A5 STAMP DUTY

A5.1 DEFINITION OF WRITING OR WRITTEN TO INCLUDE ELECTRONIC INSTRUMENTS

Existing Legislation

Presently, there are references to “writing” and “written” throughout the Stamp Act 1949. However, there is no definition of these terms in Section 2 of the Stamp Act 1949.

Proposed Legislation

It is proposed that the definition of “writing” and “written” be included in Section 2 of the Stamp Act 1949 and that such definition will include “any handwriting, typewriting, printing, electronic record or transmission which is in an electronically readable form”.

Reference

Section 2 of the Stamp Act 1949.

Effective Date

1 January 2024.

Likely Tax Effects and Implications

This proposal seeks to define the terms “writing” or “written” to provide that an instrument for stamp duty purposes includes an electronic instrument.

A5.2 VERIFICATION OF DATE OF RECEIPT OF INSTRUMENTS EXECUTED OUTSIDE MALAYSIA RECEIVED THROUGH ELECTRONIC TRANSMISSION

Existing Legislation

Presently, an instrument executed outside Malaysia concerning any matter in Malaysia that has been brought to the Collector of Stamp Duty for stamping may require the date of receipt to be verified either by production of the envelope in which the instrument was received or of any accompanying letter, or by statutory declaration (unless the date of the instrument shows that it must have been received within 30 days).

Proposed Legislation

It is proposed that where the instrument executed outside Malaysia is received by way of electronic transmission, the date of receipt thereof shall be verified by the production of a copy or print out of the electronic transmission.

Reference

New subsection 42(2A) of the Stamp Act 1949.

Effective Date

1 January 2024.

Likely Tax Effects and Implications

This proposal seeks to clarify the date of receipt of an instrument executed outside Malaysia which is received by way of electronic transmission. The instrument must be stamped within 30 days from first receipt by way of electronic transmission.

A5.3 STAMP DUTY FOR CONVENTIONAL LOAN AGREEMENTS AND SHARIAH-COMPLIANT FINANCING IN FOREIGN CURRENCY

Existing Legislation

Presently, instruments for conventional loans and Shariah-compliant financing in foreign currency are subject to ad valorem stamp duty of RM5 for every RM1,000 (0.5%) or part thereof of the loan amount. The total stamp duty payable is capped at RM2,000.

Proposed Legislation

It is proposed that the stamp duty limit on foreign currency loan or financing instruments of RM2,000 be removed.

Reference

Item 27(a)(ii) of the First Schedule of the Stamp Act 1949.

Effective Date

For instruments executed from 1 January 2024.

Likely Tax Effects and Implications

The proposed amendment aims to enhance the Government's commitment to long-term fiscal sustainability via increased stamp duty collection.

A5.4 STAMP DUTY TREATMENT FOR TRANSFER OF PROPERTY OWNERSHIP BY RENUNCIATION OF RIGHTS BY A BENEFICIARY OF A DECEASED ESTATE

Existing Legislation

Presently, the transfer of property ownership involving inheritance property is subject to a fixed duty of RM10 under Item 32(i) of the First Schedule, Stamp Act 1949 if the ownership is transferred from the administrator to an eligible beneficiary in accordance with a will/*faraid* or the Distribution Act 1958.

If the eligible beneficiary renunciates his/her right to another eligible beneficiary or non-beneficiary, ad valorem duty is charged under Item 66(c) of the First Schedule of the Stamp Act 1949.

Proposed Legislation

It is proposed that the transfer of property ownership in which the eligible beneficiary renunciates his/her right over a deceased estate to another eligible beneficiary entitled under the same estate be subjected to a fixed duty of RM10.

Reference

Item 32(h) of the First Schedule of the Stamp Act 1949.

Effective Date

For the instrument of property ownership transfer executed from 1 January 2024.

Likely Tax Effects and Implications

This proposal seeks to reduce the stamp duty cost for instruments of transfer of property ownership by renunciation of rights by a beneficiary of a deceased estate to another beneficiary entitled under the same estate.

A5.5 STAMP DUTY TREATMENT FOR TRANSFER OF PROPERTY OWNERSHIP TO FOREIGN-OWNED COMPANIES AND NON-CITIZEN

Existing Legislation

The rates of stamp duty on instruments of transfer of any property (except stocks, shares or marketable securities) are as follows:

	Sales Price / Market Value (whichever higher) *RM*	*Stamp Duty Rate*	*Stamp Duty Payable* *RM*
On the first	100,000	1%	1,000
On the next	400,000	2%	8,000
On the next	500,000	3%	15,000
	1,000,000		24,000
In excess of	1,000,000	4%	

Presently, foreign-owned companies and non-citizen individuals are allowed to own properties in Malaysia and are subject to the above ad valorem stamp duty rate on the instrument of transfer of property.

Proposed Legislation

It is proposed that a flat rate stamp duty of 4% be imposed on the instrument of transfer of property (except stocks, shares or marketable securities) executed by foreign-owned companies and non-citizen individuals (excluding Malaysian permanent residents).

Reference

New item 32(aa) of First Schedule of the Stamp Act 1949.

Effective Date

For instrument of property ownership transfer executed from 1 January 2024.

Likely Tax Effects and Implications

This proposal will result in foreign-owned companies and individuals who are non-citizens and non-permanent residents of Malaysia incurring higher stamp duty cost when buying properties in Malaysia. This measure is part of the Government's property price control mechanism. It also demonstrates the Government's commitment to long-term fiscal sustainability through increased stamp duty collection.

A5.6 HEARING OF STAMP DUTY APPEALS IN ORIGINAL JURISDICTION

Existing Legislation

Presently, Section 39 of the Stamp Act 1949 does not specify that the High Court is exercising its original jurisdiction when hearing a duty payer's appeal against a stamp duty assessment by the Collector of Stamp Duty.

Proposed Legislation

It is proposed that Section 39(6) of the Stamp Act 1949 be introduced to provide clarity. The new Section 39(6) provides that, unless it is otherwise provided by rules of court, the rules of court for the time being in force in relation to stamp duty appeals in the High Court in its original jurisdiction to the Court of Appeal and the Federal Court shall apply with the necessary modifications to appeals under this section to the High Court, the Court of Appeal and the Federal Court respectively.

Reference

Section 39 of the Stamp Act 1949.

Effective Date

1 January 2024.

Likely Tax Effects and Implications

This proposal seeks to clarify that the High Court is exercising its original jurisdiction and not its appellate jurisdiction when hearing a duty payer's appeal against an assessment by the Collector of Stamp Duty. Therefore, the Federal Court is vested with jurisdiction to hear stamp duty appeals given that the High Court hears stamp duty appeals in its original jurisdiction.

A5.7 TERMINATION OF USE OF DIGITAL AND POSTAL FRANKING MACHINES AND ADHESIVE STAMPS

Existing Legislation

Presently, the Stamp Act 1949 provides for stamping through the use of digital franking machines, postal franking machines, adhesive stamps and impressed stamps.

Proposed Legislation

It is proposed that the use of digital and postal franking machines as well as revenue stamps be terminated effective from 1 January 2024.

Reference

Sections 7, 8, 15(6), 43, 45(1), 48, 57(b), 60, 60A, 71, 72, 73, 82(a), 82(b), Second and Fifth Schedule of the Stamp Act 1949.

Effective Date

1 January 2024.

Likely Tax Effects and Implications

This proposal aims to encourage online application for stamping and payment of stamp duty via the Inland Revenue Board (IRB)'s Stamp Duty Assessment and Payment System (STAMPS) portal (https://stamps.hasil.gov.my). The IRB has earlier announced that duty payers are still allowed to use revenue stamps for stamping of agreements and documents up to 31 December 2023 but there will be no claim for refund or cash substitution allowed for unused revenue stamps effective 1 January 2024.