SOUTH AUSTRALIA

STATE TAXATION OFFICE

Stamp Duties **Circular No. 76**

STAMP DUTY ON "TAX-LOSS" TRANSFER AGREEMENTS BETWEEN COMPANIES OF THE SAME GROUP

BACKGROUND

Prior to 1 July, 1992 the transfer of tax losses among members of a corporate group pursuant to Section 80G of the (Commonwealth) Income Tax Assessment Act, 1936 could have been effected orally. However, an amendment from 1 July, 1992 required the execution of a written instrument to effect the transfer of these losses (Section 80G(6)(c) of the above Act now refers).

ISSUE

The amendment raised the issue whether transfers of tax losses constituted property. If they were property and were situated within the State then stamp duty at conveyance rates would be payable.

OUTCOME

This Office considers that the right to an allowable deduction in respect to a tax loss incurred in a previous year is not property. Further, even if it is considered to be property it is the view of this Office that it is not property situated in the State of South Australia.

Accordingly, instruments transferring income tax losses are not liable for stamp duty.

29 June, 1993

COMMISSIONER OF STAMPS