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'99-to-1' property deals: Stamp duty avoidance or honest mistake

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‘99-to-1’ property deals: Stamp duty avoidance or honest mistake?

It is time to put a stop to sketchy arrangements that avoid paying stamp duty.

By Vincent Ooi

The Inland Revenue Authority of Singapore probe comes after brewing public discussions over whether this “99-to-1” practice exploits a loophole for stamp duty avoidance purposes and whether steps must be taken to stem this insidious move.

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Numerous property owners, lawyers and agents have had a rather stressful week since news reports published by The Straits Times highlighted a recent investigation launched by the Inland Revenue Authority of Singapore (Iras).

Letters have been sent to some home owners requesting information in cases of residential property purchases where a 1 per cent sale was executed to a relative soon after the exercise of the option to purchase (OTP).

The probe comes after brewing public discussions over whether this common “99-to-1” practice exploits a loophole for stamp duty avoidance purposes and whether steps must be taken to stem this insidious move, since the issue was first covered in The Straits Times in 2022.

Currently, there is nothing illegal about splitting residential property ownership in this manner to accommodate property owners in extenuating circumstances. But given that such instances ought to be unusual and few and far between, the authorities would be right to inspect all of such cases if they are more commonplace than expected.

Stamp duty avoidance?

Iras has long warned that any tax advantages from stamp duty avoidance would be negated, and stiff penalties of up to a 50 per cent surcharge on the amount of additional buyer’s stamp duty (ABSD) avoided would be imposed. The surcharge applies to instruments executed on or after Dec 7, 2020. The authorities also retain the power to negate the tax advantages on any case of stamp duty avoidance from when ABSD was first introduced in 2011.

Stamp duty avoidance differs from stamp duty evasion. As an example of the latter, falsifying documents is clearly illegal. A case of wilful tax evasion of stamp duties in 2021 saw two property agents and the buyer of a condominium apartment sentenced to jail for backdating the OTP to evade paying higher ABSD after rates were raised.

The buyers were also fined $276,000 – four times the amount of ABSD evaded.

99-to-1 arrangements are unlikely to involve illegal activity, and thus would not constitute tax evasion. But the trouble is that these arrangements save buyers significant duties, and it would be difficult to prove that there was no deliberate attempt to pay less stamp duty.

When the 99-to-1 sale is staggered and executed after the OTP, the payable stamp duties are significantly lower, assuming the secondary buyer owns a residential property.

Had both names been used from the start when the OTP was executed, the residential property sale would command a higher ABSD rate.

The property would have attracted a 17 per cent ABSD rate if the OTP was exercised with two names, compared with 0 per cent if the OTP only had a sole buyer who did not own any residential property.

Even when the 1 per cent stake is transferred to the secondary buyer, the payable ABSD is levied only on the value transferred, not on the entire purchase price of the property.

Under the law as it currently stands, the authorities do not need to show that property buyers intended to avoid paying stamp duty. Rather, when queried by the authorities, the burden of proof lies with property buyers to show both that the staggering of the transaction did not have the avoidance of duty as one of its main purposes and that it was done for bona fide commercial reasons.

Certainly, if the property buyer staggered the transaction only because less ABSD would be payable, that would be a clear “smoking gun”.

Bona fide reasons for staggering

If a property buyer knew from the start that a second buyer would be required in order to qualify for a bank loan, it would be difficult to argue that the transaction was staggered for bona fide reasons.

However, there may be cases where a property buyer finds out about the need for a second buyer only later, for example, when property buyers find out about the requirements for the loan themselves only belatedly.

Singapore has a complex set of rules regarding mortgage financing for which a first-time buyer should do due diligence, yet fails to do so.

Total debt servicing ratio rules stipulate that borrowers can take out debt obligations inclusive of car, credit loans and other debt of no more than 55 per cent of their income. A second buyer may be added as a nominal second name to the property in order to satisfy these rules. Further, caps on loan-to-value ratios can also require a larger upfront payment on property purchases, which a second buyer can help with cash or a drawdown from their Central Provident Fund Ordinary Account.

There may be cases where there is an honest miscalculation, with the property buyers initially thinking that they qualified. Further, the property buyers may have suffered a sudden drop in income or there might be a sudden increase in the loan quantum needed if a higher bid was required to secure the residential property against other buyers.

Documentation showing these circumstances would greatly aid property buyers in convincing Iras of these bona fide reasons and show that any tax advantages were merely incidental.

Even here, the problem with citing the challenges of securing a home loan is that this argument does not quite answer the question of why the transfer of property had to be staggered, even if it does answer the question of why the property needed a second name as co-owner.

Is there a loophole for Parliament to address?

Iras has strong powers to negate any tax advantage from stamp duty avoidance and impose a surcharge. In this sense, there is no real "loophole" to be exploited by property buyers and no real way to "game the system".

The use of 99-to-1 property deals to save on stamp duties never had a real chance of succeeding. The question is the extent to which Iras would exercise such powers and whether the authorities would inspect every such arrangement, including those co-sharing a larger proportion of the property.

Additional guidance from Iras on what constitutes fair grounds for the use of such arrangements would be welcome.

On top of holding property buyers accountable, the authorities should also address the role of another key player. A previous news report suggested that overzealous real estate agents may have been giving faulty tax advice.

Such agents should be taken to task. Quite apart from their professional duties to provide accurate advice to their clients, the provision of advice on structuring an arrangement to save on stamp duties may potentially breach the Legal Profession Act 1966. This is a matter for the Council for Estate Agencies under the Ministry of National Development as the relevant regulatory organisation to handle within existing legal and professional frameworks.

The use of 99-to-1 property deals for stamp duty avoidance should undoubtedly be stopped. News of the Iras probe should deter further such problematic tax advice. The question remains as to how many of such existing arrangements would be taken to task for tax avoidance and the extent of the penalty imposed.

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