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Stricter requirements for property buyers

BY **KHAIRANI AFIFI NOORDIN**

The proposed amendments to the Stamp Act 1949 will see more stringent requirements imposed on property buyers. This includes the introduction of a self-assessment system, upfront payment of ad valorem duty on contracts for the sale of property and an exponential increase in the penalties for late stamping.

One of the more significant changes proposed in the Stamp (Amendment) Bill 2016 — which was tabled for first reading in parliament on Nov 23 last year — is that the ad valorem duty must be paid before the sales and purchase agreement (SPA) is signed. Under the current Act, the duty is paid in the later stages of the property-buying process.

Ad valorem duty is one of two stamp duties payable in the country, apart from fixed duty (RM10). Unlike the latter, the ad valorem duty depends on the type and value of the instrument, be it property, stock or marketable securities.

Shawn Ho, partner at legal firm Donovan & Ho, says property buyers will have to be more aware of their stamp duty obligations once the bill is passed. "The normal sequence of a transaction is that the parties come together, agree on the terms of the SPA and sign it. Then, the purchaser applies for a loan. After the loan has been secured, the bank makes the payments. Only after two to three months is the instrument of transfer stamped with ad valorem duty.

"But under the proposed amendments, the SPA will be the instrument that has to be stamped with ad valorem duty. That means purchasers will have to prepare the money needed for this even before they sign the agreement."

The proposed amendments have caused a stir among local property developers, who in the past had offered to absorb the stamp duty for the SPA, says Sunita S Sothi, partner at legal firm Zaid Ibrahim & Co. "Normally, most developers offer to pay your legal fees and stamp duty for the SPA. Some buyers do not realise that payment of stamp duty on the SPA refers to the RM10 duty payable on each copy of the SPA. Under the proposed amendments, the ad valorem duty will have to be paid upon execution of the SPA, which will now carry the ad valorem duty based on the value of the property and not a nominal sum. This will be the first expense a buyer needs to pay upon execution of the SPA and banks will not release a loan until the documents evidencing the purchase have been properly stamped.

"This may hit property flippers the most because they have to take this amount into account when acquiring properties. Some flippers tend to buy condominium units and request that the developer transfer the property directly to the third-party buyer who bought the unit from them. The flippers are able to do this and avoid paying the stamp duty because it used to take a considerable time for the strata titles of condominium units or apartments to be issued. With the amendments, property flippers will have to pay in advance. So, this will greatly impact them. Developers that have agreed to pay the stamp duty on the SPA will have to rethink and reword their brochures and promotional packages or budget for this payment of ad valorem duty."

Those who have signed the SPA and paid the ad valorem duty but are unable to secure a loan can choose to terminate the agreement (in accordance with the terms of the agreement) and get a refund from the stamp office. But buyers and developers need to understand that refunds may take a while. Sunita advises buyers to include the ad valorem duty cost in their purchasing budget when the amendments kick in to avoid any cash flow disruptions.

Under the current Act, property purchasers incur ad valorem duty on every RM100 of the property price. Buyers are charged RM1 for every RM100 on the first RM100,000, RM2 for every RM100 between RM100,001 and RM500,000, and RM3 for every RM100 above RM500,000. Thus, for a property worth RM500,000, the buyer incurs an ad valorem duty of RM9,000.

However, first-time homebuyers are exempt from stamp duty if the loan is less than RM300,000. They get a discount of RM1,500 if the loan is between RM300,000 and RM500,000.

HEFTIER PENALTIES

Under the proposed amendments, there will be heftier penalties for those who do not have their SPA stamped on time. Errant property buyers can be penalised up to 100% of the original amount if they are 90 days late, compared with just 5% currently.

From the 91st to the 160th day, they can be penalised up to 200% of the original amount. And from the 181st day onwards, they can be penalised up to 400% of the original amount.

Another significant amendment is the provision where the stamp office is able to recover any deficient or unpaid duties from the deceased, says Ho. "Previously, these provisions were never specified in the Act. But under the amendments, the collector is allowed to go after the executor of the estate for any outstanding duties. This includes penalties. If the buyer failed to pay a duty or penalty when he was alive, the stamp office will be able to claim the amount from the estate."

Sunita says the proposed amendments to the Stamp Act are the way forward for Malaysians. "These changes may be difficult to swallow in the beginning, but it does tidy up the current Act and close loopholes that people may have taken advantage of. I believe that going forward, things

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like online self-assessments will be the way forward for many things, not just the Stamp Act. So, it is good that the options are given and the process set out is clearly written."

Ho says a change of mindset is needed and both the public and practitioners should be ready for the amendments to the current Act. "People tend to be lax about stamp duties. But once the bill is passed, they can no longer afford to do so. If they do not adhere to the new provisions, they will suffer the penalties, which will be a lot higher than what they are used to."

SELF-ASSESSMENT AND LATE PAYMENTS

A self-assessment system similar to the current income tax assessment system will be introduced under the proposed bill. The online system, which will replace the official assessment system, will allow people to assess and calculate the value of the stamp duty themselves.

Under the present Act, the calculations are made by the collector (the stamp office), who reviews the instrument and adjudicates the value of the stamp duty. The self-assessment is intended to reduce the adjudication process from 30 days to 14 days.

With the self-assessment system, people will not only be able to calculate the value of the stamp duty themselves but also keep track of the adjudication process. However, those who use this system will have to be very careful in determining the value of the stamp duty as there are consequences to providing an inaccurate value.

"If the collector feels that you are not being honest, the collector will have the right to search or have access to buildings, premises, instruments and documents relevant to the stamp duty. Those who refuse to comply with these requests may be fined up to RM10,000," says Sunita.

"So, the liability and onus is on you to make a proper declaration of the value of your property and information related to it. Otherwise, be prepared to face penalties."

Meanwhile, those who have overvalued their assessments will be able to apply for relief from the stamp office, provided it is done within 12 months.

If they are confident that they have determined the correct value, they will benefit from the shorter adjudication period, says Ho. "The Act deems the date you submit the self-assessment as the date the collector issues the notice of assessment. This means you are able to speed up the stamping time."

Those who use the self-assessment system or have the stamp office make the assessment will be required to pay the stamp duty within 14 days of submission or assessment respectively compared with the current 30 days. This may spell trouble for those who tend to procrastinate on the payment of stamp duties, says Ho.

"Exceeding this time period will mean that they are liable to a late stamping penalty, which will be greatly increased under the proposed amendments. This may be the biggest blow to the public. If they forget or are not able to pay the stamp duty on time, penalties will likely be imposed almost immediately. I doubt that there will be much leeway for excuses or justifications," he says.

Despite the introduction of the self-assessment system, the public will still be able to use the current adjudication process. However, the time frame will be longer as it requires them to engage with the stamp office to determine the value of the stamp duty.

Adjudication for property transactions, for example, may take a few weeks as the valuation department of the stamp office will have to ensure that the transaction value corresponds to the current market value before issuing a notice stating the amount payable. Whereas other transactions, such as simple service agreements, may only take a day to adjudicate.

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> Ho

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Stamp Act penalties

OFFENCES	PENALTIES UNDER THE CURRENT ACT	PROPOSED PENALTIES
Obstruction/refusal to permit entry; refusal to produce instrument, book, account, record or other documents; and failure to provide reasonable facilities and assistance to the collector (s.3A)	RM250	RM10,000
For registering any instrument of transfer that is not duly stamped in accordance with s.4A(2) of the Act (s.4A)	RM250	RM1,000
Failure to comply with conditions imposed on the licence issued under subsection (2) for franking of certain instruments (s.8)	Not less than RM4,000 and not more than RM10,000	Not exceeding RM10,000
For cheques drawn out of Malaysia that have not been duly stamped (s.43(5))	If the instrument is stamped within three months after the time for stamping: RM25 or 5% of the amount of the deficient duty, whichever sum is greater.	If the instrument is stamped within 90 days after the time of stamping: RM25 or the amount of deficient duty, whichever sum is greater.
	If the instrument is stamped later than three months but not later than six months after the time for stamping: RM50 or 10% of the amount of the deficient duty, whichever sum is greater. In any other case: RM100 or 20% of the amount of the deficient duty, whichever sum be the greater.	If the instrument is stamped later than 90 days but not later than 180 days after the time for stamping: RM50 or two times the amount of the deficient duty, whichever sum is greater. In any other case: RM100 or four times of the amount of the deficient duty, whichever sum is greater.
For late stamping (s.47A)	If the instrument is stamped within three months after the time for stamping: RM25 or 5% of the amount of the deficient duty, whichever sum is greater. If the instrument is stamped later than three months but not later than six months after the time of stamping: RM50 or 10% of the amount of the deficient duty, whichever sum is greater. In any other case: RM100 or 20% of the amount of the deficient duty, whichever sum be the greater.	If the instrument is stamped within 90 days after the time for stamping: RM25 or the amount of the deficient duty, whichever sum is greater. If the instrument is stamped later than 90 days but not later than 180 days after the time for stamping: RM50 or two times the amount of the deficient duty, whichever sum is greater. In any other case: RM100 or four times of the amount of the deficient duty, whichever sum is greater. If the instrument is not duly stamped in accordance with the First Schedule: Treble the amount of deficient duty.
Failure by executor to make provisions for the payment of any stamp duty, penalty or sum due from the deceased to the collector (s.56A)	-	Equal to the amount of the duty, penalty or sum payable.
Failure to cancel adhesive stamp (s.60)	RM500	RM6,000
Failure to set forth all the facts and circumstances as required under Section 5 of the Act (s.61)	RM2,500	RM10,000
For executing and signing documents not duly stamped (s.63)	RM1,500	RM6,000
Failure to execute and transmit a contract note (s.64)	RM1,500	RM6,000
For offences relating to post-dating promissory notes (s.65)	RM2,500	RM10,000
For offences of issuing a share warrant or stock certificate that is not duly stamped (s.69)	RM1,500	RM6,000
For unauthorised dealing in stamps (s.71)	RM1,000	RM10,000
For hawking stamps (s.72)	RM1,000	RM10,000
For offences related to stamp certificates (s.72A)	RM5,000	RM10,000
Failure to keep records and other offences (s.72B)	-	RM10,000
For offences related to fraud, contrivance or devices in relation to duty (s.74)	RM5,000	RM10,000