GARIS PANDUAN PERMOHONAN PELEPASAN DUTI SETEM DI BAWAH SEKSYEN 15A, AKTA SETEM 1949

1. PENGENALAN

Garis Panduan ini dikeluarkan untuk menerangkan prosedur permohonan pelepasan duti setem di bawah seksyen 15A Akta Setem 1949 (AS) bagi pindah milik harta antara syarikat-syarikat bersekutu. Syarikat bersekutu adalah seperti mana yang ditakrifkan di bawah seksyen 15A AS.

Seksyen 15A mengecualikan surat cara-surat cara yang boleh dikenakan duti di bawah Butiran 32(a) dan 32(b) Jadual Pertama, AS jika syarat-syarat yang ditetapkan dipatuhi dengan sepenuhnya.

Secara umumnya, transaksi yang layak memohon pelepasan duti setem di bawah seksyen 15A adalah merupakan transaksi pindah milik hartanah, syer dan harta syarikat yang dilaksanakan menggunakan memorandum pindah milik atau perjanjian pindah milik aset.

Tujuan pindah milik harta adalah untuk meningkatkan kecekapan dalam operasi syarikat. Sehubungan itu, pelepasan di bawah seksyen 15A tidak terpakai bagi pindah milik perniagaan.

2. SYARAT-SYARAT KELULUSAN

2.1. Pindah milik harta adalah antara syarikat-syarikat bersekutu.

2.2. Syarikat adalah bersekutu sekiranya:

a. Syarikat pemberi atau syarikat penerima memegang tidak kurang 90% modal syer dikeluarkan dalam syarikat pemberi atau penerima sebagaimana peruntukan subseksyen 15A(2)(a) AS; atau

b. Kedua-dua syarikat pemberi dan syarikat penerima adalah dipegang oleh sebuah syarikat induk/perantara melalui tidak kurang 90% pegangan modal syer dikeluarkan sebagaimana peruntukan subseksyen 15A(2)(a) AS.

2.3. Dalam kes di mana modal syer dikeluarkan dipegang melalui syarikat perantara, pengiraan peratusan syer yang dipegang hendaklah dilaksanakan menurut peruntukan-peruntukan dalam Jadual Ke-6, AS.

2.4. Syarikat-syarikat yang dipegang oleh orang perseorangan yang sama tidak boleh dianggap syarikat bersekutu.

2.5. Syarikat pemegang syer hendaklah merupakan pemilik benefisial syer tersebut.

2.6. Penerima pindah milik hendaklah diperbadankan di Malaysia.

2.7. Pindah milik bertujuan untuk meningkatkan kecekapan operasi syarikat pemberi dan penerima pindah milik.

2.8. Balasan mestilah dibuktikan telah diselesaikan sepenuhnya oleh kedua-dua pihak pada masa permohonan pelepasan.

2.9. Harta yang dipindah milik dipindahkan terus dari pemberi kepada penerima pindah milik.

3. PROSEDUR PERMOHONAN

3.1. Permohonan hendaklah dikemukakan kepada mana-mana Pejabat Pengarah Negeri, Lembaga Hasil Dalam Negeri Malaysia (LHDNM) melalui sistem STAMPS, diikuti dengan pengemukaan dokumen-dokumen sokongan secara serahan tangan.

3.2. Dokumen-dokumen yang perlu dikemukakan adalah seperti berikut:

a. Surat permohonan berserta justifikasi peningkatan kecekapan dan perancangan operasi syarikat pemberi dan syarikat penerima pindah milik dalam tempoh 3 tahun selepas pindah milik dilakukan;

b. Akuan berkanun yang diakui oleh seorang peguam bela dan peguam cara di Mahkamah Tinggi dalam format yang telah ditetapkan seperti **Lampiran 1**;

c. Surat cara pindah milik atau perjanjian pindah milik harta yang telah disetem sewajarnya;

d. Sijil Syer (*Share Certificate*) dan Borang Seksyen 51 Akta Syarikat 2016 *(Register of Member*) atau Borang Seksyen 68 Akta Syarikat 2016 *(Annual Return of A Company Having A Share Capital)* sebagai bukti pemilikan syer dalam syarikat-syarikat berkaitan yang dimuat turun daripada Portal Rasmi Suruhanjaya Syarikat Malaysia (SSM);

e. Resolusi Lembaga Pengarah berkaitan dengan pindah milik bagi kedua-dua syarikat pemberi dan penerima yang disahkan oleh Setiausaha Syarikat;

f. Salinan Borang CKHT 2A yang telah diakui terima oleh LHDNM;

g. Surat-surat kelulusan daripada badan kawal selia Kerajaan seperti Kementerian Perdagangan Antarabangsa dan Industri, Suruhanjaya Sekuriti dan Bank Negara Malaysia berkenaan balasan dalam bentuk saham;

h. Penyata bank sebagai bukti pembayaran tunai; dan

i. Borang Seksyen 78 Akta Syarikat 2016 *(Return Of Allotment of Shares)* bagi syarikat penerima pindah milik yang dimuat turun daripada Portal Rasmi SSM.

3.3. Kelulusan akan dimaklumkan dalam sistem STAMPS. Pemohon perlu hadir ke Pejabat Pengarah Negeri, LHDNM yang berkenaan bagi mendapatkan Surat Kelulusan dan Sijil Pengecualian Duti Setem di bawah peruntukan ini.

3.4. Permohonan pelepasan yang ditolak juga dimaklumkan dalam sistem STAMPS dan disalin kepada Pejabat Setem Cawangan atau Pusat Khidmat Hasil, LHDNM yang berkenaan bagi memastikan penyeteman surat cara dibuat dengan sewajarnya.

4. PENARIKAN BALIK KELULUSAN PELEPASAN DUTI SETEM

4.1. Kelulusan pelepasan duti setem di bawah peruntukan ini akan ditarik balik sekiranya didapati berlakunya perkara-perkara yang berikut:

a. Mana-mana perakuan atau dokumen sokongan yang dikemukakan didapati tidak benar;

b. Balasan atau mana-mana bahagian balasan didapati diberikan oleh pihak selain daripada penerima pindah milik atau syarikat bersekutu;

c. Balasan atau mana-mana bahagian balasan didapati diterima oleh pihak selain daripada pemberi pindah milik atau syarikat bersekutu;

d. Harta yang dipindah milik bukan milik benefisial pemberi;

e. Pemberi dan penerima pindah milik tidak lagi bersekutu dalam tempoh 3 tahun dari tarikh pindah milik; atau

f. Syarikat penerima melupuskan harta yang diperolehi dalam tempoh 3 tahun dari tarikh pindah milik.

4.2. Dengan penarikan balik kelulusan di bawah seksyen 15A, duti setem yang telah dilepaskan adalah dikenakan bersama-sama dengan faedah sebanyak 6% setahun mulai dari tarikh surat cara pindah milik yang berkenaan sepatutnya disetemkan selaras dengan peruntukan subseksyen 15A(5) AS. Selain itu, penalti lewat setem di bawah seksyen 47A AS juga boleh dikenakan.

5. TANGGUNGJAWAB SYARIKAT PENERIMA DAN SYARIKAT PEMBERI

5.1. Syarikat penerima dan syarikat pemberi yang terlibat dengan pindah milik hendaklah memaklumkan secara bertulis kepada Pejabat Pengarah Negeri, LHDNM yang telah mengeluarkan kelulusan di bawah peruntukan ini sekiranya berlaku mana-mana keadaan berikut:

a. Sebahagian/keseluruhan balasan diterima atau dibayar (secara langsung atau tidak langsung) oleh syarikat selain pemberi, penerima atau syarikat yang bersekutu;

b. Kepentingan harta telah dipindah milik (secara langsung atau tidak langsung) sebelum harta dipindah milik kepada syarikat penerima;

c. Pemberi dan penerima pindah milik tidak lagi bersekutu dalam tempoh 3 tahun dari tarikh pindah milik;

d. Syarikat penerima melupuskan harta yang diperolehi dalam tempoh 3 tahun dari tarikh pindah milik.

5.2. Pemakluman kepada Pejabat Pengarah Negeri, LHDNM hendaklah dibuat dalam tempoh 30 hari dari tarikh berlakunya mana-mana keadaan tersebut di atas.

5.3. Syarikat penerima, syarikat pemberi dan syarikat bersekutu yang terlibat dengan pindah milik harta hendaklah mengemukakan akaun beraudit syarikat bagi 3 tahun kewangan selepas pindah milik dibuat.

6. PENGEMASKINIAN

Garis panduan ini adalah untuk menggantikan ‘Garis Panduan Permohonan Pelepasan Duti Setem Di Bawah Seksyen 15A, Akta Setem 1949 (No.Rujukan LHDN.AG.600-1/7/3)’ dan berkuat kuasa mulai tarikh ianya dikeluarkan.

LEMBAGA HASIL DALAM NEGERI MALAYSIA

1 Mac 2022

s.k. LHDN.01/35/(S)/42/68/4

LAMPIRAN 1

PDS S11A

STATUTORY DECLARATION MADE IN CONNECTION WITH AN APPLICATION FOR RELIEF OF STAMP DUTY UNDER SECTION 15A OF THE STAMP ACT 1949

In the matter of Section 15A Stamp Act 1949

AND

In the matter of.....[1]	Bhd./Ltd. (Parent Company);
[.....]	Bhd./Ltd. (Transferor Company);
[.....]	Bhd./Ltd. (Transferee Company);
[.....]	Bhd./Ltd. (Intermediary Company);
[.....]	Bhd./Ltd. (Asset);

I……
……..NRIC NO ……. of full age and residing at .....……. an Advocate and Solicitor of the High Court of Malaya and a [partner] [legal assistant]l in the firm of .....……
……..... (name) and (address)

DO SOLEMNLY AND SINCERELY DECLARE as follows:-

1. I have been engaged in connection with the transaction referred to below and am fully acquainted therewith.

2. The parent company is a company incorporated with limited liability in .....[2] under the .....[2] on the .....[3]

3. .....Bhd./Ltd.[1] (hereinafter called the "transferor company") is a company incorporated with limited liability in ..... [2] under the .....[2] on the ..... [3] and as at.....[4] had an issued share capital of ..... divided into..... [5] shares of .... each, all of which have been fully paid up. [The said shares] [Out of the said shares, ...[6] sharesl] have been registered in the name of .....[7].

4. ..... Sdn. Bhd./Bhd. [1] (hereinafter called the "transferee company") is a company incorporated with limited liability in Malaysia under the .....[8] on the ..... a and as at .....[4] had an issued share capital of ..... . divided into.....[5] shares of ..... each, all of which have been fully paid up. [The said shares] [Out of the said shares, ...[6] shares][I] have been registered in the name of ……..

5. ..... Bhd./Ltd. [1] (hereinafter called the "intermediary company") is a company incorporated with limited liability in ..... [8] under the .....[8] on the .....[3] and as at ..... .[4] had an issued share capital of ..... divided into .....[5] shares of.....each, all of which have been fully paid up. [The said shares] [Out of the said shares,..... [6] shares] [I] have been registered in the name of..... [Parents] [Transferor] [Transferee] [1] Company.

6. The transferor and transferee companies are associated companies by reason that as at .....[4] not less than ninety per cent of the issued share capital of .....[9] was held by ..... [10] and the condition stipulated by paragraph 15A(2)(a) of the Stamp Act 1949 is therefore satisfied. [Copies of Share Certificate] [Copies of Shareholders Register][I] are enclosed and marked ……...

7. The transfer of the [property] [properties] [1] of the associated companies [is] [are] [1] to achieve greater efficiency in the operations of the transferor and the transferee companies and the condition stipulated by paragraph 15A(2)(b) of the Stamp Act 1949 is therefore satisfied. Three years operational plans[11]of the transferor and the transferee companies are enclosed and marked .....

8. Pursuant to resolution adopted on .....[12] by the Board of Directors of the transferor company and on .....[12] by the Board of Directors of the transferee company (copies of which resolutions are enclosed and marked….) and an agreement was entered into between the companies on.....[13] for the sale and purchase of .....[14] [copy] [copies][I] of which agreement [is] [are] [I] enclosed and marked .....

9. The instrument(s) of transfer[15], which [is] [are][I] attached and submitted for adjudication, [was] [were][I] executed on .....[4] And the sum of RM .....being the agreed consideration,[1]

a. [was paid by the transferee company by way of allotment of ..... shares of RM ..... each in the transferee company to the transferor company]; or

b. [was paid by the transferee company out of its own resource in cash to the transferor company].

10. [The transfers are not subject to control by the regulatory bodies of Government on the grounds that ..... [16]]. [The transfers are of a kind requiring prior approval by a regulatory body of Government. A certified true copy of [the] [each of the] [l] letter(s) of approval is annexed and marked .....

11. The transfer(s) [is] [are][l] being undertaken for organisational reasons only and it is intended that the beneficial interest in the [property] [properties] [l] which will be so transferred will be retained for three (3) years by the transferee company and remain associated for three (3) years.

12. The instrument(s) of transfer [was] [were][l] not executed in pursuance of or in connection with an arrangement whereunder-

a. the consideration or any part of the consideration, for the transfer(s) was to be provided or received, directly or indirectly, by a person other than a company which at the time of the execution of the instruments was associated within the meaning of paragraph15A(2)(a) and subsection 15A(3) of the Stamp Act 1949 with either the transferor or transferee; or

b. the beneficial interest was previously transferred directly or indirectly, by such person; or

c. the transferor and the transferee were to cease to be associated within the meaning of paragraph 15A(2)(a) and subsection 15A(3) of the Stamp Act 1949 by reason of change in the percentage of the issued share capital of the transferee in the beneficial ownership of the transferor or a third company; or

d. the transferee company disposes of the [property] [properties] that it has acquired within three years from the date of the conveyance or transfer of the property.

13. The transferor and the transferee companies will notify the Collector in writing of the occurrence of any of the circumstances under subsection 15A(4) within thirty days from the date of the occurrence.

14. It is submitted that the effect of the instrument(s) attached hereto is to transfer a beneficial interest in [property] [properties] [1] between associated companies and that the conditions of Section 15A of the Stamp Act 1949 are satisfied in relation thereto.

AND MAKE THIS SOLEMN DECLARATION with the consent of my Board of Directors, conscientiously believing the same to be true and by virtue of the provision of the Statutory Declaration Act 1960.

Subscribed and solemnly declared by the abovenamed)
……)
at ……..)
in the State of .....)
this.....20.....[17])

Before me,

Commissioner for Oaths

Notes

1 Adopt either as appropriate.

2 State the place of incorporation and the law under which it was incorporated eg. If in Malaysia, "The Companies Act 1965" if incorporated before 1 January 2017, and "The Companies Act 2016" if incorporated by or after 1 January.

3 Date of incorporation.

4 Date of execution of the Instrument of Transfer.

5 If more than one class, give appropriate particulars of each class.

6 State the number of shares so held.

7 State "parent company", transferor company" or transferee company"

8 Transferee Company must be a company incorporated in Malaysia. Please state "The Companies Act 1965" if incorporated before 1 January 2017, and "The Companies Act 2016" if incorporated by or after 1 January 2017.

9 State either "each of these companies" or [transferor] [transferee] company.

10 State either "the parent company" or [transferor] [transferee] company. However, where the minimum percentage (90%) of ownership of one of the companies by either company is present through an intermediary company, eg. Where A beneficially owns 60% of B and 75% of C, and B owns 25% of C, giving A therefore a 90% ownership of C, full particulars including a sketch of the "family tree" should be provided in an appendix hereto.

11 Operational plans to show greater efficiency to be achieved by the transferor and transferee companies by transferring the [property] [properties].

12 State the dates of each resolution.

13 Date of agreement executed if it is a different agreement than the Instrument of Transfer.

14 Give particulars of the properties/undertakings that are the subject matters of the contract of sale and purchase.

15 In accordance with Section 36 of Stamp Act 1949.

16 State briefly on what grounds.

17 Name of the person making the decision.