

Information Circular No: 101

Stamp Duties Act 1923

Transfers of property to correct an error

Issued 10 May 2017

Section 107(1) of the *Stamp Duties Act 1923* (the “Act”) provides that if the Commissioner of State Taxation (the “Commissioner”) is satisfied, upon application by a party to an instrument submitted for stamping (the “Corrected Instrument”), that the sole purpose of the Corrected Instrument is to reverse or correct a disposition of property resulting from an error in an earlier instrument (the “Earlier Instrument”), the Commissioner may grant relief from duty under the section.

Section 107(2) provides that the Commissioner may require the applicant to provide such information, verified by a statutory declaration if the Commissioner thinks it appropriate, as is considered necessary to decide the application.

Section 107(3) provides that if the Commissioner grants relief from stamp duty under this section, the duty chargeable on the Corrected Instrument is the amount (if any) by which the duty that would have been paid on the Earlier Instrument if it had been correctly made in the first instance exceeds the amount of duty actually paid on the Earlier Instrument.

Section and Part references in this Information Circular relate to the *Stamp Duties Act 1923*, unless otherwise stated.

What constitutes an error?

Section 107 applies to Instruments to reverse or correct a disposition of property resulting from an error in an Earlier Instrument. The concept of an error is broad and involves a “deviation from accuracy or correctness” (Macquarie Online Dictionary). The concept of an error may extend to any deviation from accuracy or correctness in an Earlier Instrument that involves a disposition of property.

Examples of what constitutes an error include:

- (i) an incorrect title reference;
- (ii) an incorrectly identified party to the transaction; and
- (iii) errors in the scope of the beneficiaries in a deed settling property on trust.

As the section requires that the Corrected Instrument is to correct an error in the Earlier Instrument, it does not allow for the correction of an instrument by reason of a misunderstanding of the consequences of an instrument. As such, an unforeseen duty liability or other consequence arising from a disposition of property does not constitute an error for the purposes of Section 107. This includes where an unforeseen duty liability or other consequence arises, even if incorrect professional advice was provided to a party to the transfer.

The amount of duty payable on a Corrected Instrument

In calculating the amount of duty that is chargeable on a Corrected Instrument, Section 107(3) provides for the following:

- ▶ If the amount of duty ordinarily payable on a Corrected Instrument is the same as the amount of duty paid on the Earlier Instrument, no further duty is chargeable on a Corrected Instrument.
- ▶ If a lower amount of duty was paid on the Earlier Instrument and a higher amount of duty is payable on a Corrected Instrument, duty is chargeable on a Corrected Instrument. The amount of duty chargeable on a Corrected Instrument is calculated by subtracting the lower amount of duty paid on the Earlier Instrument from the higher amount of duty payable on a Corrected Instrument.

In both of the instances above, Section 107(3) does not affect the duty charged and paid on the Earlier Instrument.

Where a higher amount of duty was paid on the Earlier Instrument than is payable on the Corrected Instrument, a taxpayer may make an application for a refund or reassessment pursuant to the *Taxation Administration Act 1996* (the “TAA”). Subject to Section 107 and Part 3 and/or Part 4 of the TAA (as applicable) being satisfied, the Commissioner will refund the difference between the higher amount of duty paid on the Earlier Instrument and the lower amount of duty payable on the Corrected Instrument.

Incorrect references to titles or parties

As already highlighted, the most common example of where a Corrected Instrument is required as a result of an error is where a contract for the sale of land contains an incorrect title reference and this error is reflected in the subsequent transfer (being the Earlier Instrument), such that the wrong title is transferred and duty is paid on the transfer. A Corrected Instrument is therefore required to correct the disposition of property.

To illustrate the above, in the following example, the titles for two units in a Community Strata Scheme (Unit 1 and Unit 2) are by way of two transfers (each transfer being an Earlier Instrument) transferred in error to the wrong parties (A and B). As such, Unit 1 is mistakenly transferred to B instead of A, and Unit 2 is mistakenly transferred to A instead of B.

This error might be corrected by either:

- ▶ transferring Unit 1 from B to A and transferring Unit 2 from A to B by way of Corrected Instruments; or

- ▶ transferring the units back to the original transferor by way of Corrected Instruments, followed by the original transferor then transferring the units to the correct transferees, all by way of further Corrected Instruments.

Another common example of where a Corrected Instrument is required as a result of an error is where a party (or parties) to the transaction is incorrectly identified in the transfer (being an Earlier Instrument).

Information that the Commissioner may require

Examples of information that the Commissioner may require in order to determine an application include contracts, receipts, professional advice, and other written communications between the parties to the property conveyance and/or their representatives.

Graeme Jackson
COMMISSIONER OF STATE TAXATION

10 May 2017

Further Information

Further information can be obtained from RevenueSA.

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