

1990

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STAMP DUTIES AND TAXES (AMENDMENT) BILL 1990

EXPLANATORY MEMORANDUM

**Circulated by the Authority of the Minister for Finance
and Urban Services
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12368/90 Cat. No. 90 4256 7



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STAMP DUTIES AND TAXES (AMENDMENT) BILL 1990

The Stamp Duties and Taxes Act 1987 provides for the imposition of stamp duties and other similar taxes in the Australian Capital Territory.

Stamp duty is imposed on conveyances and transfers of marketable securities and taxes on insurance premiums, the sale, purchase and registration of transfers of marketable securities (excluding debentures) and the registration of motor vehicles.

The Government has decided to introduce a number of amendments to the Act, which are designed to provide additional revenue and to prevent an erosion of the tax base.

A new provision will be inserted into the Act to levy stamp duty on the sale of business agreements at marketable security rates. The Third Commonwealth Grants Commission report on ACT finances for 1986-87 identified the lack of ACT provisions in the taxing of business agreements as one of the reasons for the ACT's below average revenue effort for stamp duties.

The legislation in relation to insurance premiums will be clarified. The liability for stamp duty on contracts of insurance will be payable in the ACT: where the location of risk/property is in the ACT; or where premiums are paid in the ACT and the location of risk cannot be identified.

A further change to the Act is the shifting of the liability for tax on transfers of registration of motor vehicles, purchased through licensed vehicle dealers, onto the dealers. This amendment is to overcome the understatement of the value of vehicles by purchasers and will improve the administration and collection of the tax.

Measures to prevent the erosion of the tax base include: rendering liable for stamp duty instruments executed and held outside the ACT which relate to property in the ACT and requiring that such documents be lodged within 3 months in the ACT for assessment where it has been executed outside the ACT; providing that instruments not duly stamped are not to be admissible in a court of law (except in criminal proceedings or proceedings for the purpose of determining liability to tax); and by removing the option to affix adhesive stamp to instruments in respect of certain conveyance and marketable security transactions.

As the amendments are a mixture of anti-avoidance, new provisions and a tightening of existing provisions any estimate of revenue is difficult to calculate. However the package of amendments is estimated to provide an extra \$1.8 million in revenue for the 1990/91 financial year with the major revenue source being derived from the introduction of business agreement provisions.

Paragraph 5(d), sections 30 and 31, new Part VI and new Schedule 7 of the Principal Act as amended, commence on 1 June 1990.

Paragraph 5(b) and sections 14 and 15 of the Principal Act as amended, commence on 1 December 1990.

The remaining amendments will come into effect from the date of notification in the Gazette.

Details of each clause of the proposed Bill are outlined in the Attachment.

ATTACHMENT

STAMP DUTIES AND TAXES (AMENDMENT) BILL 1990

PART I - PRELIMINARY

Part I consists of clauses 1 to 4 and will deal with preliminary matters pertaining to the Bill.

Clause 1 cites the short title of the Bill, once enacted, as the Stamp Duties and Taxes (Amendment) Act 1990 (the Act).

Clause 2 provides for the commencement of the Bill.

Subclause 2(1) provides that the Bill will commence on the day on which it is notified in the Gazette.

Subclause 2(2) provides that paragraph 5(d), sections 20, 23, 24, 25 and 27 will commence on 1 June 1990.

Subclause 2(3) provides that paragraph 5(b), sections 11 and 12 will commence on 1 December 1990.

Clause 3 will cite the Principal Act as meaning, the Stamp Duties and Taxes Act 1987.

Any reference to 'commencement day' in Parts I and III of the Bill means the day in which the Bill is notified in the Gazette.

Clause 4 will provide for the application of the Principal Act as amended. Subclauses (1) to (7) indicates the dates upon which the nominated sections will apply.

PART II - AMENDMENTS OF THE PRINCIPAL ACT

Part II consists of clauses 5 to 28 and will deal with amendments to the Principal Act.

Clause 5 deals with interpretations.

Clause 6 will provide that sections 7 and 8 of the Principal Act be repealed and a new section 7 be inserted.

The new section 7 will provide for the making of impressed stamps for denoting payment of stamp duties and taxes.

Clause 7 will provide that paragraph 9 (1)(a) of the Principal Act be omitted. This amendment will remove the option for instruments to be stamped by the means of an adhesive stamp as evidence that it is duly stamped.

Clause 8 will provide that section 12 of the Principal Act be repealed. Section 12 allowed a person to lodge a document for assessment where there was no requirement to do so. This section is no longer required as all documents must now be lodged with the Commissioner for assessment.

Clause 9 will provide that subsections 13(2) and 13(3) of the Principal Act be omitted. These subsections dealt with situations where an adhesive stamp has been spoilt, defaced or removed from an instrument. As the affixing of adhesive stamps will no longer be an option to taxpayers these subsections are no longer required.

Clause 10 will insert new section 13A. Section 13A will provide that an instrument executed in respect of a conveyance or a transfer of a marketable security cannot, except in criminal proceedings or proceedings for the purpose of determining liability to tax, be used or given in evidence or admitted to be good, useful or available in a court of law unless it has been stamped.

Clause 11 will provide that section 14 of the Principal Act be repealed and a new section 14 be inserted. The new section 14 will provide that it is an offence to, where there is an intention to defraud, impress on an instrument a stamp that is or resembles an impressed stamp. The penalty is a fine of \$10,000 or imprisonment for 2 years, or both.

Clause 12 will amend section 15 of the Principal Act by omitting subsection (1) and substituting a new subsection (1). The new subsection (1) will provide that it is an offence to make, sell, use or have in one's possession without lawful authority a device for making impressed stamps. The penalty is a fine of \$10,000 or imprisonment for 2 years, or both.

Subsection (2) will provide that the word "uttered" be omitted. The word "uttered" applied to adhesive stamps is unnecessary because of the proposed amendment to subsection (1) will delete the reference to counterfeit adhesive stamps.

Clause 13 will provide that the heading to Part III of the Principal Act be omitted and a new heading substituted. The new heading will read: "PART III - INTERESTS IN LAND".

Clause 14 will amend section 17 of the Principal Act. Section 17 will provide that stamp duty in respect of a conveyance is payable on the instrument created as a result of the conveyance transaction.

Clause 15 will insert new section 17A. Section 17A will extend the application of the Principal Act to instruments executed outside the ACT which relate to ACT property.

Clause 16 will amend section 18 of the Principal Act. The amendment will provide that stamp duty is not payable on an instrument in respect of a conveyance of the kind specified in Schedule 1.

Clause 17 will amend section 19 of the Principal Act which deals with chattels included in a conveyance of a Crown lease. The amendment will further clarify that duty is levied on the instrument in respect of a conveyance.

Clause 18 will provide that section 21 of the Principal Act be repealed and a new section 21 be inserted. The new section 21 will provide that the payment of stamp duty on a dutiable instrument, created in respect of a conveyance transaction, shall be denoted by impressed stamp only. The option to affix an adhesive stamp has been removed.

Clause 19 will provide that sections 23 and 24 of the Principal Act be repealed and new sections 23 and 24 to be inserted.

The new section 23 will provide that all instruments in respect of a conveyance be lodged with the Commissioner for assessment. This section also provides that the time limits under which a person, who is liable to pay stamp duty on an instrument in respect of a conveyance, shall lodge the instrument with the Commissioner for assessment.

Paragraph 23(a) requires a person to lodge an instrument with the Commissioner for assessment, if the instrument is executed in the Territory, within 30 days after the date of its execution .

Paragraph 23(b) requires a person to lodge the instrument with the Commissioner for assessment, if the instrument is executed outside the Territory, within 3 months after the date of its execution, .

The new section 24 will provide a mechanism for providing a credit for duty paid on an instrument lodged for assessment with the Commissioner where duty has been paid in respect of that instrument under a corresponding tax law.

Subsection 24(1) will provide that in assessing the amount of stamp duty payable on an instrument lodged for assessment, 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 paid by that person as duty in respect of the instrument under a similar law of a State or another Territory.

Subsection 24(2) will provide that any credit allowed will not exceed the amount of stamp duty payable before the credit is allowed.

Subsection 24(3) will provide that any request for a credit under subsection 24(1) must be made in writing by the person who would be liable to pay the duty. The time limit for making such an application is 3 months after the date of lodgement of the instrument to which the request relates.

Clause 20 will provide that sections 30 and 31 of the Principal Act be repealed and new sections 30 and 31 be inserted.

The new section 30 will clarify the liability to tax on insurance premiums.

Paragraph 30(a) will provide that tax is payable in the Territory on life insurance where the person covered by the policy was domiciled in the Territory at the time the insurance was effected.

Paragraph 30(b) will provide that tax is payable in the Territory on general insurance effected in respect of:

- (i) property situated in the Territory when the insurance was effected; or
- (ii) any act or omission occurring in the Territory.

Paragraph 30(c) will provide that tax is payable in the Territory on premiums paid in the Territory in respect of general insurance, other than those situations referred to in paragraph 30(b), where:

- (i) tax or stamp duty is not payable under a similar law of a State or another Territory in respect of the premium,
- (ii) tax or stamp duty payable under a similar law of a State or another Territory has not been paid in respect of the premium.

The new section 31 provides that tax is not payable on a general insurance premium of a kind specified in Schedule 2. Schedule 2 provides exemptions in respect of certain general insurance premiums.

Clause 21 will provide that sections 47 and 48 of the Principal Act be repealed and substituted by new sections 47 and 48. The effect of these amendments is to remove the option of affixing adhesive stamps to transfers of marketable securities.

The new section 47 will provide for the stamping of instruments of transfer of marketable securities.

Paragraph 47(a) will provide that where there is a dutiable transfer of a marketable security the transferee shall lodge with the Commissioner the instrument for assessment within 30 days after it has been executed in the Territory.

Section 64E(3) will provide that the crediting provisions of Section 64E will only apply to tax or duty paid under the Principal Act.

These provisions will avoid the situation of double taxation under the Act as amended.

Clause 27 will provide an exemption from tax under new paragraph (f) of Schedule 6 for a purchaser of a vehicle from a licensed vehicle dealer.

Clause 28 will insert Schedule 7 into the Principal Act. Schedule 7 will provide that an acquisition of a business is exempt from tax where that acquisition is:

- . by a personal representative of a deceased person
- . by a beneficiary under a will or an intestacy
- . by a person upon the bankruptcy or insolvency of a person
- . under an order by a court under the Family Law Act 1975 of the Commonwealth or the Married Persons' Property Act 1986
- . by virtue of a relevant maintenance agreement within the meaning of section 90 of the Family Law Act 1975 of the Commonwealth
- . by, or by trustees on trust for, a hospital, school or charitable organisation
- . by a trustee from another trustee and the acquisition is not connected with a tax avoidance scheme
- . from a trustee by a person who contributed the purchase money and the acquisition is not connected with a tax avoidance scheme
- . by the beneficiary, the business was held in trust for that beneficiary, stamp duty on the acquisition of the business by the trustee has been paid, or is not payable, and the acquisition is not in connection with a tax avoidance scheme
- . under the regulations, exempt from tax under section 64A

PART III - TRANSITIONAL

Part III consists of clauses 29 and 30 and will provide for transitional matters pertaining to the Bill.

Clause 29 will provide for the application of certain provisions of the former Act in respect of certain instruments and transactions.

A reference to 'former Act' in this section means the Principal Act in force immediately before the commencement day of the amendments effected by this Bill.

Clause 26 will provide that a new part will be inserted into the Principal Act under the heading:

'PART VIA - ACQUISITION OF BUSINESS'.

Section 64A (1) will provide that tax is payable on the acquisition of a business conducted wholly or partly in the Territory.

Section 64A(2) will provide that only that part of the business which is conducted in the ACT is taxable.

Section 64B will provide an exemption from tax on the acquisition of a business under section 64A. An exemption will be allowed where the acquisition of the business is of a kind specified in new Schedule 7.

Section 64C will provide for returns and payments in respect of the acquisition of a business.

Where a person acquires a business conducted wholly or partly in the Territory he or she shall no later than 60 days after the acquisition provide the Commissioner with a return, in the approved form, setting out details of the acquisition and pay the tax payable as assessed by the Commissioner.

Section 64D will provide that the Commissioner may disregard the liability connected with the acquisition of a business where he or she believes on reasonable grounds that the liability declared for taxation purposes is connected with a tax avoidance scheme.

Section 64E(1) will provide that where duty or tax has been separately paid under the Principal Act in respect of any instrument executed or transaction effected as a result of an acquisition of a business the Commissioner shall credit an amount equal to any duty or tax paid against the liability to tax payable on the acquisition of the business under Section 64A.

This provision will operate where a sale of a business includes the acquisition of land, building and motor vehicles. Where duty has been paid on the conveyance of the land and building under the conveyance provisions, or on motor vehicles under the transfer of motor vehicle registration provisions, an amount equal to the duty paid under those provisions would be credited against the liability assessed on the acquisition of the business as the land and building component would have been included in the return relating to the acquisition.

Section 64E(2) will provide that where tax has been paid pursuant to section 64A in relation to land, chattels and motor vehicles, that credit will be offset against any liability assessed under Parts III or VI of the Act.

Subsection 56E(2) will provide that where a licensed vehicle dealer sells an unregistered vehicle the dealer shall, on request by the purchaser, endorse the dealer's licence code on the application for registration.

Subsection 56E(3) will provide that it is an offence for a licensed vehicle dealer not to endorse the dealer's registration code on an application for registration under subsections 56E(1) and (2). The penalty for failing to comply with this provision is a fine on conviction not exceeding \$2,000.

Section 56F will provide for a refund where a person purchases a vehicle from a licensed vehicle dealer and that person was entitled to an exemption but did not claim that exemption at the time of purchase.

Where the Commissioner, on application in writing by the purchaser of a vehicle from a licensed vehicle dealer, believes on reasonable grounds that the purchaser would have been eligible for a certificate of exemption on the date of the sale of the vehicle, he or she shall refund to the purchaser an amount equal to the amount of the tax paid on the sale by the dealer provided that:

- . the dealer has paid the amount of tax payable under 56A in respect of the sale and
- . the purchaser has, on account of the dealer's liability for tax, paid the dealer an amount equal to the amount of tax paid in respect of the sale.

A new subheading will be inserted in Part VI of the Principal Act. The subheading will read:

'Division 2 - Registration of vehicles'.

Clause 25 will provide that section 61 of the Principal Act be amended.

An amendment to paragraph (1)(d) will allow the applicant to have his or her vehicle registered where the transfer documents bear the endorsement of a licensed vehicle dealer.

The omission of subsection (2) and the insertion of a new subsection (2) will provide that the tax payable in respect of registration is based on the higher of the market value or purchase price of the vehicle to be registered.

Subsection (2A) will provide that the Registrar shall not register a motor vehicle sold by a licensed vehicle dealer unless the dealer's registration code is endorsed on the application for registration or transfer of registration as the case requires.

Paragraph 56B(c) will provide that tax is not payable by a licensed vehicle dealer where a vehicle is purchased by certain Commonwealth, State or Territory Authorities.

Paragraph 56B(d) will provide that a licensed vehicle dealer is not liable to tax where he or she sells and registers a new motor vehicle in another State or Territory.

Section 56C will provide that where a certificate of exemption has been given to a licensed vehicle dealer, in respect of a sale of a vehicle, the dealer shall keep the certificate for a period of 6 years after the date of sale. The penalty for failing to comply with this paragraph is \$2,000.

Section 56D will provide the requirement for dealers to submit returns and payments to the Commissioner in relation to their sales.

Subparagraph 56D(a)(i) will provide that the dealer, no later than 14 days after the end of each month, lodge with the Commissioner a return in writing showing the particulars of each taxable sale. The return shall be in a form approved by the Commissioner.

Subparagraph 56D(a)(ii) will provide that the dealer, no later than 14 days after the end of each month, in addition to lodging a return under subparagraph 56D(a)(i), pay the tax payable in respect of the taxable sales indicated on the return.

Paragraph 56D(b) will provide that where the dealer makes no taxable sales during the month he/she shall lodge a return in writing to the Commissioner including a statement to that effect.

Section 56E will provide for the endorsement of registration forms by a licensed vehicle dealer.

The purpose of endorsing the transfer documents is to indicate to the ACT Motor Registry that the tax has been paid by the dealer so that the vehicle can be transferred into the transferees name without further tax being levied.

Subsection 56E(1) will provide that where a licensed vehicle dealer sells a registered vehicle the dealer shall endorse the dealer's licence code on the application for transfer of the registration.

The dealer's licence code means the dealer's business name followed by the letters 'LMVD' and the dealer's licence number.

Paragraph 47(b) will provide that where there is a dutiable transfer of a marketable security the transferee shall lodge with the Commissioner the instrument for assessment within 3 months after the date of execution where the instrument is executed outside the Territory.

The new section 48 will provide that the payment of stamp duty on a transfer of a marketable security shall be denoted by impressed stamps only on the instrument of transfer.

Clause 22 will amend section 56 of the Principal Act by omitting subparagraph (a)(iii) and inserting a new subparagraph (a)(iii).

The new subparagraph (a)(iii) will provide that a transfer of a marketable security shall not be registered in the books of the company or unit trust to which it relates unless it bears an impressed or adhesive stamp in accordance with a similar law of a State or another Territory indicating that tax or stamp duty is not payable in respect of the transaction to which the instrument relates.

Clause 23 - will provide that the heading to Part VI of the Principal Act be omitted and a new heading substituted. The new heading will read: 'PART VI - VEHICLES'.

Clause 24 - will provide for new sections 56A, 56B, 56C, 56D, 56E, and 56F to be inserted into the Principal Act. These sections deal with sales of vehicles by licensed vehicle dealers.

The new sections will be inserted under the heading: 'Division 1 - Sales by licensed vehicle dealers', in Part VI of the Principal Act.

Section 56A will provide that a licensed vehicle dealer is liable for tax on the sale of a vehicle by him/her.

Section 56B will provide for sales that are exempt from tax under section 56A.

Paragraph 56B(a) will provide that tax is not payable by a licensed vehicle dealer where the purchaser gives the dealer a certificate of exemption issued under section 62 of the Principal Act.

Paragraph 56B(b) will provide that no tax is payable by a licensed vehicle dealer where a vehicle is purchased for trading stock by another licensed vehicle dealer, licensed under the Sale of Motor Vehicles Act 1977 or under a similar law of a State or another Territory.

Subclause (2)(a) will provide that section 8, paragraph 9(1)(a) and sections 12, 21, 23 and 24 of the former Act will continue to apply to instruments executed before the commencement day.

Subclause (2)(b) will provide that sections 30 and 31 of the former Act will continue to apply to premiums in respect of life insurance, or general insurance, effected before 1 June 1990.

Subclause (2)(c) will provide that sections 47 and 48 and subparagraph 56(a)(iii) of the former Act will continue to apply in relation to instruments of transfer executed before the commencement day.

Subclause (2)(d) will provide that paragraph 61(1)(d) and subsection 61(2) of the former Act will continue to apply in relation to the registration of a vehicle before 1 June 1990.

Clause 30 will provide for refunds for unused adhesive stamps. To be eligible for a refund a person must apply in writing to the Commissioner for a refund of an amount of stamp duty denoted by the stamps together with the stamp/s. Where the Commissioner believes on reasonable grounds that a refund should be granted he or she shall refund to that person an amount equal to the amount of duty denoted on the stamp. Refunds will only be considered on applications made before 1 December 1990.