SOUTH AUSTRALIA

STATE TAXATION OFFICE

Stamp Duties **Circular No. 74**

MORTGAGES
STAMP DUTIES (PENALTIES, REASSESSMENTS AND SECURITIES) AMENDMENT ACT, NO. 88 OF 1992
TRANSITIONAL PROVISIONS

BACKGROUND

Following the recent amendments to the mortgage duty provisions under the Stamp Duties Act, 1923 a number of requests have been received seeking clarification on the tax treatment on mortgages that were executed prior to 14 December, 1992 that secure liabilities arising from an overdraft facility agreement or a bill facility agreement (or a combination of both) which were also executed prior to 14 December, 1992.

Pursuant to these agreements moneys may not have been fully (or only partially) drawn prior to 14 December, 1992. In addition in some instances a mortgagor may have fully utilised the overdraft facility, but prior to 14 December 1992, may have repaid in full or part the amounts drawn on that overdraft with the intention of using this facility again after 14 December, 1992. These transactions occurred in the normal course of trade and commerce.

GENERAL PRINCIPLES

Overdraft Facilities

It is the opinion of this Office that when moneys are drawn pursuant to an overdraft facilities agreement entered into before 14 December, 1992 and these moneys are secured by a mortgage executed prior to that date, the mortgage will not be considered a new and separate agreement pursuant to Section 45 of the Stamp Duties (Penalties, Reassessment and Securities) Amendment Act, 1992 and therefore will not attract further duty. However if at any time the overdrawn amount exceeds the limit stated in the original agreement the mortgage will be considered a new and separate instrument and credit for duty paid on the initial agreement will be given against the duty due.

Example

Date of Overdraft facility agreement	1 January, 1990
Maximum facility afforded	$100,000
Date of execution of mortgage	1 January, 1990
Value of underlying property	$200,000
Stamp Duty paid	$ 340
Facility availed of by 14 Dec 1992	$ 75,000

Situation (i) A cheque was paid on 2 January, 1993 increasing the debt to $100,000.

No further mortgage stamp duty is due.

Situation (ii) A further cheque for $20,000 was paid on 15 January, 1993 raising the overdraft debt to $120,000.

The mortgage will be considered as a new and separate instrument. The duty will be calculated as follows:

Duty on $120,000	$410
Less Duty Paid initially	$340
Duty Due	$ 70

Bill Facilities

The treatment of a bill facilities agreement entered into prior to 14 December, 1992 where the underlying mortgage is executed before that date is dependent on whether the agreement has a termination date.

If bills are rolled over after 14 December, 1992 pursuant to such an agreement which has a termination date, no further duty is payable on the rollover. However if the value of the money for which the bill is drawn [hereafter "value of the bill"] exceeds the maximum amount stated in the original agreement pursuant to another agreement, the mortgage will attract duty as a new and separate instrument.

If there are no termination clauses in the agreement, on the first review of that agreement after 14 December, 1992 the mortgage will be taken as a new and separate instrument and additional mortgage duty is due.

Credit for duty paid at the time of execution of the mortgage will be given in determining the additional liability.

Example

Date of Bill Facility Agreement	1 January, 1990
Maximum Facility Afforded	$500,000
Date of Execution of Mortgage	1 January, 1990
Stamp Duty Paid	Nil

Situation (i) The agreement had a termination date of 30 June, 1993. On that day the agreement was renegotiated and a further bill of value of $500,000 was drawn.

The mortgage will be taken as a new and separate instrument and additional duty is payable as follows:-

Duty on $500,000	$1,740
Less duty paid earlier	$nil
Duty due	$1,740

Situation (ii) The agreement has no termination date. The first annual review takes place on 30 June, 1993 and the debtor will be given the same privilege.

The mortgage will be stamped as a new and separate instrument.

Duty on $500,000	$1,740
Less duty paid earlier	$nil
Duty due	$1,740

<u>A MORTGAGE EXECUTED BEFORE 14 DECEMBER, 1992 THAT SECURES BOTH BILL FACILITIES AND OVERDRAFT FACILITIES AGREEMENTS</u>

In the case of an agreement that has not specified a termination date the mortgage will be taken to be a new and separate instrument on the first day of review of the agreement after 14 December, 1992.

Where the agreement has a termination date the principles stated under the paragraphs relating to overdraft and bill facilities will apply. However, the bills drawn, accepted or discounted will be quarantined from cheques paid under overdraft facility and the total value of bills and the total amount of cheques paid for overdraft will be compared with the respective limits stated in the agreement. If the limit is exceeded, either by bills or overdraft or both, the mortgage will be taken to be a new and separate instrument.

Example

Date of Bill / Overdraft facility agreement	1 January, 1990
Maximum facility afforded - Bill	$ 500,000
Maximum facility afforded - Overdraft	$ 100,000
Date of execution of mortgage	1 January, 1990
Value of underlying property	$ 800,000
Stamp Duty paid	$ 340

Situation (i) The customer avails himself of the maximum facility afforded; that is, the bills rolled over and cheques paid under the overdraft do not exceed the $500,000 and $100,000 limits respectively.

There will be no further mortgage duty liability until termination date of the agreement.

Situation (ii) The customer exceeds the overdraft facility; that is, while the value of bills drawn are $500,000, the cheques paid under overdraft facility increases the debt to $120,000.

The mortgage will be taken to be a new and separate instrument and additional mortgage duty is due.

Duty on $120,000	$ 410
Duty paid earlier	$ 340
Additional duty due	$ 70

Situation (iii) In this instance the customer does not make use of the maximum bill facility afforded but increases the overdraft beyond the limit afforded; that is, while the value of the bills drawn is $400,000, the cheques paid under overdraft facility increases the debt to $120,000.

The mortgage is a new and separate instrument and further mortgage duty is payable.

Duty on $120,000	$ 410
Duty paid earlier	$ 340
Additional duty due	$ 70

Situation (iv) The customer makes use of the maximum facilities afforded and requests a further bill facility under the same mortgage. Before the request the value of bill drawn was $500,000 and the debt on overdraft was $100,000. The bank accommodates a second bill under a different agreement for $200,000.

Duty payable on the mortgage as a new and separate agreement is as follows:

Duty on $200,000	$ 690
Additional duty due	$ 690

Situation (v) In this instance the value of bills drawn is $500,000, but the overdraft facility afforded before 14 December, 1992 has been paid after that date. However, on the request of the customer the bank accommodates a second bill for $200,000 under a separate agreement.

The additional mortgage duty payable is :

Duty on $200,000	$ 690
Additional duty due	$ 690

Situation (vi) The value of the bills drawn is $500,000 and the overdraft debt remains at $100,000. The bank now debits the overdraft account with $10,000 being bank commission and discounting fees.

The duty payable is :

Duty on $110,000	$ 375
Duty paid earlier	$ 340
Additional duty due	$ 35

Situation (vii) The customer has availed himself of the maximum facilities afforded before 14 December, 1992. However the value of the bills drawn was only $400,000 on 13 December, 1992. In January, 1993 the customer draws a bill for $100,000 bringing up the level of bill liability to $500,000.

Since the liability account of bills drawn is contained within the $500,000 there will not be any mortgage duty liability.

1 June, 1993

<u>COMMISSIONER OF STAMPS</u>