

Report No. 54 of the Director of Audit — Chapter 2

ASSESSMENT AND COLLECTION OF STAMP DUTY

Summary

1. The Stamp Duty Ordinance (Cap. 117) provides that assignments of property, agreements for sale of residential property, leases of property and contract notes for sales or purchases of Hong Kong stock shall be chargeable with stamp duty. The stamp duty assessment and collection work is performed mainly by the Stamp Office of the Inland Revenue Department, with the Rating and Valuation Department (RVD) providing the necessary property valuation services. The Audit Commission (Audit) has recently conducted a review of the assessment and collection of stamp duty.

Stamp duty on assignments and agreements for sale

2. ***Delay in providing information to RVD.*** For property transactions involving inadequate consideration, the RVD values the property and the Stamp Office issues a further stamp duty assessment based on the RVD valuation. Audit examination of 10 long outstanding valuation cases revealed that the Stamp Office took a long time (ranging from 12 to 39 months) to provide information to the RVD for valuation purposes. *Audit has recommended that the Commissioner of Inland Revenue should take measures to ensure that the Stamp Office provides information promptly to the RVD.*

3. ***Explanations for long outstanding cases not provided.*** For valuation cases outstanding for over four months, the RVD's internal guidelines require RVD staff to provide explanations monthly until completion of the cases. However, Audit examination of 82 such cases revealed that explanations were given for 2 cases only. Such non-compliance with the guidelines weakens the intended control. *Audit has recommended that the Commissioner of Rating and Valuation should take measures to address the issue.*

4. ***Need to monitor the issue of assessments.*** The Stamp Office has not established procedures for monitoring the issue of further stamp duty assessments after receipt of the RVD valuation. Without such monitoring procedures, management will not be timely informed as to whether there are undue delays in issuing the assessments. *Audit has recommended that the Commissioner of Inland Revenue should establish a monitoring system for the issue of further stamp duty assessments.*

Stamp duty on leases

5. ***Unstamped leases.*** The RVD conducts annually a rent verification exercise to require selected property owners or occupiers to submit a copy of their leases. Audit examination of 200 leases so collected by the RVD in 2008 or 2009 revealed that 7 leases had not been stamped. *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) take measures as appropriate to enhance voluntary compliance and detect non-compliance.*

6. ***Incorrect stamp duty.*** Audit examination of the 200 leases also revealed that, for 14 leases, the stamp duty was calculated incorrectly. The duty payers were over-charged for 11 leases and under-charged for 3 leases. *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.*

7. ***Need to examine documents thoroughly and seek clarification.*** Duty payers may request the Stamp Office to adjudicate the stamp duty on any executed instrument. Audit examination of 20 adjudication cases involving leases revealed that in one case, the stamp duty was under-assessed. The RVD under-assessed the capital value of the lease, apparently on the incorrect 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. *Audit has recommended that the Commissioner of Inland Revenue and the Commissioner of Rating and Valuation should: (a) regularly remind their 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; and (b) regularly remind their 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.*

8. ***Need to review counter adjudication procedures.*** Audit examination also revealed room for improvement in the counter adjudication procedures. In one case, for example, Audit found that the lease was incorrectly 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. *Audit has recommended that the Commissioner of Inland Revenue should review the controls and procedures for adjudicating leases over the counter to take improvement measures.*

Stamp duty on contract notes

9. *Need to establish additional procedures for checking stock borrowings.* The Stamp Office's checking procedures may not be sufficient for identifying stock borrowings not meeting the requirements for stamp duty relief. For example, the Stamp Office's inspections of exchange participants can only cover a small part of the total stamp duty relief, given that many borrowers are non-exchange participants. *Audit has recommended that the Commissioner of Inland Revenue should 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.*

10. *Need to establish additional procedures for detecting non-payment.* Audit examination of 20 late stamping cases revealed that in five cases, the duty payers voluntarily reported the non-payment of stamp duty in respect of many stock transactions conducted over a number of years. The Stamp Office was not aware of the non-payment until the duty payers reported it. This revealed room for improvement in the Stamp Office's procedures for detecting non-payment of stamp duty. *Audit has recommended that the Commissioner of Inland Revenue should: (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; and (b) take measures to enhance voluntary compliance with the stamping requirements on contract notes, and establish appropriate procedures for detecting non-compliance.*

11. *Need to check whether counterparty has paid stamp duty.* In three late stamping cases, the duty payers voluntarily provided the Stamp Office with the name of the counterparty of each stock transaction. However, the Stamp Office only assessed the duty payers' stamp duty, and did not take follow-up actions to check whether the counterparties had paid their stamp duty. *Audit has recommended that the Commissioner of Inland Revenue should, 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.*

Recovery of stamp duty

12. *Need to improve procedures for processing remission applications.* Audit examination of 10 write-off cases revealed that in one case, the Stamp Office did not take any recovery actions when the defaulter's application for remission of the stamp duty was being considered by the Financial Services and the Treasury Bureau (FSTB). The FSTB took months to process the application, and when it finally decided to reject the application, the Stamp Office had been time-barred from taking recovery actions. *Audit has recommended that the Commissioner of Inland Revenue should, 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. Audit has also 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.*

13. *Need to take prompt recovery actions against all persons liable.* The Stamp Office's guidelines require prompt recovery actions to be taken against all persons liable. However, Audit found some instances where these guidelines were not strictly followed. *Audit has recommended that the Commissioner of Inland Revenue should take recovery actions promptly against all persons liable for stamp duty, in line with the guidelines specified in the Stamp Office Handbook.*

Response from the Administration

14. The Administration accepts the audit recommendations.

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