

STAMP DUTIES AMENDMENT ACT 1987

No. 94 of 1987

TABLE OF PROVISIONS

- | | |
|--|---|
| 1. Short title. | 12. Insertion in Principal Act of new Division 3AA. |
| 2. Commencement. | <i>Division 3AA—Rental business</i> |
| 3. Principal Act. | 57—Interpretation. |
| 4. Application of Act. | 58—Requirement to be registered under this Division. |
| 5. Amendment of section 3 of Principal Act (Interpretation). | 59—Statements to be lodged by registered persons with Commissioner. |
| 6. Amendment of section 11 of Principal Act (Denoting of duties). | 59A—Registered persons to keep records. |
| 7. Amendment of section 12 of Principal Act (Cases in which duty may be denoted by adhesive stamps). | 59B—Penalties. |
| 8. Amendment of section 12A of Principal Act (Payment of duty by return in certain cases). | 59C—Transactions with unregistered persons. |
| 9. Amendment of section 54 of Principal Act (Preparation of original instruments). | 59D—Undertaking to pay duty. |
| 10. Amendment of section 55 of Principal Act (Duty payable by certain persons in certain cases). | 59E—Duty payable on collateral instruments. |
| 11. Insertion in Principal Act of new section 56A. | 13. Amendment of section 71A of Principal Act (Interpretation: Division 6A, Part IV). |
| 56A—Consequences of failure to pay monthly instalments in relation to certain credit transactions. | 14. Amendment of section 76 of Principal Act (Offences). |
| | 15. Amendment of section 79 of Principal Act (Refunds of excess duty). |
| | 16. Amendment of Schedule 2 to Principal Act (SCALE AND RATES OF DUTIES). |
| | 17. Amendment of Schedule 3 to Principal Act (INSTRUMENTS EXEMPTED FROM DUTY). |
| | 18. Amendment of <i>Stamp Duties Amendment Act 1986</i> . |



STAMP DUTIES AMENDMENT ACT 1987

No. 94 of 1987

AN ACT to amend the Stamp Duties Act 1931.

[Royal Assent 14 December 1987]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1—This Act may be cited as the *Stamp Duties Amendment Act 1987*. Short title.

2—This Act shall commence on 1st January 1988, but if this Act does not receive the Royal assent on or before that date, it shall be deemed to have commenced on that date. Commencement.

3—In this Act, the *Stamp Duties Act 1931** is referred to as the Principal Act. Principal Act.

4—The amendments effected to items 8, 9, and 13 of Part I of Schedule 2 to the Principal Act apply in respect of an instrument— Application of Act.

(a) presented for assessment of duty;

* 22 Geo. V No. 19. For this Act, as amended to 1st September 1987, see the continuing Reprint of Statutes.

- (b) included in a return or statement under the Principal Act; or
- (c) the duty payable in respect of which is denoted on the instrument by any adhesive stamp or stamps, on or after 1st January 1988.

Amendment of section 3 of Principal Act (Interpretation).

5—Section 3 of the Principal Act is amended as follows:—

- (a) by omitting the definition of “broadcast receiver” in subsection (1);
- (b) by omitting the definition of “hirer” in subsection (1) and substituting the following definition:—
“hirer”, in relation to a hire-purchase agreement, means a hirer as defined in the *Hire-Purchase Act 1959*;
- (c) by omitting the definition of “owner” in subsection (1) and substituting the following definition:—
“owner”, in relation to a hire-purchase agreement, means an owner as defined in the *Hire-Purchase Act 1959*;
- (d) by omitting the definition of “television receiver” in subsection (1);
- (e) by omitting from subsection (3) “arrangements, credit purchase agreements, or rental agreements” and substituting “arrangements or credit purchase agreements”;
- (f) by omitting subsection (4);
- (g) by omitting subsection (7);
- (h) by omitting from subsection (8) “, a rental agreement,”;
- (i) by omitting from subsection (8) (b) “, item 9, or item 23” and substituting “or item 9”;
- (j) by omitting from subsection (10) “or rental agreement”.

Amendment of section 11 of Principal Act (Denoting of duties).

6—Section 11 of the Principal Act is amended by omitting paragraphs (b), (c), and (d) of subsection (2) and substituting the following paragraph:—

- (a) any instrument included in a return under section 12A; or

Amendment of section 12 of Principal Act (Cases in which duty may be denoted by adhesive stamps).

7—Section 12 of the Principal Act is amended by omitting paragraph (ec) of subsection (1).

8—Section 12A of the Principal Act is amended by inserting after subsection (7) the following subsections:—

Amendment of section 12A of Principal Act (Payment of duty by return in certain cases).

(7A) Notwithstanding subsection (7) (b), an approved person may pay an amount equal to the amount of the duty that would, but for the provisions of subsection (5), have been payable in respect of any credit arrangement, credit purchase agreement, or hire-purchase agreement by way of equal monthly instalments over the term of the credit arrangement, credit purchase agreement, or hire-purchase agreement.

(7B) Where an approved person is paying duty by equal monthly instalments on any credit arrangement, credit purchase agreement, or hire-purchase agreement in accordance with subsection (7A) and the arrangement or agreement is terminated or otherwise ceases to have effect prior to the full amount of duty payable in respect of the arrangement or agreement being paid, an amount equal to the duty outstanding at the date on which the arrangement or agreement is terminated or otherwise ceases to have effect becomes immediately due and payable.

(7C) Where an approved person is paying duty by equal monthly instalments over the term of any credit arrangement, credit purchase agreement, or hire-purchase agreement and that person's rights are assigned to another person (in this subsection referred to as "the assignee"), an amount equal to the duty outstanding becomes immediately due and payable by the first-mentioned person unless the Commissioner allows the assignee to continue to pay an amount equal to the duty by way of equal monthly instalments.

9—Section 54 of the Principal Act is amended as follows:—

Amendment of section 54 of Principal Act (Preparation of original instruments).

(a) by adding "or" after "agreement;" in subsection (1) (b);

(b) by omitting "arrangement; or" from subsection (1) (c) and substituting "arrangement,";

(c) by omitting paragraph (d) of subsection (1);

(d) by inserting after paragraph (c) in subsection (2) the following paragraph:—

(ca) state the term for which the instrument is to have effect;

(e) by inserting the following subsection after subsection (2):—

(2A) Where a credit arrangement or credit purchase agreement is for a term of indefinite duration, that term shall, for the purposes of subsection (2) (ca), be expressed as being a term of 2 years.

Amendment of section 55 of Principal Act (Duty payable by certain persons in certain cases).

10—Section 55 of the Principal Act is amended as follows:—

(a) by adding “or” after “agreement;” in paragraph (b);

(b) by omitting “arrangement; or” from paragraph (c) and substituting “arrangement;”;

(c) by omitting paragraph (d);

(d) by adding “and” after “purchaser;” in paragraph (f);

(e) by omitting “borrower; and” from paragraph (g) and substituting “borrower.”;

(f) by omitting paragraph (h).

Insertion in Principal Act of new section 56A.

11—After section 56 of the Principal Act, the following section is inserted:—

Consequences of failure to pay monthly instalments in relation to certain credit transactions.

56A—(1) Where an approved person, within the meaning of section 12A, who is paying duty by equal monthly instalments on any credit arrangement, credit purchase agreement, or hire-purchase agreement in accordance with section 12A (7A) does not in respect of a month lodge with the Commissioner a return and pay the duty required to be paid under this Act within the time required to pay that duty, an amount equal to the duty outstanding becomes immediately due and payable under this Act, and an amount of 20 per cent of that amount is a debt due and payable by that person to the Crown and may be recovered accordingly.

(2) The Commissioner may remit in whole or in part any debt imposed under subsection (1).

12—After section 56A of the Principal Act (as inserted by this Act), the following Division is inserted:—

Insertion in
Principal Act of
new Division
3AA.

Division 3AA—Rental business

57—(1) In this Division, unless the contrary intention appears— Interpretation.

“external rental agreement” means an agreement in respect of rental business where the negotiations by or on behalf of the registered person took place in Tasmania but the goods obtained by the other party to the agreement were obtained for the purpose of being used exclusively in another State or a Territory of the Commonwealth;

“prescribed amount”, in relation to a statement under section 59, means—

(a) where the statement relates to a month after December 1987 and before July 1988, \$10 000; and

(b) where the statement relates to a month after June 1988, \$20 000;

“prescribed goods” means the goods prescribed for the purposes of this Division in the regulations in force under this Act;

“prescribed period”, in relation to a statement under section 59, means—

(a) where the statement relates to a month after December 1987 and before July 1988, the period of 6 months commencing on 1st January 1988 and ending on 30th June 1988; and

(b) where the statement relates to a month after June 1988, the period of 12 months commencing on 1st July 1988 or any succeeding 1st July;

“registered person” means a person who is registered under this Division;

“rental business” means the business of—

(a) letting, bailing, or otherwise giving rights to use goods; and

- (b) acquiring the rights of the lessor, bailor, or other disponer under any agreement or arrangement for the letting, bailing, or hiring of goods or under any other similar agreement or arrangement with respect to the use of goods,

but does not include the business of giving to any person the right to use goods in conjunction with a lease of, or licence to occupy or use, any real property;

“special rental agreement” means an agreement for—

- (a) letting, bailing, or otherwise giving rights to use goods; or

- (b) acquiring the rights of the lessor, bailor, or other disponer under any agreement or arrangement for letting, bailing, or hiring of goods or under any other similar agreement or arrangement with respect to the use of goods,

where the aggregate amount paid or payable under the agreement exceeds \$200 000, but does not include an agreement for the right to use goods in conjunction with a lease of, or licence to occupy or use, any real property or an agreement under which the goods to which it relates at any time may in whole or in part be replaced by other goods or have other goods added to them, whether of the same or a different class.

(2) A person is not required to register under this Division by reason only of the fact that the person acts as agent for, or is the employee of, a person who carries on any rental business.

Requirement to
be registered
under this
Division.

58—(1) A person who, immediately before 1st January 1988, carried on rental business in Tasmania and received a total amount in respect of that rental business exceeding \$20 000 in the immediately preceding financial year shall, not later than 21st January 1988, apply to the Commissioner, in a form approved by the Commissioner, to be registered under this Division.

(2) A person who, in the 6 month period commencing on 1st January 1988 and ending on 30th June 1988, carries on rental business in Tasmania and receives a total amount in respect of that rental business exceeding \$10 000 in that period shall, not later than 21 days after the end of the month in which that amount was exceeded, apply to the Commissioner, in a form approved by the Commissioner, to be registered under this Division.

(3) A person who, after 30th June 1988, carries on rental business in Tasmania and receives a total amount in respect of that rental business exceeding \$20 000 in the 12 month period commencing on 1st July 1988 or in any succeeding 12 month period shall, not later than 21 days after the end of the month in which that amount was exceeded, apply to the Commissioner, in a form approved by the Commissioner, to be registered under this Division.

(4) The obligation to make an application under subsection (1), (2), or (3), as the case may be, continues until the application is made, notwithstanding that the period within which the application should have been made has expired and whether or not a person has been convicted of an offence in relation to the failure to make the application.

(5) A person—

- (a) referred to in subsection (1) who fails to comply with that subsection;
- (b) referred to in subsection (2) who fails to comply with that subsection; or
- (c) referred to in subsection (3) who fails to comply with that subsection,

is guilty of an offence punishable, on summary conviction, in accordance with subsection (6).

(6) A person convicted of an offence under subsection (5) is liable to a fine not exceeding 50 penalty units, and a person who is so convicted in respect of a continuing failure to comply with subsection (1), (2), or (3)—

- (a) is liable, in addition to the penalty otherwise applicable to that offence, to a fine for each day during which the failure continued of not more than 10 penalty units; and

(b) if the failure continues after the person is convicted, is guilty of a further offence under subsection (5) and is liable on summary conviction for that further offence, in addition to the penalty otherwise applicable to that further offence, to a fine for each day on which the failure continued after that conviction of not more than 10 penalty units.

(7) The Commissioner shall, on receipt of an application from a person—

(a) referred to in subsection (1), register that person under this Division and the registration takes effect on 1st February 1988;

(b) referred to in subsection (2), register that person under this Division and the registration shall be deemed to have taken effect on the first day of the month immediately following the month in which the amount received by that person from the rental business carried on by him since the commencement of the period referred to in that subsection exceeded \$10 000; and

(c) referred to in subsection (3), register that person under this Division and the registration shall be deemed to have taken effect on the first day of the month immediately following the month in which the amount received by that person from the rental business carried on by him since the preceding 1st July exceeded \$20 000.

(8) A person who, in the course of any business, undertakes negotiations in Tasmania with the object of transacting any rental business shall be deemed to carry on rental business in Tasmania, whether the person has an established place of business in Tasmania or not.

(9) A registered person may apply to the Commissioner, in a form approved by the Commissioner, for the cancellation of the registration under this Division of that person.

(10) On receipt of an application under subsection (9), the Commissioner shall, if he is satisfied that the person is no longer carrying on a rental business, the total amount derived from which will exceed—

(a) \$10 000 during the period commencing on 1st January 1988 and ending on 30th June 1988; or

(b) \$20 000 during the 12 month period commencing on 1st July 1988 or any succeeding 12 month period,

cancel the registration under this Division of that person.

59—(1) A registered person shall, not later than the 21st day of each month—

Statements to be lodged by registered persons with Commissioner.

(a) lodge with the Commissioner a statement, in a form approved by the Commissioner, showing—

- (i) the total amount received by the registered person during the last preceding month (in this section called the “monthly total”) in respect of rental business for or in relation to the use of goods, other than amounts so received in respect of special rental agreements, external rental agreements, and rental agreements in respect of prescribed goods;
- (ii) the total amount received by the registered person during the last preceding month in respect of each special rental agreement;
- (iii) the total number of external rental agreements entered into by the registered person during the last preceding month; and
- (iv) the total number and value of rental agreements entered into by the registered person during the last preceding month in respect of prescribed goods; and

(b) pay to the Commissioner—

- (i) an amount equal to 2 per cent of the amount (if any) by which the sum of that monthly total and the aggregate of the monthly totals in respect of the preceding months in the prescribed period (other than any part of those monthly totals in respect of which duty is payable or has been paid under this section) exceeds the prescribed amount;
- (ii) in respect of each special rental agreement, an amount equal to—
 - (A) 2 per cent of the amount referred to in paragraph (a) (ii) or \$4 000 (whichever is the lesser); or
 - (B) where an amount of duty has previously been paid under this section in respect of the special rental agreement, an amount equal to 2 per cent of the amount referred to in paragraph (a) (ii) or the amount (if any) by which \$4 000 exceeds the aggregate amount of that duty previously so paid (whichever is the lesser); and
- (iii) in respect of each external rental agreement, an amount equal to \$20.

(2) The amounts referred to in subsection (1) include amounts received by or on behalf of the registered person in respect of the use of goods, other than under external rental agreements, where—

- (a) the right to use the goods was granted in Tasmania;
- (b) any of the negotiations by or on behalf of the registered person with respect to the grant of the right to use the goods were undertaken in Tasmania; or
- (c) the goods were delivered in Tasmania to the grantee of the right to use those goods.

(3) Subject to subsection (4), nothing in this Division shall require a registered person to include in the statement required to be submitted to the Commissioner under subsection (1) an amount in respect of—

(a) any transaction effected or evidenced by an instrument to which item 8, 9, or 13 of Schedule 2 applies or a transaction pursuant to a rental agreement—

(i) presented for assessment of duty;

(ii) included in a return under section 12A in respect of rental agreements; or

(iii) the duty payable in respect of which is denoted on the agreement by any adhesive stamp or stamps,

before 1st January 1988; or

(b) any business transacted by the registered person outside Tasmania if—

(i) none of the negotiations leading to the transaction of the business took place in Tasmania; and

(ii) the goods obtained by the other party to the transaction were obtained for the purpose of being used exclusively outside Tasmania,

but a registered person shall supply to the Commissioner such particulars of the matters referred to in this subsection as are in any particular case required by the Commissioner.

(4) On and after 1st July 1990, any amount received in respect of a transaction pursuant to a rental agreement for an indefinite and indeterminable period and executed before 1st January 1988 shall be included in the statement required to be submitted to the Commissioner under subsection (1).

(5) Where the Commissioner is of the opinion that it would be unduly onerous to require a registered person to lodge statements—

(a) within the time specified in subsection (1), the Commissioner may, by notice in writing delivered or posted to the registered person, vary the time within which that person is required to lodge statements under that subsection; or

(b) relating to each month, the Commissioner may, by notice in writing delivered or posted to the registered person, authorize that person to lodge statements at such times and relating to such other periods as may be specified in the notice,

and the registered person shall, while that notice remains unrevoked, lodge statements accordingly.

(6) Where the Commissioner is satisfied that, in the circumstances of a particular case, it is not reasonable to require any statements to be lodged by a registered person under subsection (1) (a), the Commissioner may, by notice in writing delivered or posted to the registered person, exempt that person from lodging a statement under that subsection.

(7) The Commissioner may at any time, by notice in writing delivered or posted to the registered person, revoke any notice given under subsection (5) or (6).

(8) Where duty has been paid on an external rental agreement shown in a statement lodged under subsection (1), the words "Tasmanian Stamp Duty Paid" shall be placed on the front page of that agreement.

Registered
persons to keep
records.

59A—(1) A registered person—

(a) shall keep or cause to be kept sufficient books and records to enable the person to calculate accurately the total amounts which are to be set out in the monthly statements required to be submitted to the Commissioner under this Division; and

(b) shall keep those books and records as well as all working papers used in making the calculations available for inspection for a period of at least 3 years from the month to which each such statement relates or for such shorter period as the Commissioner determines in any particular case.

(2) A person who fails to comply with subsection (1) is guilty of an offence and is liable on summary conviction to a fine not exceeding 10 penalty units.

59B—(1) Where a registered person does not, in respect of a month, in accordance with section 59, or in respect of another period, in accordance with section 59 (5), lodge with the Commissioner a statement and pay an amount due as duty on or before the 21st day of the succeeding month, or the time agreed in relation to that period under section 59 (5), an amount of 20 per cent of the amount due is a debt due and payable by that registered person to the Crown and may be recovered in accordance with this Act. Penalties.

(2) The Commissioner may remit in whole or in part a debt payable under this section.

59C—(1) Where any person domiciled or resident in Tasmania transacts or offers to transact any business with a person carrying on any rental business (whether within or outside Tasmania) who is not a registered person, the person shall forthwith make a note or memorandum in writing of the transaction or offer containing such particulars as the Commissioner may approve. Transactions with unregistered persons.

(2) A note or memorandum made for the purposes of subsection (1) is chargeable with duty at the rate of 2 per cent or \$4 000, whichever is the lesser, of the amount that is or will be payable for the use of the goods to which the transaction relates but, where the amount is not capable of being determined, the person making the note or memorandum shall be liable, in lieu of paying that duty on the note or memorandum, to pay a duty of \$20.00 by an impressed stamp on the note or memorandum and to pay not later than 31st March in each year further duty on the note or memorandum at the rate of 2 per cent of the amount paid or payable in respect of the use of the goods during the year ending on 31st January then last past.

(3) Notwithstanding subsection (2), a person is not liable to pay an aggregate amount exceeding \$4 000 in respect of any special rental agreement.

(4) The duty shall be denoted on the note or memorandum by an impressed stamp and shall be paid by the person liable to make the note or memorandum within 7 days of the making of the note or memorandum.

(5) A note or memorandum which is not stamped as required by this section may be stamped on payment of a penalty of double the amount of duty that should have been paid and a penalty of not more than \$1 000.

(6) Any person who fails to comply with subsection (1) shall be liable to pay a penalty equal to double the amount of the duty that would have been payable if the person had made a note or memorandum in writing of the transaction or offer in compliance with the requirements of subsection (1).

(7) Notwithstanding anything in this section, a person domiciled or resident in Tasmania need not make a note or memorandum of any business transacted or offered to be transacted—

(a) if the total amount that is or will be payable for the use of goods does not exceed \$100 or the grant of the right to the use of the goods is for a period of 14 days or less;

(b) with a person carrying on business outside Tasmania if—

(i) none of the negotiations leading to the transaction of, or to the offer to transact, the business were carried out in Tasmania; and

(ii) the goods obtained by him were obtained for the purpose of being used exclusively outside Tasmania;

(c) with the Crown or any person acting on behalf of the Crown whether in right of the Commonwealth or any State of the Commonwealth; or

(d) which is not a grant of the right to use goods.

Undertaking to
pay duty.

59D—(1) A person carrying on any rental business (whether within or outside Tasmania) who is not a registered person and is not required to be a registered person may give an undertaking to the Commissioner in accordance with a form approved by the Commissioner and to make such payments to the Commissioner in respect of such amounts and at such times as he would be required to make payments if he were required to be a registered person.

(2) Where the Commissioner receives an undertaking under subsection (1), he shall determine whether or not to accept the undertaking.

(3) An undertaking accepted by the Commissioner under this section has effect from the date on which it is so accepted until—

- (a) the person by whom the undertaking was given withdraws the undertaking by notice in writing given to the Commissioner; or
- (b) the Commissioner, by notice in writing given to the person, withdraws his acceptance of the undertaking.

59E—Where duty under item 1 (a) or item 18 of Schedule 2 would, but for this section, be payable on an instrument which is expressed to be collateral to and intended to secure any money owing under a rental agreement to which a registered person is a party, duty under item 5 of Schedule 2 is payable on that instrument.

Duty payable on collateral instruments.

13—Section 71A (1) of the Principal Act is amended as follows:—

Amendment of section 71A of Principal Act (Interpretation: Division 6A, Part IV).

- (a) by omitting “or on behalf of an instrumentality of the Commonwealth” from paragraph (k) of the definition of “exempt account”;
- (b) by inserting “, other than the Hydro-Electric Commission,” after “person” in paragraph (m) of the definition of “exempt account”.

14—Section 76 of the Principal Act is amended by omitting paragraphs (a), (b), and (c) of subsection (7).

Amendment of section 76 of Principal Act (Offences).

15—Section 79 of the Principal Act is amended by omitting from subsection (1) “section 47, section 55, section 58,” and substituting “section 12A, section 59,”.

Amendment of section 79 of Principal Act (Refunds of excess duty).

Amendment of
Schedule 2 to
Principal Act
(SCALE AND
RATES OF
DUTIES).

16—Part I of Schedule 2 to the Principal Act is amended as follows:—

(a) by omitting items 8, 9, and 13 and substituting the following items:—

8	Credit arrangement	2 per cent of the total amount of credit provided or to be provided under the arrangement or \$4 000, whichever is the lesser	By the lender
9	Credit purchase agreement	2 per cent of the amount of the purchase price or \$4 000, whichever is the lesser	By the vendor
13	Hire-purchase agreement	2 per cent of the purchase price or \$4 000, whichever is the lesser	By the owner

(b) by omitting items 23 and 24.

Amendment of
Schedule 3 to
Principal Act
(INSTRUMENTS
EXEMPTED
FROM DUTY).

17—Part I of Schedule 3 to the Principal Act is amended as follows:—

(a) with respect to the exemption operating in relation to item 11 in Schedule 2, by adding at the end of the second column of that Part:—

“Any rental agreement.”;

(b) by omitting the exemptions relating to item 23 in Schedule 2.

Amendment of
Stamp Duties
Amendment Act
1986.

18—The *Stamp Duties Amendment Act 1986* is amended by omitting subsection (1) of section 4 and substituting the following subsection:—

(1) This Act applies to any instrument, other than an instrument referred to in subsection (2) or (3)—

(a) which is presented for assessment of duty on or after 1st August 1986;

(b) which is included in a return under the Principal Act on or after that date; or

- (c) the duty payable in respect of which is denoted on the instrument by any adhesive stamp or stamps on or after that date and, if required under subsection (4A) of section 11 of that Act, which is produced for certification as provided in that subsection on or after that date.

