



ANNO VICESIMO QUARTO

ELIZABETHAE II REGINAE

A.D. 1975

No. 76 of 1975

An Act to amend the Gift Duty Act, 1968-1973, and the Stamp Duties Act, 1923-1975.

[Assented to 16th October, 1975]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART I

PART I

PRELIMINARY

- Short title.** 1. This Act may be cited as the "Statutes Amendment (Gift Duty and Stamp Duties) Act, 1975".
- Commencement.** 2. This Act shall be deemed to have come into operation on the fourteenth day of July, 1975.
- Arrangement.** 3. This Act is arranged as follows:—
- PART I—PRELIMINARY
PART II—AMENDMENT OF GIFT DUTY ACT, 1968-1973
PART III—AMENDMENT OF STAMP DUTIES ACT, 1923-1975

PART II

PART II

AMENDMENT OF GIFT DUTY ACT, 1968-1973

- Short titles.** 4. (1) The Gift Duty Act, 1968-1973, is referred to in this Part as "the principal Act".
- (2) The principal Act, as amended by this Part, may be cited as the "Gift Duty Act, 1968-1975".

5. Section 11 of the principal Act is repealed and the following sections are enacted and inserted in its place:—

Repeal of s. 11 of principal Act and enactment of sections in its place—

11. (1) Subject to subsection (2) of this section, where the gift duty that would, apart from this section, be payable in respect of a gift is less than five dollars, no gift duty is payable in respect of the gift.

Remission of gift duty under five dollars.

(2) This section does not operate to exempt a gift from gift duty if—

(a) the value of the gift;

and

(b) the value of all other gifts given by the same donor to the same donee within eighteen months before or after the date of the gift,

are such that if those gifts together constituted a single gift, gift duty of an amount of five dollars or more would be payable in respect of that single gift.

11a. (1) Where a donor makes a gift to his spouse of an interest in his matrimonial home (whether or not subsection (3) of this section applies to the gift), the donor may claim the benefit of this subsection, and if he does so, the following principles operate:—

Reduction of duty in case of gift of interest in matrimonial home.

(a) the dutiable value of the gift is as follows:—

(i) where the value of the interest given to the spouse exceeds \$4 000 but does not exceed \$6 000, the dutiable value is \$4 000;

and

(ii) where the value of the interest given to the spouse exceeds \$6 000 but does not exceed \$8 000, the dutiable value is the actual value less an amount equal to the difference between \$2 000 and the amount by which the value of the gift exceeds \$6 000;

(b) the value of all relevant gifts includes, for the purpose of ascertaining the percentage rate at which gift duty is payable on that gift, the dutiable value (as distinct from the actual value) of the gift;

and

(c) the value of all relevant gifts includes, for the purpose of ascertaining the percentage rate at which gift duty is payable on gifts made within eighteen months before or after the date of the gift, the actual value of the gift.

(2) Where a donor makes a gift to his spouse of an interest in his matrimonial home (being a gift to which subsection (3) of this section applies) the donor may claim the benefit of this subsection, and if he does so, the following principles operate:—

(a) the dutiable value of the gift is as follows:—

(i) where the gross value of the matrimonial home does not exceed \$40 000, the gift has no dutiable value;

(ii) where the gross value of the matrimonial home exceeds \$40 000 and no debt is secured by mortgage over the matrimonial home, the dutiable value of the gift is one-half of the gross value of the matrimonial home less \$20 000;

(iii) where the gross value of the matrimonial home exceeds \$40 000 and a debt is secured by a mortgage over the matrimonial home, the dutiable value of the gift is ascertained by reference to the following formula:—

$$v = [\frac{1}{2}g - 20\,000] - \frac{(g - 40\,000)m}{2g}$$

where—

v represents the dutiable value of the gift

g represents the gross value of the matrimonial home

and

m represents the outstanding principal of the debt secured over the matrimonial home;

(b) the value of all relevant gifts includes, for the purpose of ascertaining the percentage rate at which gift duty is payable on that gift (but not on any other gift), the actual value of the gift;

and

(c) the value of all relevant gifts includes, for the purpose of ascertaining the percentage rate at which gift duty is payable on other gifts made within eighteen months before or after the date of the gift, the dutiable value (as distinct from the actual value) of the gift.

(3) Where a donor makes a gift to his spouse of an interest in his matrimonial home with the intention that the matrimonial home should be held by the donor and his spouse in joint tenancy, or in tenancy in common in equal shares, and—

(a) no matrimonial home has been held jointly or in common by the donor and his spouse either on the fourteenth day of July, 1975, or after that date and before the date of the gift;

(b) the gift is made on or after the fourteenth day of July, 1975, but before the fourteenth day of July, 1976;

and

(c) a return in respect of the gift is lodged under this Act with the Commissioner before the fourteenth day of July, 1976,

this subsection applies to that gift.

(4) A person is not entitled to claim the benefit of a provision of this section where he has previously enjoyed the benefit of that provision, or some other provision of this section, or of a provision of this Act superseded by this section.

(5) In this section—

“matrimonial home” of a donor means a dwellinghouse (together with its curtilage) that constitutes in the opinion of the Commissioner the principal permanent home at which the donor and his spouse live together as husband and wife:

“curtilage” in relation to a dwellinghouse means an area of land, determined by the Commissioner, not exceeding 0.2 hectare in area, on which the dwellinghouse is situated:

“gross value” in relation to a matrimonial home means the value of the matrimonial home unencumbered by any mortgage.

(6) Where the Commissioner is satisfied by such evidence as he may require that two persons who are not married are living together as husband and wife, the provisions of this section apply to those persons as if they were married.

(7) Where the Commissioner is satisfied by such evidence as he may require—

(a) that a donor has made a gift of cash to his spouse with a view to the acquisition by the donor and his spouse in joint tenancy, or in tenancy in common in equal shares, of a matrimonial home;

and

(b) that a matrimonial home has been subsequently so acquired by the donor and his spouse,

the gift shall be treated for the purposes of this section as a gift of an interest in a matrimonial home made at the date of acquisition by the donor and his spouse of the matrimonial home.

PART III

PART III

AMENDMENT OF STAMP DUTIES ACT, 1923-1975

6. (1) The Stamp Duties Act, 1923-1975, is referred to in this Part as “the principal Act”.

Short titles.

(2) The principal Act, as amended by this Part, may be cited as the “Stamp Duties Act, 1923-1975”.

7. Section 71 of the principal Act is amended by inserting after subsection (4) the following subsections:—

Amendment of principal Act, s. 71—
Conveyance operating as a voluntary disposition *inter vivos*.

(5) Where there is a conveyance, to which subsection (6) of this section applies, of an interest in a matrimonial home, the following principles operate:—

(a) if the gross value of the matrimonial home does not exceed \$40 000, no duty is payable on the conveyance;

(b) if—

(i) the gross value of the matrimonial home exceeds \$40 000;

and

(ii) there is no mortgage over the matrimonial home subject to which the interest is conveyed,

there is to be a reduction of \$360 in the amount of duty payable on the conveyance;

and

(c) if—

(i) the gross value of the matrimonial home exceeds \$40 000;

and

(ii) there is a mortgage over the matrimonial home subject to which the interest is conveyed,

there is to be a reduction in the amount of the duty payable on the conveyance ascertained by reference to the following formula:—

$$r = d \left[\frac{20\,000 - 20\,000 \frac{m}{g}}{v} \right]$$

where—

r represents the reduction in the amount of duty payable on the conveyance

d represents the duty that would, apart from this subsection, be payable on the conveyance

m represents the outstanding principal of the debt secured by mortgage over the matrimonial home

g represents the gross value of the matrimonial home

v represents the net value of the interest subject to the conveyance.

(6) Where a person by a conveyance operating as a voluntary disposition *inter vivos* transfers to his spouse an interest in his matrimonial home with the intention that the matrimonial home should be held by that person and his spouse, in joint tenancy, or in tenancy in common in equal shares, and—

(a) no matrimonial home has been held jointly or in common by that person and his spouse either on the fourteenth day of July, 1975, or after that date but prior to the date of the conveyance;

(b) the conveyance is executed on or after the fourteenth day of July, 1975, but before the fourteenth day of July, 1976;
and

(c) the conveyance is lodged for stamping before the fourteenth day of July, 1976,

this subsection applies to that conveyance.

(7) In this section—

“matrimonial home” of a person means a dwellinghouse (together with its curtilage) that constitutes in the opinion of the Commissioner the principal permanent home at which that person and his spouse live together as husband and wife:

“curtilage” in relation to a dwellinghouse means an area of land, determined by the Commissioner, not exceeding 0·2 hectare in area on which the dwellinghouse is situated:

“gross value” in relation to a matrimonial home means the value of the matrimonial home unencumbered by any mortgage.

(8) Where the Commissioner is satisfied by such evidence as he may require that two persons who are not married are living together as husband and wife the provisions of this section apply to those persons as if they were married.

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

M. L. OLIPHANT, Governor