

SOUTH AUSTRALIA



STATE TAXATION OFFICE

Stamp Duties

Circular No. 64

STAMP DUTIES (PENALTIES, REASSESSMENTS & SECURITIES) AMENDMENT ACT, 1992

Your attention is drawn to the above Act and its provisions. This Act which will be assented to on 3/12/1992 contains a number of very important provisions which effect significant change.

This circular is issued subject to the usual caveat that the information set out below is of necessity brief and the precise nature and scope of the changes must be taken from the reading of the provisions as set out in full in the Amending Act in conjunction with the Stamp Duties Act, 1923.

DATE OF OPERATION

The Act will operate from the date that it is proclaimed into force. It is likely that this Act will be proclaimed into force on 14/12/1992.

BROAD AREAS OF CHANGE

The Amending Act contains the following:-

1. abolition of the \$10 agreement duty;
2. increase in the conveyance duty for values over \$1 million;
3. revised security/mortgage provisions;
4. inclusion of a reassessment power;
5. improved penalty and recovery provisions;
6. closure of a rental duty avoidance practice;
7. consequential amendments.

1. ABOLITION OF THE \$10 AGREEMENT DUTY

The Amending Act abolishes the \$10 agreement fixed duty component on agreements made on or after 1/9/1992.

This means that agreements which were only liable to a fixed 20 cent duty up until 31/8/1992 will be exempt from duty as from 1/9/1992.

Upon evidence being supplied that the \$10 agreement duty had been paid the Stamp Duties Office will refund that \$10 in full upon application.

NOTE: Agreements that were previously and are presently liable to ad valorem conveyance duty (such as an agreement for the sale of a business) are still liable for ad valorem conveyance duty.

2. INCREASE IN THE CONVEYANCE DUTY

The revenue loss from the repeal of duty on agreements made on or after 1 September, 1992 is offset by an increase in conveyance duty.

The top rate of conveyance duty for property transfers (excluding sales of marketable securities) will be increased from 4% to 4.5% in respect of values over \$1 million.

By virtue of Section 45(1) of the Amending Act this change will apply to any conveyance executed on or after the proclamation date.

3. REVISED SECURITY/MORTGAGE PROVISIONS

Duty will now also be payable on:-

- bill facilities supported by mortgages;
- mortgage backed guarantee schemes;
- put options which are supported by mortgages;
- the depositing of documents of title.

These provisions will not have any retrospective application. Bank bills which are "rolled over" pursuant to existing bill facility agreements will not be subject to any additional stamp duty until a new bill facility agreement is entered into or a fresh liability is incurred.

Guarantees of Performance or Indemnities such as those common in building contracts will not be liable to duty.

The Amending Act also contains improved compliance requirements for the certification by mortgagees.

4. INCLUSION OF A REASSESSMENT POWER

Where the Commissioner is of the opinion that:-

- a mistake of fact has occurred in an assessment of duty;
- incorrect, misleading or incomplete information has been provided;
or
- a reassessment is necessary to recover duty;

then a reassessment can be made. This reassessment can be made within five years of the date of the original assessment unless the Commissioner has reason to suspect fraud or evasion.

Taxpayers should note that if duty is decreased as a result of a reassessment then the overpaid duty together with interest will be refunded.

5. IMPROVED PENALTY AND RECOVERY PROVISIONS

The penalty provisions have been amended to ensure that if taxpayers seek to circumvent the provisions of the Stamp Duties Act then they will not be in a more favourable position than those taxpayers who meet their obligations.

6. CLOSURE OF A RENTAL DUTY AVOIDANCE PRACTICE

The reasoning and outcome of a very recent Supreme Court decision left the rental revenue base exposed.

The rental provisions have been amended so that the tax base is preserved and the status quo maintained.

A power to exempt specified classes by regulation has been inserted to deal with any unintended consequence of the inclusion, within the definition of rental business, of the business of guaranteeing the obligations of a bailee under a contractual bailment or a bailment plan.

Discussions are continuing between the State Taxation Office and relevant industry groups in relation to "floor plan financing" arrangements in the motor dealer area.

7. CONSEQUENTIAL AMENDMENTS

The Amending Act deletes references to the Companies (South Australian) Code and substitutes with references to the Corporations Law.