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SIGNED, SEALED, DELIVERED ... BUT NOT STAMPED? HOW CHANGES IN STAMP DUTY ADMINISTRATION IN MALAYSIA COULD AFFECT TAXPAYERS

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The Stamp Act 1949 (“SA 1949”), a pre-Merdeka piece of legislation, traces its origins back to the UK Stamp Act, which dates as far back as 1694. Despite its long history, misconceptions and disputes regarding stamp duty persist, including:

- Is stamping only required if a document is to be used as evidence in court?
- Are intercompany documents exempt from stamping?

In the past, categorising instruments for stamping was not without its challenges, but taxpayers could at least rely on official assessments from the Stamp Office. However, recent changes mark a significant shift in stamp duty administration, making proper compliance more important than ever.

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Transition to a Self-Assessment System

A fundamental shift is underway with the implementation of a self-assessment system, in phases, beginning 1 January 2026, aligning with similar changes for Real Property Gains Tax (“RPGT”). Similar to income tax and RPGT, the responsibility to ensure that instruments are properly stamped with the correct duty now falls on taxpayers, where:

- a. The filing of returns with instruments shall be deemed to be an assessment made by the Collector of Stamp Duties (“Collector”).
- b. Duty must be paid on the date of the deemed assessment.
- c. The Collector has the power to raise assessments or additional assessments within five years, except in cases of fraud or negligence, where no time bar applies.
- d. Failure to submit returns or submitting incorrect returns may attract penalties.

Stamp Duty Audit Framework

With the shift to self-assessment, audits will play a crucial role. Taxpayers will be familiar with this process from audits conducted under the Income Tax Act 1967. The Inland Revenue Board (“IRB”) issued a Stamp Duty Audit Framework¹ on 1 January 2025, outlining the rights and responsibilities of both taxpayers and audit officers. Key aspects of the framework include the following:

a. Types of Audits

- General review: A desk audit based on documents submitted via the STAMPS system. Taxpayers may be called for interviews if clarification is needed. Complex cases may escalate to a comprehensive audit.
- Comprehensive review: A thorough examination conducted at the taxpayer’s premises, an IRB office, or another agreed location, requiring meticulous record-keeping of stamped documents.

b. Audit Scope and Period

Audits can cover up to three calendar years, except in cases involving fraud, negligence, or duty evasion.

c. Selection Criteria for Audit Cases

Cases are selected based on risk assessment, industry-specific concerns, issues affecting specific taxpayer group, and third-party information.

[1] Accessed at: <https://www.hasil.gov.my/media/x5hn0ha0/rangka-kerja-audit-duti-setem-2025.pdf>

d. Voluntary Disclosure Mechanism

- Standard late stamping penalties under Section 47A of the SA 1949:
 - i. RM50 or 10% of duty, whichever is higher, for stamping within three months of the deadline; or
 - ii. RM100 or 20% of duty, whichever is higher, for stamping beyond three months of the deadline.
- The Collector has the discretion under Section 47A(2) of the SA 1949 to reduce or remit penalties.
- Under the Stamp Duty Audit Framework, taxpayers can make a voluntary disclosure for documents beyond the three-month stamping period to benefit from reduced penalties. Eligible cases are those where voluntary disclosures have been made before the start of an audit; an audit begins when the IRB issues a formal request for documents or information.

Taxpayer Considerations: Risk Management and Compliance

Reviewing Past Transactions

The IRB is empowered to conduct audits and raise assessments for past shortfalls in duties or failure to stamp chargeable instruments. Taxpayers should therefore:

- a. Conduct internal reviews of historical agreements to ensure compliance.
- b. Consider voluntary disclosure for past non-compliance to mitigate risks and to benefit from reduced penalties under the Stamp Audit Framework.
- c. Maintain robust documentation to defend against potential reassessments.
- d. Engage tax and legal advisors to assess potential exposure and implement corrective actions.

Addressing Common Misconceptions

In conducting such risk assessments, duty payers should be aware of the following common misconceptions that could lead to non-compliance:

- a. **“Stamping is only required if parties intend to present the instrument as evidence in court” - Incorrect**

Any instrument specified in the 1st Schedule of the SA 1949 is chargeable with duty, pursuant to Section 4 of the SA 1949.

- b. **“Intercompany documents do not require stamping.” - Incorrect**

There is no automatic exemption for intercompany agreements.

Best Practices for Compliance

- a. **Adopt a proactive stamping strategy:** Ensure all relevant documents are stamped within the prescribed timeframe.
- b. **Proper classification of instruments:** Misclassification can lead to underpayment and penalties.
- c. **Seek legal and tax advisory support:** Proper guidance ensures compliance and minimises risks.
- d. **Staying informed on recent legal precedents** affecting stamp duty treatment.

Dispute Resolution Processes for Stamp Duty

Should disputes arise, taxpayers have avenues to challenge IRB assessments:

- a. **Objections & Appeals Process:**

Taxpayers dissatisfied with an assessment or additional assessment may file a notice of objection with the Collector pursuant to Section 38A of the SA 1949. Taxpayers dissatisfied with the Collector’s decision on their notices of objection may file an appeal to the High Court under Section 39 of the SA 1949.

Understanding the proper procedures and deadlines is crucial for a successful appeal.

- b. **Judicial Review:**

In exceptional circumstances, taxpayers may also seek redress from the courts via judicial review.

Conclusion

With the shift to self-assessment and enhanced enforcement measures, taxpayers must adopt a proactive approach to stamp duty compliance. Ensuring timely stamping, correct classification of instruments, and seeking expert advice are crucial strategies to mitigate risks and maintain compliance.

Given the potential financial impact of non-compliance, businesses and individuals should integrate stamp duty considerations into their broader

tax planning and risk management frameworks. In this evolving regulatory environment, staying informed and seeking professional guidance is key to avoiding unnecessary penalties and legal disputes.

*If you have any inquiries on stamp duty treatment of instruments or issues arising from stamp duty audits, please contact Partner **Chris Toh Pei Roo** (tpr@lh-ag.com).*