

# **Stamp Duties (Amendment) Bill**

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**Bill No. 18/2017 [Urgent Bill].**

*Read the first time on 10 March 2017.*

A BILL

*intituled*

An Act to amend the Stamp Duties Act (Chapter 312 of the 2006 Revised Edition).

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

## Short title and commencement

1. This Act is the Stamp Duties (Amendment) Act 2017 and is deemed to have come into operation on 11 March 2017.

## Amendment of section 5

5 2. Section 5 of the Stamp Duties Act (called in this Act the principal Act) is amended —

(a) by inserting, immediately after subsection (1), the following subsection:

10 “(1A) Where the liability of an instrument to duty or any amount of duty, is determined by facts or circumstances that are not set out in the instrument, those facts or circumstances must be provided to the Commissioner in such form and manner as the Commissioner may specify.”; and

15 (b) by deleting the word “it” in subsection (2) and substituting the words “the instrument or provided under subsection (1A)”.

## Amendment of section 15

20 3. Section 15 of the principal Act is amended by inserting, immediately after subsection (1), the following subsection:

“(1AA) Subsection (1) does not apply to an instrument that is executed for the purpose of or in connection with the transfer, conveyance or assignment of any equity interest in an entity that is chargeable with any duty under section 23.”.

## 25 Amendment of section 15A

4. Section 15A of the principal Act is amended by inserting, immediately after subsection (1), the following subsection:

30 “(1A) Subsection (1) does not apply to an instrument that is executed for the purpose of or in connection with an acquisition of shares in a company, that is chargeable with any duty under section 23.”.

## **Amendment of section 22**

5. Section 22(1) of the principal Act is amended by deleting the words “and stocks or shares,” in paragraph (b).

## **New sections 23 to 23D**

6. The principal Act is amended by inserting, immediately after section 22B, the following sections: 5

### **“Duty on conveyance of equity interests in property-holding entities**

23.—(1) This section applies to a conveyance —

- (a) executed whilst this section is in operation; 10
- (b) of equity interests in an entity; and
- (c) whether or not the conveyance is —
  - (i) on a sale;
  - (ii) by way of gift, release or settlement; or
  - (iii) pursuant to a declaration of trust where the 15  
beneficial interest in the equity interests passes.

(2) If —

- (a) the grantee is a significant owner of the entity immediately before the execution of the conveyance, or becomes one upon the execution of the conveyance; 20  
and
- (b) the entity is a property-holding entity or PHE at the time of the execution,

then the conveyance is chargeable with ad valorem duty (called duty A in this section, sections 23B and 23C, Article 3A of the First Schedule and Article 2A of the Third Schedule) that is payable by the grantee. 25

(3) Subject to subsection (4), if —

- (a) the grantor is a significant owner of the entity immediately before the effective date or becomes one on or after the effective date; 30

(b) the conveyance is executed at any time on or after the effective date and whether at a time when the grantor is still such significant owner or after the grantor ceases to be one;

5 (c) the entity is a PHE at the time of the execution; and

(d) the equity interests conveyed comprise or include equity interests in the entity specified in subsection (8),

10 then the conveyance is chargeable with ad valorem duty (called duty B in this section, sections 23B and 23C, Article 3A of the First Schedule and Article 2A of the Third Schedule) that is payable by the grantor.

15 (4) Subsection (3) does not apply to any conveyance that is executed in the period between the time the grantor (including the grantor's associates) ceases to own any equity interests in the entity and the time the grantor becomes a significant owner of the entity again.

(5) If, at the time of the execution of the conveyance —

20 (a) the entity (called in this subsection the target entity) is not a PHE; and

(b) the grantee beneficially owns equity interests in another entity or entities in circumstances where, had the target entity and the other entity or entities been a single entity —

25 (i) that single entity would have been a Type 2 PHE; and

30 (ii) the grantee would have been a significant owner of that single entity or would have become such significant owner upon the execution of the conveyance,

then the conveyance is chargeable with ad valorem duty (called duty C in this section, sections 23B and 23C, Article 3A of the First Schedule and Article 2A of the Third Schedule) that is payable by the grantee.

(6) Subject to subsection (7), if —

(a) immediately before the effective date or at any time on or after that date, the grantor beneficially owns equity interests in one or more entities in circumstances where, had those entities been a single entity — 5

(i) the single entity would have been a Type 2 PHE; and

(ii) the grantor would have been a significant owner of the single entity;

(b) the conveyance is executed at any time on or after the effective date and whether at a time when the grantor would still be such significant owner or after the grantor has ceased to be one; and 10

(c) the equity interests conveyed comprise or include equity interests in any of those entities and are equity interests specified in subsection (8), 15

then the conveyance is chargeable with ad valorem duty (called duty D in this section, sections 23B and 23C, Article 3A of the First Schedule and Article 2A of the Third Schedule) that is payable by the grantor. 20

(7) Subsection (6) does not apply to any conveyance that is executed in the period between —

(a) the time the grantor (including the grantor's associates) ceases to own any equity interests in any of the entities that comprise the single entity mentioned in that subsection; and 25

(b) the time the grantor beneficially owns equity interests in 2 or more of those entities again in circumstances where, had those entities been a single entity, the grantor would have been a significant owner of that single entity. 30

(8) The equity interests specified for subsections (3)(d) and (6)(c) are those that the grantor acquired —

(a) on or after the effective date; and

(b) within the prescribed holding period before the execution of the conveyance,

and, for this purpose, where the grantor acquired the equity interests at different times, then the equity interests first acquired by the grantor are treated as being disposed of first by the grantor.

(9) To avoid doubt, both duty A and duty B, or both duty C and duty D (as the case may be), may be charged on the same instrument, and are in addition to any duty chargeable on the conveyance of shares in Article 3(c) of the First Schedule.

(10) The amounts of duty A, duty B, duty C and duty D are indicated in Article 3A of the First Schedule.

(11) For the purposes of this section and Article 3A of the First Schedule, a significant owner of an entity is a person who beneficially owns a percentage of the equity interests in the entity —

(a) that is equal to or more than the percentage prescribed in the section 23 Order as the equity-owning percentage; or

(b) that carries voting power in the entity that is equal to or more than the percentage prescribed in the section 23 Order as the voting power percentage.

(12) For the purposes of this section and Article 3A of the First Schedule —

(a) in determining whether a person is a significant owner of an entity, equity interests beneficially owned by each of the person's associates in the entity are treated as beneficially owned by the person; and

(b) in determining whether a grantee becomes a significant owner of an entity upon the execution of a conveyance, equity interests beneficially owned by each of the grantee's associates in the entity, including those conveyed, transferred, assigned or agreed to be sold to any of the grantee's associates at or about the

same time as the time of execution of the conveyance, are treated as beneficially owned by the grantee.

(13) In this section, sections 23A and 23C and Article 3A of the First Schedule, an entity is a PHE if —

- (a) the percentage of the market value of the total tangible assets of the entity as at the end of the most recent completed accounting period of the entity that comprise prescribed immovable property, is equal to or more than the percentage prescribed in the section 23 Order as the Type 1 PHE percentage; or
- (b) where the entity has a significant stake in one or more entities each of which is a Type 1 PHE, the percentage calculated by the following formula is equal to or more than the percentage that is prescribed in the section 23 Order as the Type 2 PHE percentage:

$$\frac{E}{F} \times 100,$$

and the entity is not an entity prescribed as a non-PHE under the section 23 Order.

(14) For the purposes of subsection (13)(b), the amount E is determined by adding both of the following:

- (a) the sum of the market values of all prescribed immovable properties that form part of the entity's total tangible assets as at the end of its most recent completed accounting period;
- (b) the sum of all amounts calculated for each Type 1 PHE in which the entity has a significant stake, using the formula  $G \times H$ , where —
  - (i) G is the percentage of equity interests in the Type 1 PHE beneficially owned by the entity; and
  - (ii) H is the sum of the market values of all prescribed immovable properties that form part

of the total tangible assets of the Type 1 PHE as at the end of the most recent completed accounting period of the Type 1 PHE.

(15) For the purposes of subsection (13)(b), the amount F is determined by adding both of the following:

(a) the market value of the total tangible assets of the entity as at the end of its most recent completed accounting period;

(b) the sum of all amounts calculated for each entity (called in this subsection the 2nd entity) in which the entity has a significant stake, using the formula  $G1 \times I$ , where —

(i) G1 is the percentage of equity interests in the 2nd entity beneficially owned by the entity; and

(ii) I is the market value of the total tangible assets of the 2nd entity as at the end of the most recent completed accounting period of the 2nd entity.

(16) For the purposes of subsections (13), (14) and (15), an entity has a significant stake in another entity if the percentage of equity interests in the other entity which it beneficially owns is not less than the percentage prescribed in the section 23 Order as the significant stake percentage.

(17) For the purposes of subsections (14)(b), (15)(b) and (16), in a case where an entity (*X*) (being a partnership or limited partnership) beneficially owns equity interests in another entity (*Y*), a partner of *X* that is itself an entity is taken to beneficially own a percentage of equity interests in *Y* that is calculated according to the formula  $L \times M$ , where —

(a) L is the percentage of the partner's share in the partnership; and

(b) M is the percentage which the value of equity interests in *Y* owned by *X* bears to the total value of all equity interests in *Y*.



(18) For the purposes of subsections (14)(b), (15)(b), (16) and (17), if —

(a) an entity (called in this subsection the subject entity) beneficially owns (including by reason of one or more applications of this subsection) equity interests in another entity (called in this subsection the 1st level entity); and

(b) the 1st level entity beneficially owns equity interests in another entity (called in this subsection the 2nd level entity),

then the subject entity is taken to beneficially own a percentage of equity interests in the 2nd level entity that is calculated according to the formula  $N \times O$ , where —

(i)  $N$  is the percentage which the value of equity interests in the 1st level entity beneficially owned by the subject entity bears to the total value of all equity interests in the 1st level entity; and

(ii)  $O$  is the percentage which the value of equity interests in the 2nd level entity beneficially owned by the 1st level entity bears to the total value of all equity interests in the 2nd level entity.

(19) To avoid doubt, in determining, for the purposes of subsections (14)(b), (15)(b), (16), (17) and (18), the percentage of the equity interests in an entity that are beneficially owned by another entity, all of the equity interests that the other entity owns, whether directly, or indirectly under subsection (18) through one or more chains of ownership, are to be added together.

(20) In this section, section 23A and Article 3A of the First Schedule, a person ( $X$ ) is an associate of another person ( $Y$ ) if —

(a)  $X$  is the spouse, a parent, a grandparent, a child, a grandchild or a child of a parent of  $Y$ ;

(b) *X* and *Y* are partners in a partnership, limited partnership or limited liability partnership;

5 (c) *X* is a person with whom *Y* has an agreement or arrangement, whether oral or in writing and whether express or implied, to act together with respect to the acquisition, holding or disposal of equity interests in, or with respect to the exercise of their votes in relation to, the entity in question; or

10 (d) *X* is associated with *Y* in such manner as may be prescribed in the section 23 Order.

(21) In this section, sections 23A to 23D and Article 3A of the First Schedule —

15 “child”, in relation to a person, means a legitimate child or stepchild of the person or a child adopted by the person in accordance with any written law relating to adoption;

“effective date” means the most recent date on which this section and sections 23A, 23B and 23C come into operation;

“entity” means —

20 (a) a company;

(b) a partnership, limited partnership or limited liability partnership; or

(c) a property trust;

“equity interest”, in relation to an entity, means —

25 (a) where the entity is a company, an issued share in the company that is not a treasury share;

(b) where the entity is a partnership, limited partnership or limited liability partnership, a share in the partnership; or

30 (c) where the entity is a property trust, a unit in the trust;

“limited liability partnership” has the same meaning as in section 4(1) of the Limited Liability Partnerships Act (Cap. 163A);

“limited partnership” means a limited partnership registered under the Limited Partnerships Act (Cap. 163B);

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“prescribed immovable property” means the type of immovable property prescribed as prescribed immovable property by the section 23 Order;

“property trust” means a trust that holds or invests in —

(a) prescribed immovable properties; or

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(b) equity interests in an entity that holds or invests in prescribed immovable properties;

“section 23 Order” means the order made under section 23D bringing this section and sections 23A, 23B and 23C into operation;

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“share”, in relation to a partnership, limited partnership or limited liability partnership, means —

(a) the proportion of the partnership property that a partner is entitled to on the dissolution or winding up of the partnership, as specified in the partnership agreement; or

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(b) if none is specified, the proportion of the profits of the partnership that a partner is entitled to;

“Type 1 PHE” means an entity that is a PHE by reason of subsection (13)(a);

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“Type 2 PHE” means an entity that is a PHE by reason of subsection (13)(b);

“underlying property”, in relation to a PHE, means —

(a) if the PHE is a Type 1 PHE, the prescribed immovable property that forms part of its total tangible assets;

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(b) if the PHE is a Type 2 PHE, all of the following:

(i) the prescribed immovable property that forms part of the total tangible assets of each Type 1 PHE in which the Type 2 PHE holds a significant stake as defined in subsection (16); and

(ii) the prescribed immovable property that forms part of the total tangible assets of the Type 2 PHE; or

(c) if the PHE is both a Type 1 PHE and a Type 2 PHE, the properties in sub-paragraphs (i) and (ii) of paragraph (b);

“unit”, in relation to a property trust, means —

(a) a share in the beneficial ownership in the property subject to the trust; or

(b) a share in the profits, income or other payments or returns from the management of the property or operation of the business premised on the property.

(22) In this section, sections 23A and 23C and Article 3A of the First Schedule —

(a) a reference to equity interests that are beneficially owned by a person includes equity interests agreed to be sold to the person under a contract or agreement for the sale of equity interests; and

(b) a reference to an entity beneficially owning equity interests in another entity, in a case where the firstmentioned entity is a property trust, is a reference to the trustee of the trust holding the equity interests as trust property of the trust.

(23) In determining if the entities mentioned in subsection (5) or (6) would have been a Type 2 PHE if they were a single entity, subsections (13)(b), (14) and (15) are to be read subject to the following modifications:

- (a) a reference to the entity is a reference to those entities taken as a whole;
- (b) a reference to an accounting period of the entity is a reference to the accounting period of each of those entities; 5
- (c) a reference to the entity having a significant stake in another entity is a reference to each of those entities having beneficial ownership (including indirectly by applying subsection (18)) of equity interests in another entity which, when added together, constitutes a percentage of equity interests in the other entity that is not less than the significant stake percentage mentioned in subsection (16); 10
- (d) such other modifications as may be prescribed by the section 23 Order. 15

### **Offences for section 23**

#### **23A.—(1) If —**

- (a) the grantee of a conveyance of equity interests in an entity asks the grantor whether the entity is a PHE or for any information concerning the PHE's underlying property; 20
- (b) the grantor falsely informs the grantee that the entity is not a PHE, or provides false or misleading information concerning the PHE's underlying property; and
- (c) the information results in a failure to pay or an underpayment of ad valorem duty chargeable under section 23 on the conveyance, 25

then the grantor shall be guilty of an offence and shall be liable on conviction to a fine not exceeding 4 times the amount of duty not paid or underpaid. 30

(2) It is a defence to a charge under subsection (1) for the grantor to prove on a balance of probabilities that the grantor had used reasonable efforts in finding the required information, and

in verifying the truth of the information before providing it to the grantee.

(3) If —

5 (a) before a conveyance of equity interests in an entity, the grantor or grantee asks an associate of the grantor or grantee (as the case may be) for information on the equity interests in the entity which the associate beneficially owns;

10 (b) the associate provides false or misleading information to the grantor or grantee; and

(c) the information results in a failure to pay or an underpayment of ad valorem duty chargeable under section 23 on the conveyance,

15 then the associate shall be guilty of an offence and shall be liable on conviction to a fine not exceeding 4 times the amount of duty not paid or underpaid.

**Section 23, etc., applies also to transfers, assignments and contracts**

20 **23B.**—(1) Sections 23 and 23A apply to a transfer or assignment of equity interests in an entity as they apply to a conveyance of those equity interests, and for this purpose —

25 (a) a reference in those sections, Article 3A of the First Schedule and Article 2A of the Third Schedule to the grantee of a conveyance is a reference to the transferee or assignee;

(b) a reference in those sections, Article 3A of the First Schedule and Article 2A of the Third Schedule to a grantor of a conveyance is a reference to the transferor or assignor; and

30 (c) a reference in section 23 and Article 3A of the First Schedule to the date of execution of a conveyance is a reference to the date of execution of the transfer or assignment.

(2) Sections 23 and 23A apply to a contract or agreement for the sale of equity interests in an entity as they apply to a conveyance of those equity interests, and for this purpose —

- (a) a reference in those sections, Article 3A of the First Schedule and Article 2A of the Third Schedule to a grantee of a conveyance is a reference to the purchaser; 5
- (b) a reference in those sections, Article 3A of the First Schedule and Article 2A of the Third Schedule to a grantor of a conveyance is a reference to the vendor; and 10
- (c) a reference in section 23 and Article 3A of the First Schedule to the date of execution of a conveyance is a reference to the date of execution of the contract or agreement. 15

(3) Where duty A, duty B, duty C or duty D has been paid upon any contract or agreement by reason of subsection (2), the conveyance, transfer or assignment is exempt from that duty.

**Instruments effecting certain arrangements regarded as conveyances chargeable with section 23 duties, etc.** 20

**23C.**—(1) Where —

- (a) an arrangement mentioned in subsection (3) has the effect of a person (*X*) beneficially owning equity interests, more equity interests or a higher percentage of equity interests in an entity (called in this section acquired equity interests), or a person (*Y*) beneficially owning no equity interest, less equity interests or a lower percentage of equity interests in an entity (called in this section disposed equity interests), or both; and 25
- (b) had the acquired equity interests been conveyed to *X*, or the disposed equity interests been conveyed by *Y*, or both (as the case may be), the conveyance would have been chargeable with duty A, duty B, duty C, duty D 30

or ad valorem duty under Article 3(c) of the First Schedule, or one or more of these,

then the arrangement is treated as a conveyance of equity interests to *X* or a conveyance of equity interests by *Y*, or from *X* to *Y* (as the case may be).

(2) In the case mentioned in subsection (1), duty A, duty B, duty C, duty D or ad valorem duty under Article 3(c) of the First Schedule, or 2 or more of these (whichever is applicable), are chargeable on the following instrument as if it were such a conveyance:

(a) any instrument that, in the Commissioner's opinion, effects (whether directly or indirectly and whether wholly or partially) or is evidence of the arrangement; or

(b) in the absence of any such instrument, a notice prescribed in the section 23 Order for the purposes of this paragraph.

(3) The arrangements in subsection (1) are —

(a) an acquisition by an entity of its equity interests;

(b) an issue by an entity of equity interests;

(c) a cancellation or redemption of equity interests in an entity;

(d) the conversion of —

(i) equity interests into instruments that are not equity interests;

(ii) instruments that are not equity interests into equity interests; or

(iii) equity interests from one class to another class;

(e) the conversion of an entity to another type of entity;

(f) a change of partners of a partnership, limited partnership or limited liability partnership;

(g) an amalgamation of entities; and



(h) any other arrangement that, in the Commissioner's opinion, has as its purpose or one of its purposes the effect mentioned in subsection (1)(a).

(4) Despite subsection (2), ad valorem duty under Article 3(c) of the First Schedule is not chargeable on an instrument under that subsection in relation to any arrangement to which section 31, 32A, 32C or 33 applies, if the instrument in relation to that arrangement is chargeable with the same duty by reason of that section. 5

(5) If the Commissioner is of the opinion that the effect mentioned in subsection (1)(a) could not reasonably have been prevented by any person who is liable (if not for this subsection) to pay any duty chargeable under subsection (2), then that duty is not chargeable on the instrument, or the amount of that duty is reduced by the amount of the duty that the person is liable to pay. 10 15

(6) Where —

(a) an arrangement in subsection (7) results in an entity ceasing to be a PHE;

(b) had the entity been a PHE at the time of the execution of a conveyance, transfer or assignment of equity interests in it, or of a contract or agreement for the sale of equity interests in it, that instrument would have been chargeable with duty A or duty B, or both (as the case may be); and 20

(c) the arrangement takes place at any time within such period as may be prescribed by the section 23 Order before the time of execution of that instrument, 25

then duty A or duty B, or both (as the case may be) are chargeable on that instrument as if it were a conveyance of equity interests in a PHE. 30

(7) The arrangements in subsection (6) are —

(a) a change in the composition of the tangible assets of an entity; and

(b) any other arrangement that, in the Commissioner's opinion, has as its purpose or one of its purposes the effect mentioned in subsection (6)(a).

5 (8) If the Commissioner is of the opinion that the arrangement under subsection (6) was not (whether solely or partly) carried out for the purpose of avoiding the liability to pay that duty, then the instrument is not chargeable with that duty.

10 (9) Sections 23, 23A and 23B also apply (with such modifications as may be prescribed in the section 23 Order) to any other instrument that, in the Commissioner's opinion, effects (whether directly or indirectly and whether wholly or partially) or is evidence of any arrangement that the section 23 Order prescribes as an equivalent arrangement, as it applies to an instrument chargeable with duty under section 23.

15 (10) The section 23 Order may prescribe, as an equivalent arrangement for the purposes of subsection (9), any arrangement the purpose or effect of which is to (directly or indirectly) —

20 (a) alter the incidence of any duty which is payable or which would otherwise have been payable by any person under section 23;

(b) relieve any person from any liability to pay such duty; or

25 (c) reduce or avoid any liability imposed or which would otherwise have been imposed on any person by section 23.

30 (11) In this section, "arrangement" means any scheme, trust, grant, covenant, agreement, disposition or transaction, whether or not it is or is part of a business or family dealing or is carried out for a bona fide commercial reason, and includes all steps by which it is carried into effect.

(12) The section 23 Order may —

(a) require a specified person to give notice in a specified form to the Commissioner of an arrangement to which subsection (1) applies;

- (b) treat the notice as an instrument for the purposes of subsection (2)(b);
- (c) provide that any contravention of a requirement under paragraph (a) shall be an offence punishable with a fine of up to 4 times the amount of ad valorem duty that is chargeable on the instrument; and
- (d) exempt specified arrangements from this section.

### **Power to bring sections 23 to 23C into operation**

**23D.**—(1) Sections 23 to 23C only come into operation at the time and in the manner mentioned in subsection (2).

(2) The Minister may, from time to time, by order in the *Gazette*, declare that sections 23 to 23C are to come into operation on a date specified in the order, and those sections come into operation on that date and remain in force until the section 23 Order is revoked by the Minister.

(3) The section 23 Order must prescribe —

- (a) the holding period for the purpose of section 23(8)(b);
- (b) the equity-owning percentage, the voting power percentage, the Type 1 PHE percentage, the Type 2 PHE percentage, and the significant stake percentage for the purposes of section 23(11), (13) and (16);
- (c) the type of prescribed immovable property for the purposes of the definition of that term in section 23(21);
- (d) the period in section 23C(6)(c); and
- (e) any other matter required or permitted to be prescribed by section 23 or 23C, or that are necessary or expedient for the purposes of giving effect to section 23, 23A, 23B or 23C.

(4) The section 23 Order may specify the prescribed immovable property mentioned in subsection (3)(c) by —

- (a) the manner it is zoned under the Master Plan; or

(b) the purpose for which it is —

(i) permitted to be used by a written permission given under section 14(4) of the Planning Act (Cap. 232) (not being one that is given for a period of 10 years or less);

(ii) permitted to be used by a notification under section 21(6) of the Planning Act; or

(iii) used, in a case where the property was put to such use on 1 February 1960 and has not been put to any other use since that date, and where such use is not the subject of a written permission mentioned in sub-paragraph (i) or a notification mentioned in sub-paragraph (ii).

(5) The section 23 Order may —

(a) specify 2 or more types of prescribed immovable property under subsection (3)(c); and

(b) specify different holding periods for different descriptions of property-holding entities.

(6) The Minister may, in respect of the first section 23 Order made on or after 11 March 2017, specify in the Order a date of commencement for sections 23 to 23C that is before the date of publication of the Order in the *Gazette* but no earlier than 11 March 2017.

(7) All orders made under this section are to be presented to Parliament as soon as possible after publication in the *Gazette*.”.

### **Amendment of section 71**

7. The principal Act is amended by renumbering section 71 as subsection (1) of that section, and by inserting immediately thereafter the following subsections:

“(2) The Commissioner may by notice require any person to provide to the Commissioner by a specified time an appropriate valuation of any property that is the subject of an instrument (including any underlying property of a PHE within the meaning

of section 23) for the purposes of determining the liability or the extent of the liability of the instrument to duty.

(3) A person who, without reasonable excuse, fails to comply with the notice in subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 and, in the case of a continuing offence, to a further fine not exceeding \$100 for every day or part of a day during which the offence continues after conviction.

(4) In subsection (2), an appropriate valuation is a valuation by a valuer who is independent of any party to the instrument, and has qualifications and experience that are relevant to the valuation sought by the Commissioner.”.

**Amendment of First Schedule**

8. The First Schedule to the principal Act is amended by inserting, immediately after Article 3, the following Article:

“3A. CONVEYANCE OF EQUITY INTERESTS IN PROPERTY-HOLDING ENTITIES OR ENTITIES WITH OWNERSHIP INTERESTS IN PROPERTY-HOLDING ENTITIES

| <i>(1) Conveyance of equity interests in a PHE</i> |  |
|--|--|
|  | <p><i>Duty A or duty B or both (as applicable).</i></p> <p><i>Duty A is the sum total of the amounts in paragraphs (a) and (b) for a PHE that is a Type 1 PHE, the sum total of the amounts in paragraphs (c) and (d) for a PHE that is a Type 2 PHE, and the sum total of the amounts in paragraphs (c) and (d) for a PHE that is both a Type 1 PHE and a Type 2 PHE.</i></p> <p><i>Duty B is the amount in paragraph (e) for a PHE that is a Type 1 PHE, the amount in paragraph (f) for a PHE that is a Type 2 PHE, and the amount in paragraph (f) for a PHE that is both a Type 1 PHE and a Type 2 PHE.</i></p> |

|    |  |  |
|----|--|--|
| 5  | (a) <i>Market value of the underlying property of the PHE under paragraph (a) of the definition of “underlying property” in section 23(21)</i> | <i>The sum of the following:</i>   |
|    | For every dollar of the first \$180,000  | $1\% \times \frac{U}{V} \times W$  |
| 10 | For every dollar of the next \$180,000   | $2\% \times \frac{U}{V} \times W$  |
|    | For every dollar exceeding \$360,000   | $3\% \times \frac{U}{V} \times W$  |
|    | (b)  | $15\% \times \frac{U}{V} \times W$   |
| 15 | (c) <i>Market value of the underlying property of the PHE under paragraph (b) of the definition of “underlying property” in section 23(21)</i> | <i>The sum of the following:</i>   |
| 20 | For every dollar of the first \$180,000  | $\begin{aligned} & (1\% \times \frac{U}{V} \times W1 \times X) \\ & + \\ & (1\% \times \frac{U}{V} \times W2) \end{aligned}$ |
|    | For every dollar of the next \$180,000   | $\begin{aligned} & (2\% \times \frac{U}{V} \times W1 \times X) \\ & + \\ & (2\% \times \frac{U}{V} \times W2) \end{aligned}$ |
| 25 | For every dollar exceeding \$360,000   | $\begin{aligned} & (3\% \times \frac{U}{V} \times W1 \times X) \\ & + \\ & (3\% \times \frac{U}{V} \times W2) \end{aligned}$ |

|     |  |  |   |
|-----|--|--|---|
| (d) |  | $(15\% \times \frac{U}{V} \times W1 \times X)$ $+$ $(15\% \times \frac{U}{V} \times W2)$   |   |
| (e) |  | $12\% \times \frac{U1}{V} \times W$  |   |
| (f) |  | $(12\% \times \frac{U1}{V} \times W1 \times X)$ $+$ $(12\% \times \frac{U1}{V} \times W2)$ | 5 |

Where —

(a) U is —

- (i) if, as a result of the conveyance, the grantee becomes a significant owner of the PHE, and this is the first time the grantee becomes such significant owner since the effective date, the difference between — 10
- (A) the sum of the equity interests in the PHE beneficially owned by the grantee following the conveyance, and the equity interests in the PHE beneficially owned by each of the grantee's associates, acquired on or after the effective date; and 15
- (B) the lowest amount, at any time in the period between the effective date and the time of execution of the conveyance, of the sum of — 20
- (BA) the equity interests in the PHE beneficially owned by the grantee; and
- (BB) the equity interests in the PHE beneficially owned by each of the grantee's associates; 25
- (ii) if, as a result of the conveyance, the grantee becomes a significant owner of the PHE at any time other than that mentioned in sub-paragraph (i), the difference between —
- (A) the sum of the equity interests in the PHE beneficially owned by the grantee following the conveyance, and the equity interests in the PHE beneficially owned by each of the grantee's associates; and 30

(B) the lowest amount, at any time in the period between the date of the most recent conveyance by which the grantee ceased to be a significant owner and the time of execution of the conveyance, of the sum of —

5 (BA) the equity interests beneficially owned by the grantee; and

(BB) the equity interests in the PHE beneficially owned by each of the grantee's associates; or

10 (iii) if, after the conveyance, the grantee remains a significant owner of the PHE, the total number of all equity interests in the PHE conveyed under the conveyance to the grantee;

(b) U1 is the amount of equity interests specified in section 23(8) that are comprised in the conveyance;

(c) V is the total amount of all equity interests in the PHE;

15 (d) W is the market value, at the time of execution of the conveyance, of the underlying property of the PHE under paragraph (a) of the definition of “underlying property” in section 23(21);

20 (e) W1 is the market value, at the time of execution of the conveyance, of the underlying property of the PHE under paragraph (b)(i) of the definition of “underlying property” in section 23(21);

(f) W2 is the market value, at the time of execution of the conveyance, of the underlying property of the PHE under paragraph (b)(ii) of the definition of “underlying property” in section 23(21); and

25 (g) X is the percentage of the equity interests that the PHE (being a Type 2 PHE) beneficially owns (including indirectly by applying section 23(18)) in a Type 1 PHE.



| <i>(2) Conveyance of equity interests in an entity with ownership interests in a PHE</i> |  |  |                              |
|--|--|--|------------------------------|
|  |  | <p><i>Duty C or duty D or both (as applicable).</i></p> <p><i>Duty C is the sum total of the amounts in paragraphs (a) and (b) for a PHE that is a Type 1 PHE, the sum total of the amounts in paragraphs (c) and (d) for a PHE that is a Type 2 PHE, and the sum total of the amounts in paragraphs (c) and (d) for a PHE that is both a Type 1 PHE and a Type 2 PHE.</i></p> <p><i>Duty D is the amount in paragraph (e) for a PHE that is a Type 1 PHE, the amount in paragraph (f) for a Type 2 PHE, and the amount in paragraph (f) for a PHE that is both a Type 1 PHE and a Type 2 PHE.</i></p> | <p>5</p> <p>10</p> <p>15</p> |
| <i>(a)</i>   | <i>Market value of the underlying property of the PHE under paragraph (a) of the definition of “underlying property” in section 23(21)</i> | <i>The sum of the following:</i>   | <p>20</p> <p>25</p>          |
|  | For every dollar of the first \$180,000  | $1\% \times \left[ \left( \frac{U}{V} \times Y \right) + P \right] \times W$   |                              |
|  | For every dollar of the next \$180,000   | $2\% \times \left[ \left( \frac{U}{V} \times Y \right) + P \right] \times W$   |                              |
|  | For every dollar exceeding \$360,000   | $3\% \times \left[ \left( \frac{U}{V} \times Y \right) + P \right] \times W$   | <p>30</p>                    |
| <i>(b)</i>   |  | $15\% \times \left[ \left( \frac{U}{V} \times Y \right) + P \right] \times W$  |                              |

|    |  |  |
|----|--|--|
| 5  | (c) <i>Market value of the underlying property of the PHE under paragraph (b) of the definition of “underlying property” in section 23(21)</i> | <i>The sum of the following:</i>   |
|    | For every dollar of the first \$180,000  | $\left\{ 1\% \times \left[ \left( \frac{U}{V} \times Y \right) + P \right] \times W1 \times X \right\}$ $+$ $\left\{ 1\% \times \left[ \left( \frac{U}{V} \times Y \right) + P \right] \times W2 \right\}$   |
| 10 | For every dollar of the next \$180,000   | $\left\{ 2\% \times \left[ \left( \frac{U}{V} \times Y \right) + P \right] \times W1 \times X \right\}$ $+$ $\left\{ 2\% \times \left[ \left( \frac{U}{V} \times Y \right) + P \right] \times W2 \right\}$   |
| 15 | For every dollar exceeding \$360,000   | $\left\{ 3\% \times \left[ \left( \frac{U}{V} \times Y \right) + P \right] \times W1 \times X \right\}$ $+$ $\left\{ 3\% \times \left[ \left( \frac{U}{V} \times Y \right) + P \right] \times W2 \right\}$   |
|    | (d)  | $\left\{ 15\% \times \left[ \left( \frac{U}{V} \times Y \right) + P \right] \times W1 \times X \right\}$ $+$ $\left\{ 15\% \times \left[ \left( \frac{U}{V} \times Y \right) + P \right] \times W2 \right\}$ |
|    | (e)  | $12\% \times \frac{U1}{V} \times W \times Y$   |
| 20 | (f)  | $\left( 12\% \times \frac{U1}{V} \times W1 \times Y \times X \right)$ $+$ $\left( 12\% \times \frac{U1}{V} \times W2 \times Y \right)$   |

Where —

(a) U is —

25

- (i) if the equity interests in the entity (called the target entity) being conveyed, together with the equity interests beneficially owned by the grantee in one or more other entities (each called a 2nd entity), would result in the grantee becoming a significant owner of the combined single entity, and this is the first time the grantee becomes such significant owner since the effective date, the difference between —

30

- (A) the sum of the equity interests in the target entity that are beneficially owned by the grantee following the conveyance, and the equity interests in the target entity beneficially owned by each of the grantee’s associates, that are acquired on or after the effective date; and 5
- (B) the lowest amount, at any time in the period between the effective date and the time of execution of the conveyance, of the sum of —
  - (BA) the equity interests in the target entity beneficially owned by the grantee; and 10
  - (BB) the equity interests in the target entity beneficially owned by each of the grantee’s associates;
- (ii) if the equity interests in the entity (called the target entity) being conveyed, together with the equity interests beneficially owned by the grantee in one or more other entities (each called a 2nd entity), would result in the grantee becoming a significant owner of the combined single entity, and this is not the first time that the grantee becomes such significant owner since the effective date, the difference between — 15
  - (A) the sum of equity interests beneficially owned in the target entity by the grantee following the conveyance, and the equity interests in the target entity beneficially owned by each of the grantee’s associates; and 25
  - (B) the lowest amount, at any time in the period between the date of the most recent conveyance by which the grantee ceased to be a significant owner and the time of execution of the conveyance, of the sum of —
    - (BA) equity interests beneficially owned in the target entity by the grantee; and 30
    - (BB) the equity interests in the target entity beneficially owned by each of the grantee’s associates; or
- (iii) if the grantee is already a significant owner of the combined single entity at the time of execution of the conveyance, the amount of equity interests conveyed in the target entity under the conveyance; 35

(b) P is —

(i) in the case mentioned in paragraph (a)(i), the total of the sums calculated for each 2nd entity mentioned in that provision using the formula  $\frac{Q}{R} \times S$ , where —

5 (A) Q is the amount of equity interests in the 2nd entity beneficially owned by the grantee, and the equity interests in the 2nd entity beneficially owned by each of the grantee's associates, that were acquired between the effective date and the time of execution of the conveyance;

10 (B) R is the total amount of all equity interests in the 2nd entity; and

15 (C) S is the percentage of the equity interests that the 2nd entity beneficially owns (including indirectly by applying section 23(18)) in the PHE;

(ii) in the case mentioned in paragraph (a)(ii), the total of the sums calculated for each 2nd entity mentioned in that provision using the formula  $\frac{Q1}{R} \times S$ , where —

(A) Q1 is the difference between —

20 (AA) the total amount of equity interests beneficially owned in the 2nd entity by the grantee following the conveyance, and the equity interests in the 2nd entity beneficially owned by each of the grantee's associates; and

25 (AB) the lowest amount of equity interests beneficially owned in the 2nd entity by the grantee in the period between the date of the most recent conveyance by which the grantee, and the equity interests in the 2nd entity beneficially owned by each of the grantee's associates, ceased to be a significant owner and the time of execution of the conveyance; and

30 (B) R and S have the same meanings as in sub-paragraph (i); and

35 (iii) in the case mentioned in paragraph (a)(iii), zero;

(c) U1 is the amount of equity interests specified in section 23(8) that are comprised in the conveyance;

(d) V is the total amount of all equity interests in the target entity;

- (e) W is the market value, at the time of execution of the conveyance, of the underlying property of the PHE under paragraph (a) of the definition of “underlying property” in section 23(21);
- (f) W1 is the market value, at the time of execution of the conveyance, of the underlying property of the PHE under paragraph (b)(i) of the definition of “underlying property” in section 23(21); 5
- (g) W2 is the market value, at the time of execution of the conveyance, of the underlying property of the PHE under paragraph (b)(ii) of the definition of “underlying property” in section 23(21);
- (h) X is the percentage of the equity interests that the PHE (being a Type 2 PHE) beneficially owns (including indirectly by applying section 23(18)) in a Type 1 PHE; and 10
- (i) Y is the percentage of the equity interests that the target entity beneficially owns (including indirectly by applying section 23(18)) in the PHE at the time of the execution of the conveyance. 15

*In this Article, the market value of the underlying property of a PHE is the amount of the value of the part of the property that is attributable to a residential purpose, as defined in paragraphs (2A), (2B) and (2C) of Article 3.”.*

**Amendment of Third Schedule** 20

9. The Third Schedule to the principal Act is amended by inserting, immediately after Article 2, the following Article:

“2A. CONVEYANCE — Article No. 3A

- (a) for duty A and duty C           The grantee
  - (b) for duty B and duty D           The grantor”.
- 25



## EXPLANATORY STATEMENT

This Bill seeks to amend the Stamp Duties Act (Cap. 312) primarily to introduce new ad valorem duties for conveyances of equity interests in property-holding entities (PHE) that are computed on the basis of their underlying immovable properties.

Clause 1 relates to the short title and commencement.

Clause 2 amends section 5 to provide that the facts and circumstances affecting the liability of any instrument to duty that are not set out in the instrument, must be provided to the Commissioner of Stamp Duties (the Commissioner) in the form and manner specified by the Commissioner.

Clause 3 amends section 15 so that the relief from stamp duty provided by that section will not apply to an instrument relating to a transfer, conveyance or assignment of equity interests that is chargeable with any duty under the new section 23.

Clause 4 amends section 15A so that the relief from stamp duty provided by that section will not apply to an instrument relating to an acquisition of shares in a company that is chargeable with any duty under the new section 23.

Clause 5 removes the reference to “stocks and shares” in section 22(1)(b), to clarify that contracts or agreements for the sale of stocks and shares are dutiable. Section 22(1)(b) (as well as section 22(1)(a)) already refers to “property”, which would include stocks and shares.

Clause 6 inserts new sections 23 to 23D to provide for new ad valorem duties payable on conveyances of equity interests in a PHE or in entities with ownership interests in a PHE.

In these new sections, the following concepts apply:

“Significant owner of an entity” — a person is a significant owner of an entity if the percentage of equity interests which the person owns in the entity (together with those owned by the person’s associates) is equal to or more than the equity-owning percentage, or carries voting power that is equal to or more than the voting power percentage.

“Type 1 PHE” — an entity is a Type 1 PHE if, at the end of its most recent completed accounting period, the percentage of the market value of its total tangible assets that comprise prescribed immovable property, exceeds a prescribed percentage.

“Type 2 PHE” — an entity is a Type 2 PHE if the percentage by which the amount in paragraph (a) below exceeds the amount in paragraph (b) below, is more than a prescribed percentage:

- (a) the sum of the market value of the entity's total prescribed immovable properties, and the entity's share of the total market value of prescribed immovable properties that form part of the total tangible assets of all Type 1 PHEs in which the entity holds a significant stake;
- (b) the sum of the market value of the entity's total tangible assets, and the entity's share of the total market value of the total tangible assets of all entities in which the entity holds a significant stake.

The new section 23 provides for new ad valorem duties on 4 types of conveyances of equity interests that are executed on or after the date the section comes into operation, namely —

- (a) a conveyance of equity interests in a PHE of which the grantee is already a significant owner or becomes one upon the execution of the conveyance (subsection (2));
- (b) a conveyance of equity interests in a PHE that takes place after the grantor becomes a significant owner of the PHE, where the equity interests disposed of were acquired within the prescribed holding period and on or after the date the new section 23 comes into operation (the effective date) (subsection (3));
- (c) a conveyance of equity interests in a non-PHE where, if the non-PHE and another entity or entities were a single entity, the single entity would have been a Type 2 PHE, and the grantee would have been a significant owner of that single entity or would have become one upon the execution of the conveyance (subsection (5)); and
- (d) a conveyance of equity interests in any one of 2 or more entities where (immediately before the effective date or on or after that date) those entities would have been a Type 2 PHE if they were a single entity, and the grantor would have been a significant owner of that single entity, and where the equity interests disposed of were acquired within the prescribed holding period and on or after the effective date (subsection (6)).

The new section 23A makes it an offence for the grantor of a conveyance of equity interests in an entity who, on the grantee's request for information on whether an entity is a PHE and the entity's underlying property, provides false or misleading information, which results in a failure to pay or an underpayment of ad valorem duty under the new section 23. The new section 23A also makes it an offence for an associate of a grantor or grantee who, when asked by the grantor or grantee for information concerning the associate's ownership in an entity, gives false or misleading information resulting in a failure to pay or an underpayment of such duty.

The new section 23B extends the application of the new duties to transfers and assignments of equity interests in an entity as well as a contract or agreement for the sale of equity interests in an entity. If duty is paid on such contract or agreement, the subsequent conveyance, transfer or assignment is exempt from duty.

The new section 23C is an anti-avoidance provision. It provides that certain instruments that are otherwise not chargeable with the new duties under the new section 23 are nevertheless chargeable with those duties if the instruments effect or are evidence of any of the following:

- (a) an arrangement that achieves the same effect as instruments chargeable with those duties;
- (b) a prescribed “equivalent arrangement”, which is an arrangement that has the effect of altering the incidence of any of the new duties, relieves a person from paying any of them, or reduces or avoids liability under section 23.

In addition, a conveyance or other instrument that is executed within a prescribed period after an arrangement that causes an entity to be no longer a PHE is also a chargeable instrument.

The new section 23D enables the Minister to make an order bringing the new sections 23, 23A, 23B and 23C into operation from time to time. The new sections will only come into operation on the commencement date specified in the order when it is made, and will remain in force until the order is revoked. The new section 23D also provides for various matters to be set out in the order for the purposes of implementing those new sections.

Clause 7 amends section 71 to provide the Commissioner with the power to require a valuation of the underlying property of a PHE to be carried out, for the purpose of determining the liability of any conveyance of equity interests in the PHE to ad valorem duty.

Clause 8 inserts a new Article 3A in the First Schedule to provide for the amount of the new ad valorem duties payable under the new section 23.

The example below shows how the new duties for a conveyance of equity interests in a PHE are to be computed under the new Article 3A.

Conveyance 1: On 1 June 2017, *X*, who owns no shares in a company that is a PHE, buys 30% of the shares in a PHE.

Conveyance 2: On 1 December 2018, *X* buys a further 30% of the shares in the PHE, bringing *X*'s total ownership to 60%.

Conveyance 3: On 1 March 2019, *X* buys a further 30% of the shares in the PHE, bringing *X*'s total ownership to 90%.



Conveyance 4: On 1 July 2021, *X* sells 50% of the shares in the PHE, bringing *X*'s total ownership to 40%.

Conveyance 5: On 1 November 2021, *X* sells 10% of the shares in the PHE, bringing *X*'s total ownership to 30%.

Conveyance 6: On 1 January 2023, *X* buys 15% of the shares in the PHE, bringing *X*'s total ownership to 45%.

Conveyance 7: On 1 January 2024, *X* buys another 15% of the shares in the PHE, bringing *X*'s total ownership to 60%.

For the purposes of the example —

- (a) *X* is a significant owner of a PHE if *X*'s equity ownership in the PHE is 50% or more;
- (b) duty B under the new section 23(3) becomes payable if equity interests are disposed of within a holding period of 3 years; and
- (c) the effective date is 11 March 2017.

Based on Article 3A —

- (a) duty A under the new section 23(2) is not chargeable on Conveyance 1 as *X* does not become a significant owner of the PHE as a result of the conveyance;
- (b) duty A is chargeable on Conveyance 2 as *X* becomes a significant owner of the PHE as a result of the conveyance. The amount of duty is computed on the basis of all the shares bought since 11 March 2017 (i.e. 60%);
- (c) duty A is chargeable on Conveyance 3 as *X* is a significant owner of the PHE when the conveyance is executed. The amount of duty is computed on the basis of the 30% shares;
- (d) duty B is chargeable on Conveyance 4, but only in relation to shares bought within the holding period of 3 years. Shares acquired first are treated as disposed of first. On this basis, only the 20% shareholding acquired under Conveyance 2 and treated as disposed of under Conveyance 4 will be used in computing the duty;
- (e) duty B is chargeable on Conveyance 5 as the shares disposed of were acquired on 1 December 2018 and therefore disposed of within their holding period. The duty is chargeable even though *X* is no longer a significant owner of the PHE at the time of the execution;
- (f) duty A is not chargeable on Conveyance 6 as *X* is not a significant owner of the PHE and does not become one as a result of the conveyance; and

- (g) duty A is chargeable on Conveyance 7 as *X* becomes a significant owner of the PHE as a result of the conveyance. The duty is computed on the basis of the difference between the percentage of beneficial ownership of equity interests in the PHE that *X* has as a result of the conveyance (i.e. 60%) and the least percentage of such ownership that *X* has since the last time *X* was such significant owner (i.e. 30% as of 1 November 2021).

Clause 9 inserts a new Article 2A in the Third Schedule to provide for the persons liable to pay the new duties.

## EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.

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