

75HA. Subsequent liability for duty in certain circumstances

- (1) In this section —
 - “**current exempted property**” means, when a taxable event occurs in relation to a discretionary trust, that part of —
 - (a) a farming property;
 - (b) an interest in a farming partnership; or
 - (c) a share in a farming company,
as the case requires, conveyed by an instrument of conveyance the subject of a farming exemption that is, at the date of the taxable event, vested in the discretionary trustee as trustee of the discretionary trust;
 - “**entitled share**”, in relation to a farming company, means a share that would entitle the holder of that share, if the property of the farming company were to be distributed after the share was acquired (on the basis of a winding up) to participate (otherwise than as a creditor or other person to whom the farming company is liable) in the distribution of the property of the farming company;
 - “**farming exemption**” means an exemption or partial exemption granted by the Commissioner under this Part;
 - “**relevant proportion**” means the proportion that the shares in a farming company that are current exempted property bear to the total number of entitled shares in the farming company;
 - “**the transferor**” has the meaning given in section 75E(1).
- (2) For the purposes of this section a taxable event occurs in relation to a discretionary trust when —
 - (a) a person who is not a family member of the relevant transferor —
 - (i) becomes entitled to a share or interest in the trust property of the discretionary trust, whether that share or interest is vested or contingent; or
 - (ii) otherwise benefits from the discretionary trust;
 - or
 - (b) the relevant transferor gains control of the discretionary trust.
- (3) Where a farming exemption has been granted in relation to an instrument of conveyance referred to in section 75E(1)(e) and during the life of the transferor a taxable event occurs, the discretionary trustee of the relevant discretionary trust shall, unless subsection (4) applies, within a period of one month after the date of the taxable event, prepare a dutiable statement in respect of the taxable event.
Penalty: \$20 000.
- (3a) A dutiable statement is to be in an approved form.
- (4) A discretionary trustee is not required to prepare a dutiable statement if —
 - (a) a dutiable statement in respect of the farming exemption has previously been prepared under this section and lodged with the Commissioner;
 - (b) there is no current exempted property.

- (5) If a dutiable statement is prepared in respect of a farming exemption for an instrument of conveyance referred to in section 75E(1)(e)(i) or (ii), the dutiable statement is taken to be an instrument operating as a voluntary disposition under section 75(1) of the current exempted property and is chargeable with duty accordingly.
- (6) If —
- (a) a dutiable statement is required to be prepared under this section in respect of a farming exemption for an instrument of conveyance referred to in section 75E(1)(e)(iii);
 - (b) a section 76AG statement is required to be prepared in respect of the acquisition that is the subject of the instrument of conveyance; and
 - (c) at the date of the taxable event the relevant farming company is beneficially entitled to all or part of the farming land to which the section 76AG statement relates,

then the dutiable statement prepared under this section is taken to be an instrument operating as a voluntary disposition under section 75(1) of the relevant proportion of the farming land or of that part of the farming land and is chargeable with duty accordingly.

- (7) If —
- (a) a dutiable statement is required to be prepared under this section in respect of a farming exemption for an instrument of conveyance referred to in section 75E(1)(e)(iii); and
 - (b) either —
 - (i) a section 76AG statement was not required to be prepared in respect of the acquisition that is the subject of the instrument of conveyance; or
 - (ii) a section 76AG statement was required to be prepared, but at the date of the taxable event the relevant farming company is not beneficially entitled to any part of the farming land to which the section 76AG statement relates,

then the dutiable statement prepared under this section is taken to be an instrument operating as a voluntary disposition under section 75(1) of the current exempted property and is chargeable with duty accordingly.

- (8) The amount of duty payable in respect of a dutiable statement prepared in respect of a farming exemption for an instrument of conveyance referred to in section 75E(1)(e)(ii) or (iii) is reduced (up to the amount of duty payable in respect of the dutiable statement) by the amount of any duty previously paid on the instrument of conveyance.

[Section 75HA inserted by No. 20 of 1996 s. 34; amended by No. 60 of 2000 s. 20(3), (4) and (5); No. 2 of 2003 s. 73; No. 66 of 2003 s. 107(4).]