

Western Australia

Revenue Laws Amendment Act 2004

As at 29 Jun 2004

No. 11 of 2004

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Revenue Laws Amendment Act 2004

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Western Australia

Revenue Laws Amendment Act 2004

No. 11 of 2004

An Act to amend —

- the *Land Tax Act 2002*;
 - the *Stamp Act 1921*,
- and for related purposes.**

[Assented to 29 June 2004]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Revenue Laws Amendment Act 2004*.

2. Commencement

- (1) Subject to this section, this Act comes into operation on the day on which it receives the Royal Assent.
- (2) If this Act receives the Royal Assent before or on 1 July 2004, Parts 2 and 3 come into operation on 1 July 2004.
- (3) If this Act receives the Royal Assent after 1 July 2004, Parts 2 and 3 are deemed to have come into operation on 1 July 2004.

Part 2 — The *Land Tax Act 2002* amended

3. The Act amended

The amendments in this Part are to the *Land Tax Act 2002**.

[* *Act No. 51 of 2002.*

*For subsequent amendments see Western Australian
Legislation Information Tables for 2003, Table 1, p. 208.]*

4. Section 5 amended

Section 5 is amended as follows —

- (a) by deleting from the heading to Table 2 “and subsequent financial years”;
- (b) by inserting after Table 2 the following table —

Table 3: Land tax rates for 2004/05 and subsequent financial years		
Unimproved value of the land		
Exceeding (\$)	Not exceeding (\$)	Rate of land tax
0	100 000	Nil
100 000	220 000	\$150.00 + 0.15 cent for each \$1 in excess of \$100 000
220 000	570 000	\$330.00 + 0.45 cent for each \$1 in excess of \$220 000
570 000	2 000 000	\$1 905.00 + 1.76 cents for each \$1 in excess of \$570 000
2 000 000	5 000 000	\$27 073.00 + 2.30 cents for each \$1 in excess of \$2 000 000
5 000 000		\$96 073.00 + 2.50 cents for each \$1 in excess of \$5 000 000

Part 3 — *Stamp Act 1921* amended and transitional provision

Division 1 — Preliminary

5. The Act amended

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

[* *Reprint 14 as at 12 Sep 2003.*

For subsequent amendments see Western Australian Legislation Information Tables for 2002, Table 1, p. 365 and Act No. 56 of 2003 .]

Division 2 — Conveyances

6. Second Schedule amended — rate changes

- (1) The amendments in this section are to the Second Schedule.
- (2) Item 4(1)(a) is amended by deleting “\$2.30” and inserting instead —
“ \$2.20 ”.
- (3) Item 4(1)(b) is amended by deleting “\$1 840 and \$3.45” and inserting instead —
“ \$1 760 and \$3.30 ”.
- (4) Item 4(1)(c) is amended by deleting “\$2 530 and \$4.75” and inserting instead —
“ \$2 420 and \$4.50 ”.
- (5) Item 4(1)(d) is amended by deleting “\$9 655 and \$5.90” and inserting instead —
“ \$9 170 and \$5.60 ”.

- (6) Item 4(1)(e) is amended by deleting “\$24 405 and \$6.30” and inserting instead —

“ \$23 170 and \$6.00 ”.

- (7) Item 4(5)(b) is amended by deleting “\$5.50” and inserting instead —

“ \$5.42 ”.

7. Second Schedule amended — first home owner rates

After the Second Schedule Item 4(1) the following item is inserted —

Item		Nature of instrument	Duty payable	Person liable to pay duty
	(2)	Transfer under the <i>Transfer of Land Act 1893</i> of land that includes a home within the meaning of section 75AG, where duty on the instrument of transfer becomes chargeable under that section		the transferee as defined in section 75AG
		Where the amount or value of the consideration —		
		(a) does not exceed \$220 000	nil	
		(b) exceeds \$220 000 but does not exceed \$300 000	\$14.96 for every \$100 and any fractional part of \$100 by which the amount or value of the consideration exceeds \$220 000	

Revenue Laws Amendment Act 2004**Part 3** Stamp Act 1921 amended and transitional provision**Division 2** Conveyances**s. 8**

Item		Nature of instrument	Duty payable	Person liable to pay duty
	(3)	Transfer under the <i>Transfer of Land Act 1893</i> of vacant land, where duty on the instrument of transfer becomes chargeable under section 75AG		the transferee as defined in section 75AG
		Where the amount or value of the consideration —		
		(a) does not exceed \$100 000	nil	
		(b) exceeds \$100 000 but does not exceed \$150 000	\$9.34 for every \$100 and for any fractional part of \$100 by which the amount or value of the consideration exceeds \$100 000	

8. Transitional provision

Despite the amendments made by this Division, the *Stamp Act 1921* as in force immediately before the commencement of this Division applies to and in relation to —

- (a) an instrument that was first executed before 1 July 2004;
- (b) an instrument of conveyance or transfer that replaces another instrument for the conveyance or transfer of the same property where the replaced instrument was first executed before 1 July 2004;
- (c) an instrument of conveyance or transfer of property where —
 - (i) the person to whom the property is conveyed or transferred (the transferee) had an option to purchase the property, or the person who conveys or transfers

- the property had an option to require the transferee to purchase the property; and
- (ii) in either case, the option was granted on or after 6 May 2004 but before 1 July 2004;
- and
- (d) an instrument of conveyance or transfer where —
- (i) the conveyance or transfer of property is made in accordance with an arrangement made on or after 6 May 2004; and
- (ii) the sole or principal purpose of the arrangement was to defer the conveyance or transfer of the property until 1 July 2004 or later so that the rates of duty applicable on or after 1 July 2004 would apply to the instrument.

Division 3 — Land holding companies and corporations

9. Section 4 amended

Section 4(1) is amended as follows:

- (a) in the definition of “dutiable statement” by inserting before “77A” —
- “ 76AT, 76ATG, ”;
- (b) in the definition of “Part IIIA statement” by deleting “or” after paragraph (a) and inserting after paragraph (b) —
- “
- (c) a section 76AT statement; or
- (d) a section 76ATG statement;
- ”;
- (c) by inserting in the appropriate alphabetical position the following definitions —

“

“section 76AT statement” means a dutiable statement lodged under section 76AT in relation to which the Commissioner has not made a determination under section 76AT(12);

“section 76ATG statement” means a dutiable statement lodged under section 76ATG in relation to which the Commissioner has not made a determination under section 76ATG(11);

”.

10. Section 33 amended

Section 33(3)(b) is amended as follows —

- (a) after subparagraph (iii) by deleting “or” and inserting —

“

- (iiia) in the case of a relevant acquisition to which Division 3b of Part IIIBA applies — the person who acquired the controlling interest or additional interest; or

”.

- (b) in subparagraph (iv) by deleting “or (iii)” and inserting instead —

“ (iii) or (iiia) ”.

11. Section 63AB amended

Section 63AB(3)(a)(i) is amended as follows:

- (a) by inserting after “76AI” —

“ or 76ATB ”;

- (b) by inserting after “76AP” —

“ or 76ATI ”.

12. Section 73DA amended

Section 73DA(3)(a) is amended as follows:

- (a) by inserting after “2” —
“ or 3a ”;
- (b) by inserting after “3” —
“ or 3b ”.

13. Section 75JA amended

Section 75JA(2) is amended by inserting after “acquisition under” —

“ Division 2 or 3 of ”.

14. Section 75JB amended

Section 75JB(3)(b) is amended by deleting “or 76AO.” and inserting instead —

“ , 76AO, 76ATA or 76ATH. ”.

15. Section 75JF amended

Section 75JF(d) is amended as follows:

- (a) in subparagraph (i) by inserting after “statement” —
“ or section 76AT statement ”;
- (b) in subparagraph (ii) by inserting after “statement” in both places where it occurs —
“ or section 76ATG statement ”.

16. Part IIIBA Division 1 heading amended

The heading to Part IIIBA Division 1 is amended by deleting “Divisions 2 and 3” and inserting instead —

“ **this Part** ”.

17. Section 76 amended

- (1) Section 76(1a) is amended by deleting “76AR.” and inserting instead —

“

76AR or the acquisition of a controlling interest or an additional interest within the meaning of section 76ATD or 76ATK.

”.

- (2) After section 76(1a) the following subsection is inserted —

“

- (1b) In the definition of “acquire” in subsection (1) a reference to the increase of an interest includes a reference to an increase that occurs by the cancellation of any shares or the variation of the rights of any shares.

”.

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

- (a) by deleting “and 76AP(3)(c)” and inserting instead —
“ , 76AP(3)(c), 76ATB(4)(d) and 76ATI(4)(d) ”;
- (b) in paragraph (a)(ii) by inserting after “(3)” —
“ (a) to (g) ”.

- (4) Section 76(3) is amended as follows:

- (a) after paragraph (f) by deleting “and”;
- (b) after paragraph (g) by deleting the full stop and inserting —

“

;

- (h) persons who acquire interests in a corporation by virtue of acquisitions that arise from those persons acting in concert with each other.

”.

- (5) Section 76(7) is amended by deleting “and 76AR(4)” and inserting instead —

“ , 76AR(4), 76ATB(6), 76ATI(6) and 76ATK(4) ”.

18. Section 76A amended

- (1) Section 76A(1) is amended by deleting “or a further interest” and inserting instead —

“

, a further interest, a controlling interest or an additional interest

”.

- (2) Section 76A(2)(b) and (c) are amended by deleting “or section 76AN” and inserting instead —

“

, section 76AN statement, section 76AT statement or section 76ATG

”.

- (3) Section 76A(3) is amended as follows:

- (a) by inserting after the definition of “beneficiary” —

“

“interest”, “controlling interest” and “additional interest” —

- (a) in relation to a section 76AT statement, have the meanings given by section 76ATD; and
- (b) in relation to a section 76ATG statement, have the meanings given by section 76ATK;

”;

- (b) in the definition of “relevant acquisition” by deleting “or 76AQ” and inserting instead —

“ , 76AQ, 76ATC or 76ATJ ”.

19. Section 76AA amended

Section 76AA is amended as follows:

- (a) by inserting after “76AN” —
“ or 76ATG ”;
- (b) in paragraph (a) by inserting after “3” —
“ or 3b ”;
- (c) in paragraph (c) by inserting after “76AR(1)” —
“ or 76ATK(1) ”.

20. Section 76AB amended

- (1) Section 76AB(1), (3)(b), (5)(b), (6) and (7) are amended by deleting “or 76AN” and inserting instead —

“ , 76AN, 76AT or 76ATG ”.

- (2) Section 76AB(2) is repealed and the following subsection is inserted instead —

“

- (2) A request under subsection (1) must be made in an approved form and must include —

- (a) the information that would be required under —

- (i) section 76AG(4)(a) to (f);
- (ii) section 76AN(3)(a) to (f);
- (iii) section 76AT(8)(a) to (h), (9)(a) to (c) or (10)(a) to (c); or
- (iv) section 76ATG(7)(a) to (h), (8)(a) to (c) or (9)(a) to (c),

if the request were a dutiable statement; and

- (b) any prescribed information.

”.

21. Section 76AH amended

- (1) Section 76AH(1) is amended as follows:
- (a) in paragraph (a) by inserting after “76AJ(1)(a)” —
“ (i) ”;
 - (b) after paragraph (a) by deleting “and” and inserting —
“
 - (aa) where the section 76AG statement relates to a relevant acquisition within section 76AJ(1)(a)(ii), the duty —
 - (i) shall be calculated on the dutiable value determined under section 76AL(2a)(a); but
 - (ii) shall be reduced by the amount of duty determined on the dutiable value calculated under section 76AL(2a)(b);and
”.
- (2) Section 76AH(2) is amended by inserting after “where paragraph” —
“ (aa) or ”.

22. Section 76AI amended

Section 76AI(2a)(c) is amended by deleting “(5)(b)” and inserting instead —
“ (1) ”.

23. Section 76AJ amended

- (1) After section 76AJ(2a) the following subsection is inserted —
“
 - (2b) Subject to subsection (2a), a previous acquisition of an interest in the WA company is to be taken into”.

consideration under subsection (1)(a)(ii) even if, at the time of that acquisition, this Division did not apply to the WA company because of section 76AI(1)(a) and (b).

”.

- (2) Section 76AJ(3) is amended by inserting after “(1)(a)(ii)” —
“ and section 76AL(2a)(b) ”.

24. Section 76AL amended

- (1) After section 76AL(1) the following subsection is inserted —
“

- (1a) The method of determining the dutiable value depends on the nature of a relevant acquisition by which a person acquires an interest in a WA company.

”.

- (2) Section 76AL(2) is amended by deleting “by a relevant acquisition, a person acquires a majority interest in a WA company” and inserting instead —
“ the relevant acquisition is within section 76AJ(1)(a)(i) ”.

- (3) After section 76AL(2) the following subsection is inserted —
“

- (2a) Where the relevant acquisition is within section 76AJ(1)(a)(ii) the dutiable value —
(a) for the purposes of section 76AH(1)(aa)(i), is the same proportion of the value of the land and chattels situated in Western Australia to which the WA company is entitled, as provided by subsection (4), at the time of the acquisition, as the proportion of the property of the WA company to which the person, or the person and a related person, would be entitled, as provided

in subsection (5), after the acquisition of the majority interest;

- (b) for the purposes of section 76AH(1)(aa)(ii), is the same proportion of the value of the land and chattels situated in Western Australia to which the WA company is entitled, as provided by subsection (4), at the time of the acquisition, as the proportion of the property of the WA company to which the person, or the person and a related person, would have been entitled, as provided in subsection (5), before the relevant day as defined in section 76AJ(4).

”.

- (4) Section 76AL(4) and (5) are amended by inserting after “(2)” —
“ , (2a) ”.

25. Section 76AO amended

- (1) Section 76AO(1) is amended as follows:
- (a) in paragraph (a) by inserting after “76AQ(1)(a)” —
“ (i) ”;
- (b) after paragraph (a) by deleting “and” and inserting —
“
- (aa) where the section 76AN statement relates to a relevant acquisition within section 76AQ(1)(a)(ii), the duty —
- (i) shall be calculated on the dutiable value determined under section 76AS(2a)(a);
but
- (ii) shall be reduced by the amount of duty determined on the dutiable value calculated under section 76AS(2a)(b);
- and

”.

- (2) Section 76AO(2) is amended by inserting after “where paragraph” —

“ (aa) or ”.

26. Section 76AP amended

Section 76AP(2a)(c) is amended by deleting “(4)(b)” and inserting instead —

“ (1) ”.

27. Section 76AQ amended

- (1) After section 76AQ(2a) the following subsection is inserted —

“

- (2b) Subject to subsection (2a), a previous acquisition of an interest in the corporation is to be taken into consideration under subsection (1)(a)(ii) even if, at the time of that acquisition, this Division did not apply to the corporation because of section 76AP(1)(d) and (e).

”.

- (2) Section 76AQ(3) is amended by inserting after “(1)(a)(ii)” —

“ and section 76AS(2a)(b) ”.

28. Section 76AS amended

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

“

- (1a) The method of determining the dutiable value depends on the nature of a relevant acquisition by which a person acquires an interest in a corporation.

”.

- (2) Section 76AS(2) is amended by deleting “by a relevant acquisition, a person acquires a majority interest in a corporation” and inserting instead —
- “ the relevant acquisition is within section 76AQ(1)(a)(i) ”.
- (3) After section 76AS(2) the following subsection is inserted —
- “
- (2a) Where the relevant acquisition is within section 76AQ(1)(a)(ii) the dutiable value —
- (a) for the purposes of section 76AO(1)(aa)(i), is the same proportion of the value of the land and chattels situated in Western Australia to which the corporation is entitled, as provided by subsection (4), at the time of the acquisition, as the proportion of the property of the corporation to which the person, or the person and a related person, would be entitled, as provided in subsection (5), after the acquisition of the majority interest;
- (b) for the purposes of section 76AO(1)(aa)(ii), is the same proportion of the value of the land and chattels situated in Western Australia to which the corporation is entitled, as provided by subsection (4), at the time of the acquisition, as the proportion of the property of the corporation to which the person, or the person and a related person, would have been entitled, as provided in subsection (5), before the relevant day as defined in section 76AQ(4).
- ”.
- (4) Section 76AS(4) and (5) are amended by inserting after “(2)” —
- “ , (2a) ”.

29. Part IIIBA Divisions 3a and 3b inserted

After section 76AS the following Divisions are inserted —

“

**Division 3a — Listed companies taken to be registered
in Western Australia**

76AT. Preparation of dutiable statement

- (1) Where by a relevant acquisition a person acquires a controlling interest in —
 - (a) a listed land holder WA company; or
 - (b) a WA company that would be a listed land holder WA company if the reference to the value of land in section 76ATB(2)(b) were a reference to the value of land, goods, wares and merchandise,

the person shall, within 2 months after the acquisition, lodge a statement with the Commissioner in respect of that acquisition.

- (2) Subject to subsections (4)(d) and (5)(c), where by a relevant acquisition a person acquires an additional interest in a WA company the person shall, within 2 months after the acquisition, lodge a statement with the Commissioner in respect of that acquisition.
- (3) Within 2 months after a relevant acquisition referred to in subsection (2) (“**acquisition A**”) the person referred to in subsection (2) may apply to the Commissioner in an approved form for approval to lodge periodical statements for the purposes of this section in respect of periods approved by the Commissioner (each of which is referred to in this Division as a “**relevant period**”).

- (4) If the Commissioner approves the application —
- (a) the Commissioner is to notify the person accordingly specifying —
 - (i) the day on which each relevant period ends; and
 - (ii) any conditions to which the approval is subject;
 - (b) the first relevant period is taken to have begun on the day of acquisition A and a subsequent relevant period begins on the day after the day on which the immediately preceding relevant period ends;
 - (c) the person shall —
 - (i) within 14 days after the first relevant period ends, lodge a statement with the Commissioner in respect of acquisition A and any other relevant acquisitions by which the person acquired additional interests in the WA company during that relevant period; and
 - (ii) within 14 days after each subsequent relevant period ends, lodge a statement with the Commissioner in respect of any relevant acquisitions by which the person acquired additional interests in the WA company during that relevant period;
- and
- (d) subsection (2) does not apply to acquisition A or any other relevant acquisition referred to in paragraph (c).

- (5) If the Commissioner does not approve the application —
 - (a) the Commissioner is to notify the person accordingly giving reasons for the decision;
 - (b) the person shall, within 2 months after the notification is given, lodge statements with the Commissioner in respect of acquisition A and each other relevant acquisition (if any) by which the person acquired an additional interest in the WA company after acquisition A and before the notification is given; and
 - (c) subsection (2) does not apply to acquisition A or any other relevant acquisition referred to in paragraph (b).
- (6) If a requirement under this section arises in circumstances where a person acquires a controlling interest or an additional interest by reason of acquisitions by the person and a related person or related persons being aggregated, one of such persons shall comply with this section on behalf of all such persons by including all the acquisitions in a dutiable statement lodged under this section.
- (7) A dutiable statement must be prepared in an approved form.
- (8) A dutiable statement under subsection (1) shall include the following information —
 - (a) the name and address of the person who has acquired the controlling interest and of any related person referred to in subsection (6);
 - (b) the date of the acquisition;
 - (c) particulars of the interest acquired and all interests previously acquired by the person or a related person in the WA company;

- (d) the person's estimate of the unencumbered value of all land and chattels in Western Australia to which the WA company is entitled as at the date of the acquisition;
 - (e) particulars of any chattels, whether situated in Western Australia or not, to which the WA company was entitled in the 12 months preceding the date of the acquisition and acquired, directly or indirectly, by the person or a related person in that period;
 - (f) the person's estimate of the unencumbered value of those chattels;
 - (g) the person's estimate of the unencumbered value of the property of the WA company as at the date of the acquisition;
 - (h) if the dutiable statement is lodged because of subsection (1)(b), a notation to that effect and such information relating to the goods, wares and merchandise referred to in subsection (1)(b), and their ownership and acquisition, as the approved form requires to be provided.
- (9) A dutiable statement under subsection (2) or (5)(b) shall include the following information —
- (a) the name and address of the person who has acquired the additional interest and of any related person referred to in subsection (6);
 - (b) the date of the acquisition;
 - (c) particulars of the interest acquired and all interests previously acquired by the person or a related person in the WA company.

- (10) A dutiable statement under subsection (4)(c) in respect of a relevant period shall include the following information —
- (a) the name and address of the person who acquired the additional interest or additional interests during the relevant period and of any related person referred to in subsection (6);
 - (b) in relation to each additional interest acquired during the relevant period —
 - (i) the date of the acquisition; and
 - (ii) particulars of the interest;
 - (c) particulars of all interests acquired by the person or a related person in the WA company before the relevant period.
- (11) A dutiable statement lodged under this section is taken to be an instrument evidencing the relevant acquisition or relevant acquisitions and is chargeable with duty accordingly.
- (12) If, in the case of a dutiable statement lodged because of subsection (1)(b), the Commissioner is satisfied that the entitlement to, and valuation of, the goods, wares and merchandise referred to in subsection (1)(b) were not part of an arrangement or scheme having as its purpose, or one of its purposes, the defeat of the object of this Division, the Commissioner may determine that subsection (11) does not apply to the dutiable statement.
- (13) In deciding whether or not to make a determination under subsection (12) the Commissioner may have regard to —
- (a) the source of the goods, wares and merchandise and the source of funding for their acquisition;

- (b) their nature and their relevance to any business carried on by the WA company or any subsidiary;
 - (c) the period for which they have been and are likely to remain the property of the WA company or any subsidiary; and
 - (d) any other matter that the Commissioner considers relevant.
- (14) A determination made under subsection (12) has effect according to its terms and the Commissioner is to give notice of it to the person who lodged the dutiable statement.
- (15) If the person who lodged the dutiable statement requests the Commissioner to give reasons why the Commissioner has not made a determination under subsection (12), the Commissioner is to give reasons to the person.
- (16) A person who fails to comply with subsection (1), (2), (4)(c) or (5)(b) commits an offence.
Penalty: \$20 000.

76ATA. Statement chargeable with duty

- (1) A section 76AT statement is chargeable, in accordance with section 76ATE, with duty at the rate provided for in item 4(1) of the Second Schedule calculated as follows —
 - (a) where the section 76AT statement relates to a relevant acquisition within section 76ATC(1)(a)(i), the duty shall be calculated on the dutiable value determined under section 76ATE(3);

- (b) where the section 76AT statement relates to a relevant acquisition within section 76ATC(1)(a)(ii), the duty —
 - (i) shall be calculated on the dutiable value determined under section 76ATE(4)(a); but
 - (ii) shall be reduced by the amount of duty determined on the dutiable value calculated under section 76ATE(4)(b);
 - (c) unless paragraph (d) applies, where the section 76AT statement relates to a relevant acquisition within section 76ATC(1)(b), the duty —
 - (i) shall be calculated on the dutiable value determined under section 76ATE(5)(a); but
 - (ii) shall be reduced by the amount of duty determined on the dutiable value calculated under section 76ATE(5)(b);
 - (d) where approval has been granted under section 76AT(4), the duty —
 - (i) shall be calculated on the dutiable value determined under section 76ATE(6)(a); but
 - (ii) shall be reduced by the amount of duty determined on the dutiable value calculated under section 76ATE(6)(b).
- (2) Notwithstanding item 4(1) of the Second Schedule, where the value of the land and chattels under section 76ATE(7) does not exceed \$1 500 000 the duty chargeable under this section shall be calculated as follows, and where paragraph (b), (c) or (d) of

subsection (1) applies shall be so calculated in terms of subparagraphs (i) and (ii) of that paragraph —

$$\frac{A - \$1\,000\,000}{\$500\,000} \times B$$

where —

- A is the value of the land and chattels situated in Western Australia to which the WA company is entitled as provided in section 76ATE(7); and
 - B is the duty calculated under item 4(1) of the Second Schedule on the dutiable value determined under section 76ATE.
- (3) Subject to subsection (4), if a section 76AT statement contains particulars of any chattels as required by section 76AT(8)(e), then, in addition to the duty chargeable under subsection (1), the section 76AT statement is chargeable with duty at the rate provided for in item 4(1) of the Second Schedule calculated on the unencumbered value of the chattels, but duty shall not be charged in respect of —
- (a) any of the chattels in respect of which duty has been paid under section 31B, 31C or 70 by the person who made the relevant acquisition to which the section 76AT statement relates or by a related person;
 - (b) any of the chattels in respect of which *ad valorem* duty has been paid by that person, or a related person, in another jurisdiction; or
 - (c) any of the chattels that, in the opinion of the Commissioner, are usually not situated in Western Australia.
- (4) The section 76AT statement is not chargeable with duty under subsection (3) if the Commissioner is satisfied that no transaction by means of which the

chattels were transferred from the WA company to the person who made the relevant acquisition, or a related person, was effected for the collateral purpose of reducing the duty that otherwise would be chargeable in respect of the relevant acquisition.

- (5) If —
- (a) a section 76AT statement relates to a relevant acquisition within section 76ATC(1)(a)(ii); and
 - (b) duty charged under Division 2 or 3 (the **“previous duty”**) has been paid in respect of a previous acquisition of an interest in the WA company that is taken into consideration under section 76ATC(1)(a)(ii),

there shall be deducted from the duty payable on the section 76AT statement the amount that the previous duty would have been if the previous acquisition had occurred immediately before the relevant acquisition occurred.

76ATB. Meaning of “listed land holder WA company”

- (1) In this Division a WA company is a **“listed land holder WA company”** if it is a land holder within the meaning in subsection (2) and is listed on a recognised financial market.
- (2) A WA company is a land holder for the purposes of this Division if at the time of an acquisition of a controlling interest —
 - (a) it is entitled to land situated in Western Australia and the unencumbered value of the land is not less than \$1 000 000, or it is entitled to land situated in Western Australia as a co-owner of the freehold or of a lesser estate in the land and the value of the whole of the

freehold or lesser estate is not less than
\$1 000 000; and

- (b) the value of all land to which the WA company is entitled, whether situated in Western Australia or elsewhere, is 60% or more of the value of all property to which it is entitled, other than property directed to be excluded by subsection (4),

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

- (3) If the Commissioner makes a determination under subsection (2) —
 - (a) the Commissioner is to give notice of it to the person who acquired the controlling interest;
 - (b) the notice is to contain reasons for the determination; and
 - (c) for the purposes of section 76AT(1) the acquisition of the controlling interest is taken to have occurred when the notice is given.
- (4) The following property of a WA company, or of any subsidiary within the meaning in subsection (6), shall not be included for the purpose of calculating the value of property under subsection (2)(b) —
 - (a) cash or money in an account at call;
 - (b) negotiable instruments, and money on deposit with any person;
 - (c) property consisting of rights or interests under a sales contract (including a forward sales

- contract) relating to minerals, primary products or other commodities;
- (d) money lent by the WA company or a subsidiary to —
- (i) any person who in relation to the WA company is an associated person; or
 - (ii) any person at call or in terms that require or allow full repayment to the WA company within 12 months after the money is lent;
- (e) where by virtue of Division 6 of Part 1.2 of the Corporations Act a corporation is a subsidiary of the WA company, the shareholding of that WA company in the subsidiary corporation, but without limiting subsection (6);
- (f) in the case of the WA company, property consisting of a share or interest in a trust referred to in subsection (6);
- (g) a licence or patent or other intellectual property (including knowledge or information that has a commercial value) relating to any process, technique, method, design or apparatus to —
- (i) locate, extract, process, transport or market minerals; or
 - (ii) grow, rear, breed, maintain, produce, harvest, collect, process, transport or market primary products;
- (h) stores, stockpiles or holdings of minerals or primary products (whether processed or unprocessed) produced by the WA company or a related person;
- (i) future tax benefits (whether in the nature of tax losses, capital losses, foreign losses or foreign tax credits) under the *Income Tax Assessment*

Act 1997 or Income Tax Assessment Act 1936
of the Commonwealth or similar benefits under
the laws of another jurisdiction;

- (j) any property prescribed for the purposes of this subsection;
 - (k) any other property, whether of the same nature as or a different nature from the foregoing, in respect of which it is not shown to the Commissioner's satisfaction that a reason for ownership by the WA company or the subsidiary within the meaning in subsection (6) is not for the purpose of defeating the object of this Division.
- (5) In forming an opinion for the purposes of subsection (4)(k) the Commissioner may have regard to —
- (a) the source of the property and the source of funding for its acquisition;
 - (b) its nature and its relevance to any business carried on by the WA company or the subsidiary;
 - (c) the period for which it has been and is likely to remain the property of the WA company or the subsidiary; and
 - (d) any other matter that the Commissioner considers relevant.
- (6) Without limiting the meaning of “entitled”, a WA company is deemed to be entitled to land or property to the extent that a subsidiary is entitled to that land or property, and for the purposes of this subsection a subsidiary is —
- (a) a subsidiary corporation by virtue of Division 6 of Part 1.2 of the Corporations Act, or any other

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

- (b) the trustee of any trust where the WA company or a subsidiary corporation of the WA company, as defined in paragraph (a) —
 - (i) is entitled to a share or interest in the trust, whether vested or contingent; or
 - (ii) in the case of a discretionary trust, may benefit from that trust;
- (c) any corporation, where the trustee of a trust in which the WA company or a subsidiary corporation —
 - (i) is entitled to a share or interest, whether vested or contingent; or
 - (ii) in the case of a discretionary trust, may benefit from that trust,would be entitled if the corporation were to be wound up, after the time of the acquisition of the controlling interest, to participate in a distribution of the property of the corporation to an extent greater than 50% of the value of the distributable property; or
- (d) any other corporation or the trustee of any other trust that would by an application of this subsection be a subsidiary of a corporation that is a subsidiary of the WA company.

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

76ATC. Meaning of “relevant acquisition”

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

or

- (b) if by that acquisition a person acquires an additional interest in the WA company.
- (2) If subsection (1)(b) applies to an acquisition, subsection (1)(a)(ii) does not apply to it.
- (3) A previous acquisition of an interest in the WA company is to be taken into consideration under subsection (1)(a)(ii) even if, at the time of that acquisition, the WA company was not a land holder within the meaning in section 76ATB(2) or was not listed on a recognised financial market.

76ATD. Meaning of “interest”, “controlling interest” or “additional interest”

- (1) For the purposes of this Division, a person acquires an **“interest”** in a WA company if the person acquires, or the person and any related person acquire, an entitlement such that the person, or the person and any related person, would be entitled if the WA company were to be wound up to participate in a distribution of the property of the WA company.
- (2) For the purposes of this Division, a person acquires a controlling interest in a WA company if the person acquires, or the person and any related person acquire, an interest in the WA company such that having acquired that interest the person, or the person and any related person, would be entitled if the WA company were to be wound up to participate in a distribution of the property of the WA company to an extent not less than 90% of the value of the distributable property and, in section 76ATC(1)(a)(i) and (ii) and subsection (3), **“controlling interest”** has a corresponding meaning.

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

76ATE. How dutiable value is determined

- (1) Where section 76ATA(1) applies, duty is chargeable in accordance with this section on the basis of the value free of encumbrances (the **“dutiable value”**) of the land and chattels situated in Western Australia to which the WA company is entitled.
- (2) The method of determining the dutiable value depends on the nature of a relevant acquisition by which a person acquires an interest in a WA company.
- (3) Where the relevant acquisition is within section 76ATC(1)(a)(i) the dutiable value is the same proportion of the value of the land and chattels situated in Western Australia to which the WA company is entitled, as provided by subsection (7), at the time of the acquisition, as the proportion of the property of the WA company to which the person, or the person and any related person, would be entitled, as provided in subsection (8), after the acquisition.

- (4) Where the relevant acquisition is within section 76ATC(1)(a)(ii) the dutiable value —
 - (a) for the purposes of section 76ATA(1)(b)(i), is the same proportion of the value of the land and chattels situated in Western Australia to which the WA company is entitled, as provided by subsection (7), at the time of the acquisition, as the proportion of the property of the WA company to which the person, or the person and a related person, would be entitled, as provided in subsection (8), after the acquisition of the controlling interest;
 - (b) for the purposes of section 76ATA(1)(b)(ii), is the same proportion of the value of the land and chattels situated in Western Australia to which the WA company is entitled, as provided by subsection (7), at the time of the acquisition, as the proportion of the property of the WA company to which the person, or the person and a related person, would have been entitled, as provided in subsection (8), before the day that is 3 years before the day of the acquisition of the controlling interest.
- (5) Unless subsection (6) applies, where the relevant acquisition is within section 76ATC(1)(b) the dutiable value —
 - (a) for the purposes of section 76ATA(1)(c)(i), is the same proportion of the value of the land and chattels situated in Western Australia to which the WA company was entitled, as provided by subsection (7), at the time the controlling interest was acquired, as the proportion of the property of the WA company to which the person, or the person and a related person,

- would be entitled, as provided in subsection (8), after the acquisition of the additional interest;
- (b) for the purposes of section 76ATA(1)(c)(ii), is the same proportion of the value of the land and chattels situated in Western Australia to which the WA company was entitled, as provided by subsection (7), at the time the controlling interest was acquired, as the proportion of the property of the WA company to which the person, or the person and a related person, would have been entitled, as provided in subsection (8), at the time of the immediately preceding relevant acquisition by that person, or a related person.
- (6) Where approval has been granted under section 76AT(4) the dutiable value —
- (a) for the purposes of section 76ATA(1)(d)(i), is the same proportion of the value of the land and chattels situated in Western Australia to which the WA company was entitled, as provided by subsection (7), at the time the controlling interest was acquired, as the proportion of the property of the WA company to which the person, or the person and a related person, would be entitled, as provided in subsection (8), at the end of the relevant period to which the section 76AT statement relates;
- (b) for the purposes of section 76ATA(1)(d)(ii), is the same proportion of the value of the land and chattels situated in Western Australia to which the WA company was entitled, as provided by subsection (7), at the time the controlling interest was acquired, as the proportion of the property of the WA company to which the person, or the person and a related person,

would have been entitled, as provided in subsection (8), before the beginning of the relevant period to which the section 76AT statement relates.

- (7) For the purposes of subsections (3), (4), (5) and (6), the unencumbered value of the land and chattels to which a WA company is entitled at any time is the sum of —
- (a) in the case of land and chattels to which the WA company is entitled without reference to subsection (6) of section 76ATB, the unencumbered value of the land and chattels at that time; and
 - (b) in the case of land and chattels to which a subsidiary is entitled as mentioned in that subsection, the amount to which, if the property of a subsidiary or of all subsidiaries in the chain of relationships were to be distributed at that time (in the case of a corporation, on the basis of a winding up), without having regard to any liabilities of the same, the WA company would be entitled in respect of the unencumbered value at that time of land and chattels to which the subsidiary is, or all subsidiaries are, entitled.
- (8) For the purposes of subsections (3), (4), (5) and (6), the property of a WA company to which a person, or the person and any related person, would be entitled is the property to which the person, or the person and any related person, would be entitled if the WA company were to be wound up after the acquisition.
- (9) If the day of the acquisition of the controlling interest is 30 June 2007 or earlier, the reference in subsection (4)(b) to the day that is 3 years before the

day of the acquisition of the controlling interest is taken to be a reference to 1 July 2004.

76ATF. Liability for duty

Without limiting section 17(1)(c), where an acquisition is a relevant acquisition by virtue of a person and any related person acquiring an interest in a WA company all such persons are jointly and severally liable for the duty chargeable under this Division on the section 76AT statement lodged in relation to the acquisition.

Division 3b — Listed corporations incorporated, or taken to be registered, outside Western Australia, and certain other companies not within Division 3a

76ATG. Preparation of dutiable statement

- (1) Where by a relevant acquisition a person acquires a controlling interest in —
 - (a) a listed land holder corporation; or
 - (b) a corporation that would be a listed land holder corporation if the reference to the value of land in section 76ATI(2)(b) were a reference to the value of land, goods, wares and merchandise,the corporation shall, within 2 months after the acquisition, lodge a statement with the Commissioner in respect of that acquisition.
- (2) Subject to subsections (4)(d) and (5)(c), where by a relevant acquisition a person acquires an additional interest in a corporation the corporation shall, within 2 months after the acquisition, lodge a statement with the Commissioner in respect of that acquisition.

- (3) Within 2 months after a relevant acquisition referred to in subsection (2) (“**acquisition A**”) the corporation may apply to the Commissioner in an approved form for approval to lodge periodical statements for the purposes of this section in respect of the person referred to in subsection (2) (the “**bidder**”) in respect of periods approved by the Commissioner (each of which is referred to in this Division as a “**relevant period**”).
- (4) If the Commissioner approves the application —
 - (a) the Commissioner is to notify the corporation accordingly specifying —
 - (i) the day on which each relevant period ends; and
 - (ii) any conditions to which the approval is subject;
 - (b) the first relevant period is taken to have begun on the day of acquisition A and a subsequent relevant period begins on the day after the day on which the immediately preceding relevant period ends;
 - (c) the corporation shall —
 - (i) within 14 days after the first relevant period ends, lodge a statement with the Commissioner in respect of acquisition A and any other relevant acquisitions by which the bidder acquired additional interests in the corporation during that relevant period; and
 - (ii) within 14 days after each subsequent relevant period ends, lodge a statement with the Commissioner in respect of any relevant acquisitions by which the

bidder acquired additional interests in
the corporation during that relevant
period;

and

- (d) subsection (2) does not apply to acquisition A or any other relevant acquisition referred to in paragraph (c).
- (5) If the Commissioner does not approve the application —
 - (a) the Commissioner is to notify the corporation accordingly giving reasons for the decision;
 - (b) the corporation shall, within 2 months after the notification is given, lodge statements with the Commissioner in respect of acquisition A and each other relevant acquisition (if any) by which the bidder acquired an additional interest in the corporation after acquisition A and before the notification is given; and
 - (c) subsection (2) does not apply to acquisition A or any other relevant acquisition referred to in paragraph (b).
- (6) A dutiable statement must be prepared in an approved form.
- (7) A dutiable statement under subsection (1) shall include the following information —
 - (a) the name and address of the person who has acquired the controlling interest, and of any related person if the acquisition is required to be aggregated with an acquisition by such person;
 - (b) the date of the acquisition;

- (c) particulars of the interest acquired and all interests previously acquired by the person or a related person in the corporation;
 - (d) the corporation's estimate of the unencumbered value of all land and chattels in Western Australia to which the corporation is entitled as at the date of the acquisition;
 - (e) particulars of any chattels, whether situated in Western Australia or not, to which the corporation was entitled in the 12 months preceding the date of the acquisition and acquired, directly or indirectly, by the person or a related person in that period;
 - (f) the corporation's estimate of the unencumbered value of those chattels;
 - (g) the corporation's estimate of the unencumbered value of the property of the corporation as at the date of the acquisition; and
 - (h) if the dutiable statement is lodged because of subsection (1)(b), a notation to that effect and such information relating to the goods, wares and merchandise referred to in subsection (1)(b), and their ownership and acquisition, as the approved form requires to be provided.
- (8) A dutiable statement under subsection (2) or (5)(b) shall include the following information —
- (a) the name and address of the person who has acquired the additional interest, and of any related person if the acquisition is required to be aggregated with an acquisition by such person;
 - (b) the date of the acquisition;

- (c) particulars of the interest acquired and all interests previously acquired by the person or a related person in the corporation.
- (9) A dutiable statement under subsection (4)(c) in respect of a relevant period shall include the following information —
 - (a) the name and address of the bidder, and of any related person if any acquisition is required to be aggregated with an acquisition by such person;
 - (b) in relation to each additional interest acquired during the relevant period —
 - (i) the date of the acquisition; and
 - (ii) particulars of the interest;
 - (c) particulars of all interests acquired by the bidder or a related person in the corporation before the relevant period.
- (10) A dutiable statement lodged under this section is taken to be an instrument evidencing the relevant acquisition or relevant acquisitions and is chargeable with duty accordingly.
- (11) If, in the case of a dutiable statement lodged because of subsection (1)(b), the Commissioner is satisfied that the entitlement to, and valuation of, the goods, wares and merchandise referred to in subsection (1)(b) were not part of an arrangement or scheme having as its purpose, or one of its purposes, the defeat of the object of this Division, the Commissioner may determine that subsection (10) does not apply to the dutiable statement.
- (12) In deciding whether or not to make a determination under subsection (11) the Commissioner may have regard to —

- (a) the source of the goods, wares and merchandise and the source of funding for their acquisition;
 - (b) their nature and their relevance to any business carried on by the corporation, trustee or related corporation;
 - (c) the period for which they have been and are likely to remain the property of the corporation, trustee or related corporation; and
 - (d) any other matter that the Commissioner considers relevant.
- (13) A determination made under subsection (11) has effect according to its terms and the Commissioner is to give notice of it to the corporation.
- (14) If the corporation requests the Commissioner to give reasons why the Commissioner has not made a determination under subsection (11), the Commissioner is to give reasons to the corporation.
- (15) A person who fails to comply with subsection (1), (2), (4)(c) or (5)(b) commits an offence.

Penalty: \$20 000.

76ATH. Statement chargeable with duty

- (1) A section 76ATG statement is chargeable, in accordance with section 76ATL, with duty at the rate provided for in item 4(1) of the Second Schedule calculated as follows —
 - (a) where the section 76ATG statement relates to a relevant acquisition within section 76ATJ(1)(a)(i), the duty shall be calculated on the dutiable value determined under section 76ATL(3);
 - (b) where the section 76ATG statement relates to a relevant acquisition within section 76ATJ(1)(a)(ii), the duty —

- (i) shall be calculated on the dutiable value determined under section 76ATL(4)(a); but
 - (ii) shall be reduced by the amount of duty determined on the dutiable value calculated under section 76ATL(4)(b);
 - (c) unless paragraph (d) applies, where the section 76ATG statement relates to a relevant acquisition within section 76ATJ(1)(b), the duty —
 - (i) shall be calculated on the dutiable value determined under section 76ATL(5)(a); but
 - (ii) shall be reduced by the amount of duty determined on the dutiable value calculated under section 76ATL(5)(b);
 - (d) where approval has been granted under section 76ATG(4) the duty —
 - (i) shall be calculated on the dutiable value determined under section 76ATL(6)(a); but
 - (ii) shall be reduced by the amount of duty determined on the dutiable value calculated under section 76ATL(6)(b).
- (2) Notwithstanding item 4(1) of the Second Schedule, where the value of the land and chattels under section 76ATL(7) does not exceed \$1 500 000 the duty chargeable under this section shall be calculated as follows, and where paragraph (b), (c) or (d) of subsection (1) applies, shall be so calculated in terms of subparagraphs (i) and (ii) of that paragraph —

$$\frac{A - \$1\,000\,000}{\$500\,000} \times B$$

where —

- A is the value of the land and chattels situated in Western Australia to which the corporation is entitled as provided in section 76ATL(7); and
 - B is the duty calculated under item 4(1) of the Second Schedule on the dutiable value determined under section 76ATL.
- (3) Subject to subsection (4), if a section 76ATG statement contains particulars of any chattels as required by section 76ATG(7)(e), then, in addition to the duty chargeable under subsection (1), the section 76ATG statement is chargeable with duty at the rate provided for in item 4(1) of the Second Schedule calculated on the unencumbered value of the chattels, but duty shall not be charged in respect of —
- (a) any of the chattels in respect of which duty has been paid under section 31B, 31C or 70 by the person who made the relevant acquisition to which the section 76ATG statement relates or by a related person;
 - (b) any of the chattels in respect of which *ad valorem* duty has been paid by that person, or a related person, in another jurisdiction; or
 - (c) any of the chattels that, in the opinion of the Commissioner, are usually not situated in Western Australia.
- (4) The section 76ATG statement is not chargeable with duty under subsection (3) if the Commissioner is satisfied that no transaction by means of which the chattels were transferred from the corporation to the person who made the relevant acquisition, or a related person, was effected for the collateral purpose of reducing the duty that otherwise would be chargeable in respect of the relevant acquisition.

(5) If —

- (a) a section 76ATG statement relates to a relevant acquisition within section 76ATJ(1)(a)(ii); and
- (b) duty charged under Division 2 or 3 (the “**previous duty**”) has been paid in respect of a previous acquisition of an interest in the corporation that is taken into consideration under section 76ATJ(1)(a)(ii),

there shall be deducted from the duty payable on the section 76ATG statement the amount that the previous duty would have been if the previous acquisition had occurred immediately before the relevant acquisition occurred.

76ATI. Meaning of “listed land holder corporation”

(1) In this Division a corporation is a “**listed land holder corporation**” if —

- (a) it is —
 - (i) a body corporate that is taken to be registered outside Western Australia (for the purposes of the Corporations Act) or that is otherwise formed or incorporated outside Western Australia, not being a body corporate that is —
 - (I) within paragraphs (a) to (d) of section 66A(4) of the Corporations Law; or
 - (II) a subsidiary, within the meaning in section 76ATB(6), of a WA company to which Division 3a applies;

or

- (ii) a WA company that would be a subsidiary, within the meaning in section 76ATB(6), of a body corporate referred to in subparagraph (i) if that body corporate were a WA company;
 - and
 - (b) it is a land holder within the meaning in subsection (2) and is listed on a recognised financial market.
- (2) A corporation is a land holder for the purposes of this Division if at the time of an acquisition of a controlling interest —
 - (a) it is entitled to land situated in Western Australia and the unencumbered value of the land is not less than \$1 000 000, or it is entitled to land situated in Western Australia as a co-owner of the freehold or of a lesser estate in the land and the value of the whole of the freehold or lesser estate is not less than \$1 000 000; and
 - (b) the value of all land to which the corporation is entitled, whether situated in Western Australia or elsewhere, is 60% or more of the value of all property to which it is entitled, other than property directed to be excluded by subsection (4),or if the Commissioner determines that paragraphs (a) and (b) would have applied to the corporation at the time of the acquisition of the controlling interest but for a transaction, or series of transactions, which in the Commissioner's opinion had as its purpose, or one of its purposes, the defeat of the object of this Division.
- (3) If the Commissioner makes a determination under subsection (2) —

- (a) the Commissioner is to give notice of it to the corporation;
 - (b) the notice is to contain reasons for the determination; and
 - (c) for the purposes of section 76ATG(1) the acquisition of the controlling interest is taken to have occurred when the notice is given.
- (4) The following property of a corporation, or of a trustee or another corporation referred to in subsection (6), shall not be included for the purpose of calculating the value of property under subsection (2)(b) —
- (a) cash or money in an account at call;
 - (b) negotiable instruments, and money on deposit with any person;
 - (c) property consisting of rights or interests under a sales contract (including a forward sales contract) relating to minerals, primary products or other commodities;
 - (d) money lent by the corporation or a trustee or a related corporation referred to in subsection (6) to —
 - (i) any person who in relation to the corporation is an associated person; or
 - (ii) any person at call or in terms that require or allow full repayment to the corporation within 12 months after the money is lent;
 - (e) in the case of the corporation, property consisting of a shareholding in another corporation referred to in subsection (6) or of a share or interest or entitlement under a trust referred to in that subsection;

- (f) a licence or patent or other intellectual property (including knowledge or information that has a commercial value) relating to any process, technique, method, design or apparatus to —
 - (i) locate, extract, process, transport or market minerals; or
 - (ii) grow, rear, breed, maintain, produce, harvest, collect, process, transport or market primary products;
 - (g) stores, stockpiles or holdings of minerals or primary products (whether processed or unprocessed) produced by the corporation or a related person;
 - (h) future tax benefits (whether in the nature of tax losses, capital losses, foreign losses or foreign tax credits) under the *Income Tax Assessment Act 1997* or *Income Tax Assessment Act 1936* of the Commonwealth or similar benefits under the laws of another jurisdiction;
 - (i) any property prescribed for the purposes of this subsection; and
 - (j) any other property, whether of the same nature as or a different nature from the foregoing, in respect of which it is not shown to the Commissioner's satisfaction that a reason for ownership by the corporation or the trustee or other corporation referred to in subsection (6) is not for the purpose of defeating the object of this Division.
- (5) In forming an opinion for the purposes of subsection (4)(j) the Commissioner may have regard to —
 - (a) the source of the property and the source of funding for its acquisition;

- (b) its nature and its relevance to any business carried on by the corporation or the trustee or other corporation;
 - (c) the period for which it has been and is likely to remain the property of the corporation or the trustee or other corporation; and
 - (d) any other matter that the Commissioner considers relevant.
- (6) Without limiting the meaning of “entitled”, a corporation is deemed to be entitled to land or property where —
- (a) the trustee of a trust is entitled to that land or property and the corporation —
 - (i) has a share or interest in the trust whether vested or contingent; or
 - (ii) in the case of a discretionary trust, may benefit from that trust,but an entitlement under subparagraph (i) is limited to the extent of that share or interest;
 - (b) in a case where the entitlement to participate referred to in section 76ATK(2) relates to the corporation itself, any of the following corporations is entitled to that land or property —
 - (i) a corporation that is a subsidiary (as defined in the Corporations Act) of the corporation;
 - (ii) any other corporation where the corporation would be entitled if the other corporation were to be wound up, after the time of the acquisition of the controlling interest, to participate in a distribution of the property of the other

corporation to an extent greater than
50% of the value of the distributable
property;

or

- (c) in a case where the entitlement to participate referred to in section 76ATK(2) relates to a holding corporation (as defined in section 76ATK(4)(a)) of the corporation, any of the following corporations is entitled to that land or property —
 - (i) a corporation that is a subsidiary (as defined in the Corporations Act) of the holding corporation;
 - (ii) any other corporation where the holding corporation would be entitled if the other corporation were to be wound up, after the time of the acquisition of the controlling interest, to participate in a distribution of the property of the other corporation to an extent greater than 50% of the value of the distributable property.
- (7) In determining the entitlement of an entity to land for the purposes of this section or section 76ATL —
 - (a) if the entity has contracted or agreed to acquire an interest in land, that contract or agreement is to be regarded as having been completed even if it has not yet been completed; and
 - (b) if the entity has contracted or agreed to dispose of an interest in land but that contract or agreement has not yet been completed, that contract or agreement is to be disregarded.

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

76ATJ. Meaning of “relevant acquisition”

- (1) An acquisition is a **“relevant acquisition”** for the purposes of this Division —
- (a) if by that acquisition a person acquires a controlling interest in a corporation by acquiring an interest —
 - (i) that is itself a controlling interest in the corporation; or
 - (ii) that is, when taken with each previous acquisition of an interest in the corporation made by the person, a controlling interest in the corporation;
- or
- (b) if by that acquisition a person acquires an additional interest in the corporation.
- (2) If subsection (1)(b) applies to an acquisition, subsection (1)(a)(ii) does not apply to it.
- (3) A previous acquisition of an interest in the corporation is to be taken into consideration under subsection (1)(a)(ii) even if, at the time of that acquisition, the corporation was not a land holder

within the meaning in section 76ATI(2) or was not listed on a recognised financial market.

76ATK. Meaning of “interest”, “controlling interest” or “additional interest”

- (1) For the purposes of this Division, a person acquires an **“interest”** in a corporation if the person acquires, or the person and any related person acquire, an entitlement such that the person, or the person and any related person, would be entitled if the property of the corporation or the holding corporation were to be distributed (in the case of a corporation on the basis of a winding up) to participate in a distribution of the property of the corporation or holding corporation.
- (2) For the purposes of this Division, a person acquires a controlling interest in a corporation if the person acquires, or the person and any related person acquire, an interest in the corporation such that having acquired that interest the person, or the person and any related person, would be entitled if the property of the corporation or a holding corporation were to be distributed (in the case of a corporation on the basis of a winding up) to participate in a distribution of the property of the corporation or holding corporation to an extent not less than 90% of the value of the distributable property and, in section 76ATJ(1)(a)(i) and (ii) and subsection (3), **“controlling interest”** has a corresponding meaning.
- (3) For the purposes of this Division, a person acquires an **“additional interest”** in a corporation if —
 - (a) the person has, or the person and any related person have, a controlling interest in the corporation;

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

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

76ATL. How dutiable value is determined

- (1) Where section 76ATH(1) applies, duty is chargeable in accordance with this section on the basis of the value free of encumbrances (the “**dutiable value**”) of the land and chattels situated in Western Australia to which the corporation is entitled.
- (2) The method of determining the dutiable value depends on the nature of a relevant acquisition by which a person acquires an interest in a corporation.
- (3) Where the relevant acquisition is within section 76ATJ(1)(a)(i) the dutiable value is the same proportion of the value of the land and chattels situated in Western Australia to which the corporation is entitled, as provided by subsection (7), at the time of the acquisition, as the proportion of the property of the corporation to which the person, or the person and any

related person, would be entitled, as provided in subsection (8), after the acquisition.

- (4) Where the relevant acquisition is within section 76ATJ(1)(a)(ii) the dutiable value —
 - (a) for the purposes of section 76ATH(1)(b)(i), is the same proportion of the value of the land and chattels situated in Western Australia to which the corporation is entitled, as provided by subsection (7), at the time of the acquisition, as the proportion of the property of the corporation to which the person, or the person and a related person, would be entitled, as provided in subsection (8), after the acquisition of the controlling interest;
 - (b) for the purposes of section 76ATH(1)(b)(ii), is the same proportion of the value of the land and chattels situated in Western Australia to which the corporation is entitled, as provided by subsection (7), at the time of the acquisition, as the proportion of the property of the corporation to which the person, or the person and a related person, would have been entitled, as provided in subsection (8), before the day that is 3 years before the day of the acquisition of the controlling interest.
- (5) Unless subsection (6) applies, where the relevant acquisition is within section 76ATJ(1)(b) the dutiable value —
 - (a) for the purposes of section 76ATH(1)(c)(i), is the same proportion of the value of the land and chattels situated in Western Australia to which the corporation was entitled, as provided by subsection (7), at the time the controlling interest was acquired, as the proportion of the

property of the corporation to which the person, or the person and a related person, would be entitled, as provided in subsection (8), after the acquisition of the additional interest;

- (b) for the purposes of section 76ATH(1)(c)(ii), is the same proportion of the value of the land and chattels situated in Western Australia to which the corporation was entitled, as provided by subsection (7), at the time the controlling interest was acquired, as the proportion of the property of the corporation to which the person, or the person and a related person, would have been entitled, as provided in subsection (8), at the time of the immediately preceding relevant acquisition by that person, or a related person.

- (6) Where approval has been granted under section 76ATG(4) the dutiable value —

- (a) for the purposes of section 76ATH(1)(d)(i), is the same proportion of the value of the land and chattels situated in Western Australia to which the corporation was entitled, as provided by subsection (7), at the time the controlling interest was acquired, as the proportion of the property of the corporation to which the person, or the person and a related person, would be entitled, as provided in subsection (8), at the end of the relevant period to which the section 76ATG statement relates;
- (b) for the purposes of section 76ATH(1)(d)(ii), is the same proportion of the value of the land and chattels situated in Western Australia to which the corporation was entitled, as provided by subsection (7), at the time the controlling interest was acquired, as the proportion of the property of the corporation to which the person,

or the person and a related person, would have been entitled, as provided in subsection (8), before the beginning of the relevant period to which the section 76ATG statement relates.

- (7) For the purposes of subsections (3), (4), (5) and (6) the unencumbered value of the land and chattels to which a corporation is entitled at any time is the sum of —
- (a) in the case of land and chattels to which the corporation is entitled without reference to subsection (6) of section 76ATI, the unencumbered value of the land and chattels at that time; and
 - (b) in the case of land and chattels to which a trustee or a corporation is entitled as mentioned in that subsection, the amount to which, if the property of a trust or corporation referred to in that subsection or all such trusts and corporations in the chain of relationships were to be distributed at that time (in the case of a corporation, on the basis of a winding up), without having regard to any liabilities of the same, the corporation would be entitled in respect of the unencumbered value at that time of land and chattels to which all such trusts and corporations are entitled.
- (8) For the purposes of subsections (3), (4), (5) and (6), the property of a corporation to which a person, or the person and any related person, would be entitled is the property to which the person, or the person and any related person, would be entitled if the property of the corporation and all holding corporations, as defined in section 76ATK(4), in the chain of relationships were to be distributed after the acquisition (in the case of a corporation, on the basis of a winding up), without having regard to any liabilities of the same.

- (9) If the day of the acquisition of the controlling interest is 30 June 2007 or earlier, the reference in subsection (4)(b) to the day that is 3 years before the day of the acquisition of the controlling interest is taken to be a reference to 1 July 2004.

”.

30. Section 76AU amended

Section 76AU(4) is amended as follows:

- (a) in the definition of “deeming-in provision” by deleting “or 76AP(6)(a);” and inserting instead —

“

, 76AP(6)(a), 76ATB(7)(a), 76ATB(8)(a),
76ATI(7)(a) or 76ATI(8)(a);

”.

- (b) in the definition of “deeming-out provision” by deleting “or 76AP(6)(b);” and inserting instead —

“

, 76AP(6)(b), 76ATB(7)(b), 76ATB(8)(b),
76ATI(7)(b) or 76ATI(8)(b);

”.

31. Part IIIBA Division 5 inserted

After section 76AU the following Division is inserted —

“

Division 5 — Avoidance of duty

76AV. Commissioner may determine that an obligation to lodge a statement has been avoided

- (1) This Division applies to an arrangement or scheme (the “scheme”) if the Commissioner determines that, but for the scheme —

- (a) a relevant acquisition within the meaning given by section 76AJ would have occurred on or after 1 July 2004 by reason of which a person would have been required to lodge a section 76AG statement;
 - (b) a relevant acquisition within the meaning given by section 76AQ would have occurred on or after 1 July 2004 by reason of which a corporation would have been required to lodge a section 76AN statement;
 - (c) a relevant acquisition within the meaning given by section 76ATC would have occurred by reason of which a person would have been required to lodge a section 76AT statement; or
 - (d) a relevant acquisition within the meaning given by section 76ATJ would have occurred by reason of which a corporation would have been required to lodge a section 76ATG statement.
- (2) The Commissioner can only make a determination under subsection (1) if the Commissioner is of the opinion that the scheme is or was one having as its purpose, or one of its purposes, the defeat of the object of Division 2, 3, 3a or 3b, as the case may be.
- (3) For the purposes of subsection (2) the Commissioner may have regard to —
- (a) the way in which the scheme was entered into and carried out;
 - (b) the form and substance of the scheme, including the legal rights and obligations involved in the scheme and the economic and commercial substance of the scheme;
 - (c) when the scheme was entered into and the length of the period during which the scheme was carried out;

- (d) any change to a person's financial position, or any other consequence, that has resulted, will result or may reasonably be expected to result from the scheme's having been entered into and carried out;
- (e) the circumstances surrounding the scheme; and
- (f) any other matter that the Commissioner considers relevant.

76AW. Liability to pay duty that has been avoided

If this Division applies to an arrangement or scheme, the person or corporation mentioned in paragraph (a), (b), (c) or (d) of section 76AV(1) is liable to pay the duty that would have been payable if the statement mentioned in that paragraph had been lodged.

76AX. Reasons for determination that duty has been avoided

The assessment notice served under section 23(3) of the *Taxation Administration Act 2003* in respect of the duty under section 76AW is to contain or be accompanied by the Commissioner's reasons for making the determination under section 76AV(1) including the reasons for forming the opinion required by section 76AV(2).

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