

## LEGAL PRACTITIONERS LIABILITY COMMITTEE

### REFUNDS OF STAMP DUTY ON TRANSFERS OF LAND AND BUSINESS

Since 1999, the State Revenue Office (SRO) has argued that the goodwill attaching to a business being transferred at the same time as the land on which the business is conducted, must be taken into account as enhancing the value of the land for stamp duty purposes. This resulted in several notifications being made to LPLC where the client was faced with a substantially increased stamp duty liability which had not been accounted for in any pre-contractual discussions, prospectus or the like.

Following a spate of adverse judicial decisions, the last being that of the Supreme Court in *Primelife (Glendale Hostel) Pty Ltd v Commissioner of State Revenue* [2004] VSC 214, the SRO has indicated it will not appeal nor pursue the previous practice of including goodwill when assessing the value of the land for stamp duty purposes. From now on, the SRO will require a valuation to accompany certain transfers of land presented for stamping and practitioners and their clients are referred to Revenue Ruling DA.029.

Clients who have previously paid duty calculated with reference to goodwill, should apply under the Taxation Administration Act 1997 for either a:

- refund of stamp duty (see Section 19(1)); or
- reassessment of stamp duty (Section 9(1))

**BUT SHOULD NOTE THAT EITHER APPLICATION MUST BE MADE WITHIN 3 YEARS OF THE TAX BEING PAID OR THE INITIAL NOTICE OF ASSESSMENT MADE.**

Unfortunately, clients who have objected to the initial assessment and then negotiated a settlement with the SRO will not be eligible to apply for a reassessment of duty. In those circumstances, or where an application for refund or reassessment is not possible because of the 3 year limitation period expiring, an application for an ex gratia payment should be made directly to the Treasurer.

Practitioners should refer to the *Transfers of land and business, Duties Act Bulletin* which appears on the SRO website at [www.sro.vic.gov.au](http://www.sro.vic.gov.au) and also the *Revenue Ruling DA.029* for further information.

Legal Practitioners Liability Committee

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