

2006

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

DUTIES AMENDMENT BILL 2006

EXPLANATORY STATEMENT

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Duties Amendment Bill 2006

Summary

This Bill amends the *Duties Act 1999* which imposes duty on the transfer of dutiable property and certain transactions in the ACT.

Overview

The *Intergovernmental Agreement on the Reform of Commonwealth State Financial Relations* (the IGA) underpins the introduction of the GST. The ACT was committed under the IGA to review the need to retain certain state business taxes. The outcome of the ACT review was a package of reform measures first announced in the 2005-06 Budget with a proposed timetable over the next five years. The *Duties Amendment Bill 2006* (the Bill) amends the *Duties Act 1999* to abolish duty on non-real core business assets on 1 July 2006 as foreshadowed in that timetable.

On 1 July 2006 goodwill, intellectual property, statutory licences or permissions under Commonwealth or Territory law will be removed from the dutiable property list. Where a transfer or transaction involving these assets takes place on or after that date, there will be no duty liability.

In addition, the Bill abolishes duty on franchise agreements in the ACT (except for long term franchise agreements) if the agreement is entered into on or after 1 July 2006.

A transfer or transaction on or after 1 July 2006 involving any of the remaining dutiable property, or interests in such dutiable property, will remain dutiable. Partnership interests and goods in the ACT will now only be dutiable property where they include, or are dependent on an arrangement that includes, other dutiable property, such as land. Transfers and transactions involving partnership interests and goods will not be liable for duty on goodwill, intellectual property and statutory licences.

The Bill contains new transitional anti-avoidance provisions to capture transactions deferred wholly or mainly to avoid duty and those that replace previous transactions that were liable to duty prior to 1 July 2006. It also introduces transitional regulation-making powers to address any issue not adequately or appropriately dealt with in the new Chapter 14. These powers would be used to address any avoidance issues that may arise as a result of the new provisions. All transitional provisions expire after five years.

Financial Implications

The estimated annual impact of these amendments from 1 July 2006 was forecast in the ACT 2005-06 Budget as \$2m.

Details of the Bill are attached.



Details of the Duties Amendment Bill 2006

Clause 1 - Name of Act. This Act is the *Duties Amendment Act 2006*.

Clause 2 - Commencement. This Act commences on 1 July 2006.

Clause 3 - Legislation amended. This Act amends the *Duties Act 1999*.

Clause 4 - Dutiable property Section 10 (1) (g), (h) and (i). This clause removes business assets (goodwill, intellectual property and a statutory licence or permission under a Commonwealth law) and a statutory licence or permission under a territory law from the dutiable property list from the date of commencement of this Act. The effect of this change is that transfers or transactions in relation to these business assets are not dutiable if they occur on or after 1 July 2006.

A new paragraph (g) restates, with no change in effect, that partnership interests are dutiable property but only where the partnership holds dutiable property mentioned elsewhere in the section. This eliminates goodwill, intellectual property and Commonwealth and territory statutory licences or permissions from the dutiable property in any partnership interest. This new clearer definition is further explained in new paragraph (3) (see Clause 6).

The Note makes it clear that the business assets formerly in paragraphs (g) and (h) are no longer dutiable property, and there are transitional arrangements in section 400.

Clause 5 - Section 10 (1) (j) to (l). These sections are renumbered as section 10 (1) (h) to (j).

Clause 6 - New section 10 (3). This clause inserts a new subsection to clarify that property held for a partnership is partnership property and that indirect interests through partnership interests or trust interests, or a series of such interests, is also dutiable property.

Clause 7 - What is the *dutiable value* of dutiable property? Section 20 (2). This paragraph is redundant and omitted as business assets are no longer dutiable property.

Clause 8 - What is the consideration for the transfer of dutiable property? Section 21 (3). This paragraph is redundant and omitted as goodwill is no longer dutiable property.

Clause 9 - What is the *unencumbered value* of dutiable property? Section 22 (2). This paragraph is redundant and omitted as goodwill is no longer dutiable property.

Clause 10 - Apportionment – business assets in this and other jurisdictions. Section 27. As business assets are no longer dutiable property, this paragraph is redundant and omitted.

Clause 11 - Section 33 (1) - Certain business assets. Business assets are no longer dutiable property, so there is no need to determine rates of duty. This section has been recast to allow the determination of the rate of duty to be charged on a dutiable transaction that is related to a partnership interest or an interest in property mentioned in the new section 10 (1) (j), other than an interest in land (ie section 10 (1) (a), (b) or (c)). Note that all interests in land are excluded from this provision and they remain dutiable at the general rate under section 31.

Clause 12 - Section 33 (2). This clause substitutes references to the old subsection (1) (c) with the new subsection (1) (a).

Clause 13 - Definitions for ch 5. Section 133, definition of *lease*, paragraph (c). The only franchise arrangement that is now liable to duty is a long term franchise arrangement as described in this provision. This has been moved, unchanged, from section 141A (2) (now omitted - see Clause 14). The Note indicates that transitional provisions in relation to the former paragraph (c) are in section 401.

Clause 14 - General rate – franchise arrangements. Section 141A (2). As there is now only one type of franchise arrangement that is liable to duty, this section has been omitted.

Clause 15 - New chapter 14. Transitional provisions for Duties Amendment Act 2006.

Section 400 Application of ch 2 to certain transfers and transactions.

Section 400 (1) refers to the repealed provisions in sections 10 (1) (g) and (h) in relation to business assets and statutory licences or permissions. For convenience, the repealed provisions that were in force up to 30 June 2006 are quoted in Note 1. To assist in the calculation of duty prior to 1 July 2006, Note 2 advises that the duty liability in relation to section 10 (1) (g) was apportioned under section 27, and the rate of duty was determined under section 33 (both as in force before 1 July 2006).

Section 400 (2) provides anti-avoidance measures to ensure that chapter 2, as it was in force on 30 June 2006, still applies to a transfer or transaction that replaces a dutiable transaction made before the abolition of these duties. Also, duty cannot be avoided by the use of options, or by any arrangement made where the only or main purpose was to defer the transfer or transaction so that chapter 2 would not apply.

Section 401 Application of ch 2 to certain transfers and transactions.

Section 401 (1) refers to the *previous provision* which means section 133 (1), definition of *lease*, paragraph (c) as in force on 30 June 2006 which, for convenience, is quoted.

Section 401 (2) provides anti-avoidance measures to ensure that chapter 5, as in force on 30 June 2006, still applies to a lease instrument that replaces one that was made before the abolition of duty on this type of franchise arrangement. Also, duty cannot be avoided by any arrangement where the only or main purpose was to defer the execution of, or variation to such a lease instrument so that chapter 5 would not apply.

Section 402 - Transitional regulations – ch 14. This provision allows the executive to make transitional regulations where they consider any matter is not dealt with adequately or appropriately in this chapter. This power would usually be used to address any avoidance issues that may arise after the amendment is in place. To allow sufficient time to follow the transitional regulation with an amendment to the Act, such regulations expire 12 months after they commence.

Section 403 Expiry of ch 14. The provisions in chapter 14 are transitional and have been made to assist taxpayers in ascertaining any liability that may arise in relation to a period prior to 1 July 2006. The whole chapter expires on 1 July 2011, five years after commencement.

Clause 16 - Dictionary, definition of *partnership interest*. A new definition is added to the Dictionary.