

Western Australia

**Stamp Amendment Act (No. 3) 2000**

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As at 04 Dec 2000

No. 60 of 2000

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## Stamp Amendment Act (No. 3) 2000

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Western Australia

## **Stamp Amendment Act (No. 3) 2000**

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**No. 60 of 2000**

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**An Act to amend the *Stamp Act 1921* and for related purposes.**

*[Assented to 4 December 2000]*

The Parliament of Western Australia enacts as follows:

**1. Short title**

This Act may be cited as the *Stamp Amendment Act (No. 3) 2000*.

**2. Commencement**

This Act is deemed to have come into operation on 10 August 2000.

**3. The Act amended**

The amendments in this Act are to the *Stamp Act 1921*\*.

[\* *Reprinted as at 22 October 1999.*

*For subsequent amendments see 1999 Index to Legislation of Western Australia, Table 1, pp. 236-7, and Acts Nos. 6, 28 and 29 of 2000.]*

**4. Section 76 amended**

(1) Section 76(1) is amended as follows:

- (a) by deleting the definition of “acquire” and inserting the following definition instead —

“

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

- (a) that is chargeable with duty under section 73E(4);
- (b) that occurs solely as the result of —
- (i) the appointment of a receiver or trustee in bankruptcy;
- (ii) the appointment of a liquidator; or

- (iii) the making of a compromise or arrangement under Part 5.1 of the Corporations Law —
  - (I) which has been made with the corporation's creditors or a class of them;
  - (II) which has been approved by the court;
  - (III) which does not involve a cancellation of shares, or a variation, abrogation or alteration of the rights of shares, to which section 112HA applies or a conversion of shares to which section 112HB applies; and
  - (IV) in respect of which the Commissioner is satisfied that it is not an arrangement having as its purpose, or one of its purposes, the defeat of the object of this Part;
- (iv) the distribution of the estate of a deceased person, including an acquisition that occurs as the result of —
  - (I) a will, a codicil or an order of a court varying or modifying the provisions of a will or codicil; or
  - (II) an intestacy or an order of a court varying or modifying the application, in relation to the estate of a deceased person, of

the provisions of a law relating to the distribution of the assets of persons who die intestate;

or

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

”;

- (b) in the definition of “entitled” by inserting after “beneficially entitled” —

“

, and “**entitlement**” has a corresponding meaning

”;

- (c) in the definition of “mining tenement” —

- (i) after paragraph (a) by deleting “and”;
- (ii) after paragraph (b) by inserting —

“

and

- (c) a tenement, right or interest that is —

- (i) similar to a tenement or right referred to in paragraph (a) or (b); and
- (ii) held under the law of another State, a Territory, the Commonwealth or another jurisdiction;

”.

- (2) In section 76(1) the following definitions are inserted in their appropriate alphabetical positions —

“

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

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

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

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

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

”.

(3) Section 76(1) is amended by deleting the definition of “interest”.

(4) After section 76(1) the following subsection is inserted —

“

(1a) For the purpose of this Division a reference to the acquisition of an interest includes a reference to the acquisition of a majority interest or a further interest within the meaning of section 76AK or 76AR.

”.

(5) Section 76(4) is amended by deleting paragraph (c) and inserting the following paragraph instead —

“

(c) a majority shareholder in relation to a corporation is a person who would have a substantial holding in the corporation under the definition of “substantial holding” in section 9 of the

Corporations Law even if the reference in that definition to 5% were a reference to 50%.

”.

(6) After section 76(4) the following subsection is inserted —

“

(4a) For the purposes of this Part, a reference to entitlement to property of a corporation or trust, or to participate in a distribution of property of a corporation or trust, is a reference to entitlement otherwise than as a creditor or other person to whom the corporation or trust is liable, and a reference to distributable property is a reference to property distributable to persons otherwise than as creditors or other persons to whom the corporation or trust is liable.

”.

(7) Section 76(5) is repealed and the following subsections are inserted instead —

“

- (5) For the purposes of this Part, the entitlement that a person would have at a particular time to participate in the distribution of the property of a corporation on a winding up of the corporation is an entitlement to an amount calculated —
- (a) as if the winding up were carried out at that time in accordance with the rules of the corporation and any law relevant to the winding up, as the rules and law then exist; or
  - (b) as if the person had, immediately prior to the winding up, exercised all powers and discretions exercisable by the person by reason of having acquired an interest in the corporation —
    - (i) to effect or compel an alteration to the rules;

- (ii) to vary the rights conferred by shares in the corporation; or
- (iii) to effect or compel the substitution or replacement of shares in the corporation with other shares in the corporation,

in such manner as to maximise that amount,

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

- (5a) If the extent of a person's entitlement to participate in a distribution of the property of a corporation is unascertainable or uncertain, that entitlement shall be determined for the purposes of this Part as being the greatest entitlement that the person could derive from the distribution.

”.

- (8) Section 76(7) is amended after “76AI(4)” by inserting —  
“ , 76AP(4) ”.

## 5. Section 76A amended

Section 76A(1) is amended as follows:

- (a) after “company” by deleting “to which Division 2 applies”;
- (b) after “corporation” by deleting “to which Division 3 applies”.

**6. Section 76AB amended**

Section 76AB(2)(a) is amended by deleting “acquiring the total shareholding of the corporation or such lesser shareholding as he” and inserting instead —

“

having an entitlement referred to in  
section 76AR(1) to such an extent as the  
Commissioner

”.

**7. Section 76AG amended**

(1) Section 76AG(1) is repealed and the following subsection is inserted instead —

“

- (1) Where by a relevant acquisition a person acquires a majority interest or a further interest in —
- (a) a WA company to which this Division applies;  
or
  - (b) a WA company to which this Division would apply if the reference to the value of land in section 76AI(2)(b) were a reference to the value of land, goods, wares and merchandise,

the person shall prepare and lodge with the Commissioner a statement in respect of that acquisition.

”.

(2) Section 76AG(4) is amended as follows:

- (a) after paragraph (db) by deleting “and”;

- (b) after paragraph (e) by deleting the full stop and inserting —

“

; and

- (f) if the statement is lodged because of subsection (1)(b), a notation to that effect and such information relating to the goods, wares and merchandise referred to in subsection (1)(b), and their ownership and acquisition, as the approved form requires to be provided.

”.

- (3) Section 76AG(5) is repealed and the following subsections are inserted instead —

“

- (5) For the purposes of this Act —

- (a) a statement lodged because of subsection (1)(a); and  
(b) subject to subsection (5c), a statement lodged because of subsection (1)(b),

is to be regarded as an instrument executed on the day on which the relevant acquisition occurs.

- (5a) If, in the case of a statement lodged because of subsection (1)(b), the Commissioner is satisfied that the entitlement to, and valuation of, the goods, wares and merchandise referred to in subsection (1)(b) were not part of an arrangement or scheme having as its purpose, or one of its purposes, the defeat of the object of this Division, the Commissioner may determine that subsection (5) does not apply to the statement.

- (5b) In deciding whether or not to make a determination under subsection (5a) the Commissioner may have regard to —
- (a) the source of the goods, wares and merchandise and the source of funding for their acquisition;
  - (b) their nature and their relevance to any business carried on by the WA company or subsidiary;
  - (c) the period for which they have been and are likely to remain the property of the WA company or subsidiary; and
  - (d) any other matter that the Commissioner considers relevant.
- (5c) A determination made under subsection (5a) has effect according to its terms and the Commissioner is to give written notice of it to the person who lodged the statement.
- (5d) If the person who lodged the statement requests the Commissioner, in writing, to give reasons why the Commissioner has not made a determination under subsection (5a), the Commissioner is to give written reasons to the person.
- (5e) A person who —
- (a) is required to lodge a statement because of subsection (1)(b); and
  - (b) fails to do so within the period set out in subsection (3),
- commits an offence against this Act.

”.

**8. Section 76AH amended**

- (1) Section 76AH(1) is amended by deleting “statement lodged under section 76AG” and inserting instead —
- “ statement to which section 76AG(5) applies ”.
- (2) After subsection (2) the following subsection is inserted —
- “
- (2a) Subsection (2) does not apply unless —
- (a) the acquisition referred to in section 76AJ(1)(a)(i) or (ii) or (b), as the case may be, consists of the acquisition of a shareholding in a corporation; and
- (b) the shareholding acquired confers an entitlement to participate in a distribution of the property of the corporation (if the corporation were to be wound up) that bears the same relationship to the value of the distributable property as the shareholding acquired bears to the total shareholding in the corporation.
- ”.
- (3) Section 76AH(4) is amended by deleting “statement lodged under section 76AG” and inserting instead —
- “ statement to which section 76AG(5) applies ”.

**9. Section 76AI amended**

- (1) Section 76AI(2) is amended at the end of paragraph (b) by deleting “excluded by subsection (3).” and inserting instead —
- “
- excluded by subsection (3),
- or if the Commissioner determines that paragraphs (a) and (b) would have applied to the WA company at the time of the relevant acquisition but for a transaction, or

series of transactions, which in the Commissioner's opinion had as its purpose, or one of its purposes, the defeat of the object of this Division.

”.

(2) After section 76AI(2) the following subsections are inserted —

“

- (2a) If the Commissioner makes a determination under subsection (2), the Commissioner is to give written notice of it to the person who made the relevant acquisition.
- (2b) The notice is to contain written reasons for the determination.
- (2c) For the purposes of section 76AG(3) the relevant acquisition is to be regarded as having occurred when the notice is given.

”.

(3) Section 76AI(3) is amended as follows:

(a) after paragraph (b) by inserting —

“

- (ba) property consisting of rights or interests under a sales contract (including a forward sales contract) relating to minerals, primary products or other commodities;

”;

(b) after paragraph (e) by deleting “and” and inserting —

“

- (ea) a licence or patent or other intellectual property (including knowledge or information that has a commercial value) relating to any process, technique, method, design or apparatus to —
  - (i) locate, extract, process, transport or market minerals; or

- (ii) grow, rear, breed, maintain, produce, harvest, collect, process, transport or market primary products;
  - (eb) stores, stockpiles or holdings of minerals or primary products (whether processed or unprocessed) produced by the WA company or a related person;
  - (ec) future tax benefits (whether in the nature of tax losses, capital losses, foreign losses or foreign tax credits) under the *Income Tax Assessment Act 1997* or *Income Tax Assessment Act 1936* of the Commonwealth or similar benefits under the laws of another jurisdiction;
  - (ed) any property prescribed for the purposes of this subsection; and
- ”;
- (c) in paragraph (f) by deleting “the WA company’s ownership” and inserting instead —
    - “
    - ownership by the WA company or the subsidiary within the meaning in subsection (4)
    - ”.
- (4) After section 76AI(3) the following subsection is inserted —
- “
- (3a) In forming an opinion for the purposes of subsection (3)(f) the Commissioner may have regard to —
    - (a) the source of the property and the source of funding for its acquisition;
    - (b) its nature and its relevance to any business carried on by the WA company or the subsidiary;
    - (c) the period for which it has been and is likely to remain the property of the WA company or the subsidiary; and

(d) any other matter that the Commissioner considers relevant.

”.

(5) Section 76AI(4) is amended as follows:

(a) in paragraph (a) by deleting “Law;” and inserting instead —

“

Law, or any other corporation where the WA company would be entitled if the corporation were to be wound up, after the time of the relevant acquisition, to participate in a distribution of the property of the corporation to an extent greater than 50% of the value of the distributable property;

”;

(b) in paragraph (c) by deleting “participate (otherwise than as a creditor or other person to whom the corporation is liable) in a distribution of the property of the corporation to an extent greater than 50% of the value of the property distributable to all of the holders of shares in the corporation;” and inserting instead —

“

participate in a distribution of the property of the corporation to an extent greater than 50% of the value of the distributable property;

”.

(6) After section 76AI(4) the following subsections are inserted —

“

(5) In determining the entitlement of an entity to land for the purposes of this section or section 76AL —

(a) if the entity has contracted or agreed to acquire an interest in land, that contract or agreement is to be regarded as having been completed even if it has not yet been completed; and

- (b) if the entity has contracted or agreed to dispose of an interest in land but that contract or agreement has not yet been completed, that contract or agreement is to be disregarded.
- (6) In determining the entitlement of an entity to property other than land for the purposes of this section —
  - (a) if the entity has contracted or agreed to dispose of an interest in such property, that contract or agreement is to be regarded as having been completed even if it has not yet been completed; and
  - (b) if the entity has contracted or agreed to acquire an interest in such property but that contract or agreement has not yet been completed, that contract or agreement is to be disregarded.

”.

**10. Sections 76AJ and 76AK replaced**

Sections 76AJ and 76AK are repealed and the following sections are inserted instead —

“

**76AJ. Meaning of “relevant acquisition”**

- (1) An acquisition is a relevant acquisition for the purposes of this Division —
  - (a) if by that acquisition a person acquires a majority interest in a WA company by acquiring an interest —
    - (i) that is itself a majority interest in the WA company; or
    - (ii) that is, when taken with each previous acquisition of an interest in the WA company made by the person on or after

the relevant day for that acquisition, a majority interest in the WA company;

or

- (b) if by that acquisition a person acquires a further interest in the WA company.
- (2) If subsection (1)(b) applies to an acquisition, subsection (1)(a)(ii) does not apply to it.
  - (3) For the purposes of subsection (1)(a)(ii), if a person acquires an interest in a WA company (the **“earlier acquisition”**) and, after that acquisition, that person acquires another interest in the WA company (the **“later acquisition”**) because of an arrangement that was entered into during the relevant period, the earlier acquisition is to be regarded as having been made on or after the relevant day for the later acquisition even if it was not so made.
  - (4) In this section —
    - “relevant day”** for an acquisition means —
      - (a) if the acquisition was or is made on or after 10 August 2000 but before 11 August 2002 — 10 August 1999; or
      - (b) if the acquisition is made on or after 11 August 2002 — the day that is 3 years before the day of the acquisition.
  - (5) In subsection (3) —
    - “relevant period”** means —
      - (a) if the earlier acquisition was made before 10 August 1999 — the period beginning on the day that is one year before the day of that acquisition and ending on the day that is one year after the day of that acquisition;

- (b) if the earlier acquisition was made on or after 10 August 1999 but before 10 August 2000 — the period beginning on the day that is one year before the day of that acquisition and ending on the day that is 3 years after the day of that acquisition; or
  - (c) if the earlier acquisition was or is made on or after 10 August 2000 — the period beginning on the relevant day for that acquisition and ending on the day that is 3 years after the day of that acquisition.
- (6) Subsection (3) does not apply in relation to an arrangement entered into before 10 August 2000 unless, because of the arrangement, the person referred to in that subsection had the right to acquire the other interest referred to in that subsection.

**76AK. Meaning of acquiring an interest, majority interest or further interest**

- (1) For the purposes of this Division, a person acquires an interest in a WA company if the person acquires, or the person and any related person acquire, an entitlement such that the person, or the person and any related person, would be entitled if the WA company were to be wound up to participate in a distribution of the property of the WA company.
- (2) For the purposes of this Division, a person acquires a majority interest in a WA company if the person acquires, or the person and any related person acquire, an interest in the WA company such that having acquired that interest the person, or the person and any related person, would be entitled if the WA company were to be wound up to participate in a distribution of the property of the WA company to an extent greater than 50% of the value of the distributable property and,

s. 11

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in section 76AJ(1)(a)(i) and (ii) and subsection (3),  
“**majority interest**” has a corresponding meaning.

- (3) For the purposes of this Division, a person acquires a further interest in a WA company if —
- (a) the person has, or the person and any related person have, a majority interest in the WA company;
  - (b) the acquisition of that majority interest gave rise to a liability for duty under this Part; and
  - (c) the person acquires, or the person and any related person acquire, an interest in the WA company such that having acquired that interest the person, or the person and any related person, would be entitled if the WA company were to be wound up to participate further in a distribution of the property of the WA company.

”.

**11. Section 76AL amended**

- (1) Section 76AL(3)(a) is amended as follows:
- (a) by inserting a comma after “of section 76AH(1)(b)(i)”;
  - (b) by deleting “further acquisition;” and inserting instead —  
“ acquisition of the further interest; ”.
- (2) Section 76AL(5) is amended by deleting “(otherwise than as a creditor or other person to whom the WA company is liable)”.

**12. Section 76AM amended**

- (1) Section 76AM(1) is amended after “is liable” by inserting —  
“ , if section 76AG(5) applies to the statement, ”.

- (2) Section 76AM(2) is amended by deleting “a shareholding” and inserting instead —

“ an interest ”.

**13. Section 76AN amended**

- (1) Section 76AN(1) is repealed and the following subsection is inserted instead —

“

- (1) Where by a relevant acquisition a person acquires a majority interest or a further interest in —
- (a) a corporation to which this Division applies; or
  - (b) a corporation to which this Division would apply if the reference to the value of land in section 76AP(2)(b) were a reference to the value of land, goods, wares and merchandise,
- the corporation shall prepare and lodge with the Commissioner a statement in respect of that acquisition.

”.

- (2) Section 76AN(3) is amended as follows:

- (a) in paragraph (d) before “the unencumbered” by inserting —  
“ the corporation’s estimate of ”;
- (b) by deleting paragraphs (db) and (e) and “and” after paragraph (db) and inserting —

“

- (db) the corporation’s estimate of the unencumbered value of those chattels;
- (e) the corporation’s estimate of the unencumbered value of the assets of the corporation as at that date; and

- (f) if the statement is lodged because of subsection (1)(b), a notation to that effect and such information relating to the goods, wares and merchandise referred to in subsection (1)(b), and their ownership and acquisition, as the approved form requires to be provided.

”.

- (3) Section 76AN(4) is repealed and the following subsections are inserted instead —

“

- (4) For the purposes of this Act —
  - (a) a statement lodged because of subsection (1)(a); and
  - (b) subject to subsection (4c), a statement lodged because of subsection (1)(b),is to be regarded as an instrument executed on the day on which the relevant acquisition occurs.
- (4a) If, in the case of a statement lodged because of subsection (1)(b), the Commissioner is satisfied that the entitlement to, and valuation of, the goods, wares and merchandise referred to in subsection (1)(b) were not part of an arrangement or scheme having as its purpose, or one of its purposes, the defeat of the object of this Division, the Commissioner may determine that subsection (4) does not apply to the statement.
- (4b) In deciding whether or not to make a determination under subsection (4a) the Commissioner may have regard to —
  - (a) the source of the goods, wares and merchandise and the source of funding for their acquisition;
  - (b) their nature and their relevance to any business carried on by the corporation, trustee or related corporation;

- (c) the period for which they have been and are likely to remain the property of the corporation, trustee or related corporation; and
  - (d) any other matter that the Commissioner considers relevant.
- (4c) A determination made under subsection (4a) has effect according to its terms and the Commissioner is to give written notice of it to the corporation.
- (4d) If the corporation requests the Commissioner, in writing, to give reasons why the Commissioner has not made a determination under subsection (4a), the Commissioner is to give written reasons to the corporation.
- (4e) A corporation that —
- (a) is required to lodge a statement because of subsection (1)(b); and
  - (b) fails to do so within the period set out in subsection (2),
- commits an offence against this Act.

”.

- (4) Section 76AN(5) is amended by deleting “person who” and inserting —

“ corporation that ”.

**14. Section 76AO amended**

- (1) Section 76AO(1) is amended by deleting “lodged under section 76AN” and inserting instead —

“ to which section 76AN(4) applies ”.

(2) After section 76AO(2) the following subsection is inserted —

“

(2a) Subsection (2) does not apply unless —

- (a) the acquisition referred to in section 76AQ(1)(a)(i) or (ii) or (b), as the case may be, consists of the acquisition of a shareholding in a corporation; and
- (b) the shareholding acquired confers an entitlement to participate in a distribution of the property of the corporation (if the corporation were to be wound up) that bears the same relationship to the value of the distributable property as the shareholding acquired bears to the total shareholding in the corporation.

”.

(3) Section 76AO(4) is amended by deleting “lodged under section 76AN” and inserting instead —

“ to which section 76AN(4) applies ”.

**15. Section 76AP amended**

(1) Section 76AP(2) is amended at the end of paragraph (b) by deleting “excluded by subsection (3).” and inserting instead —

“

excluded by subsection (3),

or if the Commissioner determines that paragraphs (a) and (b) would have applied to the corporation at the time of the relevant acquisition but for a transaction, or series of transactions, which in the Commissioner’s opinion had as its purpose, or one of its purposes, the defeat of the object of this Division.

”.

(2) After section 76AP(2) the following subsections are inserted —

“

- (2a) If the Commissioner makes a determination under subsection (2), the Commissioner is to give written notice of it to the corporation.
- (2b) The notice is to contain written reasons for the determination.
- (2c) For the purposes of section 76AN(2) the relevant acquisition is to be regarded as having occurred when the notice is given.

”.

(3) Section 76AP(3) is amended as follows:

- (a) by deleting “or a related” and inserting instead —  
“ or another ”;
- (b) after paragraph (b) by inserting —

“

- (ba) property consisting of rights or interests under a sales contract (including a forward sales contract) relating to minerals, primary products or other commodities;

”;

- (c) in paragraph (d) by deleting “a related” and inserting instead —  
“ another ”;
- (d) after paragraph (d) by deleting “and” and inserting —

“

- (da) a licence or patent or other intellectual property (including knowledge or information that has a commercial value) relating to any process, technique, method, design or apparatus to —
  - (i) locate, extract, process, transport or market minerals; or

- (ii) grow, rear, breed, maintain, produce, harvest, collect, process, transport or market primary products;
  - (db) stores, stockpiles or holdings of minerals or primary products (whether processed or unprocessed) produced by the corporation or a related person;
  - (dc) future tax benefits (whether in the nature of tax losses, capital losses, foreign losses or foreign tax credits) under the *Income Tax Assessment Act 1997* or *Income Tax Assessment Act 1936* of the Commonwealth or similar benefits under the laws of another jurisdiction;
  - (dd) any property prescribed for the purposes of this subsection; and
- ”;
- (e) in paragraph (e) by deleting “the corporation’s ownership” and inserting instead —
    - “
    - ownership by the corporation or the trustee or other corporation referred to in subsection (4)
    - ”.
- (4) After section 76AP(3) the following subsection is inserted —
- “
- (3a) In forming an opinion for the purposes of subsection (3)(e) the Commissioner may have regard to —
    - (a) the source of the property and the source of funding for its acquisition;
    - (b) its nature and its relevance to any business carried on by the corporation or the trustee or other corporation;

- (c) the period for which it has been and is likely to remain the property of the corporation or the trustee or other corporation; and
- (d) any other matter that the Commissioner considers relevant.

”.

- (5) Section 76AP(4) is amended by deleting paragraph (b) and inserting —

“

- (b) in a case where the entitlement to participate referred to in section 76AR(2) or (3), (whichever is applicable to the relevant acquisition) relates to the corporation itself, any of the following corporations is entitled to that land or property —

- (i) a corporation that is a subsidiary (as defined in the Corporations Law) of the corporation;
- (ii) any other corporation where the corporation would be entitled if the other corporation were to be wound up, after the time of the relevant acquisition, to participate in a distribution of the property of the other corporation to an extent greater than 50% of the value of the distributable property;

or

- (c) in a case where the entitlement to participate referred to in section 76AR(2) or (3), (whichever is applicable to the relevant acquisition) relates to a holding corporation (as defined in section 76AR(4)(a)) of the

corporation, any of the following corporations is entitled to that land or property —

- (i) a corporation that is a subsidiary (as defined in the Corporations Law) of the holding corporation;
- (ii) any other corporation where the holding corporation would be entitled if the other corporation were to be wound up, after the time of the relevant acquisition, to participate in a distribution of the property of the other corporation to an extent greater than 50% of the value of the distributable property.

”.

(6) After section 76AP(4) the following subsections are inserted —

“

- (5) In determining the entitlement of an entity to land for the purposes of this section or section 76AS —
  - (a) if the entity has contracted or agreed to acquire an interest in land, that contract or agreement is to be regarded as having been completed even if it has not yet been completed; and
  - (b) if the entity has contracted or agreed to dispose of an interest in land but that contract or agreement has not yet been completed, that contract or agreement is to be disregarded.
- (6) In determining the entitlement of an entity to property other than land for the purposes of this section —
  - (a) if the entity has contracted or agreed to dispose of an interest in such property, that contract or agreement is to be regarded as having been completed even if it has not yet been completed; and

- (b) if the entity has contracted or agreed to acquire an interest in such property but that contract or agreement has not yet been completed, that contract or agreement is to be disregarded.

”.

## 16. Sections 76AQ and 76AR replaced

Sections 76AQ and 76AR are repealed and the following sections are inserted instead —

“

### 76AQ. Meaning of “relevant acquisition”

- (1) An acquisition is a relevant acquisition for the purposes of this Division —
  - (a) if by that acquisition a person acquires a majority interest in a corporation by acquiring an interest —
    - (i) that is itself a majority interest in the corporation; or
    - (ii) that is, when taken with each previous acquisition of an interest in the corporation made by the person on or after the relevant day for that acquisition, a majority interest in the corporation;
  - or
  - (b) if by that acquisition a person acquires a further interest in the corporation.
- (2) If subsection (1)(b) applies to an acquisition, subsection (1)(a)(ii) does not apply to it.
- (3) For the purposes of subsection (1)(a)(ii), if a person acquires an interest in a corporation (the “**earlier acquisition**”) and, after that acquisition, that person acquires another interest in the corporation (the “**later**

**acquisition**”) because of an arrangement that was entered into during the relevant period, the earlier acquisition is to be regarded as having been made on or after the relevant day for the later acquisition even if it was not so made.

(4) In this section —

**“relevant day”** for an acquisition means —

- (a) if the acquisition was or is made on or after 10 August 2000 but before 11 August 2002 — 10 August 1999; or
- (b) if the acquisition is made on or after 11 August 2002 — the day that is 3 years before the day of the acquisition.

(5) In subsection (3) —

**“relevant period”** means —

- (a) if the earlier acquisition was made before 10 August 1999 — the period beginning on the day that is one year before the day of that acquisition and ending on the day that is one year after the day of that acquisition;
- (b) if the earlier acquisition was made on or after 10 August 1999 but before 10 August 2000 — the period beginning on the day that is one year before the day of that acquisition and ending on the day that is 3 years after the day of that acquisition; or
- (c) if the earlier acquisition was or is made on or after 10 August 2000 — the period beginning on the relevant day for that acquisition and ending on the day that is 3 years after the day of that acquisition.

- (6) Subsection (3) does not apply in relation to an arrangement entered into before 10 August 2000 unless, because of the arrangement, the person referred to in that subsection had the right to acquire the other interest referred to in that subsection.

**76AR. Meaning of acquiring an interest, majority interest or further interest**

- (1) For the purposes of this Division, a person acquires an interest in a corporation if the person acquires, or the person and any related person acquire, an entitlement such that the person, or the person and any related person, would be entitled if the property of the corporation or the holding corporation were to be distributed (in the case of a corporation on the basis of a winding up) to participate in a distribution of the property of the corporation or holding corporation.
- (2) For the purposes of this Division, a person acquires a majority interest in a corporation if the person acquires, or the person and any related person acquire, an interest in the corporation such that having acquired that interest the person, or the person and any related person, would be entitled if the property of the corporation or a holding corporation were to be distributed (in the case of a corporation on the basis of a winding up) to participate in a distribution of the property of the corporation or holding corporation to an extent greater than 50% of the value of the distributable property and, in section 76AQ(1)(a)(i) and (ii) and subsection (3), “**majority interest**” has a corresponding meaning.
- (3) For the purposes of this Division, a person acquires a further interest in a corporation if —
- (a) the person has, or the person and any related person have, a majority interest in the corporation;

- (b) the acquisition of that majority interest gave rise to a liability for duty under this Part; and
  - (c) the person acquires, or the person and any related person acquire, an interest in the corporation such that having acquired that interest the person, or the person and any related person, would be entitled if the property of the corporation or a holding corporation were to be distributed (in the case of a corporation on the basis of a winding up) to participate further in a distribution of the property of the corporation or holding corporation.
- (4) In this section **“holding corporation”** in relation to a corporation —
- (a) means a corporation —
    - (i) that is an ultimate holding company as defined in section 9 of the Corporations Law; or
    - (ii) of which a body corporate is a subsidiary by virtue of Division 6 of Part 1.2 of the Corporations Law;
- and
- (b) is deemed to include —
    - (i) any trust if the trustee of the trust would be entitled if the corporation or a holding corporation (as defined in paragraph (a)) were to be wound up to participate in a distribution of the property of the corporation or holding corporation to an extent greater than 50% of the value of the distributable property;

- (ii) a corporation, if in respect of any trust referred to in subparagraph (i) that corporation —
  - (I) is entitled to a share or interest in the trust whether vested or contingent; or
  - (II) in the case of a discretionary trust, may benefit from that trust;and
- (iii) any other corporation, or the trustee of any other trust that would by an application of this subsection be a holding corporation of a corporation that is a holding corporation of the corporation.

”.

**17. Section 76AS amended**

- (1) Section 76AS(3)(a) is amended as follows:
  - (a) after “of section 76AO(1)(b)(i)” by inserting a comma;
  - (b) by deleting “further acquisition;” and inserting instead —
    - “ acquisition of the further interest; ”.
- (2) Section 76AS(5) is amended by deleting “(otherwise than as a creditor or other person to whom the corporation or a holding corporation is liable)”.

**18. Section 76AT amended**

Section 76AT is amended by deleting “to pay the duty chargeable under sections 76AO and 76AS.” and inserting instead —

“

, if section 76AN(4) applies to the statement, to pay the duty chargeable under this Division.

”.

**19. Part IIIBA Division 4 inserted**

After Part IIIBA Division 3 the following Division is inserted —

“

**Division 4 — Reassessment of liability for duty**

**76AU. Definitions and operation**

(1) In this Division —

“**assessment**” means the assessment of duty issued in relation to the statement;

“**duty**” means duty chargeable under Division 2 or 3, whichever is applicable;

“**statement**” means the statement that was charged with duty;

“**taxpayer**” means —

- (a) a person liable under section 76AM to pay duty; or
- (b) a corporation liable under section 76AT to pay duty.

(2) This Division is in addition to the provisions of Part III relating to the reassessment of duty and does not affect the operation of those provisions.

**76AV. Request for reassessment of liability for duty**

- (1) A taxpayer may request the Commissioner to reassess the taxpayer's liability to pay duty if —
  - (a) the taxpayer considers that the duty would not have been chargeable, or that the amount of the duty would have been less, but for the operation of section 76AI(5)(a) or (6)(a) or 76AP(5)(a) or (6)(a) in relation to a contract or agreement mentioned in the request; and
  - (b) that contract or agreement has been rescinded, annulled or otherwise terminated without being completed.
- (2) A taxpayer may request the Commissioner to reassess the taxpayer's liability to pay duty if —
  - (a) the taxpayer considers that the duty would not have been chargeable, or that the amount of the duty would have been less, but for the operation of section 76AI(5)(b) or (6)(b) or 76AP(5)(b) or (6)(b) in relation to a contract or agreement mentioned in the request; and
  - (b) that contract or agreement has been completed.
- (3) A request for reassessment must be made in writing and can only be made within 5 years after the date on which the assessment was issued.

**76AW. Reassessment**

- (1) If the Commissioner is satisfied that the contract or agreement mentioned in a request under section 76AV(1) has been rescinded, annulled or otherwise terminated without being completed, the Commissioner is to consider whether or not duty would have been chargeable and, if so, the amount of duty that would have been chargeable, but for the operation

of section 76AI(5)(a) or (6)(a) or 76AP(5)(a) or (6)(a), as the case may be.

- (2) If the Commissioner is satisfied that the contract or agreement mentioned in a request under section 76AV(2) has been completed, the Commissioner is to consider whether duty would have been chargeable and, if so, the amount of duty that would have been chargeable, but for the operation of section 76AI(5)(b) or (6)(b) or 76AP(5)(b) or (6)(b), as the case may be.
- (3) If after consideration under subsection (1) or (2) the Commissioner is of the opinion that a reassessment of duty is appropriate, the Commissioner is to —
  - (a) issue the reassessment; and
  - (b) endorse on the statement —
    - (i) a notation that this Part no longer applies to it and that it is not chargeable with duty; or
    - (ii) the reduced amount of duty with which it is chargeable,as the case requires.
- (4) Without limiting subsection (3), if after consideration under subsection (1) the Commissioner is not satisfied that the rescission, annulment or other termination of the contract or agreement was not part of a scheme or arrangement under which the object of the contract or agreement has been or may be achieved in another way, the Commissioner is not obliged to issue a reassessment.

**76AX. Effect of reassessment**

- (1) A reassessment supersedes the assessment.

- (2) A reassessment that results in the statement being endorsed under section 76AW(3)(b)(ii) does not invalidate proceedings for the recovery of duty but an appropriate adjustment may be made to the amount to be recovered in the proceedings to accord with the reassessment.
- (3) If an objection to the assessment is lodged and, before determination of the proceedings on the objection, a reassessment that results in the statement being endorsed under section 76AW(3)(b)(ii) is issued, the proceedings may be continued against the reassessment to the extent that it is liable to the same objection or to an objection that is the same or similar in substance.

**76AY. Refund of duty or payment of reassessed amount**

- (1) If a reassessment results in the statement being endorsed under section 76AW(3)(b)(i), the Commissioner is to refund the amount of any duty which may have been paid in accordance with the assessment and the amount of any fine charged under section 20 or 31AC.
- (2) If a reassessment results in the statement being endorsed under section 76AW(3)(b)(ii), the Commissioner is to refund the amount of any excess of duty which may have been paid in accordance with the assessment and the amount of any excess of any fine charged under section 20 or 31AC.
- (3) If no duty or less than the reassessed amount of duty has been paid in accordance with the assessment, section 31AC(1), (7) and (8) apply.

”.

**20. Consequential amendments**

- (1) Section 32(6) is amended by inserting after “31AA” —  
“ or 76AW ”.
- (2) Section 73DA(3)(b) is amended as follows:
  - (a) by deleting “has a shareholding in the company that would entitle him” and inserting instead —  
“ would be entitled ”;
  - (b) by deleting “to all the holders of shares in the company” and inserting instead —  
“  
otherwise than to creditors, or other persons to whom the company is liable  
”.
- (3) Section 75HA(6)(b) and section 75I(1)(b) are amended by deleting “under Division 2 of Part IIIBA” and inserting instead —  
“ to which section 76AG(5) applies ”.
- (4) Section 75HA(7)(b) is amended by deleting “statement under Division 2 of Part IIIBA” and inserting instead —  
“ statement to which section 76AG(5) applies ”.
- (5) Section 75HA(7)(b)(ii) is amended by deleting “lodged under Division 2 of Part IIIBA” and inserting instead —  
“ to which section 76AG(5) applies ”.
- (6) Section 75J(1) is amended in the definition of “Part IIIBA statement” by deleting “under Part IIIBA” and inserting instead —  
“ to which section 76AG(5) or 76AN(4) applies ”.

**21. Transitional**

- (1) In this section —
- “amended provisions”** means the provisions of Part IIIBA and sections 32, 73DA, 75HA, 75I and 75J of the *Stamp Act 1921* as enacted after the coming into operation of this Act;
- “existing provisions”** means the provisions of Part IIIBA and sections 32, 73DA, 75HA, 75I and 75J of the *Stamp Act 1921* as enacted before the coming into operation of this Act.
- (2) Subject to subsection (3), the existing provisions continue to apply to and in relation to an acquisition of an interest in a corporation that occurred before 10 August 2000 and the amended provisions do not apply to it.
- (3) Subsection (2) does not affect the operation of the amended provisions in relation to an acquisition of an interest that occurred before 10 August 2000 in so far as those provisions have effect for the purpose of determining whether an acquisition that occurred on or after 10 August 2000 is a relevant acquisition for the purposes of those provisions.
- (4) If —
- (a) a legally enforceable agreement in writing was executed before 10 August 2000;
  - (b) that agreement created before 10 August 2000 an entitlement to an interest in a corporation; and
  - (c) that entitlement resulted or results in that interest being acquired on or after 10 August 2000 but before 1 January 2001,

the acquisition of that interest is to be regarded for the purposes of subsections (2) and (3) as having occurred before 10 August 2000.

- (5) Despite section 76AG(3) or 76AN(2), as the case may be, of the amended provisions, if —
- (a) an acquisition of an interest in a corporation occurred on or after 10 August 2000 but before this Act receives the Royal Assent;
  - (b) a statement has to be lodged under section 76AG or 76AN in respect of that acquisition because of the operation of the amended provisions; and
  - (c) the existing provisions would not have required such a statement to be lodged,

the statement may be lodged at any time before the end of the period of 3 months after the day on which this Act receives the Royal Assent.

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