

77A. Offer to lease

- (1) Subject to subsection (2), where there is a transaction —
 - (a) by which —
 - (i) land situated in Western Australia;
 - (ii) buildings on land situated in Western Australia; or
 - (iii) fixtures annexed to, or to buildings on, land situated in Western Australia,is or are leased;
 - (b) in respect of which there exists a written offer to lease, or a written acceptance of an offer to lease, that land or those buildings or fixtures; and
 - (c) which is not effected or evidenced by an instrument chargeable with *ad valorem* duty under item 12 of the Second Schedule,

the lessee of the land, buildings or fixtures shall, within 2 months after entering into the transaction, lodge a statement with the Commissioner in respect of the transaction.

Penalty: \$20 000.

- (2) Subsection (1) does not apply to a lessee unless, had an instrument effecting or evidencing the transaction been executed, the lessee would have been liable to pay *ad valorem* duty under item 12 of the Second Schedule in respect of the transaction.
- (3) A dutiable statement shall be prepared in an approved form.
- (4) A dutiable statement lodged under subsection (1) is taken to be a lease and is chargeable with duty accordingly.
- (5) Each party to a transaction described in subsection (1), except the person required to lodge the dutiable statement, shall, within 2 months after entering into the transaction, notify the Commissioner in an approved form that the transaction has been entered into.

Penalty: \$20 000.
- (6) Subsection (5) does not apply to a party unless, had an instrument effecting or evidencing the transaction been executed, the lessee would have been liable to pay *ad valorem* duty under item 12 of the Second Schedule in respect of the transaction.
- (7) Nothing in this section prevents the joint making of a notification under subsection (5) in respect of a transaction by any 2 or more parties to the transaction who are required to make the notification.
- (8) The requirement to lodge a dutiable statement under subsection (1) or give notification under subsection (5) ceases to apply if an instrument that evidences the transaction and is chargeable with *ad valorem* duty under item 12 of the Second Schedule is executed at any time after the transaction was entered into, but nothing in this subsection affects the liability of a person for an offence against subsection (1) or (5) committed before the instrument was executed.

- (9) Where subsection (8) has effect, the instrument referred to in that subsection is to be regarded, for the purposes of section 17A, as having been first executed on the day on which the transaction occurred.
- (10) If an instrument is executed as referred to in subsection (8) after a dutiable statement has been lodged under subsection (1), subsection (4) ceases to apply to the dutiable statement unless duty has already been paid in respect of it.
- (11) If duty has already been paid as mentioned in subsection (10), the instrument is not chargeable with *ad valorem* duty but the Commissioner, on being requested to do so, is to endorse on the instrument the duty paid.
- (12) Regulations may exempt from the operation of subsections (1) and (5) any transactions belonging to a class specified in those regulations.

[Section 77A inserted by No. 66 of 2003 s. 76.]