

Document Type:	Conveyance of Other
Document Name:	Exemptions
Exemption Provision:	Surrender of Interest in a Trust by a Family Member

## Introduction

This Document Guide Note refers to a document that evidences the transfer by way of surrender of interest in a discretionary trust by a family member to another member of the family trust pursuant to Section 71(5)(g).

A transfer, surrender or renunciation of an interest in property subject to a trust is liable for *ad valorem* voluntary conveyance stamp duty pursuant to Sections 71(3)(a)(iv) and 71(3)(a)(v). An 'interest' in property includes legal, equitable, potential, contingent, expectant or inchoate interest.

However, Section 71(5)(g) deems **certain transfers** of a potential beneficial interest in property subject to a discretionary trust **not** to be conveyances operating as a voluntary disposition *inter vivos*. These transfers would be self-determined as exempt.

The terms 'object' of a discretionary trust and 'potential beneficiary' of a discretionary trust are synonymous. In this Document Guide Note, the term 'transfer' has the same meaning as 'surrender' or 'renunciation'.

The criteria for exemption from *ad valorem* stamp duty pursuant to Section 71(5)(g) are:

- the discretionary trust must have been created wholly or principally for the benefit of a family group. Family group is defined at Section 71(15) to mean a group of persons connected by an unbroken series of relationships of consanguinity (related by blood) or affinity (related by marriage).

The following types of transfers are exempt from *ad valorem* stamp duty by this provision:

- a transfer from one member of the family group to another member of the family group (both of whom are objects of the discretionary trust and the trust was created for the members of the family group);
- a transfer by a member of the family group by way of surrendering or renouncing their potential beneficial interest and another member of the family group is to continue as an object or beneficiary of the trust; or

- an acknowledgment by the trustee (pursuant to his/her power or authority) that a member of the family group no longer has any interest in the trust, and another member of the family group is to continue as an object or beneficiary of the trust.

## What documents can I self-determine under this document type?

The document can be in the form of:

- any document that evidences the surrender or renunciation of interest in a discretionary trust by a family member (usually in the form of a Deed).

## What types of transactions can I self-determine under this document type?

A document that evidences the surrender or renunciation of interest in a discretionary trust by a family member is deemed **suitable** for self-determination under this document type where:

- the transfer is from one member of the family group to another member of the family group (both of whom are objects of the discretionary trust and the trust was created for the members of the family group); or
- the transfer is by a member of the family group by way of surrendering or renouncing their potential beneficial interest and another member of the family group continues as an object or beneficiary of the trust; or
- an acknowledgment by the trustee (pursuant to his/her power or authority) that a member of the family group no longer has any interest in the trust, and another member of the family group will continue as an object or beneficiary of the trust.

The following similar transactions cannot be self-determined under this document type:

This exemption will not apply if the transferee had, prior to the transfer, a beneficial or potential beneficial interest in the property conveyed, but takes the property or interest transferred to him as trustee of a further trust – refer Section 71(6).

If a discretionary trust is amended to include a new beneficiary, it may be liable for *ad valorem* conveyance stamp duty. The document must be **submitted to the Commissioner for assessment** together with the Deed establishing the trust, all amending Deeds and the Balance Sheet of the trust as at the date of the addition of a beneficiary.

If the terms of a discretionary trust are varied, and the variation does not involve the creation or variation of any beneficial interest or potential beneficial interest

in the property subject to the trust, the document is not subject to *ad valorem* duty pursuant to Section 71(5)(i) and the document varying the trust is self-determined under the document type:

## [Exemptions | Deed](#)

Some examples of variations to a trust that do not attract *ad valorem* voluntary conveyance stamp duty are:

- a change to the name of the trust;
- a change to the appointer of the trust;
- a change to the vesting date; or
- banking amendments to the trust.

### **What evidence do I need to retain for audit purposes?**

For audit purposes, you will need to retain the following documentation either in paper form or electronic form:

- a copy of the documents;
- a copy of the Deed establishing the family trust;
- evidence that a stamp duty determination has been made (i.e. Certificate of Stamp Duty, Document ID or stamped document); and
- a copy of the renunciation document.

### **What Section(s) of the *Stamp Duties Act 1923* applies?**

Schedule 2, Part 2, General Exemption 29

### **What stamp duty is payable on this document?**

This document is exempt from stamp duty.

### **Examples**

#### Renunciation of interest in a Family Discretionary Trust to a family member

Tom no longer wants to be an object of a trust. He executes a Deed renouncing his potential interest in favour of the other objects of the trust who are members of his family group.

As the above requirements of Section 71(5)(g) have been satisfied, the Deed is exempt from *ad valorem* voluntary conveyance stamp duty and the deed is self-determined under this document type as **Exempt**.

## Trustee renounces the interest of a potential beneficiary to a continuing beneficiary

Jim as trustee of the Martin Family Discretionary Trust has executed a Deed whereby Jim's parents are from the date of the deed no longer included as objects of the trust. The parents are not parties to the deed. Other members of the Martin family will continue as beneficiaries of the Martin Family Discretionary Trust.

The Martin Family Discretionary Trust Deed includes a clause giving the trustee the power to exclude a person as a potential beneficiary of the trust.

As the above requirements of Section 71(5)(g) have been satisfied, the deed is exempt from *ad valorem* voluntary conveyance stamp duty and the Deed is self-determined under this document type as **Exempt**.

### Version History

Version No.	Release Date
1	May 2018
2	November 2018
3	July 2019 Hyperlinks updated - April 2022