



**BDO IN MALAYSIA**

# **STAMP DUTY**

**MAKE THE WISEST CHOICE FOR YOURSELF OR YOUR ORGANISATION WITH BDO'S STAMP DUTY EXPERTS**



# OVERVIEW

Many people may be familiar with the stamp duty, often associated with the stamping of legal and financial documents such as sale and purchase agreements, tenancy agreements and loan documents. However, not many are aware of the importance and intricacies of planning for this specific tax that is imposed by the authorities.

Even fewer know how to categorise and detail their documents correctly to optimise the amount needed to be paid for stamp duty. This is where BDO stamp duty experts come in.

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## WHAT IS STAMP DUTY?

Stamp duty is a tax imposed on instruments and not transactions.



## WHAT IS AN INSTRUMENT?

It is any written document and in general, stamp duty is levied on legal, commercial and financial instruments.



## WHO PAYS STAMP DUTY?

It is paid by persons mentioned in the Third Schedule of the Stamp Act 1949. For transfers of assets e.g. property, stamp duty is payable by the transferee.



## WHY PAY STAMP DUTY?

Instruments that are not duly stamped are not enforceable in court. In addition, such instruments are not recognised by government authorities or regulatory bodies.

- ▶ For example, transfer of legal ownership of land cannot be registered by the land office unless the memorandum of transfer is duly stamped.

# UNDERSTANDING STAMP DUTY

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## Instruments subject to stamp duty

- ▶ Instruments for transfer of properties:
  - Landed properties (e.g. memorandum of transfer, deed of assignment)
  - Business (e.g. transfer of business agreement)
  - Rights (e.g. transfer of debt/receivables agreement, goodwill, share transfer form)
- ▶ Security instruments (e.g. loan agreement, service agreement, charge)
- ▶ Lease or agreement for lease of immovable property (e.g. rental agreement)
- ▶ Other instruments listed in the First Schedule of the Stamp Act 1949

## Types of stamp duty

### 1. *Ad Valorem Duties*

- ▶ These are duties based on the value of the consideration stated in the instrument.
- ▶ Example: Duty of RM3 for every RM1,000 or fractional part of RM1,000 on the sale of any stock / shares / marketable securities.

### 2. *Fixed Duties*

- ▶ These are duties that ignores the consideration stated in the instrument.
- ▶ Example: Duty of 15 sen for each cheque.

## Commonly Asked Questions

The following are some common questions asked by persons or organisations with regards to stamp duty:

- ▶ Which instrument is chargeable with stamp duty?
- ▶ What is the applicable rate of stamp duty for the instrument?
- ▶ What is the appropriate valuation method of instruments chargeable with ad valorem stamp duty?
- ▶ Are there any stamp duty exemptions or remissions applicable to the instrument?

# CASE STUDIES

*How BDO's expertise in stamp duty has helped clients\**

## CASE STUDY #1 -Valuation of Property

### SCENARIO

- The client, a property developer, acquired a large land bank over 20 years ago.
- The titles of some undeveloped land from this land bank were still registered under the name of the previous landowner.
- Stamp duty cost to effect the registration was substantial due to the current market valuation.

### CLIENT'S REQUEST

- Transfer the title of these lands to the client's own name.
- Reduce the stamp duty cost in compliance with the law.

### WHAT NEEDED TO BE DONE

- A memorandum of transfer (MOT) was to be executed, which is subject to ad valorem stamp duty under Item 32(a) of the First Schedule to the Stamp Act 1949.

### WHAT BDO DID FOR THE CLIENT

- Advised and assisted the client with preparing additional documents to link the sale and purchase agreement with the current titles in order to support a valuation lower than the current market valuation.
- Helped the client provide a technical explanation to the Stamp Office to substantiate a lower valuation based on the documents and circumstances.

### OUTCOME

- ✓ Stamp Office accepted the technical explanation and supporting documentation for the lower valuation of the land.
- ✓ Quantum of stamp duty payable by the client was reduced.

*\* Note: actual names of clients have been removed for the purpose of maintaining client confidentiality*

## CASE STUDY #2 - Review of Agreement

### CLIENT'S REQUEST

- Transfer a significant amount of receivables to another company pursuant to a merger and acquisition exercise.

### WHAT THE CLIENT HAD DONE

- Drafted an agreement for the transfer of the receivables.
- The agreement was at risk of being subjected to ad valorem duty of up to 4%.

### WHAT BDO DID FOR THE CLIENT

- ✓ Reviewed and assisted the client's legal advisors to redraft the agreement to mitigate the large stamp duty exposure.

## CASE STUDY #3 - Stamp Duty Exemption

- A Malaysian listed group (client) underwent a restructuring exercise to carve out its property development business to be listed separately.
- However, the land titles were not legally transferred from the landowner companies to the development companies.
- The Securities Commission made the completion of the transfer of the land titles a condition for approval of the restructuring scheme.
- The client was informed by other advisors that, based on the facts of their case and interpretation of the stamp duty legislation, the transfers were subject to stamp duty and were not eligible for any exemption.

- Based on a detailed documentation review and alternative interpretation of the Stamp Act 1949, BDO was able to establish that the client could meet all the conditions for the stamp duty exemption.
- BDO assisted the client with compiling the necessary information and documentation as evidence to apply to the Stamp Office for the stamp duty exemption.

- ✓ Stamp Office approved the stamp duty exemption application.

### SCENARIO

### WHAT BDO DID FOR THE CLIENT

### OUTCOME

# HOW BDO CAN HELP

## BDO Expertise

“ We have an **experienced team of tax professionals** with **comprehensive knowledge** of the history and laws on stamp duty as well as the conditions and procedures for obtaining stamp duty exemptions. Our expertise can help you **translate potentially huge expenses from stamp duty into significant cost savings.**”

## BDO services in the area of stamp duty



**Assessing and quantifying** potential stamp duty exposure of instruments.



Assistance in determining the **appropriate valuation method** of instruments chargeable with variable stamp duty.



**Communicating and dealing** with the stamp office on behalf of our clients.



**Identification of instruments** that are eligible for stamp duty exemption or remission.



Assisting our clients in the **preparation of documentation** for stamp duty exemption applications requiring approval from the stamp office.



Assisting our clients in any **technical disputes** with the stamp office.

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