

SOUTH AUSTRALIA



STATE TAXATION OFFICE

Stamp Duties

Circular No. 19

TRANSFERS TO CORRECT AN ERROR

Transfers lodged to correct an error in an earlier registration often give rise to a requirement to pay stamp duty. It is clear that some areas of the industry are seeking clarification of the Stamp Duties Office practice in relation to assessment of duty on these transfers.

This circular is issued to clarify the key issues. These are:--

- A. What types of conveyances to correct an error will be assessed as not liable to ad valorem duty?
- B. How much duty will be retained on conveyances that are stamped but not registered?

RULINGS

1. Conveyances that are lodged to correct an error, attract duty of \$4.00 where the Commissioner is satisfied that an error has occurred as distinct from a change of mind by the parties or incorrect advice being provided by a third party.

The onus is on the lodging party to provide the relevant information to show that an error has been made. The information may be in the form of contracts, receipts, etc., that support the claim, along with a statutory declaration from each party to the instrument and the party who prepared the instrument. These transfers are assessed at \$4.00 as a conveyance of any other kind.

The most common requests are:--

(a) Transfers prepared pursuant to a contract but the title reference in the contract was incorrect. There it is necessary to re-convey the title to the original owner and convey the correct land to the purchaser.

(b) In relation to units in a Strata Plan:--

Unit 1 CT 4170/222	Unit 2 CT 4170/223
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When titles were issued they were issued to the wrong parties.

Under review, new publication being developed

Unit 1 occupied by A but registered in the name of B. Unit 2 occupied by B but registered in the name of A.

Therefore, Unit 1 is to be transferred from B to A and Unit 2 to be transferred from A to B

(c) Property registered in the wrong name

This seems to occur mainly in relation to marketable securities. In these cases, application forms are completed in an individual's name instead of a company name and vice versa and the instructions given to the person completing the transfer form, i.e., stockbroker may not have been as complete as those normally provided in other transactions.

(d) To correct an error in financial or legal advice given

Even though the consideration shown in the instrument may be "in order to correct an error", this Office must be satisfied that this is in fact the case, i.e., the original transfer must have been contrary to the instructions given.

It cannot be classed as an error and only liable to \$4.00 duty if the transfer has been prepared in line with instructions given to the conveyancer. The fact that the wrong advice has been given to the parties does not mean that any future transaction to right the wrong can be classed as a conveyance of other kind attracting minimum duty.

Examples of this situation have arisen where the transfer that is described as having been drawn in error has been registered for many years. The parties are then confronted with new circumstances of tax laws that put them at a disadvantage because of the earlier transfer.

2. Where documents are stamped but not registered the situation in relation to the level of duty payable is similar to the above cases. The Commissioner must be satisfied as to the circumstances under which the error occurred.

If the executed and stamped instrument has not come into effect, duty (subject to a 5% deduction) would be refunded under Section 60b and Section 106 of the Stamp Duties Act. However, should the executed and stamped instrument have been used as a security or otherwise have been considered to have come into effect, than in these circumstances duty would not be refunded. A statutory declaration from the parties can cover the circumstances of the request for a refund.

Any enquiries in relation to the above should be directed to the Stamp Duties Office enquiry area on telephone numbers 226 3750 or 226 3715.

26 May, 1992

COMMISSIONER OF STAMPS