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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

AUSTRALIAN CAPITAL TERRITORY TAX (VEHICLE REGISTRATION)
AMENDMENT BILL 1982

AUSTRALIAN CAPITAL TERRITORY TAX (INSURANCE BUSINESS)
AMENDMENT BILL 1982

AUSTRALIAN CAPITAL TERRITORY STAMP DUTY
AMENDMENT BILL 1982

AUSTRALIAN CAPITAL TERRITORY TAXATION (ADMINISTRATION)
AMENDMENT BILL 1982

EXPLANATORY MEMORANDUM

(circulated by authority of the Treasurer,
the Hon. John Howard, MP)

General Outline

These Bills will amend the stamp duty and related legislation applicable in the Australian Capital Territory (including Jervis Bay) to correct certain deficiencies in the existing machinery and liability provisions. The proposed amendments will :

- . exempt from duty a transfer of registration in the A.C.T. of a motor vehicle occurring -
 - . in the course of administration of a deceased estate;
 - . upon repossession of a motor vehicle by a hire purchase company or a lessor; or
 - . in the course of carrying on a business of a motor vehicle dealer in a State or the Northern Territory provided a comparable exemption is provided in that State or Territory for A.C.T. dealers;
- . enable a refund of duty paid on an agreement for a transfer of freehold or leasehold land where the agreement is rescinded prior to the transfer taking place;
- . exempt from duty conveyances of leasehold or freehold land to or from a trustee in circumstances where beneficial interests in the property remain unchanged;
- . make existing exemptions for transfers of marketable securities to or from a trustee, in circumstances where beneficial interests in the property remain unchanged, subject to appropriate anti-avoidance safeguards;
- . exempt from duty transfers of marketable securities made solely to give effect to a partition or division of marketable securities held by persons jointly;
- . delete a now redundant reference to a consular post; and
- . exempt from insurance business tax, premiums received in respect of an employer's common law liability to his employees.

Main features

The amendments proposed by this package of Bills will amend -

- . the Australian Capital Territory Tax (Vehicle Registration) Act 1981 - which imposes a tax on new and transferred registrations of motor vehicles and trailers in the Territory;
- . the Australian Capital Territory Stamp Duty Act 1969 - which, amongst other things, imposes duty on a transfer or an agreement to transfer freehold or leasehold land situated in the Territory and on a transfer of a marketable security that is registered in a register kept by a company in the Territory;
- . the Australian Capital Territory Tax (Insurance Business) Act 1969 - which imposes duty on premiums received in the Territory by insurers in respect of certain classes of general insurance effected in the Australian Capital Territory; and
- . the Australian Capital Territory Taxation (Administration) Act 1969 - which, broadly, incorporates machinery provisions for the assessment, collection and recovery of Territory duties.

Broad details of the proposed amendments are as follows.

Transfer of registration of a motor vehicle in the course of administration of a deceased estate

(Clause 4 of the A.C.T. Tax (Vehicle Registration) Amendment Bill 1982 and clauses 6, 7 and 8 of the A.C.T. Taxation (Administration) Amendment Bill 1982)

Amendments proposed will exempt from motor vehicle registration tax imposed by the Australian Capital Territory Tax (Vehicle Registration) Act 1981 the transfer, in the course of winding up the affairs of a deceased person, of a motor vehicle formerly owned by the deceased.

The exemption from tax will apply to transfers to the executor or administrator of the deceased's estate and to a person who is beneficially entitled to the vehicle under the will of the deceased or by virtue of the law relating to intestacy. The exemption will also extend to

transfers to a joint owner or joint owners of a vehicle that are consequential on the death of another joint owner of the vehicle.

The exemption will apply from 1 October 1981 - the date from which registration tax first applied. Persons who have paid the tax under these circumstances prior to the amending legislation receiving the Royal Assent will, under amendments proposed to the Australian Capital Territory Taxation (Administration) Act 1969, be able to apply to the Commissioner of Taxation for a refund of the tax paid.

Transfer of registration in the A.C.T. of a motor vehicle in the course of carrying on a business of a motor vehicle dealer in a State or the Northern Territory

(Clause 3 of the A.C.T. Tax (Vehicle Registration) Amendment Bill 1982 and clauses 6 and 8 of the A.C.T. Taxation (Administration) Amendment Bill 1982)

Under the existing provisions of the Australian Capital Territory Tax (Vehicle Registration) Act 1981 a registration in the name of a person carrying on a business in respect of which he or she is a licensed dealer under the A.C.T. Sale of Motor Vehicles Ordinance 1977 is exempt from tax, provided that the motor vehicle is held by that person as trading stock for resale in the course of that business.

Transfers of A.C.T. registration to motor vehicle dealers elsewhere in Australia - for example, a N.S.W. dealer in Yass or Queanbeyan - in the course of carrying on a business as a licensed dealer are presently subject to tax.

Amendments proposed will extend the exemption to dealers licensed in a State or the Northern Territory if, under the law of the dealer's own State or Territory, there is an equivalent exemption for A.C.T. dealers.

Transfer of registration of a motor vehicle upon repossession of the vehicle by a hire purchase company or a lessor

(Clause 5 of the A.C.T. Tax (Vehicle Registration) Amendment Bill 1982 and clauses 6, 7 and 8 of the A.C.T. Taxation (Administration) Amendment Bill 1982)

Amendments proposed will exempt from registration tax a transfer of registration of a motor vehicle to a hire purchase company that occurs as a consequence of the repossession from, or voluntary return of the vehicle to the company by the hirer. A transfer under equivalent

circumstances of registration of a motor vehicle to a lessor engaged in a business of letting vehicles on lease will similarly be exempt from tax.

The exemption will apply with respect to applications for registration made on or after 14 October 1982.

Rescission of agreement for a transfer of freehold or leasehold land prior to the transfer taking place
(Clause 4 of the A.C.T. Taxation (Administration) Amendment Bill 1982)

Under the Australian Capital Territory Stamp Duty Act 1969, duty is payable on an agreement to transfer an interest in land or the transfer itself. Commonly, the duty is paid on the agreement to transfer (e.g. contract of sale) and, so that duty is not duplicated, the memorandum of transfer is then specifically exempted from duty as the counterpart to the dutiable agreement.

As the law presently stands, there is no authority to refund duty paid on an agreement to transfer where that agreement is rescinded or annulled prior to the transfer taking place. Amendments proposed to the Australian Capital Territory Taxation (Administration) Act 1969 will introduce refund provisions to accommodate this situation. The amendments (which will incorporate necessary safeguards) will apply with respect to agreements entered into on or after 14 October 1982.

Conveyances of freehold or leasehold land to or from a trustee in circumstances where the beneficial interests in the property remain unchanged
(Clauses 3 and 4 of the A.C.T. Stamp Duty Amendment Bill 1982)

The first of the amendments proposed under this broad heading will exempt from duty under the Australian Capital Territory Stamp Duty Act 1969 a conveyance made in consequence of the appointment or retirement of a trustee or other changes in trustees in order to vest the property in the trustees for the time being entitled to hold it.

The second will apply in circumstances where a person purchases land in his own name with funds provided by another. Under the present law, duty is payable on both the transfer of the interest in the land to the trustee under the imputed trust arising under the arrangements, and on the transfer from the trustee to the person beneficially

entitled to the interest. Under the proposed amendments, the transfer of the interest in the land from the trustee to the person who provided the purchase money is to be exempt from duty.

The last of the amendments proposed under this heading will exempt from duty conveyances from a trustee to a beneficiary in the trust. The exemption is to be subject to the conditions -

- . that the conveyance is not made for valuable consideration;
- . that the conveyance is in conformity with a trust contained in an instrument of trust; and
- . that the property the subject of the conveyance was acquired by the trustee by virtue of an instrument upon which duty has been paid or on which duty is not payable.

The exemptions (which will be subject to safeguards against abuse) will apply with respect to instruments effected on or after 14 October 1982.

Transfer of marketable securities to and from a trustee in circumstances where the beneficial interests in the property remain unchanged.

(Clauses 3 and 4 of the A.C.T. Stamp Duty Amendment Bill 1982)

The A.C.T. Stamp Duty Act 1969 presently incorporates an exemption for transfers of marketable securities to and from a trustee in circumstances broadly equivalent to those now being proposed for conveyances of freehold or leasehold land.

Amendments proposed will subject the exemption to anti-avoidance safeguards of the kind proposed in connection with the exemptions for transfers of interests in land. The amendments will apply with respect to instruments effected on or after 14 October 1982.

Transfers of marketable securities to give effect to a partition or division of marketable securities held jointly

(Clause 5 of the A.C.T. Taxation (Administration) Amendment Bill 1982)

Stamp duty is presently payable under the Australian Capital Territory Stamp Duty Act 1969 on the unencumbered value of marketable securities in respect of a

transfer by way of partition or division of interests in securities held jointly or in common by two or more persons, even though there may have been no increase in the value of the parties' interest in the securities in consequence of the partition.

Amendments proposed will apply in these circumstances, with effect from 14 October 1982, to exclude from duty on the relevant transfer the value of the beneficial interest held by the transferee in the marketable securities prior to the partition or division of those securities.

Reference to "consular post"

(Clause 3 of the A.C.T. Taxation (Administration)
Amendment Bill 1982)

Amendments proposed to the Australian Capital Territory Taxation (Administration) Act 1969 will remove the definition of "consular post" which became redundant following the enactment of the Australian Capital Territory Stamp Duty Act 1972. That Act repealed exemptions relating to certain consular premises - the reason for the definition in the Administration Act.

Premiums received in respect of an employer's common law liability to his employees

(Clause 3 of the A.C.T. Tax (Insurance Business)
Amendment Bill 1982)

Premiums in respect of insurance under a law of a State or Territory insuring an employer against his liability under that law to a person under contract of employment or apprenticeship with him or her are exempt from tax under the A.C.T. Tax (Insurance Business) Act 1969.

Amendments proposed to that Act will ensure that premiums on insurance in respect of a liability at common law for an injury or death of an employee - which an employer is required to effect with an approved insurer by virtue of the A.C.T. Workmen's Compensation Ordinance - are also exempt from tax. The amendment will have effect with respect to premiums received by an insurer in respect of insurance effected by an insurer on or after 14 October 1982.

Each of the Bills is explained more fully in the notes that follow.

Australian Capital Territory Tax (Vehicle Registration)

Amendment Bill 1982

Clause 1 : Short title, etc.

This clause provides formally for the citation of the amending Act as the Australian Capital Territory Tax (Vehicle Registration) Amendment Act 1982 and for the Australian Capital Territory (Vehicle Registration) Act 1981 to be referred to in the amending Act as the Principal Act.

Clause 2 : Commencement

By sub-clause (1) the amending Act is generally to come into operation on the date on which it receives the Royal Assent. Sub-clause (2) ensures that the amendment proposed by clause 4 - relating to the exemption from registration tax of transfers of registration occurring in the course of administration of a deceased's estate - comes into effect from 1 October 1981.

But for this clause the amending Act would, by reason of the operation of sub-section 5(1A) of the Acts Interpretation Act 1901, come into operation on the twenty-eighth day after the date of assent.

Clause 3 : Exemptions - general

This clause proposes an amendment to section 6 of the Principal Act, which applies to exempt from tax specified classes of registrations.

Paragraph (a) of clause 3 is a drafting measure relating to the proposed inclusion of an additional paragraph in sub-section 6(2) of the Principal Act.

Paragraph (b) of clause 3 will insert new paragraph (f) in sub-section 6(2) to enable a transfer of registration in the A.C.T. of a motor vehicle occurring in the course of carrying on a business of a licensed or registered motor vehicle dealer in a State or the Northern Territory to be exempt from tax where a comparable exemption is provided in that State or Territory for A.C.T. dealers.

Under new paragraph (f) of sub-section 6(2), where an equivalent exemption is to be made available to A.C.T. dealers by a particular State or the Northern Territory, the law under which motor vehicle dealers are licensed or

registered under that State or Territory will be prescribed by regulation. Dealers licensed or registered under a prescribed law will be entitled to claim the exemption in respect of transfers of motor vehicles held as trading stock in their businesses.

The regulations will specify the date from which the exemption is to apply. Should the date of application be a date prior to the date on which the particular regulations come into force, amendments proposed to the Australian Capital Territory Taxation (Administration) Act 1969 by clause 8 of the Australian Capital Territory Taxation (Administration) Amendment Bill 1982 will ensure that a dealer will be able to apply for a refund of any tax paid on relevant transfers occurring during the period between date of application of the regulations and the date on which they come into force.

By virtue of amendments to the Australian Capital Territory Taxation (Administration) Act 1969 by clause 6 of the Australian Capital Territory Taxation (Administration) Amendment Bill 1982, a dealer making application for the exemption will be required to certify to the Registrar of Motor Vehicles that he is carrying on a business in respect of which he is licensed or registered under a prescribed law and that the vehicle is held as trading stock for the purpose of resale in the course of his or her business.

Clause 4 will insert new section 7 in the Principal Act to exempt from registration tax a transfer of registration in the A.C.T. of a motor vehicle occurring in the course of administration of a deceased estate.

New section 7 will apply, in a case where a vehicle is registered in the name of a person who dies, to exempt from tax a transfer of registration of that vehicle to a person who is the personal representative of the deceased or a beneficiary of the deceased person's estate that occurs by reason of that person being the personal representative or beneficiary (paragraphs (1) (a), (b) and (c) and sub-section (2) of section 7).

Section 7 will apply also in circumstances where a vehicle is registered in the name of two or more parties prior to the death of one of those parties, to exempt from tax any consequential transfer to the deceased party's personal representative or beneficiary (paragraphs (1) (a), (b) and (c) and sub-section (2)) or to the other parties to whom the vehicle was registered prior to the death by reason of their having been the joint owners of the vehicle (paragraphs (1) (a), (b) and (d)).

Sub-section (3) is a drafting measure that will ensure that the exemption granted by section 7 extends to situations where the transfer is to a personal representative of a person who, at the time of his or her death, held an entitlement to an interest in a vehicle of another deceased person and to situations where the vehicle was registered in the name of a deceased person elsewhere in Australia.

As explained in the notes on clause 2, the exemption proposed by new section 7 will apply with effect from 1 October 1981, the date from which the registration tax first applied.

Amendments to the Australian Capital Territory Taxation (Administration) Act 1969 by clause 8 of the Australian Capital Territory Taxation (Administration) Amendment Bill 1982 will ensure that persons who have paid the tax under these circumstances prior to the amending Bills coming into force will be able to apply to the Commissioner of Taxation for a refund of the tax paid.

Where an application for transfer of registration is made after the amending Act comes into force, an applicant seeking the benefit of the exemption will, by virtue of amendments proposed by clause 6 of the Australian Capital Territory Taxation (Administration) Amendment Bill 1982 be required to furnish to the Registrar of Motor Vehicles a certificate of exemption issued by the Commissioner.

Clause 5 will insert new sections 8 and 9 in the Principal Act. Proposed new section 8 will apply to exempt from tax a transfer of registration in the A.C.T. of a motor vehicle occurring in consequence of a repossession by a hire purchase company or return to a lessor.

By paragraph (a) of sub-section 8(1), the exemption will apply to a vehicle that is the subject of a hire-purchase agreement or a finance lease, i.e., where it is customary for the vehicle to be registered in the name of the lessee.

Paragraphs (b) and (c) of sub-section 8(1) ensure that where such a vehicle is acquired by the hire purchase company upon a repossession or voluntary return of the vehicle in accordance with the hire-purchase agreement or the law applicable to that agreement, any consequential transfer of registration to the hire purchase company will be exempt from tax. Similarly exempt from tax will be a transfer to a lessor consequential on the acquisition of the vehicle by the lessor in accordance with the lessor's rights under the relevant lease.

By paragraph (d) of new sub-section 8(1), the exemption is to apply with respect to applications for registration made on or after 14 October 1982.

Sub-section (2) of section 8 limits the operation of the exemption to a person or company that is engaged in a business of letting, hiring or agreeing to sell vehicles under hire purchase agreements or, in the case of a lessor, to a person or company engaged in a business of letting vehicles on lease.

Amendments to the Australian Capital Territory Taxation (Administration) Act 1969 proposed by clause 8 of the Australian Capital Territory Taxation (Administration) Amendment Act 1982 will ensure that a hire-purchase company or lessor that has paid the tax under these circumstances on or after 14 October 1982 and before the amending Act comes into force will be able to apply to the Commissioner of Taxation for a refund of the tax paid.

Where an application for transfer of registration is made after the amending Act comes into force, an applicant seeking the benefit of the exemption will, by virtue of amendments proposed by clause 6 of the Australian Capital Territory Taxation (Administration) Amendment Bill 1982, be required to furnish to the Registrar of Motor Vehicles a certificate of Exemption issued by the Commissioner.

Proposed new section 9 will formally authorise the Governor-General to make regulations prescribing a law of a State or the Northern Territory for the purposes of the new exemption from tax for motor vehicle dealers outside the Australian Capital Territory, the details of which are explained in the notes on clause 3.

AUSTRALIAN CAPITAL TERRITORY TAX (INSURANCE BUSINESS)

AMENDMENT BILL 1982

Clause 1 : Short title, etc.

This clause provides formally for the citation of the amending Act as the Australian Capital Territory Tax (Insurance Business) Amendment Bill 1982 and for the Australian Capital Territory Tax (Insurance Business) Act 1969 to be referred to in the amending Act as the Principal Act.

Clause 2 : Commencement

Under this clause, the amending Act is to come into operation on the day on which it receives the Royal Assent.

Clause 3 : Exemptions

Sub-clause (1) of clause 3 will amend paragraph 6(d) of the Principal Act to ensure that premiums on insurance paid by an employer in respect of his or her liability at common law for injury to or death of an employer, which an employer is required to effect with an approved insurer by virtue of the Australian Capital Territory Workmen's Compensation Ordinance, are exempt from Insurance Business Tax.

By sub-clause (2) the exemption is to apply to premiums received by an insurer in respect of insurance effected by the insurer on or after 14 October 1982.

AUSTRALIAN CAPITAL TERRITORY STAMP DUTYAMENDMENT BILL 1982Introductory Note

This Bill will exempt from stamp duty conveyances of leasehold or freehold land to or from a trustee in specified circumstances where beneficial interest in the property remains unchanged. Broadly, the circumstances specified are -

- a conveyance in consequence of a change in trustees;
- a conveyance from a trustee to a person who is the beneficial owner under an imputed trust by reason of having paid the purchase money; and
- a conveyance from a trustee to a beneficiary in the trust.

Because the proposed exemptions rely on a distinction being made between beneficial and legal title to property, there arises the potential for abuse under arrangements whereby the transfer of legal title under

circumstances now to be exempt from duty is part of an overall scheme also involving a transfer, in non-dutiable circumstances, of the beneficial title to the property.

One example of this type of arrangement, that would exploit the proposed exemption of conveyances in consequence of a change in trustees, would operate in the following way to avoid duty on what is, in effect, an otherwise dutiable conveyance of land from one party to another.

Person A, who is the owner of an interest in land, by instrument of declaration of trust (which is not subject to duty in the A.C.T.) constitutes himself trustee for an associate. A then retires as trustee and is replaced by C - the conveyance being exempt from tax under the proposed amendment. In consideration of an amount paid to A, the associate of A assigns the beneficial interest to B. The overall result is that a transfer of the property from A to B has been effected without duty having been paid.

To prevent exploitation of this kind the proposed new exemptions will be subject to safeguarding provisions. Under these, the exemption will not apply where the otherwise exempt conveyance occurs as part of a "scheme to avoid or reduce stamp duty". Schemes of this kind are defined in amendments to the Australian Capital Territory Taxation (Administration) Act 1969 by clause 3 of the Australian Capital Territory Taxation (Administration) Amendment Bill 1982. As is relevant, a scheme to avoid or reduce stamp duty is, broadly, a scheme entered into or carried out with the dominant purpose of securing that an amount of duty that could reasonably be expected to have been payable if the scheme had not been entered into or carried out is not payable.

Further amendments proposed by the Bill will make broadly equivalent exemptions presently applying to transfers of marketable securities under the Australian Capital Territory Stamp Duty Act 1969 subject to the same safeguard.

The amendments proposed by the Bill will apply with respect to instruments effected on or after 14 October 1982.

Clause 1 : Short title, etc

This clause provides formally for the citation of the amending Act as the Australian Capital Territory Stamp Duty Amendment Act 1982 and for the Australian Capital Territory Stamp Duty Act 1969 to be referred to in the Amending Act as the Principal Act.

Clause 2 : Commencement

Under this clause the amending Act is to come into operation on the day on which it receives the Royal Assent.

Clause 3 : Amendments of Schedule 2

This clause proposes an amendment to Schedule 2 of the Principal Act, which specifies instruments that are exempt from stamp duty by virtue of sub-section 6(1) of the Principal Act.

Paragraph (a) of clause 3 will insert new items 18 to 18B in Schedule 2 of the Principal Act.

New Item 18 will exempt from duty a transfer or assignment of a lease of land held on trust that is made in consequence of an appointment or retirement of a trustee of the trust or other change in trustees of the trust, in order to vest the lease in the trustees of the trust who are for the time being entitled to hold it. Item 18 will apply similarly to exempt from duty a transfer in equivalent circumstances of an estate in fee simple in land held on trust. In either case the exemption will not apply where the conveyance is made in connection with a "scheme to avoid or reduce stamp duty".

The exemption conferred by item 18 will, by virtue of clause 4, apply in relation to an instrument executed on or after 14 October 1982.

Proposed new Item 18A will apply to exempt from duty a transfer or assignment of a lease of land or a transfer of an estate in fee simple in land where the transfer or assignment is from a trustee to the person who contributed the purchase money for the conveyance to the trustee.

The exemption, which is to apply by virtue of clause 4 to instruments executed on or after 14 October 1982, will not extend to a transfer or assignment made in connection with a scheme to avoid or reduce stamp duty.

New Item 18B will exempt from duty a conveyance of land held on trust made on or after 14 October 1982 by a trustee to a beneficiary of the trust. The exemption will be subject to the conditions that the conveyance does not constitute a breach of trust, that stamp duty on the conveyance of the land has either been paid or is not payable and that the conveyance to the beneficiary was not made in connection with a scheme to avoid or reduce stamp duty.

Paragraphs (b) to (d) of clause 3 will ensure that the present exemptions conferred by Item 22 (relating to transfers of marketable securities in consequence of a change in trustees); Item 25 (relating to transfers of marketable securities from a trustee to a person who contributed the money for the transfer by which the trustee acquired the marketable securities); and Item 26 (relating to transfers of marketable securities to a trustee to be held solely as trustee of the transferrer without change in beneficial ownership and only re-transfer to the transferrer) of Schedule 2 of the Principal Act do not extend to transfers made in connection with a scheme to avoid or reduce stamp duty.

The amendments proposed by paragraphs (b) to (d) will, by virtue of clause 4, apply in relation to instruments executed on or after 14 October 1982.

Clause 4 : Application of amendments

Sub-clause (1) of clause 4, as stated in the preceding notes, specifies that the amendments to be effected to Schedule 2 of the Principal Act by this Bill will apply in relation to instruments executed on or after 14 October 1982. For this purpose an instrument is, by sub-clause 2, to be taken to have been executed on the date on which the last party to the instrument appears to have executed it.

AUSTRALIAN CAPITAL TERRITORY TAXATION
(ADMINISTRATION) AMENDMENT BILL 1982

PART I - PRELIMINARY

Clause 1 : Short title, etc.

This clause provides formally for the citation of the amending Act as the Australian Capital Territory Taxation (Administration) Amendment Act 1982 and for the Australian Capital Territory Taxation (Administration) Act 1969 to be referred to in the amending Act as the Principal Act.

Clause 2 : Commencement

This clause specifies the date on which various Parts of the amending Act are to come into effect. Because certain sections of the amending Act propose the enactment of machinery provisions consequential on amendments

proposed in other amending Acts included in the package, the commencement of those provisions are where necessary tied to the commencement of the relevant amending Act.

By sub-clause (1), Parts I and II are, with the exception of clause 3, to come into operation on the day on which the amending Act receives the Royal Assent.

Sub-clause (2) of clause 1 ensures that clause 3, which proposes amendments relevant to the safeguards to be incorporated in the amendments proposed by the Australian Capital Territory Stamp Duty Amendment Act 1982, comes into operation no later than the day on which that Act receives the Royal Assent.

Sub-clause (3) of clause 1 will ensure that the commencement of Part III of the amending Act, which proposes amendments necessary for the operation of amendments proposed by the Australian Capital Territory Tax (Vehicle Registration) Amendment Act 1982, is similarly related to the commencement of that Act.

PART II - MISCELLANEOUS AMENDMENTS

Clause 3 : Interpretation

Clause 3 proposes amendments to sub-section 4(1) of the Principal Act, which defines certain terms used in the Principal Act.

By paragraph (a) of clause 3, the definition of "consular post" is to be omitted from sub-section 4(1) of the Principal Act.

Paragraph (b) of clause 3 proposes to insert two new definitions in sub-section 4(1).

Under the first of these, "scheme" is defined widely to mean any agreement, arrangement, understanding, promise or undertaking whether it is express or implied and whether or not legally enforceable. A scheme, plan, proposal, action, course of action or course of conduct is brought within the definition; as are such arrangements of a unilateral kind.

Under the second, "scheme to avoid or reduce stamp duty" is a scheme as defined above where the dominant purpose of any of the parties to the scheme or any part of the scheme was to secure that an amount of duty that would be payable, or that might reasonably be expected to have been payable, if the scheme had not been entered into or

carried out would not be payable. The definition extends similarly to schemes where the dominant purpose of one or more of the parties was to secure a reduction in, or a refund of stamp duty.

These definitions are relevant to safeguards incorporated in amendments proposed by the Australian Capital Territory Stamp Duty Amendment Bill 1982 and clause 4 of this Bill.

Clause 4 : Refund of duty where agreement not completed

Clause 4 proposes to insert new section 50A in the Principal Act to enable a refund of stamp duty paid on an agreement for a transfer of freehold or leasehold land to be made when the agreement is rescinded or otherwise not proceeded with so that a transfer does not take place.

By virtue of paragraphs (a), (b) and (c) of sub-section (1) of new section 50A, the refund is to apply in the case of an agreement entered into on or after 14 October 1982 for the transfer of an estate in fee simple in land in the A.C.T. or an agreement entered into on or after that date for the transfer or assignment of a lease in such land on which stamp duty has been paid where the agreement is void, unenforceable, rescinded or otherwise comes to an end and the Commissioner of Taxation is satisfied that no transfer or assignment is to be made in pursuance of the agreement.

Where these conditions are satisfied the amount of the duty paid on the agreement is, by virtue of paragraph 1(d), to be refunded.

The amount of the duty otherwise refundable under paragraph 1(d) is, however, subject to the operation of paragraph 1(e). That paragraph applies where, despite the transfer not having proceeded, the transferee or assignee has gone into possession of the land in pursuance of the agreement. In these circumstances the amount of the refund otherwise payable is to be reduced by an amount equivalent to the amount of duty that would have been payable on a lease of the land for the period during which the transferee had possession of the land.

For the purposes of the operation of paragraph 1(e), possession of land by a transferee or assignee includes arrangements whereby another person goes into possession of the land in pursuance of an agreement with the transferee or assignee or, by virtue of proposed new sub-section 50A(5), arrangements whereby the transferee or assignee become entitled to any rents or profits from the land.

Proposed new sub-section (2) will ensure that the refund arrangements proposed by sub-section (1) are not exploited to avoid duty otherwise payable on a sub-sale.

The sort of exploitation at which sub-section (2) is directed would arise under arrangements whereby a person who, having entered into an agreement to acquire land and having then decided to on-sell the land to a third party, adopts the course of rescinding his or her agreement with the vendor on the understanding that the land will be transferred to the third party. By adopting this course duty would, in the absence of sub-section (2), be payable only on the transfer by the vendor to the third party rather than on both the transfer from the vendor to the original purchaser and the transfer from him or her to the third party.

Sub-section (2) will ensure that a refund will not be payable under sub-section (1) where any action or inaction on the part of a person leading to the rescission, etc., of the agreement of transfer or assignment occurred in connection with a scheme to avoid or reduce stamp duty (see notes on clause 3).

To obtain the benefit of a refund under section 50A, new sub-section (3) requires that an application be made to the Commissioner of Taxation within 12 months after the agreement for transfer is rescinded or annulled or otherwise comes to an end. The application is to be in an approved form and the applicant must also provide such further information as is required by the Commissioner to enable a determination of the amount of the refund.

Proposed new sub-section (4) applies in circumstances where a refund of duty on an agreement of transfer or assignment has been made and where the transfer or assignment subsequently occurs in pursuance of the agreement. In these circumstances sub-section (4) applies to ensure that duty becomes payable on the transfer or assignment.

New sub-section (5), as mentioned in the notes on sub-section (1), ensures that a reference in paragraph (e) of that sub-section to a transferee or assignee going into possession of land includes a reference to the transferee or assignee receiving any of the rents or profits from the land.

Sub-section (6) defines certain terms used in section 50A. By those definitions:

"agreement" includes an instrument purporting to be an agreement'

"arrangement" means any agreement, arrangement or understanding, whether express or implied and whether or not legally enforceable;

"person" as it relates to an agreement means any person, whether a party to the agreement or not.

Clause 5 : Partition of marketable securities

Sub-clause (1) of clause 5 proposes to insert new section 58AA in the Principal Act.

New section 58AA will apply to ensure that when determining the amount of stamp duty payable on a transfer executed to give effect to a partition or division of a parcel of marketable securities, the unencumbered value of the marketable securities transferred to the transferee - on which the duty is payable - is the amount of that value less the amount of the value of the beneficial interest of the transferee in the parcel prior to the partition or division.

By sub-clause 2, section 58AA is to apply in relation to an instrument executed on or after 14 October 1982. For this purpose an instrument is, by virtue of sub-clause (3), taken to have been executed on the date on which the last party to the instrument appears to have executed it.

PART III - AMENDMENTS OF DIVISION 10 OF

PART III OF THE PRINCIPAL ACT

Amendments proposed by this Part of the amending Bill are consequential on the amendments proposed by the Australian Capital Territory Tax (Vehicle Registration) Amendment Bill 1982. The operation of the proposed amendments has been explained in the notes on the relevant provisions of that Bill.

In these circumstances only the broad basis of operation of the amendments proposed under this Part is repeated in the following notes.

Clause 6 : Registration of vehicles

This clause will amend section 58C of the Principal Act to authorise the Registrar of Motor Vehicles to register a vehicle without payment of registration tax where the application for registration is -

- . accompanied by a certificate of exemption issued by the Commissioner of Taxation on the grounds that the transfer is in the course of administration of a deceased person's estate or is consequential on the repossession of the vehicle by a hire purchase company or return to a lessor (see notes on clauses 4 and 5 of the A.C.T. Tax (Vehicle Registration) Amendment Bill 1982); or
- . accompanied by a statement from the applicant that certifies that he or she is carrying on a business as a motor vehicle dealer in respect of which he or she is licensed or registered under a prescribed law and that the vehicle is held as trading stock for resale in the course of carrying on that business (see notes on clause 3 of the A.C.T. Tax (Vehicle Registration) Amendment Bill 1982).

Clause 7 : Certificates of exemption from tax

This clause will amend section 58D of the Principal Act to formally authorise the Commissioner of Taxation to issue a certificate of exemption where the transfer is to be exempt from registration tax by reason that it is an exempt transfer occurring in the course of administration of a deceased person's estate or on return of a vehicle to a hire purchase company or lessor.

Clause 8 : Refund of tax incorrectly paid

Clause 8 will amend section 58F of the Principal Act to authorise a refund of registration tax in the following circumstances -

- . where on or after 1 October 1981 and prior to the A.C.T. Tax (Vehicle Registration) Amendment Act 1982 coming into force an amount of tax has been paid on a transfer occurring in the course of administration of a deceased person's estate (see notes on clause 4 of that Act);

- . where on or after 14 October 1982 and prior to the A.C.T. Tax (Vehicle Registration) Amendment Act 1982 coming into force tax is paid on a transfer consequential on the return of a vehicle to a hire purchase company or lessor (see notes on clause 5 of that Act);
- . where on or after the date of application of regulations prescribing for the purposes of proposed new paragraph 6(2)(f) of the A.C.T. Tax (Vehicle Registration) Act 1982 a law of a State or the Northern Territory under which motor vehicle dealers are licensed or registered, and prior to those regulations coming into force, a motor vehicle dealer licensed or registered under that law pays tax on a transfer of a vehicle held as trading stock for resale (see notes on clause 3 of the A.C.T. Tax (Vehicle Registration) Amendment Act 1982).

An application for refund under section 58F must be made within 3 years of the date of the registration on which the tax to be refunded was paid. The refund arrangements authorised by section 58F do not extend to situations where refunds are otherwise authorised under the ordinary assessment provisions of the Act, for example, under sub-section 68(3) in respect of certain default assessments.





