SOUTH AUSTRALIA

STATE TAXATION OFFICE

Stamp Duties **Circular No. 155**
(Replaces No. 147)

STAMP DUTIES (RATES OF DUTY) AMENDMENT ACT 1997

NO. 42 OF 1997

The *Stamp Duties (Rates of Duty) Amendment Act 1997*, which was assented to on 17 July 1997, provides the following three amendments to the *Stamp Duties Act 1923*:

- an exemption from *ad valorem* stamp duty on conveyances of property by the Official Trustee in Bankruptcy, or a registered trustee under the Commonwealth *Bankruptcy Act 1966;*

- the provision of stamp duty concessions for conveyances of property by superannuation funds for the purposes of enabling them to comply with the requirements of the Commonwealth *Superannuation Industry (Supervision) Act 1993;* and,

- the reduction of the rate of stamp duty charged on the transfer of marketable securities, by way of gift.

The information set out below is of necessity brief, and the precise nature, and scope of the changes must be taken from the reading of the provisions set out in full in the amending Act, in conjunction with the *Stamp Duties Act 1923*.

DATE OF OPERATION

The amendments to the *Stamp Duties Act 1923*, will operate with effect from 17 July 1997

SUMMARY OF AMENDMENTS

1. ***A new section s71CD dealing with Duty on Conveyances by the Official Trustee in Bankruptcy, or Registered Trustee under the* Commonwealth *Bankruptcy Act 1966.***

The new section provides that a transfer of property from the Official Trustee in Bankruptcy, or a registered trustee to the bankrupt, or former bankrupt, is exempt from duty.

A transfer to any other person will be assessed as though it were a transfer from the bankrupt, or former bankrupt. This means that section 71CD will operate to ensure that the stamp duty exemptions provided under section 71CA, and section 71CB of the *Stamp Duties Act 1923*, are maintained in cases of personal bankruptcy on the part of a spouse, or former spouse (and the property is subsequently transferred to a spouse or former spouse of the bankrupt).

2. *Duty on certain Conveyances between Superannuation Funds, Etc., (amendment of section 71DA).*

Since the commencement of the Commonwealth *Superannuation Industry (Supervision) Act 1993* (the SIS Act), Commonwealth Government policy has placed the onus on superannuation fund trustees to formulate and implement broad investment strategies to protect investments, and to ensure that the actions of the trustees of a superannuation fund are always in the best interest of beneficiaries of the fund.

Small superannuation funds (formerly excluded funds), were required to comply with the investment strategy requirements of the SIS Act from 1 July 1996.

The most financially viable method for small superannuation funds to comply with these requirements, is by transferring property *in specie*, to the trustees of a Pooled Superannuation Trust (PST), in exchange for units in that PST.

Consequentially, the Government has amended the *Stamp Duties Act 1923*, to provide concessional stamp duty treatment in the following circumstances:

Subsection 71DA(1a) provides legislative force to the Ruling issued by the Commissioner in Circular No. 147. It provides concessional stamp duty treatment in respect of each instrument of transfer of property from a small superannuation fund to a PST, in exchange for units in that PST.

Subsection 71DA(1b) provides concessional stamp duty treatment in respect of each instrument of transfer of property (by a PST unit holder), from a PST to another PST, or superannuation fund for the purposes of complying with the requirements of the SIS Act.

Duty Payable

The duty payable on an instrument that conveys property for the purposes of complying with requirements under the SIS Act, will be the lesser of, either:

(a) the amount of *ad valorem* duty that would be payable on an instrument as a conveyance apart from this section; or,

(b) $200.

Compliance Monitoring

The operation of these concessions will be closely monitored to ensure that the transfers envisaged at section 71DA(1a), and section 71DA(1b) of the *Stamp Duties Act 1923*, are effected solely to comply with the rules laid down under the SIS Act, and are not part of an avoidance scheme.

Where transfers of property to, between, or from PST's are effected for some purpose other than in compliance with the SIS Act rules, and do not otherwise comply with the terms of section 71DA(1), the transfer, or transfers will be liable to the stamp duty ordinarily applicable to any such instruments.

3. *Rates Of Stamp Duty For Gifts Of Shares.*

Background

Prior to the introduction of this amendment, gifts of shares were assessed for stamp duty at tax rates ranging from 1% to 4.5%. The amendment reduces the rate of duty to 30¢ per $100 of the value of listed shares, and 60¢ per $100 of the value of unlisted shares.

FURTHER INFORMATION?

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17 July 1997

COMMISSIONER OF STATE TAXATION