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Proposed Changes to the Stamp Act

In 2016, the Stamp (Amendment) Bill 2016 ("**Stamp Bill 2016**") was introduced but subsequently withdrawn from the Malaysian Parliament.

In our earlier alert dated 13 April 2017 (see here), we had highlighted the proposed amendments under the Stamp Bill 2016 and the withdrawal of the Stamp Bill 2016.

At a recent parliamentary seating, the Stamp (Amendment) Bill 2017 ("**Stamp Bill 2017**") was introduced and tabled for its first reading in the Lower House of the Malaysian Parliament (i.e. *Dewan Rakyat*). The proposed amendments in the Stamp Bill 2017, as it currently stands, are substantially similar to those proposed under the Stamp Bill 2016 where significant amendments are being introduced to the current provisions of the Stamp Act 1949 ("**Stamp Act**"). The Stamp Bill 2017 will likely be tabled for its second reading in the Lower House in October 2017.

Key Changes under the Stamp Bill 2017

Broadly, the proposed amendments under the Stamp Bill 2016 have been maintained under the current form of the Stamp Bill 2017. In this alert, we have only highlighted the new or additional amendments which are proposed under the Stamp Bill 2017 (please refer to our earlier client alerts by clicking the links provided above).

Stamp duty relief for transfer of property between associated companies

Notably, the Stamp Bill 2017 seeks to introduce additional requirements for obtaining stamp duty relief for transfer of property between associated companies. The Stamp Bill 2016 proposed for the following additional requirements to be imposed as the conditions to relief application:

(a) the transferee must not dispose of the asset which is acquired within a period of 3 years from the date of the conveyance or transfer;

(b) the transferee and transferee must remain associated for a period of 3 years following the date of conveyance or transfer;

(c) where a claim for relief is allowed and the declaration provided for the purposes of the application for the relief is subsequently found to be untrue, the relief may be revoked and stamp duty together with interest shall become payable; and

(d) the party to the instrument for which a relief is granted shall inform the Collector of Stamp Duties ("**Collector**") in writing of any changes of the circumstances within 30 days of such occurrence.

The amendments proposed by the Stamp Bill 2016 have been maintained and reiterated under the Stamp Bill 2017. Further, The Stamp Bill 2017 now seeks to introduce three extra requirements in addition to the ones abovementioned, *i.e.*,:

(a) it must be shown to the Collector that the transfer of property between the associated companies is to achieve greater efficiency in operation;

(b) the transferee must be a company incorporated in Malaysia; and

(c) the Collector may require the delivery to him a statutory declaration made by an advocate and solicitor, or, in the case of Sabah and Sarawak, an advocate of the High Court, and of such further evidence, if any, as he deems necessary.

At this stage, it is difficult to determine what would constitute a transfer of property "to achieve greater efficiency" and how such declaration could be substantiated. In addition, the requirement for the transferee to be a Malaysian incorporated company in order to qualify for the stamp duty relief would likely disqualify cross border intercompany restructuring exercises where the holding company of the Malaysian assets are non-Malaysian entities and would result in tax implications in the context of such restructuring exercises.

Stamp duty relief for reconstructions or amalgamations of companies

Under the Stamp Bill 2016, Section 15 of the Stamp Act was proposed to be revised to provide that where stamp duty relief has been allowed, parties to the transaction shall not within a period of three years, cease to be the beneficial owner of the shares so acquired or issued, with the exceptions being where the change in shareholding is in consequence of reconstruction, amalgamation or liquidation or in compliance with Government policy on capital participation in industry.

The above proposal is maintained under the Stamp Bill 2017, save that the exception for the change in shareholding arising in compliance with Government policy on capital participation in industry has now been substituted with the exception for where the change in shareholding is for the purposes of achieving greater efficiency in operation.

At this point, it is unclear whether the efficiency in operation refers to the efficiency in operation for the transferee, transferor or the group of company as a whole and the type of documentary evidence required to substantiate such claim.

Limitation period to present a replicate & for issuance of a substituted stamp certificate

Under the Stamp Bill 2016, where a replicate of an instrument is presented to the Collector for stamping, the presentation shall be made within 6 years from the date of execution of the instrument and the taxpayer shall satisfy the Collector that the duty payable on the original instrument has been duly paid. The Stamp Bill 2017 is now proposing that the limitation period of 6 years be increased to 7 years.

The Stamp Bill 2016 also sought to introduce a new provision to deal with the loss of stamp certificates. The Collector may issue a substituted stamp certification if the Collector is satisfied 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 duty chargeable has been paid, where an application is made within 6 years from the date of execution of the instrument. The Stamp Bill 2017 has proposed that the limitation period of 6 years be increased to 7 years.

The instrument on which *ad valorem* stamp duty is paid

One of the most debated amendments sought to be introduced under the Stamp Bill 2016 was for *ad valorem* stamp duty to be paid on the agreement for conveyance upon execution and nominal stamp duty be imposed on the instrument of conveyance. This would be the reverse of the current position where *ad valorem* duty is paid on the instrument of conveyance and the agreement is charged with nominal stamp duty.

In view of the public concerns which arose from such an amendment, it is noteworthy that the amendment has now been removed entirely from the Stamp Bill 2017. As such, the current position as regards the stamping of agreements and instruments where *ad valorem* duty is paid on the instrument of conveyance and the agreement is charged with nominal stamp duty remains unchanged.

Revision to the Schedules

The amendments to the Schedules, where the First, Second, Third, and Fifth Schedules to the Stamp Act are substituted with new schedules, are largely maintained under the Stamp Bill 2017.

Notwithstanding, it should be noted that the quantum of stamp duty payable on instruments for the conveyance, assignment or transfer of property (except stock, shares, marketable security and accounts receivables or book debts) have been proposed are now as follows:

<table>
<tr><th>Consideration sum or market value of the property (whichever higher)</th><th>Stamp Bill 2016</th><th>Stamp Bill 2017</th></tr>
<tr><td>RM 0 - RM 100,000</td><td>1% on the amount or value of the consideration</td><td>1% on the amount or value of the consideration</td></tr>
<tr><td>RM 100,001 - RM 500,000</td><td>RM 1,000 plus 2% on any amount by which the amount or value of the consideration exceeds RM 100,000</td><td>RM 1,000 plus 2% on any amount by which the amount or value of the consideration exceeds RM 100,000</td></tr>
<tr><td>RM 500,001 - RM 1,000,000*</td><td rowspan="2">RM 9,000 plus 3% on any amount by which the amount or value of the consideration exceeds RM 500,000</td><td>RM 9,000 plus 3% on any amount by which the amount or value of the consideration exceeds RM 500,000</td></tr>
<tr><td>RM 1,000,001* and above</td><td>RM 24,000 plus 4% on any amount by which the amount or value of the consideration exceeds RM 1,000,000*</td></tr>
</table>

*****We note that the threshold is stated as RM 1,000,000,000 instead of RM 1,000,000 under the Stamp Bill 2017. However it appears to us that the intention would likely be for the threshold to be set at RM 1,000,000 instead.*

Saving and transitional provisions

Section 77 of the Stamp Bill 2016 provides that the amendments proposed thereunder shall not affect, amongst others, any instrument executed before the coming into operation of the Bill and any instrument executed after the date of coming into operation of the Bill implementing a sale under a duly stamped agreement for sale and purchase executed before the date of coming into operation of the Bill.

Kindly note that under the Stamp Bill 2017, the above saving and transitional provisions have been removed and any instruments which are executed before the coming into force of the Stamp Bill 2017 but stamped after such date, may be affected by the proposed amendments.

Commentary and Observations

The above summary is not intended to be exhaustive of all the amendments and only serves to highlight the key amendments proposed under the Stamp Bill 2017. The proposed changes under the Stamp Bill 2017 appear to be aligned with the Malaysian government's recent efforts to widen its tax base and increase tax revenue and collection. We would recommend that the companies and individuals who are currently looking to enter into transactions to consider the proposed amendments to determine whether its anticipated transactions would be affected by the changes proposed under the Stamp Bill 2017. It is important to be mindful of the changes to the Malaysian stamp duty regime in the context of planning and executing transactions in the coming months.

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