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Changes to Singapore's stamp duty regime

Following the recent amendments to the Stamp Duties Act (SDA), which took effect on 11 March 2017, key changes have been made to Singapore's stamp duty regime that significantly affect share transfers of Singapore companies. Prospective parties to mergers and acquisitions (M&A) in Singapore should be mindful of these changes.

Point of duty for share transfers. Prior to the amendments, in relation to contracts dutiable as "conveyance[s] on sale", the SDA provided an exception for any contracts for the sale of shares (i.e., a sale and purchase agreement [SPA]). Accordingly, in relation to share transfers, stamp duty was payable only on the execution of the transfer instruments (namely share transfer forms) upon the completion of the transfer.

Under the amended SDA, the exception for contracts for the sale of shares has been removed. Accordingly, stamp duty on the transfer of shares is now payable upon the execution of the SPA.

Practical implications. Where M&A transactions are structured with a deferred closing, stamp duty on the transactions are now payable upfront upon signing the SPA, and not subsequently on completion. This introduces new issues that the parties should consider:

1. Which party should pay the stamp duty upfront upon signing the SPA?
2. Which party should apply to Inland Revenue Authority of Singapore (IRAS) for a remission or other adjustments to the stamp duty amount if completion does not occur, or if there are revisions to the stamp duty payable?
3. How should the costs of the stamp duty paid be allocated amongst the parties in the event that the IRAS rejects the remission application?

Parties to M&A transactions should comprehensively address such issues in the SPA.

New stamp duty on acquisition and disposal of equity interest in property holding entities (PHEs). Prior to the amended SDA, the sale of a residential property was commonly structured in two ways.

The first method is a direct sale, completed by a change of direct ownership of the property between the buyer and seller. Under a direct sale, the buyer incurs buyer's stamp duty (BSD) and potentially incurs additional buyer's stamp duty (ABSD – up to 15% based on the buyer's profile), calculated on the purchase price or market value of the property, whichever is higher. The seller also potentially incurs seller's stamp duty (SSD).

Under the second method (indirect sale), the residential property would be held by a company and the seller would sell its shares in the company to the buyer. The buyer therefore has effective ownership of the property through the company.

At law, as the transaction is only a transfer of shares, BSD, ABSD and SSD are not incurred. Instead, the transaction only incurs stamp duty on the share transfer (being 0.2% of the consideration, or the company's net asset value).

The amended SDA has introduced a new additional conveyance duty (ACD), which significantly affects indirect sales of residential property. ACD is payable on every qualifying acquisition and disposal of equity interest in a residential property holding entity (PHE), and is pro-rated based on the percentage of equity interest acquired or disposed. The ACD is in addition to the existing stamp duty payable on the transfer of shares in a PHE.

A PHE refers to the following:

1. Type 1 PHE: an entity that holds residential properties valued at 50% or more of the value of its total tangible assets (TTA); and
2. Type 2 PHE: an entity that has 50% or more beneficial interest in one or more Type 1 PHEs (related entities), and the aggregate market value of the residential properties beneficially owned by the entity and related entities is at least 50% of the value of the aggregate TTA of all the entities.

ACD for buyers (ACDB) applies to an acquisition of equity interest in a PHE where the buyer is already a significant owner before the acquisition, or becomes one thereafter. The ACDB rate is the aggregate of: (1) the applicable rate aligned with the BSD; and (2) a flat rate of 15%.

ACD for sellers (ACDS) applies to a disposal of equity interest in a PHE where the seller is a significant owner of the PHE and where the seller disposes any equity interest in the PHE within three years of its acquisition. The ACDS is payable at a flat rate of 12%.

"Significant owner" is as an individual or entity that beneficially owns at least 50% equity interest or voting power in the PHE, including that held by its associates.

While the new ACD is a welcome change targeted at eliminating significant differences in the tax liabilities between direct and indirect purchases of residential property, prospective parties to M&A transactions should be mindful of the potential cost implications for dealings involving equity interests in PHEs.

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