

STAMP DUTY AUDIT FRAMEWORK: IMPACT ON EMPLOYMENT CONTRACTS

Introduction

The Inland Revenue Board (“**IRB**”) has adopted a stringent approach to enforcing compliance with the Stamp Act 1949 (“**Stamp Act**”) through the implementation of the Stamp Duty Audit Framework (“**Framework**”), effective from 1 January 2025.[1] The Framework extends its coverage to contracts executed within the past three (3) years. This sudden enforcement has caused considerable concern, particularly among employers, as they are now required to ensure that all relevant documents, including employment contracts (“**EC**”), are duly stamped in accordance with the provisions of the Stamp Act.

While the Stamp Act does not expressly mention ECs, the term “instrument,” as defined under the Stamp Act, to include every written contract, is understood to encompass ECs.[2] This interpretation is further supported by the descriptions in the First Schedule of the Stamp Act, which lists agreement or memorandum of agreement as chargeable instruments.[3]

Example of Documents Requiring and Not Requiring Stamp Duty[4]

(i) Documents Requiring Stamp Duty:

- (a) Offer Letter;
- (b) Letter of Transfer;
- (c) Fixed-Term Contract; and
- (d) Contract for Service.

(ii) Documents Not Requiring Stamp Duty:

- (a) Offer Letter;
- (b) Promotion Letter;
- (c) Secondment Letter;
- (d) Resignation Letter; and
- (e) Internship Letter.

Comparing Stamp Duty on Contract of Service and Contract for Service

The comparison between Contract of Service and Contract for Service is summarised in the table set up below:

	Contract of Service	Contract for Service
Definition	Agreement between employer and employee, which gives rise to employer and employee relationship	Agreement between client and contractor
Type of Contract	EC	Service Contract
Amount of Duty	RM10.00 for each instrument[5]	Ad valorem duty (capped at 0.1% via remission order)[6]

Duty to Stamp EC Lies with the Employer

Some may not be aware that the duty to stamp the EC falls on the employer. This responsibility is outlined in Item 1 of the Second Schedule of the Stamp Act, which states:

“The person by whom the instrument is first executed”

The employer is considered the person who first executes the EC as they prepare and offer the contract, which is then accepted and signed by the employee. Although the duty to stamp the EC lies with the employer, the employer is not obligated to stamp a copy of the EC for the employee. If the employee wishes to retain a stamped copy, they must arrange to stamp it themselves. The employer is only required to keep one (1) duly stamped copy of the EC in their safekeeping.

Validity of Unstamped Employment Contracts

The crucial terms to understand in this context are validity and enforceability in a Court. Generally, an unstamped EC remains a valid and binding contract. However, such contract cannot be admitted as evidence in Court. Reference is made to Section 52(1) of the Stamp Act, which states:

52(1). Instruments not duly stamped inadmissible in evidence

“No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered, or authenticated by any such person or by any public officer, unless such instrument is duly stamped...”

In the recent case of *Public Bank Berhad v. Kok Kon Sang*, the Court affirmed that an unstamped document remains valid unless the lack of stamping affects the document's

validity itself.[7] Nonetheless, it is crucial for both parties to ensure the EC is stamped to safeguard their interests in the event of a legal dispute.

The Purpose of the Framework is to Ensure Compliance

The IRB released the Framework to outline clear audit guidelines and encourage voluntary compliance with the Stamp Act, in preparation for the transition to a self-assessment system set to take effect on 1 January 2026.

Under the Framework, the IRB will conduct more extensive stamp duty audits on companies selected through a computerised system. This selection method makes stamp duty audits less predictable compared to income tax audits, which typically follow identifiable trends or focus on targeted areas of concern.

As far as the timeframe is concerned, the Framework does not specify an exact deadline by which employers must stamp all unstamped EC. Nonetheless, it is crucial for employers to ensure that all existing valid ECs are ready and properly prepared for audit.

Amendments to the Stamp Act through the Finance Act 2024 (“Finance Act”)

On 1 January 2025, the Finance Act came into effect, introducing several key amendments to the Stamp Act. However, this article will highlight only three (3) features relevant to EC. These include: (i) the introduction of the self-assessment system, as previously mentioned; (ii) the implementation of a minimum stamp duty amount; and (iii) the revised penalty rates for non-compliance.

(i) Self-Assessment Regime

Under this new regime, taxpayers are responsible for determining the correct amount of stamp duty payable. This marks a shift from the previous system, where the IRB assessed and determined the duty amount on behalf of the taxpayer.

Taxpayers may face a hefty penalty of up to RM10,000.00 for non-compliance under this new regime.[8] As a result, they are expected to exercise a higher degree of care and diligence when stamping their contracts. This includes identifying which documents are chargeable to duty and accurately determining the correct amount of duty payable.

(ii) Minimum Amount of Duty

The Finance Act introduced a minimum stamp duty of RM10.00 on instruments, excluding cheques and contract notes, as provided under the newly inserted Section 36CB of the Stamp Act, which states:

36CB. Minimum amount of duty

*“Notwithstanding any other provision of this Act, an amount of **ten ringgit** shall be imposed as duty for each instrument where the duty is less than ten ringgit except for*

cheque and contract note."

(iii) The Amended Penalty for Non-Compliance

An amendment was also made to the principal Stamp Act under Section 47A(1), as reflected in the comparison table outlined below:

	Delay After Signing	Penalty
Prior Amendment	Within three (3) months after the time for stamping	RM25.00 or 5% of the deficient duty, whichever is higher
	After three (3) months from the time for stamping but not later than six (6) months	RM50.00 or 10% of the deficient duty, whichever is higher
	More than six (6) months	RM100.00 or 20% of the deficient duty, whichever is higher
Post Amendment	Within three (3) months after the time for stamping	RM50.00 or 10% of the deficient duty, whichever is higher
	After three (3) months from the time for stamping	RM100.00 or 20% of the deficient duty, whichever is higher

Penalty Waiver Granted by the IRB

On 6 June 2025, the IRB announced the stamp duty penalty amnesty via a press statement,[9] which may be summarised as follows:

- (i) EC signed prior to 1 January 2025 will be exempted from stamp duty;
- (ii) EC signed between 1 January 2025 and 31 December 2025 must be stamped however, no penalty will be imposed if they are stamped on or before 31 December 2025; and
- (iii) EC signed on or after 1 January 2026 will be subject to penalties if not stamped within 30 days of execution.

The amnesty was announced to ease the burden on employers following a comprehensive audit of EC, which revealed a high volume of unstamped contracts. According to the Department of Statistics Malaysia, the total number of employed persons in Malaysia as of the fourth quarter of 2024 was approximately 9.05 million.[10] Assuming only a small portion of ECs have been duly stamped by employers, a significant number of employers are likely to be impacted by the implementation of the Framework.

Key Issues Arising from the Framework

(i) Greater Obligation & Accountability for Employers

Employers now have an increased duty of care to ensure that all documents chargeable to stamp duty are properly stamped and that the correct duty amount is calculated. This additional obligation may necessitate seeking professional advice and/or services to ensure full compliance and to avoid potential penalties.

(ii) Challenges with the 30 Days Deadline to Stamp EC

A common practice nowadays is for employees to sign the EC in advance. As such, requiring stamping within 30 days of execution may lead to inefficient use of resources for employers if employees later defer or withdraw from joining. The Malaysian Employers Federation in its online briefing, recommends that employers consider having employees sign the EC on their reporting date, rather than in advance, to better align with this requirement.

(iii) Stamp Duty Exemption No Longer Reflects Current Realities

While the Stamp Act provides an exemption from stamp duty, this exemption is no longer practical in the current context, as it only applies to employees earning RM300.00 or less. Given that the minimum wage for 2025 has been increased to RM1,700.00, this exemption is obsolete and no longer applicable to any company.

The Federation of Malaysian Manufacturing, in its Members' Advisory, proposed that the IRB review the wage threshold for the exemption and recommended that it be increased to RM10,000.00, taking into account current economic conditions.[11]

Conclusion

Effective immediately, employers must ensure that all existing EC signed on 1 January 2025 are duly stamped by 31 December 2025 to ensure compliance and avoid unnecessary penalties. This is especially important in light of the IRB recent press statement announcing the waiver of penalties for certain types of stamp duty.

Although the implementation of the Framework serves as a pivotal mechanism to ensure taxpayers' compliance with the Stamp Act, it has placed a significant burden on employers, who must now exercise heightened diligence to avoid non-compliance.

As such, employers with strong governance and robust internal controls will be better positioned to comply with and adapt effectively to any changes introduced by the Government.

1. Inland Revenue Board (2025, January 1) Framework. Page 2 Rangka Kerja Audit Duti Stem.
2. Section 2 of the Stamp Act 1949 (Act 378).
3. Item 4 of the First Schedule of the Stamp Act 1949 (Act 378).
4. L & Co. (2025, June 5) Employment Contract Stamp Duty, Grace period until December 31, 2025. <https://landco.my/information-sharing/employment-contract-stamp-duty-penalty-waiver/>.
5. Section 36CB of the Stamp Act 1949 (Act 378).
6. Item 22(1)(a) of the First Schedule of the Stamp Act 1949 (Act 378) & Paragraph 2(1) of the Stamp Duty (Remission) Order 2021.
7. [2025] CLJU 783.
8. Page 84 of the Parliament's Handsard (Bill. 64, 4.12.2024).
9. Inland Revenue Board (2025, June 6) Press Statement. Pengecualian Pengenaan Duti Setem Untuk Kontrak Penggajian Yang Dimuktamadkan Sebelum 1 Januari 2025.
10. Department of Statistics Malaysia (2025, February 13) Employment Statistics, Fourth Quarter of 2024.
11. Federation of Malaysian Manufacturing (2025, May 23) Members' Advisory. Clarification on Stamping of Employment Contracts under the Stamp Act 1949.

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