

SOUTH AUSTRALIA



STATE TAXATION OFFICE

Stamp Duty

Circular No. 4
replaced by Circular No. 72

**PENALTIES FOR LATE LODGEMENT AND
STAMPING OF DOCUMENTS**

There has been, for some time, a high incidence of lodgements for stamping of documents which are executed outside the periods prescribed by section 20 (1) of the Stamp Duties Act, 1923. This subsection states:-

“Except where express provision is made to the contrary, an instrument may be stamped without penalty:-

(a) where it was executed in South Australia - within two months after its execution;

or

(b) where it was executed outside South Australia - within two months after its receipt in South Australia or within six months after its execution, whichever period first expires.”

Section 20 (1a) of the Act provides that:-

“Except where express provision is made to the contrary, an instrument that is unstamped or insufficiently stamped after the expiration of the period referred to in subsection (1) shall, in addition to the unpaid duty, be charged with a penalty of:-

(a) fifty dollars

or

(b) and amount equal to 10 per centum of the amount of the unpaid duty for each month for which the instrument has remained unstamped or insufficiently stamped from the day when it was executed until the amount equals the amount of the unpaid duty,

whichever is the greater amount.”

The primary objective of section 20 (1a) is to deter late lodgement and payment of duty but unfortunately some sections of the business community still do not comply with the requirements of the legislation.

IT IS AN OFFENCE NOT TO STAMP

Section 20 (4) of the Act provides that if an instrument that is chargeable with stamp duty is not produced to the Commissioner for stamping within the prescribed period any person who executed the instrument is guilty of an offence carrying the maximum penalty of \$10,000.

ADMINISTRATIVE PRACTICE

Since December, 1988 The Stamp Duties office has applied the following practice in relation to the level of penalties to be applied to documents lodged over the counter as voluntary submissions;

| <i>Time period</i> | <i>Penalty</i> |
|--|---|
| Stamping instruments within 2 calendar months of the date of execution | No penalty (as provided by section 20 (1)) |
| After 2 calendar months but within 6 months | \$5 or 5% of the duty whichever is greater |
| After 4 calendar months but within 6 months | \$10 or 10% of the duty whichever is greater |
| After 6 calendar months but within 9 months | \$15 or 25% of the duty whichever is greater |
| After 9 calendar months but within 12 months | \$25 or 50% of the duty whichever is greater |
| After 12 calendar months but within 15 months | \$35 or 70% of the duty whichever is greater |
| After 15 calendar months | \$50 or 100% of the duty whichever is greater |

The above penalties are not applicable if the late lodgement and payment of duty on an instrument was occasioned by an attempt to evade stamp duty. In such circumstances penalties will be imposed in full and remissions will not be considered.

The following is offered for further clarification of some of the issues associated with stamp duty penalty:

STOCK CERTIFICATES AND OTHER MATTERS THAT MAY INFLUENCE FINAL CONSIDERATION

When the final purchase price is dependent upon the amount of stock on hand or other matter, penalty will not be levied until either:-

- (a) two months after the stocktake or event took place, or

(b) two months after settlement,

whichever is the earlier.

Where it is anticipated that the determination of the financial consideration may take longer than provided above, this Office will, where requested, accept duty based upon a realistic estimate of the final consideration with any adjustment to duty payable to be made once the final consideration is known. Where an overpayment is subsequently found, the amount of overpaid duty will be refunded in full.

INTERSTATE DOCUMENTS

The Act provides for lodgement without penalty, two months after the document is received into Australia or six months after execution, whichever is the earlier. Lodging parties are reminded of this provision and should they experience difficulty in obtaining documents from interstate for stamping, they should notify the Stamp Duties Office in writing seeking an extension of time for lodgement without penalty.

In some instances a document executed interstate will relate to interstate assets and those assets will subsequently be shifted to South Australia, thus creating a liability for duty that could not have been anticipated when the document was executed. In these cases lodging parties should lodge a late stamping declaration setting out the circumstances and the penalty may be remitted.

CONDITIONAL CONTRACTS

Contracts containing conditional clauses are stampable within two months of execution irrespective of the date that conditions are satisfied.

Should a conditional contract not proceed and duty has been paid, the duty will be refunded in full upon presentation of appropriate evidence. Section 17 of the Act now provides an authority for this view.

MAXIMUM PENALTY FOR CERTAIN DOCUMENTS

Where an instrument is liable for a duty of 20 cents or \$4.00, the maximum level of penalty that will be assessed when the instrument is lodged for stamping voluntarily is \$5.00 and \$10.00 respectively.

REMISSION OF PENALTY

The discretion to remit all or part of any penalties granted under section 20 (3) of the Act shall continue to be exercised where, in the opinion of the Commissioner of Stamps, circumstances warrant such action. A statutory declaration setting out the circumstances of the transaction is required in these cases.

DATE OF OPERATION

The above revised practices will apply in respect of all documents lodged or produced for stamping or detected by this Office on or after 1 November, 1990. Documents lodged for stamping prior to that date will be dealt with in accordance with the practices prevailing at the time of their lodgement.

11 December, 1990

COMMISSIONER OF STAMPS

Historical Use Only