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HKICPA Module D Module Preparation Seminar (Part I)

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15 October 2018



Topics Covered

- Ascertainment of salaries tax liability under separate assessment and joint assessment (Ch 5)
- Personal assessment (Ch 7)
- AVD, BSD and SSD (Ch 8)
- Stamp duty exemptions and reliefs (Ch 8)
- Offences and penalties (Ch 2)



Separate Assessment or Joint Assessment under Salaries Tax

Separate Taxation

- The husband and the wife are mandatorily separately assessed and taxed on individual basis.
- Separate assessment will be made unless election for joint assessment under s.10(2) .
- Under separate assessment, the couple decides who would claim each kind of allowances.



Joint Assessment under Salaries Tax

- Normal purpose is to reduce total tax payable by the couple as a whole
- Personal allowances not fully used under separate assessment

Decision for Separate or Joint Assessment

Normally Separate Taxation

- Maintain personal independence
- Maintain personal privacy
- Avoid top slicing rate

May elect for Joint Assessment

- Maximum use of allowances
- One spouse has no assessable income or the income is less than basic allowance
- Transfer of losses between the couple

Tax Rates



Salaries Tax Rates

2008/2009–2016/2017

First 40,000 2%
Next 40,000 7%
Next 40,000 12%
Remainder 17%

2017/2018

First 45,000 2%
Next 45,000 7%
Next 45,000 12%
Remainder 17%

2018/2019 onward

First 50,000 2%
Next 50,000 6%
Next 50,000 10%
50,000 14%
Remainder 17%

Standard rate 15%

15%

15%

Profits Tax Rates

Incorporated 16.5%

16.5%

16.5%

Unincorporated 15%

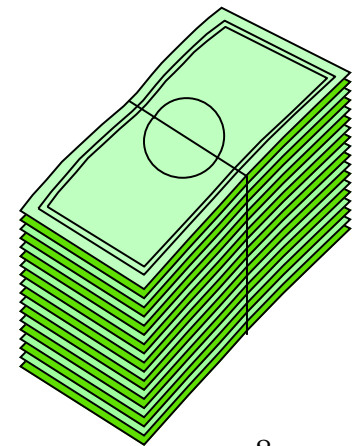
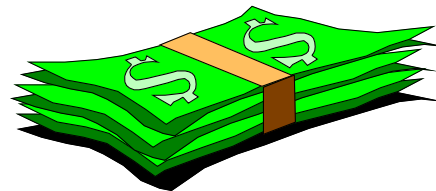
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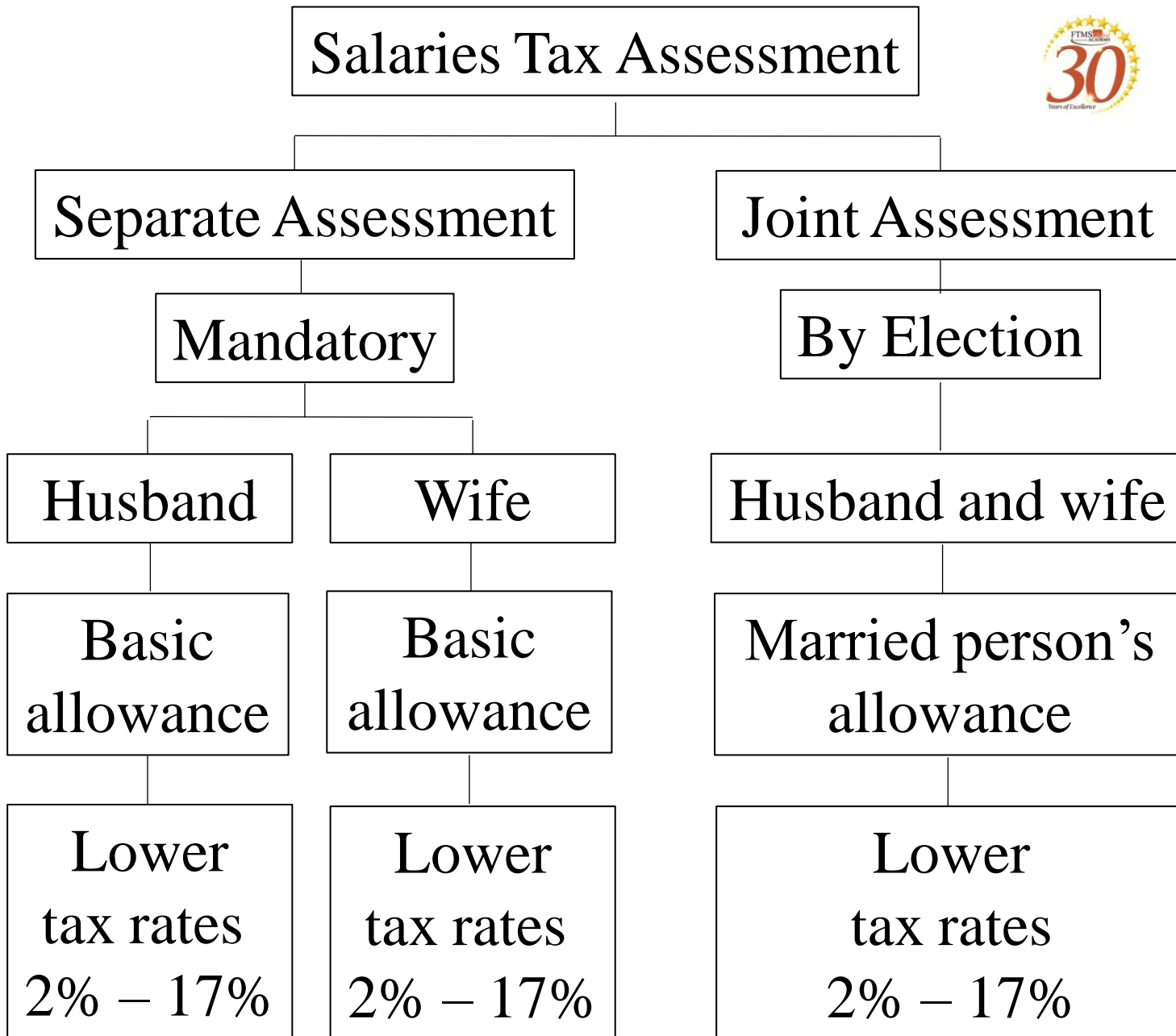
Allocating Allowances Between Husband and Wife for Less Tax

Depends on :

- the magnitude of income earned by each spouse
- how allowance may be split between the spouses



Salaries Tax Assessment



Learning Activity 1



Mr & Mrs Ma are married with 3 children aged 24, 22 and 15. Eldest child is studying MBA in Canada. Second child is married and studying at HKU.

They maintain their own parents, all over 65. They paid for each of them \$30,000 per year to support their living expenses.

Mr Ma earns salaries of \$670,000 in 2017/2018. Mrs Ma earns \$110,000. Both are Hong Kong sourced employment, and each paid 5% of monthly salary for MPF contribution.

During the year, Mr Ma donated \$28,000 to the community chest. Mrs Ma attended a course at HKU for \$5,000.

What will be their salaries tax liability for 2017/2018:

- a. under separate taxation, and
- b. under joint taxation ?

Mr and Mrs Ma – Separate Salaries Tax Assessment

	<u>Mr Ma</u>	<u>Mrs Ma</u>
Salaries	\$670,000	\$110,000
Less: Self-education expenses	<u>0</u>	<u>(5,000)</u>
	670,000	105,000
Less: Donation	(28,000)	0
MPF Contribution	<u>(18,000)</u>	<u>(5,500)</u>
	624,000	99,500
Less: Basic allowance	(132,000)	(132,000)
Child allowance	(200,000)	0
Dependent parent allowance	<u>(184,000)</u>	<u>0</u>
Net Chargeable Income	<u>\$ 108,000</u>	<u>\$ 0</u>

Mr and Mrs Ma –

Separate Salaries Tax Assessment



	<u>Mr Ma</u>	<u>Mrs Ma</u>
Progressive rates tax	\$	\$
\$45,000 @ 2%	900	0
\$45,000 @ 7%	3,150	0
\$18,000 @ 12%	<u>2,160</u>	0
Salaries Tax Payable (less than standard rate tax below)	<u>\$6,210</u>	<u>\$0</u>
Standard rate tax		
\$624,000 @ 15% & \$99,500 @ 15%	<u>\$93,600</u>	<u>\$14,925</u>
Total Salaries Tax Payable		<u>\$6,210</u>

Mr and Mrs Ma – Joint Salaries Tax Assessment



Salaries – Mr Ma		\$670,000
Salaries – Mrs Ma		<u>110,000</u>
		780,000
Less: Self-education expenses		<u>5,000</u>
		775,000
Less: Donation	\$28,000	
MPF Contribution (18,000 + 5,500)	<u>23,500</u>	<u>51,500</u>
		723,500
Less: Married person's allowance	264,000	
Child allowance (1 st and 3 rd children)	200,000	
Dependent parent allowance	<u>184,000</u>	<u>648,000</u>
Net Chargeable Income		<u>\$75,500</u>



Mr and Mrs Ma – Joint Salaries Tax Assessment

Progressive rates tax	\$
\$45,000 @ 2%	900
\$30,500 @ 7%	2,135
Salaries Tax Payable (less than standard rate tax)	<u>\$3,035</u>
Standard rate tax	
\$723,500 @ 15% (Not applicable because more than progressive rates tax)	<u>\$108,525</u>

Result of Learning Activity 1 – Comparison of Separate Assessment and Joint Assessment

- Total tax payable for separate assessment
= \$6,210
- Total tax payable for joint assessment
= \$3,035
- Joint assessment is more beneficial if one spouse's income is below basic allowance.

Learning Activity 2

Data same as Learning Activity 1 and same total income of \$780,000 for Mr and Mrs Ma.

The only thing different is their share of income.

Now, Mr Ma earns \$460,000 and Mrs Ma earns \$320,000, what will their salaries tax liability for 2017/2018 be?

(Would their total salaries tax liability be smaller or larger than that of Learning Activity 1 under separate taxation and under joint taxation ?)

Mr and Mrs Ma – Separate Salaries Tax Assessment

	<u>Mr Ma</u>	<u>Mrs Ma</u>
Salaries	\$460,000	\$320,000
Less: Self-education expenses	<u>0</u>	<u>(5,000)</u>
	460,000	315,000
Less: Donation	(28,000)	0
MPF Contribution	<u>(18,000)</u>	<u>(16,000)</u>
	414,000	299,000
Less: Basic allowance	(132,000)	(132,000)
Child allowance	(200,000)	0
Dependent parent allowance	<u>(46,000)</u>	<u>(138,000)</u>
Net Chargeable Income	<u>\$ 36,000</u>	<u>\$ 29,000</u>



Mr and Mrs Ma – Separate Salaries Tax Assessment

	<u>Mr Ma</u>	<u>Mrs Ma</u>
Progressive rates tax		
\$36,000 @2% / \$29,000 @2%	\$ 720	\$ 580
Standard rate tax		
\$414,000 @15% & \$299,000 @15%	<u>\$62,100</u>	<u>\$44,850</u>
Salaries Tax Payable (less than standard rate tax below)	<u>\$ 720</u>	<u>\$ 580</u>
Total Salaries Tax Payable		<u>\$1,300</u>

Mr and Mrs Ma – Joint Salaries Tax Assessment

Salaries – Mr Ma		\$460,000
Salaries – Mrs Ma		<u>320,000</u>
		780,000
Less: Self-education expenses		<u>5,000</u>
		775,000
Less: Donation	\$28,000	
MPF Contribution (18,000 + 16,000)	<u>34,000</u>	<u>62,000</u>
		713,000
Less: Married person's allowance	264,000	
Child allowance (1 st and 3 rd children)	200,000	
Dependent parent allowance	<u>184,000</u>	<u>648,000</u>
Net Chargeable Income		<u>\$65,000</u>



Mr and Mrs Ma – Joint Salaries Tax Assessment

Progressive rates tax	
\$45,000 @ 2%	\$ 900
\$20,000 @ 7%	<u>1,400</u>
Salaries Tax Payable (less than standard rate tax)	<u>\$2,300</u>
Standard rate tax	
\$713,000 @ 15% (Not applicable because more than progressive rates tax)	<u>\$106,950</u>

Result of Learning Activity 8 – Comparison of Separate Assessment and Joint Assessment

- Total tax payable for separate assessment
= \$1,300
- Total tax payable for joint assessment
= \$2,300
- Separate assessment is more beneficial if both spouses' incomes are more than basic allowance.



Personal Assessment



Phenomenon of Schedular Tax System

Under Existing Schedular Hong Kong Tax System

- People Receiving
- Same Amount of Income
- Under Different Sources
- Pay Different Amount of Tax

Learning Activity 3

- In 2017/2018 –
- Mr. A, single, received Salaries of \$150,000
- Ms. B, single, earned Profits of \$150,000
- Mr. C, single, received Property Income of \$150,000
- *Calculate the Tax Payable by A, B, and C, assuming receiving the minimum allowances?*

Tax Calculation

Mr. A - Net Chargeable Income \$18,000,
Tax Thereon : \$360

Ms. B - Net Assessable Profits \$150,000
Tax Thereon : \$22,500

Mr. C - Net Assessable Value \$120,000
Tax Thereon : \$18,000

Is it Fair and Equitable?





Personal Assessment

The mechanics of

- accumulating all sources of income
- of an individual aged 18 or over
- in a year of assessment
- and make a single assessment instead of several assessments under the scheduler taxation system

Individual Income Tax

Property Tax

Salaries Tax

Profits Tax

No Personal Allowance

Personal Allowance

No Personal Allowance

Tax Relief After Electing for Personal Assessment



Effect After Electing for Personal Assessment

Mr. A - Net Chargeable Income \$18,000,
Tax Thereon : \$360

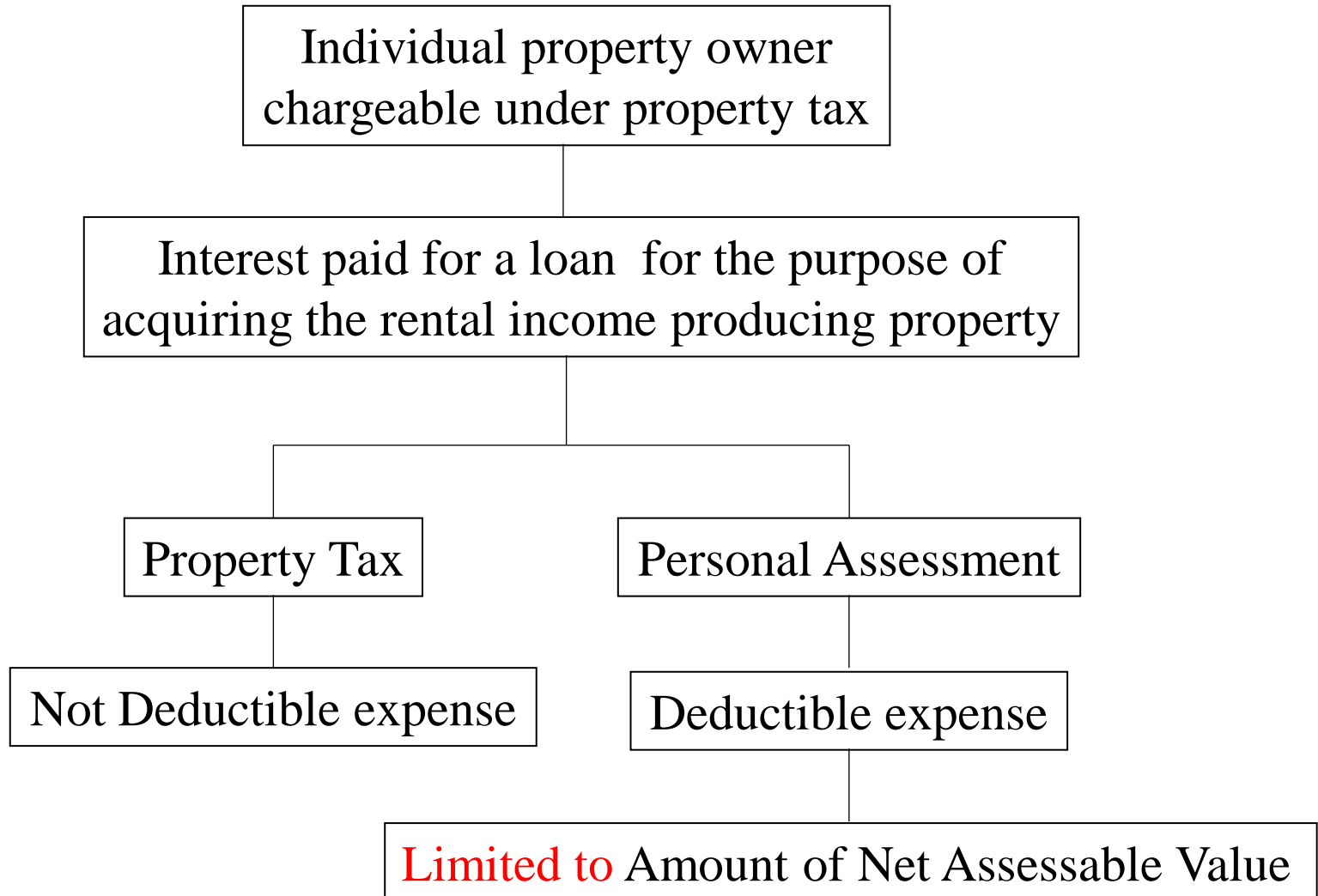
Ms. B - Net Chargeable Income \$180,000
Tax Thereon : \$360

Mr. C - Net Chargeable Income \$120,000
Tax Thereon : Zero

Reasons to Apply Personal Assessment

- ✓ **Gain Benefits of Deduction of Expenses :**
 - Interest paid for property earning rental income
 - Concessionary deductions:
 - Home loan interest
 - Charitable donations
 - Elderly residential care expense
- ✓ **Set-off of business loss against other income**
- ✓ **Gain Benefits of Personal Allowances**

Interest Expense Not Otherwise Deductible



	Salaries tax	Property tax	Profits tax	Personal assessment
Charitable donation	Deductible	<i>Not</i>	Deductible	Deductible
Elderly residential care	Deductible	<i>Not</i>	<i>Not</i>	Deductible
Interest for home loan	Deductible	<i>Not</i>	<i>Not</i>	Deductible
Interest for rental property	<i>Not</i>	<i>Not</i>	<i>Not</i>	Deductible
Set-off of business loss	<i>Not</i>	<i>Not</i>	<i>Not</i>	Deductible
Personal allowances	Deductible	<i>Not</i>	<i>Not</i>	Deductible
Lower marginal tax rates	Available	<i>Not</i>	<i>Not</i>	Available



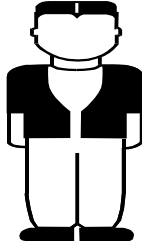
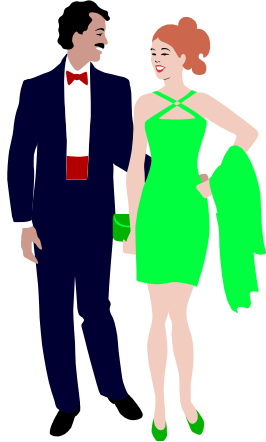
Maximising Allowances Between Husband and Wife

Note:

If both husband and wife receive salaries income only, they are not required to elect for personal allowance as the tax payable is the same for both salaries tax and personal assessment tax.

They may simply apply for Joint Assessment under Salaries Tax

Applying Personal Assessment

- An Individual 
 - 18 or over Years of Age
 - A Permanent or Temporary Resident
 - Has Income Assessable Under IRO
-
- For Couple, both Husband and Wife Must Elect 

Permanent Resident

- An individual ordinarily resides in Hong Kong.
- This usually means that the individual has a place of abode in Hong Kong.



Temporary Resident

An individual who stay in Hong Kong for:

- more than 180 days in the year of election for personal assessment, or
- more than 300 days in two consecutive years of assessment one of which is the year of election for personal assessment.

Learning Activity 4

- Mr. A, a Hong Kong resident, migrated to the US on 1.4.2017. He occasionally returns to Hong Kong and runs certain business during these few years.
- Can he elect for PA for 2017/2018?

Answer to Learning Activity 4

- Mr. A stayed in Hong Kong for the following number of days in :
 - Year of assessment 2016/2017 365 days
 - Year of assessment 2017/2018 1 day
- Mr. A stayed in Hong Kong for more than 300 days in two years of assessment of 2016/2017 and 2017/2018.
- Thus, he is entitled to elect for personal assessment for 2016/2017 and 2017/2018.

Conditions for Election for Personal Assessment

Individual age 18 or over unless both parents dead

Hong Kong resident

Permanent Resident

Temporary Resident

Maintaining a place of abode in Hong Kong

Over 180 days in Hong Kong in the year of election

Over 300 days in Hong Kong in the two consecutive years of assessment



Timing for Election

- Within Two Years After the End of the Year of Assessment, or
- Within One Month from the Date when Assessment on Component Incomes Becomes Final and Conclusive

Learning Activity 3

- Mr. A is married but with no child. The couple does not need to maintain any parent or dependent. Their incomes are as follows: (Y/A 2017/2018)
- Mr. A – Salaries \$120,000; Proprietorship Profits \$80,000.
- Mrs. A – Property Income \$250,000.
- Tax Payable with and without PA?

Answer to Learning Activity 3



Mr. A – Personal Assessment Tax

Mr. A – Assessable income		\$120,000
Mr. A – Assessable profits		80,000
Mrs. A – Net assessable value (250,000 x 80%)		<u>200,000</u>
		400,000
Less: MPF Contribution (120,000 x 5%)		<u>6,000</u>
		394,000
Less: Married person's allowance		<u>264,000</u>
Net Chargeable income		<u>\$130,000</u>
Progressive rate tax [(4,050 + 40,000 x 12%) x (1 – 75%)]		<u>\$2,212</u>
Standard rate tax (394,000 x 15% – 30,000)		<u>\$29,100</u>

Answer to Learning Activity 3 (Con't.)

Mr. A – Tax Without Personal Assessment

Mr. A – Salaries tax	\$ 0
Mr. A – Profits tax $(80,000 \times 15\%) - (80,000 \times 15\% \times 75\%)$	3,000
Mrs. A – Property tax $[250,000 \times (1 - 20\%) \times 15\%]$	<u>30,000</u>
Total tax without election for personal assessment	<u>\$33,000</u>
Tax for election for personal assessment (smaller than \$33,000)	<u>\$2,212</u>
<i>Answer : Beneficial for election for personal assessment</i>	

Learning Activity 4

- Similar facts to L.A. 3 (Same Personal Allowance of L.A. 3) but with different income as follows:
- Mr. A - Salaries \$800,000;
- Mr. A - Proprietorship Profits \$30,000;
- Mrs. A - Property Income \$20,000.
- **Should They Apply for Personal Assessment?**

Answer to Learning Activity 4



Mr. A – Personal Assessment Tax

Mr. A – Assessable income		\$800,000
Mr. A – Assessable profits		30,000
Mrs. A – Net assessable value (20,000 x 80%)		<u>16,000</u>
		846,000
Less: MPF Contribution (800,000 x 5%, max. \$18,000)		<u>18,000</u>
		828,000
Less: Married person's allowance		<u>264,000</u>
Net Chargeable income		<u>\$564,000</u>
Progressive rate tax [9,450 + 429,000 x 17% – 30,000]		<u>\$52,380</u>
Standard rate tax (828,000 x 15% – 30,000)		<u>\$94,200</u>



Answer to Learning Activity 4 (Con't.)
Mr. A – Salaries Tax

Mr. A – Assessable income	\$800,000
Less: MPF Contribution (400,000 x 5%, max. \$18,000)	<u>18,000</u>
	782,000
Less: Married person's allowance	<u>264,000</u>
Net Chargeable income	<u>\$518,000</u>
Progressive rate tax [(9,450 + 383,000 x 17%) – 30,000]	<u>\$44,560</u>
Standard rate tax (782,000 x 15% – 30,000)	<u>\$87,300</u>

Answer to Learning Activity 4 (Con't.)

Mr. A – Total Tax Payable Without Personal Assessment

Mr. A – Salaries tax	\$44,560
Mr. A – Profits tax $(30,000 \times 15\%) - (30,000 \times 15\% \times 75\%)$	1,125
Mrs. A – Property tax $[20,000 \times (1 - 20\%) \times 15\%]$	<u>2,400</u>
Total tax without election for personal assessment (smaller)	<u>\$48,085</u>
Tax for election for personal assessment	<u>\$52,380</u>
<i>Answer : NOT Beneficial for election for personal assessment</i>	

Objection to Personal Assessment Tax Assessment

In Practice

- CIR issues property tax assessment and profits tax assessment without personal allowance.
- After the property tax and profits tax assessments become final and conclusive, CIR will issue personal assessment tax assessment.
- The issue of personal assessment tax assessment does not give the taxpayer a fresh right of objection to the original property tax and profits tax assessment.

Objection to Personal Assessment Tax Assessment

What a taxpayer may object against a personal assessment tax assessment

- The deduction of interest paid for the acquisition of the property with assessable value.
- The share of profit and loss in a partnership.
- The business loss not agreed with assessor under profits tax.
- The concessionary deductions such as charitable donation, elderly residential care expense and home loan interest.

Objection Procedure to PA Tax Assessment

The objection procedure to a PA tax assessment is same as objection to other tax assessment under section 64 :

- Within one month from the date of issue of the assessment
- Addressing the objection to CIR
- With precise grounds of objection.



Stamp Duty

AVD, BSD and SSD

Head 1: Immovable Property

- Documents relating to transaction of immovable property in *Hong Kong - Territorial Source Principle*
- Immovable Property:
 - land, whether covered by water or not;
 - any estate, right, interest or easement in or over any land; and
 - things attached to land or permanently fastened to anything attached to land

Head 1: Immovable Property

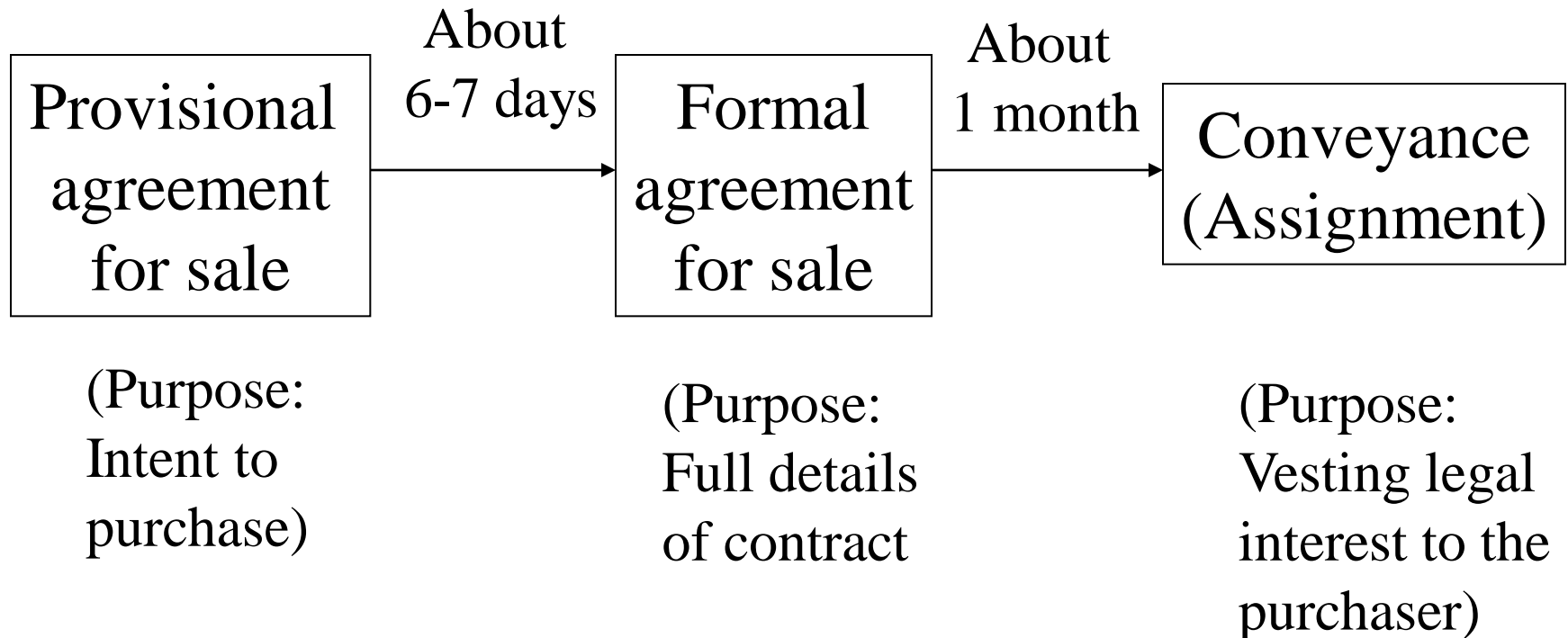
Sub-Heads - Dutiable Documents

- Three Sub-Heads:
 - **Conveyance** on Sale – Head 1(1)
 - *Agreement or Contract* for Sale of equitable interest in *residential property*
 - Head 1(1A)
 - **Lease** agreement – Head 1(2)

Purchase of Property

- 3 Instruments (also referred as documents)
- Provisional sale and purchase agreement
(also called provisional agreement for sale)
 - Formal sale and purchase agreement
(also called formal agreement for sale)
 - Conveyance (also called Assignment or Deed of Assignment)

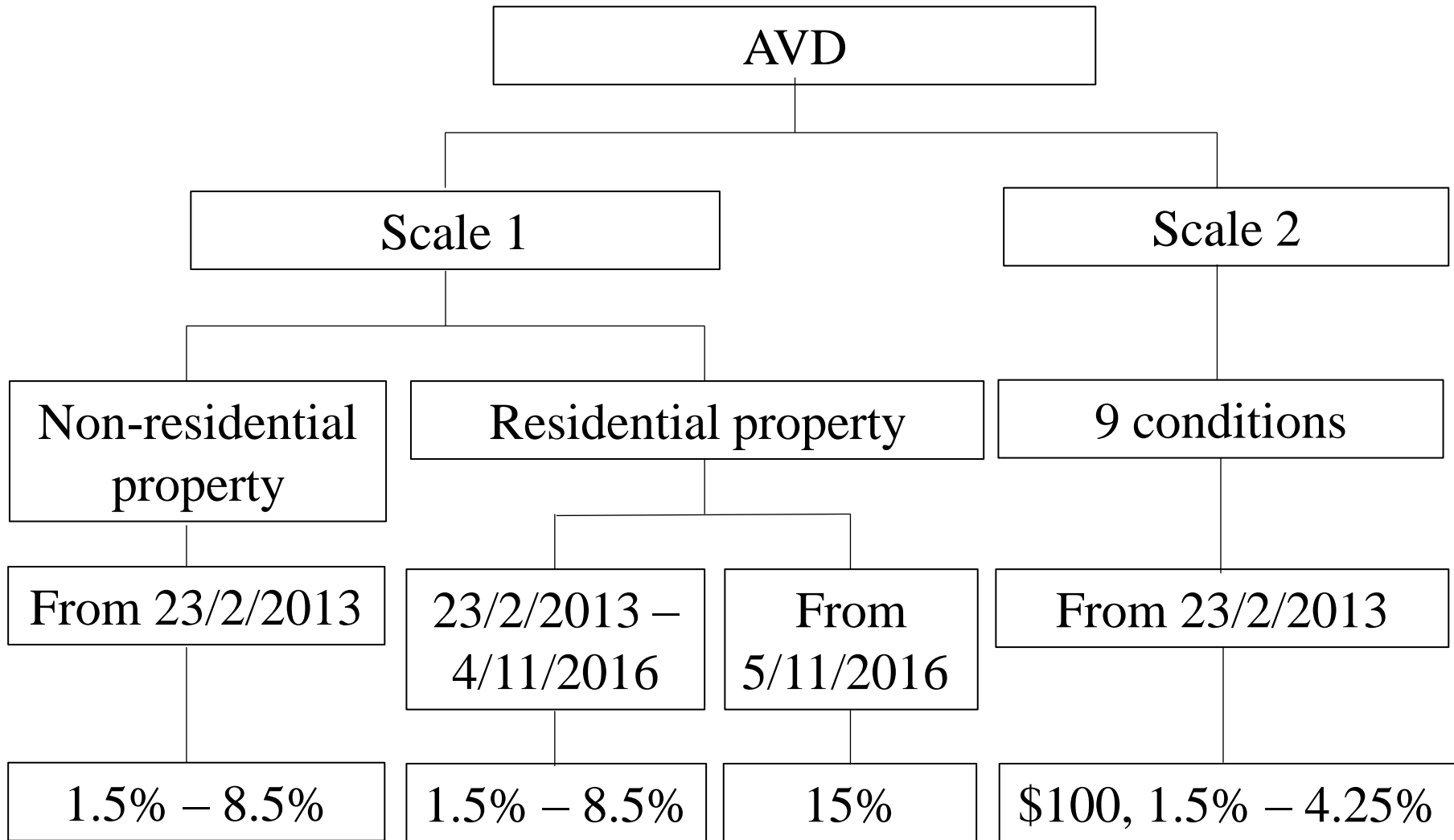
Procedure of Purchase of Property in Hong Kong



Purchase of Property

(assumed no change of buyer throughout)

- Provisional sale and purchase agreement
 - *Ad valorem Stamp Duty (AVD)*
- Formal sale and purchase agreement
 - *Fixed Stamp Duty of \$100*
- Conveyance
 - *Fixed Stamp Duty of \$100*



From 23/2/2013 :



Non-residential Property – Scale 1

C = Consideration	Stamp Duty Payable
\$1 – \$2,000,000	Consideration x 1.5%
\$2,000,001 – \$2,351,760	\$30,000 + [(C – \$2,000,000) x 20%]
\$2,351,761 – \$3,000,000	Consideration x 3%
\$3,000,001 – \$3,290,320	\$90,000 + [(C – \$3,000,000) x 20%]
\$3,290,321 – \$4,000,000	Consideration x 4.5%
\$4,000,001 – \$4,428,570	\$180,000 + [(C – \$4,000,000) x 20%]
\$4,428,571 – \$6,000,000	Consideration x 6%
\$6,000,001 – \$6,720,000	\$360,000 + [(C – \$6,000,000) x 20%]
\$6,720,001 – \$20,000,000	Consideration x 7.5%
\$20,000,001 – \$21,739,120	\$1,500,000 + [(C – \$20,000,000) x 20%]
\$21,739,121 and above	Consideration x 8.5%

23/2/2013 – 4/11/2016 :

Residential Property – Scale 1



C = Consideration	Stamp Duty Payable
\$1 – \$2,000,000	Consideration x 1.5%
\$2,000,001 – \$2,351,760	\$30,000 + [(C – \$2,000,000) x 20%]
\$2,351,761 – \$3,000,000	Consideration x 3%
\$3,000,001 – \$3,290,320	\$90,000 + [(C – \$3,000,000) x 20%]
\$3,290,321 – \$4,000,000	Consideration x 4.5%
\$4,000,001 – \$4,428,570	\$180,000 + [(C – \$4,000,000) x 20%]
\$4,428,571 – \$6,000,000	Consideration x 6%
\$6,000,001 – \$6,720,000	\$360,000 + [(C – \$6,000,000) x 20%]
\$6,720,001 – \$20,000,000	Consideration x 7.5%
\$20,000,001 – \$21,739,120	\$1,500,000 + [(C – \$20,000,000) x 20%]
\$21,739,121 and above	Consideration x 8.5%

From 5/11/2016 : Residential Property – Scale 1



C = Consideration	Stamp Duty Payable
\$1 – \$2,000,000	Consideration x 15%
\$2,000,001 – \$2,351,760	Consideration x 15%
\$2,351,761 – \$3,000,000	Consideration x 15%
\$3,000,001 – \$3,290,320	Consideration x 15%
\$3,290,321 – \$4,000,000	Consideration x 15%
\$4,000,001 – \$4,428,570	Consideration x 15%
\$4,428,571 – \$6,000,000	Consideration x 15%
\$6,000,001 – \$6,720,000	Consideration x 15%
\$6,720,001 – \$20,000,000	Consideration x 15%
\$20,000,001 – \$21,739,120	Consideration x 15%
\$21,739,121 and above	Consideration x 15%

23/2/2013 to Now :



Ad Valorem Stamp Duty Scale 2

C = Consideration	Stamp Duty Payable
\$1 – \$2,000,000	\$100
\$2,000,001 – \$2,351,760	$\$100 + [(C - \$2,000,000) \times 10\%]$
\$2,351,761 – \$3,000,000	Consideration x 1.5%
\$3,000,001 – \$3,290,320	$\$45,000 + [(C - \$3,000,000) \times 10\%]$
\$3,290,321 – \$4,000,000	Consideration x 2.25%
\$4,000,001 – \$4,428,570	$\$90,000 + [(C - \$4,000,000) \times 10\%]$
\$4,428,571 – \$6,000,000	Consideration x 3%
\$6,000,001 – \$6,720,000	$\$180,000 + [(C - \$6,000,000) \times 10\%]$
\$6,720,001 – \$20,000,000	Consideration x 3.75%
\$20,000,001 – \$21,739,120	$\$750,000 + [(C - \$20,000,000) \times 10\%]$
\$21,739,121 and above	Consideration x 4.25%

When *Scale 1* Stamp Duty Applies

- It applies to all sale, purchase and transfer of property (both residential property and non-residential property) situated in Hong Kong unless Scale 2 stamp duty is applied.

When *Scale 2* Stamp Duty Applies

- Scale 2 stamp duty applies to nine situations with the following more popular situations:
 - Purchase of a residential property by a HKPR (i.e. a person holding a valid Hong Kong permanent resident identity card) without owning a residential property at the time of purchase of that residential property.
 - Sale of a residential property to a close relative.

9 Conditions When Scale 2 Applies

- Purchase of a residential property by a HKPR (i.e. a person holding a valid Hong Kong permanent resident identity card) without owning a residential property at the time of purchase of that residential property.
- Purchase of a residential property by the aforesaid HKPR with a car parking space

9 Conditions When Scale 2 Applies (Con't.)

- Joint acquisition with closed relatives – All purchasers must be closely related with the HKPR purchaser.
- Sale or transfer between closed relatives.
- Replacement of property due to government order (no restriction on the size and value of the property) but must be non-residential for non-residential property and residential for residential property

9 Conditions When Scale 2 Applies (Con't.)

- Sale in pursuance of a court order.
- Mortgaged property transferred to a financial institution in the capacity of a mortgagee.
- Tenant purchase scheme of the Housing Authority if the purchaser does not own any residential property in Hong Kong
- Lease – the charge of stamp duty on premium

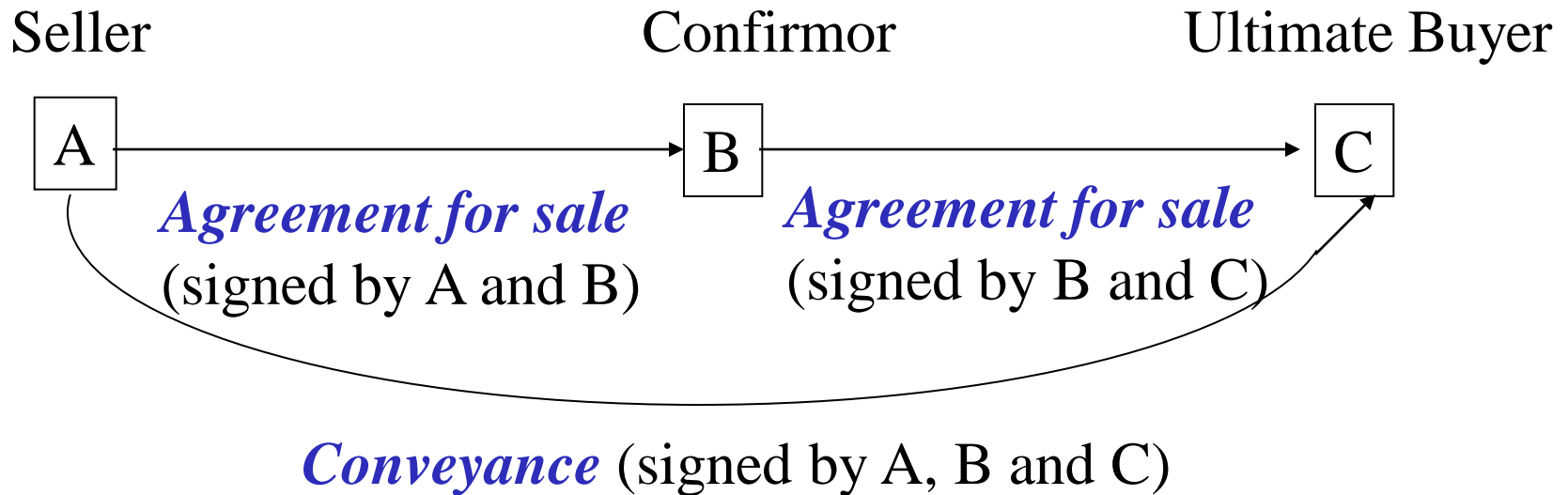
Partial Refund of Scale 1 Stamp Duty

- Conditions for a partial refund of stamp duty:
 - A HKPR purchases a residential property at Scale 1 stamp duty initially.
 - If the HKPR sells his own old residential property within 12 months from the date of the purchase of that residential property, he may apply to The Collector of Stamp Revenue for a partial refund of stamp duty by applying scale 2 stamp duty to his purchase of the property within 12 months ago.

Time for Payment of Stamp Duty for Property Transactions

- Always within 30 days after the date of execution no matter whether it is a
 - agreement for sale
 - conveyance (assignment)
 - deed of gift
 - lease

Sub-sale of Property

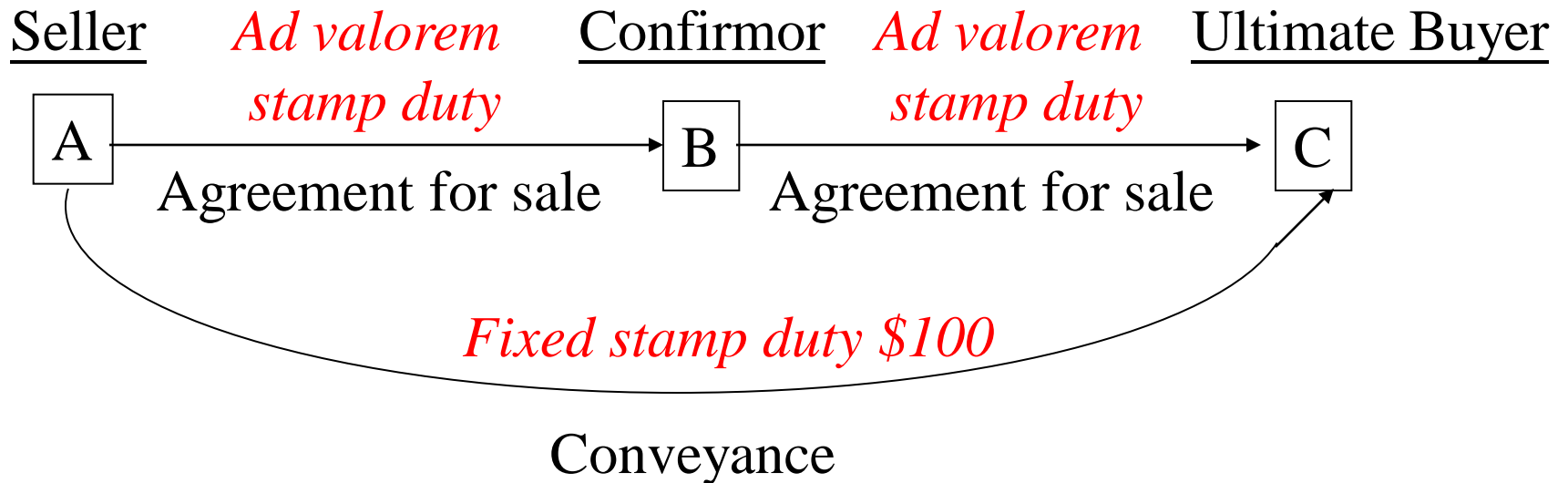


“Sub-sale” is the process referred the sale of the same property for the second or third or more times before the execution of the conveyance.

Sub-sale of Property

- Stamp duty is chargeable as follows:
 - From Seller to First Buyer
 - ❖ Provisional sale and purchase agreement
 - *Ad Valorem Stamp Duty*
 - From First Buyer to Ultimate Buyer
 - ❖ Formal sale and purchase agreement
 - *Ad Valorem Stamp Duty*
 - From Seller to Ultimate Buyer (with all sub-buyers)
 - ❖ Conveyance
 - *Fixed Stamp Duty of \$100*

Sub-sale of Property

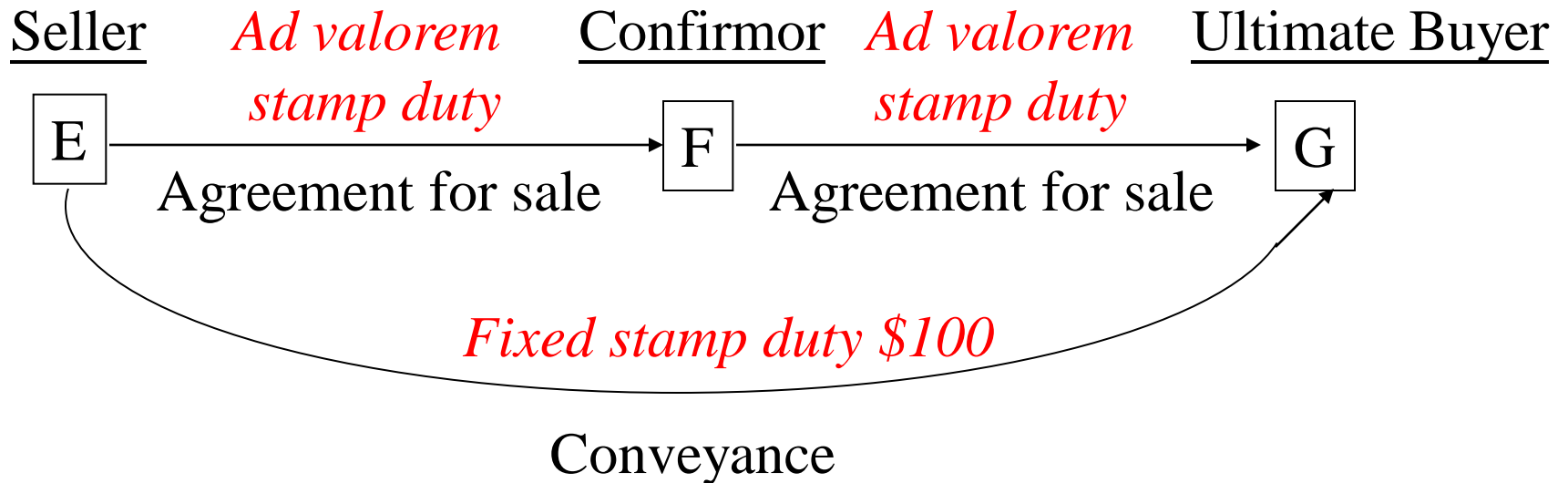


“Sub-sale” is the process referred the sale of the same property for the second or third or more times before the execution of the conveyance.

Learning Activity 5

- On 1 July 2017, E and F entered an agreement for E to sell to F a personal residence at a sales price of \$10,000,000.
- On 1 October, 2017, F entered an agreement with G for the sale of the aforesaid property at \$10,000,000.
- On 1 November, 2017, E, F and G signed the conveyance for the aforesaid residential property.
- What is the stamp duty payable:
 - On 1 July, 2017?
 - On 1 October, 2017?
 - On 1 November, 2017?

Answer to Learning Activity 5



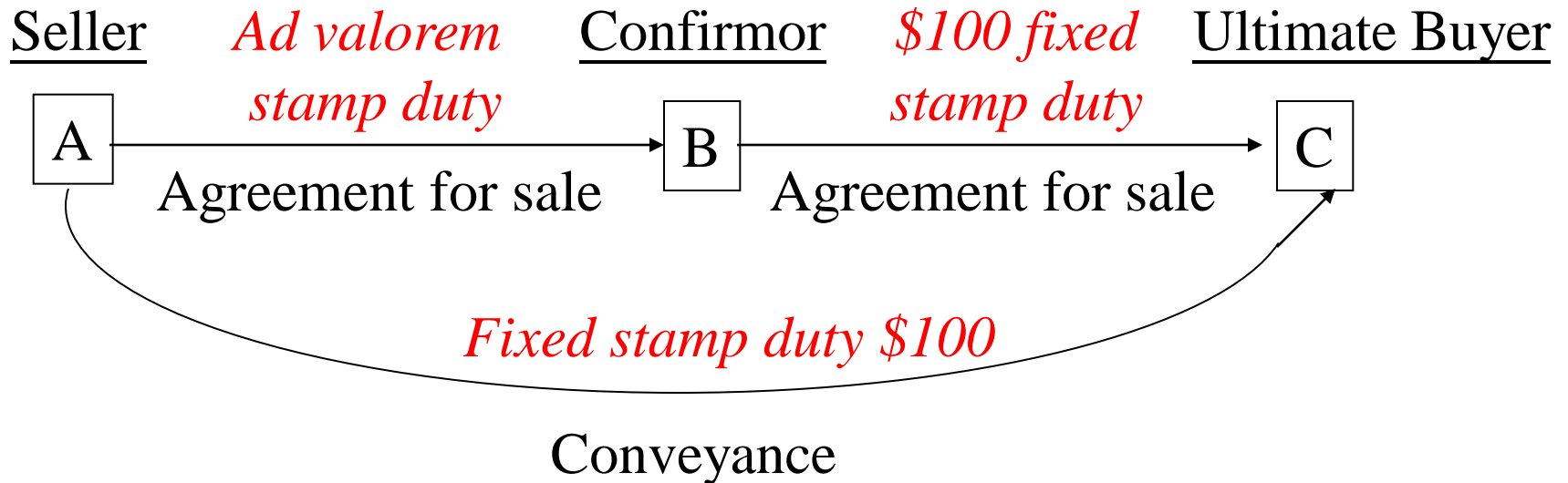
“Sub-sale” is the process referred the sale of the same property for the second or third or more times before the execution of the conveyance.

Sub-sale of Property to Spouse, Parents or Children



- Stamp duty is chargeable as follows:
 - From Seller to First Buyer
 - ❖ Provisional sale and purchase agreement
 - *Ad Valorem Stamp Duty*
 - From First Buyer to Ultimate Buyer
 - ❖ Formal sale and purchase agreement
 - *Fixed Stamp Duty of \$100*
 - From Seller to Ultimate Buyer (with all sub-buyers)
 - ❖ Conveyance
 - *Fixed Stamp Duty of \$100*

Sub-sale of Property to Spouse, Parents or Children



“Sub-sale” is the process referred the sale of the same property for the second or third or more times before the execution of the conveyance.

Liability for Payment of Stamp Duty

- All the parties executing (signing) the instrument (document) are *jointly and severally liable* for the payment of the stamp duty.
- This means that the Collector of Stamp Revenue may demand any party (i.e. the seller, confirmor and the buyer) executing the instrument for the payment of the whole stamp duty.

Single Residential Property for Scale 2

- With effect from 12 April 2017, Scale 2 AVD applies to an instrument for purchase of a single residential property with or without a car parking space.
- If the instrument is for purchase of more than one residential property, Scale 2 AVD will not apply, and the instrument is chargeable with Scale 1 AVD.



Additional Charge of Stamp Duty on Residential Property



Additional Charge of Stamp Duty on Residential Property

- Original Special Stamp Duty
 - effective on 20 November 2010
- New Special Stamp Duty
 - effective on 27 October 2012
- Buyer Stamp duty
 - effective on 27 October 2012



Special Stamp Duty (SSD) on Residential Property

Special Stamp Duty (SSD)

- With effect from 20 November 2010 a Special Stamp Duty (“SSD”) is imposed on the sale of a residential property if the property is sold within a certain period.
- SSD was first imposed on 20 November 2010 for properties resold *within 24 months* after acquisition.
- New (or Enhanced) SSD was subsequently imposed on 27 October 2012 for properties resold *within 36 months* after acquisition.

Original Special Stamp Duty Rates (with effective from 20 November 2010)

Period held before sale	SSD Rates
6 months or less	15%
> 6 months but up to 12 months	10%
> 12 months but up to 24 months	5%



New Special Stamp Duty Rates (SSD) (with effective from 27 October 2012)

Period held before sale	SSD Rates
6 months or less	20%
> 6 months but up to 12 months	15%
> 12 months but up to 36 months	10%

Persons Liable to Pay SSD

- SSD is *on top of the normal stamp duty payable* on purchase and sale of property
- Buyer and seller are *jointly and severally liable* for the payment of the SSD.

Learning Activity 6

- Mr. Yeung, a Hong Kong permanent resident, purchased a residential property from Mr. Lam at the price of \$18,000,000 on 1.11.2018. Mr. Yeung did not own any residential property before.
- Mr. Lam purchased the aforesaid property on 1.6.2018.

Required:

- What is the total stamp duty payable upon the purchase of the property in November 2018?



Answer to Learning Activity 6 (sale within 6 months)

Normal stamp duty (scale 2)

$$\$18,000,000 \times 3.75\% \qquad \$675,000$$

Special stamp duty

$$\$18,000,000 \times 20\% \qquad \$3,600,000$$

Total stamp duty payable

$$\$4,275,000$$

=====

Exemptions from Special Stamp Duty

- *Nomination* of a close relative to take up the assignment of a property under a sale and purchase agreement.
- (“*close relative*” means *spouse, parents, children, brothers or sisters* who are blood-related, half blood-related, and also persons who have adoption or step relationship,);
- *Addition or deletion of close relatives* in the transfer of a property.
- Sale of the *estate of a deceased person*

Exemptions from Special Stamp Duty (Con't.)

- Sale or transfer of a property due to bankruptcy/company *winding up* by the Court of First Instance because of inability to pay debts;
- Sale or transfer of a property *between associated companies*; and
- Sale or transfer of a property *to Government*.



Buyer's Stamp Duty (BSD) on Residential Property

Buyer's Stamp Duty (BSD)

- With effect from 27 October 2012 a Buyer's Stamp Duty ("BSD") is imposed on the purchaser (including a company incorporated) of a residential property unless the purchaser is a Hong Kong Permanent Resident.
- BSD is charged at a *flat rate of 15%* on all residential properties, on top of the existing stamp duty and the special stamp duty.



When BSD is Payable?

- Purchase of a residential property situated in Hong Kong
- By any person (including limited company) not a Hong Kong permanent resident (HKPR)
- on or after 27 October 2012.

Hong Kong Permanent Resident (HKPR)

- The definition of HKPR is stipulated under the Immigration Ordinance (Cap. 115).
- A person holding a Hong Kong Permanent Identity Card issued by the Director of Immigration is prima facie a HKPR.
- A person who can produce a “certificate of entitlement” to HKPR status issued by the Immigration Department of the Hong Kong SAR is also accepted as a HKPR.

Persons Liable to Pay BSD

- BSD is *on top of the normal stamp duty payable* and BSD on purchaser (not on the sale) of property
- Buyer or the transferee is *solely liable* for the payment of the BSD.



When BSD payable

- BSD has to be paid within 30 days after the execution of the chargeable document.

Relation of BSD with Normal SD and SSD

- Normal stamp duty is payable on the instrument.
- SSD is payable when a *residential* property is disposed with a certain period after the acquisition.
- BSD is payable when the purchaser of a *residential* property is not a Hong Kong permanent resident in addition to normal stamp duty and SSD as the case may be.

Learning Activity 7

- Mr. Leslie, a foreigner, purchased a residential property from Mr. Cheung at the price of \$18,000,000 on 1.9.2018.
- Mr. Cheung purchased the aforesaid property on 1.6.2018.

Required:

- What is the total stamp duty payable upon the purchase of the property in September 2018?



Answer to Learning Activity 7 (sale within 6 months)

Normal stamp duty \$18m x 15%	\$2,700,000
Special stamp duty \$18m x 20%	\$3,600,000
Buyer's stamp duty \$18m x 15%	\$2,700,000

Total stamp duty payable	\$9,000,000
	=====

Exemptions from Buyer's Stamp Duty

- *Nomination* of a close relative to take up the assignment of a property under a sale and purchase agreement.
- (“*close relative*” means *spouse, parents, children, brothers or sisters* who are blood-related, half blood-related, and also persons who have adoption or step relationship,);
- *Addition or deletion of close relatives* in the transfer of a property.
- Sale of the *estate of a deceased person*

Exemptions from Buyer's Stamp Duty (Con't.)

- Sale or transfer of a property due to bankruptcy/company *winding up* by the Court of First Instance because of inability to pay debts;
- Sale or transfer of a property *between associated companies*; and
- Sale or transfer of a property *to Government*.

Learning Activity 8 (Q.7 of IRD Q&A on BSD)

If a residential property is acquired by

- a HKPR and
- his spouse who is not a HKPR as joint tenant,

Required:

Will any BSD be payable?

Answer to Learning Activity 8

Answer (Q.7 of IRD Q&A on BSD)

- Acquisition of residential properties by
- a HKPR jointly
- *with a close relative* (i.e. spouse, parents, children, brothers and sisters) who is not HKPR
- is not chargeable with BSD.



Summary of Charge of Stamp Duty for Purchase of Immovable Property

Purchase of Non-residential Property

- Agreement for sale – AVD at Scale 1 (1.5% – 8.5%)
- Conveyance – fixed duty of \$100
- No SSD
- No BSD

Purchase of Residential Property – HKPR

- Agreement for sale – AVD at Scale 1 (15%) unless it falls within one of the conditions of Scale 2 (\$100, 1.5% – 4.25)
- Conveyance – fixed duty of \$100
- SSD (if sold within 3 years by the seller)
- No BSD

Purchase of Residential Property – Non-HKPR

- Agreement for sale – AVD at Scale 1 (15%)
- Conveyance – fixed duty of \$100
- SSD (if sold within 3 years by the seller)
- BSD at 15%



Stamp Duty Exemptions and Reliefs

Exemptions & Relief

- conveyances to H.K. Government
- conveyances of consular premises to consular officer
- lease of consular premises to consular officer, other person shall pay 50% of duty
- lease to H.K. government, other person shall pay 50% of duty

Exemptions & Relief

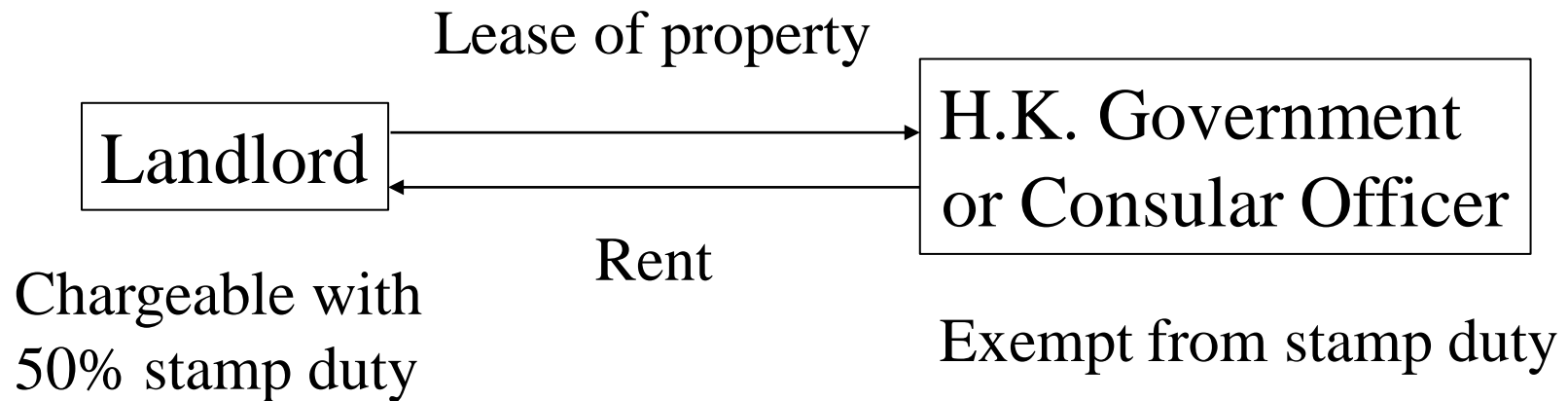
- gifts in consideration of marriage
- no change in beneficial interests
- outright gifts to charitable institutions
- conveyance and transfer of stock between associated corporations – S 45



Payment of 50% Stamp Duty

- Lease to H.K. Government
- Lease of Consular Premises to Consular Officer

Payment of 50% Stamp Duty





Exemption Stamp Duty

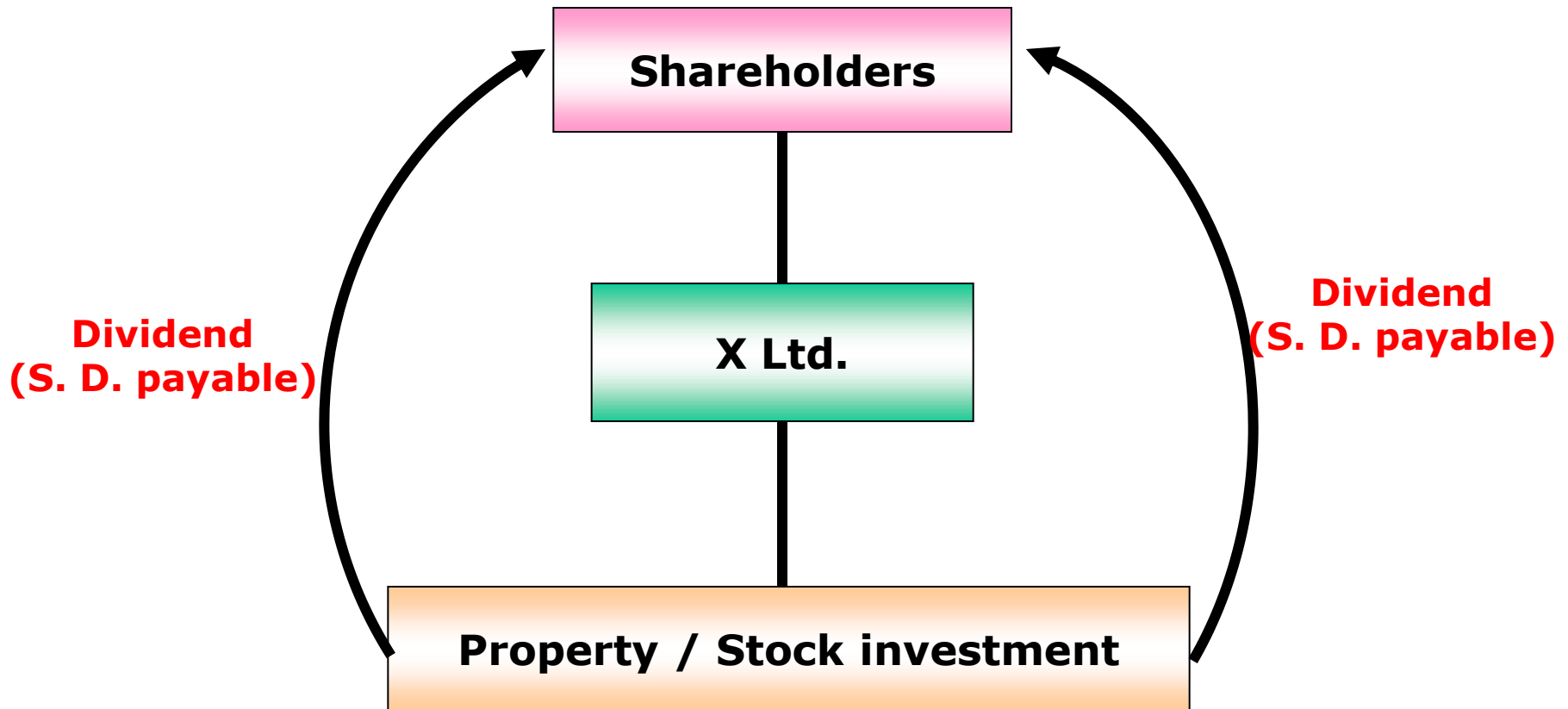
No Change of Beneficial Interest

No change in Beneficial Interests

Section 27 (5) exemption

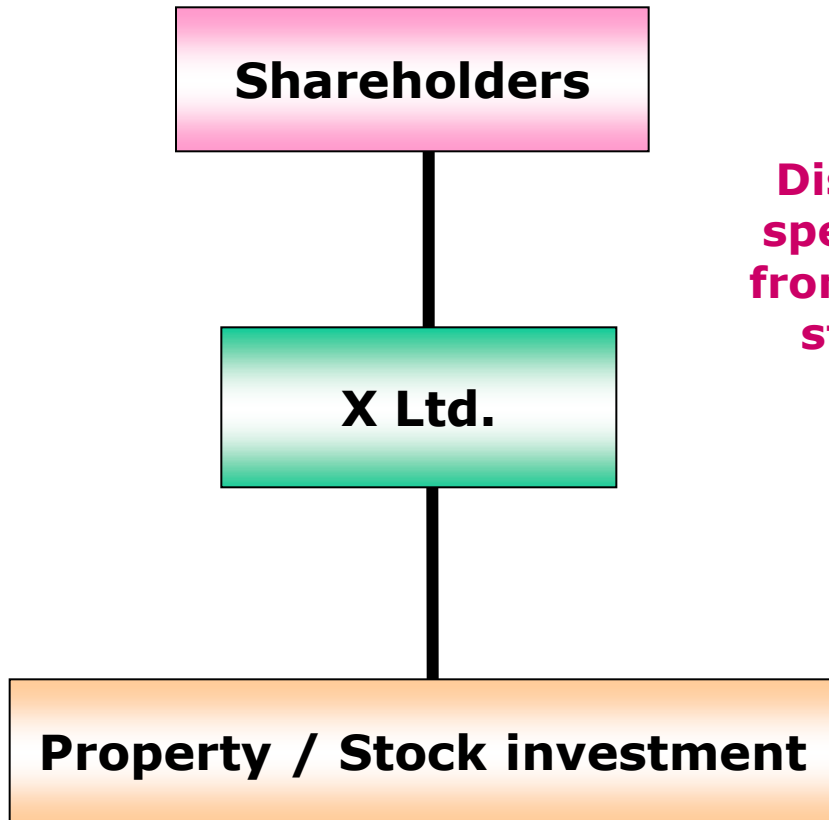
- Securing the repayment of an advance or loan for a conveyance of immovable property or a transfer of stock.
- Securing the repayment of an advance or loan from a financial institution for an agreement for sale of residential property under sec. 29A(1) and 29F(4).
- Appointment of a new trustee.
- No beneficial interest passes in the property conveyed or stock transferred.
- Made to a beneficiary by a trustee under a trust

Distribution of Stock as Dividend



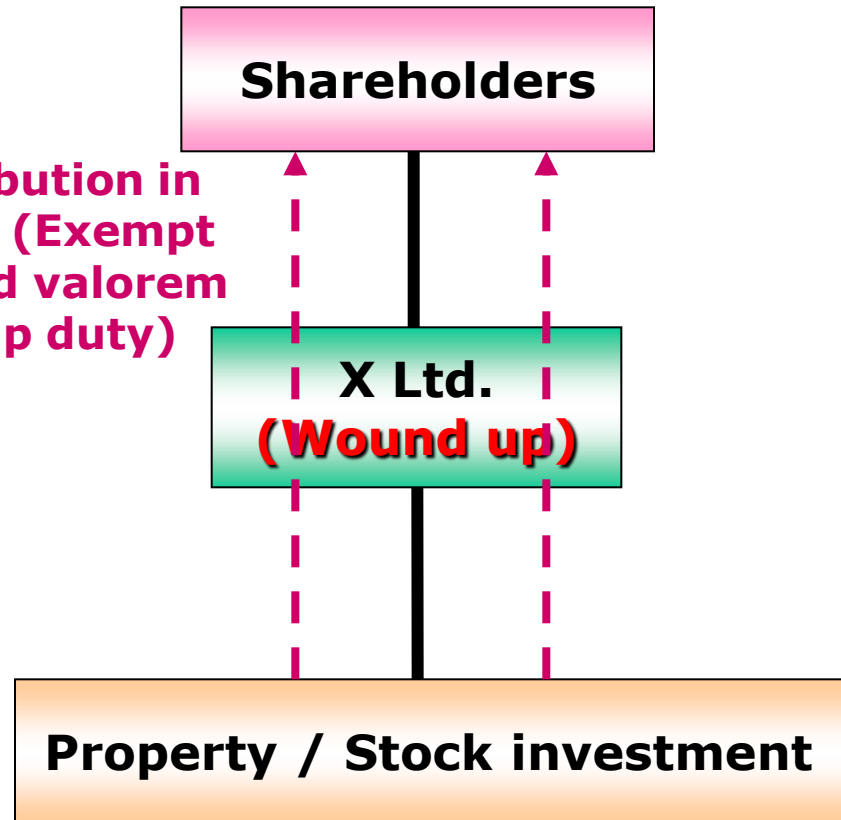
Distribution in specie under Liquidation

Day 1



Day 2

Distribution in specie (Exempt from ad valorem stamp duty)



Stamp Duty Planning for Transfer of Property back to Shareholders

- In case, a valuable property is owned by a company with one or two shareholders
- Stamp duty may be saved by liquidating the company instead of sale or transfer of the property to the shareholders as demonstrated in the earlier slide



Exemption Stamp Duty Transfer Between Associated Corporations

Group Relief under Section 45

- Transferor and transferee must be associated corporations
 - Parent and subsidiary of 90% ownership, or
 - Transferor and transferee held 90% by a common parent.
- Funds for acquiring stock not provided by a person not associated with the transferor and the transferee (except by a bank)
- Transferee remaining within the associated relationship within the meaning of section 45(2) (within **2 years** after the completion of the transaction)

Learning Activity 9

- Determine if the following corporations are associated:
 - **A Ltd. owns 90% of B Ltd.**
 - **C Ltd. owns 85% of D Ltd.**
 - **E Ltd. owns 100% of F Ltd. which owns 100% of G Ltd.**
 - **H Ltd. owns 80% of Y Ltd and 50% of X Ltd, X Ltd owns 20% of Y Ltd.**
 - **T Ltd. owns 100% of M Ltd and N Ltd.**
 - **Jane owns 100% of both P Ltd and Q Ltd.**

Answer to Learning Activity 9

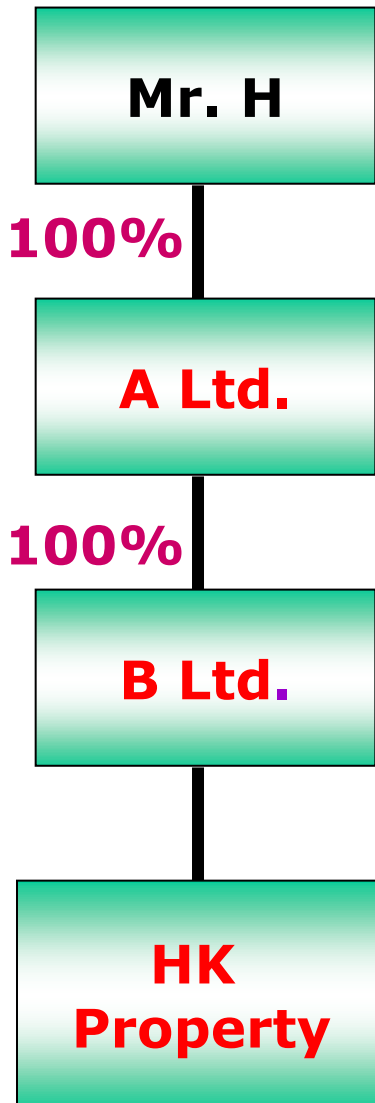


- Determine if the following corporations are associated:
 - A Ltd. owns 90% of B Ltd. : **Associated**
 - C Ltd. owns 85% of D Ltd. . : **Not Associated**
 - E Ltd. owns 100% of F Ltd. which owns 100% of G Ltd. : **Associated**
 - H Ltd. owns 80% of Y Ltd and 50% of X Ltd, X Ltd owns 20% of Y Ltd. : **Associated**
 - T Ltd. owns 100% of M Ltd and N Ltd. : **Associated**
 - Jane owns 100% of both P Ltd and Q Ltd. :
Not Associated

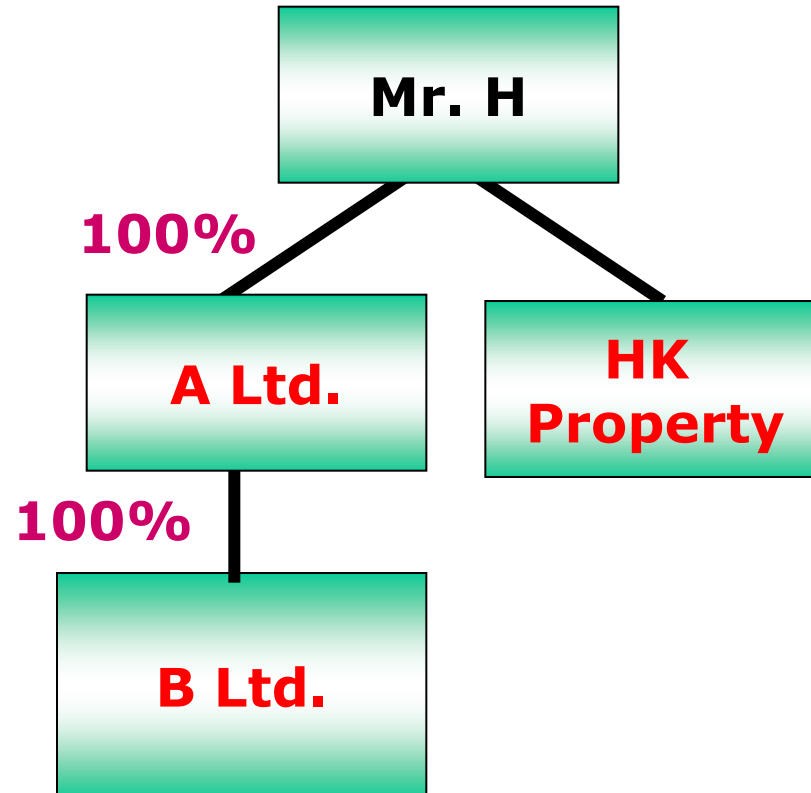
Group Relief under Section 45



Day 1



Day 2



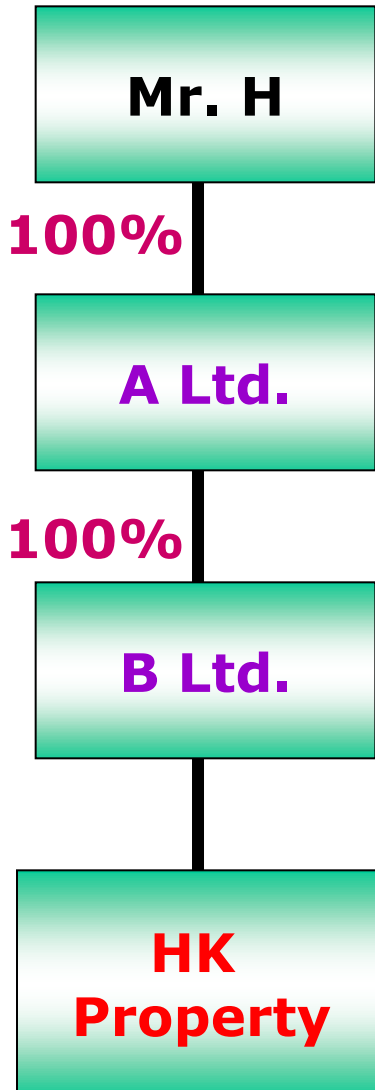
NO EXEMPTION OF STAMP DUTY

Transfer of HK property from B Ltd. to Mr. H is chargeable with stamp duty.

Group Relief under Section 45

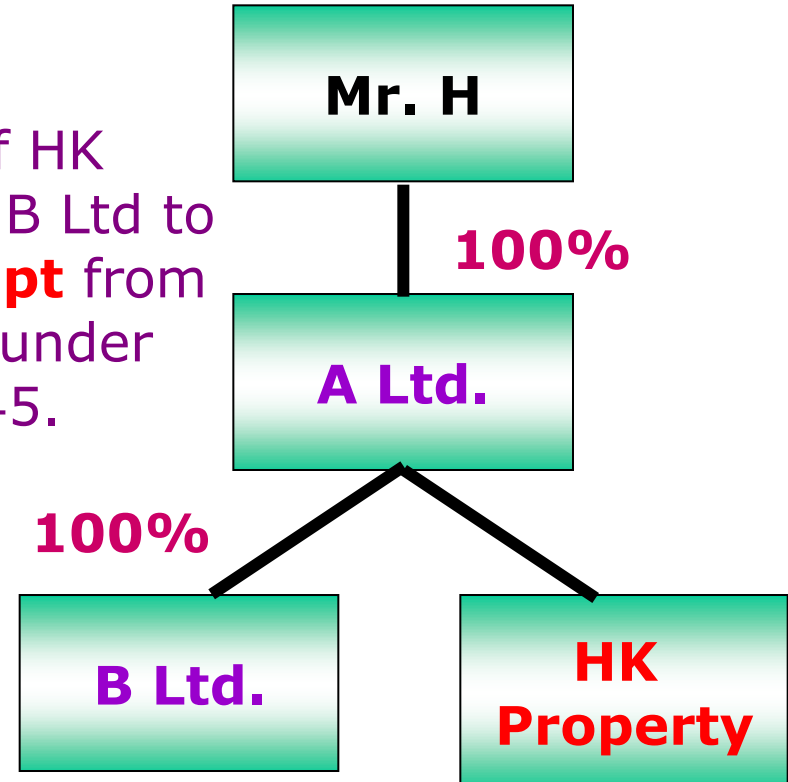


Day 1



Transfer of HK property from B Ltd to A Ltd is **exempt** from stamp duty under section 45.

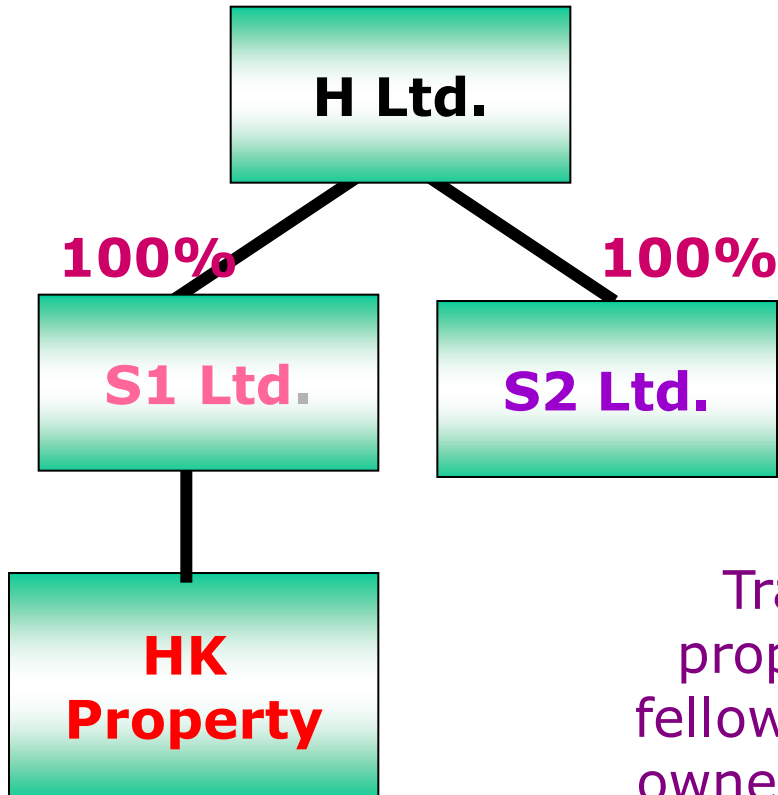
Day 2



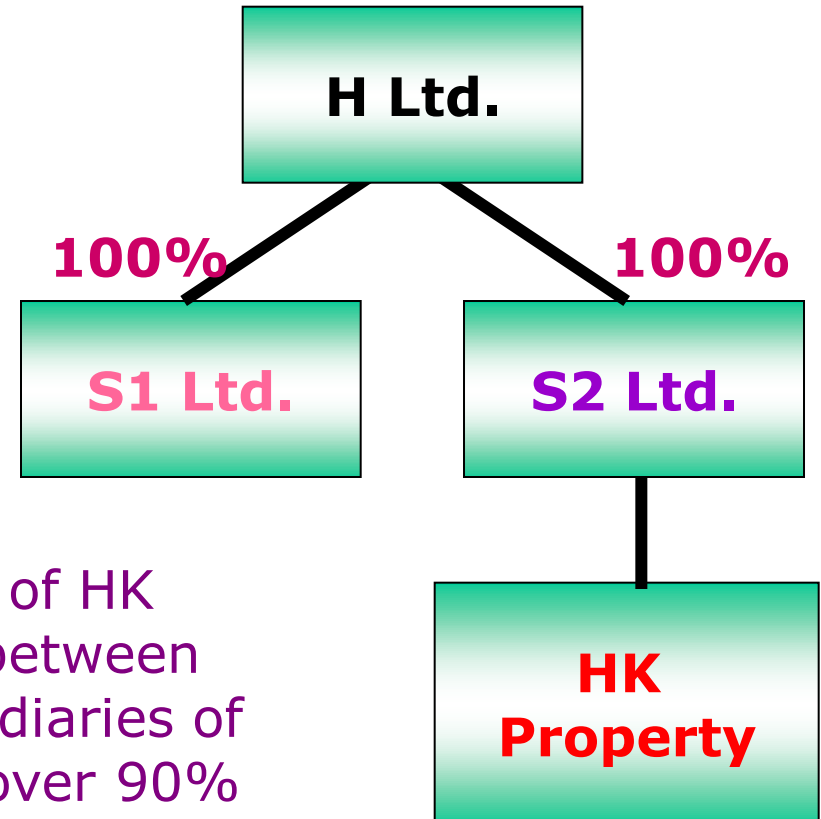
Group Relief under Section 45



Day 1



Day 2

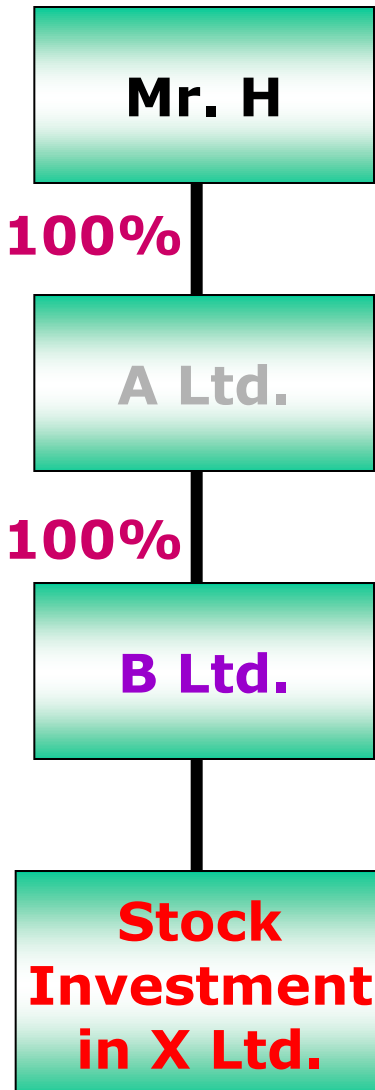


Transfer of HK property between fellow subsidiaries of ownership over 90% is **exempt** from Hong Kong stamp duty.

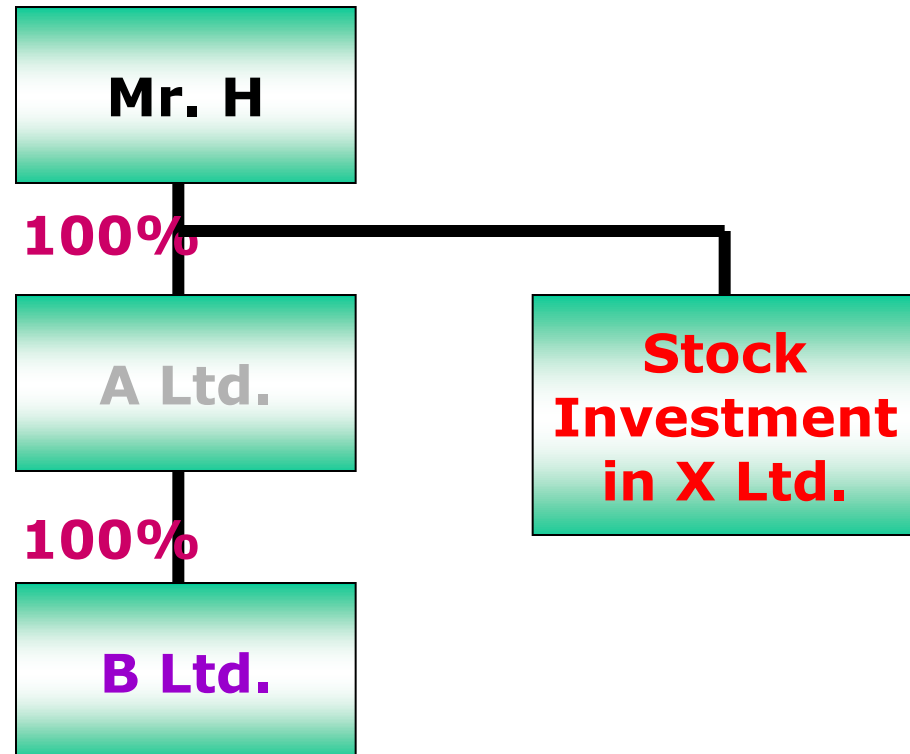
Group Relief under Section 45



Day 1



Day 2



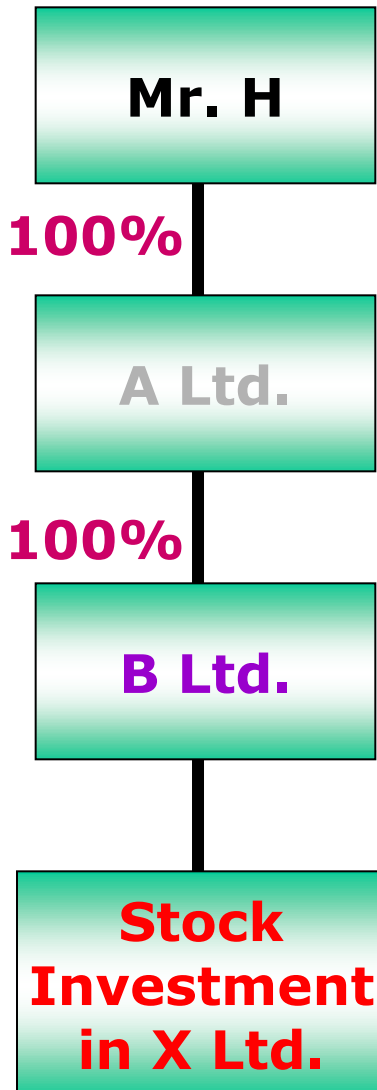
NO EXEMPTION OF STAMP DUTY

Transfer of stock investment from B Ltd. to Mr. H is chargeable with stamp duty.

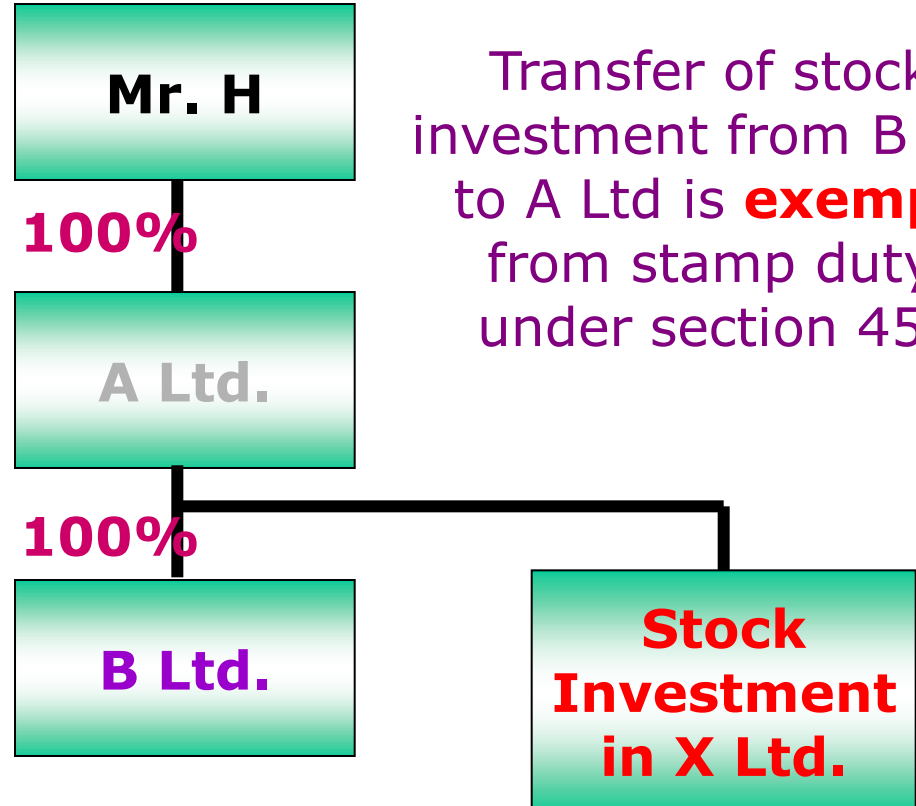
Group Relief under Section 45



Day 1



Day 2

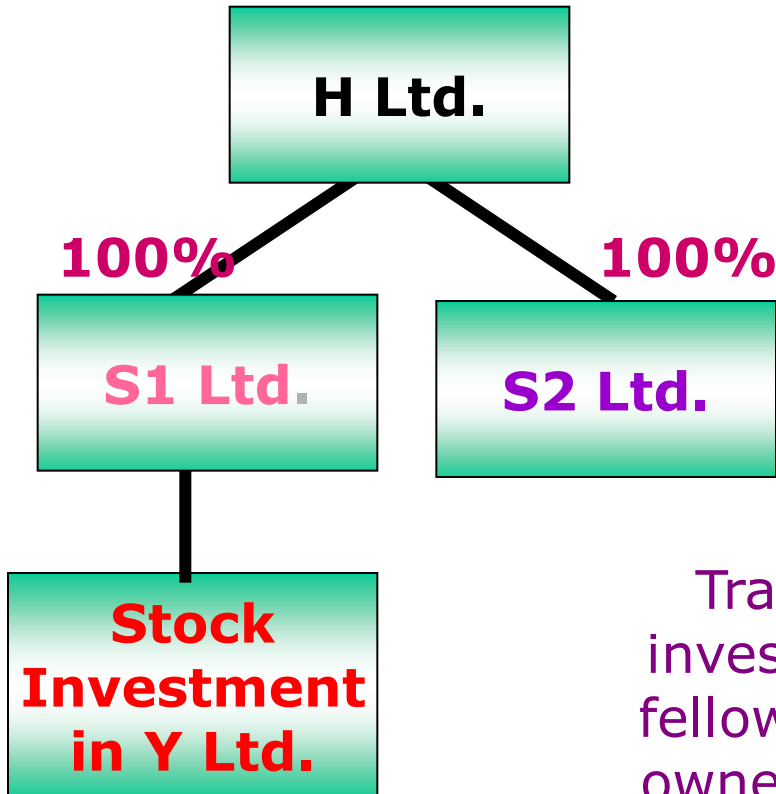


Transfer of stock investment from B Ltd to A Ltd is **exempt** from stamp duty under section 45.

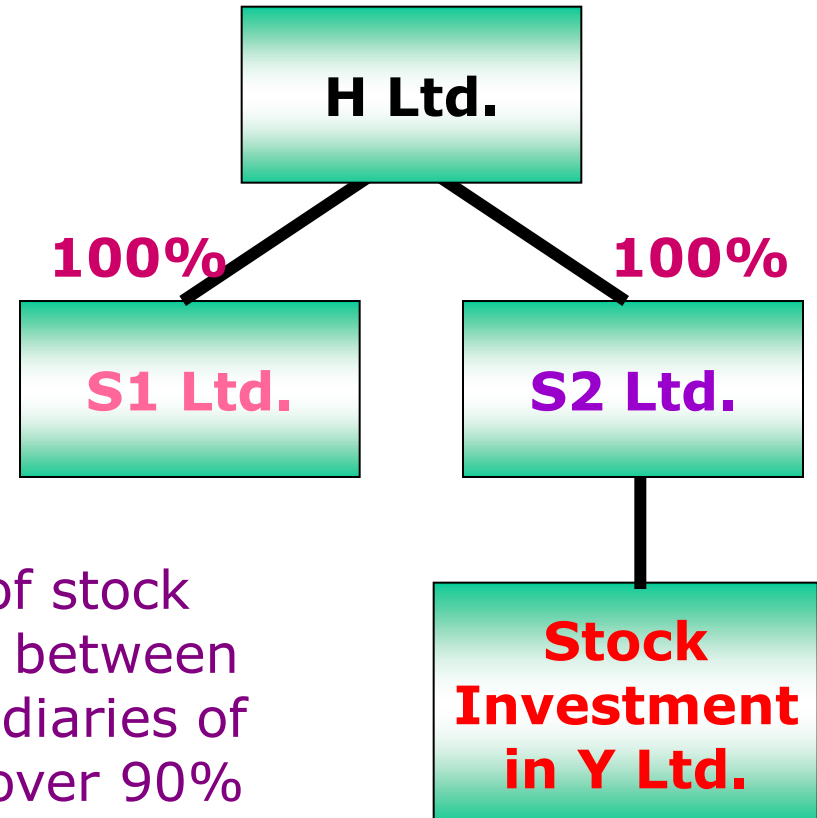
Group Relief under Section 45



Day 1



Day 2



Transfer of stock investment between fellow subsidiaries of ownership over 90% is **exempt** from Hong Kong stamp duty.

Adjudication



- Preliminary Documents for Application for Section 45 Relief:
 - Executed contract notes/instrument of transfer
 - Memorandum and articles of association
 - Statutory declaration by a director of the parent company [declaring that no S.45(4) transactions being operated]
 - Documents supporting associated relationship
 - Other documents required for stamping a transfer of stock



Alternative Bond Schemes – Stamp Duty Relief

Alternative Bond Schemes (ABS)

There are two parts of the schemes:

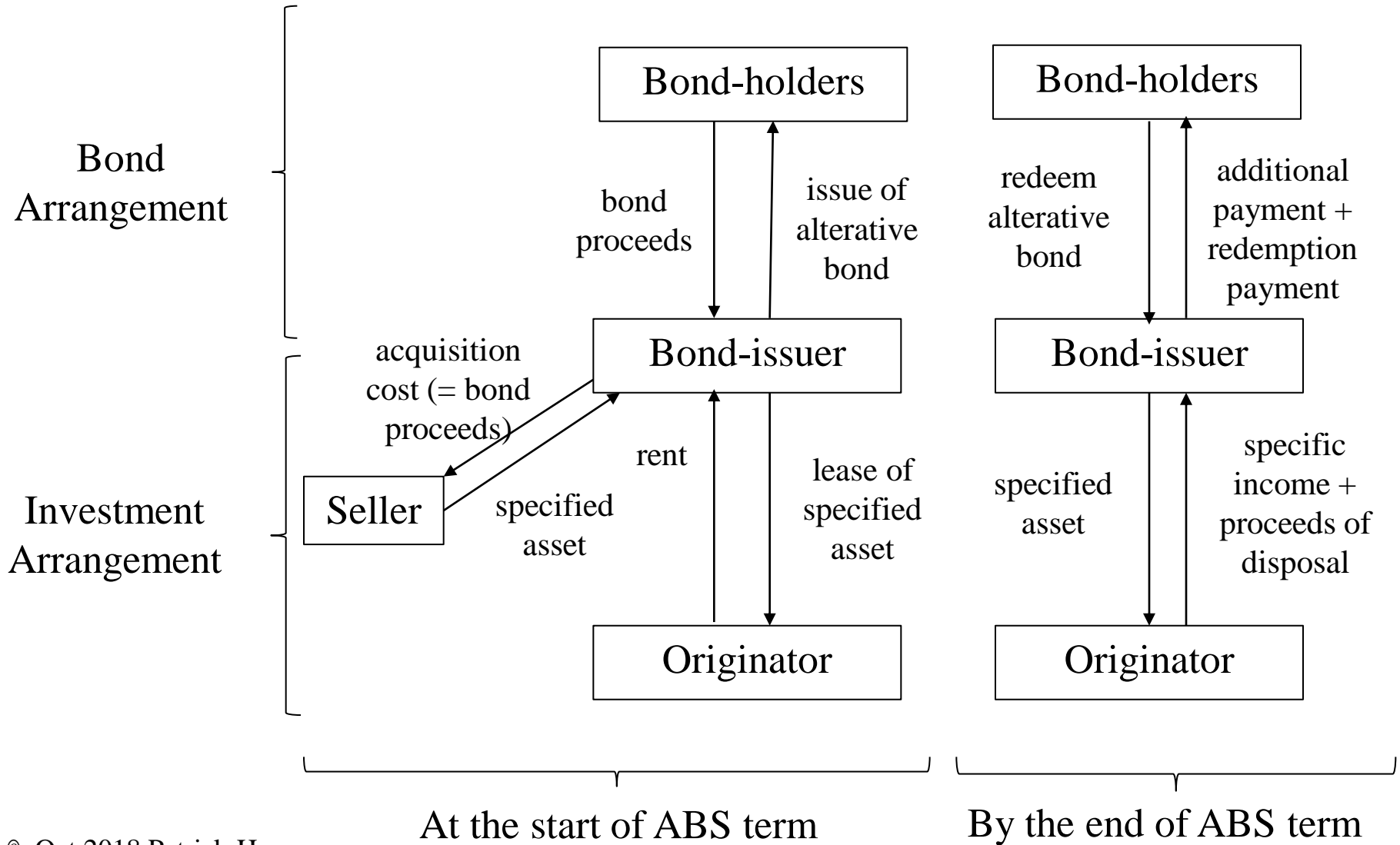
- Bond arrangement
 - Relationship between the bond-holders and the bond-issuer

- Investment arrangement
 - Relationship between the bond-issuer and the originator

Parties of Alternative Bond Schemes

- Originator – the one may be in substance the borrower (O)
- Bond-issuer – must be a special purpose vehicle (BI)
- Business undertaking – which operates the specified asset (BU)
- Bond-holders (BH)

ABS structured on the basis of lease arrangement (Ijara)



Stamp Duty Relief under Sections 47E

- In the context of Islamic finance, sukuk certificates evidence their holders' ownership in the underlying asset. The transfer of the certificates would amount to the transfer of the underlying asset. If the underlying asset is Hong Kong stock or immovable property in Hong Kong, stamp duty liability may arise. To provide comparable treatment for a BA in the specified ABS vis-à-vis debt securities –

Stamp Duty Relief under S.47E (Con't.)

- 1) the BHs under a qualified BA in a specified ABS are to be regarded as not having any legal or beneficial interest in the specified asset under the specified ABS; and
- 2) an alternative bond issued under the qualified BA is to be regarded as a bond to which neither paragraph (b) nor (c) of the definition of loan capital in section 2 of the Ordinance applies.

Stamp Duty Relief under S.47E (Con't.)

- The transfer of an alternative bond issued under a qualified BA in a specified ABS would not be treated as a transfer of the specified asset for stamp duty purposes, and will **not** be subject to stamp duty unless the alternative bond falls within the meaning of Hong Kong stock because it carries a right of conversion into stock or to the acquisition of any stock under section 2 of the Ordinance, is denominated in or redeemable in Hong Kong currency and the transfer of which is required to be registered in Hong Kong.

Stamp Duty Relief under Sections 47F

- Where the BA and a specified IA in a specified ABS comply with the respective conditions mentioned in paragraphs 9 and 10, subject to the security requirement in paragraph 23 below, stamp duty (including special stamp duty (SSD) and buyer's stamp duty (BSD)) under the Ordinance is *not* chargeable on –

Stamp Duty Relief under S.47F (Con't.)

- the instrument executed either to effect a transaction of immovable property in Hong Kong or Hong Kong stock that is a specified asset transaction between the O and the BI or asset transaction between the O and the BU under that qualified IA (*IA transaction*); or as an agreement for an IA transaction; or
- the instrument required by the Ordinance to be made and executed for effecting an IA transaction (for example, contract notes required under section 19 of the Ordinance).

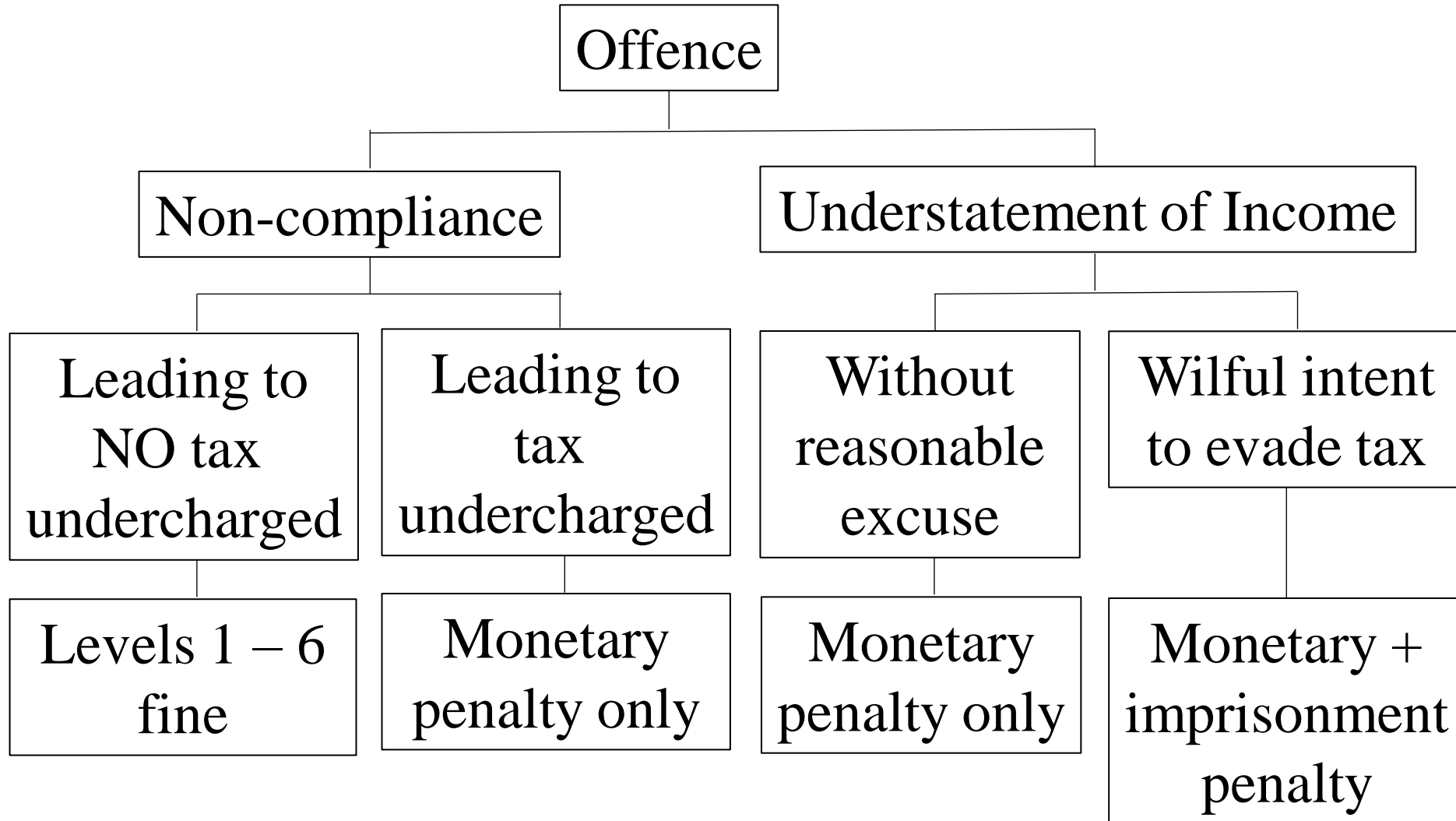


Offence and Penalty

Part 10 of Inland Revenue Ordinance

- S.80(1) – failure to comply obligations under IRO
- S.80(1A) – failure to keep proper records under S.51C
- S.80(2) – incorrect return / information leading to undercharge of tax
- S.80B, S.80C, S.80D, S.80E and S.80F – reporting financial institution under S.50B, 50C and 50D
- S.81 – breach of official secrecy under S.4
- S.82 – penalty relating to fraud
- S.82A – penalty in the form of additional tax
- S.82B – appeal to Board of Review against additional tax assessment

Relationship between Offence and Penalty





Two Types of Penalty

- Monetary Penalty – level 1 to level 6 ; and 3 times tax undercharged
- Imprisonment



Relationship between Offences and Penalty with Obligations of a Taxpayer

Taxpayer's Obligations



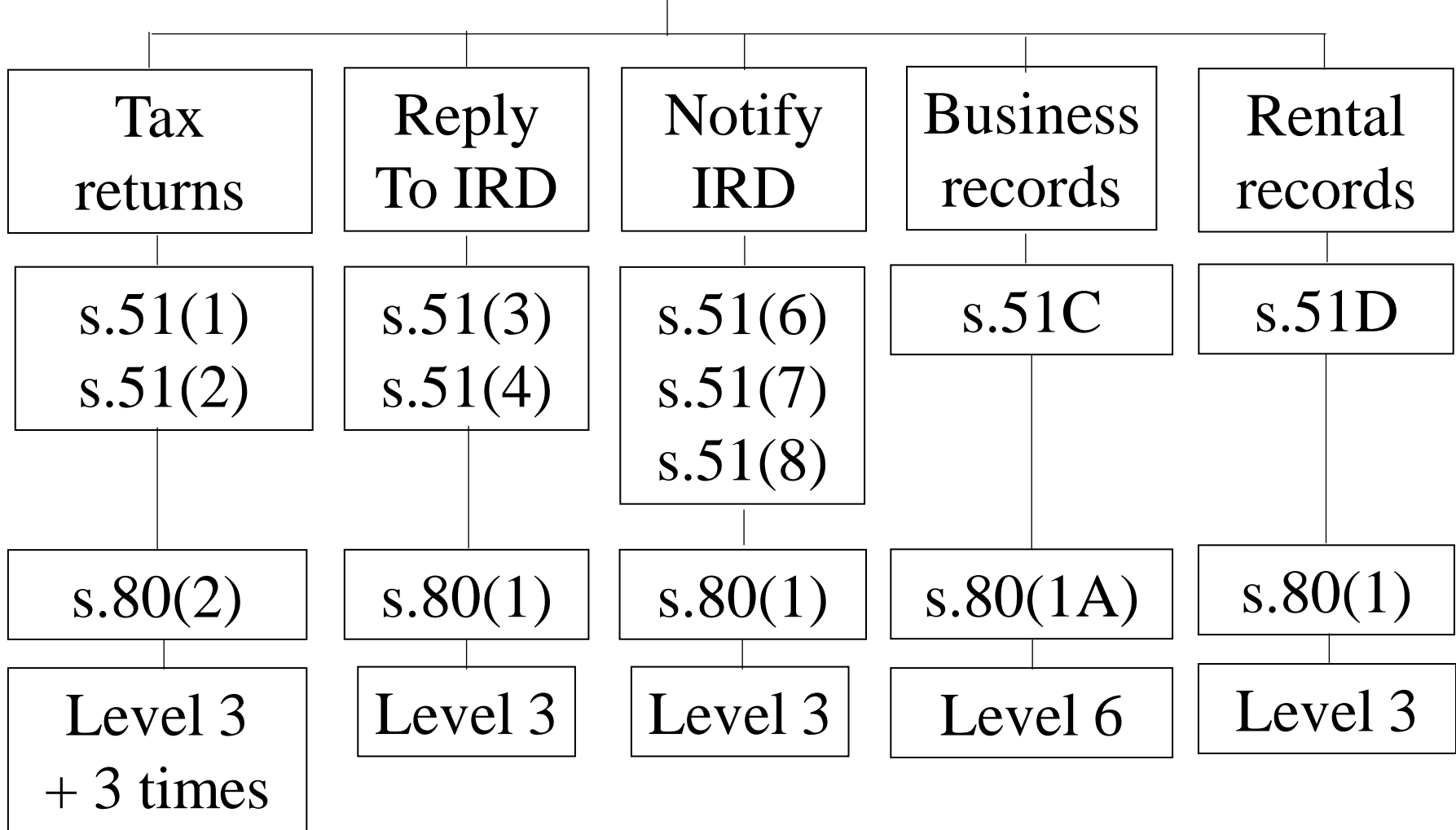
s.51(1)	<i>Complete</i> and return a <i>tax return</i> to the CIR upon receipt of a tax return
s.51(2)	<i>Inform</i> CIR of <i>chargeability of tax</i> not later than 4 months after the end of the basis period if a person does not receive any tax return from IRD
s.51(3)	<i>Answer</i> IRD's enquiry on taxpayer's own details
s.51(4)	<i>Answer</i> IRD's enquiry on other's details
s.51(6)	Inform CIR of <i>cessation</i> of income
s.51(7)	Inform CIR of <i>leaving HK</i> over 1 month
s.51(8)	Inform CIR of <i>changes of address</i>
s.51C	Maintain <i>business records</i> for 7 years
s.51D	Maintain <i>property records</i> for 7 years

Taxpayer's Obligations and Penalty



s.51(1)	Level 3 fine and <i>3 times tax undercharged</i>
s.51(2)	Level 3 fine and <i>3 times tax undercharged</i>
s.51(3)	Level 3 fine
s.51(4)	Level 3 fine
s.51(6)	Level 3 fine
s.51(7)	Level 3 fine
s.51(8)	Level 3 fine
s.51C	<i>Level 6 fine</i>
S.51D	Level 3 fine

Taxpayer's Obligations under Section 51



Level of Fine

Level	Amount of Fine
1	\$1 – \$2,000
2	\$2,001 – \$5,000
3	\$5,001 – \$10,000
4	\$10,001 – \$25,000
5	\$25,001 – \$50,000
6	\$50,001 – \$100,000



Relationship between Offences and Penalty with Obligations of an Employer

Employer's Obligations and Fine

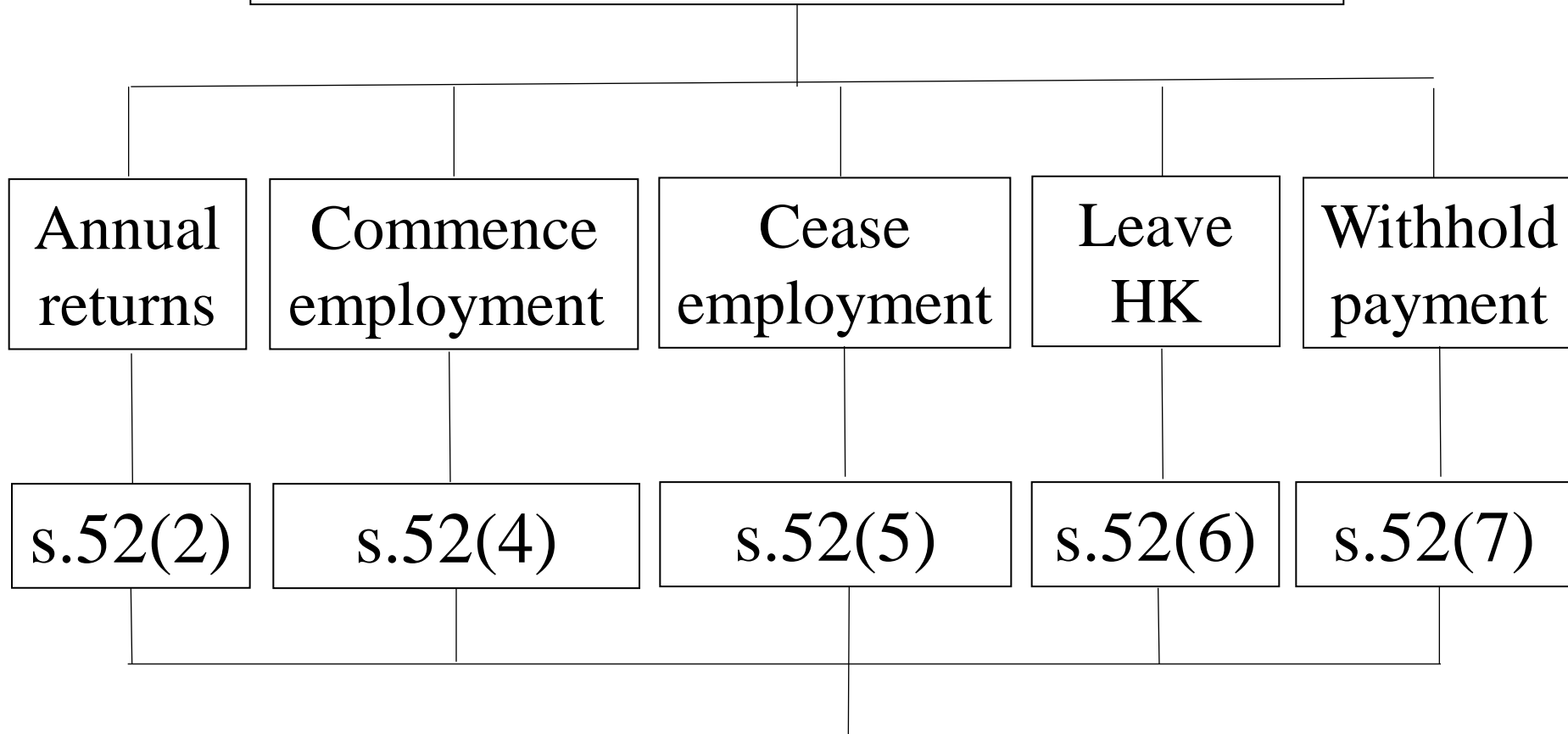


s.52(2)	Submit <i>annual</i> employer's return for employees	Level 3 fine
s.52(4)	Inform IRD for <i>commencement</i> of employment within 3 months	Level 3 fine
s.52(5)	Inform <i>cessation</i> of employment not later than 1 month	Level 3 fine
s.52(6)	Inform IRD for employees <i>leaving HK over 1 month</i> not later than 1 month before leaving HK	Level 3 fine
s.52(7)	<i>Withhold payment</i> of money payable to employees leaving HK under s.52(6)	Level 3 fine

Employer's Obligations under IRO



Employer's Obligations under Section 52



Court Order Compliance and Penalty : Level 3 Fine



Penalty for Back Duty and Understatement of Income in Return



What is Back Duty?

Back duty is the amount of tax that has not been collected by a tax department as a result of a taxpayer's understatement of income in a return.

Understatement of Income in a Return

Causes for understatement of income

- Taxpayer purposely took an active role in putting a wrong figure in a return – this is a criminal offence with monetary and imprisonment penalty
- Taxpayer carelessly put an incorrect figure in a return – this is “without reasonable excuse” mistake – monetary penalty only.

Understatement of income in a return

Wilful intent to evade tax

Without reasonable excuse

Direct evidence found
for understatement

No direct evidence found
for understatement

Monetary & prison penalty

Monetary penalty only

Types of Penalty

- Prosecution without imprisonment penalty – Section 80 (without reasonable excuse)
- Prosecution with imprisonment penalty – Section 82 (wilful intent to evade tax)
- Administrative penalty – Section 82A (without reasonable excuse)

Penalty for Income Understated in a Return

Without reasonable excuse

Wilful to evade tax

S.80(2)
(Court)

S.82A
(Adm.)

S.82
(Court)

Level 3 and
3 times tax
undercharged

Additional tax
(3 times tax
undercharged)

Summary
conviction

Indictment

Appeal to court of
higher level

Appeal to Board of
Review

Appeal to court of
higher level

Section 80(2) and 82A

Same five offences:

- Incorrect return
- Incorrect statement
- Incorrect information
- Section 51(1) – failure to complete return
- Section 51(2) – failure to notify CIR of chargeability of tax



Penalty for Section 80(2)

Two possibilities:

- Level 3 fine
- Maximum penalty of three time tax undercharged

Penalty for Section 82A

- Administrative penalty
- Not a prosecution at the court
- Remaining confidential
- Personally handled by CIR or Deputy CIR
- Penalty in the form of “additional tax” by issuing an additional tax assessment
- Maximum is 3 times tax undercharged

Reasonable Excuse

- “Reasonable excuse” is not defined in the IRO.
- The Board of Review, in D13/85, describes the concept of “reasonable excuse” as:
- “Reasonable excuse is what one would expect a reasonable person to do in all of the circumstances. A reasonable person is not a perfect person, but an average person using the reasonable skills and care in handling his tax affairs which one would expect to see from such an average person.”

Possible Defence for Non-Compliance

- **Physically absent** from Hong Kong
- **Illness**
- **Have taken reasonable steps**
but things beyond control

Reasons Accepted as Defence

Generally it is very difficult to establish a reasonable excuse as a defence for understatement of income in a tax return

In many Board of Review decisions, the commonly accepted as a reasonable excuse is

- Reliance on professional advice

Reasons Not Accepted as Defence for Reasonable Excuse

- Ignorance of Tax Ordinance
- Too Busy to Handle
- Overlook and Careless Mistake
- Managing Partner / Director Away from HK
- Passed to Tax Representative
- Misled by IRD

Section 82



Seven offences:

- Omission of income
- False return
- False claim of expense / allowance
- Signing but not believing true
- False answer
- False records
- Fraudulent acts

Penalty for Section 82

Summary conviction

- Level 3 fine
- 3 times tax undercharged
- 6 months' imprisonment

Indictment

- Level 5 fine
- 3 times tax undercharged
- 3 years' imprisonment

Actual Penalty Charges



The actual penalty charges on non-compliance or default cases will be on a **case by case basis** and subject to www.ird.gov.hk/eng/pol/ppo.htm

Provisions of the Law

- **Way of disclosure / Attitude**
- **Intention of the taxpayer / person concerned**
- **Frequency of committed crime**
- **Level of sophistication**
- **Time span**
- **Scale of case**



What to Do After Today For Preparation of Examination



Question and Answer

Thank You