

## Client Alert

9 May 2019

### Malaysian Stamp Act: Changes to Relief Provisions, Instruments Which Secure Indebtedness and Rates Increase

#### Background

In 2016, the Stamp (Amendment) Bill 2016 ("Stamp Bill 2016") was introduced but was subsequently withdrawn from Parliament. The Bill raised concerns amongst the business community regarding the significant implications arising from the proposed amendments. In 2017, similar changes as proposed under the Stamp Bill 2016 were again introduced and proposed under the Stamp (Amendment) Bill 2017 ("Stamp Bill 2017"). However, the Stamp Bill 2017 was again withdrawn from Parliament.

Some notable amendments proposed under the Stamp Bills 2016 and 2017 were passed by the Malaysian Parliament under the Finance Act 2018 ("FA"), which came into force on 28 December 2018. Following such amendments, the Malaysian Inland Revenue Board ("MIRB") has also published new guidelines which aim to provide guidance and clarification relating to the amended provisions under the Stamp Act 1949 ("MSA"). In this alert, we discuss specific key amendments to the MSA and their implications.

#### Stamp duty relief for reconstructions or amalgamations of companies under Section 15 of MSA

Conditions applicable to the Section 15 stamp duty relief in respect of transfers in relation to reconstructions and amalgamations have been amended to provide for the following:

- (a) where the transferee of the asset in the transaction issues shares ("Transferee Shares") to the transferor, the time period for the transferor to hold such Transferee Shares acquired and remain as the beneficial owner of such shares, has been increased from two to three years (with limited exceptions);
- (b) where the transferee receives asset in the form of shares in a company from the transferor ("Asset Shares"), the time period for the transferee to hold the Asset Shares so acquired and remain as the beneficial owner of such shares, has been increased from two to three years (with limited exceptions); and
- (c) where there is change in circumstances surrounding the Section 15 relief, there is now a requirement for each party to the instrument relieved from stamp duty to notify the Collector of Stamp Duties ("Collector") of the circumstances of the occurrence within 30 days from the date of the occurrence.

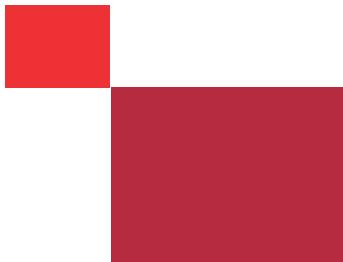
Further, the MIRB has issued guidelines relating to the Section 15 relief ("Section 15 Guidelines") which provide further clarification and a comprehensive list of documents (including an updated statutory declaration

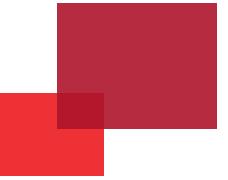
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which must be affirmed by an advocate and solicitor) to be furnished in connection with Section 15 relief applications.

### **Implications**

We expect that the amendments to Section 15 of the MSA which provides for longer holding period for both Transferee Shares and Asset Shares would make it more difficult for businesses to comply with and qualify for the relief. In respect of the notification requirement, while the legal provision within Section 15 provides that all parties to the instrument subject to the duty relief are subject to the notification requirement, the MIRB has clarified in the Section 15 Guidelines that only the transferee would be required to notify the MIRB of any change of circumstances. The MIRB also clarified that where change of circumstances results in the revocation of a Section 15 relief, the applicable stamp duty relieved together with interest of 6% per annum computed from the date on which the instrument ought to have been stamped shall become payable.

### **Stamp duty relief for transfer of property between associated companies under Section 15A of MSA**

Section 15A of the MSA which provides for stamp duty relief for transfer of property between associated companies has been amended to provide for the following conditions:

- (a) the transfer of property between the associated companies is to achieve greater efficiency in operation;
- (b) the transferee company is incorporated in Malaysia;
- (c) the transferee and transferor must remain associated for at least three years following the date of conveyance or transfer;
- (d) the transferee must not dispose of the asset acquired within a period of three years from the date of the conveyance or transfer;
- (e) where there has been a change of circumstances following the grant of a stamp duty relief, each party to the instrument subject to the stamp duty relief are required to notify the Collector of the change of circumstances within 30 days of the date of the occurrence;
- (f) where a claim for Section 15A relief is subsequently found to be untrue, the relief will be revoked and the stamp duty relieved, together with interest at 6% per annum, computed from the date on which the conveyance or transfer ought to be stamped shall become payable; and
- (g) the Collector may require a statutory declaration made by an advocate and solicitor to be submitted in support of an application for the Section 15A relief.

Further, the MIRB has also issued guidelines which further clarify the amended requirements in respect of Section 15A relief applications ("Section 15A Guidelines") and set out the supporting documents required for such application. The Section 15A Guidelines clarify that the relief is applicable to transfer of real property and shares, but will no longer apply to business transfers.

## Implications

Generally, we observe that the conditions applicable to the Section 15A relief are much more restrictive and stringent now. The requirement for the transferee to be a Malaysian incorporated company would likely result in many instruments which would have been able to qualify for the Section 15A relief in the past to be disqualified under the amended conditions. In addition, the scope of application of the relief is narrower now, and the relief can no longer be sought for the business transfers.

The requirement for the acquired asset to remain with the transferee for a period of three years from the date of transfer, is expected to create challenging implications in the context of multiple transfer transactions which are common in the context of global restructuring exercises involving multinationals.

The imposition of the requirement to show "greater efficiency in operation" will also pose practical difficulties and uncertainty for businesses as it is not entirely clear what would amount to greater efficiency for the purposes of the Section 15A and what would be the implications for the applicant where the anticipated increase in efficiency is not achieved.

Also, the requirement for all parties to the relevant instrument to notify the Collector of any change of circumstances would mean that a transferor which would not have submitted the application and may not be informed of any potential change in circumstances (such as the disposal of the relevant asset by the transferee within three years) would find it difficult to meet this requirement.

In addition, it would be difficult for an advocate or solicitor who is not part of the company or business to make a declaration as to whether the transfer would result in "greater efficiency in operation" which is a matter for the transferee or transferor or parent company to opine on. As such, we expect further challenges to arise in the application of the amended provisions.

## Higher stamp duty rate under Item 32 (a) of the First Schedule

Stamp duty rate applicable to instruments for the conveyance, assignment, transfer or absolute bill of sale, for the sale of any property (except stock, shares, marketable securities and accounts receivables or book debts) for value exceeding RM 1 million is increased as follows:

Consideration sum or the market value of the property (whichever higher)	Stamp duty rate pre-amendment	Stamp duty rate post-amendment
First RM 100,000	1%	1%
RM 100,001 - RM 500,000	2%	2%
RM 500,001 - RM 1,000,000	3%	3%
RM 1,000,001 and above	3%	<b>4%</b>

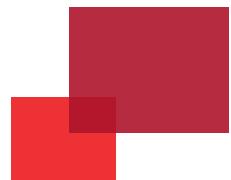
## Instruments falling under Item 22(1) in the First Schedule

Prior to the amendments under the FA, Item 22(1) was earlier amended such that its scope was broadened and could cover any instrument for any sum or sums of money. This means that any agreement with a stated sum or sums of money, including potentially sale or supply agreements could have been subjected to the stamp duty rates under Item 22(1). In view of this, the prior

amendment to this provision was criticised for being too broad such that it covered instruments which may not have been intended to be covered.

Under the FA, Item 22(1) has been amended to restrict the application of this provision to instruments "for any sum or sums of money at stated periods" as shown in the comparison below.

Pre-amendment	Post-amendment
Description of Instrument	Stamp Duty Rate
<p>BOND, COVENANT, LOAN, SERVICES, EQUIPMENT LEASE AGREEMENT OR INSTRUMENT of any kind whatsoever:</p> <p>(1)(a) being the only or principal or primary security for any annuity (except upon the original creation thereof by way of sale or security, and except a superannuation annuity), for the term of life or any other indefinite period</p> <p>for every RM100 and also for any fractional part of RM100 of the annuity or sum periodically payable</p> <p>(b) <u>for any sum or sums of money</u>, not being interest for any principal sum secured by a duly stamped instrument, nor rent reserved by a lease or tack.</p>	<p>BOND, COVENANT, LOAN, SERVICES, EQUIPMENT LEASE AGREEMENT OR INSTRUMENT of any kind whatsoever:</p> <p>(1) Being the only or principal or primary security for any annuity (except upon the original creation thereof by way of sale or security, and except a superannuation annuity), or <u>for any sum or sums of money at stated periods</u>, not being interest for any sum secured by a duly stamped instrument, nor rent reserved by a lease or tack-</p> <p>(a) for a definite and certain period so that the total amount to be ultimately payable can be ascertained.</p> <p>The same ad valorem duty as a charge or mortgage for such total amount.</p> <p>(b) for the term of life or any other indefinite period for every RM100 and also for any fractional part of RM100 of the annuity or sum periodically payable.</p>
RM1.00	The same <i>ad valorem</i> duty as a charge or mortgage for such total amount.



The effect of the amendment is that this provision will now only apply where the instrument specifies payment of certain sum(s) at stated periods and any instrument that does not specify such information would now be excluded from the scope of Item 22(1). This is a welcomed move.

### **Conclusion**

The changes to the MSA generally reflects the Malaysian government's intention to increase tax revenue and collection by restricting stamp duty reliefs granted and increasing stamp duty rate for transfer of property. It is important for businesses to be mindful of these changes and their implications, specifically in relation to any potential business restructurings, mergers and acquisitions, to ensure that the stamp duty exposure arising from such transactions is adequately taken into account before they are effected. Companies undergoing global restructurings will also need to consider the impact of not being able to obtain stamp duty relief in the event that the transferee of the transferred asset is not a Malaysian incorporated company.

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