MALAYSIA AUSTRALIA BUSINESS COUNCIL

Observations by the Chairman of MABC

THE NEW STAMPING GROUND

Malaysian and Australian businesses in Malaysia must review protocols for chargeable instruments in the light of recent amendments to the Stamp Act 1949.

Overview

From 1 January 2026 Malaysia's stamp duty regime moved from authority-led assessments to a taxpayer-led self-assessment model with a phased implementation (the Stamp Duty Self-Assessment System (SDSAS)), stronger audit powers and significantly higher penalties.

The amendments to the Stamp Act 1949, enacted through recent fiscal legislation, mark a deliberate transfer of responsibility from the Collector to the taxpayer. Under the SDSAS, those who execute chargeable instruments must upload the documents, complete an electronic return and pay the duty through the MyTax/e-DS portal. The act of submission is treated as an assessment in the first instance.

The SDSAS Phases

Phase 1 (1 January 2026): Tenancy and lease agreements, general stamping, and securities instruments.

Phase 2 (1 January 2027): Instruments relating to transfers of property ownership

Phase 3 (1 January 2028): All other chargeable instruments

What has changed

The reform is not merely procedural. It is structural. Where once parties waited for an official notice and the assurance of a Collector's assessment, they must now calculate *ad valorem* and fixed duties themselves and make payment at the point of filing. In short, the convenience of immediate electronic stamping comes with the less comfortable requirement that taxpayers get the arithmetic right the first time.

The practical difference is a shift in the legal burden of proof. Previously, no liability for stamp duty arose until it was imposed or adjudicated by the Collector. Now, an erroneous return is the taxpayer's responsibility until and unless the Collector re-assesses. The amendments expressly empower the Collector to demand supporting abstracts and sworn statements and to conduct audits that can reach back over several years, increasing exposure to additional duty and penalties for past omissions.

The new regime is given teeth through higher penalties for failure to comply with the self-assessment protocols.

What has not changed

The tax authorities now have a more efficient means of collecting stamp duty revenues, however the fundamental legal basis for assessment or liability to duty remains unchanged. Stamp Duty is still chargeable on instruments and not transactions.

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Implications for businesses and practitioners

The message is simple: process controls for and disclosure of executed instrument is necessary to avoid the risk of penalties. Failure to adapt may invite reassessment and stiffer enforcement tools.

Does this affect instruments before 1 January 2026?

The amendments are not a blanket retrospective re-taxing of past transactions, but even without express language for retrospective administration, *prima facie*, the new legislation expands enforcement and empowers the Collector to audit and reassess unstamped instruments executed before 1 January 2026. This is because, arguably, if an instrument was unstamped before 1 January 2026, it will continue to remain unstamped after 1 January 2026 and it will still attract the stamping obligation under the new legislation. It remains to be seen whether the Collector will exercise its new powers on earlier instruments.

Lingering Doubts

The new law is not rewriting history. It is sharpening the tools that allow the tax authorities to improve its collection methodology and efficiencies. Nonetheless it does allow the authorities to look back and penalise failures to stamp past instruments at a time when commercial paradigms were different. If the new powers are used retrospectively it could raise fears of regulatory unfairness and dampen business sentiment and incentivise avoidance.

Of greatest concerns for many businesses is the vast number of unstamped instruments that they may still retain which could be a potential source of liability if detected by the Collector in its investigations.

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[We welcome your feedback. Please contact the secretariat at mabc@mabc.org.my]