

SOUTH AUSTRALIA



STATE TAXATION OFFICE

Stamp Duties

Circular No. 72

Replaces Circular No. 4

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

A number of documents have been lodged late for stamping.

Documents executed in South Australia should normally be lodged within two months of execution.

Documents executed outside South Australia should be lodged within two months after their receipt in South Australia or within six months of execution whichever date expires first.

AMOUNT OF PENALTY WHEN A DOCUMENT IS LATE

The penalty for late lodgement is the greater of -

- (a) fifty dollars or
- (b) "interest" of 10 per cent **per month** on the unpaid duty. When the document is late the period starts from the date of execution to the date the duty is paid.

PENALTY POLICY

Where you lodge a document for stamping but are outside the time periods allowed for stamping, a reduced level of penalty will be applied.

A penalty of half that set out in the law, ie 5% per month for each month that you are late, will be applied. This lower level will be applied where you have lodged the document voluntarily and the document has not been deliberately withheld or duty has not been evaded.

A minimum level of penalty of \$10 will apply to all documents lodged late.

EXTRA TIME TO PAY AFTER YOU RECEIVE ADVICE OF DUTY PAYABLE

Where a notice of assessment is issued that shows the amount of duty and penalty duty payable, those amounts will remain fixed for twenty-one days from the date of the notice.

This will allow funds to be presented at the Stamp Duties Office without a review of the duty and penalty in the twenty-one day period.

Should the twenty-one day period expire and the document is still less than two months old (or six months for interstate documents) the later date will still be the key date in relation to penalties.

REMISSION OF PENALTY

In the case of voluntary lodgement of late documents the penalty is normally remitted to the levels set out in our penalty policy.

The Stamp Duties Office can further remit all or part of the penalty for late lodgement of documents where we are satisfied that the circumstances warrant a lower penalty.

If you want us to consider remission of the penalty you need to complete a Statutory Declaration setting out the circumstances leading to the late lodgement of the document.

IT IS AN OFFENCE NOT TO STAMP

If you do not lodge documents for stamping within the time limits set, it is an offence. The offence has a maximum penalty of \$10,000.

EXTENSIONS OF TIME TO LODGE

You can ask for an extension of time to lodge documents.

If you have documents which will not be able to be lodged on time you should write to us and request an extension. You will need to tell us the circumstances which may cause you to be late and set out a time when the documents will be lodged.

We will advise you in writing whether the extension is granted.

SPECIAL CIRCUMSTANCES

Conditional Contracts

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

If the conditional contract does not proceed and duty has been paid, the duty will be refunded in full. You will need documents which verify the amount of duty paid.

Stock certificates and other matters that may influence final consideration

When the final purchase price is dependent on some matter, such as the amount of stock on hand, penalty for late lodgement will not apply until the earliest date of either-

- (a) two months after the event, ie the stocktake, or
- (b) two months after settlement.

If you expect that the determination of the final consideration may take longer than the set time periods we will accept duty based on a realistic estimate of the final consideration. You must advise us that it is an estimate and that you will adjust the duty payable once the final consideration is known.

If you make an estimate and find that you have overpaid, the amount of overpayment will be refunded in full.

Interstate documents - Transfer of assets to South Australia

In some instances an interstate document when executed relates solely to interstate assets but subsequently relates to South Australian assets. This may create a liability which could not have been anticipated when the document was executed.

In these cases you should lodge a late stamping declaration setting out the circumstances of the late lodgement. The penalty may then be remitted.

LEGISLATIVE PROVISIONS

The main legal provisions of the Stamp Duties Act, 1923 which govern the policies set out in this circular are set out below.

| Situation | Provision |
|---|-----------|
| Prescribed period for lodgement of documents | 20(1) |
| Statutory Penalty | 20(1a) |
| Non stamping is an offence | 20(4) |
| Authority to refund duty on conditional contracts | 17 |
| Discretion to remit penalty | 20(3) |

DATE OF OPERATION

This circular will apply to all documents lodged for stamping after 1 March, 1993.

All enquiries should be directed to:-

Stamp Duties Enquiries: (08) 226 3750
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Written Enquiries to: Commissioner of Stamps
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