

Stamp Duties (Amendment No. 2) Bill

Bill No. /2010.

Read the first time on

2010.

A BILL

intituled

An Act to amend the Stamp Duties Act (Chapter 312 of the 2006 Revised Edition).

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

Short title and commencement

1.—(1) This Act may be cited as the Stamp Duties (Amendment No. 2) Act 2010 and shall, with the exception of sections 3 and 4, come into operation on such date as the Minister may, by notification in the *Gazette*, specify.

(2) Sections 3 and 4 shall be deemed to have come into operation on 1st April 2010.

Amendment of section 15

2. Section 15 of the Stamp Duties Act (referred to in this Act as the principal Act) is amended —

(a) by deleting paragraphs (i) and (ii) of subsection (3) and substituting the following paragraphs:

“(i) become payable by the transferee entity to the Commissioner immediately; and

(ii) be recoverable from that entity as a debt due to the Government, together with interest thereon at the rate of 6% per annum —

(A) if the instrument is executed by any person in Singapore, from the date of its execution; or

(B) if the instrument is executed outside Singapore, from the date the instrument is first received in Singapore.”; and

(b) by inserting, immediately after subsection (3), the following subsections:

“(3A) The amount recoverable under subsection (3) shall be payable at the place stated in a notice served by the Commissioner on the entity, within one month after the service of the notice by the Commissioner on that entity.

(3B) If any amount recoverable from the entity under subsection (3) is not paid within the period specified in subsection (3A), the following penalties shall be imposed on the entity:

(a) where the outstanding amount is paid to the Commissioner within 3 months from the expiration of

such period, a penalty of \$10 or the outstanding amount, whichever is the greater; and

- (b) where the outstanding amount is not paid to the Commissioner within 3 months from the expiration of such period, a penalty of \$25 or 4 times the outstanding amount, whichever is the greater.”.

New section 15A

3. The principal Act is amended by inserting, immediately after section 15, the following section:

“Relief from ad valorem stamp duty for acquisition of shares of companies

15A.—(1) Subject to subsections (4) and (5) and the prescribed conditions being fulfilled, ad valorem stamp duty under Article 3(c) in the First Schedule shall not be chargeable on —

- (a) any instrument executed during the period from 1st April 2010 to 31st March 2015 (both dates inclusive) for the purposes of or in connection with an acquisition of ordinary shares of a company (referred to in this section as the target company) by a Singapore company (referred to in this section as the acquiring company), which the company claiming the relief informed the Commissioner is the instrument whose date of execution is to be used for determining the period of 12 months referred to in paragraph (b); and

- (b) any instrument executed during the period from 1st April 2010 to 31st March 2015 (both dates inclusive) and within the period of 12 months before the date of execution of the instrument referred to in paragraph (a), for the purposes of or in connection with an acquisition of ordinary shares in the target company by the acquiring company,

provided that the acquisition of shares under one of these instruments (referred to in this section as the principal instrument) is made in the circumstances specified in subsection (2).

- (2) The circumstances referred to in subsection (1) are —

5 (a) the acquiring company owns 50% or less of the ordinary shares of the target company before the date of share acquisition, and the acquisition of the ordinary shares by the acquiring company will result in it owning more than 50% of the ordinary shares of the target company after the share acquisition; or

10 (b) the acquiring company owns more than 50% but less than 75% of the ordinary shares of the target company before the date of share acquisition, and the acquisition of the ordinary shares by the acquiring company will result in it owning at least 75% of the ordinary shares of the target company after the share acquisition.)

15 (3) The Commissioner shall, on an application by the company that has paid the ad valorem duty on an instrument referred to in subsection (1), and if he is satisfied that the instrument is entitled to the relief referred to in that subsection, refund to the company the amount of the duty, subject to the limit set out in subsection (4) or (5), whichever is applicable.

20 (4) Subject to subsection (5), the maximum amount of relief from duty to be allowed under subsection (1) to the company by whom the stamp duty is payable in any of its financial year shall not exceed \$200,000.

25 (5) Where the financial year of the company by whom the stamp duty is payable exceeds 12 months, the maximum amount of relief from duty to be allowed to it for each of the following periods shall not exceed \$200,000:

(a) the first 12 months of that financial year;

(b) the remaining period of that financial year.

30 (6) For the purposes of subsection (1), where the acquiring company and target company are part of the same group of companies on the date of share acquisition of the instrument referred to in subsection (1)(a), no relief from duty shall be allowed for that instrument or any instrument referred to in subsection (1) unless the total number of ordinary shares acquired by the acquiring company in the period starting 12 months before that date and ending on that date
35 results in an increase in the total number of ordinary shares of the target company held on that date by all companies in the group.

(7) For the purpose of determining the amount of relief from duty allowable under subsection (1), where the consideration paid by the acquiring company in respect of the share acquisition consists, wholly or in part, of shares issued by the acquiring company, the value of consideration comprising such issued shares shall be such value of the issued shares as at the date of share acquisition as may be determined by the Commissioner.

(8) Section 15(2) shall apply, with the necessary modifications, to an instrument referred to in this section.

(9) Where any claim for relief from duty under this section has been allowed and it is subsequently found that —

(a) any declaration or other evidence furnished in support of the claim was untrue in any material particular; or

(b) any prescribed event has occurred,

the claim shall be deemed to have been disallowed and an amount equal to the amount of relief from duty shall —

(i) become payable by the company given the relief to the Commissioner immediately; and

(ii) be recoverable from that company as a debt due to the Government, together with interest thereon at the rate of 6% per annum —

(A) if the instrument is executed by any person in Singapore, from the date of its execution; or

(B) if the instrument is executed outside Singapore, from the date the instrument is first received in Singapore.

(10) The amount recoverable under subsection (9) shall be payable at the place stated in a notice served by the Commissioner on the company, within one month after the service of the notice by the Commissioner on that company.

(11) If any amount recoverable from the company under subsection (9) is not paid within the period specified in subsection (10), the following penalties shall be imposed on the company:

(a) where the outstanding amount is paid to the Commissioner within 3 months from the expiration of such period, a

penalty of \$10 or the outstanding amount, whichever is the greater; and

(b) where the outstanding amount is not paid to the Commissioner within 3 months from the expiration of such period, a penalty of \$25 or 4 times the outstanding amount, whichever is the greater.

(12) In this section —

“acquisition”, in relation to shares of a company, means the acquisition of an equitable interest in those shares;

“date of share acquisition” means the date on which the agreement for the sale of equitable interest in the ordinary shares of the target company is entered into by the acquiring company, or the date of transfer of the equitable interest in the ordinary shares of the target company to the acquiring company, whichever is earlier;

“financial year”, in relation to a company, means the period in respect of which any profit and loss account of the company laid before it in general meeting is made up, whether that period is a year or not;

“group of companies” means 2 or more companies each of which is either a holding company or subsidiary of the other or any of the others;

“holding company” and “subsidiary” have the same meanings as in section 5 of the Companies Act (Cap. 50);

“Singapore company” means a company which is incorporated in Singapore and resident in Singapore for income tax purposes within the meaning of section 2(1) of the Income Tax Act (Cap. 134).”.

Amendment of section 38

4. Section 38 of the principal Act is amended —

(a) by deleting the word “When” in subsection (2) and substituting the words “Subject to subsection (2A), when”;

(b) by inserting, immediately after the words “chargeable with duty” in subsection (2), the words “or with full duty”; and

(c) by inserting, immediately after subsection (2), the following subsection:

“(2A) Where the instrument is one referred to in section 15A(1)(a), the Commissioner may base his opinion on a statutory declaration in such form as he may direct, made by or on behalf of the target company or acquiring company, or both, referred to in that provision, and such further evidence as he considers necessary.”.

New section 70AA

5. The principal Act is amended by inserting, immediately after section 70A, the following section:

“Recovery of duty from persons leaving Singapore

70AA.—(1) Where the Commissioner is of the opinion that any person is about or likely to leave Singapore without paying all the duty or penalty recoverable from him under any provisions of this Act, the Commissioner may issue a certificate containing particulars of the duty or penalty and a direction to the Commissioner of Police or the Controller of Immigration, or both, that such person be prevented from leaving Singapore without paying the duty or penalty or furnishing security to the satisfaction of the Commissioner for payment thereof.

(2) Subject to the provisions of any order issued or made under any law for the time being in force relating to banishment or immigration, the Commissioner of Police or the Controller of Immigration, or both, as the case may be, shall thereupon take, or cause to be taken by any police officer or immigration officer, such measures as may be necessary to prevent the person named in the direction from leaving Singapore until payment of the duty or penalty has been made or secured as aforesaid, including the use of such force as may be necessary and, if appropriate, the detention of any Singapore passport, certificate of identity or travel document and any exit permit or other document authorising such person to leave Singapore.

(3) At the time of issue of the certificate, the Commissioner shall issue to such person a notification thereof by personal service or registered post; but the non-receipt thereof shall not invalidate any proceedings under this section.

(4) Payment of the duty or penalty to an officer in charge of a police station or to an immigration officer or production of a statement signed by the Commissioner stating that the duty or penalty has been paid or secured as aforesaid shall be sufficient authority for allowing such person to leave Singapore.

(5) Any person who, knowing that a direction has been issued under this section for the prevention of his departure from Singapore, voluntarily leaves or attempts to leave Singapore without paying the duty or penalty payable by him or furnishing security to the satisfaction of the Commissioner for payment thereof shall be guilty of an offence and may be arrested, without warrant, by any police officer or immigration officer.

(6) No civil or criminal proceedings shall be instituted or maintained against the Government, the Commissioner of Police, the Controller of Immigration or any other police officer or immigration officer, in respect of anything lawfully done under the authority of this section.”.

Amendment of section 74

6. Section 74 of the principal Act is amended —

(a) by inserting, immediately after the words “The Minister may”, the words “, in his discretion and subject to such conditions as he may impose,”; and

(b) by renumbering the section as subsection (1) of that section, and by inserting immediately thereafter the following subsections:

“(2) A reduction or remission of duty in relation to a class of instruments, or any instrument belonging to such class, or any instrument when executed by or in favour of a class of persons, or by or in favour of members of such class, shall be made by order published in the *Gazette*, and the conditions (if any) shall be specified in the order.

(3) Where the Minister is satisfied that a person to whom a remission or reduction of duty is granted fails to comply with any condition imposed under subsection (1) (whether a condition precedent or a condition subsequent), an amount equal to the amount of duty so remitted or reduced shall be recoverable as a debt due to the Government.

(4) The amount recoverable under subsection (3) shall be payable at the place stated in a notice served by the Commissioner on the person, within one month after the service of the notice by the Commissioner on that person.

5 (5) The Commissioner may, in his discretion and subject to such terms and conditions (including the imposition of interest) as he may impose, extend the time delimited by subsection (4) within which payment is to be made.

10 (6) If any amount recoverable from a person under subsection (3) and any interest imposed under subsection (5) is not paid within the period specified in subsection (4) or extended under subsection (5), the following penalties shall be imposed on the person:

15 (a) where the outstanding amount is paid to the Commissioner within 3 months from the expiration of such period, a penalty of \$10 or the outstanding amount, whichever is the greater; and

20 (b) where the outstanding amount is not paid to the Commissioner within 3 months from the expiration of such period, a penalty of \$25 or 4 times the outstanding amount, whichever is the greater.

25 (7) Sections 50 and 70AA shall apply to the collection and recovery by the Commissioner of the amount recoverable under subsection (3), any interest imposed under subsection (5) and any penalty imposed under subsection (6) as they apply to the collection and recovery of duty and penalty required to be paid under this Act.”

EXPLANATORY STATEMENT

This Bill seeks to amend the Stamp Duties Act (Cap. 312) (the Act) for the following main purposes:

- (a) to create a new relief from ad valorem stamp duty (referred to as duty) for instruments for share transfers made in the course of mergers and acquisitions; and
- (b) to expand the Minister’s powers to reduce or remit duties.

Clause 1 relates to the short title and commencement.

Clause 2(a) amends section 15 by amending paragraphs (i) and (ii) of subsection (3) to clarify that where a claim for relief from duty has been allowed and subsequently disallowed under the section, an amount equal to the duty remitted will become payable by the transferee entity to the Commissioner of Stamp Duties (the Commissioner) immediately and be recoverable from that entity as a debt with interest accruing on the debt from the following points in time:

- (a) if the instrument is executed by any person in Singapore, from the date of its execution; or
- (b) if the instrument is executed outside Singapore, from the date the instrument is first received in Singapore.

Clause 2(b) amends section 15 by inserting new subsections (3A) and (3B).

The new subsection (3A) states that the amount recoverable under section 15(3) shall be payable by the entity at the place stated in a notice served by the Commissioner on that entity within one month after the service of the notice by the Commissioner on that entity.

The new subsection (3B) provides that if the entity fails to pay to the Commissioner the amount recoverable under section 15(3) in accordance with the new subsection (3A), a penalty will be imposed on the entity.

Clause 3 inserts a new section 15A (Relief from ad valorem stamp duty for acquisition of shares of companies).

The new section 15A(1) provides that subject to the satisfaction of certain prescribed conditions, relief from duty will be granted for any instrument executed during the period from 1st April 2010 to 31st March 2015 (both dates inclusive) for or in connection with the acquisition by a Singapore company (acquiring company) of ordinary shares in another company (target company) (first-mentioned instrument) as well as any instrument executed during that period and within a 12 month period before the date of share acquisition of the first-mentioned instrument for or in connection with the acquisition by the acquiring company of ordinary shares in the target company (second-mentioned instrument) provided that the acquisition of shares under any one of the above-mentioned instruments is made in the circumstances specified in the new section 15A(2). For the second-mentioned instrument, the Commissioner will on application make a refund of any duty paid on it since it would not be possible to determine if the instrument is eligible for the relief until after the first-mentioned instrument is determined to be so eligible. The amount of refund to be given is subject to the limits set out in the new section 15A(4) or (5). The provision for refund is the new section 15A(3).

The new section 15A(2) sets out the circumstances referred to in the new section 15A(1).

The new section 15A(4) sets out the maximum amount of relief from duty to be allowed to a company by which the stamp duty is payable where its financial year does not exceed 12 months.

The new section 15A(5) sets out the maximum amount of relief from duty to be allowed to a company by which the stamp duty is payable where its financial year exceeds 12 months.

The new section 15A(6) provides that if the acquiring company and the target company are part of the same group of companies on the date of share acquisition, no relief from duty will be allowed unless the aggregate number of ordinary shares of the target company held by all the companies in the group increases as a result of the total acquisition made in the 12 months before the date of share acquisition as well as on that date.

The new section 15A(7) provides that for the purpose of determining the amount of relief from duty granted under the new section 15A(1), where the consideration paid by the acquiring company for the share acquisition consists of shares issued by it, the value of consideration comprising such issued shares will be the value of the issued shares as at the date of share acquisition as may be determined by the Commissioner.

The new section 15A(8) applies section 15(2) to an instrument referred to in the new section 15A(1) with the necessary modifications.

The new section 15A(9) states the circumstances under which a claim for relief from duty previously allowed under the new section 15A will be disallowed and the consequences of such disallowance.

The new section 15A(10) states that the amount recoverable under the new section 15A(9) shall be payable by the company which claimed the relief at the place stated in a notice served by the Commissioner on that company within one month after such service of notice.

The new section 15A(11) provides that if the company fails to pay to the Commissioner the amount recoverable under the new section 15A(9) in accordance with the new section 15A(10), a penalty will be imposed on the company.

The new section 15A(12) sets out the definitions of expressions used in the new section 15A.

Clause 4 amends section 38 (Certificate of adjudication by Commissioner) to insert a new subsection (2A) and to make consequential amendments to subsection (2).

Section 38(2) is amended so that, in a case where an instrument is referred to the Commissioner to determine if it is chargeable with duty and if so how much, he may certify that the instrument is not chargeable with full duty. This is because an instrument under the new section 15A may still be chargeable with duty though not full duty as the relief in that new section is subject to the limit referred to in subsection (4) or (5) of that new section.

The new subsection (2A) of section 38 provides that for the purpose of determining whether an instrument referred to in the new section 15A(1)(a) is entitled to any relief under that new section, the Commissioner may base his opinion on a statutory declaration in such form as he may direct, made by or on behalf of the target company or acquiring company, or both, and such further evidence as he considers necessary.

Clause 5 introduces a new section 70AA, which provides that the Commissioner may direct the Commissioner of Police or the Controller of Immigration to stop a person who has failed to pay all the duty or penalty recoverable from him under the Act from leaving Singapore. The Commissioner of Police or the Controller of Immigration must take or cause to be taken by any police officer or immigration officer such measures to stop the person from leaving Singapore until payment of the duty or penalty has been made or secured. Further, a person who has the knowledge that a direction has been made to stop him from leaving Singapore and yet leaves or attempts to leave Singapore without paying the duty or penalty or furnishing security to the Commissioner for payment thereof will be guilty of an offence and may be arrested, without warrant, by any police officer or immigration officer.

Clause 6 amends section 74 (Power to reduce or remit duties) to enable the Minister to grant a remission or reduction of duty at his discretion. The remission or reduction may be granted subject to conditions. If the Minister is satisfied that any condition is breached, the amount of duty in respect of which the remission or reduction is granted must be recoverable as a debt due to the Government. A penalty will be imposed if a person fails to pay the debt to the Commissioner within the specified period. Section 50 and new section 70AA shall also apply to the collection and recovery by the Commissioner of the amounts recoverable under section 74 as they apply to the collection and recovery of duty.

EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.