

## **STAMP DUTIES (TRUSTS) AMENDMENT ACT 2008**

The *Stamp Duties (Trusts) Amendment Act 2008* (the “Amending Act”) was assented to on 26 June 2008.

The Amending Act makes a number of amendments to the *Stamp Duties Act 1923* (the “Act”) to:

- ensure that section 71 continues to apply in the same way that it did prior to the decision in the High Court case of *CPT Custodian Pty Ltd v Commissioner of State Revenue (Vic)* (“the CPT Case”) both retrospectively and prospectively;
- ensure that distributions from unit trusts to unit holders, or transfers of property from superannuation trusts to members are exempt from *ad valorem* conveyance duty to the extent of the transferee’s beneficial interest in the trust property, pursuant to section 71(5)(e) of the Act;
- clarify the operation of General Exemption 26 in the Second Schedule of the Act (“Exemption 26”);
- expand the application of the exemption in section 71(5)(e) of the Act to include situations where trust property is subdivided into community or community strata titles and subsequently transferred to the beneficiaries for whom the trust property was originally held; and
- provide an exemption in relation to transfers of property between responsible entities and custodians of managed investment schemes.

Further detail in relation to the amendments is set out below.

### **MSP AND CPT AMENDMENTS**

The *Stamp Duties (Land Rich Entities and Redemption) Amendment Act 2000* (the “MSP Amendments”), was enacted in response to the decision in *MSP Nominees Pty Ltd v Commissioner of Stamps* (“the MSP case”) to ensure that the transfer, issue and redemption of units in private unit trusts that own property in South Australia remained liable to *ad valorem* conveyance duty, except where a relevant exemption applied.

On 28 September 2005, the High Court handed down its decision in the CPT Case. The decision in this case cast doubt on the effectiveness of the changes made by the MSP Amendments.

Concerns had also separately been raised by industry that the structure of the MSP Amendments resulted in the exemption in section 71(5)(e) of the Act not being available in circumstances where it was intended to operate.

The issue has been put beyond doubt in the Amending Act.

Exemption 26 was inserted into the Act at the request of industry who were concerned that the broad definitions of interest introduced with the MSP Amendments would result in some transactions carried out by a trustee of a regulated superannuation fund in the ordinary course of business being subject to *ad valorem* duty. Exemption 26 was enacted to alleviate these concerns.

It has since been argued that Exemption 26 may also apply when property is transferred into a superannuation fund in circumstances where an exemption had not applied in the past. Given that the MSP Amendments were intended to reinstate the *status quo* existing prior to the MSP case, legislative amendment was necessary.

The Amending Act amends the private unit trust provisions of the Act to ensure that:

- the transfer, issue and redemption of units in private unit trusts are chargeable with *ad valorem* duty (both retrospectively and prospectively);
- the section 71(5)(e) exemption continues to be available in certain circumstances where the property of a unit trust is transferred to a unit holder, consistent with the approach of RevenueSA prior to the High Court decision in the MSP case; and
- Exemption 26 does not extend to circumstances where property is transferred into or out of a regulated superannuation fund.

## **EXEMPTIONS**

The Amending Act also provides for two additional exemptions in the Act.

### **Community Titles**

The application of section Section 71(5)(e) has also been extended in certain circumstances.

Section 71(5)(e) is applied by RevenueSA in circumstances where *ad valorem* stamp duty is paid on the transfer of Torrens Title land which has been purchased subject to a written trust arrangement and is then subdivided into multiple lots and transferred to the previously identified beneficiaries.

The exemption has not, however, been available in circumstances where Torrens Title land is sub-divided into community titles or community strata titles rather than Torrens Titles.

The Amending Act operates to extend the exemption to situations where trust property is sub-divided into community or community strata titles and transferred to previously identified beneficiaries as foreshadowed under the trust.

The exemption is only available where the community title that is transferred to the beneficiary is the property identified as being subject to the original trust arrangement.

## Managed Investment Schemes

The Amending Act also provides a new exemption in relation to a transfer of property subject to a registered managed investment scheme from the responsible entity of the scheme to a person as primary custodian for the responsible entity (or vice versa).

The exemption does not apply to a transfer of property that is part of an arrangement under which either the property ceases to be subject to the scheme or the persons who are members of the scheme do not have the same interest in the property after the transfer as they had immediately before the arrangement was entered into.

**Please note that circulars do not have the force of law.**

## FURTHER INFORMATION

Further information regarding this change can be obtained from RevenueSA.

### **Location**

RevenueSA  
State Administration Centre  
200 Victoria Square East  
ADELAIDE SA 5000

### **Postal**

Commissioner of State Taxation  
RevenueSA  
GPO Box 1353  
ADELAIDE SA 5001

### **Telephone**

(08) 8226 3750

### **Facsimile**

(08) 8226 3737

### **Website**

<http://www.revenuesa.sa.gov.au>

### **Email**

[stamps@saugov.sa.gov.au](mailto:stamps@saugov.sa.gov.au)