



ANNO TRICESIMO SEPTIMO

ELIZABETHAE II REGINAE

A.D. 1988

No. 21 of 1988

An Act to amend the Stamp Duties Act, 1923.

[Assented to 14 April 1988]

The Parliament of South Australia enacts as follows:

Short title.

1. (1) This Act may be cited as the "Stamp Duties Act Amendment Act, 1988".

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

Commencement.

2. (1) Subject to subsection (2), this Act will be taken to have come into operation on 7th December, 1987.

(2) Section 3 will come into operation two months after assent.

Amendment of
s. 20—
Penalty for not
duly stamping.

3. Section 20 of the principal Act is amended by inserting after subsection (3) the following subsections:

(4) If an instrument that is chargeable with stamp duty is not produced to the Commissioner for stamping within the period prescribed by subsection (1), any person who executed the instrument, or on whose behalf it was executed, is guilty of an offence.

Penalty: \$10 000.

(5) Subsection (4) does not apply in relation to—

(a) an instrument executed, or brought into existence, before 7th December, 1987;

(b) an instrument that has been duly stamped in some other manner authorized by this Act within the relevant period.

(6) It is a defence to a charge against subsection (4) to prove that the defendant delivered the instrument or had it delivered into the possession of some other party, or an agent for some other party, to the instrument in the reasonable expectation that the other party would have it stamped.

(7) The commission of an offence against subsection (4) does not affect the validity of the instrument in relation to which the offence was committed.

(8) Where a body corporate is guilty of an offence against subsection (4), each member of the governing body of the body corporate is guilty of an offence and liable to the same penalty as is prescribed by that subsection unless it is proved that he or she could not by the exercise of reasonable diligence have prevented the commission of the offence by the body corporate.

Amendment of
s. 24—
Objections to,
and appeal
against,
assessments.

4. Section 24 of the principal Act is amended—

(a) by striking out subsection (2) and substituting the following subsection:

(2) The Treasurer may, on receipt of a statement of grounds of objection, confirm or modify the Commissioner's assessment and, if the assessment is reduced, any excess duty paid by the objector will be refunded together with interest on the excess, from the date of payment of the duty, at the rate fixed under subsection (10).;

(b) by striking out subsection (7) and substituting the following subsection:

(7) If the Court finds that the appellant has paid duty that is not chargeable under this Act, or has paid duty in excess of the amount chargeable under this Act, the Court will order the Commissioner—

(a) to refund the amount that was not properly chargeable together with interest on that amount, from the date of payment of the duty, at the rate fixed under subsection (10);

and

(b) to pay the appellant's costs of the appeal.;

and

(c) by inserting after subsection (9) the following subsection:

(10) The Minister may, by notice in the *Gazette*—

(a) fix a rate of interest in respect of refunds of duty under this section;

or

(b) vary a rate of interest previously fixed under this section.

Amendment of
s. 71—
Instruments
chargeable as
conveyances
operating as
voluntary
dispositions *inter vivos*.

5. Section 71 of the principal Act is amended by striking out paragraph (e) of subsection (5) and substituting the following paragraph:

(e) a transfer of property to a person who has a beneficial interest in the property by virtue of an instrument that is duly stamped, where—

(i) the beneficial interest arises under a trust of which the transferor is a trustee;

and

(ii) (A) the transferor or some other trustee or trustees of the trust obtained his, her or their interest in the

property under one of the other paragraphs of this subsection (except paragraph (d));

or

- (B) the transferor or some other trustee or trustees of the trust obtained his, her or their interest in the property by virtue of an instrument duly stamped with *ad valorem* duty;

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

Insertion of new s. 71cb.

71cb. (1) An instrument of which the sole effect is to transfer an interest in the matrimonial home from one spouse to the other is exempt from stamp duty.

Exemption from duty in respect of a conveyance between husband and wife.

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

(3) In this section—

“matrimonial home”, in relation to spouses, means residential premises that constitute their principal place of residence but does not include premises that form part of industrial or commercial premises;

“spouses” includes persons who have been cohabiting continuously as de facto husband and wife for at least five years before execution of the instrument in respect of which an exemption is claimed under this section.

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

7. The following heading and section are inserted after section 71d of the principal Act:

Insertion of new s. 71e.

Transactions effected without creating a Dutiable Instrument

71e. (1) Subject to subsection (2), this section applies to a transaction in the following circumstances—

Transactions otherwise than by dutiable instrument.

(a) the transaction results in a change in the ownership of a legal or equitable interest in—

(i) land;

(ii) a business, or the goodwill of a business, situated in the State;

or

(iii) an interest in a partnership;

and

(b) (i) the transaction is not effected by an instrument on which *ad valorem* duty is chargeable;

but

- (ii) if the transaction had been effected, or wholly effected, by an instrument, the instrument would be chargeable with duty as a conveyance or as if it were a conveyance.

(2) This section does not apply to any of the following transactions—

- (a) the appointment of a receiver or trustee in bankruptcy;
- (b) the appointment of a liquidator;
- (c) a compromise or arrangement under Part VIII of the Companies (South Australia) Code;
- (d) a conveyance of property (not being land subject to the provisions of the Real Property Act, 1886) for nominal consideration for the purpose of securing the repayment of an advance or loan;
- (e) any other transaction of a prescribed class.

(3) Where a transaction to which this section applies is entered into, a statement in a form approved by the Commissioner must be lodged with the Commissioner setting out—

- (a) the nature and effect of the transaction;
- (b) a description of the property affected by the transaction;
- (c) a statement of the value of any property to which the transaction relates;
- (d) a statement of any consideration that has passed or is to pass between the parties to the transaction.

(4) Duty is payable on the statement as if it were a conveyance effecting the transaction to which it relates.

(5) Where a statement is lodged with the Commissioner under this section—

- (a) any instrument that relates to the same transaction is not chargeable with duty to the extent to which duty has been paid on the statement;

and

- (b) the statement will not be charged with duty to the extent that duty has been paid on any instrument that relates to the same transaction.

(6) If a statement relating to a transaction to which this section applies is not lodged with the Commissioner in accordance with this section within two months after a change in legal or equitable ownership of property is effected by the transaction—

- (a) each party to the transaction is guilty of an offence;

and

- (b) the Commissioner may make an assessment, on the basis of such information as is available to the Commissioner and such estimates as the Commissioner considers reasonable, of the duty that would have been payable if the

statement had been lodged (and that duty will be recoverable from the parties to the transaction).

(7) A person who aids, abets, counsels or procures another person to enter into a transaction to which this section applies knowing that none of the parties to the transaction intends to lodge a statement under this section is guilty of an offence.

(8) A person who is guilty of an offence against this section is liable to a fine not exceeding \$10 000.

(9) If a statement relating to a transaction to which this section applies is lodged with the Commissioner but it is subsequently established to the satisfaction of the Commissioner that the transaction is not to be completed, the Commissioner may refund any duty paid on the statement.

(10) If there is a series of transactions between the same parties and the transactions take place within a period of one month, they may be treated as one transaction for the purposes of this section.

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

Insertion of new s. 82.

82. (1) A caveat under the Real Property Act, 1886, to protect an interest arising under an unregistered mortgage is chargeable with duty.

Unregistered mortgages protected by caveats.

(2) The amount of duty chargeable on a caveat to which subsection (1) applies is—

(a) if the mortgage to which the caveat relates has been stamped—\$4;

(b) if the mortgage to which the caveat relates has not been stamped—\$4 plus the amount of duty that would be payable on the mortgage if produced for stamping.

(3) If—

(a) stamp duty is paid on a caveat in respect of a mortgage that has not been stamped;

and

(b) the mortgage is subsequently produced for stamping,

the mortgage is not chargeable with duty to the extent to which duty in respect of the mortgage has been paid on the caveat.

9. Section 71e of the principal Act applies in relation to transactions entered into on or after 7th December, 1987, but no offence arises under subsection (6) (a) of that section in relation to a transaction entered into before the date of assent to this Act if the required statement is lodged with the Commissioner within two months after assent.

Transitional provision.

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

C. L. LAUCKE, Governor's Deputy