

REVENUE RULING NO. SD 025

PAYMENT OF STAMP DUTY ON FOREIGN SECURITIES

PREAMBLE

Foreign securities are exempt from duty under the Stamp Duties Act, 1920, (the Act). Section 84F (1) defines "foreign security" as a loan security **"issued or made"** outside New South Wales, and the extent of the exemption from New South Wales duty is the amount of ad valorem duty which **"has been paid or is payable"** in another State or Territory.

This ruling deals with the interpretation of the expressions "issued or made" and "paid or is payable".

RULING

- **ISSUED OR MADE**

It is the policy of the Chief Commissioner to relate "issued" to debentures and "made" to mortgages, bonds and covenants (including guarantees under seal) and to apply the following interpretation to the words:

"Issued": A debenture would be **issued** (as to both time and place) when it is first **received by or handed over to the lender**.

"Made": A mortgage, bond or covenant would be **made** when it is first **received into the hands of the lender/mortgagee**. This would include receipt at a branch office of, or by the agent or legal representative of, the lender/mortgagee.

It follows that the Chief Commissioner's policy is not to limit his interpretation of the words "issued or made" merely to mean **executed**.

There will be occasions when the preliminary question of nexus needs to be determined and, in this regard, place of execution is a determining factor (see Ruling SD 8).

Lodging parties claiming that a loan security is a "foreign security" should furnish sufficient evidence to establish the place where the security was "issued" or "made", having regard to the interpretation of these words adopted by the Chief Commissioner.

- **PAID OR IS PAYABLE**

In applying section 84F (2), it has been the practice of the Chief

Commissioner to insist on the prior payment of stamp duty in another State or Territory before allowing a set off against the duty payable in New South Wales on a foreign security.

On and from 9 June 1986 that practice ceased. Thereafter, the

Commissioner of Stamp Duties will interpret the Act so as to allow a set off in respect of:

- * The duty already paid in another State or Territory, or;
- * The duty payable (but as yet unpaid) in such State or Territory.

Prior payment of stamp duty elsewhere will no longer be a prerequisite to set off

The Commissioner has made arrangements with his counterparts in all other States and territories for details to be supplied to them of the documentation involved and the lodging party, so that necessary action can be taken to ensure that stamp duty obligations in the relevant State or Territory are met. The arrangements also provide for authorities in other States and Territories to advise the Commissioner in those instances where the amount, eventually paid elsewhere, varies from the amount "set off" in New South Wales. Action to recover the amount of duty short paid in New South Wales will then be instituted.

In cases where ad valorem stamp duty has not already been paid in another State or Territory, but the benefit conferred by section 84F is being claimed, lodging parties should furnish a letter stating the amount of ad valorem duty considered to be payable in that State or Territory. In addition, details should be given of the party expected to lodge the document for stamping in that State or Territory.

These arrangements have been made with the approval of the Chief Commissioner, having regard to the provisions of section 131A of the Stamp Duties Act, 1920.

This Ruling is based on a Practice Note first published with the Law Society Journal.

A. D. CLYNE,
Chief Commissioner of Stamp Duties.
11 July, 1986

Last Updated: 17-Jan-2001