

SOUTH AUSTRALIA



STATE TAXATION OFFICE

Stamp Duties

Circular No. 3

STAMP DUTIES ACT AMENDMENT ACT (NO. 2), 1990 CONTRACT SPLITTING (SECTION 67)

Your attention is drawn to the above Act which was assented to on 26 April 1990 and came into operation on that date. The information set out below is of necessity brief and the precise nature and scope of the change 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 these amendments is to prevent stamp duty revenue being lost as a result of the practice of contract splitting. This Office has experienced a marked increase in the incidence of the artificial dividing of property into smaller parcels for the purpose of stamp duty avoidance.

IMPACT ON THE STAMP DUTIES ACT

As a consequence of the passing of the Stamp Duties Act Amendment Act (No.2), 1990, the following sections have been repealed:-

--Section 66a

--Section 66ab

--Subsections 68 (1) and 68 (2)

--Section 69 and;

--Subsection 71e (10)

A new section 67 has been introduced to extend the principles established under the old section 66ab to apply not only to land, but to the artificial dividing of all property for purpose of stamp duty avoidance.

APPLICATION OF SECTION 67

--Section 67 applies to the following instruments:
(S 67 (1))
(a) a conveyance on sale

(b) a conveyance operating as a voluntary conveyance *intervivos*;

(c) an instrument chargeable with duty as if it were a conveyance (including a statement under section 71e)

-- It does *not* apply to the following instruments:--

(S. 67 (2))

(a) conveyances that relate to property being transferred to different persons by separate conveyances where the Commissioner is satisfied that no arrangement or understanding exists between the persons receiving the property and that the property so conveyed is to be used separately and independently from each other.

Note: The exemption that was previously provided under section 66ab for primary production land conveyed to different persons by separate conveyances has been extended under section 67 (2) (a) to include all property.

(b) a conveyance of stock, implements or chattels that would be exempt under the provision of section 31a ("walk-in walk-out").

(c) conveyances of marketable securities

(d) any instrument excluded by regulations from the operation of this section.

(S. 67 (4))

--In circumstances where instruments have been executed within 12 months of one another a person conveys property (or an interest in property) to the same person (whether that person accepts alone or with different persons) it will be presumed that the transactions form one transaction or one series of transactions unless the Commissioner is satisfied to the contrary.

OFFENCE PROVISIONS

It is an offence for a person to prepare or certify instruments chargeable under subsection (3) and submit them for stamping and subsequently fail to declare to the Commissioner the connection between that instrument and others that may form substantially one transaction (s. 67 (5)) penalty \$5,000. It is a defence to a charge under subsection (5) that the defendant did not know or could not be expected to know of any matters required to be disclosed under that subsection.

CERTIFICATION ON REAL PROPERTY ACT DOCUMENTATION

All transfers of vacant land where the certifying party is of the opinion that the document is not affected by section 67 require the appropriate endorsement on the transfer. Where the transfer is affected the document must be lodged for opinion with full details provided.

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