

STAMP DUTIES (FURTHER AMENDMENT) ACT 1987
No. 227

NEW SOUTH WALES



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STAMP DUTIES (FURTHER AMENDMENT) ACT 1987 No. 227

NEW SOUTH WALES



Act No. 227, 1987

An Act to amend the Stamp Duties Act 1920 to enable duty on certain contracts for the purchase of a first home to be paid by instalments and to effect miscellaneous amendments to that Act. [Assented to 16 December 1987]

See also Land Tax (Amendment) Act 1987; Land Tax Management (Amendment) Act 1987; Pay-roll Tax (Amendment) Act 1987.

*Stamp Duties (Further Amendment) 1987***The Legislature of New South Wales enacts:****Short title**

1. This Act may be cited as the Stamp Duties (Further Amendment) Act 1987.

Commencement

2. (1) Except as provided by this section, this Act shall commence on the date of assent to this Act.

(2) Schedule 1 (1) shall commence on the day occurring 28 days after the date of assent to this Act.

(3) Schedule 1 (8) and (13) (a) shall be deemed to have commenced on 10 August 1987.

(4) Schedule 1 (9) and (12) and Schedule 2 shall be deemed to have commenced on 23 September 1987.

(5) Schedule 1 (14) shall be deemed to have commenced on 24 June 1987.

(6) Section 3, in its application to a provision of a Schedule, shall commence or be deemed to have commenced on the day on which the provision commences.

Amendment of Act No. 47, 1920

3. The Stamp Duties Act 1920 is amended as set out in Schedules 1-3.

Application of certain amendments

4. Schedule 4 has effect.

SCHEDULE 1—MISCELLANEOUS AMENDMENTS

(Sec. 3)

(1) Section 21 (**Penalty for not fully setting forth facts**)—

Omit "one hundred dollars", insert instead "50 penalty units in the case of a corporation and 20 penalty units in any other case".

(2) Section 25 (**Terms on which instruments may be stamped after execution**)—

Section 25 (3c)—

Omit "after the instrument was marked 'interim stamp only' ", insert instead "after the full amount of the duty has been ascertained or assessed by the Chief Commissioner".

*Stamp Duties (Further Amendment) 1987*SCHEDULE I—MISCELLANEOUS AMENDMENTS—*continued***(3) Section 41 (Agreements for sale or conveyance to be chargeable as conveyances etc.)—****(a) Section 41 (7) (a)—**

Omit “prescribed form”, insert instead “form approved by the Chief Commissioner”.

(b) Section 41 (7) (b)—

Omit the paragraph, insert instead:

(b) There shall be deducted from the amount of any such refund—

(i) \$25; and

(ii) the amount of any duty, other than ad valorem duty, to which the instrument may be liable.

(c) Section 41 (7A)–(7D)—

After section 41 (7), insert:

(7A) If, under section 66M of the Conveyancing Act 1919, in relation to a duly stamped agreement (whether executed before or after the commencement of this subsection)—

(a) the consideration expressed in the agreement is reduced; or

(b) the purchaser recovers an amount from the vendor as a debt,

the person who paid the duty may apply to the Chief Commissioner, on a form approved by the Chief Commissioner, for a further assessment of the ad valorem duty and a refund of the difference (if any) between the duty as paid and the duty as further assessed.

(7B) The Chief Commissioner, on application under subsection (7A), may make a further assessment of the ad valorem duty in relation to the agreement which shall be calculated on the amount on which duty was previously assessed less—

(a) any amount by which the consideration expressed in the agreement was reduced; or

(b) any amount recovered by the purchaser from the vendor as a debt.

(7C) An amount of \$25 shall be deducted from the amount of any refund under subsection (7A).

(7D) An application under subsection (7A) for a refund shall be made within 12 months after the consideration expressed in the agreement is reduced or the purchaser recovers an amount from the vendor as a debt.

Stamp Duties (Further Amendment) 1987

SCHEDULE 1—MISCELLANEOUS AMENDMENTS—*continued*

(d) Section 41 (9)—

Omit the subsection.

(4) Section 45A (**Bookmakers to issue betting tickets etc.**)—

Section 45A (7)—

After section 45A (6), insert:

(7) This section does not apply to or in respect of a bet made with a bookmaker on or after 1 January 1988.

(5) Section 46A—

Omit the section, insert instead:

Cheque defined

46A. For the purposes of this Act, “cheque” has the same meaning as in the Cheques and Payment Orders Act 1986 of the Commonwealth and includes a payment order within the meaning of that Act.

(6) Section 66E (**Conveyance between married couple**)—

Section 66E (3), (4)—

After section 66E (2), insert:

(3) A person who has or persons who have paid duty on a conveyance of property is or are entitled to a refund of the duty if the person is or the persons are able to satisfy the Chief Commissioner that—

- (a) the person is one of a married couple or the persons are a married couple;
- (b) the property, as at the date of the conveyance, was vacant land;
- (c) the property, as at the date of application for the refund, has erected on it a private dwelling house which is solely or principally used as the married couple’s principal place of residence;
- (d) had the dwelling house been erected on the property as at the date of the conveyance and been solely or principally used, as at that date, as the married couple’s principal place of residence, the conveyance would have been exempt, under this section, from stamp duty; and
- (e) the application for the refund has been made within 12 months after the dwelling house came to be so used.

(4) An application under subsection (3) shall be made in the form approved by the Chief Commissioner.

*Stamp Duties (Further Amendment) 1987*SCHEDULE 1—MISCELLANEOUS AMENDMENTS—*continued*(7) Section 74CB (**Certain instruments exempt from duty**)—

(a) Section 74CB (1)—

Omit the subsection, insert instead:

(1) An instrument is exempt from duty to the extent that the instrument makes provision for or with respect to—

(a) the conveyance to the parties to a marriage which is dissolved or annulled (whether before or after the instrument is executed) or to either of those parties, or to a child or children of either of them, of matrimonial property, if the instrument is—

(i) registered or approved under the Commonwealth Act or executed for the purposes of or in accordance with another instrument so registered or approved; or

(ii) an order of a court under that Act or executed for the purposes of or in accordance with such an order; or

(b) the conveyance to the parties to a marriage or to either of those parties, or to a child or children of either of them, of matrimonial property, if the instrument is—

(i) approved under the Commonwealth Act or executed for the purposes of or in accordance with another instrument so approved; or

(ii) an order of a court under that Act or executed for the purposes of or in accordance with such an order.

(b) Section 74CB (2)—

After “them,” insert “or to a child or children of either of them,”.

(8) Section 74H—

After section 74G, insert:

Exemption from duty

74H. (1) Notwithstanding any other provision of this Act, duty is not chargeable in respect of an amount paid or payable under a hiring arrangement if the owner of the goods subject to the hiring arrangement paid ad valorem duty as on a conveyance of property in connection with the acquisition of the goods.

(2) Subsection (1) applies—

(a) if the owner of the goods is an approved person for the purposes of section 74F—to amounts paid or payable on or after 10 August 1987; or

(b) if the owner is not such an approved person—to hiring arrangements executed on or after 10 August 1987.

Stamp Duties (Further Amendment) 1987

SCHEDULE 1—MISCELLANEOUS AMENDMENTS—*continued*

(9) Section 78F—

Omit the section, insert instead:

Exemption from duty—residential leases

78F. (1) Notwithstanding any other provision of this Act, duty is not chargeable in respect of so much of the rent or other consideration payable under a residential lease executed on or after 23 September 1987 as relates to the premises or part of the premises used, or intended to be used, exclusively as a place of residence.

(2) In this section—

“residential lease” means an agreement under which a person has the right to occupy for a term (or for a term together with any option period) not exceeding 5 years any premises or part of premises used or intended to be used, whether or not exclusively, as a place of residence.

(10) Section 84B (**Collateral security**)—

(a) Section 84B (3A) (a)—

Omit “a primary loan security” where firstly occurring, insert instead “an instrument”.

(b) Section 84B (3A) (a)—

Omit “primary loan security” where secondly occurring, insert instead “instrument”.

(11) Section 84EA (**Re-issue of certificates of debentures not liable to duty**)—

Omit “on a foreign security, as defined in section 84F (1)”, insert instead “of a like nature in another State or a Territory of the Commonwealth”.

(12) Section 84EC—

After section 84EB, insert:

Exemption of certain debentures and related instruments from duty

84EC. (1) In this section—

“financial corporation” means a corporation whose sole or principal business is that of the provision of finance to the public, including the making of loans within the meaning of Division 20 to the public;

“related corporation”, in relation to a financial corporation, means a corporation that is deemed to be related to the financial corporation by virtue of section 7 (5) of the Companies (New South Wales) Code.

*Stamp Duties (Further Amendment) 1987***SCHEDULE 1—MISCELLANEOUS AMENDMENTS—*continued***

(2) Subject to subsection (3), but notwithstanding any other provision of this Act—

(a) duty is not chargeable on—

(i) a debenture issued by a financial corporation or a related corporation pursuant to an instrument of trust to which the financial corporation or related corporation is a party and which protects the interests of the holders of the debentures; or

(ii) a debenture issued by a financial corporation or a related corporation the repayment in respect of which is secured by a mortgage executed by the financial corporation or related corporation; and

(b) duty as duty on a loan security is not chargeable on—

(i) an instrument of trust to which a financial corporation or a related corporation is a party and which protects the interests of the holders of debentures issued by the financial corporation or related corporation pursuant to the instrument; or

(ii) a mortgage executed by a financial corporation or a related corporation to secure the repayment of debentures issued by the financial corporation or related corporation.

(3) Subsection (2) applies to a debenture issued, or an instrument of trust or mortgage executed, by a related corporation only in so far as the debenture is issued, or the instrument of trust or mortgage is executed, for the purpose of raising funds to be used by a financial corporation.

(13) Section 84G (Duty on motor vehicle certificates of registration)—

(a) Section 84G (1) (d), (e)—

After section 84G (1) (d), insert:

; or

(e) a motor vehicle certificate of registration issued for a motor vehicle if ad valorem duty as on a conveyance of property has been paid in connection with the acquisition of the motor vehicle.

(b) Section 84G (2A) (a)—

After “issued”, insert “, being a motor vehicle which has previously been registered under the Motor Traffic Act 1909 or a law of another State or a Territory of the Commonwealth which corresponds to that Act”.

*Stamp Duties (Further Amendment) 1987*SCHEDULE 1—MISCELLANEOUS AMENDMENTS—*continued*

(14) Section 87A—

After section 87, insert:

Exemption from duty—property etc. outside New South Wales

87A. Notwithstanding any other provision of this Act, duty is not chargeable on an insurance policy which is issued, or the renewal of which is effected, in New South Wales to the extent to which the amount insured under the policy relates to—

- (a) property which, at the time of issue or renewal, is outside New South Wales; or
- (b) a risk concerning an act or omission which, in the normal course of events, can only occur outside New South Wales.

(15) Section 124 (**Objections and appeals**)—

(a) Section 124 (1)—

Omit the subsection, insert instead:

(1) A person—

- (a) who is liable to pay duty and who is dissatisfied with an assessment of the duty made by the Chief Commissioner; or
- (b) who has paid duty and who is dissatisfied with a decision of the Chief Commissioner with respect to the refunding of the whole or any part of the duty,

may, within 60 days after the issue of the assessment or the making of the decision, object to the assessment or decision by lodging, at an office at which the Chief Commissioner accepts instruments for stamping, a statement in writing of the grounds of the objection.

(b) Section 124 (3) (a)—

After “assessment”, insert “or alter the decision”.

(c) Section 124 (3) (b), (6) (b)—

After “assessment” wherever occurring, insert “or decision”.

(d) Section 124 (6) (a)—

Omit the paragraph.

(e) Section 124 (7A)—

After section 124 (7), insert:

(7A) On the hearing of a stated case, the appellant may dispute any fact or document stated in the case.

(f) Section 124 (8)—

*Stamp Duties (Further Amendment) 1987*SCHEDULE 1—MISCELLANEOUS AMENDMENTS—*continued*

After “stated case”, insert “relating to the amount of an assessment”.

(g) Section 124 (8) (a)—

Omit the paragraph, insert instead:

(a) if the assessment of the Supreme Court is less than that of the Chief Commissioner and the objector—

(i) has not paid the amount assessed by the Chief Commissioner—shall order the objector to pay the amount of duty determined by it, together with any fine;

(ii) has paid the amount assessed by the Chief Commissioner—shall order the Chief Commissioner to pay the difference to the objector, together with interest at the prescribed rate; or

(iii) has paid part of the amount assessed by the Chief Commissioner—shall order the objector to pay the balance of the amount of duty determined by it, together with any fine or shall order the Chief Commissioner to pay the difference to the objector, together with interest at the prescribed rate, as the case requires; or

(h) Section 124 (9)—

After “If”, insert “, under subsection (8).”.

(i) Section 124 (9A), (9B)—

After section 124 (9), insert:

(9A) On giving its decision on a stated case relating to a refund, the Supreme Court may determine the amount of any refund payable as a result of the decision and order the Chief Commissioner to pay the amount to the objector, together with interest at the prescribed rate.

(9B) If, under subsection (9A), the Supreme Court orders the Chief Commissioner to refund to an objector any amount of duty, the Chief Commissioner shall also pay interest on the amount from the date on which it was paid to the Chief Commissioner until the date it is refunded.

(16) Second Schedule—

(a) Second Schedule, under the heading “BETTING TICKETS”—

After “issued” wherever occurring, insert “before 1 January 1988”.

*Stamp Duties (Further Amendment) 1987*SCHEDULE 1—MISCELLANEOUS AMENDMENTS—*continued*

- (b) Second Schedule, under the heading "POLICIES OF INSURANCE"—

After paragraph (j) under the heading "Exemptions", insert:

- (k) Any policy issued by an organization registered under Part VI of the National Health Act 1953 of the Commonwealth, being a policy which provides hospital benefits or medical benefits (or both), whether or not other benefits are also provided.

- (c) Second Schedule, under the heading "TRANSFER OF SHARES"—

After paragraph (1) (a), insert:

<p>(b) Where the shares transferred are shares of a corporation or company—</p> <p>(i) the shares of which are not listed on a recognized stock exchange; and</p> <p>(ii) which is not the legal or beneficial owner of land in New South Wales</p> <p>Where the duty is \$10, adhesive stamp may be used.</p>	<p style="text-align: center;">\$10</p> <p>or ad valorem duty at the rate of 6c for every \$10 (or part thereof) of the value of the shares, whichever is the greater.</p>
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- (d) Second Schedule, under the heading "TRANSFER OF SHARES"—

Re-number paragraph (1) (b) as paragraph (1) (c).

- (e) Second Schedule, under the heading "GENERAL EXEMPTIONS FROM STAMP DUTY UNDER PART III"—

After paragraph (31), insert:

- (32) An instrument approved by the Minister (except to such extent (if any) as may be determined by the Minister and in accordance with such conditions (if any) as may be so determined) by which property is conveyed or agreed to be conveyed by a corporation which is a member of a group of corporations to another corporation which is a member of the same group.

**SCHEDULE 2—AMENDMENTS CONCERNING THE FIRST HOME
PURCHASE SCHEME**

(Sec. 3)

(1) Part III, Division 3B—

After Division 3A, insert:

Division 3B—First home purchase scheme**Administration of the scheme**

45. (1) The Chief Commissioner shall administer the scheme set out in Schedule 2A.

(2) The scheme confers no rights on a person except to the extent determined by the Chief Commissioner.

(3) Schedule 2A has effect.

(2) Second Schedule, under the heading “LOAN SECURITY”—

After paragraph (a) under the heading “*Exemptions—*”, insert:

(b) An eligible mortgage under Schedule 2A where the eligible contract with which it is associated is eligible to be stamped under clause 11 of that Schedule.

(3) Schedule 2A—

After the Second Schedule, insert:

SCHEDULE 2A

(Sec. 45)

FIRST HOME PURCHASE SCHEME**The nature of the scheme**

1. This scheme is intended to help people who are buying their first home by enabling them to choose to pay stamp duty on the contract by instalments over a period of 5 years (instead of at the time of purchase). Under the scheme, any mortgage given to assist the financing of the purchase may be exempted from payment of stamp duty.

Commencement

2. Contracts and mortgages executed on or after 23 September 1987 are eligible for consideration under the scheme.

Eligible persons

3. (1) A single person may apply under the scheme but will only be eligible once as a single person.

(2) A couple may apply under the scheme as long as one of them has not owned a home in New South Wales solely or with someone else.

(3) A person who owns or has owned vacant land is not excluded.

Ineligible persons

4. (1) Companies, partnerships and persons in their capacity as trustees are not eligible.

(2) A person is not eligible if any stamp duty remains to be paid by the person in connection with a previous application approved under the scheme.

*Stamp Duties (Further Amendment) 1987***SCHEDULE 2—AMENDMENTS CONCERNING THE FIRST HOME PURCHASE SCHEME—*continued*****Eligible contracts**

5. (1) The contract must be for the purchase of a first home.
- (2) The total consideration payable under the contract (that is, the amount paid for the house or unit, land, furnishings and other items acquired under the contract or any related document) must not be more than \$105,000.
- (3) The amount paid must be the full market value. Wholly or partially gifted property is not eligible.

Ineligible contracts

6. (1) A contract for the purchase of vacant land is not eligible.
- (2) A contract is not eligible if it involves the acquisition of a business or business premises. However, a contract for the purchase of a farming property on which there is a private dwelling is not excluded.
- (3) A contract for the purchase of a holiday home is not eligible.
- (4) A contract under which there are more than 2 purchasers is not eligible.

Other qualifications

7. (1) The home must be occupied or intended to be occupied by the purchaser or purchasers on or before settlement, or within a reasonable time after settlement, as the principal place of residence.
- (2) No part of the property purchased may be rented or leased while any instalment of stamp duty remains to be paid.

Eligible mortgages

8. (1) A mortgage is eligible if it is given to assist the financing of a purchase under a contract which is eligible under the scheme.
- (2) The mortgage must be over the property purchased and the amount secured must not be more than \$105,000.

Making of applications

9. (1) An application is made to the Chief Commissioner by completing a statutory declaration in a form approved by the Chief Commissioner.
- (2) The application must be accompanied by an undertaking in a form approved by the Chief Commissioner to pay the duty on the contract by 5 annual instalments, the amounts of which shall, as nearly as possible, be equal.

Determination of applications

10. An application shall be determined solely at the discretion of the Chief Commissioner whose decision is final.

Stamping of documents if application is approved

11. (1) If an application concerning an eligible contract is approved and any fine incurred in respect of the contract is paid, the contract will be stamped as if the full amount of duty had been paid.
- (2) The associated transfer or conveyance will be stamped as if the full amount of the duty had been paid.
- (3) The amount of any duty payable on a duplicate contract and any associated transfer or conveyance may be added to the amount to be paid by instalments.

*Stamp Duties (Further Amendment) 1987***SCHEDULE 2—AMENDMENTS CONCERNING THE FIRST HOME PURCHASE SCHEME—*continued*****Payment of instalments**

12. (1) Instalments of duty must be paid in accordance with the undertaking. The first instalment is to be paid by a date which is approximately 1 year after the stamping of the contract.

(2) Although instalments are payable annually, payments may be made at more frequent intervals.

Payment of interest

13. (1) No interest is payable unless an instalment is overdue. An instalment is overdue if it is not paid within 14 days after the date fixed for its payment in the undertaking.

(2) Interest of 15% per annum (calculated on a daily rate) is payable on an overdue instalment.

Overdue instalments

14. As well as attracting interest, if an instalment is overdue for more than 3 months, the Chief Commissioner (or the Chief Commissioner's agent) may sue the defaulter to recover, as a debt, the whole of the outstanding balance of the duty and any accrued interest.

Sale or leasing of home before all instalments are paid

15. If the home is sold, leased (wholly or in part) or otherwise disposed of, or if for some other reason the home ceases to be the principal place of residence of the person or both of the persons having the benefit of the scheme, the whole of the outstanding balance of the duty and any accrued interest becomes immediately payable. The Chief Commissioner (or the Chief Commissioner's agent) may sue the person or persons owing the duty and any interest to recover, as a debt, the amount involved.

Definitions

16. In this Schedule—

“contract” means an agreement for sale or conveyance or a conveyance;

“couple” means any 2 people residing together or who intend to reside together in the home the subject of the application;

“home” means a private dwelling and includes a farming property on which a private dwelling is erected;

“single person” means a person residing alone (whether or not with children) or who intends to so reside in the home the subject of the application.

SCHEDULE 3—STATUTE LAW REVISION

(Sec. 3)

(1) Section 74F (Payment of duty on hiring arrangements by return)—

Section 74F (15)—

Before “furnish”, insert “unless the Chief Commissioner otherwise determines.”.

*Stamp Duties (Further Amendment) 1987*SCHEDULE 3—STATUTE LAW REVISION—*continued*

(2) Section 84 (Limited and unlimited loan securities)—

Section 84 (3)—

Omit “in the loan security” insert instead “(whether in the loan security or otherwise)”.

(3) Section 84G (Duty on motor vehicle certificates of registration)—

Section 84G (2)—

Omit “hereto and such motor vehicle certificate of registration shall not be deemed an agreement or memorandum made under hand for or relating to the sale of any goods, wares, or merchandise within the exemption contained in the Second Schedule to this Act under the heading “Agreement or Memorandum of an Agreement, and not otherwise specifically charged with any duty””.

SCHEDULE 4—APPLICATION OF CERTAIN AMENDMENTS

(Sec. 4)

Definition

1. In this Schedule—

“amended Principal Act” means the Stamp Duties Act 1920, as amended by this Act.

Agreements for sale or conveyance

2. Section 41 of the amended Principal Act applies to an agreement if, on or after the date of assent to this Act, the consideration expressed in the agreement is reduced or a purchaser recovers an amount from a vendor, as referred to in section 41 (7A) of the amended Principal Act, whether or not the agreement was executed before or after that date.

Conveyance between married couple

3. Section 66E (3) of the amended Principal Act applies only to a conveyance executed on or after the date of assent to this Act.

Conveyance of matrimonial property

4. Section 74CB (1) of the amended Principal Act only applies to an instrument which is registered, approved or executed, as referred to in that subsection, on or after the date of assent to this Act or which is an order, so referred to, made on or after that date.

Exemption of certain debentures and related instruments from duty

5. (1) Section 84E of the amended Principal Act applies to a debenture instrument of trust or mortgage referred to in that section issued or executed on or after 23 September 1987.

(2) No duty as duty on a loan security is chargeable under the Stamp Duties Act 1920 in respect of an instrument of trust or mortgage to which section 84E of the amended Principal Act applies and which was executed before 23 September 1987 if an amount repayable in respect of a debenture to which that section applies is increased on or after that date.

Stamp Duties (Further Amendment) 1987

SCHEDULE 4—APPLICATION OF CERTAIN AMENDMENTS—*continued*

(3) No duty is payable under section 84D (2) of the Stamp Duties Act 1920 by a financial corporation as defined in section 84EC (1) of the amended Principal Act for amounts subscribed for in New South Wales on or after 23 September 1987 in respect of debentures to which section 84EC (2) (a) of the amended Principal Act applies.