

Memo

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To: Financial Secretary
Director Budget Management Unit
(FAO: Ronnie Dunn, Mike Dilbert, Lee Ramoon)

From: Director of Lands & Survey

My Ref: VEO/LEG/LAW/ff

Date: 10 September 2009

RE: STAMP DUTY ON RESIDENTIAL LEASES

The review of duties payable under the Stamp Duty Law has reminded us of the lack of enforcement of Stamp Duty payable on Residential Leases. At present, all leases are dutiable at ad valorem rates, yet this is not enforced on residential leases. As such, a revenue stream which is already on statute lays dry (as no persons, except one law firm, present residential leases for stamping).

Notwithstanding the differing views in this Department as to whether ad-valorem duty is appropriate for residential property, it has never been collected in either good times or bad, which suggests that it never will in its current form. As such, it is an anomaly against every other type of property document, on which duty is chargeable, and collected. It also represents an untapped opportunity for Government to increase revenue without announcing new measures, as it is already on statute.

We therefore recommend the repeal of the existing ad-valorem Duty provisions on residential leases for replacement with a tiered fixed rate duty system as follows;

Rent per month	Duty Amount
Less than CI \$1,200	CI \$100
CI \$1,200.01 to CI \$2,500	CI \$200
CI \$2,500.01 - CI \$5,000	CI \$500
CI \$5,000.01 - CI \$10,000	CI \$1,000
In excess of CI \$10,000.01	CI \$2,000

Leases for a term of less than one month would be dutiable as if they were for a term of one month, based on the rent payable extrapolated to a one month term. We are aware of a current loophole for tourists staying in non hotel accommodation whereby the signing of a very short term lease avoids the payment of Tourism Tax (and at present the payment of any tax at all, as the lease is dutiable, but collection not enforced). This provision may not resolve the issue once and for all, but will ensure some revenue for CIG.

Inevitably such tiered duty amounts will result in leases being agreed at rents fractionally below each threshold when they might otherwise be just above it, to minimise the Duty payable. However, the Landlord will only accept minor reductions in rent to utilise this loophole (ie. a Landlord of property renting at CI \$31,000 per annum is not going to reduce the rent to CI \$30,000 per annum just to get a Stamp Duty reduction), and this is therefore considered a tolerable concession.

Because provisions for charging Stamp Duty on Leases already exists in Law, the only modification required in the schedule is to note that the provisions recommended apply to leases where the underlying property to the transaction is residential (using the definition found in the Residential Tenancies Law) and that existing provisions apply to any other Lease transaction.

We would further recommend that it be a legal requirement that the Landlord be responsible for stamping any Lease, even though they will likely collect Duty from the Tenant to present for payment. This provides CIG with a single point of enforcement, the ability to collect after the tenancy to which the Lease relates has ended (when the Tenant may be hard to locate), and an incentive to the Landlord to Stamp, as it absolves them of their liability, at no cost. This may however require the drafting of substantive clauses, and if time does not permit this may be deferred to a subsequent revision.

In terms of collection, the cost of such is likely to be very low and estimated to well below 10% of revenue raised. A paper we prepared earlier this year suggested that there may be 8,000 residential leases – even if the majority of leases fell in the lowest threshold this is likely to yield in excess of CI \$1m per year in additional revenue.

It would be proposed that revenue be collected through Lands & Survey rather than by self stamping, to allow for easier monitoring and enforcement. The actual details of such are not presented, but we would hope to provide a same day, if not instantaneous service through our cashier and counter facilities. Enforcement would likely take a similar line to the successful Commercial Lease Chase Exercise.

There are many connotations and discussions that could be had as to the appropriateness of both rates and thresholds, however given the current climate it is considered best to simply commence collection, allowing for such modifications when further time permits, especially as the costs per lease are modest. From a public relations standpoint, this change legally reduces the Duty on the vast majority of residential leases from 5% to no more than 1.5%. The change from an effective rate of 0% (through lack of collection) is unlikely to attract public criticism, as doing so would in effect be advocating stamp duty evasion. Indeed, the recent introduction of enforcement of Duty on Purchase Agreement resulted in no negative publicity (in public at least).

We would welcome the opportunity to discuss this further with you now, and as the part of any further wholesale review of the Stamp Duty Law.

Please let me know if you have any further queries.

Kind regards

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for Director of Lands and Survey

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