

SOUTH AUSTRALIA



STATE TAXATION OFFICE

Stamp Duties

Circular No. 149

THE USE OF A LEASE TO ARTIFICIALLY DEPRESS THE VALUE OF PROPERTY - (*BRADNEY CASE*)

On 7 January 1997, the Treasurer announced that the Government would legislate to amend the *Stamp Duties Act 1923* to prevent the potential exploitation of a loophole, identified as a result of a decision of the Supreme Court of Victoria in the case of *Commissioner of State Revenue (Vic) v Bradney*. In that press release the Treasurer announced that the legislation would operate from 7 January, 1997.

In *Commissioner of State Revenue (Vic) v Bradney*, the Court decided that a long term lease for nominal rent was not an encumbrance for the purposes of the conveyancing provisions of the Victorian Legislation. It has resulted in the potential situation whereby valuable property may be transferred virtually free of stamp duty, if the property is deliberately encumbered by a long term lease, or through some other fabricated arrangement which artificially reduces the value of the transferred property.

The *Stamp Duties (Miscellaneous) Amendment Act 1997* was assented to on 27 March 1997 and introduces (inter alia) provisions to prevent the decision in the *Bradney* case being used to avoid stamp duty in this State by transferring valuable property burdened by a long term lease for nominal rent, or by some other arrangement that artificially reduces the value of the transferred property.

New subsections 60A (4a) and (4b) of the *Stamp Duties Act 1923* have been designed to close the potential avoidance opportunity by giving the Commissioner a discretion to disregard interests, agreements or arrangements which have the effect of reducing the value of the property that is being transferred, when the property is valued for stamp duty purposes.

The new provisions will not effect arrangements made for valid commercial purposes which have the incidental effect of reducing the value of transferred property. The purpose of this amendment is to prevent avoidance and to protect the current revenue base.

The provisions of the new Section 60A (4a) apply, unless a person liable to pay the duty satisfies the Commissioner that the interest, agreement or arrangement was granted or made for a purpose other

than reducing the value of the transferred property, or was not granted or made in favour of the transferee or a person related to the transferee.

For the purposes of subsection (4a) persons will not be considered to be related if the Commissioner is satisfied that the persons were not acting together to achieve a common purpose.

These provisions will take effect from the 7 January 1997, the date of the Treasurer's media release.

This Amending Act also extends the First Home Concession (Circular No. 148).

Enquiries relating to the contents of this circular may be made to the State Taxation Office on (08) 8226 3716.

27 March 1997

COMMISSIONER OF STATE TAXATION

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