

Information Circular No: 22

Stamp Duties Act 1923

Stamp Duties (Insurance) Amendment Act 2011

Issued 21 April 2011

The *Stamp Duties (Insurance) Amendment Act 2011* (the "Amending Act") was assented to on 14 April 2011 and has today been proclaimed to come into operation on 1 May 2011.

In this Information Circular, the term 'dutable premiums' refers to both premiums received by the insurer and premiums credited to the account of the insurer (but not received by the insurer).

The Amending Act makes a number of amendments to the insurance provisions of the *Stamp Duties Act 1923* (the "SD Act") to:

- ▶ align the wording and structure more closely to general insurance duty provisions in interstate stamp duty legislation, and in particular to make it clear that duty on general insurance is imposed on the premium relating to a contract of insurance (even though legal liability remains with the insurer) in order that the stamp duty may qualify as a GST free component of insurance premiums;
- ▶ amend the stamp duty rate for general insurance to 11% of dutable premiums instead of \$11 per \$100 or part thereof;
- ▶ amend the stamp duty rate for life insurance to 1.5% of dutable premiums instead of \$1.50 per \$100 or part thereof;
- ▶ introduce refund provisions in respect of dutable premiums refunded or cancelled;
- ▶ make it clear that riders attached to life insurance policies are dutable at general insurance rates;
- ▶ remove the requirement that returns be verified by a statutory declaration; and
- ▶ remove the requirement to hold an annual licence.

Further details in relation to the amendments are set out below.

Goods and Services Tax

At the time of the introduction of the Goods and Services Tax (GST), explicit provisions were inserted in the Commonwealth legislation enabling the GST on compulsory third party (CTP) and general insurance premiums to be calculated on premiums exclusive of stamp duty.

These provisions were inserted to avoid a cascading of stamp duty and GST (both of which are applied to insurance premiums). The GST provisions were intended to clarify that while GST would be calculated on stamp duty exclusive premiums, stamp duty under state stamp duty law would be calculated on GST inclusive premium amounts.

The insurance duty provisions in the SD Act are drafted differently to interstate provisions, a difference which in recent times has cast some doubt over whether the Commonwealth legislation is effective to prevent GST being charged on stamp duty inclusive premiums. The Amending Act puts this matter beyond any doubt.

Rates of Insurance

The stamp duty rate for general insurance will change from being charged at \$11 per \$100 or fractional part of \$100 of dutable premiums to a fully proportional rate of 11% of dutable premiums. The new rate for general insurance applies in respect to dutable premiums on or after 1 May 2011. Effectively, general insurers will be required to pay duty equivalent to 11% of their total amount of dutable premiums from the May 2011 monthly return (which is due on 15 June 2011) onwards.

Similarly the stamp duty rate for life insurance will change from being charged at \$1.50 per \$100 or fractional part of \$100 of dutable premiums to a fully proportional rate of 1.5% of dutable premiums. The new rate for life insurance applies in respect to all dutable premiums during the 2011 calendar year (which is due on 31 January 2012).

Refund Provisions

The Amending Act also introduces refund provisions in relation to stamp duty charged on insurance premiums to allow for easier and more equitable access to refunds than is currently available. The following are to be taken to be overpayments of tax for the purposes of Part 4 of the *Taxation Administration Act 1996*:

- a) duty paid in respect of an amount of premium that has been refunded;
- b) duty paid in respect of a premium credited to an account of an insurer but not received by the insurer at the time the duty is paid if the policy in respect of which the premium was credited is cancelled before the insurer receives the premium.

Refunds will only be available for duty overpaid in relation to the May 2011 monthly return onwards. Provision to apply for a refund is now incorporated within returns.

Life Riders

Life insurers have traditionally offered other insurance products known as 'riders' which cover such risks as trauma, a disabling or incapacitating injury, sickness condition or disease.

RevenueSA has always been of the view that the life insurance riders are properly characterised as general insurance under the SD Act and are therefore dutiable at the higher general insurance rate.

Whilst a large proportion of the industry have complied with this view, some sections of industry have over time disputed this interpretation and asserted that riders should be chargeable at the lower life insurance rate.

The Amending Act puts beyond doubt that where a life policy is issued with riders of a general insurance nature attached, stamp duty at the general insurance rate is payable on that portion of the premium attributable to the rider benefit, where the separate premium component in respect of that rider can be determined with certainty.

Statutory Declarations

The Amending Act removes the requirement that any information or statement contained in a return (monthly or annual) must be verified by statutory declaration. RevenueSA will now accept the personal signature of the director, secretary, public officer or authorised person on these returns.

Annual Licence

The Amending Act removes the requirement to hold an annual licence.

For currently registered insurers, a returns booklet will be posted once all returns have been submitted for the assessed financial or calendar year.

New insurers who carry on insurance business in the State must apply for registration to the Commissioner in the approved form.

Further Information

Further information can be obtained from RevenueSA.

Location	RevenueSA State Administration Centre 200 Victoria Square East ADELAIDE SA 5000
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