

REVENUE RULING NO. SD 089

TRANSACTIONS OTHERWISE THAN BY DUTIABLE INSTRUMENT - PARTNERSHIP INTERESTS

PREAMBLE

Questions have been raised concerning the interpretation of provisions in Division 3A of the Stamp Duties Act 1920, dealing with transactions otherwise than by dutiable instruments.

Section 44(1)(e) states that Division 3A applies to a transaction which, on or after 21 November 1986, causes or results in a change in the beneficial ownership of an estate or interest in an interest in a partnership, insofar as the interest relates to property of the partnership, being property of the

kind referred to in paragraph (a), (b), (c), (d) or (f) or prescribed, (or of a class prescribed).

The intention of the legislature was to bring to stamp duty only certain types of partnership property where a change in beneficial ownership occurred without resort to a written instrument.

The view has been expressed, however, that the provisions in Division 3A are capable of a wider interpretation and that, in particular, section 44A may bring to duty all partnership property the subject of an oral arrangement effecting a change in beneficial ownership, provided any of the property of the partnership was of the kind referred to in section 44(1)(e).

Section 44A provides for the lodgment with the Chief Commissioner of a statement in respect of a transaction to which Division 3A applies and deems that statement to be an instrument chargeable with the appropriate ad valorem duty.

Section 44A also provides that the ad valorem duty with which the statement is chargeable is to be charged on either

"....

- (a) the unencumbered value of the property the subject of the transaction as at the date on which the change in beneficial ownership occurs; or
- (b) the amount of the consideration in respect of the transaction, whichever is the greater ..." (vide. section 44A(7))

It has been suggested that, while section 44(1) defines the classes of property which "trigger" the operation of Division 3A, it thereafter ceases

to have any effect, so that any statement lodged with the Chief Commissioner in respect of the transaction will bear stamp duty on **all** property the subject of the transaction regardless of the specified classes of property in section 44.

RULING

The opinion of Counsel has been obtained on the proper interpretation of the legislation.

On the basis of advice provided, section 44A is to be "read down" in the light of section 44(1). As a result, a statement relating to an interest in a partnership is deemed to be an instrument effecting the transaction to which it relates but only to the extent that that interest relates to property of the partnership of the kinds specified in section 44(1).

The ad valorem duty with which the statement is chargeable is to be calculated on the unencumbered value of (or consideration paid for, whichever is greater) the estate or interest in the interest in the partnership insofar as that interest relates to property of the kinds specified in section 44(1). That is, duty will not be payable in respect of property of the partnership which is not of a kinds specified in section 44(1).

A. D. CLYNE,
Chief Commissioner of Stamp Duties.
29 February 1988

Last Updated: 20-Sep-2001