

DISSATISFIED WITH STAMP DUTY ASSESSMENTS - WHAT'S NEXT?

Here's a common situation - parties to a transaction submitted the relevant instrument for adjudication to the Stamp Duty Office of the Inland Revenue Board of Malaysia only to be taken by surprise when the instrument was assessed for an excessive sum of stamp duty instead of the nominal sum, or to be subsequently imposed with additional assessment after the original assessment. Dissatisfied, but what's next?

Worry not as the Stamp Duty Act 1949 ("**the Act**") provides for avenues to object and appeal against the stamp duty assessment or additional assessment.

A. Appeal Process

First Step: Objection to the Stamp Duty Office

Any person who is dissatisfied with an assessment or additional assessment of stamp duty may, by written notice, object to the assessment or additional assessment and apply to the Collector of Stamp Duties ("**the Collector**") to review the assessment or additional assessment under Section 38A of the Act.

The notice of objection shall be made within thirty (30) days after the date of the assessment notice or such further period as the Collector may allow in any particular case. Though Section 38A(2) of the Act seems to give discretion to the Collector to allow for an extension of time to submit the objection, it is highly advisable to comply with the stipulated time period to avoid any legal complication.

The aggrieved taxpayer shall state the grounds of objection to the assessment in the notice of objection and, if required to so by the Collector, furnish further particulars and information in relation to the grounds of the objection.

After the objection has been reviewed and determined, the Collector is obliged to issue a written decision, either to maintain the original or additional assessment, or cancel the assessment, or make such other assessment in substitution of the earlier assessment.

It must be noted that the making of an objection shall not relieve the taxpayer of the liability to pay the duty within thirty (30) days from the date of the assessment notice.

Second Step: Appeal to the High Court

In the event the taxpayer is dissatisfied with the decision of the Collector on the objection, he may then appeal to the High Court under Section 39 of the Act. For the appeal purpose, the appellant may require the Collector to provide a case stated which lays out the opinion and decision of the Collector.

The appeal shall be filed at the High Court and served on the Collector within twenty-one (21) days of being notified of the result of the review in writing. Upon the hearing of the appeal, the High Court may affirm, or vary, or cancel the assessment raised by the Collector. If dissatisfied with the decision of the High Court, either party may then appeal to the Court of Appeal.

B. Revision by the Minister of Finance

Another avenue provided under the Act is by applying to the Minister of Finance for revision under Section 78 of the Act.

All decisions, orders and acts of the Collector shall be open to revision by the Minister of Finance who is empowered to revise, alter or modify such decision. The Minister of Finance may also order any instrument to be stamped or re-stamped.

C. Judicial Review

Besides the above, the aggrieved taxpayer may also consider applying for judicial review at the High Court. In Malaysia, the High Court exercises supervisory jurisdiction over administrative or public bodies including the Stamp Duty Office and the Minister of Finance. However, given that there is an appeal procedure provided for under the Act, an applicant seeking leave to judicially review that there are exceptional circumstances, such as a clear lack of jurisdiction, a blatant failure to perform some statutory duty, or a serious breach of the principles of natural justice in the assessment process by the Stamp Duty Office.

It is only upon proving one of the elements that the High Court would grant leave to commence the judicial review proceedings. Once leave is allowed, the Court is empowered to look into the merit of the application for judicial review. If leave is denied, the taxpayer

may appeal the matter before the Court of Appeal. It must be noted that there are numerous cases which decided that the applicant is not entitled to initiate a judicial review proceeding if the applicant had failed to exhaust the available statutory appeal procedure. As the Act does provide specific avenues for aggrieved parties to air their grievances, the applicant should exhaust the domestic remedy available before making an application for judicial review.

So, what's next?

Taking into account the legal intricacies of stamp duty matters, both procedurally and substantively, it is advisable for you to seek legal advice before considering the appropriate legal basis and specific avenue to object and appeal against any stamp duty assessment. Feel free to contact us for legal consultation on this subject.

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