

# Revenue Ruling

Stamp Duties Act 1923

SDA004

## SECURITISATION TRANSACTIONS

### Preamble

Securitisation is a mechanism for funding assets and involves a process whereby illiquid assets, such as loans and receivables are converted into tradeable assets – variously referred to as mortgage or asset-backed securities. The securities either represent equity (i.e. a beneficial interest in the underlying assets) or debt, taking the form of bonds or notes. These securities provide investors with the ability to participate in the returns from the bundles of loans, receivables or other assets.

Transactions under securitisation programmes relating to South Australian assets and mortgages have traditionally not been subject to stamp duty in South Australia due to the manner in which these transactions are structured.

The operative provisions of the *Personal Property Securities Act 2009* (Cwlth), which commenced on 30 January 2012 may result in changes to the way securitisation transactions are structured in order to comply with the legislation. This could have stamp duty implications in South Australia.

The Government has decided to provide *ex gratia* relief to securitisation transactions that are dutiable in South Australia, on or after 30 January 2012 in accordance with this ruling.

### Ruling

#### Relief

Relief will not be provided unless the Commissioner of State Taxation is satisfied that the securitisation transaction is part of a genuine arrangement relating to the creation, continuing existence, redemption or trading of asset or mortgage backed securities.

#### Asset Backed Securities

*Ex gratia* relief will be available in relation to instruments effecting, acknowledging, evidencing or recording any of the following securitisation transactions:

- ▶ a conveyance or conveyance on sale of an asset backed security;
- ▶ a contract or agreement for the conveyance or conveyance on sale of an asset backed security;
- ▶ a conveyance or conveyance on sale of a financial asset or a pool of financial assets for creating, issuing, marketing or securing an asset backed security;
- ▶ any contract or agreement for the conveyance or conveyance on sale of a financial asset or a pool of financial assets for creating, issuing, marketing or securing an asset backed security;
- ▶ any instrument declaring a trust that is required for creating, issuing, marketing, acquiring or securing an asset backed security; or

- ▶ any instrument effecting, acknowledging, evidencing or recording the surrender or renunciation of an interest in property under a trust to give effect to a redemption of an asset backed security.

#### Mortgage Backed Securities

*Ex gratia* relief will be available in relation to instruments effecting, acknowledging, evidencing or recording any of the following securitisation transactions:

- ▶ a conveyance or conveyance on sale of a mortgage or pool of mortgages for creating, issuing, marketing or securing a mortgage-backed security;
- ▶ any contract or agreement for the conveyance or conveyance on sale of a mortgage or pool of mortgages for creating, issuing, marketing or securing a mortgage-backed security;
- ▶ any instrument declaring a trust that is required for creating, issuing, marketing, acquiring or securing a mortgage-backed security; or
- ▶ any instrument effecting acknowledging evidencing or recording the surrender or renunciation of an interest in property under a trust to give effect to a redemption of a mortgage-backed security.

#### Definitions

##### Asset Backed Securities

An **asset backed security** is one of the following:

1. An entitlement or interest of a person in an entitlement of a financier for a financial asset or pool of financial assets.
2. An entitlement or interest of a person in amounts payable to a financier under a financial asset or pool of financial assets, whether or not on the same conditions applying under the asset and whether or not the person is entitled to a transfer of the asset or pool of assets.
3. A debenture, promissory note, bill of exchange, stock, bond, note or other security (whether or not in writing) creating, evidencing or acknowledging indebtedness issued or made by a corporation if the payments under the security are received by the corporation substantially from the receipts, whether of capital or income, from an underlying financial asset or pool of financial assets.
4. A security by which an interest in, or mortgage or charge over, an entitlement, interest or security mentioned in paragraph 1, 2 or 3 is created.

An **asset backed security** does not include a mortgage, other than a mortgage mentioned in 4 above or a transfer of a mortgage or financial asset.

A **mortgage** is a mortgage of, or charge over, land regardless of whether the land is situated in South Australia or elsewhere.



A **corporation** means a corporation as defined in Section 57A of the *Corporations Act 2001* (Cwth).

A **credit card** means a card, or other thing, for which the credit card provider agrees, whether or not on conditions, to:

- ▶ make payment to a merchant to whom the card is produced; or
- ▶ provide a cash advance to the credit card holder.

A **credit card holder** means a person:

- ▶ to whom a credit card has been issued; and
- ▶ whose address last known to the credit card provider, or at the person's direction, is in South Australia.

A **credit card provider** means a person who has issued a credit card and, in the ordinary course of business, may make a payment or provides credit under an obligation accepted by the person on the issue of the credit card.

A **financier** is a lender, bailor, service or product provider entitled to receive payments under a financial asset.

A **financial asset** is any of the following:

- ▶ a loan, including any security for the loan;
- ▶ a credit card account;
- ▶ a hire purchase agreement;
- ▶ a chattel lease, whether finance or operating;
- ▶ a vehicle dealer floor plan agreement;
- ▶ trade receivables;
- ▶ a contract under which insurance or any other financial service or product is provided; or
- ▶ any rights of a financier that are usually conferred in relation to a financial asset mentioned above or that are incidental to such an asset.

A **credit card account** means an account kept by a credit card provider for a credit card holder recording the balance of account between the provider and the holder for credit card transactions for the holder's credit card.

A **credit card transaction** means a debit or adjustment to a credit card holder's credit card account that is for a payment by a credit card provider to a merchant to whom the holder's credit card is produced, or a cash advance made by a credit card provider to or at the direction of, the holder; and involves the giving of credit by the provider or an adjustment of credit previously given by the provider.

A **pool of financial assets** is:

- ▶ a pool or collection of assets that consists solely of financial assets; or
- ▶ a pool or collection of assets that consists substantially of financial assets or amounts paid under financial assets, or a combination of them, if the other assets in the pool or collection are cash or an authorised investment.

An **authorised investment**, for a pool of financial assets, is any of the following:

- ▶ a bond, debenture, stock, note, Treasury bill or other security of the Commonwealth or a state;
- ▶ a debenture or stock of a public statutory body established under an Act of the Commonwealth or a state;
- ▶ a deposit with, or a certificate of deposit or another security issued by, a financial institution;

▶ a bill of exchange, promissory note or other negotiable instrument accepted, drawn or endorsed by a financial institution; or

▶ an asset-backed security or mortgage-backed security.

### Mortgage Backed Securities

A **mortgage-backed security** is one of the following:

1. An entitlement or interest of a person in an entitlement of a mortgagee or another entitlement for a mortgage or pool of mortgages.
2. An entitlement or interest of a person in amounts payable by a mortgagor under a mortgage or pool of mortgages, whether or not on the same conditions applying under the mortgage and whether or not the person is entitled to a transfer of the mortgage or pool of mortgages.
3. A debenture, promissory note, bill of exchange, stock, bond, note or other security (whether or not in writing) creating, evidencing or acknowledging indebtedness issued or made by a corporation if the payments under the security are received by the corporation substantially from the receipts, whether of capital or income, from an underlying mortgage or pool of mortgages.
4. A security by which an interest in, or mortgage or charge over an entitlement, interest or security mentioned in paragraphs 1, 2 or 3 is created.

A **mortgage backed security** does not include a mortgage (other than a mortgage mentioned in 4 above) or a transfer of a mortgage.

A **mortgage** is a mortgage of, or charge over, land regardless of whether the land is situated in South Australia or elsewhere.

A **corporation** means a corporation as defined in Section 57A of the *Corporations Act 2001* (Cwth).

A **pool of mortgages** is:

- ▶ a pool or collection of assets that consists solely of mortgages; or
- ▶ a pool or collection of assets that consists substantially of mortgages or amounts paid under mortgages, or a combination of them, if the other assets in the pool or collection are cash or an authorised investment.

An **authorised investment**, for a pool of mortgages, is any of the following:

- ▶ a bond, debenture, stock, note, Treasury bill or other security of the Commonwealth or a state;
- ▶ a debenture or stock of a public statutory body established under an Act of the Commonwealth or a state;
- ▶ a deposit with, or a certificate of deposit or another security issued by, a financial institution;
- ▶ a bill of exchange, promissory note or other negotiable instrument accepted, drawn or endorsed by a financial institution; or
- ▶ an asset-backed security or mortgage-backed security.

### **Applying for Relief**

All applications for relief should be made in writing to the Commissioner of State Taxation together with an Application for Opinion Form.

## Further Information

Further information can be obtained from RevenueSA.

<b>Location</b>	RevenueSA State Administration Centre 200 Victoria Square East ADELAIDE SA 5000
<b>Postal</b>	Commissioner of State Taxation RevenueSA GPO Box 1353 ADELAIDE SA 5001
<b>Telephone</b>	(08) 8226 3750
<b>Facsimile</b>	(08) 8226 3737
<b>Email</b>	<a href="mailto:stamps@sa.gov.au">stamps@sa.gov.au</a>
<b>Website</b>	<a href="http://www.revenuesa.sa.gov.au">www.revenuesa.sa.gov.au</a>

## History

This Revenue Ruling is effective from 31 January 2012.

This is the first Revenue Ruling issued on this topic.

Mike Walker  
COMMISSIONER OF STATE TAXATION

31 January 2012