

Document Class:	EXEMPTIONS
Document Name:	Conveyance – Other
Document Description:	Surrender of Interest in a Trust by a Family Member
Document Code:	EX

Introduction

This guide note refers to a document that evidences the transfer by way of surrender of interest in a discretionary trust by a family member to another member of the family trust pursuant to section 71(5)(g) of the SD Act.

A transfer, surrender or renunciation of an interest in property subject to a trust is liable for *ad valorem* voluntary conveyance stamp duty pursuant to sections 71(3)(a)(iv) and 71(3)(a)(v) of the SD Act. An “interest” in property includes legal, equitable, potential, contingent, expectant or inchoate interest.

However, section 71(5)(g) of the SD Act deems **certain transfers** of a potential beneficial interest in property subject to a discretionary trust **not** to be conveyances operating as a voluntary disposition *inter vivos*. These transfers would be stamped as exempt.

The terms “object” of a discretionary trust and “potential beneficiary” of a discretionary trust are synonymous. In this guide note, the term “transfer” has the same meaning as “surrender” or “renunciation”.

The criteria for exemption from *ad valorem* stamp duty pursuant to section 71(5)(g) of the SD Act are:

- the discretionary trust document has been stamped; and
- the discretionary trust must have been created wholly or principally for the benefit of a family group. Family group is defined at section 71(15) of the SD Act to mean a group of persons connected by an unbroken series of relationships of consanguinity (related by blood) or affinity (related by marriage).

The following types of transfers are exempt from *ad valorem* stamp duty by this provision:

- a transfer from one member of the family group to another member of the family group (both of whom are objects of the discretionary trust and the trust was created for the members of the family group);
- a transfer by a member of the family group by way of surrendering or renouncing their potential beneficial interest and another member of the family group is to continue as an object or beneficiary of the trust; or
- an acknowledgment by the trustee (pursuant to his/her power or authority) that a member of the family group no longer has any interest in the trust, and another member of the family group is to continue as an object or beneficiary of the trust.

The following similar transactions cannot be stamped under this document heading:

This exemption will **not** apply if the transferee had, prior to the transfer, a beneficial or potential beneficial interest in the property conveyed, but takes the property or interest transferred to him as trustee of a further trust – refer section 71(6) of the SD Act.

If a discretionary trust is **amended to include a new beneficiary**, it may be liable for *ad valorem* conveyance stamp duty. The document must be submitted for the Opinion of the Commissioner of State Taxation together with the Deed establishing the trust, any amending Deeds and the Balance Sheet of the trust as at the date of the addition of a beneficiary.

If the terms of a discretionary trust are varied, and the **variation does not involve the creation or variation of any beneficial interest or potential beneficial interest** in the property subject to the trust, the document is **not** subject to *ad valorem* duty pursuant to section 71(5)(i) of the SD Act and the document varying the trust is stamped under the document heading:

- [Others – Deed](#) (EX).

Some examples of variations to a trust that do **not** attract *ad valorem* voluntary conveyance stamp duty are:

- a change to the name of the trust;
- a change to the appointer of the trust
- a change to the vesting date; or
- banking amendments to the trust.

What *documents* can I stamp under this document heading?

The document can be in the form of:

- any document that evidences the surrender or renunciation of interest in a discretionary trust by a family member (usually in the form of a Deed).

What types of *transactions* can I stamp under this document heading?

A document that evidences the surrender or renunciation of interest in a discretionary trust by a family member is deemed **suitable** for self-stamping under this document heading where:

- the Deed establishing the family discretionary trust has been stamped; and
- the transfer is from one member of the family group to another member of the family group (both of whom are objects of the discretionary trust and the trust was created for the members of the family group); or

- the transfer is by a member of the family group by way of surrendering or renouncing their potential beneficial interest and another member of the family group continues as an object or beneficiary of the trust; or
- an acknowledgment by the trustee (pursuant to his/her power or authority) that a member of the family group no longer has any interest in the trust, and another member of the family group will continue as an object or beneficiary of the trust.

What stamp duty is payable on this document?

Exempt.

What evidence do I need to retain for audit purposes?

For audit purposes, you will need to retain the following documentation:

- a copy of the stamped document;
- a copy of the stamped Deed establishing the family trust; and
- a copy of the renunciation document.

Example 1 – Renunciation of interest in a Family Discretionary Trust to a family member

Tom no longer wants to be an object of a trust. He executes a Deed renouncing his potential interest in favour of the other objects of the trust who are members of his family group.

As the above requirements of section 71(5)(g) of the SD Act have been satisfied, the Deed is exempt from *ad valorem* voluntary conveyance stamp duty and the deed is stamped Exempt.

Example 2 – Trustee renounces the interest of a potential beneficiary to a continuing beneficiary

Jim as trustee of the Martin Family Discretionary Trust has executed a Deed whereby Jim's parents are from the date of the deed no longer included as objects of the trust. The parents are not parties to the deed. Other members of the Martin family will continue as beneficiaries of the Martin Family Discretionary Trust.

The Martin Family Discretionary Trust Deed includes a clause giving the trustee the power to exclude a person as a potential beneficiary of the trust.

As the above requirements of section 71(5)(g) of the SD Act have been satisfied, the deed is exempt from *ad valorem* voluntary conveyance stamp duty and the Deed is stamped Exempt.

What section of the SD Act applies?

Schedule 2, Part 2, General Exemption 29.