



Australian Capital Territory

Duties Amendment Act 2009 (No 2)

A2009-45

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Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

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Australian Capital Territory

Duties Amendment Act 2009 (No 2)

A2009-45

An Act to amend the *Duties Act 1999*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 Name of Act

This Act is the *Duties Amendment Act 2009 (No 2)*.

2 Commencement

- (1) This Act (other than section 19 and section 20) commences on the day after its notification day.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

- (2) Section 19 and section 20 commence on a day fixed by the Minister by written notice.

Note 1 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

Note 2 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

3 Legislation amended

This Act amends the *Duties Act 1999*.

4 Section 4

substitute

4 Territory not liable for payment of duty

The Territory is not liable to pay duty under this Act.

Note Prescribed territory entities are not exempt from paying duty (see *Taxation (Government Business Enterprises) Act 2003*, s 9).

5 Payment of duty equivalents by territory departments Section 4A

omit

6 **No double duty**
Section 17 (9)

substitute

- (9) This section does not apply to a personal relationship financial agreement if—
- (a) the agreement provides for a transfer of dutiable property; and
 - (b) the transfer is not exempt from duty under section 74B (Transfers relating to certain personal relationships).
- (10) In this section:

personal relationship financial agreement means—

- (a) a financial agreement made under the *Family Law Act 1975* (Cwlth), section 90B, section 90C or section 90D that is binding on the parties under that Act; or
- (b) a part VIIIAB financial agreement made under the *Family Law Act 1975* (Cwlth), section 90UB, section 90UC or section 90UD that is binding on the parties under that Act; or
- (c) a domestic relationship agreement or termination agreement under the *Domestic Relationships Act 1994*.

7 **Cancelled agreements**
Section 50 (1)

omit

rescinded or annulled

substitute

cancelled

8 Section 50 (2)

substitute

- (2) The commissioner must reassess and refund duty paid on an agreement if—
 - (a) the agreement is not liable to duty under this chapter because of this section; and
 - (b) an application for a refund is made within the later of—
 - (i) 5 years after the initial assessment; or
 - (ii) 1 year after the agreement is cancelled.

- (3) In this section:

cancelled means rescinded, annulled or otherwise terminated without completion.

9 New section 50A

insert

50A Cancelled transfer of dutiable property

- (1) A transfer of dutiable property by instrument is not liable to duty under this chapter if the commissioner is satisfied that—
 - (a) the transfer instrument is cancelled and the dutiable property is not transferred to the transferee; and
 - (b) the transfer was not cancelled to give effect to a subsale.
- (2) The commissioner must reassess and refund duty paid on a transfer of dutiable property if—
 - (a) the transfer is not liable to duty under this chapter because of this section; and
 - (b) an application for a refund is made within 5 years after the initial assessment.

-
- (3) The transfer instrument must be surrendered to the commissioner unless the commissioner dispenses with that requirement.
- (4) In this section:
- cancelled*—
- (a) means rescinded, annulled or otherwise terminated without completion; and
- (b) includes abandoned.

10 Financial and other agreements

New section 74A (aa)

insert

- (aa) a part VIIIAB financial agreement made under the *Family Law Act 1975* (Cwlth), section 90UB, section 90UC or section 90UD that is binding on the parties under that Act; or

11 Transfers relating to certain personal relationships

New section 74B (2A)

insert

- (2A) No duty is chargeable under this chapter on a transfer of dutiable property under a part VIIIAB financial agreement made under the *Family Law Act 1975* (Cwlth), section 90UB, section 90UC or section 90UD that is binding on the parties under that Act, if—
- (a) the commissioner is satisfied that the transfer is consequent on the end of the de facto relationship between the parties; and
- (b) the property is relationship property; and
- (c) the transfer is—
- (i) to the parties to the relationship, or to either of them; or
- (ii) to a child or children of either of them, or to a person in trust for the child or children.

12 New section 74B (4A)

insert

- (4A) For subsection (2A) (a), in deciding whether a transfer under a part VIIIAB financial agreement is consequent on the end of a de facto relationship, the commissioner must have regard to any separation declaration made by a spouse party to the agreement under the *Family Law Act 1975* (Cwlth), section 90UF.

13 Section 74B (6)

omit

Subsections (4)

substitute

Subsections (4), (4A)

14 Section 74B (7), new definitions

insert

de facto relationship—see the *Family Law Act 1975* (Cwlth), section 4AA.

spouse party—see the *Family Law Act 1975* (Cwlth), section 4.

**15 Exempt transactions relating to certain personal relationships
New section 115H (2A)**

insert

- (2A) No duty is chargeable on a chapter 3 transaction made under a part VIIIAB financial agreement made under the *Family Law Act 1975* (Cwlth), section 90UB, section 90UC or section 90UD that is binding on the parties under that Act, if—
- (a) the commissioner is satisfied that the transaction is consequent on the end of the de facto relationship between the parties; and

- (b) the property that is the subject of the transaction is relationship property; and
- (c) the parties to the transaction are—
 - (i) the parties to the relationship, or either of them; or
 - (ii) a child or children of either of them, or a trustee for the child or children.

16 New section 115H (4A)

insert

- (4A) For subsection (2A) (a), in deciding whether a transaction under a part VIIIAB financial agreement is consequent on the end of a de facto relationship, the commissioner must have regard to any separation declaration made by a spouse party to the agreement under the *Family Law Act 1975* (Cwlth), section 90UF.

17 Section 115H (6)

omit

Subsections (4)

substitute

Subsections (4), (4A)

18 Section 115H (7), new definitions

before the note, insert

de facto relationship—see the *Family Law Act 1975* (Cwlth), section 4AA.

spouse party—see the *Family Law Act 1975* (Cwlth), section 4.

19 **Rate of duty**
Section 208 (2)

substitute

- (2) Duty payable on an application to register a motor vehicle is payable on the dutiable value of the vehicle at the determined rate if—
- (a) the vehicle has a dutiable value of at least—
 - (i) \$45 000; or
 - (ii) if an amount is determined under the *Taxation Administration Act 1999*, section 139—the amount determined; and
 - (b) the vehicle is not any of the following:
 - (i) a motorcycle (with or without a sidecar);
 - (ii) a large bus (seating 10 or more people, including the driver);
 - (iii) a hearse;
 - (iv) an invalid conveyance;
 - (v) a caravan;
 - (vi) a trailer;
 - (vii) a vehicle with a gross vehicle mass more than 4.5t;
 - (viii) plant or equipment;
 - (ix) a vehicle prescribed by regulation.

Example—par (viii)

forklift

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

20 Section 208 (3)

omit

for this section made under the *Taxation Administration Act 1999*, section 139

substitute

of a determined rate for this section

**21 Vehicle registration transfers relating to certain personal relationships
New section 213 (2A)**

insert

- (2A) No duty is chargeable under this chapter on an application to transfer the registration of a motor vehicle following a transfer of property in the vehicle to the applicant under a part VIIIAB financial agreement made under the *Family Law Act 1975* (Cwlth), section 90UB, section 90UC or section 90UD that is binding on the parties under that Act, if—
- (a) the commissioner is satisfied that the transfer is consequent on the end of the de facto relationship between the parties; and
 - (b) the vehicle is relationship property; and
 - (c) the transfer is—
 - (i) to the parties to the relationship, or to either of them; or
 - (ii) to a child or children of either of them, or to a person in trust for the child or children.

22 New section 213 (4A)

insert

- (4A) For subsection (2A) (a), in deciding whether a transfer under a part VIIIAB financial agreement is consequent on the end of a de facto relationship, the commissioner must have regard to any separation declaration made by a spouse party to the agreement under the *Family Law Act 1975* (Cwlth), section 90UF.

23 Section 213 (6)

omit

Subsections (4)

substitute

Subsections (4), (4A)

24 Section 213 (7), new definitions

insert

de facto relationship—see the *Family Law Act 1975* (Cwlth), section 4AA.

spouse party—see the *Family Law Act 1975* (Cwlth), section 4.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 15 October 2009.

2 Notification

Notified under the Legislation Act on 24 November 2009.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Duties Amendment Bill 2009 (No 2), which was passed by the Legislative Assembly on 17 November 2009.

Clerk of the Legislative Assembly

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