



STAMP DUTIES (CONCESSIONS) AMENDMENT ACT 1994

No. 31 of 1994

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ELIZABETHAE II REGINAE

A.D. 1994

No. 31 of 1994

An Act to amend the Stamp Duties Act 1923.

[Assented to 30 May 1994]

The Parliament of South Australia enacts as follows:

Short title

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

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

Commencement

2. (1) Sections 1, 2, 3, 4, 7, 8 and 9 will come into operation on the day on which this Act is assented to by the Governor.

(2) Sections 5, 6 and 10 will come into operation on 1 June 1994.

Amendment of s. 4—Interpretation

3. Section 4 of the principal Act is amended by inserting after the definition of "authorized officer" the following definition:

"business of primary production" means the business of agriculture, pasturage, horticulture, viticulture, apiculture, poultry farming, dairy farming, forestry or any other business consisting of the cultivation of soils, the gathering in of crops, the rearing of livestock or the propagation and harvesting of fish or other aquatic organisms:.

Amendment of s. 31a—Duty on agreements for "walk in walk out" sales of land used for primary production

4. Section 31a of the principal Act is amended by striking out from paragraph (a) "a pastoral holding, farm, orchard or other land used wholly or mainly for primary production" and substituting "land used wholly or mainly for the business of primary production".

Amendment of s. 31b—Interpretation

5. Section 31b of the principal Act is amended by inserting after the definition of "contractual bailment" the following definition:

"corresponding law" means a law of the Commonwealth or of another State or of a Territory that imposes duty of a similar nature to the duty imposed under this heading in respect of rental business or hiring arrangements;.

Amendment of s. 31i—Matter not to be included in statement

6. Section 31i of the principal Act is amended—

(a) by inserting after paragraph (b) of subsection (1) the following paragraph:

(c) any business transacted by the registered person in respect of which the registered person has paid duty under a corresponding law where—

(i) the rate of duty under that corresponding law is not less than 1.8 per cent on amounts received in respect of any rental business or hiring arrangement (disregarding any deductions or allowances available under that corresponding law);

and

(ii) the Commissioner is satisfied, on application made to the Commissioner by the registered person in a manner and form determined by the Commissioner, that it would be reasonable to allow the registered person to have the benefit of this subsection in respect of that business;;

(b) by inserting after subsection (1) the following subsections and redesignating existing subsection (1a) as subsection (1c):

(1a) If—

(a) a registered person, in respect of any period for which duty is payable under this heading in respect of his or her rental business, pays duty in respect of the same business (including business that involves a hiring arrangement) under a corresponding law;

(b) the rate of duty under that corresponding law is less than 1.8 per cent on amounts received in respect of any rental business or hiring arrangement (disregarding any deductions or allowances available under that corresponding law);

and

(c) the Commissioner is satisfied, on application made to the Commissioner by the registered person in a manner and form determined by the Commissioner, that it would be reasonable to allow a deduction to be made under this subsection,

the registered person is entitled to a deduction from the amount of duty that would, apart from this subsection, be payable, the amount of the deduction being equal to the amount of duty paid in respect of the same business under that corresponding law for the corresponding period.

(1b) The Commissioner may, in making a decision on an application under subsection (1)(c)(ii) or (1a)(c), take into account any of the following:

- (a) the law that constitutes the proper law with respect to the business to which the application relates, or that would be the proper law had not the registered person and any other person with whom the registered person has entered into or is conducting the business expressly or by implication determined on the law of some other place as the law to govern the business;
- (b) the extent to which the business to which the application relates is connected with the place where the corresponding law applies;
- (c) the extent (if any) to which it appears to the Commissioner that the registered person has arranged or structured his or her business to avoid the payment of duty under this heading,

and may take into account such other matters (whether similar or dissimilar to those referred to above) as the Commissioner thinks fit.

Insertion of s. 71cc

7. The following section is inserted after section 71cb of the principal Act:

Exemption from duty in respect of a conveyance of a family farm

71cc. (1) An instrument of which the sole effect is to transfer an interest in land used for the business of primary production from a natural person, or a trustee for a natural person, to a relative of the natural person, or a trustee for a relative of the natural person, is exempt from stamp duty if the Commissioner is satisfied—

- (a) that the land to which the transfer relates is used wholly or mainly for the business of primary production and is not less than 0.8 hectares in area;
- (b) that immediately before the instrument there was a business relationship between—
 - (i) the natural person (A) who, or whose trustee, is the transferor;and
 - (ii) the natural person (B) who, or whose trustee, is the transferee, or a lineal ancestor or spouse of B,

(otherwise than in relation to the transfer) with respect to the use of the property for the business of primary production;

- (c) in the case of a transfer where either or both parties are trustees, that no person is a beneficiary of the trust or trusts other than—
- (i) the natural person (A) who, or whose trustee, is transferor;
 - (ii) the natural person (B) who, or whose trustee, is transferee;
 - (iii) a relative (or relatives) of A or B;

and

- (d) that the transfer does not arise from arrangements or a scheme devised for the principal purpose of taking advantage of the benefit of this section.

(2) The Commissioner may, in deciding for the purposes of subsection (1)(b) whether a business relationship existed between two persons, take into account any of the following:

- (a) a previous employment relationship between them (regardless of the amount or form of remuneration);
- (b) a share-farming arrangement;
- (c) the provision of assistance in the running of the business;
- (d) a partnership arrangement,

and may take into account such other matters (whether similar or dissimilar to those referred to above) as the Commissioner thinks fit.

(3) The Commissioner may require a party to an instrument in respect of which an exemption is claimed under this section to provide such information or evidence as the Commissioner may require for the purpose of determining whether the instrument is exempt from duty under this section.

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

(5) In this section—

"relative", in relation to a natural person, means a person who is—

- (a) a child or remoter lineal descendant of the person or of the spouse of the person;
- (b) a parent or remoter lineal ancestor of the person or of the spouse of the person;
- (c) a brother or sister of the person or of the spouse of the person;

- (d) the spouse of the person or a spouse of any person referred to in paragraphs (a), (b) or (c);

"spouse" of a person includes a *de facto* husband or wife of the person who has been cohabiting continuously with the person for at least five years.

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

Insertion of s. 81d

8. The following section is inserted after section 81c of the principal Act:

Refinancing of rural loans

81d. (1) If the Commissioner is satisfied—

- (a) that a mortgage over land (the "new mortgage") provides for the refinancing of a loan secured by a previous mortgage (whether or not with the same mortgagee) that is being discharged;
- (b) that both the new mortgage and the previous mortgage apply to the same, or substantially the same, land;
- (c) that the land is used wholly or mainly for the business of primary production and is not less than 0.8 hectares in area;
- (d) that the sole or principal business of the mortgagor is the business of primary production;

and

- (e) that the mortgagor under both mortgages is the same person, and is not a public company or a subsidiary of a public company,

duty is not chargeable on so much of the amount under the new mortgage as secures the balance outstanding under the previous mortgage.

(2) The Commissioner may require a party to a mortgage in respect of which a benefit is claimed under this section to provide such information or evidence as the Commissioner may require for the purpose of determining whether the mortgage is entitled to that benefit.

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

(4) In this section—

"subsidiary", in relation to a public company, means a body corporate that is a subsidiary of the public company within the meaning of the *Corporations Law*;

"public company" means a public company within the meaning of the *Corporations Law*.

(5) This section applies in relation to mortgages executed after its commencement.

(6) This section expires on the second anniversary of its commencement.

Amendment of second schedule

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

(a) by striking out "a tractor owned by a primary producer," twice occurring from paragraph (A) under the heading commencing "APPLICATION to Register a Motor Vehicle";

(b) by inserting after item 17 of the exemptions from payment of the component payable in respect of Registration appearing under the heading commencing "APPLICATION to Register a Motor Vehicle" the following item:

18. Any application to register or to transfer the registration of a tractor or item of farm machinery owned by a primary producer.

Transitional provision

10. The amendments made by sections 5 and 6 of this Act apply in relation to rental business transacted on or after 1 June 1994.

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

ROMA MITCHELL Governor