

Bird & Bird ATMD & Corporate Legal Update



*New Stamp Duty Remissions Affecting M&A Transactions In
Singapore*

July 2018

In this update, we analyse and report on the new **Stamp Duties (Agreements for Sale of Equity Interest) (Remission) Rules 2018** (the "**2018 Remission Rules**"), effective 11 April 2018 and its implications for M&A transactions in Singapore.

Background

The 2018 Remission Rules clarify and streamline the stamping requirements for sale of company shares in Singapore, following changes to the Stamp Duties Act (Cap 312 of Singapore) (the "**Act**") in March 2017 (the "**2017 Changes**").

Last year, we reported on the 2017 Changes and its implications on M&A transactions – the most crucial of which was the new requirement to stamp the agreement for sale of shares i.e. on the signing of the S&P or SPA, rather than the instrument of share transfer (usually exchanged on completion) transferring shares. This was a change from the prevalent position that existed prior to the 2017 Changes.

Another change to the Act in 2017 was the introduction of the requirement to stamp agreements for sale of scriptless shares.

The situation brought about by the above changes were not fully welcomed by practitioners, although by no means unreasonable in the circumstances, since the changes to the Act were corollary to and meant to plug possible loopholes for avoidance of additional conveyance duties ("**ACD**") related to sale of residential property through corporate ownership structures.

In typically efficient Singaporean fashion, the above issues with the 2017 changes have been quickly addressed in the 2018 Remission Rules, while preserving the spirit of the ACD as a property market cooling measure.

Please refer to our Legal Update issued on 9 June 2017 for more details on the 2017 Changes [here](#).

The effect

As of 11 April 2018, the 2018 Remission Rules have clarified:

- (a) Sale of scriptless shares are not subject to stamp duty (*rule 3 of the 2018 Remission Rules*).
- (b) If an agreement for sale of shares is not subject to ACD, the agreement need not be stamped, and we revert to the pre-2017 position of stamping the instrument of share transfer (*rule 2 of the 2018 Remission rules*).
- (c) If an agreement for sale of shares is subject to ACD, the agreement should be stamped within the standard deadline, but the instrument of share transfer need not be stamped a second time if all prevalent ad valorem duties have been paid (*i.e. the position in the Act is preserved for this category of agreements*).

If your agreement falls within paragraph 3 (above) and the transaction is subsequently aborted, you may apply to the Inland Revenue Authority of Singapore ("**IRAS**") for remission of duties paid.

ACD applies to sale of shares in property-holding entities ("**PHEs**"), if the target is a PHE *at the time of the agreement for sale*. It also applies to gift, release, settlement or declaration of trust which conveys the beneficial ownership of shares in PHEs.

What is a PHE

PHEs are defined by IRAS as:-

"An entity which has at least 50% (i.e. asset ratio) of its total tangible assets comprising prescribed immovable properties ("**PIP**") in Singapore. A PHE can be a Type 1 PHE, a Type 2 PHE or both.

PIP means any immovable property that is –

- a. zoned or situated on land that is zoned "Residential", "Commercial and Residential", "Residential/Institution", "Residential with Commercial at 1st Storey", or "White";
- b. permitted to be used by a written permission given under section 14(4) of the Planning Act (not being one that is given for a period of 10 years or less) or notification given under section 21(6) of the Planning Act for solely residential purposes or for mixed purposes one of which is residential; or
- c. used for solely residential purposes or for mixed purposes one of which is residential, in a case where the property was so used on 1 Feb 1960 and has not been put to any other use since that date, and where such use is not the subject of a written permission or notification mentioned in paragraph (b).

Type 1 PHE means the target entity has PIP of which the market value makes up at least 50% of the value of the entity's total tangible assets ("**TTA**").

Type 2 PHE means the target entity:

- has 50% or more beneficial interest (directly or indirectly) in one or more entities each of which is a Type 1 PHE (henceforth referred to as "related entities"); **and**
- the sum of the market value of the PIP beneficially owned by the target entity directly and indirectly through its related entities is at least 50% of the TTA of the target entity and all the entities which the target entity has 50% or more beneficial interest (directly/ indirectly) in.

(Source: IRAS website, accessed 13 July 2018 <<https://www.iras.gov.sg/irashome/Other-Taxes/Stamp-Duty-for-Property-Holding-Entities/Learning-the-basics/Stamp-Duty-Basics-for-Property-Holding-Entities>>)

Practical Implications

For M&A involving shares in non-PHE targets

Now that the stamping requirement for most share transfers has reverted to the pre-2017 position for non PHE targets, most parties engaged in M&A transactions will be heartened to know that complex clauses relating to stamp duty are no longer required.

SPAs should therefore contain the following, to align with stamp duty payment on the share transfer instruments:-

- Sellers of shares should generally deliver the stamp duty working sheet to the purchasers at completion.
- Identify the party responsible to pay stamp duty, as it would typically be presumed that the purchasers are responsible.

Board resolutions of the target company to approve share transfer would typically be "subject to stamping."

For M&A involving PHE targets

If the sale involves a target that is a PHE, our recommendations are to set out the following in the SPA:

- The seller of shares should deliver the stamp duty working sheet to the purchaser (in order for the NAV to be calculated) at execution of the SPA, not as a document to be provided at completion.
- Identify the party responsible to pay stamp duty and clarity on which party is responsible to apply for remission of stamp duty paid should completion not occur or if there are changes to the amount of stamp duty to be paid.
- Consideration for the shares at the time of signing an SPA (in order for stamp duty to be calculated) i.e. if a formula is provided to calculate the consideration, there should be some attempt to devise a clear consideration amount at the time of signing the SPA with provision for refunds or additional payment at completion to reflect changes to the consideration amount in accordance with the formula over time.

This article is produced by our Singapore office, Bird & Bird ATMD LLP, and does not constitute legal advice. It is intended to provide general information only. Please contact our lawyers if you have any specific queries.

Contact Us

Sandra Seah

Joint Managing Partner
Singapore

Tel: +65 6428 9429
Sandra.seah@twobirds.com



Eef G Van Emmerik

Associate
Singapore

Tel: +65 6428 9474
EefGerard.VanEmmerik@twobirds.com



twobirds.com

Abu Dhabi & Amsterdam & Beijing & Bratislava & Brussels & Budapest & Copenhagen & Dubai & Dusseldorf & Frankfurt & The Hague & Hamburg & Helsinki & Hong Kong & London & Luxembourg & Lyon & Madrid & Milan & Munich & Paris & Prague & Rome & Shanghai & Singapore & Stockholm & Sydney & Warsaw

Bird & Bird is an international legal practice comprising Bird & Bird LLP and its affiliated and associated businesses, which include Bird & Bird ATMD LLP as a Singapore law practice registered as a limited liability partnership in Singapore with registration number To8LLO001K.

Bird & Bird LLP is a limited liability partnership, registered in England and Wales with registered number OC340318 and is authorised and regulated by the Solicitors Regulation Authority. Its registered office and principal place of business is at 12 New Fetter Lane, London EC4A 1JP. A list of members of Bird & Bird LLP and of any non-members who are designated as partners, and of their respective professional qualifications, is open to inspection at that address.