



STANDARD INTERPRETATION GUIDELINE 2020-11

COVID-19 RESPONSE BUDGET -- TAX ADMINISTRATION ACT 2009 - STAMP DUTY ACT 1920 - VALUE ADDED TAX ACT 2009 - DIRECT AND INDIRECT TAX MEASURES

This Standard Interpretation Guideline (“SIG”) sets out Fiji Revenue and Customs Service’s (“FRCS”) policy and operational practice in relation to the provisions of Tax Administration Act 2009, Stamp Duty Act 1920 and Value Added Tax Act 1991.

It is issued with the authority of the Chief Executive Officer (“CEO”) of FRCS.

All legislative references in this SIG are to the Tax Administration Act 2009, Stamp Duty Act 1920 and Value Added Tax Act 1991.

This SIG is in effect from 01 April 2020 and may need to be reviewed in the event of any relevant legislative amendments.

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PURPOSE

1. The purpose of this Standard Interpretation Guideline (SIG) is to provide CEO's interpretation and application on the COVID-19 Response Budget on the amendments to the Tax Administration Act, Stamp Duty Act and Value Added Tax Act.

INTRODUCTION

2. On 26th March 2020 the Minister for Economy while announcing the COVID-19 Response Budget stated that this budget *"is strategically aimed at mitigating the impact of the pandemic on the Fijian economy, businesses and employment. Government is implementing proactive measures through this budget to safeguard Fijian lives, families and economy."*
3. Therefore, a number of taxation and customs policy changes have been announced in the COVID-19 Response Budget by the Minister which is aimed at providing immediate relief and assistance to businesses and individual taxpayers, and to revive investment & business.
4. This SIG will provide the implications of the direct and the indirect tax measures as per the COVID-19 Response Budget.
5. The direct tax measures discussed will be on the administration of the late lodgment penalty and the stamp duty on mortgages and air waybills.
6. The indirect tax measure discussed will be on the administration of VMS and the implication of VAT on the importation of medical supplies.
7. In this SIG, any reference to the term "Minister" is a reference to the Minister responsible for Finance.

LEGISLATIVE ANALYSIS

Tax Administration Act (TAA) 2009

Definitions

8. For the purpose of TAA 2009 amnesty period is interpreted as –
"amnesty period¹" - the period commencing on and from **31 March 2020 to 31 December 2020**

Waiver of Late Lodgment Penalty

9. The Tax Administration Act 2009 is amended with the insertion of new section, i.e. section 48D
10. Section 48D (1) of TAA 2009 provides for the waiver of late lodgment penalty on late filing of tax returns or any other documents required by any tax laws if the due dates fall within the amnesty period.
11. For clarity purposes, the waiver in section 48D (1) does not stop a taxpayer, who is liable to pay tax imposed under any tax law from the **payment** of the tax by the due date.

¹ Section 48D (3), Tax Administration Act 2009

Stamp Duty Act (SDA) 1920

12. In the COVID-19 Response Budget, the Minister for Economy announced:

“Individuals and investors are also anticipated to hold back investments in areas like real estate which is expected to impact stamp duties and capital gains tax collections. To mitigate this, stamp duties and capital gains tax collections. To mitigate this, stamp duty on mortgages has been temporarily reduced to support new investments in real estate.

Definitions

13. The definition of mortgage is defined as per section 2 of Stamp Duty Act 1920 –

“mortgage” – means a security by way of mortgage for the payment of any definite and certain sum of money advanced or lent at any time, or previously due and owing or forborne to be paid, being payable, or for the repayment of money to be thereafter lent, advanced or paid, or which may become due upon an account current, together with any sum already advanced or due, or without, as the case may be, and includes -

- a) any conveyance of any lands, estate or property whatsoever in trust to be sold or otherwise converted into money intended only as a security, and redeemable before the sale or other disposal thereof, either by express stipulation or otherwise, except where the conveyance is made for the benefit of creditors generally or for the benefit of creditors specified who accept the provision made for payment of their debts, full satisfaction thereof; and
- b) any defeasance, declaration or other deed or writing for defeating, or making redeemable, or explaining, or qualifying any conveyance, transfer or disposition of any lands, estate or property whatsoever, apparently absolute, but intended only as a security; and
- c) any agreement, contract or bond, accompanied with a deposit of title-deeds for making a mortgage, or any other security or conveyance as aforesaid, of any lands, estate or property comprised in the title-deeds, or for pledging or charging the same as security, and any instrument by which any property whatsoever is charged with or rendered liable as a security for the payment or the repayment of any sum of money; and
- d) any instrument operating as a mortgage of any stock or marketable security, and any power or letter of attorney given upon the occasion of or relating to the deposit of any title-deeds or instruments constituting or being evidence of the title to any property whatsoever or creating a charge on such property; and
- e) any deed of mortgage and trust for the purpose of securing debenture-holders, upon its execution in Fiji provided that any legal mortgage afterwards executed in pursuance thereof shall be treated as thereto;

14. SDA 1920 has been amended with the insertion of new paragraph 31 in Part 2 of the Schedule to provide an exemption for stamp duty payable on mortgages and air waybills.

15. Commencing from **01 April 2020 to 31 December 2020** under the provision of part 2 of the schedule (**General Exemptions from Stamp Duty**) paragraph 31 the following will be applicable –

a. any mortgage, **except** the **transfer** or **assignment of a mortgage** and, for the avoidance of doubt, where stamp duty payable on any other instrument is as per the **like duty for a mortgage**, the exemption in this subparagraph **does not apply** to such instrument; and²

b. any **air waybill** for any goods, merchandise or effects to be exported from Fiji.

16. An **assignment of mortgage** is where the lender(s) of the loan transfers their loan obligations to a third party. The lender usually assigns a mortgage by selling it to a new bank or lender. Therefore, the borrower will owe any previous obligations to the new lender.

17. An **air waybill (AWB)** is a non-negotiable document issued by an air carrier to acknowledge the possession of shipment (goods) between the consignor(shipper) and the carrier. The AWB indicates the shipment’s destination address and includes contact information for the consignor and consignee (receiver)

18. For the provision of paragraph 31 (a) and paragraph 31 (b) the following instruments will be **exempted**:

| Nature of Instrument | Amount of Duty (before 01 April 2020) | Amount of Duty (from 01 April 2020 to 31 December 2020) | Persons Primarily Liable |
|--|---------------------------------------|---|--------------------------|
| MORTGAGE | | | |
| (1) Being the only or principal or primary security for the payment or repayment of money – for every \$100 or part of \$100 principal moneys OR | \$1.75 or 1.75% | 0% | The mortgagor |
| Where such a mortgage secures further or future advances or moneys due on account current – For every \$100 or part of \$100 of the principal indebtedness at any time owing. | \$1.75 or 1.75% | 0% | The mortgagor |
| Where the principal indebtedness under such a mortgage at any time exceeds the amount covered by ad valorem duty already paid, the mortgage shall be liable to further duty as if it were a new instrument in respect of the amount of such excess | | | |

²

| | | | |
|---|---------------------------|------------------|-----------------------------|
| <p>(2) Being a collateral, auxiliary or additional or substituted security or by way of further assurance where the principal or primary security is duly stamped.</p> | <p>\$10 or 10%</p> | <p>0%</p> | <p>The mortgagor</p> |
| <p>Note: In determining whether an instrument is the only principal or primary security for the payment or repayment of money within the meaning of paragraph (1) of this Head, no account shall be taken of any other instrument which is a security for the same sum or sums or for the payment or repayment as the case may be, of any part thereof, unless that other instrument is chargeable with stamp duty under paragraph (1) above and is duly stamped.</p> | | | |
| <p>(4) Reconveyance, release, or discharge of any such security as aforesaid, or of the benefit thereof, or of the money thereby secured</p> | <p>\$10 or 10%</p> | <p>0%</p> | <p>The mortgagor</p> |
| <p>(5) Mortgage on any property by a non-resident for residential purpose only, for every \$100 or part thereof of the purchase or consideration price. In this paragraph, “non-resident” means non-resident for the purposes of the Land Sales Act 1974</p> <p><i>Exemption</i></p> <p>The transfer of a mortgage or mortgages to or in trust for any corporation or body of persons associated solely for religious, charitable, or educational purposes or any refinancing or Reconveyance of the stamped amount of mortgage. Any mortgage relating to an agriculture sector.</p> | <p>\$5 or 5%</p> | <p>0%</p> | <p>The mortgagor</p> |

| | | | |
|---|--------------------|-----------|---|
| AIR WAYBILL For any goods, merchandise, or effects to be exported from Fiji | \$10 or 10% | 0% | The person by whom the goods are consigned |
|---|--------------------|-----------|---|

19. Stamp Duty will be applicable on all other instruments apart from instruments listed in the above paragraph, e.g. Chattel Mortgage will be subject to the stamp duty of 1.75% and so will any secured loans on motor vehicles, caveats and loan against term deposit investments.

20. Calculation of Stamp Duty on Mortgage

Example 1

Suppose Mr. X (mortgagor) took home loan on **15th March 2020** from XYZ Bank (mortgagee) for \$200,000.00 to purchase a residential property in Nadi.

$$\begin{aligned} \text{Stamp Duty Payable} &= \text{Consideration Amount} * \text{Rate of Stamp Duty} \\ &= 200,000.00 * 1.75\% \\ &= \underline{\underline{\$3,500.00}} \end{aligned}$$

Example 2

Suppose Mr. X (mortgagor) took home loan on **3rd April 2020** from XYZ Bank (mortgagee) for \$200,000.00 to purchase a residential property in Nadi.

$$\begin{aligned} \text{Stamp Duty Payable} &= \text{Consideration Amount} * \text{Rate of Stamp Duty} \\ &= 200,000.00 * 0\% \\ &= \underline{\underline{\$0.00}} \end{aligned}$$

21. 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.

Value Added Tax Act 1991

22. In order to assist the business community, this budget has addressed key VAT implications.
23. Implementation of the VAT Monitoring System (VMS) has been deferred to 01 January 2021.
24. VMS will now become applicable on businesses with an annual gross turnover of **more than \$100,000**.
25. Taxpayer's whose annual gross turnover is below \$100,000 will not be captured in VMS.
26. To ensure that the medical sector in Fiji has the proper resources in combating the COVID-19 crisis, Minister for Economy announced exemption on the Import VAT on the following medical supplies under a new Concession Code Number 298 in the Customs Tariff Act 1986:
 - Hand sanitizers and antibacterial hand wash;

- Gloves (surgical, medical, knitted, crocheted with plastic coating);
- Masks;
- Disposable hair nets;
- Disinfectant wipes;
- Tissue papers;
- Face shield;
- Medical goggles and spectacles (used in the lab and medical facilities);
- Protective plastic garments for surgical and medical use;
- Protective garments of textiles or rubberized textiles;
- Long sleeve medical gowns;
- Scanners and cameras involved in medical examination;
- Ethanol for companies involved in hand sanitizer production;
- Disinfectants
- Vaccinations and Medicaments of Chapter 30 of the Customs Tariff;
- Air purifier;
- Boots – specifically used in medical environment;
- Hospital beds;
- Hydrogen peroxide;
- Paper bed sheets;
- Thermometers; and
- Medical equipment under Chapter 90 of the Customs Tariff.

27. For further information and clarification in regard to this SIG, please email us at tipu@frcs.org.fj.

**APPENDIX: LEGISLATION
TAX ADMINISTRATION ACT 2009**

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ACT NO. 2 OF 2020



I assent.

J. K. KONROTE
President

[27 March 2020]

AN ACT

TO AMEND THE TAX ADMINISTRATION ACT 2009

ENACTED by the Parliament of the Republic of Fiji—

Short title and commencement

1.—(1) This Act may be cited as the Tax Administration (COVID-19 Response) (Amendment) Act 2020.

(2) This Act comes into force on 1 April 2020.

Section 48D inserted

2. The Tax Administration Act 2009 is amended after section 48C by inserting the following new section—

“Waiver of penalty for failure to file a tax return or lodge other document by the due date

48D.—(1) Notwithstanding any other provision in this Act, any penalty payable in respect of any failure by a taxpayer to file a tax return or lodge any other document by the due date as required under any tax law is deemed to have been waived if the due date falls on a date within the amnesty period.

(2) For the avoidance of doubt, subsection (1) does not prevent a taxpayer who is liable to pay tax imposed by any tax law from payment of the tax by the due date.

6 *Tax Administration (COVID-19 Response) (Amendment)—2 of 2020*

(3) For the purpose of this section, “amnesty period” means the period commencing on and from 31 March 2020 to 31 December 2020.

Passed by the Parliament of the Republic of Fiji this 27th day of March 2020.

STAMP DUTY ACT 1920

13

ACT NO. 5 OF 2020



I assent.

J. K. KONROTE
President

[27 March 2020]

AN ACT

TO AMEND THE STAMP DUTIES ACT 1920

ENACTED by the Parliament of the Republic of Fiji—

Short title and commencement

1.—(1) This Act may be cited as the Stamp Duties (COVID-19 Response) (Amendment) Act 2020.

(2) This Act comes into force on 1 April 2020.

Schedule amended

2. The Stamp Duties Act 1920 is amended in Part 2 of the Schedule after paragraph (30) by inserting the following new paragraph—

“(31) In the period commencing on and from 1 April 2020 to 31 December 2020—

- (a) any mortgage, except the transfer or assignment of a mortgage and, for the avoidance of doubt, where stamp duty payable on any other instrument is as per the like duty for a mortgage, the exemption in this subparagraph does not apply to such instrument; and
- (b) any air waybill for any goods, merchandise or effects to be exported from Fiji.”.

Passed by the Parliament of the Republic of Fiji this 27th day of March 2020.

VALUE ADDED TAX ACT 1991

11

ACT NO. 4 OF 2020



I assent.

J. K. KONROTE
President

[27 March 2020]

AN ACT

TO AMEND THE VALUE ADDED TAX ACT 1991

ENACTED by the Parliament of the Republic of Fiji—

Short title and commencement

1.—(1) This Act may be cited as the Value Added Tax (COVID-19 Response) (Amendment) Act 2020.

(2) This Act comes into force on 1 April 2020.

Section 14 amended

2. Section 14(4A)(a) of the Value Added Tax Act 1991 is amended by deleting “and 228 (tourists)” and substituting “, 228 (tourists) and 298 (Concession for medical emergencies - companies, entities and individuals)”.

Passed by the Parliament of the Republic of Fiji this 27th day of March 2020.