

REVENUE RULING NO. SD 002

SD2 LODGEMENT INFORMATION AND GENERAL REQUIREMENTS IN STAMP DUTY MATTERS (STAMP DUTIES ACT 1920)

- **General (including application form)**

When instruments are lodged for stamping, the appropriate application form must be completed. Proper completion of the form ensures that, after stamping has been completed and instruments are returned, an accurate record of particulars relating to the instrument exists (reg.6). Instructions appear on the reverse side of the form and the following should be noted:

(i) Applicant's name and address must be legibly printed to enable any subsequent correspondence or refund to be correctly forwarded and to ensure that documents are properly returned.

(ii) Each instrument must be separately listed on the application form (including duplicates) with only one instrument being listed on each numbered line.

NOTE: Where there are a significant number of instruments, a single application form is acceptable provided that a fully detailed numbered schedule is annexed.

(iii) Date of first execution of each instrument should be shown.

NOTE: It is essential that each instrument lodged for stamping is dated - many real property transfers are not.

(iv) Relevant code for type of document should be inserted.

NOTE: Codes are shown on the reverse side of the application form and are most important for statistical analysis. If there is any doubt as to document type, assessing staff will offer assistance.

(v) Names of parties should be clearly shown.

(vi) Consideration, nominal or otherwise, should be stated.

NOTE: it is essential that, where appropriate, the consideration be shown in the instrument.

(vii) Amount of duty and fine being paid in respect of each instrument must be shown.

NOTE: Generally, any fines incurred for late payment of duty should be paid upon lodgement of the instrument for

stamping. In any instance where it is claimed there are mitigating circumstances, a written submission addressed to the Chief Commissioner setting out full reasons must be lodged with the application.

(viii) Additional duty and/or fine should be paid on the appropriate application form quoting the reference number under which the instrument was originally lodged and giving sufficient detail to ensure that the payment is applied to the correct instrument.

NOTE: Where it is claimed that there are mitigating circumstances in respect of any additional duty subject to fine for late payment, a similar written submission to (vii) above should lessen any delays.

(ix) The amount of duty which is to be impressed on an instrument (including any duplicate) should be pencilled at the head of the instrument (reg.4).

NOTE: Whereas the suggestions and regulatory requirements outlined above may be considered red tape, compliance with them does assist the work flow given the volume of lodgements on any one day.

- **Agreements for Sale or Conveyance**

2.1 Duty is chargeable on the higher of consideration or value and, if an assessment is to be made on the value of the property, it is based on the unencumbered value (sec.66).

2.2 In most "arm's length" transactions, the assessment is calculated on the consideration. If any of the following circumstances exist, evidence of value of property (see item 4.1) will most likely be sought to support the consideration -

(a) where the parties are apparently related; or

(b) where one or both parties to the agreement are private companies and there may be a possible relationship or connection between any of the directors or shareholders of the vendor company and any of the directors or shareholders of the purchaser company and/or an individual vendor or purchaser as the case may be;

(c) there is no selling agent and the same legal firm is acting for both parties; or

(d) the consideration appears low for the type of property being sold.

If, in any of the above circumstances, there is no relationship between vendor and purchaser, advice to this effect should be furnished at the time of lodgement.

- **Agreements for Sale of Business**

3.1 The assessing criteria mentioned above as applying to "Agreements for Sale or Conveyance" also apply to agreements for sale of businesses. In addition, where an agreement shows the contract sum of goodwill as nil or a nominal figure, an explanation will usually be required giving the reasons for the absence of any goodwill attaching to the business.

3.2 Goods, Wares and Merchandise

(i) Section 41(6) of the Stamp Duties Act 1920 provides that the exemption for goods, wares and merchandise in the Second Schedule only applies where the purchase price has been apportioned and the values of the goods, wares and merchandise are fully set out in the executed agreement. If the apportionment is not shown in the instrument, the exemption is not available. Any apportionment, valuation or schedule subsequently lodged will preclude the concession being availed of.

(ii) To take advantage of the exemption it is essential that the consideration is apportioned as to items for which exemption is claimed and other classes of property to which the consideration relates. A separate value should be shown for each individual item unless, for example, groups of items are all clearly fixtures or all clearly non-fixtures.

Where the description of any item may leave doubt as to whether it is fixed or otherwise, advice should be furnished at the time of lodgement as to the degree of annexation of the item to the freehold, for example, type of electrical connection, manner of connection of gas, water or drainage services or whether the item is screwed/bolted to a wall or floor. Items freely standing on their own weight ordinarily would be eligible for the exemption. However, it is generally considered that "tenant's fixtures" are distinguishable from "goods, wares and merchandise".

(iii) Where an agreement for sale signed under seal is eligible for exemption in respect of goods, wares and merchandise, it is liable to an additional \$10 duty (Second Schedule - Agreement or Memorandum of an Agreement). In order to avoid any delay caused in raising a requisition for this amount when other aspects of the assessment are in order, it should be paid at time of lodgement.

NOTE: Where the instrument actually conveys or assigns the interest in the business and in the goods, wares and merchandise (i.e. it is not an agreement to convey or assign in an executory sense), the exemption under sec.41(6) of the Stamp Duties Act 1920 (N.S.W.) does not apply.

- **Valuations**

4.1 Estate or Interest in Land

(i) In cases where evidence of value of realty is required to support a consideration, a private opinion or expression of value by a registered valuer, appropriately phrased and identifying the property, is usually acceptable. Should an opinion express a range of values, regard will be had to the higher amount. Evidence of an arm's length sale of the property in the preceding 12 months also might be acceptable. Valuations required by financing authorities (banks, building societies, etc.) are usually conservative and may not be satisfactory unless there is some reasonable margin of excess consideration.

Should the evidence produced suggest a value in excess of the consideration by more than \$2,000 or should there be no satisfactory evidence available a Valuer General's Certificate of Valuation as at the date of first execution of the instrument must be furnished to enable calculation of duty on the value (sec. 125 - see also sec. 65 of the Valuation of Land Act 1916). There is no discretionary power to waive this requirement.

(ii) Where there is no consideration for a conveyance and the value of the property exceeds \$2,000, or where an assessment for duty is based upon the value of realty, e.g. Family Law transfers to or from other than the spouses, distributions of real estate in specie or company liquidations, etc., a Valuer General's Certificate of Valuation as at the date of the instrument must be submitted (sec. 125 of the Stamp Duties Act 1920 (N.S.W.)).

(iii) It should be noted that Valuer General's notices of valuation only specify vacant land and would be acceptable in very few cases.

4.2 Other Property

Valuations of property, other than estates or interest in land, should be by a "valuer" as defined in sec.3 of the Stamp Duties Act 1920 (N.S.W.), whose business it is to make valuations of the particular class of property in question. If there is some doubt as to the type of valuation that will be acceptable, it is advisable to contact a Stamp Duty Enquiry Officer before obtaining a valuation whether it be a private valuation or one by the Valuer General. The circumstances should be clearly explained to avoid unnecessary costs.

- **Leases**

5.1 Duty is calculated on the total rental for the full term of the lease. If the lease provides for any periodic increases in the rent, these increases should be taken into account as far as practicable.

Also, where the lessee is obliged to account to the lessor for additional outgoings such as rates, taxes, etc., for

which the lessor is primarily liable in his own right, the amounts of such items are considered to be rent. For the purpose of calculating duty, reasonable estimates of future outgoings, rates, taxes, etc., will sometimes be acceptable to finalise a matter particularly in respect of short-term leases, say up to five years. Alternatively, the reappraisal provisions in sec. 78D of the Stamp Duties Act 1920 (N.S.W.) will apply.

5.2 A mortgagee's consent to a lease will attract stamp duty as a separate instrument (refer sec. 17) which also should be paid at time of lodgement. The relevant duty is \$10 (if the consent is a deed or signed under seal) or Soc (if signed under hand).

- **Loan Securities**

Where the amount secured by a loan security is not expressed in the instrument, evidence should be furnished as to the total limit agreed as between the parties. The usual evidence may be a copy of the relevant letter of offer and acceptance, advice from a lender or similar documentation (refer sec.19 of the Stamp Duties Act 1920 (N.S.W.)). In these circumstances it is considered that sec. 84(3) of the Stamp Duties Act 1920 (N.S.W.) providing for a minimum \$5 duty (with appropriate up-stamping at a future point) is not applicable.

- **Transfer of Shares In Private Companies**

7.1 Duty on share transfers as with other types of property is assessed on the higher of the consideration or value of the shares. In most "arm's length" transactions, the assessment is acceptable on the consideration. Therefore, it is important to furnish evidence as to whether the transferor and transferee are related in any way and, in the circumstances where one or both of the parties to the transfer is a private company, to advise whether there is any relationship between any of the directors or shareholders of the transferor company and any of the directors or shareholders of the transferee company and/or an individual transferor or transferee as the case may be

7.2 Where any degree of relationship is present, it is necessary, in order to support the consideration, to lodge a certified copy of the balance sheet and ancillary accounts of the company as at the end of the last fiscal year together with a statement of the company's taxable income for the last five years. In respect of large or valuable holdings, an accountant's valuation of the shares will be required either to support the consideration or to enable an assessment where the value is higher than the consideration or where there is no consideration.

- **Share Transfers (nominal consideration)**

In respect of a transfer of shares for a nominal consideration, evidence should be furnished at the time of lodgement setting out the facts and circumstances surrounding the transfer, e.g. statutory declaration, production of probate or certified copy of a will, trust deed and appointment or other relevant documentation.

- **Transmission Applications (deceased estates)**

9.1 An application for realty to be registered in the name of a beneficiary or devisee will attract a fixed duty (\$10) where entitlement to property has been established.

9.2 In cases where the deceased person died testate, the probate or a certified copy of the probate should be lodged with the documents.

9.3 Where the deceased dies intestate, evidence is required of the beneficiary's entitlement in terms of the relevant legislation.

NOTE: in every case where one or more of the applicants is not in realty a devisee ad valorem duty will be payable. This will give rise to the need for a Valuer General's Certificate of Valuation.

- **Transfers of Leases**

10.1 It is essential that the consideration (nominal or otherwise) be inserted in the transfer (indeed in all transfers of whatever nature).

10.2 If the transfer has been executed in conformity with an agreement previously stamped With ad valorem duty (e.g. agreement for sale of a business), that agreement should be lodged with the transfer. If the transfer is separately lodged while the agreement is being processed for stamping, the application number under which the agreement is being processed should be advised.

10.3 Where the transfer is not preceded by an agreement, a completed declaration Form "U" should be lodged together with a stamped copy of the original lease.

10.4 In some instances, evidence of value or a Valuer General's Certificate of Valuation may be required to support the consideration or, where the value of the lease is higher than the consideration, to enable an assessment based on the value (refer to "Valuations" above).

- **Surrenders of Lease**

11.1 This type of instrument should be lodged with a stamped copy of the original lease.

11.2 The consideration clause should be completed (nominal consideration or otherwise).

11.3 If the lessee is the party paying to be released from the lease, duty payable could be expected to be \$10 (subject to circumstances). In other cases, evidence of value or a Valuer General's Certificate of Valuation may be required to support the consideration, or where the value of unexpired portion of the lease is higher than the consideration, to enable an assessment based on the value.

- **Declarations of Trust**

12.1 In matters where it is claimed that a fixed duty of \$10 applies according to the Second Schedule to the Stamp Duties Act 1920 (N.S.W.) under the heading "Declaration of Trust" para. (1), the onus is on the taxpayer to establish a resulting trust. Lodged with the instrument as a basic requirement must be a statutory declaration by the trustee stating -

(a) the intention of the parties as to beneficial ownership at the time the property was purchased;

(b) the date of acquisition of the property by the trustee;

(c) whether the beneficiary is sui juris and date of birth if under 18 years or, if the beneficiary is a private company, the date of incorporation thereof; and

(d) who actually provided the purchase money. (Reference might be made to *Truskett v. Commissioner of Stamp Duties* (1976) 6 A.T.R. 1.)

12.2 Where the beneficiary is claimed to have provided the purchase money as in (d) above corroborative evidence is generally required. This may include the production of the beneficiary's pass book, pass sheets, loan agreements, copies of presented cheques or similar evidence. The evidence should be sufficient to demonstrate that the beneficiary provided the deposit and balance of purchase money. If money has been borrowed by the trustee (e.g. in the trustee's name as mortgagor) any arrangements regarding repayment by the beneficiary should be advised and satisfactorily supported. Any indemnities, etc., by the beneficiary in respect of the personal covenants, etc., in a mortgage should be produced.

12.3 Always produce the stamped agreement for sale, etc., whereunder the property was acquired by the trustee.

- **Trust Deeds (Establishing Superannuation Trusts and Settlement Trusts)**

This type of instrument must always be accompanied by a statutory declaration by the trustee declaring the actual N.S.W. assets in the fund as at the date of first execution of the deed.

- **Final Checklist**

(i) If the nature of the transaction is complex or not readily evident from the instrument, an outline of the full facts and circumstances surrounding the transaction in covering

correspondence/declarations/documents will often avoid unnecessary requisitions or enable an assessor to be more specific as to any enquiry.

(ii) In doubtful cases, indicate how the duty considered

payable has been calculated. If the assessment differs this will enable advice to be forwarded as to how the difference arises.

(iii) Ensure that each instrument is dated and executed.

(iv) Consideration clauses must be completed.

(v) Real Property Act instruments should be completed to show the volume, folio or identifier number and whether the whole or part. If part only, reference needs to be made to lot and D.P. numbers.

(vi) Transfers, conveyances, etc., must conform with any ad valorem stamped agreements to which they relate as to parties, property and consideration if a nominal charge is considered properly applicable.

(vii) indicate on each instrument (including any duplicate) the amount of duty to be impressed on the instrument and the approximate location for stamping.

(viii) In every instance where a valuation or evidence of value is submitted, care should be taken to ensure that it can be identified with the relevant item of property, in particular, real estate. This omission gives rise to perhaps the greater number of requisitions which are raised and can be simply avoided.

A. D. CLYNE,
Chief Commissioner of Stamp Duties.
1 December, 1985

Last Updated: 17-Jan-2001