

## REVENUE RULING NO. SD 021

### REMISSION OF FINES FOR LATE PAYMENT OF STAMP DUTY ON INSTRUMENTS

#### PREAMBLE

- This ruling provides new guidelines for the exercise by the Chief Commissioner of the discretion to remit the whole or any part of fines incurred under the Stamp Duties Act. It replaces any previous instructions on the subject of fines on instruments and is to be applied from 31 May 1986.
- A supplementary ruling will be issued dealing with guidelines for similar fines in relation to periodic returns required under the Act.

#### RULING

##### THE LEGISLATION

- The Stamp Duties Act imposes a graduated scale of fines in instances where instruments are not duly stamped within specified times. Section 25 stipulates that the following fines will be payable by the persons liable to duty:
  - \* 20%, where not duly stamped within 2 months of first execution.
  - \* 25%, where not duly stamped within 3 months of first execution.
  - \* 100%, where not duly stamped within 4 months of first execution.
- The discretion to remit fines is to be found in section 14.

##### THE DISCRETIONARY POWER

- Persons lodging instruments for stamping after statutory fines have commenced to run will be normally required to pay the full statutory penalties applying at the time of payment of the appropriate stamp duty. **The Chief Commissioner's discretion to remit will be exercised only if exceptional circumstances are presented to explain failure to pay that duty within the time fixed by the Act.**
- **In the event that exceptional circumstances can be established to justify remission, the following principles will be applied in determining the extent of that remission:**
  - \* If the instrument is lodged for assessment (and duty paid) after 2 months but within 3 months of first execution, the statutory fine will be reduced by 50%

- \* If the instrument is lodged for assessment (and duty paid) after 3 months but within 4 months of first execution, the statutory fine will be reduced by 25%;
- \* If the instrument is lodged for assessment (and duty paid) more than 4 months after first execution, the statutory fine will be reduced by 10%.
- An underlying principle to the exercise of the discretion will be that, the greater the delay in lodgement and payment following execution of the instrument, the more exceptional the circumstances required to justify remission.
- Remission of 100% of the fine will only be contemplated where:
  - \* The Chief Commissioner is satisfied that it was impossible for the person primarily liable (or his or her legal representative) to lodge the instrument and pay duty within the prescribed time;
  - \* The instrument was lodged within the prescribed time (and a genuine attempt made to pay the duty properly payable thereon) but additional duty is subsequently assessed by the Chief Commissioner. In this event co-operation, in promptly replying to requisitions and paying additional duty assessed, will be factors in the extent of remission.
- Without limiting or defining the circumstances which might give rise to the exercise of discretion under paragraphs 6 and 8, the following factors would be relevant:
  - \* Ignorance of the law, where the person primarily liable could not be reasonably expected to have knowledge of the law and the legal representative was not in a position to provide advice on stamp duty obligations before the statutory fine arose;
  - \* Genuine and excusable mistake in interpretation of the law;
  - \* The imposition of statutory fines causing undue and unreasonable financial hardship to the person primarily liable;
  - \* circumstances outside the control of the person primarily liable. However, oversight or carelessness, on the part of the legal representative of the person primarily liable, will not be acceptable as a reason for remission of the whole or any part of a statutory fine.
- Statutory fines are imposed to gain compliance with the obligation to pay stamp duty on the various types of dutiable instruments. It is expected that there will be very few cases warranting variation from the statutory impositions and no application will be considered unless made in writing and setting forth the exceptional circumstances relied upon.

A.D. CLYNE  
CHIEF COMMISSIONER OF STAMP DUTIES  
28 April 1986

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