

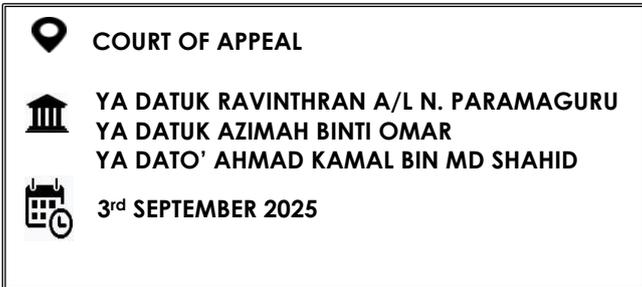


**Section 16 Stamp Act 1949,  
Item 32(a), Schedule 1, Stamp Act 1949.**

**NIKE GLOBAL TRADING B.V., SINGAPORE  
BRANCH**

**v**

**PEMUNGUT DUTI SETEM  
W-01(A)-623-11/2023**



The Court of Appeal unanimously allowed the duty payer's appeal and set aside the decision of High Court dated 06.11.2023.

The central issue before the Court of Appeal was whether the Novation Agreement dated 17 December 2021 was chargeable to stamp duty under subsection 16(1) of the Stamp Act 1949, read together with Item 32(a) of the First Schedule.

The Novation Agreement originated from a financial arrangement between Nike European Operations Netherlands (“the Original Lender”) and Nike Global (Malaysia) Sdn. Bhd. (“the Borrower”), who had entered into an Intercompany Loan Agreement on 1 May 2021. Under the terms of this agreement, the Borrower was entitled to borrow up to RM41,257,000.00 from the Original Lender. The loan was structured such that both the principal amount and any accrued interest would be payable in full only on the Maturity Date, which was set at five years from the date of the agreement. The Original Lender subsequently disbursed the entire loan amount to the Borrower in accordance with the agreement. Following the disbursement of the loan, the parties entered into a Novation Agreement involving the Original Lender, the Borrower, and the duty payer. Under this agreement, the duty payer assumed all of the Original Lender's rights and obligations under the Intercompany Loan Agreement, including the right to receive repayment of the outstanding debt amounting to RM41,257,000.00. As a result of this transaction, the Novation Agreement was assessed to ad valorem stamp duty in the sum of RM1,716,004.00.

The duty payer contended that the Novation Agreement should not be subject to ad valorem stamp duty under section 16(1) and Item 32(a) of the First Schedule of the Stamp Act 1949. Relying on section 63 of the Contracts Act 1950, the duty payer argued that a novation does not involve any transfer of property. Instead, it extinguishes the original contract and replaces it with a new agreement among the parties. As there is no conveyance or assignment of property involved, the provisions that impose stamp duty on instruments effecting such transfers are inapplicable. Furthermore, the Novation Agreement is not expressly listed under any specific item in the First Schedule of the Stamp Act. In the absence of a clear provision categorizing the agreement as chargeable to ad valorem duty, the correct assessment should be the nominal stamp duty of RM10, as prescribed under Item 4 of the First Schedule.

The Respondent argued that in determining whether an instrument is chargeable to stamp duty, one must look beyond its title and examine its substance and overall effect. Merely labelling the document as a “Novation Agreement” does not automatically entitle it to be stamped at the nominal rate of RM10 if, in substance, it operates as a transfer of property. It was submitted that the Novation Agreement clearly transferred the right to receive repayment of the debt from the Original Lender to the Appellant. Although the transfer was made without monetary consideration, it conferred substantial benefit on the Appellant. As such, the transaction was deemed to be made without valuable consideration and classified as a voluntary conveyance inter vivos under section 16(3) of the Stamp Act 1949. Further, given that the debt constitutes property under the Act, the Respondent maintained that the Novation Agreement effectively operated as a transfer of property. Therefore, it attracted the application of section 16(1) and was chargeable under Item 32(a) of the First Schedule.

The Court of Appeal, however, disagreed with the Respondent's position. It held that section 16(1) of the Act was plainly inapplicable in this case. The Court found that the Novation Agreement was a genuine novation, not an assignment, conveyance, or transfer of property. The High Court's conclusion that the agreement amounted to an assignment was legally flawed and warranted appellate intervention. On the issue of consideration, the Court of Appeal held that the High Court erred in finding that the Novation Agreement lacked consideration. The Court clarified that consideration in a novation need not be monetary; it may consist of mutual promises between the parties, such as the agreement to release one party from prior obligations. Since the Novation Agreement extinguished the original loan and substituted the duty payer in place of the Original Lender, it did not fall within the scope of section 16(1) or Item 32(a) of the First Schedule.

**Decision:** The Court of Appeal allowed the appeal and set aside the stamp duty assessment. Costs of RM20,000 were awarded to the duty payer.