

EXPLANATORY MEMORANDUM

STAMP AMENDMENT BILL 1999

This Bill amends the Stamp Act 1921 to:

- ensure that duty is paid on chattels that are transferred in conjunction with the grant of a long term lease; and
- provide an exemption from stamp duty in circumstances where property that vested in a bankruptcy trustee on the bankruptcy of a person is conveyed from the bankruptcy trustee back to that person.

Clause 1: Short title and citation.

Clause 2: This clause provides that the amendments commence when the Act receives Royal Assent.

Clause 3: This clause identifies that the amendments are to the Stamp Act 1921.

Chattels amendment

As part of the 1998/99 Budget, the Government removed the stamp duty exemption in respect of most chattels that are transferred in conjunction with land.

Land was defined to include leases which have an assigned or determined value, to ensure that no disparity exists between chattels transferred with land in fee simple and that where pseudo ownership is obtained by acquiring the lease.

However, it has recently come to light that an anomaly in the legislation prevents duty from being charged on chattels that are transferred in

Furthermore, it also provides an opportunity for persons to structure their affairs so as to minimise their stamp duty exposure where they transfer chattels in conjunction with an interest in land.

The proposed amendment should alleviate these concerns.

It should be noted that the proposed amendment only relates to the grant of long term leases which include a premium component. Chattels that are transferred in conjunction with any other lease, including the majority of commercial leases, will not generally be charged with duty.

There are currently no identified transactions where the inability to charge duty on chattels sold in conjunction with the granting of a long term lease would impact on the revenue. However, the deficiency could result in the loss of future revenue through tax minimisation arrangements.

Clause 4: This clause amends section 70.

Subclause (1) amends subsection (1) by deleting the definition of "chargeable with duty" and inserting the following definition in its place:

"chargeable with duty" means chargeable with duty under -

(a) item 4, 10, 14A, 15, 17 or 19 of the Second Schedule; or

(b) item 12(1) or (3) if -

(i) the term of the lease, including any period for which the lease may be renewed, exceeds, or is to exceed, 20 years; and

(ii) any option to renew the lease is, or is to be, exercisable by the lessor;

This amendment corrects an anomaly in the provisions by extending the definition to include leases and lease agreements that are assessed with ad valorem duty because a

- that are made for an initial period of less than 20 years but that may be extended so that they exceed 20 years, where any option to renew the lease is exercisable by the lessor.

Paragraph (b) of the definition will also apply where any option to renew a lease is exercisable by both the lessor and lessee.

Subclause (2) amends the definition of "transfer" contained in subsection (1) by including the word "grant".

This addition provides clarity to the chattels provisions, by stating that a reference to a transfer also includes a grant. This makes it apparent that chattels that are transferred in conjunction with the grant of an estate or interest in land (eg. the grant of a lease) may be subject to duty under these provisions.

Bankruptcy amendment

Upon bankruptcy, the property of the bankrupt vests in the bankruptcy trustee in accordance with the provisions of the Bankruptcy Act 1966.

Generally, no stamp duty liability arises upon the vesting of the property as there is no "instrument" constituting a "conveyance", nor is there a "transaction" which may be subject to duty.

However, once property vests in the trustee, it does not revert in the bankrupt following the bankrupt's discharge from bankruptcy.

As noted by McClelland J in *Gosden & Another v Dixon & Another* (1992) 107 ALR 329, "In regard to such property, the trustee is still bound to collect and realise it, and to distribute the proceeds among the creditors, notwithstanding the discharge."

In many cases, the equity in the property is established and offered back to the bankrupt in order to deal with the asset in the most cost effective way.

Clause 5: This clause inserts a new section 75ABA into the Act to provide a power of exemption for conveyances by a bankruptcy trustee to a bankrupt.

This section provides an exemption from stamp duty where property which vested in the bankruptcy trustee is conveyed back to that person.

Subsection (1) provides that the Commissioner must be satisfied that an instrument is one by which property that vested in a bankruptcy trustee on the bankruptcy of a person is conveyed from the bankruptcy trustee back to that person. Where the Commissioner is satisfied that it is an instrument of this kind, he may exempt it from duty and endorse the instrument accordingly.

Subsection (2) describes what is meant by "bankruptcy trustee". For the purposes of this section "bankruptcy trustee" means the Official Trustee in Bankruptcy or a registered trustee under the Bankruptcy Act 1966 of the Commonwealth.