

SOUTH AUSTRALIA*

LEGISLATION

STAMP DUTIES ACT AMENDMENT ACT (NO 3) 1990

Amendments to the Stamp Duties Act 1923 (SA) have now been passed in both Houses of the SA Parliament.

Under the current provisions of the Act, transfers of shares attract a lower rate of duty than transfers of real property. Purchasers have been able to reduce the amount of stamp duty by purchasing shares in a company which owns real estate, rather than purchasing the real estate from the company.

The amendments provide that certain transactions including the transfer of real property by way of shares in an unlisted company or units in a non-listed trust will be assessed at land conveyance rates in respect of the underlying real property assets of the company or the trust.

The criteria which must be present before the new provisions apply are:

1. More than 50% of the total equity in a land owning company or unit trust must be acquired within a two year period.
2. The company or unit trust must own land which has an unencumbered value in excess of \$1 million.
3. The value of the land must comprise more than 80 per cent of the value of the total assets of the company or the unit trust.

Of particular interest is that, for the purposes of the new legislation, 'real property' is defined to include 'a mining tenement'. A mining tenement is defined to mean 'a right, permit, claim, lease or licence under the Mining Act 1971, or the Petroleum Act, 1940'. Thus if it is proposed to acquire a mining tenement or tenements by way of acquiring the shares in the company that holds those tenements, the transaction will be assessed at conveyancing rates, subject to coming within three criteria mentioned above.

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