

South Australia



ANNO QUINQUAGESIMO PRIMO
ELIZABETHAE II REGINAE
A.D. 2002

**STAMP DUTIES (GAMING MACHINE SURCHARGE) AMENDMENT
ACT 2002**

No. 39 of 2002

[Assented to 28 November 2002]

An Act to amend the Stamp Duties Act 1923.

SUMMARY OF PROVISIONS

1. Short title
2. Commencement
3. Insertion of ss 71EA to 71EJ
 - Gaming Machine Surcharge*
 - 71EA. Interpretation
 - 71EB. Direct interests
 - 71EC. Related entities
 - 71ED. Indirect interests
 - 71EE. Notional interests
 - 71EF. Application of this Division
 - 71EG. Imposition of surcharge
 - 71EH. Exempt transactions
 - 71EI. Notice of transaction to which this Division applies
 - 71EJ. Recovery of duty
4. Application of amendments

**Stamp Duties (Gaming Machine Surcharge)
Amendment Act 2002**

No. 39 of 2002

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Stamp Duties (Gaming Machine Surcharge) Amendment Act 2002*.

(2) The *Stamp Duties Act 1923* is referred to in this Act as "the principal Act".

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Insertion of ss 71EA to 71EJ

3. The following heading and sections are inserted after section 71DA of the principal Act:

Gaming Machine Surcharge

Interpretation

71EA. (1) In this Division—

"**direct interest**"—*see* section 71EB(1);

"**this Division**" means section 71EA to section 71EJ (inclusive);

"**family group**" means a group of persons connected by an unbroken series of relationships of consanguinity or affinity;

"**gaming machine business**" means a business conducted in pursuance of a gaming machine licence;

"**gaming machine licence**" means a gaming machine licence under the *Gaming Machines Act 1992*;

"**gaming machine surcharge**" means the duty imposed under this Division;

"**hold**"—a person holds a share in a private entity if the person—

- (a) is registered as the holder; or
- (b) is beneficially entitled to the share; or
- (c) controls the exercise of rights attached to the share;

"**indirect interest**"—*see* section 71ED(1);

"**net gambling revenue**" means net gambling revenue as defined for the purposes of section 72 of the *Gaming Machines Act 1992*;

"**person**" includes a private entity;

"private company" means—

- (a) a company that is limited by shares but whose shares are not quoted on a recognised financial market; or
- (b) a company that is not limited by shares,

but does not include a company that is excluded from the ambit of this definition by the regulations;

"private entity" means a private company or a private unit trust scheme;

"private unit trust scheme" means—

- (a) a unit trust scheme in which less than 50 persons hold units; or
- (b) a unit trust scheme in which 50 or more persons hold units if 20 or fewer persons hold 75 per cent or more in number or value of the units on issue,

but does not include a unit trust scheme that is an approved deposit fund or a pooled superannuation trust within the meaning of the *Superannuation Industry (Supervision) Act 1993 (Cwth)*;

"proportionate interest"—see sections 71EB(3), 71EC(2) and 71ED(3);

"related entity"—see section 71EC(1);

"share" in a private entity means—

- (a) where the private entity is a private company—a share or other interest that—
 - (i) entitles the holder to vote at a general meeting of shareholders of the private company; or
 - (ii) entitles the holder to share in dividends or would entitle the holder to share in dividends assuming that there were profits out of which dividends could be declared; or
 - (iii) entitles the holder to share in the distribution of the assets of the company in the event of a winding up; or
 - (iv) confers entitlements of two or more kinds mentioned above;
- (b) where the private entity is a private unit trust—a unit in the trust.

(2) Property is taken to be held beneficially by a private unit trust scheme if it is held by the trustees of the scheme in trust for the unitholders.

(3) If an interest that is to be valued for the purposes of this Division is the potential interest of an object of a discretionary trust, the interest is to be valued as if it were the greatest beneficial interest in the property subject to the trust that could be conferred under the terms of the trust.

Direct interests

71EB. (1) A person has a **direct interest** in a private entity if the person holds a share in the private entity.

(2) A direct interest is to be expressed as a proportionate interest.

(3) The **proportionate interest** is the highest of the following:

- (a) a percentage representing the proportion of votes that the person would be entitled to exercise (or control) at a general meeting of shareholders or unitholders assuming that all shareholders or unitholders exercised their voting rights;
- (b) a percentage representing the extent the person is entitled to participate in dividends or distributions of income;
- (c) a percentage representing the extent to which the person would be entitled to participate in distribution of assets on a winding up of the private entity.

(4) The proportionate interest of a person is to be determined as if any power that the person has to increase the extent of an interest (by varying the constituent documents of the private entity or in any other way) had been exercised so as to maximise the relevant interest in the private entity.

Related entities

71EC. (1) Two private entities are **related entities** if—

- (a) one has a direct interest in the other; or
- (b) a series of such relationships can be traced between them through another or other related entities (**intermediate entities**).

(2) If a private entity is related to another private entity by a relationship traced through an intermediate entity or intermediate entities, the private entity's proportionate interest in the other is calculated by multiplying the relevant fractions together and expressing the result as a percentage.

Example—

Entity A (a private company) holds a 75% proportionate interest in entity B (a private unit trust scheme) which in turn holds a 50% proportionate interest in entity C (a private company). In this case, the proportionate interest of entity A in entity C (insofar as it is traced through entity B) is 37.5%.

Indirect interests

71ED. (1) If a person has a direct interest in a private entity (entity A) which is related to another private entity (entity B), the person has an **indirect interest** in entity B.

(2) An indirect interest is to be expressed as a proportionate interest.

(3) The proportionate interest is calculated by multiplying together—

(a) a fraction representing the person's proportionate interest in entity A; and

(b) a fraction representing entity A's proportionate interest in entity B,

and expressing the result as a percentage.

Example—

X holds a proportionate interest of 33¹/₃% in entity A (a private company) which in turn holds a 75% proportionate interest in entity B (a private unit trust scheme) which in turn holds a 50% proportionate interest in entity C (a private company). In this case X's indirect interest in entity C is to be expressed as a proportionate interest of 12.5%

Notional interests

71EE. (1) If a private entity owns a gaming machine business or an interest in a gaming machine business, a person who holds a direct or indirect interest in the private entity is taken to have a notional interest in the gaming machine business.

(2) The value of the notional interest is calculated as follows:

$$V = p \times v_1$$

where—

p is a fraction representing the person's proportionate interest in the private entity;

v₁ is the value of the gaming machine business or the interest in the gaming machine business (as the case requires).

Application of this Division

71EF. (1) This Division applies to the following transactions—

(a) the transfer of an interest in a gaming machine business; or

(b) the transfer of a notional interest in a gaming machine business.

(2) A transfer includes any transaction as a result of which the amount or value of the interest or notional interest of a person (the transferor) in a gaming machine business is diminished or extinguished and another person (the transferee) gains an interest or notional interest in the gaming machine business or the transferee's interest or notional interest increases in amount or value.

Example—

Suppose that a gaming machine business is operated by a private entity. The shares of a particular person in the private entity are redeemed or cancelled. This transaction is to be regarded as a transfer of the shareholder's notional interest to the remaining shareholders because their respective notional interests are increased by the value of the notional interest that has been extinguished by the redemption or cancellation.

**Stamp Duties (Gaming Machine Surcharge)
Amendment Act 2002**

No. 39 of 2002

- (3) However, a transfer does not include—
- (a) a transaction by way of mortgage; or
 - (b) a transaction between members of the same family group by way of gift; or
 - (c) a transaction between members of the same family group for which there is no consideration of a commercial nature.

Imposition of surcharge

71EG. (1) A gaming machine surcharge is imposed on a transaction to which this Division applies.

(2) The surcharge is in addition to any other duty payable under this Act in respect of the transaction.

(3) The surcharge is calculated as follows:

$$A = p \times 0.05 \times \text{NGR}$$

where—

A is the amount of the surcharge

p is —

- (a) if the whole of the gaming machine business is transferred—1;
- (b) in any other case—a fraction representing the relationship between the value of the interest or notional interest transferred and the value of the gaming machine business

NGR is the net gambling revenue derived from the business for the last 12 complete calendar months before the date of the transaction or, if the business was not carried on during that period or for the whole of that period, an amount determined by the Liquor and Gambling Commissioner to be reasonable having regard to net gambling revenue derived during that period from similar businesses.

Exempt transactions

71EH. (1) A transaction is exempt from the surcharge if—

- (a) no liability to duty is imposed (apart from this Division) in respect of the transaction (or an instrument by which it is effected); or
- (b) the transaction is effected by a conveyance that is exempt from *ad valorem* duty under this Act.

(2) The regulations may exempt transactions of a specified class from the surcharge.

Notice of transaction to which this Division applies

71EI. (1) If a transaction to which this Division applies occurs, the parties to the transaction must within 2 months after the date of the transaction—

- (a) lodge a return with the Commissioner; and
- (b) pay the relevant amount of the surcharge.

Maximum penalty: \$10 000.

(2) The return must be in a form approved by the Commissioner and contain the following information—

- (a) the names and addresses of the parties to the transaction; and
- (b) the date of the transaction; and
- (c) particulars of the transaction and the interest or notional interest transferred as a result of the transaction; and
- (d) sufficient details to enable the calculation of the fraction representing the relationship between the value of the interest or notional interest transferred and the value of the gaming machine business; and
- (e) details of the net gambling revenue for the last 12 calendar months before the date of the transaction; and
- (f) other information required by the Commissioner.

Recovery of duty

71EJ. (1) The Commissioner may recover a surcharge payable on a transaction to which this Division applies as a debt—

- (a) from a party to the transaction; or
- (b) if the relevant gaming machine business is owned by a private entity—from the private entity.

(2) If the Commissioner recovers the surcharge from a private entity, the private entity may recover the relevant amount from the parties to the transaction.

Application of amendments

4. The amendments made by this Act do not apply to a transaction entered into before the commencement of this Act.