

# STAMP DUTY ON HIRING ARRANGEMENTS 2001-02 Budget Amendments

*Taxation (Administration) Act / Stamp Duty Act*

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## TERRITORY REVENUE MANAGEMENT

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### Purpose of this circular

1. This circular provides information on proposed amendments to the *Taxation (Administration) Act* and the *Stamp Duty Act* relating to stamp duty imposed on hiring arrangements. The proposed amendments are measures announced in the 2001-02 Budget and introduced as part of *Taxation (Administration) Amendment Bill 2001* and the *Stamp Duty Amendment Bill 2001*. All of the proposed changes outlined in this circular are to commence from 1 July 2001.
2. Revenue Circular RA001 is incorporated into and is to be read as one with this Circular.

### Proposed changes

3. In summary, the measures:
  - (a) increase the threshold over which stamp duty on hiring arrangements becomes payable from \$12,000 to \$36,000;
  - (b) allow the threshold to be apportioned over the period a lender conducted a hiring business;
  - (c) provide an exemption from stamp duty on hiring arrangements between related persons where the lender only hires to related persons;
  - (d) clarify that demonstration vehicles and trading stock under a motor vehicle dealer bailment plan are not subject to hiring duty;
  - (e) increase the "large transaction" cap from \$7,500 to \$9,000 per hiring arrangement; and
  - (f) amend the record keeping requirements from 2 years to 5 years.

### Increasing the tax-free threshold

4. Currently, the *Taxation (Administration) Act* provides a threshold of \$12,000 before receipts from hiring arrangements become liable for duty. However, the Commissioner will only exempt a lender from the operation of the hiring provisions where satisfied on an application by a lender that the lenders' receipts will not exceed \$12,000 in the financial year.
5. From 1 July 2001, this liability threshold increases to \$36,000 per year.

### Apportioning the tax-free threshold for part-year operations

6. Currently, the threshold only applies on an annual basis. This does not provide for the circumstance where lenders commence or cease entering into hiring arrangements part way through the year. As such, it is proposed to apportion the

threshold over the period that a lender entered into hiring arrangements in the Territory during the year.

7. The threshold will be calculated as \$3,000 multiplied by the number of months (or part months) that the lender entered into hiring arrangements. For the purposes of this threshold, the lender will be taken to be entering into hiring arrangements for the whole of any month in which they enter into a hiring arrangement.
8. For example, if a lender commences entering into hiring arrangements in November, then the Commissioner may exempt the lender if satisfied that the lender will not receive more than \$24,000 (8 months x \$3,000) under one or more hiring arrangements for the remaining part of that financial year.

### **Related party hiring arrangements**

9. Related party hiring arrangements arise as a result of related businesses structuring their affairs such that all assets are held by one entity and then leased back to another related entity. Such arrangements are usually undertaken for risk management reasons and/or for income tax reasons.
10. The existing provisions of the *Taxation (Administration) Act* clearly impose duty on such arrangements. However, this result is considered outside the intent of the hiring duty provisions.
11. Accordingly, the proposed amendments will provide an exemption for hiring arrangements between related parties, provided that the lender does not enter into hiring arrangements with other non-related parties.
12. For the purposes of the exemption, related parties will be defined as:
  - natural persons and corporations where that natural person has a controlling interest;
  - natural persons and partnerships where that natural person has a controlling interest;
  - corporations and partnerships in which the same natural person or persons have a controlling interest; and
  - corporations that are related within the meaning of the *Corporations Law* or the *Corporations Act 2001* of the Commonwealth.
13. A controlling interest in a corporation will be defined as the power to control or influence the exercise of more than 50% of the voting power:
  - at meetings of the corporations directors; or
  - attached to voting shares issued by the corporation.
14. A controlling interest in a partnership will be defined as:
  - owning more than 50% of the capital of the partnership; or
  - being entitled to more than 50% of the profits of the partnership.

### **Motor Vehicle Dealer Bailment Arrangements**

15. Bailment arrangements (commonly described as floor plans) generally relate to the provision of motor vehicles for the purpose of displaying and/or demonstrating the vehicles pending their sale or hire to a third party.
16. Hiring duty is generally imposed on arrangements whereby goods are hired for another person's use. While the existing provisions catch these bailment arrangements, it is considered that they are more closely related to a financing arrangement rather than as a hiring arrangement for the use of goods. As such, the amendment clarifies that such arrangements are not included within the definition of a "hiring arrangement", and therefore will not be subject to stamp duty.
17. This amendment accords with office practice on this issue to date. Moreover, duty will not be sought for motor vehicle dealer bailment arrangements prior to the commencement of the amendment.

### **Increasing the large transaction cap**

18. Item 9 of Schedule 1 to the *Stamp Duty Act* provides an upper cap of \$7,500 on the amount of duty payable on a single hiring arrangement.
19. On 1 July 2000 the *Taxation (Administration) Act* was amended to increase the hiring duty rate from 1.5% to 1.8%. As a consequence of this rate increase, the cap of \$7,500 effectively reduced the maximum value of the consideration paid or payable under a single hiring arrangement on which duty is charged from \$500,000 to \$416,667. To restore the relativity of the capping, it is to be increased to \$9,000.

### **Record Keeping**

20. The measures amend the record keeping provisions for hiring arrangements so that they are consistent with other provisions of the *Taxation (Administration) Act*. As a consequence, registered lenders will be required to retain records of hiring arrangements for 5 years.

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The above is a general summary of the amendments as they relate to stamp duty on hiring arrangements. Reference should be made to the *Taxation (Administration) Amendment Act 2001* and the *Stamp Duty Amendment Act 2001* for precise details. For general information, please contact this office on ☎ (08) 8999 7949.

COMMISSIONER OF TAXES