

South Australia



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ELIZABETHAE II REGINAE
A.D. 2002

**STATUTES AMENDMENT (STAMP DUTIES AND OTHER MEASURES)
ACT 2002**

No. 35 of 2002

[Assented to 28 November 2002]

An Act to amend the Financial Sector (Transfer of Business) Act 1999, the First Home Owner Grant Act 2000, the Pay-roll Tax Act 1971, the Petroleum Products Regulation Act 1995, the Stamp Duties Act 1923 and the Taxation Administration Act 1996.

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The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Statutes Amendment (Stamp Duties And Other Measures) Act 2002*.

Commencement

2. (1) Subject to subsection (2), this Act will come into operation on the day on which it is assented to by the Governor.

(2) Section 12 will be taken to have come into operation on 1 April 1992.

Interpretation

3. A reference in this Act to the principal Act is a reference to the Act referred to in the heading to the Part in which the reference occurs.

**PART 2
AMENDMENT OF FINANCIAL SECTOR (TRANSFER OF BUSINESS) ACT 1999**

Substitution of s. 8

4. Section 8 of the principal Act is repealed and the following section is substituted:

Exemption from State taxes

8. (1) No State taxes are chargeable under any Act in respect of a compulsory transfer of business facilitated under this Act.

(2) The Treasurer may, by agreement with a receiving body in a voluntary transfer of business, grant an exemption from a State tax or State taxes in relation to a transaction facilitated under this Act.

(3) An exemption under subsection (2) may be conditional on payment to the Treasurer of an amount determined by the Treasurer.

(4) The receiving body must pay the amount determined by the Treasurer in accordance with the agreement.

(5) In this section—

"State tax" means—

- (a) stamp duty; or
- (b) any other tax, duty or impost that would, apart from an exemption under this section, be payable in respect of the transaction under the law of the State.

PART 3
AMENDMENT OF FIRST HOME OWNER GRANT ACT 2000

Amendment of s. 3—Definitions

5. Section 3 of the principal Act is amended by striking out the definition of "new home".

Substitution of s. 13A

6. Section 13A of the principal Act is repealed and the following section is substituted:

Special eligible transactions

13A. (1) Subject to subsection (6), an eligible transaction that is a contract for the purchase of a home (other than a contract for an "off-the-plan" purchase) is a **special eligible transaction** if—

- (a) the home is a new home; and
- (b) the contract is made between 9 March 2001 and 30 June 2002 (both dates inclusive).

(2) Subject to subsection (6), an eligible transaction that is a comprehensive home building contract for a new home is a **special eligible transaction** if—

- (a) the contract is made between 9 March 2001 and 8 October 2001 (both dates inclusive); and
- (b) the building work commences within 16 weeks after the contract is made, or any longer period the Commissioner may, in particular circumstances, allow; and
- (c) the contract states that the eligible transaction must be completed within 12 months after the building work is commenced or, in any other case, the eligible transaction is completed within 12 months after the building work is commenced.

(3) Subject to subsection (6), an eligible transaction that is a comprehensive home building contract for a new home is also a **special eligible transaction** if—

- (a) the contract is made between 9 October 2001 and 30 June 2002 (both dates inclusive); and
- (b) the building work commences within 26 weeks after the contract is made, or any longer period the Commissioner may, in particular circumstances, allow; and
- (c) the contract states that the eligible transaction must be completed within 18 months after the building work is commenced or, in any other case, the eligible transaction is completed within 18 months after the building work is commenced.

(4) An eligible transaction that is the building of a new home by an owner-builder is a **special eligible transaction** if—

- (a) the commencement date of the eligible transaction is between 9 March 2001 and 8 October 2001 (both dates inclusive) and the transaction is completed before 1 May 2003; or
- (b) the commencement date of the eligible transaction is between 9 October 2001 and 31 December 2001 (both dates inclusive) and the transaction is completed before 1 January 2004; or
- (c) the commencement date of the eligible transaction is between 1 January 2002 and 30 June 2002 (both dates inclusive) and the transaction is completed before 1 July 2004.

(5) Subject to subsection (6), an eligible transaction that is a contract for an "off-the-plan" purchase of a new home is a **special eligible transaction** if—

- (a) the contract is made between 9 March 2001 and 8 October 2001 (both dates inclusive) and either—
 - (i) the contract states that the eligible transaction must be completed before 1 May 2003; or
 - (ii) in any other case—the eligible transaction is completed before 1 May 2003; or
- (b) the contract is made between 9 October 2001 and 31 December 2001 (both dates inclusive) and either—
 - (i) the contract states that the eligible transaction must be completed before 1 January 2004; or
 - (ii) in any other case—the eligible transaction is completed before 1 January 2004; or
- (c) the contract is made between 1 January 2002 and 30 June 2002 (both dates inclusive) and either—
 - (i) the contract states that the eligible transaction must be completed before 1 July 2004; or
 - (ii) in any other case—the eligible transaction is completed before 1 July 2004.

(6) An eligible transaction that is a contract is not a special eligible transaction if the Commissioner is satisfied that—

- (a) the contract replaces a contract made before 9 March 2001; and
- (b) the replaced contract was—
 - (i) a contract for the purchase of the same home; or

- (ii) a comprehensive home building contract to build the same or a substantially similar home.

(7) For subsections (2) and (3), building work—

- (a) commences when laying the foundations for the home commences; and
 (b) is completed when the building is ready for occupation as a home.

(8) In this section—

"contract for an **"off-the-plan" purchase**", of a new home, means a contract for the purchase of the home on a proposed lot in an unregistered plan of a subdivision of land;

"**new home**" means a home that has not been previously occupied or sold as a place of residence and includes a substantially renovated home.

(9) For this section, a home is a **substantially renovated home** if—

- (a) the sale of the home is, under the *A New Tax System (Goods and Services Tax) Act 1999* (Commonwealth), a taxable supply as a sale of new residential premises within the meaning of section 40-75(1)(b) (Meaning of *new residential premises*); and
 (b) the home, as renovated, has not been previously occupied or sold as a place of residence.

(10) The Governor may, by regulation—

- (a) alter a date or period specified by this section in order to extend an entitlement under this Act; or
 (b) determine any other transaction to be a **special eligible transaction** under this section,

if to do so is consistent with the extension of the Commonwealth/State scheme for the payment of grants under this Act (and any such regulation may have effect in accordance with its terms and without the need for any other authorisation or appropriation).

Amendment of s. 18—Amount of grant

7. Section 18 of the principal Act is amended by striking out subsection (2).

Insertion of s. 18A

8. The following section is inserted after section 18 of the principal Act:

Amount of grant for special eligible transactions

18A. (1) The amount of the first home owner grant for a special eligible transaction is the amount payable under this section instead of the amount payable under section 18.

(2) If the commencement date of the special eligible transaction is between 9 March 2001 and 31 December 2001 (both dates inclusive), the amount payable is the lesser of the following:

- (a) the consideration for the transaction;
- (b) \$14 000.

(3) If the commencement date of the special eligible transaction is between 1 January 2002 and 30 June 2002 (both dates inclusive), the amount payable is the lesser of the following:

- (a) the consideration for the transaction;
- (b) \$10 000.

(4) The Governor may, by regulation—

- (a) alter a date or amount specified by this section in order to extend an entitlement under this Act; or
- (b) prescribe the amount of the first home owner grant for a special eligible transaction,

if to do so is consistent with a regulation under section 13A(10) (and any such regulation may have effect in accordance with its terms and without the need for any other authorisation or appropriation).

(5) In this section—

"special eligible transaction"—see section 13A.

Amendment of s. 46—Regulations

9. Section 46 of the principal Act is amended by inserting after subsection (3) the following subsection:

(4) A regulation made for the purposes of section 13A or 18A may operate retrospectively provided that it does not do so to the prejudice of any person.

Validation for payment of increased grants

10. The payment of an amount as first home owner grant under the principal Act before the commencement of this Part, and anything done under the principal Act or the *Taxation Administration Act 1996*, is validated to the extent that it would have been valid if this Part had been enacted when the payment was made or the thing was done.

PART 4
AMENDMENT OF PAY-ROLL TAX ACT 1971

Amendment of s. 3—Interpretation

11. Section 3 of the principal Act is amended—

(a) by inserting after subparagraph (iii) of paragraph (a) of the definition of "superannuation benefit" in subsection (1) the following word and subparagraph:

or

(iv) —

(A) the crediting of an account of an employee, or any other allocation to the benefit of an employee (other than the actual payment of a benefit), so as to increase the entitlement or contingent entitlement of the employee under any form of superannuation, provident or retirement fund or scheme; or

(B) the crediting or the debiting of any other account, or any other allocation or deduction, so as to increase the entitlement or contingent entitlement of an employee under any form of superannuation, provident or retirement fund or scheme;;

(b) by inserting in paragraph (g) of the definition of "wages" in subsection (1) "or benefit" after "any other amount";

(c) by inserting after subsection (2) the following subsection:

(2a) For the purposes of this Act, where a superannuation benefit arises under this Act because of subparagraph (iv) of paragraph (a) of the definition of "superannuation benefit"—

(a) subject to paragraphs (b) and (c), the amount of wages attributable to that superannuation benefit will be taken to be the value of the increase of the entitlement or contingent entitlement of the relevant employee;

(b) if that superannuation benefit can be directly attributed to a payment or setting apart of money within the ambit of subparagraph (i), (ii), or (iii) of paragraph (a) of the definition of "superannuation benefit", the value of the superannuation benefit under subparagraph (iv) (and therefore the relevant amount of wages) will only be the amount (if any) by which the value of that benefit exceeds the amount of the payment or setting apart of money (as the case may be);

- (c) if that superannuation benefit can be directly attributed to an increase in the capital of the relevant fund or scheme or to the payment of interest, over and above any contribution that the employer is required to make, or would be required to make but for the increase in capital or the payment of interest, the value of the superannuation benefit (to the extent that it exceeds any contribution that the employer is required, or would be required, to make as mentioned above), will be taken to be nil;
- (d) if there is a crediting or a debiting of an account, or any other allocation or deduction, and a corresponding debiting or crediting, or deduction or allocation, then liability for pay-roll tax will only arise with respect to one crediting or debiting, or allocation or deduction, so as to avoid double taxation.

Amendment of s. 4A—Employment agents

12. Section 4A of the principal Act is amended—

- (a) by inserting after subsection (1) the following subsection:

(1a) For the purposes of this section, where an employment agent under an employment agency contract engages a third party to procure the services of a contract worker for the client of the employment agent (whether or not a further party or parties are in turn engaged to procure those services)—

- (a) the services of the contract worker will be taken to have been procured for the client by the employment agent; and
- (b) any amount received directly or indirectly by the third party as a result of being so engaged, whether by way of a lump sum or ongoing fee, during or in respect of the period when the services are provided by the contract worker to the employment agent's client, will be taken to be remuneration paid or payable to the contract worker in respect of the provision of those services.;

- (b) by inserting after subsection (3) the following subsection:

(4) Where an employment agent under an employment agency contract—

- (a) by arrangement procures the services of a contract worker for a client of the employment agent; and
- (b) pays pay-roll tax in respect of an amount, benefit or payment that is, under subsection (2)(c), taken to constitute wages paid or payable by the employment agent in respect of the provision of those services in connection with the contract,

no other person (including any other person engaged to procure the services of the contract worker for the employment agent's client as part of the arrangement) is liable to pay pay-roll tax in respect of wages paid or payable for the procurement or performance of those services by the contract worker for the client.

Application of amendments

13. Section 3 of the principal Act, as amended by section 11 of this Act, will be taken to have applied with respect to superannuation benefits from 1 December 1994 (subject to any necessary modifications to any cross-references to any other Act (whether of the State or the Commonwealth)), but not so as—

- (a) to impose tax under paragraph (b) of the amended definition of "superannuation benefit" before 1 July 1996; or
- (b) to validate the assessment of pay-roll tax made in relation to a payment or setting apart that were the subject of the Supreme Court's judgment in *Hills Industries Ltd & Anor v Commissioner of State Taxation & Anor* (Judgment No. [2002] SASC 67), or to authorise a reassessment of pay-roll tax in that case.

PART 5**AMENDMENT OF PETROLEUM PRODUCTS REGULATION ACT 1995****Substitution of s. 56**

14. Section 56 of the principal Act is repealed and the following section is substituted:

Confidentiality

56. (1) A person who is or has been engaged in the administration of this Act must not disclose any information obtained (whether by that person or some other person) under or in relation to the administration of this Act, except as permitted by this section.

Maximum penalty: \$10 000.

(2) A person who is or has been engaged in the administration of this Act may disclose information obtained (whether by that person or some other person) under or in relation to the administration of this Act—

- (a) as authorised by or under this Act; or
- (b) with the consent of the person from whom the information was obtained or to whom the information relates; or
- (c) in connection with the administration or enforcement of this Act or a corresponding law; or
- (d) for the purpose of any legal proceedings arising out of the administration or enforcement of this Act or a corresponding law; or
- (e) to the holder of a prescribed office or a prescribed body established under a law of this jurisdiction or another Australian jurisdiction; or
- (f) as authorised under the regulations.

(3) The Minister or the Commissioner may disclose information obtained under or in relation to the administration of this Act that does not directly or indirectly identify a particular licensee or any particular person to whom a regulatory or subsidy scheme under this Act applies.

(4) A person other than a person who is or has been engaged in the administration of this Act must not disclose information that—

- (a) has been obtained (whether properly or improperly and whether directly or indirectly) from another person who is or has been engaged in the administration of this Act; and
- (b) the other person obtained under or in relation to the administration of this Act,

unless—

- (c) the disclosure is of a kind that a person who is or has been engaged in the administration of this Act would be permitted to make under this section; or
- (d) if the person is a prescribed office holder or body under a law of this jurisdiction or another Australian jurisdiction—the disclosure is made in connection with the performance of functions conferred or imposed on the person under a law of this jurisdiction or another Australian jurisdiction (including for the purposes of legal proceedings connected with the performance of such functions); or
- (e) the disclosure is made with the consent of the Minister or the Commissioner.

Maximum penalty: \$10 000.

(5) A court does not have power to require a disclosure of information contrary to this section.

PART 6 AMENDMENT OF STAMP DUTIES ACT 1923

Amendment of s. 2—Interpretation

15. Section 2 of the principal Act is amended by inserting after the definition of "adhesive stamp" in subsection (1) the following definition:

"approved form" means a form approved by the Commissioner;.

Amendment of s. 31E—Registration

16. Section 31E of the principal Act is amended—

- (a) by striking out from subsection (1) "prescribed form" and substituting "approved form";
- (b) by striking out from subsection (2) "prescribed form" and substituting "approved form".

Amendment of s. 31F—Statement to be lodged by person registered or required to be registered

17. Section 31F of the principal Act is amended by striking out from subsection (1)(a) "prescribed form" and substituting "approved form".

Amendment of s. 42AA—Duty in respect of policies effected outside South Australia

18. Section 42AA of the principal Act is amended by striking out from subsection (1) "prescribed form" and substituting "approved form".

Amendment of s. 60B—Refund of duty where transaction is rescinded or annulled

19. Section 60B of the principal Act is amended by striking out from subsection (1) "one year" and substituting "5 years".

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

20. Section 71 of the principal Act is amended by striking out subsection (2).

Amendment of s. 71C—Concessional rates of duty in respect of purchase of first home, etc.

21. Section 71C of the principal Act is amended—

(a) by inserting after subsection (1a) the following subsection:

(1b) If the Commissioner is satisfied on an application under this section—

(a) that the conveyance relates to a genuine farm; and

(b) that the conveyance would be one to which this section applies if it related only to the relevant component of the genuine farm,

this section applies to a notional conveyance of the relevant component of the genuine farm.;

(b) by striking out from subsection (2) "conveyance to which this section applies" and substituting "conveyance or notional conveyance to which this section applies";

(c) by striking out subsection (2a) and substituting the following subsection:

(2a) Where the Commissioner is satisfied by such evidence as the Commissioner may require that—

(a) a person or persons who have paid stamp duty on a conveyance would have been entitled to the benefit of this section in respect of the conveyance if when it was submitted for stamping the requirements of subsection (1)(a)(iv) had been satisfied; and

(b) the person or persons occupied, as their principal place of residence, a dwelling house constructed subsequent to the conveyance, on the land comprised in the conveyance, or under rights conferred by shares comprised in the conveyance, within 2 years of the date of the conveyance,

the Commissioner must refund to that person or those persons any duty in excess of the amount that would have been payable if the conveyance had been stamped under this section.;

(d) by inserting after subsection (2a) the following subsection:

(2b) Where, on the conveyance of a genuine farm, the amount by reference to which duty would, apart from this section, be calculated exceeds the prescribed maximum, the duty payable on the conveyance is calculated as follows—

(a) first, calculate the duty on the conveyance apart from this section;

- (b) then, subtract from this amount the duty that would be payable apart from this section on a notional conveyance of the relevant component of the farm;
 - (c) finally, add to this amount the duty calculated on the notional conveyance in accordance with this section.;
- (e) by inserting after the definition of "dwelling house" in subsection (3) the following definition:

"genuine farm" means land as to which the Commissioner is satisfied—

- (a) the land is to be used for primary production by the person seeking the benefit of this section; and
 - (b) the land is, by itself, or in conjunction with other land owned by that person, capable of supporting economically viable primary production operations;;
- (f) by inserting after the definition of "prescribed maximum" in subsection (3) the following definition:

"relevant component" of a genuine farm means the part of the farm constituted by the dwelling house and its curtilage, or the part of the land that is to constitute the site and curtilage of a dwelling house that is to be constructed;.

Amendment of s. 71CC—Interfamilial transfer of farming property

22. Section 71CC of the principal Act is amended—

- (a) by striking out from subsection (1) "An instrument of which the sole effect is to transfer" and substituting "A transfer of";
- (b) by inserting after subsection (1a) the following subsection:

(1b) In assessing the duty payable on an instrument, the Commissioner is to apply the following principles—

- (a) if the instrument gives effect solely to a transaction, or part of a transaction, that is exempt from duty under this section, then no duty is payable on the instrument;
- (b) if the instrument gives effect to a transaction, or part of a transaction, of which some of the elements are exempt from duty under this section and others not, the instrument will be assessed for duty as if it gave effect only to those elements of the transaction that are not exempt from duty under this section.

Insertion of s. 71F

23. The following section is inserted after section 71E of the principal Act:

Statutory transfers

71F. (1) A statutory transfer is a transfer or vesting of assets or liabilities that takes effect by or under the provisions of a special Act.

(2) The parties to a statutory transfer must, within 2 months after a statutory transfer takes effect, lodge with the Commissioner a statement in a form approved by the Commissioner setting out—

- (a) a description of the property subject to the statutory transfer; and
- (b) the value of that property; and
- (c) any other information required by the Commissioner.

(3) Duty is payable on the statement as if it were a conveyance, executed by the parties to the statutory transfer, operating as a voluntary disposition *inter vivos* of the property subject to the statutory transfer.

(4) If a statement is not lodged as required by this section within 2 months after the statutory transfer takes effect—

- (a) each party to the transfer is guilty of an offence and liable to a penalty not exceeding \$10 000; and
- (b) the parties to the transfer are jointly and severally liable to pay duty to the Commissioner as if such a statement had been lodged with the Commissioner immediately before the end of that period of 2 months.

(5) A statutory transfer arising from the merger of credit unions, or transferring assets from one credit union to another, is exempt from this section.

(6) In this section—

"special Act" means—

- (a) the *Financial Sector (Transfer of Business) Act 1999*; or
- (b) the *Financial Sector (Transfer of Business) Act 1999* of the Commonwealth; or
- (c) any other Act of the State, another State, or the Commonwealth prescribed by regulation for the purposes of this section.

Amendment of s. 90D—Returns to be lodged and duty paid

24. Section 90D of the principal Act is amended—

- (a) by striking out from subsection (1)(a) "prescribed form" and substituting "approved form";
- (b) by striking out from subsection (2) "prescribed form" and substituting "approved form".

Amendment of s. 106A—Transfers of marketable securities not to be registered unless duly stamped

25. Section 106A of the principal Act is amended by striking out from subsection (1a) "prescribed form" and substituting "approved form".

Insertion of s. 107

26. The following section is inserted after section 106A of the principal Act:

Transfer of property to correct error

107. (1) If the Commissioner is satisfied, on application by a party to an instrument submitted for stamping, that the sole purpose of the instrument is to reverse or correct a disposition of property resulting from an error in an earlier instrument, the Commissioner may grant relief from stamp duty under this section.

(2) The Commissioner may require the applicant to provide such information (verified if the Commissioner thinks fit by statutory declaration) as the Commissioner thinks necessary to decide the application.

(3) If the Commissioner grants relief from stamp duty under this section, the duty chargeable on the instrument is ten dollars plus the amount (if any) by which the duty that would have been paid on the earlier instrument if it had been correctly made in the first instance exceeds the amount of duty actually paid on that instrument.

Transitional provision

27. The amendment made to the principal Act by section 21(c) of this Act does not apply in relation to stamp duty paid before the commencement of that section.

PART 7
AMENDMENT OF TAXATION ADMINISTRATION ACT 1996

Amendment of s. 87—Objections lodged out of time

28. Section 87 of the principal Act is amended by striking out subsection (1) and substituting the following subsection:

(1) The Minister has a discretion to permit a person to lodge an objection after the end of the 60-day period but not to do so later than 12 months after—

- (a) in the case of an objection to an assessment—the date of service of the assessment on the taxpayer; or
- (b) in the case of an objection to some other decision—the date on which the taxpayer was notified of the decision.

Amendment of s. 95—Appeals made out of time

29. Section 95 of the principal Act is amended by inserting after "60-day period" "but not to do so later than 12 months after the date of service on the person of notice of the Minister's determination of the person's objection".

Transitional provisions

30. (1) The amendments made to the principal Act by section 28 of this Act apply to any objection lodged after the commencement of that section whether the assessment or decision to which the objection relates was made before or after that commencement.

(2) The amendments made to the principal Act by section 29 of this Act apply to any appeal made after the commencement of that section whether the initial objection, or the Minister's determination to which the appeal relates, was made before or after that commencement.