

SOUTH AUSTRALIA



RevenueSA

Stamp Duties

Circular No. 242

**STAMP DUTIES ACT 1923
RENTAL BUSINESS PROVISIONS**

This Circular is a general guide to the rental duty provisions (sections 31B to 31M) of the *Stamp Duties Act 1923* (“the Act”).

A person who carries on a rental business that consists of or involves dutiable rental business must be registered in South Australia and subject to the following requirements, pay the appropriate duty.

WHAT IS RENTAL BUSINESS?

“Rental business” is defined in the Act to mean:

- (a) *the business of conferring rights to the possession or use of goods under a contractual bailment; or*
- (b) *the business of acquiring the rights of the bailor under a contractual bailment; or*
- (c) *the business of providing financial accommodation under a bailment plan; or*
- (d) *the business of guaranteeing the obligations of a bailee under a contractual bailment or a bailment plan,*

*but does not include business of a class exempted by regulation from the ambit of this definition*¹ (Refer point (j) of Annexure B).

The term “dutiable rental business” was introduced into the Act by the *Stamp Duties (Rental and Mortgage Duty) Amendment Act 2003* (“the Amending Act”), which was assented to on 24 July 2003, with the amendments taking effect from 1 October 2003. The definition of dutiable rental business describes the *forms* of rental business that are dutiable under the rental duty provisions of the Act.

¹ See section 31B of the Act.

“Dutiable rental business” is defined in the Act to mean:

rental business consisting of one or more of the following -

- a) *conferring rights to the possession or use of goods under a **contractual bailment** to which this Division applies; or*
- b) *guaranteeing the obligations of the bailee under a contractual bailment to which this Division applies; or*
- c) *acquiring the rights of the bailor under a contractual bailment to which this Division applies; or*
- d) *providing financial accommodation under a bailment plan where the trading stock is situated in South Australia; or*
- e) *guaranteeing the obligations of the bailee under a bailment plan where the trading stock is situated in South Australia²;*

Although not exhaustive, the following types of business activities are considered likely to fall within the rental business definitions: leasing and hire-purchase (of various types of equipment), plant hire, scaffolding hire, fencing hire, party hire, computer hire, houseboat hire, car rental, container hire and communication equipment hire.

WHAT ARE THE COMPONENTS OF A “RENTAL BUSINESS” AND “DUTIABLE RENTAL BUSINESS”?

The Amending Act introduced a new term; namely “equipment financing arrangement” that distinguishes rental business as part of a financing arrangement from short-term hires and enables a split rate regime to be applied from 1 October 2003. Rental business under an equipment financing arrangement entered into from 1 October 2003, attracts a lower rate of duty (see “WHAT IS THE RELEVANT RATE OF DUTY” at page 6).

“**equipment financing arrangement**” is defined in the Act to mean:

- a) *a **hire purchase agreement**; or*
- b) *a **contractual bailment** for a term of not less than 9 months under which the final payment is not required to be made earlier than 8 months after the agreement is entered into;³*

“**contractual bailment**” is defined in the Act to mean:

*a contract or agreement under which a person who owns, or is entitled to the possession of, **goods** confers on another a right to possession or use of the goods, and includes a **hire-purchase agreement**, but does not include a contract or agreement conferring a right to the possession or use of goods, or providing for the sale of goods, incidentally to a lease of, or licence to occupy, or the sale of, land.⁴*

² See section 31B of the Act.

³ See section 31B of the Act.

⁴ See section 31B of the Act.

“**goods**” includes all chattels personal and any fixture severable from the realty, but does not include money, livestock, things in action or books.⁵

“**hire-purchase agreement**” means;

- (a) a contract or agreement for the letting of goods with an option to purchase the goods; or
- (b) a contract or agreement for the sale of goods by instalments (whether the contract or agreement describes the instalments as rent or hire or otherwise),

but does not include a contract or agreement under which property in the goods passes on or before delivery of the goods.⁶

Hire-purchase agreements were included in the definition of contractual bailments with effect from 1 January 2003. Receipts from hire-purchase agreements entered into on or after that date are therefore dutiable, subject to certain exemptions (see Annexure B – MATTERS NOT TO BE INCLUDED IN STATEMENTS).

In determining whether a contractual bailment exists, it is important to consider the “use” of the goods by the person and not solely “possession” of the goods by the person. If in a contract or agreement a person is given a right to use goods without also being conferred a right to possess the goods, this is sufficient for the contract or agreement to be regarded as a contractual bailment. It is possible for goods to be used pursuant to a contractual bailment without the person necessarily having legal possession of the goods. (For example, certain vending machines may be used in a business without the person having legal possession of the machines).

WHAT ARE THE JURISDICTIONAL NEXUS FOR RENTAL BUSINESS?

From 1 October 2003, the rental business provisions apply to contractual bailments if in any period of liability:

- a) *the goods are, or are to be, used solely or predominantly in South Australia; or*
- b) *the goods are delivered to the bailee in South Australia and –*
 - (i) *the goods are to be used outside Australia; or*
 - (ii) *they are not to be used solely in any one Australian State and it is not possible to determine which Australian State is to be the jurisdiction of predominant use.*

If a motor vehicle is taken on hire under an equipment financing arrangement, and the

⁵ See section 31B of the Act.

⁶ See section 31B of the Act.

*motor vehicle is, or is to be, registered under the law of a State, the State in which the motor vehicle is registered will be taken to be the jurisdiction of its predominant use.*⁷

In essence, if a motor vehicle is subject to an equipment financing arrangement, then the State in which it is registered is taken to be the place of its predominant use. For all other types of motor vehicle rental arrangements, which come within the rental business provisions of the Act (eg. short-term hires), the above general nexus apply (eg. predominant use in South Australia).

A **registered person** may rely on a statement from the hirer of goods as to where the goods are to be solely or predominantly used or where a motor vehicle will be registered, unless the person knows the statement to be false.

The registered person is not bound to inquire as to any change in the place of use of the goods or the place of registration of a motor vehicle.

It is an offence to falsely represent that hired goods will be used solely or predominantly outside South Australia⁸.

For contractual bailments (including old equipment financing arrangements) entered into prior to 1 October 2003, the nexus provisions in the Act existing at that time apply. i.e. the rental business provisions apply if :

- the contractual bailment was entered into in South Australia; or
- any negotiations leading to the formation of the contractual bailment took place in South Australia; or
- the goods were delivered in South Australia to the person who obtained the right to their possession or use under the contractual bailment.

DO I HAVE TO REGISTER AS A RENTAL BUSINESS?

Under the Act, a person who carries on a rental business consisting or involving a dutiable rental business must be registered, irrespective of where the rental business is transacted and whether or not the person is resident, or has a place of business within South Australia⁹.

WHEN SHOULD I LODGE A STATEMENT AND WHAT SHOULD IT INCLUDE?

A person who is, or ought to be, registered must not later than the 21st day of each month, lodge with the Commissioner a statement in the approved form (“the Statement”) setting out:

- 1) the total amount received during the preceding month in respect of his or her rental business; and
- 2) the amount representing the component referable to equipment financing arrangements entered into before 1 October 2003 (the “**old equipment financing component**”); and

⁷ See section 31C of the Act.

⁸ See section 31M of the Act.

⁹ See section 31D of the Act.

- 3) the amount representing the component referable to equipment financing arrangements entered into on or after 1 October 2003 (the “**new equipment financing component**”); and
- 4) the amount representing the component referable to other kinds of rental business (the “**general rental business component**”)¹⁰.

The Act details matters that are to be **included** and **not included** in the Statement. For example, a registered person is required to include in the Statement amounts received for services incidental or related to the rental business or the relevant component of the business when calculating their duty liability. However, the Act allows for a statutory threshold and also servicing costs to be deducted from the gross amount received in relation to the use of goods under a contractual bailment (**other than an equipment financing arrangement**), prior to the calculation of any stamp duty payable in the relevant Statement period¹¹.

As hire purchase agreements were not brought within the rental duty base until 1 January 2003, the Statement need not include these amounts for agreements **entered into** before that date.

More detail on what matters are to be **included** and **not included** in the Statement are detailed in **Annexures A** and **B** respectively of this Circular¹².

Where the Commissioner is satisfied, on application in the approved form by a registered person, that the total rental business amount upon which duty is to be calculated for the ensuing 12 months is likely to be less than \$120,000, the Commissioner may permit the person to lodge Statements and pay duty on an annual basis¹³.

Under the *Taxation Administration Act 1996* (“the TAA”), the Commissioner may upon application, also approve special return/Statement arrangements (eg. quarterly Statements)¹⁴.

RevenueSA sends registered persons their Statements prior to the relevant period’s due date.

WHAT IS THE RELEVANT RATE OF DUTY?

Duty is payable on the three previously mentioned components (see “WHEN SHOULD I LODGE A STATEMENT & WHAT SHOULD IT INCLUDE?” at page 5) at the following rates:

- 1) 1.8% of the **old equipment financing component**;
- 2) 0.75% of the **new equipment financing component**; and
- 3) 1.8% of the **general rental business component** that exceeds \$6,000.

¹⁰ See section 31F of the Act.

¹¹ See section 31I(1c) of the Act.

¹² See section 31I of Act.

¹³ See section 31F(3) of the Act.

¹⁴ See Part 6 of the TAA.

The rates for the general rental business component should be applied to the net amount of receipts from dutiable rental business included in the Statement. That is, the total amount received, net of any **servicing cost deductions** and after allowance for the **statutory threshold**.

Servicing Costs Deduction

The term “servicing costs” is not defined in the Act, however, the Commissioner has determined the term to mean costs **directly incurred in servicing and maintaining the goods hired**, but not the general expenses associated with operating the business.

The servicing costs deduction is the lesser of the actual cost of servicing the goods or an amount not exceeding 40% of the dutiable rental business receipts to be included in the relevant Statement, unless the Commissioner approves a higher deduction %.

The Amending Act introduced specific *exceptions* for the servicing costs deduction where an equipment financing arrangement or collateral agreement provides that the financier is responsible for those costs. (See point (o) under Annexure B – MATTERS NOT TO BE INCLUDED IN STATEMENTS).

To claim a full deduction of servicing costs for equipment financing arrangements entered into on or after 1 October 2003, the equipment financing arrangement or a collateral agreement will need to provide that the financier is responsible for servicing the goods and separately charge the costs. The cost of servicing if separately charged need not be disclosed and is not liable to duty.

If the costs are not separately charged in the equipment financing arrangement, the financier will need to obtain the approval of the Commissioner as to what proportion of a receipt can be categorised as a “servicing cost” and is exempt from duty.

Examples of servicing costs **allowed** and **not allowed** are detailed in this Circular at **Annexure C** and **D** respectively.

Threshold Deduction

From 1 January 2003 (which applies to the December 2002 Statement required to be lodged in January 2003) the Act allows for a statutory threshold of \$6,000 per month for the general business component of the dutiable rental business, but not the old or new equipment financing components.

The effect is that a registered person should deduct \$6,000 from the total amount received for the general business component of the dutiable rental business (and any servicing costs) in the relevant Statement period to arrive at a net figure on which duty is payable.

From 1 October 2003 (which applies to Statements required to be lodged in October 2003) the statutory threshold of \$6,000 per month only applies to receipts from the general business component of the dutiable rental business. There is no threshold for receipts from equipment financing arrangements where agreements were existing at 1 October 2003 or entered into on or after that date.

WHAT IF I PAY DUTY ON THE SAME RENTAL RECEIPTS IN ANOTHER JURISDICTION?

Instances may arise where through the nexus or application provisions of the stamp duty laws in South Australia and corresponding laws in other States and Territories, duty may be payable on the same rental business in two or more jurisdictions.

If the Commissioner is satisfied, upon application by the registered person, that it would be reasonable in the circumstances, the registered person is entitled to a deduction of the rental duty amount otherwise payable in South Australia where an amount is paid in another jurisdiction in respect of the same rental business under a corresponding law for the corresponding period¹⁵.

The underlying principle in applying the corresponding law provisions is for registered persons not to pay the equivalent of full stamp duty on the one transaction, in more than one jurisdiction.

CAN RENTAL DUTY BE PASSED ON?

The Act prohibits a registered person from passing on the liability to duty to its customer unless it occurs as part of a transaction exempted from the prohibition by proclamation¹⁶.

By proclamation the Governor has exempted all commercial leasing transactions or other commercial transactions of a similar character to which the provisions of the *Consumer Credit Act 1971* (now the *Consumer Credit Code (South Australia)* and the *Consumer Transactions Act 1972* do not apply¹⁷.

Therefore, in the majority of commercial lease and commercial hire-purchase transactions a registered person would not be prohibited from including a passing on of stamp duty provision in the agreement with its customer.

PENALTIES

Penalty and expiation fees apply for non-compliance with the Rental Business provisions.

¹⁵ See section 31I(1a)

¹⁶ See section 31L(1)

¹⁷ See Governor's Proclamation 486/1986 - Gazette dated 9 April 1987.

FURTHER INFORMATION***Location***

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COMMISSIONER OF STATE TAXATION

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MATTERS TO BE INCLUDED IN STATEMENTS

The “total amount received in respect of dutiable rental business” includes:

- (a) amounts received for services incidental or related to the business or the relevant component of the business. The Commissioner has determined (but not limited) these amounts to include:
- Insurance charges - Where a rental business makes a charge for insurance, whether or not the item is optional, the amount so charged is considered by the Commissioner to be additional rent unless the charge is simply one which is passed on to an insurance company and the rental business acts solely as its agent. (However, where the registered person receives from an insurance company amounts in relation to goods lost or destroyed such amounts are not liable to duty).
 - Cleaning charges – All receipts for cleaning costs from the person hiring the goods including extraordinary cleaning costs incurred such as the removal of hardened cement on a cement mixer are considered rent and should be included in the statement. However, the costs (not necessarily the charges) incurred in carrying out this type of cleaning can be claimed as a “servicing cost deduction”. The servicing cost deduction is discussed in the body of the Circular (refer also, Annexure C).
 - Maintenance charges - All receipts for maintenance costs charged by the person hiring the goods are considered rent and should be included in the statement. However, the costs (not necessarily the charges) incurred in carrying out maintenance can be claimed as a “servicing cost deduction”. The servicing cost deduction is discussed later.
 - Delivery – Where delivery is an addition to the terms of the agreement and the customer is required to use the delivery services of the registered person or a third party nominated by the registered person (i.e. by name or by expertise – “a recognised computer removalist”), the amounts received for the delivery should be included in the statement. However, where delivery is an addition to the terms of the agreement and is offered as an option only, no duty is payable on those receipts and they should not be included in a statement.
 - Damage waiver – An amount received by a registered person as damage waiver is dutiable. Payments received from an insurer by the registered person to defray damage caused by the hirer are also dutiable, however the costs incurred could be claimed as a servicing cost deduction.
 - Damage excess – same principles as for damage waiver apply.
 - Fees payable for the late return of goods, and
 - Costs of erecting and installing equipment hired – Where a contract requires that the erection or installation of equipment (eg scaffolding, marquees, etc) is to be carried out by the registered person, the amount received in respect of the costs of erection must be included in the statement.
- (b) Goods & Services Tax Component (“GST”) - Prior to 1 January 2003 (i.e. up to and including the statement required to be lodged in December 2002), amounts received to reimburse, offset or defray the registered person’s liability to GST on the services provided in and incidental to the registered person’s business should be included in the statement.

However, from 1 January 2003, Statements disclosing amounts received from 1 December 2002 (which takes into account the monthly statement required to be lodged in January 2003 for amounts received in the preceding liability period) [eg monthly for registered persons paying on a monthly basis] should be exclusive of GST.

- (c) Sale & Leaseback Arrangements – This arrangement involves a registered person acquiring goods from another person and hiring or leasing them back to the original owner. Provided the leaseback arrangement is not related to the lease of, or licence to occupy, land or involve members of a corporate group then receipts from this leaseback should generally be included in the statement. If you require advice on whether a particular leaseback arrangement is liable to stamp duty then you should contact RevenueSA.
- (d) Sub-Hire Arrangements – A rental business (A) may hire a certain item from another rental business (B) with the intention of on-hiring that particular item. This is known as a sub-hire and the amounts received by rental business (B) in relation to this sub-hire must be included in its statement. In addition, amounts received by rental business (A) when it on-hires the item to another person (C) should also be included in the monthly statement of rental business (A).
- (e) Novated Leases – An employee in connection with his or her remuneration or other employment benefits may lease a motor vehicle from a registered person and then novate the lease to his or her employer. Receipts by the registered person from the novated lease paid by the employer should be included in the statement. However, unless the employee is, or is required to be, a registered person he or she does not have a separate liability to rental business duty on receipts (if any) from the novation of the lease to the employer.

MATTERS NOT TO BE INCLUDED IN STATEMENTS

Registered persons are not required to include in Statements any amount in respect of:

- (a) a transaction entered into by the person in the course of any business carried on by the person as a pawnbroker.
- (b) the sale of any goods (other than where there is an agreement, arrangement, or understanding that the person to whom the goods are sold may, at a later time, sell the goods back to the first mentioned person). The Commissioner has determined that the following would meet this exemption;
 - Payouts / Residual payouts - Payments by the person hiring the goods if title to the goods passes to that person as a consequence of the payment (eg payment of the residual value in an equipment lease or the balloon in a hire-purchase agreement or a final payment in either case in order for the hirer to secure ownership).
 - Sales of other products – Where a registered person derives receipts not only from the hire of goods but also from the sale of other products, the proceeds from the sale of those products are exempt as sales of goods. (eg a video hire business would not include sales made from confectionery items, nor would a business which hired out sanding machines include receipts from the sale of sheets of sandpaper used by the machine).
 - Delivery – As noted earlier, where delivery is an addition to the terms of the agreement and is offered as an option only, no duty is payable on those receipts and they should not be included in a statement.
 - Replacement parts – Where a charge is levied by the registered person for the cost of replacing goods stolen, lost, not performing, worn-out or damaged, the amounts received are considered to relate to the sale of goods and are exempt. (eg cost for replacing blunt or broken blades on hired cutting equipment).
 - Fuel – If a charge for fuel made by a registered person is optional and the hirer can purchase the fuel at any other place, the receipt for the sale of fuel is exempt.
- (c) Insurance – where the registered person receives from an insurance company amounts in relation to goods lost or destroyed such amounts are not liable to duty. Where a registered person receives an amount for insurance that is passed on to an insurance company and the registered person acts solely as its agent the receipt does not have to be included in the statement.
- (d) Ancillary income – investment income such as interest dividends or similar receipts are not receipts received in respect of rental business and are not to be included in the statement.
- (e) Cash deposits – cash deposits are not rental receipts of a registered person and should not be included in the statement. However, if these cash deposits are subsequently appropriated as rent, such amounts are dutiable and should be included.

Annexure B

- (f) Deposits in a hire-purchase agreement – Deposits, which are received by the financier hiring the goods, are subject to duty. However, where the deposit is received by a third party, such as the manufacturer or dealer, and is not paid at the direction of the financier to satisfy an obligation in respect of rental payable to the financier, such a deposit is not dutiable.
- (g) Refunds of money paid – Where a registered person receives refunds (eg stamp duty overpaid or deposits refunded) such amounts are not liable for duty.
- (h) Duty on duty – The Act generally prohibits the passing on of the duty liability.

However, commercial leasing or other similar commercial transactions not regulated under consumer credit laws have been exempted from this prohibition¹⁸. Where the registered person has passed on the liability to duty to its customer, the recoupment of this amount is not considered to be rent and should not be included in the statement.

- (i) Related Companies – Receipts from the grant, by a corporation to a related corporation, of the right to the use of goods beneficially owned by that first mentioned corporation should not be included in the statement.
- (j) Floorplan finance – Amounts received from floorplan financing where a unique number identifies each item of trading stock covered by a floorplan financing agreement (refer regulation 15 of the *Stamp Duties Regulations 2002*).
- (k) Goods hired with land – Receipts from the hire of goods incidental to a lease of, or licence to occupy, or the sale of, land are not to be included in a statement.
- (l) Wet Hires - Goods that are hired together with an operator (eg a crane and crane operator being hired from the same business) do not comprise the conducting of a rental business but rather the “provision of services”. Accordingly amounts received from such transactions are not liable to stamp duty.

However, if a crane is hired from a business and the customer supplies a crane operator then the amount received by the business for the hire of the crane must be included in statements lodged by that business.

- (m) Book hires – Receipts from the hire of books do not need to be included as goods are defined to exclude books.
- (n) On-site Caravan Hires – Receipts from the hire of an on-site van are not regarded as receipts from rental business and do not need to be included in Statements.
- (o) Financier servicing costs - If an equipment financing agreement or a collateral agreement provides that the financier is responsible for servicing the goods, the

¹⁸ See section 31L and Governor’s Proclamation 486/1986 - Gazette dated 9 April 1987.

costs of servicing, if separately charged, need not be included in the Statement as a component of dutiable rental business.

If the costs of servicing are not separately charged, a proportion of the consideration received by the financier and approved by the Commissioner as being properly referable to the servicing of the goods, need not be disclosed in the Statement as a component of dutiable rental business¹⁹.

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¹⁹ See *Exception* in section 31F(2) of Act.

EXAMPLES OF SERVICING COSTS ALLOWED

- Repairs to the goods hired, including the cost of replacement parts (but not the purchase of capital equipment for purposes of wholly replacing the goods hired).
- Salaries, wages and associated on costs such as WorkCover and superannuation contributions paid by the employer that are directly attributable to employees servicing the goods hired (the wages of persons not directly involved in the servicing of goods, for example administrative personnel, are not allowable as a servicing cost).
- Cleaning and maintenance costs of goods hired.
- Service vehicle(s) operating costs and the driver's wages but only that proportion of wages that relates to service calls. Costs involved in the delivery of goods hired are not an allowable servicing cost.
- Rent applicable to the area where the servicing of goods hired occurs.
- Depreciation of the equipment used in servicing the goods hired.
- Light and power expenses used in servicing the goods hired.
- Council, water and any other rates or charges imposed on the business property and payable by the registered person (whether directly or in reimbursing the landlord) applicable to the area used for servicing the goods hired.

This is not an exhaustive list of expenses that qualify as servicing costs, as the types of expenses may vary depending upon the nature of the rental business conducted.

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EXAMPLES OF SERVICING COSTS NOT ALLOWED

- Accountancy fees
- Bank fees and charges
- Donations
- General freight and cartage
- Advertising
- Depreciation of the hired goods
- Entertainment
- Insurance (whether in relation to the goods that are the subject of a contractual bailment or otherwise).
- Leasing charges
- Licence fees
- Motor vehicle registration fees
- Office cleaning
- Office or clerical staff wages
- Postage
- Printing
- Professional fees
- Security
- Stationery
- Subscriptions
- Cost of goods hired for subsequent re-hire
- Replacement stock
- Fringe benefits tax
- Telephone and travel and accommodation (excepting that component directly related to the servicing of goods)
- Delivery and/or erection/disassembling of equipment hire.

This is not exhaustive list of expenses that do not qualify as servicing costs, as the types of expenses may vary depending upon the nature of the rental business conducted.
