

76AT. Preparation of dutiable statement

- (1) Where by a relevant acquisition a person acquires a controlling interest in —
 - (a) a listed land-holder WA company; or
 - (b) a WA company that would be a listed land-holder WA company if the reference to the value of land in section 76ATB(2)(b) were a reference to the value of land, goods, wares and merchandise,the person shall, within 2 months after the acquisition, lodge a statement with the Commissioner in respect of that acquisition.
- (2) Subject to subsections (4)(d) and (5)(c), where by a relevant acquisition a person acquires an additional interest in a WA company the person shall, within 2 months after the acquisition, lodge a statement with the Commissioner in respect of that acquisition.
- (3) Within 2 months after a relevant acquisition referred to in subsection (2) (“**acquisition A**”) the person referred to in subsection (2) may apply to the Commissioner in an approved form for approval to lodge periodical statements for the purposes of this section in respect of periods approved by the Commissioner (each of which is referred to in this Division as a “**relevant period**”).
- (4) If the Commissioner approves the application —
 - (a) the Commissioner is to notify the person accordingly specifying —
 - (i) the day on which each relevant period ends; and
 - (ii) any conditions to which the approval is subject;
 - (b) the first relevant period is taken to have begun on the day of acquisition A and a subsequent relevant period begins on the day after the day on which the immediately preceding relevant period ends;
 - (c) the person shall —
 - (i) within 14 days after the first relevant period ends, lodge a statement with the Commissioner in respect of acquisition A and any other relevant acquisitions by which the person acquired additional interests in the WA company during that relevant period; and
 - (ii) within 14 days after each subsequent relevant period ends, lodge a statement with the Commissioner in respect of any relevant acquisitions by which the person acquired additional interests in the WA company during that relevant period;and
 - (d) subsection (2) does not apply to acquisition A or any other relevant acquisition referred to in paragraph (c).
- (5) If the Commissioner does not approve the application —
 - (a) the Commissioner is to notify the person accordingly giving reasons for the decision;
 - (b) the person shall, within 2 months after the notification is given, lodge statements with the Commissioner in respect of acquisition A and each other relevant acquisition (if any) by which the person acquired

an additional interest in the WA company after acquisition A and before the notification is given; and

- (c) subsection (2) does not apply to acquisition A or any other relevant acquisition referred to in paragraph (b).
- (6) If a requirement under this section arises in circumstances where a person acquires a controlling interest or an additional interest by reason of acquisitions by the person and a related person or related persons being aggregated, one of such persons shall comply with this section on behalf of all such persons by including all the acquisitions in a dutiable statement lodged under this section.
- (7) A dutiable statement must be prepared in an approved form.
- (8) A dutiable statement under subsection (1) shall include the following information —
- (a) the name and address of the person who has acquired the controlling interest and of any related person referred to in subsection (6);
 - (b) the date of the acquisition;
 - (c) particulars of the interest acquired and all interests previously acquired by the person or a related person in the WA company;
 - (d) the person's estimate of the unencumbered value of all land and chattels in Western Australia to which the WA company is entitled as at the date of the acquisition;
 - (e) particulars of any chattels, whether situated in Western Australia or not, to which the WA company was entitled in the 12 months preceding the date of the acquisition and acquired, directly or indirectly, by the person or a related person in that period;
 - (f) the person's estimate of the unencumbered value of those chattels;
 - (g) the person's estimate of the unencumbered value of the property of the WA company as at the date of the acquisition;
 - (h) if the dutiable statement is lodged because of subsection (1)(b), a notation to that effect and such information relating to the goods, wares and merchandise referred to in subsection (1)(b), and their ownership and acquisition, as the approved form requires to be provided.
- (9) A dutiable statement under subsection (2) or (5)(b) shall include the following information —
- (a) the name and address of the person who has acquired the additional interest and of any related person referred to in subsection (6);
 - (b) the date of the acquisition;
 - (c) particulars of the interest acquired and all interests previously acquired by the person or a related person in the WA company.
- (10) A dutiable statement under subsection (4)(c) in respect of a relevant period shall include the following information —
- (a) the name and address of the person who acquired the additional interest or additional interests during the relevant period and of any related person referred to in subsection (6);

- (b) in relation to each additional interest acquired during the relevant period —
 - (i) the date of the acquisition; and
 - (ii) particulars of the interest;
 - (c) particulars of all interests acquired by the person or a related person in the WA company before the relevant period.
- (11) A dutiable statement lodged under this section is taken to be an instrument evidencing the relevant acquisition or relevant acquisitions and is chargeable with duty accordingly.
- (12) If, in the case of a dutiable statement lodged because of subsection (1)(b), the Commissioner is satisfied that the entitlement to, and valuation of, the goods, wares and merchandise referred to in subsection (1)(b) were not part of an arrangement or scheme having as its purpose, or one of its purposes, the defeat of the object of this Division, the Commissioner may determine that subsection (11) does not apply to the dutiable statement.
- (13) In deciding whether or not to make a determination under subsection (12) the Commissioner may have regard to —
 - (a) the source of the goods, wares and merchandise and the source of funding for their acquisition;
 - (b) their nature and their relevance to any business carried on by the WA company or any subsidiary;
 - (c) the period for which they have been and are likely to remain the property of the WA company or any subsidiary; and
 - (d) any other matter that the Commissioner considers relevant.
- (14) A determination made under subsection (12) has effect according to its terms and the Commissioner is to give notice of it to the person who lodged the dutiable statement.
- (15) If the person who lodged the dutiable statement requests the Commissioner to give reasons why the Commissioner has not made a determination under subsection (12), the Commissioner is to give reasons to the person.
- (16) A person who fails to comply with subsection (1), (2), (4)(c) or (5)(b) commits an offence.

Penalty: \$20 000.

[Section 76AT inserted by No. 11 of 2004 s. 29.]