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IRB'S GUIDELINES ON STAMP DUTY FOR SERVICE AGREEMENTS

by Chris Toh Pei Roo & Yee Xin Yi

On 29 September 2026, the Inland Revenue Board of Malaysia (“**IRB**”) issued the Guidelines on the Imposition of Stamp Duty on Instruments of Service Agreement (*Garis Panduan Pengenaan Duti Setem ke atas Surat Cara Perjanjian Perkhidmatan*) (“**Guidelines**”). The Guidelines are issued by the Collector of Stamp Duties (“**Collector**”) under section 76B of the Stamp Act 1949 (“**Stamp Act**”).

The Guidelines explain the stamp duty treatment of service agreements and the application of the Stamp Duty (Remission) Order 2021 [P.U.(A) 428/2021] (“**Remission Order**”). Notably, the Guidelines appears to take the position that Sales and Service Tax (“**SST**”) charged on the contract value forms part of the dutiable value of a service agreement.

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Although issued pursuant to section 76B of the Stamp Act, the Guidelines serve to clarify the Collector's interpretation and facilitate compliance; they cannot override the legislation. Decisions under the Income Tax Act 1967, including ***Lavender Confectionery & Bakery Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri*** [2018] MLJU 1962, have held that internal guidelines or rulings cannot impose conditions or restrictions beyond that stipulated by Parliament in the relevant legislation.

A. What is a Service Agreement?

The Stamp Act does not define "service". The IRB adopts its general meaning, namely "work done for a customer" (*"kerja yang dilakukan untuk pelanggan"*). A service agreement covers any type of service, including construction, maintenance, security, consultancy and advisory services.

The Guidelines apply to service agreements executed between:

- a principal service provider and a party other than the Ruler of a State, the Federal or State Government, or a local authority ("**Government**") which awards the contract;
- a sub-service provider and a principal service provider, where the principal service provider has entered into an undertaking with the Government; and
- a principal service provider and the Government.

Where the obligation to pay duty falls on the Government, the instrument is exempt from stamp duty under paragraph 1 of the General Exemptions to the First Schedule of the Stamp Act. Where it falls on a local authority, the instrument is exempt under the Stamp Duty (Exemption) (No. 16) Order 1986 [P.U.(A) 174/1986]. Such instruments must still be submitted to the Collector for endorsement under section 37(2) of the Stamp Act.

B. Stamp Duty Treatment

- (i) **Service agreements are "security" instruments:** The Guidelines state that a service agreement is an instrument of security, even where payment for the services is subject to conditions before it can be claimed. "Security" under the Stamp Act does not carry its ordinary financial meaning of collateral or a property-based guarantee. Instead, it refers to **an obligation to pay money created by the instrument**, whether in respect of an existing debt or one that may become payable in the future.

- (ii) **Ad valorem duty of 0.5%:** The Guidelines state that service agreements are therefore subject to duty under Item 22(1)(a) of the First Schedule of the Stamp Act at RM5 for every RM1,000 or part thereof. The statutory requirements concerning payment at stated periods are discussed in Section G below.
- (iii) **SST included in the dutiable value:** The Guidelines appear to take the position that the dutiable contract value or consideration for services includes any SST imposed on that contract value. Questions concerning the treatment of separately charged SST are discussed in Section G below.
- (iv) **Party liable to pay:** Generally, the recipient of the services is liable to pay the duty under Item 2 of the Third Schedule of the Stamp Act.

C. Remission under the Remission Order

The Remission Order remits the amount of duty under Item 22(1)(a) which exceeds 0.1% of the contract sum. Accordingly, service agreements executed from 28 December 2018 are subject to stamp duty as follows:

No.	Type of Agreement	Duty Payable
(a)	Principal service provider and a non-Government party awarding the contract	0.1% of the contract value (excess over 0.1% remitted)
(b)	Sub-service provider and a principal service provider which holds a contract with the Government	0.1% of the contract value. The principal contract with the Government is exempt.
(c)	Subsequent tiers (the principal service provider in (a) or sub-service provider in (b) awards the work to a further sub-service provider)	RM50.00 (excess over RM50 remitted)
(d)	Subsequent tier where duty at the full rate (0.5%) is below RM50	0.5% of the contract value. No remission, as the duty does not exceed RM50.
(e)	First tier where duty at 0.1% is below RM10	Minimum duty of RM10.00 under section 36CB of the Stamp Act

D. Conditions for the RM50 Remission

To qualify for duty of RM50 under the Remission Order, the subsequent-tier service agreement must clearly state:

- the names of the parties and the date of execution of the upper-tier agreement (i.e. the agreement in item (a) or (b) of Section C above)
- the subject matter of the agreement; and
- that the upper-tier agreement has been duly stamped at the rate set out in item (a) or (b) of Section C above.

E. Agreements Outside the Remission Order

The Guidelines identify two categories of service agreements which do not fall within the Remission Order:

No.	Category	Stamp Duty Treatment
(a)	Total payment cannot be ascertained	RM10.00 under Item 4 of the First Schedule.
(b)	Payment period cannot be ascertained	RM1.00 for every RM100 or part thereof under Item 22(1)(b) of the First Schedule.

F. Key Takeaways for Businesses

- **Review the amount and timing of payments.** Retainers, panel appointments and unit-rate contracts may fall within Item 4 or Item 22(1)(b) instead. Where the total sum is ascertainable but payments are not periodic, the payment provisions warrant separate consideration, as discussed below.

In respect of instruments identified to be chargeable under Item 22(1)(a):

- **Identify the correct tier.** The duty payable depends on where the agreement sits in the contracting chain. Parties should map out their contracting structure to determine whether the 0.5% rate, 0.1% rate, or the RM50 rate applies.
- **Draft sub-contracts to meet the remission conditions.** Sub-contracts should expressly reference the upper-tier agreement, its parties, date and stamping status. Failure to do so may result in duty being imposed at the full rate of 0.5%.

- **Ensure upper-tier agreements are stamped first.** The RM50 remission depends on the upper-tier agreement having been duly stamped.
- **Stamp within time.** Instruments must be stamped within the prescribed timeframe to avoid late stamping penalties under section 47A of the Stamp Act.

G. Our Comments

The Guidelines provide welcome clarification of the multi-tier remission framework. However, questions remain concerning the treatment of separately charged SST and the application of Item 22(1)(a) where the total sum is ascertainable but payments are not periodic.

SST in the Dutiable Value

Paragraph 2.3 of the Guidelines provides that the dutiable contract value or consideration for services includes any SST imposed on the contract value. However, the Guidelines do not expressly distinguish between contracts where the stated contract sum is inclusive of SST and those where SST is charged separately, over and above the agreed contract sum. Example 1 of the Guidelines illustrates the computation of stamp duty on a construction contract valued at RM27,500,700, but does not clarify whether that amount is inclusive or exclusive of SST.

The Guidelines therefore leave open questions concerning the treatment of contracts which expressly provide for SST to be charged separately from the agreed contract sum, particularly in determining the amount secured by the instrument for stamp duty purposes. The description of the price as SST-exclusive is not, by itself, determinative: the instrument may nevertheless create an obligation to pay both the agreed contract sum and the applicable SST.

Given the IRB's stated position, taxpayers should carefully consider the contractual provisions governing the contract sum, SST and payment obligations, and seek appropriate advice when determining the dutiable amount. The key question is whether the SST amount can be said to be secured by the particular instrument.

Ascertainable Contract Sums Without Periodic Payments

The Guidelines do not expressly address whether an ascertainable total contract sum is sufficient for Item 22(1)(a) to apply where the instrument does not provide for periodic payments. This is distinct from the open-ended arrangements discussed in Section E above. Item 22(1) refers to security for sums of money payable “at stated periods”, while paragraph (a) requires “a definite and certain period so that the total amount ultimately payable can be ascertained”.

In *Binastra Land Sdn Bhd & Anor v Pemungut Duti Setem* [2026] CLJU 2507, the High Court noted that the letter of award provided for monthly interim claims and payment within 30 days of certification. The Court held that these provisions satisfied the stated-period requirement: a rigid payment timetable was unnecessary, but the sums had to be payable through stated time periods. The Court also relied on the definite contract period and ascertainable contract sum in concluding that Item 22(1)(a) applied.

That reasoning suggests that the payment provisions require consideration in addition to the ascertainability of the total sum. This may leave open the treatment of an instrument which specifies an ascertainable total sum but contains no provision for payment at stated periods. However, the appropriate stamp duty treatment depends on the terms of each agreement and the contracting structure. Businesses may wish to seek advice to determine the correct duty and mitigate any potential exposure.

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