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General

Circular No. 282

DOMESTIC PARTNERS

The *Statutes Amendment (Domestic Partners) Act 2006* (“the Amending Act”) and the *Regulations Variation (Domestic Partners) Regulations 2007* (“the Amending Regulations”) were assented to on 14 December 2006 and came into operation on 1 June 2007.

The Amending Act and Amending Regulations amend the:

- *Family Relationships Act 1975*
- *De Facto Relationships Act 1996* (which is retitled the *Domestic Partners Property Act 1996*)

and relevantly for RevenueSA the:

- *Emergency Services Funding (Remissions – Land) Regulations 2000*
- *First Home Owner Grant Act 2000*
- *First Home Owner Grant Regulations 2000*
- *Land Tax Act 1936*
- *Rates and Land Tax Remissions Regulations 2005*
- *Stamp Duties Act 1923*.

The information in this Circular is only intended as a guide. The precise nature and scope of the new legislation should be taken from a reading of the amending legislation.

THE AMENDMENTS

The amendments provide for the recognition of certain domestic relationships of non-married couples, covering people who live:

- in an opposite sex *de facto* relationship
- in a same-sex *de facto* relationship
- together as close companions or life partners.

However, the amendments do not cover relationships such as:



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- flatmates or housemates
- boarders
- commercial relationships (e.g. live-in housekeeper, paid carer).

Generally, the amendments either replace legislative references to a 'de facto spouse', a 'de facto relationship' or a 'putative spouse' with, or insert into the legislation, the new terms "domestic partner" or "domestic partnership" (as the case may be), but the changes must be read in conjunction with the context of the relevant substantive legislation.

With the exception of the *Land Tax Act 1936* and section 71CBA of the *Stamp Duties Act 1923* (which are separately dealt with later in this Circular):

*"A person is, on a certain date, the **domestic partner** of another person if he or she is, on that date, living with that person in a close personal relationship and –*

(a) he or she –

- (i) has so lived with that other person continuously for the period of 3 years immediately preceeding that date; or*
- (ii) has during the period of 4 years immediately preceding that date so lived with that other person for periods aggregating not less than 3 years; or*

(b) a child, of whom he or she and the other person are the parents, has been born (whether or not the child is still living at that date)."

In regard to "close personal relationship":

*"**close personal relationship** means the relationship between 2 adult persons (whether or not related by family and irrespective of their gender) who live together as a couple on a genuine domestic basis, but does not include—*

(a) the relationship between a legally married couple; or

(b) a relationship where 1 of the persons provides the other with domestic support or personal care (or both) for fee or reward, or on behalf of some other person or an organisation of whatever kind.

Note - Two persons may live together as a couple on a genuine domestic basis whether or not a sexual relationship exists, or has ever existed, between them."

HOW THE AMENDMENTS AFFECT SPECIFIC LEGISLATION

Emergency Services Levy

Regulation 9 of the *Emergency Services Funding (Remissions – Land) Regulations 2000* provides a remission of up to \$40 of the Emergency Services Levy on the principal place of residence of levy payers who are:

- in receipt of certain government allowances and pensions;
- self funded retirees; or
- holders of certain government issued concession cards.

Conditions apply to the remission where:

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- two or more persons own land jointly or as tenants in common;
- a married couple or domestic partnership owns land solely, or jointly or as tenants in common with another person or persons; or
- two people comprising a married couple or domestic partnership live together and one of them is working in paid employment at a rate of 20 hours per week or more.

The effect of the amendments is to add the term “*or domestic partnership*” to the above mentioned conditions.

Further information in relation to the remission is available in the *Guide to Emergency Services Levy Legislation* issued each year with Emergency Services Levy accounts, at www.revenuesa.sa.gov.au, or by contacting the RevenueSA Helpline on 1300 366 150.

First Home Owner Grant

Pursuant to sections 10 and 11 of the *First Home Owner Grant Act 2000*, an applicant for a First Home Owner Grant (“FHOG”) is ineligible for the grant if the applicant or the applicant’s spouse or domestic partner:

- had previously been paid a grant;
- could have successfully applied for a grant in respect of an earlier transaction to which he or she was a party but did not do so;
- could, assuming that he or she had then been an Australian citizen or a permanent resident, have successfully applied for a grant in respect of an earlier transaction to which he or she was a party;
- had, before 1 July 2000, held a relevant interest in residential property in South Australia or in another State or a Territory; or
- had, before the purchase of the residential property upon which the grant is sought, held a relevant interest in a residential property in South Australia or in another State or a Territory and occupied that residential property as a place of residence for a continuous period of at least 6 months.

The effect of the amendments is to add the term “*or domestic partner*” to the above mentioned conditions.

Consequential amendments have also been made to the FHOG Regulations to reflect the changes to the FHOG Act.

Further information in relation to the grant is available from the FHOG website www.firsthome.gov.au, at www.revenuesa.sa.gov.au, or by contacting RevenueSA on (08) 8226 3750 or Free Call 1800 637 778.

Land Tax Defined Rural Area Primary Production Exemption

Section 5(10)(g) of the *Land Tax Act 1936* (“the Land Tax Act”) provides an exemption from land tax to land used for primary production within the defined rural areas of the greater metropolitan area of Adelaide and of Mount Gambier, depending on how the land is owned and/or used.

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The land ownership and/or land usage criteria under which the exemption can be claimed, makes reference to the land owner's "relative" or "close relative". Those terms are defined in section 5(13) of the Land Tax Act.

The effect of the amendments to the Land Tax Act is to expand the scope of the definitions of "relative" and "close relative" to include "*domestic partners*" as a category of "relative" and "close relative".

For the purposes of the Land Tax Act (only):

*"a person is the **domestic partner** of a person if he or she lives with the person in a close personal relationship".*

The definition of "*close personal relationship*" is as set out earlier in this Circular.

Further information in relation to the exemption is available in the *Primary Production Exemption Information Sheet* available at www.revenuesa.sa.gov.au or by contacting the RevenueSA Helpline on (08) 8204 9870.

Partial Land Tax Principal Place Of Residence Exemption

In cases where a person's principal place of residence may not satisfy all the conditions for the full Land Tax principal place of residence exemption, Regulation 4 of the *Rates and Land Tax Remissions Regulations 2005* provides a remission of up to 60% of land tax (to a maximum of \$150) in respect of a principal place of residence owned and occupied by:

- pensioners;
- holders of certain Health Cards;
- recipients of certain Commonwealth allowances; and
- holders of a current State Concession Card or other persons who would normally qualify for the card.

Conditions apply to the remission where:

- two or more persons own land jointly or as tenants in common;
- a married couple or domestic partnership owns land solely, or jointly or as tenants in common with another person or persons; or
- two people comprising a married couple or domestic partnership live together and one of them is working in paid employment at a rate of 20 hours per week or more.

The effect of the amendments to the above-mentioned Regulations is to add the term "*or domestic partnership*" to the conditions as set out above.

Further information in relation to the remission is available by contacting the RevenueSA Helpline on (08) 8204 9870.

Stamp Duties - Exemption From Duty In Respect Of Certain Transfers Between Spouses Or Former Spouses

Section 71CB of the *Stamp Duties Act 1923* provides an exemption from stamp duty to a document of which the sole effect is to:

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- transfer an interest in the shared residence or the registration of a motor vehicle between spouses or former spouses, or domestic partners or former domestic partners, if the document was executed as a result of the irretrievable breakdown of the parties' marriage or relationship; or
- register a motor vehicle in the name of a person whose spouse or former spouse, or domestic partner or former domestic partner, was the last registered owner of the vehicle (either alone or jointly with the person), if the document was executed as a result of the irretrievable breakdown of the parties' marriage or relationship.

The effect of the amendments is to expand the availability of the exemption to a “*domestic partner or former domestic partner*”, and replace prior reference to a “*matrimonial home*” (of spouses or former spouses) with reference to a “*shared residence*” (of spouses or former spouses, or domestic partners or former domestic partners).

Further information in relation to the exemption is available in the *Stamp Duty Document Guide* available at www.revenuesa.sa.gov.au or by contacting RevenueSA on (08) 8226 3750.

Stamp Duties – Exemption From Duty In Respect Of Domestic Partnership Agreements Or Property Adjustment Orders

Section 71CBA of the *Stamp Duties Act 1923* provides an exemption from stamp duty to a:

- certified domestic partnership agreement;
- deed or other instrument (including an application to transfer the registration of a motor vehicle) to give effect to, or consequential on, a certified domestic partnership agreement, or a property adjustment order, if certain conditions are met; or
- deed or other instrument executed by the trustee of a superannuation fund to give effect to, or consequential on, a certified domestic partnership agreement, or a property adjustment order.

The effect of the amendments is to expand the availability of the exemption to a “*domestic partner*”, and replace the terms “*certificated cohabitation agreement*” and “*cohabitation agreement*” with the term “*certified domestic partnership agreement*”.

For the purposes of section 71CBA (only), the definition of “*domestic partner*” is that in section 3(1) of the *Domestic Partners Property Act 1996*, which states:

“domestic partner means a person who lives in a close personal relationship and includes—

- (a) a person who is about to enter a close personal relationship; and
- (b) a person who has lived in a close personal relationship.”

To qualify for the exemption, the Commissioner must still be satisfied that the domestic partners have lived together continuously as domestic partners for at least 3 years.

Further information in relation to the exemption is available in the *Stamp Duty Document Guide* available at www.revenuesa.sa.gov.au or by contacting RevenueSA on (08) 8226 3750.

Stamp Duties – Interfamilial Transfer Of Farming Property

Section 71CC of the *Stamp Duties Act 1923* provides an exemption from stamp duty to the transfer of a family farming property from a person or a trustee of the person to a relative of the person or a trustee of the relative of the person if certain conditions are met.

The effect of the amendments is to expand the availability of the exemption by extending the definition of “*relative*” to now include a “*domestic partner*”, and expand the condition relating to a prior business relationship required between the transferor and the transferee or a lineal ancestor or spouse of the transferee to now include a domestic partner.

Further information in relation to the exemption is available in the *Stamp Duty Document Guide* available at www.revenuesa.sa.gov.au or by contacting RevenueSA on (08) 8226 3750.

Stamp Duties – Land Rich Entities

The Part 4 (Sections 91-102) land rich provisions of the *Stamp Duties Act 1923* operate when a person or a group of associates acquire a majority interest in a land rich entity or increase their existing majority interest in a land rich entity.

The effect of the amendments is to expand the application of the provisions to include a “*domestic partner*” and persons in a “*close personal relationship*”.

Further information in relation to the provisions is available in Stamp Duty Circulars available at www.revenuesa.sa.gov.au or by contacting RevenueSA on (08) 8226 3750.

FURTHER INFORMATION

Location

RevenueSA
State Administration Centre
200 Victoria Square East
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Postal

Commissioner of State Taxation
RevenueSA
GPO Box 1353
ADELAIDE SA 5001

Telephone

ESL 1300 366 150
FHOG (08) 8226 3750 or
 Free Call 1800 637 778
Land Tax (08) 8204 9870
Stamp Duties (08) 8226 3750

Facsimile

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FHOG (08) 8226 3737
Land Tax (08) 8207 2100
Stamp Duties (08) 8226 3737

Website

FHOG www.firsthome.gov.au or
 www.revenuesa.sa.gov.au
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