

2007

**The Legislative Assembly for
Australian Capital Territory**

Duties Amendment Bill 2007

Explanatory Statement

**Circulated by authority of
Treasurer
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Duties Amendment Bill 2007

Summary

This Bill amends the *Duties Act 1999* (the Duties Act).

Overview

The review of certain taxes initiated under the *Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations* (the IGA) has led to the abolition of lease duty in the ACT on 1 July 2009. Duty on long-term leases is retained under Chapter 2 of the *Duties Act* and is payable at conveyance rates.

In accordance with the IGA this Bill introduces anti avoidance measures to provide greater certainty regarding long-term leases under Chapter 2 and to strengthen transitional provisions specific to the expiry of Chapter 5 Lease Instruments.

Long Term Leases:

The Bill clarifies the definition and commencement of a long-term lease and ensures that where either a new lease granted on surrender of another lease to the same or associated person, or an extension of an existing lease, result in a term greater than 30 years, it is treated as if it were a long-term lease.

Transitional Provisions:

The Act contains transitional provisions to ensure that all taxpayers are treated consistently, equitably and fairly both before and after the abolition of lease duty assessed under Chapter 5. The Bill provides clarity on two of these provisions to reinforce their intention and protect revenue.

The first amendment is to clarify that an option to renew a lease granted before 1 July 2009 may be included in the duty base if the option is executed after 30 June 2009 where the main purpose is to defer execution of the instrument to avoid lease duty.

The second amendment extends the current provision where there is no refund of duty on a lease instrument that is terminated early if there is a subsequent lease by the lessee or an associated person that is for substantially the same property.

Financial Implications

These amendments are expected to have a negligible budget impact.



Details of the Duties Amendment Bill 2007

Clause 1 - Name of Act

This Act is the *Duties Amendment Act 2007*.

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 dutiable transactions that are not transfers
Section 8, table 8, item 4

This clause substitutes item 4 in table 8, section 8 of the Act. Table 8 relates to the charging of duty on dutiable transactions and details for each type of dutiable transaction, the property transferred, the transferee and the time when a transfer occurs. This provision refines the detail in relation to the charging of duty on long-term leases to include the extended definitions (see clause 5).

Clause 5 – Dutiable property New section 10 (1) (da) and (db)

Clause 5 inserts two new subsections to clarify the meaning of long-term lease. New subsection 10 (1) (da) sets out that where a lease is granted on surrender of another lease to the same person, and together the term of those leases exceeds 30 years, the lease is considered to be a long-term lease. This applies regardless of whether the leases apply to all or part of the land. New subsection 10 (1) (db) deals with leases where there has been a variation to the term of the lease. Where the term of the lease has been extended beyond 30 years the lease will be deemed a long-term lease. The extended time can be achieved by one or more extensions.

Clause 6 – New section 10 (2A)

Clause 6 inserts a new subsection to verify that for subsection 1 (da) the word “person” is synonymous with “associated person”. This provision strengthens the intention of subsection 1 (da) to prevent a lease being surrendered by a person only to be taken up by an associated person for the purpose of avoiding duty.

Clause 7– No double duty

New sections 17 (6A) and (6B)

Clause 7 inserts two new provisions to prevent the imposition of duty occurring twice. New subsection 17 (6) (A) provides where a lease has been granted on surrender of another lease and the lease results in a long-term lease, the duty that is payable at conveyance rates is to be reduced by the amount of any duty already paid under Chapter 5 Lease Instruments. New subsection 17 (6B) applies the same principle of reducing the liability by any amount paid under Chapter 5, where the term of a lease is extended, or further extended.

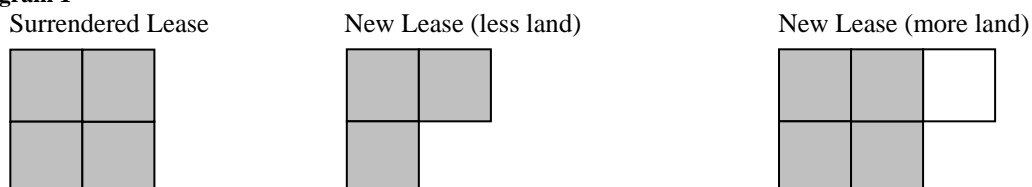
It should be noted that where a lease is terminated before the end of its term, a refund will not be available if the lessee or any associated person will continue to lease the property under a new arrangement.

Clause 8- What is the dutiable value of dutiable property

New section 20 (2A)

Clause 8 inserts a new subsection to deal with situations under subsection 10 (1) (da) where the land being leased is not identical to that under a surrendered lease by virtue of the new lease being for either more or less land. Where the lease instrument that triggers conveyance duty is not for exactly the same land, then for the purposes of determining the dutiable value, the unencumbered value will be based on that part of the land that would be held for longer than 30 years (see Diagram 1).

Diagram 1



Note: shaded area depicts the land on which the unencumbered value would be based in relation to clause 8

Clause 9 – Section 421 (2) (b)

Clause 9 ensures that the use of options is included in identifying any arrangement made before the abolition of lease duty, so that Chapter 5 would not apply. This prevents the manipulation of a replacement lease to avoid duty.

Clause 10 – Section 421 (3)

Clause 10 inserts after “lease the property” the words “, or substantially the same property,” to prevent the avoidance of duty by changing the property that is leased and this strengthens the provision already in place to protect revenue.

Clause 11 – Dictionary, definition of long-term lease

Clause 11 substitutes a new definition of “long-term lease” to include the additional descriptions of long-term lease under new subsections 10 (1) (da) and 10 (1) (db).

