

Stamp Duties (Amendment) Bill

Bill No. 13/2022.

Read the first time on 9 May 2022.

A BILL

in title

An Act to amend the Stamp Duties Act 1929.

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 2022 and is deemed to have come into operation on 10 May 2022.

Amendment of section 2

5 2. Section 2(1) of the Stamp Duties Act 1929 (called in this Act the principal Act) is amended by inserting, immediately before the definition of “Commissioner”, the following definition:

““bare trust beneficiary”, in relation to a trust over property, means a person —

- 10 (a) who is identified in the declaration of trust as a beneficiary of that property; and
 (b) who, upon the declaration of the trust, has beneficial ownership of that property;”.

Amendment of section 16

15 3. Section 16 of the principal Act is amended by inserting, immediately after subsection (6), the following subsections:

20 “(7) Where equity interests in an entity were conveyed or transferred on or after 10 May 2022 to a trustee to hold on trust for a beneficiary who is not a bare trust beneficiary, then subsection (5)(d) does not apply to a conveyance or transfer, executed on or after that date, by the trustee of those equity interests to the beneficiary.

25 (8) In subsection (7), “entity” and “equity interest” have the meanings given by section 23(21).

 (9) To avoid doubt, this section applies to a settlement that is made voluntarily.”.

New section 22C

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

“Duty on renunciation of interest in trust over residential property by beneficiary

22C.—(1) This section applies in a case where —

- (a) a person (called in this section the settlor) declared a bare trust over residential property or any interest in residential property on or after 10 May 2022; and
 - (b) a beneficiary of the trust disclaims or renounces on or after that date the beneficiary’s interest in the residential property under the trust, and a resulting trust arises in favour of the settlor of the interest so disclaimed or renounced (called in this section the renounced interest).
- (2) The beneficiary must, within the prescribed period after the date of the disclaimer or renunciation, give to the Commissioner and the settlor in the prescribed manner a notice in the prescribed form that this section applies to the renounced interest (called in this section and Article 3 of the First Schedule a section 22C notice).
- (3) A beneficiary who contravenes subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000.
- (4) If the beneficiary fails to comply with subsection (2), the Commissioner may at any time give a section 22C notice to the beneficiary and the settlor.
- (5) A section 22C notice is chargeable with the same ad valorem duty under this Act that is payable by a grantee as if it were a conveyance or transfer operating as a voluntary disposition inter vivos of the renounced interest to the settlor, except that the duty is payable by the settlor as if the settlor were the grantee.
- (6) If the disclaimer or renunciation takes effect —
- (a) whilst section 22A is in force; and
 - (b) before the end of the specified holding period mentioned in section 22A after the date the

beneficiary first has beneficial ownership of the renounced interest,

then duty under section 22A is also chargeable on a section 22C notice, and payable by the beneficiary, as if it were a conveyance or transfer operating as a voluntary disposition inter vivos of the renounced interest under section 22A, and the renounced interest were disposed of on the effective date of the disclaimer or renunciation.

(7) For the purpose of determining the amount of duty chargeable under subsection (5) or (6), the value of the property is determined as follows:

- (a) if the section 22C notice is given by the beneficiary — the value of the property is its value as at the last day of the prescribed period in subsection (2) or, if the notice is given before the end of the prescribed period, the date the notice is given to the Commissioner;
- (b) if the section 22C notice is given by the Commissioner — the value of the property is its value as at the last day of the prescribed period in subsection (2).

(8) Section 46 applies in relation to the duties in subsections (5) and (6) as if the section 22C notice were —

- (a) if given by the beneficiary — an instrument first executed in Singapore on the last day of the prescribed period in subsection (2) or, if the beneficiary gives the notice before the end of the prescribed period, the date the notice is given to the Commissioner; or
- (b) if given by the Commissioner — an instrument first executed in Singapore on the last day of the prescribed period in subsection (2).

(9) In this section —

- (a) “residential property” has the meaning given by paragraph (b) of the definition of that term in paragraph (1) of Article 3 of the First Schedule; and
- (b) a reference to the beneficiary is, in a case where the beneficiary is an individual below 21 years of age or lacks capacity, to the guardian, donee, deputy or other person having the direction, control or management of the renounced interest on the beneficiary’s behalf.

(10) This section is subject to section 9 of the Stamp Duties (Amendment) Act 2022.”.

Amendment of section 23

5. Section 23 of the principal Act is amended —

- (a) by inserting, immediately after the word “sale” in subsection (1)(c)(i), the words “or otherwise”; 15
- (b) by deleting the words “where the beneficial interest in the equity interests passes” in subsection (1)(c)(iii);
- (c) by inserting, immediately after the words “sections 23B” in subsections (2), (3), (5) and (6), “, 23BA”;
- (d) by inserting, immediately after subsection (20), the following subsection: 20

“(20A) However, subsection (20) does not apply in a case mentioned in subsection (22)(aa)(i) or (ii); and in such a case, a person (*X*) is an associate of the trustee of the trust concerned if *X* is associated with the trustee in such manner as may be prescribed in the section 23 Order.”; and 25

- (e) by deleting the word “and” at the end of paragraph (a) of subsection (22), and by inserting immediately thereafter the following paragraph:

“(aa) in the case of a conveyance executed on or after 10 May 2022 where the equity interests being conveyed —

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- (i) are (in the case of duty A or duty C) to be held on trust by the grantee for a beneficiary who is not a bare trust beneficiary; or
- 5 (ii) were (in the case of duty B or duty D) conveyed to the grantor on or after 10 May 2022 to be held on trust by the grantor for a beneficiary who is not a bare trust beneficiary,
- 10 then a reference to equity interests beneficially owned by a person is a reference to, as the case may be —
- 15 (iii) equity interests held or to be held on trust (as the case may be) by the grantee as trust property of the trust for that beneficiary; or
- (iv) equity interests held by the grantor as trust property of the trust for that beneficiary; and”.

20 **New section 23BA**

6. The principal Act is amended by inserting, immediately after section 23B, the following section:

“Modification of section 23, etc., where grantee, etc., holds on trust for bare trust beneficiary

25 **23BA.** In sections 23, 23A and 23B, Article 3A of the First Schedule and Article 2A of the Third Schedule, in the case of an instrument executed on or after 10 May 2022 where the equity interests being conveyed, transferred, assigned or sold —

- 30 (a) are (in the case of duty A or duty C) to be held on trust by the grantee, transferee, assignee or purchaser for a bare trust beneficiary; or
- (b) were (in the case of duty B or duty D) conveyed to the grantor, transferor, assignor or seller on or after

10 May 2022 to be held on trust by him, her or it for a bare trust beneficiary,

then a reference to the grantee, transferee, assignee, purchaser, grantor, transferor, assignor or seller (as the case may be) is to the bare trust beneficiary.”.

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Amendment of First Schedule

7. The First Schedule to the principal Act is amended —

(a) by inserting, immediately after sub-paragraph (aa) of paragraph (2) of Article 3, the following sub-paragraph:

“(ab) to avoid doubt, for the purposes of the definitions of the terms in sub-paragraph (a), a settlor of a trust in section 22C does not beneficially own the residential property or interest in residential property being disclaimed or renounced by reason only of the section 22C notice being treated as a conveyance or transfer of the residential property or interest under that section (but without affecting the settlor being so treated because of the resulting trust);”;

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(b) by inserting, immediately after paragraph (a) (the definition of U) of item 1 of Article 3A, the following paragraph:

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“(aa) however, in a case where —

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(i) the equity interests had earlier been conveyed to the grantor on or after 10 May 2022 to hold on trust for the grantee as beneficiary (but not a bare trust beneficiary);

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(ii) the grantor then exercised a power of appointment (whether pursuant to the trust or otherwise) over those equity interests in favour of the grantee, as a result of which the grantee became a significant owner of the PHE; and

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- (iii) the conveyance is a conveyance executed on or after 10 May 2022 of those equity interests by the grantor to the grantee under the trust,

then U is —

- 5 (iv) if this is the first time that 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; and

- 25 (v) if the grantee becomes such significant owner at any other time, the difference between —

30 (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

35 (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) 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;";

(c) by inserting, immediately after paragraph (a) (the definition of U) of item 2 of Article 3A, the following paragraph:

"(aa) however, in a case where —

- (i) the equity interests in the entity (being the target entity) had earlier been conveyed to the grantor on or after 10 May 2022 to hold on trust for the grantee as beneficiary (but not a bare trust beneficiary);
- (ii) the grantor then exercised a power of appointment (whether pursuant to the trust or otherwise) over those equity interests in favour of the grantee;
- (iii) those equity interests together with the equity interests in one or more entities (each called a 2nd entity) beneficially owned by the grantee, would result in the grantee becoming a significant owner of the combined entity; and
- (iv) the conveyance is a conveyance executed on or after 10 May 2022 of those equity interests by the grantor to the grantee under the trust,

then U is —

- (v) if this is the first time that the grantee becomes such significant owner since the effective date, the difference between —

(A) the sum of the equity interests in the target entity 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

(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 —

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(BA) the equity interests in the target entity beneficially owned by the grantee; and

(BB) the equity interests in the target entity beneficially owned by each of the grantee's associates; and

5 (vi) if this is not the first time that the grantee becomes such significant owner since the effective date, the difference between —

10 (A) the sum of the equity interests in the target entity 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; and

15 (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 —

20 (BA) the equity interests in the target entity beneficially owned by the grantee; and

25 (BB) the equity interests in the target entity beneficially owned by each of the grantee's associates;”; and

(d) by inserting, immediately after paragraph (3) of Article 11, the following paragraph:

30 “(4) For the purpose of determining the duty mentioned in Article 3A for an instrument executed on or after 10 May 2022 in this Article, a reference to the grantor, transferor or lessor is a reference to the settlor, and a reference to the grantee, transferee or lessee is —

35 (a) in a case where the equity interests in the entity are to be held on trust by the grantee, transferee or lessee for a beneficiary who is not a bare trust beneficiary — the grantee, transferee or lessee; or

- (b) in a case where the equity interests in the entity are to be held on trust by the grantee, transferee or lessee for a bare trust beneficiary — the bare trust beneficiary.”.

Transitional provisions for amendments to sections 16 and 23, and new section 23BA

8.—(1) This section applies to —

- (a) an instrument mentioned in subsection (7) of section 16 of the principal Act (as inserted by section 3);
- (b) an instrument mentioned in paragraph (aa) of section 23(22) of the principal Act (as inserted by section 5(e)), including an instrument chargeable in like manner under section 23B of the principal Act; and
- (c) an instrument mentioned in section 23BA of the principal Act (as inserted by section 6),

each of which is executed at any time between 10 May 2022 and the date of publication in the *Gazette* of this Act (called in this section the *Gazette* date) (both dates inclusive).

(2) Section 46 of the principal Act applies in relation to these instruments as if they were executed on the *Gazette* date.

Transitional provisions for new section 22C

9.—(1) This section applies to a case to which section 22C of the principal Act (as inserted by section 4) applies, where —

- (a) the bare trust over the residential property or interest in residential property is declared on or after 10 May 2022; and
- (b) the beneficiary of the trust disclaimed or renounced the beneficiary’s interest in the residential property or interest on or before the date of publication in the *Gazette* of this Act (called in this section the *Gazette* date).

(2) For the purposes of section 22C(2) of the principal Act, the section 22C notice must be given (instead of within the prescribed period in that provision after the date of the disclaimer or

renunciation) on or before the later of the following (called in this section the expiry date):

- (a) the *Gazette* date;
- (b) the last day of the prescribed period in that provision after the date of the disclaimer or renunciation.

5 (3) For the purpose of determining the amount of duty chargeable under section 22C(5) or (6) of the principal Act, the value of the property is determined as follows:

- 10 (a) if the section 22C notice is given by the beneficiary — the value of the property is its value as at the date the notice is given to the Commissioner or, if the notice is not given on or before the expiry date, the expiry date;
- (b) if the section 22C notice is given by the Commissioner — the value of the property is its value as at the expiry date.

15 (4) Section 46 of the principal Act applies in relation to the section 22C notice as if it were —

- 20 (a) if given by the beneficiary — an instrument first executed in Singapore on the date the notice is given to the Commissioner or, if the notice is not given on or before the expiry date, the expiry date; or
- (b) if given by the Commissioner — an instrument first executed in Singapore on the expiry date.

Other saving and transitional provisions

25 10. For a period of 2 years after the date of publication in the *Gazette* of this Act, the Minister may, by rules, prescribe such additional provisions of a saving or transitional nature consequent on the enactment of any provision of this Act as the Minister may consider necessary or expedient.

EXPLANATORY STATEMENT

This Bill amends the Stamp Duties Act 1929 for the following main purposes:

- (a) to impose ad valorem duty in relation to a case where a beneficiary of a bare trust over residential property renounces the beneficiary's interest in the property, and a resulting trust of the renounced interest arises in favour of the settlor;
- (b) to set out how section 23 (which imposes duty on the conveyance of equity interests in a property-holding entity) applies in a conveyance of such equity interests to a person to hold on trust for a beneficiary who is not a bare trust beneficiary.

Clause 1 relates to the short title and commencement.

Clause 2 amends section 2(1) to insert a definition for the term “bare trust beneficiary”. A bare trust beneficiary is one who is identified in the declaration of trust as a beneficiary of the property in question and who, upon such declaration, has beneficial ownership of the property.

Clause 3 amends section 16 (Voluntary conveyance inter vivos) for 2 purposes.

First, section 16 is amended to provide that the rule in subsection (5)(d) (that a conveyance or transfer by a trustee to a beneficiary under a trust is not subject to duty as a voluntary conveyance inter vivos under section 16) does not apply to a conveyance or transfer of equity interests in an entity to a beneficiary of a trust who is not a bare trust beneficiary, so that duty under section 23 (if applicable) becomes payable on the conveyance or transfer to the beneficiary. This is because duty under section 23 (if any) on the initial conveyance or transfer to the trustee is payable by the trustee as grantee, whereas duty under section 23 on a similar conveyance or transfer to a trustee to hold for a bare trust beneficiary is payable by the bare trust beneficiary under the new section 23BA.

Second, section 16 is amended to clarify that the section applies to a voluntary settlement.

Clause 4 inserts a new section 22C, which deals with a case where a settlor declares a bare trust over residential property, and a beneficiary of the trust renounces the beneficiary's interest in the residential property, which then gives rise to a resulting trust in favour of the settlor of the renounced interest.

The beneficiary must within the prescribed period give a notice to the Commissioner of Stamp Duties (the Commissioner) of the applicability of the new section 22C to the renounced interest, failing which the Commissioner may issue the notice to the beneficiary and the settlor. The notice is chargeable with ad valorem duty payable by a buyer under the Act (i.e. “buyer's stamp duty” and “additional buyer's stamp duty”) as if it were a conveyance or transfer operating as a voluntary disposition inter vivos of the renounced interest. Such duty is payable

by the settlor. The notice is also chargeable with ad valorem duty payable by a seller under the Act (i.e. “seller’s stamp duty”) if the renunciation is made within the specified holding period under section 22A. Such duty is payable by the beneficiary.

The new section 22C further provides for how section 46 (Stamping of instruments after execution) is to apply for the purposes of determining when the deemed instrument is to be stamped and the penalty payable for late stamping.

Clause 5 amends section 23 (Duty on conveyance of equity interests in property-holding entities) —

- (a) to provide that the section applies to a conveyance whether on a sale or otherwise, and a conveyance pursuant to a declaration of trust whether or not beneficial interest in the equity interests passes;
- (b) to provide that, in determining whether the threshold for significant ownership of an entity is reached for duty A, duty B, duty C or duty D to be levied in a case where the grantee or grantor (as the case may be) holds the equity interests in the entity on trust for a beneficiary who is not a bare trust beneficiary, one must consider the equity interests in the entity that the grantee or grantor holds as trust property of the trust; and
- (c) to provide that an associate of a trustee who holds equity interests in an entity on trust for a beneficiary who is not a bare trust beneficiary, is one that is specified by the section 23 Order. Under section 23, equity interests in an entity held by an associate of the grantee or grantor are to be taken into account in determining whether the grantee or grantor is a significant owner of the entity.

Clause 6 inserts a new section 23BA which modifies the application of provisions relating to the levying of ad valorem duty on the conveyance, etc., of equity interests in entities (commonly called “additional conveyance duty”). Where the party concerned holds the equity interests on trust for a bare trust beneficiary, it is the bare trust beneficiary who is considered the grantee, transferee, assignee, purchaser, grantor, transferor, assignor or seller (as the case may be) and therefore the party liable for any duty.

Clause 7 amends the First Schedule (Instruments chargeable with stamp duty) for the following purposes:

- (a) to make clear (in Article 3) that where duty is payable by the settlor of a trust over a residential property under the new section 22C, the settlor is not to be treated as owning the residential property that is the subject of the renunciation of interest by a beneficiary of the trust, by reason only of the section 22C notice being treated as a conveyance or transfer of the residential property under section 22C;

(b) to provide (via amendments to the definitions of U in Article 3A) that where the conveyance of equity interests is made by a trustee of a trust to a non-bare trust beneficiary who was already a significant owner of the entity or deemed entity concerned owing to an earlier appointment by the trustee, the beneficiary pays section 23 duty not only on the equity interests so conveyed but also on equity interests which he, she or it beneficially owns at the time of the conveyance.

Clauses 8 and 9 contain transitional provisions for the amendments to sections 16 and 23, and the new sections 23BA and 22C, to extend the date by which payment of duty is to be made for transitional cases, to extend the date by which a section 22C notice has to be given for such cases, and to provide for how the value of property is to be determined for such cases under the new section 22C.

Clause 10 enables the Minister to make other saving and transitional provisions for a limited time.

EXPENDITURE OF PUBLIC MONEY

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