

SOUTH AUSTRALIA



RevenueSA

Stamp Duties

Circular No. 183

STAMP DUTIES ACT 1923

STAMP DUTIES (MISCELLANEOUS) AMENDMENT ACT 1999

The *Stamp Duties (Miscellaneous) Amendment Act 1999*, which came into operation on 18 March 1999 amends the *Stamp Duties Act 1923* (“the Act”) in respect of three matters. These amendments:

- extend the inter-generational family farms exemption to include transfers of a family farm to nieces and nephews. Additionally the scope of the exemption is broadened to include stock, implements and other chattels held or used in conjunction with the land when transferred as part of the family farm within the family group;
- alter the definition of “Broker” at Section 90A of the Act in order to recognise changes to the Business Rules of the Australian Stock Exchange; and
- provide a General Exemption from stamp duty for conveyances or transfers of property made in order to comply with the new regulatory regime introduced by the Commonwealth’s *Managed Investments Act 1998* (the MIA).

The information set out below is of necessity brief, and the precise nature, and scope of the amendments must be taken from the provisions set out in full in the amending Act, in conjunction with the provisions of the *Stamp Duties Act 1923*.

DATE OF OPERATION

These amendments to the *Stamp Duties Act 1923* operate with effect from 18 March 1999.

EXEMPTION FROM AD VALOREM STAMP DUTY ON FAMILY FARM TRANSFERS TO NIECES AND NEPHEWS. FURTHER BROADENING OF THE EXEMPTION TO INCLUDE STOCK, IMPLEMENTS AND OTHER CHATTELS HELD OR USED IN CONJUNCTION WITH THE LAND

In May 1994, the Government introduced legislation, which exempted family farm transfers from *ad valorem* stamp duty where transfers or conveyances of property were effected between specified categories of relatives.

The existing exemption from stamp duty has not been available when the family farm was being transferred to the niece, or nephew of the transferor(s), even if this was the only avenue available to keep the farm within the family ownership.

This amendment extends the concession to exempt conveyances or transfers of property to nieces or nephews of the transferor(s).

In addition, the amendment extends the operation of the inter-generational family farm exemption to exempt stock, implements and other chattels (farm and plant equipment), held or used with the land when transferred as part of the family farm within the family group.

Applicants seeking an exemption should read this Circular in conjunction with Circulars 109 and 138, and the *Stamp Duties Act 1923*, as amended.

AMENDMENT TO THE DEFINITION OF “BROKER” FOR THE PURPOSES OF THE ON-MARKET SHARE PROVISIONS OF THE ACT

The Australian Stock Exchange (ASX) demutualised its business operations on 14 September 1998, and amended its Business Rules to recognise its altered operating status. As a consequence of the changes, the definition of a “Member” of the ASX, was removed from the Business Rules.

In order to provide for the “seamless” operation of Part 3A of the Act (Special Provisions Relating To Marketable Securities), the definition of “Broker” at section 90A of the Act, that relied in part on the definition of a “Member”, was amended to:

“Broker” means a person who is a broker under the Business Rules of the Australian Stock Exchange”

It should be noted that the amendment does not vary the existing revenue base.

STAMP DUTY EXEMPTION FROM COMPLIANCE WITH THE NEW REGULATORY REQUIREMENTS OF THE COMMONWEALTH MANAGED INVESTMENTS ACT 1998 (the MIA)

General Exemption 20A contained in Schedule 2 of the *Stamp Duties Act 1923* provides stamp duty relief for the conveyance or transfer of property arising from the new regulatory regimes imposed by the MIA.

A key requirement of the MIA is that the existing two-tier structure of a prescribed interest scheme comprising an independent scheme trustee and a separate management company

will be replaced by a single Responsible Entity that will combine the roles of the trustee and manager.

General Exemption 20A applies to any conveyance or transfer of property effected as a consequence of the conversion of an existing prescribed interest scheme, to a registered scheme, within the meaning of Division 11 of Part 11.2 of the *Corporations Law*.

In order for the exemption to apply the Commissioner must be satisfied that:

- the conversion is made solely for the purpose of effecting a MIA driven restructure of a prescribed interest scheme, and
- scheme members retain the same beneficial interests in the scheme property as they enjoyed prior to the transfer or conveyance of the scheme property.

Amendments to trust deeds to enable prescribed interest schemes to comply with the constitutional requirements contained in Chapter 5C of the *Corporations Law*, and which do not involve the creation or variation of any beneficial interest or potential beneficial interest in property subject to the deed will be dutiable at \$10.00.

General Exemption 20A will provide for the retirement or appointment of a trustee or manager provided that the consequent conveyance or transfer of the property is effected solely for the purpose of complying with the requirements of Division 11 of Part 11.2 of the *Corporations Law*.

The operation of this exemption will be monitored closely to ensure that the transfer or conveyance of scheme property is effected solely to comply with the conversion of a prescribed interest scheme, to a registered scheme within the meaning of the MIA, and *is not part of any avoidance scheme*. Where the transfer or conveyance of scheme property is effected for some purpose other than in compliance with MIA provisions, the transfer, or conveyance of property will be liable to the stamp duty ordinarily applicable to that instrument.

APPLICATION OF THE CORPORATIONS LAW TO CERTAIN PRESCRIBED INTEREST SCHEMES

The Australian Securities & Investments Commission (ASIC) has published Policy Statements that provide guidance on the application of Chapter 5C of the *Corporations Law* (the Law), to schemes including certain wholesale funds, and excluded funds.

Prescribed Interest Scheme operators seeking clarification concerning the application of the Managed Investment Scheme provisions of the Law, are directed to the ASIC for clarification of fund positions.

(The ASIC web site may be viewed at <http://www.asic.gov.au> look for “Managed Investments: Transitional Issues”)

FURTHER INFORMATION***Location***

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COMMISSIONER OF STATE TAXATION