

Additional Buyer's Stamp Duty and Additional Conveyance Duty to apply for transfers of residential property into a living trust

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Introduction

On 8 May 2022, the Ministry of Finance (MOF) announced that with effect from 9 May 2022, any transfer of residential property into a living trust will be subject to additional buyer's stamp duty (ABSD) at the rate of 35% (ABSD (Trust)). In addition, with effect from 10 May 2022, additional conveyance duties (ACD (Trust)) will now apply to transfers of equity interests in Property Holding Entities (PHEs) into living trusts, and where applicable, buyer's stamp duty (BSD), ABSD, and seller's stamp duty (SSD) will also be imposed when a beneficial owner renounces his or her interest in residential property held on a bare trust.

According to the MOF, these new measures aim to plug a gap in the existing ABSD and ACD regimes, and will largely affect those who use trusts with unidentified beneficiaries to avoid the high ABSD rates on their subsequent purchases of property.

The previous ABSD regime and the relevance of this change

Generally, ABSD liability depends on the profile of the buyer as at the date of purchase of the residential property, which generally consists of two factors:

- (a) The profile of the buyer (whether the buyer is an entity or an individual, and; if buyer is an individual – whether buyer is a Singaporean citizen, permanent resident, or foreigner); and
- (b) Count of residential properties owned by the buyer.

Previously, when a trust was structured such that it had no identifiable beneficial owners at the time residential property was transferred into the trust, ABSD was not payable. To address this lacuna, the MOF has since introduced ABSD (Trust), which takes effect on and from 9 May 2022. Under the ABSD (Trust), instruments transferring residential property into a **living trust** will be subject to ABSD at the rate of 35%, even if there is no identifiable beneficial owner at the time of transfer. For the purposes of ABSD (Trust), a "living trust" is defined by the MOF as a trust that is created by the settlor during his or her lifetime, *i.e.*, an *inter vivos* trust. This definition is broad and seems to affect **all transfers** of residential properties into an *inter vivos* trust.

Nonetheless, as an administrative concession, trusts which only consist of identifiable individual beneficiaries (e.g., fixed trusts) may be eligible for remission of ABSD (Trust) under the Stamp Duties (Trusts for Identifiable Individual Beneficiary) (Remission of ABSD) Rules 2022 (ABSD (Trust) Rules). An "identifiable individual beneficiary" is defined in Article 3 of the First Schedule of the Stamp Duties Act 1929 as an individual:

- (a) Who is identified in a declaration of trust as the beneficiary of the estate or interest (whether solely or with other individuals); and
- (b) Who, because of the trust, has a beneficial interest in the estate or interest (whether solely or with other individuals) and the terms of the trust do not stipulate that the estate or interest is revocable, variable, or subject to any condition subsequent,

excluding an individual who is entitled to any estate or interest in property in remainder or reversion.

For the avoidance of doubt, the Inland Revenue of Singapore (IRAS) has further clarified that each of the following is not an identifiable individual beneficiary:

- (a) An individual who has not been born on the date of the declaration of trust;
- (b) An individual who is only entitled to the income of the property under the trust; or
- (c) 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.

Under the ABSD (Trust) Rules, the refunded amount will be based on the difference between the ABSD (Trust) rate of 35% and the highest applicable ABSD rate corresponding to the profile of the beneficial owner(s). For reference, we include here a table of the current ABSD rates:

Summary of ABSD rates		
Profile of buyer		ABSD rates (on or after 9 May 2022)
Singapore Citizens	First residential property	NIL
	Second residential property	17%
	Third and subsequent residential property	25%
Singaporean Permanent Resident	First residential property	5%
	Second residential property	25%
	Third and subsequent residential property	30%
Foreigners	Any residential property	30%
Entities	Any residential property	35%
Housing Developers	Any residential property	35% (remittable, subject to conditions) + 5% (non-remittable)
Trustee (NEW)	Any residential property	35%

To apply for the remission of ABSD (Trust), the following conditions must be met:

- (a) The residential property is held on trust for one or more identifiable individual beneficiaries only;
- (b) ABSD (Trust) of 35% has been paid; and
- (c) The claim is made within 6 months after the date of execution of the instrument.

If you wish to find out more on the remission process of ABSD (Trust), please feel free to reach out to us and we can advise further.

Additional Conveyance Duty (Trust)

Prior to the current amendments, ACD has already applied to transfers of equity interest in Property Holding Entities (PHEs) into living trusts with identifiable beneficial owners who are or become significant owners of the PHEs. Where there is no identifiable beneficial owner when the equity interests in the PHEs are transferred into the trust, ACD treatment has been unclear.

In line with the ABSD (Trust) update above, ACD will, on or after 10 May 2022, also be payable on transfers of equity interests in PHEs into all living trusts executed, where the significant owner threshold has been reached, **even if there is no identifiable beneficial owner** of the equity interests at the time of transfer (ACD (Trust)). To determine if the significant owner threshold is reached for a living trust with no identifiable beneficial owner, IRAS would look at the equity interests that **the trustee** holds in addition to those held by his associates.

For the avoidance of doubt, IRAS has also clarified that ACD will be payable where:

- (a) Equity interest in a PHE was transferred to the trust on or after 10 May 2022;
- (b) The trustee subsequently executes a conveyance of the trust equity interest to a beneficiary who was previously not an identifiable beneficial owner at the time the equity interests were transferred to be held on trust; and
- (c) This beneficiary remains or becomes a significant owner as a result of this conveyance.

Renunciation of Residential Property Held on Trust

BSD, and where applicable, ABSD and SSD, will be imposed where:

- (a) A residential property is transferred into a living trust on or after 10 May 2022;
- (b) All the beneficial owners of the residential property are identified at the time of transfer; and
- (c) A beneficial owner of that property renounces his interest in the property on or after 10 May 2022.

The beneficial owner renouncing his interest must give notice of the renunciation in writing (i.e. through a Prescribed Notice (Renunciation)) to the settlor and the Commissioner of Stamp Duties within a specified period, on which the applicable stamp duties will be imposed. As a result of this renunciation, the original beneficial owner may also be liable for SSD.

Where the settlor attains interest in the residential property upon the renunciation, he/she becomes the new beneficial owner, and he/she will have to pay the relevant stamp duties (e.g., BSD, ABSD) within a prescribed period.

Potential issues that require further clarity

At this juncture, since the announcement by the MOF only refers to transfers into a “living trust”, it appears that a transfer of residential property into a testamentary trust would not be subject to ABSD (Trust).

Further, given the absence of transitional provisions, the treatment of an option-to-purchase for a residential property that has already been issued to a trustee, but not yet exercised before 9 May 2022, or a purchase where the option has already been exercised but completion has not yet occurred before 9 May 2022, has not been clearly spelt out.

While we await for more definitive guidance on the issues above, please feel free to reach out to us if you require any advice or assistance on ABSD (Trust) or ABSD (ACD).

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