

SOUTH AUSTRALIA



STATE TAXATION OFFICE

Stamp Duties

Circular No. 134

STAMP DUTIES (MISCELLANEOUS) AMENDMENT ACT 1995

The Stamp Duties (Miscellaneous) Amendment Act 1995, which came into effect on 23 November 1995 amends the Stamp Duties Act 1923 in respect of six different issues. The package of amendments either introduces new exemptions or provisions that ensure fairer and more equitable treatment.

The information set out below is a summary only. The full legal intent must be taken from reading the amending legislation in conjunction with the Stamp Duties Act.

Transfers of part interests in motor vehicles

A new section has been inserted in the Act that provides that a reduced amount of stamp duty is payable upon an application for registration where a part interest in a motor vehicle is transferred. The provision has been introduced because of an anomaly that existed in the Act. Transfers between spouses and former spouses are exempt but an inequity existed for partial transfers. (Circular 123 refers to the details concerning the arrangements for transfers between former spouses.)

In the past stamp duty has been payable based on the value of the motor vehicle at the time of the application to transfer the registration. This has meant that partial transfers attracted the full amount of duty. This was in contrast to the conveyancing provisions in the Act which based the duty on the value of the property transferred.

The Act has now been amended to allow for a proportion of the duty to be payable upon an application for registration to be in line with the share of the vehicle being transferred. Duty will firstly be calculated on the full value of the vehicle at the time of registration. The amount payable will then be reduced to the same ratio as the interest being passed. A formula has been designed to calculate the reduction as follows:

$$\text{Duty} = \text{Duty payable on the current value of the vehicle} \times \frac{\text{No. of persons added or removed}}{\text{Greatest No. of persons registered}}$$

Example

In the case of registration in a single name where 2 persons are added to the registration details, the duty will be $\frac{2}{3}$ of the duty payable on the value of the vehicle. Where 1 person is removed from joint registration of a vehicle, the duty will be $\frac{1}{2}$ of the duty payable on the value of the vehicle.

Transfer of Heavy Vehicles to the South Australian Registration Scheme

For a number of years, the Federal and State Governments have been working together to achieve a set of more uniform National Road Transport laws. The National Road Transport Commission has been established for some time to facilitate this process. The national registration scheme will provide a uniform set of requirements and standards for the registration, transfer, cancellation and use of vehicles in Australia.

Registration of “Heavy Vehicles” (those with a gross mass of 4.5 tonnes or more) will be transferred back to the home State’s registration scheme when the Federal Registration Scheme is abolished some time next year. As the majority of vehicles have remained under the same registration for a significant period of time, operators of heavy vehicles transferred to the South Australian Registration Scheme from the Federal plate system will not be required to pay stamp duty on the application to register the vehicle.

Calculation of rent payable on leases

For some time difficulties have been encountered in the calculation of stamp duty where some lease rentals have been based on a percentage of business turnover or have included incentives (such as rent free periods) to encourage the taking of a lease. In assessing duty on such leases the Commissioner did not have a clear basis for determining the rental value.

The Commissioner of Stamps will now be empowered to seek a valuation of the current market rental value where the value of the rent cannot be readily ascertained or estimated, or the rent is considered by the Commissioner to be less than the current market rent. This new provision is consistent with other existing sections of the Stamp Duties Act, which provide for valuation of property to be obtained by the Commissioner. Having regard to the merits of the case, the Commissioner may pass the cost of the valuation on to the person liable to pay the duty.

Where the Commissioner is of the opinion that the actual amount paid as rent is not a true reflection of the current market value, duty may be assessed on the higher amount.

The new provisions at Section 75 of the Act allow the Commissioner to assess the duty payable on the lease based on the current market rent for the property expressed as an annual rate or as an average annual rate.

Extensions of Leases by one day

Where an agreement is reached between a landlord and tenant to vary the covenants of a lease, other than the rent payable, it is common practice to extend the lease by one day so that the new covenants may be registered at the Lands Titles Office. In the past, this has resulted in a liability to duty based on the annual rental as if a new lease was made; this was inequitable.

An amendment has been made to the Act to recognise this practice. Such extension will now attract nominal duty of \$10.

Extensions of leases that vary the rent payable will continue to be charged as new leases.

Orders under the Enforcement of Judgements Act

A charge over property awarded to a creditor under the Enforcement of Judgements Act is chargeable as a mortgage under the Act. The incidence of duty on charging orders is an unintended consequence of the Enforcement of Judgements Act. The amending Act has therefore added an exemption clause to prevent such arrangements from incurring stamp duty as a mortgage.

CHESS transfers without change to the beneficial owner

The Stamp Duties Act was recently amended to incorporate transfers processed through the Australian Stock Exchange on the Clearing House Electronic Subregister System (CHESS). The amendment at that time provided for a nominal charge of \$10 to be payable on several types of transactions. This treatment was not consistent with the subsequent alterations to legislation by other States which exempted such transfers.

Where transfers on CHESS do not result in any change in beneficial ownership, exemption has now been provided.

Additional Information

Any enquiries relating to the amendments may be directed to the following telephone numbers:-

Stamp Duty on Motor Vehicle Registrations:	(08) 226 3838
Assessment of Stamp Duty on Leases:	(08) 226 3728 (08) 226 3732
Stamp Duty Payable on CHESS transfers:	(08) 226 3711