

South Australia



STAMP DUTIES (SECURITIES CLEARING HOUSE) AMENDMENT ACT 1994

No. 14 of 1994

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ANNO QUADRAGESIMO TERTIO

ELIZABETHAE II REGINAE

A.D. 1994

No. 14 of 1994

An Act to amend the Stamp Duties Act 1923.

[Assented to 12 May 1994]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Stamp Duties (Securities Clearing House) Amendment Act 1994*.

(2) The *Stamp Duties Act 1923* is referred to in this Act as "the principal Act".

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Amendment of s. 27b—Access to records

3. Section 27b of the principal Act is amended by striking out paragraph (b) of subsection (1) and the word "and" appearing before that paragraph and substituting the following paragraphs:

(b) require the production of any instrument or record in the premises that may be relevant to the assessment of duty, including a written record that reproduces in an understandable form information stored by computer, microfilm or other process;

and

(c) inspect and take extracts from, or make copies of, or require the provision of copies of, any instrument or record in the premises or so produced that appears to be relevant to the assessment of duty.

Amendment of s. 71c—Concessional rates of duty in respect of purchase of first home, etc.

4. Section 71c of the principal Act is amended by striking out subsection (2b).

Substitution of heading to Part IIIA

5. The heading to Part IIIA of the principal Act is repealed and the following headings are substituted:

**PART IIIA
SPECIAL PROVISIONS RELATING TO MARKETABLE SECURITIES**

DIVISION I—INTERPRETATION

Amendment of s. 90a—Interpretation

6. Section 90a of the principal Act is amended—

- (a) by striking out "In this Part" and substituting "In this Act";
- (b) by inserting in the definition of "broker" "and is carrying on business in this State" after "Limited";
- (c) by inserting after the definition of "dealer" the following definitions:

"error transaction" means each of the following transfers:

- (a) an SCH-regulated transfer made to reverse an SCH-regulated transfer that was made mistakenly not more than seven days earlier;
- (b) the SCH-regulated transfer so reversed:

"foreign company" has the same meaning as is assigned to the term by section 9 of the *Corporations Law*:

"identification code", in relation to an SCH participant, means a code that, for the purposes of the SCH business rules, is the SCH participant's identification code, or one of the SCH participant's identification codes, as the case may be;

- (d) by inserting after the definition of "odd lot specialist" the following definitions:

"proper SCH transfer" has the same meaning as is assigned to the term by section 9 of the *Corporations Law*:

"relevant company" means—

- (a) a South Australian registered company;
- or
- (b) a foreign company with a registered office under the *Corporations Law* that is situated in this State:

"relevant SCH participant", in relation to an SCH-regulated transfer, means the SCH participant who is, according to Division 3, liable to pay duty chargeable in respect of the transfer, or, if no duty is chargeable, the SCH participant who would be so liable if duty were chargeable:

"SCH" means the securities clearing house registered by the Commissioner under Division 4:

"SCH business rules" has the same meaning as is assigned to the term by section 9 of the *Corporations Law*:

"SCH participant" has the same meaning as is assigned to the term by section 9 of the *Corporations Law*:

"SCH-regulated transfer" has the same meaning as is assigned to the term by section 9 of the *Corporations Law*;

(e) by inserting after the definition of "South Australian dealer" the following definitions:

"South Australian registered company" means a body that is registered, or taken to be registered, as a company under the *Corporations Law* of South Australia, but does not include a company registered under Division 4 of Part 2.2 of the *Corporations Law* of another jurisdiction or a foreign company:

"transfer document" has the same meaning as is assigned to the term by section 1097 of the *Corporations Law*:

"transfer identifier", in relation to an SCH-regulated transfer, means the distinctive code assigned to the transfer as required by SCH:

"transfer value", in relation to an SCH-regulated transfer of a marketable security, means—

(a) in the case of a transfer on sale—the total consideration for the sale or the unencumbered market value of the security at the date of the sale, whichever is the greater;

or

(b) in any other case—the unencumbered market value of the security at the date of the transfer.

Insertion of heading

7. The following heading is inserted immediately before section 90b of the principal Act:

DIVISION 2—DUTY ON SALES AND PURCHASES BY BROKERS

Amendment of s. 90b—Application of Division

8. Section 90b of the principal Act is amended by striking out "This Part" and substituting "This Division".

Amendment of s. 90c—Records of sales and purchases of marketable securities

9. Section 90c of the principal Act is amended—

(a) by striking out from subsection (1) "this Part" and substituting "this Division";

(b) by striking out subsection (6) and substituting the following subsection:

(6) The record must be kept by the South Australian dealer in a legible written form, or so as to be readily convertible into such a form, for a period of not less than three years from the date of the sale or purchase.;

(c) by striking out from subsection (8) "shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars" and substituting "is guilty of an offence";

(d) by striking out the expiation fee provision at the foot of subsection (8) and substituting the following penalty and expiation fee provisions:

Penalty: \$2 000.
Expiation fee: Division 7 fee.

Amendment of s. 90d—Returns to be lodged and duty paid

10. Section 90d of the principal Act is amended—

(a) by striking out subsection (3) and substituting the following subsection:

(3) A South Australian dealer who fails to lodge a return as required under this section is guilty of an offence.

Penalty: \$5 000.;

(b) by striking out from subsection (6) "\$2 000" and substituting "\$5 000".

Amendment of s. 90e—Endorsement of instrument of transfer as to payment of duty

11. Section 90e of the principal Act is amended by inserting in subsection (1) ", if the transfer on the sale or purchase is not an SCH-regulated transfer," after "the South Australian dealer shall".

Insertion of Divisions 3 and 4

12. The following Divisions are inserted after section 90g of the principal Act:

DIVISION 3—DUTY ON CERTAIN SCH-REGULATED TRANSFERS

Application of Division

90H. This Division applies to an SCH-regulated transfer of a marketable security only where—

- (a) the transfer is a proper SCH transfer;
- (b) the transfer is made otherwise than on a sale or purchase to which Division 2 applies;
- (c) the security is—
 - (i) a share, or a right in respect of a share, of a relevant company;
 - (ii) a unit of a unit trust scheme the principal register of which is situated in this State;

or

- (iii) a unit of a unit trust scheme in relation to which no register exists in Australia and—
 - (A) having as the manager of the scheme a relevant company or a natural person principally resident in this State;
 - or
 - (B) not having a manager but with a trustee that is a relevant company or a natural person principally resident in this State;
- and
- (d) the body approved as the securities clearing house under section 779B of the *Corporations Law* is registered by the Commissioner under Division 4.

Transfer documents treated as instruments of conveyance

90I. For the purposes of this Act, the transfer document for an SCH-regulated transfer of a marketable security to which this Division applies is to be taken to be an instrument of conveyance or conveyance on sale (as the case may require) of the security and, subject to this Act, chargeable with duty accordingly.

SCH participant liable to pay duty

90J. (1) Where duty is chargeable in respect of an SCH-regulated transfer of a marketable security, the SCH participant party to the transfer, or, if there is more than one, the SCH participant who is the transferee or controls the transferee's holding, is liable to pay the duty.

(2) Where the SCH participant liable to pay duty in respect of an SCH-regulated transfer is not the transferee under the transfer, the participant may recover from the transferee the amount of the duty paid as a debt by action in a court of competent jurisdiction and may, in reimbursement of that amount, retain any money in the participant's hands belonging to the transferee.

Record of SCH-regulated transfers

90K. (1) A record must be made in accordance with this section immediately on the making of an SCH-regulated transfer of a marketable security to which this Division applies.

(2) The record must be made by the relevant SCH participant.

(3) The record must show—

- (a) the date of the transfer;
- (b) the transfer identifier of the transfer;
- (c) the name of the transferee and, unless another SCH participant controls the transferor's holding, the name of the transferor;
- (d) the identification code of the participant making the record and the identification code of the other SCH participant (if any) party to the transfer;

- (e) the quantity and full description of the marketable security transferred;
 - (f) the transfer value of the marketable security or, if more than one, of each marketable security and the total transfer value of all;
 - (g) the amount of duty chargeable in accordance with the second schedule in respect of the transfer;
 - (h) if *ad valorem* duty is not chargeable in respect of the transfer, a statement of the grounds on which *ad valorem* duty is not chargeable;
 - (i) in the case of an error transaction to reverse an earlier transfer that was made mistakenly, the transfer identifier of that earlier transfer;
- and
- (j) any other particulars prescribed for the purposes of this section.

(4) An SCH participant may, in any record made in accordance with this section, incorporate additional information for the participant's own use.

(5) The record must be kept by the SCH participant in a legible written form, or so as to be readily convertible into such a form, for a period of not less than five years from the date of the transfer.

(6) An SCH participant who fails to make or keep a record as required by this section is guilty of an offence.

Penalty: \$2 000.
Expiation fee: Division 7 fee.

Particulars to be included by relevant participant in transfer document

90L. The relevant SCH participant must include in the transfer document for an SCH-regulated transfer to which this Division applies the particulars required by the Commissioner under the conditions of registration of SCH.

Penalty: \$2 000.

Relevant SCH participant's identification code equivalent to stamping

90M. When the relevant SCH participant's identification code is included in the transfer document for an SCH-regulated transfer to which this Division applies, the transfer document is to be taken to be duly stamped but without affecting the relevant SCH participant's liability to pay any duty chargeable on the transfer document.

Report to be made and duty paid

90N. (1) The relevant SCH participant must, not more than seven days after the end of a month in which the participant has been party to an SCH-regulated transfer to which this Division applies—

- (a) make a report to SCH in respect of the transfer in the form and containing the particulars required by the Commissioner under the conditions of registration of SCH;

and

(b) if duty is chargeable in respect of the transfer, pay the duty to SCH.

(2) An SCH participant who fails to make a report as required under this section is guilty of an offence.

Penalty: \$5 000.

(3) Where the Commissioner has reason to believe or suspect that an SCH participant has contravened or failed to comply with a requirement of this section, the Commissioner may, on the basis of estimates if necessary, make an assessment of the amount that, in the Commissioner's opinion, represents unpaid duty.

(4) Where the Commissioner makes an assessment under subsection (3)—

(a) the Commissioner must cause notice in writing of the assessment to be served on the participant in default;

and

(b) the participant is liable to pay to the Commissioner any duty determined by the Commissioner under the assessment to be payable together with any further duty specified in the notice as being payable by way of penalty pursuant to subsection (5).

(5) Where an SCH participant is liable to pay duty by virtue of an assessment under subsection (3), the participant is in addition liable to pay penalty duty equal to twice the amount of the duty that has been so assessed.

(6) The Commissioner may at any time remit any penalty duty, or part of any penalty duty, payable under this section.

(7) An SCH participant liable to pay duty as a result of an assessment under this section who fails to pay the amount specified in the notice of assessment on or before the date specified in the notice is guilty of an offence.

Penalty: \$5 000 plus an amount equal to twice the amount of the Commissioner's assessment under subsection (3).

Refund for error transaction

90O. The Commissioner must, on being satisfied that *ad valorem* duty has been paid to the Commissioner in respect of an error transaction to which this Division applies, refund the amount of the duty so paid.

DIVISION 4—THE SECURITIES CLEARING HOUSE

Registration as the securities clearing house

90P. (1) The Commissioner must, on application (in a form approved by the Commissioner) by the body approved as the securities clearing house under section 779B of the *Corporations Law*, register the body under this Division.

(2) The registration is subject to conditions determined by the Commissioner from time to time and notified to SCH by writing.

(3) The registration continues in force—

(a) until cancelled on the application of the body registered;

and

(b) subject to an order of suspension made by the Commissioner for a specified period for contravention of, or failure to comply with, a provision of this Division or a condition of the registration.

Monthly return

90Q. (1) SCH must, on or before the fifteenth day of each month—

(a) lodge with the Commissioner a return in the form and containing the particulars required by the Commissioner under the conditions of registration of SCH;

and

(b) pay to the Commissioner any duty paid to SCH under this Act in respect of an SCH-regulated transfer made in the preceding month.

(2) Where the Commissioner has reason to believe or suspect that SCH has contravened or failed to comply with a requirement of this section, the Commissioner may, on the basis of estimates if necessary, make an assessment of the amount that, in the Commissioner's opinion, represents unpaid duty.

(3) Where the Commissioner makes an assessment under subsection (2)—

(a) the Commissioner must cause notice in writing of the assessment to be served on SCH;

and

(b) SCH is liable to pay any duty determined by the Commissioner under the assessment to be payable together with any further duty specified in the notice as being payable by way of penalty pursuant to subsection (4).

(4) Where SCH is liable to pay duty by virtue of an assessment under subsection (2), SCH is in addition liable to pay penalty duty equal to the amount of the duty that has been so assessed.

(5) The Commissioner may at any time remit any penalty duty, or part of any penalty duty, payable under this section.

Particulars reported by participants to be kept by SCH

90R. The particulars reported to SCH by an SCH participant under this Division must be kept by SCH in a legible written form, or so as to be readily convertible into such a form, for a period of not less than five years from the date on which the report is made.

Disclosure to SCH of information

90S. Nothing in this Act prevents the disclosure to SCH of information acquired in, or in connection with, the administration of this Part.

Amendment of s. 106a—Transfers of marketable securities not to be registered unless duly stamped

13. Section 106a of the principal Act is amended by striking out from subsection (2) "to perfect a sale or purchase to which Part IIIA applies" and substituting "(other than an SCH-regulated transfer) on a sale or purchase to which Division 2 of Part IIIA applies".

Substitution of s. 107

14. Section 107 of the principal Act is repealed and the following section is substituted:

Penalty for false or misleading information

107. A person who in providing or recording any information as required under this Act makes a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) is guilty of an offence.

Penalty: If the person acted with intent to evade the payment of duty—\$10 000 plus an amount equal to twice the amount of duty sought to be evaded or imprisonment for 2 years.

In any other case—\$2 000.

Expiation fee: Division 7 fee.

Amendment of second schedule

15. The second schedule of the principal Act is amended—

(a) by inserting under the passage—

CONVEYANCE operating as a voluntary disposition *inter vivos* of any property (including a statement under Part IV)—

the following:

(a) In the case of an SCH-regulated transfer of a marketable security to which Division 3 of Part IIIA applies—

For every \$100 and any fractional part of \$100 of the value of the marketable security 0.60;

(b) In any other case — ;

(b) by striking out item 19 under the heading "GENERAL EXEMPTIONS FROM ALL STAMP DUTIES" and substituting the following item:

19. Conveyance or transfer of a marketable security by the personal representative of a deceased person to another person entitled under the will of the deceased person, or on intestacy, to have the marketable security conveyed or transferred to him or her.;

(c) by striking out from items 20 and 21 under the heading "GENERAL EXEMPTIONS FROM ALL STAMP DUTIES" "any share or shares in the stock, funds or capital of, or of any debenture or debentures or bond or bonds issued by, any corporation, company or society" and substituting, in each case, "a marketable security";

(d) by striking out item 24 under the heading "GENERAL EXEMPTIONS FROM ALL STAMP DUTIES" and substituting the following items:

- 24. A conveyance or transfer of a marketable security to or from a nominee company established by a South Australian dealer or an SCH participant solely for the purpose of facilitating settlement of transactions relating to marketable securities entered into in the ordinary course of business.
- 24A. An error transaction in respect of a marketable security to which Division 3 of Part IIIA applies.
- 24B. A conveyance or transfer of a marketable security made solely for the purpose of a security lending transaction of a kind that would qualify for relief under section 26BC(3) of the *Income Tax Assessment Act 1936* of the Commonwealth, as amended from time to time.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

ROMA MITCHELL Governor