

SOUTH AUSTRALIA



RevenueSA

Stamp Duties

Circular No. 255

STATE BUDGET 2005-2006

BACKGROUND

In the State Budget handed down today, 26 May 2005, the Government announced the following stamp duty measures:

- from 1 July 2005, abolition of stamp duty on owner-occupied home mortgages, all mortgage refinancing and discharges of mortgages;
- from 1 July 2006, abolition of “minor” stamp duties;
- from 1 July 2007, a one third reduction (from current levels) in stamp duty rates for rental business and remaining mortgage duty;
- from 1 July 2008, an additional one third reduction (from current levels) in stamp duty rates for rental business and remaining mortgage duty;
- from 1 July 2009, full abolition of stamp duty on rental business and remaining mortgage duty;
- from 1 July 2009, halving of stamp duty rates on transfers of unlisted marketable securities with full abolition from 1 July 2010; and
- from 1 July 2009, halving of stamp duty rates on non-realty property transfers with full abolition from 1 July 2010.

The legislative amendments required to implement the above measures (other than the changes to stamp duty on unlisted marketable securities and non-realty property transfers) are contained in the *Statutes Amendment (Budget 2005) Bill 2005* (“the Bill”) which was introduced into Parliament today.

MORTGAGES

Owner Occupied Mortgages

From 1 July 2005, all mortgages taken out for the purposes of securing a loan that has been or is to be applied for **home acquisition or improvement** will be exempt from stamp duty.

A loan will be considered to be applied for **home acquisition or improvement** purposes to the extent that it is used for one or more of the following purposes:

- purchasing land on which residential premises have been, or are to be built, that the mortgagor (or, if there are two or more mortgagors, at least one of them) intends to occupy as his or her sole or principal place of residence; or
- building, or making additions or improvements to, residential premises that the mortgagor (or, if there are two or more mortgagors, at least one of them) occupies or intends to occupy as his or her sole or principal place of residence; or
- repaying a loan previously taken out for one or more of the above purposes.

Mixed Purpose Loan

A mortgage securing a loan that has been, or is to be, applied in part for home acquisition or improvement and in part for other purposes, is liable to duty as if it secured only so much of the loan as is to be applied for the other purposes.

Mortgage Refinancing

From 1 July 2005, a mortgage to secure a loan that has been, or is to be, applied wholly for **refinancing purposes** will be exempt from stamp duty.

A loan will be considered to be applied for **refinancing purposes** to the extent that the loan has been, or is to be, applied to paying out the outstanding balance of a debt secured by an earlier mortgage on which duty has been paid (or which is exempt from duty) if the following conditions are satisfied:

- the borrower under the loan transaction must be the person liable for the debt secured by the earlier mortgage;
- at least some of the mortgaged property must be common to both mortgages; and
- the earlier mortgage must be fully discharged before, or as soon as practicable after, the first payment of loan money to, or for the benefit of, the borrower under the loan transaction secured by the later mortgage.

Mixed Purpose Loan

A mortgage securing a loan that has been, or is to be, applied in part for refinancing purposes and in part for other purposes is liable to duty as if it secured only so much of the loan as is to be applied for the other purposes.

In all cases the refinancing exemption will only apply to the outstanding balance of the debt secured by the earlier mortgage and not to the maximum secured liability under the earlier mortgage.

Mortgages Chargeable with Further Duty

Section 79(2)(b) of the *Stamp Duties Act 1923* (“the Act”) prescribes the method for determining stamp duty where the amount of the liability secured by the mortgage exceeds the amount for which the mortgage has been previously stamped.

The Act charges further duty based on a formula which does not take into account the possibility that the rate of duty (if any) applying to the relevant mortgage may change from the time the first advance was made to the time the stamp duty on the further advance has to be calculated.

It was therefore necessary for two further exceptions in addition to the current Exceptions 1 and 2 to be included in the Act, to account for the introduction of the exemptions for owner-occupied home mortgages and refinancing mortgages and for the progressive lowering of the rates of duty.

The further exceptions operate so that where a further advance is made, duty is only payable on the amount of the further advance, based on the rates of mortgage duty applying at the time that the further advance is made.

Proposed Exception 3

Exception 3 will apply in cases where a mortgage that was stamped with *ad valorem* duty becomes chargeable with further duty after the rates of mortgage duty have decreased from 1 July 2007.

Proposed Exception 4

Exception 4 will apply in two separate cases.

The first case is where a mortgage that was initially exempt from duty becomes chargeable with duty when a further advance is made for a non-exempt purpose.

Example

A person borrows \$150,000 to buy their first home in May 2005. The mortgage is fully exempt under section 83 of the Act. In August 2007, the person borrows a further \$30,000 for a motor vehicle which is chargeable with duty. Exception 4, will ensure that duty will be chargeable on the further advance as if it was a new loan. Duty of \$118 will apply.

The second case is where a further advance is made under a mortgage that was initially chargeable with duty, which due to the operation of the provisions of the Bill has become a mortgage that would have been exempt from duty if it had been submitted for stamping immediately before the further advance (eg, a refinancing mortgage entered into prior to 1 July 2005).

Example

A refinancing mortgage of \$200,000 is entered into in May 2005, and is chargeable with *ad valorem* duty of \$883. A further advance of \$30,000 for a motor vehicle is made under this mortgage on 1 August 2005. If the initial mortgage had been presented for stamp duty immediately before the further advance it would have been exempt from duty as refinancing mortgages are exempt from duty from 1 July 2005.

When the further advance is made under this mortgage, stamp duty will be calculated as if it were a new loan for \$30,000 and no regard will be made to the duty already paid on the initial mortgage, that is, duty of \$118 would be payable.

Discharges

From 1 July 2005, stamp duty on all partial and full discharges of mortgages will be exempt from stamp duty.

Reducing Mortgage Rates

From 1 July 2007 the rate of duty on dutiable mortgage transactions will be reduced by one third to 30 cents per \$100.

The rate of duty will further reduce to 15 cents per \$100 from 1 July 2008, with stamp duty on mortgages being abolished from 1 July 2009.

RENTAL DUTY

Rental duty will also be phased out between 1 July 2007 and 1 July 2009.

Commercial hire purchase and other equipment finance arrangements for terms of not less than nine months currently attract duty at a rate of 0.75% of rental income. The duty rate will reduce to 0.5% from 1 July 2007, 0.25% from 1 July 2008 and will be abolished from 1 July 2009.

All other rental business attracts duty at a rate of 1.8% on rental income in excess of \$6,000 per month. The duty rate will reduce to 1.2% from 1 July 2007, 0.6% from 1 July 2008 and will be abolished from 1 July 2009.

Further information in relation to these reductions will be provided closer to their implementation.

MINOR STAMP DUTIES

From 1 July 2006, the following instruments will be exempt from stamp duty:

- Deeds;
- Caveats (see explanation below);
- Trustee appointments;
- Application to register or transfer the registration of a motor vehicle pursuant to a will;
- Conveyance for partition of a property between family members where consideration is less than \$200; and
- Conveyance of any other kind that attracts a fixed \$10 fee.

Caveats

A caveat under the *Real Property Act 1886* to protect an interest arising under an unregistered mortgage will still be chargeable with duty if the mortgage to which the caveat relates has not been stamped with duty.

If the mortgage has been stamped with duty, however, no duty will be payable on the caveat.

MARKETABLE SECURITIES AND NON-REALTY PROPERTY TRANSFERS

Amendments to the Act in relation to the phased abolition of stamp duty on unlisted marketable securities transfers and non-realty property transfers from 1 July 2009 require more substantive legislative drafting and will be dealt with in a separate amendment to the Act to be brought forward at a later date.

LEGISLATION

The operation of all of the above provisions is subject to the Bill being passed by Parliament and being assented to by Her Excellency the Governor of South Australia.

If the legislation is not passed by 30 June 2005, it is proposed to provide taxpayers with the benefit of the proposed mortgage duty exemptions that apply from 1 July 2005 by *ex gratia* payment.

If this occurs, mortgages will not be permitted to be stamped on RevNet but will need to be lodged with RevenueSA until the legislation is enacted.

FURTHER INFORMATION

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COMMISSIONER OF STATE TAXATION

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