

SOUTH AUSTRALIA**STATE TAXATION OFFICE****Stamp Duties****Circular No. 82****THE STAMPING OF CROSS-COLLATERALISED SECURITIES**

Following representations made to this Office and after consultation with various industry groups this Office has formulated the following method of stamping cross-collateralised securities.

The circumstances in which this circular apply are:

- an institution lends money to a group of debtors and/or to a group of debtor companies ("the Group");
- the debtor companies are members of the group for the purposes of the Corporations Law, or are partners of a business, or are members of the same family or are persons who conduct business together on a joint venture;
- there exist cross guarantee and indemnity agreements or alternatively a form of guarantee and indemnity is being taken whereby the debts incurred by one member of the Group are jointly and severally guaranteed and indemnified by all others of the Group in relation to moneys lent and secured by the institution.

In summary, circumstances exist whereby a new debt incurred by a member of the group will increase the highest amount to be secured by all mortgages (pursuant to Section 79(2)(b) of the Stamp Duties Act, 1923) and therefore will warrant each and every mortgage instrument related to the Group to be upstamped for the purposes of Section 79(2)(b) of the Act.

STAMPING PROCEDURE

Under the circumstances described and where a fresh loan is made or a cross guarantee and indemnity is taken the Commissioner will consider that it is sufficient compliance with the provisions of Section 79 of the Act if;

- (a) the aggregate of the amounts of stamp duty paid on the various related mortgages is equal to the amount of duty which would have been payable had the whole of the duty been paid and denoted etc. on one of the mortgages, and all other mortgages had been drawn on a collateral basis to that mortgage and;
- (b) a record of stamping is completed at the time of the advance (Declaration F2 obtainable from the Stamp Duties Office) and is available for compliance checking by this office.
- . This record must indicate which instrument is the prime security and which is collateral and the extent of the security.
 - . Where duty is paid by way of return pursuant to Section 10 of the Stamp Duties Act, 1923 this form will need to be retained by the Financial Institution.
 - . Where duty is paid direct to the Stamp Duties Office the declaration F2 will need to be lodged together with an opinion form.
- (c)(i) Financial Institutions paying by way of the return system endorse each mortgage covered by the guarantee with a stamp in the format:-

S.D. ACT SECTION 10 & 79	
PREVIOUS PRIMARY SECURITY \$...../.....	
NEW PRIMARY SECURITY \$...../.....	
DUTY PAID \$...../.....	
COLLATERAL SECURITY \$.. 12,000,000	
TOTAL SECURITY \$.. 12,000,000	
DATE / /199..	DECLARATION NO..... 002 ..
AUTHORISED BY F SMITH	

This stamp will be endorsed to reflect the extent of stamping of each mortgage as either a prime or collateral security.

or

- (c)(ii) Where the stamping is not effected under the return system all affected mortgages will need to be produced to the Stamp Duties Office for stamping.

EXAMPLES

The following examples illustrate an acceptable method of stamping of cross collateralised securities.

Background

On 1 January, 1993 Company A borrows \$10M (million) from a bank, XYZ Ltd. As security the company mortgages its real property by instrument M1. Companies B and C, associates of Company A, guarantee that debt and as security, mortgage their real properties by mortgage instruments M2 and M3.

Stamping

M1 should be stamped as a Primary Security for \$10M. M2 and M3 should be stamped for \$10M pursuant to subsection 79(2) of the Act; however, by virtue of the authority given by this circular, once a mortgagee declaration is made and either retained by a registered financial institution or lodged with an opinion form both will be stamped as collateral security for \$10M.

SITUATION 1

Company A borrows a further \$2M on 1 February, 1993 under the above mentioned securities.

Stamping

M1 should be stamped for \$12M (as a Primary Security) in the manner provided at subsection 79(2) of the Act. Stamp duty will be the duty on \$12M less the duty paid on the first advance of \$10M.

M2 and M3 will be stamped collateral securities; each will show additional collateral stamping for \$2M.

SITUATION 2

Company B borrows a sum of \$3M under its mortgage instrument M2 on 1 March, 1993.

Stamping

Instrument M2 should be stamped for \$3M (as a Primary Security) provided that the requirements for completion of the F2 declaration and the endorsement of each mortgage covered by the guarantee are met.

M1 will be stamped as collateral security for \$3M. On conclusion of the stamping it will reflect stamping for \$12M primary security and \$3M collateral security.

M2 will be stamped as a prime security for \$3M. Collateral stamping of \$12M will have been endorsed previously.

M3 will be stamped to reflect collateral stamping for \$15M.

SITUATION 3

An advance of \$2M was made to Company C under instrument M3 on 1 April, 1993. Instrument M3 should be stamped for \$2M (as a Primary Security) provided that the requirements for completion of the F2 declaration and the endorsement of each mortgage covered by the guarantee are met.

STAMPING ON MORTGAGE DOCUMENTATION

If the procedures set out in this circular are followed, the example mortgage stampings for companies A,B and C would be recorded as follows:-

Company A (Mortgage M1)	Company B (Mortgage M2)	Company C (Mortgage M3)
S.D. ACT SECTION 10 & 79 PREVIOUS PRIMARY SECURITY \$...../..... NEW PRIMARY SECURITY \$.10,000,000. DUTY PAID \$34,990. COLLATERAL SECURITY \$...../..... TOTAL SECURITY \$.10,000,000..... DATE 1 / 1 /1993.. DECLARATION NO....001.. AUTHORISED BYF SMITH.....	S.D. ACT SECTION 10 & 79 PREVIOUS PRIMARY SECURITY \$...../..... NEW PRIMARY SECURITY \$...../..... DUTY PAID \$...../..... COLLATERAL SECURITY \$.10,000,000..... TOTAL SECURITY \$.10,000,000..... DATE 1 /1 /19933 DECLARATION NO....001.. AUTHORISED BYF SMITH.....	S.D. ACT SECTION 10 & 79 PREVIOUS PRIMARY SECURITY \$...../..... NEW PRIMARY SECURITY \$...../..... DUTY PAID \$...../..... COLLATERAL SECURITY \$.10,000,000..... TOTAL SECURITY \$.10,000,000..... DATE 1 /1 /1993 DECLARATION NO....001.. AUTHORISED BYF SMITH.....
S.D. ACT SECTION 10 & 79 PREVIOUS PRIMARY SECURITY \$.10,000,000.. NEW PRIMARY SECURITY \$.2,000,000. DUTY PAID \$.7,000..... COLLATERAL SECURITY \$...../..... TOTAL SECURITY \$.12,000,000..... DATE 1/2 /1993. DECLARATION NO....002.. AUTHORISED BYF SMITH.....	S.D. ACT SECTION 10 & 79 PREVIOUS PRIMARY SECURITY \$...../..... NEW PRIMARY SECURITY \$...../..... DUTY PAID \$...../..... COLLATERAL SECURITY \$.12,000,000..... TOTAL SECURITY \$.12,000,000..... DATE 1/2 /1993 DECLARATION NO....002.. AUTHORISED BYF SMITH.....	S.D. ACT SECTION 10 & 79 PREVIOUS PRIMARY SECURITY \$...../..... NEW PRIMARY SECURITY \$...../..... DUTY PAID \$...../..... COLLATERAL SECURITY \$.12,000,000..... TOTAL SECURITY \$.12,000,000..... DATE 1/2 /1993. DECLARATION NO..002.. AUTHORISED BYF SMITH.....
S.D. ACT SECTION 10 & 79 PREVIOUS PRIMARY SECURITY \$.12,000,000.. NEW PRIMARY SECURITY \$...../..... DUTY PAID \$...../..... COLLATERAL SECURITY \$.3,000,000..... TOTAL SECURITY \$.15,000,000..... DATE 1 /3 /1993 DECLARATION NO....003.. AUTHORISED BYF SMITH.....	S.D. ACT SECTION 10 & 79 PREVIOUS PRIMARY SECURITY \$...../..... NEW PRIMARY SECURITY \$.3,000,000... DUTY PAID \$.10,500... COLLATERAL SECURITY \$.12,000,000..... TOTAL SECURITY \$.15,000,000..... DATE 1 /3 /1993. DECLARATION NO....003.. AUTHORISED BYF SMITH.....	S.D. ACT SECTION 10 & 79 PREVIOUS PRIMARY SECURITY \$...../..... NEW PRIMARY SECURITY \$...../..... DUTY PAID \$...../..... COLLATERAL SECURITY \$.15,000,000..... TOTAL SECURITY \$.15,000,000..... DATE 1 /3 /1993 DECLARATION NO...003.. AUTHORISED BYF SMITH.....
S.D. ACT SECTION 10 & 79 PREVIOUS PRIMARY SECURITY \$.12,000,000.. NEW PRIMARY SECURITY \$...../..... DUTY PAID \$...../..... COLLATERAL SECURITY \$.5,000,000..... TOTAL SECURITY \$.17,000,000..... DATE 1 /4 /1993. DECLARATION NO....004.. AUTHORISED BYF SMITH.....	S.D. ACT SECTION 10 & 79 PREVIOUS PRIMARY SECURITY \$.3,000,000 NEW PRIMARY SECURITY \$...../..... DUTY PAID \$...../..... COLLATERAL SECURITY \$.14,000,000..... TOTAL SECURITY \$.17,000,000..... DATE 1 /4 /1993. DECLARATION NO....004.. AUTHORISED BYF SMITH.....	S.D. ACT SECTION 10 & 79 PREVIOUS PRIMARY SECURITY \$...../..... NEW PRIMARY SECURITY \$.2,000,000.. DUTY PAID \$.7,000..... COLLATERAL SECURITY \$.15,000,000..... TOTAL SECURITY \$.17,000,000..... DATE 1 /4 /1993. DECLARATION NO....004.. AUTHORISED BYF SMITH.....

ENQUIRIES

Enquiries in relation to cross collateralised stampings can be directed to the Mortgage Return area of our Office on Telephone Number, 226 3660.

3 August, 1993

COMMISSIONER OF STAMPS

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