

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**STAMP DUTIES AND TAXES (AMENDMENT)
BILL 1998**

EXPLANATORY MEMORANDUM

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STAMP DUTIES AND TAXES (AMENDMENT) BILL 1998

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Summary

This is an amending Bill. It amends the *Stamp Duties and Taxes Act 1987* referred to in the amending Bill as the Principal Act.

The amendments introduced by this Bill are intended to

- clarify the intent of the Principal Act in respect of share buy-back transactions,
- remove any doubts on the validity of past stamp duty assessments made by the Commissioner for ACT Revenue on share buy-back transactions (and accordingly to protect the revenue collected pursuant to them) as a consequence of the Victorian Court of Appeal's decision in *Coles Myer Limited v Commissioner of State Revenue* ("the *Coles Myer* decision"), and
- enable the Commissioner for ACT Revenue to continue to assess share buy-back transactions for duty.

The Commissioner for ACT Revenue collects stamp duty on share buy-back transactions, as defined in the *Companies Act 1981* (effective from 1 November 1989) and the *Corporations Law* (effective from 1 January 1991), on the basis that a share buy-back transaction comes within Part V of the Principal Act.

In the *Coles Myer* decision, it was held that a share buy-back transaction was not a 'transfer' within the meaning of the Victorian *Stamps Act 1958*. While a decision of the Victorian Court of Appeal is not determinative of the meaning of provisions in the ACT Stamp Duties and Taxes Act 1987, the *Coles Myer* decision creates uncertainty for ACT taxpayers by casting doubt on the validity of stamp duty assessments made by the Commissioner for ACT Revenue on share buy-back transactions under the Principal Act.

Finance/Cost Implications

This measure is to remove doubts concerning the validity of stamp duty collected on share buy-back transactions by the ACT since 1 November 1989. The revenue at risk is estimated at more than \$4 million.

Details of the Bill are attached.

Details of the Stamp Duties and Taxes (Amendment) Bill 1998

Formal Clauses

Clauses 1, 2 and 3 are formal requirements. They refer to the short title of the Bill, commencement of the amendments introduced by the Bill, and definition of the Principal Act.

Commencement of the amendments introduced by clauses 5, 6 and 7 is made retrospective to 1 November 1989 (the date on which share buy-back transactions were authorised under the relevant provisions of the *Companies Act 1981*).

Commencement of the amendment introduced by clause 8 is made retrospective to 1 September 1994 (the date of commencement of section 49F of the Principal Act).

Interpretation

Clause 4 amends section 37A by inserting into subsection (1) a definition of a buy-back transaction.

Transactions subject to tax

Clause 5 amends section 38 of the Principal Act by adding subsection (5) and subsection (6). These subsections specifically recognise a buy-back transaction, effected by a broker, as either a purchase or a sale by the broker of a marketable security, and therefore subject to tax, payable by the broker, under the section.

Subsection (5) deems a purchase by a broker on behalf of a company, or 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 to be a purchase or sale by the broker of a marketable security.

Where a broker acts in a buy-back transaction in relation to a share in the capital of a company, subsection (6) deems the effecting of the transaction to be

- for the purposes of paragraph (5) (a), a purchase of the share by the broker on behalf of the company; and
- for the purposes of paragraph (5) (b), where the broker does not act on behalf of the company, a sale of the share by the broker to the company.

Transfer subject to tax or stamp duty

Clause 6 amends section 44 of the Principal Act by adding subsection (4). Subsection (4) deems each of the transactions listed in the subsection to be a transfer of a marketable security, and therefore subject to tax or duty under the section

Liability to pay tax or stamp duty

Clause 7 amends section 45 of the Principal Act by adding subsection (4), which deems

- each of the transactions listed in the subsection (other than an SCH regulated transfer) to be a non-SCH regulated transfer of a marketable security, and
- the company in question, in relation to each transaction that is taken to be a non-SCH regulated transfer of a marketable security, to be the transferee;

so that the company in question is made liable to pay duty under the section as the transferee for a non-SCH regulated transfer of a marketable security

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

Clause 8 inserts subsection (7) in Section 49F, to deem

- each of the transactions listed in the subsection as involving a change in beneficial ownership of a marketable security, and
- the effecting of each of those transactions as involving an acquisition by the company in question of a marketable security;

so that the company in question is made liable to pay tax or duty under the section

Application

Clause 9 provides that the definition of a share buy-back transaction inserted by clause 4 into the Principal Act is to apply to the amendments introduced by clauses 5, 6 and 7 as from 1 November 1989 (the date on which share buy-back transactions were authorised under the relevant provisions of the *Companies Act 1981*), and is to apply to the amendment introduced by clause 8 as from 1 September 1994 (the date of commencement of section 49F of the Principal Act)

Saving

Clause 10 saves a person from being made liable to a penalty or guilty of an offence under a provision of the Principal Act in respect of an act or omission, as a result of the amendments made by this Bill to the Principal Act. Clause 10 does not apply to acts or omissions occurring after the commencement of this amending Bill