



Western Australia

Duties Amendment (Additional Duty for Foreign Persons) Act 2018

As at 17 Oct 2018

No. 24 of 2018
Published on www.legislation.wa.gov.au

Duties Amendment (Additional Duty for Foreign Persons) Act 2018

Contents

| | | |
|---|--|----|
| 1. | Short title | 2 |
| 2. | Commencement | 2 |
| 3. | Act amended | 2 |
| 4. | Section 3 amended | 2 |
| 5. | Section 147A amended | 2 |
| 6. | Section 147C amended | 3 |
| 7. | Section 147D amended | 3 |
| 8. | Chapter 3A inserted | 3 |
| Chapter 3A — Additional duty for foreign persons | | |
| Part 1 — Preliminary | | |
| 205A. | Terms used | 3 |
| 205B. | Associate | 5 |
| 205C. | Foreign corporation | 5 |
| 205D. | Foreign trust | 6 |
| 205E. | Residential property | 7 |
| Part 2 — Foreign transfer duty | | |
| Division 1 — Preliminary | | |
| 205F. | Terms used | 8 |
| Division 2 — Imposition of foreign transfer duty | | |
| 205G. | Foreign transfer duty imposed | 9 |
| Division 3 — Foreign dutiable transactions | | |
| 205H. | Foreign dutiable transaction | 10 |
| 205I. | New residential property | 11 |
| Division 4 — Collection of foreign transfer duty | | |
| 205J. | When liability for duty arises | 12 |
| 205K. | Who is liable to pay duty | 12 |
| 205L. | Joint tenants to be treated as tenants in common in equal shares | 13 |

Contents

| | | |
|---|--|----|
| 205M. | Foreign transfer duty declaration to be lodged | 13 |
| 205N. | When duty must be paid | 13 |
| 205O. | Rate of foreign transfer duty | 14 |
| 205P. | Dutiable value | 14 |
| 205Q. | No double foreign transfer duty | 15 |
| 205R. | Interim assessment of foreign transfer duty | 16 |
| Division 5 — Application of Chapter 2 Part 5 to certain transactions | | |
| 205S. | Application of Chapter 2 Part 5 to foreign dutiable transactions | 16 |
| 205T. | References to residential trust acquisition | 18 |
| 205U. | References to residential trust surrender | 18 |
| 205V. | Dutiable value of residential trust acquisition or residential trust surrender | 18 |
| 205W. | Share disposition taken to be agreement for transfer of trust property | 20 |
| 205X. | References to residential partnership acquisition | 21 |
| Division 6 — Exemptions and reassessment | | |
| Subdivision 1 — Exempt transactions | | |
| 205Y. | Transactions on which minimum, nominal or no transfer duty payable | 21 |
| 205Z. | Transactions relating to agreements for transfer of residential property | 22 |
| Subdivision 2 — Exemptions relating to construction, refurbishment and subdivision | | |
| 205ZA. | Exemption relating to construction or refurbishment of 10 or more dwellings | 23 |
| 205ZB. | Exemption relating to subdivision for purpose of constructing 10 or more dwellings | 25 |
| Subdivision 3 — Reassessment | | |
| 205ZC. | Reassessment | 26 |
| Part 3 — Foreign landholder duty | | |
| Division 1 — Preliminary | | |
| 205ZD. | Terms used | 27 |
| Division 2 — Application of Chapter 3 | | |
| 205ZE. | Application of Chapter 3 | 28 |
| Division 3 — Imposition of foreign landholder duty | | |
| 205ZF. | Foreign landholder duty imposed | 30 |
| Division 4 — Residential landholders to which this Part applies | | |
| 205ZG. | Which entities are residential landholders | 31 |

| | | |
|---|---|----|
| Division 5 — Acquisitions to which this Part applies | | |
| 205ZH. | Acquisition of significant interest in residential landholder | 32 |
| 205ZI. | Acquisition of further interest by holder of significant interest | 33 |
| Division 6 — Collection of foreign landholder duty | | |
| 205ZJ. | Rate of foreign landholder duty | 34 |
| 205ZK. | Calculation of foreign landholder duty where landholder duty calculated under s. 193 | 34 |
| Division 7 — Interim assessment of foreign landholder duty | | |
| 205ZL. | Interim assessment of foreign landholder duty | 35 |
| Division 8 — Exemptions and reassessment | | |
| Subdivision 1 — Exempt acquisitions | | |
| 205ZM. | Exemption if foreign transfer duty would not be chargeable | 36 |
| 205ZN. | Exemption for certain acquisitions treated as made under agreement referred to in s. 176(2) | 37 |
| Subdivision 2 — Exemptions relating to construction, refurbishment and subdivision | | |
| 205ZO. | Exemption relating to construction or refurbishment of 10 or more dwellings | 37 |
| 205ZP. | Exemption relating to subdivision for purpose of constructing 10 or more dwellings | 39 |
| 205ZQ. | Calculation of duty where some land of landholder not part of parcel of land | 41 |
| Subdivision 3 — Reassessment | | |
| 205ZR. | Reassessment | 41 |
| Division 9 — Lodgment of declaration | | |
| 205ZS. | Foreign landholder duty declaration to be lodged | 42 |
| 205ZT. | Failure to lodge foreign landholder duty declaration | 42 |
| 9. | Section 259 amended | 43 |
| 10. | Section 260 amended | 43 |
| 11. | Section 272 amended | 44 |
| 12. | Section 273 amended | 44 |
| 13. | Section 275 amended | 46 |
| 14. | Schedule 2 amended | 46 |
| 15. | Schedule 3 Division 8 inserted | 46 |

Contents

**Division 8 — Provisions for *Duties Amendment*
(*Additional Duty for Foreign Persons*)
Act 2018**

| | | |
|-----|---|----|
| 39. | Terms used | 46 |
| 40. | When Ch. 3A Pt. 2 starts to apply | 47 |
| 41. | Agreements entered into before 1 January 2019 | 47 |
| 42. | Declaration of trusts made before 1 January 2019 | 47 |
| 43. | Other transactions before 1 January 2019 | 48 |
| 44. | When Ch. 3A Pt. 3 starts to apply | 49 |
| 45. | Application of some Ch. 8 provisions | 49 |



Western Australia

Duties Amendment (Additional Duty for Foreign Persons) Act 2018

No. 24 of 2018

An Act to amend the *Duties Act 2008*.

[Assented to 17 October 2018]

The Parliament of Western Australia enacts as follows:

s. 1

1. Short title

This is the *Duties Amendment (Additional Duty for Foreign Persons) Act 2018*.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on 1 January 2019.

3. Act amended

This Act amends the *Duties Act 2008*.

4. Section 3 amended

In section 3 insert in alphabetical order:

foreign dutiable transaction has the meaning given in section 205H;

foreign landholder duty means duty under Chapter 3A Part 3;

foreign transfer duty means duty under Chapter 3A Part 2;

residential property has the meaning given in section 205E;

5. Section 147A amended

- (1) In section 147A(1) delete the definition of *residential property*.

- (2) In section 147A(1) insert in alphabetical order:

residential land has the meaning given in section 147D;

6. Section 147C amended

In section 147C(1) delete “property.” and insert:

land.

7. Section 147D amended

In section 147D delete “*residential property*” and insert:

residential land

Note: The heading to amended section 147D is to read:

Residential land

8. Chapter 3A inserted

Before Chapter 4 insert:

**Chapter 3A — Additional duty for
foreign persons**

Part 1 — Preliminary

205A. Terms used

- (1) In this Chapter, unless the contrary intention appears —

associate has the meaning given in section 205B;

dwelling means a building, or part of a building, that is or is intended to be used solely or dominantly as a place of residence;

foreign corporation has the meaning given in section 205C;

foreign individual means an individual who is not —

- (a) an Australian citizen as defined in the *Australian Citizenship Act 2007* (Commonwealth) section 3; or
- (b) the holder of a permanent visa as defined in the *Migration Act 1958* (Commonwealth) section 5(1); or
- (c) the holder of a special category visa as defined in the *Migration Act 1958* (Commonwealth) section 5(1);

foreign person means —

- (a) a foreign corporation; or
- (b) a foreign individual; or
- (c) a foreign trustee;

foreign trust has the meaning given in section 205D(1);

foreign trustee means a person that is the trustee of a foreign trust;

parcel of land means —

- (a) a lot as defined in the *Land Tax Assessment Act 2002* Glossary clause 2; or
- (b) 2 or more such lots which have common boundaries and which in the opinion of the Commissioner should be treated as a single lot for the purpose of this Chapter.

- (2) If a term is given a meaning in section 9 it has the same meaning in this Chapter unless the contrary intention appears in this Chapter.
- (3) If a term is given a meaning in section 148 or 161 (as applied by section 205ZE(1)) it has the same meaning in this Chapter unless the contrary intention appears in this Chapter.

205B. Associate

- (1) A person is an **associate** of another person if —
 - (a) the person is a family member (within the meaning given in section 100) of the other person; or
 - (b) the person and the other person are related persons under section 162(1)(c) to (g); or
 - (c) the person and the other person are partners in the same partnership.
- (2) If a beneficiary of a trust, other than a unit trust scheme or a discretionary trust, is an associate under subsection (1) of a person, a trustee of the trust is also an **associate** of that person.

205C. Foreign corporation

- (1) In this section —

potential voting power has the meaning given in the *Foreign Acquisitions and Takeovers Act 1975* (Commonwealth) section 4;

voting power has the meaning given in the *Foreign Acquisitions and Takeovers Act 1975* (Commonwealth) section 4.
- (2) A corporation is a **foreign corporation** if —
 - (a) the corporation is incorporated outside Australia; or

- (b) the corporation is a corporation in which foreign persons have a controlling interest.
- (3) For the purposes of subsection (2)(b), foreign persons have a controlling interest in a corporation if 1 or more foreign persons or their associates —
 - (a) control at least 50% of the voting power in the corporation; or
 - (b) control at least 50% of the potential voting power in the corporation; or
 - (c) hold at least 50% of the issued shares in the corporation.
- (4) In subsection (3) references to control are to control that is direct or indirect, including control that is exercisable as a result or by means of arrangements or practices, whether or not having legal or equitable force, and whether or not based on legal or equitable rights.

205D. Foreign trust

- (1) A trust is a *foreign trust* if it is —
 - (a) a discretionary trust controlled by a foreign person; or
 - (b) a discretionary trust and 1 or more foreign persons that are takers in default, together with their associates, hold at least a 50% interest in the discretionary trust; or
 - (c) a trust other than a discretionary trust and 1 or more foreign persons, together with their associates, hold beneficial interests in at least 50% of the income or property of the trust.
- (2) For the purposes of subsection (1)(a), a discretionary trust is controlled by a foreign person if the person is in a position to influence, either directly or indirectly, the

vesting of the whole or any part of the capital of the trust property, or of the whole or any part of the income from the trust property.

205E. Residential property

- (1) Subject to subsection (3), any of the following is ***residential property*** —
 - (a) land in Western Australia that is, is capable of being, or is intended to be, used solely or dominantly for residential purposes;
 - (b) land in Western Australia that is vacant or substantially vacant and zoned solely for residential purposes under a planning scheme as defined in the *Planning and Development Act 2005* section 4(1);
 - (c) in the case of land described in paragraph (a) or (b) —
 - (i) any estate or interest in the land;
 - (ii) anything that is part of the land as a fixture.
- (2) For the purposes of Part 2, other than sections 205S(2)(b) and (h) and 205X, ***residential property*** includes a chattel in Western Australia if —
 - (a) the chattel is the subject of a dutiable transaction; and
 - (b) under section 37, the dutiable transaction in respect of the chattel is aggregated with a dutiable transaction in respect of residential property as defined in subsections (1) and (3); and
 - (c) the use of the chattel is directly linked to, or is incidental to, the use of residential property for residential purposes.

- (3) The following are not ***residential property*** —
- (a) land that is intended to be used solely or dominantly for the purposes of an aged care facility as defined in the *Land Tax Assessment Act 2002* section 38A(1);
 - (b) land that is intended to be used solely or dominantly for the purposes of commercial residential premises as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Commonwealth) section 195-1;
 - (c) land that is intended to be used solely or dominantly for the purposes of a retirement village as defined in the *Retirement Villages Act 1992* section 3(1);
 - (d) an easement;
 - (e) a security interest;
 - (f) a carbon right or a carbon covenant registered under the *Carbon Rights Act 2003*;
 - (g) land prescribed for the purposes of this subsection.

Part 2 — Foreign transfer duty

Division 1 — Preliminary

205F. Terms used

- (1) In this Part, unless the contrary intention appears —
- dutiable value*** has the meaning given in Chapter 2 Part 4 Division 5 as applied by section 205P(1);
- foreign transfer duty endorsed*** has the meaning given in subsections (2) and (3);
- new residential property*** has the meaning given in section 205I;

residential partnership acquisition has the meaning given in section 205X;

residential trust acquisition has the meaning given in section 205T;

residential trust surrender has the meaning given in section 205U;

special residential property means any of the following —

- (a) a life interest in residential property;
 - (b) a remainder interest in residential property;
 - (c) a lease of residential property, if consideration is paid, or agreed to be paid, by the lessor for the surrender of the lease.
- (2) A foreign dutiable transaction is ***foreign transfer duty endorsed*** if a transaction record for it is foreign transfer duty endorsed.
- (3) A transaction record, or a duplicate of a transaction record, for a foreign dutiable transaction is ***foreign transfer duty endorsed*** if it is duty endorsed and the duty endorsement indicates —
- (a) the amount of foreign transfer duty paid on the transaction; or
 - (b) that foreign transfer duty is not chargeable on the transaction.

Division 2 — Imposition of foreign transfer duty

205G. Foreign transfer duty imposed

Foreign transfer duty is imposed on foreign dutiable transactions.

Division 3 — Foreign dutiable transactions

205H. Foreign dutiable transaction

- (1) Subject to subsection (2), any of the following is a *foreign dutiable transaction* —
- (a) a transfer of residential property to a foreign person;
 - (b) an agreement, whether conditional or not, for the transfer of residential property to a foreign person;
 - (c) a declaration of trust over residential property if the trust is a foreign trust;
 - (d) a vesting of residential property in a foreign person —
 - (i) by, or expressly authorised by, statute law of this or another jurisdiction, whether inside or outside Australia; or
 - (ii) by, or as a consequence of, a court order of this or another jurisdiction, whether inside or outside Australia;
 - (e) a foreclosure of a mortgage over residential property by a mortgagee that is a foreign person;
 - (f) an acquisition by a foreign person of new residential property, on its creation, grant or issue;
 - (g) a surrender of special residential property to a foreign person;
 - (h) a residential trust acquisition or residential trust surrender;
 - (i) a residential partnership acquisition.

- (2) The following transactions are not *foreign dutiable transactions* —
- (a) a transaction the subject of which is a right if no consideration is paid, or agreed to be paid, for the transaction;
 - (b) a transfer of, or an agreement for the transfer of, a lease if no consideration is paid, or agreed to be paid, for the transfer or agreement;
 - (c) a transaction prescribed as an excluded transaction for the purposes of this section.
- (3) Without limiting subsection (1)(d)(i), section 12 applies for the purposes of determining when residential property is vested under statute law.

205I. New residential property

- (1) Subject to subsection (2), any of the following is *new residential property* —
- (a) residential property;
 - (b) the following rights —
 - (i) an option to acquire residential property, unless the option is part of a simultaneous put and call option over residential property;
 - (ii) a right to acquire residential property;
 - (iii) any other right prescribed for the purposes of this subsection.
- (2) The following are not *new residential property* —
- (a) a lease if no consideration is paid, or agreed to be paid, for the grant of the lease;
 - (b) any other residential property prescribed as excluded property for the purposes of this section.

Division 4 — Collection of foreign transfer duty

205J. When liability for duty arises

Liability for foreign transfer duty chargeable on a foreign dutiable transaction arises when the liability for transfer duty chargeable on the transaction arises under section 19.

205K. Who is liable to pay duty

- (1) A person is liable to pay foreign transfer duty on a foreign dutiable transaction if the person is —
 - (a) liable to pay transfer duty on the transaction; and
 - (b) a foreign person.
- (2) A person is liable to pay foreign transfer duty, regardless of whether the person is a foreign person, if —
 - (a) the person is liable to pay transfer duty on a foreign dutiable transaction referred to in section 205H(1)(h); or
 - (b) the person is, under section 69 as applied by section 205S(1), the person liable to pay foreign transfer duty.
- (3) A foreign individual or foreign corporation is not liable to pay foreign transfer duty on a foreign dutiable transaction if —
 - (a) the individual or corporation is acting in their capacity as trustee; and
 - (b) the individual or corporation is not a foreign trustee.

205L. Joint tenants to be treated as tenants in common in equal shares

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

205M. Foreign transfer duty declaration to be lodged

- (1) Subject to subsection (2), the person liable to pay foreign transfer duty on a foreign dutiable transaction must lodge a foreign transfer duty declaration in the approved form within 2 months after the day on which liability for foreign transfer duty on the transaction arises.

Penalty for this subsection: a fine of \$5 000.

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

205N. When duty must be paid

- (1) A person liable to pay foreign transfer duty on a foreign dutiable transaction must pay the duty within 1 month after the date of the assessment notice issued in relation to an assessment of the duty, unless a later time is provided under subsection (2) or (3) in respect of the transaction.
- (2) Unless subsection (3) applies, foreign transfer duty must be paid within 12 months after the day on which liability for foreign transfer duty on the transaction arises if the transaction is —
 - (a) a conditional agreement; or
 - (b) a foreign dutiable transaction referred to in section 205H(1)(a), (b), (c) or (d) if a document

relating to the transaction must be registered under —

- (i) the *Registration of Deeds Act 1856*; or
 - (ii) the *Transfer of Land Act 1893*.
- (3) Foreign transfer duty must be paid within 3 years after the day on which liability for foreign transfer duty on the transaction arises if the transaction is —
- (a) a subdivision conditional agreement; or
 - (b) an issue of title conditional agreement.

205O. Rate of foreign transfer duty

Foreign transfer duty is chargeable at the rate of 7% of the dutiable value of the foreign dutiable transaction.

205P. Dutiable value

- (1) The provisions of Chapter 2 Part 4 Division 5 other than sections 31(5), 37, 39(3) and 40 apply, with all appropriate modifications, in respect of foreign transfer duty in the same way as they apply in respect of transfer duty.
- (2) Without limiting subsection (1), the provisions applied by that subsection apply as if —
 - (a) a reference to dutiable property were a reference to residential property; and
 - (b) a reference to a dutiable transaction were a reference to a foreign dutiable transaction; and
 - (c) other than in sections 28(6) and 29(4), a reference to duty were a reference to foreign transfer duty; and
 - (d) a reference to duty endorsed were a reference to foreign transfer duty endorsed; and

- (e) the reference in section 28(1) to section 11(1)(d)(ii) or (e) were a reference to section 205H(1)(d)(ii) or (e); and
 - (f) the reference in section 29(4) to nominal duty were a reference to no foreign transfer duty.
- (3) If a foreign dutiable transaction is aggregated with another dutiable transaction under section 37, then the foreign dutiable transaction is treated as having taken place at the time that the last of the aggregated transactions took place.
- (4) Foreign transfer duty is chargeable on any foreign dutiable transaction effecting an exchange of residential property to a foreign person for dutiable property as if the exchange involved the transfer of the residential property for consideration equal to the unencumbered value of the residential property.

205Q. No double foreign transfer duty

- (1) The provisions of Chapter 2 Part 4 Division 6 other than section 42(15) apply, with all appropriate modifications, in respect of foreign transfer duty in the same way as they apply in respect of transfer duty.
- (2) Without limiting subsection (1), the provisions applied by that subsection apply as if —
 - (a) a reference to dutiable property were a reference to residential property; and
 - (b) a reference to a dutiable transaction were a reference to a foreign dutiable transaction; and
 - (c) a reference to duty were a reference to foreign transfer duty; and
 - (d) a reference to duty endorsed were a reference to foreign transfer duty endorsed; and

- (e) a reference to the general or a concessional rate were a reference to the rate of foreign transfer duty; and
- (f) the reference in section 42(12) to section 11(1)(d) were a reference to section 205H(1)(d).

205R. Interim assessment of foreign transfer duty

- (1) The Commissioner may make an assessment (an *interim assessment*) of a portion of the foreign transfer duty payable on a foreign dutiable transaction if, under section 44A(1), the Commissioner makes an assessment of a portion of the transfer duty payable on the transaction.
- (2) For the purposes of making an interim assessment, the foreign transfer duty payable is to be determined as if the portion of the dutiable value of the foreign dutiable transaction were the full dutiable value of the transaction.

Division 5 — Application of Chapter 2 Part 5 to certain transactions

205S. Application of Chapter 2 Part 5 to foreign dutiable transactions

- (1) The provisions of Chapter 2 Part 5 other than section 70 and Divisions 5 and 6 apply, with all appropriate modifications, in respect of foreign transfer duty in the same way as they apply in respect of transfer duty.
- (2) Without limiting subsection (1), the provisions applied by that subsection apply as if —
 - (a) a reference to dutiable property (other than in Chapter 2 Part 5 Division 4) were a reference to residential property; and

- (b) a reference to dutiable property in Chapter 2 Part 5 Division 4 were a reference to each of the following —
- (i) residential property;
 - (ii) a chattel in Western Australia, the use of which is directly linked to, or is incidental to, the use of residential property for residential purposes;
- and
- (c) a reference to a dutiable transaction were a reference to a foreign dutiable transaction; and
 - (d) a reference to duty were a reference to foreign transfer duty; and
 - (e) a reference to duty endorsed were a reference to foreign transfer duty endorsed; and
 - (f) a reference to a trust acquisition were a reference to a residential trust acquisition; and
 - (g) a reference to a trust surrender were a reference to a residential trust surrender; and
 - (h) a reference in section 73 to land in Western Australia were a reference to residential property; and
 - (i) a reference in section 76 or 77 to a partnership acquisition were a reference to a residential partnership acquisition; and
 - (j) each provision specified in Column 1 of the Table were replaced by the provision specified opposite it in Column 2 of the Table.

Table

| Column 1 | Column 2 |
|-----------------|-----------------|
| s. 55 | s. 205T |

| Column 1 | Column 2 |
|-----------------|-----------------|
| s. 56 | s. 205U |
| s. 59 | s. 205V |
| s. 67 | s. 205W |
| s. 72 | s. 205X |

205T. References to residential trust acquisition

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

- (a) residential property; or
- (b) an indirect interest in residential property.

205U. References to residential trust surrender

A reference to a residential trust surrender is to the surrender by a taker in default of an interest in a discretionary trust that holds residential property or an indirect interest in residential property, if the surrender results in a foreign person acquiring an interest in the discretionary trust.

205V. Dutiable value of residential trust acquisition or residential trust surrender

- (1) The dutiable value of a residential trust acquisition is —
 - (a) the consideration for the acquisition so far as the consideration relates to residential property —
 - (i) held by the discretionary trust; or

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

or

- (b) the value of the taker in default's interest in the discretionary trust at the time when liability for foreign transfer duty on the acquisition arises if —
 - (i) there is no consideration for the acquisition; or
 - (ii) the consideration cannot be ascertained when liability for foreign transfer duty on the acquisition arises; or
 - (iii) the value of the taker in default's interest is greater than the consideration for the acquisition.

- (2) The dutiable value of a residential trust surrender is —

- (a) the consideration for the surrender so far as the consideration relates to —
 - (i) residential property held by the discretionary trust or to which an entity linked to the trustee of the discretionary trust is entitled; and
 - (ii) the interests in the discretionary trust acquired by a foreign person as a result of the surrender;

or

- (b) the value of a foreign person's interest in the discretionary trust at the time immediately after liability for foreign transfer duty on the surrender arises less the value of the foreign person's interest in the discretionary trust

immediately before liability for foreign transfer duty on the surrender arises if —

- (i) there is no consideration for the surrender; or
- (ii) the consideration cannot be ascertained when liability for foreign transfer duty on the surrender arises; or
- (iii) the value of the taker in default's interest is greater than the consideration for the surrender.

205W. Share disposition taken to be agreement for transfer of trust property

- (1) A disposition of a share in a corporate trustee is taken to be an agreement for the transfer of residential property and is liable to foreign transfer duty accordingly if —
 - (a) it is a transaction, or part of a transaction, that is a scheme or arrangement, or part of a scheme or arrangement; and
 - (b) the transaction results in —
 - (i) a foreign person increasing its beneficial interest in residential property held directly or indirectly by the corporate trustee of a discretionary trust; or
 - (ii) a foreign person acquiring a beneficial interest in residential property held directly or indirectly by the corporate trustee of a discretionary trust.
- (2) Subsection (1) does not apply to the disposition of a share by which the personal representative of a deceased person disposes of a share to a beneficiary in the administration of the estate of the deceased person.

205X. References to residential partnership acquisition

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

- (a) residential property; or
- (b) an indirect interest in residential property.

Division 6 — Exemptions and reassessment

Subdivision 1 — Exempt transactions

205Y. Transactions on which minimum, nominal or no transfer duty payable

- (1) Foreign transfer duty is not chargeable on a transaction to which section 39 applies if the minimum amount of transfer duty referred to in section 39(3) is payable on the transaction.
- (2) Except as provided in subsection (3), foreign transfer duty is not chargeable on a foreign dutiable transaction to the extent that —
 - (a) transfer duty is not chargeable on the transaction under Chapter 2 Part 5 Division 6; or
 - (b) transfer duty is not chargeable on the transaction under Chapter 2 Part 6 Division 1; or
 - (c) nominal duty is chargeable on the transaction under Chapter 2 Part 6 Division 2.
- (3) Foreign transfer duty is chargeable on a foreign dutiable transaction if —
 - (a) section 97 applies to the transaction, the person to whom the property is transferred or agreed to be transferred is a foreign person, and foreign

transfer duty was not chargeable on the acquisition of the property by the person from whom the property is transferred or agreed to be transferred; or

- (b) section 114 applies to the transaction, the taker in default is a foreign person, and foreign transfer duty was not chargeable on the acquisition of the property by the trustee of the trust or on any acquisition by which the taker in default acquired its interest in the trust; or
- (c) section 115 applies to the transaction, the beneficiary is a foreign person, and foreign transfer duty was not chargeable on the acquisition of the property by the trustee of the trust; or
- (d) section 116 applies to the transaction, the beneficiary is a foreign person, and the declaration of trust has not been foreign transfer duty endorsed; or
- (e) section 117(1)(a) or (b) applies to the transaction, the real purchaser is a foreign person, and foreign transfer duty was not chargeable on the acquisition of the property by the apparent purchaser.

205Z. Transactions relating to agreements for transfer of residential property

- (1) Foreign transfer duty is not chargeable on an agreement for the transfer of residential property if —
 - (a) the agreement is an agreement referred to in section 42(2) or (4), the purchaser is a foreign person, and the transferee is not a foreign person; or

- (b) the agreement is an agreement referred to in section 42(4B), the purchaser is a foreign person, and the trust is not a foreign trust; or
 - (c) the agreement is an agreement referred to in section 42(5), the person named in the agreement as the purchaser is a foreign person, and the corporation is not a foreign corporation.
- (2) Foreign transfer duty is not chargeable on an agreement for the transfer of residential property to a transferee if the property is transferred in conformity with the agreement and the transferee is not a foreign person when the property is transferred.

Subdivision 2 — Exemptions relating to construction, refurbishment and subdivision

205ZA. Exemption relating to construction or refurbishment of 10 or more dwellings

- (1) Foreign transfer duty is not chargeable on a foreign dutiable transaction to the extent that the transaction relates to a parcel of land to which this section applies.
- (2) This section applies to a parcel of land if —
 - (a) at the time when liability for foreign transfer duty on the transaction arises, there is no building, or part of a building, on the parcel of land capable of being used solely or dominantly as a place of residence; and
 - (b) the person liable to pay foreign transfer duty on the transaction or an associate of the person intends to construct, refurbish or complete the construction or refurbishment of 10 or more dwellings on the parcel of land; and
 - (c) within the period of 5 years beginning on the day on which the transaction is completed, the person or associate complies with

s. 8

- subsection (3) in relation to 10 or more dwellings on the parcel of land; and
- (d) the parcel of land is, in the Commissioner's opinion, suitable for 10 or more dwellings.
- (3) A person or an associate of a person complies with this subsection in relation to —
- (a) a dwelling the person or associate intends to construct, if the person or associate begins construction of that dwelling or another dwelling on the parcel of land; or
- (b) a dwelling the person or associate intends to refurbish, if all licences, approvals, registrations, exemptions and other kinds of authorisation necessary to refurbish that dwelling or another dwelling on the parcel of land are issued, granted or obtained; or
- (c) a dwelling the person or associate intends to complete the construction or refurbishment of, if that dwelling or another dwelling on the parcel of land, construction or refurbishment of which is completed by the person or associate, is ready for occupation as a place of residence.
- (4) For the purposes of subsection (3)(a), construction of a dwelling begins on —
- (a) the day on which laying the foundations for the dwelling begins; or
- (b) another day the Commissioner considers appropriate in the circumstances of the case.
- (5) An application for reassessment under section 205ZC(2) because of this section must be made on or before the later of the following —
- (a) the last day of the period of 1 year beginning on the day on which the person or associate

- complies with subsection (3) in relation to 10 or more dwellings;
- (b) the last day of the period of 5 years beginning on the day on which the transaction is completed.

205ZB. Exemption relating to subdivision for purpose of constructing 10 or more dwellings

- (1) Foreign transfer duty is not chargeable on a foreign dutiable transaction to the extent that the transaction relates to a parcel of land to which this section applies.
- (2) This section applies to a parcel of land if —
 - (a) at the time when liability for foreign transfer duty on the transaction arises, the parcel of land is vacant or substantially vacant; and
 - (b) the person liable to pay foreign transfer duty on the transaction or an associate of the person intends to subdivide or complete subdividing the parcel of land for the purpose of a person constructing 10 or more dwellings on the parcel of land; and
 - (c) within the period of 5 years beginning on the day on which the transaction is completed, the person or associate —
 - (i) begins subdividing the parcel of land; or
 - (ii) if subdividing the parcel of land has begun when the transaction is completed, completes subdividing the parcel of land;
 - and
 - (d) the parcel of land is, in the Commissioner's opinion, suitable for 10 or more dwellings.

- (3) An application for reassessment under section 205ZC(2) because of this section must be made on or before the later of the following —
 - (a) the last day of the period of 1 year beginning on the day on which the person or associate —
 - (i) begins subdividing the parcel of land; or
 - (ii) if subdividing the parcel of land has begun when the transaction is completed, completes subdividing the parcel of land;
 - (b) the last day of the period of 5 years beginning on the day on which the transaction is completed.
- (4) For the purposes of subsections (2)(c) and (3)(a) —
 - (a) a person begins subdividing land on the day on which the land is subdivided under the *Land Tax Assessment Act 2002* Glossary clause 3; and
 - (b) a person completes subdividing land on the day on which the new certificate of title is created and registered for the subdivided land.

Subdivision 3 — Reassessment

205ZC. Reassessment

- (1) If the Commissioner is required to reassess the liability to transfer duty of a foreign dutiable transaction that is not liable to foreign transfer duty because of section 205Y —
 - (a) the Commissioner, on the application of a taxpayer, must reassess the liability to foreign transfer duty of the transaction; and
 - (b) the limitation as to time (if any) that applies in respect of the reassessment of transfer duty

applies in respect of the reassessment of foreign transfer duty; and

- (c) if the reassessment of transfer duty is under section 107 — the application for reassessment under this subsection must be made in the approved form.
- (2) The Commissioner, on the application of a taxpayer, must reassess the liability to foreign transfer duty of a foreign dutiable transaction if the liability is affected by section 205Z, 205ZA or 205ZB.
- (3) The limitations as to time in the Taxation Administration Act section 17 do not apply in respect of a reassessment because of section 205ZA or 205ZB.
- (4) An application for reassessment under subsection (2) must be made in the approved form.

Part 3 — Foreign landholder duty

Division 1 — Preliminary

205ZD. Terms used

- (1) In this Part, unless the contrary intention appears —
foreign acquirer means —
 - (a) a foreign person that acquires an interest in a residential landholder by a foreign landholder acquisition; or
 - (b) a foreign person that is a related person to a person that acquires an interest in a residential landholder by a foreign landholder acquisition; or
 - (c) if there is more than 1 person referred to in paragraph (a) or (b), each of them;

s. 8

foreign landholder acquisition has the meaning given in sections 205ZH and 205ZI;

residential landholder means an entity that is a residential landholder under section 205ZG.

- (2) A reference in this Part to a provision of Chapter 3 that is applied by section 205ZE(1) is a reference to that provision as so applied.

Division 2 — Application of Chapter 3

205ZE. Application of Chapter 3

- (1) The provisions of Chapter 3 other than the provisions set out in the Table apply, with all appropriate modifications, in respect of foreign landholder duty in the same way as they apply in respect of landholder duty.

Table

| | |
|--------------------|------------------------------------|
| s. 149(2A) and (4) | Part 2 |
| s. 155 | Part 5 Division 2 Subdivision 2 |
| s. 167 | s. 168 |
| s. 171 | Part 5 Division 2 Subdivision 4 |
| s. 175 | Part 6 Division 4 |
| s. 193 | Part 6 Division 6A |
| Part 6 Division 7 | |

- (2) Without limiting subsection (1), the provisions applied by that subsection apply as if —
- (a) a reference to duty or landholder duty were a reference to foreign landholder duty; and
 - (b) a reference to an acquirer were a reference to a foreign acquirer; and
 - (c) a reference to a landholder were a reference to a residential landholder; and
 - (d) a reference to a relevant acquisition were a reference to a foreign landholder acquisition; and
 - (e) a reference to land, land in Western Australia or dutiable property were a reference to residential property; and
 - (f) a reference to a chattel were a reference to a chattel, the use of which is directly linked to, or is incidental to, the use of residential property for residential purposes; and
 - (g) the reference in section 157(1) to section 155 were a reference to section 186; and
 - (h) the provisions of Division 8 Subdivisions 1 and 2 of this Chapter were provisions of Chapter 3 Part 5 Division 2 Subdivision 3; and
 - (i) the reference in the definition of ***call option***, ***put option*** and ***simultaneous put and call option*** in section 177(1) to section 44 were a reference to section 44 as applied by section 205S(1); and
 - (j) a reference in section 185 or 189 to a related person were a reference to a related person that is a foreign person; and
 - (k) a reference in section 188(1) or 189(1) to applying the appropriate rate of duty under

s. 8

- section 184(1) to the value were a reference to working out 7% of the value; and
- (l) the reference in section 189(6) to 1 July 2008 were a reference to 1 January 2019; and
- (m) a reference to a provision specified in Column 1 of the Table were a reference to the provision specified opposite it in Column 2 of the Table.

Table

| Column 1 | Column 2 |
|-----------------|-----------------|
| s. 67 | s. 205W |
| s. 151 | s. 205ZF |
| s. 155 | s. 205ZG |
| s. 163 | s. 205ZH |
| s. 164 | s. 205ZI |
| s. 167 | s. 205ZM |
| s. 200 | s. 205ZS |

Division 3 — Imposition of foreign landholder duty

205ZF. Foreign landholder duty imposed

Foreign landholder duty is imposed in respect of any foreign landholder acquisition of an interest in a residential landholder.

**Division 4 — Residential landholders to which this
Part applies**

205ZG. Which entities are residential landholders

- (1) This section applies where it is necessary to determine in relation to an acquisition of an interest in an entity whether the entity is a residential landholder for the purposes of section 205ZH or 205ZI.
- (2) A corporation is a residential landholder if immediately before the acquisition —
 - (a) it is entitled to residential property or an entity linked to the corporation is so entitled; and
 - (b) it is a landholder.
- (3) A unit trust scheme is a residential landholder if immediately before the acquisition —
 - (a) the trustee of the scheme is entitled to residential property or an entity linked to the unit trust scheme is so entitled; and
 - (b) the scheme is a landholder.
- (4) For the purposes of subsections (2)(a) and (3)(a) —
 - (a) a partnership, as a linked entity, is entitled to residential property if the partnership property is or includes residential property; and
 - (b) a unit trust scheme, as a linked entity, is entitled to residential property if the trustee of the scheme is so entitled.

Division 5 — Acquisitions to which this Part applies

205ZH. Acquisition of significant interest in residential landholder

- (1) An acquisition by a foreign person of an interest in an entity is a *foreign landholder acquisition* if —
 - (a) immediately before the acquisition the entity was a residential landholder in which the interest (if any) of the foreign person and the interest (if any) of any related person did not amount to a significant interest; and
 - (b) after the acquisition the entity is a residential landholder in which —
 - (i) the interest of the foreign person is a significant interest; or
 - (ii) the interest of the foreign person when aggregated with any interest of a related person amounts to a significant interest.
- (2) An acquisition by a person that is not a foreign person of an interest in an entity is a *foreign landholder acquisition* if —
 - (a) immediately before the acquisition the entity was a residential landholder in which the interest (if any) of the person and the interest (if any) of any related person did not amount to a significant interest; and
 - (b) after the acquisition the entity is a residential landholder in which the person and at least 1 related person that is a foreign person has an interest and in which —
 - (i) the interest of the person is a significant interest; or

- (ii) the interest of the person when aggregated with any interest of a related person amounts to a significant interest.

205ZI. Acquisition of further interest by holder of significant interest

- (1) An acquisition by a foreign person of an interest in an entity is also a ***foreign landholder acquisition*** if —
 - (a) immediately before the acquisition the entity is a residential landholder in which —
 - (i) the interest of the foreign person is a significant interest; or
 - (ii) the interest of the foreign person when aggregated with any interest of a related person amounts to a significant interest; or
 - (iii) the interest of a related person is a significant interest;
 - and
 - (b) by the acquisition the foreign person or any related person acquires, or the foreign person and any related person acquire, a further interest in the landholder.
- (2) An acquisition by a person that is not a foreign person of an interest in an entity is also a ***foreign landholder acquisition*** if —
 - (a) immediately before the acquisition the entity is a residential landholder in which at least 1 related person that is a foreign person has an interest and in which —
 - (i) the interest of the person is a significant interest; or

- (ii) the interest of the person when aggregated with any interest of a related person amounts to a significant interest; or
 - (iii) the interest of a related person is a significant interest;
- and
- (b) by the acquisition the person or a related person acquires, or the person and a related person acquire, a further interest in the landholder.

Division 6 — Collection of foreign landholder duty

205ZJ. Rate of foreign landholder duty

Foreign landholder duty is chargeable —

- (a) by reference to the value referred to in section 188(1) or 189(1), as the case requires; and
- (b) at the rate of 7% of that value.

205ZK. Calculation of foreign landholder duty where landholder duty calculated under s. 193

- (1) This section applies to the calculation of foreign landholder duty in respect of a foreign landholder acquisition if the Commissioner calculates landholder duty in respect of the acquisition under section 193(3).
- (2) If this section applies —
 - (a) the Commissioner may calculate the foreign landholder duty in respect of the acquisition as if the acquisition occurred at the end of the relevant period (as defined in section 193(1)); and

- (b) if the single relevant acquisition referred to in section 193(3) (the *single acquisition*) includes more than 1 foreign landholder acquisition —
 - (i) the Commissioner is not required to make a separate calculation of foreign landholder duty in respect of the acquisition; and
 - (ii) the Commissioner may calculate foreign landholder duty in respect of all foreign landholder acquisitions forming part of the single acquisition as if all of the acquisitions had been made by a single foreign landholder acquisition.

Division 7 — Interim assessment of foreign landholder duty

205ZL. Interim assessment of foreign landholder duty

- (1) The Commissioner may make an assessment (an *interim assessment*) of a portion of the foreign landholder duty payable in respect of a foreign landholder acquisition if, under section 195A(1), the Commissioner makes an assessment of a portion of the landholder duty payable in respect of the acquisition.
- (2) For the purposes of making an interim assessment, the foreign landholder duty payable is to be determined as if the portion of the value of the residential landholder were the full value of the residential landholder.
- (3) The Commissioner can make a determination of a portion of the value of a residential landholder for the purposes of making an interim assessment even though the Commissioner has ascertained —
 - (a) the value of only some of the residential property or chattels to which section 186(1) applies; or

- (b) only a portion of the value of particular residential property or chattels to which section 186(1) applies.

Division 8 — Exemptions and reassessment

Subdivision 1 — Exempt acquisitions

205ZM. Exemption if foreign transfer duty would not be chargeable

- (1) In this section —
acquiring person, in relation to an acquisition, means the person making the acquisition;
relinquishing person, in relation to an acquisition, means the person from whom the interest in the landholder was acquired.
- (2) An acquisition is exempt if no foreign transfer duty would be chargeable, other than under Chapter 6, on the transfer, at the time of the acquisition, by the relinquishing person to the acquiring person of residential property of the landholder, or of a linked entity in respect of the landholder, as if the property were that of the relinquishing person.
- (3) For the purposes of subsection (2), the acquiring person in respect of an acquisition described in section 205ZH(2) or 205ZI(2) is to be treated as if they were a foreign person.
- (4) If the acquiring person did not acquire the interest in the residential landholder from another person, the reference to the relinquishing person is to be read (according to what is relevant) as a reference to the or a person —
 - (a) whose interest in the landholder is decreased because of the acquisition; or

- (b) whose interest in the landholder decreased resulting in the acquisition.

Note for this subsection:

An acquiring person may acquire an interest in a company by the company issuing shares to the person, or buying back shares of another person.

205ZN. Exemption for certain acquisitions treated as made under agreement referred to in s. 176(2)

An acquisition is exempt if —

- (a) for the purposes of an assessment, the acquisition was treated as having been made under an agreement of the kind referred to in section 176(2); and
- (b) when the agreement is completed the acquirer is not a foreign person; and
- (c) had the acquisition not been treated as mentioned in paragraph (a) the liability for foreign landholder duty in respect of the acquisition would not have arisen.

Subdivision 2 — Exemptions relating to construction, refurbishment and subdivision

205ZO. Exemption relating to construction or refurbishment of 10 or more dwellings

- (1) An acquisition is exempt if —
 - (a) at the time when the acquisition occurs, the residential landholder or a linked entity in respect of the landholder is entitled to a parcel of land on which there is no building, or part of a building, capable of being used solely or dominantly as a place of residence; and
 - (b) the landholder, linked entity or an associate of the landholder intends to construct, refurbish or

s. 8

- complete the construction or refurbishment of 10 or more dwellings on the parcel of land; and
- (c) within the period of 5 years beginning on the day on which the acquisition occurs, the landholder, linked entity or associate complies with subsection (2) in relation to 10 or more dwellings; and
 - (d) the interest the subject of the acquisition has not been disposed of by the acquirer at the time the landholder, linked entity or associate complies with subsection (2) in relation to 10 or more dwellings; and
 - (e) the parcel of land is, in the Commissioner's opinion, suitable for 10 or more dwellings.
- (2) A residential landholder, linked entity or associate of a residential landholder complies with this subsection in relation to —
- (a) a dwelling the landholder, linked entity or associate intends to construct, if the landholder, linked entity or associate begins construction of that dwelling or another dwelling on the parcel of land; or
 - (b) a dwelling the landholder, linked entity or associate intends to refurbish, if all licences, approvals, registrations, exemptions and other kinds of authorisation necessary to refurbish that dwelling or another dwelling on the parcel of land are issued, granted or obtained; or
 - (c) a dwelling the landholder, linked entity or associate intends to complete construction or refurbishment of, if that dwelling or another dwelling on the parcel of land, construction or refurbishment of which is completed by the landholder, linked entity or associate, is ready for occupation as a place of residence.

- (3) For the purposes of subsection (2)(a), construction of a dwelling begins on —
 - (a) the day on which laying the foundations for the dwelling begins; or
 - (b) another day the Commissioner considers appropriate in the circumstances of the case.
- (4) An application for reassessment under section 205ZR because of this section must be made on or before the later of the following —
 - (a) the last day of the period of 1 year beginning on the day on which the residential landholder, linked entity or associate complies with subsection (2) in relation to 10 or more dwellings;
 - (b) the last day of the period of 5 years beginning on the day on which the acquisition occurs.

205ZP. Exemption relating to subdivision for purpose of constructing 10 or more dwellings

- (1) An acquisition is exempt if —
 - (a) at the time when the acquisition occurs, the residential landholder or a linked entity in respect of the landholder is entitled to a parcel of land that is vacant or substantially vacant; and
 - (b) the landholder, linked entity or an associate of the landholder intends to subdivide or complete subdividing the parcel of land for the purpose of a person constructing 10 or more dwellings on the parcel of land; and
 - (c) within the period of 5 years beginning on the day on which the acquisition occurs, the landholder, linked entity or associate —
 - (i) begins subdividing the parcel of land; or

s. 8

- (ii) if subdividing the parcel of land has begun when the acquisition occurs, completes subdividing the parcel of land;
 - and
 - (d) the interest the subject of the acquisition has not been disposed of by the acquirer when the landholder, linked entity or associate —
 - (i) begins subdividing the parcel of land; or
 - (ii) if subdividing the parcel of land has begun when the acquisition occurs, completes subdividing the parcel of land;
 - and
 - (e) the parcel of land is, in the Commissioner's opinion, suitable for 10 or more dwellings.
- (2) An application for reassessment under section 205ZR because of this section must be made on or before the later of the following —
- (a) the last day of the period of 1 year beginning on the day on which the landholder, linked entity or associate —
 - (i) begins subdividing the parcel of land; or
 - (ii) if subdividing the parcel of land has begun when the acquisition occurs, completes subdividing the parcel of land;
 - (b) the last day of the period of 5 years beginning on the day on which the acquisition occurs.
- (3) For the purposes of subsections (1)(c) and (d) and (2)(a) —
- (a) a person begins subdividing land on the day on which the land is subdivided under the *Land*

Tax Assessment Act 2002 Glossary clause 3;
and

- (b) a person completes subdividing land on the day on which the new certificate of title is created and registered for the subdivided land.

205ZQ. Calculation of duty where some land of landholder not part of parcel of land

- (1) This section applies to an acquisition referred to in section 205ZO or 205ZP if immediately before the acquisition the residential landholder, or a linked entity in respect of the landholder, is entitled to —
 - (a) a parcel of land referred to in section 205ZO or 205ZP; and
 - (b) other residential property in Western Australia.
- (2) Section 166 is not applicable to or in relation to the acquisition.
- (3) For the purposes of calculating foreign landholder duty in respect of the acquisition the residential property referred to in subsection (1)(a) is to be disregarded when determining the value of the landholder.

Subdivision 3 — Reassessment

205ZR. Reassessment

- (1) The Commissioner, on the application of a person that has paid or is liable to pay foreign landholder duty, must reassess the liability to foreign landholder duty on an acquisition if the liability is affected by section 205ZN, 205ZO or 205ZP.
- (2) An application for reassessment under this section must be made in the approved form.

- (3) The limitations as to time in the Taxation Administration Act section 17 do not apply in respect of a reassessment because of section 205ZO or 205ZP.

Division 9 — Lodgment of declaration

205ZS. Foreign landholder duty declaration to be lodged

- (1) A foreign landholder duty declaration must be lodged in respect of a foreign landholder acquisition.
- (2) The foreign landholder duty declaration must be lodged on or before the day on which the acquisition statement is required to be lodged under section 200(3), 201(6) or 202(2) in respect of the acquisition.

205ZT. Failure to lodge foreign landholder duty declaration

If a foreign landholder duty declaration is not lodged in accordance with section 205ZS(2), the following persons commit an offence —

- (a) in every case, the foreign acquirer;
- (b) if the landholder concerned is a corporation, the corporation;
- (c) if the landholder concerned is a unit trust scheme, the trustee of the scheme;
- (d) any person taken into account under section 205ZH or 205ZI as being related to the foreign acquirer for the purposes of the acquisition, other than a person whose interest in the landholder is, for the purpose of calculating the foreign landholder duty, an excluded interest under section 189.

Penalty: a fine of \$5 000.

9. Section 259 amended

In section 259(2) after “landholder duty” insert:

or foreign landholder duty

10. Section 260 amended

(1) After section 260(1)(a) insert:

- (aa) any of the following foreign dutiable transactions, if foreign transfer duty is chargeable —
 - (i) an agreement, whether conditional or not, for the transfer of residential property from one member of a family to another member of the family;
 - (ii) a transfer of residential property from one member of a family to another member of the family;
 - (iii) a declaration of trust over residential property under which one member of a family holds the property on trust for another member of the family;
 - (iv) a vesting of residential property held by one member of a family in another member of the family;
 - (v) a surrender of special residential property, as defined in section 205F(1), if the special residential property is surrendered by one member of a family to another member of the family;

s. 11

- (2) In section 260(1)(d) after “landholder duty” insert:

or foreign landholder duty

- (3) After section 260(2) insert:

- (2A) A transaction referred to in subsection (1)(aa) is not a **relevant reconstruction transaction** if, immediately before the transaction, the residential property is held, or the transaction results in the property being held, subject to a discretionary trust.

11. Section 272 amended

Delete section 272(2)(a) and insert:

- (a) endorsed by the Commissioner —
- (i) under section 273(2), (3) or (4) or 274(2); and
 - (ii) if the transaction is a foreign dutiable transaction — under section 273(2A);
- or

12. Section 273 amended

- (1) In section 273(1) delete the definition of **duty**.
- (2) In section 273(1) in the definition of **required duty** paragraph (a) delete “duty” and insert:

transfer duty and foreign transfer duty (if any)

- (3) Delete section 273(2) and insert:
- (2) If a transaction record for a dutiable transaction is lodged for duty endorsement and any required duty is paid in full, the Commissioner must —
- (a) if transfer duty is chargeable on the dutiable transaction — endorse the transaction record to indicate the amount of transfer duty paid; or
 - (b) if transfer duty is not chargeable on the dutiable transaction because of an exemption under this Act or another written law — endorse the transaction record to indicate that transfer duty is not chargeable because of the exemption; or
 - (c) if transfer duty is not chargeable on the dutiable transaction other than because of an exemption under this Act or another written law — endorse the transaction record to indicate that transfer duty is not chargeable.
- (2A) If a transaction record for a foreign dutiable transaction is lodged for duty endorsement and any required duty is paid in full, the Commissioner must —
- (a) if foreign transfer duty is chargeable on the foreign dutiable transaction — endorse the transaction record to indicate the amount of foreign transfer duty paid; or
 - (b) if foreign transfer duty is not chargeable on the foreign dutiable transaction because of an exemption under this Act or another written law — endorse the transaction record to indicate that foreign transfer duty is not chargeable because of the exemption; or
 - (c) if foreign transfer duty is not chargeable on the foreign dutiable transaction other than because of an exemption under this Act or another

s. 13

written law — endorse the transaction record to indicate that foreign transfer duty is not chargeable.

- (4) In section 273(3A) delete “subsection (2),” and insert:

subsections (2) and (2A),

13. Section 275 amended

In section 275(a)(ii) after “transfer duty (if any)” insert:

and foreign transfer duty (if any)

14. Schedule 2 amended

In Schedule 2 Division 2 delete “Residential property” and insert:

Residential land

15. Schedule 3 Division 8 inserted

After Schedule 3 Division 7 insert:

Division 8 — Provisions for *Duties Amendment (Additional Duty for Foreign Persons) Act 2018*

39. Terms used

When this Division uses a term that is used in Chapter 3A, the term has the same meaning in this Division as it has in Chapter 3A.

40. When Ch. 3A Pt. 2 starts to apply

Chapter 3A Part 2 applies in relation to the imposition of foreign transfer duty on a foreign dutiable transaction only if that transaction takes place on or after 1 January 2019.

41. Agreements entered into before 1 January 2019

- (1) Foreign transfer duty is not chargeable on a transfer of residential property to a transferee in conformity with an agreement for the transfer of residential property if the agreement is entered into before 1 January 2019.
- (2) If an agreement for the transfer of residential property is entered into before 1 January 2019, foreign transfer duty is not chargeable on the subsequent transfer of the property if, when liability for transfer duty on the agreement arose, the person named in the instrument effecting, or evidencing, the agreement as the purchaser was acting as the agent of the transferee of the subsequent transfer.

42. Declaration of trusts made before 1 January 2019

- (1) Foreign transfer duty is not chargeable on a transfer to a trustee of residential property subject to a declaration of trust in respect of the same residential property if the declaration of trust was made before 1 January 2019.
- (2) Foreign transfer duty is not chargeable on a declaration of trust that declares the same trusts as those upon and subject to which the same residential property was transferred, or agreed to be transferred, to the person declaring the trust if the transfer, or agreement, was made before 1 January 2019.
- (3) Foreign transfer duty is not chargeable on a declaration of trust if —
 - (a) the declaration of trust supersedes another declaration of trust which was made before 1 January 2019 and declares the same trusts as were declared under the superseded declaration of trust; and

s. 15

- (b) the beneficiary under the declaration of trust is the same as under the superseded declaration of trust; and
- (c) the residential property subject to the declaration of trust —
 - (i) is wholly or substantially the same as the property that was the subject of the superseded declaration of trust at the time of the declaration of the superseded declaration of trust; or
 - (ii) represents the proceeds of re-investment of property that was the subject of the superseded declaration of trust at the time of the declaration of the superseded declaration of trust; or
 - (iii) is property to which both subparagraphs (i) and (ii) apply.

43. Other transactions before 1 January 2019

- (1) Foreign transfer duty is not chargeable on a transfer of residential property resulting from a foreign dutiable transaction referred to in section 205H(1)(d) if the vesting of the residential property was made before 1 January 2019.
- (2) Foreign transfer duty is not chargeable on a transfer of residential property in accordance with a foreclosure order if the foreclosure order was made before 1 January 2019.
- (3) Foreign transfer duty is not chargeable on a transfer of residential property in accordance with a residential partnership acquisition if the residential partnership acquisition was made before 1 January 2019.
- (4) Foreign transfer duty is not chargeable on a foreign dutiable transaction if —
 - (a) section 97 applies to the transaction and the person from whom the property is transferred or agreed to be transferred acquired the property before 1 January 2019; or

- (b) section 114, 115 or 116 applies to the transaction and the trustee acquired the property before 1 January 2019; or
- (c) section 117(1)(a) or (b) applies to the transaction and the apparent purchaser acquired the property before 1 January 2019.

44. When Ch. 3A Pt. 3 starts to apply

- (1) Chapter 3A Part 3 applies in relation to the imposition of foreign landholder duty on a foreign landholder acquisition only if that acquisition occurs on or after 1 January 2019.
- (2) For the purposes of subsection (1), when an acquisition of an interest in a residential landholder occurs is to be determined under section 176 as applied by section 205ZE(1).

45. Application of some Ch. 8 provisions

- (1) Sections 272(2) and 273 as in force before the commencement of the *Duties Amendment (Additional Duty for Foreign Persons) Act 2018* section 15 apply in relation to a dutiable transaction that takes place before 1 January 2019.
- (2) Section 273(2A) applies in relation to a foreign dutiable transaction only if that transaction takes place on or after 1 January 2019.

=====