



AUSTRALIAN CAPITAL TERRITORY

Stamp Duties and Taxes (Amendment) Act (No. 3) 1996

No. 57 of 1996

TABLE OF PROVISIONS

Section

1. Short title
2. Commencement
3. Principal Act
4. Insertion—

PART VIB—HIRE OF GOODS

Division 1—Introduction and overview

- 64F. Interpretation
- 64G. Duty on hire of goods
- 64H. Hire of goods to which this Part applies—jurisdictional nexus
- 64J. What are “goods”?
- 64K. What is a “hire of goods”?
- 64L. What are “hiring charges”?
- 64M. Splitting or redirection of hiring charges (anti-avoidance provision)
- 64N. What form may a hire of goods take?

Division 2—What arrangements apply to persons in business hiring out goods (commercial hirers)?

- 64P. Application
- 64Q. Registration of commercial hirers
- 64R. Application for registration
- 64S. Registration without application
- 64T. Cessation of business and cancellation of registration by commercial hirer
- 64U. Duty base

Stamp Duties and Taxes (Amendment) (No. 3) No. 57, 1996

TABLE OF PROVISIONS—continued

Section

- 64V. Monthly returns and payment of duty
- 64W. Returns of related bodies corporate
- 64X. Refunds—error as to place of use of goods
- Division 3—What arrangements apply to other persons?*
- 64Y. Statement of transaction
- 64Z. Lodgment of statement and payment of duty
- 64ZA. Apportionment of duty
- 5. Review of decisions
- 6. Application
- 7. Determination of percentages and specification of amount
- 8. Transitional



AUSTRALIAN CAPITAL TERRITORY

Stamp Duties and Taxes (Amendment) Act (No. 3) 1996

No. 57 of 1996

An Act to amend the *Stamp Duties Act 1987*

[Notified in ACT Gazette S320: 29 November 1996]

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Short title

1. This Act may be cited as the *Stamp Duties and Taxes (Amendment) Act (No. 3) 1996*.

Commencement

2. This Act shall be taken to have commenced on 1 October 1996.

Principal Act

3. In this Act, “Principal Act” means the *Stamp Duties and Taxes Act 1987*.¹

Insertion

4. After Part VIA of the Principal Act the following Part is inserted:

“PART VIB—HIRE OF GOODS

“Division 1—Introduction and overview

Interpretation

“64F. (1) In this Part, unless the contrary intention appears—

‘commercial hirer’ means a person who hires out goods as a business whether or not that business is the principal business of the person or is ancillary to some other business;

‘duty-free threshold’ means the amount indicated in the determination made for the purposes of paragraph 64G (1) (a) as the amount above which the determined amount of duty is payable;

‘equipment financing arrangement’ means—

- (a) an arrangement under a hire-purchase agreement the effect of which is to provide for the hire of goods;
- (b) an arrangement under a finance lease, or an operating lease, the effect of which is to provide for the hire of goods for a term of not less than 9 months;

‘goods’ has the meaning given by section 64J;

‘hire of goods’ has the meaning given by section 64K;

‘hiring charge’ has the meaning given by section 64L;

‘related body corporate’ has the same meaning as in the Corporations Law.

“(2) For the purposes of this Part, a hiring charge shall be taken to be receivable by a commercial hirer in respect of a month if the charge is shown as being receivable by the hirer in invoices issued in that month or in accounting records kept on behalf of the hirer in relation to that month.

Duty on hire of goods

“64G. (1) The determined amount of duty is payable in respect of—

- (a) the hire of goods not involving an equipment financing arrangement; or
- (b) an equipment financing arrangement.

“(2) Subject to subsection (3), the maximum amount that may be determined for the purposes of subsection (1) in respect of the hire of goods under any 1 hiring arrangement is \$10,000.

“(3) Subsection (2) does not apply to a hiring arrangement which permits the addition or substitution of goods (whether or not the goods added or substituted are of the same kind as the goods originally hired).

“(4) Where the Commissioner is satisfied that a hiring arrangement entered into on or after the commencement of the *Stamp Duties and Taxes (Amendment) Act (No. 3) 1996* was negotiated before that commencement, the Commissioner may waive any duty otherwise payable in respect of that hiring under this Part.

Hire of goods to which this Part applies—jurisdictional nexus

“64H. (1) This Part applies to an arrangement for the hire of goods and to a person who hires out goods only if—

- (a) the arrangement is entered into in the Territory;
- (b) the goods are supplied or delivered or agreed to be supplied or delivered in the Territory; or
- (c) the goods are used, or are to be used in the Territory.

“(2) A person who hires out goods has no obligation to inquire as to any change in the place of use of the goods.

What are “goods”?

“64J. Goods includes all chattels personal and fixtures severable from realty, but does not include money, livestock or things in action.

What is a “hire of goods”?

“64K. (1) A hire of goods is an arrangement under which goods are or may be used at any time by a person other than the person from whom the goods are hired.

“(2) A hire of goods does not include an arrangement that gives a person a right to use goods that is conferred incidentally with a lease of, or a licence to occupy or use, real property if—

- (a) there is no apportionment of consideration between the right to use the goods and the right to occupy or use the real property; and
- (b) any duty chargeable under Part III has been paid.

“(3) A hire of goods does not include an arrangement which, if completed otherwise than by the exercise of an option, will result in the ownership of the goods passing to the person to whom they are hired.

“(4) A hire of goods does not include an arrangement made between a finance provider and a motor dealer or other person who trades in goods (in this subsection called the ‘dealer’) relating to the supply of those goods for display by the dealer pending their sale or lease to a third party.

“(5) A hire of goods does not include an arrangement—

- (a) comprising a ‘wet hire’, that is, an arrangement under which an operator is provided by the person from whom the goods are hired to operate the goods for the person to whom they are hired;
- (b) relating to the hire of a caravan that is to remain on site;
- (c) made between related bodies corporate;
- (d) by way of a novated lease of a motor vehicle, that is, a sublease by an employee to an employer of a motor vehicle leased by the employee;
- (e) relating to the use of a book;
- (f) relating to the use of an electricity or a gas or water meter;
- (g) made for the use, by a person who is partially or totally incapacitated, of an invalid aid or prosthetic device or of any similar aid, device or appliance;
- (h) relating to the use of goods by a hospital, school or charitable organisation; or
- (j) of a type of arrangements prescribed by the regulations for the purposes of this section.

What are “hiring charges”?

“64L. (1) Hiring charges are payments made to a person who hires out goods by the person to whom the goods are hired (or by another person on that person’s behalf) for the hire of the goods and form part of the consideration for the agreement to hire the goods.

“(2) Hiring charges for goods include payments, such as for damage waiver, damage excess and late return fees, that arise as an incident of the hire of the goods and form part of the consideration for the agreement to hire the goods.

“(3) Hiring charges for goods do not include payments made for work carried out directly on the goods themselves, such as for delivery, repositioning, erection or installation of the goods or for insurance payments paid by the hirer, cleaning or otherwise for maintenance of the goods.

“(4) Residual payments made in relation to a hire of goods to which Division 3 applies are taken to be hiring charges.

Splitting or redirection of hiring charges (anti-avoidance provision)

“64M. The Commissioner may include as part of the amount received or receivable as hiring charges—

- (a) that part of any associated payment, such as for installation or maintenance, that the Commissioner is satisfied is unreasonably high; and
- (b) any payments that would be hiring charges except for the fact that they are paid to a person other than the person who hires out the goods.

What form may a hire of goods take?

“64N. (1) A hire of goods may take any form.

“(2) It is immaterial whether or not a hire of goods is effected or evidenced by a written instrument.

“Division 2—What arrangements apply to persons in business hiring out goods (commercial hirers)?

Application

“64P. This Division applies to commercial hirers.

Registration of commercial hirers

“64Q. (1) Where—

- (a) a commercial hirer enters into an equipment financing arrangement; or
- (b) in any month, the total amount of hiring charges received or receivable by a commercial hirer in respect of that month otherwise than in relation to an equipment financing arrangement exceeds the duty-free threshold;

the commercial hirer shall apply for registration under this Division.

“(2) A person who is not already registered shall make an application for registration in accordance with section 64R within 21 days after—

- (a) entering into an equipment financing arrangement; or
- (b) the end of the month in which the hiring charges to which paragraph (1) (b) applies first exceed the duty-free threshold;

whichever first occurs.

Penalty:

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.

Application for registration

“64R. The Commissioner shall register a commercial hirer who applies in the approved form for registration under this Division.

Registration without application

“64S. (1) The Commissioner may register a commercial hirer who has not applied for registration.

“(2) The Commissioner shall give written notice to the commercial hirer of the hirer’s registration.

Cessation of business and cancellation of registration by commercial hirer

“64T. (1) A registered commercial hirer who ceases to hire out goods as a business shall—

- (a) give notice of that fact to the Commissioner;
- (b) lodge the return required to be lodged under this Division; and
- (c) pay the duty payable in connection with the return on or before the twenty-first day of the month after which the notice is given.

Penalty:

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.

“(2) The notice cancels the commercial hirer’s registration under this Division on the day on which it is received by the Commissioner but does not affect any accrued liability of the hirer.

Duty base

“64U. (1) Subject to subsection (2), duty payable by a commercial hirer under this Part shall be assessed on the total amount of hiring charges received in a month by the hirer.

“(2) A registered commercial hirer may, with the approval in writing of the Commissioner, choose to have duty assessed on the total amount of hiring charges receivable by the hirer in a month.

“(3) A registered commercial hirer may, with the approval in writing of the Commissioner, change the basis (as between a receipts basis and an accruals basis) from month to month but shall not change the basis within a month.

“(4) If approval is given, the Commissioner may make any consequential adjustment and for that purpose may issue an assessment for duty or make a refund of duty.

“(5) The first return lodged by the registered commercial hirer after the basis is changed shall include any hiring charges that would not otherwise be accounted for because of the change of basis.

“(6) If a commercial hirer incurs a bad debt in relation to a hiring charge included in an invoice on which duty has been assessed and paid, the bad debt may be deducted from the amount of the hiring charges for the month in which the bad debt is written off.

Monthly returns and payment of duty

“64V. Where in respect of a month hiring charges are received or receivable by a commercial hirer (whether or not the hirer is registered under this Division) in relation to—

- (a) an equipment financing arrangement;
- (b) a hiring (not being an equipment financing arrangement) where the amount of the charges for that hiring exceeds the duty-free threshold; or
- (c) an equipment financing arrangement and a hiring (not being an equipment financing arrangement) whether or not the amount of the charges for that hiring exceeds the duty-free threshold;

the hirer shall, on or before the twenty-first day of the following month—

- (d) lodge a return in the approved form showing the total amount of those charges distinguishing between charges in relation to equipment financing arrangements and any charges in respect of any other type of hiring; and
- (e) pay to the Commissioner as duty—
 - (i) an amount equal to the determined amount (if any) that is applicable to the charges referred to in the return; or
 - (ii) if the return distinguishes between different types of hiring charges—an amount equal to the total of each determined amount (if any) that is applicable to the amount of each type of hiring charges referred to in the return.

Returns of related bodies corporate

“64W. (1) A single return may be lodged on behalf of 2 or more commercial hirers that are related bodies corporate.

“(2) The duty-free threshold applies to the aggregated hiring charges required to be included in such a single return.

“(3) The duty-free threshold does not apply individually to the hiring charges of each commercial hirer included in the return.

“(4) If 2 or more commercial hirers that are related bodies corporate lodge individual returns for the same month, the duty-free threshold applies to the hiring charges of only 1 of them.

“(5) The commercial hirers referred to in subsection (3) may in writing nominate to the Commissioner which of them is to be subject to the duty-free threshold.

Refunds—error as to place of use of goods

“64X. If, when duty under this Part is paid on the hire of goods, the Territory is not or has ceased to be the place of use of the goods, the Commissioner may refund the duty paid in error on evidence that the equivalent amount of duty has been paid under a corresponding law.

“Division 3—What arrangements apply to other persons?”

Statement of transaction

“64Y. (1) Where hiring charges are paid or payable to a person who is not a commercial hirer in relation to a transaction that is—

- (a) an equipment financing arrangement; or
- (b) a hiring (not being an equipment financing arrangement) where the amount of the charges for that hiring exceed the duty-free threshold;

the person shall, subject to subsection (3), make out a written statement relating to that transaction that specifies—

- (c) the name and address of each party;
- (d) a description of the goods;
- (e) the commencement date and the term of the hire;
- (f) the hiring charges (including any residual payment) paid or payable over the term of the hire; and
- (g) the intervals at which the hiring charges are paid or payable.

“(2) The written statement shall be made out—

- (a) when the person hiring out the goods receives the first (or only) payment of hiring charges; or
- (b) when the hiring charges become payable;

whichever first occurs.

“(3) The person hiring out the goods is not required to make out a statement if he or she retains a copy of a written agreement which incorporates the terms of a transaction referred to in subsection (1) and specifies the matters referred to in paragraphs (1) (c) to (g) (inclusive).

Penalty:

- (a) if the offender is a natural person—10 penalty units;
- (b) if the offender is a body corporate—50 penalty units.

Lodgment of statement and payment of duty

“64Z. (1) Within 30 days after the written statement is required to be made out, the person hiring out the goods shall—

- (a) subject to subsection (2), lodge the statement; and
- (b) pay to the Commissioner as duty an amount equal to the determined amount that is applicable to the charges specified in the statement.

Penalty:

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.

“(2) Where the terms of a transaction referred to in subsection 64Y (1) are incorporated in a written agreement which specifies the matters referred to in paragraphs 64Y (1) (c) to (g) (inclusive), the person hiring out the goods may lodge a copy of the agreement instead of a statement.

“(3) The person hiring out the goods and the person to whom the goods are hired are jointly and severally liable to pay duty in accordance with this section.

“(4) The person to whom the goods are hired may, at any time, make out and lodge a statement and pay duty in accordance with this section.

Apportionment of duty

“64ZA. (1) Where goods are used, or will be used, under a single hiring arrangement in more than 1 State or Territory, the person who hires out the goods shall apportion the hiring charges between each State or Territory according to the proportion of use in each State or Territory.

“(2) Where hiring charges are to be apportioned in accordance with subsection (1), particulars of that apportionment shall be recorded—

- (a) in any document which sets out the terms of the hiring arrangement between the parties; or

- (b) by the person who hires out the goods in a form which enables those particulars to be readily identified with the parties to the arrangement and the date the arrangement was entered into.

“(3) The Commissioner, if satisfied that goods described in a written statement may be used in more than 1 State or Territory during the term of the hire, may assess duty on an estimate of that part of the term in which the goods are likely to be used in the Territory.

Review of decisions

5. Section 65 of the Principal Act is amended—

- (a) by omitting “and” from paragraph (da); and
- (b) by adding at the end the following paragraphs:
 - “(f) refusing to waive duty under subsection 64G (4);
 - (g) including a payment as part of the hiring charges under section 64M;
 - (h) registration of a commercial hirer under subsection 64S (1); and
 - (j) refusing to give approval under subsection 64U (2) or (3);”.

Application

6. Subject to sections 7 and 8, Part VIB of the Principal Act as amended by this Act applies in relation to a hire of goods entered into on or after the commencement of this Act.

Determination of percentages and specification of amount

7. (1) Subject to this section, with effect on and after 1 October 1996—

- (a) 1.5% shall be taken to have been determined by the Minister in accordance with subsection 99 (1) of the *Taxation (Administration) Act 1987* for the purposes of paragraph 64G (1) (a) of the Principal Act as amended by this Act; and
- (b) \$6,000 shall be taken to have been indicated in that determination as the amount above which the rate of duty referred to in paragraph (a) is payable.

(2) Subject to this section, with effect on and after 1 October 1996, 0.75% shall be taken to have been determined by the Minister in accordance with subsection 99 (1) of the *Taxation (Administration) Act 1987* for the purposes of paragraph 64G (1) (b) of the Principal Act as amended by this Act.

(3) For the purpose of facilitating revocation or variation by determination under subsection 99 (1) of the *Taxation (Administration) Act 1987* of the percentages and the amount referred to in subsections (1) and (2), the Minister may, after the notification of this Act, by notice published in the *Gazette*, make a determination—

- (a) for the purposes of paragraph 64G (1) (a) of the Principal Act as amended by this Act being a determination that is expressed to determine the percentage, and indicate the amount, referred to in subsection (1); and
- (b) for the purposes of paragraph 64G (1) (b) of the Principal Act as amended by this Act being a determination that is expressed to determine the percentage referred to in subsection (2).

(4) Upon the publication in the *Gazette* of a determination—

- (a) referred to in paragraph (3) (a)—subsection (1) shall be taken to have expired; or
- (b) referred to in paragraph (3) (b)—subsection (2) shall be taken to have expired.

(5) A determination referred to in paragraph (3) (a) or (b) is not a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

(6) A determination referred to in paragraph (3) (a) or (b) has effect according to its terms, and may be revoked or varied, as if it had been made under subsection 99 (1) of the *Taxation (Administration) Act 1987*.

Transitional

8. (1) Notwithstanding the period specified in section 64V for lodgment of a return and payment of duty, a person to whom that section applies shall, within 30 days after the date of notification of this Act, in respect of each month completed between 30 September 1996 and the date of that notification—

- (a) lodge the return required by that section in relation to hiring charges received or receivable by the person in respect of that month; and

- (b) pay to the Commissioner as duty the amount required by that section in relation to hiring charges received or receivable by the person in respect of that month.

(2) Notwithstanding the period specified in section 64Z for lodgment of a statement or agreement and payment of duty, where hiring charges are received or become payable after the commencement of this Act and before the date of its notification—

- (a) the statement or agreement relating to those charges shall be lodged; and
- (b) the duty relating to those charges shall be paid;

within 30 days after the date of notification of this Act.

(3) In this section, a reference to a section shall be taken to be a section of the Principal Act as amended by this Act.

(4) For the purposes of the *Taxation (Administration) Act 1987*, this section shall be taken to be a tax law.

NOTES

Principal Act

1. Reprinted as at 28 February 1995. See also Acts Nos. 13 and 54, 1995; Nos. 49 and 50, 1996.

Penalty units

See section 33AA of the *Interpretation Act 1967*.

[Presentation speech made in Assembly on 26 September 1996]