FOCUS

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The 2008 Budget: New Tax Incentives & Initiatives

FOCUS On Recent Budget Legislation

IN THIS ISSUE

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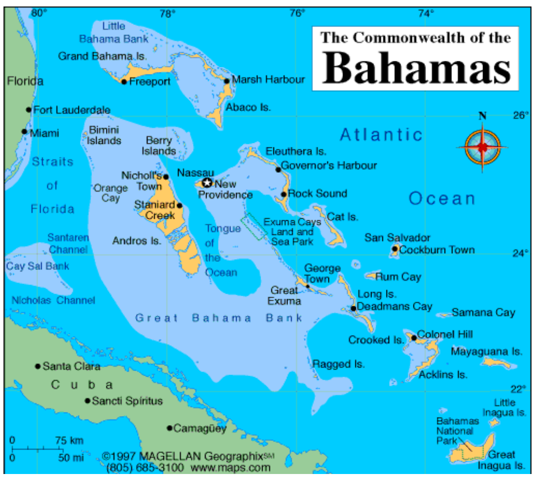

Introduction

This article provides an overview of the following Acts, which came into force on 1st July, 2008, namely: (i) The Real Property Tax (Amendment) Act, 2008, (ii) The City Of Nassau Revitalization Act, 2008, and (iii) The Family Islands Development Encouragement Act, 2008.

Two other legislations, The Stamp (Amendment) (No. 2) Act, 2008 and The Stamp (Amendment) (No. 3) Act, 2008 will be addressed in other articles in this issue of FOCUS.

The General Aim

Generally, the foregoing Acts make provisions for tax savings while simultaneously promoting fiscal growth. These tax concessions came into force on the background of what has aptly been described as an inexorable increase in the cost of living in The Bahamas. Such savings, however, will remain in force for relatively short periods. The short time frames appear to be consistent with the strategy proffered by the Managing Director of the International Monetary Fund and approved in the Government's recent Budget Communication: "Unless the situation improves, the fiscal authorities in countries with low fiscal risks should prepare to exploit the headroom for timely and targeted fiscal stimulus that can add to aggregate demand in a way that supports private consumption. Of course, it has to be temporary – maintaining a sustainable medium-term fiscal position is still very important. But in a sense, medium-term fiscal policy is all about saving for a rainy day. It is now raining."

1. The Real Property Tax (Amendment) Act, 2008 (the "RPTA Act")

The RPTA Act amends the Real Property Tax Act (the "**Principal Act**") as follows:

(I) Crown Land

Crown land held under a lease will no longer be exempt from payment of real property tax. The lessee is now considered to be the owner of the property for real property tax purposes and, therefore, responsible for the payment of the tax.

(II) Revised Tax Rates/Exemptions

Revised Tax Rates. Prior to the RPTA Act, properties valued in excess of $500,000 were taxed at a rate of 1% of their market value; however, the maximum tax that could be levied annually was $35,000. This tax ceiling has now been removed and properties valued in excess of $500,000 but less than $5M will continue to be taxed at 1% of the market value; however, properties valued in excess of $5M are now taxed annually at a lower rate of ¾ of 1% of the market value. This means

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properties of a lesser market value will in fact pay more tax.

Exemptions

Under the Principal Act, properties valued under $250,000 will continue to be exempt from the payment of real property tax. As a result of the RPTA Act, owner-occupied properties valued in excess of $250,000 but not more than $500,000 may also be exempt from payment of real property tax if the applicant satisfies the following criteria:

(i) he is for the first time the owner of a home which is used exclusively as a dwelling house, or a mortgagor in possession of a dwelling house which he occupies and resides in exclusively as a dwelling house. It is worthwhile to note that a dwelling house has not been expressly defined in the RPTA Act or the Principal Act. Nonetheless, the new section 5 of the RPTA Act, being section 42A(5) of the Principal Act, reads as follows,

"No claim for relief from taxes under this section shall be obtained in respect of real property, or any part thereof, used for commercial purposes."

"No claim for relief from taxes under this section shall be obtained in respect of real property, or any part thereof, used for commercial purposes."

The above may suggest that part of the market value of a multi-purpose building used exclusively as a residence may be exempt. Additionally, it remains to be seen how the Valuation Section of the Ministry of Finance will, in practice, verify an applicant's first time home owner status; and

(ii) he has resided in the home for not less than an aggregate of nine months ("minimum period") in the tax year ending 1st October of each year, in respect of taxes due in the next ensuing year. Presumably, it is not intended that applicants should qualify for exemptions in the 2009 tax year (save in the circumstances detailed below) as the period from 1st July, 2008 (the date on which time begins to run) to 1st October, 2008 is less than the minimum period.

A person who has not resided in the home for the minimum period may still be eligible for the exemption if the Chief Valuation Officer is satisfied that this was due to his attending an educational or professional training course outside of The Bahamas, a work transfer, or a need for him, his spouse, their minor child, his minor child or his spouse's minor child (only if the spouse's minor child resides with him) to receive medical treatment outside of The Bahamas.

The Application

The exemption is not as of right; application must be made to the Chief Valuation Officer and this must be accompanied by an Affidavit executed by the applicant. The Affidavit must state the following:

a) that neither the applicant, nor another person on his behalf, has ever applied for or been granted an exemption;

(b) that the applicant is a first time owner; and

(c) that the applicant occupies and resides in the property exclusively as a dwelling house.

It is an offence under the RPTA Act to knowingly or recklessly make a false statement on the application/affidavit. A person who commits such an offence shall be liable on summary conviction to a fine of $5,000.

Time Stipulations

If the application is approved, the applicant will be eligible to receive the exemption for five years from either of the following dates, which must be after 1st July, 2008:

- the date shown on the occupancy certificate issued by the Ministry of Works; or

- the date of the conveyance (which must be duly executed and stamped) in respect of the purchase of a completed dwelling house.

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Exemptions may continue only if the investment continues to be used and operated for residential or commercial purposes.

2. <u>The City Of Nassau Revitalization Act, 2008 (the "Nassau Act")</u>

Background

The aim of this legislation, which will expire on 30th June, 2013, is to encourage the restoration of properties situate in the City of Nassau by offering concessions to the owners relative to payment of real property tax and also customs duty and excise tax on imported supplies.

Definitions

The following definitions are of particular relevance:

Investment refers to the construction, renovation, repair or upgrade of buildings for residential or commercial use.

City of Nassau, according to the Interpretation and General Clauses Act, encompasses "All that part of New Providence bounded on the north by the Harbour of Nassau, on the east by Mackey Street, on the south by an imaginary line starting at a point approximately three hundred and eighty yards to the south of the junction of Mackey Street and Shirley Street and continuing in a straight line to the south-east corner of the grounds of the Princess Margaret Hospital, thence south-westerly to Prison Lane, thence to the division wall between the Barracks and the Prison, thence in a straight line westwardly to the junction of Dillet Street and Blue Hill Road and following the centre of Dillet Street and Meeting Street to Nassau Street, and on the west by Nassau Street." For exemption purposes, the City of Nassau does not include Paradise Island and the other islets and cays in the Nassau Harbour.

Application for Exemption

An application must be submitted to the (the "Minister") for an exemption under the Nassau Act.

The criterion for approval of an application is that the Minister should be satisfied that the investment will be in the best interest of The Bahamas.

No guidelines have been suggested to aid the Minister in making such a determination. Yet, should the application be approved, the Minister and the owner may enter into an agreement which might provide for any or all of the following:

- **exemption from the payment of all customs duties on all materials (imported as well as purchased or taken out of bond) which are necessary and used for the investment.** The applicant will have to furnish a bond in a form approved by the Comptroller of Customs for double the amount of the custom duties and excise tax that would ordinarily attach to importation of the materials in question. Obviously, if the materials were not used as they should, the applicant could ultimately lose twice the amount of the duties and tax that were initially avoided. Such bond would expire once the imported materials are, in fact, used for the specified purpose.
- **exemption from the payment of real property tax with respect to the property in question provided that such property has been well maintained.**

There are no market value classes or tax ceiling stipulations under the Nassau Act, and the exemptions may continue only if the investment continues to be used and operated for residential or commercial purposes. No definition of non-use or a time frame of abandonment has been provided.

These concessions do not appear in any of the other Acts; such as, the Real Property Tax Act, the Excise Act, and the Tariff Act. Therefore, those Acts will have to be considered *cont'd pg 4*
4along cont' with the exemptions

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Foreign nationals might be encouraged to construct buildings during this concession period, because the cost savings on supplies should be significant.

along with the exemptions contained in the Nassau Act. Stamp tax concession on financing instruments relating only to certain residences will be found under the Stamp (Amendment) (No. 2) Act, 2008.

3. <u>The Family Islands Development Encouragement Act, 2008 (the "FIDE Act")</u>

Concessions

Persons will be eligible for exemptions from payment of customs duty and excise tax in respect of building materials and machinery imported ***and used*** in any of the Approved Islands. Unlike the Nassau Act, the exemption runs for a period of five (5) years from the date of the commencement of the Act. This means that no exemption would remain in force after 30th June, 2013. The "Approved Islands" are Sweetings Cay and Water Cay (Grand Bahama), Grand Cay and Moores Island (Abaco), Current Island (Eleuthera), Andros, Cat Island, San Salvador, Rum Cay, Long Island, Crooked Island, Long Cay, Acklins, Ragged Island and Cays, Mayaguana and Inagua.

These exemptions are not iterated under the Tariff Act and the Excise Act and will need to be considered along with those Acts.

Criteria

In order to qualify for the exemptions, the building materials (i.e., plumbing, electrical, mechanical, and construction materials) must be used for the construction of a new building or for the rehabilitation, remodelling or extension of a new or existing building situate on any of the Approved Islands. If the materials are still in the possession of a supplier at the end of the concession period (30th June, 2013), they will become subject to payment of duty.

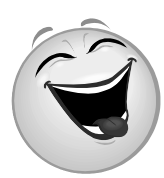
Machinery will only be exempt if used in construction as indicated or to clear land for farming in any of the Approved Islands. If the machinery is subsequently transported to another Island which is not an Approved Island, it will become liable to customs duty.

Penalty

It is an offence under the FIDE Act to transport the materials and machinery out of the Approved Islands once the tax or duty has been waived. The penalty for such offence as well as for making a false declaration to obtain an exemption shall be five thousand dollars on summary conviction. The same penalty would apply to any supplier who continues to supply building materials imported duty free (after such exempt period has expired) without paying the required duty; except that such supplier would also be subject to having the materials seized and proceeded against in the same manner as goods liable under the Customs Management Act. Similarly, where any vessel or other thing is used to facilitate the contravention of the FIDE Act, such vessel or other thing so used and also the building materials or machinery would be liable to forfeiture.

Possible Effect

Foreign nationals might be encouraged to construct buildings during this concession period, because the cost savings on supplies which should be significant. Additionally, as Family Island properties owned by Bahamians are already exempt from the payment of real property tax under the Real Property Tax Act, 1969, the exemption from payment of customs duty and excise tax on building supplies under the FIDE Act may provide an added incentive for Bahamians to build on the lesser developed islands. Finally, the incentives under the FIDE Act to encourage farming should assist Bahamians in making the country more agriculturally independent.



A command was given to a dog: "SPEAK!"
The dog said in return: "Not without my lawyer present!"

Relief for First Time Home Owners: The Stamp (Amendment) (No. 2) Act 2008 (the "Stamp 2 Act")

It is an offence under the Stamp 2 Act to knowingly or recklessly make a false statement on the Affidavit.

Exemptions

The previous exemption under the Stamp Act (the "**Principal Act**"), that is, on instruments where the transaction(s) was valued under $250,000 expired 1st January, 2008. The Stamp 2 Act replaces this exemption but increases the transaction(s) value to $500,000. This new exemption will expire on 30th June, 2013. A person can apply to the Financial Secretary, currently located at the Office of the Prime Minister, for the exemption from stamp duty on instrument(s) executed after 1st July, 2008 and relating to one of the following purposes:

(i) purchase of a dwelling house,

(ii) purchase and financing of a dwelling house,

(iii) purchase and financing of a dwelling house combined with other domestic loans,

(iv) purchase of vacant land for the construction of a dwelling house, or

(v) transfer between licensed lending institutions of a home mortgage or of a home mortgage combined with other domestic loans.

Domestic loans are non-business loans which relate to the home, house or household, or pertaining to the borrowers family affairs (presumably, non-commercial family affairs).

In the Stamp 2 Act, a "home mortgage" means a mortgage with respect to a dwelling house which is occupied by the mortgagor exclusively as a family residence.

There is no clear definition of what constitutes a "dwelling house"; however, the Stamp 2 Act does state that a dwelling house includes a condominium unit or a duplex exclusive of any part not occupied by the owner. It follows, then, that a dwelling house will mean any residence, condominium unit or duplex which is actually occupied by the applicant or by the applicant and his family. If the applicant and his family occupy one half of a duplex, the exemption would relate only to the value of that one half. Obviously, no relief is available in Stamp 2 Act for property used for commercial purposes.

The Application

Applications for exemption must be accompanied by an Affidavit of the applicant which states that there is no other dwelling house held by the applicant or on his behalf for which an exemption has already been applied for or granted. Where the property is vacant land, the Affidavit must also state that the applicant intends to construct a dwelling house for residential purposes and will reside in such home for an aggregate period of not less than nine months per year. Alternatively, where the property already has a structure on the property, the Affidavit must state that the applicant occupies and resides or intends to occupy and reside in the home for an aggregate period of not less than nine months per year.

It is an offence under the Stamp 2 Act to knowingly or recklessly make a false statement on the Affidavit. The penalty for making such a false statement is that the applicant is liable on summary conviction to a fine of $5,000 in addition to payment of the amount of any exemption which was granted.

It should be noted that an exemption will be granted only once to an applicant and only with respect to a dwelling house which is the first and only dwelling home owned by the applicant whether situate in or out of The Bahamas.

Possible Effects

The exemption provided by the Stamp 2 Act should assist qualified applicants acquiring a dwelling home and might encourage persons to consolidate certain debts. Additionally, the removal of stamp tax on particular financing instruments could result in increased transfers where lower mortgage rates are offered; although it is likely that a lending institution with a higher interest rate might lower that rate rather than lose the customer (who wins in either case).

H & J 'Excellence in Teaching' Award 2008

In its continuing effort to recognize teachers for their outstanding contributions in the field of education, Higgs & Johnson, Counsel & Attorneys-at-Law, this year marked twelve years as corporate sponsor of the national *H&J Excellence in Teaching Award*.

The award, presented this year to winner Marcia D. Musgrove of C.V. Bethel Senior High School, is a cash prize that rewards educators who exemplify excellence in the teaching profession and leadership development.

In presenting this award, Higgs & Johnson Managing Partner, John K. F. Delaney, noted that "Higgs & Johnson recognizes the paramount importance of a quality education.

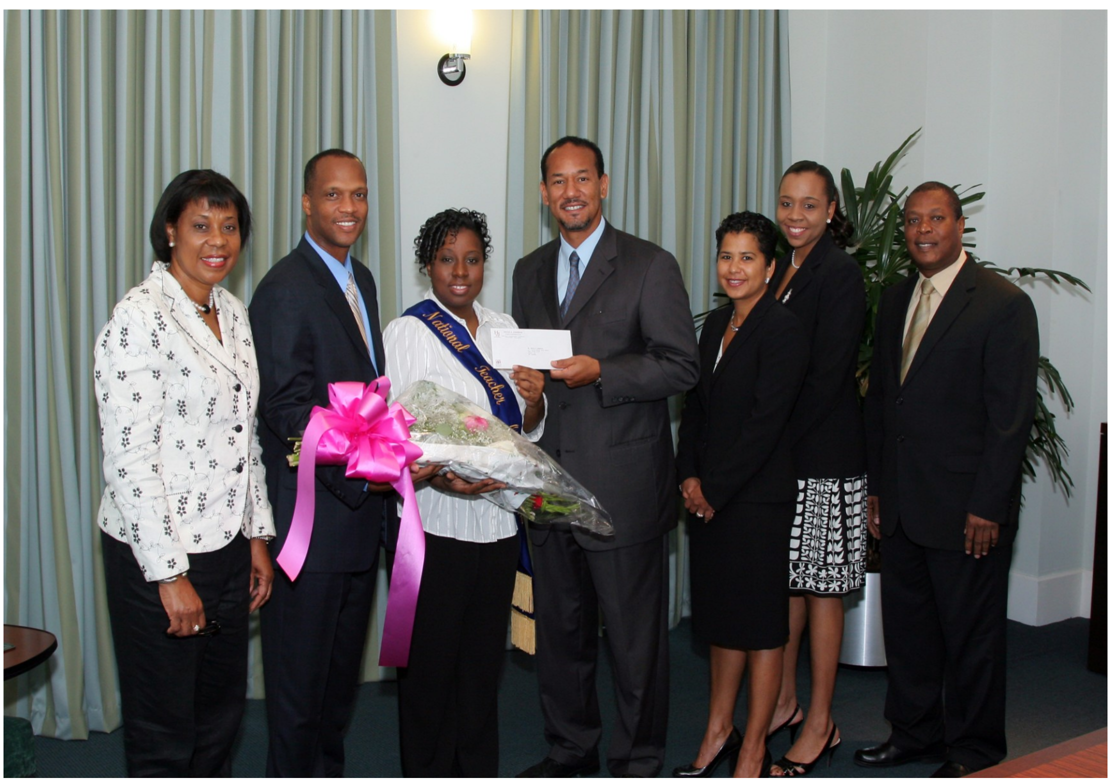
Essential to this process are those dedicated educators whose commitment to the development of their students and to providing capable and committed leaders for our young nation enables us to move forward with confidence in an ever more competitive global environment.

We are proud to support the National Teacher of the Year Programme and we are happy to be able to contribute to the furtherance of educational achievement through the *H&J Excellence in Teaching Award".*

Ms. Musgrove sent a letter expressing her delight in winning such a prestigious award and thanked Higgs & Johnson for continuing to support those in the education system.

Higgs & Johnson recognizes the continued need for the National Teacher of the Year Programme which focuses public attention on excellence in teaching and salutes all educators!

Ms. Musgrove expressed her delight in winning such a prestigious award.



Pictured from left to right are: Eulease Beneby, Principal, C.V. Bethel Senior High School, Sterling H. Cooke, H&J Partner, Marcia D. Musgrove, Teacher of the Year, John K.F. Delaney, H&J Managing Partner, Zarina Fitzgerald, Tara A.A. Archer and Vann P. Gaitor, H&J Partners.

The Stamp (Amendment) (No. 3) 2008

Introduction

For those of us who deal with property and commercial transactions on a daily basis, the Stamp Act is always a necessary, albeit frustrating, companion. With the coming into force on 14th July, 2008 of the Stamp (Amendment) (No. 3) Act, 2008 (the “Stamp 3 Act”) which amends the Stamp Act (the “Principal Act”), there are now new sections that would be of public interest. The purpose of this article, therefore, is to provide an introduction to the Stamp 3 Act.

Changes to Section 2

A land owning company is one that owns land directly or via a subsidiary.

The newly added section 2(1) of the Stamp 3 Act includes new definitions as well as alterations and redefinitions of various terminology used in the Principal Act. For example, the new term “land owning” has replaced the term “landholding” as it relates to the overall definition of a “landholding company”. The substance of the terminology, however, remains consistent as it specifies that a land owning company is one that owns land directly or via a subsidiary. It is unlikely, therefore, that this particular variance in terminology would have any substantive effect.

A more significant alteration occurs with the term “mortgage” which has been expanded to include promissory notes. It seems clear that this insertion was made by the Legislature in an attempt to close a loophole that allowed promissory notes to be used as a primary document. For instance, where there were a mortgage/indenture and promissory note, some might have stamped the note at 0.2% of the loan and might have stamped the mortgage/debenture as collateral security for the loan at the nominal amount of $10.00.

Then, there is the completely new definition of “value of equity of redemption”. This outlines a formula for defining what should be the value of equity redemption. To arrive at this value the Stamp 3 Act requires us to take the value of the equity redemption. To arrive at this value the Stamp 3 Act requires us to take the value of the property with which we are dealing and to subtract from that value any amount that is owed under the mortgage or any other lien.

Additionally, the new Section 2(2) expands the definition of “vendor” and “purchaser”. Such terms now include not only the seller and the purchaser themselves, but their nominees.

Section 14

Section 14 has only one main addition which is subsection (4). This subsection stipulates that stamp duty is to be payable on the market value at the date of the instrument which transfers the interest in the land. This is to be contrasted with the value at the date the instrument is submitted for stamping.

Section 17

The new section 17(1) of the Stamp 3 Act will impact those persons who might be reticent or sluggish in paying the stamp tax on their document. This section increases the penalty for the late stamping of documents and obviously reflects the objective of the Legislature to increase revenue. The chart below sets out the new penalties for the late payment of stamp duty .

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Time elapsing from execution to payment	Percent surcharge on unpaid duty
6 months – 1 year	15%
Over 1 year – 10 years	20%
Over 10 years – 20 years	25%
Over 20 years – 30 years	30%
Over 30 years	35%

The Stamp (Amendment) (No.3) Act Cont'd

No doubt, the public will be interested in the manner in which the Treasurer will exercise such power and discretion.

Section 27

Section 27(1) of the Stamp 3 Act has been expanded to provide the Treasurer with the authority to express his opinion as to whether a relevant instrument or transaction is chargeable with stamp duty and, if it is, how much stamp duty should be charged. As a consequence, the Treasurer is vested with an increased amount of power and discretion. No doubt, the public will be interested in the manner in which the Treasurer will exercise such power and discretion.

Section 28

The Legislature has addressed the practice of avoiding stamp duty by transferring the shares of a company that holds land. The new paragraph (f) of section 28 mandates that stamp duty on the transfer of an interest in a company will now be assessed in the same manner as the direct sale or transfer of land (or a business if certain elements are present). This will affect a company when it:

- purchases its own shares,
- cancels or redeems its shares,
- retains its shares as treasury shares,
- exchanges its share to acquire other property, or
- engages in an act which causes an increase in shareholders' equity.

At first blush, paragraph (f) appears too broad, somewhat akin to cutting a toothpick with a buzz saw. Time will soon tell whether this will unfairly intrude on the rights of shareholders to deal with their holdings.

New Sections Added

Apart from all of the alterations to sections that were in the Principal Act, the Stamp 3 Act adds new sections 43, 44 and 45. Each shall be discussed to illustrate its potential effect.

Section 43

Not surprisingly, section 43 aims at revenue expansion. This section explicitly provides that no International Business Company will be exempted from paying stamp duty upon disposing of real property or resident business that it owns within The Bahamas regardless of how remote such ownership may be.

Section 44

Section 44 clarifies that the stamp duty mentioned in section 43 will apply even if the actual instrument of transfer was executed in another jurisdiction. Therefore, stamp duty will be assessed just as if the actual transaction had occurred in The Bahamas.

Section 45

Section 45 should be noteworthy to any corporate entity that is a subsidiary of an international organization or whose parent company is located in another jurisdiction. Where there is a sale of shares or other equity by or in the privately held parent of the resident business (i.e., a company incorporated under either the Companies Act or the International Business Companies Act) which results in the transfer of the controlling interest in the resident business or its shares, any stamp duty then owing shall constitute a lien on the resident business and is enforceable by law against the assets of the resident business.

Consequently, section 45 becomes a companion to the new paragraph (f) of section 28 mentioned earlier by preventing the avoidance of stamp duty through indirect transfers in the ownership of the parent company of the resident business.

Schedule II

Schedule II of the Principal Act has been materially altered so that all deeds or exchanges of property or lease for 10 or more years cont'd pg. 9

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The Stamp (Amendment) (No.3) Act Cont'd

are subject to stamp tax based upon whichever is greater, the value of the realty, personalty or lease, or the consideration (i.e., the actual price paid).

Further, the reference to leases has the following new provision:-

"Where the term of the lease exceeds seven years but is less than 10 year … two percent of the annual rent reserved".

Schedule III

There has been one major alteration to this Schedule: the deletion of that part which formerly expressed that an instrument used by a company to acquire its own shares thereby caused those shares to be either cancelled or to be retained as treasury shares. In its stead is the provision that a company which acquires its own shares will have these shares treated as a normal property transaction where such an acquisition was intended to transfer a beneficial interest in ownership.

> *The Stamp 3 Act does, however, create new liabilities for persons who would be delinquent in paying such taxes.*

Incidental Effect upon the International Business Companies Act

An interesting observation that can be discerned from reading the new Act is that it amends Section 187 of the International Business Companies Act in the following ways:

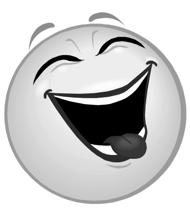
1. Immediately after the word "law" in section 187 subsection (1) the insertion of the words "other than section 28D(e) or 43 of the Stamp Act; and

2. Immediately after the words "Stamp Act" in section 187 subsection (3) the insertion of the words "other than section 28D(e) or 43 thereof."

Section 187 of the International Business Companies Act exempts an international business company from taxes for certain transactions. Prior to the amendment of the Stamp 3 Act these exemptions were explicitly unfettered by any other statute. At this point, any tax exemptions provided by section 187 are now subject to the provisions of the Stamp 3 Act, specifically sections 28D[e] and 43 (both discussed above).

Conclusion

A substantial amount of changes to the Principal Act relate to ways in which the Government may either increase revenue or close loopholes that have enabled stamp tax avoidance. This conforms with the nature of the Principal Act, which is to deal with the collection of revenue. The Stamp 3 Act does, however, create new liabilities for persons who would be delinquent in paying such taxes. Still, the public might take some slight comfort in the final amendment effected by the Stamp 3 Act; namely that no amendment made as a result of the provisions of the Stamp 3 Act shall result in a person having to pay any stamp duty twice in relation to the same transaction.



FREE ADVICE ANYONE?

A doctor and a lawyer were attending a cocktail party when the doctor was approached by a man who asked advice on how to handle his ulcer. The doctor mumbled some medical advice, then turned to the lawyer and remarked, "I never know how to handle the situation when I'm asked for medical advice during a social function. Is it acceptable to send a bill for such advice?"

The lawyer replied that it was certainly acceptable to do so.

The next day, the doctor sent the ulcer-stricken man a bill.

The lawyer also sent one to the doctor.