

STAMP DUTY CHANGES MAY END PROPERTY SPECULATION IN MALAYSIA

Proposed new amendment makes ad valorem stamp duty payable upon signing of the Sale & Purchase Agreement unlike currently where it's only payable at point of transfer when the title is issued.



SHAWN HO is a partner at Donovan & Ho (Corporate & Property Practice) specialising in tax and is based in Kuala Lumpur. This article is written with the assistance of Adryenne Lim.

There are several significant changes to the Malaysian Stamp Act 1949 proposed by the Stamp (Amendment) Bill 2016. This article will focus on the implications to the sale and purchase of immovable property / real property only.

What instruments are chargeable with stamp duty for the sale of property?

The sale and purchase agreement (“SPA”) for the sale of property will now be charged with ad valorem duty (based on value of the property). The stamp duty will be payable within a shorter timeframe of 14 days from the date of assessment or date the self-assessment return is furnished, whichever is applicable.

On the other hand, the instrument used for the transfer of property (being the Memorandum of Transfer or the Deed of Assignment) will be charged with a fixed duty of RM10, provided that the purchaser has already paid the ad valorem duty on the SPA.

Where there is no SPA, the instrument of transfer will be the instrument that attracts the ad valorem stamp duty.

The stamp duty on the loan agreement remains the same, being payable upon signing of the loan agreement.

Does the amendment apply to agreements affecting the sale of all property?

No. It does not apply to agreements affecting the sale of: (a) property situated outside Malaysia; (b) goods, wares or merchandise; or (c) ship or vessel, or part interest, share or property of or in any ship or vessel.

What are the stamp duty implications when a first purchaser sells the property to a sub-purchaser (sub-sale) before the completion of the conveyance of the property?

Under the amended law, the first purchaser will need to pay ad valorem stamp duty on the SPA and not on the instrument of transfer.

If the first purchaser on-sells the property prior to the completion of the transfer, the SPA entered between the first purchaser and sub-sale purchaser will be charged with ad valorem duty based on the full new purchase price, not just on the excess consideration as under the old law.

Is there a procedure to apply for a refund of stamp duty paid?

The amendment further provides that the application for a refund of stamp duty paid by the purchaser or sub-purchaser shall be made within 12 months —

- (a) after the contract, agreement or assignment has been rescinded, annulled or cancelled; AND



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- (b) the instrument in respect of such contract, agreement or assignment has not been registered in accordance with any written law.

Purchasers should be mindful that failing to apply for the refund within the 12-month time limit may forfeit their right to do so. Given the expected increase in the number of stamp duty refund applications moving forward due to the changes, it also begs the question of how quickly the stamp duty will be refunded.

What about contracts which are subject to the fulfilment of a condition precedent?

Purchasers will be required to pay the ad valorem duty first upon execution of the SPA, regardless of whether the SPA contains any condition precedents to fulfil.

If a condition precedent (such as obtaining state authority consent) in the SPA is not fulfilled resulting in the rescission or cancellation of the agreement, the purchaser may then apply for a full refund of the stamp duty paid according to the requirements mentioned above.

Will this amendment curb property speculation and flipping?

Prior to the amendment, purchasers of properties (which have yet to be constructed) directly from the developer only need to pay the ad valorem stamp

duty years later upon the issuance of the strata titles, which typically occurs upon handover of the property at the earliest. There are instances where these first purchasers may not even need to pay the ad valorem stamp duty if they have on-sold the property prior to the strata titles being issued.

With the amendment, purchasers of property directly from developer will need to fork out the ad valorem stamp duty soon after signing of the SPA, instead of having the luxury of waiting until the property is completed.

This may cause property speculators who purchase property (in bulk or otherwise) to think twice as the payment of full stamp duty will directly impact their cash outlay.

Also, it may now be more costly for purchasers who seek to aggressively flip the property to another purchaser in a sub-sale context within the short time frame before their own purchase is even completed.

When will the amendment come into force?

The date for the second reading of the Stamp (Amendment) Bill 2016 has not yet been confirmed, but it is anticipated to come into force some time in 2017. ■

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