

WESTERN AUSTRALIA

STAMP AMENDMENT ACT 1987

(No. 33 of 1987)

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WESTERN AUSTRALIA

STAMP AMENDMENT ACT

No. 33 of 1987

AN ACT to amend the *Stamp Act 1921*.

[Assented to 30 June 1987]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title

1. This Act may be cited as the *Stamp Amendment Act 1987*.

Commencement

2. (1) Subject to subsection (2), this Act shall come into operation on the day on which it receives the Royal Assent.

(2) Sections 5, 15 and 19 shall come into operation on such day as is fixed by proclamation.

Principal Act

3. In this Act, the *Stamp Act 1921** is referred to as the principal Act.

[*Reprinted as approved 9 June 1985; and amended by Acts Nos. 84 and 85 of 1985 and 98 of 1986.]

Retrospective application and transitional provisions

4. (1) Section 76AG inserted in the principal Act by section 22 of this Act extends to any relevant acquisition of a majority interest or a further interest in a company to which Division 2 of Part IIIBA of the principal Act applies that occurred on or after 19 January 1987, and the provisions of Divisions 1 and 2 of that Part and any regulations having effect for the purposes of those Divisions shall have effect accordingly.

(2) Section 76AN inserted in the principal Act by section 22 of this Act extends to any relevant acquisition of a majority interest or a further interest in a corporation to which Division 3 of Part IIIBA of the principal Act applies that occurred on or after 19 January 1987, and the provisions of Divisions 1 and 3 of that Part and any regulations having effect for the purposes of those Divisions shall have effect accordingly.

(3) Subsections (1) and (2) have effect notwithstanding that duty on an instrument effecting or evidencing an acquisition has already been paid under item 4 (3) of the Second Schedule.

(4) A statement required by subsection (1) or (2) shall be prepared and lodged not later than 3 months after the commencement of this section.

(5) Notwithstanding subsection (1) or (2), a previous acquisition referred to in subparagraph (ii) of section 76 AJ (1) (a) or subparagraph (ii) of section 76AQ (1) (a) of the principal Act shall not be taken into account for the purposes of that subparagraph if it occurred before 19 January 1987.

(6) Regulations having retrospective effect to 19 January 1987 may be made under section 120 (1) of the principal Act so far as it is necessary or expedient to do so to give effect to this section.

(7) An expression used in this section in relation to a Division of Part IIIBA of the principal Act has the same meaning as it has for the purposes of that Division.

Section 4 amended

5. Section 4 of the principal Act is amended—

(a) in subsection (1), in the definition of “marketable security”, by deleting paragraph (c) and substituting the following paragraph—

“ (c) any right or interest, whether described as a unit or sub-unit or otherwise, of a beneficiary under a unit trust scheme—

(i) any of the units of which is listed on a stock exchange prescribed by the Minister by notice published in the *Government Gazette*; or

(ii) that is not a private unit trust scheme within the meaning in section 63 (2). ”; and

(b) by inserting after subsection (2) the following subsection—

“ (3) The Minister may by notice published in the *Government Gazette* amend or revoke a notice referred to in paragraph (c) (i) of the definition of “marketable security”. ”.

Section 16 amended

6. Section 16 of the principal Act is amended in subsection (3) by deleting paragraph (b) and substituting the following paragraph—

“ (b) is executed in some place outside Western Australia and held in that place or another place outside Western Australia, ”.

Section 20 amended

7. Section 20 of the principal Act is amended—

(a) in subsection (1) by deleting “but an instrument which is a statement prepared under section 31B (1) may be stamped without fine after that preparation if it is lodged under that

section within a period of 3 months after the transaction to which it relates was entered into” and substituting the following—

“ but—

(a) an instrument which is a statement prepared under section 31B (1) may be stamped without fine after that preparation if it is lodged under that section within a period of 3 months after the transaction to which it relates was entered into;

and

(b) an instrument which is a statement prepared under section 76AG or 76AN may be stamped without fine after that preparation if it is lodged within the time allowed under that section ”; and

(b) in subsection (5a) by inserting after “statement” the following—

“ (not being a statement under section section 31B, 76AG or 76 AN) ”.

Section 26 amended

8. Section 26 of the principal Act is amended by inserting after subsection (1) the following subsection—

“ (1a) For the purposes of subsection (1) the suppression from an instrument of any fact or circumstance referred to in subsection (1) or the inclusion therein of any matter that is known to be false in a material particular is *prima facie* evidence of intent to defraud the Crown. ”.

Section 27 amended

9. Section 27 of the principal Act is amended—

(a) in subsection (1) by deleting “and any fine with which it is chargeable has been paid ”; and

(b) in subsection (2) by deleting “and any fine with which the statement is chargeable have” and substituting the following—

“ has ”.

Section 28 amended

10. Section 28 of the principal Act is amended in subsection (4) by deleting “and the duty and any fine with which the statement is chargeable have been paid”.

Section 29 amended

11. Section 29 of the principal Act is amended—

- (a) in subsection (1), by deleting “and any fine”;
- (b) by repealing subsection (2a) and substituting the following subsection—

“ (2a) If a document referred to in subsection (1) relates to a transaction in respect of which a statement is required to be, but has not been, lodged under section 31B (1), the document may, on production to an officer of the relevant court or to the arbitrator or referee concerned of the statement and payment to him of the amount of duty and of any fine with which the statement is chargeable, be received in evidence, saving all just exceptions on on other grounds. ”; and

- (c) in subsection (3)—

- (i) by inserting after “(2)” the following—

- “ or (2a) ”; and

- (ii) by inserting after “instrument” the following—

- “ or statement ”.

Section 30 amended

12. Section 30 of the principal Act is amended in paragraph (b) by deleting “if a statement has been prepared and lodged under section 31B (1) in respect of the transaction to which that document relates and the duty and any fine with which the statement is chargeable have been paid” and substituting the following—

“ on production to an officer of that court or to the arbitrator or referee of a statement under section 31B (1) and payment to him of the amount of duty and of any fine with which the statement is chargeable ”.

Section 39 amended

13. Section 39 of the principal Act is amended by repealing subsection (6).

Section 39A inserted

14. After section 39 of the principal Act the following section is inserted—

Recovery of duty and fines

“ 39A. (1) Subject to subsection (5), any unpaid duty or fine may be recovered, as a debt due to the Crown, at the expiration of the period allowed by or under this Act for payment.

(2) Any debt referred to in subsection (1) may be recovered by the Commissioner in a court of competent jurisdiction.

(3) Proceedings under this section may be taken in the name of the Commissioner by any officer of the State Taxation Department employed in the administration of this Act and authorized to take proceedings on behalf of the Commissioner, and any proceedings taken in the name of the Commissioner shall, in the absence of evidence to the contrary, be deemed to have been taken by his authority.

(4) An officer referred to in subsection (3) may appear on behalf of the Commissioner in any proceedings under this section.

(5) The Commissioner may elect to recover any duty or fine in the manner provided for by this section or section 39 (2), but proceedings under both sections shall not be in progress at the same time. ”.

Section 63 amended

15. Section 63 of the principal Act is amended—

(a) by inserting after the section designation “63.” the subsection designation “(1)”;

(b) by deleting the definition of “unit trust scheme” and substituting the following—

“ “unit trust scheme” means a private unit trust scheme within the meaning in subsection (2). ”; and

(c) by inserting the following subsections—

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

(a) has not been approved for the purposes of Division 6 of Part IV of the *Companies (Western Australia) Code* or the corresponding provisions of the *Companies Code* or *Companies Act* of another State or Territory;

(b) has been so approved but—

(i) no units have been issued to the public;

or

(ii) an insufficient number of persons is beneficially entitled to units under the scheme.

(3) An insufficient number of persons is beneficially entitled to units under a unit trust scheme if—

(a) fewer than 50 persons are so entitled; or

(b) 20 or fewer persons are so entitled to 75% or more of the total issued units under the scheme.

(4) For the purposes of subsection (2) (b) (ii) one person shall be treated as being beneficially entitled to all units held by a person and any related person namely—

(a) where the first-mentioned person is a corporation—

(i) another corporation that is a related corporation within the meaning of the *Companies (Western Australia) Code*;

(ii) a person who is beneficially entitled to more than one-half of the issued share capital of the corporation; or

(b) a trustee of any trust (including a unit trust scheme) if—

- (i) in the case of a discretionary trust as defined in section 76, the first-mentioned person may benefit from that trust; or
- (ii) the share or interest of the first-mentioned person in the trust, whether vested or contingent, constitutes more than one-half of the trust property or of the issued units in the unit trust scheme,

and subparagraph (i) shall be construed in accordance with section 76 (6). ”.

Section 66 amended

16. Section 66 of the principal Act is amended by inserting after “*ad valorem* duty” the following—

“ and such conveyance shall be deemed to be a conveyance on sale of the property and to be chargeable with *ad valorem* duty in accordance with this Act ”.

Section 69 repealed and a section substituted

17. Section 69 of the principal Act is repealed and the following section is substituted—

Conveyance duty in cases where conveyance made at request or by direction of intermediary

“ 69. (1) Subject to sections 73 and 74, where—

- (a) property is conveyed or transferred by one person (in this section called “the transferor”) to another person (in this section called “the transferee”) or is agreed to be so conveyed or transferred; and
- (b) another person (in this section called “the intermediary”) obtained the beneficial ownership of the property after the transferor acquired the beneficial ownership thereof but before he conveyed or transferred, or agreed to convey or transfer, the property to the transferee,

the instrument of conveyance or the agreement shall be subject to duty, as if it were both a conveyance of the property by the transferor to the intermediary and also a conveyance of the

property by the intermediary to the transferee; and if there are several intermediaries, as if it were a conveyance of the property from the transferor to the first intermediary and a conveyance from each intermediary to the other in succession, and from the last intermediary to the transferee.

(2) Subsection (1) does not apply to the extent that duty under item 4 of the Second Schedule has been paid on a conveyance or transfer to any intermediary. ”.

Section 73AA amended

18. Section 73AA of the principal Act is amended—

- (a) by inserting after the section designation “73AA” the subsection designation “(1)”; and
- (b) in subsection (1) as so designated, by deleting paragraph (f) and substituting the following paragraph—
 - “ (f) not otherwise coming within this section, if the Commissioner is satisfied that the conveyance or transfer—
 - (i) does not pass a beneficial interest in the property conveyed or transferred;
 - (ii) is not made in contemplation of the passing of a beneficial interest therein; and
 - (iii) is not part of, or made pursuant to, a scheme whereby any beneficial interest in the property conveyed or transferred, whether vested or contingent, has passed or will or may pass, ”;

and

- (c) by inserting after subsection (1) as so designated the following subsection—
 - “ (2) A conveyance or transfer that is—
 - (a) made by any trustee or other person in a fiduciary capacity to a beneficiary; or

(b) made by a unit trustee to the holder of a unit in a unit trust scheme,
and that does not conform to subsection (1) (b), (c), (d) or (e), and a conveyance or transfer in respect of which the Commissioner is not satisfied as mentioned in subsection (1) (f), shall be deemed to operate as a voluntary disposition and is chargeable with duty under section 75 (1). ”.

Section 73D amended

19. Section 73D of the principal Act is amended—

(a) in subsection (1), in the definition of “disposition”—

(i) in paragraph (c) by deleting “and”;

(ii) in paragraph (d) by inserting after “scheme;” the following—

“ and ”; and

(iii) by inserting after paragraph (d) the following paragraph—

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

(b) by repealing subsection (2) and substituting the following subsection—

“ (2) A person shall not make, accept, give effect to, recognize, or register, record, or enter in the books or records of a unit trust scheme a disposition in relation to a unit unless—

(a) a transfer or an instrument effecting or evidencing the disposition is executed and delivered to him;

and

(b) the transfer or the instrument, as the case may be, is duly stamped under this Act. ”; and

(c) in subsection (4) (a)—

(i) by inserting after “land” in the first place where it appears the following—

“ (as defined in section 76) situated in the State ”;

and

- (ii) by deleting “land” in the second place where it appears and substituting the following—

“ any such land ”.

Section 73DA inserted

20. After section 73D of the principal Act the following section is inserted—

Shares owned by unit trust deemed
to be land in certain cases

“ 73DA. (1) If a unit trustee of a unit trust scheme has a majority interest in a company all land, as defined in section 76, situated in the State to which the company is beneficially entitled is deemed to be an undivided share in land held by the unit trustee for the purposes of section 73D (4) to the extent provided for in subsection (2).

(2) The extent of the undivided share in land referred to in subsection (1) is the same proportion of the value of the land situated in the State to which the company is beneficially entitled as the proportion of the property of the company which the trustee would be entitled to claim in a distribution of property, as provided in section 76 (5), if the company were to be wound up at the time of the disposition effected or evidenced by the relevant transfer or instrument.

(3) For the purposes of this section—

- (a) “company” means a company to which Division 2 of Part IIIBA applies and a corporation to which Division 3 of that Part applies; and
- (b) a unit trustee has a majority interest in a company if he has a shareholding in the company that would entitle him, if the company were to be wound up at the time of the disposition effected or evidenced by the relevant transfer or instrument, to participate (otherwise than as a creditor, or other person to whom the company is liable) in a distribution of the property of the company, as provided in section 76 (5), to an extent greater than 50% of the value of the property distributable to all the holders of shares in the company. ”.

Section 75 amended

21. Section 75 of the principal Act is amended—

(a) by inserting after subsection (2) the following subsection—

“ (2a) Any conveyance or transfer of any property—

(a) by a corporation, within the meaning in the *Companies (Western Australia) Code*, to a shareholder of that corporation in the course of a distribution of assets on a reduction of the capital of the corporation, including a conveyance or transfer of property in consideration of or pursuant to a surrender, redemption or cancellation of any shareholding; or

(b) by the liquidator of a corporation, as defined in paragraph (a), to a shareholder of that corporation pursuant to a right attaching to any shareholding in the corporation to select or receive particular property of the corporation,

shall be chargeable with duty in accordance with subsection (2); and for the purposes of that subsection the amount of the paid up value of the shares, including any premium paid to the corporation on the issue of the shares, shall be deemed to be the consideration payable in respect of that property. ”; and

(b) in subsection (3), by deleting paragraph (f) and substituting the following paragraph—

“ (f) not otherwise coming within this subsection if the Commissioner is satisfied that the conveyance or transfer—

(i) does not pass a beneficial interest in the property conveyed or transferred;

(ii) is not made in contemplation of the passing of a beneficial interest therein; and

(iii) is not part of, or made pursuant to, a scheme whereby any beneficial interest in the property conveyed or transferred, whether vested or contingent, has passed or will or may pass, ”.

Part IIIBA inserted

22. After Part IIIB of the principal Act the following Part is inserted—

“ PART IIIBA—DUTY ON CHANGE OF CONTROL OF
CERTAIN LAND-OWNING CORPORATIONS

Division 1—Provisions applicable to Divisions 2 and 3

Interpretation

76. (1) In this Part, unless the contrary intention appears—

“acquire”, in relation to an interest in a company to which Division 2 applies or a corporation to which Division 3 applies, means to acquire beneficially and includes, without limiting the generality of the expression, to acquire an interest by virtue of—

- (a) the allotment or issue of any share to the person or another person, not being the initial allotment of shares to a subscriber to a memorandum of a company or corporation;
- (b) the redemption, surrender or cancellation of any share by the company or corporation or by the person or another person;
- (c) the variation, abrogation or alteration of a right pertaining to any share,

but does not include an acquisition—

- (d) that is chargeable with duty under section 73E(4);
- (e) that occurs solely as the result of—
 - (i) the appointment of a receiver or trustee in bankruptcy;
 - (ii) the appointment of a liquidator;
 - (iii) the making of a compromise or arrangement under Part VIII of the *Companies Code* which has been approved by the court;

(iv) the distribution of the estate of a deceased person, including an acquisition that occurs as the result of—

(A) a will, a codicil or an order of a court varying or modifying the provisions of a will or codicil; or

(B) an intestacy or an order of a court varying or modifying the application, in relation to the estate of a deceased person, of the provisions of a law relating to the distribution of the assets of persons who die intestate;

or

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

“*Companies Code*” means the *Companies (Western Australia) Code*;

“company” and “corporation” have the same meanings as in the *Companies Code*;

“director” has the same meaning as in the *Companies Code*;

“discretionary trust” means—

(a) a trust under which the vesting of the whole or any part of the capital of the trust property, or the whole or any part of the income from that capital, or both—

(i) is required to be determined by a person either in respect of the identity of the beneficiaries, or the quantum of interest to be taken, or both; or

(ii) will occur in the event that a discretion conferred under the trust is not exercised; or

(b) a trust which is, by regulation, declared to be a discretionary trust for the purposes of this Part,

but does not include—

(c) a trust that is solely a charitable trust; or

(d) a trust that is, by regulation, declared not to be a discretionary trust for the purposes of this Part;

“entitled” means beneficially entitled;

“interest” includes a majority interest and a further interest as defined in sections 76AK and 76AR;

“land” includes a mining tenement, and also includes—

- (a) any estate or interest in land; and
- (b) anything fixed to the land including anything that is, or purports to be, the subject of ownership separate from the ownership of the land;

“mining tenement” means—

- (a) a mining tenement held under the Mining Act 1978 being a mining tenement within the meaning of that Act or the Mining Act 1904; and
- (b) a mining tenement or right of occupancy continued in force by section 5 of the Mining Act 1978;

“related corporation” has the same meaning as in section 5(1) of the *Companies Code*;

“share” means a share or stock of a corporation and includes an interest in a share, and “shareholding” has a corresponding meaning;

“trust” includes a unit trust scheme, but, except in section 76A, does not include a unit trust scheme referred to in paragraph (c) of the definition of “marketable security” in section 4 (1).

(2) For the purposes of sections 76AI (3) (c) and 76AP (3) (c) the following—

- (a) are associated persons in relation to a corporation—
 - (i) a related corporation;
 - (ii) a related person within the meaning in subsection (3);
 - (iii) a director or secretary of the corporation or a related corporation;

- (iv) a person who is entitled to any shareholding in the corporation or a related corporation;
 - (v) a relative of any natural person referred to in subparagraph (ii), (iii), or (iv);
 - (vi) a corporation in which the corporation or any person referred to in subparagraph (iii), (iv) or (v) is entitled to any shareholding;
- (b) are relatives of a person for the purposes of paragraph (a)(v)—
- (i) a child or remoter lineal descendant of the person or his spouse;
 - (ii) a parent or remoter lineal ancestor of the person or his spouse;
 - (iii) a brother or a sister of the person or his spouse;
 - (iv) his spouse and a spouse of any person referred to in subparagraphs (i), (ii) or (iii).

(3) For the purposes of this Part the following persons are related—

- (a) natural persons who are spouses of each other or between whom the relationship is that of parent and child;
- (b) related corporations;
- (c) a trustee and another trustee if there is any beneficiary common to the trusts of which they are trustees, whether the beneficiary has a vested share or is contingently entitled or may benefit from a discretionary trust;
- (d) a natural person and a corporation if the natural person is a majority shareholder, director or secretary of the corporation or a related corporation;
- (e) a natural person and a trustee if the natural person is a beneficiary under the trust of which the trustee is a trustee, whether the person has a vested share or is contingently entitled or may benefit from a discretionary trust;

(f) a corporation and a trustee if—

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

or

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

whether any such beneficiary has a vested share or is contingently entitled or may benefit from a discretionary trust; and

(g) persons who acquire interests in a corporation by virtue of acquisitions that together form or arise from substantially one transaction or one series of transactions.

(4) For the purposes of subsections (2) and (3)—

(a) an illegitimate person shall be treated as the legitimate child of his mother and reputed father;

(b) a spouse includes a *de facto* spouse; and

(c) a majority shareholder in relation to a corporation is a person who has a substantial shareholding in the corporation in accordance with section 136 of the *Companies Code* as if the reference in that section to the prescribed percentage were a reference to 50%.

(5) For the purposes of this Part, the entitlement of a person to participate (otherwise than as a creditor or other person to whom the corporation is liable) in the distribution of the property of a corporation on a winding up of the corporation is an entitlement to an amount calculated—

(a) as if the winding up were carried out in accordance with the memorandum and articles of association of the corporation and any law relevant to the winding up, as the memorandum, articles and law exist at the time of the winding up; or

- (b) as if the person had, immediately prior to the winding up, exercised all powers and discretions exercisable by the person by reason of having acquired an interest in the corporation—
- (i) to effect or compel an alteration to the memorandum or articles of association;
 - (ii) to vary the rights conferred by shares in the corporation; or
 - (iii) to effect or compel the substitution or replacement of shares in the corporation with other shares in the corporation,

in such manner as to maximize that amount,

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

(6) For the purposes of this Part, the entitlement of a person on the distribution of a trust shall be determined as the greatest entitlement that the person could derive at any time from the trust whether by the fulfilment of any condition, the outcome of any contingency or the exercise of any power or discretion or otherwise, and in particular a person that may benefit from, or the trust property of another trust that may comprise or be augmented by a benefit from, a discretionary trust shall be deemed to be entitled to or comprise or be augmented by—

- (a) the property subject to the discretionary trust unless the Commissioner determines otherwise; or
- (b) such part of that property as the Commissioner determines.

(7) For the purposes of sections 76AI (4) and 76AR (4) reference to a trust includes any other trust if the property of the first-mentioned trust—

- (a) includes a share or interest, whether vested or contingent, or direct or indirect, in that other trust; or
- (b) in the case of a discretionary trust, may comprise or be augmented by a benefit from that other trust.

Lodgment of statements by trustees

76A. (1) Where a person by a relevant acquisition acquires a majority interest or a further interest in a company to which Division 2 applies or a corporation to which Division 3 applies in the capacity of a trustee, the liability to prepare and lodge a statement under section 76AG or 76AN, as the case may require, is not affected by the fact that the acquisition is not made by the person beneficially, and this Part shall apply as if the acquisition had been made beneficially.

(2) Notwithstanding subsection (1), if the Commissioner considers that—

- (a) any person beneficially entitled to a share or interest in the trust property, whether he has a vested share or is contingently entitled or may benefit from a discretionary trust, is related to any person, within the meaning in section 76(3), who has acquired an interest in the company or corporation; and
- (b) the beneficial interest of the beneficiary in the company or corporation when taken with that of any such related person amounts to a greater interest than the interest of the trustee and any person who is related to the trustee,

he may create a memorandum under section 31A in respect of the statement lodged by the trustee, and that section shall apply accordingly.

(3) Where the Commissioner creates a memorandum as mentioned in subsection (2), duty is not payable on the statement lodged by the trustee.

Valuation of land

76AA. (1) The Commissioner may—

- (a) require a person who is required to lodge a statement under section 76AG or 76AN to furnish him with a further statement in a form approved by the Commissioner concerning the unencumbered value of any land, or such other evidence of that value as the Commissioner thinks fit; and
- (b) assess duty in accordance with the evidence of value referred to in paragraph (a).

(2) Section 75A (2), (3) and (4) apply where the Commissioner is not satisfied with the evidence of value furnished under subsection (1).

(3) The Commissioner shall, if required by any person, express his opinion as to the value of any specified land at a specified time for the purposes of section 76AI (2) (a) or section 76AP (2) (a), and for the purposes of this Part the Commissioner is bound by any opinion expressed in terms of such a requirement but subject to any qualification that he may have attached to his opinion.

Powers of Commissioner as to entry,
documents and information

76AB. (1) Sections 7 and 7A apply to the enforcement of this Part and for that purpose the reference in section 7 (1) (c) to "instruments liable to duty" includes any document relating to a relevant acquisition under this Part.

(2) Where a corporation that is, or is reasonably believed by the Commissioner to be, required to lodge a statement under section 76AN fails or refuses to comply with a requirement of the Commissioner under section 7 or 7A and the Commissioner is by reason of that failure or refusal unable to determine whether an acquisition by a person is a relevant acquisition for the purposes of Division 3 of this Part or a corporation is one to which that Division applies, the Commissioner may assess duty on the basis that—

- (a) the acquisition resulted in the person acquiring the total shareholding of the corporation or such lesser shareholding as he may determine; or
- (b) the corporation is one to which Division 3 applies,

or both, as the case may require.

Memorial may be registered on title

76AC. (1) Where the Commissioner has reason to believe that duty is payable under section 76AH or 76AO on the value of land to which a company or corporation is entitled or where any such duty has been assessed but not paid, the Commissioner may, if the company, or a subsidiary as defined in section 76AI (4), or the corporation is the registered proprietor of the land, deliver to the Registrar of Titles a memorial in the prescribed form relating to

the duty and any fine that is or may be payable under this Act, and the Registrar of Titles shall, on payment of the prescribed fee, register the memorial on the certificate of title to the land.

(2) After the memorial is registered the Registrar of Titles shall not register or accept for registration an instrument affecting the land without the consent of the Commissioner until the land ceases under subsection (4) to be subject to this subsection.

(3) When—

(a) payment of the duty and any fine in respect of which a memorial is registered under this section has been made;

or

(b) the Commissioner is satisfied that no duty is payable,

the Commissioner shall deliver to the Registrar of Titles a notice to that effect.

(4) The Registrar shall, on payment of the prescribed fee, record the notice on the certificate of title, and thereupon the land ceases to be subject to subsection (2).

(5) In subsections (1) and (4) “the prescribed fee” means such fee as may be prescribed under the *Transfer of Land Act 1893*.

Charge on land

76AD. Where a memorial has been registered under section 76AC on the certificate of title to any land, any duty and any fine to which the memorial relates that has become payable is a first charge on the land and the charge continues in force notwithstanding any disposition of the land, until the duty and any fine is paid.

Power of sale

76AE. (1) Where—

(a) duty has been assessed on the value of any land in accordance with section 76AH or 76AO;

(b) the duty and any fine have not been paid at the expiration of one year from the date of the assessment;

and

- (c) a memorial is registered on the certificate of title to the land,

the Commissioner may, notwithstanding any judgment against the person liable to pay the duty and fine, cause to be published in the *Government Gazette*, a notice specifying the land, and the amount of duty and any fine payable, and stating that if such amount is not paid within 6 months from the publication of the notice the Commissioner intends to apply to the Supreme Court for an order for the sale of the land.

(2) A copy of a notice under subsection (1) shall be served on the registered proprietor of the land, which service may be effected by posting the document on the land if service cannot reasonably be effected in the State by other means.

(3) The Commissioner may apply to the Supreme Court or any Judge thereof for sale of so much of the land described in the notice as may be necessary, and the Court or Judge, on being satisfied by affidavit or otherwise that the amount is lawfully due and that all things required by this Act to be done by the Commissioner have been done, shall order the sale of the said land and that the proceeds be applied in accordance with section 76AF (a).

Application of proceeds of sale

76AF. Where any land has been sold under section 76AE—

- (a) the Court or a Judge shall order payment of the duty, fine, costs, and expenses to be made out of the proceeds of the sale, and the balance of the proceeds of the sale shall be paid into Court, and after such advertisement as the Court or Judge may direct shall be applied as the Court or Judge may think proper for the benefit of the parties interested therein;
- (b) the conveyance or transfer, as the case may be, shall be executed by the officer of the Court nominated by the Court or Judge for such purpose to the purchaser, in such form as shall be approved by the Court or Judge;
- (c) the conveyance or transfer shall vest the land, estate, or interest sold in the purchaser as completely and effectually as if the conveyance or transfer had been executed by the owner of the land, estate, or interest; and

- (d) the Registrar of Titles shall, upon production to him of the transfer, register it and, notwithstanding any provision of the *Transfer of Land Act 1893* to the contrary, production of the duplicate certificate of title shall not be required; but for the purposes of registration, the Registrar of Titles shall, if necessary, do and perform all such acts and things as are provided for in the case of dealings with land where the duplicate certificate of title is lost or not produced, in which case a new certificate of title for such land shall be issued.

Division 2—Companies incorporated in the State

When statement to be lodged

76AG. (1) Where by a relevant acquisition a person acquires a majority interest or a further interest in a company to which this Division applies, he shall prepare and lodge with the Commissioner a statement in respect of that acquisition.

(2) If a requirement under subsection (1) arises in circumstances where a person acquires a majority interest or a further interest by reason of acquisitions by him and a related person or related persons being aggregated, one of such persons shall prepare and lodge a statement under that subsection of all acquisitions on behalf of all such persons.

(3) The statement shall be lodged within 3 months of the occurrence of the relevant acquisition.

(4) The statement shall be in a form approved by the Commissioner and shall include the following information—

- (a) the name and address of the person who has acquired a majority interest or a further interest and of any related person referred to in subsection (2);
- (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 company;
- (d) the person's estimate of the unencumbered value of all land in the State to which the company is entitled as at that date; and

- (e) the person's estimate of the unencumbered value of the assets of the company as at that date.

(5) A statement shall be deemed, for the purposes of this Act, to be an instrument executed on the day on which the relevant acquisition occurs.

Statement chargeable with duty

76AH. (1) A statement lodged under section 76AG is chargeable, in accordance with section 76AL, with duty at the rate provided for in item 4 (1) of the Second Schedule calculated as follows—

- (a) where the statement relates to a relevant acquisition within section 76AJ (1) (a), the duty shall be calculated on the dutiable value determined under section 76AL (2); and
- (b) where the statement relates to a relevant acquisition within section 76AJ (1) (b), the duty—
- (i) shall be calculated on the dutiable value determined under section 76AL (3) (a); but
- (ii) shall be reduced by the amount of duty determined on the dutiable value calculated under section 76AL (3) (b).

(2) Notwithstanding item 4 (1) of the Second Schedule, where the value of the land under section 76AL (4) does not exceed \$1 500 000 the duty chargeable under this section shall be calculated as follows, and where paragraph (b) of subsection (1) applies shall be so calculated in terms of subparagraphs (i) and (ii) of that paragraph—

$$\begin{array}{r}
 A - \$1\,000\,000 \quad \times \quad B \\
 \hline
 \$500\,000 \\
 + \left[1 - \left[\frac{A - \$1\,000\,000}{\$500\,000} \right] \right] \times C
 \end{array}$$

where—

- A is the value of the land situated in the State to which the company is entitled as provided in section 76AL (4) at the time of the relevant acquisition;
- B is the duty calculated under item 4 (1) of the Second Schedule on the dutiable value determined under section 76AL; and
- C is the duty calculated under paragraph (a) of item 4 (3) of the Second Schedule on the value of the shares comprised in the relevant acquisition had the acquisition been effected by an instrument chargeable under that paragraph.

(3) There shall be deducted from the duty chargeable on a statement, any duty paid under item 4 (3) of the Second Schedule in respect of any instrument effecting or evidencing the acquisition of any interest which is taken into account in determining liability under section 76AG to lodge that statement, except any duty previously deducted under this subsection in respect of a statement previously lodged under that section.

Companies to which this Division applies

76AI. (1) This Division applies to a company if—

- (a) shares of the company are not listed on a recognized stock exchange or are listed on a prescribed stock exchange; and
- (b) it is a land-holder within the meaning in subsection (2).

(2) A company is a land-holder for the purposes of this Division if at the time of a relevant acquisition—

- (a) it is entitled to land situated in the State and the unencumbered value of the land is not less than \$1 000 000, or it is entitled to land situated in the State 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 company is entitled, whether situated in the State or elsewhere, is 80% or more of the value of all property to which it is entitled, other than property directed to be excluded by subsection (3).

(3) The following property of a company, or of any subsidiary within the meaning in subsection (4), 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) money lent by the company or a subsidiary to—
 - (i) any person who in relation to the company is an associated person; or
 - (ii) any person at call or in terms that require or allow full repayment to the company within 12 months after the money is lent;
- (d) where the company is a holding company within the meaning in section 7 of the *Companies Code*, the shareholding of that company in a subsidiary corporation within the meaning of that section, but without limiting subsection (4);
- (e) in the case of the company, property consisting of a share or interest in a trust referred to in subsection (4); and
- (f) 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 the company's ownership is not for the purpose of defeating the object of this Division.

(4) Without limiting the meaning of "entitled", a 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 within the meaning in section 7 of the *Companies Code*;

- (b) the trustee of any trust where the company or a subsidiary corporation of the 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; or
- (c) any corporation, where the trustee of a trust in which the 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 relevant acquisition, to participate (otherwise than as a creditor or other person to whom the corporation is liable) in a distribution of the property of the corporation to an extent greater than 50% of the value of the property distributable to all of the holders of shares in the corporation;
- (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 company.

Meaning of relevant acquisition

76AJ. (1) An acquisition is a relevant acquisition for the purposes of this Division—

- (a) if a person—
 - (i) by that acquisition acquires a majority interest in a company; or
 - (ii) by that acquisition of an interest in a company, when taken with each previous acquisition of an interest in the company made by the person during the 12 months immediately preceding the day on which that acquisition occurs, acquires a majority interest in the company; or

- (b) if by the acquisition a person who has a majority interest in the company (and in acquiring that majority interest he became subject to section 76AG) acquires a further interest in the company.

(2) For the purposes of subsection (1)(a)(ii), if a person acquires an interest in a company and within one year before or after such acquisition he became or becomes entitled to a right to acquire a further shareholding in the company, and that right is exercised, he is deemed to acquire that further shareholding in the company within the period of 12 months after the first-mentioned acquisition, notwithstanding that the right is exercised after the expiration of that period.

Meaning of “interest”, “majority interest”
and “further interest”

76AK. (1) For the purposes of sections 76AG and 76AJ, a person acquires an interest in a company if the person, or the person and any related person, acquires a shareholding in the company that would entitle the person, or the person and any related person, if the company were to be wound up after the shareholding was acquired to participate (otherwise than as a creditor or other person to whom the company is liable) in a distribution of the property of the company.

(2) For the purposes of section 76AG and 76AJ, a person acquires a majority interest in a company if the person, or the person and any related person, acquires a shareholding in the company that would entitle the person, or the person and any related person, if the company were to be wound up after the shareholding was acquired to participate (otherwise than as a creditor or other person to whom the company is liable) in a distribution of the property of the company to an extent greater than 50% of the value of the property distributable to all of the holders of shares in the company.

(3) For the purposes of sections 76AG and 76AJ, a person acquires a further interest in a company if the person, or the person and any related person—

- (a) has a majority interest in the company;
- (b) in acquiring that majority interest the person, or the person and any related person, became subject to section 76AG; and

- (c) acquires a further shareholding in the company that would entitle the person, or the person and any related person, if the company were to be wound up after the shareholding was acquired to participate further, otherwise than as a creditor or other person to whom the company is liable, in a distribution of the property of the company.

How dutiable value is determined

76AL. (1) Where section 76AH(1) applies, duty is chargeable in accordance with this section on the basis of the value free of encumbrances (in this section called “the dutiable value”) of the land situated in the State to which the company is entitled.

(2) Where by a relevant acquisition, a person acquires a majority interest in a company the dutiable value is the same proportion of the value of the land situated in the State to which the company is entitled, as provided by subsection (4), at the time of the acquisition, as the proportion of the property of the company to which the person, or the person and any related person, would be entitled, as provided in subsection (5), after the acquisition.

(3) Where the relevant acquisition is within section 76AJ (1) (b) the dutiable value—

- (a) for the purposes of section 76AH (1) (b) (i) is the same proportion of the value of the land situated in the State to which the company is entitled, as provided by subsection (4), at the time of the acquisition, as the proportion of the property of the company to which the person, or the person and a related person, would be entitled, as provided in subsection (5), after the further acquisition;
- (b) for the purposes of section 76AH (1) (b) (ii), is the same proportion of the value of the land situated in the State to which the company is entitled, as provided by subsection (4), at the time of the acquisition, as the proportion of the property of the company to which the person, or the person and a related person, would have been entitled, as provided in subsection (5), at the time of the immediately preceding relevant acquisition by that person, or a related person.

(4) For the purposes of subsections (2) and (3), the unencumbered value of the land to which a company is entitled at any time is the sum of—

- (a) in the case of land to which the company is entitled without reference to subsection (4) of section 76AI, the unencumbered value of the land at that time; and
- (b) in the case of land 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 company would be entitled in respect of the unencumbered value at that time of land to which the subsidiary is, or all subsidiaries are, entitled.

(5) For the purposes of subsections (2) and (3), the property of a 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 (otherwise than as a creditor or other person to whom the company is liable) if the company were to be wound up after the acquisition.

Liability for duty

76AM. (1) A person who is required to lodge a statement under section 76AG is liable to pay the duty chargeable under this Division.

(2) Where an acquisition is a relevant acquisition by virtue of a person and any related person acquiring a shareholding in a company all such persons are jointly and severally liable for the duty chargeable under this Division.

*Division 3—Corporations incorporated outside the State,
and certain companies not within Division 2*

When statement to be lodged

76AN. (1) Where by a relevant acquisition a person acquires a majority interest or a further interest in a corporation to which this Division applies, the corporation shall prepare and lodge with the Commissioner a statement in respect of that acquisition.

(2) The statement shall be lodged within 3 months of the occurrence of the relevant acquisition.

(3) The statement shall be in a form approved by the Commissioner and shall include the following information—

- (a) the name and address of the person who has acquired a majority interest or a further 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 unencumbered value of all land in the State to which the corporation is entitled as at that date; and
- (e) the unencumbered value of the assets of the corporation as at that date.

(4) A statement shall be deemed, for the purposes of this Act, to be an instrument executed on the day on which the relevant acquisition occurs.

Statement chargeable with duty

76AO. (1) A statement lodged under section 76AN is chargeable, in accordance with section 76AS, with duty at the rate provided for in item 4 (1) of the Second Schedule calculated as follows—

- (a) where the statement relates to a relevant acquisition within section 76AQ (1) (a), the duty shall be calculated on the dutiable value determined under section 76AS (2); and
- (b) where the statement relates to a relevant acquisition within section 76AQ (1) (b), the duty—
 - (i) shall be calculated on the dutiable value determined under section 76AS (3) (a); but

- (ii) shall be reduced by the amount of duty determined on the dutiable value calculated under section 76AS (3) (b).

(2) Notwithstanding item 4 (1) of the Second Schedule, where the value of the land under section 76AS (4) does not exceed \$1 500 000 the duty chargeable under this section shall be calculated as follows, and where paragraph (b) of subsection (1) applies, shall be so calculated in terms of subparagraphs (i) and (ii) of that paragraph—

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

$$+ \left[1 - \left[\frac{A - \$1\,000\,000}{\$500\,000} \right] \right] \times C$$

where—

A is the value of the land situated in the State to which the corporation is entitled as provided in section 76AS (4) at the time of the relevant acquisition;

B is the duty calculated under item 4 (1) of the Second Schedule on the dutiable value determined under section 76AS; and

C is the duty calculated under paragraph (a) of item 4 (3) of the Second Schedule on the value of the shareholding or entitlement comprised in the relevant acquisition had the acquisition been effected by an instrument chargeable under that paragraph.

(3) There shall be deducted from the duty chargeable on a statement, any duty paid under item 4 of the Second Schedule in respect of any instrument effecting or evidencing the acquisition of any interest which is taken into account in determining liability under section 76AN to lodge that statement, except any duty previously deducted under this subsection in respect of a statement previously lodged under that section.

Corporations to which this Division applies

76AP. (1) This Division applies to a corporation if—

(a) it is—

(i) a body corporate formed or incorporated outside the State, not being a body corporate that is—

(A) within paragraphs (c) to (f) of the definition of “corporation” in the *Companies Code*; or

(B) a subsidiary, within the meaning in section 76AI (4), of a company to which Division 2 applies;

or

(ii) a company that would be a subsidiary, within the meaning in section 76AI (4), of a body corporate referred to in subparagraph (i) if that body corporate were a company;

(b) shares of the corporation are not listed on a recognized stock exchange or are listed on a prescribed stock exchange; and

(c) it is a land-holder within the meaning in subsection (2).

(2) A corporation is a land-holder for the purposes of this Division if at the time of a relevant acquisition—

(a) it is entitled to land situated in the State and the unencumbered value of the land is not less than \$1 000 000, or it is entitled to land situated in the State 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 the State or elsewhere, is 80% or more of the value of all property to which it is entitled, other than property directed to be excluded by subsection (3).

(3) The following property of a corporation, or of a trustee or a related corporation referred to in subsection (4), 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) money lent by the corporation or a trustee or a related corporation referred to in subsection (4) 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;
- (d) in the case of the corporation, property consisting of a shareholding in a related corporation referred to in subsection (4) or of a share or interest or entitlement under a trust referred to in that subsection; and
- (e) 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 the corporation's ownership is not for the purpose of defeating the object of this Division.

(4) 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) a related corporation is entitled to that land or property.

Meaning of relevant acquisition

76AQ. (1) An acquisition is a relevant acquisition for the purposes of this Division—

(a) if a person—

(i) by that acquisition acquires a majority interest in a corporation; or

(ii) by that acquisition of an interest in a corporation, when taken with each previous acquisition of an interest in the corporation made by the person during the 12 months immediately preceding the day on which that acquisition occurs, acquires a majority interest in the corporation; or

(b) if by the acquisition a person who has a majority interest in a corporation (and by reason of the acquisition of that majority interest the corporation became subject to section 76AN) acquires a further interest in the corporation.

(2) For the purposes of subsection (1)(a)(ii), if a person acquires an interest in a corporation and within one year before or after such acquisition he became or becomes entitled to a right to acquire a further shareholding in the corporation and that right is exercised, he is deemed to acquire that further shareholding in the corporation within the period of 12 months after the first-mentioned acquisition, notwithstanding that the right is exercised after the expiration of that period.

Meaning of “interest”, “majority interest” and “further interest”

76AR. (1) For the purposes of sections 76AN and 76AQ, a person acquires an interest in a corporation if the person, or the person and any related person, acquires a shareholding or entitlement in the corporation or a holding corporation that would entitle the person, or the person and any related person, if the property of the corporation or the holding corporation were to be distributed after the shareholding or entitlement was acquired (in the case of a corporation on the basis of a winding up), to participate (otherwise than as a creditor or other person to whom the corporation or holding corporation is liable) in a distribution of the property of the corporation or holding corporation.

(2) For the purposes of sections 76AN and 76AQ, a person acquires a majority interest in a corporation if the person, or the person and any related person, acquires a shareholding or

entitlement in the corporation or a holding corporation that would entitle the person, or the person and any related person, if the property of the corporation or the holding corporation were to be distributed after the shareholding or entitlement was acquired (in the case of a corporation on the basis of a winding up), to participate, (otherwise than as a creditor or other person to whom the corporation or holding corporation is liable), in a distribution of the property of the corporation or holding corporation to an extent greater than 50% of the value of the property distributable to all of the holders of shares or entitlements in the corporation or a holding corporation.

(3) For the purposes of sections 76AN and 76AQ, a person acquires a further interest in a corporation if the person, or the person and any related person—

- (a) has a majority interest in the corporation;
- (b) in acquiring that majority interest the person, or the person and any related person became subject to section 76AN; and
- (c) acquires a further shareholding or entitlement in the corporation or a holding corporation that would entitle the person, or the person and any related person, if the property of the corporation or the holding corporation were to be distributed after the shareholding or entitlement was acquired (in the case of a corporation on the basis of a winding up) to participate further (otherwise than as a creditor or other person to whom the corporation or holding corporation is liable) 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 holding corporation, or an ultimate holding corporation, within the meaning in section 7 of the *Companies Code* as if the references therein to “holding company” and “ultimate holding company” were references to “holding corporation” and “ultimate holding corporation”; 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 after the acquisition of the

shareholding or entitlement to participate (otherwise than as a creditor or other person to whom the corporation or holding corporation is liable) in a distribution of the property of the corporation or holding corporation to an extent greater than 50% of the value of the property distributable to all of the holders of shares in the corporation or holding corporation;

- (ii) a corporation, if in respect of any trust referred to in subparagraph (i) that corporation—
 - (A) is entitled to a share or interest in the trust whether vested or contingent; or
 - (B) 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.

How dutiable value is determined

76AS. (1) Where section 76AO (1) applies, duty is chargeable in accordance with this section on the basis of the value free of encumbrances (in this section called “the dutiable value”) of the land situated in the State to which the corporation is entitled.

(2) Where by a relevant acquisition a person acquires a majority interest in a corporation the dutiable value is the same proportion of the value of the land situated in the State 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 any related person, would be entitled, as provided in subsection (5), after the acquisition.

(3) Where the relevant acquisition is within section 76AQ (1) (b) the dutiable value—

- (a) for the purposes of section 76AO (1) (b) (i) is the same proportion of the value of the land situated in the State 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 further acquisition;

- (b) for the purposes of section 76AO (1) (b) (ii), is the same proportion of the value of the land situated in the State 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), at the time of the immediately preceding relevant acquisition by that person, or a related person.

(4) For the purposes of subsections (2) and (3), the unencumbered value of the land to which a corporation is entitled at any time is the sum of—

- (a) in the case of land to which the corporation is entitled without reference to subsection (4) of section 76AP, the unencumbered value of the land at that time; and
- (b) in the case of land 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 to which all such trusts and corporations are entitled.

(5) For the purposes of subsections (2) and (3), 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 (otherwise than as a creditor or other person to whom the corporation or a holding corporation is liable) if the property of the corporation and all holding corporations, as defined in section 76AR (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.

Liability for duty

76AT. A corporation that is required to lodge a statement under section 76AN is liable to pay the duty chargeable under sections 76AO and 76AS. ”.

Section 84 repealed and a section substituted

23. Section 84 of the principal Act is repealed and the following section is substituted—

Charges secured on property in and out of the State

“ 84. (1) Where money to be paid or repaid, or which is ultimately recoverable, under an instrument of security is secured wholly or in part on property out of the State duty shall, subject to this section, be payable as provided under this Part and item 13 of the Second Schedule on the full amount of such money.

(2) If the Commissioner is satisfied that any duty of a like nature to duty payable under subsection (1) has been paid in respect of the instrument, or any other instrument that secures the same money, in another State or Territory of the Commonwealth the duty calculated under subsection (1) shall be reduced by—

- (a) the same proportion of the duty payable under subsection (1) as the value of the property situated in that other State or Territory bears to the aggregate value of all property to which the instrument relates; or
- (b) the actual amount of the duty that is paid or payable in that other State or Territory,

whichever is the lesser.

(3) The Commissioner shall denote on the instrument the amount of the reduction that has been allowed, the date of the allowance, and the duty payable.

(4) Notwithstanding subsection (2), where an instrument referred to in subsection (1) is produced to the Commissioner and the person liable to pay the duty thereon gives notice in writing to the Commissioner that he intends to pay or cause to be paid duty

on the instrument, or any other instrument securing the same moneys, in another State or Territory of the Commonwealth, the following provisions shall apply—

- (a) the instrument may be stamped under subsection (2) as if the duty had been paid in another State or Territory and may be released for that purpose to the person who produced it;
- (b) the Commissioner shall issue an assessment of duty for the difference between the amount of duty payable under subsection (1) and the duty paid under paragraph (a);
- (c) if the instrument is produced to the Commissioner within 3 months after the issue of the assessment together with proof of payment of the duty payable in another State or Territory the assessment ceases to have effect and the instrument shall be denoted accordingly;
- (d) if paragraph (c) is not complied with—
 - (i) the assessment is payable at the expiration of the period of 3 months after it was issued together with a fine under section 20 (3);
 - (ii) no reduction shall be allowed for any duty paid in another State or Territory; and
 - (iii) the instrument is available only for the amount in respect of which duty has been paid under paragraph (a). ”.

Section 87 amended

24. Section 87 of the principal Act is amended by repealing subsection (1) and substituting the following subsection—

“ (1) Where an instrument of security for moneys is duly stamped under item 13 of the Second Schedule (in this subsection called “the stamped instrument”) and there are one or more other instruments that are security for the same moneys, the duty chargeable in respect of each of those other instruments shall be reduced—

- (a) where each such other instrument is security for the whole of the same moneys, by the amount of duty that was paid on the stamped instrument; and

- (b) where any of such other instruments is security for part of the same moneys, by an amount of equal to the same proportion of the duty that was paid on the stamped instrument as the amount for which that other instrument is security bears to the amount for which the stamped instrument is security. ”.

Section 117 amended

25. Section 117 of the principal Act is amended by deleting “2” and substituting the following—

“ 3 ”.
