

Revenue Rulings

Stamp Duty on Refinancing of Business Loans

Revenue Ruling SD.074

Replaced by SD.086

CEASED 30 April 1997 CEASED 30 April 1997 CEASED 30 April 1997

Preamble

Stamp duty is applicable to mortgages drawn to secure advances. Many persons are currently able to take advantage of more favourable market conditions by refinancing their mortgages. Section 137MC of the *Stamps Act 1958* was introduced to remove the mortgage stamp duty on the refinancing of business loans entered into on or after 1 April 1996.

The purpose of this ruling is to clarify a number of issues that have been raised in the application of the legislation. These issues are:

1. The apparent limitation imposed by the definition in section 137MC(9)(c) on Financial Institutions which do not borrow money in Victoria.
2. 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.
3. Whether the new mortgage is required to be over the same security as the prior mortgage.
4. Whether the new mortgage is required to be given by the same party as the prior mortgage.
5. Whether the prior mortgage must be discharged.
6. Whether the benefit is available where the prior mortgage was over property outside Victoria.
7. Whether a mortgage which has been stamped as a collateral security under section 137I or as a substitute primary security under section 137IA is eligible for relief.

Rulings

Issue 1.

The apparent limitation imposed by the definition in section 137MC(9)(c) on Financial Institutions which do not borrow money in Victoria.

Ruling

The term 'borrowing of money and provision of finance' in section 137MC(9)(c) is a reference to two activities. The fact that one of the activities, being the borrowing of money, is not carried on in Victoria at the time of the refinancing does not preclude the section from applying to such a financial institution. However, if that financial institution did borrow money in Victoria it must be, in conjunction with the provision of finance, one of its principal activities.

Issue 2.

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

Ruling

Where a borrower has an existing mortgage with the financial institution providing the refinancing they will not be required to enter into a new mortgage merely for the purpose of gaining a benefit under section 137MC. The existing mortgage may be utilised and will be considered duly stamped to the total of the existing stamping plus the value of the refinanced loan.

Issue 3.

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

Ruling

The security may be altered from one property to another and the new mortgage will still be regarded as being eligible for relief.

Issue 4.

Whether the new mortgage is required to be given by the same party as the prior mortgage.

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Ruling

To obtain a benefit the new mortgage must be given by the same party as the prior mortgage or by the person accommodated by the prior mortgage. The person accommodated must be identified in the prior mortgage as the debtor/covenantor/borrower or recognised as the borrower by the financial institution, in which case evidence by the financial institution of such will need to accompany the application for exemption. The benefit will not be available where a party to the new mortgage (other than the mortgagee) was not a party to the prior mortgage or accommodation arrangement.

Issue 5.

Whether the prior mortgage must be discharged.

Ruling

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

Issue 6.

Whether the benefit is available where the prior mortgage was over property outside Victoria.

Ruling

A mortgage over property outside Victoria would not be stamped with Victorian mortgage duty.

In order for the benefit to apply the document securing the prior loan must have been duly stamped with Victorian ad valorem mortgage duty.

Issue 7.

Whether a mortgage which has been stamped as a collateral security under section 137I or as a substitute primary security under section 137IA is eligible for relief.

Ruling

A mortgage which has been duly stamped as a collateral security under section 137I or as a substitute primary security stamped under section 137IA will be eligible for relief where:

- the collateral mortgage secures the same monies in relation to the same borrower;
- Victorian ad valorem mortgage duty was paid on the original mortgage;
- in the case of substitute primary security, that mortgage is discharged and;
- in the case of the 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

1 January 1997