

**SOUTH AUSTRALIA**



**RevenueSA**

**Stamp Duties**

**Circular No. 253**

**STAMP DUTIES (MISCELLANEOUS) AMENDMENT ACT 2004**

The *Stamp Duties (Miscellaneous) Amendment Act 2004* (“the Amending Act”) was assented to on 4 November 2004 and was proclaimed into operation on 24 February 2005.

The Amending Act makes a number of amendments to the *Stamp Duties Act 1923* (“the Act”) relating to:

- the motor vehicle provisions; and
- the exemptions provided to spouses or former spouses (including *de facto* partners) when property is transferred as a result of a relationship breakdown.

This Circular provides information on the operation of the amendments in both these areas.

Definitions of some words or expressions used in this Circular are contained at the end of this Circular.

**MOTOR VEHICLE PROVISIONS**

The Motor Vehicle provisions of the Act have been amended to:

- provide that where applications for the registration or transfer of registration of motor vehicles are made by means of an electronic communication approved by the Registrar of Motor Vehicles, that electronic communication is taken to be an instrument, which is chargeable with stamp duty;
- confirm the practice that only the total fee payable consisting of stamp duty, a compulsory third party premium and administration fee, is denoted on the certificate of registration when the registration of a motor vehicle is renewed;
- limit the exemption currently available in respect of a motor vehicle held in the name of a totally or permanently incapacitated person to only one motor vehicle owned by that person at any given time;

- provide relief from stamp duty for spouses or former spouses (including *de facto* partners), where the registration of a motor vehicle has lapsed and an application to register a motor vehicle is lodged with the Registrar of Motor Vehicles;
- provide relief to an instrument which transfers the property in a motor vehicle, which was not lodged for stamping prior to when the application to register or the application to transfer the registration of the vehicle was lodged;
- remove the potential for avoidance of stamp duty, in circumstances where a person has obtained conditional registration under the *Motor Vehicle Act 1959*;
- provide a *pro rata* exemption from stamp duty on the renewal certificates for compulsory third party insurance where a person has become entitled under the *Motor Vehicle Act 1959* to have the motor vehicle registered at a reduced fee;
- ensure that Councils continue to receive an exemption from stamp duty on the registration or transfer of registration of their motor vehicles following the repeal of the *Local Government Act 1934* and the enactment of the *Local Government Act 1999*; and
- allow the Commissioner to seek a valuation of a motor vehicle or appoint a valuer to value a motor vehicle, where the Commissioner is of the opinion that the amount declared in an application to register or transfer the registration of a motor vehicle is not the true value of the motor vehicle. (Note: taxpayers may be charged the costs of the valuation in circumstances where the submitted valuation is more than 10% lower than the valuation obtained by the Commissioner.)

#### **EXEMPTIONS WHERE PROPERTY IS TRANSFERRED AS A RESULT OF A RELATIONSHIP BREAKDOWN**

The *Family Law Amendment Act 2000 (Cth)*, which operates from 27 December 2001, amended the *Family Law Act 1975 (Cth)* (“the FLA”) by inserting a new Part VIIIA. The provisions allow married persons to enter into agreements as to the division of property in the event of a marriage breakdown. Agreements can be entered into either before, during or after marriage.

The *Family Law Legislation Amendment (Superannuation) Act 2001* which operates from 28 December 2002, amended the FLA by inserting a new Part VIIIB, which provides for the splitting of superannuation benefits on a marriage breakdown.

The Amending Act aligns the existing exemptions contained in the Act with the new Parts VIIIA and VIIIB of the FLA and extends the exemption provisions to include cohabitation agreements made pursuant to the *De Facto Relationships Act 1996*.

## **Part VIIIA of the FLA**

Part VIIIA of the FLA provides for parties to a marriage to make binding written agreements either before, during or after the marriage, about how all or part of the property or financial resources of the parties are to be dealt with upon marriage breakdown. Parties to a marriage are also able to make binding written agreements covering the maintenance of either of them during the marriage and/or after dissolution of marriage. Agreements made in such terms under Part VIIIA of the FLA are referred to as “financial agreements”.

## **Part VIIIB of the FLA**

Part VIIIB of the FLA provides for the division of superannuation interests on marriage breakdown. Parties to a marriage are able to make binding written agreements, either before, during or after the marriage, about how their superannuation interests are to be dealt with upon marriage breakdown. These agreements are referred to as 'superannuation agreements', and can be stand alone agreements or part of a broader "financial agreement".

Superannuation interests can also be divided upon marriage breakdown by Court order.

## **Extension of Section 71CA Exemptions**

The amendments to section 71CA contained in the Amending Act, extend the exemptions which are currently available.

An exemption will now apply to the three types of instruments referred to below.

### **1 Family Law agreements**

A Family Law agreement is exempt from stamp duty. A Family Law agreement can be a maintenance agreement, a financial agreement or a splitting agreement.

### **2 Instruments to give effect to or consequential on a Family Law agreement or a Family Law order**

A deed or other instrument (including an application to transfer registration of a motor vehicle) to give effect to or consequential on a Family Law agreement or a Family Law order is exempt from stamp duty if the following criteria are met:

- the Commissioner is satisfied that the marriage to which the agreement or order relates has been dissolved or annulled, or the Commissioner is satisfied that the marriage to which the agreement or order relates has broken down irretrievably;
- the instrument provides for the transfer of property between the parties to the marriage or former marriage and no other person other than a trustee of a superannuation fund takes or is entitled to take an interest in property in pursuance of the instrument;

- in the case of an application to transfer registration of a motor vehicle, the instrument must be consequential on a disposition of property between the parties to the marriage or former marriage.

### **3 Instruments executed by the trustee of a superannuation fund**

Instruments executed by the trustee of a superannuation fund to give effect to, or consequential on:

- a Family Law agreement;
- a Family Law order; or
- the provisions of any Act or law (including an Act or subordinate legislation of the Commonwealth) relating to the transfer of property or any entitlements on account of a Family Law agreement or Family Law order,

are also exempt.

### **Operation**

The amended section 71CA applies in relation to Family Law agreements both prospectively and retrospectively. In relation to any other kind of instrument, it applies to those executed after the commencement of the Amending Act.

### **New Section 71CBA**

The new section 71CBA relates to property transfers between *de facto* partners, which are regulated by the *De Facto Relationships Act 1996*. This Act provides the machinery for *de facto* partners to agree on how to split up property on the breakdown of their relationship.

An exemption will now apply to the three types of instruments referred to below.

#### **1 Certificated cohabitation agreements**

A certificated cohabitation agreement is exempt from stamp duty. A certificated cohabitation agreement is a cohabitation agreement that is a certified agreement within the meaning of the *De Facto Relationships Act 1996*.

#### **2 Instruments to give effect to or consequential on a certificated cohabitation agreement or a property adjustment order**

Deeds or other instruments (including an application to transfer the registration of a motor vehicle) to give effect to or consequential on a certificated cohabitation agreement or a property adjustment order are exempt from stamp duty if the following criteria are met:

- the Commissioner is satisfied that the *de facto* partners cohabited continuously as *de facto* husband and wife for at least three years and that the *de facto*

relationship to which the agreement or order relates has broken down irretrievably;

- the instrument provides for the transfer of property between the parties to the former *de facto* relationship and no other person other than a trustee of a superannuation fund takes or is entitled to take an interest in the property in pursuance of the instrument;
- in the case of an application to transfer registration of a motor vehicle, the instrument must be consequential on a transfer of property between the parties to the former *de facto* relationship.

### 3 Instruments executed by the trustee of a superannuation fund

Deeds or other instruments executed by the trustee of a superannuation fund to give effect to, or consequential on:

- a certificated cohabitation agreement; or
- a property adjustment order,

are also exempt.

#### Operation

The new section 71CBA applies in relation to certificated cohabitation agreements both prospectively and retrospectively and in relation to any other kind of instrument, to those executed after the commencement of the Amending Act.

#### RevNet

For information on how to process relevant instruments via RevNet, please refer to the RevNet guide notes. These can be viewed via RevNet or the RevenueSA website at <http://www.revenuesa.sa.gov.au>.

#### DEFINITIONS

A **certificated cohabitation agreement** means a cohabitation agreement that is a certified agreement within the meaning of the *De Facto Relationships Act 1996*.

A **cohabitation agreement** means a cohabitation agreement under Part 2 of the *De Facto Relationships Act 1996*

A **Family Law agreement** means a maintenance agreement, a financial agreement or a splitting agreement.

A **Family Law order** means an order of a court under Part VIII, VIIIA, or VIIIB, of the FLA.

A **financial agreement** means a financial agreement made under section 90B, 90C or 90D of the FLA, that under that Act is binding on the parties to the agreement.

A **flag lifting agreement** has the same meaning as in Part VIIIIB of the FLA.

A **maintenance agreement** means a maintenance agreement approved by a court by order under section 87 of the FLA or a maintenance agreement registered in a court under section 86 of the FLA or under regulations made pursuant to section 89 of that Act.

A **property adjustment order** means an order of a court under Part 3 or 4 of the *De Facto Relationships Act 1996*.

A **splitting agreement** means a flag lifting agreement or a superannuation agreement.

A **superannuation agreement** has the same meaning as in Part VIIIIB of the FLA.

## FURTHER INFORMATION

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