

STAMP DUTIES (FURTHER AMENDMENT) BILL, 1984

EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to remove, on and from 1st January, 1985, the duty that would otherwise be chargeable under the Stamp Duties Act, 1920, on the issue or transfer of mortgage-backed securities, not comprising declarations of trust, and certain related instruments and the transfer of corporate debt securities.

The Bill contains definitions of "mortgage-backed security" (Schedule 1 (3)—proposed section 84FA (1)) and "corporate debt security" (Schedule 1 (2) (a)).

The Bill provides for the payment of a fixed amount of duty of \$200 on a declaration of trust relating to a mortgage-backed security.

The Bill also contains other provisions of a minor, consequential or ancillary nature.

STAMP DUTIES (FURTHER AMENDMENT) BILL, 1984

No. , 1984.

A BILL FOR

An Act to amend the Stamp Duties Act, 1920, to remove certain duties chargeable in respect of mortgage-backed securities and certain related instruments and corporate debt securities.

Stamp Duties (Further Amendment) 1984

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

5 Short title.

1. This Act may be cited as the "Stamp Duties (Further Amendment) Act, 1984".

Commencement.

2. (1) Sections 1 and 2 shall commence on the date of assent to this
10 Act.

(2) Except as provided by subsection (1), this Act shall commence on 1st January, 1985.

Amendment of Act No. 47, 1920.

3. The Stamp Duties Act, 1920, is amended in the manner set forth in
15 Schedule 1.

Stamp Duties (Further Amendment) 1984

SCHEDULE 1.

(Sec. 3.)

AMENDMENTS TO THE STAMP DUTIES ACT, 1920.

(1) Section 1—

5 Omit the section, insert instead:—

Short title.

1. This Act may be cited as the “Stamp Duties Act, 1920”.

(2) (a) Section 3 (1), definition of “Corporate debt security”—

After the definition of “Commissioner”, insert:—

10 “Corporate debt security” means any debenture, debenture
 stock, bond or note or other security of a corporation,
 company or society, or any right thereto, whether
 constituting a charge on the assets of the corporation,
 company or society or not, and includes any property
 15 of a class or description of property prescribed to be
 a corporate debt security for the purposes of this
 definition, but does not include any property of a class
 or description of property prescribed not to be a
 corporate debt security for the purposes of this definition.

20 (b) Section 3 (1), definition of “Marketable security”—

(i) From paragraph (a), omit “and”.

(ii) Omit paragraph (b), insert instead:—

(b) any debenture, debenture stock, bond or note or
 other security of a Government, or any right
 25 thereto, whether constituting a charge on the
 assets of the Government or not;

(b1) any corporate debt security; and

(c) Section 3 (2), definition of “Share”—

30 Omit “debenture, unsecured note or rights thereto issued by any
 company, corporation or society”, insert instead “a corporate
 debt security”.

Stamp Duties (Further Amendment) 1984

SCHEDULE 1—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920—*continued.*

(3) Part III, Division 21A—

After Division 21, insert:—

DIVISION 21A.—*Mortgage-backed securities.*

Charging of duty on issue, etc., of mortgage-backed securities.

84FA. (1) In this section—

“mortgage” means a mortgage of any estate or interest in land, including a leasehold estate or interest in land;

“mortgage-backed security” means—

(a) an instrument which entitles the holder of or beneficial owner under the instrument to the whole or any part of—

(i) the rights or entitlements of a mortgagee and any other rights or entitlements in respect of a mortgage or any money payable by the mortgagor under the mortgage (whether the money is payable to the holder of or beneficial owner under the instrument on the same terms and conditions as under the mortgage or not); or

(ii) the rights or entitlements of a mortgagee and any other rights or entitlements in respect of a pool of mortgages or any money payable by mortgagors under those mortgages (whether the money is payable to the holder of or beneficial owner under the instrument on the same terms and conditions as under the mortgages or not),

and which may, in addition, entitle the holder or beneficial owner to a transfer or assignment of the mortgage or mortgages;

Stamp Duties (Further Amendment) 1984

SCHEDULE 1—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920—*continued.*

- 5 (b) a corporate debt security the payments under which
by the corporation, company or society which issues
or makes the instrument are derived substantially or,
where the regulations prescribe the extent, to the
prescribed extent, from the income or receipts of a
pool of mortgages, all of the mortgages in which are
residential mortgages and all of the money in which,
10 being money which has been paid pursuant to
mortgages, has been paid pursuant to residential
mortgages;
- (c) an instrument of a class or description of instruments
prescribed to be a mortgage-backed security for the
15 purposes of this definition; or
- (d) an instrument which creates an interest in or charge
over an instrument to which paragraph (a), (b) or
(c) applies,

but does not include an instrument comprising—

- 20 (e) a mortgage;
- (f) the transfer of a mortgage;
- (g) a declaration of trust; or
- (h) an instrument of a class or description of instruments
prescribed not to be a mortgage-backed security for
25 the purposes of this definition;

“pool of mortgages” means a pool or collection of assets—

- (a) which is comprised solely of mortgages; or
- (b) which is comprised substantially or, where the regula-
tions prescribe the extent, to the prescribed extent, of
30 mortgages or of money paid pursuant to mortgages
(whether or not that money has been invested in the

Stamp Duties (Further Amendment) 1984

SCHEDULE 1—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920—*continued.*

assets specified in subparagraph (ii), (iii) or (iv)), or both, but which may also contain any one or more of the following:—

- (i) cash;
- (ii) bonds, debentures, stock or Treasury Bills of the Commonwealth of Australia or the Government of New South Wales or the Government or Administration of any other State or any Territory of the Commonwealth;
- (iii) debentures or stock of any public statutory body constituted under the law of the Commonwealth of Australia or of New South Wales or of any other State or any Territory of the Commonwealth;
- (iv) assets of a class or description of assets prescribed for the purposes of this subparagraph;

“residential mortgage” means—

- (a) a mortgage, the amount secured by which is or is to be applied for—
 - (i) the purchase of land, whether there are improvements on the land or not, which is to be used solely or predominantly for residential purposes; or
 - (ii) the extension or improvement of any residential accommodation on land; or
- (b) a mortgage of a class or description of mortgages prescribed for the purposes of this definition.

(2) Notwithstanding any other provision of this Act, duty (other than duty payable in respect of a receipts return within the meaning of section 98 (1) or a short term dealers return within the meaning of that subsection or under Division 29) shall not be chargeable in respect of—

- (a) the issue or making of a mortgage-backed security;

Stamp Duties (Further Amendment) 1984

SCHEDULE 1—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920—*continued.*

- (b) the transfer or assignment of or other dealing in a mortgage-backed security; or
- 5 (c) the discharge, cancellation or termination of a mortgage-backed security,
- where the issue, making, transfer, assignment, dealing in, discharge, cancellation or termination, as the case may require, occurs on or after 1st January, 1985.
- 10 (4) Section 97 (1)—
After “transfer” where firstly occurring, insert “, liable to duty,”.
- (5) Section 97AB (2A)—
After section 97AB (2), insert:—
- 15 (2A) No stamp duty shall be payable in accordance with the provisions of subsection (1A) in respect of any sale or purchase of a corporate debt security, where the sale or purchase occurs on or after 1st January, 1985.
- (6) Section 97AE—
After “mortgage”, insert “or any interest in a mortgage”.
- 20 (7) (a) Second Schedule—
After paragraph (2) (b) appearing under the heading “DECLARATION OF TRUST”, insert:—
- | | | |
|--|---------------|---|
| <p>25 (c) Any instrument declaring that any property vested or to be vested in the person executing the instrument, or declaring that any property not identified therein and to be vested in the person executing the instrument, for the purpose of issuing or making a mortgage-backed security within the meaning of section 84FA (1), shall be held in trust for the person or persons mentioned therein.</p> <p>30</p> <p>35</p> | <p>200.00</p> | <p>The person declaring the trust or the person directing the declaration of the trust.</p> |
|--|---------------|---|

Stamp Duties (Further Amendment) 1984

SCHEDULE 1—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920—*continued.*

(b) Second Schedule—

5 In paragraph (a) of the *Exemptions* appearing under the heading "TRANSFER OF SHARES", after "New South Wales" where firstly occurring, insert "or the Government or Administration of any other State or any Territory of the Commonwealth".

(c) Second Schedule—

10 After paragraph (b) of the *Exemptions* appearing under the heading "TRANSFER OF SHARES", insert:—

(c) Any transfer of the whole or any part of a corporate debt security or any interest in a corporate debt security.

15 (d) Any transfer of an interest in or charge over any bonds, debentures, stock or Treasury Bills of the Commonwealth of Australia or the Government of New South Wales or the Government or Administration of any other State or any Territory of the Commonwealth or any debentures or stock of any public statutory body constituted
20 under the law of the Commonwealth or of New South Wales or of any other State or any Territory of the Commonwealth.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1984



STAMP DUTIES (FURTHER AMENDMENT) ACT, 1984, No. 171

New South Wales



ANNO TRICESIMO TERTIO

ELIZABETHÆ II REGINÆ



Act No. 171, 1984.

An Act to amend the Stamp Duties Act, 1920, to remove certain duties chargeable in respect of mortgage-backed securities and certain related instruments and corporate debt securities. [Assented to, 14th December, 1984.]

Stamp Duties (Further Amendment) 1984

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title.

1. This Act may be cited as the "Stamp Duties (Further Amendment) Act, 1984".

Commencement.

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on 1st January, 1985.

Amendment of Act No. 47, 1920.

3. The Stamp Duties Act, 1920, is amended in the manner set forth in Schedule 1.

Stamp Duties (Further Amendment) 1984

SCHEDULE 1.

(Sec. 3.)

AMENDMENTS TO THE STAMP DUTIES ACT, 1920.

(1) Section 1—

Omit the section, insert instead:—

Short title.

1. This Act may be cited as the “Stamp Duties Act, 1920”.

(2) (a) Section 3 (1), definition of “Corporate debt security”—

After the definition of “Commissioner”, insert:—

“Corporate debt security” means any debenture, debenture stock, bond or note or other security of a corporation, company or society, or any right thereto, whether constituting a charge on the assets of the corporation, company or society or not, and includes any property of a class or description of property prescribed to be a corporate debt security for the purposes of this definition, but does not include any property of a class or description of property prescribed not to be a corporate debt security for the purposes of this definition.

(b) Section 3 (1), definition of “Marketable security”—

(i) From paragraph (a), omit “and”.

(ii) Omit paragraph (b), insert instead:—

(b) any debenture, debenture stock, bond or note or other security of a Government, or any right thereto, whether constituting a charge on the assets of the Government or not;

(b1) any corporate debt security; and

(c) Section 3 (2), definition of “Share”—

Omit “debenture, unsecured note or rights thereto issued by any company, corporation or society”, insert instead “a corporate debt security”.

Stamp Duties (Further Amendment) 1984

SCHEDULE 1—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920—*continued.*

(3) Part III, Division 21A—

After Division 21, insert:—

DIVISION 21A.—*Mortgage-backed securities.*

Charging of duty on issue, etc., of mortgage-backed securities.

84FA. (1) In this section—

“mortgage” means a mortgage of any estate or interest in land, including a leasehold estate or interest in land;

“mortgage-backed security” means—

- (a) an instrument which entitles the holder of or beneficial owner under the instrument to the whole or any part of—
 - (i) the rights or entitlements of a mortgagee and any other rights or entitlements in respect of a mortgage or any money payable by the mortgagor under the mortgage (whether the money is payable to the holder of or beneficial owner under the instrument on the same terms and conditions as under the mortgage or not); or
 - (ii) the rights or entitlements of a mortgagee and any other rights or entitlements in respect of a pool of mortgages or any money payable by mortgagors under those mortgages (whether the money is payable to the holder of or beneficial owner under the instrument on the same terms and conditions as under the mortgages or not),

and which may, in addition, entitle the holder or beneficial owner to a transfer or assignment of the mortgage or mortgages;

Stamp Duties (Further Amendment) 1984

SCHEDULE 1—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920—*continued.*

- (b) a corporate debt security the payments under which by the corporation, company or society which issues or makes the instrument are derived substantially or, where the regulations prescribe the extent, to the prescribed extent, from the income or receipts of a pool of mortgages, all of the mortgages in which are residential mortgages and all of the money in which, being money which has been paid pursuant to mortgages, has been paid pursuant to residential mortgages;
- (c) an instrument of a class or description of instruments prescribed to be a mortgage-backed security for the purposes of this definition; or
- (d) an instrument which creates an interest in or charge over an instrument to which paragraph (a), (b) or (c) applies,

but does not include an instrument comprising—

- (e) a mortgage;
- (f) the transfer of a mortgage;
- (g) a declaration of trust; or
- (h) an instrument of a class or description of instruments prescribed not to be a mortgage-backed security for the purposes of this definition;

“pool of mortgages” means a pool or collection of assets—

- (a) which is comprised solely of mortgages; or
- (b) which is comprised substantially or, where the regulations prescribe the extent, to the prescribed extent, of mortgages or of money paid pursuant to mortgages (whether or not that money has been invested in the

Stamp Duties (Further Amendment) 1984

SCHEDULE 1—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920—*continued.*

assets specified in subparagraph (ii), (iii) or (iv)), or both, but which may also contain any one or more of the following:—

- (i) cash;
- (ii) bonds, debentures, stock or Treasury Bills of the Commonwealth of Australia or the Government of New South Wales or the Government or Administration of any other State or any Territory of the Commonwealth;
- (iii) debentures or stock of any public statutory body constituted under the law of the Commonwealth of Australia or of New South Wales or of any other State or any Territory of the Commonwealth;
- (iv) assets of a class or description of assets prescribed for the purposes of this subparagraph;

“residential mortgage” means—

- (a) a mortgage, the amount secured by which is or is to be applied for—
 - (i) the purchase of land, whether there are improvements on the land or not, which is to be used solely or predominantly for residential purposes; or
 - (ii) the extension or improvement of any residential accommodation on land; or
- (b) a mortgage of a class or description of mortgages prescribed for the purposes of this definition.

(2) Notwithstanding any other provision of this Act, duty (other than duty payable in respect of a receipts return within the meaning of section 98 (1) or a short term dealers return within the meaning of that subsection or under Division 29) shall not be chargeable in respect of—

- (a) the issue or making of a mortgage-backed security;

Stamp Duties (Further Amendment) 1984

SCHEDULE 1—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920—*continued.*

(b) the transfer or assignment of or other dealing in a mortgage-backed security; or

(c) the discharge, cancellation or termination of a mortgage-backed security,

where the issue, making, transfer, assignment, dealing in, discharge, cancellation or termination, as the case may require, occurs on or after 1st January, 1985.

(4) Section 97 (1)—

After "transfer" where firstly occurring, insert ", liable to duty,".

(5) Section 97AB (2A)—

After section 97AB (2), insert:—

(2A) No stamp duty shall be payable in accordance with the provisions of subsection (1A) in respect of any sale or purchase of a corporate debt security, where the sale or purchase occurs on or after 1st January, 1985.

(6) Section 97AE—

After "mortgage", insert "or any interest in a mortgage".

(7) (a) Second Schedule—

After paragraph (2) (b) appearing under the heading "DECLARATION OF TRUST", insert:—

| | | |
|--|---------------|---|
| <p>(c) Any instrument declaring that any property vested or to be vested in the person executing the instrument, or declaring that any property not identified therein and to be vested in the person executing the instrument, for the purpose of issuing or making a mortgage-backed security within the meaning of section 84_{FA} (1), shall be held in trust for the person or persons mentioned therein.</p> | <p>200.00</p> | <p>The person declaring the trust or the person directing the declaration of the trust.</p> |
|--|---------------|---|

Stamp Duties (Further Amendment) 1984

SCHEDULE 1—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920—*continued.*

(b) Second Schedule—

In paragraph (a) of the *Exemptions* appearing under the heading "TRANSFER OF SHARES", after "New South Wales" where firstly occurring, insert "or the Government or Administration of any other State or any Territory of the Commonwealth".

(c) Second Schedule—

After paragraph (b) of the *Exemptions* appearing under the heading "TRANSFER OF SHARES", insert:—

- (c) Any transfer of the whole or any part of a corporate debt security or any interest in a corporate debt security.
- (d) Any transfer of an interest in or charge over any bonds, debentures, stock or Treasury Bills of the Commonwealth of Australia or the Government of New South Wales or the Government or Administration of any other State or any Territory of the Commonwealth or any debentures or stock of any public statutory body constituted under the law of the Commonwealth or of New South Wales or of any other State or any Territory of the Commonwealth.

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

J. A. ROWLAND,
Governor.

*Government House,
Sydney, 14th December, 1984.*