

TALK TAX ON STAMP DUTY

FT: All stamp duties were previously handled at the Solicitors Generals office, when did FRCA take over the administering?

ACEO: The administration of the stamp duty was transferred to the Fiji Revenue & Customs Authority from 1 April 2011. Now that Stamp Duty administration has moved to FRCA, we have dedicated a team that ensures all the provisions in the Stamp Duties Act are administered in line with its policy intention.

FT: Are all business documents between separate parties subject to Stamp Duty?

ACEO: The Stamp Duty Act provides that any instrument (written document) between two or more parties is subject to Stamp Duty so as to make the document legally enforceable. The document when brought to FRCA Stamp Duty Unit is assessed to determine if it is liable to stamp duty.

FT: How about documents executed outside of Fiji and brought into Fiji?

ACEO: Any unstamped or insufficiently stamped instruments executed outside Fiji must be presented for payment of duty and stamping within one month after it has been first received in Fiji. An unstamped document becomes invalid and may not be permissible for use as evidence in the court of law.

FT: Who would normally pay the stamp duty?

ACEO: The person primary liable to pay the duty on any instrument is the person buying or paying for the product or for the use of service. It is payable only on instruments described in the Schedule in the Stamp Duty Act, and is subject to various conditional and general exemptions. The Minister of Economy, upon the advice from FRCA, may waive or refund the whole or any part of any duty payable on an instrument. The CEO FRCA can waive or refund stamp duty on amounts up to \$10,000.

FT: What is Stamp Duty?

ACEO: According to the Stamp Duty Act, "duty" means the stamp duty for the time being chargeable by law and is payable on certain signed instruments. Examples of Instruments include: Agreements (excluding employment contracts); Appointment of trustees (subject to exemption); Bill of sale, exchange, lading; Bonds (subject to exemptions); Deeds, Declarations of trust; Insurance policies; Notarial acts; Order or payment; Power of attorney; transfer documents etc.

FT: When is a document subject to Stamp Duty?

ACEO: A document or instrument must be presented for assessment of duty and stamping within two months after signing or executing. During this time, any unstamped or insufficiently stamped instrument can be stamped without any fine, however, after this

period; any late stamping will incur fines. Instruments shall only be regarded as presented for stamping when the duty is paid. However, if an assessment is disputed, the sum assessed may be paid to FRCA together with any fine until the matter is resolved

FT: How does a person pay a fine when there is a delay in stamping at FRCA?

ACEO: Where an instrument or a document is unstamped or was not properly stamped, and where the delay is more than 2 months but less than 3 months from the date of execution, the fine is 25% on the amount of duty or \$2.00, whichever is greater; and where the delay is 3 months after the date of execution, the fine is 50% on the amount of duty or \$4.00, whichever is greater. FRCA may at any time remit or reduce any fine incurred for late payment.

FT: What if persons decide to avoid Stamp Duty by using schemes etc.?

ACEO: Where person alters the incidence of any Stamp Duty that is payable or suffered by, which would otherwise have been payable or suffered by any person; or relieve any person from any liability that has arisen or which would otherwise have arisen to pay Stamp Duty or file a Stamp Duty return; or evade or avoid any liability which is imposed or which would otherwise have been imposed on any person under the Stamp Duty Act; or hinder or prevent the operation of the Act in any respect; FRCA may disregard or vary the dealings and make such assessments as FRCA considers just and proper in the circumstances.

FT: What happens when there is an incorrect assessment where the person's property has been undervalued?

ACEO: FRCA will conduct inspections on properties on an ad hoc basis. This will be conducted especially for cases where conditional exemptions had been granted. In certain cases an evaluation of the consideration declared by a person lodging application for payment of stamp duty may be required before it can be processed. If there is reason to believe that an instrument chargeable with duty has been executed and has not been presented for stamping, we will notify the person to comply. If an incorrect assessment is made, FRCA is required to recover the tax underpaid within 6 months after the date of stamping. If it remains unpaid it will be treated as a debt to the State, however the person liable may appeal to the courts against the FRCA's decision.

FT: Do we pay Stamp Duty on exporting goods outside of Fiji?

ACEO: Yes, Stamp Duty also applies on Bill of Lading for any goods, merchandise or effects that are exported from Fiji. The Stamp Duty is payable by the person to whom the goods are consigned. Agents and exporters arranging the export of goods on are required to: pay Stamp Duty of ten dollars (\$10) on each Bill of Lading; ensure that the Bill of Lading (Master Bill and House Bill) is the original and has the FRCA's STAMP and SEAL before it is delivered to the Comptroller of Customs for processing; and arrange to have pre-paid Bill of Lading (of any quantity) by paying the Stamp Duty and having the Bill of Lading stamped.

FT: How is the Stamp Duty calculated?

ACEO: The rates of duty payable are in the Schedule to the Stamp Duty Act. Duty payable can also be assessed by using the Stamp Duty calculator which is available on our website www.frca.org.fj. The calculator is designed to compute the amount of Stamp Duty payable and the fine where applicable based on the details entered.

FT: Who would qualify for the general exemption on Stamp Duty?

ACEO: Any small and micro enterprise with an annual gross turnover not exceeding \$500,000 is exempted from paying any STAMP DUTY provided that they declare by way of a statutory declaration that they have a gross turnover not exceeding \$500,000. Also included in the general exemption is the conveyance of any property to the Government of Fiji, Housing Authority and Sugar Cane Growers.

FT: Who would qualify for conditional exemption?

ACEO: This exemption is commonly used in conveyance transactions in Fiji. It applies to instruments such as Transfers, Mortgages and Leases for: a Lease of land granted for a term exceeding 50 years; a mortgage which is the only or principal or primary security for the payment or repayment of moneys, or which secures further or future advances of moneys due on account current; a transfer on sale of an estate in fee simple in any land; and a transfer on sale of a Lease of land granted for a term exceeding 50 years, the unexpired portion of which, at the date of the execution of the transfer, exceeds 5 years.

Any Fiji citizen who purchases a residential property in Fiji is conditionally exempted from paying Stamp Duty, provided that the residential property is the first residential property in Fiji or elsewhere that is purchased by the Fiji citizen in Fiji or elsewhere.