Malaysian Tax Law - Stamp Duty

July 2022
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1. What is Stamp Duty

In Malaysia, Stamp duty is a tax levied on a variety of written instruments specified in the First Schedule of Stamp Duty Act 1949 ("**the Act**"). In a general term, stamp duty will be imposed to legal, commercial and financial instruments.

There are two types of Stamp Duties namely ad valorem duty and fixed duty. For the ad valorem duty, the amount payable will vary depending on type and value of the instruments. For fixed duty, generally the amount payable starts at a nominal value of RM10 per instrument.

An instrument is required to be stamped within 30 days of its execution if executed within Malaysia. If the instrument is executed outside Malaysia, it must be stamped within 30 days after it has been first received in Malaysia.

In this section, we will explain about the stamp duty procedures in Malaysia and the importance of having your instruments or documents stamped in accordance with the law.

2. Examples of Instruments / Documents Subjected to Stamp Duty

2.1 First Schedule of Stamp Duty Act 1949 laid down all the types and categories of instruments subject to the specific stamp duty. It includes certain exception where stamp duty will be exempted.

2.2 The rates of duty vary according to the nature of the instruments and transacted values. Among the example of the instruments subjected to stamp duty are as follows:

a. Shares Transfer

b. Real properties Transfer (Sale and Purchase of Land, Houses, Buildings, etc.)

c. General stamping of contracts / agreements

d. Tenancy, lease or rental agreements

e. Security documents

f. Selling of annuity

2.3 Example of the calculation of the stamp duty are as follows:

Non-listed shares, stocks or marketable securities (e.g. Transfer Form Section 105 Companies Act 2016)	RM3 for every RM1,000.00 or any fraction thereof based on consideration, or value whichever is greater. The Stamp Office generally adopts one of the 2 methods for valuation of unlisted ordinary shares for purposes of stamp duty: - net tangible assets; or - sale consideration.
Service Agreement	Generally, Stamp duty of 0.5% applied on the value of the services. However, according to the Stamp Duty (Remission) Order 2021 [P.U.(A) 428/2021] gazetted by the Minister, the Order has reduced the duty amount in which such duty in excess of 0.1% shall be remitted (depending on the type of the Service Agreement)"[1].
Loan Agreements	For loan instruments involving loan in Ringgit Malaysia, 0.1% rate is available for loans without security. For stamp duty on foreign currency loan agreements is generally capped at RM2,000.00.
Tenancy Agreement	(i) Less than 1 year (RM1 in every RM250 of the annual rent) (ii) Between 1 to 3 years (RM2 in every RM250 of the annual rent) (iii) More than 3 years (RM3 in every RM250 of the annual rent)

[1] The Lembaga Hasil Dalam Negeri (LHDN) will assess and determine the rate payable.

	The above formula is to be calculated on the amount in excess of RM2,400.00 of the annual rent. **in excess** means, the first RM2,400.00 of the annual rent is exempted from stamp duty.

2.4 Among the example of instrument exempted from stamp duties are as follows:

(i) Government contracts (such as service agreement entered by the governmental bodies / ministries)

(ii) Instruments relating to merger and acquisitions executed by small and medium enterprises ("**SMEs**")[2]

(iii) Instruments in connection with the transfer of property or shares between associated companies[3]

(iv) Certain exemption provided by the government which announced from time to time (e.g. exemption on instrument on purchase of low-cost houses, purchase of first residential property, etc.)

3. Why Document / Instrument should be Stamped?

Stamp duty is chargeable on instruments and not on transactions. If a transaction can be affected without creating an instrument of transfer, no duty is payable.

3.1 Validity of the unstamped instruments

The Act does not state clearly whether or not unstamped instruments are valid and enforceable. The legal position to address the issue of the validity of unstamped instruments (particularly, a contract) was established in a case of *Malayan Banking Bhd v Agencies Service Bureau Sdn Bhd & Ors (1982) 1 MLJ 198* where it was held that unstamped instrument only affects the admissibility of the instrument in evidence, but it does not render that particular instrument to be invalid. Hence, the contract is still rendered enforceable but inadmissible in court as evidence.

3.2 Admissibility in court

[2] Pursuant to Stamp Duty (Exemption) (No.18) Order 2021 [P.U.(A) 502/2021]
[3] Pursuant to Section 15A Stamp Act 1949

Section 52 of the Act stipulates that the instruments specified under the First Schedule of the Act must be duly stamped by the *Lembaga Hasil Dalam Negeri (LHDN)* which translate to the Inland Revenue Board of Malaysia (IRB).

The stamping must be done in the manner specified under Section 40 and Section 47 of the Act to enable the instruments to have a complete legal effect by being admissible in court as evidence. As mentioned at the above, an unstamped or insufficiently stamped instrument is not admissible as evidence in a court of law, nor will it be acted upon by a public officer.

3.3 Effective Stamped Instruments

Notwithstanding the legal position of the unstamped contract at the above, certain instruments in Malaysia are required to be stamped in order for it to be effective. The prominent example of such instrument is the instrument of transfer of properties to transfer tangible assets like real estate or company's shares. The relevant authorities who are responsible to affect such transfer and registration of the new proprietor or owner will require the instruments to be paid in accordance with the chargeable stamp duties in accordance with the First Schedule of the Act.

The example of stamp requirement for transfer of shares is provisioned in Section 105(1) of the Companies Act 2016 where it provides that shareholder may transfer his share by a duly executed and stamped instrument of transfer prescribed under the Companies Act 2016.

In addition to the above, Section 4A(1) of the Act particularly addressed the requirement of the instrument executed outside of Malaysia for transfer of movable or immovable property situated in Malaysia (other than debentures or shares) shall be stamped accordingly in order for the transfer to be effective.

3.4 Penalties

As mentioned at the above, the instruments subjected to stamp duty must be stamped within the stipulated time. Section 47A of the Act provides that an unpaid instrument will be payable together with the penalty as follows:

Within 3 months	RM25.00 or 5% of the amount of the deficient duty, whichever sum be the greater.
More than 3 months but not later than 6 months	RM50.00 or 10% of the amount of the deficient duty, whichever sum be the greater.
More than 6 months	RM100.00 or 20% of the amount of the deficient duty, whichever sum be the greater.

4. How to proceed with stamping

Firstly, the instrument must be submitted to the Inland Revenue Board (LHDN) for their assessment of the duty payable.

Secondly, upon assessment has been completed, the LHDN will issue the Assessment Notice containing the amount of the duty payable (inclusive of the penalty, if any) within certain timeframe.

Thirdly, upon successful payment of the stamp duty, the instrument will be stamped by franking machine or a stamp certificate will be issued, depending on the method of stamp application was made.

The above process may be completed either on the LHDN officer at the counter or via the electronic system provided by the LHDN i.e. the Inland Revenue's Stamp Assessment and Payment System (STAMPS system).

5. Conclusion

Our firm provides advice on the dutiable instrument to identify if the instrument is subject to any payable stamp duty in accordance with the law together with the applicable stamp duty amount. We are also a registered agent to submit the electronic assessment to the LHDN and apply for payment of stamp duty for certificates to be issued accordingly.

If you have any inquiries about our services relating to stamp duty, please do not hesitate to contact us.

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