



ANNO VICESIMO NONO

# ELIZABETHAE II REGINAE

A.D. 1980

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## No. 111 of 1980

An Act to amend the Stamp Duties Act, 1923-1979.

[Assented to 18 December 1980]

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

Short titles.

1. (1) This Act may be cited as the "Stamp Duties Act Amendment Act, 1980".

(2) The Stamp Duties Act, 1923-1979, is in this Act referred to as "the principal Act".

(3) The principal Act, as amended by this Act, may be cited as the "Stamp Duties Act, 1923-1980".

Commence-  
ment.

2. This Act shall be deemed to have come into operation on the sixth day of November, 1980.

Amendment of  
s. 4—  
Interpretation.

3. Section 4 of the principal Act is amended—

(a) by inserting after the definition of "executed" and "execution" the following definition:

"fixed interest security" means any debenture, debenture stock, bond, note or other security issued at a fixed rate of interest by a Government or by any municipal or other corporation, company or society, whether constituting a charge on assets or not, but does not include any such security that carries an option under which the security may be converted into stock or shares;;

and

(b) by inserting after paragraph (b) of the definition of "marketable security" the following paragraph:

(ba) any interest under a deed approved for the purposes of Division V of Part IV of the Companies Act, 1962-1980, other than an interest of a kind excluded by regulation for the purposes of this Act;.

4. The following sections are inserted after section 5 of the principal Act:

Insertion of new ss. 5a and 5b.

5a. (1) Subject to subsection (2), this Act, as in force immediately before the commencement of the Stamp Duties Act Amendment Act, 1980, applies in relation to instruments executed before that commencement.

Application of Stamp Duties Act Amendment Act, 1980.

(2) The amendments made to this Act by sections 9, 13, 15 (b), 15 (f) and 15 (g) of the Stamp Duties Act Amendment Act, 1980, apply in relation to instruments executed before or after the commencement of that Act.

(3) This Act, as amended by the Stamp Duties Act Amendment Act, 1980, applies in relation to instruments executed or brought into existence after the commencement of that Act.

5b. Subject to this Act, duty shall be chargeable in respect of an instrument that is outside South Australia where the instrument relates, wheresoever executed, to property situated, or any matter or thing done or to be done, in South Australia.

Liability to duty of instruments outside South Australia.

5. Section 17 of the principal Act is repealed.

Repeal of s. 17.

6. The following section is inserted after section 19 of the principal Act:

Insertion of new s. 19a.

19a. (1) Notwithstanding any other provision of this Act, but subject to subsection (2), where an original instrument chargeable with duty under this Act has not been duly stamped or has been destroyed without being duly stamped, any copy of the instrument shall, for the purposes of this Act, be chargeable with duty and penalty (if applicable) as if it were the original and be deemed to have been executed by the person or persons who executed the original at the same time as the original was executed.

Certain copies dutiable.

(2) Where an original instrument or a copy of an instrument is duly stamped under this Act, the Commissioner shall, upon application and production of that original or copy, stamp any copy or further copy or the original, as the case may be, with a particular stamp denoting that it is duly stamped.

(3) In this section, "copy" includes—

- (a) a duplicate or counterpart of an original instrument;
- (b) an instrument that acknowledges, evidences or records the existence or terms of an original instrument;

or

- (c) an instrument that acknowledges, evidences or records the transaction or a part of the transaction to which an original instrument relates or related.

7. Section 20 of the principal Act is amended—

Amendment of s. 20—  
Penalty for not duly stamping.

- (a) by striking out subsection (1) and substituting the following subsections:

(1) Except where express provision is made to the contrary, an instrument may be stamped without penalty—

(a) where it was executed in South Australia—within two months after its execution;

or

(b) where it was executed outside South Australia—within two months after its receipt in South Australia or within six months after its execution, whichever period first expires.

(1a) Except where express provision is made to the contrary, an instrument that is unstamped or insufficiently stamped after the expiration of the period referred to in subsection (1) shall, in addition to the unpaid duty, be charged with a penalty of—

(a) fifty dollars;

or

(b) an amount equal to ten per centum of the amount of the unpaid duty for each month for which the instrument has remained unstamped or insufficiently stamped from the day when it was executed until the amount equals the amount of the unpaid duty,

whichever is the greater amount.;

and

(b) by striking out from subsection (2) the passage “and interest”.

Amendment of  
s. 35—  
Application  
for licence.

8. Section 35 of the principal Act is amended by striking out subsection (1) and substituting the following subsection:

(1) A company, person or firm of persons requiring an annual licence shall make a written application to the Commissioner in the prescribed form containing the prescribed information.

Repeal of  
ss. 43, 44, 45  
and 45a and  
heading to  
those sections.

9. Sections 43, 44, 45 and 45a of the principal Act and the heading to those sections are repealed.

Amendment of  
s. 66ab—  
Computation of  
duty in case  
of certain  
real property  
transactions.

10. Section 66ab of the principal Act is amended—

(a) by striking out from subsection (1) the passage “upon the total consideration given for the whole of the property” and substituting the passage “upon the sum of the amounts by reference to which *ad valorem* duty on each of the conveyances would, but for this subsection, have been calculated”;

(b) by striking out subsection (1a) and substituting the following subsection:

(1a) Where, by conveyances that have been, or appear to have been, executed within twelve months of each other, a person conveys land or interests in land to the same person (whether that person takes alone or with the same or different persons), it shall be presumed, unless the Commissioner is satisfied to the contrary, that the conveyances arose out of one transaction, or one series of transactions.;

(c) by striking out from subsection (2) the passage “paid in respect of” and substituting the passage “, if any, given and”;

(d) by inserting in subsection (2) after the word “transaction” the passage “or series of transactions”;

(e) by striking out from subsection (3) the passage “total consideration” and substituting the word “matters”;

and

(f) by inserting after subsection (4) the following subsection:

(5) In this section—

“conveyance” means a conveyance on sale or a conveyance operating as a voluntary disposition *inter vivos*:

“interest” in relation to land includes a potential beneficial interest as defined in section 71 (15).

11. Section 71 of the principal Act is amended by striking out subsections (3) and (4) and substituting the following subsections:

Amendment of s. 71—  
Instruments chargeable as conveyances operating as voluntary dispositions *inter vivos*.

(3) For the purposes of this Act, the following instruments shall, subject to this section, be deemed to be conveyances operating as voluntary dispositions *inter vivos*—

(a) an instrument to which subsection (4) applies effecting or acknowledging, evidencing or recording any of the following transactions—

(i) a transfer of property to a person who takes as trustee;

(ii) a declaration of trust;

or

(iii) a transfer of a beneficial interest in property subject to a trust or a potential beneficial interest in or in relation to property subject to a discretionary trust,

whether or not any consideration is given for the transaction;

or

(b) an instrument to which paragraph (a) does not apply, being a conveyance that is not chargeable with duty as a conveyance on sale.

(4) This subsection applies to any instrument that relates to land, a marketable security or a unit under a unit trust scheme or an interest or potential beneficial interest in land, a marketable security or a unit under a unit trust scheme.

(5) Subject to subsection (6), an instrument effecting or acknowledging, evidencing or recording any of the following transactions shall be deemed not to be a conveyance operating as a voluntary disposition *inter vivos*—

- (a) a transfer of property for nominal consideration for the purpose of securing the repayment of an advance or loan, not being land subject to the provisions of the Real Property Act, 1886-1980;
- (b) a transfer *in specie* of property of a company in liquidation made by the liquidator to a shareholder of the company;
- (c) a transfer of any marketable security issued by a public company to a person who takes as trustee where—
  - (i) the beneficial interest in the property is, upon the transfer, vested in the transferor;
  - and
  - (ii) the transfer is not in pursuance of a sale;
- (d) a transfer of property for the purpose of effectuating the retirement of a trustee or the appointment of a new trustee where the Commissioner is satisfied that the transfer is not part of a scheme for conferring a benefit in relation to the trust property upon the new trustee or any other person, whether as a beneficiary or otherwise, to the detriment of the beneficial interest or potential beneficial interest of any person;
- (e) a transfer of property to a person who has the beneficial interest in the property by virtue of an instrument that is duly stamped;
- (f) a transfer to a natural person who is an object of a discretionary trust of property or a beneficial interest in property subject to the discretionary trust, where—
  - (i) the discretionary trust was created by an instrument that is duly stamped;
  - and
  - (ii) the Commissioner is satisfied that the discretionary trust was created wholly or principally for the benefit of that person or a family group of which that person is a member;
- (g) a transfer of a potential beneficial interest in property subject to a discretionary trust where—
  - (i) the discretionary trust was created by an instrument that is duly stamped wholly or principally for the benefit of a family group;
  - and
  - (ii) the transfer is made by one member of the family group to another member of the family group, or by a member of the family group by way of surrender or renunciation of the potential beneficial interest and another member of the family group is to continue as an object or beneficiary under the trust;
- (h) a transfer to or by a person in his capacity as the personal representative of a deceased person or the trustee of the estate of a deceased person, not being a transfer in pursuance of a sale;

- (i) any variation of the terms of a trust where the trust was created by an instrument that is duly stamped and the variation does not involve the creation or variation of any beneficial interest or potential beneficial interest in property subject to the trust;
- (j) a voluntary disposition of property that is wholly for charitable or religious purposes;
- (k) a transfer of a prescribed class.

(6) Subsection (5) does not apply in relation to a transfer of property or a beneficial interest in property to a person who has, prior to the transfer, a beneficial interest or potential beneficial interest in the property but who takes the property or interest transferred to him as trustee under a further trust.

(7) For the purposes of subsection (5) (e), a person who is an object of a discretionary trust by virtue of an instrument that is duly stamped shall not be regarded as having a beneficial interest in the trust property by virtue of an instrument that is duly stamped unless the person has been appointed to be a beneficiary under the discretionary trust by a further instrument that is duly stamped.

(8) A conveyance operating as a voluntary disposition *inter vivos* that transfers a potential beneficial interest in or in relation to property subject to a discretionary trust shall, subject to this Act, be chargeable with duty as if it transferred the beneficial interest in the property that the transferor would have if the discretion under the discretionary trust were so exercised as to confer upon him the greatest benefit in relation to that property that can be conferred upon him under the discretionary trust.

(9) An instrument that acknowledges, evidences or records a transaction of a kind referred to in subsection (3) (a) (not being a copy within the meaning of section 19a that is duly stamped) shall, for the purposes of this Act, be deemed to have effected the transaction and to have been executed by the parties to the transaction at the same time as the transaction took place.

(10) For the purposes of this Act, in determining the value of property transferred by a conveyance operating as a voluntary disposition *inter vivos*, no regard shall be had to the fact that the person to whom the property is transferred takes or is to hold the property subject to a trust or has a beneficial interest in the property.

(11) Notwithstanding any other provisions of this Act, the rate of duty chargeable in respect of a conveyance operating as a voluntary disposition *inter vivos* of a marketable security, shall, if that conveyance is made in pursuance of sale, be the rate fixed by the second schedule in respect of a conveyance or transfer on sale of a marketable security or, as the case may require, in respect of a return lodged pursuant to section 90d.

(12) Where an instrument of a kind referred to in subsection (3) (a) is duly stamped under this Act, the Commissioner shall, upon application and production of that instrument, stamp any other instrument of a kind referred to in subsection (3) (a) that he is satisfied relates to the same transaction with a particular stamp denoting that it is duly stamped.

(13) Without limiting the generality of subsection (12), where an instrument that is duly stamped transfers or creates or acknowledges, evidences or records the transfer or creation of any property or interest in property and the person to or in whom the property or interest in property is transferred or vested takes the property or interest in property as trustee, the Commissioner shall, upon application and production of that instrument, stamp any declaration of trust or other instrument that acknowledges, evidences or records the fact that the person took the property or interest in property as trustee with a particular stamp denoting that it is duly stamped.

(14) Notwithstanding any other provisions of this Act, where—

(a) property has been transferred to a person who took as trustee;

(b) that property is subsequently transferred back to the transferor;

and

(c) the Commissioner is satisfied that no person other than the transferor under the first transfer has had a beneficial interest in the property during the period elapsing between the transfers,

the Commissioner shall, if *ad valorem* duty was paid in respect of the first transfer, upon application, refund to the person who paid that duty an amount equal to the difference between the amount of the duty and four dollars.

(15) In this section—

“discretionary trust” means an arrangement however made under which a person holds property and the beneficial interest in all or any part of that property may be vested in a person (in this section referred to as an “object”) upon the exercise of a discretion whether subject to any other contingency or not and whether the exercise of the discretion is obligatory or optional:

“family group” means a group of persons connected by an unbroken series of relationships of consanguinity or affinity:

“potential beneficial interest” means the rights, expectancies or possibilities of an object of a discretionary trust in or in relation to property subject to the discretionary trust:

“public company” means a public company within the meaning of the Companies Act, 1962-1980:

“transfer” means—

(a) transfer, assure or vest property (including a potential beneficial interest in or in relation to property) to or in any person whether legally or equitably and whether or not subject to registration, the issue of a certificate of title or other similar requirement;

(b) surrender or renounce a beneficial interest or potential beneficial interest in or in relation to property;

or

(c) surrender to the Crown any lease or other interest in land in order that the Crown may grant to a person other than the surrenderor a lease of or other interest in the same land or any part of the same land:

“trust” includes an implied trust or a discretionary trust:

“trustee” includes—

(a) a trustee under an implied trust;

or

(b) a person who holds property subject to a discretionary trust.

“unit” in relation to a unit trust scheme means a right or interest (however described) of a beneficiary under a unit trust scheme:

“unit trust scheme” means an arrangement made for the purpose, or having the effect, of providing, for persons having funds available for investment, facilities for the participation by them, as beneficiaries under a trust, in any profits or income arising from the acquisition, holding, management or disposal of any property, not being an arrangement made by a deed approved for the purposes of Division V of Part IV of the Companies Act, 1962-1980.

12. Section 71a of the principal Act is amended by inserting after the passage “voluntary disposition *inter vivos*” the passage “if, in the case of a trust other than a trust declared by a will, the beneficiary is beneficiary by virtue of an instrument that is duly stamped”.

Amendment of s. 71a—  
Provision where trust property distributed *in specie*.

13. The following section is inserted after section 71c of the principal Act:

Insertion of new s. 71d.

71d. (1) Where, upon an application made in a manner and form determined by the Treasurer and supported by such evidence as he may require, the Treasurer, after consultation with the Minister of Mines and Energy, is satisfied—

Concessional duty to encourage mineral or petroleum exploration activity.

(a) that the applicants are parties to a conveyance of an exploration tenement or an interest in an exploration tenement;

and

(b) that—

(i) commercially exploitable mineral or petroleum deposits have not yet been found to exist in the area subject to the tenement;

or

(ii) mineral or petroleum deposits have been found to exist in the area subject to the tenement but further substantial exploratory or investigatory operations are required in order to determine



the nature or extent of those deposits or whether they are commercially exploitable or whether other deposits exist in the area,

this section applies to the conveyance.

(2) The duty payable upon a conveyance to which this section applies shall be the amount specified in the second schedule.

(3) In this section, "exploration tenement" means—

(a) an exploration licence granted under the Mining Act, 1971-1978;

(b) a petroleum exploration licence granted under the Petroleum Act, 1940-1978;

or

(c) an exploration permit for petroleum granted under the Petroleum (Submerged Lands) Act, 1967-1974.

(4) This section applies to a conveyance lodged with the Commissioner for stamping on or after the sixteenth day of September, 1980.

Insertion of  
new s. 81b.

14. The following section is inserted after section 81a of the principal Act:

Duty chargeable  
proportioned to  
value of South  
Australian  
property.

81b. Notwithstanding any other provisions of this Act, where—

(a) a security creates a charge upon property in South Australia and property outside South Australia, the duty chargeable under this Act in respect of the security shall be calculated by reference only to that part of the amount to be paid or repaid under the security that bears to the total amount to be paid or repaid the same proportion as the value of the property in South Australia bears to the total value of the property subject to the charge;

or

(b) a security creates a charge upon property outside South Australia and not upon property in South Australia, the duty chargeable under this Act in respect of the security shall, subject to any exemption under this Act, be four dollars.

Amendment of  
second  
schedule.

15. The second schedule to the principal Act is amended—

(a) by inserting after *Exemption* No. 2 relating to the item that commences with the passage "ANNUAL LICENCE" the following exemptions:

3. Any portion of a premium received or charged under any life insurance policy being an amount that is specified in or directly ascertainable from the policy and declared therein to be for investment purposes only and is not for or in respect of any insurance risk.

4. Any premium received or charged under a policy in respect of a life or personal accident insurance risk where the principal place of residence of the policy owner is in the

Northern Territory and the policy is registered in a registry kept in the Northern Territory pursuant to the *Life Insurance Act 1945* of the Commonwealth.;

(b) by striking out the item—

BANK NOTE—A duty to be paid by each bank quarterly on bank notes issued by it—

For every \$200, and also for the fractional part of \$200 of the average amount of such notes stated to be in circulation by the quarterly returns made by the bank pursuant to the Banking Companies Act.....1·00;

(c) by inserting in paragraph (aa) of the item “CONVEYANCE OR TRANSFER on sale of any property (not otherwise charged), including contract or agreement for sale” after the passage “does not relate to such sale” the passage “and not being a fixed interest security”;

(d) by inserting after paragraph (aa) of the item “CONVEYANCE OR TRANSFER on sale of any property (not otherwise charged), including contract or agreement for sale” the following paragraph:

(aab) In the case of the sale of any fixed interest security—

For every \$100, or fractional part of \$100, of the consideration for the sale..... 0·10;

(e) by inserting in the item “CONVEYANCE for effectuating the appointment of a new trustee or the retirement of a trustee” after the passage “retirement of a trustee” the passage “, not being a conveyance operating as a voluntary disposition *inter vivos*”;

(f) by inserting before the item “CONVEYANCE of any other kind not before charged” the following item:

CONVEYANCE to which section 71d applies..... 50·00.

(g) by striking out from the item “LEASE (not being a lease made subsequently to and in conformity with a duly stamped agreement for a lease) or AGREEMENT for a LEASE, or any written document for the tenancy or occupancy of any lands, tenements or hereditaments” the passage “Where a rate of rent per annum can be ascertained or estimated—for every \$100 or fractional part of \$100 of one year’s rent calculated at that rate” and substituting the passage “Where a rate or average rate of rent per annum can be ascertained or estimated—for every \$100 or fractional part of \$100 of one year’s rent calculated at that rate or, if an average rate can be ascertained or estimated, at that average rate”;

(h) by striking out from the item that commences with the passage “RETURN lodged with the Commissioner by a South Australian dealer pursuant to section 90d of this Act” the following paragraphs:

Where the consideration for each sale or purchase is less than \$100—

For every \$25 and any fractional part of \$25..... 0·07

Where the consideration for each sale or purchase is \$100 or more—

For every \$100 and any fractional part of \$100..... 0·30

and substituting the following paragraphs:

(a) In the case of the sale or purchase of marketable securities other than fixed interest securities—

Where the consideration for each sale or purchase is less than \$100—

For every \$25 and any fractional part of \$25..... 0·07

Where the consideration for each sale or purchase is \$100 or more—

For every \$100 and any fractional part of \$100..... 0·30

(b) In the case of the sale or purchase of fixed interest securities—

For every \$100, or fractional part of \$100, of the consideration for each sale or purchase.... 0·05;

(i) by striking out item No. 1 under the heading "GENERAL EXEMPTIONS FROM ALL STAMP DUTIES" and substituting the following item:

1. Wills, testamentary instruments and letters of administration and any instrument acknowledging, evidencing or recording any such instrument.

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

K. D. SEAMAN, Governor