



Federal Court Affirms Ad Valorem Stamp Duty on Sale and Purchase of Assets

The recent Federal Court case of *Havi Logistics (M) Sdn Bhd v. Pemungut Duti Setem [2025] 3 MLRA 1* addresses a critical question in revenue law; whether a commercial contract, specifically an Asset Purchase Agreement should be subject to fixed or ad valorem stamp duty under the **Stamp Act 1949 (Revised 1989)** (“Act”).

Brief Facts

Havi Logistics (M) Sdn Bhd (“**Havi Logistics**”) entered into an Asset Purchase Agreement (“**Agreement**”) to acquire fixed assets, inventories and liabilities, excluding the goodwill of Martin-Brower Malaysia Co Sdn Bhd for USD2,491,491.55 (equivalent to RM10,378,806.35).

The respondent being the Collector of Stamp Duty, assessed the Agreement with an ad valorem stamp duty of RM399,196.00 on the basis that the Agreement fell within the ambit of **section 21(1) of the Act** and **Item 32 of the First Schedule to the Act**.

After an unsuccessful appeal to the respondent, Havi Logistics filed a further appeal against such assessment in the High Court, which set aside the respondent’s decision and determined that the Agreement should be assessed under **Item 4 of the First Schedule to the Act**, attracting only a fixed duty of RM10.00.

Dissatisfied with the High Court’s ruling, the respondent appealed to the Court of Appeal which overturned the High Court’s ruling, holding that the Agreement constituted a “conveyance of sale” attracting ad valorem stamp duty by virtue of the contractual deeming provision in clause 2.3(c)(i) of the Agreement which stated that at closing, the title and risk in the acquired assets would pass automatically and that the assets were deemed delivered where they were located, with no further action required by the parties.

This led Havi Logistics to appeal to the Federal Court, which had to resolve the following key issues:-

- (i) whether the deeming provision in clause 2.3(c)(i) of the Agreement made it a legal “conveyance on sale”, thus attracting ad valorem stamp duty; and
- (ii) whether the fixed capital assets (which are part of the acquired assets) sold under the Agreement fell within the definition of “goods” under **section 21(1) of the Act**, thus exempting them from the operation of the said section and not attracting ad valorem stamp duty.

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The Federal Court's Findings and Reasoning

The Federal Court unanimously dismissed the appeal and held as follows: -

(i) Conveyance on Sale

The Federal Court found that the Court of Appeal had erred in relying solely on the contractual deeming provision under Clause 2.3(c)(i) of the Agreement to reach its decision.

Instead, the Federal Court ruled that, upon reading the Agreement as a whole, the parties to the Agreement intended, clearly, to transfer all the fixed assets, inventories, liabilities and business contracts (which fall within the definition of 'properties' under **section 2 of the Act**) from one to another upon the sale without requiring further acts from the parties. Therefore, the Agreement fell squarely within **section 21(1) of the Act** and was to be construed as an actual conveyance on sale, with or without the contractual deeming provision. It is further held that no further instrument is necessary to convey or transfer the property for it to be a conveyance of sale.

The Court also rejected Havi Logistics' claim that the transaction did not result in an immediate transfer of assets (i.e. as at the date of the Agreement) and therefore should not be regarded as a conveyance, as the Agreement explicitly provided for the transfer of fixed assets, liabilities, and business contracts. The Court emphasised that the timing of the transfer of ownership is irrelevant to this determination, as the time of such transfer can be manipulated to avoid the said ad valorem stamp duty.

(ii) Interpretation of "Goods" Under Section 21(1)

Havi Logistics, relying on **section 21(1) of the Act** (as below) which by itself provides for exemption to ad valorem duty, contended that the fixed assets (e.g., machinery, equipment) should be classified as "goods" making them exempt from ad valorem duty: -

*"Any contract or agreement made in Malaysia under seal or under hand only, for the sale of any equitable estate or interest in any property whatsoever, or for the sale of any estate or interest in any property **except lands, tenements, hereditaments, or heritages, or property locally situate out of Malaysia, or goods, wares or merchandise, or stock, or marketable securities, or any ship or vessel, or part interest, share or property of or in any ship or vessel, shall be charged with the same ad valorem duty, to be paid by the purchaser, as if it were an actual conveyance on sale of the estate, interest or property contracted or agreed to be sold.**"*

However, the Federal Court rejected this interpretation, distinguishing the historical legislative background between the Malaysian and UK Stamp Acts. In the UK, the term "goods" in **section 59 of the UK Stamp Act 1891** (which is in *pari materia* with our **section 21(1) of the Act**), had evolved and attained a meaning of its own by virtue of various statutory enactments. For instance, the **UK Electric Lighting Act 1909** expressly extended the definition of "goods" to include electrical energy while the **UK Sale of Goods Act 1893** had included personal chattels. As a result of this historical legislative background, the English taxing authority, and for that matter their courts, construed the term "goods" in **section 59 of the UK Stamp Act 1891** widely to include goods held as inventory or stock, as well as goods that were capital in nature.

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On the other hand, the Federal Court recognised that the Malaysian Stamp Act does not have a similar legislative history or evolution as in England and concluded that the term “goods” in **section 21(1) of the Act** must be construed within the framework of the Act.

Hence, the Federal Court in disagreement with the Court of Appeal’s reasoning, held that the term “goods” in **section 21(1) of the Act** applies only to trading goods, wares, or merchandise, but not any other capital assets based on the dictionary meaning of “goods” and the application of the principle of *noscitur a sociis* (it is known by its associates) by reference to its two associated words, namely, ‘wares’ and ‘merchandise’. Accordingly, the Court confirmed that non-trading movable properties remain subject to ad valorem duty under **Item 32(a) of the First Schedule to the Act**.

Furthermore, the Federal Court also considered that for agreements or instruments involving conveyance of sale of the following categories of properties (which are specified to be exempted under **section 21(1) of the Act**), stamp duty is either assessed or exempted as follows:-

Items	Provisions under the Act
Lands, tenements, hereditaments, and heritages	Title to these items must be transferred by an instrument of transfer. Hence, when the property is transferred (e.g. by Form 14A under the National Land Code), the instrument would then be liable to ad valorem duty under Item 32(a) of the First Schedule .
Property locally situate out of Malaysia	These are exempted under section 35 of the Act – the General Exemptions, Item No. 4 .
Goods, wares or merchandise	Agreement for sale of goods, wares and merchandise (other than hire-purchase agreement) is exempted under exemption (a) of Item 4 .
Stock and marketable securities	These items must be transferred by an instrument of transfer. Hence, when the property is transferred, the instrument would then be liable to ad valorem duty under Item 32(b) of the First Schedule .
Any ship or vessel or part interest, share or property of or in any ship or vessel.	Exempted under section 35 – the General Exemptions, Item No. 3 .

Final Decision

The Federal Court upheld the assessment by the Collector and confirmed that the Agreement shall be subject to ad valorem stamp duty based on the following:-

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- (i) the Agreement by itself is a conveyance of sale under **section 21(1) of the Act**, with or without the contractual deeming provision; and
- (ii) fixed capital assets sold under the Agreement do not qualify as “goods” under **section 21(1)**.

Conclusion

This landmark decision sets a precedent for the interpretation of **section 21(1) of the Stamp Act 1949**, clarifying the distinction between trading goods and fixed assets in determining stamp duty liability and confirms the broad applicability of **Item 32(a) of the First Schedule to the Act** in assessing ad valorem duty on business asset transfers.

We recognise the possible confusion on the part of the taxpayers regarding the term “goods” in **section 21(1) of the Act** and whether it should be limited solely to trading goods as held by the Federal Court, given the absence of a clear definition in the Act. Since taxpayers are generally not expected to look into the legislative intent when interpreting the Act, further clarity on the definition of “goods” in the Act itself may be necessary. Nevertheless, the Federal Court as the apex court of the country has through this case, provided a definitive interpretation of the law and thus, the current ruling stands as binding precedent and shall remain good law.

Prepared by **Tan Jia Wen** (Associate); **Natalie Hong** (Associate); and **Melanie Fong** (Partner).

Jeff Leong, Poon & Wong
Advocates & Solicitors
18-17-F&G Gurney Tower
Persiaran Gurney
10250 Penang
Malaysia

Telephone : +60 4 4127 388
Facsimile : +60 4 4127 883
E-mail : melanie.fong@jlpw.com.my

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