

2006

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Treasurer)

Duties Amendment Bill 2006 (No 2)

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(As presented)

(Treasurer)

Duties Amendment Bill 2006 (No 2)

A Bill for

An Act to amend the *Duties Act 1999*

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

1 Name of Act

This Act is the *Duties Amendment Act 2006 (No 2)*.

2 Commencement

This Act commences on the day after its notification day.

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 *Duties Act 1999*.

**4 Imposition of duty on certain transactions concerning dutiable property
New section 7 (1) (b) (iv) and (v)**

insert

(iv) a grant of a long-term lease;

(v) a grant of a franchise arrangement.

**5 Imposition of duty on dutiable transactions that are not transfers
Section 8 (2)**

omit

specified in table 8, column 1

substitute

mentioned in column 2 of an item in table 8

1	6	Section 8 (2) (a)
2		<i>omit</i>
3		specified opposite the dutiable transaction in column 2
4		<i>substitute</i>
5		mentioned in the item, column 3
6	7	Section 8 (2) (b)
7		<i>omit</i>
8		specified opposite the dutiable transaction in column 3
9		<i>substitute</i>
10		mentioned in the item, column 4
11	8	Section 8 (2) (c)
12		<i>omit</i>
13		occurred at the time specified opposite the dutiable transaction in
14		column 4
15		<i>substitute</i>
16		happened at the time mentioned in the item, column 5

9 Section 8, table 8

substitute

Table 8

column 1 item	column 2 dutiabale transaction	column 3 property transferred	column 4 transferee	column 5 when transfer happens
1	agreement for sale or transfer	the property agreed to be sold or transferred	the purchaser or transferee	when the agreement is entered into
2	declaration of trust	the property vested or to be vested in the declarant	the person declaring the trust	when the declaration is made
3	grant of a Crown lease	the leasehold interest	the lessee	when the lease is granted
4	grant of a long-term lease	the leasehold interest	the lessor	when the lease is granted
5	grant of a franchise arrangement	the franchise	the franchisee	when the franchise arrangement is granted

10 Dutiable property

New section 10 (1) (ca) and (cb)

insert

(ca) a lease (a ***long-term lease***) that is 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;

(cb) a franchise arrangement held in relation to a place or area located in the ACT that is granted for—

(i) a term of 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;

Note Paragraph (cb) was inserted into the definition of ***dutiable property*** by the *Duties Amendment Act 2006 (No 2)*. It was formerly s 133, def ***lease***, par (c). For transitional provisions applying in relation to that paragraph as in force on 30 June 2006, see s 401.

11 Section 10 (1) (d), note

substitute

Note 1 After 30 June 2010, shares mentioned in this paragraph will no longer be dutiable property (see s 75A (Expiry—provisions relating to unquoted marketable securities)). For the relevant transitional provisions, see pt 15.3.

Note 2 Shares quoted on a stock exchange (and related rights and interests) are not dutiable property (see s 10 (2)).

12 Section 10 (1) (e), note

substitute

Note 1 After 30 June 2010, units mentioned in this paragraph will no longer be dutiable property (see s 75A (Expiry—provisions relating to unquoted marketable securities)). For the relevant transitional provisions, see pt 15.3.

Note 2 Units quoted on a stock exchange (and related rights and interests) are not dutiable property (see s 10 (2)).

**13 What is the *dutiable value* of dutiable property?
Section 20 (1) (b)**

substitute

(b) whichever of the following applies:

(i) for a long-term lease or franchise arrangement—the unencumbered value of the Crown lease of the land in relation to which the long-term lease or franchise arrangement is granted;

(ii) for any other dutiable property—the unencumbered value of the dutiable property.

**14 Shares, units and interests—marketable securities
Section 32 (4), note**

substitute

Note 1 No duty is chargeable on transactions relating to marketable securities that are shares or units quoted on a stock exchange, or related rights or interests (see s 10 (2)).

Note 2 After 30 June 2010, no duty will be chargeable on transactions relating to unquoted marketable securities (see s 75A (Expiry—provisions relating to unquoted marketable securities)). For the relevant transitional provisions, see pt 15.3.

**15 Transfers back from nominee
Section 57 (1) (a)**

omit

(other than marketable securities)

16 Section 57 (3), new definition of *dutiable property*

insert

dutiable property does not include marketable securities.

**17 Transfers between trustees and custodians of
superannuation funds or trusts
Section 63 (2)**

substitute

(2) The duty chargeable on a dutiable transaction is the lesser of—

- (a) ad valorem duty in accordance with this chapter; and
- (b) \$200.

(2A) However, the duty chargeable on a dutiable transaction is \$20 if the dutiable property transferred, or agreed to be transferred, is marketable securities.

Note 1 No duty is chargeable on transactions relating to marketable securities that are shares or units quoted on a stock exchange, or related rights or interests (see s 10 (2)).

Note 2 After 30 June 2010, no duty will be chargeable on transactions relating to unquoted marketable securities (see s 75A (Expiry—provisions relating to unquoted marketable securities)). For the relevant transitional provisions, see pt 15.3.

18 Marketable securities
Section 75 (3), note

substitute

Note 1 No duty is chargeable on transactions relating to marketable securities that are shares or units quoted on a stock exchange, or related rights or interests (see s 10 (2)).

Note 2 After 30 June 2010, no duty will be chargeable on transactions relating to unquoted marketable securities (see s 75A (Expiry—provisions relating to unquoted marketable securities)). For the relevant transitional provisions, see pt 15.3.

19 New part 2.7

insert

Part 2.7 Expiry—provisions relating to
unquoted marketable securities

75A Expiry—provisions relating to unquoted marketable securities

This part and the following provisions expire on 30 June 2010:

- section 6, definition of *transfer*
- section 10 (1) (d) and (e)
- section 10 (1) (i) (i) and (iii)
- section 10 (2)
- section 24 (8)
- section 32
- section 57 (3), definition of *dutiable property*
- section 60A
- section 63 (2A)
- section 70
- section 72A

- section 75
- section 90 (4)
- section 91 (2) (h)
- part 3.3
- part 3.5
- section 248
- section 249
- dictionary, definitions of *ADR*, *capital reduction*, *company*, *dutiable entitlement*, *marketable securities*, *person*, *rights alteration* and *voting share*
- dictionary, definition of *transfer*, paragraph (b).

Note The expiry takes effect at midnight on 30 June 2010 (see Legislation Act, s 85 (3)).

20 Acquisition statements

New section 87 (1A)

insert

- (1A) The statement must be lodged not later than 90 days after the day the relevant acquisition is made.

21 Section 103

substitute

103 When does liability for duty arise?

- (1) A liability for duty charged by this part arises when a land use entitlement is acquired by an allotment of shares or an issue of units to anyone otherwise than in circumstances to which subsection (2) applies.

- 1 (2) This subsection applies to an allotment of shares to anyone by a
2 territory company that is not listed on a stock exchange at another
3 person's direction, in discharge of an obligation to that other person,
4 whether that obligation arises as consideration for the purchase of
5 property by the company or otherwise.

6 **22 Definitions for ch 5**
7 **Section 133, definition of *lease***

8 *substitute*

9 *lease* does not include a long-term lease.

10 **23 Section 133, definitions of *lessee* and *lessor***

11 *omit*

12 **24 How duty is charged on lease instrument**
13 **Section 135**

14 *omit*

15 , or the unencumbered value of the Crown lease of the relevant land,

16 **25 What is the cost of a lease?**
17 **Section 136 (1)**

18 *omit*

19 (other than a franchise arrangement)

20 **26 Section 136 (3) and (4)**

21 *omit*

1 **27 Splitting or redirection of cost of franchise arrangement**
 2 **Section 137**

3 *omit*

4 **28 Section 138**

5 *substitute*

6 **138 Who is liable to pay duty?**

7 The person liable to pay the duty is the lessor.

8 **29 General rate—short-term leases**
 9 **Section 140 (2) (a) and (b)**

10 *omit*

11 **30 General rate—long-term leases**
 12 **Section 141**

13 *omit*

14 **31 General rate—franchise arrangements**
 15 **Section 141A**

16 *omit*

17 **32 Quantification of lessee's improvements**
 18 **Section 146, table 146, items 4 and 5**

19 *omit*

20 **33 Exemptions—lease instruments**
 21 **Section 150 (1) (a)**

22 *omit*

23 (other than a franchise arrangement)

1 **34 Section 150 (1) (b)**

2 *omit*

3 **35** **New part 5.6**

4 *insert*

5 Part 5.6 Expiry—ch 5

6 **150A** **Expiry—ch 5**

7 This chapter and the following provisions expire on 30 June 2009:

- dictionary, definitions of *fit-out costs*, *lease instrument*, *value of the lease* and *variation*.

10 *Note* The expiry takes effect at midnight on 30 June 2009 (see Legislation
11 Act, s 85 (3)).

12 **36 Exclusions from definition of *hire of goods***
13 **Section 153 (1) (a) (ii)**

14 *substitute*

- (ii) duty is chargeable under chapter 2 or chapter 5 in relation to the lease or licence;

17 **37 Section 153 (1) (b)**

18 *substitute*

- 19 (b) a franchise arrangement that is chargeable with duty under
20 chapter 2;

38 New part 6.5*insert***Part 6.5 Expiry—ch 6****173A Expiry—ch 6**

This chapter and the following provisions expire on 30 June 2007:

- section 252 (1) (o), (p) and (q)
- dictionary, definitions of *commercial hire business, equipment financing arrangement, goods, hire of goods, hire-purchase agreement, hiring charges* and *special hiring agreement*.

Note The expiry takes effect at midnight on 30 June 2007 (see Legislation Act, s 85 (3)).

**39 Objections and review of decisions
Section 252 (1) (n)***omit*

40 New chapter 15

insert

**Chapter 15 Transitional—Duties
Amendment Act 2006 (No 2)**

Part 15.1 Transitional—hire of goods

Note to pt 15.1

The *Duties Amendment Act 2006 (No 2)* inserted s 173A which provides for the expiry of ch 6 (Hire of goods) on 30 June 2007.

**410 Application of ch 6 to hiring charges received by
commercial hire business before 1 July 2007**

- (1) The repeal of chapter 6 (Hire of goods) by section 173A (Expiry—ch 6) does not affect any obligation to pay duty under part 6.3 (Arrangements applying to people engaged in business of hiring out goods) in relation to hiring charges received by a commercial hire business before 1 July 2007 and, for that purpose, that part continues to apply as if it had not been repealed.
- (2) In particular, section 169 (Lodgment of returns and payment of duty) continues to apply so that a commercial hire business—
 - (a) is required to lodge a return in accordance with that section in relation to each month before July 2007; and
 - (b) may request a reassessment of duty under section 169 (6).
- (3) This section applies whether or not the hire to which the charges relate is for a period after 30 June 2007.

**411 Application of ch 6 to hire of goods entered into before
1 July 2007**

- (1) The repeal of chapter 6 (Hire of goods) by section 173A (Expiry—ch 6) does not affect any obligation to pay duty under part 6.4 (Arrangements applying to people other than those engaged in business of hiring out goods) in relation to a hire of goods entered into before 1 July 2007.
- (2) For that purpose—
 - (a) part 6.4 continues to apply to a hire of goods entered into before 1 July 2007 but only if the first or only payment of hiring charges is paid or becomes payable before that date; and
 - (b) no refund of duty is payable in relation to any part of the hiring charges that is paid or becomes payable after 30 June 2007.
- (3) Subsection (2) does not prevent a reassessment of duty being made under section 169 (6) as in force immediately before its repeal.
- (4) This section applies whether or not the hire to which the charges relates is for a period after 30 June 2007.

412 Application of ch 6 to certain arrangements

- (1) In this section:
repealed provisions means the provisions mentioned in section 173A (Expiry—ch 6) as those provisions were in force immediately before their expiry.
- (2) Despite their expiry, the repealed provisions apply to a hire of goods mentioned in repealed chapter 6 (Hire of goods) if—
 - (a) the hire of goods replaces a hire of goods that was entered into before 1 July 2007; or
 - (b) another arrangement was made before 1 July 2007 the only or main purpose of which was to defer the hire of goods until 1 July 2007 or later so that chapter 6 would not apply to it.

- 1 (3) This section is a law to which the Legislation Act, section 88
2 (Repeal does not end effect of transitional laws etc) applies.

3 **413 Transitional regulations—pt 15.1**

- 4 (1) A regulation may prescribe transitional matters necessary or
5 convenient to be prescribed because of the enactment of
6 section 173A (Expiry—ch 6) by the *Duties Amendment*
7 *Act 2006 (No 2)*.

- 8 (2) A regulation may modify this part to make provision in relation to
9 anything that, in the Executive’s opinion, is not, or is not adequately
10 or appropriately, dealt with in this part.

- 11 (3) A regulation under subsection (2) has effect despite anything
12 elsewhere in this Act.

- 13 (4) A regulation under subsection (2) expires 12 months after the day it
14 commences.

15 **414 Expiry—pt 15.1**

16 This part expires on 30 June 2012.

17 **Part 15.2 Transitional—lease instruments**

18 *Note to pt 15.2*

19 The *Duties Amendment Act 2006 (No 2)* inserted s 150A which provides for the
20 expiry of ch 5 (Lease instruments) on 30 June 2009.

21 **420 Application of ch 5 to leases entered into before**
22 **1 July 2009**

- 23 (1) The repeal of chapter 5 (Lease instruments) by section 150A
24 (Expiry—ch 5) does not affect any obligation to pay duty under
25 chapter 5 in relation to a lease first executed before 1 July 2009 and,
26 for that purpose, the chapter continues to apply as if it had not been
27 repealed.

- 1 (2) However, section 139 (2) does not apply in relation to a variation to
2 a lease if the variation is made after 30 June 2009.
- 3 (3) Also, the following provisions apply if a lease executed before
4 1 July 2009 has any unascertainable cost components for which
5 there is an estimate date after 30 June 2009:
 - 6 (a) on the first estimate date after 30 June 2009 (the *final estimate*
7 *date*), the commissioner must make a final estimate of the cost
8 of the lease;
 - 9 (b) section 144 (3) applies (with any necessary changes) for the
10 making of the final estimate;
 - 11 (c) the lease instrument is chargeable with duty as if the final
12 estimate were the full cost of the lease;
 - 13 (d) no further estimates of the cost of the lease are to be made
14 (despite section 144 (5));
 - 15 (e) section 144 (7) applies only to the final estimate date or an
16 estimate date that happens before the final estimate date;
 - 17 (f) sections 144 (9) and (10) do not apply in relation to any period
18 after the final estimate date.

19 **421 Application of ch 5 to certain arrangements**

- 20 (1) In this section:

21 *repealed provisions* means the provisions mentioned in
22 section 150A (Expiry—ch 5) as those provisions were in force
23 immediately before their expiry.
- 24 (2) Despite their expiry, the repealed provisions apply to a lease
25 instrument mentioned in repealed chapter 5 (Lease instruments) if—
 - 26 (a) the lease instrument replaces a lease instrument evidencing or
27 effecting a lease that was entered into before 1 July 2009; or

- 1 (b) another arrangement was made before 1 July 2009 the only or
2 main purpose of which was to defer the execution of, or a
3 variation to, the lease instrument until 1 July 2009 or later so
4 that chapter 5 would not apply to the lease instrument.
- 5 (3) Without limiting subsection (2), the commissioner must not refund
6 duty under section 148 (Reassessment of duty—early termination)
7 on a lease instrument evidencing or effecting a lease of property if
8 satisfied that the lessee or any associated person will continue to
9 lease the property under a new arrangement.
- 10 (4) This section is a law to which the Legislation Act, section 88
11 (Repeal does not end effect of transitional laws etc) applies.

12 **422 Transitional regulations—pt 15.2**

- 13 (1) A regulation may prescribe transitional matters necessary or
14 convenient to be prescribed because of the enactment of
15 section 150A (Expiry—ch 5) by the *Duties Amendment*
16 *Act 2006 (No 2)*.
- 17 (2) A regulation may modify this part to make provision in relation to
18 anything that, in the Executive's opinion, is not, or is not adequately
19 or appropriately, dealt with in this part.
- 20 (3) A regulation under subsection (2) has effect despite anything
21 elsewhere in this Act.
- 22 (4) A regulation under subsection (2) expires 12 months after the day it
23 commences.

24 **423 Expiry—pt 15.2**

25 This part expires on 30 June 2014.

Part 15.3 Transitional—unquoted marketable securities

Note to pt 15.3

The *Duties Amendment Act 2006 (No 2)* inserted s 75A which provides for the expiry of provisions relating to duty on unquoted marketable securities on 30 June 2010.

430 Application of repealed provisions to certain arrangements

(1) In this section:

repealed provisions means the provisions mentioned in section 75A (Expiry—provisions relating to unquoted marketable securities) as those provisions were in force immediately before their expiry.

(2) Despite their expiry, the repealed provisions and chapter 2 and chapter 3 as in force immediately before the expiry apply to a transfer or transaction in relation to dutiable property mentioned in the repealed provisions if—

(a) the transfer or transaction replaces a transfer or transaction that was entered into before 1 July 2010; or

(b) another arrangement was made before 1 July 2010 the only or main purpose of which was to defer the transfer or transaction until 1 July 2010 or later so that chapter 2 would not apply to it.

(3) This section is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

431 Transitional regulations—pt 15.3

(1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of section 75A (Expiry—provisions relating to unquoted marketable securities) by the *Duties Amendment Act 2006 (No 2)*.

- 1 (2) A regulation may modify this part to make provision in relation to
2 anything that, in the Executive's opinion, is not, or is not adequately
3 or appropriately, dealt with in this part.
- 4 (3) A regulation under subsection (2) has effect despite anything
5 elsewhere in this Act.
- 6 (4) A regulation under subsection (2) expires 12 months after the day it
7 commences.

8 **432 Expiry—pt 15.3**

9 This part expires on 30 June 2015.

10 **41 Dictionary, definitions of *company title dwelling* and *error***
11 ***transaction***

12 *omit*

13 **42 Dictionary, definition of *lease***

14 *substitute*

15 *lease* means—

- 16 (a) a lease of land in the ACT or an agreement for a lease of land
17 in the ACT; or
- 18 (b) an agreement (for example, a licence) by which a right to use
19 land in the ACT at any time and for any purpose is given to or
20 acquired by a person.

21 *Note* An example is part of the Act, is not exhaustive and may extend,
22 but does not limit, the meaning of the provision in which it
23 appears (see Legislation Act, s 126 and s 132).

43 Dictionary, definitions of *lessee* and *lessor*

substitute

lessee includes—

- (a) any assignee for the time being of the rights of the lessee under a lease; and
- (b) a person who has a right of the kind mentioned in the definition of *lease*, paragraph (b).

lessor includes a person who grants a right of the kind mentioned in the definition of *lease*, paragraph (b).

44 Dictionary, new definition of *long-term lease*

insert

long-term lease—see section 10 (1) (ca).

45 Dictionary, definition of *tenement*

omit

46 Dictionary, definition of *transfer*, new paragraph (a) (iia)

insert

- (iia) a buyback of shares in accordance with the Corporations Act, part 2J.1, division 2; and

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2006.

2 Notification

Notified under the Legislation Act on 2006.

3 Republications of amended laws

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

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