

## **REVENUE RULING NO. SD 003**

### **LEASES - CALCULATION OF TERM**

#### **PREAMBLE**

Section 78A of the Stamp Duties Act 1920 (N.S.W.) provides that where by reason of any provision in a lease tenancy, or the right to use property, (whether expressed as a weekly, monthly, quarterly, half-yearly or yearly tenancy or otherwise) is subject to the provisions of the lease to continue for some specified period of 12 months or more or until some specified time, 12 months or more later than the commencement of the lease that lease shall for the purposes of the Stamp Duties Act 1920 (N.S.W.) be deemed to be a lease for a term ending at the termination of that period or at that time.

#### **RULING**

Where a lease is stated to be from "year to year" and there is no other reference in the instrument to any specific period for the lease to continue duty is to be assessed under the provisions of sec. 78A on the basis of a term of one year only.

In such a case it is considered that the specified period is one year and the fact that the lease may contain a clause giving either party the right to terminate the lease upon giving certain notice will not alter the above method of assessment under sec. 78A.

It should be noted that, in all cases where the specified period is less than 12 months, the existing method of assessment is to continue. See *Burdekin v Commissioner of Stamp Duties* (1961) 61 S.R. (N.S.W.) 514. For example, if the term is six months thence month to month the assessment is to be made on the basis of a term of seven months, if the term is one month thence week to week the assessment is related to a 5 week period. Similarly, if the tenancy is stated to be from, say, month to month the basis is a term of two months.

Some lease instruments incorporate a clause granting the lessee an option to extend the lease for a further fixed period after the initial term has elapsed. While it is not the practice to take such a clause into account for assessment purposes any executed instrument drawn to give effect to the exercise of the option could be expected to attract duty at lease rates.

(Departmental reference: T.I. 4)

A. D. CLYNE,  
Chief Commissioner of Stamp Duties.

1 December, 1985

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