

## **STAMP DUTIES: WHAT YOU NEED TO KNOW**

Stamp Duties are basically taxes paid to the Federal or State Government on documents ( also known as instruments for the purpose of the Stamp Duties Act) such as Conveyances on Sale, Bills of Exchange, Promissory notes, Agreements, Contracts or even documents such as Letters and Certificates of admission, Instruments of Apprenticeship, Insurance Policies etc. The payment of Stamp Duties is backed up by legislation the law being the Stamp Duties Act 1939 (as amended by numerous Acts and various resolutions and contained in Vol 22 Cap 411 LFN 1990) which also provides a list of documents in its Schedule and the duty payable on each of them.

The average legal practitioner would come across Stamp Duties maybe in the course of incorporating a Company or perfecting Conveyances on Sale, Mortgage, Leases etc. For legal practitioners who do lot of corporate work for their clients or even the clients themselves, they would be acquainted with Stamp Duties in the course of business for instance, Duty payable on Marketable Securities, Capital of Companies, Loan Capital and Capital and Transfer Duty in reconstructions and amalgamations etc. For the average man on the street, he probably would only come across Stamp Duties where a legal practitioner advises him on the same for instance in the course of perfecting title to his property or where he suddenly finds that he has is being penalised for failure to pay Stamp Duty on a document.

However the focus here is to acquaint people in every category mentioned above with useful information on the following

- a. Why we should pay Stamp Duty in other words, what is the legal effect of a document duly stamped?
- b. Where to pay your Stamp Duties?
- c. What is the evidence that you have paid Stamp Duty on your document?
- d. In what circumstances can you be exempted from paying Stamp Duty?
- e. On what documents are you allowed reduced duty?
- f. What is the time limit for stamping a document and what are the penalties for the same?

All the issues raised above as provided by the Stamp Duties Act, would really make the difference between your smiling to the bank, or paying more in Stamp Duties than what you should have paid or for the legal practitioner impressing your client because you have saved him a lot of money or he did not have to pay at all.

- A. LEGAL EFFECT OF A DOCUMENT DULY STAMPED:** The legal effect of a document which is duly stamped according to S.19 of the Stamp Duties Act is basically that it will be admissible in evidence in a Court of Law. This excludes documents given as evidence in criminal proceedings and all just exceptions on other grounds (S22 (1)&(4) SDA). It is advised therefore that Stamp Duty is paid on documents required to be stamped because you never know when a transaction could end up in Court. However S.22 of the Stamp Duties Act also provides terms on which instruments not duly stamped may be received in evidence; where a Judge, Referee or

Arbitrator finds a document is insufficiently stamped, payment of the unpaid duty, as well as the penalty payable thereon and a sum of two naira may be made to the officer of the court or arbitrator or referee and received in evidence.

**B. WHERE DO YOU PAY STAMP DUTY?:** S4(1)&(2) of the Stamp Duties Act empowers the Federal and State Government to impose, charge, and collect stamp duties in different circumstances as I will explain shortly. The Federal Government has the sole authority to impose, charge and collect Stamp Duties in respect of documents relating to matters between a Company and an individual, group or body of individuals i.e. whether between XYZ Ltd and Mr X or XYZ Ltd and NURTW or XYZ Ltd and Y Charity organisation. Therefore, for documents executed between a Company with any of those mentioned above, the place to go is the Federal Internal Revenue Service – Stamp Duties Office. Note that the keyword here is “Company” which extends to banks and other financial institutions.

The State Government on the other hand has authority to collect Stamp Duty in respect of documents executed between individuals or persons at such rates imposed or charged as agreed with the Federal Government. This to my mind means two things; one, that for documents executed in transactions between individuals e.g Mr X the Assignor and Mr Y the Assignee in a Deed of Assignment or between an individual and a group of individuals e.g. Mr Y the landlord and X Foundation the tenant in a lease of a property, Stamp Duty should be paid to the State Internal Revenue Service – Stamp Duties Office. It also means that the duty chargeable is not at the discretion of the State Government but as imposed by the Federal Government as empowered by the 1999 Constitution. Moreso as Stamp Duties is one of the matters reserved to the Federal Government in the Exclusive Legislative List.

It is also important to note that where Stamp Duties have been paid erroneously to the State or Federal Government, there is no provision in the Act for a refund and you would still be owing a debt to the tier of Government that you should have paid. So when next you need to pay Stamp Duties, take a thorough look at the parties executing the document.

### **C. EVIDENCE OF STAMP DUTY PAID ON DOCUMENTS**

S.5 of the Stamp provides that Stamp duties paid may be evidenced on a document in various forms as permitted by law which include; adhesive stamps, postage stamps, impressed or embossed stamps by the means of a die i.e plate tool or instrument.

These impressions are usually on the face of the document. The number or value of stamps on the face of the instrument is usually commensurate to the amount of duty paid though stamps of greater value than is required may be used upon any instrument. However impressed or embossed stamps by the means of a die could be discontinued and any document stamped with a discontinued die shall be deemed not duly stamped subject to exemptions such as a document stamped as aforesaid which is executed outside Nigeria and brought to a Commissioner within 21 days of receipt in Nigeria or documents stamped with a discontinued die, which has been rendered useless by the provision of a new die this may be submitted to the Accountant General within six months after the die has been discontinued, the stamps will be cancelled and a refund issued.

**D. EXEMPTIONS:** This is especially valuable for individuals or Companies who find themselves faced with huge amounts of money to pay for Stamp Duty and need to

find a way to reduce costs. The idea is to supply as many exceptions as provided by the Stamp Duties Act and other legislation.

- i. S.513 of the Company and Allied Matters Act provides for an exemption on certain instruments relating to a Company under liquidation by virtue of a compulsory winding up order by a court or a creditors voluntary winding up. The instruments exempted by this section include; any assurance, (which includes any deed, conveyance, discharge, assignment or surrender) mortgage, charge, or other encumbrance on any property or forming part of the assets of the Company to be liquidated. Other instruments include any power of attorney, proxy paper, writ or order in respect of the Company's property.
- ii. Another area in which instruments are exempted from stamp duty is by virtue of Treaties/Agreements made either between the Federal Government and Foreign Private Corporations, International Organizations or other Foreign Governments in which it is most times specifically stated that documents relating to transactions by the foreign private corporations, international organizations or foreign government are exempt from stamp duty. The aim of the above could be to serve as an incentive to encourage foreign investors and also to encourage economic development in Nigeria. So when a Legal Practitioner is representing such organisations or corporations especially if they are involved in a project beneficial to or in conjunction with the government or it's agencies, it is important to check ant Agreements or Treaties for exemptions.
- iii. The Stamp Duties Act itself provides exemptions which include the following;
  - A. S.43 exempts an unstamped Bill of Exchange in a set used to prove the contents of another part of the set (duly stamped) which is lost or destroyed.
  - B. Ss. 52&55 also exempts certain documents in a Conveyance on Sale such as where ad valorem duty has been paid on a decree or order conveying interest in Property to a Purchaser or any other person acting in his behalf or by his direction, any Conveyance based on such a decree or order shall be exempt from ad valorem duty.
  - C. S.70 exempts certain documents in respect of a lease such as documents providing for penal rent or increased rent in the nature of a penal rent.
  - D. For the duty payable on a loan capital by a Company, Corporation or body of persons S.102 provides that before the issue of such a loan capital, a statement of the amount to be secured is to be submitted to the CAC and where it is shown to the satisfaction of the CAC that duty has been paid in respect of a mortgage or marketable security on any trust deed or other document securing a loan capital, such a loan capital shall be exempt from Stamp Duty.
  - E. S104 further exempts documents in reconstructions and amalgamations such as a conveyance or transfer of sale assigning debts whether secured or unsecured of the existing company or documents vesting or relating to the vesting of the undertaking or shares in the transferee Company. However this exception shall not apply to debts (apart from debts due to banks or trade creditors) incurred less than two years before the proper time for making a claim of exemption. Furthermore, an instrument made for the purpose of transfer as stated above must be executed within 12 months of the date of the incorporation of the transferee company. In addition the document made for effecting the conveyance or transfer consequent to an agreement, must be made within the same twelve months of the filing of the same agreement or particulars of it with the CAC.

Also note that in the Schedule to the Act, under most heads of charge listed therein there are also documents exempted in certain circumstances from Stamp Duty such as: an Agreement, letter or Memorandum made for or relating to the sale of any goods, wares or merchandise, Receipts issued for the payment of any Government duties or taxes or of money for the Government's use or a Letter of Credit granted in Nigeria or authorised drafts to be drawn in Nigeria for payment out of Nigeria to mention a few.

### **ON WHAT DOCUMENTS CAN I PAY REDUCED STAMP DUTY?**

S.79 of the Stamp Duties Act provides a reduced duty for short-term marketable securities. For instance, a marketable security payable within a term not exceeding 3 (three) years after the date on which the duty is payable is reduced by 5k (five kobo) on every N20 (twenty naira). However where such a marketable security is assigned, transferred or negotiated, in Nigeria after the date stated on the face of the instrument as the date on which the amount to be secured is to be paid off, stamp duty will be charged at full rate.

S.103 provides for an incentive for Companies in the form of reimbursement of duty paid on a loan capital wholly or partially applied for the conversion or consolidation of the Companies existing loan capital.

### **TIME LIMIT FOR PAYMENT OF STAMP DUTY AND PENALTY**

Section 23 provides that except where express provisions are made in the Stamp Duties Act, (such as documents that must be stamped before execution e.g. Insurance Policies) any unstamped or insufficiently stamped instruments may be stamped within 40 days from its first execution. One exception to this rule is the case of instruments chargeable by ad valorem duty which has a time limit of 30 days. However, where an Instrument is not duly stamped within the time limit stated above, the person liable to a penalty shall be guilty of an offence and liable on conviction to payment of the unpaid duty and a fine of twenty naira and where the unpaid duty exceeds twenty naira there is a further penalty or interest on such duty at the rate of ten percent per annum from the day on which the document was first executed up to the time when the amount of interest is equal to the unpaid duty. For ad valorem duty a further penalty equivalent to the unpaid duty in addition to the penalty stated above shall be paid unless a reasonable excuse for the delay is provided to the satisfaction of the Commissioner, court arbitrator or referee before whom it is produced. (S.23 Stamp Duties Act).

It is also important to note that a document containing several distinct matters shall have each distinct matter separately charged with duty in respect of each of its considerations as if it were a separate instrument eg. An instrument vesting property in separate persons would require Stamp Duty in respect of the transfer to each person or an instrument which appoints new trustees and vests property in them is liable both to appointment duty and to deed duty.

So next time you have to pay Stamp Duty, armed with all this information, you would at least know what to do and when, This could also save you from being exploited by fraudsters or touts or you could use it as an opportunity to save costs for your client, Company or Employer or even yourself.

Dolapo Ajayi practices with Detail Solicitors.