

Revenue Legislation Amendment Act 2023

A2023-47

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Revenue Legislation Amendment Act 2023

A2023-47

An Act to amend legislation about revenue collection, and for other purposes

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

Part 1 Preliminary

1 Name of Act

This Act is the Revenue Legislation Amendment Act 2023.

2 Commencement

This Act commences on 1 July 2024.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

3 Legislation amended

This Act amends the following legislation:

- Duties Act 1999
- *Rates Act 2004*
- Taxation Administration Act 1999.

Part 2 Duties Act 1999

4 Section 57 heading

substitute

57 Transfers back from trustee

5 New division 2.5.2A

insert

Division 2.5.2A Alternative finance transactions

64 Meaning of financial institution—div 2.5.2A

In this division:

financial institution means—

- (a) an authorised deposit-taking institution; or
- (b) a co-operative under the *Co-operatives National Law (ACT)*; or
- (c) a body prescribed by regulation.

Note The Co-operatives National Law (ACT) Act 2017, s 7 applies the Co-operatives National Law set out in the Co-operatives (Adoption of National Law) Act 2012 (NSW), appendix as if it were an ACT law called the Co-operatives National Law (ACT).

64A Land transferred to financial institution and individual then leased and transferred to individual

- (1) This section applies if, under a scheme between an individual and a financial institution—
 - (a) a person transfers land in the ACT to the individual and the financial institution as co-owners (the *first transfer*); and
 - (b) at the time of the first transfer, the financial institution leases the land to the individual for a fixed period; and

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- (c) the financial institution transfers the land to the individual (the *second transfer*) at the end of—
 - (i) the fixed period; or
 - (ii) another period agreed by the financial institution and the individual.
- (2) Duty under this chapter is not payable in relation to the second transfer.

64B Land transferred to financial institution then transferred to individual

- (1) This section applies if, under a scheme between an individual and a financial institution—
 - (a) the individual, acting as an agent for the financial institution, enters into a contract of sale for land in the ACT with another person; and
 - (b) the other person transfers the land to the financial institution under the contract (the *first transfer*); and
 - (c) at the time of the first transfer, the individual enters into a contract of sale for the land with the financial institution; and
 - (d) the financial institution transfers the land to the individual under the contract mentioned in paragraph (c) (the *second transfer*).
- (2) Duty under this chapter is not payable in relation to the second transfer.

64C Land transferred to financial institution then leased and transferred to individual

- (1) This section applies if, under a scheme between an individual and a financial institution—
 - (a) the individual, acting as an agent for the financial institution, enters into a contract of sale for land in the ACT with another person; and
 - (b) the other person transfers the land to the financial institution under the contract (the *first transfer*); and
 - (c) at the time of the first transfer, the financial institution leases the land to the individual for a fixed period under an agreement—
 - (i) between the financial institution and the individual; and
 - (ii) that gives an option to the individual to purchase the land at the end of the fixed period or another period agreed by the parties to the agreement; and
 - (d) at the end of the period—
 - (i) the individual exercises the option to purchase the land under the agreement; and
 - (ii) the financial institution transfers the land to the individual for consideration agreed by the parties to the agreement (the *second transfer*).
- (2) Duty under this chapter is not payable in relation to—
 - (a) the agreement; or
 - (b) the second transfer.

64D Land transferred to individual with beneficial interest transferred to financial institution

- (1) This section applies if, under a scheme between an individual and a financial institution—
 - (a) a person transfers land in the ACT to the individual (the *first transfer*); and
 - (b) at the time of the first transfer—
 - (i) the individual declares a trust in favour of the financial institution in relation to the individual's beneficial interest in the land; and
 - (ii) the financial institution leases the beneficial interest to the individual for a fixed period; and
 - (c) at the end of the fixed period or another period agreed by the individual and the financial institution, the beneficial interest is transferred to the individual (the *second transfer*).
- (2) Duty under this chapter is not payable in relation to—
 - (a) the declaration of trust; or
 - (b) the second transfer.

64E Change of financial institution

- (1) This section applies if—
 - (a) an individual and a financial institution enter into a scheme in relation to land in the ACT under section 64A, section 64B, section 64C or section 64D; and
 - (b) the financial institution transfers the land to another financial institution (the *first transfer*) on the condition that the other financial institution will transfer the land to the individual in accordance with the scheme; and

- (c) the other financial institution transfers the land to the individual in accordance with the scheme (the *second transfer*).
- (2) Duty under this chapter is not payable in relation to the first transfer or second transfer.

64F Individual dies before arrangement completed

- (1) This section applies if—
 - (a) an individual and a financial institution enter into a scheme in relation to land in the ACT under section 64A, section 64B, section 64C or section 64D; and
 - (b) the individual dies before a transfer could take place under—
 - (i) section 64A (1) (c); or
 - (ii) section 64B (1) (d); or
 - (iii) section 64C (1) (d) (ii); or
 - (iv) section 64D (1) (c).
- (2) Duty under this chapter is not payable in relation to the transfer of any interest in the land under the scheme from the individual or financial institution to another individual—
 - (a) in conformity with the trusts contained in the will of the individual or arising on an intestacy; or
 - (b) because of a right of survivorship; or
 - (c) under the Administration and Probate Act 1929—
 - (i) section 38A (Estate to vest in public trustee and guardian until grant); or
 - (ii) section 39 (Real and personal estate to vest in executor or administrator).

6 Section 76A

substitute

76A Definitions—ch 3

In this chapter:

acquisition statement—see section 87 (1).

chapter 3 property, in relation to a chapter 3 transaction, means—

- (a) for an acquisition of an interest in a landholder—the interest in a landholder; or
- (b) for an acquisition of a land use entitlement—the land use entitlement; or
- (c) for a voluntary transfer of business—the business.

7 Definitions—pt 3.2 Section 78, new definition of *land*

insert

land—see section 80A.

8 New section 80A

insert

80A Meaning of *land*—pt 3.2

- (1) For this part, *land* includes anything attached to the land, whether or not the thing—
 - (a) is a fixture under a law in force in the ACT; or
 - (b) is owned separately from the land; or
 - (c) appears, or is considered to be, separate from the land under a law in force in the ACT.

- (2) Without limiting subsection (1), a thing is attached to the land if the thing is—
 - (a) attached directly to the land itself; or
 - (b) attached to a permanent structure on the land.
- (3) However, *land* does not include a thing—
 - (a) that is temporarily attached to the land to be used only for construction; or
 - (b) if the thing is not a fixture under a law in force in the ACT—
 - (i) that is held or used in relation to primary production; or
 - (ii) that is—
 - (A) a relocatable home attached to a site in a residential park; or
 - (B) attached to the relocatable home or the site for the use or enjoyment of the occupier of the relocatable home; or
 - (c) determined by the Minister.
- (4) A determination under subsection (3) (c) is a disallowable instrument.
- (5) In this section:

primary production—see section 6.

relocatable home means any of the following that can be parked or erected in a residential park:

- (a) a manufactured home under the *Residential Tenancies Act 1997*;
- (b) a mobile home under the *Residential Tenancies Act 1997*;
- (c) any other habitable structure.

residential park—

- (a) means a residential park under the *Residential Tenancies Act 1997*; and
- (b) includes a mobile home park under the *Residential Tenancies Act* 1997.

9 How person *acquires* an interest in a landholder—pt 3.2 Section 84 (3) and (4)

substitute

- (3) If an acquisition arises from an agreement to purchase, allot or issue a unit or share, the acquisition is made—
 - (a) if, at any time after the agreement is entered into, the company or unit trust scheme whose share or unit is being purchased, allotted or issued ceases to be a landholder—on the day the agreement is entered into; or
 - (b) in any other case—on the earliest of the following:
 - (i) the day the necessary transfer or title documents are delivered to the person acquiring the unit or share;
 - (ii) the day the consideration for the purchase, allotment or issue is paid in full;
 - (iii) the day a benefit is received under the agreement;
 - (iv) the last day of—
 - (A) the 12-month period beginning on the day the agreement is first executed; or
 - (B) if the commissioner approves a longer period—the longer period;

Note First executed, for an instrument—see s 243.

- (v) the day, in the commissioner's opinion, the agreement is completed.
- (4) For subsection (3), it does not matter whether or not the acquisition or interest acquired is registered.

10 New section 90D

insert

90D Duty payable on relevant acquisitions—combined acquisitions

- (1) This section applies if—
 - (a) a person acquires an interest in a landholder that is a relevant acquisition (the *previous acquisition*); and
 - (b) the person or an associated person acquires an interest in at least 1 other landholder that is also a relevant acquisition (the *later acquisition*); and
 - (c) the later acquisition is made within 12 months of the previous acquisition; and
 - (d) together, the relevant acquisitions form, provide evidence of, give effect to or arise from a single arrangement to gain effective ownership of a landholding (the *combined acquisition*).
- (2) The amount of duty payable in relation to the combined acquisition is the amount worked out in accordance with the following steps:
 - (a) work out the amount for each of the relevant acquisitions under—
 - (i) if the relevant acquisition is an acquisition mentioned in section 86 (1) (a) (i)—section 90 (2) (a); or
 - (ii) if the relevant acquisition is an acquisition mentioned in section 86 (1) (a) (ii) or (iii)—section 90A (2) (a) to (c);

- (b) add together each of the amounts worked out under paragraph (a);
- (c) multiply the resulting amount worked out under paragraph (b) by the determined rate as in force on the day—
 - (i) the later acquisition was made; or
 - (ii) if there are 2 or more later acquisitions—the last of the later acquisitions was made;
- (d) subtract any duty paid or payable under this division in relation to the relevant acquisitions from the amount worked out under paragraph (c).
- (3) In this section:

UVL, for a landholder, in relation to a relevant acquisition that is part of a combined acquisition, means the unencumbered value of all landholdings in the ACT of the landholder on the day—

- (a) the later acquisition is made; or
- (b) if there are 2 or more later acquisitions—the last of the later acquisitions is made.

11 New section 94A

insert

94A Uncompleted agreements for purchase, allotment or issue of shares or units in landholder

- (1) This section applies if—
 - (a) a person makes a relevant acquisition; and
 - (b) at the time of the relevant acquisition—
 - (i) there is an uncompleted agreement for the purchase, allotment or issue of a share or unit in a landholder; and

- (ii) the person is the purchaser or person to whom a share or unit was to be allotted or issued under the agreement; and
- (c) the commissioner is satisfied that the agreement is subsequently rescinded or terminated within 3 years after the relevant acquisition; and
- (d) the person does not receive any benefit under the agreement.
- (2) The commissioner must assess or reassess the duty payable in relation to the relevant acquisition as though, at the time of the acquisition, the person did not purchase, or was not allotted or issued, the share or unit.
- (3) In this section:

landholder includes a linked body of the landholder.

linked body—see section 81 (5).

12 Duty concession—acquisitions securing financial accommodation Section 95

omit

Declaration required if business transferred Section 115B (1)

omit

voluntary transfer of a business

substitute

voluntary transfer of business

14 When does liability for duty arise? Section 115C

omit

voluntary transfer of a business

substitute

voluntary transfer of business

15 Division 3.7.1

substitute

Division 3.7.1 Exemptions—ch 3 transactions generally

115H Exemptions—ch 3 transactions

- (1) Duty under this chapter is not payable in relation to a chapter 3 transaction if—
 - (a) a person is liable to pay duty under this chapter in relation to the transaction; and
 - (b) the person applies to the commissioner for an exemption from duty under this division in relation to the transaction; and
 - (c) the commissioner exempts the transaction from duty.
- (2) An application for exemption from duty must—
 - (a) be in writing; and
 - (b) be made not later than—
 - (i) 90 days after the day the chapter 3 transaction is made; or
 - (ii) if the commissioner approves, in writing, a longer period—the end of the longer period; and

- (c) state the exemption under this division that is being applied for; and
- (d) include any other information required by the commissioner.

Note A person may apply to extend the time by which an application for exemption from duty must be made (see Taxation Administration Act, s 40).

(3) The commissioner must exempt a chapter 3 transaction from duty if the commissioner is satisfied an exemption under this division applies to the transaction.

115HA Exemption—relevant acquisitions to secure finance

- (1) This section applies if—
 - (a) a person makes a relevant acquisition by acquiring an interest in a landholder; and
 - (b) the person is providing finance to the person from whom the interest is acquired (the *borrower*); and
 - (c) the interest is acquired solely as a security for the finance; and **Example—finance**

a mortgage

- (d) at the time of the acquisition, the borrower intends to reacquire the interest during the applicable period.
- (2) Duty is not payable in relation to the relevant acquisition if the commissioner is satisfied that—
 - (a) the interest is acquired solely as a security for finance; and
 - (b) at the time of the acquisition, the borrower intended to reacquire the interest during the applicable period.
- (3) However, duty is payable in relation to the relevant acquisition if, at the end of the applicable period, the interest is not—
 - (a) reacquired by the borrower; or

- (b) for an acquisition made by way of a mortgage—transferred to another person in exercise of the mortgagee's power of sale.
- (4) Also, duty is payable in relation to the relevant acquisition if the commissioner is satisfied that, at any time within the applicable period, the borrower intends not to reacquire the interest before the end of the applicable period.
- (5) The borrower must give written notice of their intention to not reacquire the interest to the commissioner as soon as possible after they form the intention.

Note The commissioner may require the borrower to provide information, give evidence or produce a record or other document in relation to the borrower's intention (see Taxation Administration Act, s 82).

- (6) A person who reacquires an interest in a landholder under this section does not make a relevant acquisition.
- (7) In this section:

applicable period, for a relevant acquisition, means—

- (a) 5 years after the day the acquisition is made; or
- (b) if the commissioner determines, in writing, a longer period—the longer period.

115HB Exemption—transactions made on bankruptcy or winding-up

The commissioner must exempt a chapter 3 transaction from duty if satisfied that the transaction is made by operation of law on the bankruptcy of a person or the winding-up of a company.

115HC Exemption—transactions made due to change in trustees

- (1) This section applies if a chapter 3 transaction is made because of—
 - (a) the retirement of a trustee; or
 - (b) the appointment of a new trustee.

- (2) The commissioner must exempt the transaction from duty if—
 - (a) the trust is a self managed superannuation fund; or
 - (b) the commissioner is satisfied that—
 - (i) on the retirement or appointment, there are no trustees that are, or can become, a beneficiary under the trust; and
 - (ii) the transaction is not made as part of a scheme to vest, in a person, an interest in a property of the trust to the detriment of any other person's beneficial interest or potential beneficial interest; and
 - (iii) the transaction is not made as part of, or in relation to, a tax avoidance scheme.
- (3) This section does not apply to a responsible entity of a managed investment scheme.
- (4) In this section:

new trustee means a trustee appointed—

- (a) in substitution for another trustee; or
- (b) in addition to another trustee.

self managed superannuation fund—see the Superannuation Industry (Supervision) Act 1993 (Cwlth), section 10 (1).

115HD Exemption—transactions in relation to managed investment schemes

The commissioner must exempt a chapter 3 transaction from duty if satisfied that—

- (a) the parties to the transaction are—
 - (i) the responsible entity of a managed investment scheme; and

- (ii) a custodian or agent of the responsible entity acting as custodian or agent of the scheme; and
- (b) the beneficial owner of the chapter 3 property, transferred as part of the transaction, has not changed because of the transaction.

115HE Exemption—transactions in relation to registered schemes

- (1) The commissioner must exempt a chapter 3 transaction from duty if satisfied that a chapter 3 property is transferred as part of the transaction—
 - (a) from the responsible entity of a registered scheme; and
 - (b) to a custodian or agent of the responsible entity of the scheme acting as custodian or agent of the scheme.
- (2) However, subsection (1) applies only if the commissioner is satisfied that—
 - (a) the scheme was a prescribed interest scheme before 1 July 1998; and
 - (b) at the time the scheme became a registered scheme, the responsible entity held the chapter 3 property as a trustee of the scheme.

Note The term 'prescribed interest' was replaced with 'managed investment' and the term 'trustee' was replaced with 'responsible entity' by the Managed Investments Act 1998 (Cwlth), sch 1 (repealed), which inserted new s 1465 (References to prescribed interests etc. in existing laws and documents) into the Corporations Law (Cwlth) (repealed).

115HF Exemption—ch 3 transactions made by apparent purchaser

- (1) The commissioner must exempt a chapter 3 transaction from duty if satisfied that—
 - (a) a chapter 3 property is transferred as part of the transaction from an apparent purchaser to the real purchaser; and
 - (b) the property is vested in the apparent purchaser on trust for the real purchaser; and
 - (c) the real purchaser provided the money for the purchase of the property.
- (2) In this section:

purchase includes allotment.

115HG Exemption—transactions made to return ch 3 property held by trustee

- (1) This section applies if—
 - (a) a chapter 3 property was transferred from a person (the *transferor*) to another person to be held by the other person as trustee for the transferor; and
 - (b) the property is transferred back to the transferor by the trustee for no consideration (the *chapter 3 transaction*).
- (2) The commissioner must exempt the chapter 3 transaction from duty if satisfied that, while the trustee was holding the property for the transferor, the transferor was the only person with a beneficial interest in the property.

(3) In this section:

beneficial interest does not include a trustee's right of indemnity.

trustee includes a trustee appointed—

- (a) in substitution for a trustee; and
- (b) in addition to a trustee.

115HH Exemption—transactions between superannuation funds

- (1) This section applies to a chapter 3 transaction that transfers a chapter 3 property from a superannuation fund to another superannuation fund for no consideration.
- (2) The commissioner must exempt the transaction from duty if satisfied that the transfer is made—
 - (a) from—
 - (i) a complying superannuation fund; or
 - (ii) a fund that was a complying superannuation fund within 12 months before the day the transaction is made; and
 - (b) to vest the property in—
 - (i) another complying superannuation fund; or
 - (ii) a fund that, in the opinion of its trustees at the time of the transfer, will be a complying superannuation fund within 12 months after the day the transaction is made; and
 - (c) because a person—
 - (i) has stopped being a member of, or has otherwise stopped having a beneficial interest in, the fund mentioned in paragraph (a); and
 - (ii) has become a member of, or has otherwise begun having a beneficial interest in, the fund mentioned in paragraph (b).

115HI Exemption—transactions between trustees and custodians of superannuation funds or trusts

- (1) The commissioner must exempt a chapter 3 transaction from duty if—
 - (a) a chapter 3 property is transferred as part of the transaction—
 - (i) between—
 - (A) a trustee of a relevant fund or trust; and
 - (B) a custodian of the trustee of the fund or trust; or
 - (ii) between—
 - (A) a custodian of a trustee of a relevant fund or trust; and
 - (B) another custodian of the trustee of the fund or trust; and
 - (b) the commissioner is satisfied that the beneficial ownership of the property has not changed because of the transaction.
- (2) In this section:

pooled superannuation trust means an entity that is a pooled superannuation trust under the Superannuation Industry (Supervision) Act 1993 (Cwlth), section 44.

relevant fund or trust, in relation to a chapter 3 transaction, means—

- (a) a complying superannuation fund; or
- (b) a pooled superannuation trust; or
- (c) a fund or trust that, in the opinion of its trustees, will be a complying superannuation fund or pooled superannuation trust within 12 months after the day the transaction is made.

16 Division 3.7.2 heading

substitute

Division 3.7.2 Exemptions—'top hatting' arrangements

17 Objections New section 252 (ga)

insert

(ga) under section 115H (3) refusing to exempt a chapter 3 transaction from duty, other than a determination by the commissioner under section 115HA (7), definition of *applicable period*, paragraph (b); or

18 Dictionary, note 2

insert

- authorised deposit-taking institution
- instrument (see s 14)

19 Dictionary, new definition of *chapter 3 property*

insert

chapter 3 property, in relation to a chapter 3 transaction, for chapter 3 (Certain transactions treated as transfers)—see section 76A.

20 Dictionary, definition of exchanging members

substitute

exchanging members, for division 3.7.2 (Exemptions—'top hatting' arrangements)—see section 115I.

21 Dictionary, new definition of *financial institution*

insert

financial institution, for division 2.5.2A (Alternative finance transactions)—see section 64.

22 Dictionary, definition of interposed trust

substitute

interposed trust, for division 3.7.2 (Exemptions—'top hatting' arrangements)—see section 115I.

23 Dictionary, definition of land

substitute

land—

- (a) for this Act generally—includes a stratum; and
- (b) for part 3.2 (Acquisition of interests in certain landholders)—see section 80A.

Part 3 Rates Act 2004

24 Meaning of average unimproved value New section 13A (3)

insert

(3) To remove any doubt, the period for which a parcel of land has been rateable is not affected by the grant of a further lease of the parcel of land under the *Planning Act 2023*, section 289.

Example—s (3)

The lease of a parcel of land (the *old lease*) for a term of 99 years expired on 31 October 2023. A further lease of the land was granted under the *Planning Act* 2023, s 289 and began on 1 November 2023. While held under the old lease, the parcel of land became rateable in the 1950s and has been rateable since then. The average unimproved value of the parcel for 2024 is the average unimproved value of the parcel over the last 5 years immediately before 2024 (see s (1) (g)).

25 End of application of div 5.2 Section 36 (1) (c)

substitute

(c) if the owner of the land has not applied for the subdivision of the land under the Unit Titles Act, part 3 before the end of 30 days beginning on the day a certificate of occupancy is issued under the *Building Act 2004* for the development, or before the end of any longer period that the commissioner allows—the first day after the end of the 30-day period or the longer period;

26 New section 36 (2A)

insert

- (2A) The commissioner may allow a longer period under subsection (1) (c) only if—
 - (a) the owner applies, in writing, within a period of 120 days beginning on the day the certificate of occupancy is issued, to the commissioner for a longer period to apply for subdivision of the land; and
 - (b) the commissioner is satisfied that the owner of the land could not have applied for subdivision of the land before the end of the 30-day period mentioned in subsection (1) (c) because of exceptional circumstances.

27 Schedule 1, section 1.1 heading

substitute

1.1 Police, fire and emergency services levy

28 Schedule 1, section 1.1 (1) and (2)

omit

Fire and emergency services levy

substitute

Police, fire and emergency services levy

29 Schedule 1, section 2.1A heading

substitute

2.1A Application of further provisions—police, fire and emergency services levy

30 Schedule 1, section 2.1A (2) (a)

omit

fire and emergency services levy

substitute

police, fire and emergency services levy

31 Schedule 1, section 3.1 heading

substitute

3.1 Certain proposed subdivisions—imposition of police, fire and emergency services levy

32 Schedule 1, section 3.1 (2) and (3)

omit

fire and emergency services levy

substitute

police, fire and emergency services levy

33 Rebate of levy Schedule 1, section 3.2 (3)

omit

FES rebate

substitute

PFES rebate

34 Schedule 1, section 3.2 (5), definition of FES rebate

substitute

PFES rebate means the police, fire and emergency services rebate determined under the Taxation Administration Act, section 139.

Part 4 Taxation Administration Act 1999

Recovery of tax from mortgagee New section 56HA (7A)

insert

(7A) To remove any doubt, a tax debt that a mortgagee of a parcel of land is required to pay for a debtor under this section is tax that is payable under section 48.

Note

Under s 48, tax that is payable is payable to the commissioner, who may recover any amount unpaid in a court of competent jurisdiction as a debt to the commissioner.

Recovery of tax from mortgagee of other land New section 56N (7A)

insert

(7A) To remove any doubt, a tax debt that a mortgagee of a parcel of land is required to pay for a debtor under this section is tax that is payable under section 48.

Note

Under s 48, tax that is payable is payable to the commissioner, who may recover any amount unpaid in a court of competent jurisdiction as a debt to the commissioner.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 20 September 2023.

2 Notification

Notified under the Legislation Act on 15 November 2023.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Revenue Legislation Amendment Bill 2023, which was passed by the Legislative Assembly on 2 November 2023.

Acting Clerk of the Legislative Assembly

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