



ANALYSIS

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1977, No. 97

An Act to amend the Stamp and Cheque Duties Act 1971

[16 December 1977]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title and application—(1) This Act may be cited as the Stamp and Cheque Duties Amendment Act 1977, and shall be read together with and deemed part of the Stamp and Cheque Duties Act 1971 (hereinafter referred to as the principal Act).

(2) The exemptions from conveyance duty afforded by this Act shall apply to every instrument of conveyance executed on or after the 22nd day of July 1977; but where more than one instrument of conveyance is executed in respect of the same transaction, the exemptions shall apply only if the earliest instrument is executed on or after that date.

2. New sections inserted—The principal Act is hereby amended by inserting, after section 22, the following sections:

“22A. **No conveyance duty payable on instrument of conveyance executed in respect of first home**—(1) This section shall apply to—

“(a) An instrument of conveyance of land on which a dwellinghouse is erected, or of land (in this section referred to as residential land) which is acquired for the purpose of having a dwellinghouse erected on it:

“(b) An instrument of conveyance of shares which, in the opinion of the Commissioner, has the effect of granting a right to the person to whom the shares are conveyed to occupy a dwellinghouse.

“(2) No conveyance duty shall be payable on any instrument of conveyance to which this section applies if the Commissioner is satisfied that—

“(a) Neither the person acquiring the land or, as the case may be, the shares, nor the spouse (if any) of that person, holds or has previously held, whether in New Zealand or elsewhere, an interest in residential land or a dwellinghouse or any shares which entitle the holder to occupy a dwellinghouse; and

“(b) The dwellinghouse or, as the case may be, the residential land, is to be occupied by the person to whom the land or shares is conveyed primarily and principally for residential purposes for that person and any members of that person’s family; and

“(c) The land to which the instrument of conveyance relates does not exceed 4500 m² or such larger area as is required for the reasonable occupation of the land, having regard to the size and character of the dwellinghouse erected or to be erected on the land; and

“(d) In the case of a dwellinghouse that is a unit of a multi-unit building, the conveyance is accompanied by an agreement giving to the person to whom the land is conveyed a right of exclusive use and occupation of that unit; and

“(e) No other exemption from conveyance duty under this section has been, or is being, granted to the person to whom the land or shares are being conveyed.

“(3) Notwithstanding subsection (1) of this section, this section shall not apply to any instrument conveying land or shares to more than one person unless the Commissioner is satisfied that the requirements of subsection (2) of this section, as far as they are applicable, are met by each such person.

“(4) In this section—

“‘Dwellinghouse’ means a building erected or to be erected primarily and principally as a residence for the occupation of a single household; and includes any unit of a multi-unit building if the building is, or is to be, erected primarily and principally for residential purposes and the unit is, or is to be, for the occupation of a single household; and also includes a dwellinghouse together with any appurtenances belonging to the dwellinghouse or usually enjoyed with it:

“‘Interest’, in relation to any residential land or dwellinghouse, means such legal or equitable interest as entitled, or entitles, or will entitle the holder to the personal use and occupation of that land or dwellinghouse; and includes an interest in land used primarily and principally for business purposes if a dwellinghouse on the land is or was occupied as a residence by the person holding the interest; but does not include—

“(a) Any interest held by any person as trustee for another person:

“(b) Any interest under a lease for any period of less than 5 years certain:

“(c) Any interest in Maori land within the meaning of the Maori Affairs Act 1953.

“22B. **No conveyance duty payable on instrument of conveyance executed in respect of first farm—**(1) This section shall apply to—

“(a) An instrument of conveyance of farm land:

“(b) An instrument of conveyance of shares in a farming company.

“(2) The conveyance duty which would, were it not for this section, be payable on an instrument of conveyance to which this section applies, shall, if the Commissioner is satisfied that the relevant conditions set out in subsection (3) of this section have been complied with, be reduced by such amount as shall not exceed the conveyance duty computed on the value of the interest conveyed by the instrument to each person satisfying those conditions.

“(3) For the purposes of subsection (2) of this section, the relevant conditions shall be—

- “(a) That in respect of the person to whom the farm land or shares is conveyed or deemed to be conveyed under subsection (4) of this section, neither that person nor the spouse (if any) of that person, holds or has previously held, whether alone, or jointly or in common with each other or any other person, any substantial interest in farm land or a farming company, whether in New Zealand or elsewhere; and
- “(b) That that person has undertaken in writing to pay to the Commissioner the stamp duty which, but for this section, would otherwise have been payable on an instrument of conveyance to which this section relates, in any case where—
- “(i) That person has not, within 2 years after the date of the execution of the instrument or within such extended time as the Commissioner may consider reasonable, commenced to actively farm the farm land conveyed or the farm land being the principal asset of the farming company of which the shares were conveyed:
- “(ii) That person has sold or otherwise disposed of the controlling interest (if any) in the farm land or the shares in the farming company within 2 years after the date of execution of the instrument conveying that interest or those shares to that person:
- “(iii) A farming company to which the instrument of conveyance relates ceases to hold farm land as its principal asset within 2 years after the date of execution of that instrument; and
- “(c) That the interest acquired under an instrument of conveyance to which this section relates by any person who satisfies the requirements of paragraphs (a) and (b) of this subsection, either alone or together with any other interest or interests acquired under the instrument by any other person or persons who also satisfy those requirements, constitutes a controlling interest in the farm land conveyed or, as the case may be, in the farming company in respect of which the shares are conveyed.

“(4) For the purposes of this section—

“(a) A conveyance to husband and wife shall be deemed to be a conveyance to one person:

“(b) A conveyance to a company shall be deemed to be a conveyance to its shareholders of the property conveyed in the same proportions as those shareholders hold shares in that company:

“(c) The Commissioner may disregard a small amount of paid up capital or a nominal value of shares or a small number of allotted shares held by a person in any company.

“(5) In determining any matter under this section, the Commissioner may, if he considers it necessary, obtain the advice of the Director-General of Agriculture and Fisheries or the general manager of the Rural Banking and Finance Corporation of New Zealand.

“(6) The liability of any person to pay stamp duty pursuant to the undertaking given under subsection (3) (b) of this section shall be determined by the Commissioner by notice of assessment in writing, and the provisions of Parts IV and V of this Act shall apply accordingly.

“(7) In this section—

“‘Actively farm’, in relation to an undertaking given by any person pursuant to subsection (3) (b) of this section, means to personally supervise, manage, or carry on the business of farming as the principal occupation of that person, whether alone or in partnership or other association with any other person:

“‘Controlling interest’ means any interest which, in the opinion of the Commissioner, has the effect of controlling the use of farm land conveyed or controlling the farming company in respect of which shares are conveyed, in both cases whether directly or indirectly, and whether through holding a majority of the shares in a company or in any other manner whatever:

“‘Farming company’ means a company which, in the opinion of the Commissioner, has as its principal object the carrying on of the business of farming in New Zealand and has, as at the date of execution of an instrument of conveyance of its shares, farm land as its principal asset:

“‘Farm land’ means land that is used primarily and principally for agricultural purposes, being purposes which relate to the cultivation of the soil for the production of food and other useful products of the soil, and the use of the land for horticultural, silvicultural, or pastoral purposes, or for the keeping of pigs, bees, or poultry:

“‘Substantial interest’ means an interest having a value (as ascertained in the same manner as the value of that interest would be ascertained for the purposes of computing stamp duty) of more than \$50,000 or such other sum as the Governor-General may, from time to time, by Order in Council declare,—

“(a) In the case of previously held farm land or shares in a farming company, as at the date of sale or other disposition of that land or those shares:

“(b) In the case of presently held farm land or shares in a farming company, as at the date of execution of the relevant instrument of conveyance to which this section applies.

“22c. No conveyance duty payable in respect of transactions relating to certain family homes—(1) This section shall apply to—

“(a) An instrument of conveyance of land on which a dwellinghouse is erected:

“(b) An instrument of conveyance of shares which, in the opinion of the Commissioner, has the effect of granting a right to the person to whom the shares are conveyed to occupy a dwellinghouse.

“(2) No conveyance duty shall be payable on any instrument of conveyance to which this section applies if the Commissioner is satisfied that—

“(a) The instrument conveys a large family home from the transferor or transferors, being the occupants of the home and being either the sole occupant or older persons, to any person or persons having a growing family:

“(b) The instrument conveys suitable smaller accommodation to any person or persons, being the transferor or transferors of any large family home in respect of which paragraph (a) of this subsection has applied or is being applied.

“(3) Notwithstanding subsection (1) of this section, this section shall not apply to any instrument of conveyance of land or shares if the person acquiring the land or, as the case may be, the shares, or the spouse (if any) of that person holds, whether in New Zealand or elsewhere, an interest in land on which a dwellinghouse is erected or any shares which entitle the holder to occupy a dwellinghouse.

“(4) In this section—

“‘Dwellinghouse’ means a building erected primarily and principally as a residence for the occupation of a single household; and includes any unit of a multi-unit building if the building is erected primarily and principally for residential purposes and the unit is for the occupation of a single household; and also includes a dwellinghouse together with any appurtenances belonging to the dwellinghouse or usually enjoyed with it:

“‘Growing family’ means a family habitually living together and consisting of at least one person more than the number of persons habitually living as a family in the large family home immediately before it is conveyed:

“‘Large family home’ means a dwellinghouse having not less than 3 bedrooms:

“‘Older persons’ means persons 45 years of age or older:

“‘Suitable smaller accommodation’ means a dwellinghouse having not more than 2 bedrooms.

“(5) The Commissioner may in particular cases of doubt, where he considers it equitable and reasonable so to do and after consultation with the Housing Corporation of New Zealand, extend the application of this section.”

3. Objections against exercise of Commissioner’s discretion—Section 73 (1) of the principal Act is hereby amended by inserting, after paragraph (a), the following paragraphs:

“(aa) Section 22A of this Act:

“(ab) Section 22B of this Act:”.

4. Composition by stock exchanges in respect of stamp duty on shares—(1) The principal Act is hereby further amended by inserting, after section 51, the following section:

“51A. (1) Notwithstanding anything to the contrary in

this Part of this Act, the Commissioner may enter into an agreement with any person or persons acting on behalf of the Stock Exchange Association of New Zealand (in this section referred to as the Association) for the composition of the stamp duty otherwise payable on such instruments of conveyance of shares or other securities as may be specified in the agreement, being shares or other securities—

“(a) Officially listed on a stock exchange affiliated to the Association; and

“(b) Purchased for full consideration through the agency of a sharebroker being a member of such a stock exchange.

“(2) Every agreement under this section shall provide—

“(a) For every instrument of conveyance to which the agreement relates to indicate on its face either the amount of stamp duty payable on it or that the stamp duty payable on it has been accounted for pursuant to this section, as may be agreed:

“(b) For periodic returns to be made to the Commissioner showing such particulars in respect of each instrument of conveyance to which the agreement relates, as may be agreed:

“(c) For the payment to the Commissioner of the aggregate amount of stamp duty otherwise payable on each instrument of conveyance of which particulars are shown on any return made under paragraph (b) of this subsection:

“(d) Such other terms and conditions as the Commissioner thinks necessary.

“(3) An agreement under this section shall be valid, and shall be deemed to have been made on behalf of the Association, every stock exchange affiliated to it, and every member (including a country member) of such an exchange, and shall, in favour of the Commissioner, be binding on the Association, every stock exchange affiliated to it, and on every person who is, or who becomes, a member of such an exchange. Every such person shall indemnify the Association or, as the case may require, a stock exchange affiliated to it, in respect of any liability for stamp duty incurred by the Association or a stock exchange on that person's behalf.

“(4) For the purposes of this Part and of section 72 of this Act, an instrument of conveyance bearing on its face the indication required under subsection (2) (a) of this section shall—

“(a) Be deemed to have been assessed by the Commissioner; and

“(b) Be deemed to have been stamped in accordance with this Act—

on the day the said indication is made on the face of the instrument.

“(5) The Commissioner may, after giving 3 months’ notice in writing, terminate any agreement entered into pursuant to this section or, after giving at least 7 clear days’ notice in writing, vary the terms of such agreement in respect of its effect on any particular stock exchange, person, instrument, or class of person or instrument.”

(2) Section 96 of the principal Act is hereby consequentially amended by inserting, before the words “section 92”, the words “section 51A or”.

5. Increase in amount of fines for offences—(1) The principal Act is hereby amended in the manner indicated in the Schedule to this Act.

(2) This section shall apply in respect of any fine imposed pursuant to the principal Act on or after the 1st day of January 1978.

6. Offence to stamp instrument otherwise than by presentation except in certain cases—(1) The principal Act is hereby further amended by inserting, after section 92, the following section:

“92A. Any person who, otherwise than in accordance with section 51 or section 51A of this Act, stamps any instrument not presented for stamping, commits an offence and is liable on summary conviction to a fine not exceeding \$500.”

(2) Section 51 (4) of the principal Act is hereby consequentially repealed.

Section 5

SCHEDULE**INCREASE IN AMOUNT OF FINES FOR OFFENCES**

| Section of Principal Act | Amendment |
|-----------------------------|----------------------------------------------------------------------------------|
| 16 (4) | By omitting the expression "\$500", and substituting the expression "\$2,000". |
| 50 (3) | By omitting the expression "\$200", and substituting the expression "\$500". |
| 53 (2) | By omitting the expression "\$200", and substituting the expression "\$500". |
| 70 (3) | By omitting the expression "\$200", and substituting the expression "\$500". |
| 84 (9) | By omitting the expression "\$200", and substituting the expression "\$500". |
| 88 | By omitting the expression "\$1,000", and substituting the expression "\$2,000". |
| 89 | By omitting the expression "\$500", and substituting the expression "\$2,000". |
| 90 (2) | By omitting the expression "\$200", and substituting the expression "\$500". |

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This Act is administered in the Inland Revenue Department.

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