

## Stamp duty liability relating to a 'right to reside' under a will

Revenue Ruling SD.104  
Replaces Revenue Ruling SD.027

### Preamble

This ruling has been revised to reflect the abolition of deed duty from 1 May 1997.

The transfer or conveyance of real property is subject to ad valorem duty under Heading VI of the Third Schedule to the *Stamps Act 1958* (the Act), unless an exemption applies.

Section 65 of the Act provides that duty is payable under Heading VI in respect of any instrument assigning or agreeing to assign a right or interest in real property which exists under an estate, will or codicil of a deceased person.

Section 65 also provides that if duty has been paid on such an instrument, no duty will be payable on any subsequent transfer of the underlying real property made in accordance with that instrument.

From time to time, questions arise concerning the transfer or disposal of a 'right to reside' in respect of real property. In some cases, such a right will not be a transferable interest or will be extinguished when the beneficiary ceases to occupy the property. The purpose of this ruling is to explain how different types of rights to reside are treated under section 65 of the Act.

### Ruling

This ruling applies from 1 May 1997.

The provisions of section 65 of the Act do not apply to a 'right to reside' that cannot be transferred or assigned from the beneficiary to another person. Upon relinquishment of the property such a right is extinguished.

This type of interest is generally distinguished from an instrument effecting a 'life tenancy' which is transferable. Such instruments fall within the ambit of section 65 of the Act and are subject to ad valorem duty.

It should be noted that an instrument which is executed as a deed before 1 May 1997 will be chargeable with deed duty unless chargeable with duty under another section of the Act.

Please note that rulings do not have the force of law. Each decision made by the State Revenue Office is made on the merits of each individual case having regard to any relevant ruling. All rulings must be read subject to Ruling No. GEN.01

Commissioner of State Revenue  
October 2000

