CHAPTER 2

Inland Revenue Department

Assessment and collection of stamp duty

Audit Commission
Hong Kong
29 March 2010

This audit review was carried out under a set of guidelines tabled in the Provisional Legislative Council by the Chairman of the Public Accounts Committee on 11 February 1998. The guidelines were agreed between the Public Accounts Committee and the Director of Audit and accepted by the Government of the Hong Kong Special Administrative Region.

Report No. 54 of the Director of Audit contains 8 Chapters which are available on our website at http://www.aud.gov.hk.

Audit Commission
26th floor, Immigration Tower
7 Gloucester Road
Wan Chai
Hong Kong

Tel : (852) 2829 4210
Fax : (852) 2824 2087
E-mail : enquiry@aud.gov.hk

ASSESSMENT AND COLLECTION OF STAMP DUTY

Contents

PART 1: INTRODUCTION

1.1 This PART describes the background to the audit and outlines the audit objectives and scope.

Background

1.2 The Stamp Duty Ordinance (Cap. 117) provides that every instrument, wherever executed, specified in the Ordinance shall be chargeable with stamp duty. The main types of instrument chargeable with stamp duty are as follows:

(a) conveyance on sale (i.e. assignment) of property in Hong Kong;

(b) agreement for sale of residential property in Hong Kong;

(c) lease of property in Hong Kong; and

(d) contract note for sale or purchase of Hong Kong stock (Note 1).

Appendix A shows the time limit for stamping, persons liable and amount of stamp duty.

1.3 The Commissioner of Inland Revenue, who also holds the appointment as the Collector of Stamp Revenue, is responsible for administering the Stamp Duty Ordinance. The stamp duty assessment and collection work is performed mainly by the Stamp Office of the Inland Revenue Department (IRD), with the Rating and Valuation Department (RVD) providing the necessary property valuation services. A Senior Assessor heads the Stamp Office. As at 30 September 2009, the Stamp Office had a workforce of 98 staff, comprising 74 staff in its establishment, 4 staff on loan from other IRD offices and 20 non-civil service contract staff.

1.4 Table 1 shows the stamp duty collections from 2007-08 to 2009-10.

Note 1: *Hong Kong stock means stock the transfer of which is required to be registered in Hong Kong. In general terms, it means stock of a company for which the register of members is maintained in Hong Kong, such as stock of companies incorporated under the Companies Ordinance (Cap. 32) and stock listed on The Stock Exchange of Hong Kong Limited.*

Table 1

Stamp duty collections (2007-08 to 2009-10)

Instrument	Amount of stamp duty collected		
	2007-08 **($ million)**	**2008-09** **($ million)**	**2009-10 (up to December 2009)** **($ million)**
Assignments and agreements for sale	15,702	10,009	11,633
Leases	328	367	262
Contract notes	35,447	21,702	19,863
Others (Note)	72	84	62
Total	**51,549**	**32,162**	**31,820**

Source: *Stamp Office records*

Note: *These included the penalties on late stamping cases (see para. 4.21).*

Audit review

1.5 The Audit Commission (Audit) has recently conducted a review of the IRD's assessment and collection of stamp duty, focusing on the following areas:

(a) stamp duty on assignments and agreements for sale (PART 2);

(b) stamp duty on leases (PART 3);

(c) stamp duty on contract notes (PART 4); and

(d) recovery of stamp duty (PART 5).

1.6 Audit has found room for improvement in the above areas and has made a number of recommendations to address the issues.

Acknowledgement

1.7 Audit would like to acknowledge with gratitude the full cooperation of the staff of the IRD and the RVD during the course of the audit review.

PART 2: STAMP DUTY ON ASSIGNMENTS AND AGREEMENTS FOR SALE

2.1 This PART examines the following issues relating to the stamp duty on assignments of property in Hong Kong and agreements for sale of residential property in Hong Kong:

(a) valuation services provided by the RVD (paras. 2.5 to 2.13);

(b) issue of further stamp duty assessments (paras. 2.14 to 2.18); and

(c) objections to further stamp duty assessments (paras. 2.19 to 2.23).

Procedures for stamping assignments and agreements for sale

2.2 ***Initial stamping.*** An assignment of property or an agreement for sale of residential property may be stamped by the following methods:

(a) ***Conventional stamping on original instrument.*** The applicant submits the original instrument at the Stamp Office counter, together with a stamping request form giving details of the instrument and a cheque for paying the stamp duty. The counter officer retains the submitted documents for processing, including checking the amount of stamp duty, inputting the data into the Stamp Office's Property Stamping System (PSS), and imprinting an appropriate stamp on the instrument. Normally, the applicant can collect the stamped instrument five working days after submitting the application; and

(b) ***E-stamping.*** The applicant inputs details of the instrument via the Internet. The PSS captures the input data and calculates the amount of stamp duty based on the consideration. After paying the stamp duty, the applicant can print a stamp certificate and attach it to the instrument.

Normally, the applicant registers the stamped assignment or stamped agreement for sale in the Land Registry. According to its practice, the Land Registry does not accept an unstamped instrument for registration.

2.3 ***Assessment of further stamp duty.*** According to the Stamp Duty Ordinance, stamp duty on an assignment or an agreement for sale made for an inadequate consideration shall be calculated based on the value of the property. After initial stamping of an instrument based on the consideration, the Stamp Office will request the RVD to assess the adequacy of the consideration to determine whether further stamp duty should be demanded. The procedures are summarised below:

(a) details of newly stamped instruments are sent weekly to the RVD via the PSS;

(b) the RVD valuation results are sent to the Stamp Office weekly via the PSS. The assessed cases are classified as follows:

   (i) ***Acceptable cases.*** The consideration is acceptable;

   (ii) ***Conditional acceptable cases.*** The consideration will be acceptable if the duty payer's claim (e.g. transfer of share to a joint owner rather than sale of the whole property) is accepted;

   (iii) ***No further action cases.*** The valuation does not exceed $2 million. Since the stamp duty for such cases is fixed at $100, no further stamp duty is payable; and

   (iv) ***Inadequate consideration cases.*** The valuation is greater than the consideration;

(c) for each conditional acceptable case, the Stamp Office will verify the duty payer's claim; and

(d) for each inadequate consideration case, the Stamp Office will issue a further stamp duty assessment. The duty payer is required to pay the further stamp duty within one month from the date of assessment (Note 2).

2.4 ***Adjudication of stamp duty.*** The Stamp Office's assessment of further stamp duty is an adjudication of stamp duty in accordance with section 13 of the Stamp Duty Ordinance (see para. 3.20). Under that section, a person may also voluntarily submit an assignment or an agreement for sale for adjudication of stamp duty, in which case the assessment procedures are similar to those described in paragraph 2.3.

Note 2: *In accordance with section 13(10) of the Stamp Duty Ordinance, if the further stamp duty is not paid within one month from the date of assessment, the Stamp Office will charge an additional stamp duty on the instrument equal to interest on the further stamp duty at the rate of 0.04% per day, in respect of the period from the expiration of a period of one month from the date of assessment to the date of full settlement.*

Valuation services provided by Rating and Valuation Department

2.5 The RVD mainly uses a computerised statistical analysis system to make an initial assessment of the adequacy of the consideration by analysing a large number of past transactions. The RVD professional valuation staff will review the reasonableness of the computer-generated assessments and, for cases involving inadequate consideration, value the property. The RVD will then contact the duty payers to obtain their representations about the valuation, before sending the valuation results to the Stamp Office.

2.6 According to the RVD's internal guidelines, stamp duty cases should be dealt with expeditiously and cost-effectively, the target normally being within four months of receipt. In 2008-09, the RVD's performance target was to notify the Stamp Office of the valuation result within four months in 85% of the cases.

Audit analysis of 2008-09 valuation cases

2.7 According to PSS records, in 2008-09, the RVD sent the valuation results of 108,400 cases to the Stamp Office. Table 2 shows Audit's analysis of these completed cases. The analysis shows that the RVD completed 100,300 cases (or 92.5%) within four months, which exceeded the target of 85%. It also shows that the RVD took more time to complete the remaining 8,100 cases (or 7.5%), including 300 cases which took the RVD more than one year to complete.

Table 2

Analysis of valuation cases completed by RVD (2008-09)

Time taken to complete valuation (Month)	Number of cases					
	Acceptable cases	**Conditional acceptable cases**	**No further action cases**	**Inadequate consideration cases**	**Total**	
4 or less	91,480	350	7,880	590	**100,300 (92.5%)**	
Over 4 to 8	5,140	80	1,220	260	**6,700 (6.2%)**	
Over 8 to 12	850	20	100	130	**1,100 (1.0%)**	
Over 12 to 24	222	–	10	56	**288 (0.3%)**	**8,100 (7.5%)**
Over 24 to 36	7	–	–	3	**10**	**300**
Over 36 to 48	1	–	–	1	**2**	
Total	97,700	450	9,210	1,040 (Note)	**108,400 (100%)**	

Source: *Stamp Office records*

Note: *RVD valuation for these 1,040 cases was, on average, $1.85 million greater than the consideration.*

Audit observations and recommendations

Need to complete valuations expeditiously

2.8 It is important for the RVD to complete valuations expeditiously. This is because the Stamp Office cannot issue a further stamp duty assessment until the RVD has provided a valuation, and any valuation delay will result in a corresponding delay in issuing the assessment. Apart from interest losses, a delay in issuing assessment increases the risk of collection and decreases the effectiveness of recovery actions. For example, the purchaser may have sold the property and left no assets against which recovery actions can be taken (see paras. 5.15 and 5.16 for audit findings in this respect).

Areas for improvement

2.9 The fact that the RVD took more than four months to complete the valuation of 8,100 cases in 2008-09, in Audit's view, suggests that there could be areas for improvement. The audit findings are summarised below:

(a) ***Delay in providing further information to RVD.*** After receiving a valuation request, the RVD may request the Stamp Office to provide further information (e.g. floor plans) for valuation purposes. If the requested information is not available on file, the Stamp Office may conduct searches of the Land Registry records or write to the duty payer to obtain the information. Audit examination of 10 long outstanding cases as at 16 July 2009 revealed that the Stamp Office took a long time (ranging from 12 to 39 months) to provide the RVD with the requested information. In Audit's view, the Stamp Office needs to investigate the delay so as to identify deficiencies in its procedures;

(b) ***Stamp Office reminders not promptly followed up.*** The RVD's internal guidelines set out the following requirements for responding to Stamp Office reminders:

(i) once a reminder is received, RVD staff should expedite the valuation process and notify the Stamp Office of the valuation result as soon as possible; and

(ii) if replies are specially requested, RVD staff may inform the Stamp Office of the progress of the case.

In 6 cases examined by Audit, the Stamp Office specifically requested an early reply to its reminder in 4 cases, and asked the RVD to advise the latest progress of the valuation (which was under appeal) in the remaining 2 cases. However, in these 6 cases, the RVD did not reply to the Stamp Office reminders until after 1 to 6 months (or 4 months on average). In Audit's view, the RVD needs to take measures to ensure that its staff reply promptly to the Stamp Office reminders in line with its internal guidelines; and

(c) ***Explanations for long outstanding cases not provided.*** The RVD's internal guidelines require cases outstanding for over four months to be included in a list of outstanding cases. The guidelines also require RVD staff to provide explanations monthly until completion of the cases. However, in respect of 82 such cases included in the list of outstanding cases as at 24 April 2009, Audit found that explanations were given for 2 cases only. In Audit's view, the list of outstanding cases serves as a tool to help management monitor and control the long outstanding cases. Non-compliance with the aforesaid guidelines weakens the intended control.

Audit recommendations

2.10 **Audit has *recommended* that the Commissioner of Inland Revenue should:**

(a) **investigate the delay in the 10 cases mentioned in paragraph 2.9(a) and other similar cases to identify deficiencies in the procedures; and**

(b) **based on the investigation results, take measures to ensure that the Stamp Office provides information promptly to the RVD.**

2.11 **Audit has *recommended* that the Commissioner of Rating and Valuation should ensure that valuation cases are dealt with expeditiously. In particular, she should take measures to address the issues Audit has identified in paragraph 2.9(b) and (c), regarding Stamp Office reminders and explanations for long outstanding valuation cases.**

Response from the Administration

2.12 The **Commissioner of Inland Revenue** accepts the audit recommendations in paragraph 2.10. He has said that:

(a) the Stamp Office has investigated the 10 cases and found that the requests from the RVD were all received in 2008. The main cause of the delay in providing further information to the RVD was that action was dropped, probably due to the then heavy workload of the responsible posts;

(b) in early 2009, the duties of different posts of the Stamp Office were reshuffled. The situation has been much improved; and

(c) to ensure that actions are taken expeditiously, the Stamp Office is developing a computer program to keep track of the progress of cases pending the RVD's valuation. Supervisors will review those cases where no action has been taken one month after the date of receipt of the RVD's request for further information.

2.13 The **Commissioner of Rating and Valuation** accepts the audit recommendations in paragraph 2.11. She has said that:

(a) the RVD fully recognises the need to complete valuations expeditiously. It would make continued efforts to maintain achievement of the 85% performance target of notifying the Stamp Office of the RVD's valuations within four months; and

(b) the RVD agrees that adherence to the set internal guidelines is essential to the control of long outstanding valuation cases, and non-compliance would weaken the control mechanism.

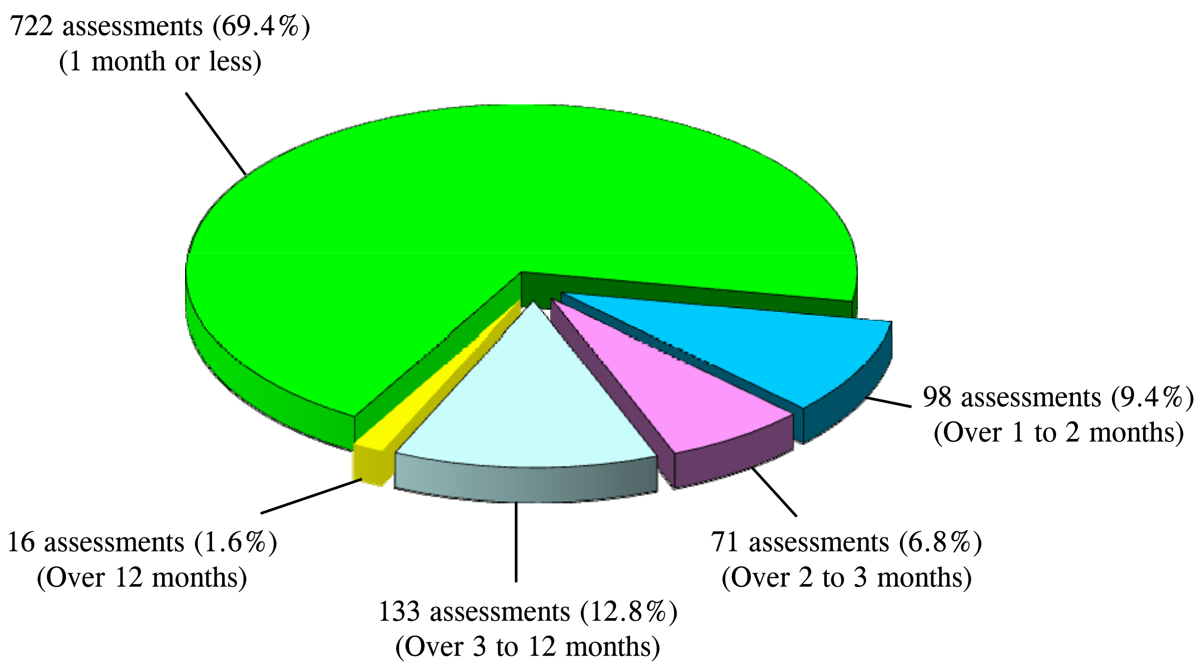
Issue of further stamp duty assessments

2.14 For cases involving inadequate consideration, the Stamp Office can at any time invoke the PSS assessment function to print a further stamp duty assessment based on the valuation provided by the RVD. The Stamp Office then issues the assessment to the duty payer.

2.15 As shown in Table 2 in paragraph 2.7, in 2008-09, the RVD sent the valuation results of 1,040 cases involving inadequate consideration to the Stamp Office. Figure 1 shows Audit's analysis of the time taken by the Stamp Office to issue further stamp duty assessments. The analysis shows that in 318 cases (or 30.6%), the Stamp Office took more than a month to issue the further stamp duty assessments after the RVD had provided a valuation. These included 16 cases where more than 12 months were taken.

Figure 1

Time taken by Stamp Office to issue further stamp duty assessments (1,040 cases involving inadequate consideration)



Source: *Stamp Office records*

In response to Audit's enquiry, the Stamp Office informed Audit that cases involving a series of transactions (Note 3), or objections to the RVD's valuation, would require additional assessment work before further stamp duty assessments could be issued. This explained why, for some of the cases, a longer time was taken.

Note 3: *Where a transaction effected by an instrument forms part of a series of transactions, stamp duty of the instrument (and the instruments effecting the other transactions) is calculated at the rate pertinent to the total amount of the considerations of the transactions, or the total value of the properties for cases involving inadequate consideration.*

Audit observations and recommendations

2.16 Audit notes the Stamp Office's explanations in paragraph 2.15. Audit also notes that the Stamp Office has not established procedures for monitoring the issue of further stamp duty assessments. Without such monitoring procedures, management will not be timely informed as to whether there are undue delays in issuing the assessments, particularly for those not involving a series of transactions or objections. Given that delays would cause interest losses and increase the risk of collection, actions are needed to improve the situation.

2.17 **Audit has *recommended* that the Commissioner of Inland Revenue should:**

(a) **investigate the cases in which the Stamp Office took a long time, after the RVD had provided a valuation, to issue the further stamp duty assessments, in order to identify the causes of the delay and deficiencies in the procedures;**

(b) **based on the investigation results, take measures to ensure that further stamp duty assessments are issued promptly after receiving the RVD's valuation; and**

(c) **establish a monitoring system for the issue of further stamp duty assessments, including requiring Stamp Office staff to report, on a regular basis, statistics similar to those shown in Figure 1.**

Response from the Administration

2.18 The **Commissioner of Inland Revenue** accepts the audit recommendations. He has said that:

(a) normally, further stamp duty assessments are issued within one month after receiving the RVD's valuation. The Stamp Office has looked into the 318 cases where assessments were issued beyond the one-month period. All these were found to be complicated cases (i.e. cases involving a series of transactions or objection) requiring further clarification of facts from, or deliberation by, the duty payers; and

(b) while it could take a longer time to resolve complicated cases, he accepts that a monitoring system can prevent undue delays and enhance efficiency. The Stamp Office is working to develop a computer system to monitor the progress of issuing further stamp duty assessments, and is designing a review system for cases where an assessment has not yet been issued, say, three months after receipt of the RVD's valuation.

Objections to further stamp duty assessments

2.19 Where the duty payer raises objection to the valuation and the further stamp duty assessment, the Stamp Office's practice is to request the RVD to review whether the valuation should be revised. If the RVD revises the valuation downwards, the Stamp Office will issue a revised assessment. If the RVD considers that the valuation should hold good and the Stamp Office does not revise the assessment, the duty payer may appeal to the District Court within one month from the date of the assessment.

2.20 According to the RVD's internal guidelines, the first objection from the duty payer provides the RVD with an opportunity to verify the details of the transaction (e.g. whether it is an "existing tenancy" transaction warranting a lower valuation). The guidelines require that, whenever possible, RVD staff should explain to the duty payer how the valuation is supported because it is pointless to simply insist that the valuation should hold good.

Audit observations and recommendation

2.21 In Audit's view, adequate and timely explanations of the basis of the RVD's valuation will not only enhance transparency, but also help the objecting duty payer understand and accept the valuation. However, from an examination of six objection cases, Audit found that RVD staff did not always give adequate and timely explanations to the duty payer as to how the valuation was supported. The audit findings are summarised below:

(a) ***Delay in giving explanations.*** In two cases, in handling the first objection, the RVD stated that the valuation should remain the same, but did not explain how the valuation was supported. It was not until the third review for the first case and the fourth review for the second case that an explanation was given; and

(b) ***Explanations not given.*** In another case, after receiving the RVD's reply to his objection, the duty payer stated that the RVD insisted on its valuation without giving any reason. The duty payer asked for an explanation as to how the valuation was made. The RVD replied that, having carefully reconsidered the matter and in the light of the latest evidence, the valuation was fair and reasonable, without explaining how it arrived at the valuation.

2.22 **Audit has *recommended* that the Commissioner of Rating and Valuation should, for cases involving objection to the RVD's valuation, take measures to ensure that RVD staff give adequate and timely explanations of the basis of the valuation to the duty payers.**

Response from the Administration

2.23 The **Commissioner of Rating and Valuation** accepts the audit recommendation. She appreciates that, for cases involving objections, improving the transparency of the valuation basis and providing adequate and timely explanations would help alleviate the objectors' dissatisfaction, and facilitate the objectors to accept the fairness and impartiality of the RVD's valuations.

PART 3: STAMP DUTY ON LEASES

3.1 This PART examines issues relating to the stamp duty on leases of property in Hong Kong. The following issues are discussed:

(a) unstamped leases (paras. 3.5 to 3.9);

(b) incorrect stamp duty (paras. 3.10 to 3.14);

(c) leases involving turnover rent (paras. 3.15 to 3.19); and

(d) adjudication of stamp duty on leases (paras. 3.20 to 3.36).

Procedures for stamping leases

3.2 A lease may be stamped by the following methods:

(a) ***Conventional stamping on original instrument.*** The applicant submits the original lease at the Stamp Office counter. The counter officer is required to examine the lease carefully to identify the information relevant to stamp duty assessment and seek his supervising officer's advice if in doubt. After the applicant has paid the assessed stamp duty, the Stamp Office Stamping Team will imprint a stamp on the lease and return it to the applicant; and

(b) ***E-stamping.*** The applicant inputs the lease details via the Internet. The PSS captures the input data and calculates the amount of stamp duty payable. After paying the stamp duty, the applicant can print the stamp certificate and attach it to the lease.

In addition, the applicant may submit the lease for adjudication of the stamp duty (e.g. where the lease involves a nominal rent) (see paras. 3.20 and 3.21).

3.3 According to the Stamp Duty Ordinance, an agreement for lease shall be chargeable with stamp duty as a lease made for the term and consideration mentioned in the agreement. A lease executed in pursuance of a duly stamped agreement for lease shall be chargeable with stamp duty at a fixed rate of $3.

Leases collected by Rating and Valuation Department

3.4 Other than cases with an adjudication file opened, the Stamp Office does not keep copies of the stamped leases. In this connection, Audit notes that:

(a) the RVD conducts annually a rent verification exercise to require selected property owners or occupiers to submit a copy of their leases so as to verify their rental information; and

(b) the leases so collected by the RVD can be used for the purpose of this audit review on stamp duty.

Audit examined 200 leases collected by the RVD in 2008 or 2009 to ascertain whether they had been duly stamped (Note 4). Audit's examination has highlighted several issues (i.e. unstamped leases, incorrect stamp duty and leases involving turnover rent) that warrant the Stamp Office's attention. The issues are discussed in paragraphs 3.5 to 3.19.

Unstamped leases

3.5 Of the 200 leases examined, Audit found that 182 leases were stamped. For the remaining 18 leases, there was no prima facie evidence that they had been stamped. After Audit brought this to its attention, the Stamp Office followed up on the 18 leases and reported its findings as follows:

(a) 11 leases had in fact been stamped previously; and

(b) 7 leases had not previously been stamped. Upon challenge, the duty payers subsequently paid the stamp duty with penalty.

Audit observations and recommendations

3.6 Section 15(1) of the Stamp Duty Ordinance provides that no instrument chargeable with stamp duty shall be received in evidence in any proceedings whatsoever except:

Note 4: *In 2008 and 2009, the RVD selected mainly non-domestic properties for verification. The sample of 200 leases was used for ascertaining whether there was room for improvement in the Stamp Office procedures. It was not intended to be statistically representative of all leases.*

(a) criminal proceedings; and

(b) civil proceedings to recover stamp duty or any penalty payable,

or be available for any other purpose whatsoever, unless such instrument is duly stamped. Also, section 15(2) provides that no instrument chargeable with stamp duty shall be acted upon, filed or registered by any public officer or body corporate unless such instrument is duly stamped.

3.7 These provisions serve as an incentive to encourage voluntary compliance with stamping requirements. However, Audit is concerned that this incentive might not always be effective, given the evidence that 7 out of the 200 leases Audit examined were unstamped (see para. 3.5(b)).

3.8 **Audit has *recommended* that the Commissioner of Inland Revenue should:**

(a) **regularly conduct risk assessments of the extent of non-compliance with the stamping requirements on leases and the amount of revenue losses; and**

(b) **based on the risk assessment results, take measures as appropriate to enhance voluntary compliance and detect non-compliance.**

Response from the Administration

3.9 The **Commissioner of Inland Revenue** accepts the audit recommendations. He has said that:

(a) in addition to the non-admissibility of instrument as evidence, as mentioned in paragraph 3.6, the Stamp Duty Ordinance provides heavy penalty for non-compliance up to 10 times of the stamp duty. Furthermore, any person who commits or attempts to commit any offence under the Ordinance is liable to severe fine and imprisonment; and

(b) despite the impact and the severe penalty and criminal sanctions on non-compliance, the Stamp Office will study the non-compliance cases and regularly review the measures for promoting compliance. Based on the investigation results, the Stamp Office will consider inviting the RVD to refer apparently unstamped lease documents for follow-up actions.

Incorrect stamp duty

3.10 Audit examination of the 200 leases also revealed that, for 14 leases (or 7%), the stamp duty was calculated incorrectly, as follows:

(a) for 11 leases, the duty payers were over-charged. The amount over-charged per case ranged from $3 to $229 (or 0.01% to 9.1% of the correct stamp duty); and

(b) for 3 leases, the duty payers were under-charged. The amount under-charged ranged from $2 to $120 (or 0.2% to 7.6% of the correct stamp duty).

3.11 As far as Audit could ascertain, some incorrect calculations were due to the failure to take account of the rent-free period. Others had no specific reasons.

Audit observations and recommendations

3.12 According to the Stamp Office's procedures for stamping leases, stamp duty calculations by counter officers are only subject to limited sample checks carried out randomly by supervisors. Calculation mistakes, if any, are unlikely to be detected. It is therefore important for due care to be exercised by counter officers in calculating stamp duty.

3.13 **Audit has *recommended* that the Commissioner of Inland Revenue should:**

(a) **regularly remind Stamp Office staff of the need to exercise due care in calculating stamp duty on leases; and**

(b) **for high-value leases, consider requiring supervisory checking of the stamp duty calculated by a counter officer.**

Response from the Administration

3.14 The **Commissioner of Inland Revenue** accepts the audit recommendations. He has said that:

(a) the Stamp Office will regularly remind its staff of the need to exercise due care in calculating stamp duty on leases; and

(b) presently, all counter assessments including leases are subject to sample checks by supervisors as set out in the Stamp Office Handbook. In implementing the audit recommendations, the Stamp Office has expanded the scope of checking to include all cases with monthly rent exceeding a specified sum. The relevant parts of the Stamp Office Handbook have been updated accordingly.

Leases involving turnover rent

3.15 Included in the 200 leases Audit examined were 15 stamped leases involving turnover rent. For each of these 15 leases, the rent was a fixed monthly amount (i.e. basic rent) plus a monthly or yearly amount, expressed as a percentage of the tenant's turnover, which would be payable in arrears if the turnover exceeded a specified amount (i.e. turnover rent).

Audit observations and recommendation

3.16 For all of these 15 leases, Audit found that the Stamp Office used only the basic rents in calculating the stamp duty. Audit estimated that the basic rents of these leases (which ranged from $10,000 to $2.6 million per month) were, on average, 32% lower than the properties' prevailing market rents (Note 5). This gives rise to the question as to whether the stamp duty for these leases was under-assessed, to the extent that the prevailing market rents reflected the actual values of the leases.

3.17 In response to Audit's enquiry, the Stamp Office has indicated that its practice for calculating stamp duty on leases involving turnover rent is in conformity with the Stamp Duty Ordinance and common law principles. In particular, there is no provision in the Stamp Duty Ordinance for the Stamp Office to substitute the basic rent by the market rent, or to collect further stamp duty on the lease when the turnover rent is subsequently ascertained. Audit notes the Stamp Office's explanations, but considers that the issue should warrant the Stamp Office's continued attention.

3.18 **Audit has *recommended* that the Commissioner of Inland Revenue should continue to monitor the use of turnover rents in leases in order to determine whether legislative amendments are required for assessing the stamp duty on such leases.**

Note 5: *Audit estimated the properties' prevailing market rents based on their rateable values, as adjusted by the changes in rental levels from the rateable value determination date to the lease commencement date.*

Response from the Administration

3.19 The **Commissioner of Inland Revenue** accepts the audit recommendation. He has said that:

(a) the Stamp Office's current practice of assessing stamp duty on leases involving turnover rent as part of the terms of the lease agreement is in conformity with case law and common law principles. Where applicable, the Stamp Office can assess stamp duty by reference to the capital value of the lease; and

(b) there is no evidence that turnover rent is used as a means to reduce stamp duty liabilities. The Stamp Office will nevertheless continue to monitor the position and consider legislative amendments, where required.

Adjudication of stamp duty on leases

3.20 ***Provisions of the Stamp Duty Ordinance.*** Section 13 of the Stamp Duty Ordinance provides that:

(a) in respect of any executed instrument, the Collector of Stamp Revenue may, and shall if he is required by any person upon payment of the adjudication fee to do so, express his opinion with reference to such instrument upon the following questions:

 (i) whether it is chargeable with any stamp duty; and

 (ii) what amount of stamp duty is chargeable thereon;

(b) if the Collector is of the opinion that the instrument is not chargeable with stamp duty, it may be stamped denoting that the instrument is not chargeable with stamp duty;

(c) if the Collector is of the opinion that the instrument is chargeable with stamp duty, he shall assess the stamp duty payable. The instrument may be stamped upon payment of the stamp duty; and

(d) the assessment of stamp duty shall, after the expiration of a period of one month from the date on which it is made, be final and conclusive for all purposes except if an appeal made to the District Court against it succeeds.

3.21 ***Procedures for adjudicating stamp duty on leases.*** According to the Stamp Office, adjudication is an important part of the stamp duty machinery. It is a means of satisfying any third party as to the correctness of stamping. It is also part of the process of appeal in any dispute as to stamp duty liability. Any person requesting adjudication must submit the original instrument and relevant supporting documents at the Stamp Office counter. The Stamp Office adjudicates the stamp duty on a lease mainly in the following ways:

(a) ***Counter adjudication.*** If a lease presented for adjudication is apparently not chargeable with stamp duty or the case is straightforward, it will be adjudicated over the counter. No adjudication file will be opened; or

(b) ***Opening of adjudication file.*** For leases not suitable for counter adjudication, the Stamp Office will open an adjudication file for further processing. If the lease is found chargeable with stamp duty, the case officer will issue a notice of assessment and demand for stamp duty to the applicant. If the lease is found not chargeable with stamp duty, the case officer is required to state the reasons in the file.

Audit examination of adjudication cases

3.22 Audit examined 20 adjudication cases involving leases (or agreements for lease) to ascertain whether there were areas for improvement. They included cases submitted by the duty payers during 2005 to 2009, and cases involving a nominal rent. The Stamp Office opened adjudication files for 18 of the 20 cases. The remaining 2 cases were adjudicated over the counter. The audit findings are reported in paragraphs 3.23 to 3.32.

Audit observations and recommendations

Need to send valuation requests promptly

3.23 In the 18 cases with adjudication files opened, the Stamp Office requested the RVD to assess the adequacy of the consideration and, for leases involving inadequate consideration, to advise on their capital values for assessing the stamp duty (Note 6). In most of these cases, the Stamp Office sent the valuation requests within 2 months after receiving the adjudication request. In 4 cases, however, Audit found that the Stamp Office took 4 to 16 months (or 9 months on average) to send the valuation requests. In Audit's view, the Stamp Office needs to ascertain why a long time was taken in these cases, and take measures to ensure that requests are sent promptly in future.

Note 6: *According to the Stamp Duty Ordinance, a lease of property made for an inadequate consideration shall be chargeable with stamp duty as an assignment based on the capital value of the lease.*

Need to examine documents thoroughly and seek clarification

3.24 ***Case A.*** In one case (Case A), Audit found evidence of under-assessment of stamp duty. Case A involved a lease instrument with a stated nominal consideration. The RVD arrived at the opinion that the capital value of the lease was nominal, apparently on the understanding that the premises were to be used for non-commercial purposes. Based on the RVD's valuation, the Stamp Office assessed the stamp duty without seeking any clarification from the duty payer. The case was then closed and the assessment became final and conclusive (see para. 3.20(d)). However, the RVD's valuation was incorrect, according to its own observations made some years later. The RVD then advised the Stamp Office that the capital value should be substantially more than the original valuation.

3.25 ***Instrument not examined thoroughly.*** In Audit's view, if staff of the RVD and the Stamp Office had examined the instrument thoroughly, they should have noted that the premises were to be used for commercial purposes. To prevent recurrence of such mistakes, the RVD and the Stamp Office need to regularly remind their staff to examine documents thoroughly. They also need to provide their staff with adequate training and guidance on examining various types of documents.

3.26 ***Clarification not sought from the duty payer.*** Furthermore, if staff of the RVD and the Stamp Office had been more proactive in seeking clarification from the duty payer about the use of the subject premises, they should have obtained sufficient information for the correct valuation of the premises. The RVD and the Stamp Office need to regularly remind their staff to be more proactive in seeking clarification from duty payers, particularly when there are doubts about issues which will affect the assessment of stamp duty.

3.27 ***Valuation not subject to supervisory review.*** The RVD officer handling Case A was a professional valuation staff. His valuation that the capital value of the lease of the premises was nominal was not subject to supervisory review. Audit found that, at the time the case was processed, the officer was on probation and had only worked a few months in the RVD. In Audit's view, the RVD needs to review whether there are deficiencies in the supervisory review procedures, particularly regarding the review of the work of newly recruited staff, and take necessary improvement measures.

Need to review counter adjudication procedures

3.28 ***Case B.*** Among the adjudication cases Audit examined was a case (Case B) that was adjudicated over the counter as not chargeable with any stamp duty. The basis of the adjudication was unknown because the Stamp Office had not kept record of the adjudication (Note 7).

3.29 ***Lease incorrectly adjudicated as not chargeable.*** Under the Stamp Duty Ordinance, a lease is chargeable with either an ad valorem stamp duty, or a stamp duty of $3, if the lease is executed in pursuance of a duly stamped agreement for lease (see para. 3.3). Therefore, in Audit's view, the Stamp Office should have adjudicated the lease in Case B as chargeable with stamp duty.

3.30 ***Adjudicated over the counter.*** Furthermore, the fact that Case B was adjudicated over the counter gives rise to Audit concern. This is because counter adjudication should only apply to straightforward cases (see para. 3.21(a)). However, it appears from Audit's examination that Case B could have significant revenue implications and was far from being straightforward. In Audit's view, the Stamp Office should have opened an adjudication file for detailed examination of the lease.

3.31 ***Similar leases processed differently.*** In two other cases (Cases C and D), Audit found that, although they involved similar leases, one was processed over the counter but the other was processed with an adjudication file. Case C involved a lease of various parts of an industrial building made between two related companies at a nominal rent for three years. Case D involved a similar lease of the same premises for the following three-year period. Further details are as follows:

(a) ***Case C.*** The lease was adjudicated over the counter as not chargeable with any stamp duty. Similar to Case B, the basis of the adjudication was unknown because the Stamp Office had not kept record of the adjudication (Note 8). In Audit's view, as in Case B, the Stamp Office might have incorrectly adjudicated the lease as not chargeable with any stamp duty (see para. 3.29); and

---

Note 7: *As the Stamp Office did not open an adjudication file, it did not keep a copy of the lease submitted for adjudication. However, it subsequently obtained a copy of the lease registered in the Land Registry.*

Note 8: *Similar to Case B, the Stamp Office did not keep a copy of the lease submitted for adjudication. Audit obtained a copy of the lease registered in the Land Registry for the purpose of this audit.*

(b) ***Case D.*** Unlike Case C, the Stamp Office opened an adjudication file for Case D, instead of adjudicating it over the counter. In September 2009, 16 months after receiving the adjudication request, the Stamp Office sent a valuation request to the RVD (Note 9). As at 31 January 2010, the RVD had not yet completed the valuation.

3.32 ***Need to review counter adjudication procedures.*** The facts of Cases B and C suggest that there was room for improvement in the counter adjudication procedures. In Audit's view, the Stamp Office needs to review the controls and procedures for adjudicating leases over the counter to identify deficiencies and take improvement measures.

Audit recommendations

3.33 **Audit has *recommended* that the Commissioner of Inland Revenue should:**

(a) **review the cases with delays in sending valuation requests to the RVD to determine the causes of delay, and take measures to ensure that such requests are sent promptly;**

(b) **regularly remind Stamp Office staff of the need to examine documents thoroughly in adjudication cases, and provide them with adequate training and guidance on examining various types of documents;**

(c) **regularly remind Stamp Office staff of the need to seek clarification proactively from duty payers, particularly when there are doubts about issues which will affect the assessment of stamp duty; and**

(d) **review the controls and procedures for adjudicating leases over the counter to identify deficiencies and take improvement measures.**

3.34 **Similarly, Audit has *recommended* that the Commissioner of Rating and Valuation should:**

(a) **regularly remind RVD staff of the need to examine documents thoroughly in adjudication cases, and provide them with adequate training and guidance on examining various types of documents;**

Note 9: *There was a delay in sending the valuation request in this case. In this connection, see also the audit findings in paragraph 3.23.*

(b) **regularly remind RVD staff of the need to seek clarification proactively from duty payers, particularly when there are doubts about issues which will affect the assessment of stamp duty; and**

(c) **review whether there are deficiencies in the supervisory review procedures, particularly regarding the review of the work of newly recruited staff, and take necessary improvement measures.**

Response from the Administration

3.35 The **Commissioner of Inland Revenue** accepts the audit recommendations in paragraph 3.33. He has said that:

Sending valuation requests promptly

(a) the Stamp Office has reviewed the 4 cases mentioned in paragraph 3.23. It was found that 2 cases were handled by an inexperienced staff, and the remaining 2 cases involved instruments with complicated clauses. The Stamp Office used to send valuation requests to the RVD after examining the instrument. To speed up the process and to avoid any similar delays in future, the Stamp Office has changed the work procedures. Valuation requests will now be prepared and issued to the RVD upon opening the adjudication file. The relevant parts of the Stamp Office Handbook have been updated accordingly;

Examining documents thoroughly and seeking clarification

(b) the Stamp Office has drawn up internal guidelines for professional officers on how to handle and assess different types of adjudication cases received over the counter. It has also issued an e-mail to remind its staff of the need to examine the documents thoroughly, and to proactively seek clarification from the duty payers (or their solicitors) should doubt arise on the content of the instruments; and

Reviewing counter adjudication procedures

(c) the Stamp Office will continuously review the controls and procedures for counter assessments, including expanding the scope of checking as mentioned in paragraph 3.14(b).

3.36 The **Commissioner of Rating and Valuation** agrees with the audit recommendations in paragraph 3.34.

PART 4: STAMP DUTY ON CONTRACT NOTES

4.1 This PART examines issues relating to the stamp duty on contract notes for sales or purchases of Hong Kong stock. The following issues are discussed:

(a) inspections of exchange participants (paras. 4.3 to 4.10);

(b) stamp duty relief for stock borrowings and stock returns (paras. 4.11 to 4.20); and

(c) late stamping cases (paras. 4.21 to 4.28).

Procedures for stamping contract notes

4.2 Section 19(1) of the Stamp Duty Ordinance provides that any person who effects any sale or purchase of Hong Kong stock shall forthwith make and execute a contract note and cause the note to be stamped. Therefore, there shall be two contract notes made for a stock transaction, one by the person effecting the sale and another by the person effecting the purchase. The stamping procedures are as follows:

(a) ***Contract notes stamped by exchange participants.*** Contract notes for sales or purchases of Hong Kong stock effected by exchange participants and recorded in the trading system of The Stock Exchange of Hong Kong Limited (SEHK) are stamped by exchange participants authorised by the Collector of Stamp Revenue. In accordance with a collection agreement between the Collector and the SEHK, the SEHK collects stamp duty from exchange participants and then pays the amount collected for each trade day to the Collector (Note 10). The SEHK is required to ensure that, for every trade day, the total amount of stamp duty paid by all exchange participants was not less than the total amount payable by them based on the SEHK records; and

(b) ***Other contract notes.*** Other contract notes (e.g. those for sales or purchases of unlisted stock) may be stamped at the Stamp Office counter. For simple cases, the counter officer assesses the stamp duty. After paying the stamp duty, the applicant can collect the stamped contract note. For more complicated cases, the Stamp Office retains the documents for processing. Normally, the applicant can collect the stamped contract note within seven working days.

Note 10: *In 2008-09, the stamp duty collected through the SEHK was $18.8 billion, representing 87% of the total amount of contract note stamp duty.*

Inspections of exchange participants

4.3 ***Maintaining a register.*** Section 54(4) of the Stamp Duty Ordinance empowers the Collector of Stamp Revenue to inspect any books of account or other documents in the possession of any person for the purposes of the Ordinance. The Stamp Office has an ongoing programme to conduct inspections of exchange participants. To this end, it maintains a register to record the relevant information about each exchange participant granted authorisation for stamping contract notes. As at 30 September 2009, there were 462 exchange participants in the register.

4.4 ***Selecting exchange participants for inspection.*** The Stamp Office has established criteria for selecting exchange participants from the register for inspection on a cycle basis. According to its programme, it inspects each exchange participant at least once every four years. It inspects active exchange participants more frequently.

4.5 ***Field inspections.*** As a condition for the granting of authorisation for stamping contract notes, exchange participants should maintain a stamp duty ledger showing the respective amounts of stamp duty payable and paid through the SEHK for each trade day. In conducting a field inspection of an exchange participant, tax inspectors check whether the exchange participant has kept proper records and paid the correct amount of stamp duty. Table 3 shows the results of inspections completed during 2007-08 to 2009-10.

Table 3

Stamp Office's inspections of exchange participants (2007-08 to 2009-10)

	2007-08	**2008-09**	**2009-10 (up to September 2009)**
Number of inspections completed			
(a) Cases with non-payment of stamp duty detected	3 (2%)	26 (18%)	15 (23%)
(b) Cases with correct stamp duty paid	179 (98%)	115 (82%)	49 (77%)
Total	**182 (100%)**	**141 (100%)**	**64 (100%)**
	($'000)	**($'000)**	**($'000)**
Amount of stamp duty charged and penalties imposed in non-payment cases			
(a) Stamp duty	82	2,204	4,750
(b) Penalties for late stamping	20	340	1,271
Total	**102**	**2,544**	**6,021**

Source: Stamp Office records

Audit observations and recommendations

Need to ensure exchange participants are granted authorisation for stamping

4.6 Section 5(2A) of the Stamp Duty Ordinance provides that an exchange participant authorised by the Stamp Office may stamp contract notes. According to the Stamp Office's authorisation requirements, an exchange participant must submit an application for authorisation three days before commencing business. In September 2009, Audit cross-checked the Stamp Office's register of authorised exchange participants against the SEHK records on exchange participants at its website. The audit findings are as follows:

(a) ***Exchange participants not yet authorised.*** As at 1 September 2009, 9 exchange participants, which commenced business during November 2007 to June 2009, had not yet submitted application for authorisation (Note 11); and

(b) ***Changes not yet updated to the register.*** The Stamp Office's register did not reflect the following changes:

   (i) 1 exchange participant ceased business in March 2009;

   (ii) 1 exchange participant, which had ceased business in February 2004, recommenced business in April 2008; and

   (iii) 4 exchange participants resigned during March to September 2008.

4.7 According to the Stamp Office, the delay in authorising the 9 exchange participants was caused by the SEHK discontinuing to dispatch its circulars (Note 12) to the Stamp Office since 2007. Starting from October 2009, the Stamp Office has required the SEHK to notify it of the commencement of business of exchange participants by e-mail. This would tighten the control on the timely issue of authorisation. In Audit's view, the Stamp Office needs to take measures to ensure that exchange participants are granted timely authorisation for stamping contract notes, and that the register of authorised exchange participants is maintained properly. This will help ensure that the Stamp Office's ongoing inspection programme covers all exchange participants.

Need to give priority to inspecting newly authorised exchange participants

4.8 Audit found that, as at 31 January 2010, the Stamp Office had not yet inspected 34 exchange participants authorised during 2006-07 to 2008-09. In particular, 2 of the 34 exchange participants (1 commencing business in December 2006 and the other in March 2008) were among the top 10% of exchange participants in terms of stamp duty payments for the six months ended 30 June 2009. Compared with exchange participants which have been inspected previously, the Stamp Office has less information to assess whether the newly authorised exchange participants keep proper records and pay the correct amount of stamp duty. In Audit's view, the Stamp Office needs to give priority to inspecting the newly authorised exchange participants, particularly those with a large scale operation.

Note 11: *The Stamp Office subsequently granted authorisation to these 9 exchange participants, mostly in October 2009.*

Note 12: *The SEHK circulars contain information on the commencement of business of exchange participants.*

Audit recommendations

4.9 **Audit has *recommended* that the Commissioner of Inland Revenue should:**

(a) **take measures to ensure that exchange participants are granted timely authorisation for stamping contract notes, and that the register of authorised exchange participants is maintained properly; and**

(b) **give priority to inspecting newly authorised exchange participants, particularly those with a large scale operation.**

Response from the Administration

4.10 The **Commissioner of Inland Revenue** accepts the audit recommendations. He has said that:

Ensuring exchange participants are granted authorisation for stamping

(a) as mentioned in paragraph 4.7, starting from October 2009, the Stamp Office has stepped up the issue of authorisation for stamping contract notes by requiring the SEHK to notify it of the commencement of business of exchange participants by e-mail. In addition, the Stamp Office will conduct monthly checks on the SEHK's website to make sure that all commencement cases have been duly included in the SEHK's notification. The relevant parts of the Stamp Office Handbook have already been updated; and

Giving priority to inspecting newly authorised exchange participants

(b) starting from March 2010, the Stamp Office will arrange field inspections to the newly authorised exchange participants after they have commenced trading for six months, with priority given to those with a large turnover. The relevant parts of the Stamp Office Handbook have been updated.

Stamp duty relief for stock borrowings and stock returns

4.11 ***Requirements for stamp duty relief.*** Section 19(11) of the Stamp Duty Ordinance provides that, where the specified requirements are met, stamp duty is not chargeable in respect of a stock borrowing (Note 13) or a stock return (Note 14) made under a stock borrowing and lending agreement. The requirements for stamp duty relief include the following:

(a) the stock borrowing is effected not earlier than 30 days prior to the registration of the stock borrowing and lending agreement with the Stamp Office;

(b) the borrowed stock is used for the specified purposes (e.g. settling of a sale of stock); and

(c) the borrowed stock is returned at the end of the agreed term or upon demand by the lender.

4.12 ***Stock borrowings not meeting requirements.*** Section 19(12AA) of the Ordinance provides that, where a stock borrowing fails to meet the relevant requirements for stamp duty relief, such stock borrowing (and any subsequent stock return) shall be deemed to be a sale and a purchase of the stock, and stamp duty is chargeable.

4.13 ***Record keeping and reporting requirements.*** In accordance with section 19(13) of the Ordinance, the Stamp Office requires a borrower to observe the following record keeping and reporting requirements:

(a) keeping a stock borrowing ledger and entering required particulars of stock borrowings and stock returns into that ledger; and

(b) submitting to the Stamp Office a bi-annual return giving details of stock borrowings not meeting the requirements for stamp duty relief, or declaring that there were no such stock borrowings. However, a borrower is not required to submit a return if he has not effected any stock borrowings during the reporting period and has no unsettled stock borrowings brought forward from the previous period.

Note 13: *A stock borrowing means the obtaining by a borrower from a lender of Hong Kong stock the sale and purchase of which in Hong Kong are subject to the rules and practices of the SEHK.*

Note 14: *A stock return, in relation to a stock borrowing, means a transaction by which a borrower returns any stock which is of the same description as the borrowed stock, or delivers any reasonable equivalent for the borrowed stock.*

4.14 ***Analysis of borrowers.*** Stock borrowings and stock returns are generally related to short sale transactions conducted through the SEHK. A short seller may borrow the stock before a short sale, and return it to the lender after a purchase to cover his short position. Table 4 shows an analysis of the stock borrowing and lending agreements registered with the Stamp Office as at 30 September 2009.

Table 4

Stock borrowing and lending agreements registered with Stamp Office (30 September 2009)

Category	Number of borrowers	Number of agreements
Exchange participants	64 (0.8%)	240 (1.1%)
Non-exchange participants	7,715 (99.2%)	21,920 (98.9%)
Total	**7,779 (100%)**	**22,160 (100%)**

Source: Stamp Office records

Audit observations and recommendations

Need to establish additional checking procedures

4.15 ***Checking procedures.*** The Stamp Office's procedures for identifying stock borrowings and stock returns not meeting the requirements for stamp duty relief are as follows:

(a) ***Inspecting exchange participants.*** In conducting a field inspection of an exchange participant, tax inspectors check whether the exchange participant has effected any stock borrowings not meeting the requirements for stamp duty relief; and

(b) ***Checking borrowers' returns.*** After receiving a borrower's bi-annual return, the Stamp Office checks whether the borrower has reported any stock borrowings not meeting the requirements for stamp duty relief.

4.16 ***Insufficient checking.*** In Audit's view, the Stamp Office's checking procedures may not be sufficient for identifying stock borrowings and stock returns not meeting the requirements for stamp duty relief. The reasons are as follows:

(a) ***Small inspection coverage.*** As shown in Table 4 in paragraph 4.14, as at 30 September 2009, less than 1% of the registered borrowers were exchange participants, and their registered stock borrowing and lending agreements represented about 1% only of the total registered agreements. Therefore, the Stamp Office's inspections of exchange participants can only cover a small part of the total stamp duty relief for stock borrowings and stock returns; and

(b) ***Many borrowers did not submit returns.*** Audit found that, for about 14,500 stock borrowing and lending agreements, the Stamp Office had not received any returns from the borrowers since their registration. The vast majority (about 14,400) of these agreements belonged to borrowers who were not exchange participants. This means that the Stamp Office had neither inspected the borrowers, nor performed other checking procedures, to ascertain whether they had effected any stock borrowings not meeting the requirements for stamp duty relief (Note 15).

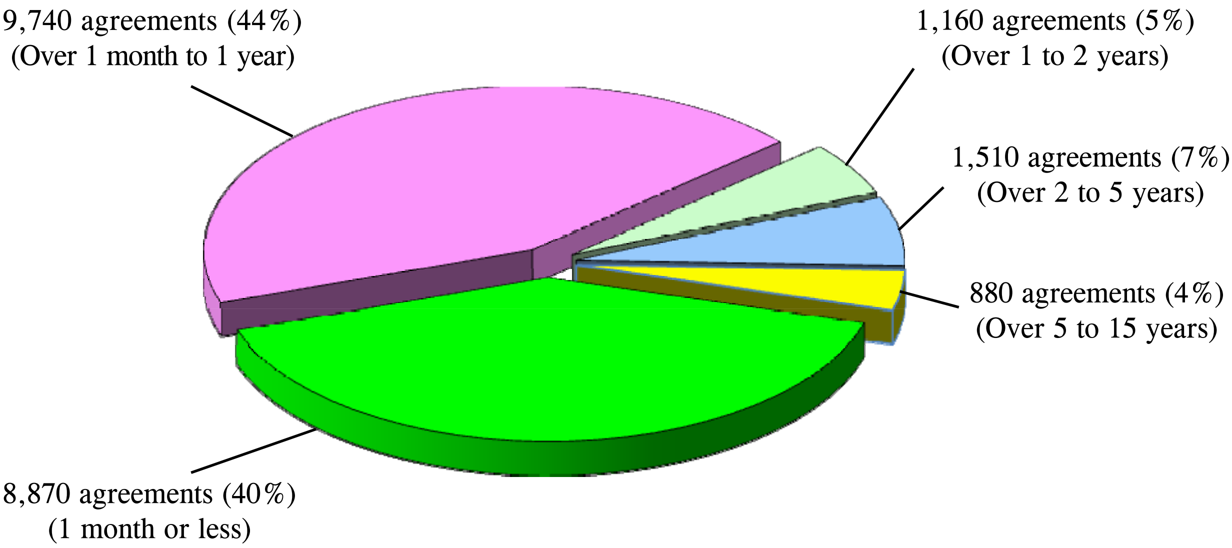
4.17 ***Risk of revenue loss.*** From the stock borrowings not meeting the stamp duty relief requirements that have come to light (Note 16), it is evident that most did not meet such requirements because they were effected earlier than 30 days prior to the registration of the stock borrowing and lending agreement (see para. 4.11(a)). There will be revenue loss, if similar transactions have been effected but not reported or detected. Audit analysis of the registration of the 22,160 agreements with the Stamp Office, as at 30 September 2009, shows that many agreements had not been registered until months, or even years, after their execution. Figure 2 shows the details. Audit notes that, in registering such agreements, the Stamp Office did not take a proactive approach to ascertain whether the borrowers had effected any stock borrowings before the registration.

Note 15: *Borrowers were not required to submit a return if they had not effected any stock borrowings (see para. 4.13(b)). However, there was no information in the Stamp Office to assess whether this was in fact the case for all the 14,400 agreements mentioned. The possibility could not be ruled out that some might have effected stock borrowings but did not report them.*

Note 16: *Stock borrowings not meeting the requirements for stamp duty relief may come to light as a result of Stamp Office inspections (only for exchange participants), or voluntary reporting. Cases 6 to 8 and 14 to 20, mentioned in paragraph 4.22, are examples.*

Figure 2

Analysis of registration of 22,160 stock borrowing and lending agreements (30 September 2009)



Source: Stamp Office records

4.18 ***Need additional checking.*** Given the risk of revenue loss, the Stamp Office needs to establish additional checking procedures for identifying stock borrowings not meeting the stamp duty relief requirements, so as to assess the stamp duty and impose penalty. Particular attention should be paid to cases where registration of the stock borrowing and lending agreement was made long after the date of execution of the agreement. The Stamp Office also needs to regularly review whether the checking procedures are adequate for identifying such transactions.

Audit recommendations

4.19 **Audit has *recommended* that the Commissioner of Inland Revenue should:**

(a) **establish additional checking procedures for identifying stock borrowings not meeting the requirements for stamp duty relief so as to assess the stamp duty and impose penalty, particularly in cases where registration of the stock borrowing and lending agreement is made long after the date of execution of the agreement; and**

(b) **regularly review whether the checking procedures are adequate for identifying such transactions in the light of the Stamp Office's findings.**

Response from the Administration

4.20 The **Commissioner of Inland Revenue** accepts the audit recommendations. He has said that:

(a) the stock borrowing and lending agreement commonly executed is a standard version document recognised and applied internationally. The agreement usually covers Hong Kong stock as well as overseas stock. It is only when the agreement parties undergo borrowing transactions involving Hong Kong stock that they would need to register the agreement. Therefore, the lapse of time between the execution of the agreement and its registration with the Stamp Office does not necessarily imply that the agreement parties have carried out Hong Kong stock borrowings not meeting the requirements for stamp duty relief. Besides, borrowers have the obligation to file returns to report such stock borrowings;

(b) the Stamp Office has decided to step up its checking procedures, and has introduced the following additional measures:

  (i) asking the applicant, before registration, for the earliest date of the Hong Kong stock borrowing effected under the agreement, and following up non-qualified transactions, if any;

  (ii) extending its field inspection to cover non-exchange participants; and

  (iii) issuing external circular, on a regular basis, through the IRD homepage and e-mails, to remind borrowers of the need to file bi-annual returns. As an immediate measure, Stamp Office Circular 1/2010 has been issued; and

(c) the Stamp Office will regularly review and enhance the checking procedures with a view to enhancing compliance.

Late stamping cases

4.21 ***Provisions on late stamping.*** According to section 9 of the Stamp Duty Ordinance, any instrument chargeable with stamp duty which is not stamped before or within the time for stamping such instrument shall not be stamped, except upon payment of the stamp duty and a penalty as specified in the Ordinance. The Collector of Stamp Revenue may remit the whole or any part of any penalty payable.

4.22 ***Audit examination of 20 cases.*** Audit examined 20 late stamping cases (Cases 1 to 20), processed by the Stamp Office during 2005 to 2009, to ascertain whether there were areas for improvement in the procedures for detecting such cases and assessing the stamp duty. Appendix B shows an analysis of the cases. The audit findings are reported in paragraphs 4.23 to 4.26.

Audit observations and recommendations

Need to establish additional procedures for detecting non-payment of stamp duty

4.23 ***Substantial amount of non-payment.*** Of the 20 cases, 10 cases (Cases 1 to 5 and 9 to 13) involved the non-payment of stamp duty in respect of sales and purchases of stock (Note 17). In 5 cases (Cases 1 to 5), the Stamp Office detected the non-payment of stamp duty during inspections of exchange participants. In the other 5 cases (Cases 9 to 13), the duty payers voluntarily reported the non-payment of stamp duty. Most of the cases involved many sale and purchase transactions conducted over a number of years. The total amount of non-payment of stamp duty in the 10 cases was $53.9 million.

4.24 ***Need additional procedures for detecting non-payment.*** Audit noted that:

(a) other than the ongoing programme to conduct inspections of exchange participants, the Stamp Office had not established procedures for detecting non-payment of stamp duty. Therefore, the Stamp Office was not aware of the non-payment of stamp duty totalling $53.4 million in Cases 9 to 13, until the duty payers voluntarily reported it to the Stamp Office; and

(b) for the same reason, the Stamp Office did not know whether there were any other similar but unreported cases of non-payment of stamp duty.

Note 17: *The other 10 cases involved stock borrowings not meeting the requirements for stamp duty relief (see paras. 4.15 to 4.18 for the audit findings).*

The Stamp Office needs to regularly assess the risk of revenue loss arising from the non-payment of stamp duty on contract notes for sales and purchases of stock. Based on the risk assessment results, the Stamp Office needs to take measures to enhance voluntary compliance with the stamping requirements, and establish appropriate procedures for detecting non-compliance.

Need to check whether counterparty has paid stamp duty

4.25 ***No assessment on counterparty.*** Audit noted that:

(a) in 17 cases (Cases 1 to 9, 12 and 14 to 20), for each transaction, the Stamp Office assessed the stamp duty in respect of both the sale and the purchase of the stock. This was because the duty payer had either effected both the sale and the purchase, or expressed willingness to bear the counterparty's stamp duty liability; and

(b) in the remaining 3 cases (Cases 10, 11 and 13), for almost all the transactions (Note 18), the Stamp Office assessed the stamp duty in respect of only the sale or the purchase of the stock, as effected by the duty payer. The total amount of stamp duty so assessed was $45 million.

4.26 ***Need to check counterparty's stamp duty.*** In Cases 10, 11 and 13, the duty payers voluntarily provided the Stamp Office with the name of the counterparty of each transaction (Note 19). However, the Stamp Office did not take follow-up actions to check whether the counterparties had paid their stamp duty. In Audit's view, where one party of a transaction has not paid the stamp duty, there is a risk that the counterparty may likewise have omitted to do so. Therefore, the Stamp Office needs to check whether the counterparty in these cases has paid the stamp duty, particularly when the amount of stamp duty involved is substantial.

Audit recommendations

4.27 **Audit has *recommended* that the Commissioner of Inland Revenue should:**

Note 18: *Cases 10, 11 and 13 each involved many transactions. Only for 2 transactions, the duty payer expressed willingness to bear the counterparty's stamp duty liability and was assessed accordingly.*

Note 19: *In Cases 11 and 13, the duty payers also provided the counterparty's address.*

(a) **regularly assess the risk of revenue loss arising from the non-payment of stamp duty on contract notes for sales and purchases of stock;**

(b) **based on the risk assessment results, take measures to enhance voluntary compliance with the stamping requirements on contract notes, and establish appropriate procedures for detecting non-compliance;**

(c) **where it is found that one party of a stock transaction has not paid the stamp duty, check whether the counterparty has likewise omitted to do so, particularly when the amount of stamp duty involved is substantial; and**

(d) **consider reopening Cases 10, 11 and 13 (and other similar past cases of non-payment of stamp duty) to ascertain whether action should be taken to demand stamp duty not paid by the counterparties.**

Response from the Administration

4.28 The **Commissioner of Inland Revenue** accepts the audit recommendations. He has said that:

Establishing additional procedures for detecting non-payment of stamp duty

(a) the Stamp Office will regularly assess the risk of non-payment of stamp duty on contract notes and review the measures to promote compliance. As mentioned in paragraph 4.20(b)(ii), it will extend its field inspection to cover non-exchange participants;

Checking whether counterparty has paid stamp duty

(b) the Stamp Office accepts the recommended procedures in paragraph 4.27(c). The revised procedures have been incorporated in the Stamp Office Handbook; and

(c) the Stamp Office is examining Cases 10, 11 and 13 to check whether the counterparties have omitted to pay stamp duty. Necessary actions to recover the stamp duty and penalty, where appropriate, will be taken.

PART 5: RECOVERY OF STAMP DUTY

5.1 This PART examines issues relating to the recovery of stamp duty. The following issues are discussed:

(a) arrears of stamp duty (paras. 5.6 to 5.12); and

(b) write-offs of stamp duty (paras. 5.13 to 5.27).

Provisions of the Stamp Duty Ordinance

5.2 The provisions of the Stamp Duty Ordinance on the recovery of stamp duty are as follows:

(a) section 4(3) provides that if any instrument chargeable with stamp duty is not duly stamped, the person or persons liable for stamping such instrument shall be liable, or jointly and severally liable, civilly to the Collector of Stamp Revenue for the payment of the stamp duty and any penalty payable under section 9 (see para. 4.21), and may be proceeded against; and

(b) section 4(5) provides that no action shall be brought for the recovery of any stamp duty with respect to any instrument more than six years from the expiration of the time for stamping such instrument.

Standing Accounting Instructions about arrears and write-offs

5.3 Controlling Officers are required to comply with the following Standing Accounting Instructions (SAIs — Note 20) about arrears and write-offs of revenue:

(a) ***SAI 800.*** Controlling Officers must regularly review the procedures and satisfy themselves that appropriate follow-up actions are taken to recover the arrears of revenue;

(b) ***SAI 1020.*** Controlling Officers are required to render an annual return of arrears of revenue to the Director of Accounting Services, who will issue annually a Treasury Circular Memorandum setting out the reporting requirements;

Note 20: *SAIs are made by the Director of Accounting Services pursuant to section 16 of the Public Finance Ordinance (Cap. 2) and the Regulations made thereunder.*

(c) ***SAI 200.*** Where a Controlling Officer is satisfied that sums due to the Government arising from arrears of revenue are not recoverable, he should apply write-off procedures. Application for write-off must be made to the Secretary for Financial Services and the Treasury, except where powers have been delegated to departmental level under Financial Circular No. 6/2000 issued in June 2000; and

(d) ***SAI 205.*** A half-yearly return must be submitted by each Controlling Officer to the Secretary for Financial Services and the Treasury showing the amounts written off by him under delegated authority and stating briefly the action taken to effect recovery.

Procedures for recovering stamp duty

5.4 ***Recovery of stamp duty.*** The Stamp Office Handbook contains the following guidelines on taking recovery actions:

(a) recovery actions should be taken against all persons liable in the case; and

(b) a proposed assessment letter (Note 21), or notice of assessment, should be issued to the other parties, before or right after the first notice of assessment is overdue (Note 22).

Where stamp duty remains outstanding after issuing a final reminder, the Stamp Office may institute legal proceedings in the Small Claims Tribunal or the District Court, depending on whether the arrears exceed $50,000. If the judgement debt is not settled, the Stamp Office may apply to the District Court to levy execution against the movable property of the defaulter, or impose a charge on his immovable property. In warranted cases, the Stamp Office may apply for an order for sale of the charged property, or institute bankruptcy or liquidation proceedings.

5.5 ***Write-off of stamp duty.*** Where recovery actions have proved fruitless, the outstanding stamp duty will be written off. In accordance with Financial Circular No. 6/2000, the Secretary for Financial Services and the Treasury's approval will be sought for cases involving losses exceeding $500,000, and for cases involving fraud or negligence on the part of a public officer. Authorised IRD officers will approve other cases.

Note 21: *In certain cases, the Stamp Office may issue a letter to the duty payer inviting him to make representations about the RVD's valuation and the Stamp Office's proposed stamp duty assessment, before issuing a formal notice of stamp duty assessment and demand for payment.*

Note 22: *For outstanding stamp duty on assignments or agreements for sale, the Stamp Office normally takes recovery actions against the purchaser first, and then the vendor. For leases, the Stamp Office may issue a notice of assessment to both the lessor and lessee at the same property address.*

Arrears of stamp duty

5.6 ***Arrears return for 2008-09.*** According to the IRD's annual return of arrears of revenue for 2008-09, as at 31 March 2009, the arrears of stamp duty amounted to $67.92 million. Table 5 shows an ageing analysis of the arrears.

Table 5

Arrears of stamp duty
(31 March 2009)

Period past due date of demand note (Year)	Number of cases	Amount of arrears ($ million)
Cases under appeal		
1 or less	1	1.49
Over 1 to 2	3	62.51
Sub-total	**4**	**64.00 (Note 1)**
Other cases		
1 or less	58	2.55
Over 1 to 2	1	0.01
Over 2 to 5	8	0.47
Over 5	6	0.89 (Note 2)
Sub-total	**73**	**3.92**
Total	**77**	**67.92 (Note 3)**

Source: Stamp Office records

Note 1: The risk of collection for the 4 cases under appeal is considered insignificant because:

(a) in 3 cases, the appellants have provided guarantees for the payment of the stamp duty; and

(b) in the remaining case, the arrears were settled in June 2009.

Note 2: This included the amount of $495,000 mentioned in Case 27, written off in November 2009 (see para. 5.18).

Note 3: The amount did not include $62.4 million of outstanding stamp duty and penalty on certain contract notes (see paras. 5.7 and 5.8).

5.7 ***Late stamping cases not included in arrears return.*** Where non-payment of stamp duty on contract notes is detected during an inspection of an exchange participant, or is reported voluntarily by a duty payer, the Stamp Office's practice is to issue a letter to demand the stamp duty and the penalty for late stamping, instead of a formal notice of stamp duty assessment and demand for payment. For such late stamping cases (Note 23), the Stamp Office's accounting treatments are as follows:

(a) any outstanding stamp duty and penalty are not treated as arrears of revenue requiring reporting under SAI 1020; and

(b) any uncollectible stamp duty and penalty are not treated as irrecoverable arrears of revenue requiring the application of write-off procedures under SAI 200 and reporting under SAI 205.

According to the Stamp Office, it adopts such accounting treatments because, in many cases, the stamp duty is only a gross estimate subject to revision and negotiation. As at 31 March 2009, there were 127 such late stamping cases involving outstanding stamp duty and penalty totalling $57 million, which were not included in the IRD's annual return of arrears of revenue for 2008-09.

5.8 ***A liquidation case not included in arrears return.*** In September 2008, an exchange participant went into liquidation. The Stamp Office subsequently issued a letter to the exchange participant to demand the outstanding stamp duty. It then filed a proof of debt with the Official Receiver. As at 31 March 2009, the outstanding stamp duty amounted to $5.4 million. Similar to the late stamping cases, the outstanding stamp duty was not included in the IRD's annual return of arrears of revenue for 2008-09.

Audit observations and recommendations

5.9 According to Treasury Circular Memorandum No. 6/2009 issued in June 2009 (see para. 5.3(b)), arrears of revenue include debts and charges raised in a form other than demand notes (e.g. letters, as in the late stamping cases and the liquidation case). Also, according to SAI 1020(4):

(a) all debts or charges should be included in the annual return of arrears of revenue; and

Note 23: *Cases 1 to 20 (see para. 4.22) were examples of such late stamping cases.*

(b) accounts under dispute (as in many of the late stamping cases) should be regarded as arrears but shown separately.

In Audit's view, the Stamp Office needs to review the accounting treatments for late stamping cases and liquidation cases.

5.10 **Audit has *recommended* that the Commissioner of Inland Revenue should, in consultation with the Director of Accounting Services, review whether:**

(a) **the SAIs about arrears and write-offs are applicable to late stamping cases and liquidation cases involving contract notes; and**

(b) **the accounting treatments for these cases need to be changed accordingly.**

Response from the Administration

5.11 The **Commissioner of Inland Revenue** accepts the audit recommendations. He has said that:

(a) the Stamp Office has noted the Treasury Circular Memorandum No. 6/2009 and the relevant SAIs; and

(b) the Stamp Office is seeking advice from the Director of Accounting Services. Upon his advice, the Stamp Office will review and modify, where appropriate, the current accounting practice on arrears and write-offs, to conform to the relevant SAIs.

5.12 The **Director of Accounting Services** concurs with Audit that the requirements to report the arrears of revenue by bureaux and departments have been stipulated clearly in SAI 1020 and the Treasury Circular Memorandum issued each year. He will liaise with the Commissioner of Inland Revenue and request him, in reviewing the accounting treatments on reporting of arrears and write-offs, to take into account the requirements, as follows:

(a) all debts and charges which were due but remained unsettled by the year end date, regardless of whether a demand note has been issued, should be included in the annual return;

(b) debts and charges raised other than in the form of a demand note (e.g. by letter) should be included as well;

(c) any interest or penalty, which was due and payable on outstanding debts and charges but for which no demand notes have been issued, should also be reported; and

(d) outstanding debts and charges under dispute should be regarded as in arrears, albeit shown separately in the return.

Write-offs of stamp duty

5.13 Table 6 shows the write-offs of stamp duty from 2003-04 to 2008-09.

Table 6

Write-offs of stamp duty
(2003-04 to 2008-09)

Year	Number of cases	Amount written off ($ million)
2003-04	63	3.19
2004-05	29	5.01
2005-06	42	0.26
2006-07	17	0.10
2007-08	27	0.17
2008-09	23	0.86

Source: Stamp Office records

Audit examination of write-off cases

5.14 Audit examined 10 write-off cases (Cases 21 to 30) to ascertain whether there were areas for improvement in the Stamp Office's assessment and collection procedures. They comprised 9 cases written off during 2003-04 to 2008-09 and 1 case written off in November 2009 (Case 27, see para. 5.18), all involving property transactions. Appendix C shows an analysis of the cases. The audit findings are reported in paragraphs 5.15 to 5.22.

Audit observations and recommendations

Need to issue stamp duty assessments promptly

5.15 ***Property sold before assessment issued.*** In 6 cases (Cases 21 to 26), the Stamp Office could not recover the outstanding stamp duty by obtaining charging orders on the relevant properties. This was because the defaulter in each case had sold the property before the Stamp Office issued the further stamp duty assessment. In Case 24, the Stamp Office obtained a charging order on another property owned by the defaulter (see para. 5.21). In the other 5 cases, the defaulters had no other assets against which recovery actions could be taken.

5.16 ***Delay in issuing assessments.*** Appendix D shows the time taken for the Stamp Office to assess stamp duty in the 6 cases, including the time spent by the RVD for valuing the property. These ranged from 5 to 45 months, with an average of 27 months. Audit noted instances of delays in the processing of the cases. For example:

(a) in Case 22, the RVD took 20 months to complete valuation of the property and inform the Stamp Office of the result. After receiving an objection to the valuation, the RVD took another 15 months to review its valuation. Further details are given in Note 3 to Appendix D; and

(b) in Case 26, 5 months after receiving the RVD's valuation, the Stamp Office asked the RVD to clarify its valuation. After 1 month, the Stamp Office issued a proposed assessment letter to the defaulter. During the next 11 months, the Stamp Office issued 3 reminders. A further 17 months later, it issued a formal notice of stamp duty assessment and demand for payment.

5.17 ***Need to issue assessments promptly.*** Cases 21 to 26 support the audit observations in paragraphs 2.8, 2.9 and 2.16 about the need to issue assessments promptly, and reinforce the audit recommendations in paragraphs 2.10, 2.11 and 2.17.

Need to improve procedures for processing applications for remission of stamp duty

5.18 ***Recovery actions not taken when remission being considered.*** Section 52 of the Stamp Duty Ordinance provides for the remission, wholly or in part, of the stamp duty payable in respect of any instrument chargeable with stamp duty. In Case 27, the defaulter executed an agreement for sale involving 10 properties. After the Stamp Office issued a stamp duty assessment, the defaulter applied for remission of the stamp duty. The Stamp Office did not take any recovery actions when the application was being considered by the Financial Services and the Treasury Bureau (FSTB). When the FSTB informed the Stamp Office of its decision to reject the application, the Stamp Office had been time-barred from taking recovery actions (see para. 5.2(b)). In November 2009, the irrecoverable stamp duty of $495,000 was written off.

5.19 ***Timely action needed for processing remission applications.*** Audit noted that, in Case 27, the Stamp Office had reminded the FSTB that the Stamp Office would, after 21 August 2004, be time-barred from taking recovery actions. However, the FSTB did not complete processing the defaulter's application for remission of stamp duty until 14 September 2004, or 25 months after the date of referral of the application to it. In Audit's view, the FSTB needs to process applications for remission as soon as possible and, in any case, before the Stamp Office is time-barred from taking recovery actions. Also, the Stamp Office needs to consider taking recovery actions when the FSTB is processing the remission application, especially where the assessed risk of collection is high (Note 24).

Need to take prompt recovery actions against all persons liable

5.20 ***Non-compliance with guidelines.*** Audit noted instances of non-compliance with the guidelines requiring prompt recovery actions to be taken against all persons liable for stamp duty, as follows:

(a) Case 28 involved a deed of joint development, whereby an owner agreed to assign part of his land to a developer upon completing a development thereon. Since the Stamp Office only took recovery actions against the developer but not the owner, it did not obtain a charging order on the relevant property. Similarly, in Cases 24 and 30, the Stamp Office only took recovery actions against the purchaser but not the vendor. In these 3 cases, the case officers did not comply with the guidelines that recovery actions should be taken against all persons liable (see para. 5.4(a)); and

(b) in 2 cases (Cases 27 and 29), the case officers did not comply with the guidelines that a proposed assessment letter, or notice of assessment, should be issued to the other parties, before or right after the first notice of assessment is overdue (see para. 5.4(b)). A proposed assessment letter was not issued until the first notice of assessment had been overdue for 24 months in Case 27 and 13 months in Case 29.

In Audit's view, the Stamp Office needs to take measures to ensure that its staff comply with the relevant guidelines.

Note 24: *The Stamp Office may institute recovery action in court to recover outstanding stamp duty, notwithstanding that the FSTB is considering an application for remission of stamp duty. However, after judgement is obtained, execution should be withheld until the outcome of such application is known.*

Need to review write-off procedures

5.21 ***Cases written off although charging orders obtained.*** SAI 200 provides that where a Controlling Officer is satisfied that sums due to the Government arising from arrears of revenue are not recoverable, he should apply write-off procedures (see para. 5.3(c)). In Cases 29 and 30, the Stamp Office obtained charging orders on the relevant properties. Also, as mentioned in paragraph 5.15, in Case 24, the Stamp Office obtained a charging order on another property owned by the defaulter. Audit has reservations about treating the debts in the 3 cases as irrecoverable and writing them off because:

(a) the charging orders provide security for the payment of the judgement debts. The defaulters cannot sell the charged properties, unless the Stamp Office discharges the charging orders after debt settlement; and

(b) in warranted circumstances, the Stamp Office may apply for orders for sale of the charged properties and use the sale proceeds to settle the debts.

In Audit's view, the Stamp Office needs to review its current practice of writing off the debts in such cases, instead of continuing to report them as arrears of revenue.

5.22 ***Irrecoverable penalty and additional stamp duty not treated as loss.*** According to Financial Circular No. 6/2000, application for write-off must be made to the FSTB for losses exceeding $500,000. The Stamp Office defined the loss in each case as including only the outstanding stamp duty, but not the additional stamp duty and penalty. In Cases 21 and 22, as the outstanding stamp duty exceeded $500,000, the Stamp Office made write-off applications to the FSTB. In the other 8 cases, authorised IRD officers approved the write-offs. Audit noted that:

(a) apart from stamp duty, the defaulters were also liable to pay additional stamp duty in 7 cases (Cases 21 to 26 and 30) and penalty in 3 cases (Cases 27 to 29). Both the additional stamp duty and penalty were imposed in accordance with the provisions of the Stamp Duty Ordinance (see Note 2 to para. 2.3(d) and para. 4.21); and

(b) if the Stamp Office had treated the outstanding additional stamp duty and penalty as part of the loss, in each of Cases 27 to 29, the loss would have exceeded $500,000 and a write-off application to the FSTB would have been required.

In Audit's view, the Stamp Office needs to review whether it is appropriate not to treat the additional stamp duty and penalty as part of the loss, for write-off purposes.

Audit recommendations

5.23 **Audit has *recommended* that the Commissioner of Inland Revenue should:**

(a) **in cases where the FSTB is processing the defaulters' applications for remission of stamp duty, consider the need to take concurrent recovery actions against the defaulters, especially where the assessed risk of collection is high;**

(b) **take recovery actions promptly against all persons liable for stamp duty, in line with the guidelines specified in the Stamp Office Handbook;**

(c) **in consultation with the Director of Accounting Services, consider whether it is more appropriate to continue reporting debts secured by charging orders on properties as arrears of revenue, instead of writing off such debts; and**

(d) **in consultation with the Secretary for Financial Services and the Treasury, review the appropriateness of the existing practice of not treating outstanding additional stamp duty and penalty as part of the loss, for write-off purposes.**

5.24 **Audit has *recommended* that the Secretary for Financial Services and the Treasury should take measures to ensure that applications for remission of stamp duty are processed as soon as possible and, in any case, before the Stamp Office is time-barred from taking recovery actions.**

Response from the Administration

5.25 The **Commissioner of Inland Revenue** accepts the audit recommendations in paragraph 5.23. He has said that:

Improving procedures for processing applications for remission of stamp duty

(a) in future, recovery actions will be taken concurrently notwithstanding that the FSTB is considering the remission application;

Taking prompt recovery actions against all persons liable

(b) agreements for property transaction usually contain a clause specifying which contracting party is liable to pay the stamp duty ("the Paying Party"). Notwithstanding that all contracting parties are legally liable, it is considered fair and reasonable to initiate recovery actions against the Paying Party in the first instance. Thus, for property transactions, the Stamp Office's practice is to take recovery actions against the other party only when the recovery actions against the Paying Party are unsuccessful, or when the recovery actions will soon become time-barred;

(c) nevertheless, to better protect revenue, the Stamp Office accepts that prompt recovery actions should be taken against all parties liable to stamp duty. The relevant parts of the Stamp Office Handbook have been amended accordingly; and

Reviewing write-off procedures

(d) as mentioned in paragraph 5.11(b), the Stamp Office is seeking advice from the Director of Accounting Services and will, in consultation with the FSTB, review and modify the current practice of write-off, where appropriate.

5.26 The **Secretary for Financial Services and the Treasury** agrees with the audit recommendation in paragraph 5.24. He has said that:

(a) Case 27 is an isolated case, and the FSTB normally finishes processing applications for stamp duty remission within a few months; and

(b) the FSTB will be more diligent in ensuring timely processing of such cases.

5.27 Regarding the audit recommendation in paragraph 5.23(c), the **Director of Accounting Services** has said that he shares Audit's view that debts secured by charging orders on properties should not be written off, as they are not irrecoverable. He will liaise with the Commissioner of Inland Revenue and request him, in reviewing the write-off procedures, to take into account the requirement of SAI 200, which clearly states that only where a Controlling Officer is satisfied that sums due to the Government arising from arrears of revenue are not recoverable, should he apply write-off procedures.

Appendix A
(para. 1.2 refers)

Time limit for stamping, persons liable and amount of stamp duty

1. **Assignment of property in Hong Kong (Note 1)**

(a) ***Time limit for stamping:*** 30 days after execution

(b) ***Persons liable:*** All parties and all other persons executing

(c) ***Amount of stamp duty:***

Amount or value of the consideration	Amount of stamp duty
\$2,000,000 or less	\$100
Over \$2,000,000 to \$2,351,760	\$100 + (10% × (consideration – \$2,000,000))
Over \$2,351,760 to \$3,000,000	1.5% × consideration
Over \$3,000,000 to \$3,290,320	\$45,000 + (10% × (consideration – \$3,000,000))
Over \$3,290,320 to \$4,000,000	2.25% × consideration
Over \$4,000,000 to \$4,428,570	\$90,000 + (10% × (consideration – \$4,000,000))
Over \$4,428,570 to \$6,000,000	3% × consideration
Over \$6,000,000 to \$6,720,000	\$180,000 + (10% × (consideration – \$6,000,000))
Over \$6,720,000	3.75% × consideration

2. **Agreement for sale of residential property in Hong Kong (Note 1)**

(a) ***Time limit for stamping:*** 30 days after the relevant date, except otherwise provided in the Stamp Duty Ordinance (Note 2)

(b) ***Persons liable:*** All parties and all other persons executing

(c) ***Amount of stamp duty:*** Same as assignment of property (see item 1(c) above)

3. **Lease of property in Hong Kong**

(a) ***Time limit for stamping:*** 30 days after execution

(b) ***Persons liable:*** All parties and all other persons executing

(c) ***Amount of stamp duty:***

Term	Amount of stamp duty
Not defined or uncertain	0.25% of the average yearly rent
1 year or less	0.25% of the total rent payable over the term
Over 1 year to 3 years	0.5% of the average yearly rent
Over 3 years	1% of the average yearly rent

4. **Contract note for sale or purchase of Hong Kong stock**

(a) ***Time limit for stamping:*** 2 days (if effected in Hong Kong) or 30 days (if effected elsewhere) after the sale or purchase

(b) ***Persons liable:*** The agent or, where no agent, the principal effecting the sale or purchase

(c) ***Amount of stamp duty:*** 0.1% of the amount of the consideration or of its value

Source: *Stamp Duty Ordinance*

Note 1: *With effect from 31 January 1992, stamp duty is chargeable on agreement for sale of residential property in Hong Kong. After an agreement has been stamped, the related assignment will be chargeable with a stamp duty of $100 only.*

Note 2: *The relevant date means the date of the agreement, or the date of the earliest agreement made by the same parties on the same terms if the agreement to be stamped is preceded by one or more such agreements. A duty payer may apply for deferring the payment of stamp duty on an agreement for sale if the specified conditions are satisfied.*

Remarks: *The rates of stamp duty are those prevailing at 31 January 2010. In February 2010, the Financial Secretary proposed in the context of the 2010-11 Budget that, with effect from 1 April 2010, the rate of stamp duty on transactions of properties valued more than $20 million be increased from 3.75% to 4.25%, and buyers would no longer be allowed to defer payment of stamp duty on such transactions.*

Appendix B
(para. 4.22 refers)

20 late stamping cases examined by Audit

Case number	Case particulars	Amount of stamp duty ($'000)	Amount of penalty ($'000)
Cases in which Stamp Office detected non-payment of stamp duty during inspections of exchange participants			
1 to 5	***Sales and purchases of stock.*** The Stamp Office detected that the exchange participants had not paid stamp duty in respect of some sales and purchases of stock which were not recorded in the SEHK trading system (e.g. transfers between clients).	552	138
6 to 8	***Stock borrowings.*** The Stamp Office detected that some stock borrowings effected by the exchange participants did not meet the requirements for stamp duty relief.	4,593	1,160
Cases in which duty payers voluntarily reported non-payment of stamp duty			
9 to 13	***Sales and purchases of stock.*** The duty payers reported that they had not paid stamp duty in respect of some sales and purchases of stock (e.g. off-exchange transactions and the conversion of American depository receipts into Hong Kong stock).	53,368	2,580
14 to 17	***Stock borrowings.*** The duty payers reported that they had not paid stamp duty in respect of some stock borrowings not meeting the requirements for stamp duty relief.	1,249	34
Cases in which a duty payer voluntarily reported changes in stock borrowing operations			
18 to 20	***Stock borrowings.*** The duty payer reported that it had changed its stock borrowing operations. Consequently, the Stamp Office found some stock borrowings not meeting the requirements for stamp duty relief. It issued three stamp duty assessments.	3,880	1,440
	Total	**63,642**	**5,352**

Source: Stamp Office records

Appendix C
(para. 5.14 refers)

10 write-off cases examined by Audit

Case number	Nature of instrument	Persons liable for stamping	Amount of stamp duty written off ($'000)
Cases without charging orders obtained on the relevant properties (property had been sold before further stamp duty assessment was issued)			
21	Assignment	Purchaser and vendor	746
22	Agreement for sale	Purchaser and vendor	514
23	Assignment	Purchaser and vendor	159
24	Agreement for sale	Purchaser and vendor	80
25	Agreement for sale	Purchaser and vendor	42
26	Lease	Lessor and lessee	40
Other cases without charging orders obtained on the relevant properties			
27	Agreement for sale	Purchaser and vendor	495
28	Deed of joint development (Note)	Developer and owner	77
Cases with charging orders obtained on the relevant properties			
29	Agreement for sale	Purchaser and vendor	150
30	Agreement for sale	Purchaser and vendor	54

Source: *Stamp Office records*

Note: *By the deed of joint development, the owner agreed to assign part of his land to the developer upon completing the development thereon.*

Appendix D
(para. 5.16 refers)

Time taken to assess stamp duty in 6 write-off cases

Case number	Date instrument received (a)	Date further stamp duty assessment issued (b)	Time taken to assess stamp duty (Note 1) (c) = (b) – (a) (Month)	Date relevant property sold by defaulter (d)
21	16 January 1998	29 January 2001	36	Various dates (Note 2)
22	5 March 1997	20 October 2000	44 (Note 3)	3 April 1998
23	15 October 2001	10 September 2003	23	1 August 2002
24	30 July 2002	29 April 2003	9	26 August 2002
25	10 November 2003	30 March 2004	5	24 March 2004
26	25 October 1999	11 July 2003	45	16 January 2002

Source: *Stamp Office records*

Note 1: *This included the time spent by the RVD for valuing the property.*

Note 2: *Case 21 involved the assignment of a number of properties to the defaulter. The defaulter had sold most of the properties before the High Court issued a winding-up order against it on 27 December 2000.*

Note 3: *As mentioned in paragraph 5.16(a), this included 20 months and 15 months taken by the RVD to complete valuation of the property and review the valuation respectively, as follows:*

(a) ***Valuing the property.*** *9 months after receiving the Stamp Office's request, the RVD made a valuation and asked the defaulter for comments. 4 months later, the defaulter provided certain information to support his view that the valuation was unreasonable. After 7 months, the RVD replied to the defaulter and informed the Stamp Office that it was satisfied that the valuation was fair; and*

(b) ***Reviewing the valuation.*** *4 months after requesting the RVD to review its valuation in response to the defaulter's objection, the Stamp Office clarified the basis of the valuation. 6 months later, the Stamp Office sent a reminder to the RVD. After 3 months, following the receipt of the Stamp Office's second reminder, the RVD requested the defaulter to provide certain information. 2 months later, the RVD provided the Stamp Office with a revised valuation.*

Appendix E

Acronyms and abbreviations

Audit	Audit Commission
FSTB	Financial Services and the Treasury Bureau
IRD	Inland Revenue Department
PSS	Property Stamping System
RVD	Rating and Valuation Department
SAI	Standing Accounting Instruction
SEHK	The Stock Exchange of Hong Kong Limited