

SOUTH AUSTRALIA



RevenueSA

General

Circular No. 236

**STATUTES AMENDMENT (STAMP DUTIES
AND OTHER MEASURES) ACT 2002**

BACKGROUND

The *Statutes Amendment (Stamp Duties and Other Measures) Act 2002* (“the Amending Act”) was assented to on 28 November 2002 and contains a range of measures to implement grants, clarify existing exemptions or concessions, confirm the operation of existing provisions and make other minor administrative changes to update certain taxation laws.

The Act amends the *First Home Owner Grant Act 2000*, *Pay-roll Tax Act 1971*, *Petroleum Products Regulation Act 1995*, *Stamp Duties Act 1923*, *Financial Sector (Transfers of Business) Act 1999*, and *Taxation Administration Act 1996*.

The information set out below is necessarily brief and the precise nature and scope of the new legislation should be taken from a reading of the provisions, as set out in full in the Amending Act and related legislation.

FIRST HOME OWNER GRANT ACT 2000

The Prime Minister announced on 9 October 2001, as part of the Federal Election campaign that the additional \$7,000 FHOG (\$14,000 in total per new home), initially intended to be phased out by 1 January 2002 would be extended until 30 June 2002, but that, from 1 January 2002, the amount of the additional grant would be reduced to \$3,000 (\$10,000 in total for new homes).

A relaxation of the eligibility criteria in two areas was also announced.

The building commencement and completion requirements applying to the additional FHOG were varied so that :

- persons must commence construction of their new home within twenty six weeks of entering into a contract (previously sixteen weeks); and
- the building contract must specify a completion date within eighteen months of the date of commencement (previously twelve months).

It was subsequently agreed between the Commonwealth and the States and Territories that these two changes would apply retrospectively from 9 October 2001.

The amendments operate retrospectively to provide legislative backing to the changes which have been implemented by RevenueSA on an administrative basis since 9 October 2001.

PAY-ROLL TAX ACT 1971

Superannuation Provisions

The *Pay-roll Tax Act 1971* (“the PRT Act”) is amended to maintain the *status quo* by ensuring that all superannuation benefits are considered “wages”, and therefore liable to pay-roll tax, irrespective of how those amounts are attributed to employees/members.

The need for these amendments arise from the South Australian Supreme Court decision in *Hills Industries Ltd & Anor v Commissioner of State Taxation & Anor* (Judgment No. [2002] SASC 67), the effect of which was that the particular treatment of superannuation contributions did not constitute wages liable to pay-roll tax.

The amendments apply from the date that the superannuation provisions were first introduced into the PRT Act in 1994, effectively confirming payments already collected.

Employment Agent Provisions

The employment agent provisions are anti-avoidance measures aimed at schemes designed to avoid liability for pay-roll tax through severing the employer-employee relationship and clarifying liability to pay-roll tax where a person’s services are obtained through an employment agent.

Doubts have recently been raised concerning the interpretation of these provisions where an employment agent procures the services of a natural person for their client, through engaging a sub-contracting entity, such as a company, rather than a natural person.

Since their commencement in 1992, RevenueSA has interpreted and applied the employment agent provisions so as to include any situation where the services of a natural person (the contract worker) are provided by a sub-contracting partnership, trust or company engaged by the employment agent.

The amendments confirm the widely held and accepted view of their application since 1992.

PETROLEUM PRODUCTS REGULATION ACT 1995

The Amending Act operates to repeal the confidentiality provisions previously contained in the *Petroleum Products Regulation Act* and replaces them with confidentiality provisions consistent with those contained in the *Taxation Administration Act 1996*.

STAMP DUTIES ACT 1923

First Home Concession

The Amending Act amends the first home concession provisions in two ways:-

Firstly, where a person purchases vacant land, the *Stamp Duties Act 1923* (“the SD Act”) required that construction of a home on the land be completed within twelve months of the date of the land transfer to be eligible for the Stamp Duty First Home Concession (“FHC”).

The Amending Act extends the twelve month time period to twenty-four months to provide more flexibility for first home builders, who are experiencing delays in building due to factors like the buoyancy of the property market.

The second amendment ensures that the concession is available where a person purchases rural land and the house and curtilage (ie the immediate land surrounding the house on the property) is valued at \$130,000 or less.

Where the Commissioner is satisfied on application that:

- the conveyance relates to a genuine farm; and
- would be a conveyance to which section 71C applies if it related only to the relevant component of the genuine farm;

then section 71C applies to a notional conveyance of the relevant component of the genuine farm (house and curtilage).

A genuine farm means land in respect of which the Commissioner is satisfied that it is –

- to be used for primary production by the person seeking the benefit of this section; and
- by itself or in conjunction with other land owned by the person capable of supporting economically viable primary production operations.

Refund Applications for Registrable Instruments

Pursuant to the SD Act, where stamp duty had been paid in relation to an instrument that can be registered under the *Real Property Act 1886*, and the transaction in relation to which the instrument was executed had been frustrated or avoided or had miscarried through failure of a party to comply with a condition, a refund was available to the parties to the instrument, if application was made no later than one year after the execution of the instrument.

The Amending Act extends the time period in which an application for a refund of duty can be made under the relevant provision from one year to five years.

Family Farms

The SD Act provides an exemption, introduced in 1994, for the transfer of farms between certain family members which also includes an exemption for goods used for the business of primary production.

In 1999, the SD Act was amended, amongst other things, to extend the exemption to include stock, implements and other chattels held or used with the land when transferred as part of the family farm within the family group.

It has come to the attention of the Government that taxpayers may not be eligible for this exemption, purely because of the manner in which they structure the transaction.

The SD Act has therefore been amended, to clarify the existing exemption by ensuring that regardless of the form which a transaction takes, the transfer will not attract stamp duty.

This has been achieved by removing the reference to “*an instrument of which the sole effect is to transfer*” and inserting a new section which allows the Commissioner to apply the following principles when assessing duty payable on a relevant instrument:

- if the instrument gives effect solely to a transaction or part of a transaction that is exempt from duty under section 71CC, then no duty is payable on the instrument;
- if the instrument gives effect to a transaction, or part of a transaction, of which some of the elements are exempt from duty under this section and others not, the instrument will be assessed for duty as if it gave effect only to those elements of the transaction that are not exempt from duty under section 71CC.

Transactions to correct an error

The SD Act has been amended to give legislative backing to RevenueSA’s long standing practice of only imposing nominal duty (\$10) where a conveyance has been lodged solely to correct an error which would otherwise give rise to a stamp duty liability.

An example of such an error would be the incorrect spelling of a party’s name. The exemption would not apply to instances of a change of mind by the parties, or incorrect advice being provided by a third party which results in further documentation being necessary and which would properly be charged with further duty.

Statutory Mergers of Financial Institutions

The Amending Act amends the SD Act to ensure that transactions that are effected under the Commonwealth and State *Financial Sector (Transfer of Business)* legislation are chargeable with stamp duty.

Complementary amendments have also been made to the South Australian *Financial Sector (Transfer of Business) Act 1999*, which will enable the Treasurer to determine an agreed lump sum to be paid in *lieu* of any State taxes or charges that would otherwise be payable on such transactions.

Each transaction will be considered by the Treasurer on a case-by-case basis.

Credit Unions are exempt from the scope of the taxing provisions, in recognition of the constraints of their mutuality principles.

Prescribed Forms

Reference in the SD Act to “prescribed forms” has been substituted with “a form approved by the Commissioner”.

The change allows greater flexibility where changed circumstances require a different form.

TAXATION ADMINISTRATION ACT 1996

The *Taxation Administration Act 1996* has been amended to limit the discretion of the Minister to extend the time in which an objection must be lodged, to no later than twelve months after the date of service of an assessment on the taxpayer or notification of a decision by the Commissioner of State Taxation.

The amendment also provides that the Supreme Court cannot allow an appeal to be lodged later than twelve months after the date of service on the person of the Minister’s determination of the person’s objection.

FURTHER INFORMATION

Location

RevenueSA
State Administration Centre
200 Victoria Square East
ADELAIDE SA 5000

Postal

Commissioner of State Taxation
RevenueSA
GPO Box 1353
ADELAIDE SA 5001

Telephone

(08) 8226 3750

Facsimile

(08) 8226 3737

Website

<http://www.revenuesa.sa.gov.au>

E-mail

Revenuesa@saugov.sa.gov.au