

Legislative Council—No 115

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South Australia

Stamp Duties (Trusts) Amendment Bill 2008

A BILL FOR

An Act to amend the *Stamp Duties Act 1923*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Stamp Duties (Trusts) Amendment Act 2008*.

2—Amendment provisions

- 5 In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Stamp Duties Act 1923*

3—Amendment of section 71—Instruments chargeable as conveyances

- 10 (1) Section 71(4a)(a)—delete "managed investment scheme registered under Chapter 5C of the *Corporations Act 2001* of the Commonwealth" and substitute:
 - registered managed investment scheme
- (2) Section 71—after subsection (4a) insert:
 - (4b) For the purposes of this Act (other than Part 4)—
 - 15 (a) property is taken to be held beneficially by a unit trust scheme if it is held by the trustees of the scheme in trust for the unitholders; and
 - (b) the holder of a unit in a unit trust scheme that is taken under paragraph (a) to hold property beneficially is taken to have a beneficial interest in that property; and

- 5 (c) the transfer, creation, surrender, renunciation, redemption, cancellation or extinguishment of a unit in a unit trust scheme that is taken under paragraph (a) to hold property beneficially is taken to be a transfer, creation, surrender, renunciation, redemption, cancellation or extinguishment (as appropriate) of a beneficial interest in that property.

(3) Section 71(5)(e)—delete paragraph (e) and substitute:

(da) a transfer of property subject to a registered managed investment scheme if the transfer is—

- 10 (i) from the responsible entity of the scheme to a person as primary custodian for the responsible entity; or
- (ii) from a person as primary custodian for the responsible entity of the scheme to the responsible entity;

Exception to paragraph (da)—

15 Paragraph (da) does not apply to a transfer of property that is part of an arrangement under which—

- (a) the property ceases to be subject to the scheme; or
- 20 (b) the persons who are members of the scheme do not have the same interest in the property after the property is transferred as they had immediately before the arrangement was entered into.

(e) a transfer of property by a trustee to a person who has a beneficial interest in the property in the following circumstances:

- 25 (i) the person has a beneficial interest in the property (other than a potential beneficial interest) by virtue of an instrument that is duly stamped; and
- (ii) the property was acquired for the trust, or became subject to the trust—
- 30 (A) by virtue of an instrument duly stamped with *ad valorem* duty; or
- (B) as a result of a transaction to which section 71E applies in relation to which a statement under that section has been lodged and *ad valorem* duty paid; or
- 35 (C) under 1 of the other paragraphs of this subsection (except paragraph (d)); and
- 40 (iii) if the trust is a discretionary trust (other than a superannuation fund or a unit trust)—the person acquired the beneficial interest by virtue of a duly stamped instrument that is separate from the instrument under which he or she became an object of the trust;

Exception to paragraph (e)—

If v_1 exceeds $[v_2 - v_3]$, then the instrument is liable to *ad valorem* duty as if it were a transfer of property with a value equivalent to the excess. In this exception—

v_1 is the net value of the property transferred;

v_2 is the value of the beneficiary's interest in the trust immediately before the transfer takes effect;

v_3 is the value of the beneficiary's interest in the trust immediately after the transfer takes effect.

(4) Section 71(7)—delete subsection (7) and substitute:

(7) The following provisions apply for the purposes of subsection (5)(e) (including the exception to paragraph (e)):

(a) the net value of property is calculated by subtracting from its unencumbered value the amount of any liability subject to which the property is transferred (other than a liability that is to be discharged after the transfer takes effect by the trustee or for some other reason is not finally assumed by the transferee);

(b) in calculating the value of a beneficiary's interest in a trust, all assets and liabilities of the trust are to be taken into account;

(c) a member of a superannuation fund is to be taken to have a beneficial interest in the property of the fund equivalent to the amount to which the member would be entitled on transfer of membership to another fund;

(d) if—

(i) property of a trust consisting of land is divided by community plan under the *Community Titles Act 1996* (including by strata plan under that Act); and

(ii) land subject to the division is subsequently transferred to a beneficiary of the trust; and

(iii) the Commissioner is satisfied that the land the subject of the transfer was transferred to the beneficiary pursuant to the trust and is identifiable as property in which the beneficiary had a fixed beneficial interest contingent on, and arising from, the division,

the transfer will be taken to have been a transfer to the beneficiary of property in which the beneficiary had a beneficial interest.

(5) Section 71(15)—after the definition of *family group* insert:

primary custodian for the responsible entity of a registered managed investment scheme means the person that has been appointed under section 601FB(2) of the *Corporations Act 2001* of the Commonwealth to hold property for the scheme as agent for the responsible entity (but does not include a person who is taken under section 601FB(3) of the *Corporations Act 2001* of the Commonwealth to be an agent appointed by the responsible entity to do something for the purposes of subsection (2) of that section);

(6) Section 71(15)—after the definition of *public company* insert:

registered managed investment scheme means a managed investment scheme registered under Chapter 5C of the *Corporations Act 2001* of the Commonwealth;

responsible entity for a registered managed investment scheme means the responsible entity for the scheme under the *Corporations Act 2001* of the Commonwealth;

superannuation fund means a fund that is, under section 45 of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth, a complying superannuation fund for the purposes the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997* of the Commonwealth;

(7) Section 71(15)—after the definition of *trustee* insert:

unit trust means a trust giving effect to a unit trust scheme.

4—Amendment of Schedule 2—Stamp duties and exemptions

Schedule 2, Part 2, clause 16, item 26—delete item 26 and substitute:

26. An instrument executed by a trustee of a regulated superannuation fund within the meaning of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth in the ordinary course of administering the fund for the purpose of effecting or acknowledging, evidencing or recording—

- (a) the creation of an interest in the property of the superannuation fund on account of a person becoming a member of the fund; or
- (b) the redemption, cancellation or extinguishment of an interest in the property of the superannuation fund on account of a person ceasing to be a member of the fund,

but not so as to exempt any conveyance or transfer of property into or out of the fund.

Schedule 1—Transitional provision

1—Transitional provision

The amendment made by section 3(2) of this Act to section 71 of the *Stamp Duties Act 1923* operates both prospectively and retrospectively.