

Customer Information Bulletin

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Further information: Recalculating and Collecting Registration Fees on the Correct Value

As a result of feedback received requesting clarification regarding Customer Information Bulletin 318, the Office of the Registrar-General provides the following further information.

Two measures relating to the *Real Property Act 1886* (the Act) were introduced to Parliament on 5 September 2018 in the *Statutes Amendment and Repeal (Budget Measures) Bill 2018* (the Bill). These measures propose minor amendments to the Act and the Real Property Regulations 2009 (the Regulations) that are required to prevent potential revenue loss for the State, by enabling the Registrar-General to recalculate and secure the *ad valorem* component of registration fees.

Background

The Regulations require transacting parties (usually the purchaser) to pay registration fees upon the transfer of land. The registration fees (additional to stamp duty) comprise two components. The first component is a base fee (currently \$163) which is applicable to all transfers of land. The second component of the registration fee is known as the *ad valorem* fee. Unless an exception applies, the *ad valorem* fee increases on a sliding scale based on the consideration or the value of the land as assessed under the *Stamp Duties Act 1923*.

Currently, the Act and the Regulations only allow the Registrar-General to recalculate registration fees where the assessed value of the transferred land is increased by the Commissioner of State Taxation (the Commissioner) pursuant to a **reassessment** of stamp duty. This is problematic for two reasons.

- The first is that the Registrar-General may be prevented from recovering any unpaid fees given that the Commissioner may have made an **assessment** and not a **reassessment** as required by the legislation.
- The second is that the Act and the Regulations do not provide a mechanism for the Registrar-General to recalculate registration fees independently of the Commissioner. This is particularly relevant in situations where a stamp duty exemption applies to non-

residential, non-primary production land (section 105A of the *Stamp Duties Act 1923*) and, accordingly, the Commissioner of State Taxation is unlikely to assess the value of transferred qualifying land.

In addition, the Registrar-General's current ability to recover unpaid registration fees as a debt does not enable the unpaid fees to be secured against the title.

Changes

The proposed amendments to the Act and the Regulations will allow the Registrar-General to:

- recalculate *ad valorem* registration fees paid on transfers of land where appropriate; and
- secure a charge on the title where registration fees remain unpaid.

The amendments will enable the Registrar-General to recalculate registration fees for transferred land based on the correct value of the land in all cases where fees have initially been calculated on a basis that does not accurately reflect the value of the land. The amendment is solely to allow the Registrar-General to collect registration fees or refund them, where the land value used to make the initial calculation and payment of fees was incorrect for some reason. This could be due to human error, an objection to the value, or deliberate under-valuation.

Examples where fees can be recalculated:

- A commercial property is transferred for no consideration. No stamp duty is payable. The value of the property supplied by the parties to the transaction via RevenueSA Online was \$100,000. Registration fees of \$677.50 were paid based on this amount. The Registrar-General becomes aware that the capital value of the property at the time of transfer was in fact \$1,000,000 and registration fees of \$8,102.50 should have been paid. The Registrar will now be able to recover the amount that should have been paid based on the correct \$1,000,000 value ($\$8102.50 - \$677.50 = \$ 7,425$).
- Stamp duty is assessed by the Commissioner of State Taxation on the transfer of a property based on a value of \$1,300,000. Stamp duty and registration fees are paid on this value. The purchaser objects to the value as they believe it was lower. The objection is referred to the Crown Solicitor who advises the Treasurer that the value of the property was in fact \$1,000,000. The Treasurer determined the objection based on this advice and the Commissioner issues a re-assessment of stamp duty resulting in a refund, and informs the Registrar-General. The Registrar-General will refund the overpaid amount based on the correct \$1,000,000 value ($\$10,577.50 - \$8102.50 = \$2,475$ refund).

- A residential property with a capital value of \$600,000 is transferred for consideration of \$500,000. Stamp duty and registration fees paid through RevenueSA Online are incorrectly calculated on the consideration of \$500,000. The Commissioner of State Taxation becomes aware of this and because the stamp duty should have been calculated on the capital value of \$600,000 the Commissioner issues an assessment of stamp duty for the underpaid duty, and informs the Registrar-General. The Registrar-General will be able to recover the amount that should have been paid based on the correct \$600,000 value (\$4802.50 - \$3977.50 = \$825).

It should be noted that there is no change to the current position as it relates to transfers assessed pursuant to section 71CA, 71CB, 71 CBA or 71CC of the *Stamp Duties Act 1923* or for transfers that are otherwise exempt from stamp duty, i.e. only the base fee applies, currently \$163.00.

The only case where *ad valorem* registration fees continue to apply to stamp duty exempt land transfers is in relation to qualifying land under section 105A of the *Stamp Duties Act 1923*, i.e. non-residential, non-primary production land.

The Registrar-General's current ability to recover unpaid registration fees as a debt does not enable the unpaid fees to be secured against the title. This presents a risk to the State if the debtor does not pay the correct registration fees. It is proposed that the Act and the Regulations be amended to give the Registrar-General power to secure a charge on the title where registration fees remain unpaid.

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