2008

The Legislative Assembly for

Australian Capital Territory

Duties Amendment Bill 2008

Explanatory Statement

Circulated by authority of
Treasurer
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Duties Amendment Bill 2008

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

Overview
The purpose of the Bill is to abolish duty on the establishment of and changes to trusts over non-dutiable property. It is not the intention of this Bill to abolish duties involving the establishment of or changes to trusts involving dutiable property.

The Bill gives effect to a measure introduced in the ACT 2008-2009 Budget to remove some minor taxes in this area.

The relatively small amount of revenue foregone also involves the removal of inordinate administrative and compliance costs associated with these minor taxes. Further, the removal of the requirement to lodge and pay duty on related instruments will reduce administrative costs for the professional community and general public.

The minor taxes removed by the Bill are applied under provisions that impose duty on the establishment of and changes to trusts where there is no transfer of, or declaration of trust over, dutiable property. These provisions are:

- section 59 of the Duties Act whereby duty of $200 is payable on the establishment of a trust relating to unidentified property and non-dutiable property;
- section 60 (1)whereby duty of $20 is payable on instruments relating to managed investment schemes which do not transfer any dutiable property; and
- section 61 whereby duty of $20 is payable on instruments relating to superannuation.

As noted, it is not the intention of this Bill to abolish duty on a declaration of trust over dutiable property. Such a declaration results in, and will continue to result in, an assessment of duty at the rate appropriate to the type of dutiable property over which the trust is declared (eg land, marketable securities). The related “nominal duty” assessments (eg section 54 Change in trustees) are also not within the scope of this Bill as they involve a change of ownership of dutiable property.

Transitional Provisions:
The Bill provides for the Executive to make transitional regulations to deal quickly with unanticipated issues as will ensure the discharge by taxpayers of their liabilities notwithstanding any legislative deficiency.

In these circumstances, when an issue is identified, the Executive may make a transitional regulation if it considers the issue is not or is not adequately or appropriately dealt with in the new Chapter 16 (Transitional – Duties Amendment Act 2008).

The transitional regulations will apply prospectively and expire 12 months after commencement. This timeframe will allow urgent issues to be dealt with in subordinate legislation subject to scrutiny by the Assembly in the form of regulations.

The Standing Committee on Legal Affairs has acknowledged that there are circumstances in which such a delegation of legislative power may be useful: Scrutiny Report No 23 (27 March 2006), *Duties Amendment Bill 2006*.

Financial Implications
These amendments are expected to have a negligible negative financial impact.

Details of the Duties Amendment Bill 2008

Clause 1 — Name of Act
This Act is the *Duties Amendment Act 2008*.

Clause 2 — Commencement
This Act commences on the day after notification.

Clause 3 — Legislation amended
This Act amends the *Duties Act 1999* (the Duties Act).

Clause 4 — Section 60 heading
This clause is a drafting matter consequent on clause 5. It provides for the renaming of section 60 following the expiry of section 60 (1) to more appropriately address the type of instrument liable to duty under section 60 (2).

Clause 5 — New part 2.5A
This clause provides for the expiry of sections 59, 60 (1) and 61 at midnight on 30 June 2008.

Clause 6 — New chapter 16
440 Meaning of *repealed provisions*—ch16
This section defines as repealed the provisions that expire under clause 5, namely; sections 59, 60 (1) and 61.

441 Application of repealed provisions
This section provides that notwithstanding the expiry of sections 59, 60 (1) and 61 (the repealed provisions), the obligation to pay duty under any of them continues to apply as if those provisions had not been repealed.

This is an anti-avoidance measure to ensure that the repealed provisions continue to apply to an instrument where an arrangement is made for the sole or main purpose of deferring the execution of the instrument until after the repealed provisions take effect in order to avoid duty.

442 Transitional regulations—ch 16
This provision delegates legislative power to the Executive to make transitional regulations so that unanticipated issues can be addressed after the Bill takes effect.

Not all issues requiring transitional provisions can be identified in advance of the Bill. Accordingly, this provision allows the Executive to make transitional regulations where it considers any matter is not, or is not adequately or appropriately, dealt with in this part as would enable any avoidance issues that may arise after the abolition of the duty to be addressed.

A transitional regulation expires 12 months after it commences to allow sufficient time for the Duties Act to be amended.

The delegation of legislative power in these circumstances has been accepted by the Standing Committee on Legal Affairs as appropriate.

443 Expiry—ch 16

This part expires at midnight on 30 June 2013. The retention of transitional provisions for five years after commencement is to enable the Commissioner for ACT Revenue to be able to reassess a taxation liability up to five years after the original assessment where a reassessment is required.