

Document Class:	EXEMPTIONS
Document Name:	Units
Document Description:	Liquidator In Specie Distribution
Document Code:	EX

Introduction

This guide note refers to a conveyance of units in a Unit Trust (where the units are not marketable securities nor are they quoted on a recognised stock exchange) by way of *in specie* distribution.

Transfers *in specie* of units owned by a company in liquidation made by the liquidator to a shareholder of the company that is in liquidation are deemed by section 71(5)(b) of the SD Act not to be transfers operating as a voluntary disposition *inter vivos*.

The units can be transferred to any one or more shareholders of the company in liquidation regardless of how many shares, or class of shares, are held by the shareholders.

A transfer of units to a shareholder who takes the units as a trustee of a trust is not precluded from this exemption by section 71(6) of the SD Act as the shareholder did not have a beneficial interest in the units prior to the transfer. Further, the liquidator is acting as an agent of the company and not as a trustee.

The consideration panel of the transfer should recite “by way of *in specie* distribution” or similar and there should be no consideration stated in the document.

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

The document must be submitted for the Opinion of the Commissioner of State Taxation and the value of the land declared in the document where:

- the units are transferred to a shareholder and another party; or
- the units is transferred in consideration of amounts owing by the company that is in liquidation to that shareholder (ie. in lieu of repayment of a debt).

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

The document can be in the form of:

- a Standard Transfer Form;
- a Unit Transfer Form; or
- any other document that evidences the conveyance of units by way of *in specie* distribution.

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

A transfer *in specie* of units owned by a company in liquidation made by a liquidator to a shareholder of the company in liquidation is deemed **suitable** for self-stamping under this document heading where:

- the document conveys units in a unit trust where the units are not marketable securities nor are they quoted on a recognised stock exchange;
- the transferor is the company in liquidation;
- the transferee is a shareholder of the company; and
- the conveyance is by way of *in specie* distribution and not for a consideration.

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 statement or statutory declaration from the liquidator stating:
 - the name of the liquidator;
 - that the units conveyed are an asset of the company;
 - that provision has been made for payment of all debts of the company;
 - the names of all the shareholders of the company; and
 - that the transaction is **not** by way of sale.

Example 1 – *In Specie* Distribution

Briggs Pty Ltd owns units in the Scott Brown Unit Trust (the units are not quoted on a recognised stock exchange). Briggs Pty Ltd has five shareholders, A, B, C, D and E. The company has gone into voluntary liquidation and Tim has been appointed as liquidator.

Tim, as liquidator, executes a transfer of the units in the Scott Brown Unit Trust to A and B. As the requirements of section 71(5)(b) of the SD Act have been satisfied, the transfer will be stamped Exempt.

What section of the SD Act applies?

Section 71(5)(b)
Schedule 2, Part 2, General Exemption 29.