



STAMP DUTIES AMENDMENT ACT 1994

No. 45 of 1994

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STAMP DUTIES AMENDMENT ACT 1994

No. 45 of 1994

AN ACT to amend the *Stamp Duties Act 1931*

[Royal Assent 25 August 1994]

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:—

Short title

1—This Act may be cited as the *Stamp Duties Amendment Act 1994*.

Commencement

2—(1) Sections 9, 10, 11, 17 (2), 18 (2) and 19 (3) commence on 1 September 1994.

(2) Section 19 (1) is taken to have commenced on 1 December 1993.

(3) Sections 5, 20 and 21 commence on a date to be fixed by proclamation.

(4) Except as provided in this section, this Act commences on the date on which it receives the Royal Assent.

Principal Act

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

Section 3 amended (Interpretation)

4—Section 3 (1) of the Principal Act is amended by omitting “public hospital within the meaning of the *Hospitals Act 1918*” from the definition of “private hospital” and substituting “hospital maintained and operated by a board under the *Health (Regional Boards) Act 1991*”.

Section 9 amended (Imposition of duties)

5—Section 9 of the Principal Act is amended by inserting after subsection (2) the following subsections:—

(2A) Where a security creates a charge on property in Tasmania and property outside Tasmania, the duty chargeable under this Act in respect of the security is to be calculated in accordance with Schedule 5.

(2B) Where a loan security comprises property wholly outside Tasmania, the duty chargeable under this Act is to be calculated in accordance with Schedule 6.

* 22 Geo. V No. 19. For this Act, as amended to 1 September 1987, see the continuing Reprint of Statutes. Subsequently amended by No. 94 of 1987, No. 6 of 1988, No. 55 of 1989, Nos. 5, 30 and 40 of 1990, Nos. 43 and 46 of 1991, No. 41 of 1992 and Nos. 24 and 100 of 1993.

Section 10D amended (Penalty taken to be assessment)

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

- (a) by omitting “Act.” from paragraph (b) and substituting “Act; and”;
- (b) by inserting after paragraph (b) the following paragraph:—
 - (c) does not affect any liability for an offence under this Act.

Section 18B amended (Loans in connection with duty on instruments relating to purchase of first homes)

7—Section 18B (6) (a) (ii) of the Principal Act is amended by omitting “(being not less than three-monthly intervals)”.

Section 25 amended (Assessment and payment of duty on certain instruments where consideration inadequate)

8—Section 25 of the Principal Act is amended by omitting subsection (1B) and substituting the following subsection:—

(1B) If—

- (a) the Commissioner is unable to determine the value of real property as provided by subsection (1A); or
- (b) a party to an agreement, assignment or similar instrument so requests—

the Commissioner may assess the duty payable on the unencumbered value of the relevant real property determined by the Valuer-General as at the date on which the agreement, assignment or other instrument was made.

Section 65 amended (Records of sale and purchases of marketable securities in certain cases)

9—Section 65 of the Principal Act is amended as follows:—

- (a) by omitting “sale.” from subsection (2) (b) and substituting “sale; and”;

- (b) by inserting after paragraph (b) of subsection (2) the following paragraph:—
 - (c) a record may be made and stored by electronic means.
- (c) by omitting “3” from subsection (5) and substituting “5”.

Section 67 amended (Endorsements on transfers of marketable securities)

10—Section 67 of the Principal Act is amended as follows:—

- (a) by omitting “paid.” from subsection (1) and substituting “paid or endorse it with the participant identification code, as defined in section 69AA, if the transfer is an SCH-regulated transfer, as so defined, which will have the effect of an endorsement that duty has been, or will be, paid.”;
- (b) by omitting “An instrument of transfer on which a statement” from subsection (2) and substituting “A transfer document, within the meaning of section 1097 of the Corporations Law, on which a statement or participant identification code”.

Division 4AA inserted

11—After section 69A of the Principal Act, the following Division is inserted:—

Division 4AA—The Clearing House Electronic Sub-register System (CHESS)

Interpretation: Division 4AA, Part IV

69AA—In this Division, unless the contrary intention appears—

- “CHESS” means the Clearing House Electronic Sub-register System;
- “foreign company” has the same meaning as in section 9 of the Corporations Law;
- “off-market transfer” means a transfer which is not an on-market transfer;
- “on-market transfer” means a transfer directly resulting from an order lodged with a broker to purchase or sell securities;

- “participant identification code”** means the code used to identify SCH participants and issued by the SCH or any of its wholly owned subsidiaries;
- “proper SCH transfer”** has the same meaning as in section 9 of the Corporations Law;
- “relevant company”** means—
- (a) a Tasmanian registered company; or
 - (b) a foreign company, within the meaning of section 9 of the Corporations Law, with a registered office situated in Tasmania;
- “SCH”** means the securities clearing house registered by the Commissioner under section 69AG and includes a settlement company;
- “SCH business rules”** has the same meaning as in section 9 of the Corporations Law;
- “SCH participant”** has the same meaning as in section 9 of the Corporations Law;
- “SCH-regulated transfer”** has the same meaning as in section 9 of the Corporations Law;
- “SCH sub-register”** means the electronic sub-register operated by the SCH and which forms part of the principal register of the corporation or register of the trust on which the shares or units are kept;
- “settlement company”** means ASX Settlement and Transfer Corporation Pty Ltd and includes any other body corporate which is approved under section 779B of the Corporations Law as the securities clearing house;
- “Tasmanian registered company”** means a body that is registered, or taken to be registered, as a company under section 9 of the Corporations Law of Tasmania but does not include a recognised company registered under Division 4 of Part 2.2 of that Law or a foreign company;
- “transfer”** includes a change in legal ownership of marketable securities or rights resulting from the execution of an instrument of transfer or from an SCH-regulated transfer;
- “transfer document”** has the same meaning as in section 1097 of the Corporations Law;

“transfer identifier” is the unique code ascribed to a particular SCH-regulated transfer as required by SCH;

“transfer value” 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 sale, whichever is the greater; or
- (b) in any other case, the unencumbered market value of the security on the date of transfer.

Application of Division

69AB—This Division applies to an SCH-regulated transfer of a marketable security only where—

- (a) the transfer is a proper SCH transfer; and
- (b) the transfer is made otherwise than on the sale or purchase of a marketable security to which Division 4 applies; and
- (c) the marketable security is—
 - (i) a share, or a right in respect of a share in a relevant company; or
 - (ii) a unit of a unit trust scheme the principal register of which is situated in Tasmania; or
 - (iii) a unit of a unit trust scheme of which no register exists in Australia if the manager of the scheme or, in the absence of a manager, the trustee is a relevant company or a natural person principally resident in Tasmania; and
- (d) SCH is registered by the Commissioner under section 69AG.

Liability for stamp duty on off-market SCH-regulated transfers

69AC—(1) An SCH-regulated transfer which is an off-market transfer and which effects a change in beneficial ownership is to be charged with stamp duty at the rate of 60 cents for each \$100 of transfer value or fractional part of \$100 unless the transfer is exempt from duty under this Act.

(2) In the case of a transfer between 2 holdings on the SCH sub-register, the SCH participant who controls the holding of the transferee on that sub-register is liable for the duty.

(3) In the case of a transfer by an SCH participant to a holding that is not on the SCH sub-register, the SCH participant is liable for the duty.

(4) In the case of a transfer from a holding that is not on the SCH sub-register to a holding that is on that sub-register, the SCH participant is liable for the duty.

(5) Where an SCH participant is liable for duty under Division 4 or 4A in respect of a transaction, the SCH participant is not liable for duty under this Division in respect of that transaction.

(6) If—

(a) the liable SCH participant would not have been liable under this Act for the payment of the duty if an instrument of transfer had been executed; or

(b) the SCH participant had acquired the marketable security on account of another person—

the liable SCH participant may recover the duty from the person who is not an SCH participant or the transferee, as the case may be, as a debt due to the SCH participant in any court of competent jurisdiction.

Record keeping by SCH participants

69AD—(1) An SCH participant who is liable to pay duty on an SCH-regulated transfer must make and keep such records relating to the transfer as may be required by the Commissioner.

(2) Where a transfer is exempt from duty, the SCH participant who would have been liable for duty if the transfer had not been exempt must—

(a) make and keep a record of particulars relating to the transfer as may be required by the Commissioner; and

(b) keep such records as may be required by the Commissioner in support of the exemption from duty.

(3) All such records are to be kept in a permanent and legible form or by electronic means for a period of 5 years from the date of transfer.

(4) An SCH participant who—

(a) makes a record that is false in a material particular; or

(b) fails to make and keep such records as may be required by the Commissioner—

is guilty of an offence and is liable on summary conviction to a fine not exceeding 20 penalty units.

Information to be included by an SCH participant in the transfer document

69AE—(1) Where an SCH-regulated transfer involves a change in beneficial ownership, the SCH participant who is the liable party, or would have been so if the transfer had not been exempt, must assess the amount of duty chargeable on the transfer.

(2) A liable SCH participant must include in the transfer document such particulars as may be required by the Commissioner relating to the transaction to which the transfer gives effect.

(3) An SCH participant must not enter his or her participant identification code on a transfer document until all records required to be made in respect of the transfer have been made.

(4) An SCH participant who includes information in a transfer document which is false in any material particular or omits to include any required information, is guilty of an offence and is liable on summary conviction to a fine not exceeding 20 penalty units.

Payment of duty by SCH participant by return to SCH in respect of off-market transfers

69AF—(1) On or before the seventh day of each month, an SCH participant must prepare a return in respect of all off-market SCH-regulated transfers during the previous month where the SCH participant is liable or, if the transfer had not been exempt, would have been liable for the payment of duty.

(2) The return is to be in a form approved by the Commissioner and is to include such particulars relating to the transfer as may be required by the Commissioner.

(3) On or before the seventh day of each month, the SCH participant must—

- (a) forward the return to SCH; and
- (b) pay to SCH the amount of duty for all transfers in the previous month for which the SCH participant is liable.

(4) If the Commissioner is satisfied that an SCH participant has made an overpayment in respect of a transfer, the Commissioner may—

- (a) refund the amount of overpayment to the SCH participant; or
- (b) allow a credit in respect of the SCH participant's future return.

(5) An SCH participant is not required to furnish SCH with a return in respect of a month in which no off-market transaction occurs.

(6) An SCH participant who fails to provide a return as required by this section or who lodges a return that is false in a material particular is guilty of an offence and is liable on summary conviction to a fine not exceeding 20 penalty units.

Payment of duty by SCH to the Commissioner

69AG—(1) The Commissioner may, on application in a form approved by the Commissioner by the body corporate approved as the securities clearing house under section 779B of the Corporations Law, register the body corporate under this section.

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

(3) The registration continues in force—

- (a) until cancelled on the application of the body corporate 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, this Division or a condition of the registration.
- (4) On or before the fifteenth day of each month, SCH must furnish the Commissioner with a return in respect of all duty which is received before the seventh day of that month from SCH participants in respect of transfers to which this Division applies.
- (5) The return is to be in a form approved by the Commissioner and is to include such particulars as may be required by the Commissioner.
- (6) The return is to be accompanied by payment of the amount equivalent to the duty received by SCH before the seventh day of that month from SCH participants in respect of transfers to which this Division applies.
- (7) A payment received by SCH from an SCH participant after the seventh day of the month is to be included in its return for the following month and separately identified.
- (8) If SCH fails to make a payment as required by this Division, the Commissioner may make a default assessment under section 10A.
- (9) SCH must keep a record of all transfer documents arising from SCH-regulated transfers in a form approved by the Commissioner for a period of 5 years from the date of the relevant transfer.

SCH-regulated off-market transfers

69AH—(1) If there is a change in beneficial ownership of marketable securities on the SCH sub-register without a change in legal ownership, the parties to the transaction must prepare a statement under section 70D.

(2) If a stamped instrument of transfer exists in respect of a change in legal ownership to be registered by means of CHESSE, the SCH participant controlling the holding of the transferee must include in the information relating to the transfer document an endorsement that the duty has been paid.

(3) The SCH participant must include on a copy of the stamped instrument particulars of any transfer identifier associated with the transfer and retain that copy for 5 years.

(4) An SCH participant must not give effect to a transfer that is evidenced by an unstamped executed instrument, unless he or she does so within 30 days after the date of execution of the instrument.

(5) If the transfer of securities evidenced by an unstamped instrument was given effect to by means of CHESSE within the period of 30 days referred to in subsection (4) and the duty included in the relevant SCH participant's return, the SCH participant must endorse the instrument with the relevant transfer identifier and the amount of duty.

(6) On being so endorsed, the instrument is taken to be stamped in respect of the liability arising from the transfer of the marketable securities.

Notification by SCH

69AI—(1) SCH must, on request in writing from the Commissioner, provide the Commissioner with such details regarding SCH participants and SCH-regulated transfers as the Commissioner may require.

(2) SCH must, within 7 days, notify the Commissioner in writing that an SCH participant has been granted access to SCH and must, at the time of the notice, provide the participant identification code and such other details of the SCH participant as are requested by the Commissioner.

(3) SCH must, within 7 days, notify the Commissioner in writing that an SCH participant has had his or her access to SCH terminated and the reasons for the termination.

(4) SCH must, within 7 days, notify the Commissioner in writing that an SCH participant is subject to disciplinary action in accordance with the SCH business rules.

(5) SCH must, within 7 days, notify the Commissioner in writing of any change to the SCH business rules relating to the operation of CHESS in the administration of this Division.

(6) SCH must, within 7 days, notify the Commissioner in writing of any facts affecting the application of this Division to SCH-regulated transfers of marketable securities.

Exemptions for off-market SCH-regulated transfers

69AJ—(1) An SCH-regulated transfer in certain cases is exempt from duty as provided by item 36 of Schedule 3.

(2) Any such exemption has no effect unless—

(a) the transferee prepares a statement in a form approved by the Commissioner to the effect that no separate sale of any rights arising from a holding of shares or units occurred; and

(b) the statement is retained by the SCH participant for 5 years.

Sanctions

69AK—(1) If an SCH participant fails to pay duty under this Division, the Commissioner may, by notice in writing, prohibit the SCH participant from paying duty by way of return in respect of SCH-regulated transfers to which this Division applies.

(2) The notice is to specify the commencement date, the duration of the prohibition and the reasons for it.

(3) The Commissioner must give notice in writing to SCH of a prohibition under this section.

(4) SCH must not permit an SCH participant to effect an SCH-regulated transfer to which this Division applies during the period of a prohibition where the SCH participant is liable for the duty in respect of the transfer unless the duty has been paid on the transfer before it is effected by the SCH.

(5) If, at any time after 7 days after SCH has been notified of a prohibition, the SCH permits a transfer to take place, SCH is jointly liable for the relevant duty while the prohibition is in force.

Section 70 amended (Special provisions relating to contracts of sale)

12—Section 70 (6B) of the Principal Act is amended by omitting paragraph (a) and substituting the following paragraph:—

- (a) by taking into account the value of the property included in the agreement other than stock in trade (excluding land), livestock, motor vehicles, marketable securities, money on hand, money on deposit, negotiable instruments and money owing to the vendor in respect of the business; and

Section 70A amended (Computation of duty in case of certain real property transactions)

13—Section 70A of the Principal Act is amended as follows:—

- (a) by omitting from subsection (1) “purchase money stated in, or the unencumbered value attributable to, each of those conveyances, contracts or transactions and apportioned by the Commissioner.” and substituting “total of the purchase money paid for, or the total unencumbered value attributable to, the property involved in those conveyances, contracts or transactions or, if the case so requires, partly upon that total of the purchase money and partly upon that total unencumbered value and duty is to be apportioned by the Commissioner accordingly.”;

- (b) by omitting from subsection (1A) “purchase money stated in, or the unencumbered value attributable to, each of those agreements or transactions and apportioned by the Commissioner.” and substituting “total unencumbered value attributable to, the property involved in those agreements or transactions calculated in accordance with section 70 (6B) and duty is to be apportioned by the Commissioner accordingly.”.

Section 70D amended (Payment of duty in absence of dutiable instruments)

14—Section 70D (1) of the Principal Act is amended by inserting after paragraph (a) the following paragraph:—

- (ab) which causes a change in the beneficial ownership of marketable securities unless duty is chargeable under Division 4AA in respect of that transaction; or

Section 71B amended (Duty payable by financial institutions and related matters)

15—Section 71B of the Principal Act is amended by inserting after subsection (1B) the following subsection:—

- (1C) The application of subsection (1B) extends to a current account kept by a bank on behalf of a building society or credit union other than an account kept for clearing purposes.

Section 74 amended (Duty payable on certain applications under the *Traffic Act 1925*)

16—Section 74 of the Principal Act is amended by inserting after subsection (6A) the following subsection:—

- (6AB) The Commissioner must keep a register of all certificates of exemption granted under subsection (5) and the register is open for public inspection at any time when the office of the Commissioner is open to the public.

Section 76 amended (Offences)

17—(1) Section 76 (5) of the Principal Act is amended by inserting after paragraph (d) the following paragraph:—

(e) alter an assessment of duty made by the Commissioner; or

(2) Section 76 (5) of the Principal Act is further amended by omitting “Act.” from paragraph (g) (iii) and substituting “Act or if duty is chargeable under Division 4AA of Part IV.”.

Schedule 2 amended (Scale of rates and duties)

18—(1) Schedule 2 is amended as follows:—

(a) by omitting “any other instrument” from item 11 in Part I and substituting “agreement”;

(b) by omitting “instrument” from the fourth column of item 11 in Part I and substituting “deed or agreement”;

(c) by inserting after “partnership”, lastly occurring in the second column of item 20 in Part I, “unless the agreement provides for the sale of any interest in the partnership business”;

(2) Schedule 2 is further amended by omitting all the words before item 36 (a) in Part III and substituting—

Transfer of any marketable security which is—

(aa) a share in a Tasmanian registered company as defined in section 69AA; or

(ab) a unit of a unit trust scheme the principal register of which is situated in Tasmania; or

(ac) a unit of a unit trust scheme of which no register exists in Australia if the manager of the scheme or, in the absence of a manager, the trustee is a relevant company, as defined in section 69AA, or a natural person principally resident in Tasmania—

unless the transfer is chargeable with duty under Division 4AA of Part IV or a transfer of marketable securities the sale or purchase of which is included in a return lodged with the Commissioner under section 66—

Schedule 3 amended (Instruments exempted from duty)

19—(1) Part I of Schedule 3 is amended by inserting after “apply.” in item 7 the following paragraph:—

Any conveyance of real property to a spouse in order to facilitate a loan under the Home Equity Conversion Loan Scheme of the Commonwealth;

(2) Part I of Schedule 3 is further amended as follows:—

(a) by omitting “\$50” from item 11 and substituting “\$1 000”;

(b) by omitting from item 11 “other than articles of clerkship”.

(3) Part I of Schedule 3 is further amended by inserting after paragraph (e) of item 36 the following paragraphs:—

(f) Any transfer executed by way of, or in order to rectify, an SCH-regulated transfer undertaken mistakenly or undertaken for the purpose of reversing the effect of an SCH-regulated transfer which was undertaken mistakenly.

(g) Any transfer executed to give effect to a stock loan, whether it is an on-market or off-market transfer and whether a party is a broker, an SCH participant or a person who is not an SCH participant.

(h) Any transfer of any marketable security or right by a nominee company established by a member of the Australian Stock Exchange Limited 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.

(i) Any transfer of shares or units pursuant to rights attaching to shares included in a previous transfer of shares or units.

- (j) Any SCH-regulated transfer executed to give effect to the provisions of a will or in the course of administration of an intestate estate.
- (k) Any SCH-regulated transfer which involves no change in beneficial ownership and which is included in a return required under Division 4AA of Part IV.

Expressions used in paragraphs (f) to (k), both inclusive, have the same meaning as in section 69AA.

(4) Part I of Schedule 3 is further amended by omitting from the sixth item following the heading "FROM ALL DUTIES UNDER THE SECOND SCHEDULE" the words "grant, purchase, conveyance, transfer, mortgage," and substituting "mortgage".

Schedule 4 amended (Rules to be applied in calculation of duty)

20—Schedule 4 to the Principal Act is amended by omitting paragraphs (f) and (g) from clause 3.

Schedules 5 and 6 inserted

21—After Schedule 4 to the Principal Act, the following Schedules are inserted:—

SCHEDULE 5

Section 9 (2A)

CHARGES SECURED ON PROPERTY IN AND OUTSIDE TASMANIA

1—In this Schedule—

"corresponding Australian jurisdiction" means another State or a Territory in respect of which a declaration under clause 7 is in force;

"loan security" means an instrument to which this Schedule applies under which money is secured wholly or in part on property outside Tasmania;

“package of securities” means either a single loan security or 2 or more instruments, at least one of which is a loan security, by or under which the same money is secured or is to be ultimately recoverable;

“property”—

- (a) in the case of property in Tasmania, includes shares in a company incorporated in Tasmania but does not include shares in a company incorporated in a corresponding Australian jurisdiction; or
- (b) in the case of property in a corresponding Australian jurisdiction, includes shares in a company incorporated in that jurisdiction but does not include shares in a company incorporated in Tasmania.

2—This Schedule applies to instruments constituting a package of securities by or under which the money secured or to be ultimately recoverable is secured partly on property in Tasmania and partly on property outside Tasmania (whether or not the property that is outside Tasmania is or is not, wholly or partly, in a corresponding Australian jurisdiction).

3—The duty is to be denoted by an impressed stamp and may not be reduced under this Schedule so as to cause the duty payable in respect of a loan security to be less than \$20.

4—The duty payable on an instrument in a package of securities is to be determined on an amount equal to the same proportion of the amount on which, but for this Schedule, the duty on the instrument would be determined as the proportion that the value of the property in Tasmania secured by those instruments at the date of first execution of the instrument bears to the total of—

- (a) that value; and
- (b) the value, at the date of first execution of the instrument, of the property in each corresponding Australian jurisdiction secured by those instruments.

5—Instruments in a package of securities that are executed within a period of not more than 14 days are taken, for the purposes of this Act, to have been first executed on the day on which the last of those instruments was executed.

6—(1) Where an instrument in a package of securities is chargeable with additional duty under rule 3 (e) (ii) of Schedule 4 arising from the making of a further advance, the amount of the duty payable is the same proportion of the duty that, but for this clause, would be payable on the instrument as the proportion of the value of the property in Tasmania at the date of the further advance secured by those instruments bears to the total of—

(a) that value; and

(b) the total value at that date of the property in all corresponding Australian jurisdictions secured by those instruments.

(2) For the purposes of subclause (1), the value of the property in Tasmania is to be determined in accordance with guidelines issued by the Commissioner in order to give effect to uniform arrangements adopted by corresponding Australian jurisdictions.

7—The Governor may, by order published in the *Gazette*, declare that another State or a Territory in which a law imposing a duty of a kind referred to in this Schedule is in force is a corresponding Australian jurisdiction for the purposes of this Schedule.

SCHEDULE 6

Section 9 (2B)

LOAN SECURITIES OVER PROPERTY WHOLLY OUTSIDE TASMANIA

1—The duty chargeable under this Act in respect of a loan security within the meaning of Schedule 5 under which money is secured wholly on property outside Tasmania is \$20.

2—This Schedule has effect subject to any exemption under this Act.

Transitional provision

22—(1) The amendments made by sections 9, 10, 11, 17 (2), 18 (2) and 19 (3) apply to the transfers of all off-market securities, whether by means of the Clearing House Electronic Sub-register System or not.

(2) The amendments made by sections 5, 20 and 21 apply to documents executed after the date fixed under section 2 (3) but, in the case of documents included in a package of instruments, those amendments apply only if all the documents are executed after that date.

*[Second reading presentation speech made in:—
House of Assembly on 11 May 1994
Legislative Council on 2 August 1994]*