



**STAMP DUTIES (MISCELLANEOUS) AMENDMENT ACT 1997**

**No. 20 of 1997**

**SUMMARY OF PROVISIONS**

1. **Short title**
2. **Commencement**
3. **Amendment of s. 60A—Value of property conveyed or transferred**
4. **Amendment of s. 71C—Concessional rates of duty in respect of purchase of first home, etc.**



ANNO QUADRAGESIMO SEXTO

**ELIZABETHAE II REGINAE**

A.D. 1997

\*\*\*\*\*

No. 20 of 1997

An Act to amend the Stamp Duties Act 1923.

[Assented to 27 March 1997]

The Parliament of South Australia enacts as follows:

**Short title**

1. (1) This Act may be cited as the *Stamp Duties (Miscellaneous) Amendment Act 1997*.

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

**Commencement**

2. (1) This Act (other than section 4) will be taken to have come into operation on 7 January 1997.

(2) Section 4 will be taken to have come into operation on 1 February 1997.

**Amendment of s. 60A—Value of property conveyed or transferred**

3. Section 60A of the principal Act is amended—

(a) by inserting after subsection (4) the following subsections:

(4a) Where an interest, agreement or arrangement (granted or made on or after 7 January 1997) in respect of property has the effect of reducing the value of the property, the Commissioner may, for the purposes of assessing the duty payable on a conveyance of the property, disregard the existence of the interest, agreement or arrangement unless a person liable to pay the duty satisfies the Commissioner that the interest, agreement or arrangement—

(a) was granted or made for a purpose other than reducing the value of the property; and

(b) was not granted or made in favour of the transferee or a person related to the transferee.

(4b) Where an estate or interest conveyed or transferred merges with an estate or interest already held by the transferee (the latter having been acquired by the transferee on or after 7 January 1997), the Commissioner may, for the purposes of assessing the duty payable on the conveyance, treat the value of the estate or interest conveyed or transferred as being—

- (a) where the instrument creating the estate or interest already held was charged with *ad valorem* duty as a conveyance—the value of the estate or interest produced by the merger less the value of the estate or interest already held; or
- (b) in any other case—the value of the estate or interest produced by the merger.;

(b) by inserting after subsection (5) the following subsections:

(6) For the purposes of subsection (4a) (but subject to subsection (7))—

- (a) natural persons are related persons if—
  - (i) they are members of a partnership within the meaning of the *Partnership Act 1891*; or
  - (ii) one is the spouse of the other or the relationship between them is that of parent and child; and
- (b) companies are related persons if they are related bodies corporate within the meaning of the *Corporations Law*; and
- (c) trustees are related persons if any person is a beneficiary common to the trusts of which they are trustees; and
- (d) a natural person and a company are related persons if the natural person is a majority shareholder, director or secretary in or of the company or in or of another company that is a related body corporate of the company within the meaning of the *Corporations Law*; and
- (e) a natural person and a trustee are related persons if the natural person is a beneficiary of the trust of which the trustee is a trustee; and
- (f) a company and a trustee are related persons if—
  - (i) the company, or a majority shareholder, director or secretary in or of the company, is a beneficiary of the trust of which the trustee is a trustee; or
  - (ii) a related body corporate of the company (within the meaning of the *Corporations Law*) is a beneficiary of the trust of which the trustee is a trustee.

(7) For the purposes of subsection (4a), persons are not related persons if the Commissioner is satisfied that the persons were not acting together to achieve a common purpose.

(8) In subsection (6)—

"majority shareholder" means—

- (a) in relation to a company within the meaning of Part 6.7 of the *Corporations Law*—a person who has a substantial shareholding in the company in accordance with section 708 of the *Corporations Law*; or
- (b) in any other case—a person who would have a substantial shareholding in the company in accordance with section 708 of the *Corporations Law* if—
  - (i) a reference in that section to the prescribed percentage were a reference to 50 per cent; and
  - (ii) the company were a company within the meaning of Part 6.7 of the *Corporations Law*;

"spouse" of a person includes a *de facto* husband or wife of the person who has been cohabiting continuously with the person for at least five years.

**Amendment of s. 71C—Concessional rates of duty in respect of purchase of first home, etc.**

4. Section 71C of the principal Act is amended—

- (a) by striking out from subsection (1)(ab) "\$130 000" and substituting "the prescribed maximum";
- (b) by striking out from subsection (2)(a) "\$80 000" and substituting "the prescribed amount";
- (c) by striking out from subsection (2)(b) "exceeds \$80 000" and substituting "exceeds the prescribed amount";
- (d) by striking out subparagraph (ii) of subsection (2)(b) and substituting the following subparagraph:
  - (ii) where the relevant contract is entered into on or after 1 September 1992—the duty payable will be an amount calculated in accordance with the following formula:

$$A = B - \left[ C - D \frac{(E - F)}{1000} \right]$$

where

A is the amount of duty payable

B is the amount of duty payable apart from this section

C is—

where the relevant contract is entered into during the period commencing on 1 February 1997 and ending on 31 January 1998—\$2 830;

in any other case—\$2 130

D is—

where the relevant contract is entered into during the period commencing on 1 February 1997 and ending on 31 January 1998—56;

in any other case—42

E is the amount by reference to which duty would, apart from this section, be calculated (any fractional part of \$1 000 being rounded up to the next multiple of \$1 000)

F is the prescribed amount.;

(e) by inserting the following definitions after the definition of "perpetual lease" in subsection (3):

**"prescribed amount" means—**

(a) where the relevant contract is entered into during the period commencing on 1 February 1997 and ending on 31 January 1998—\$100 000;

(b) in any other case—\$80 000;

**"prescribed maximum" means—**

(a) where the relevant contract is entered into during the period commencing on 1 February 1997 and ending on 31 January 1998—\$150 000;

(b) in any other case—\$130 000;.

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

E. J. NEAL, Governor