



STATE TAXATION OFFICE

Stamp Duties

Circular No. 103

**STAMP DUTIES ACT, 1923 - SECTION 71(5)(e),(f), (g) and (i)
- REQUIREMENT THAT THERE
BE DULY STAMPED INSTRUMENTS**

Section 71(5) of the Stamp Duties Act, 1923, ("the Act") provides a number of exemptions for conveyances of property which would otherwise be dutiable by virtue of Section 71(3) of the Act. Sections 71(5)(e), (f) and (g) deal with exemptions when properties subject to the trust or beneficial or potential beneficial interests in properties subject to a trust are transferred. Section 71(5)(i) deals with variation of trust instruments. A requirement for exemption from stamp duty in each of paragraphs (e), (f), (g) and (i) of Section 71(5) is that a trust should have been created by an instrument "that is duly stamped". In other words, the provisions of subsection 71(5)(e), (f), (g) and (i) will not apply if the trusts were created by instruments that were not duly stamped according to the laws of South Australia.

It has been drawn to the attention of the Commissioner that from time to time matters arise where:-

- a) at the time when a trust was created it had no connection whatsoever with South Australia (and therefore the trust instrument has not been stamped according to the laws of South Australia), and the original instrument was duly stamped in accordance with the law of the jurisdiction where the trust was created, established or administered;
- b) subsequently the trust has acquired property in South Australia;
- c) it is now desired to transfer this property in South Australia or beneficial or potential beneficial interest in it and take advantage of the exemption granted by the aforesaid provisions.

The Commissioner has been asked to indicate in these circumstances how the trust instrument should be stamped in South Australia (on the basis that all other requirements of the paragraph have been satisfied) to obtain the benefit of the exemption.

The Commissioner also has been asked to provide a ruling in the case of a trust which was created in South Australia and the trust instrument was duly stamped at that time according to the laws of South Australia, but all copies of the original trust instrument have been lost, save for an unexecuted draft and/or notes of the term of the trust.

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RULING

In the first situation, if the original instrument establishing the trust in a jurisdiction outside South Australia is produced to the Commissioner and the Commissioner is satisfied with the bonafides of the subsequent acquisition of property in South Australia by the trust, then the original instrument creating the trust will be stamped at nominal duty, and thereafter the trust instrument will be treated as a duly stamped instrument for the purpose of the exemption provisions.

In relation to this second example, where all copies of the trust instrument have been lost the Commissioner will need to be satisfied that the property which is the subject of the conveyance is indeed trust property. Further, the Commissioner will need to be satisfied that the original instrument was stamped. These requirements may be satisfied by production of unexecuted drafts together with solicitor's or land broker's trust account records showing the payment of the duty and/or opinion form numbers and supported by statutory declarations. This list of requirements is not exhaustive.

In each case, before granting exemption, the Commissioner needs to be satisfied that the property conveyed is indeed trust property of a trust created by an instrument that is duly stamped.