



COURTROOM INSIGHTS

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Stamp Duty Assessment

**HAVI LOGISTICS (M) SDN BHD V. PEMUNGUT
DUTI SETEM [2025] 3 MLRA 1 (CIVIL APPEAL NO:
01(F)-5-02-2024)**

Federal Court Clarifies : Stamp Duty Assessment on Asset Purchase Agreements

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INTRODUCTION

In **Havi Logistics (M) Sdn Bhd v. Pemungut Duti Setem [2025] 3 MLRA 1 (Civil Appeal No: 01(f)-5-02-2024)**, the Federal Court addressed a significant issue in revenue law:

Whether an asset purchase agreement (“APA”) should be subject to ad valorem stamp duty under Item **32(a) of the First Schedule to the Stamp Act 1949 (“Act”)**. While affirming the Court of Appeal’s conclusion that ad valorem duty applied, the Federal Court diverged in its reasoning, particularly regarding the effect of the APA’s deeming provision and the interpretation of “goods” under **Section 21(1) of the Act**.

KEY TAKEAWAYS

- a)** Ad valorem duty is imposed on APAs at the time of execution, regardless of whether the transaction has been fully completed.
- b)** The inclusion of a deemed delivery clause does **not** affect the determination of whether an APA constitutes a conveyance on sale.
- c)** The exemption under **Section 21(1)** applies strictly to stock-in-trade, whereas capital assets remain subject to ad valorem duty.

BACKGROUND FACTS

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- The On 6 February 2020, **Havi Logistics (M) Sdn Bhd ("Havi")** entered into an APA with **Martin-Brower Malaysia Co Sdn Bhd ("MB Malaysia")** to acquire certain assets and liabilities.
 - The acquired assets included fixed assets (such as computer software, hardware, fittings, renovations, plant, machinery, and equipment) and general assets (such as inventory and business contracts). The total purchase consideration was USD 2,491,491.55 (equivalent to RM 10,378,806.35 at the prevailing exchange rate).
 - Following an application for assessment, the Pemungut Duti Setem assessed the APA with ad valorem duty of RM399,196 under **Item 32(a) of the Act**. Havi paid the duty under protest and appealed, arguing that the APA should be assessed under **Item 4 of the First Schedule**, thereby attracting a fixed duty of RM 10.
 - However, the Collector of Stamp Duties **rejected the appeal**, maintaining that the APA constituted a conveyance on sale under **Section 21(1) of the Act**.

COURT RULINGS & REASONING

- The High Court ruled in favor of Havi, holding that the APA did not effectuate a legal or equitable transfer of property and was therefore subject only to the fixed duty of RM10 under Item 4 of the First Schedule. The High Court found that the APA was merely an agreement to buy and sell assets, with the actual transfer of legal and equitable interests occurring later through separate instruments or physical delivery.

Lower Court

- Decisions :**
- The Court of Appeal reversed the High Court's decision and held that the APA was a "conveyance on sale" under the Act and therefore subject to ad valorem duty. The appellate court reasoned that Clause 2.3(c)(i) of the APA stipulated that title and risk in the acquired assets passed automatically to Havi on closing through deemed delivery. Since no further action was required to effect the transfer, the APA itself constituted an instrument of conveyance.



FEDERAL COURT DECISION

- The Federal Court was presented with two key legal questions:
 - (a) Whether the APA was a "conveyance on sale" under **Section 2 of the Act**; and
 - (b) Whether the fixed assets sold under the Agreement fell within the expression of "goods" under **s21(1) of the Act**.

*"Conveyance on Sale" and **Section 2 of the Act***

- The Federal Court **agreed with the Court of Appeal** that the APA constituted a "conveyance on sale" under **Section 2 of the Act**. However, it disagreed with the Court of Appeal's reasoning that the APA became a conveyance on sale only due to the deeming provision in **Clause 2.3(c)(i)**.
- The Federal Court emphasized that the APA should be read as a whole, and the intention of the parties was clear in transferring the properties to the purchaser upon the sale without requiring any further act. Since no additional instrument was necessary to effect the transfer, the APA clearly fell under the second category of **Section 21(1) of the Act**.
- The Federal Court held that the Court of Appeal erred in law by determining that the APA fell under **Section 21(1)** by virtue of the deeming provision in **Clause 2.3(c)(i)**. With or without this clause, the APA would still fall squarely under Section 21(1) of the Act and was thus construed as actual conveyance of sale.

FEDERAL COURT DECISION

Section 21(1) of the Act and the “Goods” Exception

- The Federal Court then considered whether the fixed assets in the APA fell within the definition of “goods” in **Section 21(1) of the Act**, which would exempt them from ad valorem duty.
- The Court of Appeal had interpreted “goods” broadly and held that the dictionary meanings of “Goods” in Black’s Law Dictionary and the Oxford English Dictionary were of no assistance to the interpretation of “goods” under **s21(1) of the Act**. Relying on **Drages v Commissioners of Inland Revenue (1927) 46 TC 389**, the Court of Appeal concluded that capital assets such as furniture and equipment were “goods.” The Federal Court, however, rejected this interpretation, emphasizing that statutory exceptions in **Section 21(1)** must be construed within the framework of the Act and using proper principles of statutory interpretation. Applying the maxim *noscitur a sociis*, the Federal Court held that “goods” must be interpreted in relation to “wares” and “merchandise”.
- The Federal Court cited various dictionary definitions and concluded that only trading goods or goods held for sale in the ordinary course of business fall within the exception under **Section 21(1)**. Capital assets, such as machinery, office equipment, and other non-trading moveable properties, do not fall under “goods” and are subject to ad valorem duty under **Item 32(a) of the First Schedule**.
- In reaching this decision, the Federal Court distinguished the UK’s tax authority practice of treating non-trading goods as an exception under **Section 59(1) of the UK Stamp Act**. The court relied on the legislative intent and history of UK laws, noting that the UK’s stamp duty regime had evolved differently from the Stamp Act 1949. **As a result, broader UK definitions of “goods” were deemed inapplicable to Malaysia’s context.**

IMPACT ANALYSIS



This decision will primarily impact businesses, tax professionals and legal practitioners dealing with asset purchase agreements, particularly those involving non-trading capital assets.

a) Business engaging in asset acquisitions

Companies acquiring fixed assets such as machinery, equipment, and office fittings should be aware that such transactions are subject to ad valorem duty rather than fixed duty, leading to higher tax exposure.

b) Legal and tax professionals

Lawyers and tax advisors must assess the agreement structures to ensure compliance with the Stamp Act 1949, particularly regarding how asset transfers are documented to avoid disputes with the IRB.

c) Investors and financial institutions

Businesses involved in mergers, acquisitions, or large asset transactions must account for higher stamp duty liabilities when structuring deals

Moving forward, as tax enforcement tightens, prudent tax planning and strategic structuring will be key in mitigating exposure to unnecessary duties and ensuring full compliance with the evolving Malaysian tax landscape.

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