

REVENUE RULING NO. SD 179

CONCESSIONS UNDER SCHEDULE 2D OF THE STAMP DUTIES ACT

PREAMBLE

- An announcement was made in the 1990 Budget of the proposed widening of the existing Section 73AA concessions in the Stamp Duties Act (now part of Schedule 2D of the Act) allowing for the transfer of a family residence from a company or a trust to natural persons so that they could avail themselves of the land tax concession for a principal place of residence.
- The amendments to give effect to this announcement became effective as from 11 September 1990.
- Revenue Ruling SD177 states the procedures to apply for an exemption from stamp duty under Section 73AA of the Stamp Duties Act and the information required to enable the Chief Commissioner to consider an application.
- To overcome some minor anomalies that have been identified in the legislation the Premier and Treasurer has approved of a Variation to Statute which is to operate until an appropriate amendment to the Stamp Duties Act is made.
- The Variation to Statute refers to three matters which are explained below.

RULING

Transfer of Company Title Home Units

- For a transaction to gain the benefit of the concession it must be a transfer of land. The transfer of a company title home unit does not qualify, because the transfer of ownership is effected by the sale of shares in the home unit company and not by the sale of land.
- The Variation to Statute allows this type of home unit to be included in the definition of land for the purposes of gaining the benefit of the concession.

Transfers to Corporate Trustees

- Paragraph 6 of Schedule 2D of the Stamp Duties Act provides a concession for land transferred from a corporation to a beneficiary of a trust that held shares in that corporation provided the property was the beneficiary's principal place of residence.
- For a transfer to qualify for the concession, the trustee of the trust cannot be a company. This is because paragraph 6(c) states that the trustee must be a principal shareholder in the corporation that owns

the property. The definition of a principal shareholder excludes a corporation. The Variation to Statute extends the provisions of paragraph 6 of Schedule 2D to allow the transfer to beneficiaries of trusts which have a corporate trustee by allowing a principal shareholder to be a corporation for the purposes of this paragraph.

Transfers dated after 11 September 1990 but not registered by 31 December 1990

- The transitional provisions to the amending Act state that where a transfer which gains the benefit of a concession under Schedule 2D is executed after 31 December 1990 and is lodged with the Commissioner for stamping prior to 30 June 1991, the transferee of the land will be regarded as being the owner of the land as at 31 December 1990 for land tax purposes.
- This will often result in the new owner gaining a concession for the 1991 tax year. It was included to give more time for transfers to be effected for the 1991 land tax year. However, where a transfer is executed after 11 September 1990 (the date of commencement of the amending legislation) but not registered with the Land Titles Office before 31 December 1990, the transferee cannot be regarded as the owner as at 31 December 1990 for land tax purposes and cannot gain a concession for the 1991 land tax year.
- Therefore, it is proposed to backdate the transitional provisions to 11 September 1990 to allow transferees in transfers effected from that date to be eligible for the concessions in the 1991 tax year.

B. Buchanan
for THE CHIEF COMMISSIONER OF STAMP DUTIES.
20 May 1991

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