

2006

**The Legislative Assembly for
Australian Capital Territory**

Duties Amendment Bill 2006 (No 2)

Explanatory Statement

**Circulated by authority of
Treasurer
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Summary

As part of the implementation of the Goods and Services Tax, the parties to the *Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations* (the IGA) agreed to abolish certain state and territory taxes, and to review the need to retain others by 2005. After the ACT review, the timetable for the abolition of several IGA taxes was announced in the 2005-06 ACT Budget. This Bill seeks to amend the *Duties Act 1999* to complete the ACT program and implement the abolition of the following duties:

- hire of goods on 1 July 2007;
- leases on 1 July 2009; and
- unquoted marketable securities on 1 July 2010.

Overview

Transitional Provisions and Anti-avoidance Measures

So all taxpayers are treated consistently, equitably and fairly, both before and after the abolition of each tax, transitional provisions ensure that the repealed provisions as in force immediately prior to repeal, continue to apply to:

- a liability incurred prior to repeal;
- arrangements that replace earlier dutiable arrangements; and
- arrangements made with the only or main purpose of deferring transactions to beyond the repeal date so the repealed provisions do not apply.

Transitional provisions for each tax will expire 5 years after the repeal date for that tax.

Transitional Regulations

The Bill provides for the Executive to make transitional regulations to deal quickly with unanticipated issues to ensure that taxpayers discharge their liabilities, notwithstanding any legislative deficiency. When an issue is identified, the Executive may make a transitional regulation if the Executive considers it is not, or is not adequately or appropriately dealt with in the new Chapter 15 (Transitional – Duties Amendment Act 2006 (No 2)). The transitional regulations will apply prospectively and expire 12 months after commencement. This allows urgent issues to be dealt with in subordinate legislation that is scrutinised by the Assembly. The timeframe allows for issues dealt with by regulation to be put to the Assembly as a legislative amendment.

The Standing Committee on Legal Affairs has already acknowledged (in Scrutiny Report No 23 (27 March 2006) on the *Duties Amendment Bill 2006*) that there are circumstances in which the delegation of legislative power may be useful, for example, as would apply to the implementation of the arrangements provided by this Bill.

Abolition of Hire of Goods Duty

Chapter 6 of the Duties Act imposes a liability on commercial hiring businesses to pay duty on the total amount of hiring charges received in a month. This Bill removes duty on the hire of goods on both new and existing contracts for any liability incurred after 30 June 2007 and Chapter 6 and other related provisions will expire on that date. Where a contract spans the abolition date, the duty payable is only for a liability incurred prior to 1 July 2007 and there will be no pro rata refunds. The obligation to register with the Commissioner for ACT Revenue and pay hiring duty monthly by returns will also cease in relation to any period after 30 June 2007.

Even though the commercial hiring business is liable to the duty, common practice is to incorporate it into the hiring charge so in effect the hirer reimburses the hiring business. It would be desirable for commercial hiring businesses to deduct any amount that covers the reimbursement of hiring duty from their hiring charges after 30 June 2007, however, any failure to do so is a matter between the hirer and the hiring business.

Where a person hires goods from someone who is not a commercial hiring business, the hirer is required to lodge a statement with the Commissioner for ACT Revenue, and pay the duty. Their obligations will also cease in relation to a hire of goods entered into after 30 June 2007.

Duty on Lease Instruments

Chapter 5 of the Duties Act imposes duty on lease instruments on the total cost of the lease and is payable by the lessor within 90 days of the lease instrument becoming liable. This Bill proposes to cease duty on leases executed after 30 June 2009. To ensure consistent and equal treatment for all lessors, any lease first executed before 1 July 2009 will be liable to duty on the full cost or value for its full term and there will be no pro rata refunds for any period of the lease that continues beyond the abolition date.

Duty at conveyance rates will be retained on long-term leases and franchise arrangements (for more than 30 years) as they are treated as equivalent to a conveyance of land, and both will become dutiable property under Chapter 2 of the Duties Act. As is currently the case under chapter 5, the lessor and the franchisee will remain liable to the duty on these dutiable transactions.

A lease variation commencing after 30 June 2009 will not be liable to duty. Refunds will only be available to the lessor where duty has been overpaid. On termination of a lease, a refund will only apply if neither the lessee nor any associated person will continue to lease the property under a new arrangement.

Where duty has been based on the estimated cost of a lease, it is currently followed by periodic estimates and possible payment of further duty. The transitional provisions provide for a final estimate to be made at the earliest estimate date after 30 June 2009. Duty will be payable on the final estimate which will be taken to be the full cost of the lease and no further estimates will be required.

Duty on Unquoted Marketable Securities

Duty on unquoted marketable securities is imposed in Chapter 2 of the Duties Act. This Bill abolishes unquoted marketable securities duty on 30 June 2010 and the provisions relating to transactions of shares and units in a unit trust scheme, and the marketable securities anti-avoidance measures in parts 3.3 and 3.5 will also expire on that date.

Where ‘land-rich’ duty is triggered by the transfer of certain interests in landholders in the ACT, and where the acquisition of shares and/or units gives an entitlement to occupy land, duty at conveyance rates will continue to apply. An acquisition statement must be provided within 90 days of the acquisition of marketable securities where it triggers a ‘land-rich’ liability.

Financial Implications

The cumulative revenue forgone to 2011 for the abolition of duty on the hire of goods, leases and unquoted marketable securities is estimated to be \$27.8m. The financial impact has already been reflected in the forward estimates for Budget 2006-07.

Details of the Bill are attached.



Details of the Duties Amendment Bill 2006 (No 2)

Clause 1 - Name of Act

This Act is the *Duties Amendment Act 2006 (No 2)*.

Clause 2 - Commencement

This Act commences on the day after notification.

Clause 3 - Legislation amended

This Act amends the *Duties Act 1999*.

Clause 4 - Imposition of duty on certain transactions concerning dutiable property

New sections 7 (1) (b) (iv) and (v) have been inserted to make the grant of a long-term lease and the grant of a franchise arrangement transactions that are dutiable for chapter 2. Duty will also be charged on the transfer of a long-term lease and a franchise arrangement.

Clauses 5, 6, 7, 8 & 9 - Imposition of duty on dutiable transactions that are not transfers

An item column has been included in Table 8 and consequently the references to particular columns in sections 8 (2), (2) (a), (2) (b) and (2) (c) have been amended. The grant of a long-term lease and the grant of a franchise arrangement have been added to the table in column 2 at items 4 and 5 respectively, to identify the property transferred (in column 3), the transferee (in column 4) and when the transfer takes place (in column 5). Table 8 states that the “transferee” for item 4 is the lessor and for item 5 it is the franchisee. This reflects the current arrangements under chapter 5 (Lease Instruments) which are omitted or substituted in clauses 22 to 34 of this Bill.

Clause 10 - Dutiable property

To enable all provisions in chapter 5 to be expired when duty on leases is abolished, *long-term lease* (as defined) and franchise arrangement have become dutiable property in chapter 2. There is no change in effect as both were, and will continue to be, liable to duty at the general (conveyance) rate. The Note explains that franchise arrangement was formerly defined in s133 definition of *lease* paragraph (c) and points to transitional provisions that still apply to that provision as it was in force on 30 June 2006.

Clauses 11 & 12 - Section 10 (1) (d) and (e), note

Notes make it clear that the mentioned shares or units will not be subject to duty after 30 June 2010 and point to the Expiry provisions at section 75A and the transitional provisions in part 15.3, and that shares or units quoted on a stock exchange are not dutiable property.

Clause 13 - What is the dutiable value of dutiable property? Section 20 (1) (b)

Paragraph (b) has been substituted to include the dutiable value for a long-term lease (previously in section 141) and for a franchise arrangement. Now that the only dutiable franchise arrangement is one that is longer than 30 years, it will be treated for duty purposes the same as a long-term lease. The amount on which duty is payable is the greater of the consideration or the unencumbered value of the Crown lease of the land in relation to which the long-term lease or franchise arrangement has been granted.

Clause 14 - Shares, units and interests – marketable securities. Section 32 (4), note

Notes make it clear that transactions relating to unquoted marketable securities will not be subject to duty after 30 June 2010 and point to the Expiry provisions at section 75A and the transitional provisions in part 15.3, and that there is no duty on transactions relating to marketable securities that are shares or units quoted on a stock exchange.

Clauses 15 & 16 - Transfers back from nominee & definition of *dutiable property*

Omission from Section 57 (1) (a) and new definition of *dutiable property* in section 57 (3) allows the reference to ‘marketable securities’ to be separately identified for later omission (see section 75A).

Clause 17 - Transfers between trustees and custodians of superannuation funds or trusts

The substituted sections 63 (2) and (2A) allow the reference to ‘marketable securities’ to be separately identified for later omission (see section 75A). Notes are the same as Notes in clause 14.

Clause 18 - Marketable securities

Notes the same as Notes in clause 14 are added to section 75 (3).

Clause 19 - New part 2.7 Expiry – provisions relating to unquoted marketable securities is inserted.

Section 75A – Expiry – provisions relating to unquoted marketable securities

This section lists the provisions, including part 2.7, that will expire at midnight on 30 June 2010 when duty on unquoted marketable securities is abolished for transactions occurring after that date.

Clause 20 - Acquisition statements New section 87 (1A)

The requirement to lodge an acquisition statement within 90 days of the relevant acquisition brings part 3.2 into line with the same requirement in part 3.4 at section 106 (2). This is necessary as there will be no requirement to lodge a statement for the transfer of marketable securities for transactions occurring after 30 June 2010.

Clause 21 - Section 103

The substituted section 103 (When does liability for duty arise?) has been reworded so it does not rely on a cross reference to part 3.5 which will expire under section 75A.

Clauses 22 & 23 - Definitions for ch5 & Section 133, definition of *lease*, *lessee* and *lessor*

The definition of *lease* for chapter 5 is substituted so it does not include a long-term lease (which is now in chapter 2). The existing definitions of *lease*, *lessee* and *lessor* are omitted from section 133 and will be inserted into the dictionary.

Clauses 24, 25, 26, 27 & 28 - How duty is charged on a lease instrument Section 135; What is the cost of a lease? Section 136 (1), (3) & (4); Splitting or redirection of cost of franchise arrangement - Section 137; and Section 138

These sections have been substituted or omitted to remove redundant references to franchise arrangements.

Clauses 29, 30, 31, 32, 33 & 34 - General rate – short-term leases Section 140 (2) (a) and (b); General rate – long-term leases Section 141; General rate – franchise arrangements - Section 141A; Quantification of lessee’s improvements Section 146, table 146, items 4 and 5; Exemptions – lease instruments Section 150 (1) (a); Section 150 (1) (b)

Redundant references to long-term leases and franchise arrangements have been omitted from this chapter as they are now included in chapter 2.

Clause 35 - New part 5.6 Expiry – ch 5

Chapter 5 and other provisions relating to lease instruments expire at midnight on 30 June 2009 when duty ceases on lease instruments executed after that date.

Clauses 36 & 37 -

Section 153 (1) (a) (ii) and Section 153 (1) (b) are substituted as a consequence of moving long-term leases and franchise agreements to chapter 2.

Clause 38 - New part 6.5 Expiry – ch 6

Chapter 6 and other provisions relating to the hire of goods expire at midnight on 30 June 2007. The obligation to register with the Commissioner for ACT Revenue and pay hiring duty monthly by returns, or to provide statements and payments, will cease in relation to any period after 30 June 2007.

Clause 39 - Objections and review of decisions Section 252 (1) (n)

This is redundant as it applies to section 137 which has been omitted.

Clause 40 - New chapter 15 Transitional – Duties Amendment Act 2006 (No 2) is inserted.

Part 15.1 Transitional – hire of goods A note refers to section 173A which provides for the expiry of chapter 6 on 30 June 2007.

Section 410 – Application of ch 6 to hiring charges received by commercial hire business before 1 July 2007

This section ensures that the obligation to pay duty in relation to hiring charges received by a commercial hire business before 1 July 2007 continues to apply as if part 6.3 (which applies to a commercial hire business) had not been repealed. Returns in accordance with section 169 must be lodged in relation to each month before 1 July 2007. The return for June 2007 should be lodged with payment by 21 July 2007. This obligation to submit a return and pay duty applies even if the charges relate to a period after 30 June 2007. A hiring contract is liable to duty on the total amount of hiring charges received in a month and there will be no pro rata refunds of duty paid where a contract continues beyond 30 June 2007.

If an election has been made to pay duty on a special hiring agreement by lodging a statement, a reassessment may be requested if the special hiring agreement has been terminated.

Section 411 – Application of ch 6 to hire of goods entered into before 1 July 2007

This section ensures that the obligation to pay duty in relation to a hire of goods entered into before 1 July 2007 continues to apply as if part 6.4 (which applies to a person other than a commercial hire business) had not been repealed, if the first or only payment is paid or payable before that date. Under section 172 a statement must be lodged and duty paid within 90 days of receiving the first or only payment of hiring charges or when hiring charges become payable. A hire of goods is liable to duty for the whole period of the hire whether or not the hire continues beyond 30 June 2007, and there will be no refund of duty in relation to any hiring charge paid or payable for a period after 30 June 2007.

If an election has been made to pay duty on a special hiring agreement by lodging a statement, a reassessment may be requested if the special hiring agreement has been terminated.

Section 412 – Application of ch 6 to certain arrangements

This section provides anti-avoidance measures to ensure that the repealed provisions under section 173A (including chapter 6) continue to apply to a hire of goods or an arrangement made to avoid the payment of duty. Where a hire of goods replaces one entered into before the abolition date, or an arrangement made for the sole or main purpose of deferring the hire of goods until after the abolition date so that chapter 6 would not apply to it, the hire of goods will still be subject to duty.

Section 413 – Transitional regulations – pt 15.1

Because not all issues requiring transitional provisions can be identified, this provision allows the Executive to make transitional regulations where they consider any matter is not, or is not dealt with adequately or appropriately in this part. This power would usually be used to address any avoidance issues that may arise after the abolition of the duty. To allow sufficient time to follow the transitional regulation with an amendment to the Act, such regulations expire 12 months after they commence. This delegation of legislative power is discussed in the Overview.

Section 414 – Expiry – pt 15.1

This part expires at midnight on 30 June 2012. Retaining transitional provisions for five years after commencement is appropriate for such taxation provisions as the Commissioner for ACT Revenue may reassess a taxation liability up to five years after the original assessment.

Part 15.2 Transitional – lease instruments

A note refers to section 150A which provides for the expiry of chapter 5 on 30 June 2009.

Section 420 – Application of ch 5 to leases entered into before 1 July 2009

This section ensures that the obligation to pay duty under chapter 5 in relation to a lease first executed before 1 July 2007 continues to apply as if it had not been repealed. However, a lease variation made after 30 June 2009 is not liable to duty.

Section 421 – Application of ch 5 to certain arrangements

This section provides anti-avoidance measures to ensure that the repealed provisions under section 150A (including chapter 5) continue to apply to a lease instrument made to avoid the payment of duty. Where a lease instrument replaces one entered into before the abolition date, or an arrangement made for the sole or main purpose of deferring the execution of, or variation to, a lease until after the abolition date so that chapter 5 would not apply to it, will still be subject to lease duty. Where a lease is terminated before the end of its term, a refund will not be available if the lessee or any associated person will continue to lease the property under a new arrangement.

Section 422 – Transitional regulations – pt 15.2

Because not all issues requiring transitional provisions can be identified, this provision allows the Executive to make transitional regulations where they consider any matter is not, or is not dealt with adequately or appropriately in this part. This power would usually be used to address any avoidance issues that may arise after the abolition of the duty. To allow sufficient time to follow the transitional regulation with an amendment to the Act, such regulations expire 12 months after they commence. This delegation of legislative power is discussed in the Overview.

Section 423 – Expiry – pt 15.2

This part expires at midnight on 30 June 2014. Retaining transitional provisions for five years after commencement is appropriate for such taxation provisions as the Commissioner for ACT Revenue may reassess a taxation liability up to five years after the original assessment.

Part 15.3 Transitional – unquoted marketable securities

A note refers to section 75A which provides for the expiry of provisions relating to duty on unquoted marketable securities on 30 June 2010.

Section 430 – Application of repealed provisions to certain arrangements

This section provides anti-avoidance measures to ensure that the repealed provisions under section 75A continue to apply to a transaction made to avoid the payment of duty. Where a transaction replaces one entered into before the abolition date, or an arrangement made for

the sole or main purpose of deferring a transaction until after the abolition date so that the repealed provisions would not apply to it, the transaction will still be subject to marketable securities duty.

Section 431 – Transitional regulations – pt 15.3

Because not all issues requiring transitional provisions can be identified, this provision allows the Executive to make transitional regulations where they consider any matter is not, or is not dealt with adequately or appropriately in this part. This power would usually be used to address any avoidance issues that may arise after the abolition of the duty. To allow sufficient time to follow the transitional regulation with an amendment to the Act, such regulations expire 12 months after they commence. This delegation of legislative power is discussed in the Overview.

Section 432 – Expiry – pt 15.3

This part expires at midnight on 30 June 2015. Retaining transitional provisions for five years after commencement is appropriate for such taxation provisions as the Commissioner for ACT Revenue may reassess a taxation liability up to five years after the original assessment.

Clauses 41, 42, 43, 44, & 45 - Dictionary, definitions of *company title dwelling* and *error transaction, lease, lessee and lessor, long-term lease, tenement*

The dictionary definitions are omitted, substituted or inserted.

Clause 46 - Dictionary, definition of *transfer*

The buyback of shares has been added to the dictionary definition of transfer in paragraph (a) (ia). The definition of *transfer* (which includes a buyback of shares) will be omitted from Chapter 2 when duty on unquoted marketable securities ceases on 30 June 2010. The buyback of shares is now included in the dictionary definition of *transfer* to ensure that, even though the buyback of shares will not be dutiable, the land-rich liability is still triggered by the transfer.