SOUTH AUSTRALIA

STATE TAXATION OFFICE

Stamp Duties **Circular No. 138**

STAMP DUTIES (MISCELLANEOUS) AMENDMENT ACT 1996, ACT NO. 18 OF 1996

The Stamp Duties (Miscellaneous) Amendment Act 1996, which came into effect on 24 April 1996, provides the following five amendments to the Stamp Duties Act.

The Amendment Act:-

1. Tightens the exemption criteria for the transfer of a family farm within a family unit.

2. Ensures duty is payable where a business or part of a business is conveyed (otherwise than by a dutiable instrument) to one or more parties, and the conveyance is effected using a number of different transactions.

3. Strengthens the exclusion contained in Section 81 of the Act to ensure that it does not apply to a transfer of real estate where the real estate is used as a further charge for a previous security.

4. Provides for the payment of stamp duty under the newly created Clearing House Electronic Subregister System (CHESS) for Units of Foreign Securities (CUFS).

5. Reflects changes in Commonwealth Superannuation Industry legislation relating to deeds approved under Division 5 of Part 7.12 of the Corporations Law.

The information contained in this Circular is provided only as a guide to the effect of the amendment and is not intended to be a statement of legal intent.

1. <u>Tightening of the Exemption Criteria for the Transfer of a Family Farm within a Family Unit</u>

In May 1994, the Government introduced legislation which exempted family farm transfers from duty where the transfers were between specified categories of relatives and where certain criteria were met. The application of the legislation is covered in detail by Circular 109, but in essence exempted the conveying document from stamp duty when the land exceeded 0.8 hectares and was used wholly or mainly for the business of primary production. In order to qualify for the concession, a business arrangement had to be in existence immediately prior to the execution (signing) of the conveying document. The concession was restricted to transfers between relatives who had the following relationships:-

- Individuals to children or grandchildren.
- Individuals to parents or grandparents.
- Siblings.
- Spouses or a spouse of any person referred to in the above three cases.

Since the introduction of the measure, there have been a number of instances where there has been creative manipulation of circumstances in order to artificially satisfy the concession criteria. The circumstances, however, were outside the original intent of the legislation.

The amendment seeks to restore the original intention of the legislation by restricting the concession to the circumstances initially envisaged, and does so in the following way:-

- A definition of a "natural person" has been added to ensure that the concession will not be applicable where either the transferor or the transferee is deceased.

- Immediately prior to execution of the instrument, the sole or principal business of the natural person (or their trustee) who is the transferor, must be primary production.

- The business arrangement which had to exist between the transferor and transferee immediately prior to the creation of the conveying instrument, must now have been in place for a period of 12 months.

Copies of Circular 109 can be obtained from State Information, 77 Grenfell Street, Adelaide, phone 204 1900. The cost is $2 per Circular. If you have a fax and a touch 'phone, you can obtain a faxed copy by dialling 1902 986 522. The cost is $2 per copy and is charged direct to your telephone account.

2. <u>Ensuring duty is payable where a business or part of a business is conveyed (otherwise than by a dutiable instrument) to one or more parties, and the conveyance is effected using a number of different transactions.</u>

   This amendment has been introduced in order to correct a technical deficiency in the existing Section 71E provision which made it possible in certain circumstances, to reduce the duty payable by splitting agreements for the sale of businesses into separate transactions.

   The amendment to Section 71E of the Act will enable the Commissioner to assess these separate transactions as if they were one and ensure that the duty is calculated on the full value of the business being conveyed, including goodwill and other assets and inventory, even though part of the business was not conveyed by a dutiable instrument.

3. <u>Strengthening the exclusion contained in Section 81 of the Act to ensure that it does not apply to a transfer of real estate where the real estate is used as a further charge for a previous security</u>

   Section 81 of the Act exempts from stamp duty, documents which provide additional security by way of further charge. A recent Supreme Court decision held that a Memorandum of Transfer, even though signed only by the mortgagor, was additional security within the exemption provision of the Act. Given the Court decision, it would have been possible for parties to orchestrate a default on a security resulting in the property being transferred using a Memorandum of Transfer created as additional security. Such a transaction would have been exempt by operation of Section 81.

   The amendment restricts the application of Section 81 by excluding from its operations, any additional security provided over or relating to land that is subject to the Real Property Act.

4. <u>Providing for the payment of stamp duty under the newly created Clearing House Electronic Subregister System (CHESS) for Units of Foreign Security (CUFS)</u>

   This is an amendment sought by the Australian Stock Exchange (ASX) to recognise the new CHESS for Units of Foreign Securities system referred to as CUFS.

   CUFS has been developed because at present most foreign company securities cannot be settled under the existing CHESS system due to the lack of recognition at the place of the company's incorporation of electronic transfer and registration of securities processes which form the basis of the existing CHESS operations. The amendment will allow CUFS transactions to be treated like any other CHESS approved security and will provide for stamp duty being payable on foreign security transactions which take place under this new transaction system.

5. <u>Reflecting changes in Commonwealth Superannuation Industry legislation relating to deeds approved under Division 5 of Part 7.12 of the Corporations Law</u>

   The Stamp Duties Act currently provides an exemption in circumstances where there is a change in beneficial interest of a trust that is established under a deed approved under Division 5 of Part 7.12 of the Corporations Law. The Commonwealth has now decided that the regulation of approved deposit funds and pooled superannuation trusts should be covered by the Superannuation Industry (Supervision) Act 1993. It has, therefore, been necessary to make consequential amendments to the Stamp Duties Act to reflect the changes in the Commonwealth legislation.

Enquiries relating to the contents of this circular may be made to the State Taxation Office on (08) 226 3733.

May 1996 <u>COMMISSIONER OF STATE TAXATION</u>

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