

Legal Update

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ADSAN LAW

ADDITIONAL BUYER'S STAMP DUTY AND ADDITIONAL CONVEYANCE DUTY FOR TRANSFER OF RESIDENTIAL PROPERTY INTO A LIVING TRUST

Additional Buyer's Stamp Duty (Trust)

It was announced on 8 May 2022 by the Government that Additional Buyer's Stamp Duty ('ABSD') will apply and be payable on the conveyance, assignment or transfer of residential property to a trustee to hold said residential property on trust. This stamp duty payable is known as ABSD (Trust) and is calculated at the rate of 35% on the purchase price or market value of the residential property in question, whichever is higher.

The ABSD (Trust) will apply to all instruments where residential property is transferred into a trust, if said instrument is executed on or after 9 May 2022.

The Previous Position

ABSD is an additional tax that is levied on top of Buyer's Stamp Duty ('BSD'), which is payable on the purchase or acquisition of properties. ABSD applies only when the property in question is residential property, and even then, is payable only in certain circumstances. Determining liability for ABSD depends on the profile of the ultimate owner of the property that is being acquired.

The concept of trusts and the separation of legal and beneficial, or equitable, ownership has long been a feature of our common law. At its core, a trust is a legal arrangement where a party, known as a trustee, is entrusted with the legal ownership of an asset, who must hold and use said asset solely for the benefit of another, known as the beneficiary. The party who creates a trust and entrusts the asset to the trustee is known as the settlor, but the settlor and trustee can be the same person.

In this arrangement, the trustee is the legal owner of the asset, while the beneficiary is said to be the beneficial, or equitable owner, of the asset. As legal and beneficial ownership becomes separated, it is not possible for a trustee to hold assets on trust for himself.

Because the trustee must hold the asset purely for the beneficiary's interests, and cannot benefit himself, where the asset in question is residential property subject to a trust, the Inland Revenue Authority of Singapore ('IRAS') considers the profile and residential property count of the beneficiary, rather than the trustee. As such, where residential property is acquired by a trustee to be held on trust for a beneficiary who is a Singapore citizen who does not already own residential property, no ABSD is payable.

The current position

ABSD (Trust) is payable only where residential property is transferred into a living, or *inter vivos* trust (i.e. a trust created during the lifetime of the settlor). Transfers into a testamentary trust will not be subject to ABSD (Trust).

However, ABSD (Trust) is payable upfront, regardless of the profile of the beneficiary. In certain circumstances, remission of the ABSD (Trust) may be applicable. The amount remitted will be calculated based on the difference between the ABSD (Trust) of 35% and the ABSD corresponding to the profile of the beneficial owner of the property in question.

Remission of ABSD (Trust)

Trusts which are structured with only identifiable, individual beneficiaries may qualify for remission of ABSD (Trust), under the Stamp Duties (Trusts for Identifiable Individual Beneficiary) (Remission of ABSD) Rules 2022. The conditions for remission are as follows:

1. the residential property is held on trust for identifiable individual beneficiaries only;
2. ABSD (Trust) has been paid; and
3. the application for remission is made within 6 months from the date of the instrument

Article 3 of the First Schedule of the Stamp Duties Act 1929 (the "Act") defines an identifiable individual beneficiary as follows:

1. an individual who is identified in the declaration of trust as a beneficiary of the estate or interest, whether solely or together with another; and
2. who, because of the trust, has beneficial ownership of the estate or interest (whether solely or together with another) that is not, under the terms of the trust, revocable, variable, or subject to any condition subsequent.

but excludes an individual who is entitled to any estate or interest in remainder or reversion.

The term 'remainder' or 'reversion' refers to an interest in property that will only be inherited after the preceding interest expires. For example, where a settlor acquires residential property and declares that he holds the property on trust for A for life, and then to B after A dies, B is a beneficiary of the remainder.

In such a case, this trust would not qualify for ABSD (Trust) remission, as B is not an identifiable individual beneficiary.

The Act also clarifies specifically that the following are not identifiable individual beneficiaries:

1. an individual who has not been born on the date of the declaration of trust;
2. an individual who is entitled only to the income of the property under the trust;
3. an individual whose estate or interest in the property under the trust is a contingent or discretionary interest, or who becomes entitled to an estate or interest in the property only upon revocation of the trust.

Therefore, only a trust where the beneficial interest in the property has vested in all beneficiaries will qualify for remission of ABSD (Trust). Where a beneficiary's interest in the property is contingent on the happening of some other event, said beneficiary would not be an identifiable individual beneficiary. Further, as the emphasis is on individuals who have been identified in the declaration of trust, it would appear that trusts for a class of beneficiaries, such as a trust for the benefit of a settlor's children or employees, will not qualify for ABSD (Trust) remission.

Additional Conveyance Duty for Buyers ('ACDB')

ACDB is a tax similar to ABSD, and is levied on the acquisition of equity interests (i.e. shares) in property holding entities ('PHE'), where the party acquiring said interest is or becomes a significant owner of the PHE after the acquisition.

Currently, ACDB applies to the acquisition or transfer of equity interests in PHEs into living trusts, where the beneficiaries are identifiable and are significant owners or become significant owners of the PHE in question. However, where there is no identifiable beneficiaries at the time the equity interests are transferred to the trust, ACDB treatment has been unclear.

As such and in line with the ABSD (Trust) outlined above, the Government has also introduced ACD (Trust), which will apply where equity interests in PHEs are transferred to a trust on or after 10 May 2022, even where no beneficiaries have been identified. In such an instance, IRAS will consider the equity interests that the trustee holds together with his associates in determining whether the significant ownership threshold has been met.

Stamp Duty on Renunciation of Trust by Beneficial Owner

It was also announced by the Government that BSD, and where applicable ABSD and Seller's Stamp Duty ('SSD'), will be imposed where interest in residential property that is held on trust is renounced by its beneficial owner.

As the renunciation results in a change in the beneficial ownership of the property in question, stamp duty will be payable in the following manner:

1. where the beneficiary renounces his interest within the SSD holding period, the beneficiary will be liable to pay SSD;
2. the settlor who acquires the interest is liable to pay BSD and, where applicable, ABSD.

Stamp duty on the renunciation of beneficial interest held under trust will be payable where:

1. the residential property in question was transferred to the trust on or after 10 May 2022;
2. all beneficial owners of the property were identified at the time of the transfer; and
3. a beneficial owner renounces his interest in the property on or after 10 May 2022

The beneficiary renouncing their interest in the trust property must do so by completing a notice in the prescribed form, which will be the instrument chargeable for stamp duty purposes, and which must be served on both the settlor of the trust and the Commissioner of Stamp Duties. The prescribed form will be published later in the middle of 2022.

Sources / References:

1. Inland Revenue Authority of Singapore's website - Additional Buyer's Stamp Duty ([https://www.iras.gov.sg/taxes/stamp-duty/for-property/buying-or-acquiring-property/additional-buyer-s-stamp-duty-\(absd\)](https://www.iras.gov.sg/taxes/stamp-duty/for-property/buying-or-acquiring-property/additional-buyer-s-stamp-duty-(absd)))
2. Inland Revenue Authority of Singapore's website – Renunciation of Interest in Trust over Residential Property by Beneficial Owner (Section 22C) ([https://www.iras.gov.sg/taxes/stamp-duty/for-property/selling-or-disposing-property/renunciation-of-interest-in-trust-over-residential-property-by-beneficial-owner-\(section-22c\)](https://www.iras.gov.sg/taxes/stamp-duty/for-property/selling-or-disposing-property/renunciation-of-interest-in-trust-over-residential-property-by-beneficial-owner-(section-22c)))
3. Press release from the Ministry of Finance – Additional Buyer's Stamp Duty (ABSD) for Residential Properties Transferred into a Living Trust ([https://www.mof.gov.sg/news-publications/press-releases/additional-buyer-s-stamp-duty-\(absd\)-for-residential-properties-transferred-into-a-living-trust](https://www.mof.gov.sg/news-publications/press-releases/additional-buyer-s-stamp-duty-(absd)-for-residential-properties-transferred-into-a-living-trust))
4. Press release from the Ministry of Finance – Additional Conveyancing Duties for Equity Interests of Property Holding Entities Transferred into a Living Trust (<https://www.mof.gov.sg/news-publications/press-releases/additional-conveyance-duties-for-equity-interests-of-property-holding-entities-transferred-into-a-living-trust>)
5. Stamp Duties Act 1929 (<https://sso.agc.gov.sg/Act/SDA1929>)
6. Stamp Duties (Trusts for Identifiable Individual Beneficiary) (Remission of ABSD) Rules 2022 (<https://sso.agc.gov.sg/SL/SDA1929-S367-2022?DocDate=20220508>)



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