

SOUTH AUSTRALIA



STATE TAXATION OFFICE

Stamp Duties

Circular No. 1

STAMP DUTIES ACT AMENDMENT ACT, 1988 NO. 21 of 1988

Your attention is drawn to the above Act which was assented to on 14th April 1988. 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 as set out in full in the Amending Act in conjunction with the Stamp Duties Act, 1923.

PURPOSE OF THE AMENDMENTS

The intention of the Government in introducing the proposed amendments was to:--

- exempt from duty the transfer of an interest in the matrimonial home between spouses;
- pay interest on a refund of duty where an Objection or Appeal to an assessment of the Commissioner is upheld;
- prevent stamp duty revenue from being lost as a result of certain transactions being arranged in a manner which minimised the liability to duty;
- ensure that the powers of the Commissioner to impose duty in certain instances and to support the collection and recovery of duty are adequately provided.

OFFENCE TO HAVE UNSTAMPED INSTRUMENTS

Section 20 of the Principal Act is amended to provide that it will be an offence for any person who executes an instrument or on whose behalf it was executed to fail to produce for stamping an instrument that is chargeable with stamp duty within the relevant period prescribed by section 20. That is:--

- (a) For instruments executed in South Australia--within two months after its execution.
- (b) For instruments executed outside South Australia--within two months after its receipt in South Australia or within six months after its execution, whichever period first expires.

OBJECTIONS AND APPEALS--PAYMENT OF INTEREST ON REFUNDS

Section 24 of the Principal Act is amended to allow for the payment of interest on amounts refunded after a successful objection or appeal against an assessment of duty. The rate of interest will be fixed from time to time by the Minister by notice in the Government Gazette.

TRANSFER OF BENEFICIAL INTEREST IN PROPERTY

Section 71 of the Principal Act is amended by striking out paragraph (e) of subsection (5) and substituting the following paragraph:

(e) a transfer of property to a person who has a beneficial interest in the property by virtue of an instrument that is duly stamped, where

(i) the beneficial interest arises under a trust of which the transferor is a trustee; and

(ii) (A) the transferor or some other trustee or trustees of the trust obtained his or her interest in the property under one of the other paragraphs of this subsection (except paragraph (d)). or

(B) the transferor or some other trustee or trustees of the trust obtained his or her interest in the property by virtue of an instrument duly stamped with ad valorem duty.

TRANSFER OF INTEREST IN THE MATRIMONIAL HOME BETWEEN SPOUSES

A new section 71cb is enacted that exempts from stamp duty an instrument that has as its sole effect the transfer of an interest in a matrimonial home (a matrimonial home being a residence that constitutes the principal place of residence of husband and wife or a de facto husband and wife who have been cohabiting continuously for at least five years before execution of the instrument in respect of which an exemption is claimed).

TRANSACTIONS OTHERWISE THAN BY DUTIABLE INSTRUMENTS

Action is proposed to ensure that stamp duty is paid in those situations where oral acceptance or an acceptance by performance is given to a written offer.

A new section 71 e is enacted which will require a statement to be lodged with the Commissioner when a transaction is effected that transfers a legal or equitable interest in land, a business or the goodwill of a business, situated in the State or an interest in a partnership and no instrument chargeable with ad valorem duty is prepared.

UNREGISTERED MORTGAGES PROTECTED BY CAVEATS

A new section 82 is enacted which provides that a caveat which relates to an unregistered mortgage shall be chargeable with the same duty that would be payable on the mortgage instrument. If ad valorem duty has been paid, the caveat is liable only to nominal duty (\$4).

Likewise, a mortgage is not chargeable with duty to the extent to which duty in respect of the mortgage has been paid on the caveat.

As these amendments operate from the 7th December 1987 this Office will take action to follow up these matters in accordance with the terms of the amended legislation.

Any enquiries should be directed to the Stamp Duties enquiry area on telephone (08) 226 3750 or (08) 226 3719.

11 December 1990

COMMISSIONER OF STAMPS