

# **STAMP DUTIES (AMENDMENT) ACT 1990 No. 45**

NEW SOUTH WALES



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# STAMP DUTIES (AMENDMENT) ACT 1990 No. 45

## NEW SOUTH WALES



### Act No. 45, 1990

An Act to amend the Stamp Duties Act 1920 to facilitate its administration, to remove certain types of duty and to clarify its operation in certain respects. [Assented to 22 June 1990]

**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Stamp Duties (Amendment) Act 1990.

**Commencement**

2. (1) This Act commences or is to be taken to have commenced on 1 June 1990, except as provided by this section.

(2) The provisions of Schedule 1 (6) and (16) (b), c) and (d) commence or are to be taken to have commenced on 1 July 1990.

(3) Schedule 1 (15) (b) is to be taken to have commenced on 23 November 1989.

(4) Section 3 in its application to a provision of Schedule 1 commences or is to be taken to have commenced on the day on which the provision commences or is taken to have commenced.

**Amendment of Stamp Duties Act 1924) No. 47**

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

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**SCHEDULE 1 - AMENDMENTS**

(Sec. 3)

(1) Section 3 (**Interpretation**):

Insert, in alphabetical order:

"**Approved form**" means the form approved by the Chief Commissioner for the purposes of the provision of this Act or the regulations in relation to which the expression is used.

"**Company title dwelling**" means a separate dwelling in a building containing more than one separate dwelling situated on land owned by a company in which shares issued by the company are owned by persons who, by virtue of the ownership of their shares, have an exclusive right to occupy a part of the building.

SCHEDULE 1—AMENDMENTS—*continued*

(2) Section 8C:

After section 8B, insert:

**Forms**

8C. The forms to be used for the purposes of this Act and the regulations are to be the forms approved from time to time by the Chief Commissioner, except as provided by this Act or the regulations.

(3) Section 41 (**Agreements for sale or conveyance to be chargeable as conveyances etc.**):

After section 41 (7) (c), insert:

(d) The agreement is not liable to duty merely because, by virtue of the rescission or annulment, the agreement operates to convey the deposit paid under the agreement to the vendor.

(4) Section 73AA (**Exemption from duty for certain conveyances**):

After section 73AA (6) (b), insert:

; a n d

(c) all land tax payable in respect of the land (including any additional land tax payable by way of penalty or otherwise) has been paid,

(5) Section 74D (**Definitions**):

From paragraph (ii) of the definition of “Hiring arrangement”, omit “, a motion picture film”.

(6) Section 78D:

Omit the section, insert instead:

**Duty payable in respect of rental variations**

78D. (1) This section applies to a lease under which the rent may be varied during its term so that the total rent payable for the term cannot be calculated at the commencement of the lease. The duty payable in respect

SCHEDULE 1—AMENDMENTS— *continued*

of the lease may be determined in one of two ways. The first way applies unless there is agreement between the Chief Commissioner and the lessee to use the second way.

(2) Under the first way:

- (a) The Chief Commissioner makes an initial determination and a redetermination at the end of the term and, if the term of the lease is for more than 3 years, redeterminations after each 3 years.
- (b) Duty is to be paid following the initial determination on the total rent for the full term of the lease calculated according to such rate or rates as may, subject to variation, be expressed to apply throughout the term. If, when making the initial determination, no rate of rent payable after the first variation can be determined, duty, in the first instance, is payable on the total rent for the full term of the lease calculated as if the rate of rent payable before the first variation were to be paid throughout the full term (or, if there are different rates before the first variation, at the higher or highest of those rates).
- (c) Within 1 month after each redetermination is required to be made, the lessee must produce to the Chief Commissioner a duly stamped part of the lease and a statutory declaration stating, firstly, the total amount of rent payable between the date on which the initial determination or the last redetermination, as the case may be, was made and the date on which the current redetermination is required to be made and, secondly, the rate of rent payable as at the date on which the current redetermination is required to be made. The duty to be paid following the redetermination is the duty payable on any increase in the amount of rent paid or payable since the initial determination or last redetermination and, in respect of the balance of the term following the redetermination, on the amount of rent calculated as if the rate of rent

SCHEDULE 1—AMENDMENTS— *continued*

- payable at the time of the redetermination were to be paid throughout the balance of the term.
- (d) A lessee who does not comply with paragraph (c) is guilty of an offence and is liable on conviction to a penalty not exceeding 20 penalty units.
  - (e) If, following a redetermination, a re-assessment of duty is made by the Chief Commissioner, the lessee must pay any additional duty assessed or the Chief Commissioner must make a refund of duty to the lessee, as the case requires.
- (3) The second way requires the agreement of both the Chief Commissioner and the lessee Under the second way:
- (a) The Chief Commissioner assesses duty as if the total rent payable under the lease were the amount of rent (if any) which is not subject to variation under the lease together with the amount of the other rent calculated under paragraph (b).
  - (b) The amount of the other rent is the amount that would be payable for the first year at the rate payable before the first variation (or, if there are different rates before the first variation, at the higher or highest of those rates) compounded for each year, or part, after the first year by the amount of the annual percentage increase in the Consumer Price Index last issued before the commencement of the lease.
  - (c) The duty assessed may not be varied merely because the actual rent is different from the estimated rent.
- (4) This section applies to and in respect of any premium, fine, foregift-or consideration other than rent reserved by a lease in the same way as it applies to and in respect of rent reserved by a lease.
- (5) A lease on which only part of the duty has, in accordance with subsection (2), been paid may be marked "interim stamp only". A lease on which no part of the duty

SCHEDULE 1—AMENDMENTS — *continued*

is immediately ascertainable may, on payment of duty of \$10, be stamped accordingly and marked "interim stamp only". A lease marked "interim stamp only" is admissible in evidence.

(6) In this section:

"**Consumer Price Index**" means the number appearing in the Consumer Price Index (All Groups Index) for Sydney published by the Commonwealth Statistician under the Census and Statistics Act 1905 of the Commonwealth;

"**lessee**" includes a person to whom a lease is transferred or assigned;

"**variation**" means a variation made for any reason or on any basis and includes a further variation.

(7) Section 84 (**Limited and unlimited loan securities**):

Omit section 84 (3C), insert instead:

(3C) If:

(a) the security for an advance is or includes a guarantee or an indemnity or any other instrument, whether of the same or of a different kind; and

(b) a loan security is used or is capable of being used (whether directly or through a chain of arrangements) to recover the whole or any part of an amount payable by the guarantor, the indemnifying party or a party to any such other Instrument in the event of any default by any party to the arrangements,

the loan security shall, unless the Chief Commissioner is satisfied that there is no connection between the loan security and any indebtedness of any party to the arrangements, be liable to duty as a loan security:

(c) in the case of a loan security of the type referred to in subsection (1) - in accordance with subsection (1), (2) or (2A):

SCHEDULE 1—AMENDMENTS — *continued*

- (i) in respect of the total amount secured or to be ultimately recoverable under the loan security and
- (ii) in respect of the contingent liability under the guarantee, indemnity or other instrument (or, where there is more than one guarantee, indemnity or other instrument, the greatest contingent liability) as if that liability were an advance; or
- (d) in the case of a loan security of the type referred to in subsection (3)—in accordance with subsection (3) as if the advances made under or secured by the loan security included the amount of the contingent liability under the guarantee, indemnity or other instrument (or, where there is more than one guarantee, indemnity or other instrument, the greatest contingent liability).

(8) Section 84B:

Omit the section, insert instead:

**Collateral security**

84B. (1) If a loan security or other instrument of security for money has been duly stamped under this Act or under the law of another State or a Territory (in this subsection called "the stamped instrument") and there is another or other instruments which are security, wholly or partly, for the same money, the duty chargeable in respect of each of those other loan securities is to be reduced:

- (a) if each such other instrument is security for the whole of the same money, by the amount of duty (including duty paid under the law of another State or a Territory) that was paid on the stamped instrument; and
- (b) if any of such other instruments is security for part of the same money, by an amount equal to the same proportion of the duty (including duty paid under the law of another State or a Territory) that was



SCHEDULE 1—AMENDMENTS— *continued*

paid on the stamped instrument as the amount for which that other instrument is security bears to the amount for which the stamped instrument is security.

(2) Duty may not be reduced under subsection (1) to such an extent as to cause the duty chargeable under that subsection in respect of an instrument to be less than \$10.

(9) Section 84D (**Duty on subscriptions under instruments which secure debentures**):

From section 84D (1), omit "the prescribed form", insert instead "an approved form".

(10) Section 84F:

Omit the section, insert instead:

**Loan security in respect of property in and out of the State**

84F. Despite any other provision of this Act, if money secured or ultimately recoverable by or under a loan security is secured:

- (a) partly on property in the State and partly on property out of the State, ad valorem duty under this Act is payable in respect of the loan security on that portion of the money as bears to the total amount of the money the same proportion as the value of the property in the State bears to the total value of all property to which the loan security relates; or
- (b) wholly on property out of the State, the duty payable under this Act in respect of the loan security is, subject to any exemption under this Act, \$10.

SCHEDULE 1—AMENDMENTS—*continued*

(11) Section 96B (**Share transfers on registers outside New South Wales**):

After section 96B (2), insert:

(2A) The duty chargeable under subsection (2) in respect of a transfer of shares is to be reduced by the amount of any duty paid under section 44A or otherwise in accordance with this Act in respect of the transfer.

(12) Section 97AB (**Returns to be lodged and duty paid**):

From section 97AB (1) (a), omit "the prescribed form", insert instead "an approved form".

(13) Section 97E (**Duty payable in relation to relevant transactions**):

From section 97E (1) (a), omit "the prescribed form", insert instead "an approved form".

(14) Section 99A (**Definitions**):

(a) Section 99A (1), definition of "designated landholder":

Omit "its assets" where firstly occurring, insert instead "assets to which it is entitled".

(b) Section 99A (3):

(i) Omit "land" where firstly occurring, insert instead "an asset (including land)".

(ii) Omit "land" where secondly and thirdly occurring, insert instead "asset".

(c) Section 99A (4):

(i) Omit "the land" where firstly occurring, insert instead "an asset (including land)".

(ii) Omit "land" where secondly and fourthly occurring, insert instead "an asset".

(iii) Omit "land" where thirdly occurring, insert instead "asset".

(iv) Omit "land" where fifthly occurring, insert instead "assets".

SCHEDULE 1—AMENDMENTS —*continued*

- (15) Section 99F (**Assessment and payment of duty - statement of relevant acquisition of an interest etc.**):
- (a) In section 99F (2) (a), after "Division", insert ", or under the law of another State or a Territory,".
  - (b) In section 99F (2) (b), after "evidences", insert "or comprises an agreement for".
- (16) Second Schedule—Stamp Duties and Exemptions:
- (a) After paragraph (3A) of the matter appearing under the heading CONVEYANCES OF ANY PROPERTY, insert:
    - (3B) Upon the transfer of shares which confer an exclusive right to occupy a company title dwelling. The same duty as on a conveyance under paragraph (1) (2), (3) or (3A) above, as the case may require, as if a reference in those paragraphs to the unencumbered value of the property were a reference to the unencumbered value of the shares. The same persons as are primarily liable on a conveyance under paragraph (1), (2), (3) or (3A) above, as the case may require.
  - (b) From paragraph (1) of the matter appearing under the heading LEASE OR PROMISE OF OR AGREEMENT FOR LEASE OR HIRE of any Property not being a Ship or Vessel, omit "Except as provided in paragraph (10) in", insert instead "In".
  - (c) Omit paragraph (9) of the matter appearing under the heading LEASE OR PROMISE OF OR AGREEMENT FOR LEASE OR HIRE of any Property not being a Ship or Vessel.
  - (d) Omit paragraph (10) and the Exemptions from the matter appearing under the heading LEASE OR PROMISE OF

SCHEDULE 1—AMENDMENTS— *continued*

OR AGREEMENT FOR LEASE OR HIRE of any Property not being a Ship or Vessel, insert instead:

*Exemptions:*

- (a) A lease for a term of less than 1 year where the sole consideration is a rent of not more than \$3,000.
  - (b) A lease for a term of not less than 1 year where the sole consideration is a rent of not more than \$3,000 per annum.
  - (e) Omit paragraph (c) of the Exemptions appearing under the heading TRANSFER OF SHARES.
- (17) Second Schedule—General Exemptions from Stamp Duty under Part 3:  
After paragraph (40), insert:  
(41) The transfer of, or an agreement for the transfer of, the whole or any part of a corporate debt security, any interest in a corporate debt security or any option to acquire a corporate debt security.
- (18) Schedule 2A - First Home Purchase Scheme:  
Clause 16(**Definitions**):  
In the definition of "home", after "includes", insert "a private dwelling which is a company title dwelling and".
- (19) Tenth Schedule (**Savings, transitional and other provisions**):  
After Part 4, insert:

SCHEDULE 1—AMENDMENTS—*continued*

**PART 5—STAMP DUTIES (AMENDMENT)  
ACT 1990**

**Application of amendments \* generally**

12. (1) A provision of this Act as in force before the amendment of the provision by the Stamp Duties (Amendment) Act 1990 continues to apply to an instrument referred to in the provision which was executed before the date on which the amendment commenced or is to be taken to have commenced, except as provided by this Part.

(2) An amendment made by the Stamp Duties (Amendment) Act 1990 does not apply to an instrument the subject of the amendment which was executed before the date on which the amendment commenced or is to be taken to have commenced, except as provided by this Part.

**Conveyances special trusts**

13. The amendment made to section 73AA (6) by the Stamp Duties (Amendment) Act 1990 applies to a conveyance whenever executed.

**Loan securities guarantees, indemnities and other instruments**

14. The amendments made by the Stamp Duties (Amendment) Act 1990 to section 84 (3C) apply to guarantees and indemnities which were executed before 1 June 1990 but do not apply to instruments referred to in that subsection as other instruments which were executed before 1 June 1990.

**Statements of relevant acquisitions of interests etc.**

15. The amendments made by the Stamp Duties (Amendment) Act 1990 to section 99F (2) apply to a prior acquisition (within the meaning of section 99A (1)) whenever effected and to an instrument whenever executed.

SCHEDULE 1—AMENDMENTS—*continued*

**Options to acquire corporate debt securities**

16. The exemption provided for in the Second Schedule in paragraph (41) of the General Exemptions from Stamp Duty under Part 3 applies to a transfer of, or an agreement for the transfer of, an option to acquire a corporate debt security made on or after 5 January 1990.

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*[Minister's second reading speech made in -  
Legislative Assembly on 9 May 1990  
Legislative Council on 6 June 1990]*