

2009

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Treasurer)

Duties Amendment Bill 2009

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J2008-768

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(As presented)

(Treasurer)

Duties Amendment Bill 2009

A Bill for

An Act to amend the *Duties Act 1999*

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

1 **1 Name of Act**

2 This Act is the *Duties Amendment Act 2009*.

3 **2 Commencement**

4 This Act commences on 1 July 2009.

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

7 **3 Legislation amended**

8 This Act amends the *Duties Act 1999*.

9 **4 New section 73D**

10 *insert*

11 **73D Transfers etc—long-term leases for residential purposes**

12 (1) No duty is chargeable under this chapter on a dutiable transaction
13 that is a transfer or grant of a long-term lease for residential
14 purposes.

15 (2) This section applies to a dutiable transaction entered into on or after
16 29 November 2006.

17 (3) Subsection (2) and this subsection expire 5 years after the day they
18 commence.

1 **5** **Marketable securities**
2 **New section 75 (4)**

3 *before the notes, insert*

- 4 (4) No duty is chargeable under this chapter on a transfer, or an
5 agreement for a sale or transfer, of marketable securities if the
6 commissioner is satisfied that the transfer or agreement is made to
7 give effect to a scheme that would qualify as a roll-over under the
8 *Income Tax Assessment Act 1997* (Cwlth), subdivision 124-Q.

9 **6** **How person *acquires* an interest in a landholder—pt 3.2**
10 **New section 84 (2) (c)**

11 *insert*

- 12 (c) if the person holds an interest in the landholder (whether or not
13 as trustee) and the capacity in which the person holds the
14 interest changes (including if there is a change in the beneficial
15 ownership of an interest held by a person as trustee).

16 **Example—par (c)**

17 a person who holds a unit in the landholder declares a trust in relation to the
18 unit

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

22 **7** **New division 3.7.1 heading**

23 *insert*

24 **Division 3.7.1** **Exempt transactions—personal**
25 **relationships**

1 **8 New division 3.7.2**

2 *after section 115H, insert*

3 **Division 3.7.2 Exempt transactions—‘top hatting’**
4 **arrangements**

5 **115I Definitions—div 3.7.2**

6 In this division:

7 *exchanging members*—see the *Income Tax Assessment Act 1997*
8 (Cwlth), section 124-1045 (1).

9 *interposed trust*—see the *Income Tax Assessment Act 1997* (Cwlth),
10 section 124-1045 (1).

11 **115J Exemption for relevant acquisitions**

12 (1) An exchanging member who makes a relevant acquisition to which
13 section 87 (Acquisition statements) applies may apply to the
14 commissioner for an exemption from duty under this Act on the
15 relevant acquisition.

16 (2) The commissioner must grant the exemption if satisfied that—

17 (a) the relevant acquisition was made to give effect to a scheme
18 that would qualify as a roll-over under the *Income Tax*
19 *Assessment Act 1997* (Cwlth), subdivision 124-Q; and

20 *Note* A roll-over involves a scheme for interposing a unit trust scheme
21 (whether a new or existing unit trust scheme) between people
22 who have an ownership interest in 2 or more unit trust schemes,
23 or in 1 or more companies and 1 or more unit trust schemes, and
24 the unit trust schemes or companies in which they have an
25 ownership interest. The interests of the unit holders or
26 shareholders are stapled together to form stapled securities and
27 the interposed unit trust becomes the owner of all the stapled
28 interests.

-
- 1 (b) when the scheme is completed, the interposed trust will be a
2 listed trust, widely held trust or landholder; and
- 3 (c) the acquisition is not part of a scheme a purpose of which is to
4 minimise duty otherwise payable under this Act; and
- 5 (d) the conditions of the exemption, if any, will be met by the
6 applicant.
- 7 (3) If duty under this chapter has been paid on the relevant acquisition,
8 the commissioner must refund any duty paid that is not payable
9 because of the exemption.

10 **115K Conditions of exemption**

- 11 (1) An exemption granted under this division is subject to any
12 conditions stated by the commissioner.
- 13 (2) A condition of the exemption is binding on each exchanging
14 member.

15 **115L Revocation of exemption**

- 16 (1) The commissioner may revoke an exemption granted under this
17 division if—
- 18 (a) the interposed trust is not a listed trust, widely held trust or
19 landholder when the scheme is completed; or
- 20 (b) the interposed trust ceases to be a listed trust, widely held trust
21 or landholder within 12 months after the day the scheme is
22 completed; or
- 23 (c) the commissioner is no longer satisfied of a matter mentioned
24 in section 115J (2) (a) or (c); or
- 25 (d) the decision to grant the exemption was based on false or
26 misleading information in a material particular given to the
27 commissioner in relation to the application; or
- 28 (e) a condition of the exemption is not met.

- 1 (2) If the commissioner revokes an exemption granted under this
2 division—
- 3 (a) duty is chargeable under this chapter on the relevant
4 acquisition as if the exemption had never been granted; and
- 5 (b) the exchanging member who made the relevant acquisition
6 must lodge an acquisition statement with the commissioner not
7 later than 28 days after the day the exemption is revoked; and
- 8 (c) the commissioner must make an assessment of duty chargeable
9 under this chapter on the relevant acquisition; and
- 10 (d) a tax default happens for the Taxation Administration Act if
11 the whole of any duty assessed under paragraph (c) is not paid
12 to the commissioner within 90 days after the assessment.

13 **9 Objections**
14 **New section 252 (ua) to (uc)**

15 *insert*

- 16 (ua) under section 115J (2) refusing to grant an exemption from
17 duty; or
- 18 (ub) under section 115K imposing a condition on an exemption; or
- 19 (uc) under section 115L revoking an exemption; or

20 **10 Dictionary, new definitions**

21 *insert*

22 *exchanging members*, for division 3.7.2 (Exempt transactions—‘top
23 hatting’ arrangements)—see section 115I.

24 *interposed trust*, for division 3.7.2 (Exempt transactions—‘top
25 hatting’ arrangements)—see section 115I.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2009.

2 Notification

Notified under the Legislation Act on 2009.

3 Republications of amended laws

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

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