Western Australia

Duties Act 2008

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Defined terms

Western Australia

Duties Act 2008

An Act dealing with the imposition of a number of kinds of duty.

Chapter 1 — Preliminary

1. Short title

This is the *Duties Act 2008* [1].

2. Commencement

This Act comes into operation as follows:

(a) sections 1 and 2 — on the day on which this Act receives the Royal Assent [1];

(b) the rest of the Act — on 1 July 2008.

3. Terms used

In this Act, unless the contrary intention appears —

chattel does not include any of the following —

(a) chattels that are stock-in-trade;

(b) chattels held for use in manufacture;

(c) chattels under manufacture;

(d) chattels held or used in connection with the business of primary production;

(e) livestock;

(f) a vehicle the transfer or grant of a licence for which is chargeable with, or exempt from, vehicle licence duty;

(g) a ship or vessel;

(h) any other chattel prescribed for the purpose of this definition;

consideration means the amount of a monetary consideration or the value of a non-monetary consideration;

corporate trustee has the meaning given in section 65;

corporation has the meaning given in the Corporations Act section 57A;

Corporations Act means the *Corporations Act 2001* (Commonwealth);

court includes a tribunal;

director has the meaning given in the Corporations Act section 9;

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 that is, by regulation, declared to be a discretionary trust for the purposes of this Act,

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 Act;

duplicate of a transaction record for a dutiable transaction means an executed instrument that wholly reproduces the transaction record;

dutiable property has the meaning given in section 15;

dutiable transaction has the meaning given in section 11;

duties Act means this Act or the Taxation Administration Act;

duty means duty under this Act;

duty endorsed has the meaning given in section 272;

entitled means —

(a) in relation to a person as the trustee of a unit trust scheme or other trust — entitled for the purposes of the scheme or trust; and

(b) otherwise — beneficially entitled;

exempt body means —

(a) the State of Western Australia; or

(b) a public authority declared to be an exempt body under section 92; or

(c) a local government, except when it acts in its capacity as the trustee of a superannuation fund;

general rate of duty means the rate set out in Schedule 2 Division 1;

GST has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Commonwealth) except that it includes notional GST of the kind for which payments may be made under the *State Entities (Payments) Act 1999* by a person that is a State entity as defined in that Act;

industrial association means any of the following —

(a) an organisation registered under the *Industrial Relations Act 1979* section 53 or 54;

(b) an association of employees, or an association of employers, registered as an organisation, or recognised, under the *Fair Work (Registered Organisations) Act 2009* (Commonwealth);

(c) an association of employees registered or recognised as a trade union (however described) under the law of another State or a Territory;

(d) an association of employers registered or recognised as such (however described) under the law of another State or a Territory;

(e) an association of employees a principal purpose of which is the protection and promotion of the employees' interests in matters concerning their employment;

land includes —

(a) any estate or interest in land other than a carbon right or a carbon covenant registered under the *Carbon Rights Act 2003*; and

(b) a mining tenement; and

(ca) an estate or interest in a mining tenement; and

(cb) anything that —

(i) under the authority (whether direct or indirect) of a mining tenement, is fixed to land that is the subject of that mining tenement; and

(ii) would be part of that land as a fixture if the mining tenement were a freehold estate in the land;

and

(c) a licence under the *Petroleum Pipelines Act 1969*; and

(da) a pipeline, as defined in the *Petroleum Pipelines Act 1969* section 4(1), constructed on land under the authority of a licence under that Act; and

(d) anything that is part of land as a fixture;

landholder duty means duty under Chapter 3;

local government means —

(a) a local government established under the *Local Government Act 1995*; or

(b) a regional local government or regional subsidiary established under the *Local Government Act 1995* Part 3 Division 4; or

(c) an association constituted under the *Local Government Act 1995* section 9.58;

lodge means lodge with the Commissioner, and if the Commissioner has established procedures for the electronic lodgment and recording of data on dutiable transactions, includes to lodge in accordance with those procedures;

majority shareholder, in relation to a corporation, means a person that would have a substantial holding in the corporation under the definition of ***substantial holding*** in the Corporations Act section 9 if the reference in that definition to 5% were a reference to 50%;

mining tenement means any of the following —

(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* [2];

(b) a mining tenement or right of occupancy continued in force by the *Mining Act 1978* section 5;

nominal duty means the amount of duty referred to in Schedule 2 Division 3;

order includes determination, judgment or decree;

partnership has the meaning given in the *Partnership Act 1895* section 7;

political party means a body or organisation, whether incorporated or unincorporated, having as one of its objects or activities the promotion of the election to the Parliament of the Commonwealth, or to a Parliament of a State or Territory, of a candidate or candidates endorsed by it or by a body or organisation of which it forms part;

prescribed means prescribed by regulation;

prescribed financial market means a financial market, as defined in the Corporations Act section 767A(1), that is prescribed for this definition;

primary production has the meaning given in section 101A;

professional association means a body or organisation, whether incorporated or unincorporated, having as one of its objects or activities the promotion of the interests of its members in any profession;

promote trade, industry or commerce includes to carry out an undertaking a purpose of which includes the promotion of, or the advocacy for, trade, industry or commerce, whether generally or in respect of any particular kind of trade, industry or commerce;

public authority means —

(a) a trading concern, instrumentality or public utility of the State; or

(b) any other person or body, whether corporate or not, who or which, under the authority of a written law, administers or carries on for the benefit of the State, a social service or public utility;

registered scheme has the meaning given in the Corporations Act section 9;

related corporation has the meaning related body corporate is given in the Corporations Act section 9;

relevant body has the meaning given in section 96A;

security interest means the estate or interest of a mortgagee, chargee or other secured creditor;

share —

(a) in Chapter 2 Part 5 Division 3 — has the meaning given in section 63; and

(b) otherwise — means a share or stock of a corporation or an interest in a share or stock of a corporation;

supply, in relation to an amount of GST, has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Commonwealth);

Taxation Administration Act means the *Taxation Administration Act 2003*;

transaction includes an event;

transaction record, in relation to a dutiable transaction, means —

(a) an instrument that effects, or evidences, the dutiable transaction; or

(b) a transfer duty statement for the dutiable transaction; or

(c) a copy or memorandum that, under the Taxation Administration Act section 20, is treated as an instrument or statement referred to in paragraph (a) or (b);

transfer duty means duty under Chapter 2;

transfer duty statement means a statement referred to in section 22(1);

vehicle licence duty means duty under Chapter 5;

wound up has the meaning given in section 7(1).

Note for this section:

Other terms are defined or explained in the Chapters in which they are used. At the end of this Act there is an alphabetical list of all terms that are defined anywhere in this Act. See also section 4(2).

[Section 3 amended by No. 17 of 2010 s. 11; No. 33 of 2011 s. 4; No. 2 of 2014 s. 49; No. 1 of 2015 s. 10; No. 8 of 2015 s. 4; No. 26 of 2016 s. 50.]

4. Relationship with *Taxation Administration Act 2003*

(1) The Taxation Administration Act provides for the administration and enforcement of this Act.

(2) If a term has a meaning in the Taxation Administration Act, it has the same meaning in this Act unless the contrary intention appears in this Act.

Note for this subsection:

Under the *Taxation Administration Act 2003* section 3(2), this Act is to be read with that Act as if they formed one Act.

(3) If this Act requires duty to be paid within a period, the duty is due for payment, for the purposes of the Taxation Administration Act, on the last day of that period.

5. GST, effect of on value or consideration

In ascertaining the value of anything or the consideration for anything, there is to be no discount for the amount of GST (if any) payable on the supply of that thing.

6. Family relationships, determining

In determining whether a person is a family member of, or related to, another person —

(a) an illegitimate person is to be treated as the legitimate child of that person's parents; and

(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.

7. References to being wound up

(1) A reference to being wound up is —

(a) in the case of a corporation — to it being wound up in accordance with its constitution (so far as it has a constitution that deals with its winding up) and in accordance with any law for the time being applicable; and

(b) in the case of a unit trust scheme — to it being terminated in accordance with the provisions of the trust deed or any other document constituting the scheme and in accordance with any law for the time being applicable.

(2) A winding up begins —

(a) in the case of a corporation — when the winding up is taken to begin under the Corporations Act; and

(b) in the case of a unit trust scheme —

(i) when any circumstance or event occurs, or any time arrives, that, because of the trust deed or other document constituting the scheme, requires the scheme to be wound up; or

(ii) when the holders of units issued under the scheme pass a resolution directing the trustee to wind up the scheme; or

(iii) when the trustee decides to wind up the scheme; or

(iv) when a court orders that the scheme be wound up,

whichever happens first.

8. Notes in text

A note included in this Act is explanatory and is not part of this Act.

Chapter 2 — Transfer duty

Part 1 — Preliminary

9. Terms used

In this Chapter, unless the contrary intention appears —

concessional rate of duty means a rate set out in Schedule 2 Division 2;

conditional agreement has the meaning given in section 87;

consideration has a meaning affected by section 30;

de facto partner of 2 years, in relation to a person, means a person who is living in a de facto relationship with the person and has lived on that basis with the person for at least 2 years;

de facto partners of 2 years means 2 de facto partners of 2 years who are living in a de facto relationship with each other;

declaration of trust means any declaration (other than by a will) that any identified property vested or to be vested in the person making the declaration is or is to be held in trust for the person or persons, or the purpose or purposes, mentioned in the declaration although the beneficial owner of the property, or the person entitled to appoint the property, may not have joined in or assented to the declaration;

disposition, in relation to a share, has the meaning given in section 63;

dutiable value has the meaning given in Part 4 Division 5;

duty means duty under this Chapter;

entity has the meaning given in section 152;

exempt transaction means a dutiable transaction on which duty is not chargeable;

exploration amount has the meaning given in section 13;

Family Court Act means the *Family Court Act 1997*;

farm-in agreement has the meaning given in section 13;

farming land conditional agreement has the meaning given in section 88;

general conditional agreement means any conditional agreement other than the following —

(a) a farming land conditional agreement;

(b) a mining tenement conditional agreement;

(c) an issue of title conditional agreement;

(d) a subdivision conditional agreement;

interest in a discretionary trust has the meaning given in section 60;

issue of title conditional agreement has the meaning given in section 90;

managed investment scheme has the meaning given in the Corporations Act section 9;

mining tenement conditional agreement has the meaning given in section 89;

new dutiable property has the meaning given in section 17;

partnership acquisition has the meaning given in section 72;

partnership interest has the meaning given in section 74;

person liable to pay duty, in respect of a dutiable transaction, has the meaning given in section 20;

right has the meaning given in section 16;

scheme property, in relation to a managed investment scheme, has the meaning given to that term in the Corporations Act in relation to a registered scheme;

simultaneous put and call option has the meaning given in section 44;

special dutiable property has the meaning given in section 18;

subdivision conditional agreement has the meaning given in section 91;

surrender includes the following —

(a) abandonment;

(b) abrogation;

(c) cancellation;

(d) extinguishment;

(e) forfeiture;

(f) redemption;

(g) relinquishment;

taker in default has the meaning given in section 54;

terminated on relevant grounds, in relation to a conditional agreement, has the meaning given in section 88A(2);

transfer includes assignment and exchange;

trust acquisition has the meaning given in section 55;

trust surrender has the meaning given in section 56;

unencumbered value has the meaning given in section 36;

Western Australian business has the meaning given in section 79;

Western Australian business asset has the meaning given in section 79.

[Section 9 amended by No. 17 of 2010 s. 4.]

Part 2 — Imposition of transfer duty

10. Transfer duty imposed

Duty is imposed on dutiable transactions.

Part 3 — Dutiable transactions and dutiable property

Division 1 — Dutiable transactions

11. Dutiable transaction

(1) Subject to subsection (2), any of the following is a ***dutiable transaction*** —

(a) a transfer of dutiable property;

(b) an agreement for the transfer of dutiable property, whether conditional or not;

(c) a declaration of trust over dutiable property;

(d) a vesting of dutiable property —

(i) by, or expressly authorised by, statute law of this or another jurisdiction, whether inside or outside Australia; or

(ii) by, or as a consequence of, a court order of this or another jurisdiction, whether inside or outside Australia;

(e) a foreclosure of a mortgage over dutiable property;

(f) an acquisition of new dutiable property, on its creation, grant or issue;

(g) a surrender of special dutiable property;

(h) a trust acquisition or trust surrender;

(i) a partnership acquisition;

(j) a farm-in agreement.

(2) The following transactions are not ***dutiable transactions*** —

(a) a transaction the subject of which is a right if no consideration is paid, or agreed to be paid, for the transaction;

(b) a transfer of, or an agreement for the transfer of, a lease if no consideration is paid, or agreed to be paid, for the transfer or agreement;

(c) a transfer of, or an agreement for the transfer of, a security interest, if the consideration for the transfer, or agreement, is equal to or greater than the market value of the security interest;

(d) a transaction the subject of which is a unit in a unit trust scheme;

(e) a transaction prescribed as an excluded transaction for the purposes of this section.

12. Vesting of property by statute law

(1) Without limiting section 11(1)(d)(i), property is vested under statute law if the law vests the property in an entity that the law states is the successor in law of, continuation of or same entity as, the entity in which the property was previously vested.

(2) However, property is not vested under statute law on the registration of a company under the Corporations Act Chapter 5B Part 5B.

(3) The merger of a corporation (***company A***) with and into another corporation (***company B***) in circumstances where neither subsection (4) nor subsection (5) applies is taken to be a vesting of the property in Western Australia of company A in company B by statute law.

(4) A merger of corporations (the ***merging corporations***) in circumstances where another corporation (***company C***) results as a consequence of the merger is taken to be a vesting of the property in Western Australia of the merging corporations in company C by statute law.

(5) A merger of corporations (the ***merging corporations***) with and into each other in circumstances where each of the merging corporations continues in existence is taken to be a vesting in the merging corporations, jointly, of 50% (in value) of the property in Western Australia of the merging corporations by statute law.

13. References to farm-in agreement

(1) A reference to a farm-in agreement is to an agreement between —

(a) an owner of a mining tenement, or a person who holds a right to exploit a mining tenement; and

(b) another person,

to the effect that, after the other person expends the exploration amount specified in the agreement —

(c) that other person will have —

(i) a right to acquire an interest, or an entitlement to an interest, in the mining tenement that is specified in the agreement; or

(ii) a right to acquire a right to exploit, or an entitlement to a right to exploit, the mining tenement that is specified in the agreement;

and

(d) the mining tenement, or the right to exploit the mining tenement, will be held with the person referred to in paragraph (a).

(2) A reference to an exploration amount in relation to a farm-in agreement means an amount to be expended, after the agreement is made, on exploration or development of the mining tenement carried out after the agreement is made.

14. Transactions as to chattels, which are dutiable

(1) Subject to subsection (2), a transaction is not a dutiable transaction if the only dutiable property the subject of the transaction is a chattel in Western Australia.

(2) A transaction referred to in subsection (1) is a dutiable transaction if, under section 37, it is aggregated with a transaction that is a dutiable transaction and the transactions are treated as a single dutiable transaction.

Division 2 — Dutiable property

15. Dutiable property

Any of the following is ***dutiable property*** —

(a) land in Western Australia;

(b) a right;

(c) a chattel in Western Australia;

(d) a Western Australian business asset.

16. References to right

(1) A reference to a right is to any of the following —

(a) an option to acquire dutiable property, unless the option is part of a simultaneous put and call option over dutiable property;

(b) a right of pre-emption for dutiable property;

(c) a right to acquire dutiable property;

(d) a right under a joint venture relating to dutiable property of the joint venture;

(e) a right to exploit dutiable property;

(f) a right to income from dutiable property;

(g) a right to the capital growth of dutiable property.

(2) A right exists in relation to dutiable property only if the transfer of the property would be a dutiable transaction.

(3) Without limiting subsection (1), a right includes the following —

(a) a right under an application under the *Mining Act 1978* for a mining tenement;

(b) a licence, or a water entitlement under a licence, under the *Rights in Water and Irrigation Act 1914* section 5C;

(c) any other thing prescribed for the purposes of this section.

17. New dutiable property

(1) Any of the following is ***new dutiable property*** —

(a) land in Western Australia;

(b) the following rights —

(i) an option to acquire dutiable property, unless the option is part of a simultaneous put and call option over dutiable property;

(ii) a right to acquire dutiable property;

(iii) any other right prescribed for the purposes of this subsection;

(c) in section 81(4) and (5), the following Western Australian business assets —

(i) intellectual property;

(ii) a restraint of trade arrangement;

(iii) a business identity.

(2) The following are not ***new dutiable property*** —

(a) a security interest in dutiable property;

(b) a partner's interest in a partnership;

(c) a lease if no consideration is paid, or agreed to be paid, for the grant of the lease;

(d) a mining tenement;

(e) a licence under the *Petroleum Pipelines Act 1969*;

(f) a licence, or a water entitlement under a licence, under the *Rights in Water and Irrigation Act 1914* section 5C;

(g) a profit à prendre created under a timber sharefarming agreement under the *Conservation and Land Management Act 1984* or the *Forest Products Act 2000*, unless a profit à prendre had been previously created in respect of a crop of trees to which the agreement applies;

(h) a plantation interest, created under an agreement under the *Tree Plantation Agreements Act 2003*, unless the interest had been previously created in respect of a plantation to which the agreement applies;

(i) any other dutiable property prescribed as excluded property for the purposes of this section.

18. Special dutiable property

Any of the following is ***special dutiable property*** —

(a) a life interest in land;

(b) a remainder interest in land;

(c) a lease, if consideration is paid, or agreed to be paid, by the lessor for the surrender of the lease;

(d) an easement;

(e) a right of way;

(f) a mining tenement in whole or in part, if the surrender is made in contemplation of, or as part of an agreement that, the tenement, or the part of the tenement, be granted to, or acquired by, another person;

(g) a right under an application under the *Mining Act 1978* for a mining tenement;

(h) any other dutiable property prescribed for the purposes of this section.

Part 4 — Collection of transfer duty

Division 1 — Liability for transfer duty

19. When liability for duty arises

(1) Subject to subsection (2), liability for duty chargeable on a dutiable transaction described in Schedule 1 column 2, arises at the earlier of —

(a) the time referred to opposite the transaction in column 3; or

(b) if the transaction is, or will be, effected by an instrument, when the instrument is executed.

(2) If a general conditional agreement is terminated on relevant grounds before an instrument is required to be lodged under section 23 in respect of the agreement then liability for duty does not arise in respect of the general conditional agreement.

[Section 19 amended by No. 17 of 2010 s. 5.]

20. Who is liable to pay duty

The person liable to pay duty chargeable on a dutiable transaction described in Schedule 1 column 2 is the person described opposite that transaction in Schedule 1 column 4, unless another person is required under this Chapter to pay the duty.

21. Joint tenants to be treated as tenants in common in equal shares

For the purpose of charging duty, joint tenants of dutiable property are taken to hold the dutiable property as tenants in common in equal shares.

Division 2 — Lodging transaction records

22A. Terms used

In this Division —

digitally sign has the meaning given in the *Electronic Conveyancing Act 2014* section 3(1);

electronic conveyancing instrument means an instrument in electronic form that, on being digitally signed, has, under the *Electronic Conveyancing Act 2014* section 9(2), the same effect as if a paper document having the equivalent effect had been executed as provided in section 9(2)(a) or (b) of that Act.

[Section 22A inserted by No. 2 of 2014 s. 50.]

22. Transfer duty statement to be made if no instrument

(1) The person liable to pay duty on a dutiable transaction must make a transfer duty statement in the approved form within the time provided under section 23 for lodging the statement unless the transaction is effected, or evidenced, by an instrument in hard copy form.

Penalty: a fine of $20 000.

(2) For the purposes of subsection (1) and section 23(1)(a), an electronic conveyancing instrument that has been digitally signed is to be taken to be an instrument in hard copy form.

[Section 22 amended by No. 2 of 2014 s. 51.]

23. Instrument or statement for dutiable transaction, duty to lodge

(1) Subject to subsection (2), the person liable to pay duty on a dutiable transaction must lodge —

(a) if the transaction is effected by an instrument in hard copy form — that instrument and if there is more than one such instrument, each of them; or

(b) if the transaction is not effected by an instrument in hard copy form — an instrument in hard copy form that evidences the transaction and if there is more than one instrument, each of them, or a transfer duty statement for the transaction,

within 2 months after the day on which liability for duty on the transaction arises.

Penalty: a fine of $5 000.

(2) A person is not required to lodge an instrument in respect of a general conditional agreement in respect of which liability for duty does not arise under section 19(2).

(3) If a transaction is effected by an electronic conveyancing instrument, the person liable to pay duty on the transaction is to be taken to have complied with subsection (1) when the instrument is digitally signed.

[Section 23 amended by No. 17 of 2010 s. 6; No. 2 of 2014 s. 52.]

24. Form of dutiable transaction

It does not matter whether a dutiable transaction —

(a) is effected by an instrument or another way; or

(b) involves one party, or more than one party.

Division 3 — Payment of transfer duty

25. When duty must be paid

(1) A person liable to pay duty on a dutiable transaction is to pay the duty within one month after the date of the assessment notice issued in relation to an assessment of the duty, unless a later time is provided under subsection (2) or (3) in respect of the transaction.

(2) Unless subsection (3) applies, duty is to be paid within 12 months after the day on which liability for duty on the transaction arises if the transaction is —

(a) a conditional agreement; or

(b) a dutiable transaction referred to in section 11(1)(a), (b), (c) or (d) if a document relating to the transaction must be registered under —

(i) the *Mining Act 1978*; or

(ii) the *Registration of Deeds Act 1856*; or

(iii) the *Transfer of Land Act 1893*.

(3) Duty is to be paid within 3 years after the day on which liability for duty on the transaction arises if the transaction is —

(a) a subdivision conditional agreement; or

(b) an issue of title conditional agreement.

[Section 25 inserted by No. 17 of 2010 s. 7; amended by No. 10 of 2013 s. 4.]

Division 4 — Rate of transfer duty

26. Rate of transfer duty

(1) Unless otherwise provided in this Chapter, duty is chargeable —

(a) by reference to the dutiable value of a dutiable transaction; and

(b) at the general rate of duty.

(2) The general rate of duty, concessional rates of duty and the amount of nominal duty are set out in Schedule 2.

Division 5 — Dutiable value

Subdivision 1 — Dutiable value

27. Dutiable value of dutiable transactions, unless otherwise provided

Unless otherwise provided in this Chapter, the dutiable value of a dutiable transaction is —

(a) the consideration for the dutiable transaction; or

(b) the unencumbered value of the dutiable property the subject of the transaction when liability for duty on the transaction arises if —

(i) there is no consideration for the transaction; or

(ii) the consideration cannot be ascertained when liability for duty on the transaction arises; or

(iii) the unencumbered value is greater than the consideration for the transaction.

28. Dutiable value of certain dutiable transactions

(1) If the value of a dutiable transaction referred to in section 11(1)(d)(ii) or (e) is stated in a court order the value stated in the order is the dutiable value of the transaction.

(2) Subject to subsection (1), the dutiable value of a dutiable transaction that is the foreclosure of a mortgage over dutiable property is the unencumbered value of the dutiable property and not the value of the debt secured by the mortgaged property.

(3) The dutiable value of a dutiable transaction that is the surrender of a lease is the consideration for the surrender of the lease paid or payable by the lessor.

(4) The dutiable value of a dutiable transaction that is the grant of a lease is the total of the following amounts —

(a) the amount of any consideration for the grant of the lease;

(b) any amount paid or payable under the lease as rent that —

(i) is in excess of a fair market rent for the leased property; and

(ii) represents an amount paid or payable for the grant of the lease.

(5) The dutiable value of a dutiable transaction under a discretionary trust that would be a transaction described in section 114(1) or 115 except that —

(a) consideration is paid or payable for the transaction; and

(b) that consideration is consideration referred to in section 30(1),

is that consideration.

(6) The dutiable value of a dutiable transaction that is a transfer of, or an agreement for the transfer of, dutiable property from the trustee of a superannuation fund on which nominal duty would be chargeable under section 127 but for section 127(2)(d), is the amount by which the unencumbered value of the dutiable property transferred exceeds the value of the member's interest in the superannuation fund.

[Section 28 amended by No. 30 of 2008 s. 24; No. 32 of 2012 s. 4.]

29. Dutiable value of certain dutiable transactions relating to corporation or unit trust scheme property on winding up

(1) A reference in this section to a transfer of corporation or unit trust scheme property is to a transfer, or agreement for the transfer, of property (some or all of which is dutiable property) by —

(a) the liquidator of the corporation to any of its shareholders in the course of a distribution of its assets as a consequence of the winding up of the corporation; or

(b) the trustee of a unit trust scheme to any unit holder in the scheme in the course of the winding up of the unit trust scheme.

(2) The dutiable value of a dutiable transaction that is a transfer of corporation or unit trust scheme property is —

(a) in relation to a corporation — determined in accordance with the following formula —

$$DV = A \times \frac{X}{Y}$$

where —

DV is the dutiable value;

A is the greater of the following amounts —

(i) the amount (if any) by which the value, when the winding up begins, of all the assets distributed, or to be distributed, to the shareholder exceeds the value, at that time, of the shareholder's entitlement to the net assets of the corporation; or

(ii) the amount that is the total of —

(I) the amount (if any) owing to the shareholder that the shareholder has

released the corporation from paying in the relevant period; and

(II) the amount (if any) of any liability that the shareholder, or a person related to the shareholder, has assumed or discharged on behalf of the corporation in the relevant period;

X is the unencumbered value of all dutiable property the subject of the transfer;

Y is the unencumbered value of all property the subject of the transfer;

and

(b) in relation to a unit trust scheme — determined in accordance with the following formula —

$$DV = A \times \frac{X}{Y}$$

where —

DV is the dutiable value;

A is the greater of the following amounts —

(i) the amount (if any) by which the value, when the winding up begins, of all the assets distributed, or to be distributed, to the unit holder exceeds the value, at that time, of the unit holder's entitlement to the net assets held by the trustee of the unit trust scheme as trustee of that trust; or

(ii) the amount that is the total of —

(I) the amount (if any) owing to the unit holder that the unit holder has released the trustee of the unit trust scheme from paying in the relevant period; and

(II) the amount (if any) of any liability that the unit holder, or a person related to the unit holder, has assumed or

discharged on behalf of the trustee of the unit trust scheme in the relevant period;

X is the unencumbered value of all dutiable property the subject of the transfer;

Y is the unencumbered value of all property the subject of the transfer.

Note for this subsection:

For example, Company X has 2 equal shareholders A and B. The company has total assets of $800 000, total liabilities of $100 000 and net assets of $700 000. The shareholder entitlement of each of A and B is $350 000.

There are no liquid assets to satisfy the liability and the liquidator distributes the assets subject to the liability. A receives assets of $450 000 ($100 000 in excess of A's entitlement) comprising $400 000 of dutiable property and $50 000 non-dutiable property and assumes the whole mortgage. B receives assets comprising dutiable property of $350 000.

A's duty assessment:

$$\frac{\text{\$100 000 (excess entitlement)} \times \text{\$400 000 (value of dutiable property)}}{\text{\$450 000 (value of all property received)}}$$

Transfer duty is charged on $88 888.

B's duty assessment:

Nominal duty is charged, as B has received a distribution of assets equal to the shareholder entitlement.

(3) In subsection (2) —

person related, to a shareholder or unit holder, means that the person and the shareholder or unit holder are related persons within the meaning of section 162(1)(a) to (g);

relevant period means the period beginning on the day that is 12 months before the day on which the winding up begins and ending on the day that the property is transferred.

(4A) For the purposes of paragraph (a)(ii)(II) or (b)(ii)(II) of the definition of the variable "A" in subsection (2), the Commissioner may exclude part or all of the amount of any liability that a person related to a shareholder or unit holder, as the case requires, has assumed or discharged if the

Commissioner is satisfied that it is appropriate to do so having regard to the application of subsection (2) to all other transfers of corporation or unit trust scheme property in respect of the same corporation or unit trust scheme.

(4) Subject to subsection (2), nominal duty is chargeable on a dutiable transaction that is a transfer of corporation or unit trust scheme property if —

(a) in relation to a transfer of corporation property — the total value of the transaction to the shareholder, when the winding up begins, is equal to or less than the value of the shareholder's entitlement to the net assets of the corporation at that time; or

(b) in relation to a transfer of unit trust scheme property — the total value of the transaction to the unit holder, when the winding up begins, is equal to or less than the value of the unit holder's entitlement to the net assets held in the unit trust scheme at that time.

(5) This section does not apply to a transfer of corporation or unit trust scheme property if the Commissioner is satisfied that the corporation or unit trust scheme is being wound up as a scheme or arrangement, or part of a scheme or arrangement, for which a dominant purpose of any party was the reduction of the duty otherwise chargeable on the transaction.

(6) In considering whether or not the Commissioner is satisfied for the purposes of subsection (5), the Commissioner may have regard to any of the following in relation to a corporation —

(a) the duration of the shareholder's shareholding in the corporation;

(b) whether or not the shareholder held shares in a related corporation of the corporation that owned the property before it was owned by the corporation;

(c) the period for which the property has been owned by the corporation or a related corporation of the corporation;

(d) any dealing in shares of the corporation or a related corporation of the corporation by any one or more of the following —

(i) the shareholder;

(ii) a previous owner of the property;

(e) whether there is any commercial efficacy to a scheme or arrangement of transactions involving any one or more of the following —

(i) the corporation;

(ii) the shareholder;

(iii) a related corporation of the corporation;

(iv) a person that has a substantial holding (within the meaning given in the Corporations Act) in a person referred to in subparagraph (i), (ii) or (iii),

in relation to the winding up, other than to reduce the duty otherwise chargeable on the transfer;

(f) whether the transfer is pursuant to a right, attaching to any of the shares in the corporation, to select or receive any particular property of the corporation;

(g) any other matters the Commissioner considers relevant.

(7) In considering whether or not the Commissioner is satisfied for the purposes of subsection (5), the Commissioner may have regard to any of the following in relation to a unit trust scheme —

(a) the duration of the unit holder's unit holding in the unit trust scheme;

(b) whether or not the unit holder held units in a related unit trust scheme that owned the property before it was owned by the trustee of the unit trust scheme;

(c) the period for which the property has been owned by the trustee of the unit trust scheme or a related unit trust scheme of the unit trust scheme;

(d) any dealing in units of the unit trust scheme or a related unit trust scheme of the unit trust scheme by any one or more of the following —

(i) the unit holder;

(ii) a previous owner of the property;

(e) whether there is any commercial efficacy to a scheme or arrangement of transactions involving any one or more of the following —

(i) the trustee of the unit trust scheme;

(ii) the unit holder;

(iii) a related unit trust scheme,

in relation to the winding up, other than to reduce the duty otherwise chargeable on the transfer;

(f) whether the transfer is pursuant to a right, attaching to any of the units in the unit trust scheme, to select or receive any particular property held by the trustee of the unit trust scheme as trustee of that trust;

(g) any other matters the Commissioner considers relevant.

(8) For the purposes of subsection (7), unit trust schemes are related if a unit trust holder in one unit trust scheme holds units that provides the holder to an entitlement to the capital of another unit trust scheme if it were to be wound up.

[Section 29[3] amended by No. 29 of 2012 s. 4.]

Subdivision 2 — Consideration

30. Consideration for dutiable transaction

(1) The consideration for a dutiable transaction includes —

(a) the amount of any liabilities assumed under the transaction, including an obligation, whether contingent or otherwise, to pay any unpaid purchase money payable under an agreement for the transfer of dutiable property; and

(b) the amount or value of any debt to the extent it is released or extinguished under the transaction.

(2) If the consideration, or any part of the consideration, for a dutiable transaction on which duty is chargeable consists of an amount payable periodically and the total amount to be paid can be ascertained, the consideration or part of the consideration is the total amount.

(3) It does not matter whether the consideration for a transaction on which duty is chargeable is paid or given or is required to be paid or given.

31. Changes to consideration before transfer, consequences of

(1) If after an agreement for the transfer of dutiable property is entered into and before the property is transferred —

(a) the consideration under the agreement is reduced and the reduced consideration is not less than the unencumbered value of the dutiable property when the consideration was reduced; or

(b) the consideration under the agreement is reduced because the parties have agreed not to transfer some of the dutiable property previously agreed to be transferred and the reduced consideration is not less than the unencumbered value of the dutiable property that remained to be transferred when the consideration was reduced,

the Commissioner is to assess or, on the application of the taxpayer, reassess the liability to duty of the agreement in accordance with the reduced consideration.

(2) Subsection (1) does not apply in respect of an agreement to which section 32 applies.

(3) If after an agreement for the transfer of dutiable property is entered into and before the property is transferred —

(a) the consideration under the agreement is reduced and the reduced consideration is less than the unencumbered value of the dutiable property when the consideration was reduced; or

(b) the consideration under the agreement is reduced because the parties have agreed not to transfer some of the dutiable property previously agreed to be transferred and the reduced consideration is less than the unencumbered value of the dutiable property that remained to be transferred when the consideration was reduced,

the Commissioner is to assess or, on the application of the taxpayer, reassess the liability to duty of the agreement in accordance with the dutiable value of the agreement being the unencumbered value when the consideration was reduced.

(4) If after an agreement for the transfer of dutiable property is entered into and before the property is transferred —

(a) the consideration under the agreement is increased; and

(b) the increased consideration is not less than the unencumbered value of the dutiable property when the agreement was entered into,

the Commissioner is to assess or reassess the liability to duty of the agreement in accordance with the increased consideration.

(5) If after a dutiable transaction is duty endorsed the consideration under the transaction is increased as referred to in subsection (4), the person liable to pay duty must lodge —

(a) if the increase in consideration is effected by an instrument in hard copy form — that instrument and if there is more than one such instrument, each of them; or

(b) if the increase in consideration is not effected by an instrument in hard copy form — an instrument in hard

copy form that evidences the increase in consideration and if there is more than one such instrument each of them, or a transfer duty statement for the transaction that shows the increase in consideration,

within 2 months after the day on which consideration under the transaction is increased.

Penalty: a fine of $20 000.

(6) Duty is chargeable on a reassessment under this section in relation to a transaction at the same rate and using the same thresholds that applied when liability for duty on the transaction initially arose.

32. Contingent consideration not paid, consequences of

(1) If an agreement for the transfer of dutiable property is duty endorsed and any part of the consideration under the agreement was dependent on the happening of a future event (the ***contingent consideration***) and —

(a) the contingent consideration has not been paid; and

(b) the event did not happen, or did not happen within the time specified for the happening of the event, in an instrument effecting or evidencing the agreement; and

(c) either —

(i) the event cannot happen in the future; or

(ii) the time specified for the happening of the event in an instrument effecting or evidencing the agreement has passed or expired;

and

(d) the taxpayer makes an application for a reassessment under this section in the approved form,

the Commissioner is to reassess the liability to duty of the agreement in accordance with the consideration not including the contingent consideration.

(2) For the purposes of this section, the Taxation Administration Act section 17 applies as if the original assessment had been made when liability to duty on the agreement arose.

(3) In this section, a reference to the happening of an event includes a reference to an event not happening.

33. Agreement by instalments determined before final payment, consequences of

(1) In this section —

agreement by instalments means an agreement for the transfer of dutiable property —

(a) wholly or partly in consideration of the making of 2 or more payments at intervals specified in an instrument effecting or evidencing the agreement; and

(b) which is subject to the right of the purchaser or transferee to determine the agreement at any time before the property is transferred on making such of the payments as are due and payable at the time of the determination.

(2) If, after an agreement by instalments has been duty endorsed, the agreement is determined before the final payment had become due and payable under the agreement, the Commissioner, on the application of the taxpayer, is to reassess the liability to duty of the agreement in accordance with the consideration paid, or due and payable, when the agreement is determined.

(3) For the purposes of this section, the Taxation Administration Act section 17 applies as if the original assessment had been made when the determination was made.

34. Options conferred by dutiable transactions that are exercised or not renewed, consequences of

(1) If —

(a) after a dutiable transaction that —

(i) confers on a person the right of an option to acquire dutiable property; and

(ii) provides for the renewal of that right on one, or more than one, occasion specified in an instrument effecting or evidencing the transaction,

is duty endorsed based on the consideration for the transaction which includes the sum of the amounts paid by way of consideration for the right of the option and the amount or amounts, as the case may be, payable for the renewal or renewals of the option; and

(b) the person on whom the right of the option was conferred under the transaction, before the occurrence of the final occasion specified in an instrument effecting or evidencing the transaction —

(i) exercised the option; or

(ii) failed to renew the right of option,

the Commissioner, on the application of the taxpayer, is to reassess the liability to duty of the transaction as if the consideration was an amount equal to the amount paid or payable in respect of any occasion or occasions specified in an instrument effecting or evidencing the transaction that have occurred before the person exercised the option, or failed to renew the right of option.

(2) For the purposes of this section, the Taxation Administration Act section 17 applies as if the original assessment had been made when the person exercised the option, or failed to renew the right of option.

35. Option to acquire dutiable property, duty paid on to be credited

If —

(a) a transaction record for the grant or renewal of an option to acquire dutiable property is duty endorsed; and

(b) the consideration for the grant or renewal will form part of the consideration for the transaction if the option is exercised; and

(c) the option is exercised,

the amount of duty payable on the transfer of, or the agreement for the transfer of, dutiable property is to be reduced by the amount of duty paid on the grant or renewal of the option to acquire the property.

Note for this section:

For example, consideration is paid for the grant of an option to acquire dutiable property. The transaction provides for the renewal of the right for further consideration.

The transaction also provides that the consideration paid for the grant and renewal of the option forms part of the consideration for the property if the option is exercised.

Duty of $200 is charged on the total consideration for the grant and renewal of the option (the ***first dutiable transaction***).

The option is exercised after the renewal of the option and an agreement for the transfer of dutiable property is entered into for consideration (the ***second dutiable transaction***).

The amount of duty payable on the second dutiable transaction is reduced by the amount of duty paid on the first dutiable transaction.

If the duty payable on the second dutiable transaction would be $2 000, it is reduced by the duty of $200 paid on the first dutiable transaction. The duty payable on the agreement to transfer the property is therefore $1 800.

Subdivision 3 — Unencumbered value

36. Unencumbered value of property, determining

(1) The ***unencumbered value*** of property is the value of the property determined without regard to —

(a) any encumbrance to which the property is subject, whether contingently or otherwise; or

(b) any overriding power of revocation or reconveyance; or

(c) any scheme or arrangement —

(i) that results in the reduction of the value of the property; and

(ii) for which a dominant purpose of any party to the scheme or arrangement was, in the opinion of the Commissioner, the reduction of the value of the property.

Note for this subsection:

Example for paragraph (c) —

A owns land that B wishes to purchase. The land is valued at $1m. Before the purchase, A grants B a 50 year lease of the land. B is not required to pay any rent under the lease. A and B then enter into an agreement for the transfer of the land for $50 000, being the value of A's interest in the land taking into account that it is subject to the lease to B.

The unencumbered value of the land is determined without regard to the grant of the lease if the Commissioner is of the opinion there is a scheme or arrangement under which A or B's purpose in entering into it was to reduce the value of the land.

(2) Subsection (1)(c) does not apply to or in respect of a scheme or arrangement that was entered into before 27 December 1996.

(3) For the purposes of subsection (1)(c), the Commissioner may have regard to —

(a) the duration of the scheme or arrangement before the dutiable transaction or the relevant transaction concerning the property; and

(b) whether the scheme or arrangement has been entered into with a related person within the meaning given in section 162; and

(c) whether there is any commercial efficacy to the making of the scheme or arrangement other than to reduce duty; and

(d) any other matters the Commissioner considers relevant.

(4) When determining the unencumbered value of property —

(aa) the ordinary principles of valuation apply, except to the extent that those principles are modified due to the operation of another paragraph of this subsection; and

(a) the unencumbered value of an undivided share in the property, whether held jointly or in common, is to be ascertained by multiplying the total unencumbered value of the property by the share expressed as a fraction; and

(b) it is to be assumed that a hypothetical purchaser would, when negotiating the price of property, have knowledge of all existing information relating to the property; and

(ca) information relating to the property (including the right to and use of the information) —

(i) will be regarded as an attribute of the property; and

(ii) will not be regarded as something to which an independent value can be ascribed;

and

(c) that is land —

(i) if the land is the subject of an agreement to transfer, any improvement made to the land at the expense of the purchaser or transferee before the date liability to duty arises on the agreement is to be taken not to have been made to the land; and

(ii) if the land is the subject of a transfer, any improvement made to the land at the expense of the transferee before the land is transferred is to be taken not to have been made to the land; and

(iii) having regard to the use of the land that would best enhance its commercial value; and

(iv) having regard to commercial advantages (such as goodwill) that —

(I) attach to the location or other aspects of the land; and

(II) would affect the price that a reasonable purchaser would be willing to pay for the land.

[Section 36 amended by No. 1 of 2015 s. 24.]

Subdivision 4 — Miscellaneous

37. Aggregation of dutiable transactions

(1) Dutiable transactions relating to separate items of dutiable property that together form, evidence, give effect to or arise from what is, substantially one arrangement are to be aggregated and treated as a single dutiable transaction.

(2) Without limiting subsection (1), unless the Commissioner is satisfied to the contrary, dutiable transactions relating to separate items of dutiable property together form, evidence, give effect to or arise from what is, substantially one arrangement if —

(a) the transactions have taken place within 12 months; and

(b) in respect of each of the transactions, the person liable to pay duty is the same person (whether that person is the only person liable to pay duty or is liable to pay duty with the same or different persons).

(3) Dutiable transactions relating to separate items of dutiable property are not to be aggregated under this section unless the transactions to be aggregated —

(a) are all chargeable at the same rate of duty; or

(b) are all chargeable with nominal duty; or

(c) are all exempt transactions.

(4) If dutiable transactions are aggregated, then they are to be treated as a single dutiable transaction that took place at the time that the last of the aggregated transactions took place.

(5) This section does not apply to a dutiable transaction to the extent that it relates to the grant of an option to acquire dutiable property, other than as required under section 34.

(6) Duty chargeable on the dutiable transaction aggregated under this section is to be —

(a) assessed on the total of the dutiable values for each of the transactions (calculated as if each transaction was a dutiable transaction) at the time when liability for duty on each transaction arose; and

(b) apportioned between the transactions as decided by the Commissioner.

(7) The amount of duty payable in accordance with this section is to be reduced by the amount of any duty paid on a previous dutiable transaction that is, or previous dutiable transactions that are, aggregated under this section.

(8) Transactions aggregated and treated as a single dutiable transaction under this section may include a transaction that would not otherwise be a dutiable transaction, and where such a transaction is included, that transaction is taken to be a dutiable transaction and is liable to duty accordingly.

38. Transactions as to dutiable and not dutiable property, duty on

If a dutiable transaction relates to dutiable property and property that is not dutiable property, duty is chargeable only to the extent that the transaction relates to dutiable property.

39. Partitions of property, dutiable values in case of

(1) For the purposes of this section, a partition occurs when property (some or all of which is dutiable property) that is held by persons jointly (as joint tenants or tenants in common) and

beneficially is transferred or agreed to be transferred to one or more of those persons.

(2) The dutiable value of a partition is to be determined in accordance with the following formula —

$$DV = A \times \frac{X}{Y}$$

where —

DV is the dutiable value;

A is the greater of the following amounts —

(i) the sum of the amounts by which the unencumbered value of the property transferred or agreed to be transferred to a person exceeds the unencumbered value of the interest held by the person in all of the property immediately before the partition; or

(ii) the sum of any consideration for the partition paid by any of the parties;

X is the unencumbered value of all dutiable property the subject of the partition;

Y is the unencumbered value of all property the subject of the partition.

(3) The minimum amount of duty payable on a transaction that effects a partition is the amount of nominal duty.

Note for this section:

For example, A and B own lot 1 which has an unencumbered value of $400 000 and a boat that has an unencumbered value of $300 000.

The total value of the property being partitioned is $700 000 and A and B are each entitled to $350 000.

A is taking lot 1 by way of partition and the value of that lot exceeds A's entitlement by $50 000.

A's duty assessment:

$\frac{\text{\$50 000 (excess entitlement)} \times \text{\$400 000 (value of dutiable property)}}{\text{\$700 000 (value of all property)}}$

The dutiable value for the transfer of land to A is $28 571.

40. Exchanges of dutiable property, duty on

Duty is chargeable on any dutiable transactions effecting an exchange of dutiable property for any other dutiable property as if the exchange involved —

(a) the transfer of the first-mentioned property for consideration equal to the unencumbered value of that property; and

(b) the transfer of the second-mentioned property for consideration equal to the unencumbered value of that property.

Division 6 — No double duty

41. No double duty — general

(1) If a transaction for property constitutes more than one dutiable transaction for the property and the charging of duty on all of the dutiable transactions for the property would result in duty being imposed more than once on the transaction, the Commissioner is to decide the dutiable transaction on which duty is imposed and duty is not chargeable on the other dutiable transaction, or dutiable transactions.

(2) For the purposes of subsection (1), the Commissioner is to decide the dutiable transaction for the property that is the most applicable dutiable transaction having regard to this Chapter and the sole or dominant purpose of the transaction.

42. No double duty — particular dutiable transactions

(1) Duty is not chargeable on the transfer of dutiable property to a transferee in conformity with an agreement for the transfer of dutiable property if that agreement is duty endorsed.

(2) Duty is not chargeable on the transfer of dutiable property to a transferee under an agreement for the transfer of dutiable property if —

(a) when liability for duty on the agreement arises, the transferee and the purchaser of the property under the agreement are related as referred to in section 43; and

(b) the agreement is duty endorsed on the basis that duty has been paid or is payable at the general or a concessional rate (that is, under Schedule 2 Division 1 or 2); and

(c) duty would, but for this section, be chargeable on the transfer of the property at the rate at which duty was chargeable on the agreement.

(3) If an agreement for the transfer of dutiable property is duty endorsed and either, or both, of the following applies —

(a) there is a difference in the parties liable to duty under the agreement and the transferees under the transfer, and subsection (2)(a) does not apply;

(b) there is a difference between the division of the property between the transferees under the transfer and the division of the property between the parties liable to duty under the agreement, and subsection (2)(a) does not apply,

duty is not chargeable on the transfer of the property except to the extent of the change between the agreement and the transfer.

Note for this subsection:

Example for subsection (3) —

On 1 July, under an agreement for the transfer of dutiable property, A agrees to sell land in Western Australia to B and C as tenants in common in the undivided shares of 90/100 to B and 10/100 to C for $100 000.

At settlement, under the transfer, B and a new party, D are tenants in common in equal shares.

Transfer duty is chargeable on the transfer of the property only to the extent of the change in the interests in the property between the agreement and the transfer.

Transfer duty would be chargeable on the transfer of the property on 50/100 X $100 000, which is $50 000 i.e. 10/100 from C to D and 40/100 from B to D.

(4A) If, but for this subsection, subsections (1) and (3) would both apply to the transfer of dutiable property, subsection (1) does not apply.

(4B) If an agreement for the transfer of dutiable property is duty endorsed, duty is not chargeable on the transfer of the property under the agreement to the purchaser in the purchaser's capacity as —

(a) a trustee of a unit trust scheme if —

(i) the purchaser is an individual and is the sole unit holder in the unit trust; or

(ii) the purchaser is a unit holder in the unit trust and is related, as referred to in section 43(1)(a), (b), (c), (d) or (e), to each of the other unit holders;

or

(b) a trustee, other than a trustee of a discretionary trust or a unit trust scheme, if the beneficiary and the purchaser are related as referred to in section 43(1)(a), (b), (c), (d) or (e).

(4C) A reference in subsection (4B) to a unit holder or to a beneficiary is limited to a reference to a unit holder or beneficiary whose interest in the scheme or trust is a beneficial interest.

(4) If an agreement for the transfer of dutiable property is duty endorsed, duty is not chargeable on the subsequent transfer of the property if, when liability for duty on the agreement arose, the person named in the instrument effecting, or evidencing, the agreement as the purchaser was acting as the agent of the transferee of the subsequent transfer.

(5) If —

(a) an agreement for the transfer of dutiable property is duty endorsed; and

(b) the person named in the agreement as the purchaser entered into the agreement with the intention that the property would be transferred to —

(i) a corporation that the person intended to be incorporated; or

(ii) a dormant corporation, the shares in which the person intended to be acquired,

and that property will not be held by the corporation as trustee of a trust; and

(c) when liability for duty on the agreement arose, action was being taken to —

(i) incorporate the corporation referred to in paragraph (b)(i); or

(ii) acquire the shares in the corporation referred to in paragraph (b)(ii),

duty is not chargeable on the subsequent transfer of the property to the corporation referred to in paragraph (b)(i) or (ii).

(6) In subsection (5) —

dormant corporation means a corporation that, since it was incorporated —

(a) has not had any assets or liabilities other than share capital for subscriber shares or shares issued to replace subscriber shares of the same value on their redemption; and

(b) has not been party to an agreement or a beneficiary or trustee of a trust; and

(c) has not issued or sold any shares or rights relating to shares other than subscriber shares, rights relating to subscriber shares or shares issued to replace subscriber shares of the same value on their redemption.

(7) Duty is not chargeable on a transfer of dutiable property by the vendor under an agreement for the transfer of the property that results in the property becoming scheme property for a managed investment scheme if —

(a) the Commissioner is satisfied that a managed investment scheme has been, or is to be, established by means of an offer to subscribe to the scheme made to the public; and

(b) the Commissioner is satisfied that before the establishment of the scheme —

(i) the person named as purchaser in an agreement for the transfer of dutiable property entered into that agreement; or

(ii) the person promoting the scheme arranged for that agreement to be entered into by the person named in the agreement,

with the intention that the property concerned would become scheme property; and

(c) the agreement provides to the effect that, if the scheme is not established, the agreement is terminated; and

(d) the agreement is duty endorsed.

(8) If —

(a) there is an agreement for the transfer of dutiable property (the ***first agreement***); and

(b) after the first agreement takes place, one or more dutiable transactions over all or part of the dutiable property the subject of the first agreement takes place (the ***intervening transactions***); and

(c) to give effect to the first agreement and the intervening transactions, one or more transfers of dutiable property (the ***transfers***) are effected by one or more parties to the first agreement and the intervening transactions; and

(d) the first agreement and the intervening transactions are duty endorsed,

duty is not chargeable on the transfers.

Note for this subsection:

Example for subsection (8) —

On 1 July, under an agreement for the transfer of dutiable property, A agrees to sell land in Western Australia to B for $100 000. Settlement is to take place on 31 July. On 7 July, under an agreement for transfer, B agrees to sell the land to C for $120 000. Again,

settlement is to take place on 31 July. Before 31 July, B directs A, that at settlement, A transfer the land to C.

The agreement between A and B is the first agreement. The agreement between B and C is the intervening transaction. Transfer duty is not chargeable on the transfer from A to C if the first agreement and intervening transactions are duty endorsed.

(9) Duty is not chargeable on a transfer to a trustee of dutiable property subject to a declaration of trust in respect of the same dutiable property if the declaration of trust is duty endorsed, or under subsection (11) duty is not chargeable on the declaration of trust.

(10) Duty is not chargeable on a declaration of trust that declares the same trusts as those upon and subject to which the same dutiable property was transferred, or agreed to be transferred, to the person declaring the trust if the transfer, or agreement, is duty endorsed.

(11) Duty is not chargeable on a declaration of trust if —

(a) the declaration of trust supersedes another declaration of trust which is duty endorsed and declares the same trusts as were declared under the superseded declaration of trust; and

(b) the beneficiary under the declaration of trust is the same as under the superseded declaration of trust; and

(c) the dutiable property subject to the declaration of trust —

(i) is wholly or substantially the same as the property that was the subject of the superseded declaration of trust at the time of the declaration of the superseded declaration of trust; or

(ii) represents the proceeds of re-investment of property that was the subject of the superseded declaration of trust at the time of the declaration of the superseded declaration of trust; or

(iii) is property to which both subparagraphs (i) and (ii) apply.

(12) Duty is not chargeable on a transfer of dutiable property resulting from a dutiable transaction referred to in section 11(1)(d) if the vesting of the dutiable property is duty endorsed.

(13) Duty is not chargeable on a transfer of dutiable property in accordance with a foreclosure order if the foreclosure order is duty endorsed.

(14) Duty is not chargeable on a transfer of dutiable property in accordance with a partnership acquisition if the partnership acquisition is duty endorsed.

(15) Duty is not chargeable on a transfer of, or an agreement for the transfer of, an interest in a mining tenement under a farm-in agreement if —

(a) the farm-in agreement is duty endorsed; and

(b) the exploration amount under the agreement has been expended.

(16) Duty is not chargeable in respect of a dutiable transaction prescribed, on such condition and under such circumstances as are prescribed, if the dutiable transaction is one of 2 dutiable transactions that relate to the same transaction for the same dutiable property.

[Section 42 amended by No. 32 of 2012 s. 5 and 6.]

43. Persons related to purchaser for s. 42(2)(a)

(1) For the purposes of section 42(2)(a), the following persons are related to a purchaser who is an individual —

(a) the purchaser's spouse or de facto partner;

(b) a parent or remoter lineal ancestor of —

(i) the purchaser; or

(ii) the purchaser's spouse or de facto partner;

(c) a child or remoter lineal descendant of —

(i) the purchaser; or

(ii) the purchaser's spouse or de facto partner;

(d) a sibling of —

(i) the purchaser; or

(ii) the purchaser's spouse or de facto partner;

(e) a spouse or de facto partner of a sibling mentioned in paragraph (d);

(f) a corporation if —

(i) the purchaser is the sole shareholder of the corporation; or

(ii) the purchaser is a shareholder of the corporation and is related (within the meaning of this section) to each of the other shareholders;

(g) a trustee of a unit trust scheme in the trustee's capacity as trustee of the unit trust scheme if —

(i) the purchaser is the sole unit holder in the unit trust; or

(ii) the purchaser is a unit holder in the unit trust and is related (within the meaning of this section) to each of the other unit holders.

(2) For the purposes of section 42(2)(a), a person is related to a purchaser that is a corporation if —

(a) the person is the sole shareholder of the corporation; or

(b) the person is a shareholder of the purchaser and, if the person were a purchaser, would be related (within the meaning of this section) to each of the other shareholders.

(3) For the purposes of section 42(2)(a), a person is related to a purchaser that is the trustee of a unit trust scheme if —

(a) the person is the sole unit holder in the unit trust scheme; or

(b) the person is a unit holder in the unit trust scheme and, if the person were a purchaser, would be related (within

the meaning of this section) to each of the other unit holders.

(4) However, persons referred to in subsection (1), (2) or (3) are not related for the purpose of section 42(2)(a) if the dutiable property the subject of the transaction is to be held by a person on behalf of another person (the ***beneficiary***) —

(a) as the trustee of a discretionary trust; or

(b) as a trustee of a unit trust scheme, other than as referred to in subsection (1)(g); or

(c) as a trustee other than a trustee referred to in paragraph (a) or (b), unless —

(i) the purchaser and the transferee are related as referred to in subsection (1)(a), (b), (c), (d) or (e); and

(ii) the purchaser and the beneficiary are related as referred to in subsection (1)(a), (b), (c), (d) or (e).

[Section 43 amended by No. 32 of 2012 s. 7.]

Division 7 — Interim assessment of transfer duty

[Heading inserted by No. 10 of 2013 s. 5.]

44A. Interim assessment of transfer duty

(1) The Commissioner may make an assessment (an ***interim assessment***) of a portion of the duty payable on a dutiable transaction if —

(a) the Commissioner is satisfied that duty is payable on the transaction; and

(b) one of the following applies —

(i) more than 6 months have elapsed since the day on which a transaction record was lodged under section 23;

(ii) more than 6 months have elapsed since the day on which a transaction record ought to have been lodged under section 23;

(iii) the Commissioner is satisfied that it will not be possible to obtain the information necessary to determine the dutiable value of the transaction within the 6 months referred to in subparagraph (ii);

and

(c) the Commissioner is satisfied that a portion of the dutiable value of the transaction can be determined.

(2) For the purposes of subsection (1)(b)(ii), the day on which a transaction record ought to have been lodged is the last day of the 2-month period referred to in section 23(1).

(3) For the purpose of being satisfied of the matter in subsection (1)(c), the Commissioner may have regard to any information that the Commissioner considers relevant, including the following —

(a) the value, as agreed between the Commissioner and the taxpayer, of anything;

(b) the consideration (if any) given for the dutiable transaction;

(c) any evidence, whether provided by the taxpayer or obtained by the Commissioner, of the value of anything;

(d) any document or other record kept by or on behalf of a party to the dutiable transaction;

(e) any information held by a regulatory authority in the State, another Australian jurisdiction or an overseas jurisdiction;

(f) any information that is publicly available.

(4) For the purposes of making an interim assessment, the duty payable is to be determined as if the portion of the dutiable

value of the dutiable transaction were the full dutiable value of the transaction.

(5) Section 37 may apply, when relevant, for the purposes of this section, and when so applying, the reference in section 37(6)(a) to the dutiable value for a transaction includes a reference to a portion of the dutiable value for a transaction.

[Section 44A inserted by No. 10 of 2013 s. 5.]

Part 5 — Application of this Chapter to certain transactions

Division 1 — Simultaneous put and call options

Subdivision 1 — Terms used in this Division

44. Terms used

(1) In this Division —

call option means the right referred to in subsection (2)(a);

option property means —

(a) the dutiable property to which the call option applies; or

(b) if the put option applies only to a part of the dutiable property to which the call option applies, that part of the dutiable property;

put option means the right referred to in subsection (2)(b).

(2) Subject to subsection (3), a put option and a call option constitute a simultaneous put and call option if, at the same time —

(a) a person (***A***) has a right to require another person (***B***) to sell dutiable property to A, or to a person that has an agreement, arrangement or understanding with A relating to the dutiable property; and

(b) B has a right to require A, or a person referred to in paragraph (a), to purchase —

(i) the dutiable property; or

(ii) a part of the dutiable property; or

(iii) property that includes the dutiable property,

from B.

(3) For the purposes of subsection (2), it is irrelevant when the call option or the put option is exercisable.

Subdivision 2 — Simultaneous put and call options

45. Call option of simultaneous put and call option to be taken to be agreement for transfer of option property

(1) When a simultaneous put and call option comes into existence, the call option is taken to be an agreement for the transfer of the option property to A and is liable to duty accordingly, unless —

(a) the call option and the put option are only for the purpose of obtaining finance or making other financial arrangements; or

(b) the call option and the put option form part of a scheme of call options and put options given by the proprietors of a business that —

(i) are only for the purpose of facilitating the continuation of the business by one or some of the proprietors (the ***continuing proprietor or proprietors***); and

(ii) are not exercisable except on the occurrence of an event specified in them that would cause the continuing proprietor or proprietors to seek to acquire the interest of another of the proprietors.

(2) In subsection (1)(b) —

proprietor means —

(a) in the case of a partnership — a partner; or

(b) in the case of a company — a shareholder; or

(c) in the case of a unit trust scheme — a unit holder; or

(d) in any other case — a person the Commissioner determines to be a proprietor of the business.

(3) For the purposes of subsection (1), it is irrelevant whether or not the call option is assigned as referred to in section 49.

46. Simultaneous put and call option, dutiable value of

The dutiable value of a dutiable transaction referred to in section 45 is —

(a) the sum of —

(i) the amount paid by way of consideration for the granting of the call option in respect of the option property; and

(ii) the amount payable in the event of the call option being exercised in respect of the option property;

or

(b) the unencumbered value of the option property at the time when liability for duty on the transaction arises, if —

(i) there are no amounts paid or payable under paragraph (a); or

(ii) the amounts paid or payable under paragraph (a) cannot be ascertained when liability for duty on the transaction arises; or

(iii) the unencumbered value is greater than the sum of the amounts paid or payable under paragraph (a).

47. Dutiable transaction referred to in s. 45, duty paid on to be credited

If —

(a) a transaction record for a dutiable transaction referred to in section 45 for option property is duty endorsed (the ***first dutiable transaction***); and

(b) as a result of the call option or the put option being exercised either, or both, of the following occur (the ***second dutiable transaction***) —

(i) an agreement for the transfer of the option property is executed;

(ii) the option property is transferred,

the amount of duty payable on the second dutiable transaction is to be reduced by the amount of duty paid on the first dutiable transaction.

48. Simultaneous put and call option not exercised or assigned, consequences of

(1) If, in relation to a call option of a simultaneous put and call option taken to be an agreement for the transfer of option property under section 45 —

(a) the call option and the put option of the simultaneous put and call option —

(i) both expire without being exercised; or

(ii) are rescinded or cancelled by agreement, or either is rescinded or cancelled and the other expires without being exercised;

and

(b) the call option has not been assigned as referred to in section 49,

this Division does not apply and the Commissioner, on the application of the taxpayer, is to assess or reassess the liability to duty of the call option.

(2) For the purposes of this section, the Taxation Administration Act section 17 applies as if the original assessment had been made when the call option and the put option had both expired or were rescinded or cancelled.

Subdivision 3 — Assignment of call option

49. Assignment of call option to be taken to be agreement for transfer of option property

(1) If, in respect of a simultaneous put and call option —

(a) A has assigned the call option to another person (***C***) so that C has a right to require B to sell the option property

to C, or to a person that has an agreement, arrangement or understanding with C relating to the property; and

(b) B has a right to require C, or a person referred to in paragraph (a), to purchase the option property from B,

the assignment of the call option is taken to be an agreement for the transfer of the option property to C and is liable to duty accordingly.

(2) If subsection (1) applies, section 45 does not apply in relation to the rights of C and B referred to in subsection (1).

50. Assignment of call option, dutiable value of

The dutiable value of a dutiable transaction referred to in section 49 is —

(a) the sum of —

(i) the amount paid by way of consideration for the assignment of the call option in respect of the option property; and

(ii) the amount payable in the event of the exercise of the call option in respect of the option property;

or

(b) the unencumbered value of the option property at the time when liability for duty on the transaction arises, if —

(i) there are no amounts paid or payable under paragraph (a); or

(ii) the amounts paid or payable under paragraph (a) cannot be ascertained when liability for duty on the transaction arises; or

(iii) the unencumbered value is greater than the sum of the amounts paid or payable under paragraph (a).

51. Dutiable transaction referred to in s. 49, duty paid on to be credited

If —

(a) a transaction record for a dutiable transaction referred to in section 49 for option property is duty endorsed (the ***first dutiable transaction***); and

(b) as a result of the put option, or the assigned call option, being exercised either, or both, of the following occur (the ***second dutiable transaction***) —

(i) an agreement for the transfer of the option property is executed;

(ii) the option property is transferred,

the amount of duty payable on the second dutiable transaction is to be reduced by the amount of duty paid on the first dutiable transaction.

52. Assigned call option not exercised or further assigned, consequences of

(1) If, in relation to an assignment of a call option taken to be an agreement for the transfer of the option property under section 49 —

(a) the call option and the put option of the simultaneous put and call option —

(i) both expire without being exercised; or

(ii) are rescinded or cancelled by agreement, or either is rescinded or cancelled and the other expires without being exercised;

and

(b) the call option has not been further assigned as referred to in section 49,

this Division does not apply and the Commissioner, on the application of the taxpayer, is to assess or reassess the liability to duty of the assignment of the call option.

(2) For the purposes of this section, the Taxation Administration Act section 17 applies as if the original assessment had been when the call option and the put option had both expired or were rescinded or cancelled.

Division 2 — Discretionary trust acquisitions and surrenders

Subdivision 1 — Terms used in this Division

53. References to partnership or trust holding property

A reference to a partnership or trust holding property is a reference to the holding of the property by the partners for the partnership or the trustees under the trust.

54. References to taker in default

A reference to a taker in default is to a beneficiary of a discretionary trust that has an interest in the discretionary trust in default of an appointment by the trustee, or trustees, of the discretionary trust.

55. References to trust acquisition

A reference to a trust acquisition is to the acquisition by a taker in default of an interest in a discretionary trust that holds —

(a) dutiable property; or

(b) an indirect interest in dutiable property.

56. References to trust surrender

A reference to a trust surrender is to the surrender by a taker in default of an interest in a discretionary trust that holds —

(a) dutiable property; or

(b) an indirect interest in dutiable property.

57. When discretionary trust holds indirect interest in dutiable property

(1) A discretionary trust holds an indirect interest in dutiable property if an entity linked to the trustee of the discretionary trust is entitled to dutiable property.

(2) Section 156 applies where it is necessary to determine whether an entity is linked to a trustee of a discretionary trust for the purposes of subsection (1) or section 59(a)(ii) or 61(b).

(3) In applying section 156, the trustee of the discretionary trust is the main entity, despite section 152(2).

Subdivision 2 — Trust acquisitions and trust surrenders

58. When person acquires interest in discretionary trust

A person acquires an interest in a discretionary trust if the person —

(a) becomes a taker in default of the discretionary trust —

(i) on creation of the discretionary trust; or

(ii) otherwise, other than because of the surrender of another person's interest in the discretionary trust for which duty has been paid or in respect of which duty was not chargeable;

or

(b) is a taker in default of the discretionary trust whose interest increases, other than because of the surrender of another person's interest in the discretionary trust for which duty has been paid or in respect of which duty was not chargeable.

59. Trust acquisition or trust surrender, dutiable value of

The dutiable value of a trust acquisition or trust surrender is —

(a) the consideration for the acquisition or surrender so far as the consideration relates to dutiable property —

(i) held by the discretionary trust; or

(ii) to which an entity linked to the trustee of the discretionary trust is entitled;

or

(b) the value of the taker in default's interest in the discretionary trust at the time when liability for duty on the transaction arises if —

(i) there is no consideration for the acquisition or surrender; or

(ii) the consideration cannot be ascertained when liability for duty on the transaction arises; or

(iii) the value of the taker in default's interest is greater than the consideration for the acquisition or surrender.

60. References to interest in discretionary trust of taker in default

(1) A reference to an interest in a discretionary trust of a taker in default in the discretionary trust is —

(a) the percentage of —

(i) the trust income; or

(ii) the trust property,

that the taker in default would receive in default of appointment by the trustee; or

(b) if the taker in default would receive both trust income and trust property in default of appointment by the trustee, the percentage of either the trust income or the trust property that the taker in default would receive that is the greater.

(2) Despite subsection (1), if the Commissioner considers it appropriate to do so, an interest in a discretionary trust of a taker in default is to be determined by the Commissioner taking into account the rights or entitlements of the taker in default under the trust.

61. Taker in default's interest, value of for s. 59(b)

For the purposes of section 59(b), the value of the taker in default's interest in a discretionary trust is the total of the following amounts —

(a) in respect of the dutiable property held by the discretionary trust — an amount determined by applying the interest in the discretionary trust of the taker in default to the unencumbered value, when liability for duty on the transaction arises, of the dutiable property;

(b) in respect of the dutiable property to which an entity linked to the trustee of the discretionary trust is entitled — an amount determined by applying the interest in the discretionary trust of the taker in default to an amount determined by applying section 157 as if a reference in that section —

(i) to land were a reference to dutiable property; and

(ii) to the main entity were a reference to the trustee of the discretionary trust.

Note for this section:

For example, if the taker in default had a 50% interest in the trust and the trust held dutiable property of $1 000 000, the value of the taker in default's interest would be $500 000.

62. When trust acquisition or trust surrender is not dutiable transaction

(1) Duty is not chargeable on a trust acquisition or trust surrender if the trust acquisition or trust surrender is a result of —

(a) a person becoming or ceasing to be a member of a class of beneficiaries of the discretionary trust because of the birth or death of the person; or

(b) a person becoming or ceasing to be a member of a class of beneficiaries of the discretionary trust because of the marriage or divorce of the person, or the beginning or ending of a de facto relationship of the person.

(2) In subsection (1)(b) —

de facto relationship means a de facto relationship that comes within the Family Court Act section 205Z(1)(a), (b) or (c).

Division 3 — Corporate trustees

Subdivision 1 — Terms used in this Division

63. Terms used

In this Division —

authorised trustee corporation means a corporation declared under the Corporations Act to be an authorised trustee corporation for any provision of that Act;

disposition, in relation to a share, includes —

(a) a transfer or other disposition of the share; and

(b) the allotment or issue of the share; and

(c) the redemption, surrender or cancellation of the share; and

(d) the variation, abrogation or alteration of a right pertaining to the share with respect to the capital of the corporate trustee; and

(e) any means by which a share is disposed of or the rights of its holder are diminished;

share means —

(a) a share or stock of an unlisted corporation; or

(b) an interest in such a share or stock;

unlisted corporation means a corporation not listed on an official list of a prescribed financial market.

64. References to trustee of discretionary trust holding property

A reference to a trustee of a discretionary trust holding property is a reference to the holding of the property by the trustee under the trust.

65. References to corporate trustee

A reference to a corporate trustee is to the trustee of a discretionary trust if that trustee —

(a) is an unlisted corporation, other than an authorised trustee corporation; and

(b) holds —

(i) dutiable property; or

(ii) an indirect interest in dutiable property.

66. When corporate trustee holds indirect interest in dutiable property

(1) A corporate trustee holds an indirect interest in dutiable property if an entity linked to the trustee is entitled to dutiable property.

(2) Section 156 applies where it is necessary to determine whether an entity is linked to a corporate trustee for the purposes of subsection (1).

(3) In applying section 156, the corporate trustee is the main entity, despite section 152(2).

Subdivision 2 — Disposition of shares in a corporate trustee

67. Share disposition taken to be agreement for transfer of trust property

(1) A disposition of a share in a corporate trustee is taken to be an agreement for the transfer of dutiable property and is liable to duty accordingly if it is a transaction, or part of a transaction, that is a scheme or arrangement, or part of a scheme or arrangement, that results in a change in the beneficial ownership of dutiable property held directly or indirectly by the corporate trustee of a discretionary trust.

(2) Subsection (1) does not apply to the disposition of a share by which the personal representative of a deceased person disposes

of a share to a beneficiary in the administration of the estate of the deceased.

68. Transaction referred to in s. 67, dutiable value of

(1) The dutiable value of a transaction referred to in section 67 is the proportion of the dutiable value of the dutiable property held, directly or indirectly, by the corporate trustee at the time of the share disposition that is equivalent to the proportion of the total issued capital of the corporate trustee represented by the share.

(2) The dutiable value of the dutiable property held indirectly by a corporate trustee is an amount determined by applying section 157 as if a reference in that section —

(a) to land were a reference to dutiable property; and

(b) to the main entity were a reference to the corporate trustee.

(3) In determining the proportion of the total issued capital of a corporate trustee represented by a share for the purposes of subsection (1), the respective rights and obligations pertaining to the share and the other shares in the capital of the corporate trustee are to be taken into account.

69. Person liable to pay duty on disposition of share

The person liable to pay duty on a disposition of a share in a corporate trustee referred to in section 67 is each person that holds a share in the corporate trustee.

Division 4 — Partnerships

Subdivision 1 — Terms used in this Division

70. Term used: dutiable property

In this Division, other than section 78 —

dutiable property means each of the following —

(a) land in Western Australia;

(b) a chattel in Western Australia.

[Section 70 amended by No. 17 of 2010 s. 12.]

71. References to partnership or trust holding property

A reference to a partnership or trust holding property is a reference to the holding of the property by the partners for the partnership or the trustees under the trust.

72. References to partnership acquisition

A reference to a partnership acquisition is to a person acquiring a partnership interest in a partnership that holds —

(a) land in Western Australia; or

(b) an indirect interest in land in Western Australia.

[Section 72 amended by No. 17 of 2010 s. 13.]

73. When partnership holds indirect interest in WA land

(1) A partnership holds an indirect interest in land in Western Australia if an entity linked to the partnership is entitled to land in Western Australia.

(2) Section 156 applies where it is necessary to determine whether an entity is linked to a partnership for the purposes of subsection (1) or section 76(a)(ii) or 77(1)(b).

(3) In applying section 156, the partnership is the main entity, despite section 152(2).

74. References to partner's partnership interest

A reference to a partner's partnership interest is to the greater of —

(a) the percentage of the capital of the partnership the partner has contributed or is obliged to contribute; or

(b) the percentage of the losses of the partnership the partner is required to bear.

Subdivision 2 — Acquiring partnership interests

75. When person acquires partnership interest

(1) A person acquires a partnership interest if a partnership is formed or the person's partnership interest increases.

(2) Without limiting subsection (1) —

(a) a partnership may be formed on —

(i) a change in the membership of a partnership; or

(ii) the merger of 2 or more partnerships;

or

(b) a person's partnership interest may increase —

(i) under the terms of a partnership agreement; or

(ii) on the retirement of a partner from a partnership; or

(iii) on a change in the terms of a partnership agreement effecting a change in the interests of the partners.

76. Partnership acquisition, dutiable value of

The dutiable value of a partnership acquisition is —

(a) the consideration for the acquisition so far as the consideration relates to dutiable property —

(i) held by the partnership; or

(ii) to which an entity linked to the partnership is entitled;

or

(b) the value of the partnership interest the subject of the acquisition at the time when liability for duty on the transaction arises if —

(i) there is no consideration for the acquisition; or

(ii) the consideration cannot be ascertained when liability for duty on the transaction arises; or

(iii) the value of the partnership interest is greater than the consideration for the acquisition.

77. Partnership interest, value of for s. 76(b)

(1) For the purpose of section 76(b), the value of a partnership interest the subject of a partnership acquisition is the total of the following amounts —

(a) in respect of the dutiable property held by the partnership — an amount determined by applying the partner's partnership interest to the unencumbered value, when liability for duty on the transaction arises, of the dutiable property;

(b) in respect of the dutiable property to which an entity linked to the partnership is entitled — an amount determined by applying the partner's partnership interest to an amount determined by applying section 157 as if a reference in that section —

(i) to land were a reference to dutiable property; and

(ii) to the main entity were a reference to the partnership.

(2) In determining the value of a partnership interest the subject of a new partner's partnership acquisition on formation of a partnership, the value of any dutiable property the partner contributed to the partnership on its formation is to be disregarded.

(3) For the purposes of subsection (2), a person is a new partner only if —

(a) the person was not in partnership with any partners of the partnership immediately before its formation; or

(b) on the person's partnership acquisition, the person becomes a partner in an additional partnership to a partnership in which the person is a partner with any partners of the additional partnership immediately before its formation.

(4) However, subsection (3)(b) does not apply to a person that makes a partnership acquisition in a partnership that was formed because of a change in the membership of the partners of another partnership (the ***old partnership***) if the person had a partnership interest in the old partnership.

(5) In determining the value of a partner's partnership interest the subject of an acquisition that is an increase in the partner's partnership interest, the partner's partnership interest is taken to be the increase in the partner's partnership interest.

78. Transfer of dutiable property of partnership to retiring partner, dutiable value of

(1) This section applies if, on a person (the ***retiring partner***) ceasing to be a partner in a partnership because of the retiring partner's retirement from the partnership or its dissolution, dutiable property of the partnership is transferred or agreed to be transferred to the retiring partner.

(2) The dutiable value of a transfer of, or an agreement for the transfer of, dutiable property to the retiring partner must be reduced by an amount calculated by applying the retiring partner's partnership interest in the partnership to the unencumbered value of the dutiable property immediately before the retirement or dissolution.

Note for this subsection:

Example for subsection (2) —

A, B and C are in partnership in equal shares. B had a one-third partnership interest immediately before retiring. On B ceasing to be a partner, A and C transfer land to B. The dutiable value of the land acquired by B will be reduced by one-third.

Division 5 — Western Australian business assets

Subdivision 1 — Terms used in this Division

79. Terms used

In this Division —

business asset means any of the following —

(a) goodwill of a business;

(b) a restraint of trade arrangement for a business;

(c) a business identity;

(d) a business licence;

(e) a right of a business under an uncompleted agreement to supply commodities or provide services;

(f) intellectual property of a business;

(g) things that a business has that are in the nature of rent rolls and client lists,

but does not include a trade debt;

business identity means a business name, trading name or internet domain name, or a right to use a business name, trading name or internet domain name;

business licence means a licence, permit or authority which is issued, granted or given under —

(a) a written law and which is required by a written law to be held by a person carrying out an activity for gain or reward; or

(b) a law of the Commonwealth and which is required by a law of the Commonwealth to be held by a person carrying out an activity in Western Australia for gain or reward;

circuit layout right means an exclusive right under the *Circuit Layouts Act 1989* (Commonwealth) for an eligible layout under that Act;

commodities includes land, money, credit and goods and any interest in them;

franchise arrangement means an agreement or other arrangement under which a person (the ***franchisor***) that carries on a business authorises or permits another person (the ***franchisee***) —

(a) to engage in the business of producing, supplying or providing commodities or services, or both, at a place other than the place of business of the franchisor as long as the franchisee does so under —

(i) a stated marketing, business or technical plan or system; and

(ii) a common format or common procedure, or both;

and

(b) to use a mark or common trade name in such a way that the business carried on by the franchisee is or is capable of being identified by the public as being substantially associated with the mark or name identifying, commonly connected with or controlled by the franchisor or a person that is a related person to the franchisor;

intellectual property means —

(a) a patent, trademark, industrial design, copyright, registered design, plant breeder right or circuit layout right; or

(b) anything else that has the following characteristics —

(i) it is in the nature of a strategy, process, procedure, mode of operation or way of working that enables a commodity or service to be produced, supplied or provided or that enhances the production, supply, provision or quality of a commodity or service;

(ii) it was created, devised or developed to be used for business purposes or, having been created, devised or developed for other purposes, has been applied, adapted or modified for use for business purposes;

or

(c) a right to use or exploit —

(i) anything mentioned in paragraph (a) or (b); or

(ii) an adaptation or modification of anything mentioned in paragraph (a) or (b);

plant breeder right means —

(a) a plant breeder's right under the *Plant Breeder's Rights Act 1994* (Commonwealth); or

(b) a plant breeder's right corresponding to a right mentioned in paragraph (a);

related person has the meaning given in section 162;

restraint of trade arrangement for a business means a restraint of trade arrangement which, in the opinion of the Commissioner, enhances or is likely to enhance the value of the business;

Western Australian business, in relation to a dutiable transaction, means —

(a) a business that, in the year preceding the transaction has —

(i) been carried on in or from Western Australia; or

(ii) supplied commodities or provided services to customers in Western Australia;

or

(b) carrying out an activity for gain or reward under a licence referred to in paragraph (a) of the definition of ***business licence***; or

(c) carrying out an activity in Western Australia for gain or reward under a licence referred to in paragraph (b) of the definition of ***business licence***;

Western Australian business asset means a business asset of a Western Australian business.

Subdivision 2 — Particular transactions involving business assets

80. Some transactions involving business licences to be taken to be agreements to transfer WA business assets

When a person agrees to relinquish a business licence held by that person, or agrees not to apply for a renewal of such a business licence, so that it, or another business licence in respect of the same kind of activity, can be issued, granted or given to another person that agreement is taken to be an agreement to transfer a Western Australian business asset and is liable to duty accordingly.

81. Transactions for particular WA business assets that are not dutiable transactions

(1) The transfer, or an agreement for the transfer, of a Western Australian business asset from a franchisor in accordance with a franchise arrangement, is not a dutiable transaction unless another person has relinquished, or agreed not to extend, that business asset or a business asset of the same kind so that the franchisee could acquire that business asset.

(2) A transaction is not a dutiable transaction if the only dutiable property the subject of the transaction is intellectual property of a business.

(3) A transaction referred to in subsection (2) is a dutiable transaction if, under section 37, it is aggregated with a transaction that is a dutiable transaction for a Western Australian business asset and the transactions are treated as a single dutiable transaction.

(4) For the purposes of section 11(1)(f), new dutiable property that is a Western Australian business asset referred to in section 17(1)(c) is not acquired unless subsection (5) applies.

(5) If a person —

(a) carries on, or has carried on, a business (the ***first business***); and

(b) creates intellectual property, a restraint of trade arrangement or a business identity related to the first business for the purpose of the carrying on of the first business or another business by another person,

then, subject to subsections (2) and (3), the creation of the intellectual property, restraint of trade arrangement or business identity is the acquisition by that other person of a Western Australian business asset of the first business.

Subdivision 3 — Dutiable value of dutiable transactions for business assets

82. Dutiable transaction for business asset, dutiable value of

The dutiable value of a dutiable transaction for a business asset is to be determined —

(a) under section 83 if —

(i) the business asset is a business licence referred to in paragraph (b) of the definition of that term in section 79; and

(ii) the asset is of a Western Australian business referred to in paragraph (c) of the definition of that term in section 79;

or

(b) under section 84 if the business asset is a business licence referred to in paragraph (a) of the definition of that term in section 79; or

(c) under section 85 or 86, as is relevant; or

(d) if the Commissioner decides that it is not appropriate to determine the dutiable value of a dutiable transaction for business assets under any of those sections, on such other basis as the Commissioner decides is appropriate.

83. Certain business licences required by Cwlth law, dutiable value of for s. 82(a)

The dutiable value of a dutiable transaction referred to in section 82(a) is the greater of the following —

(a) the value of the business licence so far as it authorises the carrying out of an activity in Western Australia; or

(b) the portion of the consideration for the transaction that relates to the carrying out of an activity in Western Australia under the authority of the business licence.

84. Business licences required by WA law, dutiable value of for s. 82(b)

The dutiable value of a dutiable transaction referred to in section 82(b) is —

(a) the consideration for the dutiable transaction; or

(b) the unencumbered value of the business licence the subject of the transaction at the time when liability for duty on the transaction arises if —

(i) there is no consideration for the transaction; or

(ii) the consideration cannot be ascertained when liability for duty on the transaction arises; or

(iii) the unencumbered value is greater than the consideration for the transaction.

85. Dutiable value of business asset where principal place of business is in WA

The dutiable value of a dutiable transaction for a business asset where the principal place of business or head office of the

Western Australian business is in Western Australia is to be determined using the following formula —

$$DV = \frac{CUV \times (TS - IS)}{TS}$$

where —

DV is the dutiable value;

CUV is —

(a) the consideration for the transaction; or

(b) the unencumbered value of the business asset the subject of the transaction if —

(i) there is no consideration for the transaction; or

(ii) the consideration cannot be ascertained when liability for duty on the transaction arises; or

(iii) the unencumbered value is greater than the consideration for the transaction;

TS is the gross amount (in Australian dollars) of all the commodities supplied and services provided by the business in the last 3 completed financial years preceding the transaction;

IS is the gross amount (in Australian dollars) of the commodities supplied and services provided by the business to customers elsewhere in Australia in the last 3 completed financial years preceding the transaction.

86. Dutiable value of business asset where principal place of business is out of WA

The dutiable value of a dutiable transaction for a business asset where neither the principal place of business nor the head office of the Western Australian business is in Western Australia is to be determined using the following formula —

$$DV = \frac{CUV \times WAS}{TS}$$

where —

DV is the dutiable value;

CUV is —

(a) the consideration for the transaction; or

(b) the unencumbered value of the business asset the subject of the transaction if —

(i) there is no consideration for the transaction; or

(ii) the consideration cannot be ascertained when liability for duty on the transaction arises; or

(iii) the unencumbered value is greater than the consideration for the transaction;

TS is the gross amount (in Australian dollars) of all the commodities supplied and services provided by the business in the last 3 completed financial years preceding the transaction;

WAS is the gross amount (in Australian dollars) of the commodities delivered and services provided by the business to customers in Western Australia in the last 3 completed financial years preceding the transaction.

Division 6 — Conditional agreements

87. References to conditional agreement

(1) A reference to a conditional agreement is to an agreement for the transfer of dutiable property where —

(a) completion of the agreement is conditional on the happening of one or more of the events described in subsection (2) and specified in an instrument effecting or evidencing the agreement; and

(b) the parties to the agreement do not have control over the happening of the event, except to the extent that they are required under the agreement to use their best endeavours to secure the happening of the event; and

(c) a person related to a party to the agreement does not have control over the happening of the event,

unless —

(d) it is a call option of a simultaneous put and call option taken to be an agreement for the transfer of option property under section 45; or

(e) it is an agreement that is subject to a condition which, in the opinion of the Commissioner, constitutes a scheme or arrangement, or part of a scheme or arrangement, the sole or dominant purpose of which is to defer the payment of duty.

(2) The following events are specified for the purposes of subsection (1)(a) —

(a) the obtaining by a purchaser under the agreement of a satisfactory private taxation ruling by the Commissioner of Taxation of the Commonwealth as to the consequences of the agreement with respect to taxation under a law of the Commonwealth;

(b) the obtaining, to the satisfaction of a purchaser under the agreement, of funds or of approval to obtain funds to finance the purchase;

(c) the obtaining by a purchaser under the agreement of a satisfactory building inspection, geotechnical or environmental report from a third party in relation to the property the subject of the agreement;

(d) the obtaining by a vendor under the agreement of the consent of the Minister responsible for administering the *Land Administration Act 1997* to transfer a lease of leasehold land to a purchaser under the agreement;

(e) the authorisation of the payment to a purchaser under the agreement of a first home owner grant under the *First Home Owner Grant Act 2000* in relation to a property the subject of the agreement;

(f) the obtaining by a purchaser under the agreement of a licence to trade or the grant of a franchise;

(g) where the subject of the agreement is a commercial property, the obtaining by a vendor under the agreement of the renewal of an existing lease of the property;

(h) the obtaining from the landlord of a leasehold business by a vendor of the business the subject of the agreement, of a new lease, or of an assignment of the current lease to a purchaser under the agreement;

(i) the sale of another property by a purchaser under the agreement;

(j) the obtaining by a vendor under the agreement of —

(i) the approval under the *Planning and Development Act 2005* section 135 for the subdivision of the land, or part of the land, the subject of the agreement; or

(ii) the registration of a strata/survey-strata plan under the *Strata Titles Act 1985*;

(k) the obtaining by a purchaser under the agreement of approval from a regulatory body;

(l) the results of the making of due diligence inquiries by a purchaser under the agreement where the results are to be measured against objective criteria set out in an instrument that effects or evidences the agreement;

(m) the issue of a certificate of title (however described) for the property the subject of the agreement;

(n) the obtaining by a purchaser of consent required under the *Mining Act 1978* for the transfer of a mining tenement the subject of the agreement;

(o) a prescribed event.

[(3), (4) deleted]

(5) For the purposes of subsection (1)(c), the following persons are related persons —

(a) joint owners of property;

(b) individuals who are in partnership with each other;

(c) participants in the same joint venture;

(d) family members;

(e) related corporations;

(f) 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;

(g) an individual and a corporation, if the individual is a majority shareholder, director or secretary of the corporation or a related corporation;

(h) an individual and a trustee, if the individual is a beneficiary under the trust of which the trustee is a trustee, whether the beneficiary has a vested share or is contingently entitled or is a potential beneficiary under a discretionary trust;

(i) a corporation and a trustee if —

(i) the corporation or a majority shareholder, director or secretary of the corporation is a beneficiary under the trust of which the trustee is a trustee; or

(ii) a related corporation to the corporation is a beneficiary under the trust of which the trustee is a trustee,

whether the beneficiary has a vested share or is contingently entitled or is a potential beneficiary under a discretionary trust.

(6) A reference in subsection (5)(d) to a family member of a person is to —

(a) a child or remoter lineal descendant of the person; or

(b) a parent or remoter lineal ancestor of the person; or

(c) a brother or sister of the person or remoter lineal descendant of a brother or sister of the person; or

(d) an aunt or uncle of the person; or

(e) the spouse, former spouse, de facto partner or former de facto partner of the person; or

(f) a family member referred to in paragraph (a), (b), (c) or (d) of a person referred to in paragraph (e); or

(g) the spouse or de facto partner of a person mentioned in paragraph (a), (b), (c) or (d),

or more than one of them.

[Section 87 amended by No. 17 of 2010 s. 8.]

88A. General conditional agreements, no duty on if terminated on relevant grounds

(1) Duty is not chargeable on a general conditional agreement if, after an instrument effecting or evidencing the agreement has been lodged under section 23 but before duty on the transaction is paid, or is due to be paid, under section 25 (whichever is the earlier in time) —

(a) the agreement is terminated on relevant grounds; and

(b) the Commissioner is notified of the termination of the agreement in the approved form.

(2) A general conditional agreement is terminated on relevant grounds if —

(a) it is not carried into effect because the condition to which it is or was subject cannot be fulfilled for reasons that are not within the control of a party to the agreement, or a person that is related (within the meaning given in section 87(5)) to a party to the agreement; and

(b) duty is not chargeable on the agreement under section 107 because it is a cancelled transaction.

[Section 88A inserted by No. 17 of 2010 s. 9.]

88. References to farming land conditional agreement

A reference to a farming land conditional agreement is to a conditional agreement the subject of which is solely or dominantly farming land within the meaning of section 99(1).

89. References to mining tenement conditional agreement

A reference to a mining tenement conditional agreement is to a conditional agreement the subject of which is a mining tenement.

90. References to issue of title conditional agreement

A reference to an issue of title conditional agreement is to a conditional agreement —

(a) for the sale of land conditional on the happening of one or more of the events described in section 87(2)(j) or (m); or

(b) for —

(i) the sale of a strata lot; and

(ii) the construction on the strata lot, after liability for duty on the agreement arises, of a building for commercial, residential or mixed use purposes.

[Section 90 inserted by No. 17 of 2010 s. 10.]

91. References to subdivision conditional agreement

A reference to a subdivision conditional agreement is to a conditional agreement for the sale of land conditional on the obtaining by a purchaser under the agreement of approval from the relevant authorities to the subdivision of the land, or part of the land, the subject of the agreement.

Part 6 — Exemptions, nominal duty and concessions

Division 1 — Exemptions

Subdivision 1 — Exemptions for public and governmental purposes

92. Public authorities, declaration of as exempt bodies

(1) The Minister may declare a public authority to be an exempt body for the purposes of this Subdivision.

Note for this subsection:

There are other exempt bodies. See the definition of ***exempt body*** in section 3.

(2) The Minister may withdraw a declaration made under subsection (1).

(3) The Minister is to publish notice of the making or withdrawal of a declaration in the *Gazette*.

93. Transactions for which exempt body would be solely liable

Duty is not chargeable on a dutiable transaction to which an exempt body is a party if the exempt body is the only party that would be liable to pay duty that would, but for this section, be chargeable on the transaction.

94. Transactions for which exempt body and another party would be liable, duty reduction for etc.

(1) This section applies to a dutiable transaction to which an exempt body is a party if —

(a) the exempt body would, apart from subsection (2), be liable to pay duty chargeable on the transaction; and

(b) at least one other party to the transaction is liable to pay duty chargeable on the transaction and is not an exempt body.

(2) The exempt body is not liable to pay duty on the transaction.

(3) The amount of duty payable on the transaction (AD) is the amount determined under the formula —

$$AD = TD - (TD \times EI)$$

where —

TD is the amount of duty that would be payable on the transaction if this section did not apply to it;

EI is —

(a) if the interest in the dutiable property that the exempt body has under the transaction is of a kind that enables the proportion which that interest bears to the whole of the dutiable property to be ascertained — that proportion expressed as a percentage; or

(b) in any other case — a percentage determined by the Commissioner to represent the proportion which the interest in the dutiable property that the exempt body has under the transaction bears to the whole of the dutiable property.

(4) The amount of duty payable by any party referred to in subsection (1)(b) is the amount AD determined under subsection (3).

Note for this section:

For example, an exempt body and another party acquire dutiable property as tenants in common. The exempt body acquires 40 of 100 undivided shares and the other party acquires 60 of 100 undivided shares. But for this section the transfer duty chargeable on the transaction would be $3 000. Under the operation of this section the amount of duty payable on the transaction is calculated as follows:

$$\$3\,000 - \left(\$3\,000 \times \frac{40}{100}\right) = \$3\,000 - \$1\,200 = \$1\,800$$

This amount (i.e. $1 800) is the amount of transfer duty payable by the other party.

95. Transactions for charitable etc. purposes

(1) Duty is not chargeable on a dutiable transaction that has been entered into or occurred for charitable or similar public purposes.

(2) However, subsection (1) does not apply if the person liable to pay duty on the dutiable transaction is a relevant body, or is related to a relevant body as referred to in subsection (3), unless a beneficial body determination is in force for the purposes of this Act in respect of the relevant body.

(3) A person liable to pay duty on a dutiable transaction is related to a relevant body if —

(a) the person holds the dutiable property the subject of the transaction as trustee of a trust; and

(b) the relevant body is a beneficiary under the trust, whether the relevant body has a vested share or is contingently entitled or is a potential beneficiary under a discretionary trust, unless —

(i) the trust is a discretionary trust; and

(ii) the Commissioner decides in a particular case that it would be inequitable for the person to be treated as related to the relevant body.

[Section 95 amended by No. 8 of 2015 s. 5.]

96A. What is a relevant body

A reference to a relevant body is to any of the following —

(a) a political party;

(b) an industrial association;

(c) a professional association;

(d) a body, other than a body referred to in paragraph (a), (b), (c) or (e), that promotes trade, industry or commerce, unless the main purposes of the body are charitable purposes that fall within the first 3 categories (being relief of poverty, advancement of education and advancement of religion) identified by Lord Macnaghten in *Commissioners for Special Purposes of Income Tax v Pemsel* [1891] AC 531 as developed by the common law of Australia from time to time;

(e) a body that is a member of a class of bodies prescribed for the purposes of this paragraph;

(f) a body that —

(i) is a member of a group, as defined in the *Pay-roll Tax Assessment Act 2002* Glossary, of which a body referred to in another paragraph is also a member; or

(ii) is a related body corporate, as defined in the Corporations Act section 9, of a body referred to in another paragraph; or

(iii) has as its sole or dominant purpose or object the conferral of a benefit, whether financial or non-financial, on a body referred to in another paragraph.

[Section 96A inserted by No. 8 of 2015 s. 6.]

96B. Application for a beneficial body determination

(1) An application may be made to the Minister for a determination under section 96C that a relevant body is a beneficial body for the purposes of the taxation Acts if —

(a) the Commissioner has decided (the ***decision***) that —

(i) a dutiable transaction is not an exempt transaction under section 95; or

(ii) an acquisition is not exempt under section 168(1) because the transfer referred to in that section would not be an exempt transaction under section 95;

and

(b) that decision is made solely on the ground that the person liable to pay duty on the dutiable transaction, or who would be liable to pay duty on the transfer, is —

(i) a relevant body referred to in section 96A(c), (d), (e) or (f); or

(ii) related to such a relevant body as referred to in section 95(3).

(2) An application referred to in subsection (1) can be made only if —

(a) an objection was made to the decision and the objection and any subsequent review proceedings are exhausted, discontinued or finally determined; or

(b) under the Taxation Administration Act section 34B —

(i) all rights of objection or review conferred by that Act in respect of the decision have been surrendered; or

(ii) an objection to the decision has been determined and all rights to take review proceedings on the Commissioner's decision on the objection have been surrendered.

(3) However, an application referred to in subsection (1) cannot be made if the decision was made, or confirmed, on a reassessment made on an application made by the taxpayer —

(a) under the Taxation Administration Act section 16(2)(b); and

(b) after the right to object to the original assessment had expired.

(4) An application referred to in subsection (1) must be made within 60 days after subsection (2) first applies in respect of the decision.

[Section 96B inserted by No. 8 of 2015 s. 6.]

96C. Beneficial body determination

(1) On an application under section 96B the Minister, with the Treasurer's concurrence, may determine that a relevant body is a beneficial body for the purposes of the taxation Acts.

(2) The Minister, with the Treasurer's concurrence, may amend or revoke a beneficial body determination.

(3) The Minister may make, amend or revoke a beneficial body determination only if the Minister is of the opinion that it is in the public interest to do so and after considering any information that the Minister considers relevant.

(4) The Minister must —

(a) provide written reasons to the applicant for a decision in relation to an application under section 96B; and

(b) provide written reasons for a decision to amend or revoke a beneficial body determination to the body in respect of which the determination is made.

(5) The Minister is to publish notice of the making, amendment or revocation of a beneficial body determination in the *Gazette*.

(6) A beneficial body determination is subject to the conditions specified in the determination (if any).

(7) A beneficial body determination made under this section comes into force —

(a) for the purposes of this Act — on the day on which the determination is made; and

(b) for the purposes of the *Land Tax Assessment Act 2002* and the *Pay-roll Tax Assessment Act 2002* — on the day specified in the notice in respect of each Act.

(8) Despite subsection (7)(a), a beneficial body determination made under this section applies in relation to the relevant body in respect of —

(a) the dutiable transaction, or acquisition, that is the subject of the application under section 96B (the ***original transaction***); and

(b) any other transaction —

(i) that was entered into or occurred after the original transaction but before the determination was made; and

(ii) on which duty would not have been chargeable under section 95 (including for the purposes of section 168) had the determination been in force for the purposes of this Act in respect of the relevant body.

(9) The Commissioner is to reassess the liability to duty of each transaction in respect of which a beneficial body determination applies under subsection (8).

(10) The limitations as to time in the Taxation Administration Act section 17 do not apply in respect of a reassessment under subsection (9).

(11) A beneficial body determination continues in force until the day on which notice of the revocation is published in the *Gazette*, and different days may be specified for each Act in respect of which the determination is in force.

[Section 96C inserted by No. 8 of 2015 s. 6.]

Subdivision 2 — Certain transactions between spouses or de facto partners

96. Terms used

In this Subdivision —

lot means either of the following —

(a) a lot within the meaning given in the *Land Tax Assessment Act 2002* Glossary clause 2;

(b) 2 or more such lots in the same ownership —

(i) on which is constructed a residence, parts of which stand on each of the lots; and

(ii) which have common boundaries and which in the opinion of the Commissioner should be treated as a single lot for the purpose of this Subdivision;

residence includes flat, apartment or other residential unit.

97. Some transactions between spouses or de facto partners

Duty is not chargeable on a transfer of, or an agreement for the transfer of, dutiable property where —

(a) the person from whom, and the person to whom, the dutiable property is transferred, or agreed to be transferred, are married to each other or are de facto partners of 2 years; and

(b) the dutiable property is a lot on which a residence is erected which, when liability for duty on the transaction arises, was used solely or dominantly as the ordinary place of residence of the persons referred to in paragraph (a); and

(c) the lot on which the residence is erected is used solely or dominantly for residential purposes associated with that residence; and

(d) the person from whom the dutiable property is transferred, or agreed to be transferred, is the sole owner of the property; and

(e) the result of the transaction is or will be that the dutiable property is owned solely by the persons referred to in paragraph (a) as joint tenants or tenants in common in equal shares.

98. Application for exemption under this Subdivision

An application for assessment or reassessment under this Subdivision must be —

(a) made in the approved form by the persons referred to in section 97(a); and

(b) accompanied by such transaction record for the transaction as is required to be lodged under section 23.

Subdivision 3 — Family farm transactions

99. Terms used

(1) In this Subdivision —

exempt family farm transaction has the meaning given in section 102;

family member has the meaning given in section 100;

farming land means land in Western Australia that is used solely or dominantly for the purpose of primary production;

farming property means —

(a) farming land; or

(b) other dutiable property that is used solely or dominantly in connection with the business of primary production;

transferee has the meaning given in section 101;

transferor, in respect of a dutiable transaction the subject of which is farming property, means —

(a) an individual (other than a trustee) from whom the property is, or is to be, acquired; or

(b) if the property was held by a trustee (other than a trustee of a unit trust scheme or a discretionary trust) immediately before the transaction took place, an individual on whose behalf, and at whose direction, the trustee carried out the transaction.

(2) For the purposes of this Subdivision, a person controls a discretionary trust if —

(a) the person is in a position to influence, either directly or indirectly, the vesting of the whole or any part of the capital of the trust property, or of the whole or any part of the income from the trust property; or

(b) in a case where a corporation is in a position to influence, either directly or indirectly, the vesting of the whole or any part of the capital of the trust property, or of the whole or any part of the income from that trust

property, the person is beneficially entitled to a share in that corporation or a related corporation or to act as a director or secretary of that corporation or related corporation.

(3) For the purposes of this Subdivision, farming property is the subject of a dutiable transaction that is a partnership acquisition, if the land referred to in section 72 is farming land.

100. References to family member

A reference in this Subdivision to a family member of a person is to —

(a) a child or remoter lineal descendant of the person; or

(b) a parent or remoter lineal ancestor of the person; or

(c) a brother or sister of the person or remoter lineal descendant of a brother or sister of the person; or

(d) an aunt or uncle of the person; or

(e) the spouse, former spouse, de facto partner of 2 years or former de facto partner of 2 years of the person; or

(f) the spouse or de facto partner of 2 years of a person mentioned in paragraph (a), (b), (c) or (d),

or more than one of them.

101A. References to primary production

(1) A reference to ***primary production*** is a reference to any of the following —

(a) the growing or rearing of plants (including trees, fungi or any crop) for the purpose of selling them, parts of them or their produce;

(b) the breeding, rearing or maintenance of living creatures for any of the following purposes (***produce animals***) —

(i) selling them, or their progeny, for food;

(ii) the production or collection of their skins, shells or bodily produce;

(iii) selling parts of them or their skins, shells or bodily produce;

(c) the breeding, rearing or maintenance of produce animals for the purpose of selling them or their progeny —

(i) for stud purposes; or

(ii) to be used for a purpose set out in paragraph (b)(i), (ii) or (iii);

(d) the breeding or rearing of horses for the purpose of selling them or their progeny;

(e) any other thing prescribed for the purposes of this subsection.

(2) In determining whether or not something is primary production —

(a) it is irrelevant whether a thing is sold, or to be sold, in a natural, processed or converted state; but

(b) the processing or converting of anything for the purpose of selling it is not primary production.

[Section 101A inserted by No. 1 of 2015 s. 11.]

101. References to transferee

A reference in this Subdivision to a transferee in respect of a dutiable transaction the subject of which is farming property is to a person described in Schedule 1 column 4 opposite the description of the transaction, that is —

(a) a family member of the transferor, if the family member does not intend to hold the farming property as agent, trustee or otherwise on behalf of any other person; or

(b) a trustee of a trust, other than a unit trust scheme or a discretionary trust, if the beneficial owner of the trust property under the trust is a family member of the transferor; or

(c) a trustee of a discretionary trust, if —

(i) 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

(ii) the transferor does not control the discretionary trust.

102. References to exempt family farm transaction

(1) A reference in this Subdivision to an exempt family farm transaction is to a dutiable transaction to the extent to which the subject of the transaction is farming property which, as a result of the transaction is, or is to be, acquired by a transferee or transferees.

(2) A transaction is an exempt family farm transaction only if —

(a) each transferor was using the farming property in the business of primary production immediately before the transaction took place; and

(b) when liability to duty on the transaction arose, each transferee intends to continue to use the farming property in the business of primary production.

(3) It is irrelevant for the purposes of subsection (2) whether a transferor was using, or a transferee intends to continue to use, the farming property in the business of primary production —

(a) personally; or

(b) through a trust, corporation or partnership (an ***entity***) to which the transferor or transferee, as is relevant, is related; or

(c) through a combination of entities to which the transferor or transferee, as is relevant, is related.

(4) In subsection (3), a transferor is related to an entity if —

(a) the transferor is a beneficiary of a trust —

(i) other than a unit trust scheme or a discretionary trust; and

(ii) in which every other beneficiary is a family member of the transferor;

or

(b) the transferor has a share or interest in trust property, whether vested or contingent, held by the trustee of a discretionary trust and every other person who holds such a share or interest in that property, or who may benefit from that trust, is a family member of the transferor; or

(c) the transferor holds units in a unit trust scheme and every other person who holds a unit in that unit trust scheme is a family member of the transferor; or

(d) the transferor is a shareholder in a corporation in which every other shareholder is a family member of the transferor; or

(e) the transferor is a partner in a partnership in which every other partner is a family member of the transferor.

(5) In subsection (3), a transferee is related to an entity if —

(a) the transferee is a beneficiary of a trust —

(i) other than a unit trust scheme or a discretionary trust; and

(ii) in which every other beneficiary is a family member of the transferor;

or

(b) the transferee has a share or interest in trust property, whether vested or contingent, held by the trustee of a discretionary trust and —

(i) every other person who holds such a share or interest in that property, or who may benefit

from that trust, is a family member of the transferor; and

(ii) the transferor does not control the trust;

or

(c) the transferee holds units in a unit trust scheme and every other person who holds a unit in that unit trust scheme is a family member of the transferor; or

(d) the transferee is a shareholder in a corporation in which every other shareholder is a family member of the transferor; or

(e) the transferee is a partner in a partnership in which every other partner is a family member of the transferor.

(6) For the purposes of subsection (2), a farming property is being used in the business of primary production even if —

(a) some, but not all, of the farming land of that property is leased to another person; and

(b) under the lease, the lessee is using the leased land solely or dominantly for the purposes of silviculture or reafforestation.

103. Exempt family farm transactions, exemption for

Duty is not chargeable on an exempt family farm transaction.

104. No exemption for subsequent transactions for same farming property within 5 years

Despite section 103, duty is chargeable on a transaction (a ***subsequent transaction***) that would otherwise be an exempt family farm transaction if —

(a) duty was not charged on an exempt family farm transaction (the ***first transaction***); and

(b) liability to duty on the subsequent transaction arose —

(i) within 5 years of the first transaction; and

(ii) the transaction relates, in the opinion of the Commissioner, to the same farming property that was the subject of the first transaction.

105. Subsequent liability to duty in certain circumstances

(1) If, after an exempt family farm transaction as a result of which farming property was acquired by a transferee referred to in section 101(c) has taken place, any of the following events take place, the event is taken to be a transfer of farming property —

(a) during the lifetime of the transferor, a person that is not a family member of the transferor —

(i) becomes entitled to a share or interest in the trust property, whether that share or interest is vested or contingent; or

(ii) otherwise benefits from the trust;

(b) the transferor gains control of the trust,

unless —

(c) when the event took place, the trust did not hold any farming property that was the subject of an exempt family farm transaction; or

(d) an event taken to be a transfer of the farming property is already duty endorsed under this section.

(2) The trustee of the trust is to lodge a transfer duty statement not later than 2 months after the day on which an event referred to in subsection (1) takes place.

Penalty: a fine of $20 000.

(3) The person liable to pay the duty is the trustee.

(4) The dutiable value of an event subsequent to an exempt family farm transaction, taken to be a transfer under subsection (1), is the unencumbered value of the farming property that was the subject of the exempt family farm transaction held by the trust when the event took place.

106. Application for exemption under this Subdivision

(1) An application for assessment or reassessment under this Subdivision must be —

(a) made in the approved form jointly by all of the transferees; and

(b) accompanied by such transaction record for the transaction as is required to be lodged under section 23.

(2) For the purposes of this Subdivision, the Taxation Administration Act section 17 applies as if —

(a) despite subsection (1) of that section, a person is not entitled to apply for a reassessment more than 12 months after the day on which the transaction was duty endorsed; and

(b) despite subsection (4) of that section, the Commissioner may make a reassessment on an application only if the application was made within that time.

Subdivision 4 — Other exempt transactions

107. Cancelled transactions

(1) In this section —

cancelled transaction has the meaning given in subsection (2);

replacement transaction, in relation to a cancelled transaction, means another dutiable transaction that —

(a) is between all of the same parties as the parties to the cancelled transaction; and

(b) is substantially similar in effect to the cancelled transaction; and

(c) in the opinion of the Commissioner, is a scheme or arrangement, or part of a scheme or arrangement, for which the sole or dominant purpose of any party is to avoid, reduce or defer the payment of duty;

subsale transaction, in relation to a cancelled transaction, means another dutiable transaction which results in a beneficial interest in the dutiable property the subject of the cancelled transaction being held by —

(a) a person who is not a party to the cancelled transaction, a result which is contemplated or provided for under the cancelled transaction; or

(b) a person who is not a party to the cancelled transaction, a result which is substantially similar in effect to the effect of the cancelled transaction; or

(c) another person, as a result of an agreement, arrangement or understanding between a person liable to pay duty on the cancelled transaction and any other party to the transaction (including any other person liable to pay duty on the cancelled transaction).

(2) A reference to a cancelled transaction is to a dutiable transaction that has not been, and will not be, carried into effect but the following transactions are not cancelled transactions —

(a) a call option of a simultaneous put and call option taken to be an agreement for the transfer of the option property under section 45;

(b) an assignment of a call option taken to be an agreement for the transfer of the option property under section 49;

(c) a terms contract (within the meaning given in the *Sale of Land Act 1970*) if the person liable to pay duty on the transaction has under the contract, obtained exclusive use or control of the dutiable property, whether or not that contract is not fully carried into effect for any reason.

(3A) To avoid doubt, for the purposes of subsection (2), a dutiable transaction has not been, and will not be, carried into effect if —

(a) the transaction is a transfer of dutiable property; and

(b) the transaction is effected or evidenced by an electronic conveyancing instrument (as defined in section 22A); and

(c) under section 42, no duty is chargeable on the transfer; and

(d) the instrument, having been digitally signed (as defined in the *Electronic Conveyancing Act 2014* section 3(1)) is unsigned in accordance with the participation rules (as so defined) applicable to that instrument.

(3) Subject to subsection (4), duty is not chargeable on a cancelled transaction.

(4) Duty is chargeable on a cancelled transaction if the transaction has been cancelled so that a replacement transaction or a subsale transaction can be entered into.

(5) The Commissioner, on the application of a taxpayer, is to reassess the liability to duty of a dutiable transaction that is not liable to duty because of this section.

(6) An application for assessment or reassessment under this section in relation to a cancelled transaction must be —

(a) in the approved form; and

(b) accompanied by such transaction record for the transaction as is required to be lodged under section 23.

(7) For the purposes of this section, in relation to an agreement for the transfer of dutiable property, the *Taxation Administration Act 2003* section 17 applies as if —

(a) despite subsection (1) of that section, a person is not entitled to apply for a reassessment —

(i) more than 5 years after the original assessment was made; or

(ii) more than 12 months after the day on which the agreement became a cancelled transaction,

whichever is the later; and

(b) despite subsection (4) of that section, the Commissioner may only make a reassessment on an application if the application was made within that time.

[Section 107 amended by No. 29 of 2012 s. 6; No. 2 of 2014 s. 53.]

108. Bankruptcy transactions

(1) In this section —

bankruptcy trustee means —

(a) the Official Trustee in Bankruptcy; or

(b) a registered trustee,

under the *Bankruptcy Act 1966* (Commonwealth).

(2) Duty is not chargeable on a dutiable transaction —

(a) that is a vesting of dutiable property in a bankruptcy trustee; or

(b) that is the transfer, or agreement for the transfer, of dutiable property for no consideration to a former bankrupt from the estate of the former bankrupt.

109. Transfer etc. to foreign country's representative etc.

Duty is not chargeable on a transfer of, or an agreement for the transfer of, dutiable property to a representative in Australia of the Government of another country, a foreign consul, or a trade commissioner of another country, if that property is intended for official use.

110. *Financial Sector (Business Transfer and Group Restructure) Act 1999* (Cwlth) Part 4 transactions

Duty is not chargeable on a vesting of dutiable property by, or expressly authorised by, statute law (as referred to in section 11(1)(d)(i)) that is a compulsory transfer of dutiable property under the *Financial Sector (Business Transfer and Group Restructure) Act 1999* (Commonwealth) Part 4.

[Section 110 amended by No. 31 of 2008 s. 32.]

111. Special disability trust transactions

Duty is not chargeable on a transfer of, or an agreement for the transfer of, dutiable property —

(a) to a special disability trust, within the meaning given in the *Social Security Act 1991* (Commonwealth) section 1209L; and

(b) if there is no consideration for the transfer.

112. Some transactions under other Acts

(1) Duty is not chargeable on a transfer of, or an agreement for the transfer of, the fee simple in Crown land under the *Land Administration Act 1997* section 87 to complete a land exchange under section 11(1)(b) of that Act.

(2) Duty is not chargeable on a transfer of, or an agreement for the transfer of, the fee simple in Crown land by way of exchange where the decision to exchange the land is given effect under the *Land Administration Act 1997* Schedule 2 clause 4.

(3) Duty is not chargeable on a transfer of, or an agreement for the transfer of, the fee simple in —

(a) Crown land the subject of a licence referred to in the *Land Administration Act 1997* Schedule 2 clause 21; or

(b) Crown land the subject of a lease referred to in the *Land Administration Act 1997* Schedule 2 clause 22; or

(c) Crown land the subject of a conditional purchase lease referred to in the *Land Administration Act 1997* Schedule 2 clause 26; or

(d) Crown land the subject of a conditional purchase lease referred to in the *Land Administration Act 1997* Schedule 2 clause 27; or

(e) war service land referred to in the *Land Administration Act 1997* Schedule 2 clause 30; or

(f) Crown land referred to in the *Land Administration Act 1997* Schedule 2 clause 32.

(4) Duty is not chargeable on a transfer of, or an agreement for the transfer of, or the grant of the fee simple or other less estate in Crown land pursuant to —

(a) a request under the *Land Administration Act 1997* section 212; or

(b) an agreement under the *Land Administration Act 1997* section 255; or

(c) an award under the *Land Administration Act 1997* section 256; or

(d) the *Land Administration Act 1997* section 257.

(5) Duty is not chargeable on a transfer of the fee simple in Crown land —

(a) pursuant to a request under the *Public Works Act 1902* section 45A; or

(b) granted under the *Public Works Act 1902* section 80,

as in force immediately before the commencement of the *Acts Amendment (Land Administration) Act 1997*[4].

(6) Duty is not chargeable on a transaction —

(a) that is the passing of any property that occurs by operation of the *Strata Titles Act 1985* section 21I or 21M or an order under section 103P of that Act; or

(b) to give effect to a notice of resolution referred to in the *Strata Titles Act 1985* section 21V or 31H; or

(c) that occurs by operation of the *Strata Titles Act 1985* section 21W, 21Y, 31G or 31J or an order under section 103P of that Act; or

(d) under, or to give effect to, the *Strata Titles Act 1985* Part II Division 2A or Part III Division 3,

to the extent that the consideration for the transaction is an interest in common property, within the meaning of that term in that Act.

113. Transactions effected by matrimonial instrument or de facto relationship instrument

Duty is not chargeable on a dutiable transaction to the extent that it is effected by a matrimonial instrument mentioned in section 129(b) or (c) or a de facto relationship instrument mentioned in section 130(a).

Division 2 — Nominal duty

Subdivision 1 — Certain trust transactions

114. Some transfers etc. on vesting or termination of discretionary trust

(1) This section applies to a transfer of, or an agreement for the transfer of, dutiable property to a taker in default on the vesting or termination of the discretionary trust.

(2) Nominal duty is chargeable on a transaction to which this section applies if there is, or will be, no consideration for the transaction.

115. Some transfers etc. on exercise of power of appointment by trustee of discretionary trust

Nominal duty is chargeable on a transfer of, or an agreement for the transfer of, dutiable property to a beneficiary of a discretionary trust in the exercise by the trustee of a power of appointment over the property if —

(a) there is, or will be, no consideration for the transfer or agreement; and

(b) the beneficiary is an individual who does not intend to hold the property as agent, trustee or otherwise on behalf of any other person; and

(c) at the time when the trustee acquired the property the beneficiary was named or described in the instrument which created the power of appointment as a beneficiary

or as a member of a class of beneficiaries in favour of which the trustee was empowered by that instrument to appoint the property; and

(d) evidence of the acquisition by the trustee, as trustee, of the property is produced to the Commissioner.

116. Some transfers etc. of dutiable property to beneficiary

(1) Nominal duty is chargeable on a transfer of, or an agreement for the transfer of, dutiable property by the trustee of a trust, other than a unit trust scheme or a discretionary trust, to a beneficiary of the trust if —

(a) there is no consideration for the transfer or agreement; and

(b) the transfer, or agreement, is under and in conformity with the trusts contained in the declaration of trust.

(2) Subsection (1) applies only if the property the subject of the agreement or transfer is —

(a) wholly or substantially the same as the property the subject of the declaration of trust and the declaration of trust is —

(i) duty endorsed; or

(ii) an exempt transaction;

or

(b) dutiable property representing the proceeds of re-investment of property referred to in paragraph (a); or

(c) property to which both paragraphs (a) and (b) apply.

117. Transactions involving apparent purchaser

(1) Nominal duty is chargeable on —

(a) a declaration of trust made by an apparent purchaser in respect of identified dutiable property —

(i) vested in the apparent purchaser upon trust for the real purchaser that provided the money for the purchase of the dutiable property; or

(ii) to be vested in the apparent purchaser upon trust for the real purchaser if the Commissioner is satisfied that when liability for duty arose in respect of the transfer, or agreement for the transfer of, the dutiable property, the money for the purchase of the dutiable property was or was to be provided by the real purchaser;

or

(b) a transfer of dutiable property from an apparent purchaser to the real purchaser if —

(i) the dutiable property is property, or part of property, vested in the apparent purchaser upon trust for the real purchaser; and

(ii) the Commissioner is satisfied that, when liability for duty on the transaction arose, the money for the purchase of the dutiable property and for any improvements made to the dutiable property after the purchase has been or will be provided by the real purchaser.

(2) For the purposes of subsection (1), money provided by a person other than the real purchaser is taken to have been provided by the real purchaser if the Commissioner is satisfied that the money was provided as a loan and has been or will be repaid by the real purchaser.

(3) This section applies whether or not there has been a change in the legal description of the dutiable property between the purchase of the property by the apparent purchaser and the transfer to the real purchaser.

Note for this subsection:

For example, a change in the legal description of dutiable property in the issuing of a new certificate of title following a subdivision of land.

118. Transfer to and from trustee

(1) In this section —

trustee means a trustee of a trust, other than a unit trust scheme or a discretionary trust, and includes a trustee appointed in substitution for a trustee or a trustee appointed in addition to a trustee or trustees.

(2) Nominal duty is chargeable on a transfer of dutiable property that is —

(a) made by a transferor to a trustee to be held solely as trustee for the transferor without any change in the beneficial ownership of the dutiable property; or

(b) made by way of re-transfer to the transferor, if no other person has had a beneficial interest in the property between the transfer to the trustee and the re-transfer.

(3) This section applies whether or not there has been a change in the legal description of the dutiable property.

Note for this subsection:

For example, a change in the legal description of dutiable property in the issuing of a new certificate of title following a subdivision of land.

[Section 118 amended by No. 30 of 2008 s. 25.]

119. Transactions related to changes in trustees and managed investment schemes

(1) In this section —

new trustee means a trustee appointed in substitution for a trustee or a trustee appointed in addition to a trustee or trustees;

old public unit trust means an undertaking, together with the prescribed interests to which it relates and the trustee or representative and the management company in relation to those interests, to which the Corporations Law Chapter 11 Part 11.2 Division 11 (sections 1451 to 1465) applied by reason of section 1452 of that Law;

responsible entity has the meaning given in the Corporations Act section 9.

(2) A reference in this section to an old public unit trust that has become a managed investment scheme is a reference to an old public trust that has become, in accordance with the Corporations Law Chapter 11 Part 11.2 Division 11 (sections 1451 to 1465), a managed investment scheme that is a registered scheme.

(3) Nominal duty is chargeable on a transfer, or agreement for the transfer, of dutiable property —

(a) to a trustee as a consequence of the retirement of a trustee or the appointment of a new trustee if the transfer is not a scheme or arrangement, or part of a scheme or arrangement, for conferring an interest, in relation to the trust property, on a new trustee or any other person, whether as a beneficiary or otherwise, to the detriment of the beneficial interest or potential beneficial interest of any person; or

(b) as a consequence of the retirement of a responsible entity of a managed investment scheme or the appointment of a new responsible entity of a managed investment scheme if the only beneficial interest acquired by a person in relation to the property as a result of the transfer is a beneficial interest acquired by the replacement or new responsible entity solely because of its appointment as responsible entity for the scheme; or

(c) as a consequence of an old public unit trust that has become a managed investment scheme if, after the transfer takes place, the members of the managed investment scheme have the same beneficial interests in the scheme's property as they had in the old public unit trust's property before the instrument was executed.

(4) Nominal duty is chargeable on a declaration of trust —

(a) made by a trustee in respect of dutiable property that, immediately before the trust is declared, is held by the trustee as trustee of an old public unit trust that has become a managed investment scheme the members of which have the same beneficial interests in the property as they had in the old public unit trust property before the trust was declared; and

(b) to hold the dutiable property on trust for the responsible entity of the managed investment scheme.

(5) Nominal duty is chargeable on a transfer, or agreement for the transfer, of dutiable property —

(a) from a responsible entity of a managed investment scheme to a custodian or agent of the responsible entity as custodian or agent of the scheme in which the transferor held the dutiable property; or

(b) from a custodian of the responsible entity of a managed investment scheme as custodian or agent of the scheme to the responsible entity of the managed investment scheme in which the transferor held the property.

(6) Nominal duty is chargeable on a vesting of dutiable property by, or expressly authorised by, statute law (as referred to in section 11(1)(d)(i)) in a trustee or responsible entity if subsection (3)(a) or (b) or (5)(b) would apply in respect of the dutiable transaction if it were a transfer of dutiable property.

120. Transfer by way of security

(1) Nominal duty is chargeable on a transfer of dutiable property if —

(a) there has been a dutiable transaction that is a transfer of the dutiable property by way of security (the ***original transfer***); and

(b) the original transfer is duty endorsed; and

(c) the property is transferred back to the person that transferred it by way of security or is transferred to a person to whom the property has been transmitted by death or bankruptcy.

(2) If nominal duty is chargeable on a transfer under subsection (1), nominal duty is also chargeable on the original transfer.

(3) The Commissioner, on the application of the taxpayer, is to reassess the liability to duty of the original transfer under subsection (2).

(4) The limitations as to time in the Taxation Administration Act section 17 do not apply in respect of a reassessment under subsection (3).

Subdivision 2 — Certain superannuation transactions

121. Terms used

In this Subdivision —

Commonwealth Act means the *Superannuation Industry (Supervision) Act 1993* (Commonwealth);

complying approved deposit fund means an entity that is a complying approved deposit fund in accordance with the Commonwealth Act section 43;

complying superannuation fund means an entity that is —

(a) a complying superannuation fund in accordance with the Commonwealth Act section 42 or 42A; or

(b) an exempt public sector superannuation scheme within the meaning given to that term in the Commonwealth Act section 10(1);

eligible rollover fund means an entity that is an eligible rollover fund in accordance with the Commonwealth Act section 242 and includes an entity the trustee of which is satisfied will be an eligible rollover fund within 12 months after the day on which a liability to duty arises;

pooled superannuation trust means an entity that is a pooled superannuation trust in accordance with the Commonwealth Act section 44;

superannuation fund means a complying approved deposit fund, a complying superannuation fund, an eligible rollover fund or a pooled superannuation trust.

122. Relevant superannuation transactions for consideration

(1) Nominal duty is chargeable on a relevant superannuation transaction if there is, or will be, consideration for the transaction.

(2) A reference in this section to a relevant superannuation transaction is to a transfer of, or an agreement for the transfer of, dutiable property by a person (the ***transferor***) to a trustee, or a custodian of a trustee, of a superannuation fund that meets the following criteria (an ***approved superannuation fund***) —

(a) either of the following apply to the superannuation fund —

(i) only the transferor can be a member of the superannuation fund;

(ii) property can only be held in the superannuation fund specifically for the transferor and cannot be pooled with the contributions or other assets of another member and no other member can obtain an interest in the property;

(b) property can only be held in the superannuation fund to be provided to the transferor as a retirement benefit.

(3) In subsection (2)(a)(ii) and (b) —

property —

(a) means —

(i) dutiable property the subject of a relevant superannuation transaction; or

(ii) if such dutiable property is sold so that the proceeds can be provided to the transferor as a retirement benefit, those proceeds;

and

(b) includes any net income from property referred to in paragraph (a), including income retained by a trustee of a superannuation fund while legal ownership of the property is held by a custodian of a trustee of the fund.

(4) An application for assessment or reassessment under this section must be made in the approved form.

[Section 122 inserted by No. 15 of 2015 s. 4.]

123. Subsequent liability in certain circumstances

(1) A reference in this section to a subsequent event in relation to a superannuation fund is to an event the effect of which is that the superannuation fund ceases to be an approved superannuation fund, as defined in section 122(2).

(2) Subsection (3) applies if, after a transaction is duty endorsed under section 122, a subsequent event takes place in relation to the superannuation fund while the dutiable property the subject of the transaction (the ***original dutiable property***), or part of it, is held —

(a) by a custodian of a trustee of the superannuation fund; or

(b) in the superannuation fund.

(3) A subsequent event is taken to be a transfer of the original dutiable property and is liable to duty accordingly.

(4) Not later than 2 months after the day on which a subsequent event takes place a trustee, or a custodian of a trustee, of the superannuation fund, as is relevant, is to lodge a transfer duty statement for the event.

Penalty: a fine of $20 000.

(5) The person liable to pay the duty is a trustee, or a custodian of a trustee, of the superannuation fund, as is relevant.

[Section 123 inserted by No. 15 of 2015 s. 4.]

124. Some transfers etc. of dutiable property to superannuation fund without consideration

(1) Nominal duty is chargeable on a transfer of, or an agreement for the transfer of, dutiable property by a person to the trustee of a superannuation fund that is an employer-sponsored fund within the meaning given by the Commonwealth Act section 16(3) where —

(a) there is, or will be, no consideration for the transfer; and

(b) the transfer is not a transaction to which section 126 applies.

(2) An application for assessment or reassessment under this section must be made in the approved form.

125. Transfer from one superannuation fund to another

(1) In this section —

relevant transfer means —

(a) a transfer of dutiable property from a trustee of an entity, or a custodian of a trustee of an entity, to the trustee of another entity, or to a custodian of a trustee of another entity; or

(b) a transfer of dutiable property from a trustee of an entity to a custodian of a trustee of the entity, or from a custodian of a trustee of an entity to a trustee of the entity;

superannuation fund does not include a pooled superannuation trust.

(2) Nominal duty is chargeable on a relevant transfer that occurs in connection with a person —

(a) ceasing to be a member of, or otherwise ceasing to be entitled to benefits in respect of, a superannuation fund or an entity that was a superannuation fund within the period of 12 months before the day the property is transferred; and

(b) becoming a member of, or otherwise becoming entitled to benefits in respect of, another entity (the ***chosen entity***) that is also a superannuation fund or that, in the opinion of the trustees of both entities concerned, will be a superannuation fund before the end of the period of 12 months after the day on which the property is transferred,

and for which there is no consideration.

(3) An application for assessment or reassessment under this section —

(a) must be made in the approved form; and

(b) if the chosen entity is not a superannuation fund when liability to duty arises — is to be accompanied by a statutory declaration from a trustee (or a director of a trustee that is a corporation) of each of the entities concerned stating that, in the opinion of the trustee (or director), the chosen entity will be a superannuation fund before the end of the period of 12 months after the day on which the property is transferred.

126. Some transfers etc. of dutiable property between trustees and custodians of superannuation funds

(1) In this section —

relevant entity, in relation to a transfer of, or an agreement for the transfer of, dutiable property, means —

(a) a superannuation fund; or

(b) an entity that, in the opinion of its trustee, will be a superannuation fund before the end of the period of 12 months after the day on which the property is transferred.

(2) Nominal duty is chargeable on a transfer of, or an agreement for the transfer of, dutiable property from —

(a) a trustee of a relevant entity to a custodian of the trustee of the relevant entity; or

(b) a custodian of a trustee of a relevant entity to a trustee of the relevant entity; or

(c) a custodian of a trustee of a relevant entity to another custodian of the trustee of the relevant entity,

if there is no change in the beneficial ownership of the property.

(3) An application for assessment or reassessment under this section —

(a) must be made in the approved form; and

(b) if the relevant entity is not a superannuation fund when liability to duty arises — is to be accompanied by a statutory declaration from a trustee (or a director of a trustee that is a corporation) of the relevant entity stating that, in the opinion of the trustee (or director), the relevant entity will be a superannuation fund before the end of the period of 12 months after the day on which the property is transferred.

[Section 126 amended by No. 15 of 2015 s. 5.]

127. Some transfers etc. of dutiable property from superannuation fund to member, dependant or representative

(1) In this section, each of these terms has the meaning given in the Commonwealth Act section 10(1) —

dependant

legal personal representative

(2) Nominal duty is chargeable in respect of a transfer of, or an agreement for the transfer of, dutiable property from the trustee of a superannuation fund to —

(a) a member of the fund; or

(b) where the member has died — a dependant of, or the legal personal representative of, the member,

if —

(c) the member was a member of the fund when the property first became part of the fund; and

(d) the unencumbered value of the property transferred does not exceed the value of the member's interest in the fund; and

(e) there is, or will be, no consideration for the transfer or agreement.

[Section 127 inserted by No. 32 of 2012 s. 8.]

Subdivision 3 — Transactions related to the break-up of a marriage or de facto relationship

Note for this Subdivision:

Section 113 provides for an exemption from duty to the extent that a dutiable transaction is effected by a matrimonial instrument or a de facto relationship instrument.

128. Terms used

(1) In this Subdivision —

child means a person who is under 18 years of age;

de facto relationship means a de facto relationship that comes within the Family Court Act section 205Z(1)(a), (b) or (c);

de facto relationship instrument has the meaning given in section 130;

de facto relationship property of a de facto relationship, means property of the de facto partners to the relationship or of either of them;

Family Law Act means the *Family Law Act 1975* (Commonwealth);

flag lifting agreement has the meaning given in the Family Law Act section 90MN;

matrimonial instrument has the meaning given in section 129;

matrimonial property of a marriage, means property of the parties to the marriage or of either of them and includes a superannuation interest;

splitting agreement means —

(a) a superannuation agreement; or

(b) a flag lifting agreement,

that has effect under the Family Law Act Part VIIIB;

superannuation agreement has the meaning given in the Family Law Act section 90MH;

superannuation fund has the meaning given in section 121;

superannuation interest has the meaning given in the Family Law Act section 90MD.

(2) A reference in this Subdivision to persons who are married to each other or have been married to each other includes persons who are married to each other or who have been married to each other by a marriage that is void under the Family Law Act.

129. References to matrimonial instrument

A reference to a matrimonial instrument is to any of the following instruments to the extent that it deals with matrimonial property —

(a) a maintenance agreement registered under the Family Law Act section 86 or approved under the Family Law Act section 87;

(b) a financial agreement made under the Family Law Act section 90B, 90C or 90D;

(c) a splitting agreement;

(d) an order of a court under the Family Law Act.

130. References to de facto relationship instrument

A reference to a de facto relationship instrument is to any of the following instruments to the extent it deals with de facto relationship property —

(a) a financial agreement or a former financial agreement, within the meaning of those terms in the Family Court Act section 205T;

(b) an order of a court under —

(i) the Family Court Act Part 5A; or

(ii) a law of the Commonwealth or another State or Territory that substantially corresponds to the Family Court Act Part 5A.

131. Transactions effected by or in accordance with matrimonial instrument or de facto relationship instrument

(1) Nominal duty is chargeable on a dutiable transaction to the extent that it is —

(a) effected by a matrimonial instrument referred to in section 129(a) or (d); or

(b) in accordance with a matrimonial instrument referred to in section 129(b) or (c),

if —

(c) the parties to the marriage are separated or divorced from each other or the marriage has irretrievably broken down; and

(d) under the transaction, the matrimonial property is, or is to be, transferred to —

(i) either, or both, of the parties to the marriage; or

(ii) a child, or children, of either of the parties to the marriage, or a trustee of such a child or children; or

(iii) a trustee of a superannuation fund.

(2) Nominal duty is chargeable on a dutiable transaction to the extent that it is —

(a) effected by a de facto relationship instrument referred to in section 130(b); or

(b) in accordance with a de facto relationship instrument referred to in section 130(a),

if —

(c) the de facto relationship between the de facto partners has ended; and

(d) under the transaction, the de facto relationship property is, or is to be, transferred to —

(i) either, or both, of the de facto partners to the relationship; or

(ii) a child, or children, of either of the de facto partners to the relationship, or a trustee of such a child or children.

132. Transactions becoming ones to which s. 131 applies, reassessment of

(1) If a dutiable transaction —

(a) is chargeable with duty other than under section 131 and is duty endorsed; and

(b) the transaction was effected by, or is in accordance with —

(i) a matrimonial instrument or a de facto relationship instrument that came into existence; or

(ii) an instrument that became a matrimonial instrument or de facto relationship instrument,

within the period of 12 months after the day on which liability to duty on the transaction arose,

the Commissioner, on the application of the taxpayer, is to reassess the liability to duty of the transaction under section 131.

(2) For the purposes of this section, the Taxation Administration Act section 17 applies as if the original assessment had been made when the instrument became a matrimonial instrument or a de facto relationship instrument.

133. Evidence as to marriage or de facto relationship

(1) For the purposes of this Subdivision, the Commissioner is to have regard to any statutory declaration made by a party to the marriage to the effect that —

(a) the party intends to apply for dissolution or annulment of the marriage; or

(b) the parties to the marriage have separated, and there is no reasonable likelihood of cohabitation being resumed.

(2) For the purposes of this Subdivision, the Commissioner is to have regard to any statutory declaration made by a de facto partner to the de facto relationship to the effect that the relationship has ended.

Subdivision 4 — Other transactions

134. Some transfers etc. of certain lots under planning scheme

(1) Nominal duty is chargeable on a transfer of, or an agreement for the transfer of, a lot under a planning scheme by the responsible authority for a planning scheme to a person that, when the scheme came into operation, was the owner of —

(a) the land comprised in the lot; or

(b) land comprised in the scheme and to whom the lot is transferred, or agreed to be transferred, in substitution or exchange for that land or part thereof,

where the lot is comprised in the scheme and a transfer of, or an agreement for the transfer of, the lot is made in order to carry out or facilitate the carrying out of the scheme.

(2) If a term is given a meaning in the *Planning and Development Act 2005*, it has the same meaning in this section.

135. Farm-in agreements

(1) Nominal duty is chargeable on a farm-in agreement if no consideration is paid, or agreed to be paid, for the agreement.

(2) The dutiable value for a dutiable transaction that is a farm-in agreement is the consideration for the transaction.

(3) In subsections (1) and (2) —

consideration does not include the exploration amount.

136. Business licences held under *Fish Resources Management Act 1994*

Nominal duty is chargeable on a dutiable transaction, the subject of which is a business licence (within the meaning given in section 79) held under the *Fish Resources Management Act 1994* if the Commissioner is satisfied that the transaction has not, and will not, result in the passing of a beneficial interest in the business licence.

137. Transfers etc. to change joint tenancy to tenancy in common etc.

Nominal duty is chargeable on a transfer, or an agreement for a transfer, that effects a change in the ownership of property from joint tenants to tenants in common or vice versa, if the value of the co-owners' interests at the time of the transaction is not changed.

138. Transactions to correct clerical errors in previous dutiable transactions

(1) Nominal duty is chargeable on a dutiable transaction to correct a clerical error in a previous dutiable transaction about the same or other property if —

(a) no additional consideration is paid or payable; and

(b) the beneficial interests in the property change only to the extent necessary to correct the error.

(2) To remove any doubt, it is declared that an error by a party about the appropriateness of a transaction to achieve a particular intended legal result is not a clerical error in the transaction.

[Section 138 amended by No. 32 of 2012 s. 9.]

139. Some transactions involving deceased estates

(1) In this section —

distribution means a distribution under a will or on an intestacy.

(2) Nominal duty is chargeable on the following dutiable transactions —

(a) a transfer, or agreement for the transfer, of dutiable property to the extent that —

(i) the transfer gives effect to a distribution in the estate of a deceased person; and

(ii) there is no consideration for the agreement or transfer;

(b) a declaration of trust over dutiable property to the extent that it gives effect to a distribution in the estate of a deceased person;

(c) a vesting of dutiable property by, or as a consequence of, a court order made —

(i) under the *Family Provision Act 1972*; or

(ii) under the *Trustees Act 1962* section 65 on an application under the *Family Provision Act 1972*.

[Section 139 amended by No. 48 of 2011 s. 15.]

140. Prescribed dutiable transactions

(1) Nominal duty is chargeable on such dutiable transactions as are prescribed, or are of a class prescribed, for the purposes of this section.

(2) Despite subsection (1), nominal duty is not chargeable in respect of a dutiable transaction that passes, or is part of a scheme or arrangement that passes, a beneficial interest in dutiable property.

Division 3 — First home owner concessions

141. Terms used

(1) In this Division —

concessional first home owner has the meaning given in section 142A;

deposit, in relation to a terms contract, includes any part of the purchase price which the contract specifies as being a deposit and provides is to be paid, whether in one or more payments, within 28 days of the execution of the contract;

FHOG Act means the *First Home Owner Grant Act 2000*;

first concessional transaction has the meaning given in section 142(2);

first home owner concessional rate of duty means the concessional rate of duty applicable under section 143;

first home owner concessional transaction has the meaning given in section 142(1);

further concessional transaction has the meaning given in section 142(2);

terms contract means a contract for the sale and purchase of land under which the purchaser is obliged to make 2 or more payments to the vendor (over and above any deposit) before the purchaser is entitled to a conveyance or transfer of the land;

transferee, in respect of a transaction, means a person to whom the property the subject of the transaction —

(a) is transferred; or

(b) is agreed to be transferred,

other than —

(c) a person who, under the FHOG Act, would not be required to join in making an application for a first home owner grant; or

(d) a prescribed person.

(2) If a term is given a meaning in the FHOG Act, it has the same meaning in this Division.

[Section 141 amended by No. 27 of 2015 s. 9.]

142A. Concessional first home owners

(1) A reference in this Division to a concessional first home owner, in relation to the transfer of, or an agreement for the transfer of, dutiable property means —

(a) a transferee who is paid a first home owner grant in relation to the property or to whom a first home owner grant is or will be payable in relation to the property; or

(b) a transferee to whom a first home owner grant would be, or would have been, payable in relation to the property had the requirements of either, or both, of the paragraphs of subsection (2) applied.

(2) The requirements are —

(a) consideration had been given for the transfer of the property;

(b) if the transaction is a contract for the purchase of an established home, the transaction would be, or would have been, an eligible transaction but for the FHOG Act section 14(5A).

(3) If a transaction described in subsection (2)(b) is a terms contract then, for the purposes of this section —

(a) the interest in the property of the transferee as purchaser under the contract is to be taken to be a relevant interest, unless the interest does not conform with the FHOG Act section 6(2); and

(b) the transaction is to be taken to be completed for the purposes of the FHOG Act, despite section 14AA(2)(a)(ii) of that Act, when the purchaser becomes entitled to possession of the home under the contract.

[Section 142A inserted by No. 27 of 2015 s. 10.]

142. First home owner concessional transactions

(1) A reference in this Division to a first home owner concessional transaction is to a transfer of, or an agreement for the transfer of, dutiable property where —

(a) the transferee, or if there are more than one, each transferee is a concessional first home owner; and

(b) the unencumbered value of the land, or the land and home, the subject of the transaction does not exceed —

(i) if there is no home on the land — $400 000; or

(ii) otherwise — $530 000,

and includes a transaction where, due to the operation of section 42(2) or (4), duty is not chargeable on the transfer of dutiable property the subject of the transaction.

(2) A reference in this Division to a further concessional transaction is to a transfer of, or an agreement for the transfer of, a further interest in the dutiable property the subject of a first home

owner concessional transaction (the ***first concessional transaction***) —

(a) from a person excluded from the operation of the FHOG Act section 16(1); and

(b) where an instrument that effects the further concessional transaction is executed within 10 years of an instrument that effected the first concessional transaction; and

(c) where each transferee in respect of the further concessional transaction is a transferee in relation to the first concessional transaction,

and includes a transaction where, due to the operation of section 42(2) or (4), duty is not chargeable on the transfer of dutiable property the subject of the transaction.

[Section 142 amended by No. 29 of 2012 s. 7; No. 15 of 2014 s. 4; No. 27 of 2015 s. 11.]

143. First home owner concessional rate of duty

(1) Duty is chargeable on a first home owner concessional transaction at the applicable concessional rate of duty.

(2) Duty is chargeable on a further concessional transaction at the same rate and using the same thresholds that applied when duty became chargeable on the first concessional transaction.

(3) The dutiable value of a further concessional transaction is the greater of the following amounts —

(a) the consideration for the first concessional transaction;

(b) the unencumbered value of the whole of the dutiable property the subject of the first concessional transaction at the time when liability for duty on the first concessional transaction arose.

(4) When subsection (2) applies —

(a) the liability of the transferee to pay duty on the further concessional transaction is to bear the same proportion

to the whole of the amount of duty payable as the interest in the dutiable property held by the transferee after the further concessional transaction bears to the whole of the dutiable property; and

(b) the amount of duty payable is to be reduced by the amount of the duty paid by the transferee on the first concessional transaction and any other further concessional transactions on which duty has been paid; and

(c) there is no liability to pay any remaining portion of the duty that would, but for this paragraph be payable.

[Section 143 amended by No. 27 of 2015 s. 12.]

144. Application for first home owner concessional rate of duty

(1) An application for assessment or reassessment under this Division must be —

(a) made in the approved form by the transferee or, if there is more than one, each transferee; and

(b) accompanied by such transaction record for the transaction as is required to be lodged under section 23.

(2) For the purposes of this Division, the Taxation Administration Act section 17 applies as if —

(a) in respect of a first home owner concessional transaction —

(i) despite subsection (1) of that section, a person is not entitled to apply for a reassessment other than within the period beginning on the commencement date of the first home owner concessional transaction to which the application relates and ending whichever is the later of the day that is —

(I) 12 months after the day on which the first home owner concessional transaction was completed; or

(II) if an application for a first home owner grant has been made, 3 months after the day on which the grant is paid;

and

(ii) despite subsection (4) of that section, the Commissioner is to make a reassessment on an application in respect of a first home owner concessional transaction made within that time;

and

(b) in respect of a further concessional transaction —

(i) despite subsection (1) of that section, a person is not entitled to apply for a reassessment more than 12 months after whichever is the later of the day on which an instrument effecting the transaction was executed or the day on which the transaction was effected; and

(ii) despite subsection (4) of that section, the Commissioner is to make a reassessment on an application in respect of a first home owner concessional transaction made within that time.

[Section 144 amended by No. 27 of 2015 s. 13.]

145. Subsequent liability in certain circumstances

(1) Despite section 143, duty is not chargeable on a transaction referred to in section 142 at the first home owner concessional rate if —

(a) a transferee described in section 142A(1)(a) is required to repay an amount under the FHOG Act section 21(2) or 51; or

(b) a transferee described in section 142A(1)(b) would be required to repay an amount under the FHOG Act —

(i) section 21(2) had a first home owner grant been authorised to be paid to that person under the FHOG Act section 21(1); or

(ii) section 51 had a first home owner grant been authorised to be paid to that person under the FHOG Act.

(2A) For the purposes of subsection (1)(b)(i), a first home owner grant would be, or would have been, authorised to be paid under the FHOG Act section 21(1) if the transaction was assessed in anticipation of compliance by the transferee —

(a) with the residence requirements; or

(b) if the requirement under the FHOG Act section 13(4) had already been complied with by the transferee, with the requirement under section 13(1) of that Act.

(2B) Written notice referred to in the FHOG Act section 21(2)(d) must be given to the Commissioner —

(a) by a transferee referred to in subsection (1)(b)(i) who would be required to repay an amount under the FHOG Act section 21(2), had a first home owner grant been authorised to be paid to that person under the FHOG Act section 21(1);

(b) as if the conditions set out in the FHOG Act section 21(2)(a), (b) or (c) applied in respect of that person.

(2) The previous assessment of a transaction referred to in subsection (1) is taken to be incorrect for the purposes of the Taxation Administration Act section 16(2)(a).

[Section 145 amended by No. 27 of 2015 s. 14.]

146. Other provisions about first home owner concessions

For the purposes of this Division and for the purposes of applying the Taxation Administration Act in relation to the operation of this Division —

(a) the FHOG Act is to be treated as if it were a taxation Act; and

(b) the FHOG Act applies to and in relation to an application under this Division, to the extent that it can be applied for those purposes, as if a reference in the FHOG Act to an application or an applicant were a reference to the application or applicant under this Division; and

(c) this Act and the Taxation Administration Act apply in relation to any information given to the Commissioner for the purposes of the FHOG Act by a person who is an applicant under this Division as if the information had been given to the Commissioner for the purposes of this Division.

Division 4A — Residential concession

[Heading inserted by No. 30 of 2008 s. 26.]

147A. Terms used

(1) In this Division —

construction includes the continuation of construction of a partially constructed building;

eligible transaction has the meaning given in section 147B;

residence means a building, or part of a building, that —

(a) may lawfully be used; and

(b) in the Commissioner's opinion, is suitable to be used; and

(c) is intended by the taxpayer to be used,

as a place of residence for one or more individuals;

residential property has the meaning given in section 147D;

taxpayer, in relation to a transaction, means the person liable to pay duty.

(2) For the purposes of this Division the construction of a residence begins on —

(a) the date when laying the foundations for the residence begins; or

(b) another date the Commissioner considers appropriate in the circumstances of the case.

[Section 147A inserted by No. 30 of 2008 s. 26.]

147B. Eligible transaction

Each of the following is an ***eligible transaction*** —

(a) a dutiable transaction referred to in section 11(1)(a);

(b) a dutiable transaction referred to in section 11(1)(b) other than a transaction referred to in section 67;

(c) a dutiable transaction referred to in section 11(1)(d)(ii);

(d) a dutiable transaction of a kind prescribed for the purposes of this section.

[Section 147B inserted by No. 30 of 2008 s. 26.]

147C. Concessional transaction

(1) An eligible transaction is a ***concessional transaction*** for the purposes of this Division if the dutiable property is land that is residential property.

(2) Despite section 37(3)(a), transactions may be aggregated under section 37 even though at least one of them is a concessional transaction under subsection (1), and the transactions so aggregated are to be treated as a single dutiable transaction that is a concessional transaction for the purposes of this Division.

[Section 147C inserted by No. 30 of 2008 s. 26.]

147D. Residential property

Land is ***residential property*** if —

(a) there is a residence on the land; or

(b) the taxpayer has begun construction of a residence on the land; or

(c) the taxpayer has entered into a contract for the construction of a residence on the land; or

(d) the taxpayer has entered into a contract to purchase a movable building that will be affixed to the land and be a residence,

and it does not matter if the land is also used for another purpose.

[Section 147D inserted by No. 30 of 2008 s. 26.]

147E. Concessional rate of duty chargeable on concessional transactions

Duty is chargeable on a concessional transaction at the applicable concessional rate of duty and the Commissioner, on application being made in the approved form, is to assess the liability to duty at that rate.

[Section 147E inserted by No. 30 of 2008 s. 26; amended by No. 17 of 2010 s. 14.]

147F. Eligible transactions to be reassessed if construction of residence begins etc. in certain time

(1) Subsection (2) applies if duty is assessed at the general rate on an eligible transaction for dutiable property that is land (the ***land***).

(2) If this subsection applies and, within the period of 5 years from the day on which liability to duty arose (the ***relevant period***), the taxpayer —

(a) begins construction of a residence on the land; or

(b) enters into a contract for the construction of a residence on the land; or

(c) enters into a contract to purchase a movable building that will be affixed to the land and be a residence,

the Commissioner, on application being made in the approved form, is to reassess the liability to duty of the eligible transaction at the applicable concessional rate of duty.

(3) Subsection (4) applies if duty is assessed at the general rate on 2 or more transactions (the ***separate transactions***) aggregated and treated as a single transaction (the ***aggregated transaction***) under section 37 as long as at least one of the separate transactions is an eligible transaction for dutiable property that is land (the ***land***).

(4) If this subsection applies and, within the period of 5 years from the day on which liability to duty arose (the ***relevant period***), the taxpayer —

(a) begins construction of a residence on the land; or

(b) enters into a contract for the construction of a residence on the land; or

(c) enters into a contract to purchase a movable building that will be affixed to the land and be a residence,

the Commissioner, on application being made in the approved form, is to reassess the liability to duty of the aggregated transaction at the applicable concessional rate of duty and the duty as reassessed is to be apportioned between the separate transactions as decided by the Commissioner.

(5) An application for reassessment under this section can be made at any time on or before whichever is the later of —

(a) the last day of the relevant period; or

(b) the last day of the period of 12 months from the day on which construction began or the contract was entered into, as the case may be.

(6) The limitations as to time in the Taxation Administration Act section 17 do not apply in respect of a reassessment under this section.

[Section 147F inserted by No. 30 of 2008 s. 26; amended by No. 17 of 2010 s. 15.]

147G. Application for assessment or reassessment at concessional rate

An application for assessment or reassessment under this Division must be made in the approved form.

[Section 147G inserted by No. 30 of 2008 s. 26.]

Division 4 — Residential or business concessions

147. Concessional rates for transactions referred to in *Stamp Act 1921* s. 75AE

(1) A dutiable transaction is a ***concessional transaction*** for the purposes of this section if the instrument effecting or evidencing it would have been chargeable with duty under the *Stamp Act 1921* Second Schedule item 4(5), if it had been first executed before 1 July 2008.

(2) Duty is chargeable on a concessional transaction at the applicable concessional rate of duty.

(3) If a dutiable transaction is, or is treated as, a concessional transaction for the purposes of this section and for the purposes of Division 4A, the taxpayer may choose whether this Division or Division 4A is to apply and the Commissioner, with the consent or at the request of the taxpayer, may —

(a) treat an application for assessment or reassessment under this Division as an application for assessment or reassessment under Division 4A, in which case this Division no longer applies; or

(b) treat an application for assessment or reassessment under Division 4A as an application for assessment or reassessment under this Division, in which case Division 4A no longer applies.

[Section 147 amended by No. 30 of 2008 s. 27.]

Chapter 3 — Landholder duty

Part 1 — Preliminary

148. Terms used

In this Chapter, unless the contrary intention appears —

duty means duty under this Chapter;

entity has the meaning given in section 152;

interest has the meaning given in section 153;

land does not include a security interest in land;

landholder means an entity that is a landholder under section 155;

linked entity means an entity that is a linked entity under section 156(2) in respect of a main entity as defined in section 156(1);

listed corporation means a corporation that is on the official list of a prescribed financial market;

listed landholder means —

(a) a listed corporation; or

(b) a listed unit trust scheme,

that is a landholder;

listed unit trust scheme means a unit trust scheme that is on the official list of a prescribed financial market;

related person has the meaning given in section 162;

relevant acquisition has the meaning given in sections 163 and 164;

surplus property, in relation to a landholder or other entity, means property remaining after satisfaction of —

(a) any right attached to a share or unit that entitles the holder, if the landholder or other entity is wound up, to receive a fixed amount of its capital; and

(b) the debts and liabilities of the landholder or other entity; and

(c) the costs, charges and expenses of winding it up;

unencumbered value has the meaning given in section 36 as applied by section 150.

[Section 148 amended by No. 32 of 2012 s. 10.]

149. Entitlement to land, determining

(1) In determining the entitlement of a landholder or other entity to land for the purposes of this Chapter —

(a) if the landholder or other entity has entered into an agreement to acquire an interest in land, the agreement is to be regarded as having been completed even if it has not yet been completed; and

(b) if the landholder or other entity has entered into an agreement to dispose of an interest in land but the agreement has not yet been completed, the agreement is to be disregarded.

(2A) For the purposes of subsections (2) and (3), the following are to be taken to be part of land as a fixture —

(a) anything that —

(i) under the authority (whether direct or indirect) of a mining tenement, is fixed to land that is the subject of that mining tenement; and

(ii) would be part of that land as a fixture if the mining tenement were a freehold estate in the land;

(b) a pipeline, as defined in the *Petroleum Pipelines Act 1969* section 4(1), constructed on land under the authority of a licence under that Act.

(2) If a landholder or other entity has an entitlement to land, anything that is part of the land as a fixture is to be taken into account in determining the extent of the entitlement of the

landholder or other entity to the land for the purposes of this Chapter even if the fixture is, or purports to be, the subject of an entitlement separate from the ownership of the rest of the land.

(3) If —

(a) a landholder or other entity has an entitlement to something that is part of land as a fixture; and

(b) that entitlement is, or purports to be, separate from the ownership of the rest of the land,

the landholder or other entity is to be regarded as having an entitlement to land for the purposes of this Chapter to the extent of its entitlement to the fixture.

(4) In subsections (2A), (2) and (3), a reference to land does not include anything that is land under paragraph (cb), (da) or (d) of the definition of ***land*** in section 3.

[Section 149 amended by No. 33 of 2011 s. 5.]

150. Unencumbered value of land or chattels

Section 36 applies, with any appropriate modifications, where it is necessary to determine the unencumbered value of land or chattels for the purposes of section 155(5)(a), 157(2) or 186.

Part 2 — Imposition of landholder duty

151. Landholder duty imposed

Duty is imposed in respect of any relevant acquisition under Part 5 of an interest in an entity that under Part 4 is a landholder for the purposes of this Chapter.

Part 3 — Certain key concepts defined and related provisions

152. References to entity

(1) A reference in this Chapter to an entity is to —

(a) a corporation; and

(b) a unit trust scheme.

(2) Each of the following —

(a) the trustee of a discretionary trust;

(b) a partnership,

is also an entity to this extent, namely that the trustee of a discretionary trust or a partnership may be a linked entity under section 156, but not otherwise.

153. References to interest in landholder or other entity

(1) A reference in this Chapter to an interest in a landholder or other entity is to an entitlement to the surplus property of the landholder or other entity if it were to be wound up.

(2) A reference in this Chapter to an interest in a landholder or other entity together with —

(a) a reference to a percentage; or

(b) a reference to a percentage determined by the Commissioner,

is to an entitlement to receive that percentage, or the percentage so determined, of the surplus property of the landholder or other entity if it were to be wound up.

(3) This section has effect subject to section 159.

154. Interest of person in landholder etc., calculating

(1) In this section —

person includes an entity.

(2) This section applies where it is necessary for the purposes of this Chapter to calculate the interest of a person (the ***relevant person***) in a landholder or other entity.

(3) This section does not apply where section 158 or 159 applies.

(4) The interest is to be first calculated as if the landholder or other entity were wound up without regard to the notional exercise of the powers and discretions referred to in subsection (5).

(5) The interest is to be then calculated as if the landholder or other entity were wound up and as if each interested person had exercised all powers and discretions exercisable by the person —

(a) to effect or compel an alteration to the constitution of the landholder or other entity; and

(b) to vary the rights attached to units or shares in the landholder or other entity; and

(c) to effect or compel the substitution or replacement of units or shares in the landholder or other entity with other units or shares in it,

in such a manner as would maximise the value of the relevant person's interest.

(6) The reference in subsection (5) to an interested person is —

(a) to the relevant person; and

(b) if the relevant person is a unit trust scheme, to the trustee of the scheme; and

(c) to any person that the relevant person or a person referred to in paragraph (b) has power to direct with respect to a distribution; and

(d) where the calculation is required in order to determine the extent of a relevant person's interest for the purposes of section 163 or 164, to a related person under section 162 in respect of the relevant person or a person referred to in paragraph (b).

(7) The relevant person's interest is the greater of the interest calculated under subsection (4) and the interest calculated under subsection (5).

(8) If the calculation under subsection (5) results in the greater interest the Commissioner may, after considering the circumstances of the case, determine that —

(a) the application of subsection (7) would be inequitable; and

(b) the relevant person's interest is that calculated under subsection (4).

Part 4 — Landholders to which this Chapter applies

155. Which entities are landholders

(1) This section applies where it is necessary to determine in relation to an acquisition of an interest in an entity whether the entity is a landholder for the purposes of section 163 or 164.

(2) A corporation is a landholder if immediately before the acquisition —

(a) it is entitled to land in Western Australia or an entity linked to the corporation is so entitled; and

(b) the total value of all such entitlements is $2 000 000 or more.

(3) A unit trust scheme is a landholder if immediately before the acquisition —

(a) the trustee of the scheme is entitled to land in Western Australia or an entity linked to the unit trust scheme is so entitled; and

(b) the total value of all such entitlements is $2 000 000 or more.

(4) For the purposes of subsections (2)(a) and (3)(a) —

(a) a partnership, as a linked entity, is entitled to land in Western Australia if the partnership property is or includes such land; and

(b) a unit trust scheme, as a linked entity, is entitled to land in Western Australia if the trustee of the scheme is so entitled.

(5) For the purposes of this section —

(a) land to which a corporation or the trustee of a unit trust scheme is entitled is to be valued at its unencumbered value; and

(b) the value of a linked entity's entitlement to land is to be determined under section 157.

156. Which entities are linked to an entity

(1) This section applies where it is necessary to determine in relation to an acquisition of an interest in an entity (the ***main entity***) whether there is any other entity that is linked to the entity for the purposes of section 155(2)(a) or (3)(a).

(2) Each entity (a ***linked entity***) below the main entity in an ownership chain that exists immediately before the acquisition is linked to the main entity.

(3) An ownership chain exists if a series of entities starting with the main entity are successively linked to one another.

(4) Except where subsection (5) or (6) applies, an entity is linked to another entity if —

(a) where the other entity is a listed corporation or a listed unit trust scheme — it has a 90% interest, or a greater interest, in the entity; or

(b) in any other case — it has a 50% interest, or a greater interest, in the entity.

(5) An entity is linked to the trustee of a discretionary trust if it is a potential beneficiary under the trust.

(6) An entity is linked to a partnership if it is a partner in the partnership, or in the case of a unit trust scheme the trustee, as trustee of the scheme, is a partner, and —

(a) has contributed or is required to contribute 50%, or a greater percentage, of the capital of the partnership; or

(b) is required to bear 50%, or a greater percentage, of the losses of the partnership.

(7) A series of entities under subsection (3) may consist of the main entity and one other entity to which it is linked as mentioned in subsection (4), (5) or (6).

(8) In determining whether an entity is linked to another entity —

(a) if the entity has entered into an agreement to acquire an interest in the other entity, the agreement is to be regarded as having been completed even if it has not yet been completed; and

(b) if the entity has entered into an agreement to dispose of an interest in the other entity but the agreement has not yet been completed, the agreement is to be disregarded.

[Section 156 amended by No. 1 of 2015 s. 25.]

157. Land of linked entity, value of for s. 155

(1) This section applies where a linked entity is entitled to land in Western Australia and it is necessary to determine the value of that entitlement for the purposes of section 155.

(2) The value of the entitlement is an amount equal to the same percentage of the unencumbered value of the land as the percentage of the main entity's interest in the linked entity.

(3) In the case of a linked entity other than one that is immediately below the main entity in the ownership chain, the percentage of the main entity's interest in the linked entity is determined by multiplying the percentage of the main entity's interest in the entity immediately below it in the ownership chain by the percentage of the interest that each entity in the ownership chain between the main entity and the linked entity concerned has in the entity immediately below it in the ownership chain.

(4) In this section, a reference to an interest in an entity is, if the entity is the trustee of a discretionary trust, a reference to being a potential beneficiary under the trust.

158. Extent of interest in discretionary trust

For the purposes of section 157, if the trustee of a discretionary trust is a linked entity, a potential beneficiary under the trust is taken to have —

(a) a 100% interest in the trust; or

(b) if the Commissioner decides in a particular case that the operation of paragraph (a) would be inequitable, either —

(i) an interest in the trust of some other percentage; or

(ii) no interest in the trust,

as determined by the Commissioner.

159. Extent of interest in partnership

For the purposes of section 157, if a partnership is a linked entity in respect of another entity, the percentage of the interest in the partnership of that entity is the percentage —

(a) of the capital of the partnership that the entity has contributed or is required to contribute; or

(b) of the losses of the partnership that the entity is required to bear,

whichever is the greater or, if the percentage is the same in each case, that percentage.

Part 5 — Acquisitions to which this Chapter applies

Division 1 — Means by which interest acquired

160. When person acquires interest in entity

(1) A person acquires an interest in an entity if —

(a) the person obtains an interest in the entity; or

(b) the person's interest in the entity increases,

regardless of how it is obtained or increased.

(2) Without limiting subsection (1), a person may acquire an interest in a corporation or a unit trust scheme in the following ways —

(a) by the purchase, gift, allotment or issue of a share or unit;

(b) by the cancellation, redemption or surrender of a share or unit;

(c) by the abrogation or alteration of any right in respect of a share or unit;

(d) by the payment of an amount owing for a share or unit.

(3) To remove any doubt, it is declared that an interest in a corporation or a unit trust scheme may be acquired without the acquisition of shares in the corporation or units in the scheme.

Division 2 — Relevant acquisitions of interests in landholders

Subdivision 1 — Definitions

161. Term used: significant interest

In this Division —

significant interest means —

(a) a 90% interest or a greater interest, in the case of a landholder that is a listed landholder; and

(b) a 50% interest or a greater interest, in the case of any other landholder.

[Section 161 amended by No. 32 of 2012 s. 11.]

162. Related persons: s. 163 and 164

(1) For the purposes of sections 163 and 164 the following persons or entities are related persons —

(a) individuals who are spouses, or de facto partners, of each other;

(b) individuals between whom the relationship is that of parent and child;

(c) related corporations;

(d) 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 is a potential beneficiary under a discretionary trust;

(e) an individual and a corporation if the individual is a majority shareholder, director or secretary of the corporation or a related corporation;

(f) 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 is a potential beneficiary under a discretionary trust;

(g) a corporation and a trustee if —

(i) the corporation or a majority shareholder, director or secretary of the corporation is a beneficiary under the trust of which the trustee is a trustee; or

(ii) a related corporation to the corporation is a beneficiary under the trust of which the trustee is a trustee,

whether the beneficiary has a vested share or is contingently entitled or is a potential beneficiary under a discretionary trust;

(h) persons or entities that acquire interests in a landholder by virtue of acquisitions that together form or arise from substantially one transaction or one series of transactions;

(i) persons or entities that acquire interests in a landholder by virtue of acquisitions that arise from those persons or entities acting in concert with each other.

(2) If the Commissioner is satisfied, in the case of a particular acquisition of an interest in an entity, that subsection (3) applies to persons, other than related corporations, that would otherwise be related persons under subsection (1), the Commissioner may determine that, despite that subsection, the persons are not related persons for the purposes of sections 163 and 164.

(3) This subsection applies to persons if —

(a) they are not acting in concert with each other in respect of the acquisition; and

(b) their interests in the entity —

(i) were acquired independently and are, and will be, employed independently; and

(ii) were not acquired for a common purpose and are not, and will not be, employed for a common purpose.

Subdivision 2 — Relevant acquisitions

163. Acquisition of significant interest in landholder

An acquisition by a person of an interest in an entity is a ***relevant acquisition*** if —

(a) immediately before the acquisition the entity was a landholder in which the interest (if any) of the person and the interest (if any) of any related person did not amount to a significant interest; and

(b) after the acquisition the entity is a landholder in which —

(i) the interest of the person is a significant interest; or

(ii) the interest of the person when aggregated with any interest of a related person amounts to a significant interest.

164. Acquisition of further interest by holder of significant interest

An acquisition by a person of an interest in an entity is also a ***relevant acquisition*** if —

(a) immediately before the acquisition the entity is a landholder in which —

(i) the interest of the person is a significant interest; or

(ii) the interest of the person when aggregated with any interest of a related person amounts to a significant interest; or

(iii) the interest of a related person is a significant interest;

and

(b) by the acquisition the person or any related person acquires, or the person and any related person acquire, a further interest in the landholder.

[Section 164 amended by No. 32 of 2012 s. 12.]

Subdivision 3 — Exempt acquisitions

165. Term used: acquisition

In this Subdivision —

acquisition means an acquisition by a person of an interest in a landholder.

166. Effect of acquisition being exempt

An acquisition that is exempt under this Subdivision —

(a) is not a relevant acquisition for the purposes of this Chapter, other than Part 6 Division 7; and

(b) the interest acquired by the acquisition is not to be taken into account for the purposes of section 188(1) or (3) and is not an excluded interest under section 189.

[Section 166 amended by No. 32 of 2012 s. 13.]

167. Exemption if nominal duty would be chargeable on transfer

(1) An acquisition, by a person (the ***acquiring person***) of an interest in a landholder, is exempt if nominal duty would be chargeable on the transfer, at the time of the acquisition, by the person from

whom the interest in the landholder was acquired (the ***relinquishing person***) to the acquiring person of land of the landholder, or of a linked entity in respect of the landholder, as if the land were that of the relinquishing person.

(2) If the acquiring person did not acquire the interest in the landholder from another person, the reference to the person from whom the interest in the landholder was acquired is to be read (according to what is relevant) as a reference to the or a person —

(a) whose interest in the landholder is decreased because of the acquisition; or

(b) whose interest in the landholder decreased resulting in the acquisition.

Note for this section:

An acquiring person may acquire an interest in a company by the company issuing shares to the person, or buying back shares of another person.

[Section 167 inserted by No. 32 of 2012 s. 14.]

168. Exemption if transfer duty would not be chargeable

(1) An acquisition, by a person (the ***acquiring person***) of an interest in a landholder, is exempt if no duty would be chargeable, other than under Chapter 6, on the transfer, at the time of the acquisition, by the person from whom the interest in the landholder was acquired (the ***relinquishing person***) to the acquiring person of land of the landholder, or of a linked entity in respect of the landholder, as if the land were that of the relinquishing person.

(2) If the acquiring person did not acquire the interest in the landholder from another person, the reference to the person from whom the interest in the landholder was acquired is to be read (according to what is relevant) as a reference to the or a person —

(a) whose interest in the landholder is decreased because of the acquisition; or

(b) whose interest in the landholder decreased resulting in the acquisition.

Note for this subsection:

An acquiring person may acquire an interest in a company by the company issuing shares to the person, or buying back shares of another person.

(3) This section does not apply to an acquisition to which section 171 applies.

[Section 168 inserted by No. 32 of 2012 s. 14.]

169. Exemption if acquisition is dutiable under s. 67

An acquisition is exempt if the landholder concerned is a corporation and the acquisition is taken, by operation of section 67, to be an agreement for the transfer of dutiable property.

170. Exemption relating to approved arrangements with creditors under Corporations Act

An acquisition is exempt if it occurs solely as the result of the making of a compromise or arrangement with creditors of the landholder under the Corporations Act Part 5.1 that has been approved by the court.

171. Exemption of acquisition by family member of interest in corporation engaged in primary production

(1) In this section —

corporation means a corporation that is a landholder.

(2) An acquisition by a person (the ***acquirer***) is exempt if it is an acquisition from another person of an interest in a corporation which, or a linked entity in respect of which, uses land solely or dominantly in the business of primary production and —

(a) it would have been an exempt transaction under section 102(1) if —

(i) it had been a transfer, from that other person to the acquirer, of land to which the corporation or a linked entity in respect of the corporation is entitled; and

(ii) section 102(2), (3), (5) and (6) had not been enacted;

and

(b) immediately after the acquisition the corporation, or a linked entity in respect of the corporation, intends to continue to use the land solely or dominantly in the business of primary production.

(3) For the purposes of subsection (2), land is being used in the business of primary production even if —

(a) some, but not all, of the land is leased to another person; and

(b) under the lease, the lessee is using the leased land solely or dominantly for the purposes of silviculture or reafforestation.

(4) This section has effect subject to Subdivision 4.

Subdivision 4 — Further provisions in respect of exemptions under section 171

172. Calculation of duty where some land of corporation not used for primary production

(1) This section applies to an acquisition referred to in section 171 if immediately before the acquisition the corporation concerned, or a linked entity in respect of the corporation, is entitled to —

(a) land in Western Australia that is used solely or dominantly in the business of primary production; and

(b) land in Western Australia that is not so used.

(2) The following provisions apply to the acquisition (the ***partially exempt acquisition***) —

(a) section 166 is not applicable to or in relation to the partially exempt acquisition;

(b) despite Part 6 Division 5, the amount of duty payable in respect of the partially exempt acquisition is an amount that bears to the amount of duty calculated under that Division in respect of the acquisition the same proportion as the value of the land referred to in subsection (1)(b) bears to the value of the corporation concerned, as determined under section 186.

173. Reversal of exemption where certain changes made to discretionary trust

(1) This section applies if —

(a) an acquisition from a person (the ***transferor***) of an interest in a corporation by the trustee of a discretionary trust was —

(i) exempt under section 171; or

(ii) a partially exempt acquisition under section 172;

and

(b) after the acquisition occurs there is a material alteration to the operation of the discretionary trust; and

(c) at the time of the material alteration —

(i) the corporation is a landholder; and

(ii) the corporation or a linked entity in respect of the corporation, is using solely or dominantly in the business of primary production any of the land to which it was entitled when the acquisition occurred.

(2) There is a material alteration to the operation of the discretionary trust, as mentioned in subsection (1)(b), if —

(a) during the lifetime of the transferor, a person that is not a family member of the transferor —

(i) becomes entitled to a share or interest in the trust, whether that share or interest is vested or contingent; or

(ii) otherwise benefits from the trust;

or

(b) the transferor gains control of the trust.

(3) For the purposes of subsection (2) —

(a) the reference to a family member is to a person who is a family member within the meaning given in section 100; and

(b) the matter in paragraph (b) is to be determined in accordance with section 99(2).

(4) On the occurrence of a material alteration to the operation of the discretionary trust —

(a) an acquisition of an interest in the corporation by the trustee of the trust is taken to have occurred; and

(b) that interest is taken to be an interest of the same percentage as that mentioned in subsection (1)(a); and

(c) the acquisition is taken to have occurred at the time when the material alteration occurred.

(5) If the acquisition mentioned in subsection (1)(a) was a partially exempt acquisition under section 172 the amount of duty payable in respect of the acquisition that is taken to have occurred under subsection (4) is to be reduced by the amount of the duty paid in respect of the partially exempt acquisition.

174. No exemption where interest transferred within 5 years

(1) This section applies if —

(a) an acquisition of an interest in a corporation (the ***first acquisition***) was exempt under section 171; and

(b) a further acquisition of an interest in the corporation occurs within 5 years after the day on which the first acquisition occurred; and

(c) at the time when the further acquisition occurs the corporation, or a linked entity in respect of the corporation, is using solely or dominantly in the business of primary production any of the land to which it was entitled when the first acquisition occurred; and

(d) in the opinion of the Commissioner the further acquisition is by way of a transfer of an interest, or part of an interest, in the corporation that was acquired under the first acquisition.

(2) The further acquisition is not exempt under section 171 even if it comes within the provisions of that section.

Part 6 — Collection of landholder duty

Division 1 — Preliminary

175. Term used: acquirer

In this Part —

acquirer means a person that acquires an interest in a landholder by a relevant acquisition and, if there is more than one, each of them.

176. When acquisition occurs

(1) For the purposes of this Chapter, but subject to section 173(4)(c), the time when an acquisition of an interest in a landholder occurs is to be determined under this section.

(2) If there is an agreement for the making of the acquisition, whether conditional or not, and subsection (3) does not apply, the acquisition occurs when the agreement is made.

Note for this subsection:

Section 196 provides for the reassessment of duty if an agreement referred to in this subsection is not completed.

(3) If there is an agreement for the making of the acquisition, whether conditional or not, and the entity concerned is not a

landholder when the agreement is made but is a landholder when the agreement is completed, the acquisition occurs when the agreement is completed.

(4) If subsections (2) and (3) do not apply, the acquisition occurs when the interest to which it relates is acquired.

[Section 176 amended by No. 32 of 2012 s. 15; No. 1 of 2015 s. 26.]

177. Certain transactions to be treated as agreements

(1) In this section and in section 178 —

call option, ***put option*** and ***simultaneous put and call option*** have the meanings those terms would have under section 44 if references in that section to dutiable property were references to a relevant interest;

relevant interest means an interest in a landholder or other entity.

(2) For the purposes of section 176, where a simultaneous put and call option that applies to a relevant interest comes into existence —

(a) subject to section 178, the call option is taken to be an agreement for the making of an acquisition of the relevant interest by the holder of the call option rights; and

(b) paragraph (a) applies even if the call option is assigned as mentioned in subsection (3).

(3) If, in respect of a simultaneous put and call option that applies to a relevant interest —

(a) the call option has been assigned to another person so that the other person has a right to require the sale of the relevant interest —

(i) to the other person; or

(ii) to a person that has an agreement, arrangement or understanding with the other person relating to the interest;

and

(b) the put option obligations have passed to any person referred to in paragraph (a),

the assignment of the call option to the other person is taken, for the purposes of section 176, to be an agreement for the acquisition of the relevant interest by that person.

(4) If subsection (3) applies, subsection (2) does not apply to the right referred to in subsection (3)(a) or the rights under the put option referred to in subsection (3)(b).

Note for this section:

Section 196 provides for the reassessment of duty if a deemed agreement is not completed.

178. Exceptions to s. 177

(1) In this section —

proprietor of a business means a person that has an interest in a landholder or other entity that carries on a business.

(2) It is an exception to section 177(2) if the call option and the put option are for, and only for, the purpose of obtaining finance or making other financial arrangements.

(3) It is also an exception to section 177(2) if the call option and the put option form part of a scheme of call options and put options given by the proprietors of a business that —

(a) are for, and only for, the purpose of facilitating the continuation of the business by one or some of those proprietors (the ***continuing proprietor or proprietors***); and

(b) are not exercisable except on the occurrence of an event specified in them that would cause the continuing

proprietor or proprietors to seek to acquire the interest of another of the proprietors.

Division 2 — Liability

179. Who is liable to pay duty

(1) The duty chargeable in respect of a relevant acquisition is payable by the person or persons determined under subsection (2) in relation to the acquisition.

(2) The following persons are jointly and severally liable to pay duty chargeable in respect of a relevant acquisition of an interest in a landholder —

(a) in every case, the acquirer;

(b) if the landholder is a corporation, the corporation;

(c) if the landholder is a unit trust scheme, the trustee of the scheme;

(d) any person taken into account under section 163 or 164 as being related to the acquirer for the purposes of the acquisition, other than a person whose interest in the landholder is, for the purpose of calculating the duty, an excluded interest under section 189.

(3) To the extent that a person referred to in subsection (2)(b), (c) or (d) has paid the duty chargeable in respect of a relevant acquisition the person may recover the amount of duty paid from the acquirer concerned, or if there is more than one from any of them, as a debt due to the person.

[Section 179 amended by No. 32 of 2012 s. 16.]

180. Application to Commissioner for determination of liability

(1) A person mentioned in subsection (2) may, within 2 months after the day on which an acquisition of an interest in an entity occurs, apply to the Commissioner for a determination whether any liability has arisen under this Chapter in respect of the acquisition.

(2) The persons that may apply are —

(a) any person that by the acquisition acquires an interest in the entity; or

(b) any person that may be taken into account under section 163 or 164 as being related for the purposes of the acquisition to a person referred to in paragraph (a); or

(c) if the entity is a corporation, the corporation; or

(d) if the entity is a unit trust scheme, the trustee of the scheme.

(3) An application under subsection (1) must be made in the approved form.

(4) Where an application is made under subsection (1) —

(a) the Commissioner is to make the requested determination; and

(b) any liability of a person under section 200 in respect of the acquisition ceases unless it is revived under section 182(5),

but the obligation imposed by paragraph (a) is qualified so far as it is inconsistent with the exercise of a power conferred on the Commissioner by section 182(1) or (4).

181. Determination of s. 180 application

(1) If, on an application under section 180, the Commissioner determines that liability has not arisen under section 151 in respect of the acquisition in question, the Commissioner is to give notice of that determination to the applicant.

(2) If, on an application under section 180, the Commissioner determines that liability has arisen under section 151 in respect of the acquisition in question, the Commissioner is to issue an assessment notice under the Taxation Administration Act section 23 in respect of the acquisition.

182. Powers of Commissioner where further information required for determination of s. 180 application

(1) If on an application under section 180 further information or evidence is necessary for the making of a determination, the Commissioner may —

(a) defer the making of a determination; and

(b) by written notice require the applicant to provide further information or evidence to the Commissioner within a specified period,

and the Commissioner may exercise those powers as often as the Commissioner thinks fit until all necessary information and evidence have been provided.

(2) The Commissioner may at any time extend the period specified in a notice under subsection (1)(b).

(3) The powers of the Commissioner under subsection (1) are in addition to, and do not limit, the powers that the Commissioner has under the Taxation Administration Act to obtain information or carry out an investigation.

(4) If —

(a) the Commissioner has under subsection (1) required the applicant to provide further information or evidence; and

(b) the Commissioner considers that the applicant has not within the required period provided the information or evidence,

the Commissioner is to give the applicant written notice of that opinion and of the effect of subsection (5).

(5) If the Commissioner gives notice under subsection (4) —

(a) section 180(4)(a) does not apply; and

(b) any liability that ceased under section 180(4)(b) is revived as if the application under section 180(1) had never been made.

Division 3 — Payment of landholder duty

183. When landholder duty must be paid

(1) Liability to pay the duty chargeable in respect of a relevant acquisition arises when the relevant acquisition occurs.

(2) The duty is due for payment within one month after the date of an assessment notice issued in relation to an assessment of the duty.

Division 4 — Rates of landholder duty

184. Rates of landholder duty

(1) Duty is chargeable at the general rate of duty set out in Schedule 2.

(2) For the purposes of subsection (1) the value referred to in section 188(1) or 189(1), as the case may require, is taken to be the dutiable value.

[Section 184 amended by No. 32 of 2012 s. 17.]

Division 5 — Calculation of landholder duty

185. References to interest of acquirer in landholder

A reference in this Division to the interest of the acquirer in a landholder after a relevant acquisition is to the aggregated interests of —

(a) the acquirer; and

(b) any related person that is to be taken into account in relation to the acquisition for the purposes of section 163 or 164.

186. Value of landholder

(1) For the purposes of calculating duty in respect of a relevant acquisition the value of a landholder is taken to be the sum of —

(a) the unencumbered value of the land, chattels or land and chattels (whichever is relevant) in Western Australia to which the landholder is entitled; and

(b) the same percentage of the unencumbered value of the land, chattels or land and chattels (whichever is relevant) in Western Australia to which any linked entity in respect of the landholder is entitled as the percentage of the landholder's interest in the linked entity taken into account under section 157.

(2A) For the purposes of subsection (1)(b), the percentage of the landholder's interest in a linked entity that is not entitled to land in Western Australia is the percentage (of the landholder's interest in the linked entity) that would be used in section 157 if it were to be used to determine the value of the linked entity's entitlement to chattels in Western Australia.

(2) Except where section 187 applies, the entitlements referred to in subsection (1) are to be those that exist immediately after the relevant acquisition.

[Section 186 amended by No. 32 of 2012 s. 18.]

187. Determining value of further interest for duty calculation

(1) This section applies where —

(a) it is necessary to determine the value of an interest of an acquirer in a landholder for the purposes of section 188(3) or 189(3); and

(b) the relevant acquisition concerned is of a further interest in either —

(i) a listed landholder; or

(ii) a landholder that is not listed but was previously listed and in which, at a time when it was listed,

the interest of the acquirer was not less than a 90% interest.

(2) The value is to be determined —

(a) as if the further interest was acquired at the same time as the interest of the acquirer became not less than a 90% interest in the landholder concerned; and

(b) on the basis of the value of the landholder at that time.

[Section 187 amended by No. 32 of 2012 s. 19.]

188. Calculating duty payable

(1) To calculate the amount of duty payable in respect of a relevant acquisition an amount is first calculated by applying the appropriate rate of duty under section 184(1) to the value of the interest of the acquirer in the landholder immediately after the relevant acquisition and then, if applicable, a reduction is made under section 189.

(2) The resulting amount is the duty payable in respect of the relevant acquisition.

(3) The value of the interest referred to in subsection (1) is the same percentage of the value of the landholder as the percentage of the interest of the acquirer in the landholder after the relevant acquisition.

[Section 188 amended by No. 32 of 2012 s. 20.]

189. Reduction for s. 188

(1) The amount calculated under section 188(1) is to be reduced by an amount determined by applying the appropriate rate of duty under section 184(1) to the value of the excluded interest or the sum of the values of each excluded interest.

(2) An excluded interest is an interest of the acquirer in the landholder concerned that is —

(a) an interest, other than one which cannot be excluded because of subsection (4), that was held by the person or

a related person, or by the person and a related person, before the day that is 3 years before the day on which the relevant acquisition occurred; or

(b) an interest acquired by a relevant acquisition that occurred on or after the day first referred to in paragraph (a) if duty was chargeable in respect of that acquisition, but only to the extent to which the interest is held immediately before the relevant acquisition referred to in section 188; or

(c) an interest in the landholder concerned acquired by an acquisition if immediately before the acquisition neither the landholder nor a linked entity in respect of the landholder was entitled to land in Western Australia.

(3) The value of an excluded interest is the same percentage of the value of the landholder concerned as the percentage of all interests in the landholder that is represented by the excluded interest.

(4) An interest in the landholder acquired by an acquisition (the ***earlier acquisition***) cannot be excluded under subsection (2)(a) if the relevant acquisition in respect of which duty is to be calculated under section 188(1) —

(a) is described in section 163; and

(b) was made under an arrangement entered into during the prescribed period in respect of the earlier acquisition.

(5) The reference in subsection (4) to the prescribed period in respect of the earlier acquisition is to the period beginning on the day that is 3 years before the day on which the earlier acquisition occurred and ending on the day that is 3 years after the day on which the earlier acquisition occurred.

(6) Despite subsections (4) and (5), an interest that was held by the person or a related person, or by the person and a related person, before 1 July 2008 (the ***earlier acquisition***) is an excluded interest unless the relevant acquisition in respect of which duty

is to be calculated under section 188(1) was made pursuant to an arrangement entered into —

(a) during the prescribed period in respect of the earlier acquisition; and

(b) in the opinion of the Commissioner, for a purpose of avoiding or reducing the amount of duty payable.

[Section 189 inserted by No. 32 of 2012 s. 21; amended by No. 32 of 2012 s. 22.]

*[**190-192.** Deleted by No. 32 of 2012 s. 21.]*

193. Calculation of duty where statement lodged under s. 201

(1) This section applies to the calculation of duty if a statement is lodged under section 201(6) in respect of a relevant acquisition referred to in section 164 that occurred during a period (a ***relevant period***) provided for by an approval under section 201(2).

(2) The Commissioner is not required to make a separate calculation under this Division of duty in respect of each relevant acquisition that occurred during the relevant period.

(3) Instead, the Commissioner may calculate the duty under this Division in respect of all relevant acquisitions that occurred during the relevant period as if all such acquisitions had been made by a single relevant acquisition that occurred at the end of the relevant period.

194. Calculation of duty on certain acquisitions on winding up of corporation or unit trust scheme

(1) Despite anything else in this Division, duty is to be calculated under this section in respect of a relevant acquisition by a person of an interest in a landholder if the acquisition —

(a) occurs in the circumstances referred to in subsection (2); and

(b) is not exempt under section 167 because the effect of the acquisition is that the person receives a benefit in excess of the person's entitlement.

Note for this subsection:

The combined operation of sections 29(4) and 167 will make the acquisition exempt if the value of the person's benefit is not in excess of the person's entitlement.

(2) The circumstances referred to are that —

(a) the relevant acquisition occurs as a result of a transfer of shares in a corporation or units in a unit trust scheme by —

(i) the liquidator of a corporation in the course of a distribution of its assets as a consequence of the winding up of the corporation; or

(ii) the trustee of a unit trust scheme in the course of the winding up of the scheme;

and

(b) the person concerned is —

(i) a shareholder in the corporation; or

(ii) a unit holder in the unit trust scheme,

that is being wound up; and

(c) the Commissioner is satisfied that the winding up is not a scheme or arrangement, or part of a scheme or arrangement, for which a dominant purpose of any party is the reduction of the duty otherwise payable.

(3) The amount of duty payable in respect of the relevant acquisition is an amount that bears to the amount of duty that would otherwise be calculated under this Division in respect of the acquisition the same proportion as the value of the benefit received by the person in excess of the person's entitlement bears to the value of all the assets distributed or to be distributed to the person as a consequence of the winding up.

(4) For the purposes of this section —

(a) a shareholder in a corporation receives a benefit in excess of the shareholder's entitlement if the value, when the winding up begins, of all the assets distributed or to be distributed to the shareholder (the ***distributed value***) exceeds the value at that time of the shareholder's entitlement to the net assets of the corporation (the ***entitlement value***); and

(b) a unit holder in a unit trust scheme receives a benefit in excess of the unit holder's entitlement if the value, when the winding up begins, of all the assets distributed or to be distributed to the unit holder (also the ***distributed value***) exceeds the value at that time of the unit holder's entitlement to the net assets held by the trustee of the unit trust scheme as trustee of that trust (also the ***entitlement value***).

(5) For the purpose of calculating duty under subsection (3), the value of a benefit received by a shareholder or unit holder in excess of the person's entitlement is the greater of —

(a) the amount by which the distributed value exceeds the entitlement value in relation to the person; and

(b) the amount that is the total of —

(i) any amount owing to the shareholder or unit holder that the shareholder or unit holder has, in the relevant period, released the corporation or the trustee of the unit trust scheme from paying; and

(ii) the amount of any liability that the shareholder or unit holder, or a person related to the shareholder or unit holder, has, in the relevant period, assumed or discharged on behalf of the corporation or the trustee of the unit trust scheme.

(6) In subsection (5)(b) —

person related, to a shareholder or unit holder, means that the person and the shareholder or unit holder are related persons within the meaning of section 162(1)(a) to (g);

relevant period means the period beginning on the day that is 12 months before the day on which the winding up begins and ending on the day on which the relevant acquisition occurs.

(7A) For the purposes of subsection (5)(b)(ii), the Commissioner may exclude part or all of the amount of any liability that a person related to a shareholder or unit holder, as the case requires, has assumed or discharged if the Commissioner is satisfied that it is appropriate to do so having regard to the application of subsection (5) to all relevant acquisitions occurring as a consequence of the winding up.

(7) Section 29(6), (7) and (8) apply for the purposes of subsection (2)(c) as if —

(a) a reference to the property were a reference to the shares or the units, as the case may require; and

(b) a reference to the duty chargeable were a reference to the duty payable in respect of the relevant acquisition.

[Section 194[3] amended by No. 29 of 2012 s. 5.]

Division 6A — Interim assessment of landholder duty

[Heading inserted by No. 10 of 2013 s. 6.]

195A. Interim assessment of landholder duty

(1) The Commissioner may make an assessment (an ***interim assessment***) of a portion of the duty payable in respect of a relevant acquisition if —

(a) the Commissioner is satisfied that duty is payable in respect of the relevant acquisition; and

(b) one of the following applies —

(i) more than 6 months have elapsed since the day on which an acquisition statement for the relevant acquisition was lodged or an application was made under section 180 in relation to the relevant acquisition;

(ii) more than 6 months have elapsed since the day on which an acquisition statement for the relevant acquisition ought to have been lodged;

(iii) the Commissioner is satisfied that it will not be possible to obtain the information necessary to determine the value of the landholder within the 6 months referred to in subparagraph (ii);

and

(c) the Commissioner is satisfied that a portion of the value of the landholder can be determined.

(2) For the purposes of subsection (1)(b)(ii), the day on which an acquisition statement ought to have been lodged is the last day of the period within which the statement must be lodged under section 200, 201 or 202 (whichever is relevant).

(3) For the purpose of being satisfied of the matter in subsection (1)(c), the Commissioner may have regard to any information that the Commissioner considers relevant, including the following —

(a) the value, as agreed between the Commissioner and the taxpayer, of anything;

(b) the consideration (if any) given for the relevant acquisition;

(c) any evidence, whether provided by the taxpayer or obtained by the Commissioner, of the value of anything;

(d) any document or other record kept by or on behalf of a party to the relevant acquisition;

(e) any information held by a regulatory authority in the State, another Australian jurisdiction or an overseas jurisdiction;

(f) any information that is publicly available.

(4) For the purposes of making an interim assessment, the duty payable is to be determined as if the portion of the value of the landholder were the full value of the landholder.

(5) The Commissioner can make a determination of a portion of the value of a landholder for the purposes of making an interim assessment even though the Commissioner has ascertained —

(a) the value of only some of the land or chattels to which section 186(1) applies; or

(b) only a portion of the value of particular land or chattels to which section 186(1) applies.

[Section 195A inserted by No. 10 of 2013 s. 6.]

Division 6 — Reassessment of liability for landholder duty

195. Reassessment of duty where s. 149 or 156 applied

(1) A reassessment of duty in respect of a relevant acquisition is required if —

(a) for the purposes of an assessment —

(i) an agreement to acquire an interest in land has, under section 149(1)(a), been regarded as having been completed; or

(ii) an agreement to acquire an interest in an entity has, under section 156(8)(a), been regarded as having been completed;

and

(b) since that determination the agreement has been rescinded, annulled or otherwise terminated without being completed; and

(c) had the agreement not been regarded as having been completed —

(i) the liability for duty in respect of the relevant acquisition would not have arisen; or

(ii) the amount of the duty payable would have been less.

(2) A reassessment of duty in respect of a relevant acquisition is also required if —

(a) for the purposes of an assessment —

(i) an agreement to dispose of an interest in land has, under section 149(1)(b), been disregarded; or

(ii) an agreement to dispose of an interest in an entity has, under section 156(8)(b), been disregarded;

and

(b) since that determination the agreement has been completed; and

(c) had the agreement not been disregarded —

(i) the liability for duty in respect of the relevant acquisition would not have arisen; or

(ii) the amount of the duty payable would have been less.

(3) On application made by a person that has paid or is liable to pay the duty, the Commissioner is to make a reassessment of the duty —

(a) if subsection (1) applies — disregarding the agreement referred to in that subsection; or

(b) if subsection (2) applies — having regard to the agreement referred to in that subsection.

[Section 195 amended by No. 1 of 2015 s. 27.]

196. Reassessment of duty where s. 176(2) applied

(1) A reassessment of duty in respect of a relevant acquisition is required if —

(a) for the purposes of an assessment, the acquisition was treated as having been made under an agreement of the kind referred to in section 176(2); and

(b) since that assessment —

(i) the agreement has been rescinded, annulled or otherwise terminated without being completed; or

(ii) subsection (2) has become applicable to the agreement;

and

(c) had the acquisition not been treated as mentioned in paragraph (a) the liability for duty in respect of the relevant acquisition would not have arisen.

(2) This subsection has become applicable to an agreement that is taken to exist under section 177(2) or (3) if —

(a) the call option and the put option of the simultaneous put and call option referred to in section 177(2) or (3) —

(i) both expire without being exercised; or

(ii) are rescinded or cancelled by agreement, or either is rescinded or cancelled and the other expires without being exercised;

and

(b) the call option has not been assigned or further assigned as referred to in section 177(3).

(3) On application made by a person that has paid or is liable to pay the duty, if subsection (1) applies, the Commissioner is to make a reassessment of the duty disregarding the agreement referred to in subsection (1)(a).

(4) If a reassessment is required under subsection (1)(b)(ii), the Taxation Administration Act section 17 applies as if the original assessment had been made as soon as subsection (2) became applicable to the agreement that was taken to exist under section 177(2) or (3).

197. Condition precedent to reassessment under s. 195 or 196

Despite section 195(3)(a) or 196(3), the Commissioner is not to make a reassessment of the duty under that provision unless the Commissioner is also satisfied that the rescission, annulment or other termination of the agreement was not part of a scheme or arrangement under which the object of the agreement has been or may be achieved in another way.

198. Taxation Administration Act not affected

Sections 195 and 196 are in addition to the provisions of the Taxation Administration Act relating to the reassessment of duty and do not affect the operation of those provisions.

Division 7 — Lodgment of statements

199. Term used: acquisition statement

In this Division —

acquisition statement means a statement required to be lodged under section 200(2), 201(6) or 202(2).

200. Acquisition statement to be lodged

(1) This section applies where by a relevant acquisition a person —

(a) acquires an interest in a landholder; or

(b) is taken by section 173(4) to have acquired such an interest.

(2) A statement in respect of the acquisition must be lodged unless —

(a) section 180(4)(b) applies in relation to the acquisition; or

(b) it is covered by an approval under section 201.

(3) An acquisition statement under subsection (2) must be lodged not later than 2 months after the day on which the relevant acquisition occurred or is taken to have occurred or within such further time as is allowed under subsection (4).

(4) The Commissioner may from time to time, on application by a person or entity referred to in section 204, extend the time allowed for the lodgment of an acquisition statement under this section, and may do so on such conditions as the Commissioner thinks fit.

(5) An application under subsection (4) in respect of an acquisition statement must be made —

(a) before the expiry of the allowed time applicable to the statement; and

(b) in the approved form.

201. Acquisition of further interests, lodgment of periodical statements may be approved

(1) This section applies where —

(a) by a relevant acquisition referred to in section 164 a person has acquired a further interest in a landholder; and

(b) it is contemplated that the acquirer or a person that under section 162 is related to the acquirer (a ***related person***) will acquire more of such interests in the landholder.

(2) The Commissioner may, on application made by a person mentioned in subsection (3), approve the lodgment of periodical statements in respect of particular approved periods (a ***relevant period***).

(3) The persons that may apply are —

(a) the acquirer; or

(b) a related person; or

(c) if the landholder is a corporation, the corporation; or

(d) if the landholder is a unit trust scheme, the trustee of the scheme.

(4) An application under subsection (2) must be made —

(a) within 2 months after the day on which the relevant acquisition occurred; and

(b) in the approved form.

(5) The first relevant period is to begin with the day on which the relevant acquisition occurred and a subsequent relevant period is to begin with the day after the day on which the immediately preceding relevant period ends.

(6) While an approval under subsection (2) is in force —

(a) a statement must be lodged within 14 days after the first relevant period ends in respect of —

(i) the relevant acquisition referred to in subsection (1)(a); and

(ii) any other relevant acquisition by which the acquirer or a related person acquired any further interest in the landholder during that period;

and

(b) within 14 days after each subsequent relevant period ends, a statement must be lodged in respect of any relevant acquisition by which the acquirer or a related person acquired any further interest in the landholder during that period.

202. Lodgment obligations if s. 201 application refused

(1) If the Commissioner decides not to grant an approval under section 201, the Commissioner is to give written notice of the decision and of the reasons for it to —

(a) the applicant; and

(b) every other person that appears to the Commissioner to be a person that would be liable under section 204 if a statement is not lodged under subsection (2) in respect of an acquisition mentioned in that subsection.

(2) Within 2 months after the day on which a notice is given under subsection (1), statements must be lodged in respect of —

(a) the relevant acquisition referred to in section 201(1)(a); and

(b) any relevant acquisition by which the acquirer or a person that under section 162 is related to the acquirer acquired any further interest in the landholder after the relevant acquisition referred to in section 201(1)(a) and before the notice was given,

and section 200 does not apply to those acquisitions.

203. Form and content of acquisition statements

(1) An acquisition statement must —

(a) be in the approved form; and

(b) contain such information and particulars as are prescribed.

(2) The Commissioner may approve different forms of acquisition statements for different circumstances or for different provisions of this Chapter.

204. Failure to lodge acquisition statement

If an acquisition statement is not lodged in accordance with section 200(2), 201(6) or 202(2), the following persons commit an offence —

(a) in every case, the acquirer;

(b) if the landholder concerned is a corporation, the corporation;

(c) if the landholder concerned is a unit trust scheme, the trustee of the scheme;

(d) any person taken into account under section 163 or 164 as being related to the acquirer for the purposes of the acquisition, other than a person whose interest in the landholder is, for the purpose of calculating the duty, an excluded interest under section 189.

Penalty: a fine of $20 000.

[Section 204 amended by No. 32 of 2012 s. 23.]

[Division 8 (s. 205) omitted under the Reprints Act 1984 s. 7(4)(e).]

Chapter 4 — Insurance duty

Part 1 — Preliminary

206. Terms used

In this Chapter, unless the contrary intention appears —

accident insurance means insurance for any payment agreed to be made —

(a) on the death of any person only from accident or violence or otherwise than from a natural cause; or

(b) as compensation for personal injury;

contract of insurance has the meaning given in section 208;

duty means duty under this Chapter;

financial services licensee has the meaning given in the Corporations Act section 761A;

general insurance has the meaning given in section 209;

general insurer has the meaning given in section 214;

insurer means a person that writes general insurance otherwise than as an intermediary of an insurer;

intermediary, of an insurer, means —

(a) a representative of the insurer; or

(b) a financial services licensee, that is not otherwise a representative of the insurer, that arranges or effects insurance for or with the insurer;

interstate duty means duty chargeable in another State or a Territory that is of a similar nature to duty under this Chapter;

life insurance means insurance provided under or in accordance with a policy of insurance or assurance on any life or lives or on any event or contingency relating to or depending on any life or lives, other than a policy of accident insurance;

offshore risk insurance means any kind of insurance that is applicable to —

(a) property outside Australia; or

(b) a risk, contingency or event concerning an act or omission that, in the normal course of events, occurs outside Australia;

premium has the meaning given in section 211;

registered insurer means a general insurer that is registered under section 218;

representative has the meaning given in the Corporations Act section 910A.

Part 2 — Imposition of insurance duty

207. Insurance duty imposed

Duty is imposed on the premium paid in relation to a contract of insurance.

208. Contract of insurance

A ***contract of insurance*** is a contract that effects general insurance (whether or not it also effects other kinds of insurance).

209. General insurance

(1) ***General insurance*** is any kind of insurance that is applicable to —

(a) property in Western Australia; or

(b) a risk, contingency or event concerning an act or omission that, in the normal course of events, may occur within, or partly within, Western Australia,

or both.

(2) ***General insurance*** does not include any of the following —

(a) life insurance;

(b) insurance against an employer's liability to pay compensation under the *Workers' Compensation and Injury Management Act 1981*;

(c) reinsurance (that is, the indemnification of one party by another against liability or payment arising under a contract or contracts of insurance or reinsurance);

(d) insurance in respect of goods in the course of being transported, whether by rail, road, air or sea, and whether within Western Australia or elsewhere;

(e) insurance in respect of a marine hull used primarily for commercial purposes;

(f) insurance effected by an exempt body;

(g) insurance issued by a private health insurer (as defined in the *Private Health Insurance Act 2007* (Commonwealth) Schedule 1) in the course of its health insurance business (as defined in section 121-1 of that Act);

(h) insurance under the Defence Service Homes Insurance Scheme (as defined in the *Defence Service Homes Act 1918* (Commonwealth) section 38);

(i) offshore risk insurance;

(j) insurance of a prescribed class.

210. Additional insurance in life insurance policy is general insurance

(1) This section does not apply to a policy of life insurance unless the insured person's place of residence is in Western Australia.

(2) If —

(a) a policy of life insurance, in addition to providing life insurance, also provides for the payment of a benefit on the happening of a contingency or event that does not relate to or depend on a life or lives (the ***additional insurance***); and

(b) an identifiable part of the premium payable in respect of the policy is attributable to the additional insurance,

the additional insurance provided under or in accordance with the policy is taken to be general insurance and not life insurance for the purposes of this Chapter.

(3) Subsection (2) applies —

(a) whether or not the life insurance and the additional insurance are distinct matters; and

(b) whether or not payment of a benefit under the additional insurance component of the policy —

(i) will or may reduce the benefit payable under the life insurance component of the policy; or

(ii) will or may terminate the policy.

211. Premium

A ***premium*** is the total consideration paid to an insurer by or on behalf of an insured person to effect insurance, without deductions for any amounts paid or payable, or allowed or allowable, by way of commission or discount to an intermediary of the insurer, other than —

(a) an amount paid to an intermediary of the insurer by the insured person as a fee if the amount can be identified as a fee; or

(b) an amount paid to take account of duty or interstate duty.

212. When premium paid

For the purposes of this Chapter, a premium or an instalment of a premium is paid when the first of the following events occurs —

(a) the premium or the instalment is received by or on behalf of the insurer;

(b) an account of the insurer is credited with the amount of the premium or the instalment.

Part 3 — Collection of insurance duty

Division 1 — Liability

213. Who is liable to pay duty

Duty chargeable on the premium paid in relation to a contract of insurance is payable by —

(a) the insurer — if the insurer is a general insurer; or

(b) the insured person — if the insurer is not a general insurer.

214. General insurer

Any of the following insurers is a ***general insurer*** —

(a) an insurer that is either —

(i) authorised under the *Insurance Act 1973* (Commonwealth); or

(ii) registered under the *Life Insurance Act 1995* (Commonwealth);

(b) the Insurance Commission of Western Australia and any similar body of another State or a Territory that is prescribed for the purposes of this definition.

Division 2 — Amount of insurance duty

215. Amount of duty payable

The amount of duty payable on a premium, or an instalment of a premium, is 10% of the amount of the premium, or instalment, that is attributable to general insurance.

216. Policies effecting general insurance and other insurance, duty on

(1) This section applies to a contract of insurance that effects both general insurance and one or more other kinds of insurance.

(2) The proportion of the premium that is attributable to general insurance is to be determined in accordance with the Apportionment Schedule or Schedules published by the Commissioner from time to time.

(3) The Commissioner must give notice in the *Gazette* of the publication of an Apportionment Schedule and include details of how a copy of the Schedule may be obtained.

(4) The Apportionment Schedule or Schedules are to provide the means for apportioning premiums having regard to —

(a) the principle that duty is chargeable on a premium paid in relation to a contract of insurance to the extent to which the contract of insurance is for general insurance; and

(b) avoiding payment of multiple duty as between Australian jurisdictions; and

(c) giving Australian jurisdictions their appropriate share of duty by means of the apportionment.

(5) A method of apportionment in an Apportionment Schedule may, for a particular class of contract of insurance, have the effect that the proportion of the premium that is attributable to general insurance is zero.

(6) If a premium has not been, or cannot be, appropriately apportioned under subsection (2), the Commissioner may —

(a) determine the appropriate proportions; and

(b) if necessary — reassess the amount of duty payable in relation to the contract of insurance.

(7) The extent to which an instalment of a premium is attributable to general insurance is the same as the extent to which the premium is attributable to general insurance.

Division 3 — Insurers

217. General insurers to apply to be registered

(1) On becoming a general insurer, the insurer must apply to be registered under section 218.

(2) An application for registration must be made in the approved form on or before the 21st day after the end of the month in which the insurer became a general insurer.

Penalty: a fine of $20 000.

218. Registration of general insurers

(1) The Commissioner must register a general insurer that applies for registration.

(2) The Commissioner must register a general insurer that has not applied for registration if satisfied that the insurer ought to be registered for the purposes of this Chapter.

(3) The Commissioner must give notice to a general insurer of its registration.

219. Return period of registered insurer

The return period of a registered insurer is —

(a) if a special tax return arrangement is not in force — one month; or

(b) the return period provided in a special tax return arrangement in force under the Taxation Administration Act section 49.

220. Registered insurers to lodge returns

(1) A registered insurer must lodge a return in the approved form for each return period of the insurer on or before the 21st day after the end of the return period.

(2) On becoming a general insurer, the insurer must —

(a) for the month in which the insurer became a general insurer; and

(b) for each subsequent month until the month in which the insurer becomes a registered insurer or ceases to be a general insurer,

lodge a return in the approved form for the month on or before the 21st day after the end of the month.

(3) The month referred to in subsection (2) is to be treated as a return period for the purposes of this Chapter.

(4) A registered insurer that does not lodge a statement in accordance with subsection (1) commits an offence.

Penalty: a fine of $5 000.

(5) A general insurer that does not lodge a statement in accordance with subsection (2) commits an offence.

Penalty: a fine of $5 000.

(6) The requirement to lodge a return applies even if no duty is chargeable in the return period.

221. Time for payment of duty by insurers

The duty on a premium, or instalment of a premium, paid to a general insurer in a return period is due for payment on the last day for lodging the return under section 220(1) or (2) for that return period.

222. Cancelling registration of general insurers

(1) The Commissioner may cancel the registration of a general insurer on his or her own initiative or at the request of the insurer.

(2) The Commissioner is not to cancel a general insurer's registration unless registration of the insurer is no longer necessary for the purposes of this Chapter.

(3) A cancellation has effect on and from the day specified in the notice of cancellation of registration, which may be a day that is earlier than the day on which the notice is issued.

Division 4 — Insured persons

223. Some insured persons to lodge statements

(1) A person liable to pay duty on a premium under section 213(b) (an ***insured person***) must lodge a statement in the approved form on or before the 21st day after the end of the month, or each month, in which the person paid the premium, or an instalment of the premium.

(2) A person that does not lodge a statement in accordance with subsection (1) commits an offence.

Penalty: a fine of $5 000.

(3) If a document contains all the information required in a statement referred to in subsection (1), the document may be lodged instead of the statement and, if it is, the person does not commit an offence under subsection (2).

224. Time for payment of duty by insured persons

The duty on a premium, or instalment of a premium, paid by an insured person in a month is due for payment on the last day for lodging the statement under section 223(1) for that month.

Part 4 — General provisions as to insurance duty

225. Insurer and intermediary to notify Commissioner of contracts of insurance

(1) An insurer that is not a general insurer must, for each month in which the insurer is paid a premium or an instalment of a premium in respect of a contract of insurance entered into by or on behalf of the insurer, notify the Commissioner in the approved form of —

(a) each such contract of insurance for which the insurer has been paid a premium or an instalment of a premium in that month; and

(b) the amounts of those premiums or instalments,

on or before the 21st day after the end of the month.

Penalty: a fine of $5 000.

(2) An intermediary of an insurer that is not a general insurer must, for each month in which the intermediary receives a premium or an instalment of a premium in respect of a contract of insurance on behalf of the insurer, notify the Commissioner in the approved form of —

(a) each such contract of insurance for which the intermediary has received a premium or an instalment of a premium on behalf of the insurer; and

(b) the amounts of those premiums or instalments,

on or before the 21st day after the end of the month.

Penalty: a fine of $5 000.

(3) The Commissioner may make a special tax return arrangement under the Taxation Administration Act section 49 with a person referred to in subsection (1) or (2) that modifies the requirements in subsection (1) or (2) and the arrangement has effect accordingly.

(4) If a person complies with a requirement (including a modified requirement) in subsection (1) or (2) in respect of a contract of insurance then the requirement in the other subsection is taken to have been complied with in respect of that contract.

226. Refunds of duty if premium refunded

(1) If —

(a) a general insurer has paid duty in respect of a contract of insurance; and

(b) the insurer has refunded some or all of the premium for the contract,

the insurer is entitled to a refund of the duty paid to the extent to which the premium was refunded.

(2) If —

(a) a person has paid duty in respect of a contract of insurance; and

(b) the insurer has refunded some or all of the premium for the contract,

the person is entitled to a refund of the duty paid to the extent to which the premium was refunded.

(3) For the purposes of this section, an insurer refunds an amount of a premium if the insurer or an intermediary of the insurer —

(a) repays the amount to the insured person; or

(b) otherwise provides a benefit to the insured person to the value of the amount refunded.

227. Records to be kept

(1) A person that is liable to pay duty must keep —

(a) the records that are prescribed for the purposes of this section (if any); and

(b) any other records necessary to enable the Commissioner to determine the person's liability to pay duty.

Penalty: a fine of $20 000.

(2) A person referred to in section 225(1) or (2) must keep the records necessary to enable the Commissioner to verify the information in any notice.

Penalty: a fine of $20 000.

Chapter 5 — Vehicle licence duty

Part 1 — Preliminary

228. Terms used

In this Chapter, unless the contrary intention appears —

caravan means a trailer (including a camper trailer) permanently fitted for human habitation in the course of a journey;

CEO has the meaning given in the *Road Traffic (Administration) Act 2008* section 4;

charitable organisation means a charitable institution or public benevolent institution endorsed by the Commissioner of Taxation of the Commonwealth under the *Income Tax Assessment Act 1997* (Commonwealth) as a deductible gift recipient or as exempt from income tax;

corresponding State law means a law of another State or a Territory that corresponds to the Vehicles Act;

dealer means any of the following —

(a) a person that carries on the business of selling new vehicles;

(b) a person that is the holder of a dealer's licence under the *Motor Vehicle Dealers Act 1973*;

(c) a person that carries on the business of acquiring new or used vehicles for resale or disposal under hire purchase or leasing agreements;

(d) a person that, in the course of the person's business, takes possession of and resells vehicles that are the subject of mortgages, charges or hire purchase or leasing agreements;

duty means duty under this Chapter;

grant, in respect of a licence for a vehicle, does not include renew;

heavy vehicle has the meaning given in the Vehicles Act;

licence has the meaning given in section 230(2) and (3);

motor vehicle has the meaning given in the *Road Traffic (Administration) Act 2008* section 4, but does not include a trailer, semi-trailer or caravan;

new vehicle means —

(a) a vehicle that has not been used; or

(b) a vehicle that has only been used for a purpose referred to in section 246(1) or 247(1), other than a vehicle that has been used for a purpose referred to in section 246(1)(a)(ii) or 247(1) for a period of more than 2 months;

trailer means a vehicle designed to be drawn by another vehicle;

vehicle has the meaning given in section 230(1);

Vehicles Act means the *Road Traffic (Vehicles) Act 2012*.

[Section 228 amended by No. 8 of 2012 s. 90 and 95.]

Part 2 — Imposition of vehicle licence duty

229. Vehicle licence duty imposed

Duty is imposed on the grant or transfer of a licence for a vehicle.

230. Vehicle and licence

(1) A ***vehicle*** is a vehicle that is required to be licensed under the Vehicles Act, other than a caravan.

(2) A ***licence***, in respect of a vehicle, is a licence for the vehicle granted under the Vehicles Act.

(3) A duplicate licence or a certified copy of the licence granted under the Vehicles Act is not a ***licence***.

[Section 230 amended by No. 8 of 2012 s. 91 and 95.]

Part 3 — Collection of vehicle licence duty

Division 1 — Preliminary

231. Terms used

In this Part —

dutiable value, of a vehicle, means the dutiable value worked out in respect of the vehicle under Division 5;

optional feature, of a vehicle, means a feature of any of the following types that is not a standard feature of a vehicle of that make and model —

(a) any particular kind of transmission in a vehicle;

(b) any particular kind of engine in a vehicle;

(c) any other prescribed feature in or of a vehicle;

purchase price, in respect of a vehicle, includes any of the following —

(a) an amount allowed by the seller on a trade-in or an exchange of any article;

(b) an amount paid to the seller for anything included with or incorporated into the vehicle;

(c) an amount paid to the seller for the preparation of the vehicle for delivery to the purchaser;

specialised equipment means any of the following —

(a) a crane;

(b) an excavator, road roller, road grader, bulldozer, mechanical shovel, plough, rotary hoe or similar plant;

(c) hoisting equipment for lifting, partially lifting or towing other vehicles;

(d) bitumen spraying equipment;

(e) a cement agitator;

(f) garbage collection equipment;

(g) road sweeping equipment;

(h) a refrigeration unit;

(i) a stock crate;

(j) a tank for transporting liquids;

(k) equipment to make the vehicle habitable by a person in the course of a journey;

(l) any similar plant or equipment;

specialised vehicle means a motor vehicle that —

(a) is constructed or designed, or has been modified, to include or have specialised equipment permanently attached to it; and

(b) is designed to be driven or controlled by a person carried in or on the vehicle.

Division 2 — Liability

232. Who is liable to pay duty

(1) Duty chargeable on the grant or transfer of a licence for a vehicle is payable by the person in whose name the licence for the vehicle is granted, or the transferee.

(2) A person that ceases to be the owner of a vehicle, or a dealer that sells a new vehicle, is also liable to pay the duty chargeable on the grant or transfer of the licence for the vehicle in the circumstances and to the extent set out in section 252.

Division 3 — Assessment and payment of vehicle licence duty

233. Assessment of duty

(1) When an application is made for the grant or transfer of a licence for a vehicle the CEO must assess the amount of duty payable on the grant or transfer.

(2) The assessment is to be based on the dutiable value of the vehicle at the time of the grant or transfer of the licence unless a provision of this Chapter otherwise provides.

(3) An assessment made under subsection (1) is taken to be an official assessment for the purposes of the Taxation Administration Act.

[Section 233 amended by No. 8 of 2012 s. 96.]

234. Applicant for licence to state dutiable value of vehicle etc.

(1) A person that applies for the grant or transfer of a licence for a vehicle must include in the application a statement signed by the applicant setting out —

(a) the applicant's estimate of the dutiable value of the vehicle at the time of the application; and

(b) if the applicant is a purchaser of the vehicle — the purchase price of the vehicle.

Penalty: a fine of $20 000.

(2) For the purpose of determining the dutiable value of the vehicle the CEO may, by notice given to the applicant, require the applicant to give the CEO evidence of the dutiable value of the vehicle.

(3) The applicant must comply with the requirement in subsection (2) within the period stated in the notice.

Penalty: a fine of $20 000.

(4) This section does not apply to, or in respect of, a person if —

(a) under Part 4 Division 1 or 2 — duty is not chargeable on the grant or transfer of a licence for the vehicle; or

(b) under Part 4 Division 3 — nominal duty is chargeable on the grant or transfer of a licence for the vehicle.

[Section 234 amended by No. 8 of 2012 s. 96.]

235. Payment of duty

Duty chargeable on the grant or transfer of a licence for a vehicle and any penalty tax is payable —

(a) to the CEO in accordance with the Vehicles Act; or

(b) if an assessment is made by the Commissioner — in accordance with the Taxation Administration Act.

[Section 235 amended by No. 8 of 2012 s. 95 and 96.]

Division 4 — Amount of vehicle licence duty

236. Amount of duty payable

(1) The amount of duty payable on the grant or transfer of a licence for a vehicle is worked out under this section (rounded down to the nearest 5 cents) unless section 250 applies to the grant or transfer of the licence.

(2) For the grant or transfer of a licence for a vehicle that is not a heavy vehicle, the amount of duty is —

(a) if the dutiable value of the vehicle does not exceed $25 000 — 2.75% of the dutiable value; or

(b) if the dutiable value of the vehicle exceeds $25 000 but does not exceed $50 000 — R% of the dutiable value, where R is determined in accordance with the following formula —

$$R = \left\lceil 2.75 + \left(\frac{DV - 25000}{6666.66} \right) \right\rceil$$

(rounded to 2 decimal places);

where —

DV is the dutiable value;

or

(c) if the dutiable value of the vehicle exceeds $50 000 — 6.5% of the dutiable value.

(3) For the grant or transfer of a licence for a heavy vehicle, the amount of duty is the lesser of —

(a) 3% of the dutiable value; and

(b) $12 000.

[Section 236 amended by No. 12 of 2008 s. 24.]

Division 5 — Dutiable value of a vehicle

237. Certain new vehicles, dutiable value of

(1) The dutiable value of a vehicle —

(a) that is a new vehicle; and

(b) that is of a class prescribed for the purposes of this section; and

(c) for which a price has been fixed by the manufacturer, importer or principal distributor as the retail selling price in Western Australia of a vehicle of that make and model,

is the sum of —

(d) the price fixed as described in paragraph (c); and

(e) for each optional feature in or of the vehicle — the additional amount fixed by the manufacturer, importer or principal distributor for the retail sale in Western Australia of the optional feature.

(2) This section has effect subject to section 239.

238. Certain other vehicles, dutiable value of

(1) The dutiable value of a vehicle that is not a vehicle to which section 237 applies is the amount for which the vehicle might reasonably be sold, free of encumbrances, in the open market.

(2) This section has effect subject to section 239.

239. Specialised vehicles, dutiable value of

(1) Section 237 or 238 (whichever is relevant) applies in respect of a vehicle that is a specialised vehicle (***vehicle B***), as if the specialised equipment attached to it at the time of the application for the grant or transfer of the licence for the vehicle were not attached to it, if —

(a) the applicant holds, or previously held, the licence for another specialised vehicle (***vehicle A***); and

(b) the applicant is the last person to hold a licence for vehicle A; and

(c) the duty paid by the applicant on the grant or transfer of the licence for vehicle A was assessed on the dutiable value of vehicle A including the value of the specialised equipment that was then attached to it; and

(d) the specialised equipment referred to in paragraph (c) has been removed from vehicle A and attached to vehicle B; and

(e) the application for the grant or transfer of the licence for vehicle B is accompanied by, or includes, a declaration in the approved form to the effect that, in the applicant's opinion, the circumstances in paragraphs (a) to (d) apply and that the applicant understands the effect of subsections (2) and (3).

(2) If —

(a) duty on the grant or transfer of a licence for a specialised vehicle to a person was assessed on a dutiable value worked out under subsection (1); and

(b) while that person holds the licence for that vehicle it is used with specialised equipment other than the equipment that was attached to it at the time the application for the grant or transfer of the licence was made (the ***original equipment***),

the person must not attach the original equipment to any other vehicle for which the licensee intends to become the licence holder.

Penalty: a fine of $20 000.

(3) If a person contravenes subsection (2) —

(a) subsection (1) is taken not to have applied in respect of the vehicle at the time of the grant or transfer of the licence for the vehicle; and

(b) penalty tax is imposed on the grant or transfer of the licence of an amount equal to the difference between —

(i) the amount of duty that was originally payable on the grant or transfer; and

(ii) the amount of duty payable because of paragraph (a);

and

(c) the penalty tax and the unpaid amount of the duty payable because of paragraph (a) is due for payment within one month after the date of an assessment notice issued in relation to an assessment of the duty and penalty tax.

Part 4 — Exemptions and nominal duty

Division 1 — Exemptions — general

240. If no vehicle licence fee payable under Vehicles Act

(1) Duty is not chargeable on the grant of a licence for a vehicle if no fee is payable under the Vehicles Act section 7(3).

(2) Duty is not chargeable on the transfer of a licence for a vehicle if no fee would have been payable under the Vehicles Act section 7(3) for the grant of a licence to the transferee for the vehicle on the day of the transfer.

[Section 240 amended by No. 8 of 2012 s. 92.]

241. If transfer is a reconstruction transaction

Duty is not chargeable on the transfer of a licence for a vehicle if an exemption certificate issued under section 263(3)(a) in respect of the transfer is given to the CEO.

[Section 241 amended by No. 8 of 2012 s. 96.]

242. If vehicle previously licensed to licence holder

(1) Duty is not chargeable on the grant of a licence for a vehicle to a person if the vehicle was, before the grant of that licence, last licensed or registered in that person's name under —

(a) the Vehicles Act; or

(b) a corresponding State law; or

(c) a law of a country other than Australia that corresponds to the Vehicles Act.

(2) Subsection (1) does not apply to the grant of a licence to a person for a heavy vehicle that was, before the grant of that licence, last licensed or registered in the person's name under a corresponding State law if the vehicle was registered in that person's name under the *Interstate Road Transport Act 1985* (Commonwealth) on or after 16 January 1997.

(3) Subsection (1) does not apply to the grant of a licence for a vehicle, or is taken not to have applied to the grant of a licence for a vehicle at the time of the grant, if the Commissioner is satisfied, or becomes satisfied after the grant of the licence, that the vehicle was licensed or registered outside of Western Australia as part of a course of action or conduct having the sole or dominant purpose of avoiding or reducing duty.

(4) The duty chargeable because of subsection (3) is due for payment within one month after the date of an assessment notice issued in relation to an assessment of that duty.

(5) In this section, a reference to a vehicle includes a reference to a vehicle that was modified or that was part of a vehicle that was modified, whether or not the vehicle that resulted from the modification needed to meet a standard or requirement before it could be licensed that was different to the one that the original vehicle had to meet.

[Section 242 amended by No. 8 of 2012 s. 95.]

243. If licence is for certain heavy vehicle

Duty is not chargeable on the grant of a licence for a heavy vehicle to a person if —

(a) the vehicle was, immediately before 16 January 1997, registered in that person's name under the *Interstate Road Transport Act 1985* (Commonwealth); and

(b) since 16 January 1997, no licence or registration has been granted under the *Road Traffic Act 1974* or the Vehicles Act or a corresponding State law for the vehicle in any other person's name.

[Section 243 amended by No. 8 of 2012 s. 93.]

244A. If transfer is between spouses or de facto partners

(1) In this section —

de facto partners of 2 years has the meaning given in section 9.

(2) Duty is not chargeable on the transfer of a licence for a vehicle if subsections (3), (4), (5) and (6) apply.

(3) This subsection applies if the person from whom, and the person to whom, the licence is transferred are married to each other or are de facto partners of 2 years.

(4) This subsection applies if neither the person from whom, nor the person to whom, the licence is transferred holds the vehicle as trustee of a trust.

(5) This subsection applies if the fee that would have been payable under the Vehicles Act for the grant of a licence to the transferee for the vehicle on the day of the transfer would have been reduced under regulations made under section 7(3) of that Act for the reason, or for reasons that include the reason, that the vehicle is used exclusively for social, domestic or pleasure purposes and not for the carriage of passengers or goods, for hire or reward or in any business, trade or profession.

(6) This subsection applies if the application for the transfer of the licence is accompanied by, or includes, a declaration in the approved form to the effect that the circumstances described in subsections (3), (4) and (5) apply.

[Section 244A inserted by No. 27 of 2011 s. 4; amended by No. 8 of 2012 s. 94.]

244. If licence is for prescribed class of person or vehicle etc.

Duty is not chargeable on the grant of a licence for a vehicle to a person if —

(a) the vehicle is in a prescribed class of vehicle; and

(b) the person is in a prescribed class of person; and

(c) the vehicle is used, or to be used, for a prescribed purpose.

Division 2 — Exemptions — motor vehicle dealers

245. Use of vehicle includes for minor incidental purposes

A reference in this Division to the use of a vehicle for a purpose referred to in section 246(1) or (2) or 247(1) includes a reference to its use for that purpose and for minor incidental purposes.

246. If licence is for vehicle in dealer's trading stock

(1) Duty is not chargeable on the grant of a licence for a vehicle to a dealer if —

(a) the dealer acquired the vehicle solely for the purpose of —

(i) selling it to another person in the ordinary course of the dealer's business; or

(ii) demonstrating it to prospective purchasers;

and

(b) the application for the grant of the licence is accompanied by, or includes, a declaration in the approved form to the effect that —

(i) while the dealer holds the licence the vehicle will not be used for any purpose other than a purpose referred to in paragraph (a) or section 247(1)(a); and

(ii) the dealer understands the effect of sections 248 and 249.

(2) Duty is not chargeable on the transfer of a licence for a vehicle to a dealer, if —

(a) the dealer has acquired the vehicle solely for the purpose of reselling it to another person in the ordinary course of the dealer's business; and

(b) the application for the transfer of the licence is accompanied by, or includes, a declaration in the approved form to the effect that —

(i) while the dealer holds the licence the vehicle will not be used for any purpose other than a purpose referred to in paragraph (a) or section 247(1)(a); and

(ii) the dealer understands the effect of sections 248 and 249.

247. If licence is for vehicle used for charitable etc. purposes

(1) Duty is not chargeable on the grant or transfer of a licence for a vehicle to a dealer if —

(a) the vehicle is to be loaned by the dealer —

(i) to a charitable organisation to be used solely for providing assistance to underprivileged or disadvantaged persons; or

(ii) to a charitable organisation to be used solely for providing emergency assistance; or

(iii) to a school (within the meaning given in the *School Education Act 1999*) to be used solely for student driver training; or

(iv) to an individual solely for a philanthropic purpose approved by the Commissioner; or

(v) solely for a prescribed purpose;

and

(b) the application for the grant or transfer of the licence is accompanied by, or includes, a declaration in the approved form to the effect that —

(i) while the dealer holds the licence the vehicle will not be used for any purpose other than a purpose referred to in paragraph (a) or section 246(1) or (2); and

(ii) the dealer understands the effect of sections 248 and 249.

(2) The Commissioner may approve a philanthropic purpose for the purposes of subsection (1)(a)(iv) for a particular dealer or class of dealer, and the approval may take effect from a day that is earlier than the day on which the Commissioner grants the approval.

(3) Subject to the Taxation Administration Act section 17, the Commissioner must make any reassessment necessary to give effect to subsection (2).

248. Change of permitted use of exempt vehicle, Commissioner to be notified

If, under section 246(1) or (2) or 247(1), no duty was chargeable on the grant or transfer of a licence for a vehicle to a dealer and the dealer uses, or allows another person to use, the vehicle for a different purpose referred to in section 246(1) or (2) or 247(1), the dealer must notify the Commissioner, in the approved form,

of the change in use within one month after the day on which the use of the vehicle changed.

Penalty: a fine of $5 000.

249. Change of use of exempt vehicle to non-permitted use, consequences of

(1) If, under section 246(1) or (2) or 247(1), no duty was chargeable on the grant or transfer of a licence for a vehicle to a person that is or was a dealer, then while the person remains the licensee of the vehicle the person must not use, or allow any other person to use, the vehicle for a purpose other than a purpose referred to in section 246(1) or (2) or 247(1) unless the person notifies the Commissioner, in the approved form, of the change in use within one month after the day on which the use of the vehicle changed.

Penalty: a fine of $20 000.

(2) If a person notifies the Commissioner as required under subsection (1) —

(a) section 246 or 247 (whichever is relevant) is taken not to have applied to the grant or transfer of the licence at the time of the grant or transfer of the licence; and

(b) the duty chargeable on the grant or transfer of the licence because of paragraph (a) is due for payment within one month after the date of an assessment notice issued in relation to an assessment of that duty.

(3) If duty is chargeable on the grant or transfer of the licence because of subsection (2)(a), then, for the purposes of working out the amount of duty payable, the dutiable value of the vehicle is to be determined as at the time of the change in use.

(4) If a person contravenes subsection (1) —

(a) section 246 or 247 (whichever is relevant) is taken not to have applied to the grant or transfer of the licence at the time of the grant or transfer of the licence; and

(b) penalty tax is imposed on the grant or transfer of the licence of an amount equal to the amount of duty payable on the grant or transfer of the licence because of paragraph (a); and

(c) the duty and penalty tax is due for payment within one month after the date of an assessment notice issued in relation to an assessment of the duty and penalty tax.

Division 3 — Nominal duty

250. Transactions chargeable with nominal duty

(1) This section applies to the transfer of a licence for a vehicle that is the result of a transfer of the vehicle within the meaning of Chapter 2.

(2) If, on application, the Commissioner is satisfied that —

(a) if the transfer of the vehicle were to be treated as a dutiable transaction — section 29, 114, 115, 116, 117 or 119 would apply to the transfer; and

(b) nominal duty would be chargeable under that section as so applying,

nominal duty is chargeable on the transfer of the licence and the Commissioner may issue a certificate under this section to that effect.

(3A) For the purposes of subsection (2), section 116 has effect as if the requirement in section 116(2)(a) that the declaration of trust be duty endorsed or an exempt transaction were instead a requirement that duty under this Chapter was paid on the transfer of the licence for the vehicle to the trustee or was not chargeable on that transfer.

(3) If, on application, the Commissioner is satisfied that —

(a) the transfer of the vehicle is of a class prescribed for the purposes of this subsection; and

(b) the transfer does not pass, or is not part of a scheme or arrangement that passes, a beneficial interest in the vehicle,

nominal duty is chargeable on the transfer of the licence and the Commissioner may issue a certificate under this section to that effect.

(4) An application for a certificate must be in the approved form.

(5) If the transfer of the vehicle were to be treated as a dutiable transaction and nominal duty would be chargeable on the transfer under section 131 or 139, nominal duty is payable on the transfer of the licence.

(6) If —

(a) the transfer of the licence was chargeable with duty other than nominal duty; and

(b) the transfer of the vehicle was effected by or is in accordance with —

(i) a matrimonial instrument or de facto relationship instrument that came into existence; or

(ii) an instrument that became a matrimonial instrument or de facto relationship instrument,

within the period of 12 months after the day on which liability to duty arose,

the Commissioner, on the application of the taxpayer, is to reassess the liability to duty of the transfer of the licence under subsection (5) as if the transfer of the vehicle were treated as a dutiable transaction.

(7) For the purposes of subsection (6), the Taxation Administration Act section 17 applies as if references in subsections (1) and (4) of that section to when the original assessment was made were references to —

(a) the day on which the matrimonial instrument or de facto relationship instrument came into existence; or

(b) the day on which the instrument became a matrimonial instrument or de facto relationship instrument,

as the case may be.

(8) If this section uses a term that is used in Chapter 2, the term has the same meaning in this section as it has in Chapter 2 unless the contrary intention appears in this section.

[Section 250 amended by No. 32 of 2012 s. 24.]

Part 5 — General provisions as to vehicle licence duty

251. Failure to apply for transfer of licence

(1) If a person fails to apply for the transfer of a licence for a vehicle when required to do so by the Vehicles Act then, for the purposes of assessing duty —

(a) the transfer of the licence is taken to have occurred on the day chosen by the Commissioner; and

(b) the failure is taken to be a contravention of a taxation Act for the purposes of the Taxation Administration Act section 26.

(2) In choosing a day under subsection (1)(a), the Commissioner is to choose a day on which, in the ordinary course of events, the transfer would have been likely to have occurred if the person had complied with the person's obligations under the Vehicles Act and this Act.

[Section 251 amended by No. 8 of 2012 s. 95.]

252. Seller to state dutiable value of vehicle etc.

(1) A person that ceases to be the owner of a vehicle and is required under the Vehicles Act to notify the CEO of the new owner must include in that notice a statement signed by the person setting out —

(a) the purchase price (if any) of the vehicle; and

(b) the person's estimate of the dutiable value of the vehicle at the time the person ceased to be the owner of it.

Penalty: a fine of $20 000.

(2) Subsection (1) does not apply to a person if —

(a) under Part 4 Division 1 or 2 — duty is not chargeable on the grant or transfer of a licence for the vehicle; or

(b) under Part 4 Division 3 — nominal duty is chargeable on the grant or transfer of a licence for the vehicle.

(3) A dealer that sells a new vehicle must, within 7 days after the day of the sale, give to the CEO a statement signed by the dealer setting out —

(a) the purchase price of the vehicle; and

(b) the dealer's estimate of the dutiable value of the vehicle at the time the vehicle was sold.

Penalty: a fine of $20 000.

(4) If —

(a) a person understates, in a statement under this section, the purchase price or estimated dutiable value of a vehicle; and

(b) duty payable on the grant or transfer of the licence for that vehicle is initially assessed on a value of the vehicle that is less than the proper dutiable value,

the person is jointly and severally liable with the purchaser to pay the difference between the amount of duty as initially assessed and the amount of duty assessed on the vehicle's proper dutiable value.

[Section 252 amended by No. 8 of 2012 s. 95 and 96.]

253. Functions of CEO and Commissioner

(1) For the purposes of this Chapter the CEO has the functions of the Commissioner under the Taxation Administration Act

sections 26 and 29, which are modified to the extent necessary to give effect to this subsection.

(2) For the purposes of the Taxation Administration Act anything done by the CEO in the exercise of a function conferred by subsection (1) is taken to have been done by the Commissioner.

(3) The Commissioner has all of the functions of the CEO under this Chapter, which is modified to the extent necessary to give effect to this subsection.

[Section 253 amended by No. 8 of 2012 s. 96.]

254. Form of certain declarations

A declaration for the purposes of section 239(1)(e), 246(1)(b) or (2)(b) or 247(1)(b) must be signed by the person making the application for the grant or transfer of the licence.

255. CEO's duties

The CEO must, in accordance with any agreement between the CEO and the Commissioner —

(a) give to the Commissioner details of licences granted or transferred and the duty and any penalty tax paid in respect of them; and

(b) credit that duty and penalty tax to the Commissioner.

[Section 255 amended by No. 8 of 2012 s. 96.]

256. Records to be kept by dealers

A dealer must keep —

(a) the records that are prescribed for the purposes of this Chapter (if any); and

(b) any other records necessary to enable the Commissioner to determine the dealer's liability to pay duty.

Penalty: a fine of $20 000.

Chapter 6 — Certain exemptions for connected entities

257. Terms used

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

entity means —

(a) a corporation; or

(b) a unit trust scheme;

exemption means an exemption granted under section 263(1);

family has the meaning given in section 258;

parent entity has the meaning given in subsection (2);

relevant consolidation transaction has the meaning given in section 259;

relevant reconstruction transaction has the meaning given in section 260;

relevant transaction means —

(a) a relevant consolidation transaction; or

(b) a relevant reconstruction transaction;

security, of an entity, means —

(a) if the entity is a corporation, an issued share of the corporation; or

(b) if the entity is a unit trust scheme, a unit issued under the scheme;

subsidiary has the meaning given in subsection (2);

transaction group for a relevant consolidation transaction means the head entity and the affected entity;

transaction group for a relevant reconstruction transaction means —

(a) those members of the family that are parties to the transaction; and

(b) any other member of the family whose holdings of securities and control of votes mean, under subsection (2) —

(i) that the relationship between the parties to the transaction is that of a parent entity and a subsidiary; or

(ii) if the parties are not so related, that the parties are subsidiaries of the same parent entity.

(2) If a corporation, or the trustee of a unit trust scheme as trustee, (***A***) directly or indirectly —

(a) holds at least 90% of the securities of another entity (***B***); and

(b) controls (either by being able to cast or to control the casting of) at least 90% of the maximum number of votes that may be cast at a general meeting of B,

then, for the purposes of this Chapter, A is the parent entity of B and B is a subsidiary of A.

258. Members of family

(1) A parent entity and its subsidiaries are members of a family.

(2) If all of the securities of an entity are stapled to the securities of one or more other entities, all of the entities and their subsidiaries are members of a family.

259. Relevant consolidation transaction

(1) In this section —

corporate consolidation means the formation of a family by the interposition of an entity (the ***head entity***) between another entity (the ***affected entity***) and the holders of the affected entity's securities.

(2) Subject to this section, a ***relevant consolidation transaction*** is any acquisition on which landholder duty is chargeable that is made solely for the purposes of a corporate consolidation and that is —

(a) an acquisition of securities of the affected entity by the head entity for which the only consideration given by the head entity is the issue or transfer of its securities to the person from whom the affected entity's securities were acquired; or

(b) an acquisition of securities of the head entity by a holder of securities of the affected entity.

(3) An acquisition is not a ***relevant consolidation transaction*** if, immediately before the acquisition, the head entity held dutiable property or a vehicle or an interest in an entity.

(4) An acquisition is not a ***relevant consolidation transaction*** unless, immediately after the issue or transfer of the head entity's securities —

(a) each person that holds those securities (a ***security holder***) is a person that held securities of the affected entity immediately before the securities of the affected entity were acquired by the head entity; and

(b) the proportion of those securities that each security holder holds is the same proportion as that security holder held of the securities of the affected entity.

260. Relevant reconstruction transaction

(1) Subject to this section, any of the following is a ***relevant reconstruction transaction*** —

(a) any of the following dutiable transactions, if transfer duty is chargeable —

(i) an agreement, whether conditional or not, for the transfer of dutiable property from one member of a family to another member of the family;

(ii) a transfer of dutiable property from one member of a family to another member of the family;

(iii) a declaration of trust over dutiable property under which one member of a family holds the property on trust for another member of the family;

(iv) a vesting of dutiable property held by one member of a family in another member of the family;

(v) a surrender of special dutiable property, within the meaning of section 18, if the special dutiable property is surrendered by one member of a family to another member of the family;

(b) a transfer of a licence for a vehicle from one member of a family to another member of the family, if vehicle licence duty is chargeable;

[(c) deleted]

(d) an acquisition by one member of a family from another member of the family of an interest in an entity, if landholder duty is chargeable.

(2) A transaction referred to in subsection (1)(a) is not a ***relevant reconstruction transaction*** if, immediately before the transaction, the dutiable property is held, or the transaction results in the property being held, subject to a discretionary trust.

(3) A transfer referred to in subsection (1)(b) is not a ***relevant reconstruction transaction*** if, immediately before or immediately after the transfer, the vehicle is held subject to a discretionary trust.

(4) An acquisition referred to in subsection (1)(d) is not a ***relevant reconstruction transaction*** if, immediately before the acquisition, the interest is held, or the acquisition results in the interest being held, subject to a discretionary trust.

[Section 260 amended by No. 9 of 2010 s. 5.]

261. Predetermining certain questions

(1) In this section —

pre-transaction decision request means a request made under subsection (2), (3) or (4).

(2) A person proposing to enter into a relevant transaction may ask the Commissioner to decide whether, if the transaction were entered into, it would be exempted.

(3) A person proposing to enter into a relevant transaction may ask the Commissioner to decide whether, if the transaction were entered into and exempted, the Commissioner, under section 265, would revoke the exemption.

(4) A person proposing to enter into a transaction may ask the Commissioner to decide whether, if the transaction were entered into, the Commissioner, under section 265, would revoke the exemption granted for a relevant transaction.

(5) A pre-transaction decision request must be made in the approved form.

(6) The Commissioner may, as often as the Commissioner thinks fit, ask a person that has made a pre-transaction decision request for any information the Commissioner needs to make the decision requested.

(7) The Commissioner may refuse a pre-transaction decision request if —

(a) the transaction to which the request relates has been entered into; or

(b) the request does not differ materially from another pre-transaction decision request that was made previously; or

(c) a request made by the Commissioner under subsection (6) is not satisfied.

(8) If the Commissioner is given the information needed to make the decision requested in a pre-transaction decision request, the

Commissioner must make the decision and give written notice of it to the person that made the request.

(9) In making a decision requested in a pre-transaction decision request, the Commissioner may have regard to —

(a) information provided by the person that made the request; and

(b) any other matter the Commissioner considers relevant.

(10) If the Commissioner makes a decision on a pre-transaction decision request in relation to a transaction, and the transaction is subsequently entered into, the Commissioner is bound by the decision in respect of the transaction unless —

(a) the transaction, or any circumstance relating to it, differs materially from the transaction or circumstances to which the request related; or

(b) any information relevant to the transaction, or to any circumstance relating to it, differs materially from the information given to the Commissioner in relation to the request; or

(c) the Commissioner considers that there was not a full and true disclosure to the Commissioner of information in relation to the request.

262. Application for exemption

(1) In this section —

exemption application means an application for an exemption.

(2) An exemption application for a relevant transaction cannot be made by applying under the Taxation Administration Act for a reassessment for the transaction.

(3) An exemption application for a relevant transaction must be made —

(a) not later than 12 months after the date of the transaction; and

(b) by lodging an application in the approved form.

[Section 262 amended by No. 17 of 2010 s. 16.]

263. Grant of exemption

(1) If, on an exemption application made in accordance with section 262, it is shown to the satisfaction of the Commissioner that —

(a) there has been a relevant transaction; or

(b) a relevant reconstruction transaction referred to in section 260(1)(b) will occur,

the Commissioner must exempt the transaction from the duty that would otherwise be chargeable unless subsection (4) applies.

(2) If an assessment for a relevant transaction was made before it is exempted, the Commissioner must reassess the transaction.

(3) If an assessment for a relevant transaction was not made before it is exempted, the Commissioner must —

(a) if the transaction is one referred to in section 260(1)(b) — issue a certificate of the exemption to the applicant; or

(b) otherwise — make an official assessment of the transaction determining that it is exempt from duty.

(4) An exemption cannot be granted in relation to a relevant transaction if any member of the family has an outstanding tax liability.

264. Commissioner to be notified of certain events after exempt relevant transaction

(1) In this section —

controlling entity, in relation to a relevant consolidation transaction, means the head entity;

controlling entity, in relation to a relevant reconstruction transaction, means the member of the transaction group for the transaction that is a parent entity of the group immediately before or immediately after the transaction;

major holder of an entity, means a person that, directly or indirectly, holds at least 90% of the securities of the entity;

notifiable event has the meaning given by subsections (2) and (3);

responsible person means —

(a) for a notifiable event that occurs in relation to a relevant transaction as described in subsection (2)(a) —

(i) if the controlling entity is a corporation — each person who is a director of the entity when the winding up begins; or

(ii) if the controlling entity is a unit trust scheme — the trustee of the entity when the winding up begins; or

(iii) if the controlling entity is a unit trust scheme and the trustee of the entity, being a corporation, is wound up — each person who is a director of the trustee when the winding up begins;

or

(b) for a notifiable event that occurs in relation to a relevant transaction as described in subsection (2)(b) —

(i) the controlling entity or, if the controlling entity is wound up, the major holder (if any) of the controlling entity when the winding up begins; and

(ii) the member of the transaction group referred to in subsection (2)(b);

or

(c) for a notifiable event that occurs in relation to a relevant transaction as described in subsection (2)(c) — the entities whose securities cease to be stapled.

(2) Subject to subsection (3), a ***notifiable event*** occurs in relation to a relevant transaction if —

(a) the controlling entity is wound up and does not have a major holder when the winding up begins; or

(b) the controlling entity or, if the controlling entity is wound up and has a major holder when the winding up begins, the major holder, ceases to directly or indirectly —

(i) hold more than 50% of the securities of a member of the transaction group; or

(ii) control (either by being able to cast or to control the casting of) more than 50% of the maximum number of votes that may be cast at a general meeting of a member of the transaction group;

or

(c) in a case where entities are members of a family because of section 258(2) — securities of the first entity mentioned in section 258(2) cease to be stapled to the securities of another of the entities.

(3) A cessation referred to in subsection (2)(b) is not a ***notifiable event*** if it results from —

(a) the winding up of a member of the transaction group, other than the controlling entity; or

(b) a relevant transaction that is the subject of an application made under section 262 for an exemption; or

(c) an acquisition that is the subject of —

(i) an application made under section 180; or

(ii) a statement lodged under section 200;

or

(d) a prescribed event.

(4) If a notifiable event occurs in relation to an exempt relevant transaction within 3 years after the date of the transaction, the responsible person for the event must lodge a notice of the event in the approved form within 2 months after the date of the event.

Penalty: a fine of $20 000.

(5) It is a defence to a charge of an offence under subsection (4) to prove that a notice of the event in the approved form was lodged before the alleged date of the offence.

265. Revoking exemption

If the Commissioner determines that an exempt relevant transaction is part of a scheme or arrangement entered into, or carried out, by a person —

(a) for a purpose of avoiding or reducing duty on a transaction, transfer of licence or acquisition; or

(b) for the sole or dominant purpose of avoiding or reducing tax other than duty,

the Commissioner may revoke the exemption for the transaction.

266. Liability for duty and tax if exemption revoked

(1) On revoking an exemption for a relevant transaction the Commissioner must make an official assessment for the transaction.

(2) The official assessment must —

(a) determine the amount of duty payable on the relevant transaction as at the date of the transaction; and

(b) include penalty tax equal to the amount of that duty.

(3) The following persons are jointly and severally liable to pay the duty chargeable on a relevant transaction and the penalty tax —

(a) each member of the transaction group;

(b) each person liable under subsection (4) or (5).

(4) If a corporation liable under subsection (3) is voluntarily wound up before the duty and penalty tax are paid, each person who was a director of the corporation immediately before it was wound up is liable to pay the amount unless —

(a) the winding up was a creditors' voluntary winding up as defined in the Corporations Act section 9; and

(b) no creditor was an associate, as defined in the Corporations Act section 9, of the corporation.

(5) If a unit trust scheme liable under subsection (3) is wound up before the duty and penalty tax are paid, the following persons are liable to pay the amount —

(a) the trustee of the scheme;

(b) if the trustee of the scheme, being a corporation, is wound up — each person who was a director of the trustee immediately before it was wound up.

Chapter 7 — General anti-avoidance provisions

267. Term used: scheme

(1) In this Chapter —

scheme includes the whole or any part of —

(a) a trust, contract, agreement, arrangement, understanding, promise or undertaking (including all steps and transactions by which it is carried into effect) —

(i) whether made or entered into orally or in writing; and

(ii) whether express or implied; and

(iii) whether or not it is, or is intended to be, enforceable;

and

(b) a plan, proposal, action, course of action or course of conduct.

(2) This Chapter applies in relation to a scheme even if it is a unilateral scheme.

268. Tax avoidance scheme

(1) In this section —

foreign tax means a tax, duty or impost imposed under a law of the Commonwealth, another State, a Territory or a country other than Australia.

(2) For the purposes of this Chapter a ***tax avoidance scheme*** is a scheme that a person enters into or carries out —

(a) for the sole or dominant purpose of enabling —

(i) an elimination or reduction in the liability of a person for duty; or

(ii) a postponement in the liability of a person for duty;

or

(b) when any purpose relating to the elimination, reduction or postponement in the liability of a person for foreign tax is disregarded, for the sole or dominant purpose of enabling —

(i) an elimination or reduction in the liability of a person for duty; or

(ii) a postponement in the liability of a person for duty.

(3) It does not matter —

(a) whether the scheme is entered into or carried out in or outside Western Australia or partly in Western Australia and partly outside Western Australia; or

(b) whether a person that enters into or carries out the scheme is a person that is liable to pay duty.

269. Deciding whether proposed scheme would be disregarded under s. 270

(1) In this section —

pre-section 270 decision request means a request made under subsection (2);

section 270 decision means a decision of the Commissioner under section 270 that —

(a) a person has entered into or carried out a tax avoidance scheme that is of a blatant, artificial or contrived nature; and

(b) the scheme is to be disregarded.

(2) A person proposing to enter into or carry out a scheme which will relate to a transaction or acquisition or a series of transactions or acquisitions may ask the Commissioner to decide whether the Commissioner would make a section 270 decision in relation to the scheme if it were entered into or carried out by that person.

(3) A pre-section 270 decision request must be made in the approved form and must specify each transaction and acquisition to which the scheme in respect of which the request is made will relate.

(4) The Commissioner may, as often as the Commissioner thinks fit, ask a person that has made a pre-section 270 decision request for —

(a) any information the Commissioner needs to be fully informed in relation to each transaction and acquisition to which the scheme in respect of which the request is made will relate; or

(b) any other information the Commissioner needs to make the decision requested.

(5) The Commissioner may refuse a pre-section 270 decision request if —

(a) the scheme to which the request relates has been entered into or carried out; or

(b) the Commissioner has already made a decision on a pre-section 270 decision request, or a section 270 decision, in relation to the same or a similar scheme or a scheme relating to the same or similar transactions or acquisitions; or

(c) the Commissioner has already refused a pre-section 270 decision request under this section made by the same person in relation to the same or a similar scheme or a scheme relating to the same or similar transactions or acquisitions; or

(d) a request made by the Commissioner under subsection (4) is not satisfied.

(6) If the Commissioner is given the information needed to make the decision requested in a pre-section 270 decision request, the Commissioner must make the decision and give written notice of it to the person that made the request.

(7) In making a determination requested in a pre-section 270 decision request the Commissioner may have regard to —

(a) information provided by the person that made the request; and

(b) any other matter the Commissioner considers relevant.

(8) If the Commissioner decides on a pre-section 270 decision request that the Commissioner would not make a section 270 decision in relation to the scheme set out in the request, and the scheme is subsequently entered into or carried out, the Commissioner must not make a section 270 decision in relation to the scheme unless —

(a) the scheme that is entered into or carried out, or any circumstance relating to it, differs materially from the scheme or circumstances to which the request related; or

(b) any information relevant to the scheme that is entered into or carried out, or to any circumstance relating to it, differs materially from the information given to the Commissioner in relation to the request; or

(c) the Commissioner considers that there was not a full and true disclosure to the Commissioner of information in relation to the request.

270. Certain tax avoidance schemes, Commissioner may disregard

(1) If the Commissioner decides that a person has entered into or carried out a tax avoidance scheme that is of a blatant, artificial or contrived nature, the Commissioner may disregard the scheme.

(2) If a tax avoidance scheme is disregarded under subsection (1), the Commissioner must —

(a) determine the duty which would have been payable, or could reasonably have been expected to be payable, by any person that entered into or carried out the scheme, or any other person, but for the scheme; and

(b) give effect to that determination by making —

(i) an official assessment under the Taxation Administration Act section 15; and

(ii) any reassessment the Commissioner considers necessary.

(3) The Commissioner must have regard to the following matters when making a decision under subsection (1) —

(a) the way in which the scheme was entered into or carried out;

(b) the form and substance of the scheme, including —

(i) the legal rights and obligations involved in the scheme; and

(ii) the economic and commercial substance of the scheme;

(c) when the scheme was entered into and the length of the period during which the scheme was, or is to be, carried out;

(d) any change to a person's financial position, or any other consequence, that has resulted, will result or may reasonably be expected to result from the scheme having been entered into or carried out;

(e) the nature of the connection, whether of a business, family or other nature, between the person that has entered into or carried out the scheme and any person mentioned in paragraph (d);

(f) the circumstances surrounding the scheme.

(4) The Commissioner cannot exercise the powers under this section in the course of making an interim assessment but can exercise those powers in the course of making an assessment following an interim assessment.

[Section 270 amended by No. 10 of 2013 s. 7.]

271. Statement in relation to determination

The assessment notice issued under the Taxation Administration Act section 23 in respect of a determination made under section 270(2)(a) must contain or be accompanied by a statement of —

(a) the Commissioner's reasons for the relevant decision under section 270(1); and

(b) the grounds on which the determination under section 270(2)(a) is made.

Chapter 8 — Other general provisions

Part 1 — Duty endorsement

272. Duty endorsed

(1) A dutiable transaction is ***duty endorsed*** if a transaction record for it is duty endorsed.

(2) A transaction record for a dutiable transaction is ***duty endorsed*** if it is —

(a) endorsed by the Commissioner under section 273(2), (3) or (4) or 274(2); or

(b) endorsed or certified under a special tax return arrangement to indicate that an amount of duty has been paid or is payable or that duty is not chargeable.

(3) A duplicate of a transaction record for a dutiable transaction is ***duty endorsed*** if it is endorsed under section 273(5).

(4) If the Commissioner has established procedures for the electronic lodgment and recording of data on dutiable transactions, a reference in this Act to a transaction record being duty endorsed includes a reference to it being certified by the Commissioner in accordance with those procedures to indicate that an amount of duty is paid or payable or that duty is not chargeable.

273A. Duty endorsement: electronic conveyancing instruments

(1) In this section —

digitally sign has the meaning given in the *Electronic Conveyancing Act 2014* section 3(1);

electronic conveyancing instrument means an instrument in electronic form that, on being digitally signed, has, under the *Electronic Conveyancing Act 2014* section 9(2), the same effect as if a paper document having the equivalent effect had been executed as provided in section 9(2)(a) or (b) of that Act.

(2) If the Commissioner has established procedures for the duty endorsement of transaction records that are in the form of electronic conveyancing instruments, a reference in this Act to a transaction record being duty endorsed includes a reference to a transaction record in that form being verified or certified by the Commissioner in accordance with those procedures to the effect that an amount of duty has been paid or is payable or that duty is not chargeable.

(3) The procedures referred to in subsection (2) may include procedures for verifying or certifying electronic conveyancing instruments before they are digitally signed, and in that case —

(a) the verification or certification of an electronic conveyancing instrument must be undertaken in accordance with those procedures as if the transaction to be effected by the instrument were a dutiable transaction, even though the instrument is not digitally signed; but

(b) the verification or certification of the electronic conveyancing instrument in accordance with those procedures becomes a duty endorsement under subsection (2) only when the instrument is digitally signed.

[Section 273A inserted by No. 2 of 2014 s. 54.]

273. Endorsing transaction records as to duty paid etc.

(1) In this section —

duty means transfer duty;

required duty means —

(a) the duty chargeable; and

(b) anything relating to the duty that constitutes tax under the Taxation Administration Act section 62; and

(c) any penalty tax relating to the dutiable transaction or the duty.

(2) If a transaction record for a dutiable transaction is lodged for duty endorsement, the Commissioner must —

(a) if duty is chargeable on the dutiable transaction and the required duty is paid in full — endorse the transaction record to indicate the amount so paid; or

(b) if duty is not chargeable on the dutiable transaction because of an exemption under this Act or another written law — endorse the transaction record to indicate that duty is not chargeable because of the exemption; or

(c) if duty is not chargeable on the dutiable transaction other than because of an exemption under this Act or another written law — endorse the transaction record to indicate that duty is not chargeable.

(3A) Despite subsection (2), the Commissioner is not required to (but may) endorse a transaction record to indicate the duty paid as a consequence of an interim assessment.

(3) If a transaction record for a dutiable transaction is duty endorsed and another transaction record for the dutiable transaction (the ***new record***) is lodged for duty endorsement, the Commissioner may endorse the new record to indicate the amount of duty paid or that duty was not chargeable.

(4) If under a duties Act a transaction record for a dutiable transaction is in the Commissioner's possession otherwise than because of lodgment, the Commissioner may endorse the transaction record as if it had been lodged for duty endorsement.

(5) A duplicate of a duty endorsed transaction record for a dutiable transaction may be —

(a) endorsed by the Commissioner; or

(b) endorsed or certified under a special tax return arrangement,

to indicate the amount of duty paid or payable or that duty was not chargeable.

[Section 273 amended by No. 10 of 2013 s. 8.]

274. Endorsement of duty that depends on duty paid on another transaction

(1) This section applies if the amount of duty payable, or whether duty is chargeable, on a dutiable transaction (the ***dependent transaction***) depends in any way on the payment of duty chargeable on another dutiable transaction (the ***related transaction***).

(2) The transaction record for the dependent transaction may be —

(a) endorsed by the Commissioner; or

(b) endorsed or certified under a special tax return arrangement,

to indicate the amount of duty paid or payable on the related transaction.

Note for this section:

For example, duty of $20 700 is paid on an agreement for the transfer of dutiable property (the ***related transaction***). A transfer of the dutiable property (the ***dependent transaction***) is lodged and is in conformity with the agreement for transfer for the purposes of section 42(1). The transfer will be endorsed to indicate:

(a) that no duty is chargeable on the transfer; and

(b) the duty of $20 700 paid on the agreement for transfer.

275. Duty endorsement is evidence of certain matters

If a transaction record, or a duplicate of a transaction record, for a dutiable transaction is duty endorsed —

(a) the duty endorsement is evidence of —

(i) the making of an assessment in relation to the dutiable transaction; and

(ii) the amount of transfer duty (if any) paid; and

(iii) any other matter indicated in the duty endorsement;

and

(b) except in proceedings under the Taxation Administration Act Part 4, the duty endorsement is conclusive evidence that the assessment is correct.

Part 2 — Enforcement

276. Dutiable transactions etc. not to be registered etc. unless duty endorsed

(1) A registrar must not register or record —

(a) a dutiable transaction; or

(b) a transaction record for a dutiable transaction,

in a register of legal or beneficial interests in dutiable property unless the transaction is duty endorsed.

Penalty: a fine of $20 000.

(2) In subsection (1) —

registrar means a person who has the function of maintaining a register.

(3) If a disposition of a share in a corporate trustee is a dutiable transaction because of section 67, a person must not register or record —

(a) the dutiable transaction; or

(b) a transaction record for the dutiable transaction,

in the books or records of the corporation unless the dutiable transaction is duty endorsed.

Penalty: a fine of $20 000.

(4) A contravention of subsection (3) does not invalidate any right or obligation arising out of the disposition.

(5) It is a defence to a charge of an offence under subsection (1) or (3) to prove that the accused person did not know and could not reasonably have been expected to have known that —

(a) the transaction was a dutiable transaction; or

(b) the transaction was not duty endorsed.

277. Business licences not to be registered etc. unless duty endorsed or instrument lodged

(1) In this section —

business licence has the meaning given in section 79.

(2) If a business licence is the subject of a dutiable transaction, a person must not —

(a) give effect to, receive, accept, approve or recognise the dutiable transaction under a written law; or

(b) register or record —

(i) the dutiable transaction; or

(ii) a transaction record for the dutiable transaction,

in any register of business licences,

unless the dutiable transaction is duty endorsed or an instrument that effects the dutiable transaction has been lodged for duty endorsement in accordance with section 23.

Penalty: a fine of $20 000.

(3) It is a defence to a charge of an offence under subsection (2) to prove that the accused person did not know and could not reasonably have been expected to have known that —

(a) the business licence was the subject of a dutiable transaction; or

(b) the transaction was not duty endorsed; or

(c) an instrument that effects the transaction had not been lodged for duty endorsement.

278. Caveat as to dutiable transaction not to be registered unless transaction is duty endorsed or lodged

(1) In this section —

caveat means a caveat lodged under the *Mining Act 1978*;

registrar means a mining registrar as defined in the *Mining Act 1978* section 8(1).

(2) If a caveat relates to a dutiable transaction, the registrar must reject the caveat unless the registrar is satisfied, on evidence provided by the person lodging the caveat —

(a) that the transaction has been duty endorsed; or

(b) that a transaction record for the transaction has been lodged for duty endorsement in accordance with section 23.

Penalty: a fine of $20 000.

(3) It is a defence to a charge of an offence under subsection (2) to prove that the accused person did not know and could not reasonably have been expected to have known that the caveat related to a dutiable transaction.

(4) If a caveat relates to a transaction that is not a dutiable transaction, the registrar may reject the caveat unless when it is lodged it is accompanied by a statutory declaration —

(a) stating that the transaction is not a dutiable transaction; and

(b) setting out why the transaction is not a dutiable transaction (including reference to any relevant provisions of a duties Act).

[Section 278 amended by No. 2 of 2014 s. 55.]

279. Use of transaction records in civil proceedings

(1) Unless a transaction record for a dutiable transaction is duty endorsed, then, other than in respect of criminal proceedings, the transaction record is not available for use in any proceedings before a court or tribunal.

(2) Subsection (1) does not apply to a transaction record —

(a) where the person that produces the transaction record is the person liable to pay the duty —

(i) if the transaction record has been transmitted to the Commissioner; or

(ii) if the court or tribunal is satisfied that the transaction record will be transmitted to the Commissioner in accordance with arrangements approved by the court or tribunal;

or

(b) where the person that produces the transaction record is not the person liable to pay the duty —

(i) if the name and address of the person so liable and the transaction record have been transmitted to the Commissioner; or

(ii) if the court or tribunal is satisfied that the name and address of the person so liable and the transaction record will be transmitted to the Commissioner in accordance with arrangements approved by the court or tribunal.

(3) Subsection (1) does not apply to —

(a) a duty endorsed duplicate of a transaction record for a dutiable transaction; or

(b) an unexecuted copy of an instrument that effects a dutiable transaction or an instrument that evidences a dutiable transaction if a court or tribunal is satisfied that a transaction record for the dutiable transaction is duty endorsed.

[Section 279 inserted by No. 29 of 2012 s. 8.]

280. Unlodged instruments, duty of non-party to lodge

(1) This section applies to an instrument that —

(a) effects a dutiable transaction; and

(b) is not duty endorsed.

(2) If, after the expiry of the time provided under section 23 within which an instrument referred to in subsection (1) is to be lodged for duty endorsement, a person who is not a party to the dutiable transaction effected by the instrument —

(a) has possession or control of the instrument; or

(b) acts under the instrument,

that person must, as soon as practicable, lodge the instrument or give notice of the instrument to the Commissioner.

Penalty: a fine of $20 000.

(3) It is a defence to a charge of an offence under subsection (2) to prove that the accused person did not know and could not reasonably have been expected to have known that —

(a) duty is chargeable on the transaction effected by the instrument; or

(b) the instrument was not duty endorsed.

Part 3 — Miscellaneous

281. Transaction records etc., Commissioner's power to destroy

(1) If a transaction record is in the Commissioner's possession or control, the Commissioner may destroy the record if —

(a) 6 years have elapsed since the original assessment of the amount of duty payable on the dutiable transaction was made; and

(b) any amount that remains unpaid under a duties Act on the dutiable transaction has been written off under the Taxation Administration Act.

(2) Subsection (1) also applies to relevant material relating to the dutiable transaction.

282. Correction of errors

The Commissioner may, in a case in which the Commissioner considers that the circumstances so require, permit a clerical

error in an instrument that effects or evidences a dutiable transaction to be corrected before the transaction is duty endorsed.

Note for this section:

The following are examples of clerical errors in an instrument that effects or evidences a dutiable transaction —

(a) an accidental misdescription of property;

(b) an accidental misdescription of a party to the transaction.

283. Amounts expressed in foreign currency

If an amount by reference to which duty has to be calculated is expressed in a currency other than the currency of Australia, the amount is the amount expressed in Australian currency according to the buy rate of exchange reported by the Reserve Bank of Australia and applicable in Australia on —

(a) the day on which liability for duty arose; or

(b) if the rate is not obtainable for Australia on that day — the last earlier day on which the rate was obtainable for Australia.

284. Application of Corporations Act s. 1070A(1)(a) limited

The following matter is declared to be an excluded matter for the purposes of the Corporations Act section 5F in relation to the Corporations Act section 1070A(1)(a) — interests in registered schemes.

285. Regulations

(1) The Governor may make regulations prescribing all matters that a duties Act requires or permits to be prescribed or are necessary or convenient to be prescribed to give effect to a duties Act.

(2) Without limiting subsection (1), regulations may be made in relation to the records to be kept for the purposes of a duties Act.

(3) Regulations may create offences and provide, in respect of an offence so created, for the imposition of a fine not exceeding $5 000.

(4) Regulations may be expressed to apply to an instrument that was executed before the day on which the regulations come into operation, or to a transaction that took place before that day, if the application of the regulations to the instrument or transaction would not adversely affect a person that is or may become liable to pay duty on the instrument or in relation to the transaction, or adversely affect a party to the transaction.

286. Transitional provisions (Sch. 3)

Schedule 3 sets out transitional provisions.

Schedule 1 — When liability for transfer duty on a dutiable transaction arises and the person liable to pay it

[s. 19 and 20]

Column 1 Provision of section 11	Column 2 Dutiable transaction	Column 3 When liability for transfer duty arises	Column 4 Person liable to pay transfer duty
s. 11(1)(a)	Transfer	When the property is transferred	Transferee
s. 11(1)(b)	Agreement for transfer	When the agreement is made	Purchaser or transferee
s. 11(1)(c)	Declaration of trust	When the declaration is made	Person making the declaration
s. 11(1)(d)(i)	Vesting by statute law	When the vesting takes place	Person in whom the property is vested
s. 11(1)(d)(ii)	Vesting by court order	When the order is made	Person in whom the property is vested
s. 11(1)(e)	Foreclosure of mortgage	When the foreclosure order is made	Mortgagee
s. 11(1)(f)	Acquisition of new dutiable property	The earlier of the following — (a) when the property is acquired; or	Person that acquires the property

Column 1 Provision of section 11	Column 2 Dutiable transaction	Column 3 When liability for transfer duty arises	Column 4 Person liable to pay transfer duty
		(b) if an instrument evidences the acquisition, when the instrument is executed	
s. 11(1)(g)	Surrender of special dutiable property	When the surrender takes place	Person to whom the interest is surrendered; or in the case of a surrender referred to in section 18(f), the person to whom the mining tenement is granted in accordance with the agreement; or in the case of a surrender referred to in section 18(g), the person that paid the consideration for the surrender

Column 1 Provision of section 11	Column 2 Dutiable transaction	Column 3 When liability for transfer duty arises	Column 4 Person liable to pay transfer duty
s. 11(1)(h)	A trust acquisition or trust surrender	When the interest in the trust is acquired or surrendered	Person that is the trustee of the discretionary trust
s. 11(1)(i)	A partnership acquisition	The earlier of the following — (a) when the partnership interest is acquired; or (b) if the acquisition is evidenced by an instrument, when the instrument is executed	Person that acquires the partnership interest
s. 11(1)(j)	A farm-in agreement	When the agreement is made	Person referred to in section 13(1)(b)

Schedule 2 — Rates of transfer duty

Division 1 — General rate

[s. 26 and 184]

Dutiable value	General rate of duty
$ 0 — $80 000	$1.90 per $100.00 or part of $100.00
$80 001 — $100 000	$1 520 + $2.85 per $100.00 or part of $100.00 above $80 000
$100 001 — $250 000	$2 090 + $3.80 per $100.00 or part of $100.00 above $100 000
$250 001 — $500 000	$7 790 + $4.75 per $100.00 or part of $100.00 above $250 000
$500 001 and upwards	$19 665 + $5.15 per $100.00 or part of $100.00 above $500 000

Division 2 — Concessional rates

[Chapter 2 Part 6 Divisions 3, 4A and 4]

[Heading amended by No. 30 of 2008 s. 28.]

Concessional transaction	Dutiable value	Concessional rate of duty
s. 143 First home owners		
If the property includes a home	$0 — $430 000 $430 001 — $530 000	Nil $19.19 per $100.00 or part of $100.00 above $430 000
If the property does not include a home	$0 — $300 000 $300 001 — $400 000	Nil $13.01 per $100.00 or part of $100.00 above $300 000

Concessional transaction	Dutiable value	Concessional rate of duty
s. 147E Residential property	$0 — $120 000	$1.90 per $100.00 or part of $100.00
	$120 001 — $150 000	$2 280 + $2.85 per $100.00 or part of $100.00 above $120 000
	$150 001 — $360 000	$3 135 + $3.80 per $100.00 or part of $100.00 above $150 000
	$360 001 — $725 000	$11 115 + $4.75 per $100.00 or part of $100.00 above $360 000
	$725 001 and upwards	$28 453 + $5.15 per $100.00 or part of $100.00 above $725 000
s. 147 Residential or business property	$0 — $100 000	$1.50 per $100.00 or part of $100.00
	$100 001 — $200 000	$1 500 + $4.39 per $100.00 or part of $100.00 above $100 000

[Division 2 amended by No. 30 of 2008 s. 28; No. 15 of 2014 s. 5.]

Division 3 — Nominal duty

The amount of nominal duty is $20.00.

Schedule 3 — Transitional provisions

[s. 286]

Division 1 — Provisions for *Duties Act 2008*

Subdivision 1 — Preliminary

1. Terms used

(1) In this Division —

relevant acquisition has the meaning given in sections 163 and 164.

(2) A reference in this Division to the time when a transaction takes or took place is a reference to the time that —

(a) is applicable under section 19(1); or

(b) would have been applicable under section 19(1) if the transaction had been chargeable with transfer duty.

Subdivision 2 — Provisions for Chapter 2

2. When Ch. 2 starts to apply

Subject to this Subdivision, Chapter 2 applies in relation to the imposition of transfer duty on a transaction only if that transaction takes place on or after 1 July 2008.

3. No double duty

Without limiting Chapter 2 Part 4 Division 6, transfer duty is not chargeable on a dutiable transaction for which there is a transaction record chargeable with duty under the *Stamp Act 1921*.

4. Alteration of consideration (s. 31)

Section 31(1) and (3) do not apply if the liability to duty is under the *Stamp Act 1921*.

5. Aggregation (s. 37)

(1) Two or more transactions are to be aggregated and treated as a single dutiable transaction under section 37 as long as the last of the transactions takes place on or after 1 July 2008.

(2) For the purposes of section 37(6)(a), the dutiable value of a transaction that took place before 1 July 2008 is —

(a) the unencumbered value under the *Stamp Act 1921* of the property the subject of the transaction; or

(b) the consideration for the transaction,

whichever is greater.

(3) If —

(a) a previous dutiable transaction referred to in section 37(7) took place before 1 July 2008; and

(b) duty under the *Stamp Act 1921* (***stamp duty***) was paid on an instrument effecting or evidencing the transaction,

a reference in section 37(7) to duty paid on the transaction is a reference to that stamp duty.

6. Exchanges (s. 40)

Without limiting clause 2, if any of the dutiable transactions referred to in section 40 took place before 1 July 2008, transfer duty is not chargeable on that transaction.

7. Exempt bodies (s. 92)

Any body declared to be an exempt body under the *Stamp Act 1921* section 119 is taken to have been declared to be an exempt body under section 92(1).

8. Family farm transactions (s. 104 and 105)

(1) Without limiting clause 25(1)(d), a reference to an exempt family farm transaction in section 104(a) or 105(1) or (4) includes a reference to a farming exemption as defined in the *Stamp Act 1921* section 75HA(1).

(2) The reference in section 105(1)(d) to an event already duty endorsed under section 105 includes a reference to a taxable event referred to in the *Stamp Act 1921* section 75HA(2) if —

(a) a statement has been lodged under the *Stamp Act 1921* section 75HA(3) in respect of that event; and

(b) duty under the *Stamp Act 1921* has been paid in respect of that statement.

9. Matrimonial and de facto relationship instruments (s. 129, 130)

(1) Despite clause 25(1)(b), section 132 does not apply to an instrument in respect of which duty under the *Stamp Act 1921* has been paid unless the liability to duty arose on or after 28 November 2007.

(2) In a case mentioned in subclause (1), section 132 applies even if the day on which the instrument became —

(a) a matrimonial instrument as defined in section 129; or

(b) a de facto relationship instrument as defined in section 130,

was before 1 July 2008.

10. First home owners (Part 6 Div. 3)

(1) In determining the meaning of the term further concessional transaction for the purposes of Chapter 2 Part 6 Division 3, the transaction referred to in section 142(2) as the first concessional transaction can be a transaction evidenced by an instrument (the ***earlier instrument***) that was —

(a) executed before 1 July 2008 (but not before 1 July 2004); and

(b) chargeable with duty under the *Stamp Act 1921* section 75AG.

(2) If the first concessional transaction is a transaction referred to in subclause (1), the rate and thresholds referred to in section 143(2) are those that applied in relation to the earlier instrument under the *Stamp Act 1921* section 75AG.

[Clause 10 amended by No. 27 of 2015 s. 15.]

11A. Residential concession (Part 6 Div. 4A)

(1) In this clause —

concessional transaction means a transaction that is a concessional transaction under section 147C(1).

(2) Section 147C(2) applies as long as the concessional transaction mentioned in it (or at least one of them, if there are 2 or more) takes place on or after 1 July 2008.

[Clause 11A inserted by No. 30 of 2008 s. 29.]

Subdivision 3 — Provisions for Chapter 3

11. When Ch. 3 starts to apply

Chapter 3 applies in relation to the imposition of landholder duty in respect of a relevant acquisition only if that acquisition occurs on or after 1 July 2008.

12. Acquisitions under an agreement made before 1 July 2008

(1) This clause applies to an acquisition of an interest in an entity —

(a) that occurs on or after 1 July 2008; but

(b) is made under an agreement, whether conditional or not, that was entered into before 1 July 2008.

(2) Despite section 176, the acquisition is taken to have occurred when the agreement is completed.

*[**13.** Deleted by No. 32 of 2012 s. 25.]*

Subdivision 4 — Provisions for Chapter 4

14. Terms used

When this Subdivision uses a term that is used in Chapter 4, the term has the same meaning in this Subdivision as it has in Chapter 4 unless the contrary intention appears in this Subdivision.

15. When Ch. 4 starts to apply

Chapter 4 applies to and in relation to —

(a) premiums, or instalments of premiums, paid on or after 1 July 2008; and

(b) return periods commencing on or after 1 July 2008.

16. Registration

(1) A person that was, immediately before 1 July 2008, a registered insurer under the *Stamp Act 1921* Part IIIF is taken to have been registered under section 218 on 1 July 2008.

(2) If, immediately before 1 July 2008, a notice of cancellation of registration issued under the *Stamp Act 1921* section 93B had not

come into effect, the notice is taken to have been issued under section 222.

Subdivision 5 — Provisions for Chapter 5

17. Terms used

When this Subdivision uses a term that is used in Chapter 5, the term has the same meaning in this Subdivision as it has in Chapter 5 unless the contrary intention appears in this Subdivision.

18. When Ch. 5 starts to apply

(1) Chapter 5 applies to and in relation to the grant or transfer of a licence the application for which was made on or after 1 July 2008.

(2) Despite subclause (1), section 242(3) does not apply in respect of the grant of a licence if the vehicle was licensed or registered outside of Western Australia before 1 July 2008.

19. New vehicles (s. 228)

In section 228, in the definition of ***new vehicle*** —

(a) the reference to section 246(1) includes a reference to the *Stamp Act 1921* section 76D(5)(a) as in force immediately before 1 July 2008; and

(b) the reference to section 246(1)(a)(ii) includes a reference to the *Stamp Act 1921* section 76D(5)(a)(ii) as in force immediately before 1 July 2008; and

(c) a reference to section 247(1) includes a reference to the *Stamp Act 1921* section 76D(5a)(a) as in force immediately before 1 July 2008.

20. Specialised vehicles (s. 239)

(1) In section 239(1)(a), the reference to a specialised vehicle includes a reference to an eligible vehicle within the meaning of the *Stamp Act 1921* section 76B as in force immediately before section 239 comes into operation.

(2) In section 239(1)(c), the reference to dutiable value includes a reference to market value within the meaning of the *Stamp Act 1921* section 76B as in force immediately before 1 July 2008.

21. Approval of philanthropic purposes (s. 247)

In section 247(1)(a)(iv), the reference to a philanthropic purpose approved by the Commissioner includes a reference to a philanthropic purpose approved by the Commissioner under the *Stamp Act 1921* section 76D(5b).

22. Transfer of vehicles, nominal duty on (s. 250)

(1) If —

(a) the Commissioner has, before 1 July 2008, granted an authorisation under the *Stamp Act 1921* section 76C or 112UE in respect of the transfer of a licence; and

(b) the transfer of the licence occurs within the 12 month period beginning on 1 July 2008,

then —

(c) nominal duty is chargeable under section 250 on the transfer of the licence; and

(d) either —

(i) any document evidencing the authorisation may be treated as a certificate issued by the Commissioner under section 250(2); or

(ii) the Commissioner may issue a certificate under section 250(2) as if satisfied of the matters in section 250(2).

(2) If —

(a) the transfer of a vehicle (within the meaning of that term in Chapter 2) occurred before 1 July 2008; and

(b) no application for the transfer of a licence for the vehicle was made before 1 July 2008; and

(c) under the *Stamp Act 1921* section 76C or 112UE no authorisation was applied for, or, if applied for, the application was not dealt with, before 1 July 2008,

section 250 applies in respect of the transfer of the vehicle despite the transfer having occurred before 1 July 2008.

(3) Section 250(6) does not apply to the transfer of the licence for a vehicle that occurred before 28 November 2007.

(4) If the transfer of the licence for a vehicle occurs on or after 28 November 2007, section 250(6) applies to the transfer of the licence even if the day on which the instrument referred to in section 250(6)(b) —

(a) came into existence; or

(b) became a matrimonial instrument or a de facto relationship instrument,

was before 1 July 2008.

23. Statements made under *Stamp Act 1921* s. 76H (s. 252)

A statement under or for the purposes of the *Stamp Act 1921* section 76H(1) or (2) has effect as if given under section 252(1) or (3) (whichever is relevant) to the extent to which it relates to the grant or transfer of a licence the application for which was made after 1 July 2008.

Subdivision 6 — Provisions for Chapter 7

24. When Ch. 7 starts to apply

Chapter 7 applies in relation to a scheme as defined in section 267(1) only if the scheme, or at least one of the steps or transactions by which it is carried into effect, occurs on or after 1 July 2008.

Subdivision 7 — General

25. Some references to duty include stamp duty

(1) In this Act, where appropriate in the context —

(a) a reference to a transaction record that has been duty endorsed includes a reference to an instrument that —

(i) has been, or is taken to have been, endorsed in accordance with the *Stamp Act 1921* section 17C(1); or

(ii) has been stamped or endorsed under a special tax return arrangement to indicate the amount of duty

under the *Stamp Act 1921* paid or payable under the arrangement or that duty under that Act was not payable in respect of the instrument;

and

(b) a reference to a transaction that has been duty endorsed includes a reference to a transaction to which an instrument referred to in paragraph (a) relates; and

(c) a reference to duty paid or payable, or that has become chargeable, includes a reference to duty paid or payable, or that has become chargeable, under the *Stamp Act 1921*; and

(d) a reference to a transaction being or having been an exempt transaction, or not chargeable with duty, includes a reference to a transaction the subject of an instrument exempt from, or not chargeable with, duty under the *Stamp Act 1921*.

(2) Subclause (1)(a) and (b) do not apply to a reference to duty endorsed in section 31(5), 32(1), 33(2), 34(1) or 280.

(3) Without limiting subclause (1)(c), if this Act requires another amount of duty to be taken into account in making an assessment or reassessment of duty, the reference to that other amount includes, where appropriate in the context, a reference to duty paid or payable under the *Stamp Act 1921*.

26. Application of some Ch. 8 provisions

(1) Sections 272 and 273 and 275 to 282 apply in relation to a dutiable transaction only if that transaction takes place on or after 1 July 2008.

(2) Section 274 applies in relation to a dependent transaction only if that transaction takes place on or after 1 July 2008.

27. Regulations

(1) Regulations may be made for any of the following —

(a) to resolve any doubts as to which of this Act or the *Stamp Act 1921* is applicable to an instrument, transaction or matter;

(b) to clarify, vary or add to the provisions of this Division;

(c) to make further amendments of a transitional nature to the *Stamp Act 1921* in addition to those made by the *Duties Legislation Amendment Act 2008* Part 2 Division 1;

(d) to facilitate or clarify the continued operation of the *Stamp Act 1921* in relation to instruments, transactions or matters to which it applies;

(e) generally to ensure that duty on an instrument, transaction or matter is imposed correctly and appropriately under this Act or the *Stamp Act 1921*, but not under both Acts.

(2) Regulations referred to in subclause (1) have effect despite any inconsistency with a taxation Act.

(3) For the purposes of the *Interpretation Act 1984* section 41(1)(b) the day specified in regulations referred to in subclause (1) may be 1 July 2008 or any later day.

28. *Stamp Act 1921*, references to

(1) In this clause —

Stamp Act reference means a reference to the *Stamp Act 1921* in —

(a) a written law other than this Act, the *Stamp Act 1921* or the Taxation Administration Act; or

(b) an agreement, contract, determination, order or other document.

(2) A Stamp Act reference is to be read as being or including a reference to this Act if it would be appropriate in the context to do so.

[Division 2 (cl. 29) deleted by No. 30 of 2008 s. 4.]

[Division 3 (cl. 30) deleted by No. 5 of 2013 s. 7.]

Division 4 — Provisions for *Revenue Laws Amendment Act 2010* section 5

[Heading inserted by No. 9 of 2010 s. 6.]

31. Terms used

When this Division uses a term that is used in Chapter 6, the term has the same meaning in this Division as it has in Chapter 6.

[Clause 31 inserted by No. 9 of 2010 s. 6.]

32. Certain relevant reconstruction transactions

(1) An exemption cannot be granted in respect of an acquisition if —

(a) the acquisition took place on or after the day on which the *Revenue Laws Amendment Act 2010* section 5 is deemed to have come into operation; and

(b) as a result of the amendment effected by that section, the acquisition is no longer a relevant reconstruction transaction.

(2) Subclause (1) applies even if —

(a) before the day on which the *Revenue Laws Amendment Act 2010* receives the Royal Assent, an application for an exemption in respect of the acquisition was —

(i) made; or

(ii) made and dealt with;

or

(b) a decision to the contrary in relation to the acquisition was made by the Commissioner on a pre-transaction decision request under section 261.

(3) The Commissioner —

(a) is not bound by a decision referred to in subclause (2)(b); and

(b) must make any reassessment the Commissioner considers necessary to give effect to the amendment effected by the *Revenue Laws Amendment Act 2010* section 5 and this clause.

[Clause 32 inserted by No. 9 of 2010 s. 6.]

Division 5 — Provisions for *Duties Amendment Act (No. 2) 2011*

[Heading inserted by No. 33 of 2011 s. 6.]

33. Term used: relevant period

In this Division —

relevant period means the period beginning on 24 December 2010 and ending on the day before the day on which the *Duties Amendment Act (No. 2) 2011* Part 3 comes into operation.

[Clause 33 inserted by No. 33 of 2011 s. 6.]

34. When transfer duty deemed to arise in certain cases

(1) When this clause uses a term that is used in Chapter 2, the term has the same meaning in this clause as it has in that Chapter.

(2) This clause applies to any transaction —

(a) that became a dutiable transaction during the relevant period; and

(b) that would not have become a dutiable transaction during that period if the *Duties Amendment Act (No. 2) 2011* Part 2 had not been enacted.

(3) If this clause applies to a transaction, liability (if any) for transfer duty chargeable on the transaction is to be treated for all purposes of this Act as arising on the later of —

(a) the day on which the *Duties Amendment Act (No. 2) 2011* Part 3 comes into operation; or

(b) the day on which the liability would ordinarily arise by the operation of this Act.

[Clause 34 inserted by No. 33 of 2011 s. 6.]

35. When landholder duty deemed to arise in certain cases

(1) When this clause uses a term that is used in Chapter 3, the term has the same meaning in this clause as it has in that Chapter.

(2) This clause applies to any acquisition of an interest in an entity —

(a) that became a relevant acquisition during the relevant period; and

(b) that would not have become a relevant acquisition during that period if the *Duties Amendment Act (No. 2) 2011* Part 2 had not been enacted.

(3) If this clause applies to an acquisition of an interest in an entity, liability (if any) for landholder duty chargeable in respect of the acquisition is to be treated for all purposes of this Act as arising on the later of —

(a) the day on which the *Duties Amendment Act (No. 2) 2011* Part 3 comes into operation; or

(b) the day on which the liability would ordinarily arise by the operation of this Act.

[Clause 35 inserted by No. 33 of 2011 s. 6.]

Division 6 — Provisions for *Revenue Laws Amendment Act 2013* Part 2

[Heading inserted by No. 10 of 2013 s. 9.]

36. Interim assessments

The Commissioner may make an interim assessment of duty payable under Chapter 2 on a dutiable transaction, or under Chapter 3 in respect of a relevant acquisition, that occurred before the day on which the *Revenue Laws Amendment Act 2013* Part 2 came into operation.

[Clause 36 inserted by No. 10 of 2013 s. 9.]

Division 7 — Provisions for *Taxation Legislation Amendment Act 2015*

[Heading inserted by No. 1 of 2015 s. 28.]

37. Terms used

In this Division —

amended provisions means sections 156(8)(b) and 195(2)(a) as in force immediately after commencement;

commencement means the day on which the *Taxation Legislation Amendment Act 2015* Part 4 comes into operation;

relevant acquisition means a relevant acquisition that occurred on or after 1 July 2008 but before commencement.

[Clause 37 inserted by No. 1 of 2015 s. 28.]

38. Duty on certain relevant acquisitions

(1) The amended provisions apply, and are to be taken to have always applied, for the purposes of —

(a) assessing duty in respect of a relevant acquisition; and

(b) reassessing duty in respect of a relevant acquisition on an application made under section 195(3)(b) before whichever is the later of the following —

(i) 5 years after the original assessment was made;

(ii) 12 months after commencement.

(2) Subclause (1)(b) applies despite the *Taxation Administration Act 2003* section 17(4).

[Clause 38 inserted by No. 1 of 2015 s. 28.]

Notes

[1] This is a compilation of the *Duties Act 2008* and includes the amendments made by the other written laws referred to in the following table [1a]. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
Duties Act 2008 [5]	11 of 2008	14 Apr 2008	s. 1 and 2: 14 Apr 2008 (see s. 2(a)); Act other than s. 1 and 2 and Sch. 3 Div. 2: 1 Jul 2008 (see s. 2(b))
Duties Legislation Amendment Act 2008 Pt. 2 Div. 2 Subdiv. 1 and 2 [6]	12 of 2008 (as amended by No. 30 of 2008 s. 3)	14 Apr 2008	1 Jul 2008 (see s. 2(b) and (d))
Revenue Laws Amendment Act 2008 s. 4 and Pt. 7	30 of 2008	27 Jun 2008	s. 4: 27 Jun 2008 (see s. 2(2)(a)); Pt. 7: 1 Jul 2008 (see s. 2(1)(c)(i))
Revenue Laws Amendment Act (No. 2) 2008 s. 32	31 of 2008	27 Jun 2008	28 Jun 2008 (see s. 2(b))
Revenue Laws Amendment Act 2010 Pt. 2 and Pt. 3 Div. 2 [6]	9 of 2010	10 Jun 2010	s. 5 and 6: 10 Mar 2010 (see s. 2(d)); s. 3: 10 Jun 2010 (see s. 2(a)); Pt. 3 Div. 2: 10 Jun 2010 (see s. 2(b)(i)); s. 4: 11 Jun 2010 (see s. 2(c))
Revenue Laws Amendment and Repeal Act 2010 Pt. 2	17 of 2010	25 Jun 2010	s. 12: 1 Jul 2008 (see s. 2(c)); s. 3, 13 and 16: 25 Jun 2010 (see s. 2(a)); s. 4-11, 14 and 15: 1 Mar 2011 (see s. 2(d) and *Gazette* 15 Feb 2011 p. 535)
Duties Amendment Act 2011	27 of 2011	11 Jul 2011	s. 1 and 2: 11 Jul 2011 (see s. 2(a)); Act other than s. 1 and 2: 1 Jul 2011 (see s. 2(b)(ii))

Reprint 1: The *Duties Act 2008* as at 12 Jul 2011 (includes amendments listed above)

Short title	Number and year	Assent	Commencement
Duties Amendment Act (No. 2) 2011	33 of 2011	12 Sep 2011	Pt. 2: 24 Dec 2010 (see s. 2(b)); Pt. 1: 12 Sep 2011 (see s. 2(a)); Pt. 3: 13 Sep 2011 (see s. 2(c))
Inheritance (Family and Dependants Provision) Amendment Act 2011 s. 15	48 of 2011	25 Oct 2011	16 Jan 2013 (see s. 2(b) and *Gazette* 15 Jan 2013 p. 79)
Road Traffic Legislation Amendment Act 2012 Pt. 4 Div. 18	8 of 2012	21 May 2012	27 Apr 2015 (see s. 2(d) and *Gazette* 17 Apr 2015 p. 1371)
Revenue Laws Amendment Act 2012 Pt. 2	29 of 2012	3 Sep 2012	Heading to Pt. 2, Pt. 2 Div. 1 and 2: 1 Dec 2011 (see s. 2(b)); Pt. 2 Div. 3: 4 Sep 2012 (see s. 2(e))
Revenue Laws Amendment Act (No. 2) 2012 Pt. 2	32 of 2012	8 Oct 2012	Pt. 2 (other than s. 5-7, 12, 15, 18, 22 and 25: 1 Jul 2008 (see s. 2(b)); s. 5-7, 12, 15, 18, 22 and 25: 9 Oct 2012 (see s. 2(e))
Duties Legislation Amendment Act 2013 Pt. 2 Div. 2 [7]	5 of 2013	29 Jun 2013	29 Jun 2013 (see s. 2(1)(b))
Reprint 2: The *Duties Act 2008* as at 9 Aug 2013 (includes amendments listed above except those in the *Road Traffic Legislation Amendment Act 2012*)			
Revenue Laws Amendment Act 2013 Pt. 2 Div. 1	10 of 2013	24 Sep 2013	25 Sep 2013 (see s. 2(b))
Electronic Conveyancing Act 2014 Pt. 6	2 of 2014	24 Mar 2014	3 Jun 2014 (see s. 2(c) and *Gazette* 30 May 2014 p. 1679)
Revenue Laws Amendment Act 2014 Pt. 2	15 of 2014	2 Jul 2014	3 Jul 2014 (see s. 2(c)(i))
Taxation Legislation Amendment Act 2015 Pt. 2 Div. 2 and Pt. 4	1 of 2015	25 Feb 2015	26 Feb 2015 (see s. 2(d))
Taxation Legislation Amendment Act (No. 2) 2015 Pt. 2	8 of 2015	9 Mar 2015	10 Mar 2015 (see s. 2(b))
Taxation Legislation Amendment Act (No. 3) 2015 Pt. 2	15 of 2015	26 May 2015	27 May 2015 (see s. 2(c))

Short title	Number and year	Assent	Commencement
Revenue Laws Amendment Act 2015 Pt. 2 Div. 2	27 of 2015	2 Oct 2015	3 Oct 2015 (see s. 2(b))
Reprint 3: The *Duties Act 2008* as at 13 Nov 2015 (includes amendments listed above)			
Local Government Legislation Amendment Act 2016 Pt. 3 Div. 12	26 of 2016	21 Sep 2016	21 Jan 2017 (see s. 2(b) and *Gazette* 20 Jan 2017 p. 648)

[1a] On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
Aquatic Resources Management Act 2016 s. 377 [9]	53 of 2016	29 Nov 2016	To be proclaimed (see s. 2(b))
Duties Amendment (Additional Duty for Foreign Persons) Act 2018 s. 3-15 [10]	24 of 2018	17 Oct 2018	1 Jan 2019 (see s. 2(b))
Strata Titles Amendment Act 2018 Pt. 3 Div. 5 [11]	30 of 2018	19 Nov 2018	To be proclaimed (see s. 2(b))
Community Titles Act 2018 Pt. 14 Div. 6 [12]	32 of 2018	19 Nov 2018	To be proclaimed (see s. 2(b))

[2] The *Mining Act 1904* was repealed by the *Mining Act 1978*.

[3] This section has a retrospective commencement date effective from 1 Dec 2011 (see the *Revenue Laws Amendment Act 2012* Pt. 2 Div. 1 and 2).

[4] The *Acts Amendment (Land Administration) Act 1997* commenced 30 Mar 1998 (see *Gazette* 27 Mar 1998 p. 1765).

[5] The *Duties Act 2008* Sch. 3 Div. 2 was repealed by the *Revenue Laws Amendment Act 2008* s. 4.

[6] The *Duties Legislation Amendment Act 2008* Pt. 2 Div. 2 Subdiv. 3 was deleted by the *Duties Legislation Amendment Act 2013* s. 5. The amendments made by the *Revenue Laws Amendment Act 2010* Pt. 3 Div. 1 have no effect for the same reason.

[7] The *Duties Legislation Amendment Act 2013* Pt. 3 will not come into operation (see s. 2(1)(c) and (2)).

[8] Footnote no longer applicable.

[9] On the date as at which this compilation was prepared, the *Aquatic Resources Management Act 2016* s. 377 had not come into operation. It reads as follows:

377. Various references to *Fish Resources Management Act 1994* amended

(1) This section amends the Acts listed in the Table.

(2) In the provisions listed in the Table delete "*Fish Resources Management Act 1994*" and insert:

Aquatic Resources Management Act 2016

Table

Duties Act 2008	s. 136

Note:

In the *Duties Act 2008*, the heading to amended section 136 is to read:

Business licences held under *Aquatic Resources Management Act 2016*

[10] On the date as at which this compilation was prepared, the *Duties Amendment (Additional Duty for Foreign Persons) Act 2018* s. 3-15 had not come into operation. They read as follows:

3. Act amended

This Act amends the *Duties Act 2008*.

4. Section 3 amended

In section 3 insert in alphabetical order:

foreign dutiable transaction has the meaning given in section 205H;

foreign landholder duty means duty under Chapter 3A Part 3;

foreign transfer duty means duty under Chapter 3A Part 2;
residential property has the meaning given in section 205E;

5. Section 147A amended

(1) In section 147A(1) delete the definition of ***residential property***.

(2) In section 147A(1) insert in alphabetical order:

residential land has the meaning given in section 147D;

6. Section 147C amended

In section 147C(1) delete "property." and insert:

land.

7. Section 147D amended

In section 147D delete "***residential property***" and insert:

residential land

Note: The heading to amended section 147D is to read:
Residential land

8. Chapter 3A inserted

Before Chapter 4 insert:

Chapter 3A — Additional duty for foreign persons

Part 1 — Preliminary

205A. Terms used

(1) In this Chapter, unless the contrary intention appears —
associate has the meaning given in section 205B;
dwelling means a building, or part of a building, that is or is intended to be used solely or dominantly as a place of residence;
foreign corporation has the meaning given in section 205C;
foreign individual means an individual who is not —

(a) an Australian citizen as defined in the *Australian Citizenship Act 2007* (Commonwealth) section 3; or

(b) the holder of a permanent visa as defined in the *Migration Act 1958* (Commonwealth) section 5(1); or

(c) the holder of a special category visa as defined in the *Migration Act 1958* (Commonwealth) section 5(1);

foreign person means —

(a) a foreign corporation; or

(b) a foreign individual; or

(c) a foreign trustee;

foreign trust has the meaning given in section 205D(1);

foreign trustee means a person that is the trustee of a foreign trust;

parcel of land means —

(a) a lot as defined in the *Land Tax Assessment Act 2002* Glossary clause 2; or

(b) 2 or more such lots which have common boundaries and which in the opinion of the Commissioner should be treated as a single lot for the purpose of this Chapter.

(2) If a term is given a meaning in section 9 it has the same meaning in this Chapter unless the contrary intention appears in this Chapter.

(3) If a term is given a meaning in section 148 or 161 (as applied by section 205ZE(1)) it has the same meaning in this Chapter unless the contrary intention appears in this Chapter.

205B. Associate

(1) A person is an ***associate*** of another person if —

(a) the person is a family member (within the meaning given in section 100) of the other person; or

(b) the person and the other person are related persons under section 162(1)(c) to (g); or

(c) the person and the other person are partners in the same partnership.

(2) If a beneficiary of a trust, other than a unit trust scheme or a discretionary trust, is an associate under subsection (1) of a person, a trustee of the trust is also an ***associate*** of that person.

205C. Foreign corporation

(1) In this section —

potential voting power has the meaning given in the *Foreign Acquisitions and Takeovers Act 1975* (Commonwealth) section 4;

voting power has the meaning given in the *Foreign Acquisitions and Takeovers Act 1975* (Commonwealth) section 4.

(2) A corporation is a ***foreign corporation*** if —

(a) the corporation is incorporated outside Australia; or

(b) the corporation is a corporation in which foreign persons have a controlling interest.

(3) For the purposes of subsection (2)(b), foreign persons have a controlling interest in a corporation if 1 or more foreign persons or their associates —

(a) control at least 50% of the voting power in the corporation; or

(b) control at least 50% of the potential voting power in the corporation; or

(c) hold at least 50% of the issued shares in the corporation.

(4) In subsection (3) references to control are to control that is direct or indirect, including control that is exercisable as a result or by means of arrangements or practices, whether or not having legal or equitable force, and whether or not based on legal or equitable rights.

205D. Foreign trust

(1) A trust is a ***foreign trust*** if it is —

(a) a discretionary trust controlled by a foreign person; or

(b) a discretionary trust and 1 or more foreign persons that are takers in default, together with their associates, hold at least a 50% interest in the discretionary trust; or

(c) a trust other than a discretionary trust and 1 or more foreign persons, together with their associates, hold beneficial interests in at least 50% of the income or property of the trust.

(2) For the purposes of subsection (1)(a), a discretionary trust is controlled by a foreign person if the person is in a position to influence, either directly or indirectly, the vesting of the whole or any part of the capital of the trust property, or of the whole or any part of the income from the trust property.

205E. Residential property

(1) Subject to subsection (3), any of the following is ***residential property*** —

(a) land in Western Australia that is, is capable of being, or is intended to be, used solely or dominantly for residential purposes;

(b) land in Western Australia that is vacant or substantially vacant and zoned solely for residential purposes under a planning scheme as defined in the *Planning and Development Act 2005* section 4(1);

(c) in the case of land described in paragraph (a) or (b) —

(i) any estate or interest in the land;

(ii) anything that is part of the land as a fixture.

(2) For the purposes of Part 2, other than sections 205S(2)(b) and (h) and 205X, ***residential property*** includes a chattel in Western Australia if —

(a) the chattel is the subject of a dutiable transaction; and

(b) under section 37, the dutiable transaction in respect of the chattel is aggregated with a dutiable transaction in respect of residential property as defined in subsections (1) and (3); and

(c) the use of the chattel is directly linked to, or is incidental to, the use of residential property for residential purposes.

(3) The following are not ***residential property*** —

(a) land that is intended to be used solely or dominantly for the purposes of an aged care facility as defined in the *Land Tax Assessment Act 2002* section 38A(1);

(b) land that is intended to be used solely or dominantly for the purposes of commercial residential premises as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Commonwealth) section 195-1;

(c) land that is intended to be used solely or dominantly for the purposes of a retirement village as defined in the *Retirement Villages Act 1992* section 3(1);

(d) an easement;

(e) a security interest;

(f) a carbon right or a carbon covenant registered under the *Carbon Rights Act 2003*;

(g) land prescribed for the purposes of this subsection.

Part 2 — Foreign transfer duty

Division 1 — Preliminary

205F. Terms used

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

dutiable value has the meaning given in Chapter 2 Part 4 Division 5 as applied by section 205P(1);

foreign transfer duty endorsed has the meaning given in subsections (2) and (3);

new residential property has the meaning given in section 205I;

residential partnership acquisition has the meaning given in section 205X;

residential trust acquisition has the meaning given in section 205T;

residential trust surrender has the meaning given in section 205U;

special residential property means any of the following —

(a) a life interest in residential property;

(b) a remainder interest in residential property;

(c) a lease of residential property, if consideration is paid, or agreed to be paid, by the lessor for the surrender of the lease.

(2) A foreign dutiable transaction is ***foreign transfer duty endorsed*** if a transaction record for it is foreign transfer duty endorsed.

(3) A transaction record, or a duplicate of a transaction record, for a foreign dutiable transaction is ***foreign transfer duty endorsed*** if it is duty endorsed and the duty endorsement indicates —

(a) the amount of foreign transfer duty paid on the transaction; or

(b) that foreign transfer duty is not chargeable on the transaction.

Division 2 — Imposition of foreign transfer duty

205G. Foreign transfer duty imposed

Foreign transfer duty is imposed on foreign dutiable transactions.

Division 3 — Foreign dutiable transactions

205H. Foreign dutiable transaction

(1) Subject to subsection (2), any of the following is a ***foreign dutiable transaction*** —

(a) a transfer of residential property to a foreign person;

(b) an agreement, whether conditional or not, for the transfer of residential property to a foreign person;

(c) a declaration of trust over residential property if the trust is a foreign trust;

(d) a vesting of residential property in a foreign person —

(i) by, or expressly authorised by, statute law of this or another jurisdiction, whether inside or outside Australia; or

(ii) by, or as a consequence of, a court order of this or another jurisdiction, whether inside or outside Australia;

(e) a foreclosure of a mortgage over residential property by a mortgagee that is a foreign person;

(f) an acquisition by a foreign person of new residential property, on its creation, grant or issue;

(g) a surrender of special residential property to a foreign person;

(h) a residential trust acquisition or residential trust surrender;

(i) a residential partnership acquisition.

(2) The following transactions are not ***foreign dutiable transactions*** —

(a) a transaction the subject of which is a right if no consideration is paid, or agreed to be paid, for the transaction;

(b) a transfer of, or an agreement for the transfer of, a lease if no consideration is paid, or agreed to be paid, for the transfer or agreement;

(c) a transaction prescribed as an excluded transaction for the purposes of this section.

(3) Without limiting subsection (1)(d)(i), section 12 applies for the purposes of determining when residential property is vested under statute law.

205I. New residential property

(1) Subject to subsection (2), any of the following is ***new residential property*** —

(a) residential property;

(b) the following rights —

(i) an option to acquire residential property, unless the option is part of a simultaneous put and call option over residential property;

(ii) a right to acquire residential property;

(iii) any other right prescribed for the purposes of this subsection.

(2) The following are not ***new residential property*** —

(a) a lease if no consideration is paid, or agreed to be paid, for the grant of the lease;

(b) any other residential property prescribed as excluded property for the purposes of this section.

Division 4 — Collection of foreign transfer duty

205J. When liability for duty arises

Liability for foreign transfer duty chargeable on a foreign dutiable transaction arises when the liability for transfer duty chargeable on the transaction arises under section 19.

205K. Who is liable to pay duty

(1) A person is liable to pay foreign transfer duty on a foreign dutiable transaction if the person is —

(a) liable to pay transfer duty on the transaction; and

(b) a foreign person.

(2) A person is liable to pay foreign transfer duty, regardless of whether the person is a foreign person, if —

(a) the person is liable to pay transfer duty on a foreign dutiable transaction referred to in section 205H(1)(h); or

(b) the person is, under section 69 as applied by section 205S(1), the person liable to pay foreign transfer duty.

(3) A foreign individual or foreign corporation is not liable to pay foreign transfer duty on a foreign dutiable transaction if —

(a) the individual or corporation is acting in their capacity as trustee; and

(b) the individual or corporation is not a foreign trustee.

205L. Joint tenants to be treated as tenants in common in equal shares

For the purpose of charging foreign transfer duty, joint tenants of residential property are taken to hold the property as tenants in common in equal shares.

205M. Foreign transfer duty declaration to be lodged

(1) Subject to subsection (2), the person liable to pay foreign transfer duty on a foreign dutiable transaction must lodge a foreign transfer duty declaration in the approved form within 2 months after the day on which liability for foreign transfer duty on the transaction arises.

Penalty for this subsection: a fine of $5 000.

(2) A person is not required to lodge a foreign transfer duty declaration in respect of a general conditional agreement in respect of which liability for transfer duty does not arise under section 19(2).

205N. When duty must be paid

(1) A person liable to pay foreign transfer duty on a foreign dutiable transaction must pay the duty within 1 month after the date of the assessment notice issued in relation to an assessment of the duty, unless a later time is provided under subsection (2) or (3) in respect of the transaction.

(2) Unless subsection (3) applies, foreign transfer duty must be paid within 12 months after the day on which liability for foreign transfer duty on the transaction arises if the transaction is —

(a) a conditional agreement; or

(b) a foreign dutiable transaction referred to in section 205H(1)(a), (b), (c) or (d) if a document relating to the transaction must be registered under —

(i) the *Registration of Deeds Act 1856*; or

(ii) the *Transfer of Land Act 1893*.

(3) Foreign transfer duty must be paid within 3 years after the day on which liability for foreign transfer duty on the transaction arises if the transaction is —

(a) a subdivision conditional agreement; or

(b) an issue of title conditional agreement.

205O. Rate of foreign transfer duty

Foreign transfer duty is chargeable at the rate of 7% of the dutiable value of the foreign dutiable transaction.

205P. Dutiable value

(1) The provisions of Chapter 2 Part 4 Division 5 other than sections 31(5), 37, 39(3) and 40 apply, with all appropriate modifications, in respect of foreign transfer duty in the same way as they apply in respect of transfer duty.

(2) Without limiting subsection (1), the provisions applied by that subsection apply as if —

(a) a reference to dutiable property were a reference to residential property; and

(b) a reference to a dutiable transaction were a reference to a foreign dutiable transaction; and

(c) other than in sections 28(6) and 29(4), a reference to duty were a reference to foreign transfer duty; and

(d) a reference to duty endorsed were a reference to foreign transfer duty endorsed; and

(e) the reference in section 28(1) to section 11(1)(d)(ii) or (e) were a reference to section 205H(1)(d)(ii) or (e); and

(f) the reference in section 29(4) to nominal duty were a reference to no foreign transfer duty.

(3) If a foreign dutiable transaction is aggregated with another dutiable transaction under section 37, then the foreign dutiable transaction is treated as having taken place at the time that the last of the aggregated transactions took place.

(4) Foreign transfer duty is chargeable on any foreign dutiable transaction effecting an exchange of residential property to a foreign person for dutiable property as if the exchange involved the transfer of the residential property for consideration equal to the unencumbered value of the residential property.

205Q. No double foreign transfer duty

(1) The provisions of Chapter 2 Part 4 Division 6 other than section 42(15) apply, with all appropriate modifications, in respect of foreign transfer duty in the same way as they apply in respect of transfer duty.

(2) Without limiting subsection (1), the provisions applied by that subsection apply as if —

(a) a reference to dutiable property were a reference to residential property; and

(b) a reference to a dutiable transaction were a reference to a foreign dutiable transaction; and

(c) a reference to duty were a reference to foreign transfer duty; and

(d) a reference to duty endorsed were a reference to foreign transfer duty endorsed; and

(e) a reference to the general or a concessional rate were a reference to the rate of foreign transfer duty; and

(f) the reference in section 42(12) to section 11(1)(d) were a reference to section 205H(1)(d).

205R. Interim assessment of foreign transfer duty

(1) The Commissioner may make an assessment (an ***interim assessment***) of a portion of the foreign transfer duty payable on a foreign dutiable transaction if, under section 44A(1), the Commissioner makes an assessment of a portion of the transfer duty payable on the transaction.

(2) For the purposes of making an interim assessment, the foreign transfer duty payable is to be determined as if the portion of the dutiable value of the foreign dutiable transaction were the full dutiable value of the transaction.

Division 5 — Application of Chapter 2 Part 5 to certain transactions

205S. Application of Chapter 2 Part 5 to foreign dutiable transactions

(1) The provisions of Chapter 2 Part 5 other than section 70 and Divisions 5 and 6 apply, with all appropriate modifications, in respect of foreign transfer duty in the same way as they apply in respect of transfer duty.

(2) Without limiting subsection (1), the provisions applied by that subsection apply as if —

(a) a reference to dutiable property (other than in Chapter 2 Part 5 Division 4) were a reference to residential property; and

(b) a reference to dutiable property in Chapter 2 Part 5 Division 4 were a reference to each of the following —

(i) residential property;

(ii) a chattel in Western Australia, the use of which is directly linked to, or is incidental to, the use of residential property for residential purposes;

and

(c) a reference to a dutiable transaction were a reference to a foreign dutiable transaction; and

(d) a reference to duty were a reference to foreign transfer duty; and

(e) a reference to duty endorsed were a reference to foreign transfer duty endorsed; and

(f) a reference to a trust acquisition were a reference to a residential trust acquisition; and

(g) a reference to a trust surrender were a reference to a residential trust surrender; and

(h) a reference in section 73 to land in Western Australia were a reference to residential property; and

(i) a reference in section 76 or 77 to a partnership acquisition were a reference to a residential partnership acquisition; and

(j) each provision specified in Column 1 of the Table were replaced by the provision specified opposite it in Column 2 of the Table.

Table

Column 1	Column 2
s. 55	s. 205T
s. 56	s. 205U
s. 59	s. 205V
s. 67	s. 205W
s. 72	s. 205X

205T. References to residential trust acquisition

A reference to a residential trust acquisition is to the acquisition by a taker in default that is a foreign person of an interest in a discretionary trust that holds —

(a) residential property; or

(b) an indirect interest in residential property.

205U. References to residential trust surrender

A reference to a residential trust surrender is to the surrender by a taker in default of an interest in a discretionary trust that holds residential property or an indirect interest in residential property, if the surrender results in a foreign person acquiring an interest in the discretionary trust.

205V. Dutiable value of residential trust acquisition or residential trust surrender

(1) The dutiable value of a residential trust acquisition is —

(a) the consideration for the acquisition so far as the consideration relates to residential property —

(i) held by the discretionary trust; or

(ii) to which an entity linked to the trustee of the discretionary trust is entitled;

or

(b) the value of the taker in default's interest in the discretionary trust at the time when liability for foreign transfer duty on the acquisition arises if —

(i) there is no consideration for the acquisition; or

(ii) the consideration cannot be ascertained when liability for foreign transfer duty on the acquisition arises; or

(iii) the value of the taker in default's interest is greater than the consideration for the acquisition.

(2) The dutiable value of a residential trust surrender is —

(a) the consideration for the surrender so far as the consideration relates to —

(i) residential property held by the discretionary trust or to which an entity linked to the trustee of the discretionary trust is entitled; and

(ii) the interests in the discretionary trust acquired by a foreign person as a result of the surrender;

or

(b) the value of a foreign person's interest in the discretionary trust at the time immediately after liability for foreign transfer duty on the surrender arises less the value of the foreign person's interest in the discretionary trust immediately before liability for foreign transfer duty on the surrender arises if —

(i) there is no consideration for the surrender; or

(ii) the consideration cannot be ascertained when liability for foreign transfer duty on the surrender arises; or

(iii) the value of the taker in default's interest is greater than the consideration for the surrender.

205W. Share disposition taken to be agreement for transfer of trust property

(1) A disposition of a share in a corporate trustee is taken to be an agreement for the transfer of residential property and is liable to foreign transfer duty accordingly if —

(a) it is a transaction, or part of a transaction, that is a scheme or arrangement, or part of a scheme or arrangement; and

(b) the transaction results in —

(i) a foreign person increasing its beneficial interest in residential property held directly or indirectly by the corporate trustee of a discretionary trust; or

(ii) a foreign person acquiring a beneficial interest in residential property held directly or indirectly by the corporate trustee of a discretionary trust.

(2) Subsection (1) does not apply to the disposition of a share by which the personal representative of a deceased person disposes of a share to a beneficiary in the administration of the estate of the deceased person.

205X. References to residential partnership acquisition

A reference to a residential partnership acquisition is to a foreign person acquiring a partnership interest in a partnership that holds —

(a) residential property; or

(b) an indirect interest in residential property.

Division 6 — Exemptions and reassessment

Subdivision 1 — Exempt transactions

205Y. Transactions on which minimum, nominal or no transfer duty payable

(1) Foreign transfer duty is not chargeable on a transaction to which section 39 applies if the minimum amount of transfer duty referred to in section 39(3) is payable on the transaction.

(2) Except as provided in subsection (3), foreign transfer duty is not chargeable on a foreign dutiable transaction to the extent that —

(a) transfer duty is not chargeable on the transaction under Chapter 2 Part 5 Division 6; or

(b) transfer duty is not chargeable on the transaction under Chapter 2 Part 6 Division 1; or

(c) nominal duty is chargeable on the transaction under Chapter 2 Part 6 Division 2.

(3) Foreign transfer duty is chargeable on a foreign dutiable transaction if —

(a) section 97 applies to the transaction, the person to whom the property is transferred or agreed to be transferred is a foreign person, and foreign transfer duty was not chargeable on the acquisition of the property by the person from whom the property is transferred or agreed to be transferred; or

(b) section 114 applies to the transaction, the taker in default is a foreign person, and foreign transfer duty was not chargeable on the acquisition of the property by the

trustee of the trust or on any acquisition by which the taker in default acquired its interest in the trust; or

(c) section 115 applies to the transaction, the beneficiary is a foreign person, and foreign transfer duty was not chargeable on the acquisition of the property by the trustee of the trust; or

(d) section 116 applies to the transaction, the beneficiary is a foreign person, and the declaration of trust has not been foreign transfer duty endorsed; or

(e) section 117(1)(a) or (b) applies to the transaction, the real purchaser is a foreign person, and foreign transfer duty was not chargeable on the acquisition of the property by the apparent purchaser.

205Z. Transactions relating to agreements for transfer of residential property

(1) Foreign transfer duty is not chargeable on an agreement for the transfer of residential property if —

(a) the agreement is an agreement referred to in section 42(2) or (4), the purchaser is a foreign person, and the transferee is not a foreign person; or

(b) the agreement is an agreement referred to in section 42(4B), the purchaser is a foreign person, and the trust is not a foreign trust; or

(c) the agreement is an agreement referred to in section 42(5), the person named in the agreement as the purchaser is a foreign person, and the corporation is not a foreign corporation.

(2) Foreign transfer duty is not chargeable on an agreement for the transfer of residential property to a transferee if the property is transferred in conformity with the agreement and the transferee is not a foreign person when the property is transferred.

Subdivision 2 — Exemptions relating to construction, refurbishment and subdivision

205ZA. Exemption relating to construction or refurbishment of 10 or more dwellings

(1) Foreign transfer duty is not chargeable on a foreign dutiable transaction to the extent that the transaction relates to a parcel of land to which this section applies.

(2) This section applies to a parcel of land if —

(a) at the time when liability for foreign transfer duty on the transaction arises, there is no building, or part of a

building, on the parcel of land capable of being used solely or dominantly as a place of residence; and

(b) the person liable to pay foreign transfer duty on the transaction or an associate of the person intends to construct, refurbish or complete the construction or refurbishment of 10 or more dwellings on the parcel of land; and

(c) within the period of 5 years beginning on the day on which the transaction is completed, the person or associate complies with subsection (3) in relation to 10 or more dwellings on the parcel of land; and

(d) the parcel of land is, in the Commissioner's opinion, suitable for 10 or more dwellings.

(3) A person or an associate of a person complies with this subsection in relation to —

(a) a dwelling the person or associate intends to construct, if the person or associate begins construction of that dwelling or another dwelling on the parcel of land; or

(b) a dwelling the person or associate intends to refurbish, if all licences, approvals, registrations, exemptions and other kinds of authorisation necessary to refurbish that dwelling or another dwelling on the parcel of land are issued, granted or obtained; or

(c) a dwelling the person or associate intends to complete the construction or refurbishment of, if that dwelling or another dwelling on the parcel of land, construction or refurbishment of which is completed by the person or associate, is ready for occupation as a place of residence.

(4) For the purposes of subsection (3)(a), construction of a dwelling begins on —

(a) the day on which laying the foundations for the dwelling begins; or

(b) another day the Commissioner considers appropriate in the circumstances of the case.

(5) An application for reassessment under section 205ZC(2) because of this section must be made on or before the later of the following —

(a) the last day of the period of 1 year beginning on the day on which the person or associate complies with subsection (3) in relation to 10 or more dwellings;

(b) the last day of the period of 5 years beginning on the day on which the transaction is completed.

205ZB. Exemption relating to subdivision for purpose of constructing 10 or more dwellings

(1) Foreign transfer duty is not chargeable on a foreign dutiable transaction to the extent that the transaction relates to a parcel of land to which this section applies.

(2) This section applies to a parcel of land if —

(a) at the time when liability for foreign transfer duty on the transaction arises, the parcel of land is vacant or substantially vacant; and

(b) the person liable to pay foreign transfer duty on the transaction or an associate of the person intends to subdivide or complete subdividing the parcel of land for the purpose of a person constructing 10 or more dwellings on the parcel of land; and

(c) within the period of 5 years beginning on the day on which the transaction is completed, the person or associate —

(i) begins subdividing the parcel of land; or

(ii) if subdividing the parcel of land has begun when the transaction is completed, completes subdividing the parcel of land;

and

(d) the parcel of land is, in the Commissioner's opinion, suitable for 10 or more dwellings.

(3) An application for reassessment under section 205ZC(2) because of this section must be made on or before the later of the following —

(a) the last day of the period of 1 year beginning on the day on which the person or associate —

(i) begins subdividing the parcel of land; or

(ii) if subdividing the parcel of land has begun when the transaction is completed, completes subdividing the parcel of land;

(b) the last day of the period of 5 years beginning on the day on which the transaction is completed.

(4) For the purposes of subsections (2)(c) and (3)(a) —

(a) a person begins subdividing land on the day on which the land is subdivided under the *Land Tax Assessment Act 2002* Glossary clause 3; and

(b) a person completes subdividing land on the day on which the new certificate of title is created and registered for the subdivided land.

Subdivision 3 — Reassessment

205ZC. Reassessment

(1) If the Commissioner is required to reassess the liability to transfer duty of a foreign dutiable transaction that is not liable to foreign transfer duty because of section 205Y —

(a) the Commissioner, on the application of a taxpayer, must reassess the liability to foreign transfer duty of the transaction; and

(b) the limitation as to time (if any) that applies in respect of the reassessment of transfer duty applies in respect of the reassessment of foreign transfer duty; and

(c) if the reassessment of transfer duty is under section 107 — the application for reassessment under this subsection must be made in the approved form.

(2) The Commissioner, on the application of a taxpayer, must reassess the liability to foreign transfer duty of a foreign dutiable transaction if the liability is affected by section 205Z, 205ZA or 205ZB.

(3) The limitations as to time in the Taxation Administration Act section 17 do not apply in respect of a reassessment because of section 205ZA or 205ZB.

(4) An application for reassessment under subsection (2) must be made in the approved form.

Part 3 — Foreign landholder duty

Division 1 — Preliminary

205ZD. Terms used

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

foreign acquirer means —

(a) a foreign person that acquires an interest in a residential landholder by a foreign landholder acquisition; or

(b) a foreign person that is a related person to a person that acquires an interest in a residential landholder by a foreign landholder acquisition; or

(c) if there is more than 1 person referred to in paragraph (a) or (b), each of them;

foreign landholder acquisition has the meaning given in sections 205ZH and 205ZI;

residential landholder means an entity that is a residential landholder under section 205ZG.

(2) A reference in this Part to a provision of Chapter 3 that is applied by section 205ZE(1) is a reference to that provision as so applied.

Division 2 — Application of Chapter 3

205ZE. Application of Chapter 3

(1) The provisions of Chapter 3 other than the provisions set out in the Table apply, with all appropriate modifications, in respect of foreign landholder duty in the same way as they apply in respect of landholder duty.

Table

s. 149(2A) and (4)	Part 2
s. 155	Part 5 Division 2 Subdivision 2
s. 167	s. 168
s. 171	Part 5 Division 2 Subdivision 4
s. 175	Part 6 Division 4
s. 193	Part 6 Division 6A
Part 6 Division 7	

(2) Without limiting subsection (1), the provisions applied by that subsection apply as if —

(a) a reference to duty or landholder duty were a reference to foreign landholder duty; and

(b) a reference to an acquirer were a reference to a foreign acquirer; and

(c) a reference to a landholder were a reference to a residential landholder; and

(d) a reference to a relevant acquisition were a reference to a foreign landholder acquisition; and

(e) a reference to land, land in Western Australia or dutiable property were a reference to residential property; and

(f) a reference to a chattel were a reference to a chattel, the use of which is directly linked to, or is incidental to, the use of residential property for residential purposes; and

(g) the reference in section 157(1) to section 155 were a reference to section 186; and

(h) the provisions of Division 8 Subdivisions 1 and 2 of this Chapter were provisions of Chapter 3 Part 5 Division 2 Subdivision 3; and

(i) the reference in the definition of ***call option***, ***put option*** and ***simultaneous put and call option*** in section 177(1) to section 44 were a reference to section 44 as applied by section 205S(1); and

(j) a reference in section 185 or 189 to a related person were a reference to a related person that is a foreign person; and

(k) a reference in section 188(1) or 189(1) to applying the appropriate rate of duty under section 184(1) to the value were a reference to working out 7% of the value; and

(l) the reference in section 189(6) to 1 July 2008 were a reference to 1 January 2019; and

(m) a reference to a provision specified in Column 1 of the Table were a reference to the provision specified opposite it in Column 2 of the Table.

Table

Column 1	**Column 2**
s. 67	s. 205W
s. 151	s. 205ZF
s. 155	s. 205ZG
s. 163	s. 205ZH
s. 164	s. 205ZI
s. 167	s. 205ZM
s. 200	s. 205ZS

Division 3 — Imposition of foreign landholder duty

205ZF. Foreign landholder duty imposed

Foreign landholder duty is imposed in respect of any foreign landholder acquisition of an interest in a residential landholder.

Division 4 — Residential landholders to which this Part applies

205ZG. Which entities are residential landholders

(1) This section applies where it is necessary to determine in relation to an acquisition of an interest in an entity whether the entity is a residential landholder for the purposes of section 205ZH or 205ZI.

(2) A corporation is a residential landholder if immediately before the acquisition —

(a) it is entitled to residential property or an entity linked to the corporation is so entitled; and

(b) it is a landholder.

(3) A unit trust scheme is a residential landholder if immediately before the acquisition —

(a) the trustee of the scheme is entitled to residential property or an entity linked to the unit trust scheme is so entitled; and

(b) the scheme is a landholder.

(4) For the purposes of subsections (2)(a) and (3)(a) —

(a) a partnership, as a linked entity, is entitled to residential property if the partnership property is or includes residential property; and

(b) a unit trust scheme, as a linked entity, is entitled to residential property if the trustee of the scheme is so entitled.

Division 5 — Acquisitions to which this Part applies

205ZH. Acquisition of significant interest in residential landholder

(1) An acquisition by a foreign person of an interest in an entity is a ***foreign landholder acquisition*** if —

(a) immediately before the acquisition the entity was a residential landholder in which the interest (if any) of the foreign person and the interest (if any) of any related person did not amount to a significant interest; and

(b) after the acquisition the entity is a residential landholder in which —

(i) the interest of the foreign person is a significant interest; or

(ii) the interest of the foreign person when aggregated with any interest of a related person amounts to a significant interest.

(2) An acquisition by a person that is not a foreign person of an interest in an entity is a ***foreign landholder acquisition*** if —

(a) immediately before the acquisition the entity was a residential landholder in which the interest (if any) of the person and the interest (if any) of any related person did not amount to a significant interest; and

(b) after the acquisition the entity is a residential landholder in which the person and at least 1 related person that is a foreign person has an interest and in which —

(i) the interest of the person is a significant interest; or

(ii) the interest of the person when aggregated with any interest of a related person amounts to a significant interest.

205ZI. Acquisition of further interest by holder of significant interest

(1) An acquisition by a foreign person of an interest in an entity is also a ***foreign landholder acquisition*** if —

(a) immediately before the acquisition the entity is a residential landholder in which —

(i) the interest of the foreign person is a significant interest; or

(ii) the interest of the foreign person when aggregated with any interest of a related person amounts to a significant interest; or

(iii) the interest of a related person is a significant interest;

and

(b) by the acquisition the foreign person or any related person acquires, or the foreign person and any related person acquire, a further interest in the landholder.

(2) An acquisition by a person that is not a foreign person of an interest in an entity is also a ***foreign landholder acquisition*** if —

(a) immediately before the acquisition the entity is a residential landholder in which at least 1 related person that is a foreign person has an interest and in which —

(i) the interest of the person is a significant interest; or

(ii) the interest of the person when aggregated with any interest of a related person amounts to a significant interest; or

(iii) the interest of a related person is a significant interest;

and

(b) by the acquisition the person or a related person acquires, or the person and a related person acquire, a further interest in the landholder.

Division 6 — Collection of foreign landholder duty

205ZJ. Rate of foreign landholder duty

Foreign landholder duty is chargeable —

(a) by reference to the value referred to in section 188(1) or 189(1), as the case requires; and

(b) at the rate of 7% of that value.

205ZK. Calculation of foreign landholder duty where landholder duty calculated under s. 193

(1) This section applies to the calculation of foreign landholder duty in respect of a foreign landholder acquisition if the Commissioner calculates landholder duty in respect of the acquisition under section 193(3).

(2) If this section applies —

(a) the Commissioner may calculate the foreign landholder duty in respect of the acquisition as if the acquisition occurred at the end of the relevant period (as defined in section 193(1)); and

(b) if the single relevant acquisition referred to in section 193(3) (the ***single acquisition***) includes more than 1 foreign landholder acquisition —

(i) the Commissioner is not required to make a separate calculation of foreign landholder duty in respect of the acquisition; and

(ii) the Commissioner may calculate foreign landholder duty in respect of all foreign landholder acquisitions forming part of the single acquisition as if all of the acquisitions had been made by a single foreign landholder acquisition.

Division 7 — Interim assessment of foreign landholder duty

205ZL. Interim assessment of foreign landholder duty

(1) The Commissioner may make an assessment (an ***interim assessment***) of a portion of the foreign landholder duty payable in respect of a foreign landholder acquisition if, under section 195A(1), the Commissioner makes an assessment of a portion of the landholder duty payable in respect of the acquisition.

(2) For the purposes of making an interim assessment, the foreign landholder duty payable is to be determined as if the portion of the value of the residential landholder were the full value of the residential landholder.

(3) The Commissioner can make a determination of a portion of the value of a residential landholder for the purposes of making an interim assessment even though the Commissioner has ascertained —

(a) the value of only some of the residential property or chattels to which section 186(1) applies; or

(b) only a portion of the value of particular residential property or chattels to which section 186(1) applies.

Division 8 — Exemptions and reassessment

Subdivision 1 — Exempt acquisitions

205ZM. Exemption if foreign transfer duty would not be chargeable

(1) In this section —

acquiring person, in relation to an acquisition, means the person making the acquisition;

relinquishing person, in relation to an acquisition, means the person from whom the interest in the landholder was acquired.

(2) An acquisition is exempt if no foreign transfer duty would be chargeable, other than under Chapter 6, on the transfer, at the time of the acquisition, by the relinquishing person to the acquiring person of residential property of the landholder, or of a linked

entity in respect of the landholder, as if the property were that of the relinquishing person.

(3) For the purposes of subsection (2), the acquiring person in respect of an acquisition described in section 205ZH(2) or 205ZI(2) is to be treated as if they were a foreign person.

(4) If the acquiring person did not acquire the interest in the residential landholder from another person, the reference to the relinquishing person is to be read (according to what is relevant) as a reference to the or a person —

(a) whose interest in the landholder is decreased because of the acquisition; or

(b) whose interest in the landholder decreased resulting in the acquisition.

Note for this subsection:

An acquiring person may acquire an interest in a company by the company issuing shares to the person, or buying back shares of another person.

205ZN. Exemption for certain acquisitions treated as made under agreement referred to in s. 176(2)

An acquisition is exempt if —

(a) for the purposes of an assessment, the acquisition was treated as having been made under an agreement of the kind referred to in section 176(2); and

(b) when the agreement is completed the acquirer is not a foreign person; and

(c) had the acquisition not been treated as mentioned in paragraph (a) the liability for foreign landholder duty in respect of the acquisition would not have arisen.

Subdivision 2 — Exemptions relating to construction, refurbishment and subdivision

205ZO. Exemption relating to construction or refurbishment of 10 or more dwellings

(1) An acquisition is exempt if —

(a) at the time when the acquisition occurs, the residential landholder or a linked entity in respect of the landholder is entitled to a parcel of land on which there is no building, or part of a building, capable of being used solely or dominantly as a place of residence; and

(b) the landholder, linked entity or an associate of the landholder intends to construct, refurbish or complete the construction or refurbishment of 10 or more dwellings on the parcel of land; and

(c) within the period of 5 years beginning on the day on which the acquisition occurs, the landholder, linked entity or associate complies with subsection (2) in relation to 10 or more dwellings; and

(d) the interest the subject of the acquisition has not been disposed of by the acquirer at the time the landholder, linked entity or associate complies with subsection (2) in relation to 10 or more dwellings; and

(e) the parcel of land is, in the Commissioner's opinion, suitable for 10 or more dwellings.

(2) A residential landholder, linked entity or associate of a residential landholder complies with this subsection in relation to —

(a) a dwelling the landholder, linked entity or associate intends to construct, if the landholder, linked entity or associate begins construction of that dwelling or another dwelling on the parcel of land; or

(b) a dwelling the landholder, linked entity or associate intends to refurbish, if all licences, approvals, registrations, exemptions and other kinds of authorisation necessary to refurbish that dwelling or another dwelling on the parcel of land are issued, granted or obtained; or

(c) a dwelling the landholder, linked entity or associate intends to complete construction or refurbishment of, if that dwelling or another dwelling on the parcel of land, construction or refurbishment of which is completed by the landholder, linked entity or associate, is ready for occupation as a place of residence.

(3) For the purposes of subsection (2)(a), construction of a dwelling begins on —

(a) the day on which laying the foundations for the dwelling begins; or

(b) another day the Commissioner considers appropriate in the circumstances of the case.

(4) An application for reassessment under section 205ZR because of this section must be made on or before the later of the following —

(a) the last day of the period of 1 year beginning on the day on which the residential landholder, linked entity or associate complies with subsection (2) in relation to 10 or more dwellings;

(b) the last day of the period of 5 years beginning on the day on which the acquisition occurs.

205ZP. Exemption relating to subdivision for purpose of constructing 10 or more dwellings

(1) An acquisition is exempt if —

(a) at the time when the acquisition occurs, the residential landholder or a linked entity in respect of the landholder is entitled to a parcel of land that is vacant or substantially vacant; and

(b) the landholder, linked entity or an associate of the landholder intends to subdivide or complete subdividing the parcel of land for the purpose of a person constructing 10 or more dwellings on the parcel of land; and

(c) within the period of 5 years beginning on the day on which the acquisition occurs, the landholder, linked entity or associate —

(i) begins subdividing the parcel of land; or

(ii) if subdividing the parcel of land has begun when the acquisition occurs, completes subdividing the parcel of land;

and

(d) the interest the subject of the acquisition has not been disposed of by the acquirer when the landholder, linked entity or associate —

(i) begins subdividing the parcel of land; or

(ii) if subdividing the parcel of land has begun when the acquisition occurs, completes subdividing the parcel of land;

and

(e) the parcel of land is, in the Commissioner's opinion, suitable for 10 or more dwellings.

(2) An application for reassessment under section 205ZR because of this section must be made on or before the later of the following —

(a) the last day of the period of 1 year beginning on the day on which the landholder, linked entity or associate —

(i) begins subdividing the parcel of land; or

(ii) if subdividing the parcel of land has begun when the acquisition occurs, completes subdividing the parcel of land;

(b) the last day of the period of 5 years beginning on the day on which the acquisition occurs.

(3) For the purposes of subsections (1)(c) and (d) and (2)(a) —

(a) a person begins subdividing land on the day on which the land is subdivided under the *Land Tax Assessment Act 2002* Glossary clause 3; and

(b) a person completes subdividing land on the day on which the new certificate of title is created and registered for the subdivided land.

205ZQ. Calculation of duty where some land of landholder not part of parcel of land

(1) This section applies to an acquisition referred to in section 205ZO or 205ZP if immediately before the acquisition the residential landholder, or a linked entity in respect of the landholder, is entitled to —

(a) a parcel of land referred to in section 205ZO or 205ZP; and

(b) other residential property in Western Australia.

(2) Section 166 is not applicable to or in relation to the acquisition.

(3) For the purposes of calculating foreign landholder duty in respect of the acquisition the residential property referred to in subsection (1)(a) is to be disregarded when determining the value of the landholder.

Subdivision 3 — Reassessment

205ZR. Reassessment

(1) The Commissioner, on the application of a person that has paid or is liable to pay foreign landholder duty, must reassess the liability to foreign landholder duty on an acquisition if the liability is affected by section 205ZN, 205ZO or 205ZP.

(2) An application for reassessment under this section must be made in the approved form.

(3) The limitations as to time in the Taxation Administration Act section 17 do not apply in respect of a reassessment because of section 205ZO or 205ZP.

Division 9 — Lodgment of declaration

205ZS. Foreign landholder duty declaration to be lodged

(1) A foreign landholder duty declaration must be lodged in respect of a foreign landholder acquisition.

(2) The foreign landholder duty declaration must be lodged on or before the day on which the acquisition statement is required to be

lodged under section 200(3), 201(6) or 202(2) in respect of the acquisition.

205ZT. Failure to lodge foreign landholder duty declaration

If a foreign landholder duty declaration is not lodged in accordance with section 205ZS(2), the following persons commit an offence —

(a) in every case, the foreign acquirer;

(b) if the landholder concerned is a corporation, the corporation;

(c) if the landholder concerned is a unit trust scheme, the trustee of the scheme;

(d) any person taken into account under section 205ZH or 205ZI as being related to the foreign acquirer for the purposes of the acquisition, other than a person whose interest in the landholder is, for the purpose of calculating the foreign landholder duty, an excluded interest under section 189.

Penalty: a fine of $5 000.

9. Section 259 amended

In section 259(2) after "landholder duty" insert:

or foreign landholder duty

10. Section 260 amended

(1) After section 260(1)(a) insert:

(aa) any of the following foreign dutiable transactions, if foreign transfer duty is chargeable —

(i) an agreement, whether conditional or not, for the transfer of residential property from one member of a family to another member of the family;

(ii) a transfer of residential property from one member of a family to another member of the family;

(iii) a declaration of trust over residential property under which one member of a family holds the property on trust for another member of the family;

(iv) a vesting of residential property held by one member of a family in another member of the family;

(v) a surrender of special residential property, as defined in section 205F(1), if the special residential property is surrendered by one member of a family to another member of the family;

(2) In section 260(1)(d) after "landholder duty" insert:

or foreign landholder duty

(3) After section 260(2) insert:

(2A) A transaction referred to in subsection (1)(aa) is not a ***relevant reconstruction transaction*** if, immediately before the transaction, the residential property is held, or the transaction results in the property being held, subject to a discretionary trust.

11. Section 272 amended

Delete section 272(2)(a) and insert:

(a) endorsed by the Commissioner —

(i) under section 273(2), (3) or (4) or 274(2); and

(ii) if the transaction is a foreign dutiable transaction — under section 273(2A);

or

12. Section 273 amended

(1) In section 273(1) delete the definition of ***duty***.

(2) In section 273(1) in the definition of ***required duty*** paragraph (a) delete "duty" and insert:

transfer duty and foreign transfer duty (if any)

(3) Delete section 273(2) and insert:

(2) If a transaction record for a dutiable transaction is lodged for duty endorsement and any required duty is paid in full, the Commissioner must —

(a) if transfer duty is chargeable on the dutiable transaction — endorse the transaction record to indicate the amount of transfer duty paid; or

(b) if transfer duty is not chargeable on the dutiable transaction because of an exemption under this Act or another written law — endorse the transaction record to indicate that transfer duty is not chargeable because of the exemption; or

(c) if transfer duty is not chargeable on the dutiable transaction other than because of an exemption under this Act or another written law — endorse the transaction record to indicate that transfer duty is not chargeable.

(2A) If a transaction record for a foreign dutiable transaction is lodged for duty endorsement and any required duty is paid in full, the Commissioner must —

(a) if foreign transfer duty is chargeable on the foreign dutiable transaction — endorse the transaction record to indicate the amount of foreign transfer duty paid; or

(b) if foreign transfer duty is not chargeable on the foreign dutiable transaction because of an exemption under this Act or another written law — endorse the transaction record to indicate that foreign transfer duty is not chargeable because of the exemption; or

(c) if foreign transfer duty is not chargeable on the foreign dutiable transaction other than because of an exemption under this Act or another written law — endorse the transaction record to indicate that foreign transfer duty is not chargeable.

(4) In section 273(3A) delete "subsection (2)," and insert:

subsections (2) and (2A),

13. Section 275 amended

In section 275(a)(ii) after "transfer duty (if any)" insert:

and foreign transfer duty (if any)

14. Schedule 2 amended

In Schedule 2 Division 2 delete "Residential property" and insert:

Residential land

15. Schedule 3 Division 8 inserted

After Schedule 3 Division 7 insert:

Division 8 — Provisions for *Duties Amendment (Additional Duty for Foreign Persons) Act 2018*

39. Terms used

When this Division uses a term that is used in Chapter 3A, the term has the same meaning in this Division as it has in Chapter 3A.

40. When Ch. 3A Pt. 2 starts to apply

Chapter 3A Part 2 applies in relation to the imposition of foreign transfer duty on a foreign dutiable transaction only if that transaction takes place on or after 1 January 2019.

41. Agreements entered into before 1 January 2019

(1) Foreign transfer duty is not chargeable on a transfer of residential property to a transferee in conformity with an agreement for the transfer of residential property if the agreement is entered into before 1 January 2019.

(2) If an agreement for the transfer of residential property is entered into before 1 January 2019, foreign transfer duty is not chargeable on the subsequent transfer of the property if, when liability for transfer duty on the agreement arose, the person named in the instrument effecting, or evidencing, the agreement as the purchaser was acting as the agent of the transferee of the subsequent transfer.

42. Declaration of trusts made before 1 January 2019

(1) Foreign transfer duty is not chargeable on a transfer to a trustee of residential property subject to a declaration of trust in respect of the same residential property if the declaration of trust was made before 1 January 2019.

(2) Foreign transfer duty is not chargeable on a declaration of trust that declares the same trusts as those upon and subject to which the same residential property was transferred, or agreed to be transferred, to the person declaring the trust if the transfer, or agreement, was made before 1 January 2019.

(3) Foreign transfer duty is not chargeable on a declaration of trust if —

(a) the declaration of trust supersedes another declaration of trust which was made before 1 January 2019 and declares the same trusts as were declared under the superseded declaration of trust; and

(b) the beneficiary under the declaration of trust is the same as under the superseded declaration of trust; and

(c) the residential property subject to the declaration of trust —

(i) is wholly or substantially the same as the property that was the subject of the superseded declaration of trust at the time of the declaration of the superseded declaration of trust; or

(ii) represents the proceeds of re-investment of property that was the subject of the superseded declaration of trust at the time of the declaration of the superseded declaration of trust; or

(iii) is property to which both subparagraphs (i) and (ii) apply.

43. Other transactions before 1 January 2019

(1) Foreign transfer duty is not chargeable on a transfer of residential property resulting from a foreign dutiable transaction referred to in section 205H(1)(d) if the vesting of the residential property was made before 1 January 2019.

(2) Foreign transfer duty is not chargeable on a transfer of residential property in accordance with a foreclosure order if the foreclosure order was made before 1 January 2019.

(3) Foreign transfer duty is not chargeable on a transfer of residential property in accordance with a residential partnership acquisition if

the residential partnership acquisition was made before 1 January 2019.

(4) Foreign transfer duty is not chargeable on a foreign dutiable transaction if —

(a) section 97 applies to the transaction and the person from whom the property is transferred or agreed to be transferred acquired the property before 1 January 2019; or

(b) section 114, 115 or 116 applies to the transaction and the trustee acquired the property before 1 January 2019; or

(c) section 117(1)(a) or (b) applies to the transaction and the apparent purchaser acquired the property before 1 January 2019.

44. When Ch. 3A Pt. 3 starts to apply

(1) Chapter 3A Part 3 applies in relation to the imposition of foreign landholder duty on a foreign landholder acquisition only if that acquisition occurs on or after 1 January 2019.

(2) For the purposes of subsection (1), when an acquisition of an interest in a residential landholder occurs is to be determined under section 176 as applied by section 205ZE(1).

45. Application of some Ch. 8 provisions

(1) Sections 272(2) and 273 as in force before the commencement of the *Duties Amendment (Additional Duty for Foreign Persons) Act 2018* section 15 apply in relation to a dutiable transaction that takes place before 1 January 2019.

(2) Section 273(2A) applies in relation to a foreign dutiable transaction only if that transaction takes place on or after 1 January 2019.

[11] On the date as at which this compilation was prepared, the *Strata Titles Amendment Act 2018* Pt. 3 Div. 5 had not come into operation. It reads as follows:

Part 3 — Other Acts amended

Division 5 — *Duties Act 2008* amended

130. Act amended

This Division amends the *Duties Act 2008*.

131. Section 3 amended

In section 3 insert in alphabetical order:

lease does not include a strata lease;

strata lease has the meaning given in the *Strata Titles Act 1985* section 3(1);

132. Section 17 amended

(1) Before section 17(2)(b) insert:

(ac) an estate in land created as a strata lot in a freehold or a leasehold scheme on the registration of the strata titles scheme or an amendment of the strata titles scheme under the *Strata Titles Act 1985*;

Note for this paragraph:

Common property created on the registration or amendment of a strata titles scheme is also not new dutiable property.

(ad) an estate in land created on termination of a strata titles scheme under the *Strata Titles Act 1985*;

(2) After section 17(2) insert:

(3) Without limiting section 11(1)(f), new dutiable property that is land in Western Australia includes an extension of the term of a strata lease for a lot in a leasehold scheme by the postponement of the expiry day for the scheme as referred to in the *Strata Titles Act 1985* section 50(3).

133. Section 18 amended

After section 18(c) insert:

(ca) a strata lease;

134. Section 87 amended

In section 87(2)(j)(ii) delete "strata/survey-strata plan" and insert:

strata titles scheme or an amendment of a strata titles scheme

135. Section 90 amended

(1) In section 90(b)(i) delete "strata lot; and" and insert:

lot in a strata scheme (within the meaning of the *Strata Titles Act 1985*); and

(2) In section 90(b)(ii) delete "strata".

136. Section 112 amended

(1) In section 112(6):

(a) in paragraph (a) delete "section 21I or 21M or an order under section 103P of that Act; or" and insert:

Schedule 2A clause 21I; or

(b) delete paragraphs (b) and (c);

(c) in paragraph (d) delete "Part II Division 2A or Part III Division 3," and insert:

Schedule 2A Part 4 Division 1 or 2,

[12] On the date as at which this compilation was prepared, the *Community Titles Act 2018* Pt. 14 Div. 6 had not come into operation. It reads as follows:

Part 14 — Other Acts amended

Division 6 — *Duties Act 2008* amended

203. Act amended

This Division amends the *Duties Act 2008*.

204. Section 17 amended

After section 17(2)(a) insert:

(aa) an estate in land created as a community lot in a community titles scheme on the registration of the community titles scheme or an amendment of the community titles scheme under the *Community Titles Act 2018*;

Note for this subparagraph:

Common property created on the registration or amendment of a community titles scheme is also not new dutiable property.

(ab) an estate in land referred to in the *Community Titles Act 2018* section 154(2)(b)(ii), (c)(ii) or (d)(iii) created

on termination of a community titles scheme under that Act;

205. Section 87 amended

After section 87(2)(j)(i) insert:

(ia) the registration of a community titles scheme or an amendment of a community titles scheme under the *Community Titles Act 2018*; or

206. Section 90 amended

Before section 90(b) insert:

(ab) for —

(i) the sale of a lot in a community titles (building) scheme (within the meaning of the *Community Titles Act 2018*); and

(ii) the construction on the lot, after liability for duty on the agreement arises, of a building for commercial, residential or mixed use purposes;

or

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[This is a list of terms defined and the provisions where they are defined. The list is not part of the law.]

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