

# Revenue Rulings

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

### Revenue Ruling SD.073

CEASED 30 June 2001

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#### Preamble

Subdivision 13A of the *Stamps Act 1958* (the Act) provides that from 1 January 1997, rental business duty is calculated on a monthly basis with the rental business exemption amended to \$6,000 per month. From that date, the rate of rental business duty was halved to 0.75% on rental business income received under rental agreements entered into on or after 1 January 1997.

Section 131AC of the Act provides that the maximum amount of rental business duty payable by a registered person in respect of rental business income received under a 'special rental agreement' is \$4,000.

Section 131AA of the Act describes a 'special rental agreement' to be, in summary, an agreement for the letting, bailing or conferral of right to use goods whereby the aggregate rental paid or payable under the agreement exceeds \$266,667. Where such an agreement is for the right to use goods in conjunction with a lease or licence to occupy real property, section 131 AA excludes the arrangement from being a 'special rental agreement' and it would also be excluded from duty under the general definition of 'rental business'. In addition, to acquire concessional duty status as a 'special rental 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, nor allow other goods to be added to the same agreement.

Generally, agreements for the hiring of goods may be made which allow for the replacement of goods in certain limited situations. The following are some common examples:

- The goods fail, malfunction, are lost, destroyed or fail to be fit for the purposes for which they were hired.
- The goods are temporarily replaced while being serviced, maintained or repaired.

- The goods are effectively replaced as a consequence of a reconstruction.

In any of the circumstances described above, the issue arises as to whether the agreement will be disqualified from acquiring concessional duty status as a 'special rental agreement' under section 131AA of the Act.

The purpose of this ruling is to clarify the interpretation of section 131AA of the Act with respect to this issue.

#### Ruling

An agreement will not be disqualified from potentially acquiring the status of a 'special rental agreement' if it allows for replacement of the goods where such goods are lost, destroyed, stolen, fail or malfunction or are otherwise not fit for the purposes for which they were hired.

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 rental 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 rental agreement'.

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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 rental agreement' under section 131AA of the Act.

In all cases, the Office will scrutinise the relevant terms of each individual agreement to determine whether the definition of 'special rental agreement' under section 131AA 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.

**Denzil Griffiths**  
**Commissioner of State Revenue**  
**1 February 1997**