



STAMP DUTIES (MISCELLANEOUS) AMENDMENT ACT 1994

No. 83 of 1994

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Statute Revision Amendments



ANNO QUADRAGESIMO TERTIO

ELIZABETHAE II REGINAE

A.D. 1994

No. 83 of 1994

An Act to amend the Stamp Duties Act 1923.

[Assented to 8 December 1994]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Stamp Duties (Miscellaneous) Amendment Act 1994*.
- (2) The *Stamp Duties Act 1923* is referred to in this Act as "the principal Act".

Amendment of s. 42B—Stamp duty on application for motor vehicle registration

2. Section 42B of the principal Act is amended—

- (a) by striking out from subsection (1a)(b) ", subject to subsection (1b),";
- (b) by striking out subsections (1b) and (1c);
- (c) by striking out from subsection (2) "or (1b)";
- (d) by striking out from subsection (7) "section" and substituting "Act".

Repeal of s. 59B

3. Section 59B of the principal Act is repealed.

Amendment of s. 71CA—Exemption from duty in respect of certain maintenance agreements, etc.

4. Section 71CA of the principal Act is amended by striking out subsections (2) and (3) and substituting the following subsections:

- (2) Where an instrument to which this section applies—

- (a) provides for a disposition of property between two persons who, at the time of execution of the instrument, are or have been married to each other and no other person takes or is entitled to take an interest in property in pursuance of the instrument; or
- (b) in the case of an application to transfer registration of a motor vehicle—is consequential on a disposition of property between two persons who, at the date of the application, are or have been married to each other,

the instrument is exempt from stamp duty if—

- (c) the marriage of the two persons referred to above has been dissolved or annulled; or
- (d) the Commissioner is satisfied that the marriage of the two persons has broken down irretrievably.

(3) Where an instrument to which this section applies was not exempt from stamp duty under this section by reason only that—

- (a) the marriage of the two persons had not been dissolved or annulled; and
- (b) the Commissioner was not satisfied that the marriage of the two persons had broken down irretrievably,

a person by whom stamp duty was paid on the instrument is entitled to a refund of the duty—

- (c) if the marriage is subsequently dissolved or annulled; or
- (d) if the Commissioner is subsequently satisfied that the marriage has broken down irretrievably.

Substitution of s. 71CB

5. Section 71CB of the principal Act is repealed and the following section is substituted:

Exemption from duty in respect of certain transfers between spouses or former spouses

71CB. (1) In this section—

"matrimonial home" means—

- (a) in relation to spouses—their principal place of residence of which both or either of them is owner;
- (b) in relation to former spouses—their last principal place of residence of which both or either of them was owner,

but does not include premises that form part of industrial or commercial premises;

"spouses" includes persons who have cohabited continuously as *de facto* husband and wife for at least five years.

(2) Subject to subsection (3), an instrument of which the sole effect is to transfer—

- (a) an interest in the matrimonial home; or
- (b) registration of a motor vehicle,

between parties who are spouses or former spouses is exempt from stamp duty.

(3) An instrument described in subsection (2) between parties who are former spouses is only exempt from stamp duty if the Commissioner is satisfied that the instrument has been executed as a result of the irretrievable breakdown of the parties' marriage or *de facto* relationship.

(4) Where an instrument was not exempt from stamp duty under this section by reason only that the Commissioner was not satisfied that the instrument had been executed as a result of the irretrievable breakdown of the parties' marriage or *de facto* relationship, the party by whom stamp duty was paid on the instrument is entitled to a refund of the duty if the Commissioner is subsequently satisfied that the instrument had been executed as a result of the irretrievable breakdown of the parties' marriage or *de facto* relationship.

(5) The Commissioner may require a party to an instrument in respect of which an exemption is claimed under this section to provide such evidence (verified, if the Commissioner so requires, by statutory declaration) as the Commissioner may require for the purpose of determining whether the instrument is exempt from duty under this section.

(6) This section applies in relation to instruments executed after its commencement.

Insertion of s. 71DA

6. The following section is inserted immediately after section 71D of the principal Act:

Rates of duty in respect of certain conveyances between superannuation funds

71DA. (1) If on an application made under this section the Commissioner is satisfied—

- (a) that the applicant is a party to an instrument that constitutes—
 - (i) a conveyance of property between superannuation funds;
 - or
 - (ii) an agreement to convey property between superannuation funds;
- (b) that the trustees of the respective funds are of the opinion that the funds will be complying superannuation funds for the year in which the conveyance occurs;

and

- (c) that the conveyance is in connection with a person ceasing to be a member of, or otherwise ceasing to be entitled to benefits in respect of, one superannuation fund and becoming a member of, or otherwise becoming entitled to benefits in respect of, the other superannuation fund,

this section applies to the instrument.

- (2) The duty payable on an instrument to which this section applies will be—

- (a) the amount of *ad valorem* duty that would be payable on the instrument as a conveyance apart from this section;

or

- (b) \$200,

whichever is the lesser.

(3) The Commissioner may require a party to an instrument that may be assessable under this section to provide such information or evidence as the Commissioner may require for the purpose of determining whether this section applies and, if so, the amount of duty payable on the instrument.

(4) The Commissioner may require the information or evidence to be given on oath or verified by statutory declaration.

- (5) In this section—

"complying superannuation fund" means—

- (a) a fund which is a complying superannuation fund within the meaning of section 267 of the *Income Tax Assessment Act 1936* of the Commonwealth;

or

- (b) a fund which is a complying ADF within the meaning of section 267 of the *Income Tax Assessment Act 1936* of the Commonwealth.

(6) This section applies to an instrument first lodged with the Commissioner for stamping on or after the commencement of this section.

Amendment of s. 90I—Transfer documents treated as instruments of conveyance

7. Section 90I of the principal Act is amended by inserting after its present contents (now to be designated as subsection (1)) the following subsection:

(2) Subsection (1) applies whether or not the body approved as the securities clearing house under section 779B of the *Corporations Law* is registered by the Commissioner under Division 4.

Insertion of Division 5

8. The following Division is inserted after Division 4 of Part 3A:

DIVISION 5—DUTY ON OTHER CONVEYANCES**Application of Division**

90T. This Division applies to a conveyance or conveyance on sale of a marketable security only where—

- (a) the marketable security is—
 - (i) a marketable security of a company incorporated under the *Corporations Law*;
 - (ii) a marketable security of a foreign company;
 - or
 - (iii) a unit of a unit trust scheme;
 - (b) the conveyance is made otherwise than on a sale or purchase to which Division 2 applies;
- and
- (c) the conveyance is not an SCH-regulated transfer to which Division 3 applies.

Securities liable to duty

90U. Subject to section 90V, a conveyance or conveyance on sale of a marketable security to which this Division applies is only liable to duty if the security is—

- (a) a marketable security of a relevant company;
 - (b) a unit of a unit trust scheme the principal register of which is situated in this State;
- or
- (c) a unit of a unit trust scheme in relation to which no register exists in Australia and—
 - (i) having as the manager of the scheme a relevant company or a natural person principally resident in this State;
 - or
 - (ii) not having a manager but with a trustee that is a relevant company or a natural person principally resident in this State.

Proclaimed countries

90V. (1) No duty is payable under this Act in respect of a conveyance or conveyance on sale of a marketable security that is registered on a register kept within a proclaimed country.

(2) The Governor may, by proclamation, declare any country to be a proclaimed country for the purposes of this section and may, by subsequent proclamation, vary or revoke any such proclamation.

Amendment of s. 93—Acquisitions to which this Part does not apply

9. Section 93 of the principal Act is amended by striking out from subsection (1)(d) "59B" and substituting "90V".

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

10. Section 106A of the principal Act is amended—

- (a) by striking out from subsection (1) "Part 3A does not apply but which is otherwise liable to duty under this Act shall not be registered, recorded or entered in the books of" and substituting "Division 5 of Part 3A applies must not be registered by";
- (b) by striking out from subsection (2) "shall not be registered, recorded or entered in the books of" and substituting "must not be registered by";
- (c) by striking out from subsection (3) ", recorded or entered in the books of" and substituting "by";
- (d) by striking out subsection (4) and substituting the following subsection:

(4) If a corporation, company or society contravenes or fails to comply with any of the provisions of this section, that corporation, company or society is guilty of an offence.

Penalty: \$2 000.;

- (e) by striking out from subsection (5) ", recorded or entered in the books of" and substituting "by".

Amendment of schedule 2

11. Schedule 2 of the principal Act is amended by inserting after item 21 of the clause headed "GENERAL EXEMPTIONS FROM ALL STAMP DUTIES" the following item:

- 22. Conveyance or transfer of American Depositary Shares or of American Depositary Receipts that relate to American Depositary Shares, that causes or results in a change in the beneficial ownership of an estate or interest in marketable securities of a South Australian registered company.

Statute revision amendments

12. The principal Act is further amended in the manner set out in the schedule.

SCHEDULE

*Statute Revision Amendments***Provision Amended****How Amended**

Section 31I(1)(a)

Strike out this paragraph and substitute the following paragraph:

- (a) a transaction entered into by the person in the course of any business carried on by the person as a pawnbroker;.

Section 71D(3)(c)

Strike out "*Petroleum (Submerged Lands) Act, 1967*" and substitute "*Petroleum (Submerged Lands) Act 1982*".

Section 81C(6)(b)

Strike out "deemed to be related by virtue of the provisions of the *Companies (South Australia) Code*" and substitute "related for the purposes of the *Corporations Law*".**Second schedule**

Clause headed "APPLICATION to Register a Motor Vehicle or APPLICATION to Transfer the Registration of a Motor Vehicle—"

(A) Component payable in respect of Registration

Exemptions from payment of this component—

Item 10

Strike out this item and substitute the following item:

10. Any application to register a motor vehicle in, or to transfer the registration of a motor vehicle to, the name of a council as defined in the *Local Government Act 1934* or a controlling authority as defined in Part 13 of that Act.

(B) *Component payable in respect of a Policy of Insurance*

Exemptions from payment of this component—

Item 5

Strike out this item and substitute the following item:

5. Policy of insurance where the application for registration is made by a council as defined in the *Local Government Act 1934* or a controlling authority as defined in Part 13 of that Act.

Clause headed "BILL OF EXCHANGE and PROMISSORY NOTE of any other kind (except a bank note)—"

Exemptions—

Item 4(b)

Strike out this paragraph and substitute the following paragraph:

- (b) drawn on behalf of a customer by a building society or credit union that is a society for the purposes of the *Financial Institutions (South Australia) Code*.

Clause headed "CONVEYANCE or TRANSFER on sale of any property (not otherwise charged), including contract or agreement for sale—"

Exemption—

Item 4

Strike out "*Industrial Conciliation and Arbitration Act, 1972*" and substitute "*Industrial and Employee Relations Act 1994*".

Item 5

Strike out this item and substitute the following item:

In the case of an amalgamation under Part IX of the *Industrial Relations Act 1988* of the Commonwealth, any conveyance or transfer of property to an amalgamated organisation from a de-registered organisation.

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

Exemption—

Item 4

Strike out "*Industrial Conciliation and Arbitration Act, 1972*" and substitute "*Industrial and Employee Relations Act 1994*".

Item 5

Strike out this item and substitute the following item:

In the case of an amalgamation under Part IX of the *Industrial Relations Act 1988* of the Commonwealth, any conveyance or transfer of property to an amalgamated organisation from a de-registered organisation.

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

ROMA MITCHELLE Governor