

TCI transfer duty reduction

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During the years of the recent property and development boom in the Turks and Caicos Islands (TCI), stamp duty on the real estate transactions became a substantial contributor to Government coffers. All real estate transactions in TCI are subject to stamp duty at varying rates depending on the size of the transaction and on the island on which the real estate is situate. In most cases, stamp duty is charged at the rate of 9.75% of the consideration passing.

Most real estate in TCI is held in the name of closely-held, sole purpose vehicles. During a previous real estate boom (in the late 80s and early 90s), the structuring of real estate transactions as acquisitions of equity interests in holding companies became commonplace as a stamp duty avoidance mechanism. To close this loophole, TCIG enacted (in 1992) the Land Holding Companies (Transfer Duty) Ordinance which effectively imposed a tax at the rate of 8% on any transfer of equity in a TCI land holding company. The definition of land holding company was so broad that it covered all parent entities (wherever situate) and the definition of transfer included not just a transfer in the conventional sense but also a new issue of shares in a TCI land holding company.

The tourist industry is a major component of the TCI economy and many of the biggest contributors to Government tax revenues are resort-owning companies, which fall within the definition of land holding companies under the 1992 law. In the recent past, the TCI Government has been concerned that those entities have been prejudiced in their efforts to raise new capital by the effective tax imposed on the issuance of new equity, under the 1992 Ordinance, and that this was forcing some into unacceptably high levels of debt. In consequence, the TCI Government has now announced new measures to ensure that the issuance of new equity in TCI land holding companies is taxed not at the old 8% rate but rather at a nominal 0.2%.

A little unusually, the change has been introduced in advance of a formal amendment of the 1992 Ordinance. The TCI Government has said (by implication) that it will use its residual powers to waive tax that would otherwise be payable, pending introduction of a statutory amendment. The policy rationale is that the tax reduction is needed now and not in 3 or 4 months time when an amending statute might have worked its way through the legislative process.

The new provisions will apply only to the issuance of new equity in parent land holding corporations and not in subsidiaries even if those subsidiaries are the ones that directly hold the real estate. The duty of 0.2% will be charged on the face value of the newly issued shares. Thus if ResortCo Limited, the parent of a wholly-owned TCI land holding subsidiary, issues new shares with a face value of \$10m, the duty payable will be \$20k. Previously that duty would have been charged at the rate of 8% of the value of the group's TCI land holdings, multiplied by the percentage of the total issued capital represented by the new share issuance. As can be seen, the tax reduction is very significant.

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