LEGAL
Newsletter

STAMP DUTY OBLIGATIONS AND PENALTIES FOR EMPLOYMENT CONTRACTS

A — APPLICABILITY OF THE STAMP ACT 1949 ("ACT") TO THE EMPLOYMENT CONTRACTS

Section 2

- The term "Instrument" under the Act includes any written document. While the Act does not expressly mention on employment contracts, they are understood to fall within this definition.

Section 4(1)

- Document listed in the First Schedule are considered **"Instrument Chargeable with Duty".** This includes agreement or memorandum which covers employment contracts.

B — WHO IS RESPONSIBLE FOR STAMPING THE EMPLOYMENT CONTRACT?

Item 1, Second Schedule

- The duty falls on "the person by whom the instrument is first executed."
- In practice, this refer to the employer as the employment contract is typically prepared and executed as part of the hiring process.
- The Inland Revenue Board, IRB (Lembaga Hasil Dalam Negeri, LHDN) also considers the employer as the responsible party in the event of late payment penalties.
- Employers are required to keep at least one (1) duly stamped copy of each employment contract for their records. Employers are not obligated to provide a stamped copy to employee. If the employee wants a copy for personal use, they will need to arrange and pay for stamping themselves.

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C BACKGROUND ON THE STAMP DUTY AUDIT FRAMEWORK ("FRAMEWORK")

- On 1st January 2025: IRB released the Stamp Duty Audit Framework to provide clear guidelines and encourage voluntary compliance with the Act. The Framework is also part of Malaysia's transition to a self-assessment system, effective 1 January 2026.

- The Framework now covers employment contracts signed within the past three (3) years.

- However, there are few issues arising from the Framework which includes:

i. Greater accountability for employers

- Employers must ensure all documents subject to stamp duty are properly stamped and the correct duty amount is calculated.

ii. Challenges with 30 days deadlines for employment contracts

- Employment contracts are often signed before the employee's actual joining date. Stamping is required within 30 days of signing, not the joining date. Hence, if the employee delays or withdraws, the stamp duty cost may be wasted.

iii. Stamp duty exemption is outdated and not practical

- Under Schedule 1, stamp duty exemption applies only to employees earning RM300 or less. Considering the increase in the minimum wage to RM1,700 in 2025, this threshold is no longer relevant or effective as originally intended.

- While the Act stipulates stamping within 30 days of execution, the IRB has traditionally been tolerant.

- On 6th June 2025, IRB has announced the stamp duty penalty as follows: -

  i. Employment Contract signed before 1 Jan 2025: exempted from stamping

  ii. Employment Contract signed in 2025: Stamping is required, but late penalty will be waived

  iii. Contract signed from 2026 onwards: Stamping is required, and late penalty will apply if not stamped within stipulated time.

- A waiver by government of Malaysia was granted to help employers following audit findings revealed many unstamped employment contracts.

D STAMP DUTY PENALTY WAIVER FOR EMPLOYMENT CONTRACT

E WHETHER AN UNSTAMPED EMPLOYMENT CONTRACT STILL VALID?

Section 52(1)

- If a dispute arises and you wish to rely on the employment contract, it must be stamped (subject to penalties). Failure to stamp may result to the court refusing to accept it as evidence.
- It's important to distinguish between two concepts: validity and enforceability.
  An unstamped employment contract is still considered valid and legally binding between the employer and employee.

F CONCLUSION

The recent announcement by the IRB regarding penalty waivers for specific stamp duty cases offers employers a valuable window to act accordingly and avoid penalties. Therefore, employers must ensure that all employment contracts signed from 1 January 2025 are properly stamped by 31 December 2025. This is important to avoid penalties and ensure full compliance to the Act.

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