

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

**Stamp Duties and Taxes (Amendment)
Bill 1990**

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1990
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

Presented, 3 May 1990

(Minister for Finance and Urban Services)

**Stamp Duties and Taxes (Amendment)
Bill 1990**

A BILL

FOR

An Act to amend the *Stamp Duties and Taxes Act 1987*

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

PART I—PRELIMINARY

Short title

- 5 1. This Act may be cited as the *Stamp Duties and Taxes
(Amendment) Act 1990*.

Commencement

2. (1) Subject to this section, this Act commences on the day on
which it is notified in the *Gazette*.
- 10 (2) Paragraph 5 (d) and sections 20, 23, 24, 25 and 27 commence on
1 June 1990.

(3) Paragraph 5 (b) and sections 11 and 12 commence on 1 December 1990.

Interpretation

3. (1) In this Act—

“Principal Act” means the *Stamp Duties and Taxes Act 1987*.¹ 5

(2) In this Part and in Part III—

“commencement day” means the day on which this Act is notified in the *Gazette*.

Application

4. (1) Sections 9, 13A, 17A, 21, 23 and 24 of the Principal Act, as that Act is amended by this Act, apply only in relation to an instrument executed on or after the commencement day. 10

(2) Sections 30 and 31 of the Principal Act, as that Act is amended by this Act, apply only in relation to premiums in respect of life insurance, or general insurance, effected on or after 1 June 1990. 15

(3) Sections 47 and 48 and subparagraph 56 (a) (iii) of the Principal Act, as that Act is amended by this Act, apply only in relation to an instrument of transfer executed on or after the commencement day.

(4) Division 1 of Part VI of the Principal Act, as that Act is amended by this Act, applies only in relation to a sale of a vehicle by a licensed vehicle dealer on or after 1 June 1990. 20

(5) Paragraph 61 (1) (d) and subsection 61 (2) of the Principal Act, as that Act is amended by this Act, apply only in relation to the registration of a vehicle on or after 1 June 1990.

(6) Subsection 61 (2A) of the Principal Act, as that Act is amended by this Act, applies only in relation to a vehicle sold by a licensed vehicle dealer on or after 1 June 1990. 25

(7) Part VIA of the Principal Act, as that Act is amended by this Act, has effect only in relation to an acquisition of a business on or after the commencement day. 30

PART II—AMENDMENTS OF PRINCIPAL ACT

Interpretation

5. Section 4 of the Principal Act is amended—

(a) by omitting from subsection (1) the definitions of “dutiabale agreement”, “dutiabale assignment”, “dutiabale lease” and “dutiabale transfer”; 35

(b) by omitting from subsection (1) the definitions of “adhesive stamp” and “cancel”;

(c) by inserting in subsection (1) the following definition:

“‘dutiabale 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;”;

(d) by inserting in subsection (1) the following definitions:

5 “‘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;

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

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

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

15 “(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.

20 “(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—

25 (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.”.

Substitution

30 6. Sections 7 and 8 of the Principal Act are repealed and the following section is substituted:

Impressed stamps

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

35 (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

7. Section 9 of the Principal Act is amended by omitting paragraph

40 (1) (a).

Repeal

8. Section 12 of the Principal Act is repealed.

Stamps defaced or removed

9. Section 13 of the Principal Act is amended by omitting subsections (2) and (3). 5

Insertion

10. After section 13 of the Principal Act, the following section is inserted:

Admissibility of unstamped instruments

“13A. An instrument executed in the Territory or elsewhere, being— 10

(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.”. 15

Substitution

11. Section 14 of the Principal Act is repealed and the following section substituted:

Fraudulent use of stamps 20

“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

12. Section 15 of the Principal Act is amended— 25

(a) by omitting subsection (1) and substituting the following subsection:

“(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. 30

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

(b) by omitting from subsection (2) “, uttered”.

Substitution

13. The heading to Part III is omitted and the following heading substituted: 35

“PART III—INTERESTS IN LAND”.

Instruments subject to duty

14. Section 17 of the Principal Act is amended—

- 5 (a) by inserting in subsection (1) “the following instruments” after “payable on”; and
(b) by omitting from paragraph (1) (c) “or”.

Insertion

15. After section 17 of the Principal Act the following section is inserted:

10 **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;
15 then, unless the contrary intention appears, this Act applies in relation to the instrument as if it were executed in the Territory.”.

Exempt instruments

20 16. Section 18 of the Principal Act is amended by omitting “on a conveyance” and substituting “on an instrument in respect of a conveyance”.

Conveyance of Crown lease—chattels

17. Section 19 of the Principal Act is amended by omitting from subsection (1) “on a conveyance” and substituting “on an instrument in respect of a conveyance”.

25 **Substitution**

18. Section 21 of the Principal Act is repealed and the following section substituted:

Denotation of payment

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

Substitution

19. Sections 23 and 24 of the Principal Act are repealed and the following sections substituted:

35 **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—

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- (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

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“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.

10

“(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.”.

15

Substitution

20. Sections 30 and 31 of the Principal Act are repealed and the following sections substituted:

Premiums subject to tax

20

“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—

25

(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—

30

(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.

35

Exempt premiums

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

Substitution

21. Sections 47 and 48 of the Principal Act are repealed and the following sections substituted:

Stamping instruments of transfer

- 5 "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
 - 10 (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."

15 **Prerequisites for registration**

22. Section 56 of the Principal Act is amended by omitting subparagraph (a) (iii) and substituting the following subparagraph:

- 20 "(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;"

Substitution

23. The heading to Part VI is omitted and the following heading substituted:

25 **"PART VI—VEHICLES".**

Insertion

24. Before section 57 of the Principal Act the following Division and heading are inserted in Part VI:

"Division 1—Sales by licensed vehicle dealers

30 **Taxable sales**

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

Exempt sales

- 35 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 the 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;
- (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
- 5 (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.

- 10 “(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

- 15 “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
- 20 (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;

- 25 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”.

Prerequisites for registration

- 25. Section 61 of the Principal Act is amended—
- 30 (a) by inserting in paragraph (1) (d) “(other than registration referred to in subsection (2A))” after “registration” (first occurring); and
- (b) by omitting subsection (2) and substituting the following subsections:

- 35 “(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
- 40 (b) the purchase price paid for the vehicle by the applicant.

“(2A) The Registrar shall not—

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- (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; 5
- unless the dealer's licence code is endorsed on the application for, or for transfer of, registration."

Insertion

26. After Part VI of the Principal Act the following Part is inserted: 10

"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. 15

Exempt acquisitions

"64B. Tax is not payable under section 64A on an acquisition of a kind specified in Schedule 7. 20

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 25
- (b) pay the tax payable in respect of the acquisition.

Tax avoidance schemes

"64D. Where—

- (a) a business has been acquired; and 30
- (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. 35

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
- 5 (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.

10 “(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
- 15 (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.”.

Schedule 6

20 27. Schedule 6 to the Principal Act is amended—

- (a) by omitting from paragraph (d) “or” (last occurring); and
- (b) by adding at the end the following paragraph:

25 “; (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.”.

Insertion

28. After Schedule 6 to the Principal Act the following Schedule is inserted:

30

“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;
- 35 (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— 5
 - (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 10
 - (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 15
 - (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; 20
 - (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. 25

_____”.

PART III—TRANSITIONAL

Operation of former Act

- 29. (1) In this section— 30
 - “former Act” means the Principal Act in force immediately before the commencement day.
- (2) Notwithstanding the amendments of the Principal Act effected by this Act—
 - (a) section 8, paragraph 9 (1) (a) and sections 12, 21, 23 and 24 of the former Act continue to apply in relation to an instrument executed before the commencement day; 35
 - (b) sections 30 and 31 of the former Act continue to apply in relation to premiums in respect of life insurance, or general insurance, effected before 1 June 1990; 40

- (c) sections 47 and 48 and subparagraph 56 (a) (iii) of the former Act continue to apply in relation to instruments of transfer executed before the commencement day; and
- 5 (d) paragraph 61 (1) (d) and subsection 61 (2) of the former Act continue to apply in relation to the registration of a vehicle before 1 June 1990.

Refunds for unused adhesive stamps

30. (1) Where—

- 10 (a) a person—
- (i) applies in writing to the Commissioner for a refund of an amount equal to the amount of stamp duty denoted by an adhesive stamp; and
- (ii) delivers the stamp to the Commissioner; and
- 15 (b) the Commissioner believes on reasonable grounds that the person has paid to the Commissioner the amount equal to the amount of stamp duty denoted by the stamp and that—
- (i) the stamp, whether spoilt or otherwise, has not been affixed to an instrument; or
- 20 (ii) if the stamp is affixed to an instrument—it was affixed in error;
- the Commissioner shall refund to the person an amount equal to the amount of duty denoted by the stamp.

(2) A refund is not payable unless the relevant application and stamp are given to the Commissioner before 1 December 1990.

NOTE

1. Ordinance No. 39, 1987 as amended by No. 67, 1987; Nos. 55, 56 and 79, 1988; Nos. 7, 21 and 38, 1989.