

75E. Application of this Part

- (1) Subject to subsections (2), (3), (4), (5) and (6), this Part applies in respect of an instrument of conveyance made by a person (“**the transferor**”), or made by a trustee on behalf of, and at the direction of, a person (“**the transferor**”) —
 - (a) of farming property to a family member of the transferor;
 - (b) of an interest in a farming partnership to a family member of the transferor;
 - [(c) deleted]*
 - (d) of —
 - (i) farming property; or
 - (ii) an interest in a farming partnership,to a trustee where after the transfer or conveyance the subject of the instrument, the beneficial owner of the trust property will be a family member of the transferor; or
 - (e) of —
 - (i) farming property; or
 - (ii) an interest in a farming partnership,
 - [(iii) deleted]*to a discretionary trustee of a discretionary trust, where —
 - (iv) all the persons who have a share or interest in the trust property, whether vested or contingent, or who may benefit from the discretionary trust are family members of the transferor; and
 - (v) the transferor does not control the discretionary trust.
- (2) This Part —
 - (a) applies if the transfer or conveyance the subject of the instrument of conveyance referred to in subsection (1) is made by a transferor to any combination of the persons referred to in that subsection; and
 - (b) does not apply to a transfer or conveyance the subject of the instrument of conveyance referred to in subsection (1) if the transferees include a person who is not one of the persons referred to in that subsection.
- (3) This Part applies only where —
 - (a) the family member, trustee or discretionary trustee to whom the farming property is conveyed or transferred intends to continue to use the farming property in the business of primary production;
 - (b) the farming partnership in which an interest is conveyed or transferred to a family member, trustee or discretionary trustee intends to continue to use the farming property in the business of primary production; or
 - (c) section 75I applies and the farming company in which an interest is conveyed or transferred to the family member, trustee or discretionary trustee intends to continue to use the farming property in the business of primary production.

- (3a) However, if —
- (a) part of the farming property consists of farming land;
 - (b) some (but not all) of the farming land is leased to another person; and
 - (c) under the lease, the lessee is using the leased land solely or principally for the purposes of silviculture or reforestation,

then this Part applies under subsection (3) as if the family member, trustee or discretionary trustee, or the farming partnership or farming company, intends to use or continue to use the leased portion of the land in the business of primary production.

- (4) In relation to an instrument of conveyance referred to in subsection (1)(a) or (b), this Part applies only where the relevant family member does not intend to hold the farming property or partnership interest, as the case requires, as agent, trustee or otherwise on behalf of any other person.
- (5) Where an exemption has been granted under this Part in relation to an instrument of conveyance of farming property or an interest in a farming partnership, to a person (or to a trustee on behalf of a person) (“**the initial instrument**”), this Part does not apply to a subsequent instrument of conveyance by that person or trustee made within 5 years of the initial instrument if the Commissioner is of the opinion that the subsequent instrument of conveyance relates to the same farming property or partnership interest which was the subject of the exemption.
- (6) Where —
- (a) an exemption has been granted under this Part in relation to an instrument of conveyance to a discretionary trustee of a discretionary trust referred to in subsection (1)(e) (“**the initial transfer**”); and
 - (b) part or all of the farming property or partnership interest the subject of that instrument is subsequently conveyed or transferred to a beneficiary of that discretionary trust and duty in accordance with item 6 of the Second Schedule is charged on the relevant conveyance or transfer,

this Part does not apply to an instrument of conveyance by that beneficiary made within 5 years of the initial transfer if the Commissioner is of the opinion that the instrument of conveyance relates to the same farming property or partnership interest that was the subject of the exemption.

[Section 75E inserted by No. 79 of 1994 s. 4(1); amended by No. 20 of 1996 s. 32; No. 2 of 2003 s. 69; No. 66 of 2003 s. 43; No. 12 of 2004 s. 28.]