Stamp duty reforms and their impact on Malaysia

By STEVEN SOLOMON

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IN an era where global markets demand agility, efficiency and seamless integration, Malaysia's corporate landscape is being stifled by an outdated fiscal mechanism: stamp duties.

While historically intended as a revenue source, the way it is currently applied – particularly to business asset and debt transfers – creates significant barriers that affect mergers and acquisitions (M&A), restructurings, and overall investment competitiveness.

Ahead of the budget, it is timely to examine the key challenges associated with the existing stamp duty regime and their potential impact on Malaysia's economic competitiveness.

Stamp duty rates range from as low as 0.3% on share purchases to as high as 4% on high-value asset transfers. In addition, the imposition of punitive taxes on debt transfers increases inefficiencies, particularly in intricate transactions and distressed situations.

As our regional neighbours including Singapore, Indonesia, Vietnam and Thailand continue to pursue increasingly business-friendly policies, Malaysia faces the prospect of lagging behind without timely implementation of necessary reforms.

The disparity in stamp duties: Asset vs share transfer

At the heart of the issue is the stark difference in stamp duty rates applied to different transaction types.

Under Malaysia's Stamp Act 1949, the transfer of shares in a company attracts a flat ad valorem duty of 0.3% on the consideration or market value, whichever is higher.

This relatively low rate facilitates straightforward equity acquisitions, making it an attractive option for buyers seeking control without operational overhauls.

In contrast, transfers of business assets are treated as conveyances, subjecting them to progressive stamp duty rates that escalate to 4% for values exceeding RM1mil.

For instance, the first RM100,000 incurs 1%, the next RM400,000 at 2%, amounts between RM500,001 and RM1mil at 3%, and anything above at 4%. This structure means that for large-scale asset deals, the effective rate approaches 4%, imposing a substantial cost premium.

Consider a hypothetical scenario in the manufacturing sector: Company X aims to acquire Company Y, a competitor with overlapping operations. Purchasing Y's shares would cost only 0.3% in stamp duty – say, RM600,000 on a RM200mil valuation.

However, to achieve true efficiency, X might prefer an asset purchase to consolidate operations, eliminate redundancies, and streamline supply chains.

This could involve acquiring assets worth RM200mil, leading up to a 4% duty, or RM8mil. Though the actual amount may be lower due to offsets with liabilities, it will very likely be far higher than RM600,000.

Importantly, as stamp duties are instrument-based, not profit-linked, companies incur these costs regardless of whether the deal produces immediate returns.

This discourages asset purchases, which are often necessary to eliminate redundancies, consolidate operations, or achieve supply chain efficiencies. As a result, companies may resort to suboptimal share, limiting potential productivity gains. Over time, this hampers Malaysia's corporate sector from achieving the scale and agility needed in a globalised economy.

The debt transfer dilemma: Punitive costs in restructurings

Even more burdensome is the treatment of debt transfers, a common element in M&A and internal restructurings. Debts, when assigned or novated, are often classified as conveyances under the Stamp Act, attracting the same progressive rates up to 4%.

While loan agreements themselves may carry a nominal 0.5% duty (or 0.1% in some cases), the transfer of existing debts in deals can trigger full ad valorem rates if deemed a sale or assignment.

This creates obstacles in the execution of complex transactions. For example, if a company acquires RM200mil in shares and RM100mil in shareholder loans, the shares would attract 0.3% duty (RM600,000), but the loans could incur a 4% (RM4mil) duty if treated as an asset transfer.

If these loans are later transferred to a group financing entity to set-off against other payables – avoiding unnecessary cash flows – it might bring on another RM4mil, without realising any profit.

These duties can significantly escalate the expenses in large financial deals, discouraging efficient debt management and restructuring.

Attempts to mitigate this through novation or assignment have led to legal uncertainty. Novation replacing an original contract with a new one, transferring rights and obligations, while assignment passes benefits without liabilities.

In Gentari Sdn Bhd v Pemungut Duti Setem (2024), the High Court ruled that a loan novation agreement is subject only to nominal stamp duty of RM10, classifying it under Item 4 of the First Schedule as a general agreement.

However, another High Court decision found a novation agreement chargeable with ad valorem duty under Item 32(a), treating it as a transfer on sale. This contradiction highlights the regime's ambiguity: one court imposes minimal costs; another escalates them to potentially millions.

The Court of Appeal, in September 2025, affirmed the Gentari approach, confirming that loan novations are dutiable at RM10. While this provides some clarity, the prior inconsistencies have already sown doubt as the dividing lines between novations, assignments and transfers are not always clear and the authorities have already warned they intend to take a 'substance over form' approach when conducting audits.

Furthermore, it may not always be legally or commercially feasible to novate rather than transfer the debts. Businesses operating in a fast-paced environment cannot afford prolonged litigation or unpredictable tax bills, which delay the plannings and increase costs.

Exacerbating distress: Impact on restructuring and exemptions

The burden is particularly acute for financially distressed groups. Debt restructurings – essential to preserve jobs and avoid insolvency – often require transfers or set-offs of obligations.

> SEE PAGE 6

Adapt or risk obsolescence in Asean's dynamic arena

> FROM PAGE 4

Under current rules, these can trigger multiple layers of duty at up to 4%, precisely when liquidity is weakest.

While exemptions exist for certain restructurings, they are narrowly defined.

For instance, intra-group transfers may qualify if wholly owned, but foreign involvement often disqualifies them.

Even when applicable, duties must be paid upfront, with refunds sought later, tying up capital for uncertain periods, sometimes years. In distress scenarios, this cash outflow can tip companies over the edge.

The antiquated nature of the Stamp Act, dating back to 1949, has not managed to keep pace with modern deal complexities.

Multi-jurisdictional M&A, leveraged buyouts, or private equity restructurings involve layered debt movements, yet the law treats each as a taxable event without regard for economic substance.

Regional comparisons: Malaysia's competitive disadvantage

Malaysia lags behind its Asean peers, where stamp duties on similar transactions are minimal or absent, fostering vibrant M&A ecosystems.

In Singapore, share transfers incur only 0.2% duty, and there is no stamp duty on the transfer or assignment of debt securities.

Asset deals, while subject to goods and services tax in some cases, avoid heavy conveyance duties for non-property assets. Indonesia imposes a flat stamp duty of 10,000 rupiah (about RM3) on most documents, with no ad valorem rates for debt transfers.

Transfers of non-land assets may attract capital gains tax, but at 25% on gains – not transactions – encouraging efficiency.

Vietnam and Thailand both do not impose punitive stamp duties on debt or business asset transfers beyond nominal fees. In Thailand, share transfer instruments require stamping within 15-30 days, but rates are low (0.1% for some), and debt assignments are often exempt.

Meanwhile, Vietnam focuses on value-added tax for assets, not stamp duties, making restructurings smoother.

These lighter regimes attract foreign direct investment (FDI), with Singapore and Thailand consistently outpacing Malaysia in M&A volumes. In comparison, Malaysia's approach leads investors to consider additional costs when assessing investment opportunities.

Recommendations for reform

To align with regional standards and boost corporate vitality, the following areas could be considered to enhance Malaysia's stamp duty regime:

> Exempt or drastically reduce duties on transfers of corporate debts and business assets (excluding real estate), cap them at 0.3% akin to shares. This would level the playing field, encouraging efficiency-driven structures.

> Expand exemptions to all intra-group transactions under common ownership, regardless of foreign elements, recognising the global nature of business.

> Allow deferral of payments until exemption applications are assessed, with no duty if approved. This eases cash flow burdens, particularly in restructurings.

These steps could be implemented through amendments to the Stamp Act or remission orders, signalling Malaysia's commitment to business friendliness.

Conclusion: Urgency for transformation

Stamp duties remain an important revenue source.

However, their current design risks constraining Malaysia's corporate sector at a time when efficiency and competitiveness are critical.

High effective rates on asset and debt transfers, coupled with legal ambiguities and limited exemptions, can deter the very restructuring and investment activities needed to support growth.

The choice is clear: adapt or risk obsolescence in Asean's dynamic arena.

Budget 2026 offers an opportunity for the government to review and modernise the framework.

By aligning the regime with regional practices, broadening exemptions, and clarifying legal treatment, Malaysia can strike a balance between safeguarding government revenue and enabling a business environment that supports scale, agility and resilience.

This will ultimately strengthen corporate performance and expand the country's fiscal capacity.

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