

Cancellation of Stamp duty

2 June 2005

In terms of RCR 4.24/1984, the duty rests upon the Registrar of Deeds to determine whether the stamp duty calculated by the Receiver of Revenue is correct. At present, only notarial leases still attract stamp duty, and for this reason the Commissioner for the South African Revenue Services issued the following ruling:

"Background

During the meeting it was brought to my attention that the members of the Deeds Office find difficulty complying with the requirements as set out in section 13 of the Stamp Duties Act, 1968. A request was made to SARS to review the matter.

The Law

For ease of reference, the following sections of the Act are quoted:

Section 13(1)(a):

It shall be the duty of every public officer to take cognizance of the requirements of this Act in respect of the stamping of any instrument which may come before him in his official capacity, and no instrument, which is chargeable with duty and is not duly stamped, may be issued, received, lodged, filed, or registered by any public officer unless or until the same is duly stamped.

Section 13(1)(b):

In the event of any refusal by any person to have any such instrument duly stamped, or if any public officer has reason to believe that fraud or evasion of duty was intended, the public officer shall impound the instrument and transmit it to the Commissioner for the purpose of recovery of the duty and any penalty incurred.

Ruling

SARS held the view that if the stamp duty on the instrument was assessed and calculated by one of the SARS Branch Offices, it was not necessary for your members as public officers to check whether the instrument was duly stamped or not.

However, in any other matter where an instrument comes before one of your staff in his official capacity, such instrument must be checked to ensure that it is duly stamped in accordance with the provisions of the Stamp Duties Act."

The above ruling has been confirmed by RCR 2 of 2004 and RCR 4.24 of 1984 has thus been repealed.