

SOUTH AUSTRALIA



STATE TAXATION OFFICE

Stamp Duties

Circular No. 110

STAMP DUTIES (CONCESSIONS) AMENDMENT ACT, 1994 CROSS-BORDER RENTAL

This Act was assented to on 30 May, 1994 and came into operation on 1 June, 1994.

The information contained in this circular is published as a guide to the administrative effect of the amendment in relation to rental business.

ABOUT THIS AMENDMENT

The purpose of the amendment is to ensure that double duty is not payable on rental business transactions conducted across State borders (cross-border rental).

This may occur where an agreement is entered into in one State for goods used wholly or partly in another State or States and a corresponding law of the other State, States or Territories, imposes duty of a similar nature to the duty imposed in this State.

Where this occurs the registered person liable to pay the duty may apply to the Commissioner for a deduction to be made proportional to the duty paid under a corresponding law in the other jurisdiction.

ADMINISTRATION OF THE AMENDMENT

To establish what deduction, if any, may be claimed it will be necessary to establish a convention of "principal nexus" that will apply to relevant transactions.

Principal Nexus

The view in South Australia in relation to principal nexus is that it relates to where the goods are used for the duration of the rental agreement as declared for the period of the return lodged for the payment of the duty.

Where rental business is conducted causing a liability to pay duty in more than one jurisdiction, South Australia will collect full duty only when the principal nexus is activated and it relates to South Australia

Where the principal nexus is not able to be satisfied due to the portability of the hired goods, other nexus issues may also be considered. These are:-

Place of execution of the contract.

Location of the business or person liable for payment of the duty.

Duration of the contract.

Evidence of evasion via nexus shift.

As the amendment deals with cross-border rental business the nexus issue will be used to establish what proportion of the total duty payable may be claimed as deductible from a total liability in South Australia.

As an example, should a rental agreement be entered into in South Australia for goods to be used for a period of twenty days and those goods are used for five days in South Australia and fifteen days in Victoria, South Australia will require the registered person liable to pay the duty to declare the rental income on the relevant return and apply for a deduction from duty payable in this State in direct proportion to the use of the goods in the other jurisdiction; in this case, 75 percent of duty paid in the other jurisdiction.

Registered persons are cautioned not to depart from the principal nexus without sufficient justification. Where the Commissioner forms the view that the payment of duty in South Australia has been minimised by exploiting the nexus issue, a default assessment of duty may be made.

HOW TO APPLY TO THE COMMISSIONER

An application form has been approved by the Commissioner in accordance with the amending Act. An example is available from the Stamp Duties Office and may be photocopied for use.

The amendment Act requires the Commissioner to be satisfied:-

1. that the registered person making the application has paid or pays duty in relation to rental business under a corresponding law;
2. that on amounts received in respect of any rental business, duty was/is paid under that corresponding law at the appropriate rate;

3. as the extent to which the business (to which the application relates) is connected with the place where the corresponding law applies; and

4. that it would be reasonable to allow a deduction to be made in accordance with the proportion established by the application of 3. above.

Should the Commissioner be satisfied on these and any other matters thought relevant to the application, he may approve a deduction of the amount of duty paid (at 2. above) from duty payable in relation to the same business declared on the return lodged for the relevant period.

Any enquiries should be directed to the State Taxation Office on telephone (08) 226 3660.

31 May, 1994

COMMISSIONER OF STAMPS

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