

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 <u>e-CTIM TECH</u> <u>85/2013</u>), and the Institute, together with the Malaysian Institute of Certified Public Accountants (MICPA), had made a <u>submission</u> 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 <u>submissions</u> 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.	The IRB indicated that the changes are proposed to align Section 15/15A to Paragraph 17 of Schedule 2 of the RPGT Act, 1976.
2)	Section 15A relief – As with the proposed changes to Para 15, a 3 year time frame will be introduced as well.	<ul> <li>On behalf of CTIM, the following points were raised:</li> <li>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).</li> <li>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</li> </ul>
3)	Sale & Purchase (S&P) agreements will be	Several participants expressed concerns



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conveyand RM10 star A refund account agreemen Operation	ce ( mp d prov of t doe al gu	Form 14A) uty. ision will be situations es not procee uidelines wil	mp duty and actual will be subject to e introduced to take where the S&P ed to completion. Il also be issued to sed efficiently.	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.
32(a)	osed	that the ra	amp duty under Item te of stamp duty be	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.
Current ra (on higher considerati /market valu	of on	Pr	oposed rate	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
Upto RM100k	1%	Upto RM100k	1% or RM10 whichever is higher	from the introduction of GST will culminate in hardship to the rakyat. This point was noted by the authorities
>RM100k – RM500k	2%	>RM100k – RM500k	RM1k + 2% on amounts above RM100k	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.
<rm500k< td=""><td>3%</td><td>&gt;RM500k – RM1.5m</td><td>RM9k + 3% on amounts above RM500k</td><td>For clarity, CTIM has requested a provision be inserted in the Stamp Act to exclude imposition of stamp duty on GST.</td></rm500k<>	3%	>RM500k – RM1.5m	RM9k + 3% on amounts above RM500k	For clarity, CTIM has requested a provision be inserted in the Stamp Act to exclude imposition of stamp duty on GST.
		>RM1.5m	RM39k + 4% on amounts above RM1.5m	
<ul> <li>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:</li> <li>i) Sub-division/partition of land</li> <li>ii) Exchange with the Government</li> </ul>		valorem duty except is where RM10 duty f land	No comments	



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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</u> <u>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 <b>plus penalties</b> will be imposed. The quantum of penalties has not been decided yet.	No comments
7)	<ul> <li>Increase in penalties in relation to the following sections:</li> <li>Section 3A – Powers of Collector to require a person to produce any instrument</li> <li>Section 4A(3) – Instruments executed outside Malaysia effecting transfers of property in Malaysia</li> <li>Section 9(3) – late payment in relation to persons authorised to compound instruments</li> <li>Sections 60 -74 – Part IX of Stamp Act on Offences and Penalties</li> </ul>	No comments
	<ul> <li>The proposed penalties are a follows:</li> <li>Minimum – RM1,000 (previously, RM500);</li> <li>Maximum – RM10,000 (previously, RM5,000) <u>OR</u></li> <li>3 years imprisonment (previously – no jail term imposed).</li> </ul>	
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 <b>within 3 months</b> is now changed to <b>within 90 days</b>	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



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Propos	ed penalties:		first revision in rates after many years.
Time of payment	Current Penalty	Proposed penalty	
Within 90 days	The higher of RM25 or 5% of the duty payable		
Within 90 –180 days	The higher of RM50 or 10% of the duty payable	The higher of RM50 or <b>2x</b> the duty payable	
More than 180 days	The higher of RM100 or 20% of the duty payable		
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unpaid 10) <b>New</b> p record complia 11) To sim be a m phrase <b>or par</b> " <b>perce</b> 12) Item 49 lease – (i) Exis	stamp duties and pena provision to impose keeping together with ance plify calculation of star inimum of RM10 star "fractional part or f t thereof" will be repl ntage".(*with some exc 0, First Schedule: Leas	alties the obligation of penalties for non- np duty, there will np duty*; and the <b>ractional thereof</b> aced by the word ceptions) e or Agreement to duty for the first	No comments

**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.

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