

1998
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Treasurer)

**Stamp Duties and Taxes (Amendment) Bill
1998**

**A BILL
FOR**

**An Act to amend the *Stamp Duties and Taxes Act*
1987**

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

1. Short title

This Act may be cited as the *Stamp Duties and Taxes (Amendment)*
5 *Act 1998*.

2. Commencement

(1) Sections 1 to 4 (inclusive), 9 and 10 commence on the day on which
this Act is notified in the *Gazette*.

(2) Sections 5, 6 and 7 shall be taken to have commenced on
10 1 November 1989.

(3) Section 8 shall be taken to have commenced on 1 September 1994.

88044 (1998/111) (T44/1998)

3. Principal Act

In this Act, "Principal Act" means the *Stamp Duties and Taxes Act 1987*.¹

4. Interpretation

5 Section 37A of the Principal Act is amended by inserting in subsection (1) the following definition:

" 'buy-back transaction' means a transaction under, or permitted by—

(a) Division 3A of Part IV of the *Companies Act 1981* of the Commonwealth; or

10 (b) Division 4B of Part 2.4 of the *Corporations Law*;".

5. Transactions subject to tax

Section 38 of the Principal Act is amended by adding at the end the following subsections:

"(5) For the purposes of this section—

15 (a) a purchase by a broker on behalf of a company of a share in the capital of that company shall be taken to be a purchase by the broker of a marketable security; and

(b) a sale by a broker (whether or not on the broker's own behalf) to a company of a share in the capital of that company shall be taken to
20 be a sale by the broker of a marketable security.

"(6) Without limiting the generality of subsection (5), where a broker acts in a buy-back transaction in relation to a share in the capital of a company, the following provisions apply:

25 (a) for the purposes of paragraph (5) (a)—where the broker acts on behalf of the company, the effecting of the transaction shall be taken to be a purchase of the share by the broker on behalf of the company;

(b) for the purposes of paragraph (5) (b)—where the broker does not act on behalf of the company, the effecting of the transaction shall
30 be taken to be a sale of the share by the broker to the company."

6. Transfers subject to tax or stamp duty

Section 44 of the Principal Act is amended by adding at the end the following subsection:

35 "(4) For the purposes of this section, each of the following transactions, namely:

(a) a transfer to a company of a share in the capital of that company;

- (b) a buy-back transaction in relation to a share in the capital of a company;
- (c) an acquisition, or a redemption, by a company of a share in the capital of that company;

5 shall be taken to be a transfer of a marketable security.”.

7. Liability to pay tax or stamp duty

Section 45 of the Principal Act is amended by adding at the end the following subsection:

“(4) For the purposes of this section—

- 10 (a) each of the following transactions, namely:
 - (i) a transfer to a company of a share in the capital of that company;
 - (ii) a buy-back transaction in relation to a share in the capital of a company;
 - 15 (iii) an acquisition, or a redemption, by a company of a share in the capital of that company;
- other than an SCH regulated transfer, shall be taken to be a non-SCH regulated transfer of a marketable security; and
- 20 (b) in relation to a transaction that, under paragraph (a), is taken to be a non-SCH regulated transfer of a marketable security, the following provisions apply:
 - (i) in the case of a transfer to a company of a share in the capital of that company—that company shall be taken to be the transferee;
 - 25 (ii) in the case of a buy-back transaction in relation to a share in the capital of a company—that company shall be taken to be the transferee;
 - (iii) in the case of an acquisition, or a redemption, by a company of a share in the capital of that company—that company shall be taken to be the transferee.”.
- 30

8. Liability on change of beneficial ownership where tax or duty not otherwise payable

Section 49F of the Principal Act is amended by adding at the end the following subsection:

35 “(7) For the purposes of this section—

- (a) each of the following transactions, namely:
 - (i) a transfer to a company of a share in the capital of that company;

- (ii) a buy-back transaction in relation to a share in the capital of a company;
 - (iii) an acquisition, or a redemption, by a company of a share in the capital of that company;
- 5 shall be taken to involve a change in beneficial ownership of a marketable security; and
- (b) in relation to a transaction referred to in paragraph (a), the following provisions apply:
- 10 (i) in the case of a transfer to a company of a share in the capital of that company—the transfer shall be taken to involve an acquisition by that company of beneficial ownership in a marketable security;
 - (ii) in the case of a buy-back transaction in relation to a share in the capital of a company—the effecting of the transaction
15 shall be taken to involve an acquisition by that company of beneficial ownership in a marketable security;
 - (iii) in the case of an acquisition, or a redemption, by a company of a share in the capital of that company—the acquisition or
20 redemption shall be taken to involve an acquisition by that company of beneficial ownership in a marketable security.”.

9. Application

The definition inserted by section 4 into section 37A of the Principal Act shall be taken to have applied (so far as it was capable from time to time of applying) for the purposes of the subsections inserted by this Act into the
25 Principal Act, as follows:

- (a) in the case of a subsection inserted by section 5, 6 or 7—on and from 1 November 1989;
- (b) in the case of the subsection inserted by section 8—on and from 1 September 1994.

30 10. Saving

- (1) Subject to subsection (3), a person is not liable to a penalty under a provision of the amended Act in respect of an act or omission if the person would not, apart from amendments made by this Act, have been liable under the provision in respect of the act or omission.
- 35 (2) Subject to subsection (3), a person is not guilty of an offence under a provision of the amended Act in respect of an act or omission if the person would not, apart from amendments made by this Act, have been guilty under the provision in respect of the act or omission.
- (3) This section does not apply in the case of an act or omission
40 occurring on or after the date of commencement of this section.

(4) In this section—

“amended Act” means the Principal Act as amended by this Act.

NOTE

Principal Act

1. Reprinted as at 1 June 1998.