



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

### **1. TUJUAN**

Garis Panduan ini adalah untuk menerangkan prosedur pemrosesan permohonan bagi pelepasan duti setem di bawah Seksyen 15A, Akta Setem 1949.

### **2. PERUNDANGAN**

- 2.1. Seksyen 15A mengecualikan surat cara-surat cara yang boleh dikenakan duti di bawah Butiran 32(a) (tidak termasuk pindah milik perniagaan) dan 32(b) Jadual Pertama, Akta Setem 1949 jika syarat-syarat yang ditetapkan dipatuhi dengan sepenuhnya.
- 2.2. Secara umumnya, ia merupakan transaksi pindah milik seperti hartanah dan saham dilaksanakan menggunakan borang pindah milik [Borang KTN 14A, Memorandum Pindah Milik (di Sabah dan Sarawak) dan Borang Seksyen 105, Akta Syarikat 2016].
- 2.3. Seksyen 15A(2) mentakrifkan syarikat-syarikat bersekutu sebagai syarikat-syarikat di mana salah sebuah daripada syarikat ini memegang, sebagai pemilik benefisial, tidak kurang daripada 90% saham yang diterbitkan dalam syarikat yang lain atau sebuah syarikat ketiga yang dinamakan syarikat induk, memegang, sebagai pemilik benefisial, tidak kurang daripada 90% saham yang diterbitkan dalam kedua-dua syarikat pemberi dan penerima pindah milik.

- 2.4. Dalam kes di mana modal syer diterbitkan dipegang melalui syarikat perantaraan, pengiraan peratusan saham yang dipegang hendaklah dilaksanakan menurut peruntukan-peruntukan dalam Jadual Ke-6, Akta Setem 1949.
- 2.5. Syarikat-syarikat yang dipegang oleh orang perseorangan yang sama tidak boleh dianggap syarikat bersekutu.

### **3. SYARAT-SYARAT UNTUK MENDAPATKAN KELULUSAN**

- 3.1. Permohonan hendaklah dikemukakan kepada mana-mana Pejabat Pengarah Negeri (PPN), Lembaga Hasil Dalam Negeri Malaysia (LHDNM) secara dalam talian, melalui sistem STAMPS, diikuti dengan pengemukakan dokumen-dokumen sokongan secara serahan tangan.
- 3.2. Tujuan pindahmilik dilakukan adalah untuk meningkatkan kecekapan operasi pihak pemberi dan penerima pindahmilik. Perancangan operasi pihak pemberi dan penerima pindahmilik dalam tempoh tiga tahun selepas pindahmilik dilakukan merangkumi maklumat:
  - 3.2.1. Peningkatan kecekapan akan dinyatakan atau dibuktikan dalam Akuan Berkanun (*Statutory Declaration*) dalam bentuk naratif, graf, carta, jadual dan sebagainya. Sebagai contoh: peningkatan dalam input, output atau keuntungan syarikat.
  - 3.2.2. Menyatakan dengan jelas objektif dan perancangan ke arah meningkatkan kecekapan operasinya yang akan dicapai dalam tempoh 3 tahun.
  - 3.2.3. Lain-lain dokumen berkaitan yang boleh menyokong dan menunjukkan peningkatan tahunan.

- 3.3. Jika tiada peningkatan yang berlaku atau peratusan peningkatan tidak dapat dicapai, syarikat perlu kemukakan sebab-sebab yang munasabah berlakunya kegagalan untuk pertimbangan Pemungut. Pertimbangan Pemungut adalah muktamad.
- 3.4. Pihak penerima pindahmilik adalah sebuah syarikat yang diperbadankan di Malaysia.
- 3.5. Balasan mestilah dibuktikan telah diselesaikan sepenuhnya oleh kedua-dua pihak pada masa penyempurnaan surat cara.
- 3.6. Satu Akuan Berkanun dalam format yang telah ditetapkan hendaklah dikemukakan bersama-sama dengan permohonan di bawah peruntukan ini.
- 3.7. Sijil Pengecualian dan surat kelulusan akan dikeluarkan sekiranya permohonan diluluskan.

#### **4. DOKUMEN-DOKUMEN YANG PERLU DIKEMUKAKAN**

- 4.1. Surat cara pindah milik asal;
- 4.2. Akuan Berkanun yang diakui oleh seorang peguamcara dan peguambela di Mahkamah Tinggi (rujuk format Akuan Berkanun pada Lampiran 1);
- 4.3. Salinan dokumen sokongan yang disahkan oleh Timbalan Pemungut Duti Setem (TPDS) di PPN seperti berikut:
  - 4.3.1. Sijil Saham (*Share Certificate*) atau Daftar Pemilikan Saham (*Shareholder's Register*) atau Penyata Tahunan (*Annual Return*) atau maklumat syarikat dari Suruhanjaya Syarikat

Malaysia sebagai bukti pemilikan saham dalam syarikat-syarikat berkaitan;

Dalam kes syarikat asing, dokumen yang sama seperti perenggan 4.3.1 perlu dikemukakan;

4.3.2. Cabutan resolusi Ahli Lembaga Pengarah bagi kedua-dua syarikat pemberi dan penerima pindah milik yang meluluskan transaksi berkenaan dan hendaklah dikemukakan melalui kepala surat (*letterhead*) syarikat masing-masing;

4.3.3. Perjanjian jual beli yang telah disetamkan dengan sempurna jika berkenaan;

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

4.3.5. Surat-surat kelulusan daripada badan kawal selia kerajaan seperti Jawatankuasa Pelaburan Asing (F.I.C), Kementerian Perdagangan Antarabangsa dan Industri (M.I.T.I.), Suruhanjaya Sekuriti (SC), Bank Negara Malaysia (BNM) dan lain-lain yang berkaitan;

4.3.6. Bukti pembayaran amaun balasan; dan

4.3.7. Lain-lain dokumen yang berkaitan.

## **5. PENARIKAN BALIK KELULUSAN PELEPASAN DUTI SETEM**

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

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

- 5.1.2. Balasan atau mana-mana bahagian balasan didapati diberikan oleh pihak selain daripada penerima atau diterima oleh pihak selain pemberi pindahmilik yang bagi maksud peruntukan ini adalah syarikat-syarikat yang bersekutu; atau
  - 5.1.3. Harta yang dipindahmilik telah dipindahkan secara langsung atau tidak langsung oleh pihak selain daripada pemberi dan penerima pindah milik; atau
  - 5.1.4. Pemberi dan penerima pindahmilik tidak lagi bersekutu dalam tempoh tiga (3) tahun dari tarikh pindahmilik; atau
  - 5.1.5. Syarikat penerima melupuskan harta yang diperolehi dalam tempoh tiga (3) tahun dari tarikh pindahmilik.
- 5.2. Dengan penarikan balik kelulusan di bawah peruntukan ini, duti setem ke atas suratcara pindahmilik yang telah dilepaskan adalah dikenakan bersama-sama dengan faedah sebanyak enam peratus (6%) setahun mulai dari tarikh suratcara pindahmilik yang berkenaan perlu disetamkan dengan sewajarnya.

## **6. TANGGUNGJAWAB SYARIKAT PENERIMA**

Syarikat penerima yang terlibat dengan pindah milik hendaklah memaklumkan secara bertulis kepada PPN yang telah mengeluarkan kelulusan di bawah peruntukan ini sekiranya mana-mana keadaan yang dinyatakan di bawah Subseksyen 15A(4), Akta Setem 1949 berlaku, dalam tempoh tiga puluh (30) hari daripada tarikh berlakunya mana-mana keadaan tersebut.

**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 .....	<sup>1</sup>	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]<sup>1</sup> 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 .....<sup>2</sup> under the .....<sup>2</sup> on the .....<sup>3</sup>
3. .... Bhd./Ltd. <sup>1</sup> (hereinafter called the "transferor company") is a company incorporated with limited liability in .....<sup>2</sup> under the .....<sup>2</sup> on the .....<sup>3</sup> and as at .....<sup>4</sup> had an issued share capital of ..... divided into .....<sup>5</sup> shares of ..... each, all of which have been fully paid up. [The said shares] [Out of the said shares, .....<sup>6</sup> shares]<sup>1</sup> have been registered in the name of .....<sup>7</sup>.
4. .... Sdn. Bhd./Bhd. <sup>1</sup> (hereinafter called the "transferee company") is a company incorporated with limited liability in Malaysia under the .....<sup>8</sup> on the .....<sup>3</sup> and as at .....<sup>4</sup> had an issued share capital of ..... divided into .....<sup>5</sup> shares of ..... each, all of which have been fully paid up. [The said shares] [Out of the said shares, .....<sup>6</sup> shares]<sup>1</sup> have been registered in the name of .....<sup>7</sup>.

5. .... Bhd./Ltd.<sup>1</sup> (hereinafter called the "intermediary company") is a company incorporated with limited liability in .....<sup>6</sup> under the .....<sup>6</sup> on the .....<sup>3</sup> and as at .....<sup>4</sup> had an issued share capital of ..... divided into .....<sup>5</sup> shares of ..... each, all of which have been fully paid up. [The said shares] [Out of the said shares, .....<sup>6</sup> shares]<sup>1</sup> have been registered in the name of ..... [Parents] [Transferor] [Transferee]<sup>1</sup> Company.
6. The transferor and transferee companies are associated companies by reason that as at .....<sup>4</sup> not less than ninety per cent of the issued share capital of .....<sup>9</sup> was held by .....<sup>10</sup> 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]<sup>1</sup> are enclosed and marked .....
7. The transfer of the [property] [properties]<sup>1</sup> of the associated companies [is] [are]<sup>1</sup> 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<sup>11</sup> of the transferor and the transferee companies are enclosed and marked .....
8. Pursuant to resolution adopted on .....<sup>12</sup> by the Board of Directors of the transferor company and on .....<sup>12</sup> 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 .....<sup>13</sup> for the sale and purchase of .....<sup>14</sup> [copy] [copies]<sup>1</sup> of which agreement [is] [are]<sup>1</sup> enclosed and marked .....
9. The instrument(s) of transfer<sup>15</sup>, which [is] [are]<sup>1</sup> attached and submitted for adjudication, [was] [were]<sup>1</sup> executed on .....<sup>4</sup> And the sum of RM ..... being the agreed consideration, <sup>1</sup>
  - 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 .....<sup>16</sup>]. [The transfers are of a kind requiring prior approval by a regulatory body of Government. A certified true copy of [the] [each of the]<sup>1</sup> letter(s) of approval is annexed and marked .....
11. The transfer(s) [is] [are]<sup>1</sup> being undertaken for organisational reasons only and it is intended that the beneficial interest in the [property] [properties]<sup>1</sup> 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]<sup>1</sup> 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 paragraph 15A(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]<sup>1</sup> between associated companies and that the conditions of Section 15A of the Stamp Act 1949 are satisfied in relation thereto.

AND I 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.....<sup>17</sup>)

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.