

SOUTH AUSTRALIA



STATE TAXATION OFFICE

Stamp Duties

Circular No. 99

SUPERANNUATION FUND TRUST DEEDS

**TRANSFER OF PROPERTY AND/OR AMENDMENTS MADE TO
ENSURE COMPLIANCE WITH COMMONWEALTH
SUPERANNUATION INDUSTRY (SUPERVISION) ACT, 1993**

Requests have been made for the Commissioner's view as to the stamp duty liability where amendments are made to superannuation fund trust instruments or transfers of property to a new trustee, to ensure that the fund is able to comply with the trustee requirements under the proposed Superannuation Industry (Supervision) Act, 1993 ("SIS").

BACKGROUND

In broad terms, SIS imposes a requirement that a trustee of a complying superannuation fund must be either:-

1. A constitutional corporation pursuant to a requirement contained in the governing rules/trust instrument of the fund; or
2. An individual(s), provided the fund has as its sole or primary purpose the provision of old-age pensions.

In order to comply with these requirements, trust deeds/instruments of superannuation funds will require:

- (a) Amendment(s) to their provisions; and/or
- (b) Transfer(s) of property to a new trustee(s).

RULING

The provisions of Section 71(5)(d) of the Stamp Duties Act, 1923 ("the Act") will be applied to all instruments which either effect, acknowledge, evidence or record the transfer of trust property for the purpose of appointing a constitutional corporation solely to comply with the SIS requirements listed above. In respect of such instruments the Commissioner will be satisfied within the terms of Section 71(5)(d) and consequently nominal duty of \$10.00 will be applicable.

However, the following transfers pursuant to the instrument will not be liable to stamp duty in accordance with Exemption No. 20 of "General Exemptions from all Stamp Duties", under the Second Schedule of the Act.

"Exemption No. 20

20. Conveyance or transfer of any share or shares in the stock, funds or capital of, or of any debenture or debentures or bond or bonds issued by, any corporation, company or society if the conveyance or transfer is made for the purpose of effectuating the appointment of a new trustee or the retirement of a trustee and all duty chargeable on any instrument for the appointment of the new trustee or the retirement of the trustee, as the case may be, has been duly paid"

Amendments to trust deeds/instruments to enable funds to comply with the SIS trustee rules set out above and which do not involve the creation or variation of any beneficial interest or potential beneficial interest in property subject to the fund will fall under Section 71(5)(i) of the Act and consequently be dutiable at \$10.00.

QUALIFICATION

It should be noted that where amending deeds include matters which are not made for the purpose of complying with the SIS rules referred to above, the relevant amending deed or other document will be liable to be assessed with that duty ordinarily applying to such a deed.

LODGEMENT

When submitting relevant instruments of transfer for assessment under Section 71(5)(d), they should be accompanied by:-

- (a) Deed of Appointment or similar document evidencing the appointment of a new trustee(s)/constitutional corporation as trustee;
- (b) A letter by or on behalf of the trustee(s) or their solicitor(s) confirming that the appointment of trustee(s) and transfer(s) of property has been effected to comply with the SIS rules.

When submitting the relevant amending deed or similar document for assessment, it must be accompanied by:-

- (a) Original or photocopy of stamped existing trust deed of the fund;
- (b) A letter by or on behalf of the trustee(s)/solicitor(s) of the fund certifying that the amendment(s) contained in the amending deed has been made solely for the purpose of complying with the SIS rules set out above.

OTHER SIS REQUIREMENTS

The SIS rules impose additional requirements upon complying superannuation funds such as:-

- (a) The requirement for trust deeds to contain certain covenants;
- (b) The requirement for trustees of a complying superannuation fund to comprise an equal representation of employee and employer members.
- (c) The requirement that various agreements between trustees and others be in writing and be amended to incorporate/exclude certain provisions.

These issues will be the subject of a separate circular(s).

14 February, 1994

COMMISSIONER OF STAMPS