In Business Collaboration:

Stamp Duty & Its Impact On Key Business Documents: Employment Letters, Purchase Orders, Intercompany Loans & Supplementary Agreements

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"For stamp duty purposes, the label placed on a document is rarely decisive. What matters is what the instrument actually does, the rights and obligations it creates, and the transaction it records."

Stamp duty is often treated as a back-office compliance issue. In practice, it is becoming a much broader governance concern. This is especially so as businesses generate large volumes of documents across procurement, treasury, human resources and commercial functions. Employment letters, purchase orders, intercompany financing documents and supplementary agreements may appear routine, but each can raise different stamp duty consequences depending on how it is drafted and what legal effect it carries.

The starting point is deceptively simple: stamp duty is imposed on instruments, not transactions. A transaction may exist without attracting stamp duty where there is no chargeable instrument. Conversely, a document that looks operational or administrative may attract duty if it is, in substance, the instrument creating the parties' legal relationship.

This distinction is becoming increasingly important in a self-assessment environment, where businesses must take greater responsibility for determining the correct treatment themselves.

Intercompany Loans: Group Financing Is Not Automatically Exempt

Intercompany financing is one area where assumptions can be costly. The fact that funds move between related companies does not, by itself, remove the transaction from the stamp duty regime.

Where the advance is documented through a chargeable loan instrument, stamp duty may arise notwithstanding that the lender and borrower belong to the same corporate group.

The real question is therefore not whether the financing is "intercompany", but how the instrument is structured and under which part of the First Schedule it falls. This can materially affect the amount of duty payable.

Where the financing is unsecured and repayable on demand or by way of a single repayment, businesses should consider whether the relevant remission order may apply.

The courts have considered this issue in *Pemungut Duti Setem v Ann Joo Integrated Steel Sdn Bhd* [2025] 1 MLJ 141. Of particular significance was the Court of Appeal's approach to the computation of the remission, which resulted in a substantially lower duty than a straightforward application of 0.1% to the principal loan amount.

This decision remains important for businesses structuring, qualifying financing arrangements. It also illustrates why repayment terms, security arrangements and the precise drafting of the loan instrument should be considered before execution, rather than after the document has been signed. There is, however, an additional practical dimension.

The administrative position adopted by the Collector of Stamp Duties may not always align neatly with the judicial interpretation. Businesses relying on the remission should therefore ensure that the documentation falls squarely within the relevant requirements and that any objection or appeal rights are preserved within the prescribed timelines.

The broader point is clear: intercompany loan documentation should not be treated as a mere treasury formality.

Purchase Orders: Administrative Document Or Binding Contract?

Purchase orders (PO) present a different difficulty. There is no specific heading for a "purchase order" in the First Schedule to the Stamp Act 1949. However, this does not mean every PO escape duty. What matters is substance.

Where a master agreement already governs the commercial relationship and the PO merely states quantities, specifications, delivery dates or other operational details, there is a stronger basis for treating the PO as an administrative instrument.

However, this position changes where the PO itself becomes the document through which the transaction is created. If there is no underlying master agreement and the PO contains the essential terms governing the service, consideration and obligations of the parties, it may in substance be the agreement itself. Calling it a "purchase order" will not change that. Businesses should therefore ask a more practical question: what happens if the PO is removed from the contractual chain?

If the rights and obligations of the parties still arise from the master agreement, the PO is more likely to be administrative. If the PO is the document that creates the obligation to perform and pay, the stamp duty risk is significantly higher.

Goods Or Services? The Distinction Matters

A further issue arises where a purchase includes both goods and some service elements. The existence of installation, warranty, maintenance or after-sales obligations does not necessarily turn an agreement for the purchase of goods into a services agreement.

This issue was considered in *Petronas Carigali Sdn Bhd v Pemungut Duti Setem* [2023] MLJU 639. The transaction concerned the acquisition of equipment accompanied by warranty obligations. The Collector of Stamp Duties sought to characterise the arrangement as involving services and therefore attracting ad valorem duty. The High Court rejected that approach.

The essential character of the arrangement remained the acquisition of goods. The warranty obligations were ancillary to the principal transaction. In this regard, this decision is commercially important.

A company purchasing machinery, equipment or other goods does not automatically enter into a services agreement merely because the supplier must install, maintain or remedy defects in the product.

The correct inquiry is into the predominant character of the transaction. This distinction can make a substantial difference where agreements for the sale of goods are exempt while service agreements may attract ad valorem duty.

Supplementary Agreements: The Title Is Not Enough

Supplementary agreements are perhaps more difficult because there is no single rule that applies to every case. Suppose a company enters into a service agreement for a defined period and consideration. Before the agreement expires, the parties sign a supplementary agreement extending the term and introducing further consideration.

Is the later document merely an extension of the original agreement, or is it another chargeable instrument? The answer depends on what the document actually changes. Where a supplementary agreement does no more than extend the existing arrangement without materially altering the underlying bargain, there may be an argument that it does not create a fresh contractual relationship.

The risk increases where the document introduces:

- new consideration;
- an expanded scope of services;
- additional rights or obligations;
- materially different commercial terms; or

- a substantially altered contractual relationship.

In those circumstances, the fact that the document is labelled "supplementary" may be of limited significance. In substance, it may amount to a new agreement.

This is an area where businesses should be cautious about adopting blanket positions. A policy that every supplementary agreement attracts only nominal duty may be difficult to defend if the document effectively creates a new bargain.

Employment Contracts: More Certainty, But Documentation Still Matters

Employment documentation has received more administrative clarification. Employment contracts generally attract fixed stamp duty of RM10, subject to the applicable exemption for employment contracts where monthly wages do not exceed RM3,000.

More importantly, the IRB has clarified that the focus is on the principal employment instrument containing the terms and conditions of employment.

Subsequent administrative documents relating to the same employment relationship generally do not require separate stamping merely because they alter an aspect of the employment arrangement. This may include documents dealing with:

- salary increments;
- bonuses or incentives;
- promotions;
- transfers;
- extensions of probation; and
- other administrative changes.

The commercial logic is straightforward. A salary increment does not ordinarily create a new employment relationship. Nor does a promotion or transfer letter usually amount to a fresh employment contract. These documents operate within a relationship already created by the principal employment agreement.

The distinction should nevertheless be maintained between an administrative variation and an instrument that substantially replaces or creates a new contractual relationship.

Novation: Contract Law Still Matters

Stamp duty analysis does not take place in isolation from general contract law.

This was illustrated in *Mesra Retail & Cafe Sdn Bhd v Pemungut Duti Setem* [2025] MLJU 3979, where the court considered the true legal character of a novation. A genuine novation is not simply an amendment to an existing agreement. It involves the substitution of one contractual relationship for another. The court's treatment of the instrument demonstrates an important point: before asking how much duty an agreement attracts, it is necessary to identify what the instrument is as a matter of law.

This exercise may require reference not only to the Stamp Act, but also to the Contracts Act 1950 and general principles of commercial law.

Substance Over Form Remains The Central Theme

The common thread running through all these examples is that labels are rarely conclusive.

A purchase order may actually be the binding service agreement.

A supplementary agreement may in substance create an entirely new contractual relationship.

An agreement containing installation and warranty obligations may still principally be a sale of goods.

An intercompany financing arrangement may remain chargeable even though the lender and borrower are related entities.

The proper inquiry is therefore not simply, "What is this document called?"

The better questions for one to examine would be:

- What legal relationship does the instrument create?
- Does it merely implement an existing agreement or establish new rights and obligations?
- What is the predominant commercial substance of the transaction?
- Does it introduce fresh consideration or a new contractual bargain?

These questions are becoming more important as businesses assume greater responsibility for determining their own stamp duty treatment.

From Compliance Exercise To Governance Issue

The larger challenge is not whether a particular instrument attracts RM10, 0.1%, 0.5% or another amount of duty. It is whether the business has a consistent and defensible process for identifying, classifying and treating the thousands of documents generated across the organisation. This requires coordination.

Procurement teams need to understand when a PO is merely operational and when it becomes the governing contract. Treasury teams need to appreciate how the structure of an intercompany loan may affect stamp duty and the availability of remission.

Human Resource teams need to distinguish principal employment contracts from ancillary correspondence.

Legal and tax teams need to identify when variations, novations and supplementary agreements cross the line into separately chargeable instruments.

The practical response is therefore not to stamp every document indiscriminately.

It is to build a framework that distinguishes between documents according to their legal effect, commercial substance and place within the broader contractual relationship.

In an increasingly self-assessed environment, stamp duty is no longer simply a question of document processing.

It is becoming an issue of contract design, tax governance and enterprise risk management.

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