



AUSTRALIAN CAPITAL TERRITORY

## Duties Amendment Act 2000 (No 3)

No 46 of 2000

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AUSTRALIAN CAPITAL TERRITORY

## **Duties Amendment Act 2000 (No 3)**

**No 46 of 2000**

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**An Act to amend the *Duties Act 1999* and to repeal the *Duties (Transitional Provisions) Regulations 2000* and for other purposes**

*[Notified in ACT Gazette No. 39: 28 September 2000]*

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

### **PART 1—PRELIMINARY**

**1 Name of Act**

This Act is the *Duties Amendment Act 2000 (No 3)*.

**2 Commencement**

- (1) Section 23 is taken to have commenced on 1 March 1999.
- (2) Section 24 is taken to have commenced on 25 February 2000.
- (3) Sections 13, 18, 19, 20, 21 and 22 are taken to have commenced on 28 February 2000.
- (4) Section 12 commences on 1 July 2001.
- (5) The remaining provisions commence on the day this Act is notified in the Gazette.

**PART 2—AMENDMENT OF DUTIES ACT 1999**

**3 Act amended by pt 2**

This Part amends the *Duties Act 1999*.

**4 Substitution**

Section 1 is repealed and the following section substituted:

**“1 Name of Act**

This Act is the *Duties Act 1999*.”.

**5 Repeal**

Section 2 is repealed.

**6 Interpretation**

Section 4 is amended by inserting the following definition:

“*registered scheme*—see Division 11 of Part 11.2 of the Corporations Law.”.

**7 Insertion**

After section 16 the following section is inserted:

**“16A Payment of duty: ‘off the plan’ purchase agreements**

**“(1)** For subsection 16 (1), liability for duty on an ‘off the plan’ purchase agreement is taken to arise if at least 1 of the following events happens:

- (a) the agreement is completed;
- (b) the whole, or any part, of the purchaser’s interest under the agreement is assigned;
- (c) the period of 12 months, beginning on the date of the agreement, expires;
- (d) a certificate of occupancy for the building to which the agreement relates has been issued under section 53 of the *Building Act 1972*.

**“(2)** The duty payable on an ‘off the plan’ purchase agreement—

- (a) is payable within 14 days after 1 of those events happens; and
- (b) may be paid before any of those events happens.

**“(3)** Despite subsection 16 (1), a tax default occurs for the Taxation Administration Act if the duty payable on an ‘off the plan’ purchase

agreement is not paid within the period of 14 days that applies under paragraph (2) (a).

“(4) In this section:

‘*off the plan*’ *purchase agreement* means an agreement for the sale or transfer of dutiable property that is, or includes, land on which a residence is to be erected or developed before completion of the sale or transfer.”.

## **8 Certain business assets**

Section 33 is amended by omitting from paragraph (1) (d) “(g)” and substituting “(j)”.

## **9 Change in trustees**

Section 54 is amended—

- (a) by inserting in paragraphs 54 (2) (a) and (b) “except in the case of a responsible entity of a managed investment scheme—” before “none”; and
- (b) by inserting in paragraph 54 (2) (c) “except if a responsible entity of a managed investment scheme acquires a beneficial interest in the managed investment scheme solely as a consequence of its appointment as the responsible entity—” before “the transfer”; and
- (c) by omitting from subsection 54 (3) all the words after “transfer” (second occurring) and substituting “necessary to enable an undertaking that existed before the commencement of Chapter 5C of the Corporations Law to become a registered scheme.”.

## **10 Transfer to custodian of managed investment scheme**

Section 55 is amended by inserting “such” after “trustee of”.

## **11 Insertion**

After section 55 the following sections are inserted:

### **“55A Transfers in relation to managed investment schemes**

Duty of \$20 is chargeable for the transfer of dutiable property—

- (a) from the responsible entity of a managed investment scheme to a custodian or agent of the responsible entity as custodian or agent of the scheme; or

- (b) from a custodian or agent of the responsible entity of a managed investment scheme as custodian or agent of the scheme to the responsible entity.

**“55B Transfers in relation to registered schemes**

“(1) Duty of \$20 is chargeable for the transfer of dutiable property by a trustee of a registered scheme to a custodian or agent of the responsible entity of the scheme as custodian or agent of the scheme.

“(2) However, subsection (1) only applies if—

- (a) before 1 July 1998 the scheme was a prescribed interest scheme; and
- (b) when the scheme became a registered scheme the trustee held the dutiable property as a trustee of the scheme.”.

**12 Insertion**

After section 60 the following section is inserted in Division 1 of Part 6:

**“60A Nomineeing transactions—unquoted marketable securities**

“(1) Duty of \$20 is chargeable for a transfer of marketable securities, other than marketable securities that are not dutiable property, between any of the following persons:

- (a) the beneficial owner;
- (b) a trustee or nominee of the beneficial owner;
- (c) a custodian of a trustee or nominee of the beneficial owner;
- (d) a subcustodian of a custodian of a trustee or nominee of the beneficial owner.

“(2) However, subsection (1) only applies if—

- (a) there is no change in the beneficial ownership of the marketable securities; and
- (b) if the transferee is a person mentioned in paragraph (1) (b), (c) or (d)—
  - (i) the transferee is to hold the marketable securities solely for another person mentioned in paragraph (1) (a), (b) or (c); and
  - (ii) there is no contemplation of the marketable securities being held for any other person; and
- (c) if the transferor is a person mentioned in paragraph (1) (b), (c) or (d)—

- (i) the marketable securities were held by the person solely for another person mentioned in paragraph (1) (a), (b) or (c); and
- (ii) since the time when the marketable securities were first transferred or issued to the transferor, no person has held the marketable securities other than solely for a person mentioned in paragraph (1) (a), (b) or (c).”.

### **13 Substitution**

Section 68 is repealed and the following sections are substituted:

#### **“68 Surrender and regrant of Crown lease**

**“(1)** Duty of \$20 is chargeable for the grant of a new Crown lease to the lessee under a previous Crown lease because of the surrender of the previous lease if the surrender was only for 1 or more of the following purposes:

- (a) changing the purpose for which the land comprised in the lease may be used;
- (b) granting the lessee a longer leasehold interest in the land comprised in the lease;
- (c) reducing rent to not more than 5 cents a year;
- (d) correcting errors or omissions.

**“(2)** Duty of \$20 is chargeable for the grant of new Crown leases to a lessee under a previous Crown lease because of the surrender of the previous lease if the surrender was only for—

- (a) subdividing the land comprised in the surrendered lease; or
- (b) that purpose and 1 or more of the purposes mentioned in paragraphs (1) (a) to (d).

**“(3)** Duty of \$20 is chargeable for the grant of a new Crown lease to a lessee under 2 or more previous Crown leases because of the surrender of the previous leases if the surrender was only for—

- (a) consolidating the land comprised in the surrendered leases; or
- (b) that purpose and 1 or more of the purposes mentioned in paragraphs (1) (a) to (d).

#### **“68A Regrant of lease with additional land**

If—

- (a) a Crown lease is granted to a lessee under a previous Crown lease because of the surrender of the previous lease; and

- (b) the land comprised in the new lease is all the land comprised in the surrendered lease and additional land;

duty is chargeable only on the transfer of the interest in the additional land.”.

#### **14 Transfers relating to mortgages**

Section 74 is amended by adding at the end the following subsection:

“(2) In this section:

*mortgage* means any charge on dutiable property created merely for securing a debt.”.

#### **15 Marketable securities**

Section 75 is amended by omitting subsection (4) and substituting the following subsections:

“(4) No duty is chargeable under this Chapter on—

- (a) a transfer of marketable securities between any of the following persons:
  - (i) the beneficial owner;
  - (ii) a trustee or nominee of the beneficial owner;
  - (iii) a custodian of a trustee or nominee of the beneficial owner;
  - (iv) a subcustodian of a custodian of a trustee or nominee of the beneficial owner; or
- (b) without limiting paragraph (a), a transfer of marketable securities to or from—
  - (i) SECH Nominees Pty Limited; or
  - (ii) CHESSE Depository Nominees Pty Limited; or
  - (iii) a nominee company that holds marketable securities solely for the purpose of facilitating marketable security transaction settlements by a SCH participant; or
- (c) a transfer of marketable securities by or on behalf of an applicant for an instalment warrant to a trustee in exchange for the issue of an instalment warrant by a warrant issuer to the applicant or the nominee of the applicant; or
- (d) a transfer of marketable securities from a trustee to an instalment warrant holder in accordance with the terms of issue of the instalment warrant.



**“(4A)** Subsection (4) applies subject to the following restrictions:

- (a) paragraph (4) (a) only applies if—
  - (i) there is no change in the beneficial ownership of the marketable securities; and
  - (ii) if the transferee is a person mentioned in subparagraph (4) (a) (ii), (iii) or (iv)—the transferee is to hold the marketable securities solely for another person mentioned in subparagraph (4) (a) (i), (ii) or (iii) and there is no contemplation of the marketable securities being held for any other person; and
  - (iii) if the transferor is a person mentioned in subparagraph (4) (a) (ii), (iii) or (iv)—the marketable securities were held by the person solely for another person mentioned in subparagraph (4) (a) (i), (ii) or (iii) and, since the time when the marketable securities were first transferred or issued to the transferor, no person has held the marketable securities other than solely for a person mentioned in subparagraph (4) (a) (i), (ii) or (iii);
- (b) paragraph (4) (b) only applies if—
  - (i) the transfer is made solely for the purpose of facilitating a marketable security transaction settlement; and
  - (ii) there is no change in the beneficial ownership of the marketable securities (except as a result of an on-market transaction settlement).

**“(4B)** Subsections (4) and (4A) and this subsection expire on 30 June 2001.”.

## **16 How may an interest be “acquired”?**

Section 84 is amended—

- (a) by adding at the end of paragraphs 84 (a) and (c) “or”; and
- (b) by inserting after paragraph 84 (c) the following paragraphs:
  - “(d) the variation or alteration of a right of a holder of any such share; or
  - (e) payment of a call on such a share that is partially paid up;”;
- (c) by omitting “(b) and (c)” and substituting “(b), (c), (d) and (e)”.

**17 Interpretation**

Section 96 is amended by omitting “public” from the definition of “company” in subsection 96 (1).

**18 Insertion**

Before section 209 the following section is inserted in Part 2 of Chapter 9:

**“208A Definitions**

In this Part, the following definitions apply:

*demonstrator* means a new motor vehicle used solely for the sale of another motor vehicle of the same kind.

*licensed vehicle dealer* means a licensed dealer under the *Sale of Motor Vehicles Act 1977*.

*trading stock* means a motor vehicle offered or exposed for sale by a licensed vehicle dealer in the course of the dealer’s business, other than a motor vehicle used—

- (a) personally by the dealer or a member of the dealer’s staff or family; or
- (b) for the general purposes of the dealer’s business.”.

**19 Insertion**

After section 209 the following section is inserted:

**“209A Foreign countries**

Duty under this Chapter is not chargeable on an application to register a motor vehicle if—

- (a) the applicant is a foreign country; and
- (b) the vehicle is for the official use of a diplomatic mission of the foreign country based in the Territory.”.

**20 Substitution**

Section 214 is repealed and the following sections are substituted:

**“214 Vehicle dealers—registration of demonstrators and trading stock**

**“(1)** Duty under this Chapter is not chargeable on an application by a licensed vehicle dealer to register a motor vehicle in the dealer’s name if—

- (a) the vehicle is a demonstrator or trading stock; and

- (b) the vehicle is not registered in the name of the dealer at the time of the application.

“(2) However, if the dealer has not—

- (a) disposed of the vehicle; or
- (b) had the registration of the vehicle renewed under section 214A;

within 12 months after its registration under this section, the dealer becomes liable to pay the duty on the application for registration that would have been payable if the exemption under this section had not applied.

**“214A Renewal of registration of demonstrators and trading stock**

“(1) The commissioner may, in accordance with guidelines determined by the Minister, authorise a licensed vehicle dealer to maintain the registration of a motor vehicle mentioned in subsection 214 (1) for more than 12 months without becoming liable for the payment of duty on the application to register the vehicle in his or her name.

“(2) An authorisation under subsection (1) (a *dealer’s authorisation*) may be given subject to conditions.

“(3) A licensed vehicle dealer who renews the registration of a motor vehicle under a dealer’s authorisation becomes liable to pay the duty on the application to register the vehicle in his or her name if—

- (a) the dealer has not disposed of the vehicle within the time for which its registration may be renewed under the authorisation; or
- (b) the authorisation is revoked.

“(4) If a licensed vehicle dealer who has been given a dealer’s authorisation does not comply with a condition of the authorisation, the commissioner may revoke the authorisation.

“(5) The Minister may, in writing, determine guidelines for subsection (1).

“(6) Guidelines determined under subsection (5) may provide for payment of an amount by a licensed vehicle dealer for or in relation to obtaining an authorisation under subsection (1).

“(7) A determination under subsection (5) is a disallowable instrument.”.

**21 Substitution**

Section 222 is repealed and the following section substituted:

**“222 Certificates of exemption**

If, on considering an application for the registration of a motor vehicle, the commissioner is satisfied that the application is exempt from duty—

- (a) under section 209A, 210, 211, 212, 213, 215 or 216; or
- (b) under the *International Organisations (Privileges and Immunities) Act 1963* (Cwlth) or the *Diplomatic Privileges and Immunities Act 1967* (Cwlth);

the commissioner may issue a certificate to that effect.”.

**22 Objections and review of decisions**

Section 252 is amended by inserting after paragraph (1) (p) the following paragraphs:

- “(pa) under subsection 214A (1) refusing to give an authorisation to a licensed vehicle dealer; or
- (pb) under subsection 214A (2) imposing conditions on an authorisation; or
- (pc) under subsection 214A (4) revoking an authorisation; or”.

**23 Continued operation of Part VIB of the Stamp Duties and Taxes Act 1987**

Section 265 is amended by adding at the end of paragraph (1) (a) “in relation to a hire of goods entered into on or after 1 October 1996.”.

**PART 3—MISCELLANEOUS**

**24 Repeal**

The *Duties (Transitional Provisions) Regulations 2000* are repealed.

**25 Transitional**

(1) Anything done or omitted to be done, on or after 28 February 2000 and before the commencement of this section, for or under a relevant provision of the *Duties Act 1999* has effect as if it had been done or omitted to be done for or under that provision as amended, substituted or inserted by this Act.

(2) In this section:

*relevant provision*, of the *Duties Act 1999*, means section 68, 68A, 208A, 209A, 214, 214A or 222, or paragraph 252 (1) (pa), (pb) or (pc) of that Act.

**26 Expiry**

This Part expires the day after this section commences.

*Duties Amendment (No 3) No 46, 2000*

**Endnotes**

**Act amended in Part 2**

- 1 Act 1999 No 7 (not republished). See also Act 1999 No 79; SL 2000 No 15; Act 2000 Nos 5 and 30.

**Regulations repealed in Part 3**

- 2 Subordinate Law 2000 No 15 (not republished).

*[Presentation speech made in Assembly on 29 June 2000]*

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