

SOUTH AUSTRALIA



STATE TAXATION OFFICE

Stamp Duties

Circular No. 162

STAMP DUTIES (MISCELLANEOUS NO. 2) AMENDMENT ACT 1997

The *Stamp Duties (Miscellaneous No 2) Amendment Act 1997* which comes into operation on 1 January 1998, amends the *Stamp Duties Act 1923* in respect of three issues. The amendments:

- abolish stamp duty on interstate cheques
- re-introduce the stamp duty exemption on mortgages for rural refinancing; and
- introduce a new exemption for rural residents who refinance their loans as a consequence of financial institution branch closures.

The information set out below is a summary only. The full legal intent must be taken from reading the amending legislation in conjunction with the *Stamp Duties Act 1923*.

EXEMPTION FROM STAMP DUTY ON INTERSTATE CHEQUES

Currently, cheques which are issued by a bank or drawn by an account holder in respect of a bank account held outside South Australia and negotiated at a South Australian branch of a bank, are liable to stamp duty. The amount charged is 10 cents per cheque and is collected by the banks who affix an adhesive duty stamp to the cheque form.

From 1 January 1998, these cheque forms have been exempted from stamp duty. Banks will be able to identify these cheques by reference to the issuing interstate bank branch, and the cheque will not be required to be stamped in any way.

There will be no change to the current stamp duty charge of 10 cents on cheque forms issued in respect of accounts domiciled in South Australia. Banks will continue to collect this duty at the time they issue cheque books and evidence of the payment of South Australian stamp duty will be denoted by the "STAMP DUTY PAID" panel appearing on individual cheque forms as currently happens.

Where a South Australian cheque account has been exempted from paying stamp duty, the words "STAMP DUTY EXEMPT" must be denoted on cheque forms printed after 1 January 1998.

Existing cheques for exempt accounts which have no exemption denoted, may continue to be used until stocks are exhausted.

The exemptions which apply to cheque accounts extend to cheques provided by Credit Unions to their customers. Consequently, the above requirement also applies to those cheques.

The amendments also remove the current regime of licensing and replaces it with a return system. In place of the requirement to adhere to the detailed conditions of a licence, banks will now submit a monthly return of the cheque forms issued by them in respect of accounts held in South Australia and pay the appropriate duty.

REINSTATEMENT OF THE MORTGAGE DUTY EXEMPTION FOR REFINANCING OF RURAL LOANS

On 17 September 1997 the Premier announced that the Government would reinstate the stamp duty exemption for primary producers to assist them in transferring loans between financial institutions to obtain the most competitive deal.

Since the deregulation of the financial community there has been a significant trend towards more competitive interest rates offered by financial institutions. Primary producers who wish to take advantage of these favourable interest rate differentials by refinancing their loans, have, in many cases, found it prohibitive to do so due to the stamp duty implications associated with such a move.

A stamp duty exemption via section 81D of the *Stamp Duties Act 1923* for rural debt refinancing previously operated between 30 May 1994 and 31 May 1996. This amendment has the effect of reinstating section 81D for mortgages executed after the commencement date of the *Stamp Duties (Miscellaneous No 2) Amendment Act 1997*.

A minor amendment has also been made to subsection (1)(a) to make it clear that the previous mortgage must be *fully* discharged for the section to apply.

Criteria to be met

To be eligible for relief from duty certain criteria need to be met. These are:

1. The new mortgage must provide for the refinancing of a loan secured by a previous mortgage that is being fully discharged;
2. Both the previous and the new mortgage apply to the same, or substantially, the same land;
3. The land is used wholly or mainly for the business of primary production and is not less than 0.8 hectares in area;
4. The sole or principal business of the mortgagor is the business of primary production; and
5. The mortgagor under both mortgages is the same person(s) and is not a public company or a subsidiary of a public company.

MORTGAGE DUTY EXEMPTION FOR REFINANCING DUE TO CLOSURE OF RURAL FINANCIAL INSTITUTION BRANCHES

The Premier also announced on 17 September 1997 that the Government would provide a mortgage stamp duty exemption for those persons in rural South Australia who are forced by local financial institution branch closures to move their accounts and loans to another financial institution still operating in the town.

In the interests of equity, this initiative has been expanded beyond that initially announced to include transfers to a financial institution in the nearest town where the closing financial institution was the last in existence in the town affected.

Criteria to be met

1. The new mortgage replaces the previous mortgage of the closing financial institution which is being fully discharged;
2. Both the previous mortgage and the new mortgage apply to the same or substantially the same land;
3. The rural branch office of the financial institution, being the mortgagee, has closed its branch in the town;
4. The mortgagee under the new mortgage is a financial institution with a branch office in the same town or the next closest town; and
5. The mortgagor(s) is/are the same under both mortgages.

Application procedure

To receive the benefit of either of the above concessions a certification by the mortgagor and the new mortgagee outlining the facts of the case will be required.

Application forms titled:-

- “Application for the benefit of Section 81D of the Stamp Duties Act, Refinancing of Rural Loans”; and
- “Application for the benefit of Section 81E, Refinancing of Loans due to Branch Closure in Rural Towns”

which cover the information required, are available from the State Taxation Office.

A processing time of two business days should be allowed.

Stamping by return - not permitted

As the legislation requires that the Commissioner be satisfied that certain criteria are met, this responsibility cannot be delegated to a financial institution or authorised person for stamping by return. Thus all applications for stamping pursuant to these provisions must be lodged with the Commissioner of State Taxation for assessment of duty payable.

FURTHER ENQUIRIES?

Further enquiries should be directed to:-

Location

State Taxation Office
Taxpayer Services
Ground Floor
State Administration Centre
200 Victoria Square East
ADELAIDE SA 5000

Postal

Commissioner of State Taxation
State Taxation Office
GPO Box 1353
ADELAIDE SA 5001

Telephone

Stamp Duty on Cheques

Revenue Processing Branch on (08) 8204 9888

Refinancing of Mortgages

Ian Grimshaw on (08) 8226 3728

Knut Fuerstenau on (08) 8226 3732

Facsimile

(08) 8226 3737

Website

<http://www.treasury.sa.gov.au/tax.html>