e-CIRCULAR TO MEMBERS

CHARTERED TAX INSTITUTE OF MALAYSIA (225750-T)

e-CTIM TECH-DT 16/2014 **10 March 2014**

TO ALL MEMBERS

TECHNICAL

Direct Taxation

BRIEFING ON THE REVAMP OF STAMP ACT 1949 BY THE INLAND REVENUE BOARD (IRB)

The Government has reveal its intention to revamp the Stamp Act 1949 (refer to our ***e-CTIM TECH 85/2013***), and the Institute, together with the Malaysian Institute of Certified Public Accountants (MICPA), had made a ***submission*** to the authority on 30 January 2012. The Government initiated the consultation process with the main stakeholders and held its first briefing session to provide the feedback on the submissions by various parties on 5 July 2013. Subsequently the Institute made two further submissions to the IRB on 21 August 2013 and 28 October 2013. (Members may view all the 3 ***submissions*** on the Institute's website.)

On 3 March 2014, IRB invited the Institute to attend the second briefing session held at Menara Hasil, Cyberjaya. Below are several salient points discussed during the second briefing session:

Key Changes Proposed	Comments/Issues raised
1) Section 15 relief – The requirement to hold the shares for at least 2 years will be extended to 3 years. 2) Section 15A relief – As with the proposed changes to Para 15, a 3 year time frame will be introduced as well.	The IRB indicated that the changes are proposed to align Section 15/15A to Paragraph 17 of Schedule 2 of the RPGT Act, 1976. On behalf of CTIM, the following points were raised: • If the intention is to align this provision to the RPGT Act, then the requirement in Section 15 and 15A in relation to the share issue consideration and shareholding relationship respectively should mirror the provision in paragraph 17, Schedule 2 of the RPGT Act, 1976. Accordingly, for section 15, the share issuance should comprise 75% of the consideration (compared to the current 90% share issue) and for section 15A, the shareholding relationship between transferor and transferee should be 51% (instead of 90% based on the current provision). • The relief should also be extended to LLPs since the Government is encouraging the incorporation of LLPs. The authorities noted these comments and have indicated that they will consider these further
3) Sale & Purchase (S&P) agreements will be	Several participants expressed concerns

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<td>subject to ad valorem stamp duty and actual conveyance (Form 14A) will be subject to RM10 stamp duty.

A refund provision will be introduced to take account of situations where the S&P agreement does not proceed to completion.

Operational guidelines will also be issued to ensure refunds are processed efficiently.</td>
<td>over this provision, which were primarily focussed on the difficulties in obtaining refunds from the Stamp Office and the inequity of collecting the stamp duty at such an early stage. It was also suggested that in cases where an agreement is subject to conditions precedent, the payment of the stamp duty should be deferred until such time that the conditions precedent are met/satisfied.

The authorities noted the comments but indicated that the decision to impose stamp duty on the S&P will be maintained. The practice of imposing stamp duty on S&Ps is currently in operation in Hong Kong, Singapore and certain other jurisdictions. They did however note the comments regarding refunds and indicated that operational guidelines would be issued regarding the processing of refunds.</td>
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<td>4) Increase in the rate of stamp duty under Item 32(a)

It is proposed that the rate of stamp duty be increased as follows:
<table>
<tr><th colspan="2">Current rate (on higher of consideration /market value):</th><th colspan="2">Proposed rate</th></tr>
<tr><td>Upto RM100k</td><td>1%</td><td>Upto RM100k</td><td>1% or RM10 whichever is higher</td></tr>
<tr><td>>RM100k – RM500k</td><td>2%</td><td>>RM100k – RM500k</td><td>RM1k + 2% on amounts above RM100k</td></tr>
<tr><td><RM500k</td><td>3%</td><td>>RM500k – RM1.5m</td><td>RM9k + 3% on amounts above RM500k</td></tr>
<tr><td></td><td></td><td>>RM1.5m</td><td>RM39k + 4% on amounts above RM1.5m</td></tr>
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</td>
<td>There were several comments with regard to the increase in duties, particularly its negative impact on the property sector, in addition to the proposal at (3) above.

It was also suggested that the authorities should be mindful of the fact that these increased costs alongside the recent price hikes in fuel costs, electricity, sugar, and the inevitable increase in prices that will stem from the introduction of GST will culminate in hardship to the rakyat. This point was noted by the authorities

CTIM also made a point that stamp duty should not be imposed on consideration "plus GST". The authority has indicated that the issue will be looked at.

For clarity, CTIM has requested a provision be inserted in the Stamp Act to exclude imposition of stamp duty on GST.</td>
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<td>5) Exchange of real property –
This will be subject to ad valorem duty except in the following 3 situations where RM10 duty will be imposed:

i) Sub-division/partition of land
ii) Exchange with the Government</td>
<td>No comments</td>
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	iii) Exchange between family members, i.e. parents and children, spouses, grandparents and grandchildren and siblings.	
6)	Self assessment is proposed for all instruments except for transfers of property of a deceased person and transfers of property under 'hibah' principles However, it will be an option and will not be compulsory. It must be done via electronic submission and the time frame for stamping and payment of stamp duty will be 44 days from the date of execution. For property valuation, the acceptable range of difference between the self-determined value and the Government's valuation is <u>less than 10%</u>. E.g if the self assessment value is RM100,000 and the Government assessed value is RM109,000. Where the difference in valuation is between 10% - 30%, then additional duty will be imposed. Where the difference is more than 30%, then additional duty **plus penalties** will be imposed. The quantum of penalties has not been decided yet.	No comments
7)	Increase in penalties in relation to the following sections: • Section 3A – Powers of Collector to require a person to produce any instrument • Section 4A(3) – Instruments executed outside Malaysia effecting transfers of property in Malaysia • Section 9(3) – late payment in relation to persons authorised to compound instruments • Sections 60 -74 – Part IX of Stamp Act on Offences and Penalties The proposed penalties are a follows: • **Minimum – RM1,000** (previously, RM500); • **Maximum – RM10,000** (previously, RM5,000) <u>**OR**</u> • **3 years imprisonment** (previously – no jail term imposed).	No comments
8)	Section 47A – Penalty for late Payment Penalties for late stamping will be increased and will be imposed based on number of days the duty is overdue as opposed to months. For e.g. period overdue by **within 3 months** is now changed to **within 90 days**	The proposed increase in penalty rates are significant and the authorities were asked to consider if these may be lowered somewhat. The authorities commented that the penalty rates are lower than those imposed in Singapore and Hong Kong and this is the

<table>
<tr><td>Proposed penalties:
<table>
<tr><th>Time of payment</th><th>Current Penalty</th><th>Proposed penalty</th></tr>
<tr><td>Within 90 days</td><td>The higher of RM25 or 5% of the duty payable</td><td>The higher of RM25 or the duty payable</td></tr>
<tr><td>Within 90 –180 days</td><td>The higher of RM50 or 10% of the duty payable</td><td>The higher of RM50 or 2x the duty payable</td></tr>
<tr><td>More than 180 days</td><td>The higher of RM100 or 20% of the duty payable</td><td>The higher of RM100 or 4x the duty payable</td></tr>
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</td><td>first revision in rates after many years.</td></tr>
<tr><td>9) Existing provisions will be amended to enable IRB officers to take legal action to recover unpaid stamp duties and penalties</td><td>No comments</td></tr>
<tr><td>10) New provision to impose the obligation of record keeping together with penalties for non-compliance</td><td>No comments</td></tr>
<tr><td>11) To simplify calculation of stamp duty, there will be a minimum of RM10 stamp duty*; and the phrase “fractional part or fractional thereof or part thereof” will be replaced by the word “<u>percentage</u>”.(*with some exceptions)</td><td>No comments</td></tr>
<tr><td>12) Item 49, First Schedule: Lease or Agreement to lease –
(i) Existing exemption of duty for the first RM2,400 will be removed and
(ii) This item will include “licence to use immovable property”</td><td>No comments</td></tr>
<tr><td colspan="2">NOTE: The proposals above are still fluid and it is understood that there are proposals which are still being considered by the MOF/IRB which were not shared with the participants at the briefing. The time frame involved in amending the Stamp Act was not clearly indicated. It is possible that the amendments will be put through in mid 2014 although the proposed effective date is not known.</td></tr>
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