

1994

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

STAMP DUTIES AND TAXES (AMENDMENT) BILL 1994

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Circulated by the authority of the Chief Minister and Treasurer

Rosemary Follett

DETAILS OF THE AMENDMENTS TO THE STAMP DUTIES AND TAXES (AMENDMENT) BILL 1994

Details of the amendments to the Bill are attached.

Amendment 1

Paragraph 8 (c)

This amendment provides for a maximum period of imprisonment of 12 months for a breach of section 41(3) of the Act. This maintains a consistent approach to criminal penalties across legislation in the Territory.

Amendment 2

Clause 9

This amendment inserts a proposed new subsection 44(2) into the Act. The provision is designed to prevent a double duty situation arising where a liability to tax or stamp duty under section 49F of the Act has been paid.

Amendment 3

Clause 9

This amendment will provide for a maximum period of imprisonment of 12 months for a breach of section 45(5) of the Act. This maintains a consistent approach to criminal penalties across legislation in the Territory.

Amendment 4

Clause 13

Reinstates the existing Division 3, to close a potential avenue for tax avoidance that may arise due to the change in nexus provisions. Clause 13 also renumbers the following sections.

Section 49F(1) will impose a liability for duty in respect of a change in beneficial ownership, whether made by a formal instrument of transfer or otherwise. This section will recognise that an equitable interest in marketable securities may be acquired without a corresponding change in legal title.

This includes verbal arrangements between parties. This provision will close off a loophole which provides the opportunity to engage in tax avoidance.

As provided for in subsection 49F(2), in order to avoid the imposition of double duty, section 49F will not apply if duty is payable under another section in Part V..

Subsection 49F(3) will preclude a liability arising from the execution of an agreement for the change in beneficial ownership of a marketable security.

Subsection 49F(4) will provide that a person who acquires beneficial ownership of the securities becomes liable for payment of stamp duty.

Subsection 49F(5) will provide that a person who is liable under subsection 49F(4) is required to lodge a statement with the Commissioner together with payment of the stamp duty applicable to the transactions in the statement. Subsection 49F(6) requires that a statement under subsection 49F(5) shall be lodged with the Commissioner not later than 30 days after the change in beneficial ownership of the marketable security.

The existing section 56 of the Act is to be repealed and replaced with a new section 56. Section 56 will provide that a company's share register can only be updated to reflect a share transfer where the document evidencing the transfer has been correctly endorsed to the effect that stamp duty, if payable, has been or will be paid.

Amendment 5

Paragraph 15 (b)

Paragraph (ma) of Schedule 4 of the Act will provide prescribed stamp duty to be payable on the transfer of a marketable security where the marketable security is used as security for a loan. The concession is also available where the marketable security is subsequently transferred back to the original owner. The concession will not be available if the transfer is made in connection with a tax avoidance scheme as described in section 4 of the Act.