

Information Circular No: 79

Stamp Duties Act 1923 *Land Tax Act 1936*

Special Disability Trusts

Issued 18 June 2015

As part of the 2015-16 State Budget, the Government today announced the introduction of an exemption from stamp duty and land tax in relation to the principal place of residence of the primary beneficiary of a Special Disability Trust.

The legislative amendments to implement these measure are contained in the *Statutes Amendment and Repeal (Budget 2015) Bill 2015* (the "Bill") which was introduced into Parliament today. The operation of these legislative measures are subject to the Bill coming into force as an Act.

Special Disability Trusts

A Special Disability Trust is one established for the future care and accommodation needs of a person with a disability. To comply, the trust must meet the requirements set out under Section 1209L of the *Social Security Act 1991* (Cwlth) or Section 52ZZZW of the *Veterans' Entitlements Act 1986* (Cwlth).

Stamp duty exemption

Section 71CAA of the *Stamp Duties Act 1923* (the "SD Act") will exempt from stamp duty a transfer of an interest in land to the trustee of a Special Disability Trust or a declaration of trust over land.

To be eligible for the exemption:

- ▶ the person declaring the trust, or the transferor of the interest in the land (as the case may be), must be an immediate family member of the principal beneficiary, which for the purposes of the exemption is recognised as:
 - a natural parent, adoptive parent or step-parent;
 - a legal guardian;
 - a grandparent or step-grandparent; or
 - a sibling or step-sibling;

- ▶ in the case of a declaration of trust, the trust must hold land that constitutes the principal place of residence of the principal beneficiary of the Special Disability Trust within 12 months of the declaration of trust;
- ▶ in the case of a transfer of an interest in land to the trustee of a Special Disability Trust, the land must constitute the principal place of residence of the principal beneficiary within 12 months of the transfer;
- ▶ there must be no consideration provided for the declaration or transfer; and
- ▶ the declaration or transfer must have occurred on or after 18 June 2015.

To receive the Special Disability Trust exemption, the following documents must be lodged with RevenueSA:

- ▶ an executed Memorandum of Transfer or Declaration of Trust over the relevant property;
- ▶ a copy of the Special Disability Trust Deed; and
- ▶ a completed **Special Disability Trusts Exemption Application** made by the trustee of the Special Disability Trust, declaring:
 - that the trust is a complying Special Disability Trust;
 - the name of the principal beneficiary of the Special Disability Trust;
 - that the principal beneficiary will use the dwelling as their principal place of residence; and
 - the date the principal beneficiary moved or will move into the property as their principal place of residence.

In the event that a property is transferred into a Special Disability Trust between 18 June 2015 and the date on which the Bill is assented to by the Governor, stamp duty will be paid by the Government on behalf of the taxpayer by way of *ex gratia* relief.

Land tax exemption

Section 5(10)(h) of the *Land Tax Act 1936* will provide that land may be wholly exempted from land tax if the land is owned by the trustee of a Special Disability Trust and the Commissioner of State Taxation (the "Commissioner") is satisfied that the land constitutes the principal place of residence of the principal beneficiary of the Special Disability Trust.

A land tax principal place of residence exemption will automatically be applied to land transferred to a complying Special Disability Trust, provided that the transfer to the trust was exempt from duty under Section 71CAA of the SD Act. The automatic exemption will take effect from 1 July the following year.

The Commissioner may grant a waiver or refund of land tax paid or payable to a trustee of a Special Disability Trust for a particular financial year, if the Commissioner is satisfied that:

- ▶ the land was acquired by the trustee during the course of the financial year;
- ▶ the land constitutes or will constitute the principal place of residence of the principal beneficiary during the course of the financial year; and
- ▶ the application is made within five years after the assessment of the relevant land tax.

In addition, a trustee for a Special Disability Trust that held land prior to 1 July 2015 (and which is the principal place of residence for the principal beneficiary of the trust), can apply to RevenueSA for the land to be recognised as exempt for land tax purposes. Please contact RevenueSA for further information.

The exemption, once granted, will apply from midnight 30 June 2015 and remain in place provided the property continues as the principal place of residence of the principal beneficiary.

Mike Walker
COMMISSIONER OF STATE TAXATION

18 June 2015

Further Information

Further information in relation to any of the above taxation measures can be obtained from RevenueSA.

Location	RevenueSA State Administration Centre 200 Victoria Square East ADELAIDE SA 5000
Postal	Commissioner of State Taxation RevenueSA GPO Box 1353 ADELAIDE SA 5001
Telephone	(08) 8226 3750 (stamp duty) (08) 8204 9870 (land tax)
Facsimile	(08) 8226 3737 (stamp duty) (08) 8207 2100 (land tax)
Email	stamps@sa.gov.au landtax@sa.gov.au
Website	www.revenuesa.sa.gov.au