



STANDARD INTERPRETATION GUIDELINE 2018 – 14

STAMP DUTIES ACT, INCOME TAX ACT AND VAT ACT

CONCESSIONS AVAILABLE TO SMALL AND MICRO ENTERPRISE

This Standard Interpretation Guideline (“SIG”) sets out Fiji Revenue and Customs Service’s (“FRCS”) policy and operational practice in relation to application and administration of exemption on stamp duty and other tax concessions available to Small and Micro Enterprises.

It is issued with the authority of the Chief Executive Officer (CEO) of FRCS who is also the Commissioner of stamp duties under the Stamp Duties Act 1920.

Legislative references in this SIG are the Small and Micro Enterprises Development (SME) Act 2002, Stamp Duties Act 1920, Value Added Tax Act (VAT) 1991, Income Tax Act 2015, and the Companies Act 2015.

This SIG is in effect from 16.07.2018 and may need to be reviewed in the event of any relevant legislative amendments.

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EXECUTIVE SUMMARY

1. The importance of Small and Micro Enterprises (SME) sector is well recognized in developing countries due to its significant contribution towards economic efficiency and a healthy business climate. SMEs play a fundamental role in accomplishing various socio-economic objectives of the country such as creation of employment opportunities, promotion of innovative ideas and fostering entrepreneurship.
2. With a view to encourage SMEs within the country a number of welfare initiatives were introduced by the Government of Fiji. The primary purpose of these initiatives were to encourage SME sector growth and to remove undue burden and red tape. Presently, SMEs have access to a range of concessions such as stamp duty concession under the Stamp Act 1920, tax concession under the Income Tax Act 2015, and relaxation of taxable period under the VAT Act 1991. Considering that these incentives have been designed exclusively to boost SME sector, correct interpretation of purpose and intent of relevant laws is essential to ensure genuine SMEs gain from these incentives.
3. In view of the above objectives, Stamp Duties Act 1920, was amended vide Stamp Duty (Budget Amendment) Act 2015, to provide stamp duty relief to SMEs subject to compliance with prescribed requirements. The amendment came into effect from 1st January, 2016.
4. Since the amendment a number of enterprises have applied for and have been permitted stamp duty concessions. However, in the recent past a number of instances have been brought to the attention of FRCS whereby businesses and/or enterprises that do not fall within the meaning and ambit of an SME have either applied for or have availed stamp duty exemption.
5. An enterprise can avail stamp duty concession under Paragraph 3 above **only if** such an enterprise qualifies to be an SME as per the definition, explanation and purpose of SME stated in the SME Act 2002.
6. Tax reforms are aimed at strengthening the economy ensuring fairness at all levels. However, when businesses and/or enterprises exploit the legal loopholes to avail tax or stamp duty concessions, those in genuine need are deprived of the welfare benefits.

INTRODUCTION

7. Primary objective of SME Act 2002, as outlined under Section 4(a) of SME Act, is to *'support and promote the establishment of small and micro enterprises especially for the benefit of economically or socially disadvantaged groups including women, youths and other persons'*.
8. It has become critical to ensure that applications for availing concessions by SMEs are being assessed in line with the primary objective of SME Act 2002, outlined in Para 7 above.
9. Due to an increase in the number of enterprises applying for exemptions as SMEs, more particularly stamp duty exemption, there is a need and industry demand to provide clarity and ensure consistency in identifying the eligible SMEs so that only genuine SMEs get access to these exemptions.

10. The purpose of this SIG is to issue a practical guidance on the following matters:
- a) provide a detailed outline of the legislative provisions to establish eligibility of an SME entitled to claim stamp duty and tax concessions;
 - b) provide CEO's interpretation of the key provisions and issues to provide clarity and ensure consistency in application of relevant legislation; and
 - c) discuss main practical issues that are likely to arise in the application of these provisions and provide guidance on how the CEO is likely to decide on allowing stamp duty and tax concessions in relation to these issues.

LEGISLATIVE ANALYSIS

11. What concession is available to an SME under Stamp Duties Act?

Part 2 of Stamp Duties Act 1920, lists general exemptions from stamp duty. Paragraph 29 of Part 2 states:

"Any small and micro enterprise with an annual gross turnover not exceeding \$500,000 is exempted from paying any stamp duty under this Act provided that they declare by way of a statutory declaration that they have a gross turnover not exceeding \$500,000."

12. What is an SME for the purpose of stamp duty concession?

Micro and Small enterprise is defined under Section 2 of the SME Act 2002, as below -

"micro enterprise" : means any enterprise which has a turnover or total assets not exceeding \$30,000 and employs not more than 5 employees

"small enterprise" : means any enterprise which has a turnover or total assets between \$30,000 and \$100,000 and employs between 6 and 20 employees

Further, Section 13 (1) of the SME Act 2002, lays out eligibility criteria for an enterprise to avail benefits as a Small and Micro enterprise. It states -

"13. (1) A small or micro enterprise is eligible for assistance, incentives, promotion or have access to training services under this Act if it meets the following requirements-

- a. *in the case of a co-operative, self-funded enterprise, association or single proprietorship, the enterprise is wholly owned by a Fiji citizen;*
- b. *in the case of a company, 100% of the voting share of the company vests in a Fiji citizen;*
- c. *the enterprise is engaged in a business;*
- d. *the enterprise must not be a branch or subsidiary of an enterprise which is not a small or micro-enterprise;*
- e. *the enterprise is established by or for the purpose of benefiting economically or socially disadvantaged persons including women, youths and other persons.*

13. Legislative requirements under Stamp Duties Act

According to Paragraph 29, Part 2 of Stamp Duties Act 1920, for an enterprise to avail stamp duty exemption, **all three conditions** listed below must be satisfied:

- i. The enterprise must be a small or micro enterprise;
- ii. Annual Gross Turnover of the enterprise must not exceed \$500,000; and
- iii. The enterprise claiming exemption must declare by way of statutory declaration that their gross turnover does not exceed \$500,000.

Condition 1 - The enterprise must be a small and micro enterprise
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To access and enjoy stamp duty exemption, an enterprise must be a small or micro enterprise. For an enterprise to qualify as a small or micro enterprise, **definition** of SME under Section 2 (as stated above) and **eligibility requirements** of SME under section 13(1) as explained below, needs to be considered.

Section 13(1) of the SME Act 2002, states that an enterprise is eligible to avail assistance, incentives, promotion, access to training as an SME if the following conditions, as applicable, are met:

- a. **Nature of Entity:** The SME must be a registered business entity having 100% ownership by the citizens of Fiji. The business entity can be—
 - (i) a co-operative body registered under the laws of Fiji;
 - (ii) a self-funded enterprise – can be company, partnership firm, branch or any other legal entity registered under the laws of Fiji;
 - (iii) an association registered under the laws of Fiji; or
 - (iv) a single proprietary firm registered under the laws of Fiji.
- b. **Ownership Nature of Entity, if it's a Company:** If the enterprise is registered as a Company under the Companies Act 2015, 100% ownership of the Company must vest in citizens of Fiji.
- c. **Business:** The enterprise must be engaged in a business activity. This means that it must be formed for the purpose of carrying out commercial activities. Enterprise formed for charitable purposes are excluded.
- d. **Branch or Subsidiary:** If the enterprise is a branch or subsidiary of another parent enterprise, that parent enterprise must also be an SME.
- e. **Purpose of Enterprise:** The purpose of an enterprise must be clearly laid out and wherever possible must be documented. Only if the enterprise is formed by or for the purpose of benefiting persons who are economically or socially disadvantaged, including women, youth and other persons, the enterprise will qualify to be an SME.

The purpose of an enterprise requires careful examination. The intention of legislation is that the purpose of SME must be aligned to the primary objective of the SME Act 2002 (stated in Paragraph 7 hereinabove), in order to be eligible for stamp duty concessions.

Condition 2: Annual Gross Turnover of the enterprise must not exceed \$500,000

- a. Annual Gross Turnover is the ordinary income earned in the ordinary course of running a business for a financial year.
- b. An enterprise must assess in every financial year if its annual turnover is below \$500,000 in order to be able to claim stamp duty exemption.
- c. While estimating the Annual Gross Turnover, the enterprise must consider the below factors:
 - i. turnover in previous income year and estimated turnover of current year;
 - ii. whether the business activity will increase or decrease because of changing conditions; and
 - iii. if there will be an extraordinary sales or revenue and if that sale or revenue may impact the SME status.
- d. Operating a business for part of the year - If the enterprise starts or ceases a business for a part of the financial year, the enterprise must make a reasonable estimate of its annual turnover assuming the operations were carried out for the entire financial year.
- e. Related Party Transactions - The enterprise must include any income from transactions with a related party in its annual turnover. If the dealing was not at arm's length (that is, the goods or services were sold at a discounted price because of connection with the related party) the enterprise must use the market value of the goods or services when working out its annual turnover.
- f. Multiple businesses of a sole trader - If a sole trader operates multiple business activities, the enterprise of the sole trader must include income from all activities when computing his/her annual gross turnover.

Condition 3: Statutory Declaration by the SME

- a. The SME must provide a statutory declaration affirming that the gross turnover of the enterprise does not exceed \$500,000.
- b. The statutory declaration must be signed in presence of a Solicitor, Commissioner for Oaths or Notary Public.
- c. The statutory declaration must be dated not more than two months prior to the date of making application to the Commissioner of Stamps for exemption.

14. Ascertaining an SME in light of different requirements stipulated under SME Act and Stamp Duties Act

Even if the gross annual turnover of an enterprise exceeds \$100,000 and/or the number of employees exceeds 20, the CEO may, solely for the purpose of authorizing stamp duty exemption, consider that enterprise as an SME provided –

- i. the gross annual turnover of that enterprise does not exceed the threshold of \$500,000 as stipulated under the Stamp Duties Act;
- ii. eligibility requirements stipulated under 13(1) of SME Act are satisfied; and
- iii. “connected entities” test prescribed under Paragraph 16 herein below is satisfied.

Example 1: Start up business by entrepreneurs

Maria and Sarah have registered a partnership business to commence baking business by joint financing. Their partnership is not connected to any other entity or person. After operating for one year from Sarah’s home, they want to grow their business by hiring a small commercial space. They made an application to a local bank for loan of \$200,000. Their gross annual turnover is \$120,000.

Maria seeks stamp duty exemption on the mortgage document. They have submitted a statutory declaration confirming their gross annual turnover is less than \$500,000.

CEO’s position: Maria and Sarah have satisfied all three conditions of an SME as explained in Paragraph 13 above. Even though their gross annual turnover is above \$100,000, the CEO shall permit stamp duty exemption as the gross annual turnover does not exceed \$500,000 and eligibility criteria of SME stipulated under Section 13(1) have been met.

Example 2: Sole Trader with multiple business activities

John is a sole trader engaged in multiple business activities. His businesses include agriculture, fishing, catering and gardening. John’s annual gross turnover from each business is:

Agriculture – \$240,000, Fishing - \$230,000, Catering - \$30,000 and Gardening - \$20,000

John intends to buy land to consolidate all his business operations in one location. John has approached bank for a loan facility by mortgaging his house property. John claims his business to be an SME and applies to FRCS to seek stamp duty exemption on his Mortgage Agreement with the Bank.

CEO’s position: John is a sole trader carrying out multiple business activities under single business registration. For the purpose of assessing stamp duty exemption, his consolidated turnover from all business activities will be considered. His consolidated total annual turnover is - \$520,000. John has crossed the threshold of \$500,000 in terms of his annual gross turnover and will no longer be accorded the status of SME for the purpose of claiming stamp duty exemption.

Example 3: Purchase of Assets by SME not for business purpose

Franc is engaged in garment business where he buys property in bulk and sells to retailers and individual customers. His annual gross turnover is \$400,000. Franc wants to buy a residential property for which he entered into a loan arrangement with a Bank. He applies to FRCS for stamp duty concession on the mortgage documents. FRCS rejected his application on the basis that an SME cannot be granted stamp duty exemption in respect of a residential property to be used for personal use. Franc reworded the statutory declaration and stated that he will be using the property partly for business purpose (storing bulk garments) and partly for residential purpose and reapplied to FRCS.

CEO's position: An SME cannot use or misuse its status to buy assets/property for personal purposes and claim stamp duty exemption on instruments executed in that regard. Until further evidence is provided by Franc to prove that he will be using the property for business purposes, stamp duty exemption will not be granted as the present facts and documents allude that Franc is misusing his SME status to gain personal advantage.

Example 4: SME business by high wealth individuals

Jonathan Anchen retired as CEO and Managing Director of a Telecommunications Company in Fiji. Post retirement, Jonathan and wife Maria started Fragrance Ltd., a soap and perfume business that employs rural village women. In addition to wages, the rural village women also get a share in profits of the company. The company is not connected to any other business entity, their annual gross turnover in 2nd year of operations is \$450,000 and they have given a statutory declaration confirming the same.

Fragrance Ltd. wants to buy a commercial property in the village to modernize its operations. Fragrance Ltd. applies to FRCS to seek stamp duty exemption on the mortgage agreement entered into with the Bank.

CEO's position: Fragrance Ltd. is an SME that has a gross annual turnover less than \$500,000, has given a statutory declaration and meets the eligibility requirements of an SME. Although two high wealth individuals – Jonathan and his wife have formed the SME, the purpose of SME is aligned with Section 13(1)(e) of SME Act i.e. 'the enterprise is established by or for the purpose of benefiting economically or socially disadvantaged persons including women, youths and other persons' as the SME will assist and support weaker section of the society. Therefore, exemption will be allowed.

15. Avoidance of stamp duty – Section 27A of Stamp Duties Act

- a. Section 27A is a general anti avoidance provision for stamp duty purposes. It exists to ensure schemes that are designed to exploit perceived "loopholes" do not succeed in avoiding stamp duty payable.
- b. Under Section 27A of Stamp Duties Act, if the CEO has reasonable grounds to believe that a person has availed/is availing stamp duty exemption in respect of an instrument by entering into a transaction or arrangement or dealing having a direct or indirect effect of –
 - i. altering the incidence of stamp duty that is payable or suffered by, or which would otherwise have been payable or suffered.

- ii. relieving any person from any liability that has arisen or which would otherwise have arisen to pay stamp duty or file a stamp duty return;
- iii. evading or avoiding any liability which is imposed or would otherwise have been imposed on any person under this Act, or
- iv. hindering or presenting the operation of this Act in any respect,

the CEO may, without prejudice to such validity as it may have in any other respect or for any other purpose, disregard or vary the transaction, arrangement or dealings and make such assessments as the CEO considers just and proper in the circumstances.

- c. A person should refrain from devising a scheme, arrangement or transaction or entity that results in relieving that person from stamp duty liability and that defies the intent and spirit legislations created for genuine SMEs.
- d. A person should refrain from devising a scheme, arrangement or transaction or entity to evade or avoid stamp duty liability which would have otherwise been imposed on such a person. It is most likely that such an entity created for evading or avoiding stamp duty liability will not comply with the intent and spirit of legislations created for genuine SMEs.
- e. The CEO has extensive discretionary powers under this section to assess, examine, scrutinize, and review application for availing stamp duty exemption on a case by case basis according to the facts and details of each application.

16. Connected Entities

- a. In addition to the above legislative requirements, while assessing SMEs eligible for stamp duty concessions, affiliation of that SME to “connected entity/entities” needs to be examined. For the purpose of determining connected entities, reference has been made to relevant definitions under Income Tax 2015 and Companies Act 2015.

Section 4 of Income Tax Act, 2015 explains ‘Associate’ as –

- 1) *Subject to subsection (2), two persons are associates if the relationship between the two persons is such that one person may reasonably be expected to act in accordance with directions, requests, suggestions or wishes of the other person, or both persons may reasonably be expected to act in accordance with the directions, requests, suggestions or wishes of a third person.*
- 2) *Two persons are not associates solely by reason of the fact that one person is an employee or client of the other, or both persons are employees or clients of a third person.*
- 3) *Without limiting the generality of subsection (1), the following are treated as associates—*
 - a. *an individual and a relative of the individual, except if the CEO is satisfied that neither person may reasonably be expected to act in accordance with the directions, requests, suggestions or wishes of the other;*
 - b. *a partner in a partnership and the partnership, if the partner, either alone or together with an associate or associates under another application of this section, controls more than 50% of the rights to income or capital of the partnership;*
 - c. *a trust and a person who benefits under the trust or who may benefit under the trust through the exercise of a power of appointment or otherwise;*

- d. a member of a company and the company, if the member, either alone or together with an associate or associates under another application of this section, controls either directly or through one or more interposed persons—
 - (i) more than 50% of the voting power in the company;
 - (ii) more than 50% of the rights to dividends; or
 - (iii) more than 50% of the rights to capital;
 - e. two companies, if a person, either alone or together with an associate or associates under another application of this section, controls either directly or through one or more interposed persons—
 - (i) more than 50% of the voting power in both companies;
 - (ii) more than 50% of the rights to dividends in both companies; or
 - (iii) more than 50% of the rights to capital in both companies.
- 4) In applying subsection (3)(b),(d) or (e) , holdings that are attributable to a person from an associate are not reattributed to another associate.

Further, Section 2 of Companies Act 2015, defines the relevant terms as -

“Control” has the meaning given by section 9. Section 9 of Companies Act 2015 states -

For the purposes of this Act, an entity controls a second entity, if the first entity—

- a. controls or is in a position to control the composition of the second entity’s board;
- b. is in a position to cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a General Meeting of the second entity; or
- c. holds or Controls any entity which holds, more than one-half of the issued share capital of the second entity, excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital.

Further, **Section 6 and 7 of Companies Act 2015**, explains Related Bodies Corporate and Subsidiary Bodies respectively.

“Related Bodies Corporate” Where a Company is a—

- a. Holding Company of another Company;
- b. Subsidiary of another Company; or
- c. Subsidiary of a Holding Company of another Company,

the first-mentioned Company and the other Company are related to each other.

“Subsidiary Bodies”

A Company (in this section called the “first body”) is a Subsidiary of another Company only if—

- a. the other body—
 - i. controls or is in a position to control the composition of the first body’s board;
 - ii. is in a position to cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a General Meeting of the first body; or
 - iii. holds more than one-half of the issued share capital of the first body, excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital; or

b. the first body is a Subsidiary of a Subsidiary of the other body.

- b. **“Connected entity/entities”** is a broad term that includes various connected parties and requires careful examination in the context of assessing a genuine SME. Simply put, an entity is connected with another entity if:

- i. An entity is an associate of the other entity by virtue of having or exercising control or if both the entities are acting in concert.
 - ii. Two persons are associates if the relationship between them is such that one person is reasonably expected to act in accordance with directions, requests, suggestions or wishes of the other person or both person act in accordance with directions, requests, suggestions or wishes of a third person.
 - iii. As an individual, associates include but are not limited to:
 - relatives, such as spouse or children
 - partners of a partnership firm
 - another partner in that partnership and that partner's spouse and children
 - a trustee of a trust that the individual, or associate are a beneficiary of.
 - iv. An entity controls the second entity, if the first entity – controls or is in a position to control the composition of the Board of second entity, has power to cast or control the casting of more than 50% of votes that can be cast at a General meeting of second entity or holds or controls more than 50% of issued share capital of the second entity, excluding non-participative shares, or
 - v. A company is a related body corporate by virtue of holding and subsidiary relationship, or
 - vi. A Company (first body) is a subsidiary of another company, only if the other Company controls or is in a position to control the composition of the Board of the first body, has power to cast or control the casting of more than 50% of votes that can be cast at a General meeting of first body or holds or controls more than 50% of issued share capital of the first body, excluding non-participative shares.
- c. In this context, the test below must be applied to determine whether an enterprise is an SME–
- Is the enterprise connected to any other business or enterprise (“connected entities”)?
 - If yes, do the ‘connected entities’ satisfy the eligibility requirements of an SME under Paragraph 13 and this Paragraph 16?

If answer to both questions is ‘Yes’, the enterprise will be considered as SME.

- d. This test implies that if an enterprise has linkages to “connected entities”, the “connected entities” will also be required to satisfy the eligibility requirements of SME stated in Paragraph 13 and 16, as applicable, for that enterprise to qualify as an SME.
- e. Conversely put, if an enterprise claiming to be SME has linkages to “connected entities”, however that enterprise fails to satisfy the eligibility requirements of SME stated in Paragraph 13 and Paragraph 16, as applicable, such an enterprise will not be considered an SME.

Example 5: Enterprise is a subsidiary of another large business enterprise –

Ben owns a large shipping company 'BEN SHIPPING LTD.' with an annual turnover of \$300 million. Ben registered a subsidiary Company 'KEN SHIPPING LTD' in which he and his son Ken are directors and shareholders. The subsidiary company has not commenced business operations and thus has NIL annual turnover.

Ben Shipping Ltd. wishes to sell 15 vessels to Ken Shipping Ltd., a subsidiary company. Ben applies for stamp duty exemption on the Sale and Purchase Agreement citing reason that Ken Shipping Ltd. is an SME with an annual turnover less than \$500,000.

CEO's position: Eligibility requirement of Section 13(1)(d) of SME Act states '*the enterprise must not be a branch or subsidiary of an enterprise which is not a small or micro-enterprise.*

Since Ken Shipping Ltd is a subsidiary of Ben Shipping Ltd., and the parent entity Ben Shipping Ltd. is not an SME, Ken Shipping Ltd. will not be considered as an SME and thus cannot avail stamp duty exemption.

Example 6: Enterprise linked to another enterprise –

Jenny and Ben are a young married couple. Jenny runs a marketing agency with an annual turnover of \$300,000 and Ben owns a management consultancy with an annual turnover of \$1,000,000.

Jenny has hired Ben's firm to provide management consultancy to her Agency. Ben is a Director in Jenny's company. Jenny's company acts in accordance with Ben's wishes because she values his business experience. Jenny's company plans to enter into a Lease Agreement to rent a commercial office space. Jenny's company seeks stamp duty exemption on the Lease Agreement as her Agency's turnover is not more than \$500,000.

CEO's position: Considering the nature of business and annual gross turnover, Jenny's business would have been qualified as an SME. However, because Jenny's company acts in accordance with Ben's directions and wishes in relation to her business, Ben exercises control over Jenny's business, thus Ben and his Company are "connected entities" of Jenny's company.

Here, the condition of "connected entities" applies i.e. if the "connected entity" is not an SME, the enterprise will lose its SME status. Thus, even though Jenny's company turnover is below \$500,000, her Company will not be considered as an SME due its affiliation to a "connected entity" and that "connected entity" not meeting SME eligibility requirements.

Example 7: Enterprise not linked to another enterprise –

Jo and Fanny are married and share in the running of their household. Jo owns a small farm and Fanny runs fish shop. Jo's gross annual turnover is \$40,000 and Fanny's fish business gives an annual gross turnover of \$550,000.

They manage their businesses independently. They have:

- separate bank accounts for their businesses
- different business locations
- their own employees.

Neither Jo nor Fanny controls other's business. Jo's wants to procure machinery to expand his farm business. Jo applies as an SME for stamp duty exemption on the Sale and Purchase Agreement.

CEO's position: Jo and Fanny are running their own business. Jo's farm business is an SME as his turnover is below \$500,000 and Fanny's fish business is not an SME as the turnover is above the threshold of \$500,000. Even though Jo and Fanny are married, neither is a "connected entity" of the other because they:

- do not act in concert with each other in respect of their businesses, and
- do not act according to the directions or wishes of their spouse.

17. CEO's Standpoint on Stamp Duty Exemption

- a. The exemption provision under Paragraph 29 of Part 2 of Stamp Duties Act 2002, must be read in line with the intention and purpose of Stamp Duties Act and SME Act. The exemption is available to an SME whose annual gross turnover does not exceed \$500,000.
- b. Therefore, the first test is to verify whether the enterprise is an SME and the second test is to determine if the annual gross turnover of that entity is within \$500,000. To determine whether an enterprise is an SME, the eligibility requirements under Section 13(1) of the SME Act 2002 must be considered. More particularly, purpose of an SME as explained under Section 13(1)(e) deserves careful examination. Additionally, the "connected entities" test must be applied to verify if the SME and its "connected entities" satisfy the requirements of an SME.
- c. It is appropriate here to emphasize that genuine SMEs alone shall be entitled for stamp duty exemption. While determining an SME's entitlement for rightful exemptions, highest degree of importance must be given to the primary purpose of SME Act i.e. 'to support and promote the establishment of small and micro enterprises especially for the benefit of economically or socially disadvantaged groups including women, youths and other persons'.
- d. If the purpose of an SME and eligibility requirement stated under Section 13(1)(e) of SME Act are not met to the satisfaction of CEO, the CEO reserves the right to decline or recoup stamp duty concessions pursuant to Section 27A – Avoidance of Stamp Duties, under the Stamp Duties Act, 1920.
- e. The intention of stamp duty exemption is to incentivize and support genuine SMEs. Thus, only those enterprises that satisfy all requirements of SME as explained herein above will be eligible for stamp duty concessions under the Stamp Duties Act.

Note on Examples:

The examples used throughout this SIG are merely illustrative. They do not cover the infinite number of factual scenarios that may arise. The relevant legislative provisions must be considered and applied to each case on its particular facts. That is, conclusions should not be drawn by determining whether the facts of a particular case may be analogous with particular examples, but rather on the basis of applying the correct tests established by the law.

18. Tax Concessions to SMEs under Income Tax Act

- a. This SIG further explains income tax concession available to SMEs in respect of income earned by SME. Pursuant to Income Tax (Exempt Income) Regulation, 2016, Part 9, Paragraph 4, the following amounts specified in the Schedule is an exempt income.

'The income of prescribed small and micro enterprises engaged in Agriculture, Fisheries or Tourism which have a gross annual turnover not exceeding \$500,000'

- b. An enterprise claiming tax concession under the provisions stated above must fulfill all the following conditions:
- i. the enterprise must be an SME that fulfils the eligibility requirements stated under Paragraph 13 and 16 hereinabove;
 - ii. the enterprise must be an SME operating in the prescribed sector i.e. agriculture, fisheries or tourism; and
 - iii. the enterprise must have a gross annual turnover not exceeding \$500,000.

Example 8 – SME business in sector other than Agriculture, Fisheries or Tourism

Computers Ltd, is a startup company by 3 young students. Their business is providing IT and computer related assistance to other companies. Their gross annual turnover in the 2nd financial year is \$200,000. Computers Ltd. writes to the CEO to seek income tax concession as they are an SME and their gross annual turnover is below \$500,000.

CEO's position: Computers Ltd., fulfils two of the three conditions of Paragraph 18 hereinabove. It is an SME and the gross annual turnover does not exceed \$500,000. However, the business of SME is not in the prescribed sector i.e. agriculture, fisheries or tourism. Therefore, Computers Ltd. cannot avail income tax concession under the Income Tax Act 2015. It is however eligible to avail stamp duty concession as eligibility requirements of Paragraph 13 have been satisfied.

19. Relaxation of Taxable Period for SMEs under VAT Act

- a. Lastly, this SIG explains the relaxation of taxable periods available to SMEs. Section 32 of Part 7 of VAT Act 1991, states the taxable periods for various registered person. Under Section 32 (1) (d), SMEs having annual gross turnover not exceeding \$300,000 are categorized under Category D with taxable periods of 12 months ending on the last day of any month in any year.
- b. For an enterprise to avail the relaxation of taxable period, it must fulfill the following conditions:
- i. the enterprise must be an SME that fulfils the eligibility requirements stated under Paragraph 13 and 16 hereinabove;
 - ii. the enterprise must have a gross annual turnover not exceeding \$300,000

20. Self-Check for SMEs

- a. An enterprise must determine in every financial year if it meets the eligibility requirements to be able to use a particular concession.
- b. An enterprise must assess the number of employees in the current income year and impact of increase or decrease in the employees during the year if it is likely to affect SME status of that enterprise.
- c. Annual gross turnover of any entity is a fluctuating aspect. The enterprise must assess its annual gross turnover threshold in line with Paragraph 13 – Condition 2 herein above.
- d. In case the SME is acquired or taken over by another enterprise or if there is change in directorship, shareholding, ownership or control of the SME as a result of which the SME is being linked to a “connected entity”, the SME must check conditions relevant to “connected entities”. If the “connected entity” is an NOT an SME, the enterprise will lose its SME status.

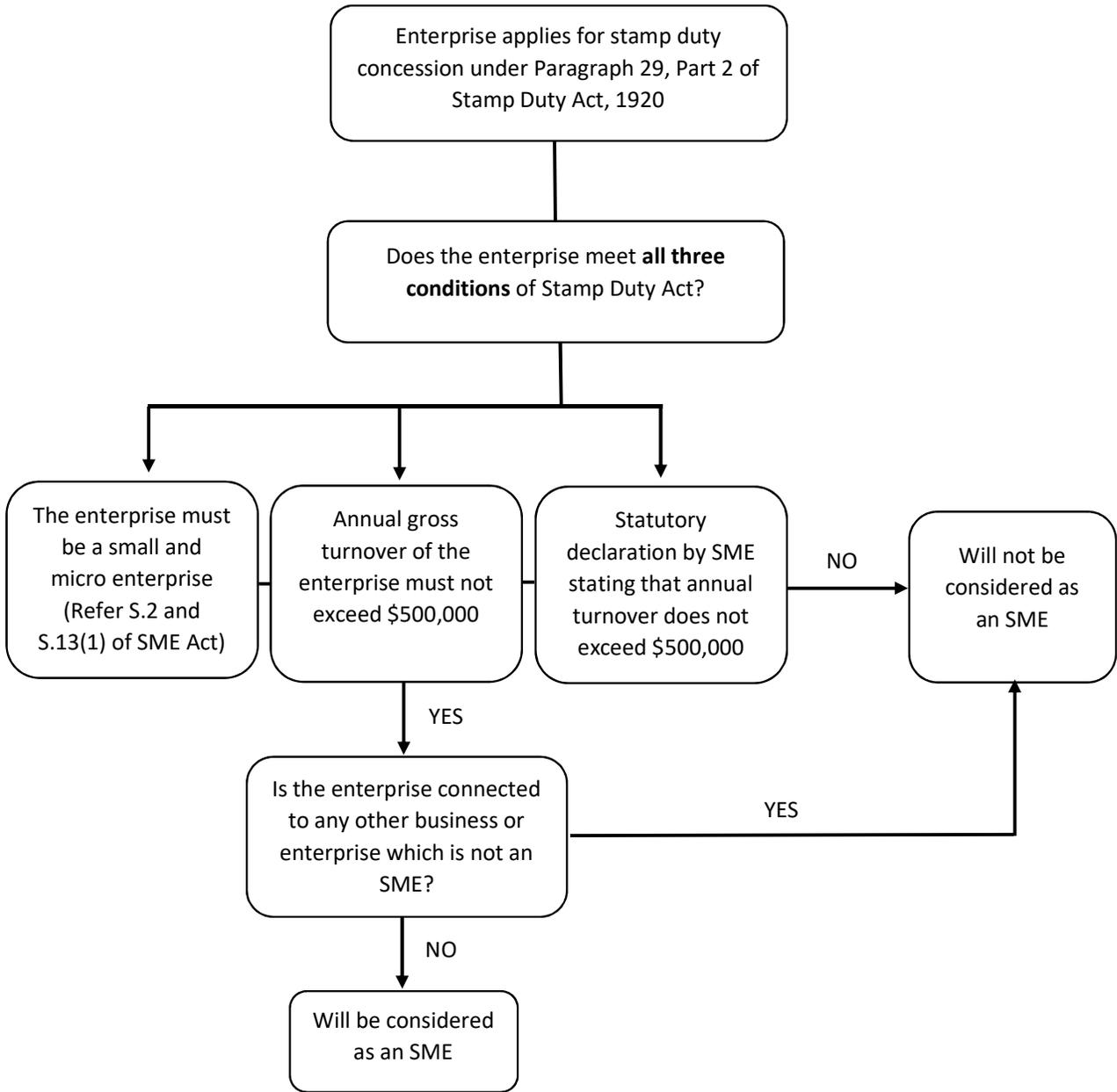
Table on ‘Concessions available to Small and Micro Enterprises’

PARTICULARS	STAMP DUTIES ACT 1920	INCOME TAX ACT 2015	VAT ACT 1991
What are the relevant provisions?	Paragraph 29, Part 2 of Stamp Duties Act 1920	Paragraph 4, Part 9, Income Tax (Exempt Income) Regulation, 2016	Section 32, Part 7, VAT Act 1991
Who is eligible?	An SME with an annual gross turnover not exceeding \$500,000	An SME with an annual gross turnover not exceeding \$500,000	An SME with an annual gross turnover not exceeding \$300,000
What is the benefit available?	Stamp Duty exemption	Income Tax Concession to specified sectors i.e. income of SME engaged in Agriculture, Fisheries, Tourism	Relaxation on VAT Reporting
What is the compliance requirement?	An SME applying for benefit must satisfy requirements stated under Paragraph 13 and 16 of this SIG.	An SME applying for benefit must satisfy requirements stated under Paragraph 13, 16 and 18 of this SIG.	An SME applying for benefit must satisfy requirements stated under Paragraph 13, 16 and 19 of this SIG.

Note: For information or clarifications in regard to this SIG please email us at tipu@frcs.org.fj

APPENDIX ONE:

FLOW CHART - SME ELIGIBILITY REQUIREMENTS FOR THE PURPOSE OF STAMP DUTY EXEMPTION



APPENDIX TWO: LEGISLATION

Stamp Duty Act, 1920

Paragraph 29, Part 2

“Any small and micro enterprise with an annual gross turnover not exceeding \$500,000 is exempted from paying any stamp duty under this Act provided that they declare by way of a statutory declaration that they have a gross turnover not exceeding \$500,000.”

27A - Avoidance of stamp duty

If there are reasonable grounds for the chief Executive Officer to believe any dealings have the direct or indirect effect of –

- i. altering the incidence of stamp duty that is payable or suffered by, or which would otherwise have been payable or suffered by any person;
- ii. relieving any person from any liability that has arisen or which would otherwise have arisen to pay stamp duty or file a stamp duty return;
- iii. evading or avoiding any liability which is imposed or would otherwise have been imposed on any person under this Act, or
- iv. hindering or presenting the operation of this Act in any respect,

the CEO may, without prejudice to such validity as it may have in any other respect or for any other purpose, disregard or vary the dealings and make such assessments as the CEO considers just and proper in the circumstances.

SME Act, 2002

Aims of the Centre

4. The aims of the Centre are-

- a. to support and promote the establishment of small and micro enterprises especially for the benefit of economically or socially disadvantaged groups including women, youths and other persons;

- b. to facilitate, through the establishment of adequate support structure and institution, the creation and promotion of an environment conducive to the development and viability of small and micro enterprises;

- c. to intensify and expand programmes for training in entrepreneurship and business management;

- d. to facilitate access to funds and to complement and supplement financing programmes for small and micro enterprises.

Eligibility for benefits for small and micro enterprises

13. (1) A small or micro enterprise is eligible for assistance, incentives, promotion or have access to training services under this Act if it meets the following requirements-

- a. in the case of a co-operative, self-funded enterprise, association or single proprietorship, the enterprise is wholly owned by a Fiji Islands citizen;

- b. in the case of a company, 100% of the voting share of the company vests in a Fiji Islands citizen;

- c. the enterprise is engaged in a business;

- d. the enterprise must not be a branch or subsidiary of an enterprise which is not a small or micro-enterprise;

- e. the enterprise is established by or for the purpose of benefiting economically or socially disadvantaged persons including women, youths and other persons.

(2) Notwithstanding paragraph (1)(e), a small or micro enterprise may carry out contracts derived from another enterprise that is not a small or micro enterprise.

Income Tax Act, 2015

Part 9, Paragraph 4 of Income Tax (Exempt Income) Regulation, 2016

The income of prescribed small and micro enterprises engaged in Agriculture, Fisheries or Tourism which have a gross annual turnover not exceeding \$500,000.

VAT Act, 1991

Part 7, Section 32 Taxable periods

1) Each registered person shall be placed by the Chief Executive Officer in one of the following categories for the purposes of determining that person's taxable periods for the purposes of this Act:

(d) Category D, with taxable periods of 12 months ending on the last day of any month in any year, for small and medium enterprises with an annual gross turnover of three hundred thousand dollars and below;