

## DIALOGUE SESSION BETWEEN BAR COUNCIL AND LHDNM

**Date** : 29<sup>th</sup> September 2011  
**Time** : 2.30pm  
**Venue** : Bilik Mesyuarat Perdana, Tingkat 15, Blok 9  
 Kompleks Bangunan Kerajaan  
 Jalan Duta, WP Kuala Lumpur

No.	Issues raised by Conveyancing Practice Committee of Bar Council	Feedback from Stamp Duty Division of LHDN
1.	What is the timeframe taken for the Deputy Collector of Stamp Duty to endorse the duly stamped Transfer and Charge documents?	<ul style="list-style-type: none"> <li>• Manual- 3 days from date of application received.</li> <li>• STAMPS- on the sama date the assessment is raise.</li> <li>• Target achieved, except for a few big branches because of heavy workload</li> </ul>
2.	Often we see our instrument of transfer have been adjudicated on the status bar, but the Notice to pay stamp duty takes too long to be posted on line, sometimes even more than 1 week.	<p>i. Transfer of property</p> <ul style="list-style-type: none"> <li>~ Manual – 5 days from date of valuation report by JPPH</li> <li>~ Online – 1 day from date of valuation report by JPPH (standard property and completed documents submitted)</li> </ul> <p>ii. Transfer of shares</p> <ul style="list-style-type: none"> <li>~ Manual – 5 days from date complete application was submitted</li> <li>~ Online – 3 days from date complete application was submitted</li> </ul> <p>iii. Others</p> <ul style="list-style-type: none"> <li>~ Manual – 5 days from date complete application was submitted</li> <li>~ Online – 3 days from date complete application was submitted</li> </ul> <p><i>(Issue of heavy workload )</i></p>
3.	If we go for e-stamps to adjudicate the Charge documents, we have to	<ul style="list-style-type: none"> <li>• Adjudicate the principal instrument first to get the adjudication number</li> </ul>

	<p>adjudicate the Facility Agreement (FA) first. Once we receive the adjudication notice for FA, then only we can adjudicate the Charge. And it takes approximately 1 week to receive the adjudication notice for both these transactions. This means if we were to adjudicate on line for the Charge documents, it will take us 2 weeks to obtain the Sijil Setem.</p>	<ul style="list-style-type: none"> <li>• Subsidiary instrument can be submitted immediately or on the same day</li> </ul>
4.	<p>What is the rationale for only compiling not more than 10 pages of the security documents for stamping?</p>	<p>Sistem Digital Franking (SDF) is to cater for instrument with fixed duty. Stamping of security instruments are encourage to be submitted online, where the size is limited to 2 MB per attachment.</p>
5.	<p>Whether manual stamping is still permitted or not? Will the manual stamping be eventually phased out and if so, when?</p>	<ul style="list-style-type: none"> <li>• Still permitted but lawyers are encouraged to use STAMPS</li> <li>• ?</li> </ul>
6.	<p>Why is it that a half share transfer has been valued at market value on the full share instead of half share? (Nazriah)</p>	<p>The case is related to the transfer of ½ share of landed property. Assessment should be on the consideration or market value of the portion of the property transferred.</p>
7.	<p>Online adjudication of security documents - could we minimise the issuance of client's account cheques i.e. if you have Facility Agreement, PA &amp; Deed of Assignment, we currently need to issue 3 cheques. We propose that only 1 cheque be submitted for all.</p>	<p>For security instruments, if Facility Agreement, Power of Attorney and Deed of Assignment are of the same transaction, payment can be made in 1 cheque.</p>
8.	<p>LHDN Kota Bharu for legal firms to pay stamp duty in cash regardless of amount and Banker's cheque is not acceptable.</p>	<p>Banker's Cheque – treatment the same as cheque. For SDF it is still not acceptable.</p> <p>Feedback received from PSC Kota Bharu is contrary to the issue being raised. The legal firm concerned insisted that PSC Kota Bahru accept their cheque for SDF cases. When told that payment can be made by bank draft, they decline stating it is expensive, troublesome and time</p>

		consuming.
10.	Stamp Office refuse to accept our clients' account cheque for manual stamping caused inconvenience for small firms and incur additional bank charges of RM5.15 per bank draft.	<ul style="list-style-type: none"> <li>• Payment mode for SFD transactions by cash and bank draft only</li> </ul>
11.	Stamp duty notice and the stamp certificate - to request stamp office to incorporate passport number at ID area and apply it where applicable. Many a times where it involves foreigner purchasing, we have to get stamp office to manually amend it and endorse it failing which the land office refuses to accept it.	Issue noted .Has been developed and tested. Will be in production in 2 weeks.
12.	Difficulty on uploading documents to stamp office site for submission of documents for adjudication. For each submission, many attempts need to be made as the failure notice kept surfacing. Each submission require at least 3 attempts.	Problem may be due to heavy usage e.g cuti raya or line connection
13.	<p>In view of the substantial amendments made to the Labuan legislation, such as the Labuan Companies Act and the Labuan Business Activity Tax Act ("LBATA") in 2010, kindly request the Stamp Duty Division to issue a new exemption order to replace the Stamp Duty (Exemption) Order 2000 (P.U.(A) 9/2000) ("Exemption Order").</p> <p>Briefly, the Exemption Order exempts certain instruments executed by or relating to an "offshore company" from stamp duty. The 2010 amendments have replaced the term "offshore company" with "Labuan company". Further, a new definition "Labuan entity" has been introduced into the LBATA which amongst others, refers to entities such as Labuan companies, Labuan</p>	<p>Noted.</p> <p>As of now if the exemption or remission order is not listed , agent can click 'Lain lain' and fill up with the appropriate order.</p>

	<p>foundations, Labuan limited liability partnerships and Labuan trust.</p> <p><b>Apart from replacing the references to “offshore company” in the Exemption Order with a reference to “Labuan company”, the Stamp Duty Division should also consider whether and the extent to which they will exempt documents relating to or executed by a “Labuan entity” from stamp duty.</b></p>	
<p>14.</p>	<p><b>Matters relating to fake and fraud stamp duty endorsements.</b></p> <p>→ to get security criteria to be Council.</p>	<p>2 issues:</p> <p>i. Detection</p> <ul style="list-style-type: none"> <li>✓ Impressed stamp - anti-fake stamping, features as specified by vendor</li> <li>✓ Adhesive stamp - sent to Percetakan Keselamatan Nasional or Makmal Forensik for verification</li> </ul> <p>ii. Procedure</p> <p>Instrument deemed not stamped</p>
<p>15.</p>	<p>Section 20A provides:</p> <p><b>20A.</b> Where upon the exchange of any real property for any other real property, or upon the partition or division of any real property, any consideration is paid or given, or agreed to be paid or given, for equality:</p> <p>(a) the principal or only instrument whereby the exchange or partition or division is affected is to be charged with the same <i>ad valorem</i> duty as a conveyance on sale for the consideration, and with that duty only; and</p> <p>(b) where in any such case there are several instruments for completing the title of either party, the principal instrument is to be ascertained and the other instruments are to be charged,</p>	<p>The procedure of stamping is similar to normal conveyance taking into consideration the following:</p> <p>i. The instrument of transfer (Form 14A) for all properties involved in the exchange must be submitted</p> <p>ii. There is an exchange of property between the two owners (transferee and transferor)</p> <p>iii. The equality money (the difference in value when a more valuable property is exchanged for a less valuable property) is subjected to <i>ad valorem</i> duty whilst other instruments are subjected to a nominal duty of RM10.</p> <p>iv. If no equality money is paid every instrument is subjected to a nominal duty of RM10.</p> <p>v. No valuation required. Therefore</p>

	<p>with duty in the manner hereinbefore provided in the case of several instruments of conveyance.</p> <p><b>Please explain how the Section 20A works and what is the procedure of stamping in exchange of real property?</b></p>	<p>need not be submitted to JPPH.</p> <p>vi. Perakuan pemungut dibawah peruntukan sek 37 perlu diturunkan dalam suratcara terlibat.</p>
16.	<p>Despite a circular from Bar Council (BC Circular 207/2010) whereby it had been agreed by LHDN during a Dialogue held on 2<sup>nd</sup> July 2010 that we can file the CKHT forms in Penang irrespective of the fact that the income tax file no. is from another state, our filing has been rejected by LHDN Penang i.e. our staff come back and inform us that we need to file in the respective states. Also, despite the assurance that lawyers can file at any branch LHDN, it appears to be the practice that CKHT 1A must be filed at the Vendor's place of assessment and CKHT 2A must be filed at the Purchaser's place of assessment.</p>	<ul style="list-style-type: none"> <li>• Guideline on submission of CKHT forms as stated on web-site is as follows: <ul style="list-style-type: none"> <li><b>Pengemukakan Borang Nyata CKHT</b></li> <li>~ Setiap pelupus dan pemeroleh dikehendaki mengisi Borang Nyata masing-masing dan mengemukakan bersama-sama dokumen yang berkaitan ke <b>cawangan LHDNM yang berhampiran.</b></li> <li>~ Walau bagaimanapun, untuk mempercepatkan pemprosesan borang tersebut, pelupus dan pemeroleh disaran untuk mengemukakan ke cawangan LHDNM di mana fail cukai pendapatan pelupus dikendalikan.</li> </ul> </li> <li>• Reasons why most cawangan do not want to accept: <ul style="list-style-type: none"> <li>~ Peguam, menghantar borang pada saat saat akhir dan sudah lewat. Tindakan ini diambil untuk mengejar masa untuk mengelak pengenaan denda lewat menghantar borang CKHT 1A dan 1B</li> <li>~ Peguam tidak mengambil berat untuk mengetahui cawangan pelupus dan pemeroleh harta dan menghantar ke cawangan yang tidak berkenaan</li> <li>~ Penghantar surat(Despatch staff) menghantar ke cawangan terdekat untuk mengelak pergi jauh ke cawangan berkenaan</li> <li>~ Masalah menghantar semula borang kepada cawangan <ul style="list-style-type: none"> <li>✓ makan masa mengesan cawangan, membuat surat dan menghantar dokumen</li> </ul> </li> </ul> </li> </ul>

		<ul style="list-style-type: none"> <li>✓ melambatkan pemerosesan borang ,taksiran dan refund</li> <li>✓ borang dan dokumen boleh cicir atau hilang</li> </ul> <p><b>Note:</b></p> <ul style="list-style-type: none"> <li>• <u>CKHT 1A</u> - Pelupusan Harta Tanah (diisi oleh pelupus)</li> <li>• <u>CKHT 1B</u> - Pelupusan Syer Dalam SHT (diisi oleh pelupus)</li> <li>• <u>CKHT 2A</u> - Pemerolehan Harta Tanah/Syer Dalam SHT (diisi oleh pemeroleh).</li> </ul>
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- The charging section treats the exchange/partition/division as a conveyance on sale and subjected to stamp duty under item 32, Schedule 1
- The consideration for the conveyance is the market value of the immoveable property.

A deed of exchange gives effect to two separate conveyances and is therefore exposed to stamp duty on the full value of each of the two conveyances