

## In this Issue

- Stamp Duty Remission on Loan Agreements to Purchase Residential Property
- Stamp Duty Remission on Instruments of Transfer of Ownership for Residential Property
- GST – List of Taxable and Non-Taxable Goods
- Case Law - MSE Sdn Bhd v KPHDN

### Stamp Duty Remission on Loan Agreements to Purchase Residential Property

The Stamp Duty (Remission) Order 2014 has been gazetted to provide 50% stamp duty remission on loan agreement to a Malaysian citizen for the purchase of only 1 residential property (i.e. a house, a condominium unit, an apartment or a flat build as a dwelling house) costing not more than RM500,000. The remission is given on the conditions that:-

- the sale and purchase agreement ["SPA"] is executed between 1<sup>st</sup> January 2015 and 31<sup>st</sup> December 2016;
- the purchaser never owned any other residential property or part thereof, including a residential property obtained by way of inheritance or gift;
- the application for this remission must be submitted together with a statutory declaration confirming that the individual has never owned any other residential property (including a residential property obtained by way of inheritance or gift) or part thereof.

The above remission applies to loan agreements executed on or after 1<sup>st</sup> January 2015.

## Hyperlinks

- [Moore Stephens Malaysia](#)
- [Moore Stephens International](#)
- [Inland Revenue Board](#)
  
- [Stamp Duty \(Remission\) Order 2014](#)

## Contact details

Advent MS Tax Consultants Sdn Bhd (703669-U)  
*(formerly known as Advent Tax Consultants Sdn Bhd)*

Unit 3.3A, 3rd Floor, Surian Tower  
No. 1 Jalan PJU 7/3, Mutiara Damansara  
47810 Petaling Jaya, Selangor, Malaysia

T +603 7728 1800  
F +603 7728 9800  
E [tax@moorestephens.com.my](mailto:tax@moorestephens.com.my)

[www.moorestephens.com.my](http://www.moorestephens.com.my)



### Stamp Duty Remission on Instruments of Transfer of Ownership for Residential Property

The Stamp Duty (Remission) (No. 2) Order 2014 has been gazetted to provide 50% stamp duty remission on any instrument of transfer to a Malaysian citizen for the purchase of only 1 residential property (i.e. a house, a condominium unit, an apartment or a flat build as a dwelling house) costing not more than RM500,000. The remission is given on the conditions that:-

- the SPA is executed between 1<sup>st</sup> January 2015 and 31<sup>st</sup> December 2016;
- the purchaser never owned any other residential property or part thereof, including a residential property obtained by way of inheritance or gift;
- the application for this remission must be submitted together with a statutory declaration confirming that the individual has never owned any other residential property (including a residential property obtained by way of inheritance or gift) or part thereof.

The above remission applies to instruments executed on or after 1<sup>st</sup> January 2015.

### GST – List of Taxable and Non-Taxable Goods

The Royal Malaysian Customs Department has recently released a handbook on the list of taxable and non-taxable goods to provide a guide for shop owners on the classification of zero-rated [not subject to Goods and Services Tax (“GST”)] and standard rated [subject to GST] supply. The list comprises 13 categories of sundry goods as follows:-

- Grocery
- Food and beverages
- Fruits and vegetables
- Beauty and health
- Household
- Hardware
- Kitchenware
- Garment, footwear, bag and accessories
- Medicine
- Stationery
- Toy and games
- Pets
- Others

### Hyperlinks

- [Stamp Duty \(Remission\) \(No. 2\) Order 2014](#)

## Hyperlinks

### **MSE Sdn Bhd v KPHDN**

*[Whether ex-gratia payment received following a termination of distributorship agreement was a capital or revenue income]*

In the case of MSE Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri ["KPHDN"], the taxpayer was incorporated in 1990 and commenced operations on 2<sup>nd</sup> February 1996 when it obtained the distributorship from G Electronics Inc. ["G"] appointing the taxpayer as the sole and exclusive distributor of household electrical, electronic and information technology-related products bearing the "G" brand or trademarks ["G Products"]. The taxpayer was prohibited from purchasing, importing, selling, distributing or otherwise dealing in products competitive with or similar to the G Products in Malaysia. The last written distributorship agreement was dated 1<sup>st</sup> January 2003 until terminated with effect from 31<sup>st</sup> January 2005. G served on the taxpayer a notice of termination dated 4<sup>th</sup> October 2004 whereby the distribution agreement was to be terminated by 4<sup>th</sup> April 2005. Following the termination, an ex-gratia payment of RM9,492,500 was received by the taxpayer from G under a termination agreement dated 29<sup>th</sup> January 2005. The issue to be considered was whether the ex-gratia payment was taxable under the Income Tax Act 1967 ["the Act"].

The taxpayer submitted that throughout the 9 years, it was distributing the G Products. It did not distribute any other products and had no other sources of income. The entire business of the taxpayer was founded on the distribution agreement entered into with G. After the formal notice of termination was served on the taxpayer, it had to take steps to close down its business operations. Hence, the taxpayer contended that the ex-gratia payment is a capital receipt received for the closure of its business and for the profit-making apparatus of the company and not subject to income tax. However, the Inland Revenue Board ["IRB"] claimed that the ex-gratia payment is a revenue receipt as it is in the nature of gratuitous payment in recognition of the taxpayer's services to G for the past 9 years in building the name and platform for G brand in Malaysia.

The Special Commissioners of Income Tax ["SCIT"] was of the view that the distribution agreement was not just an ordinary commercial contract. The distribution agreement gave the taxpayer the basis to start and structure its business i.e. one of a kind related to the whole structure of the taxpayer's profit-making apparatus. The whole structure of the taxpayer's company had to be closed down upon the termination of the distribution agreement. Hence, the ex-gratia payment is a capital receipt and not compensation for loss of income and not taxable under the Act.

Dissatisfied with the decision by the SCIT, the IRB has appealed to the High Court.

## Hyperlinks

This publication is provided gratuitously and without liability. It is intended as a general guide only and the application of its contents to specific situations will depend on the particular circumstances involved. Readers should seek appropriate professional advice regarding any particular problems that they encounter, and this tax update should not be relied on as a substitute for advice. Accordingly, Advent MS Tax Consultants Sdn Bhd assumes no responsibility for any errors or omissions it may contain, whether caused by negligence or otherwise, or for any losses, however caused, sustained by any person that relies on it. Should further information, clarification or advice be required on any of the contents stated herein, please feel free to contact our tax team.