



2002-03 Budget Amendment Stamp Duty and Franchise Arrangements

This circular provides information on changes to the stamp duty treatment of the grant or renewal of a franchise as part of the 2002-03 Budget. The changes outlined in this circular commence from 20 August 2002.

Summary

1. The rate used to assess stamp duty for franchise agreements entered into on or after 20 August 2002 has been changed from the conveyance rates, to the same rate used for commercial land leases (50c/\$100). The existing lease duty assessment provisions will be used to determine the duty payable.
2. In circumstances where a franchise is surrendered to the franchisor or transferred to a new franchisee, conveyance duty rates continue to apply.

Background

3. A franchise agreement is an arrangement whereby a franchisor authorises a franchisee to use the rights to engage in a business at a particular location for a specified period of time. The business generally is to be conducted in accordance with a specified system or marketing plan, and is to be associated with a trademark, advertising or a commercial symbol.
4. As of 1 January 1992, the transfer of business property rights was included in the conveyance base. This meant that franchise agreements were viewed as an acquisition of an existing business undertaking, and therefore taxed in the same manner as business sales.
5. Both the initial grant and renewals are subject to duty as they relate to different periods.

Assessment

6. Any payment or royalty payable by a franchisee under a franchise arrangement will be assessed in the same manner as rent under a lease. The provisions that apply to the assessment of lease rentals now also apply to franchise payments and allow for the review of payments at certain times during the term of the franchise arrangement.

Estimated assessments of unascertainable franchise payments

7. In some cases, components of a franchise payment, such as turnover-based or market-based fees or royalties, are unknown at the time of assessment. Duty payable on these unascertainable franchise payments will be estimated.
8. In estimating such payments, the Commissioner may take into account payments made under prior franchise arrangements or forecasts of future amounts payable.
9. Estimates can be made over the full term of the franchise or over a period within the franchise term.

Reassessment

10. Where a franchise is assessed for the **full term**, franchisees can seek a refund by lodging their franchise arrangement for reassessment if, after the unascertainable payments have crystallised, the estimated stamp duty is greater than the actual stamp duty due. If the estimated stamp duty is lower than the actual stamp duty the franchise arrangement does not have to be lodged for reassessment.

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Franchise arrangements cont ...

Franchise fee reviews

11. Alternatively where a franchise arrangement is assessed on a *periodic basis*, the arrangements must be resubmitted at the end of each period, so that the original estimate can be reassessed against the actual payments made. Where there is an adjustment, the subsequent estimate will be adjusted accordingly. If it is the last period, any overpaid stamp duty will be refunded and any underpaid stamp duty will be assessed.
12. Where a franchise arrangement provides for payments to be increased over the term of the franchise, the payment will be assessed for stamp duty on an amount uplifted by a CPI based rate.
13. Franchisees can reodge their franchise arrangement for reassessment if the CPI adjusted stamp duty is greater than the stamp duty that would have been paid after taking into account the actual franchise payments made.

GST and franchises

14. The duty is to be assessed on the GST-inclusive value of payment amounts. This will include the imputed GST on unascertainable payments that are estimate assessed.

Apportionment of total rent

15. Where a franchise arrangement applies to a place within the Territory and a place outside the Territory, stamp duty is to be assessed on the proportion of total rent payable under the franchise arrangement that relates to the business carried on in the Territory.
16. Statutory formulae are provided in the legislation to give further direction as to how the total rent payable is to be apportioned. These formulae operate in substantially the same manner as those introduced in July 2001 for conveyances of industrial and intellectual property. Please refer to paragraphs 7ñ11 of Revenue Circular SD 017 (Conveyance Duty and Miscellaneous Stamp Duties ñ 2001-02 Budget Amendments) and section 9BC of the Act for further details.

Anti-avoidance provision

17. An anti-avoidance provision has been inserted to counter circumstances where a franchisee does not apply to renew or extend the term of a franchise arrangement and a new franchise arrangement that authorises the use of the same or similar rights is granted to a new franchisee. Where this occurs, and the Commissioner is satisfied that the transaction has the same effect as a transfer of the franchise, conveyance duty will be assessed as if there had been such a transfer. In addition, the lease rates of duty will be assessed on the new franchise arrangement.

Revenue Circular RA001, which sets out information on the revenue circular system, is incorporated into and is to be read as one with this Circular.

Refer to the Taxation (Administration) Amendment Bill 2002 for precise details of the changes. For general information, please contact TRM on 1300 305 353.