

## REVENUE RULING NO. SD 026

### LOAN SECURITY DUTY - CONTINGENT LIABILITY

#### PREAMBLE

The question of stamp duty payable under the "Loan Security" head of duty in the Stamp Duties Act 1920, has been raised and considered on several occasions in relation to contingent obligations.

A particularly contentious issue concerns the amount of duty payable on various forms of financial accommodation given by banks and other lending institutions, where the bank or institution requires security for repayment or discharge of the borrower's liabilities. The financial

accommodation might be in the form of an advance, the issuing of a letter of credit, the acceptance, endorsement and/or discounting of Bills of Exchange or some similar arrangement.

The amount of financial accommodation to be provided may be fixed or, if not fixed, specified as being limited to a maximum sum.

The borrower will covenant to repay moneys advanced or to indemnify the bank or institution against liabilities assumed or payments made.

It is when the bank or institution obtains security that the issue of stamp duty on a loan security arises.

#### RULING

It has been the view of the Chief Commissioner in instances where the loan security is expressed to be limited to a definite and certain sum of money to assess stamp duty on that definite and certain sum and, in other cases, to seek details of the maximum amount that is or may become payable or repayable under (or that is secured by) the loan security, and to assess ad valorem duty on that maximum amount.

Persons primarily liable to payment of stamp duty have questioned the right of the Chief Commissioner to assess duty in this fashion, especially in those instances where the security given by the borrower to the bank or institution takes the form of an "all moneys" security (which secures payment to the bank or institution of all moneys owing from time to time by the borrower to the bank or institution on any account whatsoever). The argument put in support of a claim, that ad valorem duty cannot be charged on the maximum amount that may become payable or repayable in terms of the financial accommodation, is that the particular arrangement is only a **part** of a potential package of

financial accommodations, borrowings and the like entered into between the borrower and the bank or institution and secured by the "all moneys" security. The terms of the "all moneys" security, it is argued, are such that further borrowings (quite separate from particular financial accommodation under consideration) could be entered into without the need of entry into further security arrangements. Therefore, it cannot be said that a maximum amount can be identified which is payable, may become payable or repayable under, or secured by the loan security.

The Chief Commissioner accepts that the reasoning behind this argument is correct.

In that event, the Chief Commissioner cannot rely on section 84(2) and/or the Second Schedule to the Stamp Duties Act to impose ad valorem duty on the maximum amount of the financial accommodation.

Stamp duty will, however, be chargeable by reference to section 84(3) and (4) of the Act, which specify the stamp duty payable on loan securities where the total amount secured or to be ultimately recoverable by or under a loan security is not expressed in the loan security to be limited to a definite and certain sum of money. A minimum duty of \$5 will be payable, depending upon the amount of any "advances" made at the time the loan security is presented for assessment and stamping. Where an advance or advances exceed \$15,000 at that time, the loan security will be stamped at ad valorem duty rates on the amount of that advance or those advances, at the rate of 40 cents for each \$100 (or remaining fractional part of \$100) on the amount of advance which exceeds \$15,000.

For the purposes of assessing stamp duty at ad valorem rates the Chief Commissioner takes the term "advance" to include:

- \* an advance of cash;
- \* the provision of funds pursuant to a bill facility; or
- \* the payment of an indemnity obligation (e.g. payment by a guarantor on behalf of a primary borrower).

In those instances where a financial accommodation is supported by a loan security which does not contain an "all moneys" clause, the existing practice will be maintained, i.e. ad valorem stamp duty will be assessed on the maximum amount that is or may become payable or repayable under (or that is secured by) the loan security. This practice accords with the decision in [Ansett Transport Industries \(Operations\) Pty Ltd v Comptroller of Stamps](#) 80ATC4323.

This policy takes immediate effect and is to be implemented in relation to loan security documents presently under consideration in the Stamp Duties Division and those lodged in the future.

A.D. CLYNE,

Chief Commissioner of Stamp Duties.  
11 July, 1986

Last Updated: 20-Sep-2001