ADDITIONAL CONVEYANCE DUTIES ON RESIDENTIAL PROPERTY-HOLDING ENTITIES AND OTHER STAMP DUTY CHANGES WITH EFFECT FROM 11 MARCH 2017

On 10 March 2017, Parliament passed the Stamp Duties (Amendment) Bill, an urgent bill, introducing a new stamp duty known as the **additional conveyance duty** ("**ACD**") which is payable on every **qualifying acquisition and disposal of an equity interest in a residential property-holding entity** ("**Residential PHE**"). ACD is payable **in addition to** the *existing* stamp duty that is payable on the transfer of shares (i.e. at 0.2% of consideration or market value, whichever is higher). According to the ministerial statement and press release by the Government, the underlying rationale for the introduction of ACD is to address the stamp duty rate differential between direct acquisition/disposal of residential properties and indirect acquisition/disposal of residential properties via a transfer of the equity interest in a holding entity.

It is critical to note that the Bill also makes certain amendments to section 22 of the Stamp Duties Act (Cap. 312), such that **from 11 March 2017, the execution of a sale and purchase agreement for shares (not limited to Residential PHEs) will also be subject to stamp duty, including ACD where applicable**. A possible exception is that of a contract or agreement for the transfer of *scripless* shares, but the position is not entirely clear.

It is clear from the IRAS e-Tax Guide published on 10 March 2017 and entitled "*Stamp Duty: Additional Conveyance Duties (ACD) on Residential Property-Holding Entities*" that ACD is, for all practical intents and purposes, in effect from 11 March 2017. The relevant subsidiary legislation is expected to be put in place shortly, with retrospective effect from 11 March 2017.

On 10 March 2017, the Government also published a notification in the *Gazette* reducing the rate of seller's stamp duty ("**SSD**") payable on residential or mixed-residential property acquired on or after 11 March 2017. The new SSD rates (effective from 11 March 2017) are as follows:

Holding period	SSD rate
Up to one year	12%
More than one year and up to two years	8%
More than two years and up to three years	4%
More than three years	No SSD payable

How do these changes affect you?

The most important effect of the legislative change – by imposing ACD – is to remove the significant difference in the applicable stamp duty rates between a transfer where one acquires residential properties directly and a transfer of the shares of a company which owns the residential properties.

While the reach of ACD is very wide, it is currently limited to entities owning significant stakes in *residential* properties. Commercial and industrial properties are in general not affected by ACD, except where its zoning or use includes some residential component. Further details are provided in the IRAS e-Tax Guide.

Nonetheless, where the new changes apply, it should also be noted that there are extensive provisions targeting arrangements which purport to avoid ACD in the Stamp Duties (Amendment) Bill.

These changes also reverse some (but not all of the) effects of the oft-cited Court of Appeal case of *Andermatt Investments Pte Ltd v. Comptroller of Income Tax* [1995] 2 SLR(R) 866. In that case, which is an income tax decision on the deductibility of interest, the taxpayer had purchased the shares of a property-holding company, which the Court of Appeal acknowledged was permissible tax planning from a stamp duty perspective. However, as the taxpayer did not purchase the property directly, interest incurred on the financing for the purchase of the shares was held not to be deductible against the rental income arising from the property. With this latest statutory change imposing ACD, the use of such structures will obviously need to be re-examined:

(a) Given that the significantly lower duty rate of 0.2% for share transfers is no longer the only duty payable where Residential PHEs are involved as ACD is also payable, we envisage that in many cases it will no longer be feasible to do a share transfer rather than a direct transfer of residential properties.
(b) It should be borne in mind that the market value of the residential properties would be included *twice* in computing the duties payable, i.e. in computing ACD *and* in computing the existing duty at 0.2% based on the value of total tangible assets which in turn also include the residential properties.
(c) Further, as the income tax treatment presumably remains unaffected by these latest changes, this means that deduction of interest or other financing costs would continue to be disallowed against rental income from the underlying properties – an effect that suggests that the parity of treatment has yet to be fully implemented by the Government, notwithstanding the imposition of ACD. In fairness, the Government should perhaps have taken this effect into consideration as well in designing the ACD changes.

The Stamp Duties (Amendment) Bill also amends section 22(1)(b) of the Stamp Duties Act by deleting the words "stocks or shares". In effect, the execution of *all* contracts and agreements on the sale of shares (and not only contracts involving Residential PHEs) will be subject to stamp duties. This change is significant, as prior to the change, stamp duty is payable only upon the execution of the share transfer form. With this change, the point in which stamp duty is payable is accelerated to the time of the agreement or contract for the sale of shares. A possible exception is that of a contract or agreement for the transfer of *scripless* shares, which hitherto does not attract any duty whether at the time of entering the contract or agreement, or at the time of a transfer by way of book entry. However, it is not entirely clear whether the change to section 22(1)(b) is intended to leave this exception intact.

When do these changes take effect?

These new changes come into effect on **11 March 2017**.

ACD AT A GLANCE

A qualifying acquisition or disposal of an equity interest in a residential PHE will be regarded as a transfer of interest in the underlying properties and attract ACD, payable by the buyer or seller or both. ACD is payable in addition to the existing stamp duty that is payable on the transfer of shares (i.e. 0.2% of consideration or market value, whichever is higher). We append below a summary of the main features of ACD as provided under the Stamp Duties (Amendment) Bill and the IRAS e-Tax Guide. For more details, please refer to the Stamp Duties (Amendment) Bill and the IRAS e-Tax Guide.

ACD for Buyers ("ACDB")

"Qualifying Acquisition"	A qualifying acquisition of an equity interest in a Residential PHE is one where the buyer (together with any associates): (a) is already a Significant Owner of the Residential PHE *before* the acquisition; **or** (b) becomes a Significant Owner of the Residential PHE *after* the acquisition.
On or after 11 March 2017	Each Qualifying Acquisition that takes place on or after 11 March 2017 will be subject to ACDB.
ACDB rates	ACDB is generally the summation of a duty computed at 1% to 3% of the market value of the residential property and a flat rate of 15% of the market value of the residential property. In relation to a Type 2 PHE (as described below), the value of any direct and

indirect interests in the residential properties (as the case may be) will be taken into account in the computation of ACDB. It should be noted that these rates are generally aligned with (but not necessarily the same as) the rates applicable to the direct transfer of a residential property where additional buyer's stamp duty is also applicable.

ACD for Sellers ("ACDS")

"Qualifying Disposal"

A qualifying disposal of an equity interest in a Residential PHE is one where the seller (together with any associates) is a Significant Owner of the Residential PHE and the equity interest to be disposed of:

(a) is acquired on or after 11 March 2017; **and**

(b) disposed of within 3 years of acquisition on a first-in-first-out basis.

ACDS rates

ACDS is generally computed at a flat rate of 12% of the market value of the residential property. Similarly, in relation to a Type 2 PHE, the value of any direct and indirect interests in the residential properties (as the case may be) will also be taken into account in the computation of ACDS. It should be noted that these rates are generally aligned with (but not necessarily the same as) the rates applicable to the direct transfer of a residential property where SSD is also applicable.

Meaning of "Residential PHE"

A Residential PHE is a property-holding entity whose primary tangible assets, owned directly or indirectly, are "Singapore residential properties". More specifically, a Residential PHE can be either or both of the following:

Type 1 PHE – target entity directly holds the properties

(a) A target entity (known as the "**Type 1 PHE**") whose market value of residential properties makes up at least 50% of the value of its total tangible assets;

Type 2 PHE – target entity directly and indirectly holds the properties

(b) A target entity (known as the "**Type 2 PHE**") which has 50% or more beneficial interest (whether direct or indirect) in one or more Type 1 PHEs (the "Related Entities") **and** the sum of the market value of the residential properties beneficially owned by the target entity and its Related Entities is at least 50% of the total tangible assets of the target entity and its Related Entities.

Singapore residential properties

"Singapore residential properties" refer to the following properties in Singapore:

Residential properties

(a) A building unit (including those under construction) where the permitted use of the unit is residential; and

(b) Vacant land or entire building with land where the land is zoned "Residential", "Residential/Institution", "White", "Commercial & Residential" or "Residential with commercial at first storey".

Who is a "Significant Owner"?

Beneficially owns 50% or more equity interest or 50% or more voting power

A Significant Owner of the Residential PHE refers to a person or an entity who beneficially owns at least a 50% equity interest **or** at least 50% voting power in a Residential PHE, either on its own or with its associates.

"Associates" are defined broadly

Where the buyer or seller is an **entity**, an associate includes:

(a) subsidiaries which the entity beneficially owns 75% or more voting capital and more than 50% voting power in;

(b) holding entities which beneficially own 75% or more voting capital and more than 50% voting power in the entity;

(c) other entities in the group that is a subsidiary to the holding entity as mentioned in (b) above; or

(d) partners in a partnership, limited partnership or limited liability partnership.

Where the buyer or seller is an **individual**, an associate includes:

(a) family members such as grandparents, parents, children, grandchildren, siblings and spouses; or

(b) partners in a partnership, limited partnership or limited liability partnership.

How to pay ACD

Stamping procedure

A submission of the instrument (with supporting documents) effecting the qualifying acquisition/disposal is required within 14 days of the date of execution of the instrument (if executed in Singapore) or 30 days of the receipt of the instrument in Singapore (if executed overseas).

As these are still early days following the imposition of ACD, IRAS may well offer further clarification in due course, as they had done so when SSD and ABSD were previously implemented. Due to the elaborate characteristics laid down in relation to ACD, other implications may well arise as to how ACD could affect share acquisitions involving residential properties in ways that perhaps may not have been anticipated by the new changes.

If you would like information on this or any other area of law, you may wish to contact the partner at WongPartnership that you normally deal with or contact the following lawyers:

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25 YEARS