



ANNO TRICESIMO PRIMO

# ELIZABETHAE II REGINAE

A.D. 1982

\*\*\*\*\*

No. 95 of 1982

An Act to amend the Stamp Duties Act, 1923-1982.

[Assented to 23 December 1982]

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

1. (1) This Act may be cited as the "Stamp Duties Act Amendment Act (No. 3), 1982". Short titles.

(2) The Stamp Duties Act, 1923-1982, 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, 1923-1982".

2. (1) This Act shall come into operation on a day to be fixed by proclamation. Commencement.

(2) The Governor may, in a proclamation made for the purposes of subsection (1), suspend the operation of a specified provision of this Act until a subsequent day fixed in the proclamation, or a day to be fixed by subsequent proclamation.

3. Section 31b of the principal Act is amended—

(a) by striking out the definition of "prescribed rate" in subsection (1) and substituting the following definition:

"prescribed rate" in relation to a credit arrangement, discount transaction or loan means—

(a) the rate for the time being fixed by regulation as the prescribed rate;

or

(b) where different rates are fixed by regulation as the prescribed rates for different classes of transactions—the rate for the time being fixed for the class of transactions to which the credit

Amendment of  
s. 31b—  
Interpretation.

arrangement, discount transaction or loan belongs;

and

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

(1a) The Governor may, for the purposes of the provisions falling under the heading of *Credit and Rental Business*, by regulation, fix from time to time—

(a) a rate of not less than nine per centum per annum as the prescribed rate;

or

(b) different rates of not less than nine per centum per annum as the prescribed rates for different classes of transactions.

4. Section 48a of the principal Act is amended—

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

(1) The Commissioner may, in his discretion, issue to a bank a licence enabling the bank to do either or both of the following:

(a) to issue (whether within or outside South Australia) cheque forms having the words "Stamp duty paid" printed on the cheque forms;

or

(b) to endorse on cheques drawn outside South Australia the words "Stamp duty paid";

(b) by striking out from paragraph (b) of subsection (2) the passage "issued by that bank" and substituting the passage "issued or cheques endorsed by the bank pursuant to the licence";

(c) by inserting in subsection (5) after the passage "for use under this section," the passage "with respect to the endorsement of cheques under this section,";

and

(d) by inserting after subsection (5d) the following subsection:

(5e) Notwithstanding any other provision of this Act, a cheque drawn outside South Australia and endorsed with the words "Stamp duty paid" pursuant to a licence under this section shall be deemed to be duly stamped.

5. Section 60a of the principal Act is repealed and the following section is substituted:

60a. (1) Subject to subsection (2), a reference in this Act to the value of property conveyed or transferred is a reference to the market value of the property—

(a) in the case of a conveyance on sale—as at the date of the sale;

Amendment of  
s. 48a—  
Payment of duty  
on cheques.

Repeal of s. 60a  
and substitution  
of new section.

Value of property  
conveyed or  
transferred.

or

(b) in any other case—as at the date of the conveyance, assuming, in either case, that the property had, at that date, been free from any encumbrances.

(2) In the case of a conveyance on sale, the Commissioner may treat the consideration for the sale as being the value of the property conveyed or transferred unless it appears to the Commissioner that the consideration may be less than the value of the property as referred to in subsection (1).

(3) Where no evidence of the value of property conveyed or transferred or comprising or forming part of the consideration for a conveyance is furnished to the Commissioner, or the evidence so furnished is, in his opinion, unsatisfactory, the Commissioner may cause a valuation of the property to be made by some person appointed by him and may assess the duty payable by reference to that valuation.

(4) The Commissioner may, having regard to the merits of the case, charge the whole or a part of the expenses of or incidental to the making of a valuation pursuant to subsection (3) to the person liable to pay the duty, and may recover the same from him as a debt due to the Crown.

(5) In subsection (1) “encumbrance” does not include a prescribed encumbrance or an encumbrance of a prescribed kind.

6. Section 61 of the principal Act is amended by striking out the passage “upon which a conveyance is” and substituting the passage “for a conveyance”.

Amendment of s. 61—  
Method of estimating value of consideration where consideration consists of shares.

7. Section 63 of the principal Act is repealed.

Repeal of s. 63.

8. Section 65 of the principal Act is amended by striking out the passage “such conveyance shall be chargeable with *ad valorem* duty in respect of the value of such real or personal property at the date of such conveyance” and substituting the passage “the market value of the real or personal property at the date of the sale shall be taken as the value of the consideration or part of the consideration”.

Amendment of s. 65—  
Where consideration consists of real or personal property.

9. Section 66 of the principal Act is amended—

(a) by striking out from subsection (1) the passage “such conveyance shall be chargeable in respect of such consideration with *ad valorem* duty on such total amount” and substituting the passage “the total amount shall be taken as the consideration or part of the consideration”;

Amendment of s. 66—  
Where consideration payable in instalments.

and

(b) by striking out subsections (2), (3) and (4).

10. Sections 66b and 67 of the principal Act are repealed.

Repeal of ss. 66b and 67.

11. Section 68 of the principal Act is amended—

(a) by striking out from subsection (1) the passage “in respect of” and substituting the passage “as a conveyance for”;

Amendment of s. 68—  
Duty in certain cases.

- (b) by striking out from subsection (2) the passage "in respect of" and substituting the passage "as a conveyance for";
  - (c) by striking out from subsection (3) the passage "in respect of", twice occurring, and substituting, in each case, the passage "as a conveyance for";
  - (d) by striking out from subsection (4) the passage "in respect of the", twice occurring, and substituting, in each case, the passage "as a conveyance for the";
- and
- (e) by striking out from subsection (5) the passage "in respect of", twice occurring, and substituting, in each case, the passage "as a conveyance for".

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

12. Section 71 of the principal Act is amended—

- (a) by inserting in paragraph (h) of subsection (5) after the passage "estate of a deceased person," the passage "being a transfer made in pursuance of the provisions of the will of the deceased person or the laws of intestacy and";
- and
- (b) by striking out from subsection (8) the word "transferor" and substituting the word "transferee".

Amendment of  
s. 71b—  
Partition or  
division of  
property.

13. Section 71b of the principal Act is amended—

- (a) by striking out the passage "the same *ad valorem* duty as a conveyance on sale for the consideration, and with that duty only" and substituting the passage "duty as if it were a conveyance on sale and that consideration were equal to the value of the property";
- and
- (b) by inserting after its present contents as amended by this section (now to be designated as subsection (1)) the following subsections:
    - (2) A person who executes or is otherwise engaged or concerned in the preparation or certification of an instrument effecting the partition or division of any property who, upon submission of the instrument to the Commissioner for stamping, does not disclose the total consideration (if any) paid or given, or agreed to be paid or given, for equality shall be guilty of an offence and liable to a penalty not exceeding one thousand dollars.
    - (3) It shall be a defence to a charge under subsection (2) that the defendant did not know and could not reasonably be expected to have known the total consideration required to be disclosed by that subsection.
    - (4) This section applies only in relation to a conveyance for the partition or division of property between members of a family group.
    - (5) In this section "family group" has the meaning assigned to that expression by section 71(15).

14. Section 71c of the principal Act is amended by striking out paragraphs (a) and (b) of subsection (2) and substituting the following paragraphs:

Amendment of s. 71c—  
Concessional rates of duty in respect of the purchase of a first house, etc.

(a) where the conveyance arises from a contract entered into before the first day of December, 1982, and—

(i) the amount by reference to which the duty would, apart from this section, be calculated does not exceed \$30 000—no duty shall be payable;

or

(ii) the amount by reference to which the duty would, apart from this section, be calculated exceeds \$30 000—the duty payable shall be the amount payable apart from this section less the amount of duty payable on a conveyance of property the value of which is \$30 000;

or

(b) where the conveyance arises from a contract entered into on or after the first day of December, 1982, and—

(i) the amount by reference to which the duty would, apart from this section, be calculated does not exceed \$40 000—no duty shall be payable;

or

(ii) the amount by reference to which the duty would, apart from this section, be calculated exceeds \$40 000—the duty payable shall be the amount payable apart from this section less the amount of duty payable on a conveyance of property the value of which is \$40 000.

15. Section 80 of the principal Act is amended by striking out the proviso.

Amendment of s. 80—  
Security for repayment by periodical payments, how to be charged.

16. The following section is inserted after section 81b of the principal Act:

Insertion of new s. 81c.

81c. (1) The Commissioner may, upon the application of a party to a mortgage upon which duty has been paid, authorize the whole or a part of the duty paid upon the mortgage to be denoted as having been paid upon some other mortgage or mortgages if he is satisfied upon the basis of such evidence as he may require—

Duty paid upon one mortgage may be denoted as having been paid upon another mortgage

(a) that the duty was paid upon the firstmentioned mortgage instead of the other mortgage or mortgages as a result of an error on the part of a party to the mortgage or his agent;

(b) that the parties to the firstmentioned mortgage are the same as the parties to the other mortgage or mortgages;

and

(c) that the firstmentioned mortgage has not been acted upon or relied upon in any way as a security.

(2) An application under subsection (1) must—

- (a) be made in a form approved by the Commissioner;
  - (b) be made not later than three months after the date on which duty was paid upon the firstmentioned mortgage;
- and
- (c) be accompanied by the prescribed charge.

(3) The Commissioner may, upon an application under subsection (1), if he thinks it just to do so, waive payment of the prescribed charge.

(4) The Commissioner may require any evidence given in support of an application under subsection (1) to be verified by statutory declaration.

(5) Duty shall not be denoted as having been paid upon the other mortgage or mortgages in pursuance of subsection (1) unless the original and every copy of the firstmentioned mortgage stamped under this Act has been produced to the Commissioner and dealt with in accordance with the regulations.

(6) For the purposes of this section—

- (a) mortgagees that are related corporations shall be regarded as one and the same person;
- and
- (b) corporations are related if they are deemed to be related by virtue of the provisions of the *Companies (South Australia) Code*.

Amendment of  
second schedule.

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

- (a) by striking out from paragraph (aa) of the item "CONVEYANCE OR TRANSFER on sale of any property (not otherwise charged) including contract or agreement for sale" the passage "consideration for the sale", twice occurring, and substituting, in each case, the passage "value of the stock or marketable security";
- (b) by striking out from paragraph (aab) of the item "CONVEYANCE OR TRANSFER on sale of any property (not otherwise charged) including contract or agreement for sale" the passage "consideration for the sale" and substituting the passage "value of the fixed interest security";
- (c) by striking out from paragraph (b) of the item "CONVEYANCE OR TRANSFER on sale of any property (not otherwise charged) including contract or agreement for sale" the passage "the amount or value of the consideration for the sale" and substituting the passage "the value of the property conveyed";
- (d) by striking out from paragraph (b) of the item "CONVEYANCE OR TRANSFER on sale of any property (not otherwise charged) including contract or agreement for sale" the passage "amount or", wherever it occurs;
- (e) by inserting in the item "CONVEYANCE for the partition or division of any property where the consideration for equality does not exceed \$200 or where there is no consideration for equality" after the passage "any property" the passage ", being a conveyance of the kind referred to in section 71b (4),";

(f) by striking out the item "DOCUMENT or other INSTRUMENT made for the purpose of securing periodical payments provided for by a separate conveyance on sale, in respect of which provision for periodical payments such conveyance on sale is chargeable with *ad valorem* duty, of whatever description and howsoever otherwise chargeable . . . No sum higher than \$2.00.";

and

(g) by striking out item No. 6 under the heading "GENERAL EXEMPTIONS FROM ALL STAMP DUTIES" and substituting the following item:

6. Conveyances of bills, bonds, debentures or other securities issued by a public statutory body constituted under a law of the Commonwealth or of this or any other State or of any Territory of the Commonwealth, not being a prescribed statutory body or a statutory body of a prescribed class.

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

D. B. DUNSTAN, Governor