

STAMP DUTY ON NOVATION AGREEMENT: ANALYSIS OF THE MESRA RETAIL CASE

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This article examines the High Court's decision in *Mesra Retail & Cafe Sdn Bhd v Pemungut Duti Setem, Malaysia* [2025] MLJU 3979, which considered whether a Novation Agreement is subject to nominal stamp duty of RM10 under Item 4 of the First Schedule of the Stamp Act 1949 (SA) or ad valorem stamp duty under Item 32(a) of the First Schedule.

The key issue before the High Court was whether the novation resulted in a conveyance or transfer of property within the meaning of Section 16(1) of the SA, or whether it merely extinguished existing contractual rights and obligations and substituted them with a new contractual relationship. The Taxpayer was successfully represented by our firm's Tax, SST & Customs Partner, S. Saravana Kumar together with Senior Associate, Nur Hanina Mohd Azham.

This article provides an in-depth analysis of the arguments presented by both parties, the findings of the High Court, and the broader implications on the classification and stamp duty treatment of novation agreements in Malaysia.

Facts

Petronas Dagangan Berhad (PDB) is the owner of various petrol station premises and ancillary facilities. PDB had entered into several operating agreements with Golden Scoop Sdn Bhd (Golden Scoop), under which Golden Scoop was granted a licence to occupy designated areas within selected petrol stations to operate Baskin-Robbins outlets. In consideration, Golden Scoop paid monthly sums to PDB.

On 8 July 2021, PDB incorporated Mesra Retail & Café Sdn Bhd (Taxpayer), a wholly owned subsidiary, to focus on PDB's non-fuel business segment. Subsequently, on 14 January 2022, PDB, the Taxpayer and Golden Scoop entered into a Master Novation Agreement (Novation Agreement). Pursuant to the Novation Agreement, PDB novated and transferred all its rights, interests, obligations and liabilities under the existing operating agreements to the Taxpayer. Golden Scoop agreed to release and discharge PDB from the operating agreements, while the Taxpayer undertook to perform all obligations thereunder.

The Novation Agreement was submitted for adjudication. On 14 September 2023, the Collector of Stamp Duties (Collector) assessed stamp duty of RM7,478.00 on the basis that the Novation Agreement was chargeable to ad valorem stamp duty. The Taxpayer paid the stamp duty under protest and filed a Notice of Objection pursuant to Section 38A of the SA. The objection was rejected, leading the Taxpayer to appeal to the High Court under Section 39(1) of the SA.

The Law

The relevant provisions of the SA examined by the Courts in this case are as follows:

- i. Section 16(1) of the SA reads as follows:

“Any conveyance or transfer operating as a voluntary disposition inter vivos shall be chargeable with the like stamp duty as if it were a conveyance or transfer on sale.”

- ii. Item 4 of the First Schedule prescribes fixed duty of RM 10 for general agreements:

AGREEMENT OR MEMORANDUM OF
AGREEMENT made under hand only, and
not otherwise specially charged with any RM10
duty, whether the same is only evidence of a
contract or obligatory on the parties from its
being a written instrument

- iii. Item 32(a) of the First Schedule prescribes ad valorem duty for conveyances, assignments, and transfers of property:

“CONVEYANCE, ASSIGNMENT, TRANSFER OR ABSOLUTE BILL OF SALE:

(a) On sale of any property (except stock, shares, marketable securities and accounts receivables or book debts of the kind mentioned in paragraph (c))

For every RM100 or fractional part of RM100 of the amount of the money value of the consideration or the market value of the property, whichever is the greater—

- (i) RM1.00 on the first RM100,000;
- (ii) RM2.00 on any amount in excess of RM100,000 but not exceeding RM500,000;
- (iii) RM3.00 on any amount in excess of RM500,000.
- (iv) RM4.00 on any amount in excess of RM1,000,000

The Taxpayer's Contention

The Taxpayer contended that the Novation Agreement should only attract nominal duty of RM 10 pursuant to Item 4 of the First Schedule of the SA based on the following reasons:

- i. The Novation Agreement constituted a true novation in law and did not give rise to any transfer or conveyance of property. A novation operates to extinguish the original contractual rights and obligations and replaces them with a new contract by consent of all parties involved. This position is in line with Section 63 of the Contracts Act 1950 which reads as follows:

“Effect of novation, rescission and alteration of contract

If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed.”

- ii. It was submitted that, upon the execution of the Novation Agreement, PDB’s rights and obligations under the operating agreements were fully discharged and ceased to exist. As such, there were no subsisting rights capable of being transferred or assigned to the Taxpayer. The Novation Agreement merely substituted the Taxpayer as the contracting party in place of PDB and did not involve any transfer of proprietary rights; and
- iii. The Taxpayer further argued that Section 16(1) of the SA was inapplicable as there was no conveyance or transfer operating as a voluntary disposition inter vivos. In the absence of any transfer of property, the Novation Agreement could not fall within Item 32(a) of the First Schedule. Accordingly, the Novation Agreement was properly chargeable only to nominal stamp duty under Item 4 of the First Schedule.

The Collector’s Arguments

The Collector’s arguments can be summarised as follows:

- i. The Novation Agreement resulted in the transfer of property from PDB to the Taxpayer without valuable consideration;
- ii. The actual effect of the Novation Agreement is to move the original owner’s (i.e. PDB) rights, obligations, liabilities, title, interests and benefits to the Taxpayer and the Taxpayer is now bound by the terms of the operating agreements with the Operator (ie Golden Scoop); and
- iii. Thus, the rights under the operating agreements constituted “property” and that the novation therefore amounted to a voluntary conveyance inter vivos, attracting ad valorem stamp duty under Section 16(1) read together with Item 32(a) of the First Schedule of the SA

Findings Of The High Court

Upon hearing the submissions of both parties, the High Court held that the Novation Agreement does not constitute an assignment or transfer of property and is therefore not subject to ad valorem stamp duty under Section 16(1) and Item 32(a) of the First Schedule of the SA. Instead, the High Court ruled that the Novation Agreement falls under Item 4 of the First Schedule and is therefore subject to nominal stamp duty of RM10.

The High Court’s judgment can be summarised as follows:

- i. The substance of the matter and not the form must be taken into consideration in determining the applicable stamp duty rate for an

instrument as established by the Federal Court in *BASF Services (M) Sdn Bhd v Pemungut Duti Setem* [2010] 5 CLJ 109;

- ii. The High Court referred to the Supreme Court's decision in *LYL Hooker Sdn Bhd v Tevanaigam Savisthri KT Chitty & Anor* [1987] 2 MLJ 52 which examines the distinction between novation and assignment. The effect of novation is as follows:
 - a. A novation agreement extinguishes rights and obligations under an old contract for which the new contract is made; and
 - b. It requires the consent of all parties and fresh consideration, and the rights and obligations under the new contract are not transferred from the old contract, which has already been extinguished.
- iii. Upon examining the terms of the Novation Agreement, the High Court found that:
 - a. The Novation Agreement is a tripartite agreement between PDB, Golden Scoop, and the Taxpayer, the subject matter of which are the operating agreements;
 - b. Under the Novation Agreement, the non-fuel business of PDB is novated with the transfer of all rights, interests, obligations, and liabilities under the operating agreements to the Taxpayer;
 - c. Golden Scoop expressly released and discharged PDB from its obligations under the operating agreements; and
 - d. The Taxpayer assumed all rights, obligations and liabilities in place of PDB.
- iv. Therefore, there was no transfer or conveyance of property from PDB to the Taxpayer.

Commentary

The *Mesra Retail* case affirms that a true novation extinguishes the original contract and creates a new contractual relationship without transferring property or rights. As such, novation agreements do not fall under Item 32(a) of the First Schedule of the SA and are instead subject to nominal stamp duty of RM10 under Item 4. The High Court's decision offers a clear and authoritative distinction between novation and assignment, particularly in the context of stamp duty classification. The High Court emphasised that novation does not involve the transfer of property, as the original contract is extinguished and replaced with a new agreement. This case reinforces the doctrine of substance over form, affirming that the substance of the instrument, not its form or label, determines its stamp duty implication.

Furthermore, this ruling bears significant implications for corporate restructuring, intercompany financing, loan refinancing, intra-group realignments, and M&A transactions, where novation agreements are common. It is therefore essential for practitioners to ensure that novation agreements are properly drafted to demonstrate the substitution of both rights and obligations, rather than merely the transfer of benefits.

It must be highlighted that the Collector has filed an appeal to the Court of Appeal and as such, the matter is now pending before the Court of Appeal.