

LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY

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

**STAMP DUTIES AND TAXES (AMENDMENT) BILL (NO. 3) 1996**

**SUPPLEMENTARY EXPLANATORY MEMORANDUM**

Amendments to be moved on behalf of the Government

Circulated by the authority of the Chief Minister and Treasurer

Kate Carnell MLA

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## **Stamp Duties and Taxes (Amendment) Bill (No. 3) 1996**

Amendments to be moved on behalf of the Government

### **Summary**

The proposals contained in the Stamp Duties and Taxes (Amendment) Bill (No. 3) 1996 (the Bill) are intended to provide the hiring industry in the ACT with a stamp duty regime that closely follows the improved model intended for adoption by states under the multijurisdictional stamp duty rewrite proposals, and also, provide similar exemptions to those provided under existing legislation in NSW.

The purpose of this approach was to ensure that the ACT adopted a superior tax system and that affected industry in the ACT maintained its competitiveness with its counterpart in NSW.

After the introduction of the Bill in the Legislative Assembly extensive discussions were held with hiring industry representatives and other jurisdictions. As a result of these consultations, there are certain amendments that the Government believes can be accommodated which will enhance the Bill, reduce costs to the industry and continue to keep the ACT regime in line with NSW and the ongoing development of the multijurisdictional stamp duty rewrite.

### **Financial implications**

These amendments are expected to have no additional financial implications to those already mentioned in the explanatory memorandum to the Bill.

Details of the Bill are attached.

## **Stamp Duties and Taxes (Amendment) Bill (No. 3) 1996**

### **Details of the amendment sheet to the Bill**

#### **Amendment No. 1**

In clause 4 of the Stamp Duties and Taxes (Amendment) Bill (No. 3) 1996 (the Bill), the proposed section 64F(1) is amended to correct a typographical error by omitting "paragraph 64G(a)" and substituting "paragraph 64G(1)(a)".

#### **Amendment No. 2**

The proposed section 64F(1) currently defines equipment financing arrangements, dutiable at the lower rate of 0.75%, as a hire-purchase agreement, finance lease or an operating lease which are for a term of 9 months or more. A hire-purchase agreement of less than 9 months is therefore categorised as a hire of goods and would be subject to duty at the higher 1.5% rate.

In clause 4 of the Bill, the proposed definition of "equipment financing arrangement" in the proposed section 64F(1) is amended to remove that time limit for hire-purchase agreements, with the effect that any hire-purchase agreement will attract the lower rate of duty.

#### **Amendment No. 3**

In clause 4 of the Bill the proposed paragraph 64H(c) is amended to omit the words "may be used" and substituting the words "are used, or are to be used", to more clearly recognise the distinction between commercial and non-commercial hirers and give more certainty to the coverage of goods to be taxed.

#### **Amendment No. 4**

In clause 4 of the Bill the proposed section 64H is amended by relocating section 64ZB as subsection 64H(2). As a subparagraph to the nexus provisions, rather than a separate provision in the Miscellaneous Division, this change will assist with interpretation.

#### **Amendment No. 5**

Currently, subsection 64K(4) provides for an exemption on floorplan arrangements entered into between a finance company and a dealer or trader in goods (eg. motor vehicle dealers). This ACT measure has been fully supported as it was an issue that raised considerable uncertainty in other jurisdictions.

In recognition of the range of financiers who offer this type of product, the exemption is widened to remove the qualification of "finance company".

In Clause 4 of the Bill the proposed subsection 64K(4) is amended to reflect this change by using the term "finance provider".

#### **Amendment No. 6**

In clause 4 of the Bill the proposed subsection 64L(2) is amended to give examples of those items that are said to be dutiable. The items given as examples to be included as hiring charges are:

- damage waiver;
- damage excess; and
- late return fees.

#### **Amendment No. 7**

In clause 4 of the Bill the proposed subsection 64L(3) is amended to give examples of those items that are said to be non-dutiable. The items given as examples to be excluded are:

- amounts received for delivery, repositioning, erection or installation of the goods, maintenance and cleaning of the goods; and
- insurance premiums paid by the hirer.

#### **Amendment No. 8**

In clause 4 of the Bill the proposed Division 4 is removed. The amendments contained in that proposed Division are now accommodated in the amended section 64H.

#### **Amendment No. 9**

Clause 6 of the Bill is amended by omitting "section 7" and substituting "sections 6A and 7".

#### **Amendment No. 10**

After the proposed section 6 of the Bill, section 6A is inserted in order to deem the initial amounts for the purposes of paragraphs 64G(1)(a) and (b).

The Bill, like other ACT tax legislation, still contemplates a determination under subsection 99(1) of the Tax (Administration) Act as the normal mechanism to fix the amount of duty payable.

Subclauses 6A(1) and (2), however, deem that the initial amounts for the purposes of paragraphs 64G(1)(a) and (b) are as provided in those subclauses.

Subclause 6(3) enables a determination to be made which would continue the effect of subclauses 6A(1) and (2). Because this determination would only carry forward the effect of the percentages and amount provided for in subclauses 6A(1) and (2), and would not change those percentages or that amount it would not be subject to disallowance (subclause 6A(5)).

Subclause 6A(4) then provides that once a determination under subclause 6A(3) is notified in the Gazette, subclauses 6A(1) and (2) expire.

Apart from this, subclause 6A(6) gives the determination made under subclause 6A(3) the same legal effect as a normal determination under the Tax (Administration) Act and could in future be amended or varied in the normal way.