



Australian Capital Territory Taxation (Administration) Amendment Act 1982

No. 127 of 1982

An Act to amend the *Australian Capital Territory Taxation (Administration) Act 1969*

[Assented to 13 December 1982]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART I—PRELIMINARY

Short title, &c.

1. (1) This Act may be cited as the *Australian Capital Territory Taxation (Administration) Amendment Act 1982*.

(2) The *Australian Capital Territory Taxation (Administration) Act 1969*¹ is in this Act referred to as the Principal Act.

Commencement

2. (1) Parts I and II (other than section 3) shall come into operation on the day on which this Act receives the Royal Assent.

*Australian Capital Territory Taxation (Administration)
Amendment No. 127, 1982*

(2) Section 3 shall come into operation on the day on which this Act receives the Royal Assent, or, if the *Australian Capital Territory Stamp Duty Amendment Act 1982* receives the Royal Assent before that day, shall be deemed to have come into operation on the day on which that Act receives the Royal Assent.

(3) Part III shall come into operation, or shall be deemed to have come into operation, as the case requires, on the day on which the *Australian Capital Territory Tax (Vehicle Registration) Amendment Act 1982* receives the Royal Assent.

PART II—MISCELLANEOUS AMENDMENTS

Interpretation

3. Section 4 of the Principal Act is amended—

- (a) by omitting from sub-section (1) the definition of “consular post”; and
- (b) by inserting after the definition of “return” in sub-section (1) the following definitions:

“ ‘scheme’ means—

- (a) an agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; and
- (b) a scheme, plan, proposal, action, course of action or course of conduct,

and includes a unilateral scheme, plan, proposal, action, course of action or course of conduct;

‘scheme to avoid or reduce stamp duty’ means a scheme, where the person who has, or one or more of the persons who have, entered into or carried out the scheme or a part of the scheme, did so for the purpose of securing—

- (a) that an amount of duty would not be payable by a person, being an amount that would have been, or might reasonably be expected to have been, payable by the person;
- (b) that an amount of duty payable by a person would be less than the amount that would have been, or might reasonably be expected to have been, payable by the person; or
- (c) that a refund of duty would be payable to a person, being a refund that would not have been, or might reasonably be expected not to have been, payable to the person,

if the scheme had not been entered into or carried out, or for purposes of which that purpose was the dominant purpose;”.

Australian Capital Territory Taxation (Administration)
Amendment No. 127, 1982

4. After section 50 of the Principal Act the following section is inserted in Division 7 of Part III:

Refund of duty where agreement not completed

“50A. (1) Where—

- (a) on or after 14 October 1982, an amount of duty is paid by a person on an agreement, being an agreement—
 - (i) for a transfer by a person (in this sub-section referred to as the ‘transferor’) to another person (in this sub-section referred to as the ‘transferee’) of an estate in fee simple in land situated in the Territory or of a lease of such land; or
 - (ii) for an assignment by a person (in this sub-section referred to as the ‘assignor’) to another person (in this sub-section referred to as the ‘assignee’) of a lease of such land;
- (b) the agreement is void, is unenforceable (both at law and in equity), is rescinded, or comes to an end; and
- (c) the Commissioner is satisfied that no transfer or assignment has been, or may reasonably be expected to be, made in pursuance of the agreement,

there shall, subject to this section, be refunded to the person by whom the amount of duty was paid—

- (d) in a case to which paragraph (e) does not apply—an amount equal to the amount of duty paid; or
- (e) if—
 - (i) the transferee or assignee has gone into possession of the land; or
 - (ii) another person has gone into possession of the land at the request of, or under an arrangement with, the transferee or assignee,

and the agreement is rescinded or comes to an end—the amount (if any) by which the amount of duty paid exceeds the amount of duty that, in the opinion of the Commissioner of Taxation, would have been payable on a lease of the land by the transferor to the transferee, or by the assignor to the assignee, as the case may be, for a term commencing on the earliest date on which the transferee or assignee, as the case may be, or a person of the kind referred to in sub-paragraph (ii), went into possession of the land, or, if that date is earlier than the date of the agreement, the date of the agreement, and ending on the date on which the agreement is rescinded or comes to an end, as the case may be.

“(2) Where—

- (a) as a result of a person or persons doing an act or omitting to do an act, a refund under sub-section (1) would, but for this sub-section, be payable to a person; and

Australian Capital Territory Taxation (Administration)
Amendment No. 127, 1982

- (b) the person or any of those persons did the act, or omitted to do the act, as the case requires, in connection with a scheme to avoid or reduce duty,

the refund is not payable.

“(3) A refund under sub-section (1) is not payable to a person in relation to an agreement unless the person furnishes to the Commissioner of Taxation—

- (a) where the agreement is void or unenforceable—within 12 months after the person became aware of that fact; or
- (b) where the agreement is rescinded, or comes to an end, on a particular date—within 12 months after that date,

an application in accordance with an approved form, together with such information as the Commissioner of Taxation requires to enable him to determine the amount of the refund.

“(4) Where—

- (a) a refund under sub-section (1) is paid to a person in relation to an agreement by reason that no transfer or assignment has been, or may reasonably be expected to be, made in pursuance of the agreement; and
- (b) a transfer or assignment is made at any time in pursuance of the agreement,

then—

- (c) notwithstanding sub-section 17 (5), the agreement shall not be treated, for the purposes of this Act, as the original of the transfer or assignment, as the case may be; and
- (d) for the purposes of sub-section 17 (6)—
 - (i) the amount of duty paid on the agreement shall be deemed not to have been paid; and
 - (ii) the agreement shall be deemed not to be duly stamped.

“(5) A reference in sub-section (1) to going into possession of land includes a reference to receiving any of the rents and profits of the land.

“(6) In this section—

‘agreement’ includes an instrument purporting to be an agreement;
‘arrangement’ means any agreement, arrangement or understanding, whether formal or informal, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings;
‘person’, in relation to an agreement, means any person, whether or not the person is a party to the agreement.”.

5. (1) After section 58 of the Principal Act the following section is inserted in Division 9 of Part III:

Partition of marketable securities

“58AA. Before assessing the duty (if any) to be paid on a transfer executed to give effect to a partition or division of a parcel of marketable securities, the

*Australian Capital Territory Taxation (Administration)
Amendment No. 127, 1982*

Commissioner shall deduct from the unencumbered value of the marketable securities transferred to the transferee the unencumbered value of the beneficial interest held by the transferee before the transfer in the marketable securities included in that parcel.”.

(2) The amendment of the Principal Act made by sub-section (1) has effect in relation to an instrument executed on or after 14 October 1982.

(3) For the purposes of sub-section (2), an instrument shall be deemed 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**

Registration of vehicles

6. Section 58C of the Principal Act is amended—

- (a) by inserting “, otherwise than by virtue of an application of section 7 of that Act” after “Taxing Act” in paragraph (1) (a);
- (b) by omitting from the end of paragraph (1) (c) “or”; and
- (c) by inserting after paragraph (1) (c) the following paragraph:
 - “(ca) the registration is solely in the name of a person who certifies, in accordance with an approved form, that—
 - (i) he is carrying on a business in respect of which he is licensed or registered by or under a law that is prescribed for the purposes of paragraph 6 (2) (f) of the Taxing Act; and
 - (ii) the vehicle is held by him as trading stock for resale in the course of carrying on that business; or”.

Certificates of exemption from tax

7. Section 58D of the Principal Act is amended by omitting from sub-section (1) all the words after “sub-section 6 (2)” and substituting “(other than paragraph (e) or (f)) of the Taxing Act, or of section 7 or 8 of that Act, he may issue a certificate to that effect.”.

Refund of tax incorrectly paid

8. Section 58F of the Principal Act is amended by omitting sub-sections (1) and (2) and substituting the following sub-sections:

“(1) Where, on application made within 3 years after the registration of a vehicle in respect of which an amount of tax has been paid, the Commissioner of Taxation is satisfied—

- (a) in the case of a registration made before the day on which the *Australian Capital Territory Tax (Vehicle Registration) Amendment*

Australian Capital Territory Taxation (Administration)
Amendment No. 127, 1982

Act 1982 received the Royal Assent—that the registration was exempt from tax by virtue of section 7 or 8 of the Taxing Act;

- (b) in the case of a registration in relation to which regulations made for the purposes of paragraph 6 (2) (f) of the Taxing Act apply, being a registration made before the making of those regulations—that the registration would have been exempt from tax by virtue of that paragraph if those regulations had been in force at the time when application was made for the registration; or

(c) that the whole or a part of that amount should not have been paid, that amount, or that part of that amount, as the case may be, shall be refunded.

“(2) Sub-section (1) does not apply in relation to tax paid in accordance with an assessment other than an assessment made in pursuance of paragraph 68 (1) (c).

“(2A) Paragraph (1) (c) does not apply in circumstances to which paragraph 68 (1) (c) applies.

“(2B) Where—

- (a) paragraph (1) (a) or (b) applies to the registration of a vehicle, being a registration in respect of which an amount of tax has been paid; and
- (b) by reason of sub-section 68 (3), the whole or a part of that amount has been refunded or is required to be refunded,

the amount that, but for this sub-section, would be required by sub-section (1) to be refunded shall be reduced by the amount refunded or required to be refunded under sub-section 68 (3).”.

NOTE

1. No. 42, 1969, as amended. For previous amendments, see No. 216, 1973; No. 61, 1981; No. 92, 1981 (as amended by No. 80, 1982); and No. 127, 1981.