Bad timing for Stamp Act amendments

With downturn in property market, GST, falling currency and stricter lending guidelines, extra costs will only worsen things for buyers and developers

THE proposed amendments to the Stamp Act 1949 contained in the Stamp (Amendment) Bill 2016, which is expected to be enacted into law this year, have raised concerns among property buyers as they will likely see an increase in cost.

At press time, The Stamp (Amendment) Bill 2016 was having its second reading in Parliament. However, according to industry experts, the proposed amendments will not raise the cost of properties but bring forward the payment of ad valorem stamp duty, making it more difficult for purchasers to buy properties.

For developers, they may see an increase in building cost as there will be more documents to be stamped. Under the proposed amendments, all instruments chargeable with stamp duty shall be duty stamped and there will be higher penalties for contravening the rule.

According to legal firm Cheang & Ariff partner Siew See See, there is no change in the stamp duty rates on transfer instruments for property buyers. Nonetheless, she says, the buyer will be payable on the same documents but the ad valorem stamp duty will be payable upon the agreement to convey and not at the time of conveyance.

"The states that at present, the Sale and Purchase Agreement (SPA) is charged with a nominal stamp duty of RM10. There is also the ad valorem stamp duty, which is payable on the instrument of conveyance, which could be in the form of a Memorandum of Transfer (MOT)," Siew says.

"The title of the property has been issued or a deed of assignment if no individual title is issued. With the proposed amendments, the ad valorem stamp duty, which is based on the value of the property, will be payable upon the execution of the contract or agreement made for the sale of real property in Malaysia," Siew says.

Essentially, the buyer will be payable the ad valorem stamp duty on the SPA and RM10 on the instrument of conveyance.

Siew says that with the change in timing for the payment of stamp duty, the upfront cost for property purchasers will be higher, especially those buying from the developer and where the title has not been issued.

"Currently, you pay your ad valorem stamp duty only a few years down the road from the signing of your SPA. Now you have to pay earlier. However, as there is no change in the stamp duty rate, the overall catch will be the same," says Siew.

"However, if the agreement of assignment is subsequently cancelled, an application for refund by the purchaser can be made within 12 months after the contract or assignment has been rescinded, annulled or cancelled and the instrument in respect of the said document has been destroyed. In accordance with any written law," she adds.

Refund problem

This is where one of the problems lies, says PPC International Sdn Bhd managing director Datin Siders Slampannee.

"If the sale gets aborted for some reason or other, there is the hassle of (getting the refund)." Unlike for MOTs, where once it is signed and the transfer is done, there is a very slim or no chance of it being aborted," says Siders, who is the immediate past president of the Association of Valuers, Property Managers, Estate Agents and Property Consultants (PEPS).

"Although there is a refund, I’m not sure how they are going to pay the refund to the purchaser or the developer," she says.

Square Feet Real Estate team leader and real estate negotiator coash Ganesh Ramasathan agrees that refunds can be a problem and developers may find it difficult to absorb the stamp duty.

"This is because of the many technical aspects to comply with in the event of things (happening) such as the loan not being approved or the purchaser changing his mind after signing the SPA.

"Thus, I don’t think the developer will try to absorb the stamp duty with the hassle of obtaining refunds. Will they want to go through that process?"

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How much does one pay upfront?

LEGAL firm Cheang & Ariff partner Siew See See says if the proposed amendments to the Stamp Act 1949 contained in the Stamp (Amendment) Bill 2016 are passed, the ad valorem stamp duty will be paid at the time of the signing of the Sale and Purchase Agreement (SPA), instead of at the time of conveyance.

Currently, the ad valorem stamp duty is paid a few years after signing the SPA, says Siew.

Getting a refund when a sale is aborted is one of the issues, says Siders.

Usually 10% of the purchase price.

Siew adds, out that at present, first-time home buyers are exempt from paying stamp duty on the instrument of transfer, that is the memorandum of transfer or the deed of assignment, if the value of the residential property is RM500,000 or less.

They are entitled to a remission of RM5,000 from the total amount of stamp duty chargeable if the value of the residential property is more than RM500,000 but less than RM500,000.

Siew adds that they are also exempt from stamp duty chargeable on the loan agreement if the loan amount is RM500,000 or less and they

get a discount of RM1,500 if the loan is between RM200,000 and RM500,000.

However, she points out that these exemptions took effect on Jan 1 this year and will be in force until December 2018 as provided by the Stamp Duty (Remission) Order 2016 and the Stamp Duty (Remission) No 2 Order 2016.

Thus, the amendments to the Stamp Act 1949 will affect the purchasers who buy property after 2018.

On concerns that these exemptions will be taken away with the new amendments, Siew says the orders were made pursuant to subsection 50(2) of the Stamp Act 1949 which is not revoked in the amendment Bill.
More costs for developer could mean higher property prices

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"Most developers nowadays don’t want to get involved in the stamp duty aspects of their purchases," says Ganesh.

Siders says while most developers which "absorb" the stamp duty would have factored it into their selling price, it would still involve more costs upfront.

"The developer is not really affected but instead of paying at the end of the third year or three years from now for a new development, he pays upfront, which is more because he is advancing (payment) instead paying at a later stage."

"This is more cost to the developer which eventually would be passed down to the purchaser. The end-buyer would end up paying because the developer would be in no position to absorb this cost," he says.

Increased costs

As such, Siders says, purchasers will be in an even worse-off position when entering into an agreement to buy a property.

"This is going to have some impact on the market in terms of demand," he adds.

Real Estate and Housing Developers’ Association Malaysia (Sehda) vice-president Datuk Wan Fashimi Abakri concurs, saying more contracts would need to be renegotiated.

"Our contracts with the contractors will need to be stamped. The contracts between the main contractors and the sub-contractors will need to be stamped and it adds to cost and everything will have to be borne by the developer," he says.

For developers who do a minimum RM560 million of construction jobs, this is a lot of money. The cost will go up for developers who will pass it to the purchasers," says Wan Hashimi, who is also Seshe Darby Property chief operating officer.

He adds that most developers will not be able to absorb this cost.

"Maybe the big boys might be able to but in the current economy, they might also pass it on to the consumers."

"In the current market situation where most developers are trying to convince the government for easy entry costs or easy payments, with these new developments, the cost of buying a house will definitely go up," he says.

He adds that if this cost is passed to the purchasers, not only will they pay more for property, they will also have to incur higher ad valorem stamp duty.

"This is not really helping the purchasers. It will make it more difficult for them to own a house, especially for new-home buyers."

"Wait till there’s more money...

The timing of the proposed amendments is not right, given the current challenging economy," says Wan Hashimi.

"Wait until there is more money in people’s pockets, companies are doing better and developers are seeing better returns and only then implement something like this," he says.

Square Feet Real Estate’s Ganesh agrees that the timing of the move is not opportune.

"I think the timing of this move is not right particularly because of the downturn in the property market and with the Goods and Services Tax (GST) and the falling currency."

"The property market has already been hit and the new amendments will further affect it. There are already a lot of cooling measures implemented and this will further worsen things," he says.

Ganesh adds that the amendments will also affect the cash flow planning of purchasers who will have to plan for a bigger expenditure immediately instead of over a couple of months.

He says for the sub-sale market currently, the purchaser pays the deposit upon signing the SPA and has between 45 days and two months to prepare the ad valorem stamp duty for strata-titled properties and 60 days for individual titled properties.

With the new amendments, the purchaser in a sub-sale market will have to fork out not only the deposit but also the ad valorem stamp duty upon signing the SPA.

Both sub-sale and primary markets affected

Ganesh says the primary market will be even more affected, especially for first-time home buyers who may not be able to afford to buy if the amendments are passed.

First-time purchasers who are financially tight might just have enough for the property deposit, legal fees and the nominal 5% stamping charges.

They might then use the SPA to apply to withdraw the deposit amount from their Employees Provident Fund savings and use this to pay the ad valorem stamp duty down the road.

With the amendments, this will not be possible.

Ganesh feels the amendments will also affect the sub-sale market "because the (property) flippers who own the property will add the ad valorem stamp duty to the selling price".

Key changes under Stamp (Amendment) Bill 2016

THE provisions in the Stamp Bill will result in significant amendments to the current Stamp Act, 1949. Among the key changes are:

Self-assessment system

A payer may opt for self-assessment of stamp duty and if this is the preferred mode, then duty will be due and payable even before submission.

A new requirement is introduced to furnish a return together with every instrument which is executed and chargeable with duty and to retain and maintain instruments and all relevant documents for seven years.

Ad valorem duty payment

Ad valorem stamp duty will be payable on the agreement for conveyance (sale and purchase agreements) upon execution and nominal stamp duty be imposed on the instrument of conveyance.

If the purchaser has paid the ad valorem duty on a conveyance for property acquisition and prior to obtaining the conveyance of the property enters into another agreement to transfer the same property, the full ad valorem duty shall also be charged on the subsequent agreement.

Stamp duty relief requirement

Companies have to remain the beneficial owner of shares for three years, instead of two following the date of registration. For property transfers between related parties, the asset acquired must remain with the transferee for a period of three years, and the transferor and transferee must remain associated for a period of three years from the date of conveyance or transfer.

Intercompany restructuring and mergers: Companies to be taxed at the prevailing rate at which they would have been assessed if not affected by the changes are more stringent than before.

Increase in penalties

The proposed penalties have been raised for a number of non-compliances, including failure to comply with notice, obstruction or hindrance to the collector in the exercise of power where the fine will be increased to RM10,000 from RM5,290 currently.

There will also be heavy penalties for late stamping, invasion of stamp duty and execution or signing of documents not duly stamped.