

17 JUNE 2021

## Stamp Duty Assessment Based On Inflated Market Value Quashed

*PPSB v Pemungut Duti Setem (2021)*

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On 27.5.2021, the Johor High Court allowed the taxpayer's appeal against the Notice of Stamp Duty Assessment (Assessment) issued by the Stamp Duty Collector (Collector) with costs. The High Court has ruled the Assessment as erroneous and ordered the Collector to refund the excess stamp duty paid by the taxpayer with interest.

Our Tax, SST & Customs Partner, S. Saravana Kumar together with associate, Chew Ying have successfully represented the taxpayer in the appeal. This alert summarises the facts of the appeal and arguments advanced by both parties.

### Background Facts

In 2018, the taxpayer entered into a sale and purchase agreement to purchase a portion of a land in Johor Bahru (Land) for the purchase price of RM 57 million. The taxpayer had planned to develop two blocks of serviced apartments on the Land and duly submitted the form for adjudication of stamp duty to the Collector's office.

The Collector took the position that the market price of the Land is RM 107 million instead of the purchase price of RM 57 million and raised the Assessment based on the market price of RM 107 million. Under Item 32(1) of the First Schedule of the Stamp Act 1949, the amount of stamp duty payable is based on the market value of the consideration received or the market value of the property (whichever is greater).

The taxpayer objected against the Assessment under Section 38A(1) of the Stamp Act 1949 (Application). The taxpayer also submitted two valuation reports prepared by two independent valuers to the Collector to support their Application. The market value determined by the taxpayer's valuers are no more than RM 61.4 million.

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The Collector rejected the taxpayer's Application and maintained the Assessment. The taxpayer then filed the appeal to the High Court pursuant to Section 39(1) of the Stamp Act 1949.

## Issues Before The High Court

The main issues to be determined by the High Court in the appeal were:

- (a) Whether the market value of the Land as determined by the taxpayer's valuers are more accurate and suitable as compared to the market value determined by Jabatan Penilaian dan Perkhidmatan Harta (JPPH)?
- (b) Whether the Collector's decision in imposing stamp duty is based on the market value determined by JPPH is correct?

## Taxpayer's Submissions

The taxpayer submitted that the valuation conducted by its valuers are more accurate, suitable and reliable. The taxpayer's main objections with the market value of the Land as determined by JPPH are as follow:

- (a) The comparable used by JPPH in determining the market value of the Land had failed to comply with the general principles as well as the requirements stipulated under the Land Acquisition Act 1960.
- (b) Among others, the comparable relied by JPPH were transacted for more than two years from 2018, located in different vicinities and do not have similar characteristics as the Land.
- (c) JPPH had failed to take into consideration all relevant factors including adverse concerns including the fact that the Land was located in close proximity to a funeral parlour, crematorium and cemeteries.
- (d) JPPH also did not take into account the sluggish residential market and the problem of oversupply of

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apartments in Johor Bahru which had certain bearing on the market value of the Land.

During the hearing, the taxpayer also established that the oral testimony given by the Collector's witness contained hearsay evidence. This is due to the fact that the witness was not the maker of the valuation report produced by JPPH which was relied by the Collector in issuing the Assessment.

### The Collector's Response

The Collector's rationale in adopting the market value as determined by JPPH is as below:

- (a) The Land is located in a convenient location with good access to the Johor Bahru city.
- (b) The Land's use has been changed for the use for Commercial and Serviced Apartments.
- (c) The Land had obtained the necessary approvals from the authorities to construct two blocks of serviced apartments.
- (d) The valuation reports prepared by the taxpayer's valuers are flawed as there wasn't any table of adjustments in the reports.
- (e) The adverse factors highlighted by the taxpayer's valuers are irrelevant and do not have any impact on the Land's market value.

The Collector also argued that the valuation done by JPPH ought to be given priority in determining the market value of the Land. According to the Collector, the Court should only rely on the valuation by a private valuer when the JPPH's valuation was wrong or had contravened the law.

### Decision Of The High Court

Upon reading and hearing submissions by both parties, the High Court allowed the taxpayer's appeal and quashed the Assessment.

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In brief, the High Court's reasons were as follows:

- (a) The valuation report prepared by JPPH was compromised as it was not in compliance with the requirements as stated under the Land Acquisition Act 1960.
- (b) The JPPH had also failed to take into account the adverse factors such as close proximity to the crematorium and cemeteries as well as the poor market conditions in Johor which had material impact on the value of the Land.
- (c) The oral evidence given by the Collector's witness was inadmissible as the witness was not the maker of the JPPH valuation report relied by the Collector.

This decision serves as a good reminder that authorities, including the Collector and JPPH, are confined by the perimeters of our written laws and their conduct and actions can be challenged when an error of law has been committed.

In challenging a stamp duty assessment, it is pertinent that taxpayers are able to support the value of a property as stated in the sale and purchase agreement when submitting the relevant instrument of transfer for adjudication. In this appeal, the valuation reports prepared by the private valuers as well as the justification given by the valuers were key in proving that the amount of stamp duty raised by the Collector was erroneous as it was based on an inflated market value.

Authored by Chew Ying, an associate with the firm's Tax, SST & Customs practice.

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