

LATEST UPDATE – January 2011

We wish all our clients a happy and prosperous 2011 and hope that you all enjoyed the holiday season.

Further to our July Newsletter, there has been some good news on the stamp duty front in respect of imposition of duty in certain circumstances on the change of trustee of a self managed superannuation fund (SMSF).

SMSFs - Transfers to new or additional trustees.

Background

In mid 2010 there were changes to the definition of 'special trustee' in section 54 of the Duties Act which effectively removed the specific concession for the payment of duty on transfers of dutiable property owned by SMSFs when there was a change of trustee.

The loss of this relief meant that when a trustee of a SMSF retired or another was appointed, it was necessary to rely upon the general concession in subsection 54(3) of the Duties Act if the fund held dutiable property, for example, real estate.

This concession required the satisfaction of the Chief Commissioner that any continuing or incoming trustee was not and could not become a member of the relevant superannuation fund.

This clearly created difficulties in relation to SMSFs with individual trustees as they could not satisfy the requirements (as each member of a SMSF must also be a trustee of the fund unless the trustee is a company).

The practical effect of the mid 2010 amendments was to force individual trustees of SMSFs holding dutiable property and facing the retirement of a particular trustee or the addition of a new trustee to adopt a corporate trustee in order to come within the scope of subsection 54(3) of the Duties Act.

State Revenue Legislation Further Amendment Act 2010

Fortunately the amendments set out in this Act remove the difficulties created by the earlier amendments. BinetterVale Lawyers

have confirmed that the following is the current position.

Duty of \$50 is chargeable in respect of a transfer of dutiable property to a trustee of a SMSF as a consequence of the retirement of a trustee or the appointment of a new trustee PROVIDED THAT:

- the Commissioner is satisfied that the transfer is not part of a scheme for conferring an interest, in relation to trust property, on a new trustee or any other person.... to the detriment of the beneficial interest or potential beneficial interest of any person; and
- the SMSF is a complying superannuation fund within the meaning of section 42A of the SIS Act 1993

Summary

The difficulties created by the mid 2010 amendments have been removed and nominal duty should apply in the above circumstances involving the transfer of dutiable property in a SMSF as a result of the retirement of a trustee or the appointment of a new trustee.

Note that the commencement date for the amendment is 1 July 2010, ie it applies retrospectively effectively restoring the status quo.

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