



ANNO TRICESIMO NONO

ELIZABETHAE II REGINAE

A.D. 1990

No. 47 of 1990

An Act to amend the Stamp Duties Act, 1923.

[Assented to 1 November 1990]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Stamp Duties Act Amendment Act (No. 4), 1990*.
- (2) The *Stamp Duties Act, 1923*, is referred to in this Act as "the principal Act".

Commencement

2. (1) This Act (other than section 5 (2)) will be taken to have come into operation on 1 July, 1990.
- (2) Section 5 (2) will come into operation on 1 January, 1991.

Interpretation

3. Section 32 of the principal Act is amended by inserting after the definition of "firm of persons" the following definitions:

"general insurance business" means any assurance or insurance business not relating to life insurance policies:

"life insurance policy" does not include a policy covering personal accident or workers compensation or a policy complying with Part IV of the *Motor Vehicles Act, 1959*.

Substitution of ss. 33 to 42

4. Sections 33 to 42 (inclusive) of the principal Act are repealed and the following sections are substituted:

Annual licence required for insurance business

33. A company, person or firm of persons must not carry on any assurance or insurance business in any year in South Australia, whether the head office or principal place of business of that company, person or firm is in South Australia or elsewhere, unless the company, person or firm has taken out an annual licence for that year in a form determined by the Commissioner.

Penalty: \$10 000.

Application for annual licence

34. (1) A company, person or firm of persons requiring an annual licence must make a written application to the Commissioner in a manner and form determined by the Commissioner and supported by such evidence as the Commissioner may require.

(2) Any information or statement contained in the application must be verified by statutory declaration made—

(a) where the applicant is a natural person—by that person;

(b) where the applicant is a firm—by a member of the firm;

(c) where the applicant is a company—by a member of the board or committee of management of the company;

or

(d) in any case—by a person authorized by the applicant and approved by the Commissioner.

(3) A company, person or firm of persons that applies for an annual licence must, at the time of lodging the application, pay to the Commissioner the duty (if any) payable under the second schedule on the annual licence.

(4) A company, person or firm of persons that fails to comply with any of the requirements of this section is guilty of an offence.

Penalty: \$10 000.

Issuing and term of annual licence

35. (1) The Commissioner is authorized to issue an annual licence on payment of the duty (if any) payable on the annual licence.

(2) An annual licence comes into force on the date specified in the licence (which may be a date earlier than the date of issue of the licence) and remains in force until 31 December of the year in which it is issued.

Monthly returns in respect of general insurance business

36. (1) A company, person or firm of persons that carries on general insurance business in South Australia, whether the head office or principal place of business of that company, person or firm is in South Australia or elsewhere, must lodge with the Commissioner a return in a form determined by the Commissioner, supported by such evidence as the Commissioner may require, not later than the fifteenth day of the month following each month in which the company, person or firm carries on such business.

(2) Any information or statement contained in a monthly return must be verified by statutory declaration in the same way as is required for an application for an annual licence.

(3) A company, person or firm of persons that lodges a monthly return must, at the time of lodging the monthly return, pay to the Commissioner the duty (if any) payable under the second schedule on the monthly return.

(4) A company, person or firm of persons that fails to comply with any of the requirements of this section is guilty of an offence.

Penalty: \$10 000.

Denoting of duty

37. The duty paid on an annual licence or a monthly return must be denoted by cash register imprint on the licence or return.

Duty payable on acquisition of insurance business

38. Where a company, person or firm of persons acquires contractual rights and obligations of, or in connection with, the assurance or insurance business of some other company, person or firm, the acquiring company, person or firm is liable to pay to the Commissioner the amount of any unpaid duty in respect of premiums received or in any manner charged in account (whether directly or by agents) by the other company, person or firm after the end of the period in respect of which such duty was last paid by the other company, person or firm as if the acquiring company, person or firm had received or charged in account those premiums.

Records to be kept in respect of insurance business

39. (1) A company, person or firm of persons that is or has been required to hold an annual licence must keep or cause to be kept in South Australia sufficient books and records to enable all premiums and other amounts required for calculating duty on an annual licence or monthly return to be accurately calculated.

(2) The books and records referred to in subsection (1) together with all working papers used in calculating the duty must be kept available for inspection for a period of five years from the year or month, as the case may be, to which the books, records or papers relate or for such lesser period as the Commissioner may in any particular case allow.

(3) A company, person or firm of persons that fails to comply with any of the requirements of this section is guilty of an offence.

Penalty: \$10 000.

Default assessments

40. (1) Where the Commissioner has reason to believe or suspect that a company, person or firm of persons—

(a) has failed to lodge an application for an annual licence, or a monthly return, as required under this Act;

or

(b) has failed to pay any duty, or has paid insufficient duty, on an annual licence or monthly return under this Act,

the Commissioner may, on the basis of estimates if necessary, make an assessment of the amount that, in the Commissioner's opinion, represents the duty that would be payable assuming that the company, person or firm had duly taken out an annual licence, or lodged a monthly return, as required under this Act, or the duty that should have been paid on an annual licence or monthly return taken out or lodged by that company, person or firm, as the case may be.

(2) Where the Commissioner makes an assessment under this section of duty that would be payable by a company, person or firm assuming that it had duly taken out an annual licence, or lodged a monthly return, as required under this Act, the Commissioner may create an annual licence or monthly return for that purpose and any annual licence or monthly return so created has effect as if it had been taken out or lodged by the company, person or firm.

(3) Where the Commissioner makes an assessment under this section—

(a) the Commissioner must cause notice in writing of the assessment to be served on the company, person or firm to which the assessment relates;

and

- (b) the company, person or firm is, subject to any determination made on an objection or appeal under section 24, liable to pay any duty determined by the Commissioner under the assessment to be payable together with any further duty specified in the notice as being payable by way of penalty pursuant to section 41.

Further duty by way of penalty

41. (1) Where a company, person or firm is liable to pay duty by virtue of a default assessment under section 40, the company, person or firm is liable to pay further duty, by way of a penalty, of an amount equal to the amount of that duty.

(2) Where a company, person or firm makes a late payment of duty on an annual licence or monthly return, the company, person or firm is liable to pay further duty, by way of a penalty, of an amount of—

(a) \$50;

or

(b) an amount equal to 10 per cent of the amount of the duty on the annual licence or monthly return for each month for which the company, person or firm delayed in making the payment until the amount equals the amount of the unpaid duty,

whichever is the greater.

(3) For the purposes of subsection (2), the time for payment of duty on an annual licence or monthly return will be taken to be the time before which the company, person or firm is required to take out the annual licence or lodge the monthly return under this Act.

(4) The Commissioner may, at any time, remit any further duty, or part of any further duty, payable by way of a penalty under this section.

Refund of overpaid duty

42. (1) Where a company, person or firm of persons claims that it has overpaid duty on an annual licence or a monthly return, the Commissioner must, on application by that company, person or firm within three years after the day on which the overpayment was alleged to have been made, make an assessment of whether an overpayment was made and, if so, the amount overpaid.

(2) Where the Commissioner makes an assessment under this section—

(a) the Commissioner must cause notice in writing of the assessment to be served on the company, person or firm to which the assessment relates;

and

(b) the company, person or firm is, subject to any determination made on an objection or appeal under section 24, entitled to a refund of any duty determined by the Commissioner under the assessment to have been overpaid.

Amendment of second schedule

5. (1) The second schedule to the principal Act is amended—

(a) by striking out “ANNUAL LICENCE to be taken out by” and substituting “ANNUAL LICENCE or MONTHLY RETURN to be taken out or lodged by”;

(b) by striking out paragraph (a) of the item commencing “ANNUAL LICENCE” and substituting the following paragraphs:

(a) in the case of an annual licence where the company, person or firm has received or in any manner charged in account (whether directly or by agents) premiums relating to life insurance within the period of 12 months preceding the year for which the licence is to be taken out—for every \$100 or fractional part of \$100 of those premiums 1.50;

(ab) in the case of a monthly return where the company, person or firm has received or in any manner charged in account (whether directly or by agents) premiums relating to policies of any kind (other than life insurance policies) within the month preceding the month in which the return is required to be lodged—for every \$100 or fractional part of \$100 of those premiums 8.00;

(c) by striking out paragraph (1) of the item commencing “ANNUAL LICENCE”;

and

(d) by inserting after paragraph (2a) of the item commencing “ANNUAL LICENCE” the following paragraphs:

(2b) the premiums referred to in paragraph (ab) must be counted so as to exclude any amount in respect of stamp duty received or charged on or after 1 January, 1986, and any portion of those premiums actually paid by way of reinsurance effected in South Australia with any other such company, person or firm;

(2c) in the case of a monthly return, there must be deducted from the amount of the premiums referred to in paragraph (ab) the amount of any refunds in respect of premiums (whenever received) made after the end of the month in respect of which duty was last paid under this item by the company, person or firm and before the commencement of the month in which the return is required to be lodged;

(2) The second schedule to the principal Act is amended by striking out from the item commencing “APPLICATION to Register a Motor Vehicle or APPLICATION to Transfer the Registration of a Motor Vehicle” the following:

(B) *Component payable in respect of a Policy of Insurance*
 Where the application is for registration of the vehicle for a period of twelve months 3.00
 Where the application is for registration of the vehicle for a period of six months 1.50

and substituting the following:

(B) *Component payable in respect of a Policy of Insurance*
 Where the application is for registration of the vehicle for a period of 12 months 15.00
 Where the application is for registration of the vehicle for a period of 6 months 8.00.

Repeal of third schedule

6. The third schedule to the principal Act is repealed.

Transitional provisions

7. Where a company, person or firm of persons carried on general insurance business before the enactment of this Act, the company, person or firm—

(a) is required to lodge monthly returns only in relation to general insurance business carried on by it on or after 1 July, 1990;

and

(b) will be taken to have complied with the requirements of section 36(1) of the principal Act, as amended by this Act, in relation to the period from 1 July, 1990, until the enactment of this Act if the monthly returns required in relation to that period are lodged with the Commissioner not later than the fifteenth day of the month commencing after the enactment of this Act.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

D. B. DUNSTAN, Governor