Head of Secretariat
Tax Review Secretariat
C/- Department of Treasury
PO Box 542, Waigani, NCD

By email: papers@taxreview.gov.pg

12 October 2015

Submission: Issues Paper No.10 – Other Indirect Taxes

Dear Sir

We write in response to the request for submissions on the Issues Paper No.10 – Other Indirect Taxes (the Paper) released by the Taxation Review Committee on 22 September 2015. PwC is pleased to present its submission on the matters raised in the Paper in relation to stamp duty.

PwC supports tax reform in PNG and the work of the Tax Review Committee. Please contact us if there are any matters you would like to discuss.

Yours faithfully

David Caradus
Partner

PricewaterhouseCoopers
PwC Haus, Level 6, Harbour City, Konedobu. PO Box 484, PORT MORESBY, PAPUA NEW GUINEA
T: (675) 321 1500 / (675) 305 3100, F: (675) 321 1428, www.pwc.com.pg

Introduction

As a general proposition PwC agrees with the points made in the Paper's overview of indirect taxes. However, we note that in our experience the imposition of stamp duty on property transactions is not as great an impediment to businesses moving as it is to the restructuring of existing ownership of dutiable assets and to the development of company title properties.

Stamp duty

Question 1: Do the current stamp duty rules including their rates significantly impede business activity, reorganisations, etc?

It is submitted there are two main areas where the current stamp duty rules and rates significantly impede business activity. The first is the 5 year claw- back rule which apples where corporate reconstruction relief has been granted for a group reorganisation. This provision operates to charge duty at the standard rates where the conditions for the stamp duty relief cease to apply within 5 years of the transfer date. In particular the claw back rule applies:

"if the transferor or transferee cease to quality for the exemption within five years after the date on and from which the conveyance, transfer or assignment in question operated"

The claw- back provisions also impose an interest penalty on the stamp duty calculated at the rate of 10% per annum from the date the original transaction occurred until payment of the additional duty.

It seems to us the period of the claw-back is unreasonable and unnecessary. Once duty relief has been provided further stamp duty should only be payable where company which owns dutiable assets is sold outside the corporate group. This is the case if the asset itself is sold after duty relief has been granted. For example if a company was to transfer land to a wholly owned subsidiary and duty relief obtained there would be no claw back of duty if the land was sold by the wholly owned subsidiary within five years but there would be a claw back if the subsidiary was sold. In the circumstances this means the only possible transaction is the sale of the land itself.

The second is the duty applicable on a notice under Section 78A of the Income Tax Act which enables the transfer of an entitlement to tax depreciation in a company title arrangement. The imposition of duty without a sale to a third party makes it impossible for the provisions of Section 78A to have any impact in practice. Detailed commentary on this point is included in our response to question 3.

Question 2: The arrangement for charging for transfers back to vendors seems inequitable. What experience do people have of this arrangement?

We agree this appears to be inequitable. However, we have not experienced this as an issue in practice.

Question 3: What other problems are there with the existing stamp duty system?

There is no statutory system of strata title in PNG which would enable the developer of a multiple occupancy development to dispose of individual units in a residential apartment complex or commercial development. Accordingly, in order to achieve such an ownership structure a company which owns the interest in the land on which the development will take place will need to be converted to a company title entity. The usual means of achieving conversion to company title involves the issue of new shares together with a sub-lease of the land and the shares give the holder of the shares the right to occupy a particular unit in the development and the right to use the common property. In the Stamp Duties Act such shares are referred to as "land use entitlement securities".

One of the practical and legal difficulties encountered under a company title arrangement arises from the fact that ownership of the depreciable building remains with the company but the right to occupy (and hence the right to receive income) rests with the owner of the shares which give the right to occupy. This issue is addressed by Section 78A of the Act which is intended to allow the company to transfer the entitlement to depreciation to the shareholder who subscribes for the company title shares. However, the mechanism to transfer the depreciation requires a duly stamped notice to be provided to the Commissioner General. Subsections 37(4) and 37(5) of the Stamp Duties Act govern the stamp duty consequences of the transfer of tax depreciation and treat this as the transfer of real property:

"(4) Where property is deemed to be transferred to a purchaser by notice to the Commissioner General under Section 78A(4) of the Income Tax Act 1959, that notice shall be deemed to be, and is chargeable with stamp duty as, a transfer on sale of real property.

(5) Where a transfer of property has been charged with stamp duty as a transfer on sale of real property under Subsection (4), and that property is subsequently transferred to the person deemed to be the purchaser, duty chargeable on that transfer shall be reduced by the amount of duty previously paid under Subsection (4)."

Subsection (5) appears to serve no purpose whatsoever as there is currently no legal mechanism under which the relevant property could be transferred to the person who subscribes for the shares which give the right to occupy that portion of the property.

The consequence of imposing stamp duty on the transfer of the entitlement to tax depreciation means it is simply not economic to do so and there is an anomalous result with the owners not being able to claim depreciation. In the context of a new development stamp duty is paid on the acquisition of the land by the developer, on transfer of depreciation once the building is complete to create the company titles arrangements and on sale to third party purchasers. It is submitted this triple imposition of duty is an impediment to this type of development being implemented as the law intended and should be removed.

The following amendments are put forward for your consideration:

Stamp Duties Act

Repeal subsections 4 and 5 of Section 37

Income Tax Act

Amend subsection 78A (4) by removing the words *"duly stamped"* after the words *"or within such further time as the Commissioner General allows"*

Question 4: Are the land-rich company rules effective? Do they achieve their intended purpose?

In our experience the land-rich rules are generally effective in practice and in general they achieve the intended purpose. Where the transfer involves the transfer of shares in a PNG incorporated company the company is not able to record the transfer unless the share transfer is stamped. Consequently, the

IRC should have no problem in identifying transfers to which these provisions apply. Where the transfer involves the transfer of shares in a foreign company which owns shares in a PNG land-holding company or a direct interest in land the transaction is more difficult to detect and enforce. Accordingly, it is possible there are transactions which have occurred where purchasers choose not to voluntarily comply with the law.

Question 5: Are the current stamp duty exemptions, originally designed to provide incentives for exploration, still justified?

The duty concessions applicable to the transfer of interests in exploration licences reflect the high risk of exploration activities and the fact that where these apply the interest in the licence has no greater value than sunk costs. The discussion paper suggests this concession currently extends to transfers of interests in development licences. While this is the case in relation to resource information transferred at the same time as a development licence it is noted the transfer of the development licence is not subject to nominal duty.

Question 6: What is the purpose in having both stamp duty and bookmakers' turnover tax? Is stamp duty on betting tickets inequitable? Is there a way of removing stamp duties and adjusting turnover tax to compensate, which ensures current distributions to national and provincial governments are retained?

We agreed with the comments in the discussion paper that the imposition of both stamp duty and bookmaker's turnover tax appears to create unnecessary complexity and administration to bookmaking activities.