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

DUTIES AMENDMENT BILL 2001 (NO 2)

EXPLANATORY MEMORANDUM

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Duties Amendment Bill 2001 (No 2)

Summary

The *Duties Act 1999* (the Duties Act), which imposes duty on a range of dutiable property, replaced the *Stamp Duties and Taxes Act 1987* on 1 March 1999 as part of a major rewrite of State and Territory stamp duty legislation. Since its commencement, the ACT has encountered difficulties with the operation of the Duties Act which require legislative amendments. Amendments are also needed to:

- implement the Government's Competitive Neutrality Policy and National Competition Policy principles which, at the same time, would facilitate efficient and transparent operation of Government transactions;
- clarify the obligations of those issuing Crown leases on behalf of the Government; and
- where appropriate, bring the Duties Act in line with NSW legislation.

The *Duties Amendment Bill 2001 (No 2)*, therefore, amends the Duties Act to address a number of these issues. There are also minor consequential amendments to the *Taxation Administration Act 1999* (Taxation Administration Act) and some housekeeping and technical amendments to the Duties Act and the *Duties Amendment Act 2000 (No 3)*.

Briefly, the Bill:

- exempts the Territory from liability to pay duty under the Duties Act;
- allows the Minister to determine a Territory authority or agent to be liable to pay duty under the Duties Act in line with Competitive Neutrality and Competition policies;
- allows the Minister to determine agencies with no legal identity in their own right (administrative units of departments, or parts thereof) as liable to pay an amount of duty, by a duty equivalent determination;
- specifies that the vesting of an existing interest in property is a 'transfer';
- clarifies the obligations of the Land Department and others granting and issuing Crown leases on behalf of the Government;
- provides for concessional duty for certain land rich transactions involving transfers between trustees, custodians and nominees;
- provides an exemption from duty under part 3 chapter 3 for landrich private corporations which are liable to duty under both parts 2 and 3 of chapter 3 for the same transaction;

- imposes duty on all voluntary transfers of engagements and mergers made by authorised deposit taking institutions pursuant to the *Financial Sector (Transfers of Business) Act 1999* (Cwlth), unless the transfer falls into a class exempted from duty under guidelines determined by the Minister;
- imposes duty on leases based on the higher of the cost or the value of the lease, or the unencumbered value of the Crown lease which is the subject of the lease;
- increases the exemption threshold for leases (other than franchise arrangements) from \$3,000 cost to \$10,000 yearly cost or yearly value;
- allows commissioner's agents to process simple documents and in some cases there will be no duty, in others the minimum duty will not apply;
- provides exemption for corporate reconstruction for landrich companies;
- provides for general housekeeping, editorial and technical amendments; and
- makes consequential amendments to the Taxation Administration Act.

Revenue/Cost Implications

The prevention of revenue loss due to tax minimisation and the effect of anti-avoidance measures is broadly estimated at \$1-2 million per year, based on estimates of previous losses and depending on the number and type of transactions. There will also be some minimisation of Whole of Government and Revenue Office administration costs.

Details of the Bill are attached.



Details of the Duties Amendment Bill 2001 (No 2)

Part 1 Preliminary

Clause 1 Name of Act

This Act is the *Duties Amendment Act 2001(No 2)*.

Clause 2 Commencement

- (1) This Act commences on the day that it is notified in the Gazette; and
- (2) An item in Schedule 1 is taken to have commenced on the date indicated after the item.

Part 2 Duties Act 1999

Clause 3 Act Amended – pt 2

This part amends the *Duties Act 1999* (Duties Act), with additional amendments in schedule 1 part 1.

Clause 4 New sections 4 and 4A

The Territory will be exempt from duty, and those entities and functions which are subject to duty will be listed by determination. In line with the Government's Competitive Neutrality Policy and National Competition Policy principles, those made liable to duty will be Territory authorities and agencies, and departments (as defined) involved in commercial activity in direct competition with private sector businesses.

4 Liability for payment of duty by the Territory

A new section 4 is inserted whereby the Territory is not liable to pay duty under this Act. The exception to this is where the Minister, by determination, makes a Territory authority, or an agent of the Territory, liable to pay duty under this Act. The authority or agent must be an entity capable of suing and being sued in their own name.

4A Payment of duty equivalents by Territory departments

A new section 4A, is inserted. This allows the Minister to make a department liable to duty under this Act by a duty equivalent determination. This will apply if they carry out any activity (or any activity which is stated in the determination) if the department would be liable to pay an amount of duty under this Act (the duty equivalent) if it were a Territory company.

In this section, a department, in relation to a duty equivalent determination, means a stated administrative unit, a part of an identified administrative unit, or a group of 2 or more administrative units stated in the determination.

A determination and a duty equivalent determination are both disallowable instruments and it is noted that a disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

Clause 5 Imposition of duty on certain transactions concerning dutiable property

Section 7 (1) (b) (iv) is omitted as the new definition of *transfer* (see Dictionary) includes a vesting, whether the vesting is by statute or court order.

Clause 6 Section 7 (3) is substituted.

In this section, the *grant* of a Crown lease over land includes the grant of a new lease following the surrender or determination of a Crown lease over land that includes part or all of the land over which the new lease is granted.

Also, in this section, *transfer* does not include a transaction treated as a transfer by Chapter 3. This ensures there is no double duty if a chapter 3 transaction involves the vesting of an interest in property under a court order.

Clause 7 Imposition of duty on dutiable transactions that are not transfers. Section 8 (2), table, item relating to vesting on merger.

The item relating to vesting on merger in the table under Section 8 (2) is omitted. This is a consequence of the amendment in clause 5 of the Bill. Vesting will now be included in the definition of transfer (see Dictionary).

Clause 8 What is the *unencumbered value* of dutiable property? – Section 22 (4) and (5)

Land Department is omitted and *granting body* is substituted in recognition of the fact that Crown leases are now granted and issued by other administrative units and entities.

Clause 9 Section 22 (6) and (7)

Subsections (6) and (7) are substituted with subsection (6), which states that, in this section:

- *grant* of a Crown lease over a parcel of land includes a grant of a second or subsequent lease over the same parcel, and
- *granting body* in relation to a Crown lease means the administrative unit or other entity responsible for arranging the grant.

This change clarifies the responsibilities of the Land Department and others granting and issuing Crown leases.

Clause 10 How may an interest be acquired?

Section 84 (d) after *share*, insert *or unit*. This corrects an oversight in a previous amendment.

Clause 11 Transactions subject to prescribed duty

Section 91, heading.

This substitutes a new, more appropriate, heading, **Ch 3 transactions – concessional duty**.

Clause 12 Section 91.

Inserts (1) before the word *Duty*. This is a housekeeping amendment to enable the insertion of new subsections.

Clause 13 New section 91 (2) to (4)

New subsections 91 (2) to (4) of the Duties Act are inserted. These additional provisions make appropriate concessions for transactions under chapter 3 that are equivalent to concessions already within chapter 2 of the Duties Act.

It is now possible to be liable to concessional duty under chapter 2, and also concessional duty under chapter 3. These particular chapter 3 transactions were previously liable to full duty.

Clause 14 Entitlement to voting shares arising from capital reduction or rights alteration

A new section 100 (3) is inserted so that section 100 does not apply to an acquisition of voting shares that is also a relevant acquisition for s86 (part 2 chapter 3). As part 3 chapter 3 now applies to both public and private companies, this will ensure that a landholding private corporation is only charged duty under part 2 of chapter 3 where the relevant acquisition is also an acquisition of voting shares under part 3.

This addresses an unintended consequence of a previous amendment.

Clause 15 New chapter 3, part 6

After section 115, a new part is introduced into chapter 3, which adds another transaction which is to be treated as a transfer for the purposes of this chapter.

PART 6 – VOLUNTARY TRANSFERS UNDER THE FINANCIAL SECTOR (TRANSFERS OF BUSINESS) ACT 1999 (CWLTH)

This new part compels all receiving bodies to whom dutiable property is voluntarily transferred under the *Financial Sector (Transfers Of Business) Act 1999* (Cwlth) (FS (TB) Act) to lodge a declaration with the commissioner.

Duty will be payable on this declaration in accordance with duty payable for like transfers of property under the Duties Act, unless the transaction falls into a class exempted from duty under guidelines determined by the Minister. The determination is a disallowable instrument and must be notified and presented to the Legislative Assembly under the *Legislation Act 2001*.

This part applies even though the effect of the FS (TB) Act is that such a voluntary transfer of a business is not a dutiable transaction under this Act.

Where the voluntary transfer does not fit the exemption guidelines, the receiving body will be liable to pay duty on the transfer.

Clause 16 Section 135

Substitute 135 How duty is charged on a lease instrument

This section has been amended to ensure that duty is charged on a lease instrument on any one of the cost or the value of the lease, or the unencumbered value of the Crown lease of the relevant land, as determined under this chapter. The provisions in sections 140, 141 and 141A will determine which amount is to be used.

Clause 17 Sections 140 and 141

Substitutes sections 140 and 141, and a new section 141A is introduced.

140 General rate – short term leases

Duty for a short term lease (other than a franchise arrangement) is payable at the determined rate on the higher of the cost of the lease and the *value of the lease*.

It is noted that the commissioner may require the person liable to pay duty to obtain a valuation of the lease for this paragraph. If not satisfied, the commissioner may obtain a second valuation and the cost of that valuation may be recovered from the person liable to pay the duty. See section 251, and clauses 35 and 36 herein.

141 General rate—long-term leases

Duty is payable for a *long-term lease* (other than a franchise arrangement) at the determined rate on the higher of the cost of the lease and the unencumbered value of the Crown lease of the land that is the subject of the long-term lease. Section 251 applies to this section.

The effect of these two sections is to protect the revenue base. Short term leases issued at nominal cost will no longer be able to avoid or reduce duty payable as they will be assessed on the higher of the cost or the value of the lease. Long term leases, where the effect has been equivalent to an actual transfer of the land, will now pay duty on the higher of the cost of the lease or the unencumbered value of the Crown lease of the land to which the lease applies.

Franchise agreements have specifically been excluded from these changes, and to ensure their continued assessment on a cost basis a new section 141A has been introduced.

141A General rate – franchise agreements

Duty for a lease that is a franchise arrangement is payable on the cost of the arrangement at the determined rate (see section 136 (3) and (4) What is the cost of a lease).

The determined rate for a long term franchise arrangement remains the same as for long term leases (section 141), and that for any other franchise arrangement remains the same as for short term leases (section 140).

Clause 18 Exemption from duty and nominal duty

Substitutes a new heading for section 142, **Related instruments – exemptions and concessions**, which is more descriptive of the section's function.

Clauses 19 and 20 In sections 143 (2) and 149 (1) and (3), the word *total* is omitted as it is superfluous.

Clause 21 Exemptions

Substitutes a new heading for section 150, **Exemptions – lease instruments**, which is more descriptive of the section's function

Clause 22 Section 150

Inserts (1) before the words *A lease*. This is a housekeeping amendment to enable the insertion of new subsections.

Clause 23 Section 150 (a) and (b)

Substitutes section 150 (a) so that no duty will be charged on a lease (other than a franchise arrangement) whose yearly cost is no more than \$10,000, and whose yearly value is also no more than \$10,000. This also substitutes section 150 (b) so that no duty will be charged on a lease that is a franchise arrangement whose yearly cost is no more than \$3,000.

By increasing the threshold for leases (other than franchise arrangements) to \$10,000, administration costs will be reduced as there will be no liability for small amounts of duty on all low value leases and licences. The threshold for franchise arrangements remains unchanged at \$3,000.

Clause 24 New section 150 (2)

Section 150 (2) is inserted. It defines the meaning of the *yearly cost* of a lease and the *yearly value* of a lease for the purposes of subsection (1) (a). If the term is 1 year or shorter, the *yearly cost* is the cost of the lease, and the *yearly value* is the value of the lease. It provides examples of calculations for both the *yearly cost* and the *yearly value* where the term of a lease is longer than 1 year.

Clause 25 Section 203

Substitutes a new heading, **Meaning of dutiable value for pt 1**, and a new definition of *dutiable value* which removes the reference to sales tax.

A new Section 203A entitled **Registration of vehicles in the name of 2 or more people** is inserted. Section 203A makes it clear that in chapter 9 of the Duties Act, a reference to a person in whose name the vehicle was, is or is to be registered includes a reference to all or any of the people in whose names the vehicle was, is or is to be registered.

Clauses 26, 27, 28, 29, and 30 **Imposition of duty, Section 204 (b);**
Successors of deceased persons, section 212 (2); Registration charges consequent
on Vehicle Registration Act, section 213A (1) (a); Prerequisites for registration,
section 221 (1) (a); and Section 221 (1) (b).

These editorial changes implement section 203A and make these sections more succinct.

Clause 31 **Returns by road transport authority.**

In section 223, the words *statements and other information* are inserted after the word *certificates*. This is an editorial change, to correct the unintended omission of these words in a previous consequential amendment to the Duties Act.

Clause 32 **Minimum amount of duty.**

This amends section 229 (1) by inserting the words *and section 229A* after the words *subsection (2)*. This is an editorial change consequent to the new section 229A under clause 33 herein.

Clause 33 **New section 229A**

This inserts a new section 229A entitled **Approved agents and taxpayers—
exemption from \$20 concessional duty and s229 minimum duty**

In this section, the commissioner may make approvals under sections 42 or 43 of the Taxation Administration Act, whereby specified transactions can be processed by approved agents and taxpayers. They are recorded in a return lodged, or record kept, in accordance with the approval. See part 3 schedule 1 herein.

For those transactions which are processed by approved agents and recorded in a return lodged, or record kept in accordance with the approval:

- under section 229A (1), for provisions stated in the approval, no duty will be payable for a transaction that would attract duty of \$20 apart from this section, and
- under section 229A (2) the payment of duty of less than \$20 is required, rather than the minimum duty imposed by s229.

Clause 34 **Members of a group of corporations.**

This renames section 232 as **Corporate reconstructions—exemptions**, and substitutes a new section.

This amendment now allows exemptions for corporate reconstructions so that relief is provided in respect of dutiable transactions, transactions under the landrich provisions, and applications for motor vehicle registrations, where they meet the guidelines determined by the Minister.

Previously, only transactions of dutiable property and applications to register motor vehicles were eligible for exemption. Where they otherwise met the requirements of the guidelines, duty payable on transactions under the landrich provisions was waived.

This change will reduce administrative costs in processing waivers and provide certainty for the taxpayer.

Clause 35 Valuation of property

In Section 251 (1) *unencumbered value* is omitted and *value (unencumbered or otherwise)* is substituted.

Clause 36 Section 251 (4)

The words *of the dutiable property* are omitted.

These changes to section 251 are consequential to the changes in sections 135 and 140 herein. Section 251 allows the commissioner to recover the cost of obtaining a second valuation from the person liable to pay duty in any situation where another valuation is required.

Clause 37 Dictionary, definition of *complying superannuation fund*, paragraph (a).

This amends the definition of *complying superannuation fund* by inserting after the number 42, the words *or 42A*. This is an editorial change necessary to reflect amendments to the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.

Clause 38 Dictionary, definition of *transfer*.

This defines the meaning of *transfer* to include—

- (a) assignment; and
- (b) exchange; and
- (c) vesting of an interest in property under a law of the Territory, the Commonwealth, a State or another Territory, unless the interest did not exist before it is vested; and
- (d) vesting of an interest in property under a court order, unless the interest did not exist before it is vested.

This expands the meaning of transfer to include vesting, whether by statute or court order. Vesting only applies to an interest that existed before the vesting, and not to the creation of an interest by vesting. Other references to vesting in chapter 2 have been omitted by Clause 5 and Clause 7 herein.

Clause 39 Dictionary, new definitions

The new definition of *value of the lease* is inserted into the Dictionary. See Clause 17.

Part 3 Additional amendments

Clause 40 Acts amended – sch 1

Schedule 1 makes a number of consequential and technical amendments the *Duties Act 1999*, the *Duties Amendment Act 2000 (No 3)*, and the *Taxation Administration Act 1999*.