ABSD: IS “DECOUPLING” A SUITABLE SOLUTION FOR YOU?

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Since the introduction of the Additional Buyers' Stamp Duty (the "**ABSD**") in late 2011, there have been more home owners seeking to "decouple" their existing properties. Essentially, "decoupling" is the process where one co-owner of a property transfers his or her share in the property to the other co-owner (in the most common situation of a property co-owned by 2 persons). As a result, the existing property will be solely owned by one owner and the outgoing owner would then be eligible to buy another property without having to pay ABSD on the new purchase.

However, is "decoupling" indeed a suitable solution to better manage stamp duty liabilities in the given circumstances?

This article will provide a brief overview of the situations where "decoupling" may be effective in saving stamp duties. Depending on the circumstances, the "decoupling" option is also available for owners of HDB properties.
In order to "decouple", the ownership in the property would either have to be transferred by way of gift or sale of part share in the property.

Transfer by way of gift

Property is transferred by way of a gift when no consideration is paid by the outgoing owner to the existing owner. This may only be possible when the property is unencumbered (i.e. there is no outstanding mortgage and/or CPF charge). In the event that the property is encumbered, sufficient funds would be required for redemption of the outstanding loan and/or refund of the CPF monies, in order for the transfer to take place.

Also, depending on other factors such as the type of property and relationship between the co-owners, stamp duty may be payable on the transfer and the stamp duty is computed based on the market value of the portion of the property that is being transferred.

Other relevant legal implications to take note of would be that the outgoing owner should be relatively stable financially because in the event that the outgoing owner is adjudged bankrupt within 5 years from the date that the gift has been made, such a gift is voidable at the option of the Official Assignor according to the Bankruptcy Act (Cap. 20).

Transfer by way of sale of part share

The transfer by way of sale of a part share in the property is a fairly straightforward transaction whereby the outgoing owner sells his share in the property to the existing co-owner. Similarly, stamp duty is payable by the existing co-owner for the purchase of the outgoing owner's share and the stamp duty is computed based on the market value of the portion of the property that is being sold.

For a property that is unencumbered, the outlay would be stamp duties (which may include seller's stamp duties and additional buyer's stamp duties depending on the circumstances of each case), legal fees and valuation fees.

As for a property that is encumbered, the owners of the property should check with the mortgagee on the appropriate date of completion for the transaction because banks in Singapore usually require a 3-month notice for redemption, failing which interest in lieu of notice would usually have to be paid by the mortgagors. Additionally, if the outgoing owner had used CPF monies for the purchase of the property, he or she would be required to refund such CPF monies, together with the accrued interest, to his or her CPF account in order for the CPF charge to be discharged.

In the event that financing is required for the part share purchase, the prospective purchaser should also check with either the mortgagee on whether refinancing would be possible or another bank on whether financing would be granted. Further, the bank providing financing would generally require the parties to be legally represented by different law firms.

An Illustration

To better illustrate the savings to be enjoyed by parties when they "decouple", let us consider the following fact pattern. Mr. and Mrs. Tham are a married couple who are both Singapore citizens and they jointly own an unencumbered private residential property with a market value of S$800,000.00. Like many other Singaporeans who believe in investing in real estate, Mr. and Mrs.

Tham decided that they would like to purchase a second private residential property that has a market value of S$1,500,000.00. So, is "decoupling" a suitable solution for them?

Without "Decoupling"

If Mr. and Mrs. Tham chooses not to "decouple", the total amount of stamp duties (inclusive of ABSD) that they would have to pay for the purchase of the second private residential property would be **S$144,600.00**.

With "Decoupling"

However, if they choose to "decouple", the number of stamp duties payable for the part share purchase of the existing property would be S$6,600.00 and the number of stamp duties payable for the purchase of the S$1,500,000.00 property would be S$39,600.00. In total, the number of stamp duties payable by Mr. and Mrs. Tham would be **S$46,200.00**. Therefore, with "decoupling", since no ABSD is payable, Mr. and Mrs. Tham would be able to save a total amount of **S$98,400.00**.

Conclusion

Clearly, there are many issues to consider before making the decision to "decouple" but, in a situation where "decoupling" is possible, it may result in very substantial savings for the parties by either not having to pay any ABSD or paying a lower amount of ABSD; depending on the circumstances. In order to decide on whether "decoupling" is indeed a suitable solution, co-owners should discuss this issue with their lawyers to explore the possibility of "decoupling" more thoroughly.