

76. Interpretation in Part III BA

(1) In this Part, unless the contrary intention appears —

“acquire”, in relation to an interest in a WA company or a corporation, means to acquire beneficially in any manner or by any means and includes the increasing of an existing interest, but does not include an acquisition —

- (a) that is chargeable with duty under section 73E(4);
- (b) that occurs solely as the result of —
 - (i) the appointment of a receiver or trustee in bankruptcy;
 - (ii) the appointment of a liquidator;
 - (iii) the making of a compromise or arrangement under Part 5.1 of the Corporations Act —
 - (I) which has been made with the corporation’s creditors or a class of them;
 - (II) which has been approved by the court; and
 - [(III) deleted]
 - (IV) in respect of which the Commissioner is satisfied that it is not an arrangement having as its purpose, or one of its purposes, the defeat of the object of this Part;

or

- (iv) the distribution of the estate of a deceased person, including an acquisition that occurs as the result of —
 - (I) a will, a codicil or an order of a court varying or modifying the provisions of a will or codicil; or
 - (II) an intestacy or an order of a court varying or modifying the application, in relation to the estate of a deceased person, of the provisions of a law relating to the distribution of the assets of persons who die intestate;

or

- (c) that is effected or evidenced by an instrument on which duty is chargeable under item 6 of the Second Schedule;

“chattels” means goods, wares or merchandise other than —

- (a) goods, wares or merchandise referred to in item 2(7), (7a) or (7b) of the Third Schedule;
- (b) a vehicle the transfer of the licence of which is exempt under item 9 of the Third Schedule; or
- (c) goods, wares or merchandise used solely or principally in connection with the business of primary production (as defined in section 75D(1)),

and includes an estate or interest in them;

“discretionary trust” means —

- (a) a trust under which the vesting of the whole or any part of the capital of the trust property, or the whole or any part of the income from that capital, or both —
 - (i) is required to be determined by a person either in respect of the identity of the beneficiaries, or the quantum of interest to be taken, or both; or
 - (ii) will occur in the event that a discretion conferred under the trust is not exercised;
- or
- (b) a trust which is, by regulation, declared to be a discretionary trust for the purposes of this Part,

but does not include —

- (c) a trust that is solely a charitable trust; or
- (d) a trust that is, by regulation, declared not to be a discretionary trust for the purposes of this Part;

“distributable property” has the meaning given by subsection (4a);

“entitled” means beneficially entitled, and **“entitlement”** has a corresponding meaning;

“land” includes a mining tenement, and also includes —

- (a) any estate or interest in land; and
- (b) anything fixed to the land including anything that is, or purports to be, the subject of ownership separate from the ownership of the land;

“minerals” means naturally occurring substances obtained or obtainable from the earth;

“mining tenement” means —

- (a) a mining tenement held under the *Mining Act 1978* being a mining tenement within the meaning of that Act or the *Mining Act 1904*³;
- (b) a mining tenement or right of occupancy continued in force by section 5 of the *Mining Act 1978*; and
- (c) a tenement, right or interest that is —
 - (i) similar to a tenement or right referred to in paragraph (a) or (b); and
 - (ii) held under the law of another State, a Territory, the Commonwealth or another jurisdiction;

“primary products” has a meaning corresponding with the definition of “primary production” in section 75D(1) except that in relation to plants the term extends to plants that have not been grown or reared and to parts of them and their produce;

“rules” of a corporation means one or more of the following —

- (a) the corporation’s constitution;
- (b) replaceable rules applying to the corporation under the Corporations Act;
- (c) internal management rules applying to the corporation under the Corporations Act;

“**share**” means a share or stock of a corporation and includes an interest in a share, and “**shareholding**” has a corresponding meaning;

“**trust**” includes a unit trust scheme, but, except in section 76A, does not include a unit trust scheme referred to in paragraph (c) of the definition of “marketable security” in section 4(1).

- (1a) For the purpose of this Division a reference to the acquisition of an interest includes a reference to the acquisition of a majority interest or a further interest within the meaning of section 76AK or 76AR or the acquisition of a controlling interest or an additional interest within the meaning of section 76ATD or 76ATK.
- (1b) In the definition of “acquire” in subsection (1) a reference to the increase of an interest includes a reference to an increase that occurs by the cancellation of any shares or the variation of the rights of any shares.
- (2) For the purposes of sections 76AI(3)(c), 76AP(3)(c), 76ATB(4)(d) and 76ATI(4)(d) the following —
 - (a) are associated persons in relation to a corporation —
 - (i) a related corporation;
 - (ii) a related person within the meaning in subsection (3)(a) to (g);
 - (iii) a director or secretary of the corporation or a related corporation;
 - (iv) a person who is entitled to any shareholding in the corporation or a related corporation;
 - (v) a relative of any individual referred to in subparagraph (ii), (iii), or (iv);
 - (vi) a corporation in which the corporation or any person referred to in subparagraph (iii), (iv) or (v) is entitled to any shareholding;
 - (b) are relatives of an individual for the purposes of paragraph (a)(v) —
 - (i) a child or remoter lineal descendant of the individual or his spouse or de facto partner;
 - (ii) a parent or remoter lineal ancestor of the individual or his spouse or de facto partner;
 - (iii) a brother or a sister of the individual or his spouse or de facto partner;
 - (iv) the spouse or de facto partner of the individual;
 - (v) the spouse or de facto partner of an individual referred to in subparagraph (i), (ii), or (iii).
- (3) For the purposes of this Part the following persons are related —
 - (a) individuals who are spouses, or de facto partners, of each other or between whom the relationship is that of parent and child;
 - (b) related corporations;
 - (c) a trustee and another trustee if there is any beneficiary common to the trusts of which they are trustees, whether the beneficiary has a vested share or is contingently entitled or may benefit from a discretionary trust;

- (d) an individual and a corporation if the individual is a majority shareholder, director or secretary of the corporation or a related corporation;
 - (e) an individual and a trustee if the individual is a beneficiary under the trust of which the trustee is a trustee, whether the person has a vested share or is contingently entitled or may benefit from a discretionary trust;
 - (f) a corporation and a trustee if —
 - (i) the corporation, a majority shareholder, director or secretary of the corporation is a beneficiary of the trust of which the trustee is a trustee; or
 - (ii) a related corporation to the corporation is a beneficiary of the trust of which the trustee is a trustee,

whether any such beneficiary has a vested share or is contingently entitled or may benefit from a discretionary trust;
 - (g) persons who acquire interests in a corporation by virtue of acquisitions that together form or arise from substantially one transaction or one series of transactions;
 - (h) persons who acquire interests in a corporation by virtue of acquisitions that arise from those persons acting in concert with each other.
- (4) For the purposes of subsections (2) and (3) —
- (a) an illegitimate person shall be treated as the legitimate child of that person's parents;
 - (b) it is irrelevant whether a relationship is of the whole or half-blood, or whether it is a natural relationship or a relationship established by a written law; and
 - (c) a majority shareholder in relation to a corporation is a person who would have a substantial holding in the corporation under the definition of "substantial holding" in section 9 of the Corporations Act even if the reference in that definition to 5% were a reference to 50%.
- (4a) For the purposes of this Part, a reference to entitlement to property of a corporation or trust, or to participate in a distribution of property of a corporation or trust, is a reference to entitlement otherwise than as a creditor or other person to whom the corporation or trust is liable, and a reference to distributable property is a reference to property distributable to persons otherwise than as creditors or other persons to whom the corporation or trust is liable.
- (5) For the purposes of this Part, the entitlement that a person would have at a particular time to participate in the distribution of the property of a corporation on a winding up of the corporation is an entitlement to an amount calculated —
- (a) as if the winding up were carried out at that time in accordance with the rules of the corporation and any law relevant to the winding up, as the rules and law then exist; or
 - (b) as if the person had, immediately prior to the winding up, exercised all powers and discretions exercisable by the person by reason of having acquired an interest in the corporation —

- (i) to effect or compel an alteration to the rules;
 - (ii) to vary the rights conferred by shares in the corporation; or
 - (iii) to effect or compel the substitution or replacement of shares in the corporation with other shares in the corporation,
- in such manner as to maximise that amount,

whichever of the amounts under paragraph (a) or (b) results in the greater amount, unless the Commissioner determines, after consideration of the circumstances of the case, and where the calculation under paragraph (b) results in the greater amount, that the amount of the entitlement should be calculated under paragraph (a).

- (5a) If the extent of a person's entitlement to participate in a distribution of the property of a corporation is unascertainable or uncertain, that entitlement shall be determined for the purposes of this Part as being the greatest entitlement that the person could derive from the distribution.
- (6) For the purposes of this Part, the entitlement of a person on the distribution of a trust shall be determined as the greatest entitlement that the person could derive at any time from the trust whether by the fulfilment of any condition, the outcome of any contingency or the exercise of any power or discretion or otherwise, and in particular a person that may benefit from, or the trust property of another trust that may comprise or be augmented by a benefit from, a discretionary trust shall be deemed to be entitled to or comprise or be augmented by —
 - (a) the property subject to the discretionary trust unless the Commissioner determines otherwise; or
 - (b) such part of that property as the Commissioner determines.
- (7) For the purposes of sections 76AI(4), 76AP(4), 76AR(4), 76ATB(6), 76ATI(6) and 76ATK(4) reference to a trust includes any other trust if the property of the first-mentioned trust —
 - (a) includes a share or interest, whether vested or contingent, or direct or indirect, in that other trust; or
 - (b) in the case of a discretionary trust, may comprise or be augmented by a benefit from that other trust.

[Section 76 inserted by No. 33 of 1987 s. 22; amended by No. 39 of 1994 s. 21; No. 57 of 1996 s. 7; No. 13 of 1997 s. 32 and 42; No. 22 of 1998 s. 36; No. 60 of 2000 s. 4; No. 10 of 2001 s. 174; No. 2 of 2003 s. 85; No. 28 of 2003 s. 192; No. 66 of 2003 s. 57; No. 11 of 2004 s. 17.]