

Dear valued clients and friends,

We are pleased to bring you this update from our China Desk.

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### **China Desk Alert — Malaysia Covid-19 Legal Update M&A Focus — Stamping of Documents**

You or your clients may have agreements and documents which are required to be stamped in Malaysia during the closure period between 18 March 2020 until 14 April 2020 following the introduction of the Movement Control Order (“MCO”)<sup>1</sup>. This serves as a guide for your reference.

Generally, Section 47 of the **Stamp Act 1949** (“SA 1949”) requires a document to be stamped within 30 days of its execution if executed within Malaysia, or if executed outside Malaysia, within 30 days after it has been first received in Malaysia<sup>2</sup>. Otherwise, there will be late stamping penalties imposed<sup>3</sup>. Once a document is submitted to the Inland Revenue Board of Malaysia (“IRB”) for stamping, the 30-day timeline for stamping a document stops running.

Prior to the MCO, the manner in which documents are submitted for stamping depends, largely, on whether the documents are subject to a nominal stamp duty (that is, RM10) or *ad valorem* stamp duty. Documents that are subject to nominal stamp duty are generally required to be submitted for stamping over the counter (that is, at IRB offices) or be affixed with Revenue Stamps that can be pre-purchased from post offices. Documents subject to *ad valorem* stamp duty are generally required to be submitted online via the e-stamping portal for assessment. Once the assessment is done, stamp duty payment can be made.

However, all IRB premises nationwide will be closed during the MCO period (that is, 18 March 2020 to 14 April 2020). It is important to know how this will impact the stamping process and we have highlighted two scenarios below taking into account the FAQ issued by IRB<sup>4</sup>.

#### **Documents to be stamped during the MCO period:**

- For documents that attract nominal stamp duty pursuant to the Item 4 of the First Schedule of SA 1949 (for example, agreement or memorandum not specially charged with any duty such as sale and purchase agreements for houses), the stamp duty payer may pre-purchase Revenue Stamps from post offices, to be affixed on the documents. The affixation can be done by the person who signed the document<sup>5</sup>. However, the payer should take into account the travelling restriction imposed under the MCO when considering whether to purchase Revenue Stamps and that the affixation process may not be straightforward.
- For other documents that attract nominal stamp duty, but not listed in the Second Schedule of SA 1949, the stamp duty payer may still pre-purchase Revenue Stamps, but the stamps can only be

affixed at a IRB office<sup>6</sup>. As the IRB offices are currently closed during the MCO period, the stamp duty payer may consider submitting the documents manually over the counter after the MCO is lifted.

- For documents that are subject to *ad valorem* stamp duty, they can be submitted for stamping via the e-stamping portal that is still accessible during the MCO period. However, it is important to note that the actual assessment process will still need to be done manually and as the IRB offices are closed during the MCO period, some delay to the assessment process may be anticipated. For example, in the case of stamping of share transfer forms, the timing of the current manual assessment process would likely take longer than usual and may in turn give rise to delays in the completion of the transfer of legal ownership of the shares.

**Documents where deadline for stamp duty payment falls on a date during the MCO period:**

- The deadline to pay stamp duty has been automatically extended to 30 April 2020 and there will not be any late payment penalty imposed for payments made within the extended deadline.
- However, if the duty payer prefers to pay the stamp duty during the MCO period, as regards documents subject to *ad valorem* stamp duty, stamp duty can still be paid online via the e-stamping portal during this MCO period. Once payment has been made successfully, a stamp certificate can be printed from the e-stamping portal and it must be attached to the physical agreements / documents as proof of payment of stamp duty. This is important in terms of timing, especially in the case of stamping share transfer form(s), where the change of legal ownership of the shares can only be registered once the stamp duty has been paid and share transfer form(s) is stamped.

In view of the above, a stamp duty payer should plan ahead and make all necessary arrangements taking into account the current circumstances and the guidance set out in the FAQ<sup>7</sup>, when arranging documents for stamping to avoid any late stamping penalties. If you need any legal assistance on this, please contact us.

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<sup>1</sup> Prevention and Control of Infectious Diseases (Measures within the Infected Local Areas) Regulations 2020, and the Special Declaration by the Prime Minister of Malaysia on 25 March 2020.

<sup>2</sup> Section 47 of the SA 1949.

<sup>3</sup> Section 47A of the SA1949.

<sup>4</sup> Frequently Asked Questions on Tax Matters During the Movement Control Order Period (18 March 2020 to 14 April 2020) updated on 26 March 2020, issued by the Inland Revenue Board of Malaysia.

<sup>5</sup> Section 7(4) of the SA 1949, read together with Item 1 of the Second Schedule of the SA 1949.

<sup>6</sup> Section 7(3) of the SA 1949.

<sup>7</sup> Frequently Asked Questions on Tax Matters During the Movement Control Order Period (18 March 2020 to 14 April 2020) updated on 26 March 2020, issued by the Inland Revenue Board of Malaysia.

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## **中国服务组快讯 – 马来西亚新冠肺炎法律更新（收购兼并）– 文件加盖印花**

在行动管制令（“MCO”）规定的行动管制期间（2020年3月18日至2020年4月14日<sup>1</sup>，您或您的客户可能有协议和文件需要在马来西亚加盖印花。此快讯旨在为您提供一些指南作为参考。

一般而言，1949年印花税法（“SA 1949”）第47条规定在马来西亚境内签署的文件，须在文件签署后30天内加盖印花，如在马来西亚境外签署，须在马来西亚收到文件后30天内加盖印花<sup>2</sup>，否则，将被罚款<sup>3</sup>。一旦文件已提交给马来西亚内陆税务局（“IRB”）加盖印花，加盖印花的30天期限将会停止。

在MCO实施前，提交文件加盖印花的方式，很大程度上，取决于文件是否需要缴纳象征性印花税（即RM10），或从价印花税。须缴付象征性定额印花税的文件，一般须在柜台（即IRB办事处）加盖印花，或加贴在邮局预先购买的印花税票。须缴付从价印花税的文件，一般则须通过电子印花系统提交，以供评估。评估完成后，即可缴付印花税。

然而，全国所有IRB办公室将在MCO期间（即2020年3月18日至2020年4月14日）关闭。因此，了解该情况会如何影响加盖印花程序是很重要的。根据IRB发布的常见问题解答<sup>4</sup>，我们强调以下两个情况。

### **在MCO期间需要加盖印花的文件：**

- 对于根据SA 1949附表1第4项被征收定额印花税的文件（例如，未被特别征收任何税项的协议或备忘录，例如房屋买卖协议），印花税付款人可于邮政局预先购买印花税票，并将其加贴在文件上。印花税票可由文件签署人加贴<sup>5</sup>。然而，印花税付款人在考虑是否购买印花税票时，应考虑MCO所规定的行动限制，且加贴过程可能并不简单直接。
- 对于被征收定额印花税但未被列入SA 1949附表2的其他文件，印花税付款人仍可预先购买印花税票，但此印花税票只能在IRB办公室加贴<sup>6</sup>。由于目前IRB办公室在MCO期间暂时关闭，印花税付款人可考虑在MCO结束后到柜台手动提交文件。
- 对于被征收从价印花税的文件，这些文件可以通过电子印花系统提交，此电子印花系统在MCO期间仍然开放。然而，必须指出的是，实际的评估过程仍然需要人工操作，由于IRB办公室在MCO期间关闭，评估过程可能会有一些延迟。例如，在股份转让表格需加盖印花的情况下，现行的人工评估程序可能需要比往常更长的时间，从而可能导致股份法定所有权会的转让完成有所延迟。

### **缴付印花税截止日期在MCO期内的文件：**

- 缴付印花税的截止日期已自动延长至2020年4月30日，在延长的截止日期内支付的款项将不会受到任何罚款。
- 然而，如果印花税付款人愿意在MCO期间支付印花税，对于需要缴纳从价印花税的文件，在MCO期间仍然可以通过电子印花系统在线支付印花税。付款成功后，可从电子印花系统打印印花税证书，并将其附于实物合约/文件中，作为已缴付印花税的证明。对于这一点，时间性很重要，

特别是在股份转让表格上加盖印花的情况下，因为只有 在缴付印花税和在股份转让表格上加盖印花之后，才能登记股份的法定所有权的变更。

鉴于上述情况，印花税付款人在安排加盖印花文件时，应提前计划及做好一切必要的安排，同时考虑到目前的情况及 IRB 常见问题解答的指南<sup>7</sup> 以免因逾期加盖印花而被罚款。如果您需要任何相关法律协助，请联系我们。

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<sup>1</sup> 2020 年传染病预防及控制（疫区内措施）条例，和马来西亚首相在 2020 年 3 月 25 日的特别宣布。

<sup>2</sup> 1949 年印花税法第 47 条。

<sup>3</sup> 1949 年印花税法第 47A 条。

<sup>4</sup> 马来西亚内陆税务局于 2020 年 3 月 26 日更新的行动管制令期间（2020 年 3 月 18 日至 2020 年 4 月 14 日）税务事宜的常见问题解答。

<sup>5</sup> 1949 年印花税法第 7(4) 条与 1949 年印花税法附表 2 第 1 项一并阅读。

<sup>6</sup> 1949 年印花税法第 7(3) 条。

<sup>7</sup> 马来西亚内陆税务局于 2020 年 3 月 26 日更新的行动管制令期间（2020 年 3 月 18 日至 2020 年 4 月 14 日）税务事宜的常见问题解答。



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