

WESTERN AUSTRALIA

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**REVENUE LAWS AMENDMENT  
(ASSESSMENT) ACT (NO. 2) 1996**

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**No. 48 of 1996**

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**AN ACT to amend the —**

- ***Business Franchise (Tobacco) Act 1975;***
- ***Debits Tax Assessment Act 1990;***
- ***Land Tax Assessment Act 1976;*** and
- ***Stamp Act 1921,***

**and for related purposes.**

[Assented to 25 October 1996.]

The Parliament of Western Australia enacts as follows:

## **PART 1 — PRELIMINARY**

### **Short title**

1. This Act may be cited as the *Revenue Laws Amendment (Assessment) Act (No. 2) 1996*.

### **Commencement**

2. (1) Subject to this section this Act comes into operation on the day on which it receives the Royal Assent.

(2) Divisions 1 and 2 of Part 5 are deemed to have come into operation on 30 November 1995.

(3) Division 3 of Part 5 is deemed to have come into operation on 15 July 1996.

(4) Division 4 of Part 5 —

- (a) if this Act receives the Royal Assent on or before 1 October 1996 — comes into operation on 1 October 1996; or
- (b) if this Act receives the Royal Assent after 1 October 1996 — is deemed to have come into operation on 1 October 1996.

**PART 2 — BUSINESS FRANCHISE (TOBACCO) ACT 1975**

**Principal Act**

3. In this Part the *Business Franchise (Tobacco) Act 1975\** is referred to as the principal Act.

[\* Reprinted as at 20 August 1987.  
For subsequent amendments see 1995 Index to  
Legislation of Western Australia, Table 1, p. 26.]

**Section 2 amended**

4. (1) Section 2 (1) of the principal Act is amended by deleting the definition of “corporation” and substituting the following definition —

“  
“**corporation**” has the same meaning as in the  
Corporations Law;  
”.

(2) Section 2 (1) of the principal Act is amended by inserting in the appropriate alphabetical positions the following definitions —

“  
“**associate**” means —  
(a) in relation to a corporation, any of the  
following —  
(i) a director of the corporation;  
(ii) an individual who participates in the  
direction or management of the corporation;

- (iii) an individual whose directions any director ordinarily follows in his capacity as director; and
    - (iv) an employee of the corporation;
  - (b) in relation to an applicant or licensee who is an individual referred to in section 7B (1) (b) (ii), any of the following —
    - (i) a business associate or other individual who participates in the direction or management of the tobacco retailing or tobacco wholesaling carried on by the individual;
    - (ii) an individual whose directions the individual ordinarily follows in his business; and
    - (iii) an employee of the individual;
  - (c) in relation to an applicant or licensee who is a member of a firm referred to in section 7B (1) (b) (iii), any of the following —
    - (i) an individual member of the firm;
    - (ii) an associate of a corporation which is a member of the firm;
    - (iii) an individual who participates in the direction or management of the firm;
    - (iv) an individual whose directions a member of the firm ordinarily follows in his business; and
    - (v) an employee of the firm;
- and

- (d) in relation to a licensee or an applicant for a licence who is acting as trustee of a trust which will receive any benefits or proceeds from the business of tobacco retailing or tobacco wholesaling conducted under the licence, any of the following individuals in addition to those referred to in paragraph (a), (b) or (c) —
  - (i) a trustee of the trust, where the trustee is an individual; and
  - (ii) an employee of the trustee;

**“firm”** means an unincorporated body of persons registered under the *Business Names Act 1962*;

**“record”** means any thing or process —

- (a) upon or by which information is recorded or stored; or
- (b) by means of which a meaning can be conveyed by any means in a visible or recoverable form,

whether or not the use or assistance of some electronic, electrical, mechanical, chemical or other device or process is required to recover or convey the information or meaning;

”.

(3) After section 2 (9) of the principal Act the following subsection is inserted —

“

(10) A reference in this Act to a member of a firm is a reference —

- (a) in the case of a partnership, to a partner; or
- (b) in any other case, to a member of the unincorporated body constituting the firm.

”.

**Section 4 amended**

5. Section 4 of the principal Act is amended —

(a) in subsection (1c) by deleting “accounts, records, books or documents” and substituting the following —

“ records ”;

(b) in subsection (1e) (a) by deleting “account, record, book or document” and substituting the following —

“ record ”; and

(c) in subsection (4) by deleting “account, record, book or document” and substituting the following —

“ record ”.

**Section 5 amended**

6. Section 5 of the principal Act is amended in subsection (2) (b) by deleting “document” and substituting the following —

“ record ”.

**Section 6 amended**

7. After section 6 (3) of the principal Act the following subsections are inserted —

“

(4) A person shall not, in the course of carrying on tobacco retailing or tobacco wholesaling, purchase tobacco which was, at the time of a previous sale, the subject of a declaration under section 10 (4), except in accordance with an authorization in writing by the Commissioner.

Penalty: \$40 000.

(5) A person is not guilty of an offence against subsection (4) if he proves to the satisfaction of the court that he did not know that the tobacco had been subject to the declaration and had made all reasonable inquiries into the matter.

”.

**Section 7 amended**

**8.** Section 7 of the principal Act is amended in subsection (2) by deleting “, but not otherwise” and substituting the following —

“ in accordance with sections 7B and 7C ”.

**Sections 7B, 7C and 7D inserted**

**9.** After section 7A of the principal Act, the following sections are inserted —

“

**Conditions for the issue of a licence**

**7B.** (1) The Commissioner may refuse to issue a licence applied for under section 7 (1) if he is not satisfied that —

- (a) the issuing of the licence would not be contrary to the public interest;
- (b) the applicant is —
  - (i) the corporation;
  - (ii) the individual; or
  - (iii) a member of the firm,

that will carry on tobacco retailing or tobacco wholesaling under the licence;

- (c) the applicant, if the applicant is an individual, is a fit and proper person to sell tobacco;
- (d) the associates of the applicant are fit and proper persons to occupy their positions in relation to the applicant in the applicant's selling of tobacco;
- (e) the applicant has the necessary financial resources and business skills to conduct a viable business in accordance with the licence;
- (f) the applicant has suitable premises for the safe storage and distribution of tobacco; and
- (g) the persons required to provide information or authorizations under this section have done so in accordance with the requirement.

(2) Subject to subsection (3), the applicant shall furnish the Commissioner with such particulars as the Commissioner requires about —

- (a) if the applicant is a corporation other than a public company, each director and shareholder; and
- (b) if the applicant is a trustee of a trust which will receive any benefits or proceeds from tobacco retailing or tobacco wholesaling conducted under the licence —
  - (i) each trustee;
  - (ii) in the case of a unit trust, each unit-holder; and
  - (iii) in the case of a discretionary trust, each guardian, appointor and beneficiary.



(3) Where information required under subsection (2) has previously been furnished to the Commissioner under this section and under section 12E, it is sufficient for the applicant to certify that the information has been so furnished.

(4) The Commissioner may —

- (a) require the applicant or any associate of the applicant to furnish the Commissioner with any further information which he requires for the purposes of subsection (1);
- (b) require the applicant or any associate of the applicant to authorize any other person holding information about that applicant or associate which the Commissioner requires for the purposes of subsection (1) to furnish the Commissioner with the information; and
- (c) require a person authorized under paragraph (b) to furnish him with the information.

(5) A person required by the Commissioner to provide an authorization or furnish information under subsection (4) may refuse to provide the authorization or furnish the information, but a person who does so has not fulfilled the requirement for the purposes of subsection (1) (g).

(6) In order to satisfy himself as to the matters referred to in subsection (1) (e), the Commissioner may require the applicant to submit a plan for the operation of the business.

(7) A person who furnishes false or misleading information to the Commissioner for the purposes of this section shall be guilty of an offence.

Penalty: \$40 000.

(8) A person is not guilty of an offence against subsection (7) if he proves to the satisfaction of the court that he believed that the information was true and complete, and could not with reasonable diligence have ascertained that it was not.

(9) Where the Commissioner refuses to issue a licence, or issues a licence with restrictions under section 7C, the Commissioner shall notify the applicant in writing of the reasons for the refusal or the restrictions.

### **Conditions on licences**

**7C.** A licence may specify restrictions on the tobacco products which may be sold under the licence.

### **Cancellation of a licence**

**7D.** (1) The Commissioner may cancel a licence at any time if he ceases to be satisfied as to the matters referred to in section 7B (1).

(2) The Commissioner may cancel a licence if the licensee fails to provide a notice required under section 12E.

(3) The Commissioner may cancel a licence if the licensee or an associate of the licensee is convicted of —

- (a) an offence against this Act, the *Tobacco Control Act 1990* or any law of the Commonwealth or any other State or Territory dealing with the regulation of tobacco; or
- (b) an offence against any law of Western Australia, the Commonwealth or any other State or Territory for which the maximum penalty on conviction is a fine of \$5 000 or more, or a term of imprisonment of 3 months or more.

(4) Where the licensee is convicted of an offence referred to in subsection (3), he shall forthwith notify the Commissioner of the conviction.

Penalty: \$20 000.

”.

**Section 8 amended**

**10.** (1) Section 8 (1a) of the principal Act is amended by deleting “A sale” and substituting the following —

“ Subject to subsection (1ab), a sale ”.

(2) After section 8 (1a) of the principal Act the following subsection is inserted —

“ (1ab) A sale of tobacco to which subsection (1a) (a) applies is not exempt from subsection (1) if, when the tobacco was purchased, it was subject to a declaration for the purposes of section 10 (4).

”.

**Section 10 amended**

**11.** (1) After section 10 (1) of the principal Act the following subsection is inserted —

“ (1a) The Minister may, by instrument published in the *Gazette*, approve a method to be applied in any period for determining the value of tobacco sold for the purposes of subsection (1).

”.

(2) Section 10 (2) of the principal Act is amended by deleting “The value” and substituting the following —

“ If no method has been approved under subsection (1a) in relation to a period, the value

”.

(3) Section 10 (4) of the principal Act is repealed and the following subsections are substituted —

“

(4) The value of tobacco sold shall be disregarded in determining the fees payable under this section if —

- (a) the tobacco is subsequently delivered and consumed outside the State; or
- (b) the purchaser has declared in writing that the tobacco will be delivered and consumed outside the State and the seller has taken reasonable steps to satisfy himself that the declaration was made in good faith.

(5) A person who makes a false declaration for the purposes of subsection (4) (b) shall be guilty of an offence.

Penalty: \$40 000.

”.

#### **Section 12A amended**

**12.** (1) Section 12A (1) of the principal Act is amended by deleting “did not do so,” and substituting the following —

“ did not hold the necessary licence, ”.

(2) Section 12A (2) and (3) of the principal Act are repealed and the following subsections are substituted —

“

(2) In assessing the fee that would have been payable under section 10 in respect of a period, the Commissioner may —

- (a) elect to treat any tobacco acquired by the person during the relevant period, and later sold, as having been sold during the relevant period;

- (b) presume that any tobacco acquired by the person has been sold, unless the contrary is proved;
  - (c) for the purposes of sections 10 (1) (o), (p), (r) and (s), presume that any tobacco sold by the person was not sold to the holder of a wholesale tobacco merchant's licence or a group tobacco licence, unless the contrary is proved; and
  - (d) for the purposes of sections 10 (1) (q) and (t), presume that any tobacco acquired by the person was not purchased from the holder of a wholesale tobacco merchant's licence or a group tobacco licence or from a tobacco retailer, unless the contrary is proved.
- (3) Where the periods in respect of which the person did not hold the licence required by this Act exceed 5 years in total —
- (a) only periods of not more than 5 years in total shall be taken into account for the purposes of subsection (1); and
  - (b) the Commissioner shall select the periods to be taken into account.
- (4) As soon as practicable after an assessment has been made under this section, the Commissioner shall serve a notice of the assessment on the person assessed.
- (5) The amount specified in the notice of the assessment is due and payable by the person assessed within 14 days after the notice is served on him.

”.

**Section 12D amended**

**13.** Section 12D of the principal Act is amended in subsection (1) by deleting “or 8 (1)” and substituting the following —

“  
    , 6 (4), 7B (7), 7D (4), 8 (1), 8 (3), 10 (5), 12E (1), 12E (2),  
    14 (1), 14 (3), 14 (4) or 14A (2)  
”.

**Section 12E inserted**

**14.** After section 12D of the principal Act, the following section is inserted —

“  
**Information required from licensee corporations and trustees**

**12E.** (1) If a licensee is a corporation other than a public company, the corporation shall notify the Commissioner within 7 days of —

- (a) the appointment of any director;
- (b) the transfer of any share;
- (c) the issue, redemption or cancellation of any share; and
- (d) a variation of the rights under any share.

Penalty: \$40 000.

(2) If a licensee is a trustee of a trust which will receive any benefits or proceeds from tobacco retailing or tobacco wholesaling conducted under the licence, the trustee shall notify the Commissioner within 7 days of —

- (a) the appointment of a trustee;

- (b) in the case of a unit trust —
  - (i) the transfer of any unit;
  - (ii) the issue, redemption or cancellation of any unit; and
  - (iii) a variation in the rights under any unit;and
- (c) in the case of a discretionary trust —
  - (i) the appointment of a guardian or appointor; and
  - (ii) the addition of a new beneficiary of the trust.

Penalty: \$40 000.

(3) A notice under this section shall include such particulars as the Commissioner requires for the purposes of section 7D (1).

”.

### **Section 13 amended**

**15.** Section 13 of the principal Act is amended by inserting after subsection (2) the following subsection —

“

(3) Section 7B applies to the transfer of a licence under this section as if the application for a transfer were an application by the transferee for a new licence.

”.

**Section 13A amended**

**16.** Section 13A of the principal Act is amended —

- (a) by deleting “Treasurer” in each place that it appears and substituting the following —

“ Minister ”; and

- (b) in subsection (1) by deleting “or section 13 (2)” and substituting the following —

“ , 7B (1), 7C, 7D or 13 (2) ”.

**Section 14 amended**

**17.** (1) Section 14 (1) of the principal Act is amended by deleting “accounts, records, books and documents” in each place that the phrase appears and substituting the following —

“ records ”.

(2) Section 14 (2) of the principal Act is amended by deleting “books, accounts or documents” and substituting the following —

“ records ”.

(3) After section 14 (2) of the principal Act the following subsections are inserted —

“ (3) Any records required to be kept under this section shall be kept in English.

Penalty: \$40 000.

(4) Subject to this section, any records required to be kept under this section shall be kept within Western Australia.

Penalty: \$40 000.



(5) The Commissioner may, by instrument in writing made on the application of a person required to keep records under this section, authorize the records to be kept outside Western Australia.

(6) An authorization under subsection (5) may be limited as to the type of record, or as to the places at which they may be kept.

”.

**Section 14A inserted**

**18.** After section 14 of the principal Act the following section is inserted —

“

**Provision of information to the Commissioner**

**14A.** (1) The Commissioner may require the holder of a licence to provide particulars of sales of tobacco by the holder the value of which is to be disregarded under section 10 in determining the fees payable under that section.

(2) A person who fails or neglects duly to furnish any information or to comply with any requirement of the Commissioner under this section shall be guilty of an offence.

Penalty: \$20 000.

(3) A person is not guilty of an offence against subsection (2) by reason of his failure to furnish information if he proves to the satisfaction of the court that he did not have knowledge of, and could not with reasonable diligence have ascertained or obtained, the information.

”.

**Section 15 amended**

**19.** Section 15 of the principal Act is amended —

(a) in subsection (1) by deleting “books, documents and other papers whatsoever” and substituting the following —

“ records ”; and

(b) in subsection (6) by deleting “book, document or other paper” and “book, document or paper” and substituting in both places the following —

“ record ”.

**Section 18 amended**

**20.** Section 18 of the principal Act is amended in subsection (1) by deleting “other document” and substituting the following —

“ record ”.

**PART 3 — DEBITS TAX ASSESSMENT ACT 1990**

**Section 4 amended**

**21.** Section 4 of the *Debits Tax Assessment Act 1990*\* is amended —

(a) by deleting “For” and substituting the following —

“ (1) Subject to subsection (2), for ”; and

(b) by inserting at the end of the section the following subsection —

“  
(2) Subsection (1) does not apply to a debit that is, or is within a kind or class of debits that is, prescribed for the purposes of this section.  
”.

[\* *Act No. 57 of 1990.*

*For subsequent amendments see Acts Nos. 14 and 20 of 1996.]*

**PART 4 — LAND TAX ASSESSMENT ACT 1976**

**Principal Act**

**22.** In this Part the *Land Tax Assessment Act 1976\** is referred to as the principal Act.

[\* *Approved for reprint 1 December 1982.*  
*For subsequent amendments see 1995 Index to*  
*Legislation of Western Australia, Table 1, pp. 121-2*  
*and Acts Nos. 12, 14 and 20 of 1996.]*

**Application**

**23.** The amendments made by this Part apply in respect of the year of assessment that commenced on 1 July 1996 and each subsequent year of assessment.

**Section 5 amended**

**24.** Section 5 (1) of the principal Act is amended by inserting in the appropriate alphabetical positions the following definitions —

“

**“metropolitan region”** has the same meaning as it has in the *Metropolitan Region Town Planning Scheme Act 1959*;

**“town planning scheme”** means a town planning scheme for the time being in force under the *Town Planning and Development Act 1928*;

”.

**Section 15A amended**

25. (1) Section 15A (1) of the principal Act is amended —
- (a) in paragraph (i) of the definition of “the taxable portion of the land” by inserting after “10” the following —
    - “ of Part I ”; and
  - (b) by deleting paragraphs (b) and (c) and substituting the following paragraphs —
    - “
    - (b) land is subdivided when —
      - (i) a plan of subdivision of the land is approved by the Western Australian Planning Commission (“**the Commission**”) for the purposes of section 20 (2) of the *Town Planning and Development Act 1928*;
      - (ii) a transfer, conveyance, lease or mortgage of any land is approved by the Commission under section 21 (1) (a) of that Act or an application for the creation and registration of a certificate of title is approved by it under section 21 (2) of that Act and the effect of the approval is to allow a dealing with a part of the land which is less than a whole lot;
      - (iii) the Minister allows an appeal under section 26 of that Act and by doing so gives any approval referred to in subparagraph (i) or (ii);

- (iv) any plan required to be accompanied by a certificate under section 25 of the *Strata Titles Act 1985* is approved by the Commission; or
- (v) any statement is endorsed on a plan under section 25B of the *Strata Titles Act 1985*;
- (c) an approval referred to in paragraph (b) is conclusively presumed to have been given on the date appearing in the approval as endorsed on the plan, instrument or application referred to in that paragraph.

”.

(2) Section 15A (2) (a) of the principal Act is deleted and the following paragraph is substituted —

“

- (a) the land tax shall be assessed for each year of assessment during the relevant period —
  - (i) at the rate imposed by the *Land Tax Act 1976*;
  - (ii) on the unimproved value, as determined under section 26, of the taxable portion of the land; and
  - (iii) as if the taxable portion of the land were the only land of the owner liable to land tax for that year;

”.

(3) Section 15A (2) (b) of the principal Act is amended by deleting “any year” and substituting the following —

“ any such year ”.

**Section 15B inserted**

**26.** After section 15A of the principal Act the following section is inserted —

“

**Further provision relating to the subdivision of land previously exempt or taxed concessionally**

**15B.** (1) In this section and in clause 12 (c) (iv) of Part I of the Schedule, unless the contrary intention appears —

- (a) “**exempt subdivision**” means a subdivision for the purpose of defining an area of land to be taken or resumed under a written law relating to the compulsory acquisition of land;

“**owner**” means the owner of specially treated land on the day on which the land is subdivided or, if the ownership changes on that day, the first owner on that day;

“**relevant land**” means land —

- (i) situated in the metropolitan region; or
- (ii) situated outside that region but zoned other than for rural purposes under a town planning scheme;

“**specially treated land**” means any relevant land to which an exemption or concession under clause 12 of Part I of the Schedule applies or applied for any one or more years of assessment during the relevant period;

**“the relevant period”** means —

- (i) the 5 years of assessment reckoned retrospectively from and including the year of assessment in which the specially treated land is subdivided; or
- (ii) the years of assessment reckoned from and including the year of assessment in which the previously exempt land is subdivided retrospectively to the year of assessment which commenced on 1 July 1996,

whichever is the lesser period;

**“the taxable portion of the land”** means the specially treated land after subtracting —

- (i) any part of the land to which an exemption under clause 9 or 10 of Part I of the Schedule applied immediately after the land was subdivided, being an exemption arising from the use of the land by the person who was the owner as defined in this subsection; and
- (ii) any part of the land that immediately after the land was subdivided consisted of a lot of 2.0234 hectares or more that was zoned for rural purposes under a town planning scheme;



- (b) land is subdivided when —
- (i) a plan of subdivision of the land is approved by the Western Australian Planning Commission (“**the Commission**”) for the purposes of section 20 (2) of the *Town Planning and Development Act 1928*;
  - (ii) a transfer, conveyance, lease or mortgage of any land is approved by the Commission under section 21 (1) (a) of that Act or an application for the creation and registration of a certificate of title is approved by it under section 21 (2) of that Act and the effect of the approval is to allow a dealing with a part of the land which is less than a whole lot;
  - (iii) the Minister allows an appeal under section 26 of that Act and by doing so gives any approval referred to in subparagraph (i) or (ii);
  - (iv) any plan required to be accompanied by a certificate under section 25 of the *Strata Titles Act 1985* is approved by the Commission; or
  - (v) any statement is endorsed on a plan under section 25B of the *Strata Titles Act 1985*;
- (c) an approval referred to in paragraph (b) is conclusively presumed to have been given on the date appearing in the approval as endorsed on the plan, instrument or application referred to in that paragraph.

(2) Where during or after the year of assessment commencing on 1 July 1996 any specially treated land is subdivided, otherwise than under an exempt subdivision,

the owner of the land is, notwithstanding clause 12 of Part I of the Schedule, liable to pay land tax on the taxable portion of the land assessed in accordance with the following provisions of this subsection —

- (a) the land tax shall be assessed for each year of assessment during the relevant period —
  - (i) at the rate imposed by the *Land Tax Act 1976*;
  - (ii) on the unimproved value, as determined under section 26, of the taxable portion of the land; and
  - (iii) as if the taxable portion of the land were the only land of the owner liable to land tax for that year;
- (b) where land tax has already been charged on any part of the taxable portion of the land under section 14 for any such year of assessment, the assessment under this section shall be reduced by the amount so charged.

(3) Nothing in this section affects the liability of any person for land tax on the taxable portion of the land for any year of assessment after that in which the land is subdivided.

”.

### **Section 22 amended**

27. (1) Section 22 (1) of the principal Act is repealed and the following subsections are substituted —

“

(1) Subsection (1a) applies where an exemption or concession mentioned in section 21 (1) or (2) does not apply to a lot or parcel, or part of a lot or parcel, because of a qualification specified in the Schedule, other than in clause 9 (b) (ii), (iii), (iv), (v) or (vi) of Part I.

(1a) Where this subsection applies the Commissioner may, for reasonable cause shown by the person who apart from this section is liable to pay the land tax, grant the exemption or concession as to the whole or part of the lot or parcel.

”.

(2) Section 22 (2) of the principal Act is amended by deleting “for exemption under subsection (1)” and substituting the following —

“ under subsection (1a) ”.

### **Schedule amended**

**28.** (1) The Schedule to the principal Act is amended in Part I —

(a) in clause 12 (a) (i) —

(i) by deleting the definitions of “metropolitan region” and “town planning scheme”; and

(ii) by deleting “; and” at the end of the definition of “total net income” and substituting a full stop;

and

(b) by inserting after clause 12 (c) (ii) the following subparagraphs —

“

(iii) Where land would be exempt land under this clause but for the operation of subparagraph (ii) (II), the owner or owners of the land shall be liable for assessment and taxation under this Act at 50% of the rate imposed by the *Land Tax Act 1976*.

(iv) Where on or after 1 July 1996 any specially treated land is subdivided, the land or part of the land shall be liable to assessment and taxation as provided in section 15B.

”.

(2) The Schedule to the principal Act is amended in Part III by repealing clause 1 and substituting the following clause —

“

1. (1) In this clause —

“**relevant purpose**” means a purpose that allows an exemption or concession under Part I of the Schedule to apply to land.

(2) Where a lot or parcel of land is used or reserved for both a relevant purpose and a purpose that is not a relevant purpose, any exemption or concession that may apply shall do so only to the extent of the proportion of the part of the lot or parcel that is used, or would be used under the reservation, for the relevant purpose, bears to the whole of the lot or parcel.

”.

**PART 5 — STAMP ACT 1921**

***Division 1 — Preliminary***

**Principal Act**

**29.** In this Part the *Stamp Act 1921*\* is referred to as the principal Act.

[\* *Reprinted as at 23 January 1996.  
For subsequent amendments see Acts Nos. 14 and 20  
of 1996.*]

***Division 2 — Amendments deemed to have commenced on  
30 November 1995***

**Third Schedule amended**

**30.** (1) The Third Schedule to the principal Act is amended in item 2 by inserting after subitem (15) the following subitem —

“  
(16) A transfer of a share of a WA company, or a right in respect of such a share, if —  
(a) the share or right is listed on a stock exchange situated outside Australia;  
(b) the stock exchange is prescribed for the purposes of this subitem; and  
(c) *ad valorem* duty, whether stamp or similar duty, is required to be paid on the transfer under the law of the place where the stock exchange is situated.  
”

(2) Regulations made for the purposes of item 2 (16) in the Third Schedule to the principal Act, as inserted by subsection (1), if made within 3 months after this Act is assented to, may commence at a time specified in the regulations that is not earlier than 30 November 1995.

***Division 3 — Amendments deemed to have commenced  
on 15 July 1996***

**Section 4 amended**

**31.** (1) Section 4 (1) of the principal Act is amended by deleting the definition of “right in respect of shares” and substituting the following definition —

“ **“right in respect of shares”** means a security, however described, that is or represents —

- (a) a right, whether actual, prospective or contingent, to be allotted or issued with an unissued marketable security, whether or not any money or other consideration is to be payable for the issue; or
- (b) a beneficial interest in a marketable security being a marketable security that is listed on a prescribed stock exchange (as defined in section 112A),

but does not include a security that is prescribed, or that is in a class of security that is prescribed;

”.

(2) Regulations made for the purposes of the definition substituted in section 4 (1) of the principal Act by subsection (1), if made within 3 months after this Act is assented to, may commence at a time specified in the regulations that is not earlier than 15 July 1996.

**Section 64 amended**

**32.** (1) Section 64 (1) of the principal Act is amended —

- (a) by inserting after “marketable security” the following —

“ or right in respect of shares ”; and

(b) by inserting after “such security” the following —

“ or right ”.

(2) Section 64 (2) of the principal Act is amended by inserting after “marketable security” the following —

“ or right in respect of shares ”.

**Section 66 amended**

**33.** Section 66 of the principal Act is amended by deleting “or marketable security” in the 2 places where it occurs and substituting in each case the following —

“ , marketable security or right in respect of shares ”.

**Section 82 amended**

**34.** Section 82 (1) of the principal Act is amended by deleting paragraph (d) and substituting the following paragraph —

“ (d) a marketable security or right in respect of shares, ”.

**Section 112B repealed and a section substituted**

**35.** Section 112B of the principal Act is repealed and the following section is substituted —

“

**Where marketable securities etc. situated**

**112B.** (1) These marketable securities and rights in respect of shares (other than a right in respect of shares described in paragraph (b) of the definition in section 4 of

“right in respect of shares”) shall be treated for the purposes of this Act as if they are situated in this State:

- (a) a marketable security or right in respect of shares of a WA company; irrespective of where the register on which it is registered by the company is situated and despite section 1085 (3) of the Corporations Law or any other law;
- (b) a marketable security or a right in respect of shares of a foreign company — if it is registered on a register kept in this State by that company or if it is not registered on a register kept in Australia, if the company's registered office is in this State;
- (c) a marketable security that is a unit of a unit trust scheme — if the scheme's principal register is kept in this State;
- (d) a marketable security that is a unit of a unit trust scheme no register of which is kept in Australia —
  - (i) if the scheme has a manager and the manager is a natural person resident in this State or a relevant company; or
  - (ii) if the scheme does not have a manager but has a trustee that is a natural person resident in this State or a relevant company.

(2) A right in respect of shares described in paragraph (b) of the definition in section 4 of “right in respect of shares” shall be treated for the purposes of this Act as if it is situated in the place where the marketable security to which it relates is situated or is treated as being situated for the purposes of this Act.



(3) Despite section 1085 (3) of the Corporations Law or any other law, unless otherwise provided in this Act, a marketable security, or a right in respect of shares, of a company incorporated under the Corporations Law of another State or a Territory, if registered on a register in this State, shall not, for the purposes of this Act, be treated as if it is situated in this State.

(4) The situation of a marketable security or a right in respect of shares that is not referred to in this section is not affected by this section.

”.

### **Section 112FG amended**

**36.** Section 112FG of the principal Act is amended by deleting paragraph (c) and substituting the following paragraph —

“

(c) the security is, or the right is in respect of —

(i) a share of a relevant company; or

(ii) a unit of a unit trust scheme the principal register of which is situated in this State;

”.

### **Second Schedule amended**

**37.** The Second Schedule to the principal Act is amended in item 4A (1) by deleting paragraphs (a) to (e) and substituting the following paragraph —

“

(a) if the marketable security or right in respect of shares is, or under section 112B is to be treated as if it is, situated in this State,

”.

**Third Schedule amended**

**38.** The Third Schedule to the principal Act is amended in item 2 by inserting the following subitem —

“

- (17) A transfer of a marketable security to or from CHESSE Depository Nominees Pty. Ltd. that is made in connection with the issue or redemption of a right in respect of shares that is or represents a beneficial interest in that marketable security.

”.

***Division 4 — Amendments that commence on  
1 October 1996***

**Section 20 amended**

**39.** Section 20 (3) of the principal Act is amended by deleting “If” and substituting the following —

“

Except in the case of an assessment issued in respect of duty or a fine chargeable under section 75JE or 75JF, if

”.

**Section 32 amended**

**40.** Section 32 (6) of the principal Act is amended by deleting “and section 33.” and substituting the following —

“ , section 33, section 75JA (3) or section 75JB (7). ”.

**Section 75B repealed**

**41.** Section 75B of the principal Act is repealed.

**Part IIIBAAA inserted**

**42.** After section 75I of the principal Act the following Part is inserted —

“  
**PART IIIBAAA — EXEMPTIONS FOR CORPORATE  
RECONSTRUCTIONS**

**Interpretation in this Part**

**75J.** (1) In this Part, unless the contrary intention appears —

“**body corporate**” does not include a corporation sole;

“**dormant**”, in relation to a body corporate, has the same definition as in the Corporations Law;

“**Part IIIBA statement**” means a statement lodged under Part IIIBA;

“**section 31B statement**” means a statement lodged under section 31B;

“**shares**” includes stock.

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

(a) 2 bodies corporate are associated if —

(i) one of them beneficially owns (directly or indirectly) at least 90% of the issued share capital of, and has voting control over, the other; or

(ii) a third company beneficially owns (directly or indirectly) at least 90% of the issued share capital of each body corporate and has voting control over each body corporate;

- (b) a body corporate (“A”) has voting control over another body corporate (“B”) if A is in a position to cast or control the casting of at least 90% of the maximum number of votes that might be cast at a general meeting of B (excluding any power to vote by any person by virtue of the provisions of any debentures or a trust deed securing the issue of such debentures);
  - (c) if the claw-back applies —
    - (i) in the case of an instrument, section 75JE applies; or
    - (ii) in the case of a Part IIIBA statement, section 75JF applies.
- (3) In this Part, other than section 75JA, unless the contrary intention appears —

**“issued share capital”** means issued share capital that carries the right to unlimited participation in the distribution of income and capital of a body corporate.

(4) In this Part, other than section 75JA, a statement lodged and deemed to be an instrument under section 31B is deemed to be an instrument executed on the day on which the transaction to which the statement relates occurred.

#### **Corporate reconstructions: exemptions**

**75JA.** (1) This section applies if in connection with a scheme for the reconstruction of a body corporate or the amalgamation of bodies corporate —

- (a) a body corporate (“**the transferee**”) acquires at least 90% of the issued share capital of —
  - (i) a body corporate; or

(ii) each of 2 or more bodies corporate that were associated with one another immediately prior to the acquisition,

(“**the target**”);

- (b) the transferee is incorporated in Australia and has been dormant from when it was incorporated until it resolves to make the acquisition;
- (c) at least 90% of the consideration for the acquisition of the target, or if there are 2 or more targets, each target, consists of the issue of shares in the transferee to the holders of shares in the target or targets in exchange for those shares;
- (d) each holder of shares in the target or targets whose shares are acquired receives consideration equal in value to the value of those shares; and
- (e) immediately after the acquisition at least 90% of the issued share capital of the transferee consists of shares issued in consideration for the acquisition of shares in the target or, if there are 2 or more targets, for the acquisition of shares in all the targets.

(2) If on an application under section 75JD, it is shown to the satisfaction of the Commissioner that this section applies, then —

- (a) the Commissioner shall exempt an instrument executed on or after 1 October 1996 for or in connection with the transfer of the shares acquired by the transferee in the target or targets from duty under item 4A of the Second Schedule; and

- (b) if the acquisition is a relevant acquisition under Part IIIA that occurs on or after 1 October 1996 — the Commissioner shall exempt a Part IIIA statement lodged in respect of the relevant acquisition from duty chargeable under section 76AH or 76AO.

(3) If a Part IIIA statement is exempted under subsection (2) (b) and within 5 years after the date of the occurrence of the relevant acquisition to which the statement relates —

- (a) the transferee issues or cancels any shares or varies the rights of any of its shares; or
- (b) the beneficial interest in any share in the transferee issued in the circumstances described in subsection (1) (c) is transferred from the person to whom the share was issued,

then —

- (c) the transferee shall notify the Commissioner in writing in a form approved by the Commissioner within one month after the relevant event; and
- (d) the claw-back applies unless, in a case where paragraph (b) applies, the Commissioner is satisfied that the transfer is in connection with a scheme for the reconstruction of a body corporate or the amalgamation of bodies corporate.

**Corporate reorganizations: exemption from duty on conveyances between associated bodies corporate**

**75JB.** (1) This section applies if —

- (a) an instrument conveys, transfers or assigns a beneficial interest in property from one body corporate (“A”) to another body corporate (“B”);

- (b) the instrument does not convey, transfer or assign any other interest or property which if separately conveyed, transferred or assigned would not be exempt under this Act;
- (c) A and B are associated bodies corporate;
- (d) at the date of execution of the instrument, A and B have been associated bodies corporate for at least the qualifying period unless —
  - (i) A and B became associated in the circumstances described in section 75JA (1) (a) to (e);
  - (ii) A and B have been associated since A acquired at least 90% of the issued share capital —
    - (A) of B on its incorporation in Australia; or
    - (B) of B as a body corporate incorporated in Australia that had been dormant since it was incorporated,and B has been dormant from when A and B became associated until B resolved to acquire the beneficial interest; or
  - (iii) A and B became associated because B acquired at least 90% of the issued share capital of A, a Part III BA statement was lodged in respect of that acquisition, and *ad valorem* duty was paid in respect of that statement;
- (e) B does not hold the beneficial interest on trust for another person; and

- (f) the instrument was not made pursuant to or in connection with an arrangement under which —
    - (i) the consideration, or any part of it, for the conveyance, transfer or assignment was to be provided or received, directly or indirectly, by a person other than A or B or a body corporate that at the time the instrument was executed was associated with either A or B; or
    - (ii) A or B or a body corporate associated with either of them is to be enabled to provide any of the consideration or is to dispose of any of the consideration by or in consequence (wholly or partially) of the carrying out of a transaction involving a payment or other disposition by a person other than A or B or a body corporate associated with either of them at the time the instrument was executed.
- (2) In subsection (1) (d) the qualifying period is the shorter of 3 years or —
- (a) if prior to A acquiring the beneficial interest, the interest was owned by bodies corporate associated with A — the period while the interest was continuously owned by A and those associated bodies corporate;
  - (b) if the beneficial interest came into the ownership of A or of a body corporate associated with A by means of an instrument on which *ad valorem* duty has been paid in this State or elsewhere — the period since that instrument was executed; or
  - (c) in any other case — for the period since A acquired the beneficial interest.



(3) If on an application under section 75JD it is shown to the satisfaction of the Commissioner that this section applies, then —

- (a) the Commissioner shall exempt an instrument executed on or after 1 October 1996 to which this section applies from duty under item 4, 4A, 13 (3) or 19 of the Second Schedule; and
- (b) if the conveyance, transfer or assignment effected by an instrument to which this section applies is a relevant acquisition under Part IIIA that occurs on or after 1 October 1996 — the Commissioner shall exempt a Part IIIA statement lodged in respect of the relevant acquisition from duty chargeable under section 76AH or 76AO.

(4) If within 5 years after the execution of the instrument or the date of the relevant acquisition —

- (a) A and B cease to be associated;
- (b) B, being a body corporate that became associated with A in the circumstances described in section 75JA (1) (a) to (e), issues or cancels any shares or varies the rights of any of its shares; or
- (c) the beneficial interest in any share in B issued in the circumstances described in section 75JA (1) (c) is transferred from the person to whom the share was issued; or
- (d) B's assets are distributed on a liquidation,

A and B, or B, or the person (as the case requires) shall notify the Commissioner in writing in a form approved by the Commissioner within one month after the relevant event.

(5) If within 5 years after the execution of the instrument or the date of the relevant acquisition A and B cease to be associated then the claw-back applies unless A and B cease to be associated in circumstances where A has no assets or no assets other than cash or money in an account at call or on deposit with any person or a negotiable instrument.

(6) If within 5 years after the execution of the instrument or the date of the relevant acquisition B's assets are distributed to its shareholders on a liquidation, then the claw-back applies.

(7) If A and B became associated in the circumstances described in section 75JA (1) (a) to (e) and within 5 years after the execution of the instrument or the date of the relevant acquisition A and B cease to be associated in circumstances where the claw-back does not apply under subsection (5) and —

- (a) B issues or cancels any shares or varies the rights of any of its shares;
- (b) the beneficial interest in any share in B issued in the circumstances described in section 75JA (1) (c) is transferred from the person to whom the share was issued; or
- (c) B's assets are distributed to its shareholders on a liquidation,

then the claw-back applies unless, in a case where paragraph (b) applies, the Commissioner is satisfied that the transfer is in connection with a scheme for the reconstruction of a body corporate or the amalgamation of bodies corporate.

(8) If the claw-back applies under subsection (7), A shall not be liable to pay any duty or fine under section 75JE or 75JF.

**Corporate reorganizations: application for pre-determination**

**75JC.** (1) A person acting on behalf of a body corporate that proposes to be party to a transaction that would give rise to an instrument, a section 31B statement or a Part IIIIBA statement which, if executed or lodged, might be exempt from duty under section 75JA or 75JB, may request the Commissioner to determine whether a draft of that instrument or statement, if executed or lodged, would be so exempt.

(2) The request shall be in writing in a form approved by the Commissioner.

(3) The Commissioner may require the person making the request to provide a copy of the draft instrument or statement and any information and evidence that the Commissioner needs to make the determination.

(4) If the Commissioner is given sufficient information to do so the Commissioner shall make the requested determination.

(5) If the Commissioner determines that an exemption would be granted then, on an application under section 75JD for an exemption, the Commissioner shall grant the exemption unless —

- (a) the executed instrument or the lodged section 31B statement or Part IIIIBA statement, differs in a material particular to the draft provided;
- (b) circumstances relating to the executed instrument, the section 31B statement or the Part IIIIBA statement and relevant for the purposes of sections 75JA and 75JB differ materially from those that related to the draft provided; or

- (c) the Commissioner is of the opinion that in relation to the request for a determination there was not a full and true disclosure of relevant information and evidence.

**Corporate reorganizations: application for exemption**

**75JD.** (1) An application for an exemption under section 75JA or 75JB shall be —

- (a) in a form approved by the Commissioner; and
- (b) lodged with the Commissioner within 12 months after the execution of the instrument concerned, or in the case of a Part IIIIBA statement, after the date of the occurrence of the relevant acquisition.

(2) The Commissioner may require the person making the application to provide any information and evidence that the Commissioner needs to determine the application.

(3) If an application is made in respect of —

- (a) an instrument executed on or after 1 October 1996 on which duty under item 4, 4A, 13 (3) or 19 of the Second Schedule has been paid; or
- (b) a Part IIIIBA statement lodged in respect of a relevant acquisition that occurred on or after 1 October 1996 on which duty has been paid,

and the application is granted, the Commissioner shall refund any duty paid.

(4) If any information given to the Commissioner in relation to an exempted instrument or Part IIIIBA statement is false in a material particular or any material information is not given to the Commissioner the claw-back

applies and the fine is to be calculated to the date an assessment for the duty and fine is issued by the Commissioner.

**Claw-back (instruments)**

**75JE.** (1) If this section applies to an instrument —

- (a) the instrument shall be deemed not to have been exempted;
- (b) the instrument shall be charged with a fine equal to 20% per annum of the duty chargeable on the instrument calculated from the date of the execution of the instrument to the date the Commissioner is notified under section 75JB (4), or if the Commissioner is not so notified, to the date an assessment for that duty and fine is issued by the Commissioner;
- (c) the duty and fine shall be paid within one month after an assessment for the duty and fine is issued by the Commissioner;
- (d) the parties to the instrument or, in the case of a section 31B statement, the parties to the transaction, are jointly and severally liable to pay the duty and fine;
- (e) if a body corporate that is liable to pay the duty and fine has been wound up voluntarily, its directors at the time of the resolution to wind-up shall be jointly and severally liable to pay the duty and fine unless the Commissioner is satisfied that —
  - (i) the winding-up was a creditors' voluntary winding-up (as defined in the Corporations Law); and

- (ii) no creditor was an associate (as defined in the Corporations Law) of the body corporate;
- and
- (f) on payment of the duty and fine the instrument shall be deemed to have been duly stamped.

(2) The Commissioner may remit wholly or in part a fine chargeable under subsection (1).

**Claw-back (Part IIIBA statements)**

**75JF.** (1) If this section applies to a Part IIIBA statement —

- (a) the statement shall be deemed not to have been exempted;
- (b) the statement shall be charged with a fine equal to 20% per annum of the duty chargeable on the statement calculated from the date of the relevant acquisition to the date the Commissioner is notified under section 75JA (3) (c) or 75JB (4), or if the Commissioner is not so notified, to the date an assessment for that duty and fine is issued by the Commissioner;
- (c) the duty and fine shall be paid within one month after an assessment for the duty and fine is issued by the Commissioner;
- (d) these persons are jointly and severally liable to pay the duty and fine:
  - (i) in the case of a statement lodged under section 76AG — the parties to the

instrument that gave rise to the relevant acquisition;

- (ii) in the case of a statement lodged under section 76AN — the parties to the instrument that gave rise to the relevant acquisition and the corporation that is required to lodge the statement;
  - (e) if a body corporate that is liable to pay the duty and fine has been wound up voluntarily, its directors at the time of the resolution to wind-up shall be jointly and severally liable to pay the duty and fine unless the Commissioner is satisfied that —
    - (i) the winding-up was a creditors' voluntary winding-up (as defined in the Corporations Law); and
    - (ii) no creditor was an associate (as defined in the Corporations Law) of the body corporate;
- and
- (f) on payment of the duty and fine the statement shall be deemed to have been duly stamped.

(2) The Commissioner may remit wholly or in part a fine chargeable under subsection (1).

**Offences and recovery of duty etc.**

**75JG.** (1) If a person contravenes section 75JA (3) (c) or 75JB (4) —

- (a) the person commits an offence against this Act; and

- (b) in the case of a body corporate, an officer (as defined in section 9 of the Corporations Law) of the body corporate who is knowingly a party to the contravention commits an offence against this Act,

and is liable not only to the penalty referred to in section 116 but also to pay a penalty equal to the duty that would have been payable in respect of the instrument or Part IIIA statement had it not been exempted under section 75JA or 75JB.

(2) If a body corporate contravenes section 75JA (3) (c) or 75JB (4) and the Commissioner is for any reason unable to recover the duty or fine referred to in section 75JE or 75JF, each officer (as defined in section 9 of the Corporations Law) of the body corporate at the time of the contravention who is knowingly a party to the contravention shall be liable for the duty or fine, as the case may be.

(3) If in connection with a request under section 75JC or an application under section 75JD, a person gives the Commissioner information knowing that it is false in a material particular or knowingly does not give the Commissioner all material information, the person commits an offence against this Act and is liable not only to the penalty referred to in section 116 but also to pay a penalty —

- (a) if a draft has been provided to the Commissioner under section 75JC — equal to duty that would have been chargeable on the draft had it been executed or lodged; or
- (b) if an application for an exemption has been made under section 75JD — equal to the duty chargeable on the instrument or statement concerned.

”.



**Section 112EA inserted**

**43.** After section 112E of the principal Act the following section is inserted —

“

**Certain exchanges of marketable securities —  
exemption**

**112EA.** (1) Duty shall not be charged on —

- (a) the transfer of a marketable security or marketable securities by a person (“**A**”) to the trustee of a prescribed listed unit trust (“**T**”) if the transfer is made in return for the issue, in accordance with the terms of the trust, by T to A of a unit or units in that trust; or
- (b) the transfer of a marketable security or marketable securities by the trustee of a prescribed listed unit trust (“**T**”) to a person (“**A**”) if the transfer is made, in accordance with the terms of the trust, by T to redeem a unit or units in the trust from A.

(2) In subsection (1) —

“**listed unit trust**” means a unit trust scheme whose units are listed on a prescribed stock exchange.

”.

***Division 5 — Amendments that commence on Royal Assent***

**Section 63 amended**

**44.** (1) Section 63 (2) of the principal Act is repealed and the following subsection is substituted —

“

(2) A unit trust scheme is a private unit trust scheme if at the time of any conveyance, transfer or disposition of a unit or sub-unit —

(a) in relation to the unit trust scheme —

- (i) there is not in force a deed that is an approved deed for the purposes of Division 5 of Part 7.12 of the Corporations Law; or
- (ii) there is in force a deed that is an approved deed for the purposes of Division 5 of Part 7.12 of the Corporations Law but no units have been issued to the public or an insufficient number of persons is beneficially entitled to units under the scheme;

and

(b) the unit trust scheme —

- (i) is not an approved deposit fund or a pooled superannuation trust within the meaning of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth; or

- (ii) is an approved deposit fund or a pooled superannuation trust within the meaning of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth but no units have been issued to the public or an insufficient number of persons is beneficially entitled to units under the scheme.

”.

(2) Section 63 (4) of the principal Act is amended by inserting after “subsection (2)” the following —

“ (a) (ii) and ”.