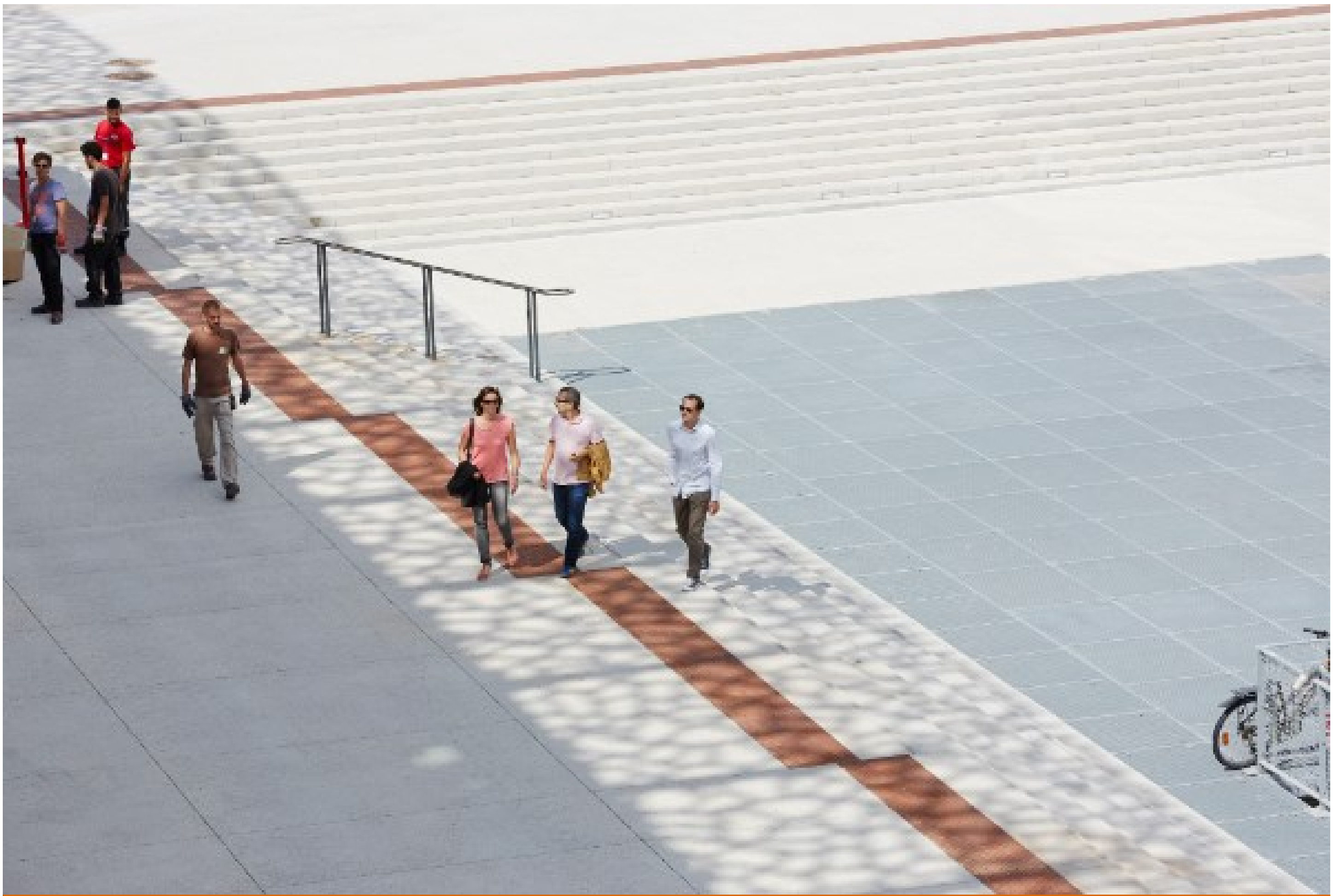

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TaXavvy

Stamp (Amendment) Bill 2016

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Inside this issue

Key highlights

Welcome to our TaXavvy which brings to you the key proposals of Stamp (Amendment) Bill 2016 (the "Amendment Bill").

The proposed amendments will be effective upon coming into operation of the Stamp (Amendment) Act (the "Amendment Act").

Property and Share Sale and Purchase Agreements subject to ad valorem stamp duty

It has been proposed *ad valorem* duty will be charged on any contract or agreement made in Malaysia for the sale of any estate, equitable estate or interest in any property including stock or marketable securities.

This effectively means the imposition of ad valorem stamp duty will be on the contract or agreement instead of the memorandum of transfer.

For transaction where there is no contract or agreement made in Malaysia and is effected by an instrument whereby any –

(a) equitable estate or interest in any property;

(b) estate or interest in any property; or

(c) stock or marketable securities

is conveyed or transferred, such instrument shall be charged with the *ad valorem* duty as if it were an actual conveyance. The stamp duty is to be paid by the purchaser.

Where *ad valorem* duty has been paid, the conveyance or transfer made to the purchaser shall be chargeable with a fixed duty of RM10.

The *ad valorem* duty paid can be refunded by the Collector of Stamp Duties ("Collector") based on the following circumstances–

(a) after the contract, agreement or assignment has been rescinded, annulled or cancelled; and

(b) the instrument in respect of such contract, agreement or assignment has not been registered in accordance with any written law.

An application for refund shall be made within 12 months after the occurrence of events set out under (a) and (b) above.

The above proposed change is not applicable to the sale of property pursuant to a scheme which is in accordance with the principles of Shariah where such sale is strictly required for the purpose of complying with such principles.

Ad valorem stamp duty is imposed on the transfer of shares in unquoted companies on Bursa Malaysia

The transfer of shares attract stamp duty at the ad valorem stamp duty rate of 0.3% of the price or value of any shares on the date of transfer, whichever is the greater.

The exception to the above is the transfer of shares in unquoted companies on Bursa Malaysia which will attract ad valorem stamp duty at the rate of 0.1%.

Key highlights (Cont'd)

Requirement to submit return

A new requirement has been proposed where every person is required to furnish a return in the prescribed form together with the executed instrument chargeable with duty.

Any person who, without reasonable excuse, fails to furnish a return commits an offence and shall, on conviction, be liable to a fine not exceeding RM10,000.

Instruments chargeable with duty under the Stamp Act 1949 ("Stamp Act")

Currently, there are other legislations which prescribe stamp duty treatment on instruments.

A proposal is made to delete the words "and in any written law for the time being in force" from the Stamp Act. This provides the chargeability to and exemption from stamp duty on instruments is subject to the Stamp Act only.

It is proposed that all instruments chargeable with duty shall be duly stamped.

Relief in respect of error or mistake

A new section is introduced to allow a duty payer who has paid excessive stamp duty by reason of error or mistake to apply for relief from the Collector.

The application for relief must be made in writing and within the specified time as follows:

Instruments	Deadline for submission of the application for relief
For executed instruments which are dated	Within 12 months from the date of the instrument
For instruments which are not dated	Within 12 months after the execution of the instrument if executed in Malaysia or if executed outside Malaysia, when it was first received in Malaysia

Adjudication and assessment as to proper stamp/Introduction to self assessment

It is proposed that a person is allowed to furnish a return by way of electronic medium.

The proposed amendments also allow the Collector to make an assessment or the duty payer can opt for self-assessment.

a) Where an **assessment is made by the Collector**, the duty shall be due and payable within 14 days from the date of assessment.

b) In the case of **self-assessment**, the return is deemed to be an assessment made by the Collector and the deemed assessment shall be due and payable within 14 days from the date the return is furnished.

   Notwithstanding the above, the Collector is empowered to make an assessment where the duty payer opts for self-assessment.

In addition, the proposed amendment also allows the Collector to make an assessment where an instrument chargeable with duty is not duly stamped.

Key highlights (Cont'd)

Powers of the Collector

With the introduction of self-assessment, the power of the Collector is expanded for the purpose of conducting audit.

The Collector may require a person to produce for examination any instrument, book, account, record or other document; to attend personally before him and produce for examination any instrument, book, account, record or other documents; and search such lands, buildings and places to which the Collector has access.

Obstruction or refusal to permit entry, refusal to produce instrument, book, account, record or other documents and failure to provide reasonable facilities and assistance for purposes of audit shall be an offence.

The proposed amendment also seeks to increase the maximum fine from RM250 to RM10,000 to reflect the severity of any non-compliance.

Power to appoint agents

A new section is introduced to allow the Collector to appoint any person to be the agent of the duty payer and that person shall be required to pay any duty or penalty due under the Stamp Act on behalf of the duty payer from any moneys including sale proceeds or rents, which may be held by him for or due by him to the duty payer.

Failure of the agent to pay such duty or penalty renders the duty and penalty as a debt due to the Government.

It is also proposed that the Collector may require any person to give him information as to any moneys, funds or other assets which may be held by him for, or of any moneys due by him to the duty payer.

If the agent is aggrieved by the appointment, he may object to the appointment by notice in writing to the Collector within 14 days from the date of appointment.

Recovery of duty from executor

The Amendment Bill introduces a new section which allows the Collector to recover any unpaid duty, penalty or sum due from a deceased from the executor of the estate of the deceased.

This proposal provides that the amount of any duty, penalty or sum payable by the executor shall be a debt due from and payable out of the estate of that deceased. Further, the section also stipulates that the executor shall not distribute any of the assets of the deceased unless the executor has made provision for the payment in full of duty, penalty or sum which the executor knows or might reasonably expect to be payable by the executor.

Failure to make the provision shall, on conviction, be liable to a penalty equal to the amount of duty, penalty or sum payable. Where there are several executors, the executors shall be jointly and severally liable.

Key highlights (Cont'd)

Definition of "small and medium enterprise" ("SME")

The definition of SME is amended as follows -

a) in relation to the manufacturing activities, an enterprise with sales turnover not exceeding RM50 million or full-time employees not exceeding 200 people; or

a) in relation to the services, and other sectors, an enterprise with sales turnover not exceeding RM20 million or full-time employees not exceeding 75 people.

Where a loan is obtained by a SME, the following stamp duty rates will apply -

Loan (RM)	**Stamp duty rate**
Up to RM250,000	0.05%
Between RM250,001 to RM1,000,000	0.25%
In excess of RM1,000,000	0.5%

Stamp duty relief

Stamp duty relief in case of reconstructions or amalgamations of companies

Stamp duty relief is available where the transfer of business or shares is carried out in connection with a scheme of reconstruction or amalgamation of companies, subject to meeting all conditions.

1. <u>3-year moratorium period</u>

   Presently, one of the pertinent conditions is the 2-year moratorium period whereby:-

   a) For transfer of business, where the consideration shares (at least 90% in the issue of shares) are issued by the transferee company to the existing company, the existing company must be the beneficial owner of the consideration shares for at least 2 years.

   b) For transfer of shares, the transferee company must be the beneficial owner of shares in the existing company it acquired for at least 2 years.

   It is proposed that the 2-year moratorium is extended to **3 years.**

2. Where stamp duty relief has been obtained, each party to the instrument is required to notify the Collector of any circumstances which would result in any of the conditions not being fulfilled (e.g. untrue declaration furnished to the Collector, failure to meet the 3-year moratorium) within 30 days from the date of the occurrence.

3. Any person who, without reasonable excuse, fails to give notice within the stipulated period commits an offence and shall, on conviction, be liable to a fine not exceeding RM10,000.

Stamp duty relief in case transfer of property between associated companies

1. The following new conditions are introduced:

   (i) The transferee company cannot dispose of the asset that it has acquired within 3 years from the date of the conveyance or transfer of the asset.

   (i) The transferor company and transferee company must be associated companies (i.e. 90% shareholding relationship) for a period of 3 years from the date of the conveyance or transfer.

2. It is proposed that where it is found that any declaration or other evidence furnished in support of the claim is untrue, the exemption from duty shall be revoked and stamp duty together with interest at the rate of 6% per annum shall be charged.

3. Where stamp duty relief has been obtained, each party to the instrument is required to notify the Collector of any circumstances which would result in any of the conditions not being fulfilled within 30 days from the date of the occurrence.

4. Any person who, without reasonable excuse, fails to give notice within the stipulated period commits an offence and shall, on conviction, be liable to a fine not exceeding RM10,000.

Stamp duty administration

Requirement to keep records

A new requirement has been proposed where every person is required to keep the instrument and all relevant documents for a period of 7 years from the date the duty is paid.

Any person who, without reasonable excuse, fails to keep instruments and all relevant documents commits an offence and shall, on conviction, be liable to a fine not exceeding RM10,000.

Loss of stamp certificate

A new section is introduced to deal with the loss of stamp certificate.

Where, on the loss of a stamp certificate, an application is made to the Collector for the issuance of a substituted stamp certificate, the Collector shall not issue the substituted stamp certificate unless it can be shown to the satisfaction of the Collector that all facts and circumstances affecting the liability of the original instrument to duty has been fully and truly set forth, and the amount of the duty chargeable has been paid.

The application for the issuance of a substituted stamp certificate shall be made within 6 years from the date of the execution of such instrument.

Each substituted stamp certificate is issued upon payment of a fee of RM100.

Allowance for spoiled stamps

1. Presently, allowance would be made for spoiled stamps in the case where the stamp is used for an instrument executed, which by reason of the inability or refusal of <u>any person</u> to act under the same, or for want of registration within the time required by law, fails of the intended purpose or becomes void.

   An amendment is made to provide "any person" does not include "the person liable to pay the stamp duty".

2. The existing provision also provides the allowance for spoiled stamp can be claimed in the case of an instrument executed by <u>any party</u> implementing a sale under a duly stamped sale and purchase agreement but subsequently became cancelled, annulled, rescinded or not performed.

   An amendment is made to provide "any person" does not include the purchaser.

   The above proposals will effectively result in the allowance can only be claimed when the non-performance of the agreement is by a party other than the purchaser.

Offences and penalties

Increase in penalties

There is an overall increase in penalties in the Amendment Bill.

For example –

i. Increase in penalty for executing and signing documents not duly stamped from RM1,500 to RM6,000.

ii. Increase in late stamping penalties for stamping of instruments after execution, as follows–

Current	Proposed
RM25 or 5% of the amount of deficient duty, whichever sum be the greater, if the instrument is stamped within 3 months after the time for stamping.	RM25 or **the amount of deficient duty**, whichever sum be the greater, if the instrument is stamped within **90 days** after the time for stamping.
RM50 or 10% of the amount of the deficient duty, whichever sum be the greater, if the instrument is stamped later than 3 months but not later than 6 months after the time for stamping.	RM50 or **2 times** of the amount of the deficient duty, whichever sum be the greater, if the instrument is stamped later than **90 days** but not later than **180 days** after the time for stamping.
RM100 or 20% of the amount of the deficient duty, whichever sum be the greater, in any other case.	RM100 or **4 times** of the amount of the deficient duty, whichever sum be the greater, in any other case.

It is also proposed where an instrument is not duly stamped in accordance with the First Schedule of the Stamp Act, the Collector may impose a penalty treble the amount of deficient duty.

iii. Increase in penalty for the offences relating to stamp certificates from RM5,000 to RM10,000.

Recovery of duties, penalties and other sums

The Government shall be empowered to recover all duties, penalties and other sums required to be paid under the Stamp Act by civil proceedings.

In addition, in a suit under the Stamp Act, the production of a certificate signed by the Collector giving the name and address of the defendant and the amount of the duty or penalty due from the defendant, shall be sufficient authority for the court to give judgement for that amount.

Compoundable offences

It has been proposed a new section will be introduced to empower the Minister of Finance to make regulations to prescribe compoundable offences. A new section is also introduced which requires the Collector to obtain written consent of the Public Prosecutor before an offence can be compounded.

Savings and transitional provisions

Savings and transitional provisions

The Amendment Act shall not affect–

a) any instrument executed before the coming into operation of the Amendment Act;

b) any instrument executed after the date of coming into operation of the Amendment Act implementing a sale under a duly stamped agreement for sale and purchase executed before the date of coming into operation of the Amendment Act;

c) any liability on the payment of stamp duties provided under any provision in any written law until such provision is repealed;

d) any exemption from payment of stamp duties provided under any provision in any written law until such provision is repealed under the Revocation of Exemption From Payment of Stamp Duties Act 1992 [*Act 478*];

e) any liability incurred, duty, penalty or other sum required to be paid before the coming into operation of the Amendment Act; and

f) any objection or appeal made by any person on assessment raised before the coming into operation of the Amendment Act, and the objection and appeal shall be dealt with under the Stamp Act as if the Stamp Act had not been amended.

Let's talk

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