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THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

DUTIES AMENDMENT BILL 2000 (NO 3)

EXPLANATORY MEMORANDUM

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Gary Humphries MLA

Duties Amendment Bill 2000 (No 3)

Summary

The *Duties Act 1999* (the Duties Act) and the *Duties (Consequential and Transitional Provisions) Act 1999* (the DC&TP Act) commenced operations on 1 March 1999. This legislation was developed under the Stamp Duties Rewrite Project, undertaken by NSW, Victoria, South Australia, Tasmania and the ACT. Since the introduction of new legislation, both NSW and ACT (the first jurisdictions to introduce the uniform legislation) have encountered difficulties with its operation.

This Bill, therefore, amends the Duties Act to incorporate relevant changes made to the NSW Duties Act, to maintain uniformity, where desirable, and to address a number of issues that have arisen within the ACT. It provides for:

- concessional treatment for transfers between managers, responsible entities and custodians made to comply with the *Managed Investments Act 1998*;
- exemptions from duty on:
  - transfers between trustees, custodians and nominees where there is no change in beneficial ownership;
  - transfers of marketable securities or other dutiable property to secure a debt; and
  - hiring contracts entered into prior to 1 October 1996;
- delays payment of duty on off-the-plan property sales for a maximum period of 12 months; and
- broadens the anti-avoidance provisions to capture land transfers made by way of the redemption of shares and variation to shareholders' rights.

Revenue/Cost Implications

The off-the-plan delayed payment scheme will decrease the amount of duty received during the first 12 months of the scheme's operation, depending on take up. However, there will be no loss of revenue, as the duty will eventually become payable. Other measures are relatively revenue neutral. Concessions are currently being provided by way of waiver under s 65 of the *Financial Management Act 1996*. Removing loopholes from the Duties Act protects the revenue before these have any significant impact on the base.

Details of the Bill are attached.

Details of the Duties Amendment Bill 2000 (No 3)

Title

Clause 1 provides that the name of this Act is the *Duties Amendment Act 2000 (No 3)*.

Commencement

Sub-clause 2(1) provides for sections 23 of this Act to be taken to have commenced on 1 March 1999 (the date of commencement of the *Duties Act 1999*).

Sub-clause 2(2) provides for section 24 to commence on 25 February 2000 (prior to the commencement of the amendment made to the *Duties Act 1999* by way of Regulations – because of the repeal of the Regulations).

Sub-clause 2(3) provides that sections 13, 18, 19, 20, 21 and 22 are to be taken to have commenced on 28 February 2000 (the date of commencement of these provisions by regulation amending the *Duties Act 1999*, which are being repealed – see clause 24).

Sub-clause 2(4) provides for Clause 12 to commence on 1 July 2001 (the date when the *Duties Act 1999* is to cease to apply to listed marketable securities).

Sub-clause 2(5) provides for the remaining provisions to commence on the day this Act is notified in the Gazette.

Act amended by Part 2

Clause 3 provides that Part 2 of the Act amends the *Duties Act 1999*.

Substitution

Clause 4 repeals section 1 and substitutes a new section 1, which provides that the name of the Act is the *Duties Act 1999*.

Repeal

Clause 5 provides for section 2 to be repealed. (Section 2 contained the original commencement provisions of the *Duties Act 1999*).

Interpretation

Clause 6 introduces a new definition into section 4 for "registered scheme" which has the same meaning as these words used in Division 11 of Part 11.2 of the Corporations Law.

Insertion

Clause 7 provides for a new section, 16A, to be inserted which will assist the purchaser of an 'off the plan' residence to not have to pay duty until generally closer to the date of being able to occupy the building.

Sub-clause 7(1) provides for the new section to delay liability to duty on an 'off the plan' purchase agreement until one of the following events occurs. The agreement to purchase is completed; the whole or any part of the purchaser's interest under the agreement is assigned; the period of 12 months expires from the date of the agreement; or a certificate of occupancy is issued.

Sub-clause 7(2) provides that duty on an off the plan purchase is payable within 14 days of one of the events mentioned in sub-clause 7(1) occurring, although nothing prevents payment of duty being made beforehand.

Sub-clause 7(3) indicates that a tax default will occur if payment is not made within the 14 days allowed.

Sub-clause 7(4) defines an 'off the plan' purchase agreement to mean, for the purposes of the section, an agreement for the sale or transfer of land (dutiable property) on which a residence is to be erected or developed before completion of the sale or transfer.

Certain business assets

Clause 8 omits an incorrect reference to 'g' in section 33(1)(d) by substituting it with the correct reference 'j'.

Changes in trustees

Clause 9 amends section 54 to allow the $20 duty concession to apply to certain changes involving the responsibile entity of a managed investment scheme or a scheme honouring an undertaking that existed before the commencement of Chapter 5C of the Corporations Law to become a registered scheme.

Transfer to custodian of managed investment schemes

Clause 10 introduces a drafting style change to section 55.

Insertion

Clause 11 introduces new sections 55A and 55B.

Section 55A prescribes a duty of $20 on a transfer of dutiable property between the responsible entity of a managed investment scheme to its custodian or agent, or from the custodian or agent of the scheme to its responsible entity, as set out in paragraphs 55A(a) and (b).

Section 55B prescribes a duty of $20 on the transfer of dutiable property from the trustee of a registered scheme to a custodian or agent of the responsible entity of the scheme, given the circumstances set out in sub-clauses (1) and (2).

Insertion

Clause 12 introduces a new section 60A for nomineeing transactions relating to unquoted marketable securities. As indicated in the commencement provisions, this section does not commence until 1 July 2001.

Subsection 60A prescribes a duty of $20 on the transfer of marketable securities, other than marketable securities that are not dutiable property, between any one of the following persons: the beneficial owner, his/her nominee, trustee, custodian, or sub-custodian, as long as there is no change in beneficial ownership, and given the circumstances set out in subsections (1), (2) and (3) apply.

Substitution

Clause 13 repeals section 68 and substitutes new sections 68 and 68A.

Section 68 provides for nominal duty of $20 to be charged on the surrender and regrant of Crown leases that:

- change the purpose for which the land in the lease may be used;
- grant the lessee a longer term over the lease;
- reduce rent to no more than 5 cents per annum;
- correct errors or omissions; or
- alter the boundaries, by way of subdivision or consolidation, on an existing Crown lease or leases, but only to the extent that any new Crown lease or leases is only land that was in the previous Crown lease or leases.

Section 68A provides that where a surrender and regrant of a Crown lease occurs and additional land is obtained in the new Crown lease, duty is only chargeable on the transfer of the additional land and not on the whole new Crown lease.

Transfers relating to mortgages

Clause 14 amends section 74 to define that, for the purposes of the section, mortgage means any charge on dutiable property created merely for securing a debt.

Marketable securities

Clause 15 amends section 75 by omitting subsection 4 and substituting new subsections 4, 4A and 4B.

Paragraph 4(a) exempts from duty a transfer of marketable securities between any one of the following persons: the beneficial owner, his/her nominee, trustee, custodian or sub-custodian, as long as there is no change in beneficial ownership, and given the circumstances set out in subsections (4)(a) and (4A)(a) apply.

Paragraph 4(b) exempts from duty a transfer of marketable securities to and from certain nominee companies as long as the circumstances set out in subsections 4(b) and (4A)(b) apply.

Paragraph 4(c) exempts from duty a transfer of marketable securities to a trustee, by or on behalf of an applicant for an instalment warrant, given the circumstances set out in the subsection.

Paragraph 4(d) exempts from duty a transfer of marketable securities to an instalment warrant holder from a trustee, in accordance with the terms of issue of the instalment warrant.

Subsection 4(A) restricts the operation of paragraphs 4(a) and (b).

Subsection 4(B) provides for subsections 4, 4A and 4B to expire on 30 June 2001, as duty is to cease to be imposed on listed marketable securities from this date.

How may an interest be acquired

Clause 16 amends section 84 to extend the coverage of how an interest in a landholding private corporation may be acquired under Part II of Chapter 3.

Sub-clause 16(a) makes a minor drafting change to the existing provisions to provide for the insertion of the new provisions.

Sub-clause 16(b) provides that an acquisition in a landholding private company may be acquired by either a variation or alteration to a right of a share holder, or by the payment of a call on such a share that is partially paid up.

Sub-clause 16(c) also makes a minor drafting change to cater for the insertion of the new provisions.

Interpretation

Clause 17 amends section 96 to extend the definition of company so that the capital reductions and alteration of rights provisions under Part III of Chapter 3 apply to any company, not just a public company.

Insertion - definitions

Clause 18 inserts a new section, 208A, which provides definitions for demonstrator, licensed vehicle dealer and trading stock, under Part 2 of Chapter 9 of the Duties Act.

Insertion

Clause 19 inserts a new section 209A.

Section 209A provides for duty not to be chargeable on the registering in the name of a foreign country of a motor vehicle based in the ACT where the vehicle is used officially for the diplomatic mission purposes of the foreign country.

Substitution

Clause 20 repeals section 214 and substitutes new sections 214 and 214A.

Subsection 214(1) provides an "exemption" from duty on an application by a licensed vehicle dealer to register a motor vehicle in the dealer's name, which is a demonstrator or trading stock, and is not registered in the name of the dealer at the time of the registration.

Subsection 214(2) stipulates that if the dealer does not dispose of the vehicle within twelve months after its registration, or does not renew the registration of the vehicle pursuant to section 214A, the dealer is liable to pay the duty payable at the time of the vehicle's first registration pursuant to section 214, as if the exemption from duty had not existed.

Subsection 214A(1) provides that the Commissioner for ACT Revenue may, in accordance with guidelines determined by the Minister, authorise a licensed motor vehicle dealer to maintain the registration of a motor vehicle on which an exemption from duty was held under section 214, for longer than 12 months, without payment of duty.

Subsection 214A(2) provides that the Commissioner may issue the authorisation subject to conditions.

Subsection 214A(3) stipulates that if the dealer does not dispose of the vehicle before the period expires in which its registration has been renewed under the authorisation, or the authorisation is revoked, the dealer is liable to pay the duty that would have been payable on the registration of the vehicle at the time of obtaining an exemption from duty under section 214.

Subsection 214A(4) provides that the Commissioner may revoke an authorisation issued with conditions, if the dealer does not comply with those conditions.

Subsection 214A(5) empowers the Minister to issue Guidelines for the operation of subsection 214A (1).

Subsection 214A(6) provides that the Guidelines determined by the Minister may provide for the payment of an administrative fee for or in relation to the authorisation.

Subsection 214A(7) provides that the determination setting the Guidelines is a disallowable instrument for the purposes of the *Subordinate Laws Act 1989.*

Substitution

Clause 21 repeals section 222 and substitutes a new section 222.

Section 222 includes a reference to the *International Organisations (Privileges and Immunities) Act 1963* (Commonwealth). This reference broadens the application of the previous provision to give certain officers of international organisations privileges and immunities similar to those given to diplomatic agents under the *Diplomatic Privileges and Immunities Act 1969.* The provision allows the Commissioner to issue a certificate of exempt status for such officers in connection with the registration of a motor vehicle.

Objections and review of decisions

Clause 22 provides licensed motor vehicle dealers with objection and review provisions in respect of the Commissioner refusing to issue, imposing conditions on, and revoking, an authorisation.

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

Clause 23 amends section 265 to provide that paragraph (1) (a) of that provision does not operate to impose liability on a hire of goods entered into before 1 October 1996, where that hire was not liable to stamp duty under the *Stamp Duties and Taxes Act 1987.*

Part 3 - Miscellaneous

Clause 24 repeals the Regulations that amended the *Duties Act 1999* on 28 February 2000.

Clause 25 introduces a transitional provision. This provides for any actions taken or not taken under the amendments made by way of the Regulations (the same amendments as are in clauses 13 and 18 to 22) are taken to have had effect under those provisions, as if they had happened under the provisions inserted by this Act. This ensures that any actions taken in connection with the previous amendments, such as the making of the Guidelines for the motor vehicle dealers authorisation scheme, continue to have legislative backing.

Clause 26 provides for Part 3 to expire after the section commences in the Duties Act.