SOUTH AUSTRALIA

STATE TAXATION OFFICE

Stamp Duties **Circular No. 147**

CONVEYANCES BETWEEN SUPERANNUATION FUNDS

TRANSFER OF ASSETS FROM SUPERANNUATION FUNDS TO POOLED SUPERANNUATION TRUSTS.

A ruling has been sought as to stamp duty liability where assets are transferred from superannuation funds to pooled superannuation trusts in compliance with the Commonwealth Superannuation Industry (Supervision) Act, 1993 (“SIS”).

BACKGROUND

Statutory obligations require that trustees of superannuation funds ensure that investment strategies are established and implemented with regard to the risk attached to the current portfolio of assets held by the fund, and that investments of the superannuation fund are diverse and are not exposed to the risks involved in inadequate diversification.

Smaller superannuation funds can best comply with these requirements by investing in a pooled superannuation trust (PST) which is designed to provide diversification in investment by pooling assets owned by other groups of superannuation funds.

However, the most financially viable method for smaller funds to invest in this strategy is to transfer assets *in specie* to the trustees of a PST in exchange for units in that PST. This type of transfer involves the conveyance of assets and attracts high stamp duty costs, thereby creating a financial disadvantage.

Consequently, stamp duty relief has been sought in order to reduce the costs met by smaller superannuation funds when investing in a PST.

SECTION 71DA

The effect of Section 71DA of the Stamp Duties Act 1923 is that a “ceiling” maximum duty of $200 applies in relation to certain superannuation fund transfers where various criteria are satisfied.

However, the transfer of assets from small superannuation funds to a (PST) in exchange for units in that trust does not fit the legislative requirements under Section 71DA (ie members are not ceasing to be members of one fund and becoming members of another). Accordingly, the Act does not currently provide stamp duty relief where smaller superannuation funds wish to obtain the benefit of diversified investment by transferring assets to the trustees of a (PST) in exchange for units in that trust.

RULING

The concession provided by Section 71DA of the Act will be granted to all *in specie* transfers which effect, acknowledge or evidence the transfer of superannuation fund assets situated in South Australia to a PST in exchange for units in that PST. However, the concession is restricted to conveyances of property, marketable securities (or units), or the right to acquire the marketable securities to either the custodian, or trustee of a PST.

The duty payable on an instrument that conveys assets under such circumstances will be the lesser of, either-

(a) the amount of ad valorem duty that would be payable on the instrument as a conveyance apart from this ruling; or

(b) $200

This ruling will apply from 1 March, 1997 on an administrative basis until an appropriate amendment can be made to the Act.

QUALIFICATION

It should be noted that the operation of this concession will be monitored closely to ensure that the transfer of assets to PST's at the concessional rate of duty are effected solely to comply with the SIS rules and *are not part of any avoidance scheme*. Where transfers of assets to PST's are effected for some purpose other than in compliance with SIS rules and do not otherwise comply with the terms of Section 71DA, the transfer will be liable to the stamp duty ordinarily applicable to that instrument.

26 February, 1997 **COMMISSIONER OF STAMPS**