



Australian Capital Territory

Stamp Duties and Taxes Act 1987

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Australian Capital Territory

STAMP DUTIES AND TAXES ACT 1987

Reprinted as at 31 May 1991

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Australian Capital Territory

STAMP DUTIES AND TAXES ACT 1987

An Act to provide for the imposition and payment of stamp duties and certain taxes, and for related purposes

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Stamp Duties and Taxes Act 1987*.¹

Commencement

2. This Act shall come into operation on such date as is fixed by the Minister by notice in the *Gazette*.¹

Incorporation of *Taxation (Administration) Act 1987*

3. The *Taxation (Administration) Act 1987* is incorporated and shall be read as one with this Act.

Interpretation

4. (1) In this Act, unless the contrary intention appears:

“aircraft” means a machine or apparatus that can derive support in the atmosphere from the reactions of the air or from buoyancy, but does not include an air-cushion vehicle;

“approved” means approved by the Commissioner for the purposes of this Act;

- “assessment” has the same meaning as in the Taxation (Administration) Act;
- “assignee”, in relation to an agreement to assign an estate in fee simple or a lease, means the person to whom the estate or lease is to be assigned under the agreement;
- “assignor”, in relation to an agreement to assign an estate in fee simple or a lease, means the person by whom the estate or lease is to be assigned under the agreement;
- “Australian stock exchange” means the Sydney Stock Exchange, the Stock Exchange of Melbourne, the Brisbane Stock Exchange, the Stock Exchange of Adelaide, the Stock Exchange of Perth or the Hobart Stock Exchange;
- “broker” means a member of an Australian stock exchange;
- “charitable organisation” means an association, society, institution or body carried on for a religious, educational, benevolent or charitable purpose, other than one carried on for the purpose of securing pecuniary benefit to its members;
- “Commissioner” means the Commissioner for Australian Capital Territory Revenue Collections appointed under the Taxation (Administration) Act;
- “company” includes a body, society, association, authority or institution, whether corporate or unincorporate, but does not include a partnership;
- “conveyance” means:
- (a) a lease of land, or a transfer, assignment or grant of a lease of land;
 - (b) an agreement for a transfer, assignment or grant of a lease of land;
 - (c) a transfer of an estate in fee simple; or
 - (d) an agreement for a transfer of an estate in fee simple;
- “corresponding law”, in relation to a law of the Territory, means a law of a State or another Territory that is similar, or has a similar effect, to the first-mentioned law;

- “Crown lease” means a lease of land granted by or in the name of the Commonwealth;
- “determined amount”, in relation to stamp duty or tax, has the same meaning as in the Taxation (Administration) Act;
- “duly stamped”, in relation to an instrument, means duly stamped as mentioned in section 9;
- “dutiable transfer”, in relation to a marketable security, means a transfer of the security on which stamp duty is payable by virtue of Division 2 of Part V;
- “execute”, in relation to an instrument, means to sign the instrument or, if the instrument is to be under seal, sign and seal the instrument;
- “exempt sale or purchase”, in relation to a marketable security, means a sale or purchase on which, by virtue of Division 1 of Part V, tax is not payable;
- “general insurance” means:
- (a) insurance on land (including crops growing on land);
 - (b) insurance on goods; or
 - (c) any other insurance (not being life insurance);
- “general insurer” means an insurer who carries on the business of general insurance;
- “hire-purchase agreement”, in relation to a vehicle, includes an agreement to lease the vehicle with an option to purchase, and an agreement for the purchase of the vehicle by instalments (whether the agreement describes the instalments as rent or hire or otherwise), but does not include an agreement:
- (a) under which the property in the vehicle passes at the time the agreement is made or before or on delivery of the vehicle; or
 - (b) under which the vehicle is being hired or purchased primarily for the purpose of re-sale by a person who is carrying on a business in respect of which the person is a licensed dealer under the *Sale of Motor Vehicles Act 1977* or a corresponding law, where the vehicle is held by the person as trading stock for re-sale in the course of carrying on that business;

“hirer”, in relation to a vehicle that is the subject of a hire-purchase agreement, means the person to whom the vehicle is to be let, hired or sold under the agreement;

“hospital” means a recognised hospital within the meaning of the *Health Insurance Act 1973* of the Commonwealth;

“impressed stamp” means a stamp impressed by means of a die or other device made pursuant to section 7;

“instrument” includes any document;

“insurance” means an undertaking or liability to make good, or indemnify against, loss or damage, or a liability to pay damages or compensation, or insuring the payment of money, contingent upon the happening of a specified event, and includes:

- (a) accepting a premium in consideration of granting, issuing or keeping in force a policy of insurance;
- (b) granting a cover note or receiving a letter or declaration of interest attaching to a policy of insurance; or
- (c) carrying out, by means of insurance effected outside the Territory, a contract or undertaking in the Territory to effect that insurance;

but does not include re-insurance effected with another insurer;

“insurer” means a person who carries on the business of insurance, and includes an authority constituted under a law of a State or another Territory that carries on the business of insurance, but does not include the Defence Service Homes Corporation;

“international trade insurance” means—

- (a) insurance of freight against loss or damage in the course of, or incidental to, international transport of the freight;
- (b) insurance of an aircraft or ship against loss or damage during a particular period when the aircraft or ship is under construction or undergoing refitting, maintenance or repairs where, at the time the insurance was effected, the aircraft or ship was intended by the owner to be used wholly or principally for the international transport of freight for an indefinitely continuing period commencing immediately after the completion of the

construction, refitting, maintenance or repairs, as the case may be;

- (c) insurance of an aircraft or ship against loss or damage in the course of, or incidental to, a particular journey or journeys where, at the time the insurance was effected, it was intended by the owner that the journey or journeys would be wholly or principally for the international transport of freight; or
- (d) insurance of an aircraft or ship against loss or damage during a particular period where, at the time the insurance was effected, the aircraft or ship was intended by the owner to be used during that period wholly or principally for the international transport of freight;

“international transport”, in relation to freight, means the transport in, or in connection with, trade or commerce, of the freight between—

- (a) a place in a foreign country; and
- (b) a place in—
 - (i) another foreign country;
 - (ii) Australia; or
 - (iii) an external Territory;

“lease” includes a sub-lease and an agreement for a lease or a sub-lease, but does not include:

- (a) an attornment under a mortgage or contract of sale;
- (b) a right granted by a company to a shareholder of the company, by virtue of his or her being a shareholder, to occupy or use land owned or held under lease by the company; or
- (c) an option to renew a lease;

“lessee”, in relation to an agreement to grant a lease, means the person to whom the lease is to be granted under the agreement;

“licence code”, in relation to a licensed vehicle dealer, means the name under which the dealer carries on business followed by the letters “LMVD” and the dealer’s licence number;

“licensed vehicle dealer” means a licensed dealer within the meaning of the *Sale of Motor Vehicles Act 1977*;

“life insurance” means insurance that insures the payment of money on death (not being death by accident only or by specified sickness only) or on the happening of a contingency dependent on the termination or continuance of a human life (either with or without provision for a benefit under a continuous disability contract referred to in paragraph (c)), and includes:

- (a) insurance under an instrument evidencing a contract that is subject to payment of premiums for a term dependent upon the termination or continuance of human life;
- (b) insurance under an instrument securing the grant of an annuity for a term dependent on the termination or continuance of human life;
- (c) insurance under a continuous disability insurance contract (which is expressed to be of more than one year’s duration and is incorporated in a life insurance policy) under which a person is to become entitled to a benefit in the event of the occurrence, within the duration of the contract, of death by accident or by another cause specified in the contract, or injury or disability caused by accident or sickness; and
- (d) insurance under a sinking fund policy insuring the payment of a sum, or series of sums, of money on a future date or dates in consideration of one or more premiums;

“life insurer” means an insurer who carries on the business of life insurance;

“marketable security” means:

- (a) a share in the capital of a company;
- (b) a unit in relation to a unit trust scheme; or
- (c) a person’s right, whether existing, or arising in the future, and whether contingent or not, to have issued to the person such a share or unit, whether on payment of money or other consideration or not;

“Motor Traffic Act” means the *Motor Traffic Act 1936*;

“non-commercial Commonwealth authority” means a body corporate (not being an incorporated company, society or association) that:

- (a) is incorporated for a public purpose by or under a law of the Territory or the Commonwealth; and
- (b) does not have as its sole or principal function the carrying on of an activity in the nature of a business, whether or not for profit;

“premium”, in relation to insurance, means the gross amount charged or payable as premium in respect of the insurance without deduction for an amount paid or payable or allowed or allowable by way of discount or commission to an agent or other person for securing or arranging that insurance on behalf of the insurer, and includes an instalment of a premium;

“register”, in relation to a vehicle, includes renew or transfer the registration of the vehicle;

“registered”, in relation to a vehicle, means registered under the Motor Traffic Act;

“registered general insurer” means a person registered as a general insurer pursuant to subsection 33 (2);

“registered life insurer” means a person registered as a life insurer pursuant to subsection 33 (2);

“Register of General Insurers” means the Register of General Insurers kept pursuant to section 32;

“Register of Life Insurers” means the Register of Life Insurers kept pursuant to section 32;

“Registrar” means the Registrar of Motor Vehicles appointed pursuant to the Motor Traffic Act;

“rent” does not include an amount in the nature of penal rent;

“scheme” means:

- (a) an agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; or
- (b) a scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise;

“school” means a school registered under the *Education Act 1937*;

“ship” means a vessel or boat of any description, and includes—

- (a) an air-cushion vehicle; and
- (b) a floating structure;

“taxable premium” means a premium on which tax is payable by virtue of Part IV, being:

- (a) in relation to a life insurer—a life insurance premium; or
- (b) in relation to a general insurer—a general insurance premium;

“taxable registration”, in relation to the transfer of a marketable security, means the registration of a transfer of a marketable security, being a registration on which tax is payable by virtue of Division 3 of Part V;

“taxable sale or purchase”, in relation to a marketable security, means a sale or purchase on which tax is payable by virtue of Division 1 of Part V;

“Taxation (Administration) Act” means the *Taxation (Administration) Act 1987*;

“tax avoidance scheme” means a scheme where the person who has, or one or more of the persons who have, entered into or carried out the scheme or a part of the scheme did so for the purpose of securing:

- (a) that an amount of stamp duty or tax would not be payable by a person, being an amount that would have been, or might reasonably be expected to have been, payable by the person;
- (b) that an amount of stamp duty or tax payable by a person would be less than the amount that would have been, or might reasonably be expected to have been, payable by the person; or
- (c) that a refund of stamp duty or tax would be payable to a person, being a refund that would not have been or might reasonably be expected not to have been, payable to the person;

if the scheme had not been entered into or carried out, or for purposes of which that purpose was the dominant purpose;

“third party insurance” means insurance effected for the purpose of, and in accordance with the requirements of, a law of the Territory or a State

or another Territory relating to the compulsory insurance of owners and drivers of motor vehicles, as defined by that law, against liability in respect of the death of, or bodily injury to, persons caused by or arising out of the use of motor vehicles;

“transferee”, in relation to an agreement to transfer an estate in fee simple or a lease, means the person to whom the estate or lease is to be transferred under the agreement;

“transferor”, in relation to an agreement to transfer an estate in fee simple or a lease, means the person by whom the estate or lease is to be transferred under the agreement;

“Tribunal” means the Australian Capital Territory Administrative Appeals Tribunal;

“trustee” includes:

- (a) a person who is a trustee under an implied or constructive trust;
- (b) in relation to a deceased person—an executor of the will, or an administrator of the estate, of the deceased person;
- (c) a receiver, guardian, committee or manager of the property of a person under a legal or other disability;
- (d) a receiver or manager of the property of a company, or a liquidator of a company for the purpose of its winding up;
- (e) a broker who executes a transfer of a marketable security as transferee on behalf of another person for the purpose of safeguarding the interests of that person in relation to dividends payable to the holder of the marketable security or in relation to the issue of other marketable securities to which the holder of the first-mentioned marketable security becomes entitled because of being the holder; and
- (f) a person who may be required to exercise his or her voting power in relation to a marketable security at the direction of another person, or who holds a marketable security for the benefit of another person;

“unit”, in relation to a unit trust scheme, means a right or interest (whether described as a unit or sub-unit or otherwise) of a beneficiary under the scheme;

“unit trust” means a trust to which a unit trust scheme relates;

“unit trust scheme” means any arrangements made for the purpose, or having the effect, of providing, for a person having funds available for investment, facilities for the participation by the person, as a beneficiary under a trust, in any profits or income arising from the acquisition, holding, management or disposal of any property pursuant to the trust;

“vehicle” means:

- (a) a motor vehicle within the meaning of the Motor Traffic Act;
or
- (b) a trailer within the meaning of that Act.

(2) Unless the contrary intention appears, a reference in this Act to a broker shall, if the broker is a member of a firm of brokers, be read as including a reference to that firm.

(3) A reference in this Act to the registration of a transfer of a marketable security shall be read as including a reference to the recording or entry of the transfer.

(4) For the purposes of this Act, an application for the registration of a vehicle shall be taken to be made at the time when the application, duly made pursuant to the Motor Traffic Act, is received by the Registrar.

(5) For the purposes of this Act:

- (a) a vehicle registered in the name of a partnership (but not in the names of the several partners), or on behalf of a partnership, shall be deemed to be registered in the names of the persons who are members of the partnership at the time of registration;
- (b) a vehicle registered (otherwise than as described in paragraph (a)) in a business name registered under the *Business Names Act 1963* shall be deemed to be registered in the name or names of the person or persons in relation to whom the business name is registered under that Act at the time of the registration of the vehicle; and
- (c) a vehicle registered on behalf of a body corporate (otherwise than as described in paragraph (b)) shall be deemed to be registered in the name of the body corporate.

(6) In subsection (5), “registered”, in relation to a vehicle, means registered under the Motor Traffic Act or under a corresponding law.

(7) A reference in this Act to the acquisition of a business shall be read as including a reference to the acquisition of an interest in a business but not the acquisition of marketable securities in, or relating to, any proprietor of a business.

(8) For the purposes of this Act, the acquisition of a business occurs—

- (a) where there is an agreement in writing in respect of the acquisition—when the agreement has been signed by the parties to it; or
- (b) where there is no such agreement—
 - (i) when 50% of the consideration for the acquisition has been paid or otherwise satisfied; or
 - (ii) when the person acquiring the business is in a position to control the business being acquired;

whichever first occurs.

Administration

5. The Commissioner has the general administration of this Act.

General exemptions from stamp duty or tax

6. Stamp duty or tax is not payable in relation to:

- (a) an instrument included in a prescribed class of instruments executed by a prescribed authority of the Commonwealth or the Territory; or
- (b) an instrument that is a counterpart or copy of another instrument that has been duly stamped.

PART II—DUTY AND TAX STAMPS

Impressed stamps

7. The Commissioner shall arrange for dies or other devices for making impressed stamps denoting—

- (a) the payment of amounts of stamp duty; or
- (b) that stamp duty is not payable;

to be made and used as the Commissioner directs.

Duly stamped instruments

9. (1) An instrument shall be taken to have been duly stamped if:

- (b) where the payment of stamp duty or tax in relation to the instrument is required or permitted by this Act to be denoted by impressed stamp—a stamp indicating the amount of duty or tax paid, being an amount not less than the amount of duty or tax payable, has been impressed on the instrument by the Commissioner;
 - (c) where no stamp duty or tax is payable in relation to an instrument—the instrument has been stamped pursuant to section 11; or
 - (d) in the case of a counterpart or copy of an instrument—the counterpart or copy has been stamped pursuant to section 10.
- (2) Where:
- (a) 2 or more instruments together but not separately relate to the same matter, being a matter in respect of which stamp duty or tax is payable;
 - (b) each instrument contains a reference to the other instrument or instruments; and
 - (c) one of the instruments is duly stamped;

each instrument shall be deemed to be duly stamped.

Stamping counterparts or copies of instruments

10. If an instrument has been duly stamped, the Commissioner shall put an impressed stamp in an approved style on a counterpart or copy of the instrument.

Stamping instruments if no duty or tax payable

11. If the Commissioner is satisfied that no stamp duty or tax is payable in relation to an instrument, the Commissioner may put an impressed stamp in an approved style on the instrument or a counterpart or copy of the instrument.

Stamps defaced or removed

13. (1) If an instrument has been duly stamped, the instrument shall be regarded as having been duly stamped notwithstanding that the stamp has been defaced or removed from the instrument.

Admissibility of unstamped instruments

- 13A.** An instrument executed in the Territory or elsewhere, being—
- (a) an instrument referred to in subsection 17 (1); or
 - (b) an instrument of transfer of a marketable security;

shall not, except in criminal proceedings or proceedings for the purpose of determining a liability to tax, be pleaded or given in evidence or be admitted to be good, useful or available in law or equity for any purpose, unless it has been stamped.

Fraudulent use of stamps

14. A person shall not, with intent to defraud, impress on an instrument a stamp that is or resembles an impressed stamp.

Penalty: \$10,000 or imprisonment for 2 years, or both.

Possession of counterfeiting equipment

15. (1) A person shall not, without lawful authority, make, sell, use or have in his or her possession a die or other device for making impressed stamps.

Penalty: \$10,000 or imprisonment for 2 years, or both.

(2) A stamp, die, plate or device made, sold, used or had in possession in contravention of subsection (1) is forfeited to the Territory.

Illegal stamping

16. A person shall not:

- (a) impress a stamp in an approved style on an instrument without lawful authority; or
- (b) impress a stamp on an instrument in a style that resembles or purports to be an approved style.

Penalty: \$10,000 or imprisonment for 2 years, or both.

PART III—INTERESTS IN LAND

Instruments subject to duty

17. (1) The determined amount of stamp duty is payable on the following instruments:

- (a) a transfer, or an agreement for a transfer, of an estate in fee simple;
- (b) a Crown lease (not being a lease referred to in paragraph (ca)), or a transfer or an agreement for a transfer of a Crown lease;
- (ca) a Crown lease granted to the lessee of a previous Crown lease (whether or not of the same parcel of land) because of the surrender of the previous Crown lease;

- (c) a lease of land (not being a Crown lease);
 - (d) a transfer or assignment, or an agreement for a transfer or assignment, of a lease of land (not being a Crown lease).
- (2) For the purposes of paragraph (1) (ca)—
- (a) a determination under section 99 of the Taxation (Administration) Act may be expressed to take effect at any time after 31 July 1987; and
 - (b) the amount of stamp duty so determined shall not exceed the amount that would have been payable under paragraph 17 (b) if the amendments effected by section 4 of the *Stamp Duties and Taxes (Amendment) Act (No. 2) 1988* had not been made.

Instruments executed outside the Territory

17A. Where—

- (a) an instrument referred to in subsection 17 (1) is executed outside the Territory; and
- (b) the instrument relates to property situated in the Territory;

then, unless the contrary intention appears, this Act applies in relation to the instrument as if it were executed in the Territory.

Exempt instruments

18. Stamp duty is not payable on an instrument in respect of a conveyance of a kind specified in Schedule 1.

Conveyance of Crown lease—chattels

19. (1) For the purpose of calculating the amount of stamp duty payable on an instrument in respect of a conveyance of a Crown lease:

- (a) the value of any chattels:
 - (i) that, because of the conveyance, are transferred or agreed to be transferred (whether or not to the transferee of the Crown lease); or
 - (ii) if the conveyance and the transfer of, or agreement to transfer, the chattels (whether or not to the transferee of the Crown lease) are, in the opinion of the Commissioner, reasonably capable of being regarded as one transaction;

shall be taken to be part of the value of the interest in the land; and

- (b) the value of any consideration given or agreed to be given in respect of the transfer or hiring of any chattels:
 - (i) that, because of the conveyance, are transferred or hired, or agreed to be transferred or hired (whether or not to the transferee of the Crown lease); or
 - (ii) if the conveyance and a transfer or hiring of, or agreement to transfer or hire, the chattels (whether or not to the transferee of the Crown lease) are, in the opinion of the Commissioner, reasonably capable of being regarded as one transaction;

shall be taken to be part of the total value of any consideration given or agreed to be given in respect of the conveyance.

(2) In subsection (1):

- (a) a reference to hiring chattels shall be read as including a reference to granting or assigning rights to use chattels; and
- (b) a reference to consideration given in respect of hiring chattels shall be read as a reference to the total consideration given or agreed to be given in respect of the hire of chattels for the total period for which the hiring is likely to continue, notwithstanding that the hiring is expressed to be on a weekly, monthly or other periodical basis.

Agreements treated as original instruments

20. For the purposes of this Part, an agreement for a lease or for a transfer or assignment of a lease or an estate in fee simple shall be treated as the original of the lease, transfer or assignment subsequently made to give effect to the agreement, and the lease, transfer or assignment shall then be treated as the counterpart of the agreement.

Denotation of payment

21. The payment of stamp duty on an instrument referred to in subsection 17 (1) shall be denoted by impressed stamp on the instrument.

Person liable to pay stamp duty

22. The stamp duty payable on:

- (a) a transfer of an estate in fee simple or a lease of land, or an agreement for such a transfer;
- (b) an assignment of a lease of land, or an agreement for such an assignment; or

- (c) a lease of land;

is payable by the transferee, assignee or lessee respectively.

Instruments to be lodged for assessment

23. The person who is the assignee, transferee or lessee in relation to an instrument referred to in subsection 17 (1) shall lodge the instrument with the Commissioner for assessment—

- (a) if the instrument is executed in the Territory—within 30 days after the date of its execution; or
- (b) in any other case—within 3 months after the date of its execution.

Credit for duty paid outside the Territory

24. (1) In assessing the amount of stamp duty payable on an instrument referred to in subsection 17 (1), the Commissioner shall, upon request by the person who would be liable to pay the duty, credit against any such liability an amount equal to the amount that the Commissioner believes on reasonable grounds has been paid by that person as duty in respect of the instrument under a corresponding law.

(2) The amount of credit allowed shall not exceed the amount of stamp duty payable before the credit is allowed.

(3) A request shall be made in writing not later than 3 months after the date of lodgment of the instrument to which the request relates.

Interpretation of term of lease

25. A period specified in a lease as the period during which the lease is to continue shall be taken to be the term of the lease notwithstanding that the lease is expressed to be for a weekly, monthly, quarterly, half-yearly, yearly or other tenancy.

Rent increases by instrument

26. Where an instrument provides for an increase in the rent that has been reserved by a lease (whether or not the lease is in writing) the instrument shall, for the purposes of this Act, be treated as a lease granted for an amount of consideration equal to the amount of the additional rent provided by the instrument for the remaining term of the lease.

Refund if lease determined early

27. (1) If:

- (a) stamp duty has been paid on a lease that has been granted for a term of not less than 2 years; and
- (b) the lease is determined before the end of that term;

an amount equal to the amount of the difference between the amount of duty paid and the amount of duty that would have been payable on the lease if the lease had been granted for a term ending on the date on which it was determined shall be refunded to the person who was the lessee immediately before that date.

(2) A refund is not payable to a person unless the person lodges with the Commissioner, within 90 days after the lease was determined, a written application, with such information as the Commissioner requires to enable the amount of the refund to be calculated.

Refund if agreement not completed

28. (1) If:

- (a) an amount of stamp duty is paid by a person in respect of an agreement for a transfer of an estate in fee simple or of a lease, or for an assignment of a lease;
- (b) the agreement is void, is unenforceable (both at law and in equity), is rescinded or comes to an end; and
- (c) the Commissioner is satisfied that no transfer or assignment has been or can reasonably be expected to be made pursuant to the agreement;

there shall be refunded to the person who paid the stamp duty:

- (d) if the transferee or assignee has gone into possession of the land, or another person has gone into possession of the land at the request of, or under an arrangement with, the transferee or assignee, and the agreement is rescinded or comes to an end—an amount equal to the amount (if any) by which the amount of duty paid exceeds the amount of duty that, in the opinion of the Commissioner, would have been payable on a lease of the land by the transferor or assignor to the transferee or assignee respectively for a term commencing on:
 - (i) the earliest date on which the transferee, assignee or other person, as the case may be, went into possession of the land; or
 - (ii) the date of the agreement;

whichever is earlier, and ending on the date on which the agreement is rescinded or comes to an end, as the case may be; or

(e) in any other case—an amount equal to the amount of duty paid.

(2) If:

- (a) an amount of stamp duty paid to the Commissioner includes an amount payable by virtue of an application of section 19 in relation to an agreement in respect of chattels;
- (b) the stamp duty is not required to be refunded pursuant to subsection (1);
- (c) the agreement is void, is unenforceable (both at law and in equity), is rescinded or comes to an end; and
- (d) the Commissioner is satisfied that no transfer or hire of, or grant or assignment of rights to use, the chattels has been or can reasonably be expected to be made pursuant to the agreement;

the amount of duty that is, in the opinion of the Commissioner, attributable to the application of section 19 shall be refunded to the person who paid the duty.

(3) A refund is not payable to a person if:

- (a) the refund would, but for this subsection, be payable as a result of an act done or omitted to be done by any person; and
- (b) the act was done or omitted to be done in connection with a tax avoidance scheme.

(4) An application by a person for a refund in relation to an agreement shall be:

- (a) in writing;
- (b) accompanied by such information as the Commissioner requires to enable the amount of the refund to be determined; and
- (c) lodged with the Commissioner:
 - (i) if the agreement is void or unenforceable—within 12 months after the person became aware of that fact; or
 - (ii) if the agreement is rescinded, or comes to an end, on a particular date—within 12 months after that date.

(5) If:

- (a) a refund is paid in relation to an agreement because no transfer or assignment has been or can reasonably be expected to be made pursuant to the agreement; and
- (b) at any time, a transfer or assignment is made pursuant to the agreement;

then:

- (c) notwithstanding section 20, the agreement shall not be treated as the original of the transfer or assignment respectively;
- (d) an amount of duty equal to the amount of the refund shall be taken not to have been paid; and
- (e) the agreement shall not be deemed to have been duly stamped.

(6) In subsection (1), a reference to going into possession of land shall be read as including a reference to receiving any of the rents or profits of the land.

(7) In this section:

“agreement” includes an instrument purporting to be an agreement;

“arrangement” means any agreement, arrangement or understanding, whether formal or informal, or express or implied, and whether or not enforceable or intended to be enforceable by legal proceedings;

“person”, in relation to an agreement, means any person, whether or not the person is a party to the agreement.

Refund if Crown lease surrendered

29. (1) Where:

- (a) an amount of stamp duty has been paid on a grant of a Crown lease;
- (b) the lease is surrendered or determined; and
- (c) part or all of the amount paid in respect of the grant of the lease is refunded pursuant to section 37A of the *City Area Leases Act 1936*;

there shall be refunded to the person who paid the duty an amount calculated in accordance with the formula $\frac{D \times R}{P}$ where:

D is the amount of duty;

R is the amount that would be refundable under that section if no deduction were made for administrative expenses; and

P is the amount paid in respect of the grant of the lease.

(2) A refund of duty is not payable unless the person lodges with the Commissioner, within 12 months after the refund referred to in paragraph (1) (c) was made, a written application, with such information as the Commissioner requires to enable the amount of the refund to be calculated.

PART IV—INSURANCE PREMIUMS

Premiums subject to tax

30. The determined amount of tax is payable on—

- (a) premiums received in the Territory or elsewhere in Australia in respect of life insurance effected in respect of a person domiciled in the Territory when the insurance was effected;
- (b) premiums received in the Territory or elsewhere in Australia in respect of general insurance effected in respect of—
 - (i) property situated in the Territory when the insurance was effected; or
 - (ii) any act or omission occurring in the Territory; and
- (c) premiums received in the Territory in respect of general insurance, other than that referred to in paragraph (b), where—
 - (i) tax or stamp duty is not payable under a corresponding law in respect of the premium; or
 - (ii) tax or stamp duty payable under a corresponding law in respect of the premium has not been paid.

Exempt premiums

31. Tax is not payable on a general insurance premium of a kind specified in Schedule 2.

Registers

32. The Commissioner shall keep a Register of Life Insurers and a Register of General Insurers.

Registration of insurers

33. (1) A person who:

- (a) carries on or intends to carry on business as a life insurer or a general insurer; and
- (b) receives or will receive taxable premiums;

may apply to the Commissioner in writing for registration as a life insurer or general insurer respectively.

(2) On receiving an application, the Commissioner shall register the applicant as a life insurer or general insurer by entering the applicant's name in the Register of Life Insurers or the Register of General Insurers, as the case requires.

(3) Notice of the registration shall be given to the applicant by the Commissioner.

(4) The Commissioner shall cancel the registration of a life insurer or general insurer, by removing the insurer's name from the respective register, on the application of the insurer, on the death or bankruptcy of the insurer or, if the insurer is a company, on being notified of the winding up of the company.

Returns

34. (1) A registered life insurer or registered general insurer shall, within 21 days after the end of each month:

- (a) lodge with the Commissioner a return in writing showing particulars of each taxable premium received by the insurer during that month; and
- (b) pay the tax payable in respect of each premium.

(2) In subsection (1), a reference to a premium received by an insurer shall be read as including a reference to an amount credited in account in the books of an insurer in respect of insurance as a premium received for that insurance, whether by way of charge made by the insurer against moneys due to the person insured or otherwise, but shall not be read as including, where an insurer's head office for Australia is in the Territory, a premium noted in the books of the head office only as a premium received in a branch or agency of the insurer outside the Territory.

Recovery of tax by insurer

35. A registered life insurer or registered general insurer may, by instrument served on a person by whom a taxable premium is payable to the

insurer, require the person to pay the insurer an amount equal to the amount of tax payable and designated as the tax payable, and the insurer may recover the designated amount from the person.

Refunds

36. If:

- (a) a policy of general insurance has been surrendered or cancelled before the end of the term of insurance expressed in this policy; and
- (b) the insurer has refunded to the person by whom the premiums on the policy were payable an amount equal to the amount of the premium (being a taxable premium) received by the insurer in respect of a period after the surrender or cancellation;

an amount equal to the amount of tax payable in respect of the amount of premium that was refunded shall be refunded to the insurer.

Unregistered insurers

37. (1) A person who:

- (a) receives taxable premiums in the course of carrying on business as a life insurer or general insurer; and
- (b) is not registered as a life insurer or general insurer respectively under subsection 33 (2);

is, in respect of each day on which the insurer carries on the business (including any such day on which the insurer is convicted of an offence under this subsection and any subsequent such day), guilty of an offence punishable, on conviction, by a fine not exceeding \$50.

(2) Subsection (1) shall not be taken to affect a liability (including a contingent liability) of an insurer under an insurance policy issued by the insurer in the course of carrying on business in contravention of subsection (1).

PART V—MARKETABLE SECURITIES

Division 1—Sales and purchases of marketable securities

Transactions subject to tax

38. (1) The determined amount of tax is payable on each sale and each purchase by a broker of a marketable security listed for quotation in the official list of an Australian stock exchange or a prescribed stock exchange being:

- (a) a sale or purchase on the broker's own behalf; or

- (b) a sale or purchase made in accordance with an order to sell or purchase given to the broker by or on behalf of a person who is not a broker and who is not acting on behalf of a broker.

(2) Where:

- (a) an order for the sale or purchase of a marketable security is given by a person (not being a broker or a person acting on behalf of a broker) to an agent or employee of a broker; and
- (b) the broker makes the sale or purchase in accordance with the order;

the broker shall, for the purposes of paragraph (1) (b), be taken to have made the sale or purchase in accordance with an order to sell or purchase given to the broker.

(3) If a broker:

- (a) sells a marketable security on his or her own behalf to a person who is not a broker and is not acting on behalf of a broker; or
- (b) sells a marketable security to such a person in accordance with an order to sell;

then, notwithstanding that no order to purchase has been given to the broker, for the purposes of subsection (1) the broker shall be taken to have made, in addition to the sale, a purchase of the marketable security in accordance with an order to purchase given to the broker by the purchaser.

(4) If a broker:

- (a) purchases a marketable security on his or her own behalf, from a person who is not a broker and is not acting on behalf of a broker; or
- (b) purchases a marketable security from such a person in accordance with an order to purchase;

then, notwithstanding that no order to sell has been given to the broker, for the purposes of subsection (1) the broker shall be taken to have made, in addition to the purchase, a sale of the marketable security in accordance with an order to sell given to the broker by the seller.

(5) For the purposes of this section—

- (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 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:

- (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 be taken to be a sale of the share by the broker to the company.

Exempt transactions

39. Tax is not payable on a sale or purchase of a marketable security of a kind specified in Schedule 3.

Records

40. (1) As soon as practicable after each taxable sale or purchase by a broker of a marketable security, the broker shall make a record of particulars of the sale or purchase showing:

- (a) the date of the sale or purchase;
- (b) the name of the person for whom the broker was acting;
- (c) the name of the broker (if any) acting for the purchaser or seller respectively;
- (d) a full description of the marketable security; and
- (e) the amount of tax payable in respect of the sale or purchase.

(2) If marketable securities are sold or purchased in a parcel, the broker shall show in the record of particulars the number of the marketable securities in the parcel, the total selling price, and the selling price per unit, of the marketable securities.

(3) A broker shall retain the record of particulars of a sale or purchase for at least 6 years after the date of the sale or purchase.

Penalty: \$2,000.

Broker's statement on instruments

41. (1) Where a broker:

- (a) makes a taxable sale or purchase of a marketable security; or
- (b) makes an exempt sale or purchase of a marketable security for consideration in money or money's worth of less than the unencumbered value of the marketable security;

the broker shall:

- (c) make a statement on the instrument of transfer that relates to the sale or purchase to the effect that stamp duty, if payable, has been or will be paid on the transfer;
- (d) set out the date of the statement on the instrument; and
- (e) impress on the instrument a stamp expressed to be the stamp of the broker.

(2) A broker shall not make a statement on an instrument of transfer that relates to a taxable sale or purchase before recording the particulars of the sale or purchase in accordance with section 40.

(3) A person shall not:

- (a) impress a broker's stamp on an instrument without lawful authority; or
- (b) impress a stamp resembling or purporting to be a broker's stamp on an instrument.

Penalty: \$10,000.

Returns

42. A broker shall, within 14 days after the end of each month:

- (a) lodge with the Commissioner a return in writing showing particulars of any taxable sales and purchases made by the broker that month, or stating that no such sales or purchases were made in that month, as the case requires; and
- (b) pay the tax payable in respect of those sales and purchases.

Recovery of tax by broker

43. A broker who pays or is liable to pay tax on a sale or purchase of a marketable security may recover an amount equal to the amount of tax payable and designated as the tax payable from the seller or purchaser respectively.

Division 2—Transfers of marketable securities**Transfers subject to stamp duty**

44. The determined amount of stamp duty is payable on a transfer of a marketable security, being a marketable security that was, immediately before the instrument of transfer was executed, registered in a register kept in the Territory by a company or under a unit trust.

(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;

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

Transferee's liability to pay stamp duty

45. Stamp duty on a dutiable transfer of a marketable security is payable by the transferee.

(4) 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;

other than an SCH regulated transfer, shall be taken to be a non-SCH regulated transfer of a marketable security; and

- (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;

- (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.

Exempt transfers

46. Stamp duty is not payable on a transfer of a marketable security of a kind specified in Schedule 4.

Stamping instruments of transfer

47. The transferee under a transfer of a marketable security shall lodge the instrument of transfer with the Commissioner for assessment—

- (a) if the transfer is executed in the Territory—within 30 days after the date of its execution; or
- (b) in any other case—within 3 months after the date of its execution.

Denotation of payment

48. The payment of stamp duty on a transfer of a marketable security shall be denoted by impressed stamp on the instrument of transfer.

Partition of marketable securities

49. Stamp duty on a dutiable transfer executed to give effect to a partition or division of a parcel or marketable securities is payable in respect of the amount equal to the unencumbered value of the securities transferred less the unencumbered value of the beneficial interest held in the securities by the transferee immediately before the transfer was executed.

Division 3—Registration of transfers of marketable securities

Registrations subject to tax

50. The determined amount of tax is payable on the registration, by a company incorporated in the Territory or under a unit trust established in the Territory, of a transfer of a marketable security that was, immediately before the instrument of transfer was executed, registered in a register kept outside the Territory by the company or under the unit trust.

Exempt registrations

51. Tax is not payable on a registration of a marketable security of a kind specified in Schedule 5.

Returns

52. A company or unit trust shall, within 21 days after the end of each month in which it effected a taxable registration of a marketable security:

- (a) lodge with the Commissioner a return in writing showing particulars of each taxable registration effected by the company or unit trust in that month; and
- (b) pay the tax payable in respect of each registration.

Credit for tax paid outside Territory

53. (1) A company or unit trust is entitled to a credit, in respect of the tax payable under this Act on a taxable registration of a marketable security, of an amount equal to the amount (if any) of tax or stamp duty paid or payable in relation to the transfer under a corresponding law of the place in which was kept the register in which the marketable security was registered immediately before the date on which the instrument of transfer was executed.

(2) The amount of credit allowed shall not exceed the amount of tax payable under this Act before the credit is allowed.

(3) A company or unit trust is not entitled to a credit unless it gives the Commissioner a written application, with such information as the Commissioner requires to enable the amount of credit to be calculated, within 12 months after the tax in respect of which the credit is claimed became due and payable.

(4) Where a company or unit trust is entitled to a credit:

- (a) if all or part of any remaining tax payable on the registration of transfer to which the credit relates is unpaid—the Commissioner shall apply the credit against that tax;
- (b) if the company or unit trust has any other tax liability—the Commissioner may apply so much of the credit as has not been applied under paragraph (a) against the liability; and
- (c) the Commissioner shall refund any remaining credit to the company or unit trust respectively.

Recovery of tax by company or unit trust

54. A company or unit trust that pays or is liable to pay tax on the registration of a transfer of a marketable security may recover from the transferee an amount designated as the tax payable and equal to the amount of tax payable less the amount of any credit to which the company or unit trust is entitled under section 53.

Partition of marketable securities

55. Tax on a taxable registration of a transfer executed to give effect to a partition or division of a parcel of marketable securities is payable in respect of the amount equal to the unencumbered value of the securities transferred less the unencumbered value of the beneficial interest held in the securities by the transferee immediately before the transfer was executed.

Prerequisites for registration

56. A transfer of a marketable security shall not be registered in the books of the company or unit trust to which the marketable security relates unless:

- (a) the instrument of transfer:
 - (i) bears statements in respect of the transactions to which the instrument relates, made under section 41 or a corresponding law, to the effect that stamp duty, if payable, has been or will be paid;
 - (ii) has been duly stamped within the meaning of this Act or a corresponding law; or
 - (iii) bears an adhesive stamp or impressed stamp affixed or impressed in accordance with a corresponding law indicating that tax or stamp duty is not payable in respect of the transactions to which the instrument relates;
- (b) any tax payable under this Act on the registration of the transfer has been paid; or
- (c) tax would, but for section 51, be payable on the registration of the transfer.

PART VI—VEHICLES

Division 1—Sales by licensed vehicle dealers

Taxable sales

56A. The determined amount of tax is payable on each sale of a vehicle by a licensed vehicle dealer.

Exempt sales

56B. Tax is not payable under section 56A on the sale of a vehicle if—

- (a) the purchaser has given to the dealer a certificate under section 62 to the effect that, on the date of the sale, the purchaser is exempt from tax payable under section 57 in respect of the registration of the vehicle;
- (b) on the date of sale the purchaser is—
 - (i) a licensed vehicle dealer; or
 - (ii) a licensed dealer under a corresponding law to the *Sale of Motor Vehicles Act 1977*;and the vehicle is purchased as trading stock to be sold by the dealer;
- (c) the purchaser is—
 - (i) an authority, established by or under a law of the Commonwealth, that is, by virtue of that law, not liable to pay tax under a law of the Commonwealth, the Territory, a State or another Territory;
 - (ii) a prescribed Territory authority; or
 - (iii) a prescribed authority of a State or another Territory; or
- (d) the vehicle—
 - (i) has not previously been registered in the Territory or elsewhere; and
 - (ii) as sold, is registered under a corresponding law to the Motor Traffic Act only in the name of the purchaser.

Certificates of exemption

56C. Where a certificate under section 62 has been given to a licensed vehicle dealer in respect of the sale of a vehicle, the dealer shall keep the certificate for not less than 6 years after the date of the sale.

Penalty: \$2,000.

Returns and payment

56D. A licensed vehicle dealer shall, not later than 14 days after the end of each month—

- (a) if the dealer made a taxable sale during the month—
 - (i) lodge with the Commissioner a return in the approved form in respect of each such sale; and
 - (ii) pay the tax payable in respect of the sale; or
- (b) if the dealer made no taxable sales during the month—lodge with the Commissioner a return in the approved form including a statement to that effect.

Endorsements on registration forms

56E. (1) Where a licensed vehicle dealer—

- (a) sells a registered vehicle; and
- (b) is in possession of the certificate of registration in respect of the vehicle (whether or not the dealer is the registered owner of the vehicle);

the dealer shall endorse the dealer's licence code on the application for the transfer of the registration.

(2) Where a licensed vehicle dealer—

- (a) sells an unregistered vehicle; and
- (b) arranges for the vehicle to be registered only in the name of the purchaser;

the dealer shall, upon request by the purchaser, endorse the dealer's licence code on the application for the registration.

(3) A licensed vehicle dealer who contravenes subsection (1) or (2) without reasonable excuse is guilty of an offence punishable on conviction by a fine not exceeding \$2,000.

Refunds—exemptions not claimed

56F. Where the Commissioner, on application in writing by the purchaser of a vehicle from a licensed vehicle dealer, believes on reasonable grounds that—

- (a) the dealer has paid the amount of tax payable under section 56A in respect of the sale;
- (b) the purchaser has, on account of the dealer's liability for the tax, paid to the dealer an amount equal to the amount of tax paid in respect of the sale; and

- (c) had the purchaser applied for a certificate under section 62, the purchaser would have been exempt on the date of the sale from tax payable under section 57 in respect of the registration of the vehicle;

the Commissioner shall refund to the purchaser an amount equal to the amount of tax paid on the sale by the dealer.

Division 2—Registration of vehicles

Registrations subject to tax

57. The determined amount of tax is payable on the registration of a vehicle under the Motor Traffic Act by the person or persons in whose name or names the vehicle is to be registered unless:

- (a) the vehicle has previously been registered under that Act or a corresponding law; and
- (b) the last previous registration was solely in the name of that person or those persons.

Exempt registrations

58. Tax is not payable on the registration of a vehicle solely in the name or names of a person or persons of a kind specified in Schedule 6.

Further exemptions—successors of deceased persons

59. Where:

- (a) a vehicle is registered under the Motor Traffic Act or a corresponding law in the name or names of a person or persons; and
- (b) the person, or one of those persons, dies;

then, for the purposes of the application of section 57 to subsequent registrations of the vehicle:

- (c) if, immediately after the person's death, the assets of his or her estate include the vehicle—the deceased person and his or her successor or successors shall be treated as being the same person; or
- (d) in any other case—the vehicle shall be treated as having been registered solely in the name or names of the surviving person or persons.

(2) In subsection (1), a reference to a successor of a deceased person, in relation to the registration of a vehicle, shall be read as a reference to:

- (a) a person in whom an interest in the vehicle has vested as a personal representative of the deceased person; or
- (b) a beneficiary of the deceased person's estate.

(3) In this section, “interest” means a proprietary interest, and includes an entitlement to such an interest under the will, or on the intestacy, of a deceased person.

Further exemptions—hire-purchases and leases

60. (1) Tax is not payable on the registration of a vehicle that is or was the subject of a hire-purchase agreement or a lease if:

- (a) the vehicle was last registered, under the Motor Traffic Act or a corresponding law, in the name of the hirer or lessee;
- (b) the person or persons who was or were the owner or owners of the vehicle at the time of that last registration subsequently acquired possession of it:
 - (i) by way of repossession or voluntary return in accordance with the hire-purchase agreement or the law applicable to the agreement; or
 - (ii) in accordance with the rights of the lessor under the lease; and
- (c) the registration is solely in the name or names of the person or persons referred to in paragraph (b).

(2) In subsection (1), “owner”, in relation to a vehicle means:

- (a) if the vehicle is the subject of a hire-purchase agreement—the person agreeing to let, hire or sell the vehicle; or
- (b) if the vehicle is the subject of a lease—the lessor of the vehicle;

being a person carrying on the business of letting, hiring or selling vehicles under hire-purchase agreements or of leasing vehicles respectively, whether or not that business is part of, or is carried on in conjunction with, any other business.

Prerequisites for registration

61. (1) Notwithstanding anything in the Motor Traffic Act, the Registrar shall not register a vehicle unless:

- (a) the Registrar is satisfied that the registration is exempt from tax by virtue of section 57, otherwise than by virtue of an application of section 59;
- (b) the application for registration is accompanied by a certificate issued under section 62 in respect of the vehicle to the person or persons in whose name the vehicle is to be registered, and the registration is not made in the name of any other person;
- (c) the registration is solely in the name of a person who certifies in writing that:
 - (i) he or she is carrying on a business in respect of which he or she is a licensed dealer under the *Sale of Motor Vehicles Act 1977* or a corresponding law; and
 - (ii) the vehicle is held by him or her as trading stock for resale in the course of carrying on the business; or
- (d) the applicant for the registration (other than registration referred to in subsection (2A)) pays the amount payable in respect of the registration, and the application is accompanied by a statement by the applicant, in writing, of:
 - (i) the amount that, to the best of his or her knowledge and belief, is or will be the market value of the vehicle at the time the application is made;
 - (ii) the purchase price paid for the vehicle by the applicant; and
 - (iii) if the stated market price differs from the purchase price—the reason for the difference.

(2) For the purposes of paragraph (1) (d), the amount payable in respect of the registration of a vehicle is an amount equal to the amount calculated, at the rate of tax applicable to the registration of the vehicle, on the greater of—

- (a) the market value of the vehicle as stated under subparagraph (1) (d) (i); or
- (b) the purchase price paid for the vehicle by the applicant.

(2A) The Registrar shall not—

- (a) register a vehicle sold by a licensed vehicle dealer, if the registration would be the first registration of the vehicle after the sale; or

- (b) transfer the registration of a vehicle sold by a licensed vehicle dealer, if the transfer would be the first transfer of the registration of the vehicle after the sale;

unless the dealer's licence code is endorsed on the application for, or for transfer of, registration.

(3) A person claiming exemption of the registration of a vehicle from tax by virtue of section 57 shall give the Registrar any relevant information that the Registrar requires.

Certificates of exemption

62. (1) If, on considering an application by a person, the Commissioner is satisfied that the registration of the vehicle in the name of the person is exempt from tax:

- (a) pursuant to section 58 by virtue of paragraph (a), (b), (c) or (d) of Schedule 6, or pursuant to section 59 or 60; or
- (b) by virtue of the *Diplomatic Privileges and Immunities Act 1967* of the Commonwealth;

the Commissioner may issue a certificate to that effect.

(2) The applicant shall give the Commissioner any information relevant to the application that the Commissioner requires.

Registrar's returns

63. As soon as practicable after the end of each month the Registrar shall give the Commissioner particulars of all certificates given, statements made and information given for the purposes of section 61 during that month.

Certificates as evidence

64. A certificate of the Registrar to the effect that a specified vehicle was or was not registered in the name a specified person on a specified date is evidence of those matters and the facts on which they are based.

PART VIA—ACQUISITION OF BUSINESSES

Taxable acquisitions

64A. (1) The determined amount of tax is payable on the acquisition of a business conducted wholly or partly in the Territory.

(2) Nothing in subsection (1) shall be taken to impose tax on the acquisition of that part of a business that is conducted outside the Territory.

Exempt acquisitions

64B. Tax is not payable under section 64A on an acquisition of a kind specified in Schedule 7.

Returns and payment

64C. A person who acquires a business conducted wholly or partly in the Territory shall—

- (a) not later than 60 days after the acquisition, lodge a return in the approved form in respect of the acquisition with the Commissioner for assessment of the tax payable; and
- (b) pay the tax payable in respect of the acquisition.

Tax avoidance schemes

64D. Where—

- (a) a business has been acquired; and
- (b) the Commissioner believes on reasonable grounds that a liability connected with the business is connected with a tax avoidance scheme;

then, for the purpose of assessing the amount of tax payable in respect of the acquisition, the Commissioner may disregard the liability to the extent to which the Commissioner reasonably believes it to be connected with the tax avoidance scheme.

Credit for duty paid

64E. (1) Where—

- (a) stamp duty has been paid in respect of an instrument executed in respect of the acquisition of a business; or
- (b) tax has been paid in respect of a transaction effected in respect of the acquisition of a business;

the Commissioner shall credit an amount equal to the amount so paid against the liability to tax under section 64A in respect of the acquisition of the business.

(2) Where tax has been paid pursuant to section 64A in respect of the acquisition of a business, the Commissioner shall credit an amount equal to the amount so paid against—

- (a) the liability to stamp duty payable in respect of an instrument executed in respect of the acquisition of the business; or
- (b) the liability to tax payable in respect of a transaction effected in respect of the acquisition of the business.

(3) Nothing in subsection (1) or (2) shall be taken to apply in relation to stamp duty or tax paid outside the Territory.

PART VII—MISCELLANEOUS

Review of decisions

65. Application may be made to the Tribunal for a review of a decision of the Commissioner—

- (a) refusing to refund an amount of stamp duty by virtue of paragraph 28 (1) (c);
- (b) as to the amount of duty that would have been payable on a lease under paragraph 28 (1) (d);
- (c) refusing to refund an amount of stamp duty by virtue of paragraph 28 (2) (d);
- (d) under subsection 28 (2), in respect of an amount of duty that is attributable to the application of section 19; and
- (e) refusing to issue a certificate under subsection 62 (1).

Notification of decisions

66. (1A) Where the Commissioner makes a decision of a kind referred to in section 65, the Commissioner shall, within 28 days of the date of the decision, give notice in writing to the person whose interests are affected by the decision.

(1) A notice shall:

- (a) include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1989*, an application may be made to the Tribunal for a review of the decision to which the notice relates; and
- (b) except where subsection 26 (11) of that Act applies—include a statement to the effect that a person whose interests are affected by the decision may request a statement pursuant to section 26 of that Act.

(2) The validity of a decision referred to in section 65 shall not be taken to have been affected by a failure to comply with subsection (1).

Regulations

67. The Executive may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed for carrying out or giving effect to this Act.

SCHEDULE 1
EXEMPT CONVEYANCES

Section 18

A conveyance:

- (a) to the Territory or Commonwealth;
- (b) by which an estate or interest in land is transferred:
 - (i) by way of mortgage (otherwise than under the *Real Property Act 1925*) where an instrument constituting or evidencing the mortgage has been duly stamped, or where no stamp duty is payable on such an instrument;
 - (ii) by way of discharge of mortgage; or
 - (iii) consequent on the death, bankruptcy or insolvency of the holder of the estate or interest;
- (c) of land on a sale by the Defence Service Homes Corporation pursuant to the *Defence Service Homes Act 1918* of the Commonwealth;
- (d) made pursuant to an order of a court under the *Family Law Act 1975* of the Commonwealth or the *Married Persons' Property Act 1986*;
- (e) to, or to trustees on trust for, a hospital, school or charitable organisation;
- (f) by way of a transfer or assignment of an estate in fee simple or a lease of land, being an estate or lease held on trust, where the transfer or assignment:
 - (i) is made in consequence of the appointment or retirement of a trustee, or other change in the trustees, in order to vest the estate or lease, as the case may be, in the trustees for the time being entitled to hold it; and
 - (ii) is not made in connection with a tax avoidance scheme;
- (g) by way of a transfer or assignment of a lease of land, or a transfer of an estate in fee simple, where the transfer or assignment:
 - (i) is from a trustee to a person who contributed the purchase money for the conveyance to the trustee; and
 - (ii) is not made in connection with a tax avoidance scheme;
- (h) of land held on trust where:
 - (i) the conveyance is made by the trustee to a beneficiary of the trust (otherwise than for valuable consideration) and does not constitute a breach of the trust;
 - (ii) stamp duty on the conveyance of the land to the trustee has been paid or was not payable; and
 - (iii) the conveyance referred to in subparagraph (i) is not made in connection with a tax avoidance scheme;
- (j) of a Crown lease to a non-commercial Commonwealth authority;

SCHEDULE 1—continued

- (k) of a Crown lease granted to the lessee of a previous Crown lease because of the surrender of the previous Crown lease, where the surrender was in connection with:
 - (i) changing the purpose for which the parcel of land to which the Crown lease relates may be used;
 - (ii) reducing rent to an amount not exceeding 5 cents per annum; or
 - (vii) correcting errors or omissions;
 - (m) of a Crown lease granted to the Australian Capital Territory Commissioner for Housing; or
 - (o) to a prescribed person.
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SCHEDULE 2

Paragraph 31 (b)

EXEMPT GENERAL INSURANCE PREMIUMS

A premium in respect of:

- (a) third party insurance;
 - (b) insurance under a law of the Territory insuring an employer against liability to persons under contract of employment or apprenticeship with the employee;
 - (c) the provision of benefits by a friendly society or trade union for its members or their dependants;
 - (d) a scheme or arrangement for the provision of medical, hospital, provident, funeral, superannuation or retirement benefits for members of a fund or their dependants;
 - (e) insurance by, or on property of, a prescribed authority of the Commonwealth or of a State or Territory;
 - (f) insurance on property of, or property held in trust for, a hospital, school or charitable organisation, or in respect of other general insurance taken out by a hospital, school or charitable organisation; or
 - (g) international trade insurance.
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SCHEDULE 3

Section 39

EXEMPT SALES AND PURCHASES OF MARKETABLE SECURITIES

A sale or purchase of a marketable security:

- (a) for a consideration in money or money's worth of less than the unencumbered value of the security;
- (b) issued by a municipal council or other local government body or by a public authority constituted under a law of the Commonwealth or a State or Territory;
- (c) by a prescribed authority of the Commonwealth or a Territory;
- (d) by, or by a trustee on trust for, a hospital, school or charitable organisation; or
- (e) by a broker on his or her own behalf, being a security previously purchased or sold respectively by the broker on the day of the sale or purchase or within 2 clear days (not including a day on which the Australian stock exchange of which the broker was a member is closed) before that day.

SCHEDULE 4

Section 46

EXEMPT TRANSFERS OF MARKETABLE SECURITIES

A transfer of a marketable security:

- (a) where the instrument of transfer bears a statement, in respect of the transactions to which the instrument relates, made under section 41 or under a corresponding law, to the effect that any stamp duty or tax payable in respect of those transactions has been or will be paid;
- (b) issued by a municipal council or other local government body or by a public authority constituted under a law of the Territory or of the Commonwealth, a State or another Territory;
- (c) to, or to trustees in trust for, a hospital, school or charitable organisation;
- (d) held in trust, where the transfer:
 - (i) is made in consequence of the appointment or retirement of a trustee, or other changes in the trustees, in order to vest the marketable security in the trustees who are for the time being entitled to hold it; and
 - (ii) is not made in connection with a scheme to reduce or avoid stamp duty;
- (e) from an executor of a deceased person's will or administrator of a deceased person's estate to another executor of the will or administrator of the estate;
- (f) to a beneficiary entitled to the marketable security under a will or a person entitled to it under an intestacy;
- (g) from a trustee to a person who contributed the purchase money for the transfer by which the trustee acquired the marketable security where:

SCHEDULE 4—continued

- (i) any stamp duty payable (whether under this Act or a corresponding law) on the transfer by which the trustee acquired the marketable security has been paid;
 - (ii) the instrument of transfer by which the trustee acquired the marketable security bears a statement in respect of the transactions to which the instrument relates made under section 41 or under a corresponding law to the effect that any stamp duty payable in respect of those transactions has been or will be paid;
 - (iii) stamp duty on the registration of the marketable security or on the transfer by which the trustee acquired the marketable security was not payable under this Act or a corresponding law; or
 - (iv) the trustee acquired the marketable security on its first issue, and the transfer is not made in connection with a tax avoidance scheme;
- (h) to a trustee to be held solely as trustee of the transferor without change in the beneficial ownership, and a transfer by way of re-transfer to the transferor, where, in either case, the transfer is not made in connection with a tax avoidance scheme;
- (j) made solely for the purpose of:
- (i) qualifying the transferee as the director of a company to act and vote, as directed, on behalf of another company; or
 - (ii) re-transferring the marketable security from that director to the other company;
- being another company that:
- (iii) controls the appointment or removal of all or a majority of the board of directors of the first-mentioned company;
 - (iv) controls more than half of the voting power in the first-mentioned company; or
 - (v) beneficially owns more than half of the paid-up capital of the first-mentioned company;
- (k) made solely for the purpose of rectifying a clerical error in an instrument of transfer;
- (m) made solely by way of security or by way of re-transfer to a person from another person who held the marketable security by way of security; or
- (n) by a broker to a person other than a broker who had, for the purpose of enabling the broker to fulfil a contract to sell marketable securities in the ordinary course of his or her business as a broker, transferred a marketable security of the same description to the broker pursuant to an undertaking of the broker, in consideration of that transfer to the broker, subsequently to transfer a marketable security of the same description to that person.

SCHEDULE 5

Section 51

EXEMPT REGISTRATIONS OF TRANSFERS OF MARKETABLE SECURITIES

Registration of a transfer of a marketable security:

- (a) if the transfer is of a kind prescribed for the purposes of this paragraph;
- (b) where the instrument of transfer bears statements in respect of the sale and of the purchase of the marketable security to which the instrument relates made under section 41 or a corresponding law to the effect that any stamp duty payable on the transfer has been or will be paid;
- (c) issued by a municipal council or other local government body or by a public authority constituted under a law of the Territory or of the Commonwealth, a State or another Territory;
- (d) to, or to trustees upon trust for, a hospital, school or charitable organisation;
- (e) held on trust, where the transfer:
 - (i) is made in consequence of the appointment or retirement of a trustee or other change in the trustees in order to vest the marketable security in the trustees who are for the time entitled to hold it; and
 - (ii) is not made in connection with a tax avoidance scheme;
- (f) from an executor of a deceased person's will or administrator of a deceased person's estate to another executor of that will or administrator of that estate;
- (g) to a beneficiary entitled to it under a will or to a person entitled to it under an intestacy;
- (h) from a trustee to a person who contributed the purchase money for the transfer by which the trustee acquired the marketable security, where the first-mentioned transfer is not made in connection with a tax avoidance scheme and:
 - (i) any tax payable under this Act or under a corresponding law in respect of the transfer by which the trustee acquired the marketable security has been paid;
 - (ii) the instrument of transfer by which the trustee acquired the marketable security bears a statement in respect of the sale and of the purchase of the marketable security to which the instrument relates made under section 41 or under a corresponding law to the effect that any stamp duty payable has been or will be paid;
 - (iii) no tax was payable under this Act on the registration of, and no tax or stamp duty was payable under a corresponding law in respect of, the transfer by which the trustee acquired the marketable security; or
 - (iv) the trustee acquired the marketable security upon its first issue;

SCHEDULE 5—continued

- (k) to a trustee to be held solely as trustee of the transferor without change in beneficial ownership, and a transfer by way of re-transfer to the transferor, where, in either case, the transfer is not made in connection with a tax avoidance scheme;
- (m) made solely for the purpose of:
 - (i) qualifying the transferee as the director of a company to act and vote, as directed, on behalf of another company; or
 - (ii) re-transferring the marketable security from that director to the other company;
being another company that:
 - (iii) controls the appointment or removal of the majority of the board of directors of the first-mentioned company;
 - (iv) controls more than half of the voting power in that first-mentioned company; or
 - (v) beneficially owns more than half of the paid-up capital of the first-mentioned company;
- (n) made solely for the purpose of rectifying a clerical error in an instrument of transfer;
- (p) made solely by way of security or by way of re-transfer to a person from another person who held the marketable security by way of security; or
- (q) by a broker to a person (not being a broker) who had, for the purpose of enabling the broker to fulfil a contract to sell marketable securities in the ordinary course of business as a broker, transferred a marketable security of the same description to the broker pursuant to an undertaking by the broker, in consideration of that transfer to the broker, subsequently to transfer a marketable security of the same description to that person.

SCHEDULE 6

Section 58

EXEMPT REGISTRATIONS OF VEHICLES

Registration of a vehicle solely in the name or names of a person or persons of a following kind:

- (a) a hospital, school or charitable organisation;
- (b) a person on behalf of, or a trustee in trust for, a hospital, school or charitable organisation;
- (c) a person who has served in the Defence Force or in any other armed forces of Her Majesty and who, as a result of that service:
 - (i) has lost a leg or both arms or has had a leg, or both arms, rendered permanently and wholly useless; or
 - (ii) is in receipt of a pension under Part II of the *Veterans' Entitlements Act 1986* of the Commonwealth and is a veteran (within the meaning of that Part) to whom section 24 of that Act applies;

where the vehicle is for use for the person's own transportation;

- (d) a person in respect of whom the Secretary to the Department of Social Security of the Commonwealth, or an officer appointed by the Secretary for the purpose, has certified that the person has lost the use of one or both legs to such an extent that he or she is permanently unable to use public transport, where the vehicle is for use in transporting the person to and from gainful employment;
- (e) a person carrying on a business in respect of which the person is a licensed dealer under the *Sale of Motor Vehicles Act 1977* or under a corresponding law, where the vehicle is held by the person as trading stock for resale in the course of carrying on that business;
- (f) a purchaser of the vehicle from a licensed vehicle dealer, where the registration (whether initial or transferred) is the first registration of the vehicle after its sale by the dealer.

SCHEDULE 7

Section 64B

EXEMPT ACQUISITIONS OF BUSINESSES

An acquisition of a business—

- (a) by a personal representative of a deceased person;
 - (b) by a beneficiary under a will or an intestacy;
 - (c) by a person by operation of law upon the bankruptcy or insolvency of another person;
 - (d) under an order by a court under the *Family Law Act 1975* of the Commonwealth or the *Married Persons' Property Act 1986*;
 - (e) by virtue of a relevant maintenance agreement within the meaning of section 90 of the *Family Law Act 1975* of the Commonwealth;
 - (f) by, or by a trustee on trust for, a hospital, school or charitable organisation;
 - (g) where—
 - (i) the business is acquired by a trustee;
 - (ii) the acquisition is made upon the appointment or retirement of a trustee, or any other change of a trustee, in order to vest the relevant property in the trustee or trustees entitled to hold it for the time being; and
 - (iii) the acquisition is not connected with a tax avoidance scheme;
 - (h) where the acquisition—
 - (i) is from a trustee by a person who contributed the purchase money for the acquisition by the trustee; and
 - (ii) is not made in connection with a tax avoidance scheme;
 - (j) held on trust where—
 - (i) the acquisition is from the trustee by a beneficiary of the trust (otherwise than for valuable consideration) and does not constitute a breach of the trust;
 - (ii) stamp duty on the acquisition by the trustee has been paid or was not payable; and
 - (iii) the acquisition referred to in subparagraph (i) is not made in connection with a tax avoidance scheme; or
 - (k) that is, under the regulations, exempt from tax payable under section 64A.
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NOTE

1. The *Stamp Duties and Taxes Act 1987* as shown in this reprint comprises Act No. 39, 1987 amended as indicated in the Tables below.

Citation of Laws—The *Self-Government (Citation of Laws) Act 1989* (No. 21, 1989) altered the citation of most Ordinances so that after Self-Government day they are to be cited as Acts. That Act also affects references in ACT laws to Commonwealth Acts.

Table 1

Table of Ordinances

| Ordinance | Number and year | Date of notification in <i>Gazette</i> | Date of commencement | Application, saving or transitional provisions |
|--|-----------------|--|---|--|
| <i>Stamp Duties and Taxes Ordinance 1987</i> | 39, 1987 | 31 July 1987 | 1 Aug 1987 (see <i>Gazette</i> 1987, No. S193) | — |
| <i>Stamp Duties and Taxes (Amendment) Ordinance 1987</i> | 67, 1987 | 25 Nov 1987 | 25 Nov 1987 | — |
| <i>Stamp Duties and Taxes (Amendment) Ordinance 1988</i> | 55, 1988 | 7 Sept 1988 | 7 Sept 1988 | — |
| <i>Stamp Duties and Taxes (Amendment) Ordinance (No. 2) 1988</i> | 56, 1988 | 7 Sept 1988 | S. 4: 1 Aug 1987 Remainder: 7 Sept 1988 | — |
| <i>Stamp Duties and Taxes (Amendment) Ordinance (No. 3) 1988</i> | 79, 1988 | 14 Dec 1988 | 14 Dec 1988 | S. 5 |
| <i>Stamp Duties and Taxes (Amendment) Ordinance 1989</i> | 7, 1989 | 8 Mar 1989 | 8 Mar 1989 | S. 4 |
| <i>Self-Government (Consequential Amendments) Ordinance 1989</i> | 38, 1989 | 10 May 1989 | Ss. 1 and 2: 10 May 1989 Remainder: 11 May 1989 (see s. 2 (2) and <i>Gazette</i> 1989, No. S164) | — |

Self-Government day 11 May 1989

Table 2

Table of Acts

| Act | Number and year | Date of notification in <i>Gazette</i> | Date of commencement | Application, saving or transitional provisions |
|-----|-----------------|--|----------------------|--|
|-----|-----------------|--|----------------------|--|

NOTE—continued**Table of Amendments**—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

| Provision | How affected | | | |
|--|--------------|--------------|---|-------------------------|
| <i>Stamp Duties and Taxes (Amendment) Act 1990</i> | 18, 1990 | 25 June 1990 | Ss. 5 (b), 11 and 12: 1 Jan 1991 Ss. 5 (d), 20, 23-25 and 27: 1 July 1990 Remainder: 25 June 1990 | Ss. 3 (2), 4, 29 and 30 |
| includes retrospective amendments by | | | | |
| <i>Stamp Duties and Taxes (Amendment) Act 1998</i> | 1998 No 30 | 9 Sept 1998 | Ss. 5-7: taken to have commenced 1 Nov 1989 | Ss. 9 and 10 |

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

| Provision | How affected |
|---------------------------|--|
| S. 4 | am. No. 79, 1988; No. 38, 1989; Act No. 18, 1990 |
| S. 7 | rs. Act No. 18, 1990 |
| S. 8 | rep. Act No. 18, 1990 |
| S. 9 | am. Act No. 18, 1990 |
| S. 10 | am. No. 55, 1988 |
| S. 12 | rep. Act No. 18, 1990 |
| S. 13 | am. No. 55, 1988; Act No. 18, 1990 |
| S. 13A | ad. Act No. 18, 1990 |
| S. 14 | rs. Act No. 18, 1990 |
| S. 15 | am. No. 38, 1989; Act No. 18, 1990 |
| Heading to Part III | rs. Act No. 18, 1990 |
| S. 17 | am. No. 56, 1988; Act No. 18, 1990 |
| S. 17A | ad. Act No. 18, 1990 |
| S. 18 | am. Act No. 18, 1990 |
| S. 19 | am. No. 67, 1987; Act No. 18, 1990 |
| S. 21 | rs. Act No. 18, 1990 |
| S. 23 | rs. Act No. 18, 1990 |
| S. 24 | rs. Act No. 18, 1990 |
| S. 28 | am. No. 55, 1988 |
| Ss. 30, 31 | rs. Act No. 18, 1990 |
| S. 36 | am. No. 55, 1988 |
| S. 38 | am A1998-30 s 5 |
| S. 44 | am A1998-30 s 6 |
| S. 45 | am A1998-30 s 7 |

NOTE—continued**Table of Amendments**—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

| Provision | How affected |
|------------------------------------|--|
| S. 47 | am. No. 7, 1989 rs. Act No. 18, 1990 |
| S. 48 | rs. Act No. 18, 1990 |
| S. 56 | am. Act No. 18, 1990 |
| Heading to Part VI | rs. Act No. 18, 1990 |
| Div. 1 of Part VI (ss. 56A-56F) | ad. Act No. 18, 1990 |
| S. 56A | ad. Act No. 18, 1990 |
| S. 56B | ad. Act No. 18, 1990 |
| Ss. 56C-56E | ad. Act No. 18, 1990 |
| S. 56F | ad. Act No. 18, 1990 |
| Heading to Div. 2 of Part VI | ad. Act No. 18, 1990 |
| S. 61 | am. Act No. 18, 1990 |
| S. 62 | am. No. 55, 1988 |
| Part VIA (ss. 64A-64E) | ad. Act No. 18, 1990 |
| Ss. 64A-64E | ad. Act No. 18, 1990 |
| S. 65 | rs. No. 55, 1988 am. No. 38, 1989 |
| S. 66 | am. No. 55, 1988; No. 38, 1989 |
| S. 67 | am. No. 38, 1989 |
| Schedule 1 | am. No. 67, 1987; No. 56, 1988; No. 38, 1989 |
| Schedule 2 | am. No. 79, 1988 |
| Schedule 6 | am. No. 38, 1989; Act No. 18, 1990 |
| Schedule 7 | ad. Act No. 18, 1990 |