

Legislative Council—No 35

As received from the House of Assembly and read a first time, 21 July 2010

South Australia

**Stamp Duties (Partnership Interests) Amendment
Bill 2010**

A BILL FOR

An Act to amend the *Stamp Duties Act 1923*.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Amendment provisions

Part 2—Amendment of *Stamp Duties Act 1923*

- 3 Insertion of section 71AB
71AB Partnership interests
- 4 Amendment of section 71E—Transactions otherwise than by dutiable instrument
- 5 Amendment of section 91—Interpretation
- 6 Amendment of section 95—General principle of liability to duty

Schedule 1—Transitional provision

- 1 Transitional provision
-

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Stamp Duties (Partnership Interests) Amendment Act 2010*.

5 2—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Stamp Duties Act 1923*

3—Insertion of section 71AB

- 10 After section 71A insert:

71AB—Partnership interests

- (1) This section applies to an instrument effecting or acknowledging, evidencing or recording 1 or more of the following:

- 15 (a) the transfer, divesting, dilution, satisfaction, realisation or extinguishment of an interest within the ambit of subsection (2) (including on account of a retirement from a partnership or the dissolution of a partnership);
- 20 (b) the conversion of an interest within the ambit of subsection (2) to an entitlement to the payment of money, the distribution of assets, or the provision of any other benefit or consideration;

(c) the acquisition of an interest within the ambit of subsection (2),

(and any such transfer, divesting, dilution, satisfaction, realisation, extinguishment, conversion or acquisition will be referred to as a "prescribed transaction" for the purposes of this section).

(2) An interest is within the ambit of this subsection if it consists of, or is constituted by, the interest of a person in the assets (or any part of the assets) of a partnership as partner (or former partner) in a partnership, however that interest may be defined or constituted, including—

(a) an interest held individually or collectively;

(b) an interest consisting of a right to a proportion of the surplus property of the partnership after the realisation of assets and the payment, satisfaction or discharge of debts and liabilities.

(3) Subsections (1) and (2) apply whether or not the interest to which the instrument relates consists of, or is constituted by, an equitable chose in action which is being satisfied, realised or extinguished without effecting a dealing with the assets of the partnership or a change in the ownership of an equitable interest in the partnership.

(4) An instrument to which this section applies is taken to be a conveyance of property operating as a voluntary disposition *inter vivos* (whether or not consideration is provided between the parties to the instrument).

(5) For the purpose of calculating *ad valorem* duty payable on an instrument to which this section applies, the value of the interest to which the instrument relates will be taken to be—

(a) unless paragraph (b) applies—any consideration or other amount or value payable, given or provided on account of the prescribed transaction with respect to the interest under subsections (1) and (2); or

(b) if the Commissioner considers that the consideration or other amount or value under paragraph (a) does not represent the full value of the interest with respect to the assets of the partnership (including the interest contemplated by subsection (3)), or if there is no consideration or other amount or value payable, given or provided—the value of the interest in the partnership of the person referred to in subsection (2) before the prescribed transaction, less any value of the interest (if any) in the partnership of that person after the prescribed transaction.

- (6) For the purposes of subsection (5)(b) (and subject to applying the principles set out in subsections (7) and (8)), the value of an interest in a partnership will be determined as follows:

$$V = TV \times P$$

where—

V is the value

TV is the total value of the assets of the partnership

P is a fraction representing the proportionate interest of the person referred to in subsection (2).

- (7) For the purposes of subsections (5) and (6)—

- (a) the value of any land will be the unencumbered market value of the land at the date of the relevant prescribed transaction; and
- (b) the value of other assets will be determined according to the net value of the assets (which cannot be a negative value for the purposes of this paragraph); and
- (c) the proportionate interest of a person as a partner will be represented by the greater of the following:
- (i) the relative entitlement of the partner to participate in the surplus property of the partnership after the realisation of assets and the payment, satisfaction or discharge of debts and liabilities;
- (ii) the relative capital contribution of the partner (being equity and, subject to subsection (9), any loan capital).

- (8) In connection with the operation of subsection (7), any charge over both land and other assets of a partnership will be apportioned to the various assets to which the charge relates according to the relative values of the assets (and then the relevant portion may be applied to the assets other than land to determine a net value under subsection (7)(b)).

- (9) Loan capital will be taken into account for the purposes of subsection (7)(c)(ii) unless the Commissioner is satisfied that the loan was entered into as part of a genuine business arrangement and not as part of an arrangement to avoid or reduce duty under this section.

- (10) For the purposes of this section (and for the calculation of the value of any assets), the goodwill of a business conducted by a partnership, or in which a partnership has an interest, will be taken to form an asset of the partnership (including on a proportionate basis if the partnership has a proportionate interest).

5 (11) If an instrument of a kind referred to in subsection (1) is duly stamped under this Act, any other instrument of a kind referred to in that subsection that the Commissioner is satisfied relates to the same transaction will be exempt from duty to the extent necessary to avoid the imposition of double duty.

(12) This section does not limit the operation of any other section which provides for the imposition of *ad valorem* duty with respect to the conveyance of property (but not so as to impose double duty of corresponding amounts under 2 or more sections).

10 (13) This section applies both prospectively and retrospectively.

4—Amendment of section 71E—Transactions otherwise than by dutiable instrument

Section 71E—after subsection (9) insert:

15 (10) A reference in this section to a transaction that results in a change in the ownership of an interest in a partnership will be taken to include a prescribed transaction with respect to an interest within the meaning of section 71AB (recognising that, for the purposes of this section, the relevant transaction will not be effected by an instrument on which *ad valorem* duty is chargeable) and, in the case of such a
20 transaction, the duty payable on a statement under this section will be the same as the duty that would be payable if the transaction were effected by an instrument under section 71AB(1).

(11) Subsection (10) applies both prospectively and retrospectively.

5—Amendment of section 91—Interpretation

25 Section 91—after subsection (3) insert:

(3a) A private entity or other person that is a partner in a partnership is to be regarded, for the purposes of this Part, as beneficially entitled to a proportionate share in each and every asset of the partnership.

30 (3b) For the purposes of subsection (3a), a proportionate share of a partner will be represented by the greater of the following:

(a) the relative entitlement of the partner to participate in the surplus property of the partnership after the realisation of assets and the payment, satisfaction or discharge of debts and liabilities;

35 (b) the relative capital contribution of the partner (being equity and, subject to subsection (3c), any loan capital).

(3c) Loan capital will be taken into account for the purposes of subsection (3b)(b) unless the Commissioner is satisfied that the loan was entered into as part of a genuine business arrangement and not as
40 part of an arrangement to avoid or reduce duty under this Part.

(3d) Subsections (3a) and (3b) do not limit the operation of section 71AB (but not so as to impose double duty with respect to the same transaction).

- (3e) Subsections (3a) to (3d) (inclusive) apply both prospectively and retrospectively.

6—Amendment of section 95—General principle of liability to duty

Section 95(4)—after paragraph (c) insert:

5

or

- (d) the addition or retirement of a partner in a partnership with assets comprising shares in a company or units in a unit trust scheme.

Schedule 1—Transitional provision

1—Transitional provision

10

- (1) The Commissioner of State Taxation may, on account of (and in accordance with) the amendments made to the *Stamp Duties Act 1923* by this Act, reassess duty with respect to any instrument or transaction created or entered into before the commencement of this Act.

- (2) However—

15

- (a) the Commissioner of State Taxation may not impose any penalty on a retrospective basis with respect to the reassessment of duty under this clause; and

20

- (b) this measure does not affect any liability to duty in respect of the Deed that was the subject of proceedings before the Full Court in Supreme Court Action No 320 of 2008.