

STAMP DUTIES AMENDMENT ACT (No. 2) 1985

No. 94 of 1985

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STAMP DUTIES AMENDMENT ACT (No. 2) 1985

No. 94 of 1985

AN ACT to amend the Stamp Duties Act 1931.

[Royal Assent 12 November 1985]

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* Short title.
(No. 2) 1985.

2—(1) Except as provided in subsections (2) and (3), this Act shall commence on the day on which it receives the Royal assent. Commence-
ment.

(2) Section 9 (a) shall be deemed to have commenced on 1st August 1984.

(3) Section 10 (4) shall be deemed to have commenced on 8th December 1982.

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

* 22 Geo. V No. 19. For this Act as amended to 1st July 1981, see the continuing Reprint of Statutes. Subsequently amended by Nos. 19 and 24 of 1980, Nos. 44 and 70 of 1981, Nos. 9, 47, 48, 65, and 99 of 1982, Nos. 23, 39, 71, and 86 of 1983, Nos. 29 and 68 of 1984, and No. 41 of 1985.

Insertion in
Principal Act
of new
Division 1A.

4—After section 10 of the Principal Act, the following Division is inserted:—

Division 1A—Evasion of duty

Default
assessments.

10A—(1) Where—

- (a) a person fails or neglects to furnish or lodge any statement, return, or other document when required to do so under this Act;
- (b) the Commissioner is not satisfied with any statement, return, or other document furnished or lodged under this Act; or
- (c) the Commissioner has reason to believe or suspect that a person is liable to pay any fee, duty, or other matter under this Act,

the Commissioner may cause an assessment to be made of the amount of duty which, in his judgment, that person is liable to pay.

(2) Where an assessment is made under this section the Commissioner shall cause notice in writing of the assessment and the duty payable to be served on the person liable to pay it.

(3) The amount of duty specified in a notice of assessment served under subsection (2) is payable on or before the date specified in the notice, being not less than 30 days after the date of service of the notice.

(4) The failure of the Commissioner to serve a notice of assessment under this section shall not invalidate the assessment and calculation made by him.

(5) Where an amount of duty specified in a notice of assessment under this section is not paid on or before the date specified in the notice, the person liable shall pay to the Commissioner, in addition to that duty, a penalty of a sum equivalent to the amount of the duty together with interest at the rate of 20 per cent per annum on the duty from the date for payment specified in the notice until the duty is paid.

(6) The Commissioner may reduce or remit any penalty payable under this section.

10B—Where the Commissioner is satisfied that a person has evaded or has attempted to evade the payment of a duty payable by that person under this Act, that person is liable, in addition to any additional duty that may be levied, or any penalty that may be imposed, on him, to a further penalty of a sum equivalent to twice the amount of the duty so evaded or attempted to be evaded.

Evasion of payment of duty.

10C—Where an instrument which relates to property in Tasmania or to any matter or thing done or to be done in any part of Tasmania is executed and held in some place outside Tasmania the provisions of this Act shall extend and apply to the instrument, notwithstanding that the instrument is not in Tasmania, in all respects as if the instrument were executed in Tasmania.

Evasion of duty with respect to property in State.

10D—A penalty imposed under section 10A or section 10B—

Penalty deemed to be assessment.

- (a) is deemed to be an assessment of duty for the purposes of this Act; and
- (b) is recoverable in accordance with the provisions of this Act.

5—After section 15 of the Principal Act, the following section is inserted:—

Insertion in Principal Act of new section 15A.

15A—(1) Duty is payable on a copy of an original instrument as if that copy were executed in the same way and at the same time as the original instrument unless the Commissioner is satisfied—

Duty payable on copy of instrument.

- (a) that the original instrument has been duly stamped;
- or
- (b) that the copy of the original instrument has been duly stamped.

(2) Where a copy of an original instrument is duly stamped, the original instrument is deemed to have been duly stamped.

Amendment of section 18B of Principal Act (Loans in connection with the payment of duty on instruments relating to the purchase of first homes).

6—Section 18B of the Principal Act is amended as follows:—

- (a) by omitting from subsection (1) (c), “ \$50 000 ” and substituting “ \$80 000 ”;
- (b) by omitting paragraph (a) of subsection (2) and substituting the following paragraph:—
 - (a) the purchase price paid by that person for the land and the chattels included in the sale of that land; or
- (c) by inserting in subsection (2) (b) “ together with the value of any chattels included in the purchase of the land, being a value determined by a person who is considered by the Commissioner to be competent to value those chattels ” after “ purchased ”.

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

7—Section 71A (1) of the Principal Act is amended by inserting in the definition of “ exempt account ” the following paragraph after paragraph (j):—

- (ja) an account kept by the Tasmanian State Institute of Technology;

Amendment of section 74 of Principal Act (Duty to be paid on certain applications under the Traffic Act 1925.)

8—(1) Section 74 of the Principal Act is amended as follows:—

- (a) by omitting from subsection (3) “ An applicant— ” and substituting “ An applicant, within 14 days of the date of the purchase or other acquisition of the motor vehicle or trailer to which an application to which this section applies— ”;
- (b) by inserting the following subsection after subsection (4A):—
 - (4B) An applicant who fails to comply with subsection (3) shall, in addition to the duty payable under subsection (1), be liable to a penalty of an amount equal to the amount of that duty.
- (c) by inserting the following subsections after subsection (6):—
 - (6A) A certificate of exemption granted under subsection (5) is subject to such conditions as the Commissioner may from time to time determine.

(6B) Where the holder of a certificate of exemption fails to comply with, or contravenes, any condition to which the certificate is subject, the Commissioner may, subject to subsection (6C), suspend or cancel that certificate.

(6C) The Commissioner shall not suspend or cancel a certificate of exemption pursuant to subsection (6B) unless he has previously given the holder of the certificate an opportunity to appear at a hearing before him to make submissions and give evidence in relation to the matter.

(e) by inserting the following subsection after subsection (9):—

(9A) Where an applicant—

(a) pays duty under this section in respect of an acquisition or purchase of a motor vehicle or trailer; and

(b) within 14 days of that acquisition or purchase cancels any arrangement or agreement, or contract under which the motor vehicle or trailer was acquired or purchased,

the Commissioner may, on application by the applicant, refund to the applicant any duty so paid.

(f) by omitting from subsection (10) the definition of “application to which this section applies” and substituting the following definition:—

“application to which this section applies” means an application under the *Traffic Act 1925* in respect of—

(a) the registration of a new motor vehicle or a new trailer;

(b) the registration of a used motor vehicle or a used trailer; or

(c) the transfer of the registration of a motor vehicle or a trailer;

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

9—Schedule 2 to the Principal Act is amended as follows:—

(a) by inserting in item 13 the following paragraph after paragraph (d):—

(e) To any person of property, being an annuity purchased for a bona fide lump sum consideration	3·00	By the purchaser, grantee, or transferee
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(b) by inserting the following item after item 28:—

28A	Any instrument or a statutory declaration made under section 71 in respect of an addition to a qualifying Superannuation Fund within the meaning of the <i>Income Tax Assessment Act 1936</i> of the Commonwealth.	3·00	By the person making that addition
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(c) by omitting item 35.

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

10—(1) Item 31 (b) of Part I of Schedule 3 to the Principal Act is amended as follows:—

(a) by omitting from subparagraph (ii) “injury; and” and substituting “injury;”;

(b) by omitting from subparagraph (iii) “hospital, or by the University of Tasmania.” and substituting “hospital;”;

(c) by inserting the following subparagraphs after subparagraph (iii):—

(iv) a policy of insurance taken out by the University of Tasmania; or

(v) a policy of insurance taken out by the Tasmanian State Institute of Technology.

(2) Item 39 of Part I of Schedule 3 to the Principal Act is amended by inserting the following paragraphs after the last paragraph of that item:—

An application made in respect of a motor vehicle or trailer where the Commissioner is satisfied there is no change in the beneficial ownership of the motor vehicle.

An application made in respect of a motor vehicle or trailer where the Commissioner is satisfied that *ad valorem* duty, calculated by reference to the value of the motor vehicle or trailer, has been paid in respect of that motor vehicle or trailer.

An application made by a person who was the owner of the motor vehicle or trailer when it was last registered, whether that registration was effected in this State or elsewhere.

An application made by the parties, or either of the parties, to a marriage that has been dissolved or annulled where the application relates to a motor vehicle or trailer and is made for the purposes of, or in accordance with—

- (a) an agreement registered or approved under the *Family Law Act 1975* of the Commonwealth; or
- (b) an order of a court made under that Act.

(3) Part I of Schedule 3 to the Principal Act is further amended as follows:—

- (a) by inserting under the paragraph headed “*General*” in the item relating to duplicate instruments under the *Land Titles Act 1980* “where the original instrument or copy of the original instrument has been duly stamped” after “1980”;
- (b) by omitting from the paragraph headed “*General*” the item relating to instruments made by a public hospitals board, a private hospital or the University of Tasmania and substituting the following paragraphs:—

Any instrument made by, to, or with any public hospitals board under the *Hospitals Act 1918* in respect of the grant, purchase, conveyance, transfer, mortgage, or lease of any land where duty on that instrument would otherwise be payable by that public hospitals board.

Any instrument made in respect of the grant, purchase, conveyance, transfer, mortgage, or lease of any land by, to, or with the licensee, proprietor, governors, trustees, committee of management, or resident manager of a private hospital not for or in connection with the acquisition of a private hospital where duty on that instrument would otherwise be payable by that private hospital.

Any instrument made by, to, or with the University of Tasmania in respect of the grant, purchase, conveyance, transfer, mortgage, or lease of any land where duty on that instrument would otherwise be payable by the University of Tasmania.

(4) Part III of Schedule 3 to the Principal Act is amended as follows:—

- (a) by omitting from item 1 “ to the parties, or either of the parties, to a marriage of matrimonial property ” and substituting “ of matrimonial property to the parties or either of the parties to, or the child of, that marriage, being a child who has not attained the age of 18 years ”;
- (b) by omitting from item 2 “ to the parties, or either of the parties, to a marriage of the matrimonial home ” and substituting “ of the matrimonial home to the parties or either of the parties to, or the child of, that marriage, being a child who has not attained the age of 18 years ”.

Amendment of Schedule 4 to Principal Act (RULES TO BE APPLIED IN CALCULATION OF DUTY).

11—Item 5 (c) of Schedule 4 to the Principal Act is amended by inserting “ where the original instrument or a copy of the original instrument has been duly stamped ” after “ instrument ” where secondly occurring.

Refund of certain duty.

12—(1) Where—

- (a) an amount of duty has been paid in accordance with the Principal Act in respect of an instrument relating to—
 - (i) an annuity as specified in item 13 (e) on or from 1st August 1984; or
 - (ii) matrimonial property as mentioned in Part III of Schedule 3 to the Principal Act on or from 8th December 1982; and
- (b) that duty would not have been payable if the instrument had been executed after the appropriate date referred to in paragraph (a),

the Treasurer shall, on application made in accordance with subsection (2), refund an amount equal to the amount of that duty to the person who paid the duty or to the legal personal representative of that person if that person is dead or under a legal disability.

- (2) An application under subsection (1)—
- (a) shall be made in writing within the period of 12 months after the commencement of this section; and
 - (b) shall be supported by such evidence as to the entitlement of the applicant to the refund as the Treasurer may require.
- (3) An amount required for a refund of duty under this section is a charge on the Consolidated Revenue Fund and is payable out of that Fund without further appropriation than this subsection.

