

South Australia

# **Stamp Duties (Rental and Mortgage Duty) Amendment Act 2003**

An Act to amend the *Stamp Duties Act 1923*.

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**The Parliament of South Australia enacts as follows:**

### **Part 1—Preliminary**

#### **1—Short title**

This Act may be cited as the *Stamp Duties (Rental and Mortgage Duty) Amendment Act 2003*.

#### **2—Commencement**

This Act will come into operation on 1 October 2003.

### 3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

## Part 2—Amendment of *Stamp Duties Act 1923*

### 4—Amendment of section 31B—Interpretation

(1) Section 31B—after the definition of *corresponding law* insert:

*dutiable rental business* means 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;
- (b) guaranteeing the obligations of the bailee under a contractual bailment to which this Division applies;
- (c) acquiring the rights of the bailor under a contractual bailment to which this Division applies;
- (d) providing financial accommodation under a bailment plan where the trading stock is situated in South Australia;
- (e) guaranteeing the obligations of the bailee under a bailment plan where the trading stock is situated in South Australia;

*equipment financing arrangement* means—

- (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;

(2) Section 31B, definition of *registered person*—delete the definition and substitute:

*registered* means registered under section 31E;

### 5—Substitution of sections 31C and 31D

Sections 31C and 31D—delete the sections and substitute:

#### 31C—Jurisdictional nexus

- (1) This Division applies to a contractual bailment if—
  - (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) they 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.

- (2) If a motor vehicle is taken on hire under an equipment financing arrangement, and the 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.

### **31D—Obligation to be registered**

- (1) A person who carries on rental business consisting of or involving dutiable rental business must be registered.

Maximum penalty: \$10 000.

- (2) The section applies—
- (a) irrespective of where the rental business is transacted; and
  - (b) whether or not the person is resident, or has a place of business, within the State.

## **6—Substitution of section 31F**

Section 31F—delete the section and substitute:

### **31F—Lodgement of statement and payment of duty**

- (1) A person who is, or ought to be, registered must, not later than the 21st day of each month—
- (a) lodge with the Commissioner a statement in the approved form setting out—
    - (i) the total amount received during the previous month in respect of dutiable rental business; and
    - (ii) the amount representing the component referable to equipment financing arrangements entered into before 1 October 2003 (the *old equipment financing component*); and
    - (iii) the amount representing the component referable to equipment financing arrangements entered into on or after 1 October 2003 (the *new equipment financing component*); and
    - (iv) the amount representing the component referable to other kinds of rental business (the *general rental business component*); and

#### **Exception—**

The statement need not include amounts received in respect of hire purchase agreements entered into before 1 January 2003.

- (b) pay to the Commissioner duty equivalent to the aggregate of—
  - (i) 1.8% of the old equipment financing component; and

- (ii) 0.75% of the new equipment financing component; and
  - (iii) if the general rental business component exceeds \$6 000—1.8% of the amount of the excess.
- (2) The amount to be disclosed in respect of dutiable rental business or a particular component of dutiable rental business under subsection (1)—
  - (a) is to include amounts received for services incidental or related to the business or the relevant component of the business; but
  - (b) is not to include amounts received to reimburse, offset or defray liability to GST.

**Exception—**

If an equipment financing arrangement (or a collateral agreement) provides that the financier is to be responsible for servicing the goods—

- (a) the cost of servicing, if separately charged, need not be disclosed and is not liable to duty; or
  - (b) if the cost of servicing is not separately charged, a proportion of the consideration received by the financier that the Commissioner considers properly referable to servicing the goods, need not be disclosed and is not liable to duty.
- (3) If the Commissioner is satisfied, on application in the approved form by a registered person, that the total on 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 basis.
- (4) A person must comply with any conditions on which the Commissioner grants permission under subsection (3).  
Maximum penalty: \$10 000.
- (5) The Commissioner may, at any time, revoke a permission granted under subsection (3) for breach of a condition or any other proper reason.

**7—Amendment of section 31I—Matter not to be included in statement**

- (1) Section 31I(1)(c)—delete paragraph (c) and substitute:
  - (c) business transacted by a registered person in respect of which the registered person has paid duty under a corresponding law if the Commissioner is satisfied, on application by the registered person, that—
    - (i) the duty paid under the corresponding law is not less than would be applicable under this Act; and
    - (ii) it would be reasonable to allow the person the benefit of this subsection in respect of that business; or

- (2) Section 31I(1)(h)—delete paragraph (h)
- (3) Section 31I(1a)(b)—delete paragraph (b) and substitute:
  - (b) the duty paid under the corresponding law is less than would be applicable under this Act; and
- (4) Section 31I(1b)(a)—delete paragraph (a)
- (5) Section 31I(1c)—delete "a lease, bailment, licence or other agreement" and substitute:

a contractual bailment (other than an equipment financing arrangement)

## 8—Insertion of section 31M

After section 31L insert:

### 31M—Ascertainment and disclosure of place of use of goods

- (1) A person who carries on a rental business may rely on a statement of the person who takes goods on hire as to where the goods will be solely or predominantly used during the course of the hire or, in the case of a motor vehicle, where the motor vehicle will be registered, unless the person knows that the statement is false.
- (2) A person who carries on a rental business is not bound to inquire as to any change in the place of use of the goods or, in the case of a motor vehicle, the place of registration.
- (3) If the Commissioner finds that insufficient duty has been paid, the failure to pay the correct amount of duty does not constitute a tax default under the *Taxation Administration Act 1996* if—
  - (a) the failure to pay the correct amount of duty results from reliance on information on which the person liable for the duty was entitled to rely under this section; and
  - (b) the correct amount of duty is paid within 3 months after the issue of a notice of assessment of the duty by the Commissioner.
- (4) A person who falsely represents that the goods that the person takes, or proposes to take, on hire will be used solely or predominantly outside South Australia, is guilty of an offence.

Maximum penalty: \$10 000.

## 9—Repeal of section 31N

Section 31N—delete the section

## 10—Amendment of section 76—Interpretation

- (1) Section 76—before the definition of *liability* insert:

*home* means any residential premises;

*home mortgage*—a mortgage is a home mortgage if—

- (a) the mortgagor is a natural person; and

- (b) the whole of the amount secured by the mortgage has been, is being, or is to be, used for any of the following purposes:
- (i) purchasing land on which a home that the mortgagor (or, if there are two or more mortgagors, at least one of them) intends to occupy as his or her sole or principal place of residence has been, or is to be, built;
  - (ii) building, or making additions or improvements to, a home that the mortgagor (or, if there are two or more mortgagors, at least one of them) occupies or intends to occupy as his or her sole or principal place of residence;
  - (iii) repaying a loan previously taken out for one or more of the above purposes,

but if the amount secured by the mortgage is to be used for some purpose in addition to a purpose mentioned above, the mortgage is not a home mortgage;

**Examples—**

- 1 A person takes out a mortgage over his or her home to secure a loan which is to be used in part to finance home improvements and in part to finance the purchase of a motor vehicle. In this case, the mortgage is not a home mortgage.
  - 2 A person takes out a mortgage to finance the purchase of shop premises with an attached residence, intending to occupy the residence as his or her principal place of residence. In this case, the mortgage is not a home mortgage.
- (2) Section 76, definition of *mortgage*—delete the parenthetical passage at the foot of the definition and insert the following as part of the definition:

**Note—**

- 1 A *mortgage* includes an instrument that would, assuming the fulfilment of a condition to which the instrument is subject, fall into one of the above categories.
- 2 A *mortgage* includes an agreement that gives rise to a presumptive mortgage under section 10(3) of the *Consumer Credit (South Australia) Code*.

## 11—Amendment of section 79—Mortgage securing future and contingent liabilities

Section 79(2)(b)—delete the parenthetical passage at the end of paragraph (b) and substitute:

**Exceptions—**

- 1 Paragraph (b) does not apply if the liability is wholly or partly denominated in a foreign currency and the amount for which the mortgage has been previously stamped is extended solely because of fluctuations in the rate of exchange.

- 2 If a mortgage becomes chargeable with further duty under paragraph (b), and the rate of duty payable on the mortgage has increased since it was previously stamped, then the further duty is to be calculated by subtracting from the amount of duty calculated under paragraph (b)(ii) the amount that would have been already paid if duty had then been calculated and paid at the higher rate.

## **12—Amendment of section 81A—Duty may be denoted in certain cases by adhesive stamps**

Section 81A—delete "\$4 000" wherever occurring and substitute in each case:

\$6 000

## **13—Amendment of Schedule 2**

Schedule 2, item commencing "MORTGAGE, BOND, DEBENTURE, COVENANT or WARRANT OF ATTORNEY to confess and enter up judgment", (a)(i), (ii) and (iii)—delete subparagraphs (i), (ii) and (iii) and substitute:

- (i) if the secured liability does not exceed \$6 000—\$10.00;
- (ii) if the security is a home mortgage and the secured liability exceeds \$6 000—\$10.00 plus \$0.35 for every \$100 or fractional part of \$100 over \$6 000;
- (iii) in any other case in which the secured liability exceeds \$6 000—\$10.00 plus \$0.45 for every \$100 or fractional part of \$100 over \$6 000,

## **Schedule—Transitional provision**

- 1 Part 3 Division 2 of the *Stamp Duties Act 1923* (the *Act*) is to be read subject to the following qualification:

An amount received under or in respect of a contract, agreement or arrangement entered into before 1 October 2003 is required to be included in a statement to be lodged under section 31F of the Act if (and only if) it was required to be brought into account for the calculation of rental duty under the relevant provisions of the Act, as in force immediately before 1 October 2003.