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BINASTRA: HIGH COURT CONSIDERS THE COLLECTOR'S PRE-2026 ASSESSMENT POWERS AND THE SCOPE OF ITEM 22(1)(A)

by Chris Toh Pei Roo & Soon Jia Ying

Binastra Land Sdn Bhd & Anor v Pemungut Duti Setem (Originating Summons No. BA-24NCvC-420-02/2025)

On 8 May 2026, the Shah Alam High Court dismissed the taxpayers' appeal and upheld the Collector of Stamp Duties' assessment of stamp duty and penalty in respect of a letter of award for construction works.

The High Court made its written grounds of judgment available on 21 July 2026 (which can be viewed here). The grounds address two important questions under the Stamp Act 1949:

1. whether, before the coming into force of Section 36CA on 1 January 2026, the Collector had statutory power to issue an assessment following the discovery of an unstamped instrument during an audit; and
2. whether the letter of award fell within Item 22(1)(a) of the First Schedule, or was instead chargeable under Item 4.

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An appeal has since been filed and is pending before the Court of Appeal. This article is therefore confined to a factual summary of the arguments advanced and the findings made by the High Court.

Brief Facts

The first appellant had awarded a construction contract to the second appellant through a letter of award dated 8 February 2022 relating to a development project.

The letter of award stated a provisional contract sum of RM250 million and a contract period of 33 months. It also incorporated provisions relating to interim claims, certification and payment under the PAM Contract 2006. The letter of award was not submitted for adjudication after execution.

Subsequent to an audit, the Collector on 31 December 2024 issued an assessment imposing stamp duty of RM250,000 and a penalty of RM50,000 on the Letter of Award.

The taxpayers paid the assessed amount and lodged an objection under Section 38A. The objection was rejected and the assessment was maintained. The taxpayers thereafter appealed to the High Court under Section 39 of the Stamp Act 1949.

Issues Before the High Court

The appeal raised two principal issues:

1. The Collector’s statutory power to issue the assessment

   The first issue was whether, before Section 36CA came into force on 1 January 2026, the Collector had statutory authority to issue an assessment where an instrument had not been brought to the Collector for adjudication under Section 36.

2. The proper classification of the letter of award

   The second issue was whether the letter of award fell within Item 22(1)(a) of the First Schedule, or whether it was chargeable, if at all, under Item 4.

The Parties’ Positions

<u>The Taxpayers' contentions</u>

The taxpayers argued that the power to issue unilateral assessments was introduced only by Section 36CA, with effect from 1 January 2026.

Prior to 1 January 2026, the following provisions of the Stamp Act performed distinct statutory functions but did not confer a general unilateral power of assessment.

- Section 3A empowered the Collector to require the production of instruments for the purpose of determining whether they were chargeable and whether duty had been paid;
- Section 4 was a charging provision;
- Section 36 dealt with adjudication where an instrument was brought to the Collector;
- Section 38A created an objection mechanism; and
- Section 39 provided for an appeal to the High Court.

Instead, Parliament imposed other consequences for non-stamping before 1 January 2026, including:

- The legal disability and inadmissibility of unstamped instruments under Section 52
- Impounding powers under Sections 51 and 53; and
- Penal provisions under Sections 63 and 74.

These provisions did however not permit a separate power of assessment to be implied.

On classification, the taxpayers contended that the letter of award did not provide for sums payable at stated periods and that the total amount ultimately payable was not ascertainable because the contract sum was expressly provisional.

<u>The Collector's contentions</u>

The Collector contended that Sections 3A, 4, 36, 38A and 39 together formed part of a statutory framework which already contemplated the ascertainment, assessment, objection and appeal of stamp duty liabilities.

The Collector further argued that the letter of award was the operative and principal instrument governing the construction transaction, and that the interim claim interval, certification period, contract duration and stated contract sum were sufficient to satisfy Item 22(1)(a).

High Court's Decision

The High Court dismissed the taxpayers' appeal and upheld the assessment and penalty.

1. <u>The Collector had pre-2026 statutory power to assess</u>

   The Court referred to Section 3A, which empowered the Collector to compel the production of instruments to determine chargeability, and to Section 36, which required chargeable instruments executed in Malaysia to be brought to the Collector for assessment. In the Court's view, this obligation was mandatory and did not depend on voluntary submission.

The Court further relied on Sections 38A and 39, reasoning that the existence of an objection and appeal mechanism demonstrated that the Stamp Act 1949 already contemplated the issuance of assessments. It would be illogical, the Court held, for the Collector to possess the power to compel production of an instrument yet lack the power to assess it.

The High Court accordingly concluded that the statutory framework existing before 1 January 2026 was sufficient to confer the power to issue an assessment.

2. <u>The letter of award fell within Item 22(1)(a)</u>

The High Court held that the letter of award was the operative and principal instrument for the transaction, capable of falling within the expression "instrument of any kind whatsoever" in Item 22.

The Court further held that the payment mechanism satisfied the requirement of sums payable at stated periods, relying on the one-month interim claim interval and the requirement that certificates be honoured within 30 days from certification. Item 22(1)(a) did not require a rigid instalment table or fixed calendar dates, provided that sums were payable through stated time periods.

The High Court further found that the 33-month contract period was definite and that the total amount payable was ascertainable from the stated contract sum. It therefore concluded that the letter of award fell within Item 22(1)(a) rather than Item 4.

3. <u>The penalty was upheld</u>

The High Court also upheld the penalty imposed under Section 47A.

The Court found that the letter of award had not been stamped within the prescribed period after execution and that the statutory late-stamping penalty had therefore been triggered.

Appeal to the Court of Appeal

The taxpayers have filed an appeal against the High Court’s decision. The appeal raises, among other matters, the proper construction of the Collector’s pre-2026 statutory powers and the scope of Item 22(1)(a).

The appeal will also address the relationship between the Collector’s pre-2026 powers under Sections 3A, 36, 38A and 39 and the express assessment powers introduced by Section 36CA with effect from 1 January 2026.

It will further consider the distinction between:

- the chargeability of an instrument;
- the obligation to submit it for adjudication and stamping;
- the consequences of non-stamping; and
- the statutory machinery for issuing an assessment.

The appeal also raises broader questions concerning the application of the settled principles governing the interpretation of revenue statutes in the stamp duty context, including:

- the principle that taxing legislation must be construed strictly;
- the rule that no tax, duty or taxing power may be imposed by implication or intendment; and
- the principle that any genuine ambiguity in a revenue statute is to be resolved in favour of the taxpayer.

For construction contracts and other commercial instruments, the decision also illustrates how provisions dealing with interim claims, certification periods, contract duration and provisional contract sums may be considered in determining whether Item 22(1)(a) applies.

As the appeal remains pending, no further comment is made on the merits or likely outcome of the appellate proceedings.

The taxpayers were represented in the High Court by **Chris Toh Pei Roo** and **Soon Jia Ying** of Lee Hishammuddin Allen & Gledhill's Tax, Customs & Trade Practice.

For inquiries on stamp duty, the Stamp Duty Self-Assessment System or stamp duty disputes, please contact the Tax, Customs & Trade Practice at Tax@lh-ag.com.

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