

# Revenue Rulings

## Special hiring agreements - replacement and repair of hired goods

### Revenue Ruling DA.003

#### Replaces SD.073

#### Preamble

Chapter 6 of the Duties Act 2000 (the Act) imposes duty on the hire of goods by commercial hire businesses in respect of hiring charges in excess of the duty-free threshold of \$6,000 per month. Hiring charges are defined in section 135 of the Act with certain exclusions listed in section 136.

Section 134 of the Act provides that the rate of hire of goods duty is 0.75 per cent of the hiring charges and the maximum amount of hire of goods duty payable by a commercial hire business in respect of hiring charges received under a 'special hiring agreement' is \$10,000.

Section 133 of the Act describes a 'special hiring agreement' to be, in summary, a written agreement for the hire of goods that enables ready identification of the nature and character of the goods and their number. Moreover, section 146(1) requires that the total hiring charges paid or payable under a special hiring agreement be not less than \$1,333,333. In addition, to qualify as a 'special hiring agreement', the terms of the agreement must not allow the possibility of the hired goods in whole or in part being replaced by other goods. However, section 133 provides that an agreement may still be classified as a 'special hiring agreement' if it permits goods to be replaced that are lost, destroyed or stolen, that fail or malfunction, that are temporarily replaced during servicing, maintenance or repair or that are otherwise not fit for hire. To qualify, the terms of the agreement must also not allow other goods to be added to the same agreement.

Issues arise as to what constitutes a 'temporary' replacement of goods or whether a replacement of goods is of such an extent as to amount to a 'reconstruction' of the goods.

The purpose of this ruling is to clarify the interpretation of section 133 of the Act with respect to these issues.

#### Ruling

Section 133 of the Act provides that an agreement will not be disqualified from acquiring the status of a 'special hiring agreement' merely because it allows for replacement of the goods where such goods are lost, destroyed, stolen, fail or malfunction or are otherwise not fit for hire.

An agreement which provides for the temporary replacement of goods during a period of service, maintenance or repair, will not be disqualified from acquiring the status of a 'special hiring agreement'. In such cases, the term 'temporary' will be construed according to the circumstances of each case. The replacement period should not be excessive having regard to all relevant circumstances, including the terms of the agreement itself and the nature of the goods under repair.

Where an agreement permits hired goods to undergo alterations which are of such an extent as to give rise to a 'reconstruction' of the goods, the Commissioner has ruled that the agreement will not be accepted as a 'special hiring agreement'. A capacity to effect repairs or alterations which would irretrievably alter the essential nature and character of the hired goods, would strongly indicate the agreement contemplated the replacement of the hired goods. Ultimately, the nature of the goods subject to the agreement will be highly relevant to this issue. It is advisable therefore, that agreements are made so as to clearly identify the extent to which repairs or alterations may be effected to the goods. The incorporation of a term in an agreement prohibiting the cost of a single repair to hired goods from exceeding their current written down value would, in the Commissioner's view, be one indication of compliance with the definition of 'special hiring agreement' under section 133 of the Act.

In all cases, the State Revenue Office will scrutinise the relevant terms of each individual agreement to determine whether the definition of 'special hiring agreement' under section 133 of the Act has been satisfied.

Please note that rulings do not have the force of law. Each decision made by the State Revenue Office is made on the merits of each individual case having regard to any relevant ruling. All rulings must be read subject to Revenue Ruling GEN.01.

**Commissioner of State Revenue**  
**July 2001**

