



STAMP DUTY IN THE PAPERLESS AGE

By Gavin Goffe

Stamp Duty is a government tax imposed on a variety of instruments, including agreements, transfers, mortgages, leases, life insurance policies and receipts. An “instrument” has been defined as “any written document”. Advances in technology, combined with increased environmental awareness, have made more transactions completely paperless, so that there is not necessarily any document produced which is capable of being stamped. This situation raises the issue of the extent to which stamp duty is an appropriate way for the government to collect tax in this day and age.

The Stamp Duty Act (the “Act”) was first passed in 1937 at a time when the Web and the Net were associated with spiders and fishermen, respectively. The Act does not seek to affect the validity of private transactions. In general, the validity of a document will not depend on whether it is stamped or not, but the party or parties seeking to rely on the document may be unable to enforce it, register it or rely upon it as evidence in Court unless it is stamped in accordance with the Act. The payment of stamp duty is indicated in a variety of ways, including affixing postage stamps, impressing ink stamps and printing on pre-stamped paper. Each method relies on there being a paper document on which the stamp will be displayed.

There are several examples of ways that businesses have evolved to limit or eliminate the creation of paper, and indirectly enjoyed an additional tax benefit. In other cases, the evolution of the business to paperless transactions might be inhibited by the requirements of the Act.

E-Tickets

In general, stamp duty of between \$150 and \$600 is payable on travel tickets purchased or issued in respect of residents leaving Jamaica. By selling electronic tickets online, however, several airlines no longer produce paper instruments as envisaged by the Act. The airline might confirm the reservation and issue a booking code and an itinerary. At the airport, no ticket is issued, but a boarding pass. The Act, however, still requires immigration officers to refuse to permit travellers to leave Jamaica where their tickets do not reflect the payment of stamp duty, unless the traveller falls within an exempt category. These exempt travellers include visitors to the island, students travelling for educational purposes, diplomats and military personnel travelling on official business. Possibly, there is an agreement between the airlines and the Government for the collection of the stamp duty on e-tickets in other ways. If that is the case, it is not clear whether the airlines are recovering the stamp duty charge from the travellers. One thing seems clear, if you purchase a ticket at our national carrier’s ticket office in New Kingston, you are more likely to incur a stamp duty charge than if you were to purchase the same ticket on their website.

Cheques

A cheque leaf is an instrument on which stamp duty has already been pre-paid. The stamp duty charge is therefore built into the cost of the cheque book. In decades past, the cheque was one of the most popular and convenient methods used by individuals to pay funds. This is no longer the case, partially because of the cost to procure and process cheques. Businesses that have an electronic method of paying employees will thereby save tens of thousands of dollars in stamp duty that would otherwise be paid in respect of each paycheque.

Receipts

Several businesses are not even aware of the general rule that stamp duty is payable on receipts issued in acknowledgment of the payment of money. In the vast majority of transactions that take place online or over the telephone, receipts are issued in an electronic form only with the option of them being printed. It would appear that no stamp duty is paid on these electronic receipts. If the receipt is printed, though, whether by the issuer or the recipient, the question arises as to whether stamp duty ought not to be paid at that point by the person who has printed the receipt. Regardless of who is liable to pay the stamp duty, it is the person who might wish to rely on the receipt as evidence of a payment being made who will opt to pay.

With the introduction of the Electronic Transactions Act in 2006, the legal framework was set for “electronic documents”, being documents that are created, communicated and stored by electronic means. Notable exceptions to the Electronic Transactions Act are Transfers of real property, Wills and Powers of Attorney. The potential exists, therefore, for electronic agreements to be concluded without any instrument within the meaning of the Stamp Duty Act being produced. One might wonder whether this opens the door for Electronic Agreements for Sale of Land. It is a very interesting question. Arguably, such an agreement could be admitted as evidence in Court without being stamped if it remains in an electronic form, and satisfies the conditions of the Evidence Act as it relates to computer-generated evidence. Practically, however, an Electronic Agreement for Sale of Land cannot be completed without a paper Instrument of Transfer or a Conveyance, and the stamp duty would certainly need to be paid on these instruments before they could be registered. At best, an Electronic Agreement for Sale of Land would only delay the payment of stamp duty.

There are many businesses operating in Jamaica that could legally save enormous amounts of money (and not just taxes and duties) if their operations were online. Be aware, though, that there are stiff penalties for contriving to defraud her Majesty of the revenue to be collected under the Act and the Government has demonstrated its intention to stamp out tax evasion of all kinds. Professional advice would be recommended before taking any decision based on supposed tax benefits as being on the internet does not automatically mean one is outside the tax net.

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