Reducing the impact of stamp duty on share transfers

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The 2018 Stamp Duties (Agreements for Sale of Equity Interest) (Remission) Rules

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The Stamp Duties (Agreements for Sale of Equity Interest) (Remission) Rules 2018 (the 2018 Rules) came into operation almost imperceptibly on 11 April 2018. The Rules serve to clarify much of the uncertainty that was created by the changes to stamp duty announced and passed in Parliament in March 2017 via the Stamp Duties (Amendment) Bill.

The April 2018 Rules essentially serve to reverse the effects of the changes in March 2017, insofar as they affected a majority of share transfer transactions. For example, under the new 2018 Rules, no stamp duty is payable on an agreement for the sale of the shares of a listed company. Furthermore, the stamping for share transfers that do not attract ACD may once again be done when the transfer instrument is executed at completion (with a 14 day grace period).

Below, we discuss the effects of the 2017 changes on stamp duty and key developments in the 2018 Rules.

The Effect of the Stamp Duty Announcements in March 2017

On 10 March 2017, the Stamp Duties (Amendment) Bill was passed in Parliament where all three readings were done in a single Parliament sitting on the same day (the 2017 Act). The changes came into effect the very next day on 11 March 2017.

On the face of the announcement, it seemed that the changes intended to target the transfer of shares in residential property holding entities. Notably, one of the key changes announced in 2017 was the imposition of Additional Conveyance Duty (ACD), a new type of stamp duty on the transfer of equity interests in residential property holding entities. Read more about this here [https://dentons.rodyk.com/en/insights/alerts/2017/march/16/new-stamp-duties-on-shares-transfer].

ACD was introduced to address the stamp duty differential that had existed between a direct acquisition or disposal of residential properties, and the indirect acquisition or disposal of residential properties via an entity. In the latter situation, stamp duty was payable on the market value of the shares of the entity at a lower rate of 0.2%.

The official press release also clarified that the intent of the legislative changes "is not to impact the ordinary buying and selling of shares in such entities by retail investors, where the entities are listed on the Singapore Stock Exchange". However, it was observed that another change introduced in the 2017 Act in section 22(1) of the Stamp Duties Act (Cap. 312) (the Stamp Duties Act) did in fact have such an impact. Read more about this here [https://dentons.rodyk.com/en/insights/alerts/2017/april/12/stamp-duty-changes-for-all-share-transfers-including-listed-companies].

As a result of the March 2017 amendment to section 22(1) of the Stamp Duties Act, all transfers of shares in Singapore companies, whether private or listed, and whether holding residential property or not, were impacted by the changes as follows:

- The time of stamping of all share transfers had shifted forward. Whereas, prior to March 2017, stamp duty was to be paid at the execution of the *instrument of transfer* at completion (with a 14 day grace period), it was now to be paid at the execution of the *agreement* for the transfer, where there is such an agreement (with a 14-day grace period);
- Since the timing of stamping had been shifted to the execution of the agreement, it appears from the strict wording of the Stamp Duties Act that stamp duty would apply to an agreement for transfer of shares in a Singapore listed company. Prior to this change, transfers of shares traded on the Singapore Stock Exchange were generally not subject to stamp duty because there is no instrument of transfer executed – shares are generally deposited with and registered in the name of the Central Depository under the scripless system. Although normal trading on the Stock Exchange does not require a written agreement, agreements would still be created in situations like a general offer in a takeover.

Remissions Granted under the 2018 Rules

The 2018 Rules in effect confirm that the changes in the 2017 Act had the unintended impact of imposing a duty on an agreement for the sale of listed shares and did not intend to impose stamp duty on certain transactions where there was no transfer at all.

Under the Rules, stamp duty is remitted (*i.e.* exempted) on the following:

- Agreements for the sale of stock or shares not subject to ACD;
- Agreements for the sale of book-entry securities including such securities subject to ACD *i.e.* scripless shares; and
- Subject to certain conditions, aborted agreements for the sale of equity interests in an entity, on or after 11 March 2017.

The Practical Effect of the 2018 Rules

As a result of the 2018 Rules, the position has effectively reverted to what it was prior to 11 March 2017 for the majority of share transfer transactions. Namely - no stamp duty is payable on an agreement for the sale of the shares of a listed company and the timing of stamping for share transfers that do not attract ACD is also back to when the transfer instrument is executed at completion (with a 14 day grace period).

In the two scenarios mentioned above, there is no longer a need to make an application for remission to the Commissioner of Stamp Duties, as there is now an automatic remission of stamp duty. Prior to the Rules, parties had to apply for remission on a case by case basis.

If you would like to further understand the effects of the 2018 Rules on your transactions, please contact any member of the Dentons Rodyk tax team listed below.

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