

SOUTH AUSTRALIA



STATE TAXATION OFFICE

Stamp Duties

Circular No. 132

**STAMP DUTIES ACT 1923
S31 AGREEMENTS
SALE AND LEASE BACK - SALE AND BUY BACK**

This Circular clarifies the stamp duty liability in relation to sale and lease back arrangements.

BACKGROUND

This Circular is directed at those transactions which involve customers of financial institutions raising finance by agreeing to sell goods or equipment already owned by the customer to the financial institution, and subsequently leasing those goods back under a sale and lease back agreement.

These transactions are generally accompanied by a written sales agreement with a subsequent written sale and lease back, or sale and buy back agreement or similar agreement. Pursuant to Section 31(1) of the Stamp Duties Act (the Act), the former agreements are normally chargeable with stamp duty as conveyances.

On occasions a financial institution may enter into similar transactions with its customers but in the following form:-

- The customer requires finance to purchase goods or equipment or wishes to raise finance on goods or equipment already owned.
- The financial institution may agree to provide finance on the basis that it buys the goods or equipment from the customer and leases the same back to the customer. Physical possession is not given to the financial institution. This part of the transaction is effected orally.
- The customer is then required to provide a signed document to the financial institution stating that the customer holds the goods on behalf of the financial institution or its agent. The sale to the financial institution is acknowledged in this document.
- The customer then provides the financial institution with a written invoice for the goods sold to the financial institution.

- The customer then enters into a sale and lease back, or sale and buy back agreement, with the financial institution for the same goods.
- Consideration for the goods is then provided by the financial institution to the customer.
- No other form of documentation is used in relation to the transactions.

RULING

Document Type A

- A document signed by only one party can be taken to comprise or evidence an agreement. Documents that evidence such an agreement are assessable in accordance with provisions of Section 31(1) of the Act.

Document Type B

- A document signed only by the customer and which acknowledges “we now hold the goods on your behalf”, reflects a concluded sale. Accordingly, such a document is a memorandum evidencing an agreement for the sale of goods.

Document Type C

- A receipt or invoice (for sale of goods) in itself can be a document that evidences an agreement for the sale of goods. Section 31(3) of the Act provides for an assessment in these circumstances, even if the sale is not supported by a document that acknowledges the holding of goods on behalf of another person as described in the preceding paragraph.

In summary, documents that evidence a sale and lease back, or sale and buy back, or similar agreement are assessable in accordance with the provisions of Section 31(1) of the Act, and must be produced to the Commissioner of Stamps for stamping.

This ruling applies only to transactions where the customer is not ordinarily in the business of selling the particular goods that are the subject of a sale.

Any telephone enquiries in respect of this ruling should be directed to (08) 226 3732 or (08) 226 3728