

Stamp duty on bridging finance securities

Revenue Ruling SD.061

CEASED 30 June 2001

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Preamble

Section 17 of the *Stamps Act 1958* (the Act) provides that the instruments specified in the Third Schedule shall, subject to certain exemptions, be charged with duty. Heading XXII of the Third Schedule imposes duty on mortgages, bonds, debentures and covenants.

The majority of securities over real property are in the form of mortgages and are normally registered as encumbrances on the relevant certificates of title. There are also various categories of unregistered securities including short term securities such as those used for bridging finance.

Under section 28 of the Act, a three (3) month penalty free period is provided for the correct stamping of any instrument on which duty is payable, unless the opinion of the Commissioner of State Revenue has been requested before the expiration of this period. Section 137EA of the Act imposes a penalty on mortgage documents not stamped as required by the Act.

On occasion, section 17 of the Act has been misinterpreted as a result of the penalty free time limit allowed for stamping by section 28 of the Act. In some cases, instruments such as bridging finance securities have not been stamped because the obligations of the parties have been discharged, or the instrument is otherwise no longer required, prior to the expiration of three (3) months.

The purpose of this ruling is to clarify the liability of executed instruments in such circumstances.

Ruling

Section 28 of the Act provides a period in which instruments may be stamped without penalty. This section does not remove the duty liability imposed by section 17 on instruments evidencing a security (such as a mortgage) merely because the loan has been repaid within three (3) months of its execution.

Such an instrument is liable to duty regardless of whether the obligations in that security have been discharged prior to the expiration of three (3) months from its creation.

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.

Denzil Griffiths

Commissioner of State Revenue

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