Tax Whiz

Changes in stamp duty administration and stamp duty audit framework

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KPMG in Malaysia

Stamp Duty

Stamp duty is chargeable on instruments and not transactions. The rate of duty varies according to the type of instruments and exemption of stamp duty is given to certain instruments. In Malaysia, instruments chargeable to stamp duty are specified in the First Schedule of the Stamp Act 1949. These include, amongst others, instruments for transfer of property or securities, deed of assignment and agreements relating to lease transaction, business transfer and provision of services. Instruments chargeable to stamp duty must be brought for stamping within 30 days of execution, or if the instruments are executed outside Malaysia, within 30 days after they have first been received in Malaysia. With effect from 1 January 2024, instruments executed outside Malaysia received by way of electronic transmission shall be deemed accepted in Malaysia from the first receipt of email as evidence and shall be stamped with 30 days from the first receipt of email.

Under the current official assessment system, duty payers are required to submit the instruments, together with supporting documents, to the Inland Revenue Board ("IRB") via STAMPS portal. The IRB would then assess the duty payable and issue a notice of assessment accordingly. The duty is then payable within the time frame stipulated in the notice of assessment, which is generally a 30-days period.

Transitioning to self-assessment system

As enacted in the Measures for the Collection, Administration and Enforcement of Tax Act 2024 ("the Act"), self-assessment system for stamp duty will kick in from 1 January 2026. While the Act has set out the legal framework for the implementation of the self-assessment system for stamp duty, it will be implemented in phases as follows for a smoother transition based on the announcement in the 2025 Budget:

Phase	Effective Date	Types of Instruments
Phase 1	From 1 January 2026	Instruments or agreements related to rental or lease, general stamping and securities
Phase 2	From 1 January 2027	Instruments of transfer of property ownership
Phase 3	From 1 January 2028	Instruments or agreements other than stated in Phase 1 and Phase 2

Under the self-assessment system, the responsibility to ensure that chargeable instruments are stamped with proper duty now lies with the duty payers. The return, together with the instrument, submitted electronically by the duty payers shall be deemed to be an assessment made by the Collector of Stamp Duties ("the Collector") and duty on the instrument shall be due and payable on the date of deemed assessment. Nonetheless, the Collector is still empowered to assess the duty on the instrument and may determine an instrument to be chargeable according to his judgement.

Where it appears to the Collector that no or no sufficient assessment has been made on an instrument chargeable to duty, the Collector may raise an assessment or additional assessment in respect of that instrument, within 5 years after the date the duty would have been paid or is paid. However, the statutory limitation period does not apply in the event of fraud, wilful default or negligence.

Several penalty provisions have also been introduced under the self-assessment system. These include:

- **Failure to submit return without reasonable excuse**

  A person may, on conviction, be liable to a fine not exceeding RM10,000. Where no prosecution has been initiated, a penalty ranging from RM200 to RM2,000 can be imposed.

- **Submission of an incorrect return which affects its chargeability to duty**

  A person may, on conviction, be liable to a fine ranging from RM1,000 to RM10,000 plus a special penalty equivalent to the amount of underpaid duty. Where no prosecution has been initiated, a penalty equivalent to the amount of underpaid duty can be imposed.

The penalty for any person who practices or is concerned in any fraudulent act, contrivance or device not specially provided for by law, with intent to defraud the Government of any duty has been amended from a fine of RM5,000 to a fine not less that RM1,000 and not more than RM20,000.

Stamp Duty Audit Framework

Following the introduction of self-assessment system, it is expected that more stamp duty audit will be conducted by the IRB, in a similar manner as what the taxpayers may have experienced under the income tax regime. The underlying objective of conducting a stamp duty audit is to encourage voluntary compliance and ensure proper duty has been paid in accordance with the provisions of the Stamp Act 1949.

With that, the IRB has issued the Stamp Duty Audit Framework, which is effective from 1 January 2025, to outline the rights and responsibilities of audit officers and duty payers. Some notable points therein are:

- **Types of stamp duty audit**

  Similar to income tax audit, stamp duty audit can be carried out in the form of a general review or a comprehensive review.

  For a general review (or commonly known as desk audit), an audit action notification letter will be issued to the duty payers. The audit is conducted by reviewing the instruments and documents that have been attached during the stamping application. Duty payers may be called for interview if further information is needed.

In certain circumstances, a general review may be evolved into a comprehensive review (or commonly known as field audit). A comprehensive review covers all documents executed by the duty payers. The review may be carried out in the duty payer's premise, IRB's office or any other places as agreed between the duty payer and the audit officers. For a comprehensive review, an audit visit letter will be issued to the duty payers. The duty payers may apply for a postponement of an audit visit, under reasonable or unavoidable circumstances.

Notwithstanding the above, where additional supporting documents and information is needed, duty payers will be given a 14 working days period from the date of the letter to furnish them. The IRB will undertake any methods they think fit to progress the audit process in any event the duty payers fail to respond within the stipulated timeframe.

- **Period covered under a stamp duty audit**

  Generally, a stamp duty audit may cover up to 3 calendar years. However, the 3-years coverage period does not apply to cases involving fraud, duty evasion or negligence. Nevertheless, duty payers are required to maintain records (i.e. the instruments and relevant documents) for 7 years from the date the duty is paid.

- **Selection of stamp duty audit cases**

  The selection is done through computerised system based on risk assessment criteria and / or based on various sources of information received.

- **Payment procedure**

  Where there are additional duties and penalties imposed arising from a stamp duty audit, the duty payers shall make good of the full amount within the stipulated period. Payment by instalments is not accepted.

- **Appeal process**

  Duty payers who are dissatisfied with the notice of assessment or additional assessment raised by the Collector may make a notice of objection with grounds to the Collector, within 30 days after the date of the assessment or additional assessment or such further period as the Collector may allow in any particular case. Do note that making an objection will not relieve the duty payers of liability to pay the duty as required.

  Upon receiving the notice of objection, the Collector shall review the assessment or additional assessment and notify the duty payers in writing of his decision. In the event duty payers are still dissatisfied with the Collector's decision, the duty payers may appeal further to the High Court. The appeal has to be filed within 21 days after being notified by the Collector in writing of his decision and upon payment of duty in conformity therewith.

What to take note?

With the implementation of self-assessment stamp duty system and issuance of the Stamp Duty Audit Framework, this signals the focus of the IRB on stamp duty compliance. The IRB is expected to carry out stamp duty audit to improve compliance with stamp duty regulations. Duty payers should ensure their stamp duty obligations are met to avoid potential penalties. This will demand heightened diligence of the duty payers, as the challenges to duty payers now are not only to correctly identify instruments which are chargeable to duty, but also to determine the right amount of duty to be paid. As stamp duty rate differs depending on the nature of instrument, determining the correct stamp duty rate to apply can become highly technical, as it involves navigating a range of factors and rules that can all influence the applicable rate.

Duty payers are therefore advised to review the instruments executed in recent years and ensure that proper stamping has been made including those with related parties. Duty payers must always exercise due care when calculating and paying stamp duty and this will require keeping themselves updated on changes in stamp duty regulations and its implementation. For complex transactions, duty payers may consider seeking advice from professional advisors when they have to self-assess the stamp duty to be paid. Maintaining proper record is also important to prove the compliance with the stamp duty obligations and facilitate a smooth audit.

Effective from 1 January 2025, the late stamping penalty rates have been revised as follows:

Penalty	Period of late stamping
RM50.00 or 10% of the deficient duty, whichever is the greater	If stamped within 3 months after the timing for stamping
RM100.00 or 20% of the deficient duty, whichever is the greater	If stamped after 3 months after the timing for stamping

Nevertheless, voluntary disclosure can be made by duty payers for instruments which have not been brought for stamping within 3 months from the due date, any time before the commencement of a stamp duty audit. A concessionary penalty rate of RM50.00 or 10% of the deficient duty, whichever is the greater, will be imposed for such voluntary disclosure cases.

Contact Us

To explore further on stamp duty related matters, you may contact:

Lim Wai Yin

Partner
International & Domestic Tax Advisory

T: + 6 03 7721 7202
E: wylim@kpmg.com.my

Ong Guan Heng

Partner
Corporate Tax

T: + 6 03 7721 7027
E: guanhengong@kpmg.com.my

KPMG Offices

Petaling Jaya
Level 10, KPMG Tower,
8, First Avenue, Bandar Utama,
47800 Petaling Jaya, Selangor
Tel: +603 7721 3388
Fax: +603 7721 3399
Email: info@kpmg.com.my

Penang
Level 18, Hunza Tower,
163E, Jalan Kelawei,
10250 Penang
Tel: +603 7721 3388
Fax: +604 238 2299
Email: info@kpmg.com.my

Kuching
Level 2, Lee Onn Building,
Jalan Lapangan Terbang,
93250 Kuching, Sarawak
Tel: +603 7721 3388
Fax: +6082 530 669
Email: info@kpmg.com.my

Miri
1st Floor, Lot 2045,
Jalan MS 1/2,
Marina Square, Marina Parkcity,
98000 Miri, Sarawak
Tel: +603 7721 3388
Fax: +6085 321 962
Email: info@kpmg.com.my

Kota Kinabalu
Lot 3A.01 Level 3A,
Plaza Shell,
29, Jalan Tunku Abdul Rahman,
88000 Kota Kinabalu, Sabah
Tel: +603 7721 3388
Fax: +6088 363 022
Email: info@kpmg.com.my

Johor
Level 3, CIMB Leadership Academy,
No. 3, Jalan Medini Utara 1,
Medini Iskandar,
79200 Iskandar Puteri, Johor
Tel: +603 7721 3388
Fax: +607 266 2214
Email: info@kpmg.com.my

Ipoh
Level 17, Ipoh Tower,
Jalan Dato' Seri Ahmad Said,
30450 Ipoh, Perak
Tel: +603 7721 3388
Email: info@kpmg.com.my

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