

SOUTH AUSTRALIA



STATE TAXATION OFFICE

Stamp Duties

Circular No. 100

SECTION 71(5)(b) AND SECTION 71(6) OF THE STAMP DUTIES ACT, 1923 "IN SPECIE DISTRIBUTIONS"

The Stamp Duties Office has received a number of requests seeking a ruling as to whether an in specie distribution of property from a company to its shareholder, which is also a company which acts as trustee of a discretionary trust, would be exempt from stamp duty pursuant to Section 71(5)(b) of the Stamp Duties Act, 1923 (the "Act").

RULING

Section 71(5)(b) of the Act provides that a transfer in specie of property of a company in liquidation made by a liquidator to a shareholder of the company will not be deemed a conveyance operating as a voluntary disposition *inter vivos*. Section 71(5)(b) does not apply if the transferee already had a beneficial or potential beneficial interest in the property, but takes the property upon transfer as a trustee under a further trust. [Section 71(6)].

In most situations Section 71(6) of the Act will not have the effect of removing the exemption from *ad valorem* duty granted by Section 71(5)(b) since the shareholder to whom the property is transferred would not generally at law have a beneficial or potential beneficial interest in the property transferred prior to the transfer.

The words "further trust" appearing at Section 71(6) are considered by this Office to mean any trust, that is both a pre-existing trust and one that comes into existence at the moment of conveyance.

Any enquiries relating to this ruling should be directed to Mr Ray Barnes (08) 226 3716.

14 February, 1994

COMMISSIONER OF STAMPS