

2002

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

DUTIES AMENDMENT BILL 2002 (No 2)

EXPLANATORY STATEMENT

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Duties Amendment Bill 2002 (No 2)

Summary

The *Duties Act 1999* (the Duties Act) commenced on 1 March 1999. It was developed under the Stamp Duties Rewrite Project undertaken by NSW, Victoria, South Australia, Tasmania and the ACT. The project aimed to produce stamp duty legislation which was contemporary in language and presentation, simple to administer, and, where possible, consistent across the participating jurisdictions. Since its introduction on 1 March 1999, several amendments have been made to the Duties Act in line with amendments made to the NSW Duties Act to maintain these aims.

This Bill amends the Duties Act to incorporate further relevant changes made to the NSW Duties Act. It also provides for duty to be charged only on additional land on the regrant of a lease with additional land, it gives the commissioner the power to obtain a valuation for a lease at the time it is granted, and omits the duty exemption for the buyback of shares in a public company.

In brief, the Bill:

- ◆ extends duty exemption to the transfer of interests in shares or units if the interest is quoted on the stock exchange;
- ◆ ensures that duty is now charged on the value of a business asset attributable to sales to Territory customers. This clarifies the method of determining the dutiable value of business assets with a connection outside the Territory, including those outside Australia;
- ◆ allows the commissioner to obtain the unencumbered value of a Crown lease at the time it is granted where the granting body has not determined the value, or the commissioner is not satisfied with the value determined by the granting body, and pass the cost of obtaining the valuation to the lessee;
- ◆ limits concessional rates of duty available for certain transactions to superannuation funds or trusts to where the transfer is from a trustee or custodian of a relevant fund;
- ◆ payment of duty only on the additional land where the regranted land includes all or part of the surrendered land;
- ◆ extends the prohibition on the registration of instruments where duty has not been paid to also apply to dutiable transactions (where there may not be an instrument), and to cases where the transfer is made by electronic means; and
- ◆ omits the duty exemption for the buyback of shares so that an unlisted public company is not exempt.

Revenue/Cost Implications

This amendment is unlikely to have direct revenue or cost implications. The changes which follow NSW amendments are to prevent administrative difficulties which may arise in the future if the provisions are not amended.

Details of the Bill are attached.



Details of the Duties Amendment Bill 2002 (No 2)

Clause 1 Name of Act

This Act is the *Duties Amendment Act 2002 (No 2)*.

Clause 2 Commencement

This Act commences on the day after its notification day.

Clause 3 Act amended

This Act amends the *Duties Act 1999*.

Clause 4 Dutiable property Section 10 (2) (b)

Shares, or units in a unit trust scheme, that are quoted on a stock exchange are not dutiable property under the *Duties Act 1999*. Interests in such shares or units are also not considered to be dutiable property. Therefore the transfer of such shares, units or interests are not dutiable under the Act.

The substitution of a new section 10 (2) (b) restates the existing provision that interests in shares or units are not dutiable property if the shares or units are quoted on a stock exchange. In addition, it makes the shares or units not dutiable property if the interest (rather than the share or unit) is quoted on a stock exchange. This extends duty exemption to the transfer of such interests.

Clause 5 What is the *dutiable value* of dutiable property? Section 20 (2)

The existing section 20 (2) provides that section 27 (Apportionment – business assets in this and other jurisdictions) applies to the value of a business asset where there is a relevant connection to the Commonwealth and to another Australian jurisdiction. Currently there can be no apportionment where there are sales outside Australia as they are not included in this provision and section 27 does not apply.

The intention is to charge duty on the value of the asset that is attributable to sales to Territory customers. A new section 20 (2) has been substituted and the dutiable value of a business asset to which section 27 applies will now be determined in accordance with that section in all cases. This ensures that duty is not assessed on the value of assets attributable to sales to all non-Territory customers, including those outside Australia.

Clause 6 Section 22(4) and (5)

New subsections (4), (5), (5A), (5B) and (5C) are inserted.

Subsection (4) restates the unchanged definition of **unencumbered value** of a Crown lease at the time it is granted. Subsection (5B) restates the conditions that must be assumed when determining the unencumbered value of a Crown lease at the time it is granted, and extends the provision to include a person valuing a lease under subsection (5) (a) or (5A) (a), as well as the granting body.

The commissioner already has the power to have property valued if he/she is not satisfied with a value provided, and to pass the cost of obtaining that value on to the lessee. However, this power did not apply to obtaining a value at the time a Crown lease was granted. The additional provisions in subsections (5) and (5A) simply extend the commissioner's power to include obtaining a valuation as at the time a Crown lease is granted. The commissioner may now obtain such a value if not satisfied with the amount determined by the granting body or if the granting body does not provide a valuation. Under subsection (5C) the commissioner may recover the cost of obtaining the valuation from the lessee if the unencumbered value obtained is greater than that provided by the granting body, or if the granting body did not determine a value.

Clause 7 Section 22

This is a technical requirement to renumber the subsections when the Act is next republished.

Clause 8 Section 63, heading

A new heading, **Transfers between trustees and custodians of superannuation funds or trusts** is substituted to clearly describe the purpose of the provision.

Clause 9 Section 63 (1) to (3)

The substitution of a new section 63 (1) and (2) is to limit the concessional rates of duty available for certain transactions related to superannuation funds or trusts. The wording in the new section 63 (1) has been simplified by defining **relevant fund or trust** and **complying superannuation fund** separately (see clause 9 herein). The section now clearly provides that the concession applies only where the transfer is from a trustee or custodian (as the case may be) of a relevant fund if there is no change in the beneficial ownership of the property.

The new section 63 (2) restates the concessional duty to be charged on these dutiable transactions. There is no change to the concessional rates.

Clause 10 Section 63 (4)

This changes the reference in section 63 (4) from “subsection (3)” to the new “subsection (2)” reflecting the changes in clause 7 herein.

Clause 11 New section 63 (5)

A new subsection 63 (5) is inserted to define *complying superannuation fund* and *relevant fund or trust* for the purposes of section 63. The meaning of these terms is unchanged, but having them defined separately allows the wording of section 63 (1) (as in clause 7 herein) to be simplified.

Clause 12 Section 63

This is a technical requirement to renumber the subsections when the Act is next republished.

**Clause 13 Regrant of lease with additional land
Section 68A (b)**

Where a Crown lease is granted to the previous lessee with additional land after the surrender of the previous lease, duty is charged only on the interest in the additional land. This is because duty has already been paid on the land which is regranted when the previous lease was granted.

The provision only applied where the regranted land included all of the surrendered land. The provision is now extended to include situations where the regranted land includes only part of the surrendered land plus the additional land.

**Clause 14 Marketable securities
Section 75 (1)**

The policy intention of section 75 (1) was for the buy back of shares in a Territory company which was a **listed** public company to be exempt from duty if the buyback was in accordance with the Corporations Act, part 2J.1, division 2, unless the purchaser will issue marketable securities. However, the word “listed” was not included in the provision and the current exemption applies to all public companies, including those not listed on a stock exchange.

The term “transfer” (for Chapter 2) is defined as including “an assignment, an exchange and a buyback of shares in accordance with the Corporations Act, part 2J.1, division 2”. There is a clear intention that some buybacks were to remain liable to the duty imposed by Chapter 2 of the Duties Act and that the exemption was intended to be limited. This differs from NSW, as their definition of transfer does not include a reference to a buyback of shares and their current exemption for a conforming buyback of shares is not limited.

It is no longer necessary to make the buyback of shares for a “listed” public company exempt from duty. Such an exemption would be ineffective as all duty on the transfer of quoted marketable securities was abolished from 1 July 2001.

Omitting section 75 (1) removes the exemption entirely. As a result, the buyback of shares for unlisted public companies will become liable to duty in line with the original intention. The removal of the exemption has no impact on the buyback of shares in a private company which was, and continues to be, liable to duty.

Clause 15 Section 75

This is a technical requirement to renumber the subsections when the Act is next republished.

**Clause 16 Registration of instruments
Section 247**

The insertion of “a dutiable transaction” extends the operation of section 247 to any dutiable transaction (whether or not it is effected by a written instrument).

Clause 17 Section 247 (b)

Section 247 (b) is restated and the insertion of a new subsection (c) extends the prohibition to register any dutiable transaction, an instrument that effects a dutiable transaction or an instrument chargeable with duty unless it is stamped or there is other evidence that duty has been paid. It now includes the registration of any dutiable transaction that bears an endorsement, or is otherwise effected, in accordance with an approval under the *Taxation Administration Act 1999* section 42 (Special arrangements for classes of persons) or 43 (Special arrangements for individual applicants).

**Clause 18 Taxation Administration Act 1999
Sections 42 (4) (a), (b) and (c) and 43 (3) (a) and (b)**

The substitution of new subparagraphs (a), (b) and (c) in sections 42 and 43 of the *Taxation Administration Act 1999* is consequential to the amendments in Clauses 13 and 14 herein.

The new subparagraphs:

- ◆ update the language;
- ◆ correct an error in section 42 by replacing “and” at the end of subsections (a) and (b) with “or” so that any or all of the subsections can apply; and
- ◆ include the lodging of returns and payments of tax by electronic means in section 43.