



Australian Capital Territory

# Duties Amendment Act 2001 (No 2)

No 55 of 2001

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Australian Capital Territory

## **Duties Amendment Act 2001 (No 2)**

**No 55 of 2001**

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An Act to amend the *Duties Act 1999*, and for related purposes

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*[Notified in ACT Gazette S57: 15 August 2001]*

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

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Duties Amendment Act 2001 (No 2)*.

### 2 Commencement

- (1) This Act commences on the day it is notified in the Gazette.

*Note 1* The provisions of an Act providing for its name and commencement automatically commence on the date of notification of the Act (see *Legislation Act 2001*, s 75).

*Note 2* A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see *Legislation Act 2001*, s 77 (1)).

*Note 3* If a provision has not commenced within 6 months beginning on the date of notification of the Act, it automatically commences on the first day after that period (see *Legislation Act 2001*, s 79).

- (2) However, a date mentioned (after ‘Commencement:’) at the end of an amendment in schedule 1 is taken to have had effect as the commencement date of the amendment.

#### Examples

- 1 The amendment in sch 1, amendment 1.7 followed by ‘(Commencement: 28 September 2000.)’ indicates that the amendment is taken to have commenced on 28 September 2000.
- 2 The amendment in sch 1, amendment 1.1 followed by ‘(Commencement: immediately after the commencement of *Statute Law Amendment Act 2000*, sch 3, amendment 3.4.)’ indicates that the amendment is taken to have commenced immediately after the commencement of that amendment (on 21 December 2000).

## Part 2 Duties Act 1999

### 3 Act amended—pt 2

This part amends the *Duties Act 1999*.

*Note* Additional amendments are included in sch 1, pt 1.

### 4 New sections 4 and 4A

*insert*

#### 4 Liability for payment of duty by Territory etc

- (1) The Territory is not liable to pay duty under this Act.
- (2) However, a Territory authority, or an agent of the Territory, determined, in writing, by the Minister is liable to pay duty under this Act if the authority or agent can sue and be sued in the authority's or agent's own name.
- (3) A determination is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

#### 4A Payment of duty equivalent by Territory departments

- (1) This section applies to a department determined, in writing, by the Minister (by a *duty equivalent determination*) that carries out any activity, or any activity stated in the determination, for which the department would be liable to pay an amount of duty under this Act (the *duty equivalent*) if the department were a Territory company.
- (2) The amount of the duty equivalent must be transferred from the departmental banking account stated in the duty equivalent determination to the Territory banking account subject to any conditions required by the duty equivalent determination (for example, a condition about when the transfer must take place).

- (3) A duty equivalent determination is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

- (4) In this section:

***department***, in relation to a duty equivalent determination, means—

- (a) an administrative unit stated in the determination; or
- (b) a part of an administrative unit, if the part of the unit is stated in the determination; or
- (c) a group of 2 or more administrative units stated in the determination.

***departmental banking account*** means a departmental banking account mentioned in the *Financial Management Act 1996*, section 34 (1).

***Territory banking account*** means the banking account mentioned in the *Financial Management Act 1996*, section 33.

**5 Imposition of duty on certain transactions concerning dutiable property**  
**Section 7 (1) (b) (iv)**

*omit*

**6 Section 7 (3)**

*substitute*

- (3) In this section:

***grant***, of a Crown lease over land, includes the grant of a new lease following the surrender or determination of a Crown lease over land that includes part or all of the land over which the new lease is granted.



**transfer** does not include a transaction treated as a transfer by chapter 3.

*Note* Chapter 3 treats certain transactions as transfers (for example, acquiring an interest in a landholding private corporation—see s 85 and s 86). Duty may be charged under that chapter on those transfers. These may involve the vesting of property under a court order, which would otherwise be a transfer for par (a) or (b) (i) here (see dict, def of **transfer**, par (d)).

**7 Imposition of duty on dutiable transactions that are not transfers**  
**Section 8 (2), table, item relating to vesting on merger**

*omit*

**8 What is the *unencumbered value* of dutiable property?**  
**Section 22 (4) and (5)**

*omit*

Land Department

*substitute*

granting body

**9 Section 22 (6) and (7)**

*substitute*

(6) In this section:

**grant**, of a Crown lease over a parcel of land, includes the grant of a second or subsequent lease over the same parcel.

**granting body**, in relation to a Crown lease, means the administrative unit or other entity responsible for arranging the grant.

**10 How may an interest be acquired?  
Section 84 (d)**

*after*

share

*insert*

or unit

**11 Transactions subject to prescribed duty  
Section 91, heading**

*substitute*

**91 Ch 3 transactions—concessional duty****12 Section 91**

*before*

Duty

*insert*

(1)

**13 New section 91 (2) to (4)**

*insert*

- (2) Duty of \$20 is chargeable in respect of a chapter 3 transaction if the land that is the subject of the interest concerned could have been acquired by the person in a way that results in a liability to pay \$20 duty under any of the following provisions:
- (a) section 54 (Change in trustees);
  - (b) section 55 (Transfer to custodian of managed investment scheme);
  - (c) section 55A (Transfers in relation to managed investment schemes);

- (d) section 55B (Transfers in relation to registered schemes);
- (e) section 56 (Property vested in an apparent purchaser);
- (f) section 57 (1) (Transfers back from a nominee), if the initial transfer from the transferor to the trustee was a chapter 3 transaction;

*Note* The initial transfer is also chargeable with \$20 duty (see s (3)).

- (g) section 58 (Property passing to beneficiaries);
  - (h) section 60A (Nomineeing transactions—unquoted marketable securities);
  - (i) section 62 (Transfer of property from one superannuation fund to another);
  - (j) section 63 (3) (b) (Transfers to trustees or custodians of superannuation funds or trusts);
  - (k) section 63 (4).
- (3) If duty of \$20 has been paid under subsection (2) (f) for a chapter 3 transaction consisting of a transfer back from a trustee to a transferor—
- (a) the initial transfer from the transferor to the trustee is chargeable with a duty of \$20; and
  - (b) the commissioner must reassess the initial transfer and refund any duty paid in excess of \$20 on application for a refund made within 5 years after the initial assessment, or 12 months after the transfer back to the transferor, whichever is later.
- (4) Maximum duty of \$200 is chargeable in respect of a chapter 3 transaction if the land that is the subject of the interest concerned could have been acquired by the person in a way that results in a liability to pay a maximum of \$200 duty under section 63 (3) (a) (Transfers to trustees or custodians of superannuation funds or trusts).

**14 Entitlement to voting shares arising from capital reduction or rights alteration  
New section 100 (3)**

*insert*

- (3) However, the person is not required to lodge a statement under this section in relation to an entitlement to an interest mentioned in section 86 (What is a “relevant acquisition”?).

*Note* **Relevant acquisitions** within the meaning of s 86 are acquisitions of certain interests in landholding private corporations. A person entitled to such an interest is required to lodge a statement about the acquisition with the commissioner under section 87 (Acquisition statements).

**15 New chapter 3, part 6**

*insert*

**Part 6 Voluntary transfers under the  
Financial Sector (Transfers of  
Business) Act 1999 (Cwlth)****115A Interpretation**

In this part:

**asset**—see the FS (TB) Act, section 4 (1).

**business**—see the FS (TB) Act, section 4 (1).

**FS (TB) Act** means the *Financial Sector (Transfers of Business) Act 1999* (Cwlth).

**receiving body**—see the FS (TB) Act, section 4 (1).

**voluntary transfer** means a transfer under the FS (TB) Act, part 3.

**115B Declaration required if business transferred**

- (1) This section applies to the voluntary transfer of a business if the transfer of the assets of the business would be dutiable under this Act.

*Note* The effect of the FS (TB) Act, s 22 is that a voluntary transfer of business, in itself, is not dutiable under this Act.

- (2) The receiving body must, within 14 days after the voluntary transfer, give the commissioner a declaration about the transfer in the approved form.

*Note* If a form is approved under the Taxation Administration Act, s 139C (Approved forms) for a declaration, the form must be used.

- (3) The declaration must state—
- (a) the names, addresses and capacities of the parties to the transfer; and
  - (b) the reason for the transfer; and
  - (c) a description of the dutiable property transferred; and
  - (d) the market value of the property (including the unencumbered value of any land transferred) on the date when the applicable certificate under the FS (TB) Act, section 18 comes into force under that section; and
  - (e) any other information about the transfer required by the approved form.
- (4) The commissioner may require a receiving body that gives a declaration under subsection (2), or that the commissioner believes is liable to give such a declaration, to give to the commissioner, within 14 days or any longer period allowed by the commissioner, a statement giving specified information about the transfer.

*Note* It is an offence to give false or misleading information to the commissioner, or to fail to give a declaration or statement required under this section (see Taxation Administration Act, s 66 and s 67).

**115C When does a liability for duty arise?**

A liability for duty charged by this part arises when a voluntary transfer of a business is made to a receiving body.

**115D When must duty be paid?**

There is no tax default for the Taxation Administration Act if duty is paid within 90 days after the liability to pay it arises.

**115E Who is liable to pay the duty?**

Duty chargeable under this part is payable by the receiving body.

**115F Assessment of duty**

- (1) A declaration to the commissioner under section 115B (2) is chargeable with duty at the determined rate on the value of the transferred property stated in the declaration.
- (2) For this section, the commissioner may—
  - (a) treat a declaration as having been varied or supplemented by a statement to the commissioner for section 115B (4) in relation to the declaration; or
  - (b) if a declaration has not been given to the commissioner under section 115B (2)—treat a statement to the commissioner for section 115B (4) as a declaration.

**115G Exemptions from duty**

- (1) The Minister may, in writing, determine guidelines for exempting from the assessment of duty under this part property that is the subject of a voluntary transfer.
- (2) Section 115F does not apply to property transferred to a receiving body if, under the guidelines, the transfer is to be exempt from duty under this part.

- 
- (3) Section 115F does not apply to property transferred to a receiving body unless the transfer would have given rise to a liability to duty under this Act if it had not been a voluntary transfer.
- (4) A determination under subsection (1) is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

## 16 Section 135

*substitute*

### 135 How duty is charged on a lease instrument

Duty is chargeable on a lease instrument on the cost or value of the lease, or the unencumbered value of the Crown lease of the relevant land, as determined under this chapter.

## 17 Sections 140 and 141

*substitute*

### 140 General rate—short-term leases

- (1) Duty for a lease is payable at the determined rate on the higher of the following amounts:
- (a) the cost of the lease;
  - (b) the capital sum (the *value of the lease*) that might be expected to be offered for the lease subject to the terms on which it is held.

*Note* Under s 251, the commissioner may require the person liable to pay duty to obtain a valuation of the lease for this paragraph, and may obtain a second valuation if not satisfied with the initial valuation. If the commissioner obtains a second valuation, the commissioner may recover the cost from the person liable to pay duty.

- (2) This section does not apply in relation to—

- (a) a long-term lease (see section 141); or
- (b) a lease that is a franchise arrangement (see section 141A); or
- (c) a lease instrument mentioned in section 142 (Related instruments—exemptions and concessions); or
- (d) a lease instrument mentioned in section 150 (Exemptions—lease instruments).

#### **141 General rate—long-term leases**

- (1) This section applies to a lease (a *long-term lease*)—
  - (a) granted for a term longer than 30 years; or
  - (b) granted for an initial term of 30 years or less, but with an option for renewal for 1 or more terms that would, taken together with the initial term, result in a term of longer than 30 years.
- (2) Duty is payable for a long-term lease at the determined rate on the higher of the following amounts:
  - (a) the cost of the lease;
  - (b) the unencumbered value of the Crown lease of the land over which the long-term lease is granted.
- (3) This section does not apply in relation to—
  - (a) a lease that is a franchise arrangement (see section 141A); or
  - (b) a lease instrument mentioned in section 142 (Related instruments—exemptions and concessions); or
  - (c) a lease instrument mentioned in section 150 (Exemptions—lease instruments).



**141A General rate—franchise arrangements**

- (1) Duty for a lease that is a franchise arrangement is payable on the cost of the arrangement at the determined rate (see section 136 (3) and (4) (What is the *cost* of a lease?)).
- (2) Different rates may be determined under subsection (1) for franchise arrangements of the following types:
  - (a) franchise arrangements granted for—
    - (i) a term longer than 30 years; or
    - (ii) an initial term of 30 years or less, but with an option for renewal for 1 or more terms that would, taken together with the initial term, result in a term of longer than 30 years;
  - (b) any other franchise arrangements.

**18 Exemption from duty and nominal duty  
Section 142, heading**

*substitute*

**142 Related instruments—exemptions and concessions****19 Operation of pt 4  
Section 143 (2)**

*omit*

total

**20 Reassessment of duty—reduction of cost  
Section 149 (1) and (3)**

*omit*

total

**21 Exemptions**  
**Section 150, heading**

*substitute*

**150 Exemptions—lease instruments****22 Section 150**

*before*

A lease

*insert*

(1)

**23 Section 150 (a) and (b)**

*substitute*

- (a) a lease (other than a franchise arrangement) the yearly cost of which is no more than \$10,000, and the yearly value of which is also no more than \$10,000;
- (b) a lease that is a franchise arrangement the yearly cost of which is no more than \$3,000;

**24 New section 150 (2)**

*insert*

(2) In this section:

*yearly cost*, of a lease, means—

- (a) if the lease is for a term of 1 year or shorter—the cost of the lease; or
- (b) if the lease is for a term of longer than 1 year—the cost of the lease divided by the number of years and any excess part of a year for which the lease is granted.

**Example (paragraph (b))**

The *cost* of a lease under s 136 is \$20,000. The lease is granted for a term of 2 years and 6 months. The *yearly cost* of the lease is its *cost* under s 136 divided by  $2\frac{1}{2}$  (the number of years and an excess of  $\frac{1}{2}$  a year for which it is granted). The *yearly cost* of the lease is therefore \$8,000 (\$20,000 divided by  $2\frac{1}{2}$ ).

*yearly value*, of a lease, means—

- (a) if the lease is for a term of 1 year or shorter—the value of the lease; or
- (b) if the lease is for a term of longer than 1 year—the value of the lease divided by the number of years and any excess part of a year for which the lease is granted.

**Example (paragraph (b))**

The *value of a lease* under s 140 (1) (b) is \$20,000. The lease is granted for a term of 2 years and 6 months. The *yearly value* of the lease is its *value* under s 140 (1) (b) divided by  $2\frac{1}{2}$  (the number of years and an excess of  $\frac{1}{2}$  a year for which it is granted). The *yearly value* of the lease is therefore \$8,000 (\$20,000 divided by  $2\frac{1}{2}$ ).

**25 Section 203**

*substitute*

**203 Meaning of *dutiable value* for pt 1**

In this part:

*dutiable value*, of a motor vehicle, means the greater of the following amounts, less any premium paid for extended warranty insurance:

- (a) the consideration in money (or money's worth) given for the acquisition of the vehicle;
- (b) the market value of the vehicle at the time duty is payable.

**203A Registration of vehicles in the name of 2 or more people**

- (1) This section applies if a motor vehicle was, is or is to be registered in the names of 2 or more people.

- (2) In this chapter, a reference to a person in whose name the vehicle was, is or is to be registered includes a reference to all or any of the people in whose names the vehicle was, is or is to be registered.

**26 Imposition of duty**  
**Section 204 (b)**

*substitute*

- (b) the person in whose name the vehicle is to be registered is not the person in whose name the vehicle was last registered.

**27 Successors of deceased persons**  
**Section 212 (2)**

*omit*

a person or persons who have

*substitute*

a person who has

**28 Registration charges consequent on Vehicle Registration Act**  
**Section 213A (1) (a)**

*omit*

the person or people in whose names the vehicle is to be registered differ from the person or people

*substitute*

the person in whose name the vehicle is to be registered is not the person

**29 Prerequisites for registration  
Section 221 (1) (a)**

*omit*

person or persons who are

*substitute*

person who is

**30 Section 221 (1) (b)**

*omit*

or persons

**31 Returns by road transport authority  
Section 223**

*after*

certificates

*insert*

, statements and other information

**32 Minimum amount of duty  
Section 229 (1)**

*after*

subsection (2)

*insert*

and section 229A

**33 New section 229A***insert***229A Approved agents and taxpayers—exemption from \$20 concessional duty and s 229 minimum duty**

- (1) No duty is payable by a taxpayer under this Act for a transaction if—
  - (a) apart from this section, the taxpayer would be charged \$20 duty for the transaction under a provision of this Act; and
  - (b) an approval has been given in relation to the taxpayer under the Taxation Administration Act, section 42 (Special arrangements for classes of persons) or 43 (Special arrangements for individual applicants); and
  - (c) the approval states the provision; and
  - (d) the transaction is recorded in a return lodged, or record kept, in accordance with the approval.
- (2) Section 229 (Minimum amount of duty) does not apply in relation to a taxpayer for a transaction if—
  - (a) an approval has been given in relation to the taxpayer under the Taxation Administration Act, section 42 (Special arrangements for classes of persons) or 43 (Special arrangements for individual applicants); and
  - (b) the transaction is recorded in a return lodged, or record kept, in accordance with the approval.

**34 Section 232**

*substitute*

**232 Corporate reconstructions—exemptions**

- (1) This section applies to a dutiable transaction, or the making of a relevant acquisition within the meaning of section 86, by which property is—
  - (a) transferred (or agreed to be transferred) by a member of a group of corporations to another member of the same group; or
  - (b) vested in a member of the group, if the property was owned immediately before the vesting by another member of the group.

*Note* **Relevant acquisitions** within the meaning of s 86 are acquisitions of certain interests in landholding private corporations.

- (2) This section also applies to an application to register a motor vehicle by a member of a group of corporations if, immediately before the application was made, the vehicle was registered in the name of another member of the group.
- (3) Duty under this Act is not chargeable on transactions or motor vehicle registration applications to which this section applies that are approved by the commissioner in accordance with guidelines determined by the Minister.
- (4) The commissioner's approval may be given subject to conditions.
- (5) The Minister may, in writing, determine guidelines for subsection (3).
- (6) A determination is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

- (7) In this section:

**corporation** includes a unit trust scheme.

**35 Valuation of property  
Section 251 (1)**

*omit*

unencumbered value

*substitute*

value (unencumbered or otherwise)

**36 Section 251 (4)**

*omit*

of the dutiable property

**37 Dictionary, definition of *complying superannuation fund*,  
paragraph (a)**

*after*

42

*insert*

or 42A

**38 Dictionary, definition of *transfer***

*substitute*

*transfer* includes—

- (a) assignment; and
- (b) exchange; and
- (c) vesting of an interest in property under a law of the Territory, the Commonwealth, a State or another Territory, unless the interest did not exist before it is vested; and
- (d) vesting of an interest in property under a court order, unless the interest did not exist before it is vested.



**39 Dictionary, new definition**

*insert*

*value of the lease*—see section 140 (1) (b) (General rate—short term leases).

## Part 3 Additional amendments

### 40 Acts amended—sch 1

*Schedule 1 amends the following Acts:*

- *Duties Act 1999*
- *Duties Amendment Act 2000 (No 3)*
- *Taxation Administration Act 1999*
- *Legislation (Consequential Amendments) Act 2001.*

## **Schedule 1      Additional amendments**

(see s 40)

### **Part 1                      Duties Act 1999**

#### **[1.1] Section 265 (1) (a)**

*after*

1 March 1999

*insert*

in relation to a hire of goods entered into on or after 1 October 1996

(Commencement: immediately after the commencement of *Statute Law Amendment Act 2000*, schedule 3, amendment 3.4.)

#### **Explanatory notes**

- 1 This corrects an error in the *Duties Amendment Act 2000 (No 3)*. By s 2 (1) of that Act, the amendment to s 265 (1) (a) was purported to be made with effect from 1 March 1999. Section 265 was inserted into the *Duties Act 1999* by the *Statute Law Amendment Act 2000*, sch 3, item 3.4, with effect from 21 December 2000. Amendments 1.7 and 1.8 below omit *Duties Amendment Act 2000 (No 3)*, s 2 (1) and s 23 as a consequence.
- 2 *Statute Law Amendment Act 2000*, sch 3, amendment 3.4 commenced on 21 December 2000.

#### **[1.2] Section 276, heading**

*substitute*

#### **276 Expiry of chapter**

(Commencement: immediately after the commencement of *Statute Law Amendment Act 2000*, schedule 3, amendment 3.4.)

### [1.3] Section 276 (1) and (2)

*omit*

part

*substitute*

chapter

(Commencement: immediately after the commencement of *Statute Law Amendment Act 2000*, schedule 3, amendment 3.4.)

#### Explanatory notes

- 1 This corrects an error in the *Statute Law Amendment Act 2000*, sch 3, amendment 3.4, which inserted s 276 into the *Duties Act 1999*.
- 2 *Statute Law Amendment Act 2000*, sch 3, amendment 3.4 commenced on 21 December 2000.

### [1.4] Dictionary, definition of *business asset*

*omit*

### [1.5] References to Duties Act 1999, s 10 (1)

*after*

10

*insert*

(1)

*in*

- section 20 (2)
- section 27 (1)
- section 33 (1)
- dictionary, definition of *partnership interest*

### [1.6] Renumbering

*renumber parts and divisions when Act next republished under Legislation Act 2001*

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## **Part 2**                                 **Duties Amendment Act 2000**   **(No 3)**

### **[1.7] Section 2 (1)**

*omit*

(Commencement: 28 September 2000.)

### **[1.8] Section 23**

*omit*

(Commencement: 28 September 2000.)

#### **Explanatory notes**

- 1     The amendment to the *Duties Act 2000* included in *Duties Amendment Act 2000 (No 3)*, s 23 was ineffective. Section 2 (1) provided a retrospective commencement for that amendment. See explanatory notes to amendment 1.1 above.
- 2     28 September 2000 is the date of commencement of the *Duties Amendment Act 2000 (No 3)*, s 2 (1).

## **Part 3**                                 **Taxation Administration Act**   **1999**

### **[1.9] New sections 42 (1A) and 43 (1A)**

*insert*

- (1A) An approval also has the effect of—
- (a) exempting the taxpayers concerned from payment of duty under provisions of the *Duties Act 1999* stated in the approval for transactions for which the taxpayers would otherwise be charged \$20 if the transactions are recorded in a return lodged, or record kept, in accordance with the approval; and
  - (b) exempting the taxpayers concerned from the application of that Act, section 229 (Minimum amount of duty) for transactions

recorded in a return lodged, or record kept, in accordance with the approval.

*Note* The *Duties Act 1999*, s 229A (1), provides for the exemption in par (a). The *Duties Act 1999*, s 229A (2), provides for the exemption in par (b). The effect of the 2nd exemption is to require the payment of duty of less than \$20 for transactions rather than the minimum duty of \$20 imposed by s 229.

**[1.10] Sections 42 and 43**

*renumber subsections when Act next republished under Legislation Act 2001*

**[1.11] Renumbering**

*renumber divisions when Act next republished under Legislation Act 2001*

**Part 4** **Legislation (Consequential  
Amendments) Act 2001**

**[1.12] Schedule 1, amendments 1.1252 and 1.1253**

*omit*

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## Endnotes

### Duties Act 1999

- 1 Act 1999 No 7 (not republished). See also Act 1999 No 79; SL 2000 No 15; Acts 2000 Nos 5, 30, 34, 46 and 80; 2001 Nos 17, 22 and 40.

### Taxation Administration Act 1999

- 2 Republished as in force on 21 December 2000 (Republication No 1).

### Legislation (Consequential Amendments) Act 2001

- 3 Act 2001 No 44 (not republished).

*[Presentation speech made in Assembly on 15 June 2001]*

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