

Transfer of Quoted Financial Products

Two recent Western Australian State Administrative Tribunal (“Tribunal”) decisions, *Amatek Holding Limited and Commissioner of State Revenue [2006] WASAT 19* (“Amatek”) and *Westpac Custodian Nominees Limited and Commissioner of Revenue [2006] WASAT 203* (“Westpac”) have created uncertainty about the stamp duty payable on the transfer of financial products quoted on recognised financial markets.

The Tribunal found in the Amatek case that shares transferred in a class of shares suspended from trading on the stock exchange could not be considered to be ‘listed on a prescribed stock exchange’ for the purposes of the Western Australian Stamp Act.

In the Westpac case, the question concerned the stamp duty treatment of stapled securities, and particularly whether a share stapled to a unit in a trust, to constitute a stapled security quoted and traded on the ASX was itself a listed security for the purposes of stamp duty. The Tribunal determined that the transfer of shares to constitute the stapled securities, which were then quoted on ASX, represented a transfer of unquoted securities and subject to duty.

Notwithstanding these decisions of the Tribunal and the outcome of any appeals on these matters, RevenueSA will administer financial product duty and land rich duty assessments under the *Stamp Duties Act 1923* (the “Act”) on the following basis:

1. financial products of a corporation or unit trust scheme will be considered to be ‘quoted’ while under temporary suspension until such time as the corporation or unit trust scheme is removed from the official list of a recognised financial market; and
2. when a stapled security is quoted on the official list of a recognised financial market each component of the stapled security is also taken to be individually quoted.

For the purposes of the land rich provisions of the Act, a private unit trust scheme is a scheme in which less than 50 persons holds units or in which 50 or more persons hold units if 20 or fewer persons hold 75 per cent in number or value of the units on issue.

FURTHER INFORMATION

Further information regarding these amendments may be obtained from RevenueSA.

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