Revenue Ruling DA.021 is ceased effective 1 July 2004 as a result of the abolition of Mortgage Duty.

REVENUE RULINGS

STATE REVENUE OFFICE VICTORIA

SRO - ISO 9001 Quality Certified

Duty on Refinancing of Loans

Revenue Ruling DA.021

Replaces SD.086

Preamble

Section 148 of the *Duties Act 2000* (the Act) charges duty on instruments that are mortgages.

Many people are able to take advantage of favourable market conditions by refinancing their mortgages. A refinancing mortgage is defined in the Act to mean a mortgage that secures the balance outstanding immediately before the execution of that mortgage under an earlier duly stamped mortgage, whether duly stamped under the Act or a corresponding Act, to the same borrower (whether over the same property or a property previously owned by the borrower). The refinanced mortgage is discharged or will be discharged as part of the arrangement for the new mortgage.

Section 166 of the Act provides a concession on a 'refinancing mortgage' relating to refinancing of loans. The refinancing mortgage now may also receive the benefit of the concession where the refinanced mortgage was duly stamped in other jurisdictions - i.e. interstate mortgages.

The purpose of this ruling is to clarify five issues that have been raised in applying the concession under the Act.

Rulings

Issue One: Whether the borrower is required to enter into a new mortgage with the new lender even where there is an existing mortgage with that new lender.

Where a borrower has an existing mortgage with the lender that is providing the refinancing, the borrower will not be required to enter into a new mortgage merely for the purpose of gaining the concession under section 166 of the Act. The existing mortgage may be utilised and will be considered duly stamped to the total of the current stamped value plus the amount of the balance outstanding under the refinanced loan.

Issue Two: Whether the new mortgage is required to be over the same security as the prior mortgage.

Where the security is altered from one property to another, the new mortgage would still be eligible for the concession. The concession only applies to a mortgage in relation to a loan for the same purpose and will not apply where a new loan is entered into for the purchase of a replacement property.

Issue Three: Whether the prior mortgage must be discharged to be eligible for the concession.

The prior mortgage must either be discharged or is to be discharged for the concession to apply. The concession is not available where the prior mortgage is available for new advances or security for overdraft facilities.

Issue Four: Whether the concession is available where the prior mortgage was over property located outside Victoria.

Where a prior mortgage over property located outside Victoria was duly stamped under a corresponding Act, the concession is available for the refinancing mortgage to the extent of the amount secured by the prior mortgage at the time the refinancing mortgage was entered into.

Issue Five: Whether a refinancing mortgage is eligible for relief when the prior mortgage has been stamped as a collateral security under section 165 of the Act or as a substitute primary security under section 174 of the Act (or under section 137I or 137IA of the *Stamps Act 1958* respectively).

Where the prior mortgage was duly stamped as a collateral security under section 165 of the Act or as a substitute primary security under section 174 of the Act (or under section 137I or 137IA of the *Stamps Act 1958* respectively) the refinancing mortgage will be eligible for relief where the other requirements of section 166 of the Act are satisfied and where:

- In the case of a substitute primary security, the primary security is discharged;
- In the case of a collateral mortgage, the original mortgage as well as the collateral is discharged.

Please note that rulings do not have the force of law. Each decision made by the State Revenue Office is made on the merits of each individual case having regard to any relevant ruling. All rulings must be read subject to Revenue Ruling GEN.01.

Commissioner of state Revenue
February 2002