



Queensland

Duties and Other Legislation Amendment Act 2016

Act No. 37 of 2016

An Act to amend the Duties Act 2001 and the First Home Owner Grant Act 2000 for particular purposes

[Assented to 27 June 2016]



Queensland

Duties and Other Legislation Amendment Act 2016

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The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Duties and Other Legislation Amendment Act 2016*.

2 Commencement

(1) The following provisions commence on 1 October 2016—

- section 4
- sections 7 to 10
- section 11, so far as it inserts new section 662
- section 12.

(2) The remaining provisions commence on 1 July 2016.

Part 2 Amendment of Duties Act 2001

3 Act amended

This part amends the *Duties Act 2001*.

4 Amendment of s 8 (Imposition of transfer duty)

Section 8(1), note—

omit, insert—

Notes—

- 1 Concessions and exemptions for transfer duty are dealt with in parts 8A to 13. Also, other exemptions are dealt with in chapter 10.

[s 5]

- 2 Additional foreign acquirer duty is imposed on particular dutiable transactions under chapter 4.

5 Replacement of s 96 (Purpose of pt 10)

Section 96—

omit, insert—

96 Purposes of pt 10

The purposes of this part are to—

- (a) provide a concession for transfer duty on particular dutiable transactions for dutiable property used to carry on particular family businesses of primary production; and
- (b) provide a concession for transfer duty on particular dutiable transactions by way of gift of dutiable property used to carry on particular family prescribed businesses.

6 Replacement of s 105 (How transfer duty is assessed on dutiable transaction)

Section 105—

omit, insert—

105 How transfer duty is assessed on dutiable transaction—primary production business

- (1) This section applies for assessing transfer duty on a dutiable transaction to which this part applies if business property to which the transaction relates is used to carry on a primary production business.
- (2) The dutiable value of the business property is taken to be nil.
- (3) In addition, if the dutiable property the subject of the dutiable transaction includes residential land adjacent to land used to carry on the business, the dutiable value of the residential land is taken to be

nil.

105A How transfer duty is assessed on dutiable transaction—prescribed business

- (1) This section applies for assessing transfer duty on a dutiable transaction to which this part applies—
 - (a) if business property to which the transaction relates is used to carry on a prescribed business; and
 - (b) to the extent the transaction is by way of gift.
- (2) The unencumbered value of the business property is limited to the amount by which the value exceeds \$500,000.
- (3) Subsection (2) has effect subject to section 106.

7 Amendment of s 157 (Imposition of landholder duty)

Section 157(1), note—

omit, insert—

Notes—

- 1 Exemptions for landholder duty are dealt with in division 5. Also, particular acquisitions relating to corporate reconstructions are exempt from landholder duty under chapter 10, part 1.
- 2 Additional foreign acquirer duty is imposed on particular relevant acquisitions under chapter 4.

8 Amendment of s 205 (Imposition of corporate trustee duty)

Section 205(1), note—

omit, insert—

[s 9]

Notes—

- 1 Exemptions for corporate trustee duty are dealt with in division 6.
- 2 Additional foreign acquirer duty is imposed on particular relevant acquisitions under chapter 4.

9 Insertion of new ch 4

After chapter 3—

insert—

Chapter 4 Additional foreign acquirer duty

Part 1 Preliminary

230 Relevant transactions

This chapter applies to the following transactions (*relevant transactions*)—

- (a) dutiable transactions on which transfer duty is imposed under chapter 2;
- (b) relevant acquisitions on which landholder duty or corporate trustee duty is imposed under chapter 3.

231 Imposition of AFAD

- (1) This chapter imposes an additional amount of transfer duty, landholder duty or corporate trustee duty on particular relevant transactions.
- (2) The additional amount of duty is *additional foreign acquirer duty* or *AFAD*.
- (3) Part 3 provides for when AFAD is imposed on a relevant transaction.

- (4) Part 4 provides for how AFAD is calculated.
- (5) The AFAD imposed on a relevant transaction is added to the duty imposed on the transaction under chapter 2 or 3.
- (6) To remove any doubt, it is declared that, unless the contrary intention appears—
 - (a) a reference in this Act to transfer duty is a reference to duty imposed under chapter 2 and AFAD relating to transfer duty imposed under this chapter; and
 - (b) a reference in this Act to landholder duty is a reference to duty imposed under chapter 3, part 1 and AFAD relating to landholder duty imposed under this chapter; and
 - (c) a reference in this Act to corporate trustee duty is a reference to duty imposed under chapter 3, part 2 and AFAD relating to corporate trustee duty imposed under this chapter.

Part 2 Some basic concepts for AFAD

232 What is *AFAD residential land*

AFAD residential land is land in Queensland—

- (a) that is, or will be, solely or primarily used for residential purposes; and
- (b) to which any of the following applies—
 - (i) on the land there is, or will be constructed, a building designed or approved by a local government for human habitation by a single family unit;

[s 9]

- (ii) on the land there is a building that a person will refurbish, renovate or extend so it becomes a building mentioned in subparagraph (i);
- (iii) the land is a lot on which there is a building or a part of a building that, for the separate area the lot comprises, is designed or approved by a local government for human habitation by a single family unit;
- (iv) the land will be a lot on which there is a building or a part of a building that, for the separate area the lot comprises, is designed or approved by a local government for human habitation by a single family unit;
- (v) the land is a lot on which there will be a building or a part of a building that, for the separate area the lot comprises, is designed or approved by a local government for human habitation by a single family unit;
- (vi) a person is undertaking, or will undertake, development of the land so it becomes land mentioned in any of subparagraphs (i) to (v).

233 Who is an *acquirer*

- (1) For the purpose of imposing AFAD relating to transfer duty on a dutiable transaction, a person is an *acquirer* if the person is—
 - (a) for a dutiable transaction mentioned in section 9(1)(a) or (b)—a transferee of the dutiable property under the transaction; or
 - (b) for a dutiable transaction mentioned in section 9(1)(c) to (e)—a person who, under

-
- the transaction, acquires the dutiable property; or
- (c) for a dutiable transaction mentioned in section 9(1)(f)—a person who, under the transaction, acquires the new right; or
 - (d) for a dutiable transaction mentioned in section 9(1)(g)—a person who, under the transaction, acquires a partnership interest; or
 - (e) for a dutiable transaction mentioned in section 9(1)(h) that is the creation of a trust of dutiable property—a person who, under the transaction, starts to hold the dutiable property in a way mentioned in section 53; or
 - (f) for a dutiable transaction mentioned in section 9(1)(h) that is the termination of a trust of dutiable property—a person who, under the transaction, starts to hold the dutiable property other than as trustee; or
 - (g) for a dutiable transaction mentioned in section 9(1)(i) that is a trust acquisition—a person who makes a trust acquisition under the transaction; or
 - (h) for a dutiable transaction mentioned in section 9(1)(i) that is a trust surrender—a person who is a trustee of the trust in which, under the transaction, the trust interest is surrendered; or
 - (i) for a dutiable transaction mentioned in paragraph (a) to (h)—a partner in a partnership in which any of the other partners is (in the capacity of a partner) a person mentioned in the paragraph.
- (2) For the purpose of imposing AFAD relating to landholder duty on a relevant acquisition, a

[s 9]

person is an *acquirer* if the person is—

- (a) a person who makes the relevant acquisition under the transaction; or
 - (b) if a person makes a relevant acquisition because interests are aggregated under section 158(1)(b)(ii), the person or a related person of the person; or
 - (c) a partner in a partnership in which any of the other partners is (in the capacity of a partner) a person mentioned in paragraph (a) or (b).
- (3) For the purpose of imposing AFAD relating to corporate trustee duty on a relevant acquisition, a person is an *acquirer* if the person—
- (a) makes the relevant acquisition under the transaction; or
 - (b) is a partner in a partnership in which any of the other partners (in the capacity of a partner) makes the relevant acquisition under the transaction.
- (4) In this section—
related person see section 164.

234 Who is a *foreign person*

Each of the following is a *foreign person*—

- (a) a foreign individual;
- (b) a foreign corporation;
- (c) the trustee of a foreign trust.

235 Who is a *foreign individual*

A *foreign individual* is an individual other than an Australian citizen or permanent resident.

236 What is a *foreign corporation*

- (1) Each of the following is a *foreign corporation*—
 - (a) a corporation incorporated outside Australia;
 - (b) a corporation in which foreign persons have a controlling interest.
- (2) A corporation is taken to be a corporation mentioned in subsection (1)(b) if, taking their interests together, 1 or more persons who are foreign persons or related persons of foreign persons—
 - (a) are in a position to control at least 50% of the voting power in the corporation; or
 - (b) are in a position to control at least 50% of the potential voting power in the corporation; or
 - (c) have an interest in at least 50% of the issued shares in the corporation.

- (3) In this section—

potential voting power see the *Foreign Acquisitions and Takeovers Act 1975* (Cwlth), section 22.

voting power see the *Foreign Acquisitions and Takeovers Act 1975* (Cwlth), section 22.

237 What is a *foreign trust*

- (1) A trust is a *foreign trust* if at least 50% of the trust interests in the trust are foreign interests.
- (2) In this section—

foreign interest means—

 - (a) a trust interest of a foreign individual; or
 - (b) a trust interest of a foreign corporation; or

[s 9]

- (c) a trust interest of a foreign trustee; or
- (d) a trust interest held by a related person of a person mentioned in paragraph (a) to (c).

238 Who are *related persons*

Persons are *related persons* if they are—

- (a) related persons under section 61; or
- (b) partners in a partnership.

239 Property held by partnership or trust

A reference in this chapter to a partnership or trust holding property is a reference to the holding of the property by the partners for the partnership or trustees on trust.

Part 3 Liability for AFAD

240 Conditions for imposing AFAD

AFAD is imposed on a relevant transaction if, at the time the liability for transfer duty, landholder duty or corporate trustee duty on the transaction arises—

- (a) the property condition under section 241 applies; and
- (b) an acquirer under the transaction is a foreign person.

241 Property condition for imposing AFAD

- (1) This section states the property condition for section 240(a).
- (2) If the relevant transaction is a dutiable

transaction, the property condition is that—

- (a) for a dutiable transaction mentioned in section 9(1)(a) to (e) or (h)—the dutiable property is AFAD residential land; or
 - (b) for a dutiable transaction mentioned in section 9(1)(f)—the new right is—
 - (i) AFAD residential land; or
 - (ii) a new right mentioned in schedule 6, definition *new right*, paragraph (c) for which the dutiable property is AFAD residential land; or
 - (c) for a dutiable transaction mentioned in section 9(1)(g)—the partnership acquisition is an acquisition of a partnership interest in a partnership that—
 - (i) holds dutiable property that is AFAD residential land; or
 - (ii) has an indirect interest in dutiable property that is AFAD residential land; or
 - (d) for a dutiable transaction mentioned in section 9(1)(i)—the trust acquisition or trust surrender is an acquisition or surrender of a trust interest in a trust that—
 - (i) holds dutiable property that is AFAD residential land; or
 - (ii) has an indirect interest in dutiable property that is AFAD residential land.
- (3) If the relevant transaction is a relevant acquisition, the property condition is that—
- (a) for landholder duty—the landholder has land-holdings that include AFAD residential land; or

[s 9]

- (b) for corporate trustee duty—the dutiable property held on trust by the corporate trustee, or in which the corporate trustee has an indirect interest that is held on trust, includes AFAD residential land.

Part 4 Calculating AFAD

242 Definitions for pt 4

In this part—

foreign acquirer means an acquirer who is a foreign person.

foreign acquirer's interest, under a relevant transaction, means the proportion that the share of the foreign acquirer under the transaction bears to the total of the shares of all acquirers under the transaction.

243 Non-application of concessions

The following provisions do not apply to the calculation or payment of AFAD imposed under this chapter—

- chapter 2, part 9
- chapter 2, part 10
- section 173.

244 AFAD for transfer duty

- (1) This section applies if, under part 3, AFAD relating to transfer duty is imposed on a dutiable transaction.
- (2) AFAD is imposed at the rate of 3% on the following amount—

-
- (a) for a dutiable transaction under section 9(1)(a) to (e) or (h)—the dutiable value of the transaction to the extent of the foreign acquirer’s interest in the AFAD residential land that is the subject of the transaction;
 - (b) for a dutiable transaction under section 9(1)(f)—the dutiable value of the transaction to the extent of the foreign acquirer’s interest in the new right mentioned in section 241(2)(b) that is the subject of the transaction;
 - (c) for a dutiable transaction under section 9(1)(g) or (i)—the dutiable value of the transaction—
 - (i) to the extent the partnership acquisition, trust acquisition or trust surrender relates to AFAD residential land; and
 - (ii) to the extent of the foreign acquirer’s interest in the partnership acquisition, trust acquisition or trust surrender.

245 AFAD for landholder duty

- (1) This section applies if, under part 3, AFAD relating to landholder duty is imposed on a relevant acquisition.
- (2) AFAD is imposed on a relevant acquisition made in a private landholder at the rate of 3% on the dutiable value of the acquisition—
 - (a) to the extent the dutiable value relates to land-holdings of the landholder that are AFAD residential land; and
 - (b) to the extent of the foreign acquirer’s interest in the relevant acquisition.
- (3) AFAD is imposed on a relevant acquisition made

[s 9]

in a public landholder, to the extent of the foreign acquirer's interest in the relevant acquisition, in the amount calculated in the way landholder duty is calculated under section 179A but with the changes stated in subsection (4).

- (4) For subsection (3), in relation to the calculation of transfer duty as mentioned in section 179A—
 - (a) the dutiable transaction mentioned in that section is treated as being limited to the transfer of the AFAD residential land; and
 - (b) the amount of transfer duty that would be imposed on the transaction as mentioned in that section is calculated at the rate of 3%.

246 AFAD for corporate trustee duty

- (1) This section applies if, under part 3, AFAD relating to corporate trustee duty is imposed on a relevant acquisition.
- (2) AFAD is imposed at the rate of 3% on the dutiable value of a relevant acquisition—
 - (a) to the extent the dutiable property held on trust by the corporate trustee, or in which the corporate trustee has an indirect interest that is held on trust, is AFAD residential land; and
 - (b) to the extent of the foreign acquirer's interest in the relevant acquisition.

Part 5 Reassessments

246A Reassessment if corporation or trust becomes foreign

- (1) This section applies if AFAD is not imposed on a relevant transaction only because an acquirer

under the transaction is not a foreign person.

- (2) The commissioner must make a reassessment under subsection (3) if—
 - (a) within 3 years after the time the liability for transfer duty, landholder duty or corporate trustee duty on the transaction arose, a corporation that was an acquirer under the transaction becomes a foreign corporation; or
 - (b) both of the following apply—
 - (i) a person was an acquirer under the transaction in the person's capacity as trustee;
 - (ii) within 3 years after the time the liability for transfer duty, landholder duty or corporate trustee duty on the transaction arose, the trust becomes a foreign trust.
- (3) The commissioner must make a reassessment to impose AFAD on the transaction as if, at the time the liability for transfer duty, landholder duty or corporate trustee duty on the transaction arose, the acquirer was a foreign person.
- (4) Within 28 days after an event mentioned in subsection (2)(a) or (b)(ii) happens, the corporation or trustee of the trust must—
 - (a) give notice in the approved form to the commissioner; and
 - (b) ensure the instruments required for the assessment of duty on the transaction are lodged for a reassessment of duty on the transaction.

Note—

Failure to give the notice is an offence under the Administration Act, section 120.

Part 6 Charge for unpaid transfer duty

246B Charge over interest in land for unpaid transfer duty

- (1) This section applies if—
 - (a) transfer duty including AFAD is imposed on a dutiable transaction; and
 - (b) all or part of the transfer duty is not paid by the date the amount (the *outstanding liability*) is payable.
- (2) The outstanding liability is a first charge on the interest of the following person (the *chargee*) in the AFAD residential land that is the subject of the transaction—
 - (a) for a dutiable transaction mentioned in section 9(1)(a) to (f)—the foreign acquirer under the transaction;
 - (b) for a dutiable transaction mentioned in section 9(1)(g)—each partner who holds the AFAD residential land to which the partnership acquisition relates;
 - (c) for a dutiable transaction mentioned in section 9(1)(h) that is the creation of a trust of dutiable property—the person who, under the transaction, starts to hold the AFAD residential land in a way mentioned in section 53;
 - (d) for a dutiable transaction mentioned in section 9(1)(h) that is the termination of a trust of dutiable property—the person who, under the transaction, starts to hold the AFAD residential land other than as trustee;

- (e) for a dutiable transaction mentioned in section 9(1)(i) that is a trust acquisition—the trustee of the trust in which the trust acquisition is made;
- (f) for a dutiable transaction mentioned in section 9(1)(i) that is a trust surrender—
 - (i) the trustee of the trust in which the trust interest is surrendered; or
 - (ii) if there is no longer a trustee as a result of the surrender, the person who holds the AFAD residential land as a result of the surrender.
- (3) The charge has priority over all other encumbrances over the chargee's interest in the land other than a charge under section 156P.
- (4) Subsection (3) applies—
 - (a) whether the other encumbrances over the chargee's interest in the land—
 - (i) are registered or unregistered; or
 - (ii) were created before or after the charge arises under subsection (2); and
 - (b) despite the *Land Title Act 1994*, part 3, divisions 2 and 2A.
- (5) The commissioner may lodge, under the Administration Act, part 4, division 5, a request to register the charge on the land that is the subject of the transaction.
- (6) Despite the Administration Act, section 47B, the registrar must not register the charge if the chargee is no longer the registered owner of the land.
- (7) On its registration, the charge is not affected by a disposition of the chargee's interest in the land.

246C Commissioner may apply to Supreme Court for order to sell

- (1) This section applies if—
 - (a) a charge has been registered over the land under section 246B; and
 - (b) the outstanding liability has not been paid within 18 months after registration.
- (2) The commissioner may apply to the Supreme Court for an order to sell the land stated in the application.
- (3) At least 6 months before making the application, the commissioner must give the persons mentioned in subsection (4) notice of the commissioner's intention to apply to the Supreme Court for an order to sell the land unless the outstanding liability is paid within 6 months after the date of the notice.
- (4) The persons to whom notice must be given are—
 - (a) the persons liable to pay the outstanding liability; and
 - (b) the owner of the land.

246D When court must order sale of land

- (1) The court must order the sale of the land if it is satisfied—
 - (a) proper notice of the application for the order was given under section 246C; and
 - (b) there is an outstanding liability payable to the State.
- (2) However, the court may make an order only for the land the court considers is sufficient to realise proceeds to pay the amounts mentioned in section 246E(a) to (d).

246E Application of proceeds of sale

The proceeds of the sale of land sold under the order must be applied as follows—

- (a) first, in payment of the commissioner's expenses on the application to the court for the order;
- (b) second, in payment of expenses properly incurred by the commissioner on the sale or any attempted sale;
- (c) third, in payment of the outstanding liability under the Administration Act, section 42;
- (d) fourth, in payment of amounts secured by a security interest or charge on the land recorded before the charge mentioned in section 246C(1)(a), unless the land is sold subject to the security interest or charge;
- (e) fifth, any balance must be applied as the court orders.

246F Registration of transfer

- (1) If land is sold under the order to sell, the person stated in the order for this section must—
 - (a) sign a transfer in the appropriate form in favour of the purchaser; and
 - (b) lodge the transfer with the registrar.
- (2) The registrar must register the transfer as if it had been signed by the registered owner of the land
- (3) Subsection (2) applies despite non-production of the relevant instrument of title.

246G Former owner may recover proceeds of sale as debt

- (1) The amount equal to the proceeds of the sale of

[s 9]

land under the order to sell less an amount paid under section 246E(d) is a debt payable to the former owner of the land by the persons liable to pay the outstanding liability for which the order was made.

- (2) The former owner may recover the debt in a court of competent jurisdiction.
- (3) In this section—
former owner, of land sold under the order to sell, means the person who owned the land immediately before its sale.

Part 7 Miscellaneous

246H Acquirer must lodge AFAD statement

The acquirer under a relevant transaction on which AFAD is imposed must, within 30 days after the date of the transaction, lodge a statement in the approved form.

Note—

Failure to lodge the statement is an offence under the Administration Act, section 121.

246I Recovery of transfer duty payment from foreign persons

- (1) This section applies if—
 - (a) AFAD relating to transfer duty is imposed on a dutiable transaction; and
 - (b) a person who is liable under this Act to pay the transfer duty, and who is not a foreign acquirer under the transaction, pays an amount to the commissioner as payment for—

-
- (i) all or part of the transfer duty; or
 - (ii) interest or penalty tax relating to the transfer duty.
- (2) The person is entitled to recover the amount from the foreign acquirer as a debt, to the extent the amount exceeds the amount that would have been payable if AFAD had not been imposed on the transaction.

10 Amendment of s 498 (Special provisions for working out value of particular shares)

- (1) Section 498(1) and (3), ‘chapters 2 and 3’—

omit, insert—

chapters 2 to 4

- (2) Section 498(5), ‘chapter 2 or 3’—

omit, insert—

chapter 2, 3 or 4

11 Insertion of new ch 17, pt 21

Chapter 17—

insert—

**Part 21 Transitional provisions
for Duties and Other
Legislation
Amendment Act 2016**

661 Application of amendments relating to s 105

- (1) Sections 105 and 105A as amended or inserted by the *Duties and Other Legislation Amendment Act 2016* apply to a dutiable transaction only if liability for transfer duty arises on or after the

[s 12]

commencement.

- (2) Section 105 as in force before the commencement continues to apply to a dutiable transaction for dutiable property used to carry on particular family businesses of primary production if the liability for transfer duty arose before the commencement.

662 Application of ch 4

Chapter 4 applies to a relevant transaction if liability for transfer duty, landholder duty or corporate trustee duty arises on or after 1 October 2016.

12 Amendment of sch 6 (Dictionary)

- (1) Schedule 6, definition *outstanding liability*—
omit.
- (2) Schedule 6—
insert—

additional foreign acquirer duty see section 231(2).

AFAD stands for additional foreign acquirer duty.

AFAD residential land, for chapter 4, see section 232.

Australian citizen see the *Australian Citizenship Act 2007* (Cwlth), section 4.

foreign acquirer, for chapter 4, see section 242.

foreign acquirer's interest, for chapter 4, see section 242.

foreign corporation, for chapter 4, section 236.

foreign individual, for chapter 4, section 235.

foreign person, for chapter 4, see section 234.

foreign trust, for chapter 4, section 237.

outstanding liability—

(a) for chapter 2, part 15, division 4, see section 156P(1)(b); or

(b) for chapter 4, part 6, see section 246B(1)(b).

permanent resident means—

(a) the holder of a permanent visa as defined by the Migration Act 1958 (Cwlth), section 30(1); or

(b) a New Zealand citizen who is the holder of a special category visa as defined by the Migration Act 1958 (Cwlth), section 32.

relevant transactions, for chapter 4, see section 230.

(3) Schedule 6, definition *acquirer*, paragraph (b)—

omit, insert—

(b) for chapter 4, see section 233; or

(c) for chapter 17, part 17, see section 630.

(4) Schedule 6, definition *related person*, paragraph (c)—

omit, insert—

(c) for chapter 4—see section 238; or

(d) otherwise—see section 61(1).

Part 3

Amendment of First Home Owner Grant Act 2000

13 Act amended

This part amends the *First Home Owner Grant Act 2000*.

[s 14]

14 Insertion of new pt 3, div 6

Part 3—

insert—

Division 6 Particular eligible transactions—2016–2017 financial year

25D Meaning of *particular eligible transaction* for div 6

- (1) A *particular eligible transaction* is an eligible transaction mentioned in section 5(1) the commencement date for which is between 1 July 2016 and 30 June 2017, both dates inclusive.
- (2) However, an eligible transaction that is a contract is not a particular eligible transaction if the commissioner is satisfied the contract forms part of a scheme to circumvent limitations on, or requirements affecting, eligibility or entitlement to a first home owner grant for a particular eligible transaction.
- (3) Unless satisfied to the contrary, the commissioner must presume the existence of a scheme mentioned in subsection (2) if the contract replaces a contract made before 1 July 2016 that is—
 - (a) a contract to purchase the same or substantially similar home; or
 - (b) a comprehensive home building contract to build the same or a substantially similar home.

25E Amount of grant

Despite section 20, the amount of a first home

owner grant for an eligible transaction that is a particular eligible transaction for a new home is the lesser of the following—

- (a) the consideration for the transaction;
- (b) \$20,000.

15 Amendment of schedule (Dictionary)

Schedule—

insert—

particular eligible transaction, for part 3, division 6, see section 25D(1).

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