



AUSTRALIAN CAPITAL TERRITORY

Stamp Duties and Taxes (Amendment) Act 1994

No. 39 of 1994

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AUSTRALIAN CAPITAL TERRITORY

Stamp Duties and Taxes (Amendment) Act 1994

No. 39 of 1994

An Act to amend the *Stamp Duties and Taxes Act 1987* and for related purposes

[Notified in ACT Gazette S174: 1 September 1994]

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

Short title

1. This Act may be cited as the *Stamp Duties and Taxes (Amendment) Act 1994*.

Commencement

2. (1) Sections 1, 2 and 3 commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions commence on a day fixed by the Minister by notice in the *Gazette*.

(3) If a provision referred to in subsection (2) has not commenced before the end of the period of 12 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

Principal Act

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

Interpretation

4. Section 4 of the Principal Act is amended—

(a) by omitting the definition of “Australian stock exchange” and substituting the following definition:

“ ‘Australian stock exchange’ means the Australian Stock Exchange Ltd. or any of its wholly owned subsidiaries;”
and

(b) by omitting from subsection (1) the definition of “taxable registration”.

Insertion

5. Before Division 1 of Part V of the Principal Act the following Division is inserted in Part V:

“Division 1A—Interpretation

Interpretation

“37A. (1) In this Part, unless the contrary intention appears—

‘Australian incorporated company’ means a company within the meaning of section 9 of the Corporations Law which has share capital and includes an unlimited company, but does not include a company incorporated in an external territory or outside Australia;

‘CHESS sub-register’ means that part of the register in which securities are held in uncertificated form that is administered by the SCH pursuant to the SCH business rules;

‘non-SCH regulated transfer’ means a transfer other than an SCH regulated transfer;

‘participant identifier’, in relation to an SCH participant, means a code that, for the purposes of the SCH business rules, is the SCH participant’s identification code;

‘place of incorporation’ means the State or Territory in Australia in which an Australian incorporated company is registered as a company under the Corporations Law;

‘transfer’, in relation to a marketable security, means the transfer by paper transfer form or an SCH regulated transfer, and includes the transfer of beneficial ownership;

‘transfer document’ has the same meaning as in section 1097 of the Corporations Law;

‘transfer value’ means—

(a) in the case of a sale—

(i) the total consideration for the transfer; or

(ii) the unencumbered value of the marketable securities or rights in respect of shares transferred;

whichever is the greater; or

(b) in any other case—the unencumbered value of the marketable security or right on the date of the transfer.

“(2) In this Part, ‘SCH’, ‘SCH business rules’, ‘SCH participant’, and ‘SCH regulated transfer’ have the same respective meanings as in the Corporations Law.”.

Exempt transactions

6. Section 39 of the Principal Act is amended by adding at the end the following subsection:

“(2) Tax is not payable on a transaction made to reverse a sale or purchase of a marketable security that was mistakenly made, and the transfer so reversed.”.

Records

7. Section 40 of the Principal Act is amended by omitting from subsection (3) “6” and substituting “5”.

Broker's statement on transfers**8.** Section 41 of the Principal Act is amended—

- (a) by omitting from subsection (1) all the words from and including “the broker shall:” to and including “the broker” (last occurring) and substituting the following:

“the broker shall—

- (c) if the transfer is a non-SCH regulated transfer—
- (i) endorse the transfer with a statement that the stamp duty (if any) has been or will be paid by the broker;
 - (ii) set out the date of the statement on the instrument; and
 - (iii) impress on the transfer a stamp expressed to be the stamp of the broker; or
- (d) if the broker is an SCH participant and the transfer is an SCH regulated transfer—include on the transfer document the dealer's participant identifier that shall have the effect of being a statement by the dealer that stamp duty, if payable, has been or will be paid by the broker.”;

- (b) by omitting from subsection (2) “an instrument of” and substituting “a”; and

- (c) by omitting subsection (3) and substituting the following subsection:

“(3) A person, other than a broker, shall not—

- (a) impress a broker's stamp on a transfer without the broker's authority;
- (b) impress a stamp resembling or purporting to be a broker's stamp on a transfer; or
- (c) endorse a transfer document with a participant identifier without the SCH participant's authority.

Penalty: \$10,000 or imprisonment for 12 months, or both.”.

Substitution

9. Sections 44 and 45 of the Principal Act are repealed and the following sections substituted:

Transfers subject to tax or stamp duty

“44. (1) The determined amount of tax or stamp duty, as the case requires, is payable on a transfer being made of a marketable security—

- (a) for which tax is not payable under Division 1;
- (b) of an Australian incorporated company whose place of incorporation is in the Territory;
- (c) of a company, other than an Australian incorporated company—
 - (i) where the transfer is an SCH regulated transfer—if the registered office of the company is in the Territory; or
 - (ii) where the transfer is a non-SCH regulated transfer—
 - (A) if the marketable security was, immediately before the transfer was executed, registered in a register kept in the Territory by a company; or
 - (B) where there is no register of marketable securities kept by the company in Australia—if the place of the registered office of the company is in the Territory; or
- (d) that is a unit of a unit trust scheme —
 - (i) where the principal register of the trust is situated in the Territory; or
 - (ii) where the principal register is not situated in Australia—if the place of the registered office of the management company of the trust is in the Territory or, if the trustee is a natural person, the location of the principal residence of that person is in the Territory.

“(2) If tax or stamp duty has been paid under section 49F in respect of a change in beneficial ownership of a marketable security, tax or stamp duty is not payable under subsection (1) in respect of the transfer of the same security.

Liability to pay tax or stamp duty

“45. (1) Tax is payable on an SCH regulated transfer of a marketable security—

- (a) by the SCH participant that controls the transferee’s holdings on the CHESSE sub-register where the transfer is between 2 holdings on the CHESSE sub-register;
- (b) by the SCH participant that controls the transferor’s holdings on the CHESSE sub-register where the transfer is from a holding on the CHESSE sub-register to a holding on a register that is not on the CHESSE sub-register; or
- (c) by the SCH participant that controls the transferee’s holdings on the CHESSE sub-register where the transfer is from a holding on a register that is not on a CHESSE sub-register to a holding on the CHESSE sub-register.

“(2) Tax is payable by a prescribed corporation for each non-SCH regulated transfer of a marketable security.

“(3) Subject to subsection (2), stamp duty is payable by the transferee for each non-SCH regulated transfer of a marketable security.

Recovery of tax by participant etc.

“45A. An SCH participant or a prescribed corporation that pays or is liable to pay tax on the transfer of a marketable security may recover from the transferee an amount equal to, and designated as, the amount of tax payable.

Records of transfers

“45B. (1) An SCH participant or a prescribed corporation that is liable to pay tax shall keep a record of each SCH regulated transfer specifying—

- (a) the date of the transfer;
- (b) the names of the transferor and transferee;
- (c) the quantity and full description of the marketable security or right to such a security;
- (d) the transfer value of the marketable security or right per unit and in total (or where the duty chargeable is not *ad valorem*, the market value of the marketable security or right per unit and in total);
- (e) the amount of the tax payable;
- (f) whether the tax is *ad valorem*, or the transfer is of a kind referred to in paragraph 46 (1A) (a) or (b);

- (g) if the SCH participant specifies under paragraph (e) that the transfer is of a kind referred to in paragraph 46 (1A) (a) or (b)—the ground relied on, and a copy of any instrument relied on in support of that ground;
- (h) the nexus with the Territory; and
- (i) such other information as is prescribed.

“(2) An SCH participant or a prescribed corporation that is required to keep a record under subsection (1) shall retain the record for at least 5 years after the date of the transfer to which the record relates.

Penalty:

- (a) in the case of a natural person—\$2,000;
- (b) in the case of a body corporate—\$10,000.

“(3) On recording the details of a transfer under subsection (1), an SCH participant shall include on the transfer document a participant identifier which shall have the effect of being a statement by the SCH participant that tax (if payable) has or will be paid by the SCH participant.

“(4) On recording the details of a transfer under subsection (1), a prescribed corporation shall affix to the instrument of transfer its seal which shall have the effect of being a statement by the corporation that tax (if payable) has or will be paid by it.

“(5) A person, other than an SCH participant, shall not—

- (a) endorse the transfer document with a participant identifier without the participant’s authority; or
- (b) endorse the transfer document with a participant identifier purporting to be that of an SCH participant without the participant’s authority.

Penalty: \$10,000 or imprisonment for 12 months, or both.”.

Duty on Schedule 4 transfers

10. Section 46 of the Principal Act is amended by inserting after subsection (1) the following subsection:

“(1A) Stamp duty of \$20 is not payable on a transfer of a marketable security of a kind specified in Schedule 4 if the transfer is—

- (a) an SCH regulated transfer; or
- (b) a transfer by a prescribed corporation.”.

Stamping transfers

11. Section 47 of the Principal Act is amended by adding at the end the following subsection:

- “(2) Subsection (1) does not apply to—
- (a) an SCH regulated transfer; or
 - (b) a transfer by a prescribed corporation.”.

Insertion

12. After section 49 of the Principal Act the following sections are inserted in Division 2 of Part V:

Returns, payments etc.—participants

“49A. (1) An SCH participant shall, not later than 7 days after the end of each month, lodge with the SCH, a return of the transfers to which section 44 applies, made by the SCH participant during the previous month.

“(2) An SCH participant shall, not later than 7 days after the end of each month, pay to the SCH, in respect of the transfers included in a return under subsection (1), the determined amount of tax.

Returns, payments etc.—SCH

“49B. (1) The SCH shall, not later than 15 days after the end of each month, lodge with the Commissioner a return of the transfers specified in a return lodged in accordance with subsection 49A (1).

- “(2) The SCH shall pay to the Commissioner—
- (a) the amounts received by SCH from participants in accordance with subsection 49A (2) during the previous month; and
 - (b) any other amounts of tax payable to the Commissioner by SCH participants in respect of an SCH regulated transfer.

“(3) If the SCH fails to pay to the Commissioner amounts required to be paid by it under subsection (2), the SCH is liable to pay an amount equal to the amount that was payable under subsection (2).

Effect of non-payment of duty by SCH participant

“49C. (1) If an SCH participant contravenes subsection 49A (1) or (2), the Commissioner shall give written notice of the fact to the SCH and the SCH participant.

- “(2) A notice under subsection (1) shall specify—
- (a) each transfer in respect of which tax has not been paid; and

- (b) each month or part of a month in respect of which a return has not been lodged.

“(3) The SCH and the SCH participant to whom notice is given under subsection (1) are jointly and severally liable for tax payable under this Act for each SCH regulated transfer made by the SCH participant after the expiration of 7 days after the date of the notice.

“(4) If an SCH participant—

- (a) pays to the Commissioner the total amount of tax referred to in paragraph (2) (a); or
- (b) lodges a return in respect of each month or part of a month referred to in paragraph (2) (b);

the Commissioner shall give written notice of the fact to the SCH.

“(5) A notice under subsection (4) shall specify the date on which the total amount of tax was paid or the return was lodged.

“(6) The SCH ceases to be liable to pay tax under subsection (3) on the date specified in the notice under subsection (4).

Returns, payments etc.—prescribed corporations

“49D. A prescribed corporation shall, not later than 7 days after the end of each month—

- (a) lodge with the Commissioner a return of the non-SCH regulated transfers to which section 44 applies made by the corporation during the previous month; and
- (b) pay to the Commissioner the tax payable in respect of the transfers.

Form of returns

“49E. A return under section 49A, 49B and 49D shall be in a form approved by the Commissioner.”.

Heading to Division 3 of Part V

13. The heading to Division 3 of Part V of the Principal Act is amended by omitting “*Registration of transfers of marketable securities*”, and substituting “*General*”.

Insertion

14. Before section 50 of the Principal Act the following section is inserted in Division 3 of Part V:

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

“49F. (1) The determined amount of tax or stamp duty, as the case requires, is payable on a change in beneficial ownership of a marketable security.

“(2) Subsection (1) does not apply to a change in beneficial ownership in respect of which tax or stamp duty is otherwise payable under this Part.

“(3) Nothing in subsection (1) is to be taken to require the payment of tax or stamp duty in respect of an agreement for the change in beneficial ownership of a marketable security.

“(4) The determined amount of tax or stamp duty referred to in subsection (1) is payable by the person who acquires beneficial ownership in the marketable security.

“(5) A person who acquires beneficial ownership in a marketable security in respect of which tax or stamp duty is payable under this section shall lodge with the Commissioner a statement in a form approved by the Commissioner.

“(6) A statement referred to in subsection (5) shall be lodged not later than 30 days after the change in beneficial ownership in the marketable security.

Substitution

15. Section 56 of the Principal Act is repealed and the following section substituted:

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) in the case of a non-SCH regulated transfer, 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; or

- (ii) has been duly stamped;
- (b) in the case of an SCH regulated transfer—the transfer document has been endorsed with the participant’s identifier; or
- (c) in the case of a transfer by a prescribed corporation—the instrument of transfer has affixed to it the seal of the corporation.”.

Schedule 3

16. Schedule 3 to the Principal Act is amended—

- (a) by omitting paragraph (a);
- (b) by omitting from paragraph (d) “or” (last occurring);
- (c) by omitting from paragraph (e) “2” and substituting “10”;
- (d) by adding at the end of paragraph (e) “or”; and
- (e) by adding at the end the following paragraph:
 - “(f) by a nominee company established by a member of the Australian Stock Exchange Ltd solely for the purpose of facilitating settlement of transactions relating to marketable securities entered into in the ordinary course of business.”.

Schedule 4

17. Schedule 4 to the Principal Act is amended—

- (a) by inserting after paragraph (k) the following paragraph:
 - “(ka) made to reverse an SCH transfer that was mistakenly made, and the SCH transfer so reversed;”;
- (b) by omitting paragraph (m) and substituting the following paragraphs:
 - “(m) made for the sole purpose of—
 - (i) lending the marketable security; or
 - (ii) restoring to the transferee the exact number and type of marketable security previously borrowed from the transferee, if the transfer is made not later than 12 months after the date on which the marketable security was borrowed;
 - (ma) 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, and that is not made in connection with a tax avoidance scheme;”;
- (c) by omitting from paragraph (n) “or” (last occurring);
- (d) by adding at the end of paragraph (p) “or”; and

(e) by adding at the end the following paragraphs:

- “(q) by a nominee company established by a member of the Australian Stock Exchange Ltd or an SCH participant solely for the purpose of facilitating settlement of transactions relating to marketable securities entered into in the ordinary course of business;
- (r) from a certificated holding to an uncertificated holding on the CHESS sub-register without change in the beneficial ownership.”.

Repeal

18. Schedule 5 of the Principal Act is repealed.

Amendments of *Taxation (Administration) Act 1987*

19. The *Taxation (Administration) Act 1987* is amended—

- (a) by omitting from subsection 4 (1) the definition of “Australian stock exchange” and substituting the following definition:
 - “ ‘Australian stock exchange’ means the Australian Stock Exchange Ltd. or any of its wholly owned subsidiaries;”;
 - and
- (b) by adding at the end of section 96 the following subsection:
 - “(3) Books and accounts may be kept by means of a data processing device.”.

NOTE

1. Reprinted as at 31 January 1994.

[Presentation speech made in Assembly on 19 May 1994]

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