



MoneyTalk

When to Stamp Duty ??

Stamp duty on short-term leases over fixed property is now exempt from the effective date of 1 June 2007, but when to stamp is still proving puzzling.

In particular it's the issue of what constitutes a short lease that needs clarity, therefore to provide guidance the SA Revenue Service has issued a memorandum on the correct stamp duty treatment of leases of varying definite or indefinite periods.

In addition, it is important that lessors note that the actual amount of stamp duty payable to SARS will depend on whether the full rental is quantifiable or not as at the date of execution.

GUIDELINES

Here are some key guidelines, reflected in the Memorandum, regarding when to stamp:

- Lease agreements with a term longer than 5 years (5 years and 1 day) or if the definite period together with the renewal period(s) equal at least 5 years, are subject to stamp duty at a flat rate of 0.5 per cent of gross rental.
- Where a lease is for an indefinite period, it will be deemed to be for a 5-year period. No stamp duty will be payable, as it will be exempt.

- Where a lease is for a definite and indefinite period, it must be stamped for the total period of 5 years (indefinite) plus the definite known period.
- Leases that are subject to renewal or extension must be stamped for the total period (i.e. inclusive of the extension period) if the stamp duty during the renewal period/s is quantifiable.
- Short-term leases concluded before 1 June 2007, with the consideration only quantifiable after this date, will be exempt.
- Long-term leases concluded before 1 June 2007, with the consideration only quantifiable after 1 June 2007, are subject to stamp duty.
- Stamp duty paid on a lease that is cancelled (or being cancelled) before the end of the lease period, may be refunded as follows:
 - a full refund if cancelled within 5 years from the commencement of the lease, and
 - a pro rata refund if cancelled after 5 years from the commencement of the lease.
- Previous stamp duty exemptions in respect of leases fall away.

Stamp Duty must not exceed 8 per cent of the value of property in relation to an agreement where the value is determined with reference to sections 5 through to 8 of the Transfer Duty Act 1949.

Copied from a Tax Breaks publication by Madelaine Schubert from Shepstone & Wylie Tax Department

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