

Observations about the “linked property transactions” provisions of Cayman’s Stamp Duty Law (Revised)

Insights - 14/02/2020

Caution: This client update gives a brief overview of the linked-property-transactions provisions (the **LPT provisions**) of the Stamp Duty Law (Revised) (the **Law**) which were introduced by the Stamp Duty (Amendment) Law, 2018 (the **2018 Amendment Law**). This update is, however, general in nature; it is not to be taken as giving legal advice. For advice about a specific transaction, please contact a member of our Local Legal Services team.

Introduction

In late 2018, the Law was amended [1] *“in order to eliminate the growing practice of reducing stamp duty due to the Government by means of linked property transactions”*. [2] In essence, the reason for introducing the LPT provisions was to ensure that stamp duty is calculated on the total value of the raw land and the dwelling constructed on that land in the case of *“a linked property transaction ... where a development scheme links the purchase of the raw land with the subsequent construction of a dwelling”*. [3]

Stamp duty is a charge on “instruments”, [4] not transactions, and the Law sets out the classes of instruments that attract duty (each referred to as a **head of duty**).

The LPT provisions added a new head of duty, namely, “CONVEYANCE OR TRANSFER of any immovable property within a development scheme and forming part of a linked property transaction” (the **LPT head of duty**).

There was, and continues to be, another conveyance head of duty, namely, “CONVEYANCE OR TRANSFER of any immovable property” (hereafter referred to as the ordinary conveyance head of duty). The concessional rates of stamp duty for first-time Caymanian buyers appear in paragraphs (10) and (11) of this head of duty. [5]

Do the concessions for first-time Caymanian buyers apply to linked property transactions?

For the reasons that follow, the short answer is “Yes”.

To recap, the concessions for Caymanian first-time buyers appear in the ordinary conveyance head of duty; they are not mentioned in LPT head of duty. This fact has led some to suppose that such concessions do not apply to linked property transactions (LPTs). But this was not the Legislative Assembly’s intention, as is plainly evident from the second-reading speech of the Minister of Public Finance, Economic Development who moved that the Bill be read a second time.

While Cayman cases caution about the use of reports of proceedings in the Legislative Assembly (LA), including Hansard, [6] as an aid to statutory interpretation, it is clear that such recourse is appropriate here.[7] Furthermore, there are objective indicators that the LA did not intend to remove the Caymanian first-time buyers’ concessions from LPTs, which include the following:

- The amending Law increased the thresholds for such concessions.
- The amending Law also included a new class of concessions for groups of Caymanian first-time buyers.
- Principles of statutory interpretation favour a broad approach to remedial legislation of this type.
- The amending Law did not expressly provide for the removal of such concessions from LPTs, and it cannot be supposed that the LA intended to do so without express words to this effect.
- The ordinary conveyance head of duty and the LPT head of duty can be read cumulatively - on the basis that an LPT is also an ordinary conveyance.

Hence, an LPT is to be assessed for duty under the ordinary conveyance head of duty as read subject to the LPT head of duty.

When does the LPT head of duty apply?

The LPT head of duty applies to:

- an instrument that effects
- a conveyance or transfer of immovable property[8]
- within a “development scheme” and
- forming part of a “linked property transaction”.

Key, therefore, to the application of this head of duty are the concepts of “development

scheme” and “linked property transaction”.

The first thing to note about the concept of “development scheme” is that the LPT head of duty applies to new constructions only. The definition has two limbs: (a) and (b). Limb (b) applies to “*a scheme where there is planning approval relating to land for the construction of buildings*”. The alternative limb (a) applies to “*a scheme —*

- i. *to develop land by a seller (“the **developer**”) where bare land is sold by that developer to any person (“the **buyer**”); and*
- ii. *there is a building agreement or any other similar agreement between the developer and the buyer that the developer or a connected person of the developer will develop that bare land into a house, strata condominium or other building for that buyer or a connected person of that buyer”.*

Put simply, limb (a) applies to a scheme where there is an agreement to purchase bare land coupled with an agreement between the developer and the buyer (or their “connected persons”) [9] to develop that land into a dwelling. Limb (b) does not require such linkage between an agreement to purchase and an agreement to develop, but the concept of “linked property transaction”, which must also be satisfied for LPT head of duty to apply, does require a linkage of more than one transaction.

The definition of “linked property transaction” has four separate elements, all of which must be satisfied. Specifically, a “linked property transaction” means:

- “(a) there are more than one transaction relating to the conveyancing and transfer of immovable property;*
- (b) the transactions are between the same buyer and seller (“the developer”) or between their connected persons;*
- (c) payment on each transaction can be made in one payment or divided into two or more payments; and*
- (d) the transactions are part of a single arrangement or development scheme or part of a series of transactions.”*

The important elements are (a) and (b) - elements (c) and (d) merely qualify them. Limb (a) of the definition of “development scheme” also satisfies elements (a) and (b) of the definition of “linked property transaction”.

What does the new rate of 3% duty apply to?

Now that the transitional period has expired, attention has turned to the concession under the

LPT head of duty itself. The concession appears as follows:

"The charge to duty on a conveyance or transfer of immovable property which is part of a linked property transaction is, where the total value of the linked property transaction is \$300,000 or less, 3% of the total value of the linked property transaction." [10]

The following observations may be made about this concession:

- First, it only applies where the combined value of the raw land and the dwelling, including fixtures, is CI \$300,000 or less. This will make cost overruns hugely problematic.
- Secondly, the concession will only apply to the immovable property, with a combined value below such threshold, that is the subject of a linked property transaction.
- Thirdly, the concession applies irrespective of whether the immovable property in question is residential or commercial, or some combination of both.
- Fourthly, the concession applies to Caymanians and non-Caymanians alike.
- Fifthly, the \$300,000 threshold compares with the following concessions for a first-time Caymanian buyer of "land with a building" under the ordinary conveyance head of duty:

| Consideration | Rate of duty |
|--------------------------------|--------------|
| \$400,000 or less | 0% |
| > \$400,000 but ≤\$500,000; | 2% |
| > \$500,000 | 7.5% |

[1] The amending Law also modified the concessions for Caymanian first-time buyers of property, but these modifications are not considered in this update.

[2] To quote from the opening sentence of the Stamp Duty (Amendment) Bill, 2018 (the **Bill**)

[3] again, quoting from the Bill

[4] In section 2, "instrument" is defined to include *"every written document and electronic record"*

[5] These concessions are to be read subject to paragraphs (11), (12) & (13) of the ordinary conveyance head of duty.

[6] See *Donette Thompson v The Cayman Islands Health Services Authority & Anor* 2016 (1) CILR 93, per Williams J, especially at para 68 and *BDO Cayman Ltd et al v The Governor in Cabinet* (Unreported, 10 May 2018), per Mangatal J, at para 123. Each of these decisions cite *Pepper v Hart* (1993) AC 593, (as qualified in later UK cases) regarding the special rules that govern the use of reports of proceedings in Parliament, including Hansard, as an aid to statutory interpretation. For the latest Cayman case on the use of Hansard, see *Carol Angella Bennett v Henry Michael Diaz* (Unreported, McMillan J, 22 January 2020).

[7] The special rules are clearly satisfied here.

[8] The expression “immovable property” is not defined, but essentially it refers to land, including any fixtures, or an interest in land.

[9] The definition of “connected person” and the related definition of “relative” are drafted broadly so as to cast the net very widely.

[10] Emphasis added. Paragraph (2) sets a rate of 7.5% where total value of the linked property transaction is more than \$300,000. Paragraphs (3) & (4) deal with the timing of the payment of duty under paragraphs (1) & (2) respectively. Finally, paragraph (5) provides that fixtures are included in the value of immovable property that is chargeable with duty.

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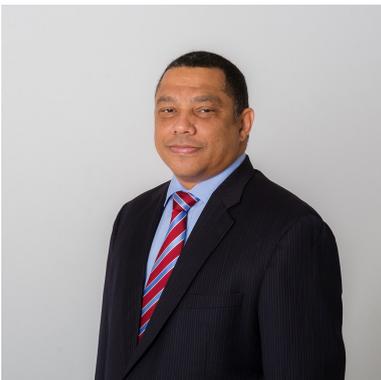
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