

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

**DUTIES (CONSEQUENTIAL AND  
TRANSITIONAL PROVISIONS) BILL 1998**

**EXPLANATORY MEMORANDUM**

**Circulated by the Authority of the Chief Minister and Treasurer**

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## **DUTIES (CONSEQUENTIAL AND TRANSITIONAL PROVISIONS) BILL 1998**

### **Summary**

The Duties (Consequential and Transitional Provisions) Bill 1998 (the Bill) should be read as one with the Duties Bill 1998, which replaces the *Stamp Duties and Taxes Act 1987*

The Bill contains transitional provisions, the purposes of which are to ensure that

- 1 taxpayers are clearly aware of which stamp duty legislation will govern their transactions,
- 2 documents and transactions subject to duty under the repealed Act, but on which duty has not been paid, remain liable for such duty or tax,
- 3 instruments and transactions do not become liable for duty under both Acts, and
- 4 there is a smooth transition from the old to the new Act for return lodging taxpayers

As a general rule, instruments first executed and transactions occurring on or after the day the Duties Act commences are liable for duty under the Duties Act. Instruments first executed and transactions occurring before the commencement day will be liable for duty under the Stamp Duties and Taxes Act.

The Bill also allows the determinations setting the rates of duty and tax for the purposes of the Stamp Duties and Taxes Act to continue to apply in respect of those instruments subject to duty under that Act, and sets the rates applying to instruments and transactions liable for duty under the Duties Act.

### **Financial/Cost Implications**

There are no financial or cost implications in relation to the enactment of the Bill.

Details of the Bill are attached.

## **DETAILS**

### **PART I- PRELIMINARY**

#### **Short Title**

*Clause 1* provides for the short title of this Act to be the *Duties (Consequential and Transitional Provisions) Act 1998*

#### **Commencement**

*Clause 2* provides for this Act to commence on the day it is notified in the Gazette

#### **Interpretation**

*Clause 3* defines “commencement day”, “Duties Act” and “Stamp Duties and Taxes Act” Expressions used in this Act have the same meanings as in the Duties Act, unless a contrary intention is evident

### **PART II - REPEALS**

#### **Acts Repealed**

*Clause 4* provides that the Acts listed in the attached Schedule are repealed These are the *Stamp Duties and Taxes Act 1987* and all subsequent amending Acts

### **PART III - TRANSITIONAL PROVISIONS**

This Part sets out the rules governing the application of the Duties Act and the former Stamp Duties and Taxes Act to instruments and transactions which are assessed for duty on and after the date of commencement of the Duties Act It also provides for the continued operation of determinations which set the rates of duty for the purposes of the Stamp Duties and Taxes Act, as well as setting the interim rates of duty applying under the *Duties Act 1998*

#### **Application of Duties Act to instruments**

*Clause 5* provides that, except where specifically addressed in later clauses under this Part, the Duties Act will apply to instruments first executed on or after the commencement day

#### **Continued operation of Stamp Duties and Taxes Act in relation to instruments**

*Clause 6* provides that although the Stamp Duties and Taxes Act is repealed, it will continue to apply to instruments listed under subsection 17(1) of that Act that are first executed before the commencement day Such instruments include

- the grant of a Crown lease or a sublease of land (other than for residential purposes),

- the transfer or agreement to transfer of an estate in fee simple, a Crown lease or of a sublease (not being a Crown lease), and
- the grant of a Crown lease to the lessee of the previous Crown lease because of the surrender of the previous Crown lease

*Subclause (2)* will allow the continued application of section 29 of the Stamp Duties and Taxes Act under which all, or a proportion of, the stamp duty paid under that Act could be refunded if the Crown lease is surrendered and all, or a proportion of, the amount paid for the lease is refunded

### **Application of Chapter 2 of the Duties Act**

*Clause 7* provides that, subject to *Clause 9*, which deals with transfers back to a nominee, duty charged under Chapter 2 of the Duties Act is charged on dutiable transactions that occur on or after the commencement day. A list of dutiable transactions, and the dates they are deemed to have occurred, are contained in *Clauses 7 and 8* of the Duties Act

Dutiable transactions occurring before commencement day are to be disregarded when applying the aggregation provisions contained in Section 24 of the Duties Act

### **Approval to pay duty by periodic return**

*Clause 8* will allow prescribed corporations which have been given approval to pay stamp duty on transfers of marketable securities by means of a monthly return (in accordance with Section 49D of the Stamp Duties and Taxes Act) to continue to pay duty by return in respect of such transactions - now provided for in Part IV of Chapter 2 of the Duties Act. Approval will be taken to have been given under section 44 of the *Taxation Administration Act 1998* and under the same arrangements which currently apply

### **Transfers back from a nominee**

*Clause 9* ensures that where, before the commencement day, dutiable property was transferred to a trustee and duty paid on that transfer under the Stamp Duties and Taxes Act and the subsequent transfer back to the original transferor occurs on or after the commencement day, concessional duty of only \$20 will apply to that subsequent transfer, as provided for under section 55 of the Duties Act. The duty paid on the original transfer may also be refunded, less \$20 if the provisions of subsection 55(2) are met

### **Credit for duty paid on the acquisition of a business**

*Clause 10* ensures that the intention of subsection 64E(2) of the Stamp Duties and Taxes Act will continue to apply in respect of instruments first executed and transactions occurring on and after the commencement date. Duty paid on the acquisition of the business under the former Act will be credited towards a stamp duty liability payable under the Duties Act in respect of an instrument executed or transaction effected in respect of that business acquisition

### **Application of Chapter 3 of the Duties Act**

*Clause 11* provides that duty charged under Chapter 3 of the Duties Act is charged on transactions that occur on or after the commencement day

### **How duty is charged on relevant acquisitions**

*Clause 12* provides that the 3 year aggregation period in respect of acquisitions of interests in landholding companies (referred to in section 88 of the Duties Act) will not include acquisitions which occur before the commencement day

### **Application of Chapter 4 of the Duties Act**

*Clause 13* provides that duty charged under Chapter 3 of the Duties Act is charged on transactions that occur on or after the commencement day

### **Continued application of Stamp Duties and Taxes Act in relation to marketable securities.**

*Clause 14* provides that although the Stamp Duties and Taxes Act is repealed, it will continue to apply to the following marketable security transactions that occurred before commencement day

- sales and purchases of marketable securities through brokers on the Australian Stock Exchange (section 38 of the repealed Act),
- private transfers of marketable securities or transfers by CHESS participants (section 44), and
- changes in beneficial ownership of marketable securities (section 49F)

### **Application of Chapter 5 of the Duties Act**

*Clause 15* provides that duty charged under Chapter 5 of the Duties Act is charged on lease instruments that are first executed on or after the commencement day, together with variations made to leases after the commencement day which increase the cost of leases first executed before the commencement day

Where leases are terminated before the end of their term, section 146 of the Duties Act provides for a reassessment of the duty paid and a refund of overpaid duty. This section will apply in respect of all leases terminated after the commencement day, irrespective of when the lease instrument was executed or whether the original duty was paid before or after the commencement date

Leases that are subsequently varied after the commencement date so as to reduce the cost of the lease will be eligible for a refund of duty, under section 147 of the Duties Act. This section will apply in respect of leases first executed and duty paid both before and after the commencement date

### **Application of Chapter 6 of the Duties Act**

*Clause 16* provides that duty charged under Chapter 6 of the Duties Act is charged

- in respect of commercial hires - on hiring charges received on or after commencement day, and
- in respect of non-commercial hires - on a hire entered into on or after commencement day

### **Continued operation of Part VIB of the Stamp Duties and Taxes Act**

*Clause 17* provides that although the Stamp Duties and Taxes Act is repealed, it will continue to apply

- in respect of commercial hires - on hiring charges received before the commencement day; and
- in respect of non-commercial hires - on a hire entered into before the commencement day

### **Registered commercial hirers**

*Clause 18* allows persons who were registered as commercial hirers under the Stamp Duties and Taxes Act immediately before commencement day to be automatically registered as commercial hire businesses under the Duties Act

### **Application of Chapter 8 of the Duties Act**

*Clause 19* provides that duty charged under Chapter 8 of the Duties Act is charged on

- general insurance premiums paid on or after the commencement day,
- the sum assured paid on a life insurance policy (not a temporary or term life policy) executed on or after the commencement day,
- the first years premium on a temporary or term life insurance policy executed on or after the commencement day, and
- a premium paid on or after the commencement day in respect of a disability insurance policy

### **Continued operation of Part IV of the Stamp Duties and Taxes Act**

*Clause 20* provides that, although the Stamp Duties and Taxes Act is repealed, it will continue to apply to

- premiums received in respect of life insurance policies executed before the commencement day, and
- premiums received before commencement day in respect of dutiable general insurance policies (refer paragraphs 30(a) and (b) of that Act),

### **Registered insurers**

*Clause 21* allows persons who were registered as a life insurer or general insurer under the Stamp Duties and Taxes Act immediately before commencement day to be automatically registered as insurers under the Duties Act

### **Refunds where premiums are returned**

*Clause 22* ensures that Section 180 of the Duties Act, which provides a refund of duty in respect of general insurance policies where a refund of part or all of the premium is made, will apply in respect of all general insurance policies, including those to which the Stamp Duties and Taxes Act applied

### **Refund on cancellation of policy of life insurance**

*Clause 23* is similar in application to *Clause 22* and ensures that Section 186 of the Duties Act, which provides a refund of duty where a life policy is cancelled within 30 days after its receipt by the policy holder, will apply in respect of policies where duty was paid under the Stamp Duty and Taxes Act

### **Application of Chapter 9 of the Duties Act**

*Clause 24* provides that duty charged under Chapter 9 of the Duties Act is charged on

- a motor vehicle registration application form made on or after the commencement date, and
- a motor vehicle registration application form made before the commencement day in respect of which a certificate of registration is issued on or after commencement day,

unless the vehicle was a used motor vehicle sold by a licensed motor dealer and either duty has been paid by the dealer or the vehicle has been included in a return lodged by the dealer

### **Continued operation of certain provisions of Part VI of the Stamp Duties and Taxes Act**

*Clause 25* provides that sales of used motor vehicles by a motor dealer prior to the commencement day will continue to be governed by the repealed Stamp Duties and Taxes Act, ensuring that vehicle dealers lodge a return for sales during the month preceding the repeal of Act and pay the tax. *Subclause 25(2)* will enable a person who purchased a vehicle from a dealer, and paid an amount equivalent to the duty to the dealer before the commencement day, to still seek a refund after that day if the deal falls through

### **Certificates of exemption**

*Clause 26* ensures that Certificates of exemption in effect immediately before the commencement day issued under Section 62 of the Stamp Duties and Taxes Act will continue to apply as if they were issued under Section 200 of the Duties Act

### **Duty and tax paid under the Stamp Duties and Taxes Act**

*Clause 27* ensures that amounts of duty paid under the Stamp Duties and Taxes Act are taken into account when an assessment or reassessment of duty is undertaken under the Duties Act

### **Stamping under the Stamp Duties and Taxes Act**

*Clause 28* provides that if a document was duly stamped for the purposes of the Stamp Duties and Taxes Act it is regarded as having been duly stamped for the purpose of the Duties Act

### **Determined duties and taxes**

*Clause 29* ensures that, despite the repeal of the *Taxation (Administration) Act 1987*, the determinations made under that Act, in respect of stamp duty and tax payable under a continuing provision which is in force immediately before the commencement day, will continue to apply

### **Interim determination of rates of duty for certain dutiable transactions and certain leases**

*Clause 30* sets the determined rates of duty which will apply to dutiable transactions listed in section 10 of the Duties Act, as identified in section 31 of that Act. Such rates also apply to long term leases for the purpose of section 139 of that Act.

*Subclauses (3) to (6)* set out the mechanism by which the rates of duty contained in *subclauses (1) and (2)* can be revoked or varied. This requires two steps

- the making and publication in the Gazette of a determination under the Taxation Administration Act 1998 of the same ranges of amounts as are set out in *subclauses (1) and (2)*, and
- subsequently making a new determination revoking the first determination and setting new rates.

### **Interim determination of certain rates of duty**

*Clause 31* sets the determined rates for all other dutiable transactions, with the exception of registration of motor vehicles, which is set in *section 207* of the Duties Act. The clause provides the same mechanism for revoking or varying the rates of duty as *clause 30*



## **PART IV - CONSEQUENTIAL AMENDMENTS**

This Part makes consequential amendments to other legislation to which specific reference is made to the Stamp Duties and Taxes Act

### **Amendment of the Land Titles Act**

*Clause 32* allows for the continued operation of *section 51* of the *Land Titles Act 1925*, prohibiting the registration of instruments that were executed on or after 1 August 1987 and before the date of repeal unless they have been stamped (a sign that duty has been paid)

Prohibition on the registration of instruments first executed on or after commencement day that have not been stamped in accordance with the Duties Act is contained within that Act itself (refer section 245)

### **Amendment of the Administrative Decisions (Judicial Review) Act**

*Clause 33* amends the *Administrative Decisions (Judicial Review) Act 1989* by inserting the Duties Act and the *Taxation Administration Act 1998* into Schedule 1. The effect of this is to ensure that the review of assessments and administrative decisions made under those Acts in relation to the making of assessments are not covered under that Act because such reviews are available under the Taxation Administration Act itself

## **PART V - MISCELLANEOUS**

### **Consequential and transitional regulations**

*Clause 34* allows the Executive to make regulations, within 12 months of the commencement date, which amend this Act, the Duties Act and any other Act arising from, connected with or consequential upon the Duties Act. Such regulations can take effect from any day on or after commencement day, irrespective of when such regulation is *Gazetted*, provided they do not detrimentally, retrospectively affect a person's liability for duty