



# Duties Act 2001

Reprinted as in force on 29 November 2004

See endnote 8 for information about retrospectivity

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This Act is reprinted as at 29 November 2004. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes. Also see list of legislation for any uncommenced amendments.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

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Revised edition indicates further material has affected existing material. For example—

- a correction
- a retrospective provision
- other relevant information.



Queensland

# Duties Act 2001

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# Duties Act 2001

[as amended by all amendments that commenced on or before 29 November 2004]

## An Act about creating and imposing duties

# Chapter 1 Introduction

## Part 1 Preliminary

### 1 Short title

This Act may be cited as the *Duties Act 2001*.

### 2 Commencement

- (1) This Act, other than sections 306(2), 342(2) and 497, commences on a day to be fixed by proclamation.
- (2) Sections 306(2), 342(2) and 497 commence on the later of the following—
  - (a) a day to be fixed by proclamation;
  - (b) when an arrangement is made under the *Commonwealth Places (Mirror Taxes) Act 1998* (Cwlth), section 9, for Queensland.

## **Part 2 Interpretation**

### **3 Definitions**

- (1) The dictionary in schedule 6 defines particular words used in this Act.
- (2) The definition *spouse* in schedule 6 applies despite the *Acts Interpretation Act 1954*, section 32DA(6).

### **4 Notes in text**

A note in the text of this Act is part of the Act.

### **5 Relationship of Act with Administration Act**

- (1) This Act does not contain all the provisions about duties.
- (2) The Administration Act contains provisions dealing with, among other things, the following—
  - (a) assessments of duty;
  - (b) collection and refunds of duty;
  - (c) imposition of interest and penalty tax;
  - (d) objections and appeals against assessments of duty;
  - (e) record keeping obligations of taxpayers;
  - (f) investigative powers, offences, legal proceedings and evidentiary matters;
  - (g) service of documents.

*Note—*

Under the Administration Act, section 3, that Act and this Act must be read together as if they together formed a single Act.

## **Part 3 Application of Act**

### **6 Act binds all persons**

- (1) This Act binds all persons, including the State and, as far as the legislative power of the Parliament permits, the Commonwealth and the other States.

*Note—*

However, under section 426, the State is exempt from duty unless this Act expressly provides otherwise.

- (2) Nothing in this Act makes the State liable to be prosecuted for an offence.

### **7 Extra-territorial application**

This Act applies to impose duty on instruments and transactions regardless of whether they are entered into or made in or outside Queensland.

*Note—*

This is because instruments and transactions on which duty is imposed have a nexus to Queensland.

### **7A Declaration of excluded matter for Corporations Act**

An interest of a person in a registered managed investment scheme is declared to be an excluded matter for the Corporations Act, section 5F,<sup>1</sup> in relation to section 1070A(1)(a), (3) and (4)<sup>2</sup> of that Act.

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1 Corporations Act, section 5F (Corporations legislation does not apply to matters declared by State or Territory law to be an excluded matter)

2 Corporations Act, section 1070A (Nature of shares and certain other interests in a company or registered scheme)

## Chapter 2      Transfer duty

### Part 1              Preliminary

#### 8              Imposition of transfer duty

- (1) This chapter imposes duty (*transfer duty*) on dutiable transactions.

*Note—*

Concessions and exemptions for transfer duty are dealt with in parts 9 to 13. Also, other exemptions are dealt with in chapter 10.

- (2) Transfer duty is imposed on the dutiable value of a dutiable transaction.

### Part 2              Some basic concepts for transfer duty

#### 9              What is a *dutiable transaction*

- (1) Each of the following is a *dutiable transaction*—
- (a) a transfer of dutiable property;
  - (b) an agreement for the transfer of dutiable property, whether conditional or not;
  - (c) a surrender of dutiable property that is land in Queensland or a transferable site area;
  - (d) a share buy-back for a Queensland marketable security;
  - (e) a vesting of dutiable property—
    - (i) by, or expressly authorised by, statute law of this or another jurisdiction, whether inside or outside Australia; or
    - (ii) by a court order, of this or another jurisdiction, whether inside or outside Australia;

- (f) a foreclosure of a mortgage over dutiable property;
  - (g) an acquisition of a new right on its creation, grant or issue;
  - (h) a partnership acquisition;<sup>3</sup>
  - (i) the creation or termination of a trust of dutiable property;<sup>4</sup>
  - (j) a trust acquisition or trust surrender.<sup>5</sup>
- (2) It does not matter whether a dutiable transaction—
- (a) is effected by an instrument or another way; or
  - (b) involves 1 or more parties.
- (3) Subsection (1) has effect subject to sections 21, 29 and 37.<sup>6</sup>

*Note—*

Under section 21, the commissioner must decide the applicable dutiable transaction for imposition of duty if a transaction constitutes more than 1 type of dutiable transaction mentioned in subsection (1).

Also, for when transactions for particular dutiable property are not dutiable transactions, see sections 29 and 37.

- (4) Without limiting subsection (1)(e), property is vested under statute law if the law vests property in an entity that the law states is the successor in law of, continuation of or same entity as, the entity in which the property was previously vested.
- (5) However, property is not vested under statute law, on the registration of a company under the Corporations Act, chapter 5B, part 5B.1.

## 10 What is *dutiable property*

- (1) Each of the following is *dutiable property*—

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3 See chapter 2, part 7 (Dutiable transactions relating to partnerships).

4 See chapter 2, part 8 (Dutiable transactions relating to trusts), division 3 (Creation and termination of trusts).

5 See chapter 2, part 8 (Dutiable transactions relating to trusts), division 4 (Some basic concepts about trust acquisitions and trust surrenders).

6 Sections 21 (No double duty—general), 29 (When transaction for chattel is not dutiable transaction) and 37 (When transaction for particular Queensland business assets not dutiable transaction)

- (a) land in Queensland;
  - (b) a transferable site area;
  - (c) a Queensland marketable security;
  - (d) an existing right;
  - (e) a Queensland business asset;
  - (f) a chattel in Queensland.
- (2) A reference to property in subsection (1) includes a reference to an interest<sup>7</sup> in the property, other than the following—
- (a) a security interest;
  - (b) a partner's interest in the partnership;
  - (c) a trust interest;
  - (d) the interest of a discretionary object of a trust that holds property mentioned in the subsection.

## 11 What is the *dutiable value* of a dutiable transaction

- (1) The *dutiable value* of a statutory dutiable transaction is the amount payable for the transaction.
- (2) The *dutiable value* of a dutiable transaction that is a partition is determined under section 31.
- (3) The *dutiable value* of a dutiable transaction that is the surrender of a lease of land in Queensland is the total of any premium, fine or other consideration payable for the surrender.
- (4) The *dutiable value* of a dutiable transaction that is the acquisition of a new right that is a lease of land in Queensland is the total of any amounts mentioned in section 233(2)(d) to (f) that are payable for the lease.
- (5) The *dutiable value* of a dutiable transaction that is a partnership acquisition is determined under part 7, division 3.

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<sup>7</sup> *Acts Interpretation Act 1954*, section 36—

*interest*, in relation to land or other property, means—

- (a) a legal or equitable estate in the land or other property; or
- (b) a right, power or privilege over, or in relation to, the land or other property.



- (6) The *dutiable value* of a dutiable transaction that is a trust acquisition or trust surrender is determined under part 8, division 5.
- (7) Subject to section 48,<sup>8</sup> the *dutiable value* of another dutiable transaction is—
- (a) the consideration for the dutiable transaction; or
  - (b) the unencumbered value of the dutiable property or new right the subject of the transaction if—
    - (i) there is no consideration for the transaction; or
    - (ii) the consideration can not be ascertained when the liability for transfer duty arises; or
    - (iii) the unencumbered value is greater than the consideration for the transaction.
- (8) However, the dutiable value of particular dutiable transactions is subject to apportionment under part 4.

## **12 Consideration for dutiable transactions—general**

- (1) The consideration for a dutiable transaction includes—
- (a) the amount of any liabilities assumed under the transaction, including an obligation, whether contingent or otherwise, to pay any unpaid purchase money payable under an agreement for the transfer of dutiable property; and
  - (b) the amount or value of any debt to the extent it is released or extinguished under the transaction.
- (2) If the consideration, or any part of the consideration, for a dutiable transaction on which duty is imposed consists of an amount payable periodically and the total amount, including any interest, to be paid can be ascertained, the consideration or part of the consideration is the total amount.

*Note—*

For other provisions relevant to consideration, see sections 501 to 503.

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<sup>8</sup> Section 48 (Dutiable value of dutiable transaction reduced for transfer of dutiable property to partner on retirement or dissolution)

**13 Consideration for dutiable transaction—transfer by way of security**

The consideration for the transfer by way of security of dutiable property that is land is an amount equal to the unencumbered value of the dutiable property when the liability for transfer duty arises.

**14 What is the *unencumbered value* of property**

- (1) The *unencumbered value* of property is the value of the property determined without regard to—
- (a) any encumbrance to which the property is subject, whether contingently or otherwise; or
  - (b) any arrangement—
    - (i) the parties to which are not dealing with each other at arm's length; and
    - (ii) that results in the reduction of the value of the property; or
  - (c) any arrangement for which a significant purpose of any party to the arrangement was, in the commissioner's opinion, the reduction of the value of the property.

*Example for paragraph (c)—*

A owns land that B wishes to purchase. The land is valued at \$1M. Before the purchase, A grants B a 50 year lease of the land. B is not required to pay any rent under the lease. A and B then enter into an agreement to transfer the land for \$50 000, being the value of A's interest in the land taking into account that it is subject to the lease to B.

The unencumbered value of the land is determined without regard to the grant of the lease if the commissioner is of the opinion there is an arrangement under which A or B's significant purpose in entering into it was to reduce the value of the land.

- (2) Also, the *unencumbered value* of property held on trust or by a partnership must be determined without regard to the liabilities of the trust or partnership, including for a trust, the liability to indemnify the trustee.
- (3) The *unencumbered value* of property that is the goodwill of a business includes the value of any restraint of trade arrangement entered into by the transferor or a related person

of the transferor to protect the value of the goodwill acquired by the transferee.

- (4) If, before a dutiable transaction that is the transfer, or agreement for the transfer, of land, improvements are made to the land at the transferee's expense, the unencumbered value of the land must be determined as if the improvements had not been made.

*Note—*

For provisions about the aggregate minimum value of the shares comprising all of the issued capital of a corporation or society and the unencumbered value of each of the shares, see section 504.

## **15 When unencumbered value of property is determined**

The unencumbered value of dutiable property is determined—

- (a) for a dutiable transaction that is the surrender of the property—immediately before the surrender; or
- (b) for another dutiable transaction—when the liability for transfer duty arises.

## **Part 3 Liability for transfer duty**

### **16 When liability for transfer duty arises**

A liability for transfer duty imposed on a dutiable transaction in schedule 2, column 1, arises at the time stated opposite the transaction in schedule 2, column 2.

### **17 Who is liable to pay transfer duty**

- (1) Transfer duty imposed on a statutory dutiable transaction must be paid by the statutory entity under the transaction.
- (2) Transfer duty imposed on another dutiable transaction must be paid by the parties to the transaction.

**18 Need for instrument or statement**

If a dutiable transaction is not effected or evidenced by an instrument, the parties liable to pay transfer duty on the transaction must make a statement in the approved form (a *transfer duty statement*) within the time stated in section 19 for lodging the statement.

Maximum penalty—40 penalty units.

**19 Lodging instrument or statement**

- (1) The statutory entity under a statutory dutiable transaction must lodge—
  - (a) the instrument that effects or evidences the transaction; or
  - (b) the transfer duty statement for the transaction.
- (2) The statutory entity must comply with subsection (1)—
  - (a) within 60 days after the liability arises to pay transfer duty on the transaction; or
  - (b) if the amount payable for the transaction is to be decided by a court or tribunal—within 14 days after the amount is decided.
- (3) The parties liable to pay transfer duty relating to another dutiable transaction must, within 30 days after the liability arises, lodge—
  - (a) the instrument that effects or evidences the transaction or transfer duty statement for the transaction; and
  - (b) an approved form for the transaction.

**20 Effect of making or lodging instrument or statement by 1 party**

The making of a transfer duty statement, or the lodging under section 19 of an instrument or transfer duty statement, by 1 of the parties to the dutiable transaction relieves the other parties to the transaction from complying with the requirement to make the statement under section 18 or lodge the instrument or transfer duty statement under section 19.

**21 No double duty—general**

- (1) If a transaction for property constitutes more than 1 dutiable transaction for the property and imposition of transfer duty on all of the dutiable transactions for the property would result in transfer duty being imposed more than once on the transaction, the commissioner must decide the dutiable transaction on which transfer duty is imposed.

*Note—*

For objections and appeals against assessments of duty, see the Administration Act, part 6.

- (2) For subsection (1), the commissioner must decide the dutiable transaction that is the most applicable dutiable transaction having regard to the provisions of this chapter and the primary purpose of the transaction.

**22 No double duty—particular dutiable transactions**

- (1) If transfer duty is imposed on a dutiable transaction for periodical payments of consideration, no duty is imposed under this Act on any agreement securing the periodical payments.
- (2) If transfer duty imposed on a dutiable transaction that is an agreement for the transfer of dutiable property is paid, no transfer duty is imposed on the transfer of the property to the transferee under the agreement.
- (3) If the commissioner is satisfied—
  - (a) a person (the ***agent***) is appointed in writing as an agent for another person (the ***principal***); and
  - (b) under the appointment, the agent enters into a dutiable transaction that is an agreement for the transfer of dutiable property from a person (the ***original transferor***) to the agent on behalf of the principal (the ***agreement***); and
  - (c) the principal provided all the consideration, including any deposit paid; and
  - (d) transfer duty imposed on the agreement is paid; and

- (e) the dutiable property is later transferred to the principal by the original transferor or the agent (the ***agency transfer***);

no transfer duty is imposed on the agency transfer or the trust acquisition or trust surrender by the principal because of the agreement or agency transfer.

- (4) For subsection (3)(a), the commissioner must not be satisfied the person was properly appointed as agent unless the original instrument of appointment, or a copy of it, is lodged.

- (5) If—

- (a) there is an agreement for the transfer of dutiable property (the ***first agreement***); and
- (b) after the first agreement takes place, 1 or more agreements to transfer all or part of the dutiable property the subject of the first agreement takes place (the ***intervening agreements***); and
- (c) to give effect to the first agreement and the intervening agreements, 1 or more transfers of dutiable property (the ***transfers***) are effected by 1 or more parties to the first agreement and the intervening agreements; and
- (d) transfer duty imposed on the first agreement and the intervening agreements is paid;

no transfer duty is imposed on the transfers.

*Example for subsection (5)—*

On 1 July, under an agreement for transfer, A agrees to sell land in Queensland to B for \$100 000. Settlement is to take place on 31 July. On 7 July, under an agreement for transfer, B agrees to sell the land to C for \$120 000. Again, settlement is to take place on 31 July. Before 31 July, B directs A, that at settlement, A transfer the land to C.

The agreement between A and B is the first agreement. The agreement between B and C is the intervening agreement. No transfer duty is imposed on the transfer from A to C if transfer duty on the first and intervening agreements has been paid.

## **23 When credit to be allowed for duty paid**

- (1) If section 14(1)(c) is applied to determine the value of land because of a lease or occupancy right, in assessing the transfer

duty payable for the dutiable transaction that is the transfer, or agreement for the transfer, of the land, a credit must be allowed for any lease duty paid for the lease or right.

- (2) Subsection (3) applies if—
  - (a) transfer duty is paid on a dutiable transaction that is an option to acquire dutiable property (the *first transaction*); and
  - (b) on the exercise of the option, transfer duty is payable on the dutiable transaction for the acquisition of the dutiable property (the *later transaction*); and
  - (c) under the option, the consideration paid for the option is part of the consideration for the later transaction.
- (3) In assessing the transfer duty on the later transaction, a credit must be allowed for the transfer duty paid for the first transaction.

## **24 Rates of transfer duty**

- (1) The rate of transfer duty imposed on each of the following dutiable transactions for dutiable property that is a Queensland marketable security is 60c for each \$100, or part of \$100, of the dutiable value of the transaction—
  - (a) a transfer of the security;
  - (b) an agreement for the transfer of the security;
  - (c) a share buy-back of the security;
  - (d) a vesting of the security—
    - (i) by, or expressly authorised by, statute law of this or another jurisdiction, whether inside or outside Australia; or
    - (ii) by a court order, of this or another jurisdiction, whether inside or outside Australia;
  - (e) a foreclosure of a mortgage over the security.
- (2) The rate of transfer duty imposed on a dutiable transaction that is a partnership acquisition, the creation or termination of a trust or a trust acquisition or trust surrender is—

- (a) for a Queensland marketable security held by the partnership or the subject of the trust—the rate under subsection (1) for the part of the dutiable value of the dutiable transaction that is attributable to the Queensland marketable security; and
  - (b) for other dutiable property held by the partnership or the subject of the trust—the rate under subsection (4) for the part of the dutiable value of the dutiable transaction that is attributable to the property.
- (3) The rate of transfer duty imposed on a dutiable transaction that is the transfer, or an agreement for the transfer, of an existing right of a holder of the following is \$5—
- (a) a mortgage, including the debt secured by the mortgage, that is solely over land in Queensland;
  - (b) another mortgage, including the debt secured by the mortgage, that is incidental to, and transferred in connection with, a mortgage mentioned in paragraph (a) (a *primary mortgage*) if the primary mortgage is the principal security held by the transferor.
- (4) The rate of transfer duty imposed on another dutiable transaction is stated in schedule 3, column 2, opposite the dutiable value of the transaction in schedule 3, column 1.

## **25 Payment of transfer duty for deeds of grant and particular freeholding leases**

- (1) This section applies if transfer duty is imposed on a dutiable transaction that is—
- (a) a grant of land in fee simple under the *Land Act 1994*; or
  - (b) an acquisition of a new right that is a post-Wolfe freeholding lease under the *Land Act 1994*.
- (2) Within 30 days after the liability for the duty arises, the grantee or lessee must pay the duty to the chief executive of the department in which the *Land Act 1994* is administered.



## Part 4 **Apportionment of consideration or unencumbered value for particular dutiable transactions**

### 26 **Apportionment—head office or principal place of business in Queensland**

- (1) This section applies for determining the consideration for a dutiable transaction for or relating to, or the unencumbered value of, dutiable property that is a Queensland business asset, other than a debt or personal property, of a Queensland business that has its head office or principal place of business in Queensland if, at any time during the 3 financial years preceding the dutiable transaction concerned—
- (a) a supply of land, money, credit or goods or any interest in them, or provision of services, has been made by the business to customers outside Queensland; or
  - (b) the asset has been used, exploited or exercised in, or relates to, a place outside Queensland.
- (2) A reference in this chapter to consideration for the transaction or the unencumbered value of the property is taken to be a reference to the amount (the *apportioned amount*) worked out using the following formula—

$$AA = CUV \times \frac{(TS - OS)}{TS}$$

where—

*AA* means the apportioned amount.

*CUV* means the consideration for the dutiable transaction or unencumbered value of the Queensland business asset mentioned in subsection (1).

*OS* means the gross amount of the supplies and provision of services made by the business to its customers in other States during the 3 completed financial years preceding the dutiable transaction.

*TS* means the gross amount of supplies and provision of services made by the business to all its customers during the 3 completed financial years preceding the dutiable transaction.

- (3) However, the commissioner may decide the consideration for the dutiable transaction or the unencumbered value of the dutiable property on another basis if the commissioner is satisfied the other basis would be more appropriate in particular circumstances.

## **27 Apportionment—head office or principal place of business in another State**

- (1) This section applies for determining the consideration for a dutiable transaction for or relating to, or the unencumbered value of, dutiable property that is a Queensland business asset, other than a debt or personal property, of a Queensland business that does not have its head office or principal place of business in Queensland if, at any time during the 3 financial years preceding the dutiable transaction concerned—
- (a) a supply of land, money, credit or goods or any interest in them, or provision of services, has been made by the business to customers in Queensland; or
- (b) the asset has been used, exploited or exercised in, or relates to, Queensland.
- (2) A reference in this chapter to consideration for the transaction or the unencumbered value of the property is taken to be a reference to the amount (the *apportioned amount*) worked out using the following formula—

$$AA = CUV \times \frac{QS}{TS}$$

where—

*AA* means the apportioned amount.

*CUV* means the consideration for the dutiable transaction or unencumbered value of the Queensland business asset mentioned in subsection (1).

*QS* means the gross amount of the supplies and provision of services made by the business to its Queensland customers during the 3 completed financial years preceding the dutiable transaction.

*TS* means the gross amount of supplies and provision of services made by the business to all its customers during the 3 completed financial years preceding the dutiable transaction.

- (3) However, the commissioner may decide the consideration for the dutiable transaction or the unencumbered value of the dutiable property on another basis if the commissioner is satisfied the other basis would be more appropriate in particular circumstances.

## **28 Apportionment of particular dutiable transactions relating to existing and new rights**

- (1) This section applies for determining—
  - (a) the consideration for a dutiable transaction for or relating to an existing right or acquisition of a new right on its creation, grant or issue if the right is exercisable or relates to the conduct of a business or activity outside Queensland; or
  - (b) the unencumbered value of dutiable property that is an existing right if the right is exercisable or relates to the conduct of a business or activity outside Queensland; or
  - (c) the unencumbered value of a new right on its creation, grant or issue if the right is exercisable or relates to the conduct of a business or activity outside Queensland.
- (2) A reference in this chapter to consideration for the transaction or the unencumbered value of the right is taken to be a reference to the amount that represents the same proportion of the consideration or unencumbered value that the unencumbered value of the right, to the extent it is exercisable or relates to the conduct of a business or activity in Queensland, bears to the total unencumbered value of the right.
- (3) However, the commissioner may decide the consideration for the dutiable transaction or the unencumbered value of the

right on another basis if the commissioner is satisfied the other basis would be more appropriate in particular circumstances.

## **Part 5 Dutiable transactions relating to dutiable property**

### **29 When transaction for chattel is not dutiable transaction**

- (1) If a chattel in Queensland is the subject of a transaction, the transaction is not a dutiable transaction unless—
  - (a) another type of dutiable property is the subject of the same transaction; or
  - (b) under section 30, it is aggregated with a dutiable transaction that is not for a chattel.
- (2) For subsection (1)(b), section 30 applies as if the transaction were a dutiable transaction.

### **30 Aggregation of dutiable transactions**

- (1) This section applies to dutiable transactions that together form, evidence, give effect to or arise from what is, substantially 1 arrangement.
- (2) For assessing transfer duty on each of the dutiable transactions, the transactions must be aggregated and treated as a single dutiable transaction.

*Example for subsection (2)—*

A conducts a business of manufacturing bullbars. A agrees to sell the business to B as a going concern for \$500 000.00. The property included in the agreement comprises land, plant and equipment, goodwill and the business name.

The land is dutiable property being land in Queensland and each of the other assets are dutiable property being Queensland business assets.

The agreement, so far as it relates to the sale of the land, is a dutiable transaction being an agreement to transfer land in Queensland and, so far as it relates to the agreement to sell each of the business assets, is a dutiable transaction being an agreement to transfer dutiable property

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that is a Queensland business asset. Accordingly, there are 4 dutiable transactions under the agreement.

Because the dutiable transactions together form 1 arrangement, they must be aggregated under this section for imposing transfer duty.

- (3) For subsection (1), all relevant circumstances relating to the dutiable transactions must be taken into account in deciding whether they together form, evidence, give effect to or arise from what is, substantially 1 arrangement.
- (4) For subsection (3), relevant circumstances include the following—
  - (a) whether the transactions are contained in 1 instrument;
  - (b) whether any of the transactions are conditional on entry into, or completion of, any of the other transactions;
  - (c) whether the parties to any of the transactions are the same;
  - (d) whether any party to a transaction is a related person of another party to any of the other transactions;
  - (e) the time over which the transactions take place;
  - (f) whether, before the transactions take place, the dutiable property the subject of the transactions was used together, or dependently with one another, by the transferor or transferors;
  - (g) whether, after the transactions take place, the dutiable property the subject of the transactions will be used together, or dependently with one another, by the transferee or transferees.
- (5) Transfer duty imposed on the dutiable transaction aggregated under this section must—
  - (a) be assessed on the total of the dutiable values of the transactions when the liability for transfer duty for each of the transactions arose; and
  - (b) be apportioned between the transactions as decided by the commissioner.

*Example for subsection (5)—*

Under 4 agreements between a builder and a developer, the builder agrees to purchase 4 lots of land from the developer for \$100 000 each.

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The lots are dutiable property being land in Queensland and each of the agreements is a dutiable transaction being an agreement to transfer land in Queensland.

Even though the sale of the 4 lots was negotiated at the same time, the agreements were signed on different dates over a 10 month period, had different settlement dates and were not conditional on each other.

Under section 24 (Rates of transfer duty) and schedule 3 (Rates of duty on dutiable transaction and relevant acquisitions for land rich and corporate trustee duty), the agreements for lots 1 to 3 have been separately stamped for \$2 350 transfer duty. When the agreement for lot 4 is lodged for stamping, the commissioner decides this section applies because the transactions together formed 1 arrangement.

Accordingly, the transactions must be aggregated under this section for imposing transfer duty and the duty apportioned between them.

Under subsection (5)(a), the total of the dutiable values of the dutiable transactions on which transfer duty is imposed is \$400 000, being the value of each of the lots when the liability for transfer duty arose for each of the transactions, regardless of a variation in the values since the liability arose.

Under section 24 and schedule 3, transfer duty imposed on the aggregated transaction is \$12 475.

If the commissioner decides to apportion the transfer duty equally between the dutiable transactions, the amount of transfer duty payable is \$3 118.75 for each transaction.

Under the Administration Act, part 3, the commissioner will make a reassessment for the transactions for lots 1 to 3. The assessment notice must state the matters mentioned in section 26(2) of that Act.

- (6) Each party to each of the dutiable transactions must, when lodging the instrument or transfer duty statement relating to the transaction, give notice to the commissioner stating details known to the party about—
  - (a) all of the dutiable property included or to be included in the arrangement mentioned in subsection (1); and
  - (b) the dutiable value of each dutiable transaction.

*Note—*

Under the Administration Act, the requirement under this subsection is a lodgment requirement for which a failure to comply is an offence under section 121 of that Act.

- (7) This section does not apply to a dutiable transaction to the extent that it relates to—

- (a) a Queensland marketable security; or
- (b) the partition of dutiable property under section 31; or
- (c) an exchange of dutiable property.

### **31 Partitions**

- (1) This section applies to dutiable transactions under which dutiable property held by persons jointly as joint tenants or tenants in common is transferred, or agreed to be transferred, to 1 or more of the persons (a *partition*).
- (2) The dutiable value of each dutiable transaction comprising the partition is the greater of the following—
  - (a) the amount by which the unencumbered value of the dutiable property transferred, or agreed to be transferred, is more than the unencumbered value of the interest held by the transferee in the property immediately before the transaction;
  - (b) the consideration paid by any party to the transaction.
- (3) For assessing transfer duty on each of the dutiable transactions, the transactions must be aggregated and treated as a single dutiable transaction.
- (4) The transfer duty imposed on the dutiable transactions under this section must be apportioned between the transactions as decided by the commissioner.
- (5) This section does not apply to a transaction if section 48<sup>9</sup> applies to the transaction.

### **32 Transfer by way of security—land**

- (1) This section applies if the commissioner is satisfied—
  - (a) there has been a dutiable transaction that is a transfer of dutiable property by way of security (the *original transfer*); and
  - (b) the property is land; and

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9 Section 48 (Dutiable value of dutiable transaction reduced for transfer of dutiable property to partner on retirement or dissolution)

- (c) transfer duty has been paid on the transaction; and
  - (d) the property has been retransferred to the person who transferred it by way of security (the *retransfer*) or has been transferred to a person to whom the property has been transmitted by death or bankruptcy (also the *retransfer*).
- (2) The commissioner must make a reassessment of transfer duty paid on the original transfer to reduce the duty to the amount that would have been payable if the amount secured by the transfer had been secured by a mortgage for which mortgage duty were imposed.
  - (3) Transfer duty is not imposed on the dutiable transaction that is the retransfer.
  - (4) Subsection (2) applies to the reassessment despite the limitation period under the Administration Act for reassessments.<sup>10</sup>

### **33 Transfer by way of security—other dutiable property**

- (1) Transfer duty is not imposed on a dutiable transaction if—
  - (a) the transaction is a transfer of dutiable property by way of security; and
  - (b) the property is not land.
- (2) Subsection (3) applies if—
  - (a) after the transfer by way of security, the transferee, or the transferee's assignee, acquires ownership of the dutiable property free from any interest of the transferor, or transferor's assignee; and
  - (b) the transferee, or the transferee's assignee, were to newly acquire the dutiable property at the time of the acquisition mentioned in paragraph (a), the acquisition would be a dutiable transaction.
- (3) The acquisition of the ownership of the dutiable property by the transferee is taken to be a dutiable transaction and transfer

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<sup>10</sup> See the Administration Act, part 3 (Assessments of tax), division 3 (Reassessments).



duty imposed on the transaction must be reduced by the amount of mortgage duty, if any, paid on the transfer.

## **Part 6                      Special provisions about dutiabale transactions relating to Queensland business assets**

### **Division 1                Some basic concepts about Queensland businesses and their assets**

#### **34        What is a *Queensland business asset***

A *Queensland business asset* is a business asset of a Queensland business.

#### **35        What is a *business asset***

- (1) Each of the following is a *business asset*—
- (a) goodwill;
  - (b) a statutory business licence used for carrying on a business;
  - (c) a right to use a statutory business licence used for carrying on a business;
  - (d) the business name used for carrying on a business;
  - (e) a right under a franchise arrangement used for carrying on a business;
  - (f) a debt of a business if the debtor resides in Queensland;
  - (g) a supply right of a business;
  - (h) intellectual property used for carrying on a business;
  - (i) personal property in Queensland of a business.
- (2) For subsection (1)—

- (a) a business asset mentioned in subsection (1)(b) that is issued or given under—
  - (i) a Queensland Act is used for carrying on a business; or
  - (ii) a Commonwealth Act is used for carrying on a business if it is used, exploited or exercised in Queensland; and
- (b) another business asset is used for carrying on a business if it is used, exploited or exercised in Queensland.

### **36 What is a *Queensland business***

A *Queensland business* is a business—

- (a) that is conducted on or from a place in Queensland; or
- (b) the conduct of which consists wholly or partly of supplying land, money, credit or goods or any interest in them, or providing any service, to Queensland customers; or
- (c) that has ceased but satisfied paragraph (a) or (b) at any time in the 1 year before a dutiable transaction that is the transfer, or agreement for the transfer, of an asset of the business.

*Example for paragraph (c)—*

A business conducted from a place in Queensland goes into liquidation. Three months after the business stops trading, the liquidator transfers business assets of the business. For determining whether the transfer of the business assets is a dutiable transaction, the business is a Queensland business because paragraph (a) was satisfied in the 1 year before the transfer.

## **Division 2                      Transactions for particular assets of Queensland businesses**

### **37            When transaction for particular Queensland business assets not dutiable transaction**

- (1) If a debt of a business that is evidenced by a negotiable instrument is the subject of a transaction, the transaction is not a dutiable transaction unless—
  - (a) another type of dutiable property is the subject of the same transaction or, under section 30, it is aggregated with a dutiable transaction; or
  - (b) under the transaction, the negotiable instrument is or is to be transferred with all, or substantially all, of the negotiable instruments of the business.
- (2) If a supply right of a business is the subject of a transaction, the transaction is not a dutiable transaction unless—
  - (a) another type of dutiable property is the subject of the same transaction or, under section 30, it is aggregated with a dutiable transaction; or
  - (b) under the transaction, the supply right is or is to be transferred with all, or substantially all, of the supply rights of the business.
- (3) If intellectual or personal property of a business is the subject of a transaction, the transaction is not a dutiable transaction unless, under section 30, it is aggregated with 1 or more of the following—
  - (a) a dutiable transaction for a Queensland business asset, other than intellectual or personal property;
  - (b) a dutiable transaction for land in Queensland.
- (4) For subsections (1)(a), (2)(a) and (3), section 30 applies as if the transaction were a dutiable transaction.

### **38            When consignment of trading stock of Queensland business is a dutiable transaction**

- (1) This section applies if—

- (a) the owner of a Queensland business transfers or agrees to transfer a Queensland business asset, other than trading stock of the business, to a person (the *new owner*); and
  - (b) the owner places all or most of the trading stock on consignment for sale by a person, whether or not the new owner, (the *consignee*) in the conduct of the business by the new owner; and
  - (c) having regard to the terms of the consignment it is reasonable to conclude that the consignment is, or is part of, an arrangement to avoid transfer duty.
- (2) Without limiting subsection (1)(c), the terms of the consignment include the following—
- (a) the amount payable to the owner by the consignee and the terms of payment;
  - (b) the price ultimately payable to the owner for the trading stock and the way in which it is worked out;
  - (c) the basis of working out the consignee's commission;
  - (d) the right of the consignee to mix the trading stock with other property not owned by the owner;
  - (e) the right of the consignee to deal with the trading stock as if it were the consignee's or other than as agent of the owner.
- (3) The placing of the trading stock on consignment is taken to be a transfer of the stock.

*Note—*

Accordingly, the transfer is a dutiable transaction being the transfer of a Queensland business asset because trading stock is a business asset being personal property.

### **39 Surrender of Queensland business asset so replacement asset may be granted**

- (1) This section applies if a Queensland business asset is surrendered by a person (the *owner*) so that a similar business asset may be granted, issued, given to or obtained by another person.

- (2) For imposing transfer duty—
- (a) the surrender is taken to be a transfer of the business asset by the owner to the other person when the similar business asset is granted, issued, given or obtained; and
  - (b) the owner and other person are the parties to the dutiable transaction that is the transfer of the business asset.

## **Part 7                      Dutiable transactions relating to partnerships**

### **Division 1                      Preliminary**

#### **40                      Interpretation for property held by partnership or trust**

A reference 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.

### **Division 2                      Some basic concepts about partnership acquisitions**

#### **41                      What is a *partnership acquisition***

A person makes a *partnership acquisition* if the person acquires a partnership interest in a partnership that—

- (a) holds dutiable property; or
- (b) has an indirect interest in dutiable property.

#### **42                      What is a partner's *partnership interest***

- (1) A partner's *partnership interest* is—
- (a) if the partner has a variable partnership entitlement under subsection (2)—the proportion that the value of the partner's entitlements as a partner bears to the value

- of the entitlements of all partners in the partnership expressed as a percentage; or
- (b) if the partner is entitled only to share in the profits of the partnership and has given or is required to give consideration, or has made or is required to make a contribution to the capital of the partnership, for the acquisition of the profit-sharing right—the partner's profit-sharing percentage; or
  - (c) if paragraph (a) or (b) does not apply—the greater of the following—
    - (i) the percentage of the capital of the partnership the partner has contributed or is obliged to contribute;
    - (ii) the percentage of the losses of the partnership the partner is required to bear.
- (2) For subsection (1)(a), a partner has a variable partnership entitlement in a partnership if, in the ordinary course of determining the partner's entitlement to share in the profits or obligation to contribute to the capital or losses of the partnership, the entitlement or obligation varies or may vary from time to time.

#### **43 What is a partnership's *indirect interest* in dutiable property**

A partnership has an *indirect interest* in dutiable property if—

- (a) through a partnership interest or trust interest there is a connection between the partnership and dutiable property of the other partnership or trust; or
- (b) through a series of partnership interests or trust interests, or a combination of any of them, there is a connection between the partnership and dutiable property of a partnership or trust in the series.

#### **44 Acquiring a partnership interest**

- (1) A person acquires a partnership interest if a partnership is formed or the person's partnership interest increases.
- (2) Without limiting subsection (1)—

- (a) a partnership may be formed on—
    - (i) a change in the membership of a partnership; or
    - (ii) the merger of 2 or more partnerships; or
  - (b) a person's partnership interest may increase—
    - (i) under the terms of a partnership agreement; or
    - (ii) on the retirement of a partner from a partnership; or
    - (iii) on a change in the terms of a partnership agreement effecting a change in the interests of the partners.
- (3) However, a partner's variable partnership entitlement under section 42 does not increase if—
- (a) the partner's entitlement to share in the profits or obligation to contribute to the capital or losses of the partnership increases merely because of the partner's performance as a partner; and
  - (b) there is no arrangement stating—
    - (i) the extent of the future variation to the partner's entitlement or obligation; or
    - (ii) the consideration for the variation.

### **Division 3                      Dutiable value of partnership acquisitions**

#### **45            What is the dutiable value of a partnership acquisition**

The dutiable value of a partnership acquisition is the greater of the following—

- (a) the consideration for the acquisition so far as the consideration relates to dutiable property, or an indirect interest in dutiable property, held by the partnership;
- (b) the value of the acquisition worked out under section 46 or 47.

**46 What is the value of a partnership acquisition—general**

- (1) Subject to subsections (5) and (6), the value of a partnership acquisition is the total of the amounts worked out by applying the partner's partnership interest to the unencumbered value, when the liability for transfer duty arises, of—
  - (a) the dutiable property held by the partnership (the *relevant partnership*); and
  - (b) any indirect interest in dutiable property held by the relevant partnership.
- (2) For subsection (1)(b), the unencumbered value of an indirect interest under section 43(a) of the relevant partnership is the amount worked out by applying to the unencumbered value of the dutiable property held by the entity in which the relevant partnership has a partnership or trust interest, the partnership or trust interest of the relevant partnership in that entity.
- (3) For subsection (1)(b), the unencumbered value of an indirect interest under section 43(b) of the relevant partnership is the amount worked out by—
  - (a) first applying to the unencumbered value of the dutiable property held by the ultimate entity, the partnership or trust interest of the partnership or trust (the *last partner or beneficiary*) that is a partner or beneficiary of the ultimate entity; and
  - (b) applying to the amount worked out under paragraph (a), and the unencumbered value of any dutiable property held by the last partner or beneficiary, the partnership or trust interest of the next partnership or trust in the series of partnerships or trusts that is a partner or beneficiary of the last partner or beneficiary; and
  - (c) applying the calculation in paragraph (b) for each of the other partnerships or trusts in the series until the first entity's partnership interest or trust interest is used in the calculation; and
  - (d) applying to the amount last worked out under paragraph (c) and the unencumbered value of any dutiable property held by the first entity, the partnership or trust interest of the relevant partnership.



- (4) Schedule 4 contains an example of how the value of a partnership acquisition is worked out.
- (5) For determining the value of a new partner's partnership acquisition on formation of a partnership, the value of any dutiable property the partner contributed to the partnership on its formation must be disregarded.
- (5A) For subsection (5), a person is a new partner only if—
  - (a) the person was not in partnership with any partners of the partnership immediately before its formation; or
  - (b) on the person's partnership acquisition, the person becomes a partner in an additional partnership to a partnership in which the person is a partner with any partners of the additional partnership immediately before its formation.
- (5B) However, subsection (5A)(b) does not apply to a person who makes a partnership acquisition in a partnership that was formed because of a change in the membership of the partners of another partnership (the *old partnership*) if the person had a partnership interest in the old partnership.
- (6) For determining the value of a partner's partnership acquisition that is an increase in the partner's partnership interest, the partner's partnership interest is taken to be the increase in the partner's partnership interest.

#### **47 What is the value of a partnership acquisition—merger of 2 or more partnerships**

- (1) This section applies if—
  - (a) a person (the *partner*) first makes a partnership acquisition (the *new partnership acquisition*) on the merger of 2 or more partnerships; and
  - (b) the person had a partnership interest (the *old partnership interest*) in 1 of the merging partnerships; and
  - (c) the partner were to make a partnership acquisition for the old partnership interest immediately before the merger, the value of the partnership acquisition would include all or part of the unencumbered value of dutiable

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property (the *continuing property*) that becomes dutiable property of the merged partnership.

- (2) The value of the new partnership acquisition must be reduced by the lesser of—
- (a) the amount that would be the value of the new partnership acquisition if the dutiable property of the merged partnership comprised only the continuing property; or
  - (b) the amount that represents the value of the partner's partnership acquisition for the old partnership interest mentioned in subsection (1)(c) immediately before the merger worked out as if the dutiable property of the former partnership comprised only the continuing property.

*Example for working out dutiable value under this section—*

X is a 30% partner in the XYZ partnership that has dutiable property of \$10M. The XYZ partnership merges with another partnership, to form a new partnership (the merged partnership). X has a 40% partnership interest in the merged partnership. The merged partnership has dutiable property with an unencumbered value of \$12M, including \$2M of the dutiable property of the XYZ partnership (the continuing property).

The value of X's new partnership acquisition is worked out as follows—

*Example—*

1. The value of X's interest in the merged partnership is \$4.8M, being 40% (X's partnership interest in the merged partnership) of \$12M (the unencumbered value of the merged partnership's dutiable property).
2. The reduction under subsection (2)(a) is \$800 000, being 40% (X's partnership interest in the merged partnership) of \$2M (the continuing property).
3. The reduction under subsection (2)(b) is \$600 000, being 30% (X's partnership interest in the XYZ partnership) of \$2M (the continuing property).

The value of X's partnership acquisition is \$4.2M, being \$4.8M less \$600 000 which is the lesser of the amounts worked out under subsection (2).

## **Division 4                      Dutiable value of other dutiable transactions for dutiable property of partnership**

### **48            Dutiable value of dutiable transaction reduced for transfer of dutiable property to partner on retirement or dissolution**

- (1) This section applies if, on a person (the *retiring partner*) ceasing to be a partner in a partnership because of the retiring partner's retirement from the partnership or its dissolution, dutiable property of the partnership is transferred or agreed to be transferred to the retiring partner.
- (2) The dutiable value of the dutiable transaction for the transfer, or agreement for the transfer, of the dutiable property to the retiring partner must be reduced by an amount worked out by applying the retiring partner's partnership interest in the partnership to the unencumbered value of the dutiable property immediately before the retirement or dissolution.

*Example for subsection (2)—*

A, B and C are in partnership in equal shares. B had a one-third partnership interest immediately before retiring. On B ceasing to be a partner, A and C transfer land to B. The dutiable value of the land acquired by B will be reduced by one-third.

## **Part 8                              Dutiable transactions relating to trusts**

### **Division 1                      Preliminary**

#### **49            Application of pt 8**

- (1) This part applies to all expressly or intentionally created trusts, regardless of how they are created.

- (2) However, this part does not apply to a trust acquisition or trust surrender of a trust interest in a public unit trust other than a majority trust acquisition in a land holding trust.<sup>11</sup>

## **50 Joint trustees**

If a trust has 2 or more trustees, the trustees are taken to be a single person for this chapter.

*Note—*

Under section 65, trustees are jointly and severally liable for transfer duty payable.

## **Division 2 Some basic concepts about property**

### **51 Interpretation for property held by trust or partnership**

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

### **52 Contracted property**

- (1) For a trust, contracted property is taken to be dutiable property held by the trust.
- (2) For determining the dutiable value of a trust creation, trust termination, trust acquisition or trust surrender—
- (a) a sale agreement made by the trustee is taken not to have been made; and
  - (b) a purchase agreement made by the trustee is taken to have been completed.
- (3) If contracted property is included in determining the dutiable value of a trust creation, trust termination, trust acquisition or trust surrender and afterwards, the sale agreement for the property is completed or the purchase agreement for the

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<sup>11</sup> See division 7 (Public unit trusts), subdivisions 7 (Majority trust acquisitions in land holding trusts) and 8 (Indirect trust interests).

property is not completed, the commissioner must make a reassessment as if the contracted property were never held by the trust.

- (4) For the reassessment, the parties liable to pay transfer duty on the trust creation, trust termination, trust acquisition or trust surrender must lodge the instruments required for the original assessment.

## **Division 3                      Creation and termination of trusts**

### **53            Creating trust of dutiable property**

- (1) A trust of dutiable property is created if a person, who has acquired property other than as trustee, starts to hold the property as trustee.
- (2) Also, a trust of dutiable property is created if all the following apply—
  - (a) a person holds dutiable property on trust (*trust 1*);
  - (b) the person is also trustee of another trust (*trust 2*);
  - (c) the person ceases to hold the dutiable property as trustee of trust 1 and starts to hold the dutiable property as trustee for trust 2;
  - (d) when the person starts to hold the dutiable property as trustee for trust 2—
    - (i) a person who has a trust interest for the dutiable property under trust 2 did not have a trust interest for that property when it was held for trust 1; or
    - (ii) a person who has a trust interest for the dutiable property under trust 2 had a trust interest for that property when it was held for trust 1 and that person's trust interest increases.

### **54            Terminating trust of dutiable property**

A trust of dutiable property is terminated if a person, having held the property as trustee, starts to hold the property other than as trustee.

## **Division 4                      Some basic concepts about trust acquisitions and trust surrenders**

### **55            What is a *trust acquisition***

A person makes a *trust acquisition* if the person acquires a trust interest in a trust that—

- (a) holds dutiable property; or
- (b) has an indirect interest in dutiable property.

*Note—*

Under section 81, an indirect trust acquisition in a land holding trust is taken to be a trust acquisition. An indirect trust acquisition is the acquisition of an interest in a land holding trust through 1 or more corporations, partnerships or trusts, or a combination of any of them. See definitions *indirect trust acquisition* and *indirect trust interest* in the dictionary.

### **56            What is a *trust surrender***

A person makes a *trust surrender* if the person surrenders a trust interest in a trust that holds dutiable property or has an indirect interest in dutiable property.

### **57            What is a *trust interest***

- (1) A *trust interest* is a person's interest as a beneficiary of a trust, other than a life interest.
- (2) For a trust that is a discretionary trust, only a taker in default of an appointment by the trustee can have a trust interest.
- (3) Also, for a trust that is a superannuation fund, a member of the fund has a trust interest in the fund.

*Note—*

For exemption from transfer duty for a trust acquisition or surrender of a member's interest in a superannuation fund, see section 119.

### **58            What is a trust's *indirect interest* in dutiable property**

A trust has an *indirect interest* in dutiable property if—

- (a) through a trust interest or partnership interest, there is a connection between the trust and dutiable property of the other trust or partnership; or
- (b) through a series of trust interests or partnership interests, or a combination of any of them, there is a connection between the trust and dutiable property of a trust or partnership in the series.

## **59 Acquiring a trust interest**

- (1) A person acquires a trust interest if—
  - (a) the person becomes a beneficiary of a trust, whether on creation of the trust or otherwise; or
  - (b) being a beneficiary of a trust, the person's trust interest increases, other than because of the surrender of another person's trust interest in the trust for which transfer duty has been paid.
- (2) If a beneficiary's trust interest is subject to a prior life interest, the interest does not increase merely because the life tenant dies or, over time, the extent of the life interest reduces.

## **60 Beneficiary's trust interest is percentage of or proportionate to property held on trust**

- (1) A beneficiary's trust interest is—
  - (a) for a beneficiary who is a taker in default under a discretionary trust—
    - (i) the percentage of the trust income or trust property the beneficiary would receive in default of appointment by the trustee; or
    - (ii) if the beneficiary would receive both trust income and trust property in default of appointment by the trustee, the greater percentage of the trust income or trust property the beneficiary would receive; or
  - (b) for a beneficiary of a trust, other than a discretionary trust, whose entitlement is solely to income of the property held on trust—the proportion that the value of the beneficiary's entitlement bears to the value of the

- entitlements of all beneficiaries expressed as a percentage; or
- (c) for another beneficiary—the proportion that the beneficiary's entitlement under the trust bears to the unencumbered value of the property held on trust expressed as a percentage.
- (2) For subsection (1)(c), the beneficiary's entitlement under the trust is—
- (a) the amount of the unencumbered value of the property held on trust that the beneficiary could receive as a result of the acquisition of the beneficiary's trust interest determined at the time of acquisition of the interest; or
- (b) the entitlement stated in subsection (3) if—
- (i) the beneficiary's entitlement under the trust is not subject to a prior life interest; and
- (ii) the beneficiary's entitlement under the trust may increase, including from nothing, on the fulfilment of any condition, contingency or the exercise or non-exercise of any power or discretion; and
- (iii) the condition, contingency, power or discretion is part of an arrangement a significant purpose of which is to lessen the amount of the beneficiary's entitlement at a particular time.
- (3) For subsection (2)(b), the beneficiary's entitlement under the trust is the maximum interest in the property held on trust that the beneficiary would have on the fulfilment of the condition or contingency or the exercise or non-exercise of the power or discretion.
- (4) For a majority trust acquisition, a reference in this section to a beneficiary's entitlement under the trust includes the entitlement under the trust of related persons of the beneficiary.

## **61 Who is a *related person***

- (1) A person is a *related person* of another person if—



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- (a) for individuals—they are members of the same family; or
  - (b) for an individual and a corporation—the person or a member of the person’s family is a majority shareholder, director or secretary of the corporation or a related body corporate of the corporation, or has a majority interest in it; or
  - (c) for an individual and a trustee—the person or a related person under another provision of this section is a beneficiary of the trust; or
  - (d) for corporations—they are related bodies corporate; or
  - (e) for a corporation and a trustee—the corporation or a related person under another provision of this section is a beneficiary of the trust; or
  - (f) for trustees—
    - (i) there is a person who is a beneficiary of both trusts; or
    - (ii) a person is beneficiary of 1 trust and a related person under another provision of this section is a beneficiary of the other trust.
- (2) Also, a person is a ***related person*** of another person if the persons acquire trust interests in a land holding trust and the acquisitions form, evidence, give effect to or arise from what is substantially 1 arrangement.
- (3) However, a person is not a ***related person*** of another person under subsection (1), other than subsection (1)(d), if the commissioner is satisfied the trust interests of the persons in a land holding trust—
- (a) were acquired, and will be used, independently; and
  - (b) were not acquired, and will not be used, for a common purpose.

## **Division 5                      Dutiable value of trust acquisitions and trust surrenders**

### **62        What is the dutiable value of a trust acquisition or trust surrender**

The dutiable value of a trust acquisition or trust surrender is the greater of the following—

- (a) the consideration for the acquisition or surrender so far as the consideration relates to dutiable property, or an indirect interest in dutiable property, held by the trust;
- (b) the value of the acquisition or surrender worked out under section 63.

### **63        What is the value of a trust acquisition or trust surrender**

- (1) Subject to subsections (6) to (8), the value of a trust acquisition or trust surrender is the total of the amounts worked out by applying the beneficiary's trust interest to the unencumbered value, when the liability for transfer duty arises, of—
  - (a) the dutiable property held by the trust (the *relevant trust*); and
  - (b) any indirect interest in dutiable property held by the relevant trust.

*Note—*

Under section 52(1), dutiable property includes contracted property.

- (2) For subsection (1), the beneficiary's trust interest for a trust surrender is the beneficiary's trust interest immediately before the surrender.
- (3) For subsection (1)(b), the unencumbered value of an indirect interest under section 58(a) of the relevant trust is the amount worked out by applying to the unencumbered value of the dutiable property held by the entity in which the relevant trust has a trust or partnership interest, the trust or partnership interest of the relevant trust in that entity.

- (4) For subsection (1)(b), the unencumbered value of an indirect interest under section 58(b) of the relevant trust is the amount worked out by—
- (a) first applying to the unencumbered value of the dutiable property held by the ultimate entity, the trust or partnership interest of the trust or partnership (the ***last beneficiary or partner***) that is a beneficiary or partner of the ultimate entity; and
  - (b) applying to the amount worked out under paragraph (a), and the unencumbered value of any dutiable property held by the last beneficiary or partner, the trust or partnership interest of the next trust or partnership in the series of trusts or partnerships that is a beneficiary or partner of the last beneficiary or partner; and
  - (c) applying the calculation in paragraph (b) for each of the other trusts or partnerships in the series until the first entity's trust interest or partnership interest is used in the calculation; and
  - (d) applying to the amount last worked out under paragraph (c) and the unencumbered value of any dutiable property held by the first entity, the trust or partnership interest of the relevant trust.
- (5) Schedule 4 contains an example of how the value of a trust acquisition is worked out.
- (6) For determining the value of a beneficiary's trust acquisition that is an increase in the beneficiary's trust interest, other than a majority trust acquisition, the beneficiary's trust interest is taken to be the increase in the beneficiary's trust interest.
- (7) Subsection (8) applies to a majority trust acquisition that is an increase in a beneficiary's trust interest (the ***relevant trust acquisition***) that has happened in the following circumstances—
- (a) the trust interest of the beneficiary and related persons of the beneficiary was more than 50% immediately before the relevant trust acquisition;
  - (b) transfer duty was previously paid for a majority trust acquisition in the trust made by the beneficiary or related persons;

- (c) since the majority trust acquisition mentioned in paragraph (b), no other related person of the beneficiary has made a trust acquisition in the trust.
- (8) For determining the value of the beneficiary's trust acquisition that is the relevant trust acquisition, the beneficiary's trust interest is taken to be the increase in the beneficiary's trust interest.

## **Division 6                      Liability to transfer duty**

### **64            Liability to pay transfer duty on creation or termination of trust**

- (1) If a trust of dutiable property is created or terminated, the trustee of the trust is the party to the dutiable transaction that is the creation or termination of the trust.
- (2) If the trustee of the trust does not pay the transfer duty, the beneficiaries of the trust are jointly and severally liable for the duty.

### **65            Liability of joint trustees**

If a trust has 2 or more trustees, the trustees are jointly and severally liable for any transfer duty imposed.

### **66            When no transfer duty on trust acquisition or trust surrender**

- (1) If, because of the creation of a trust of dutiable property, a person acquires a trust interest in the property, transfer duty is not imposed on the acquisition if—
  - (a) transfer duty has been paid for the dutiable transaction that is the creation of the trust of the property; or
  - (b) the dutiable transaction that is the creation of the trust of the property is exempt from transfer duty.
- (2) If, because of the acquisition of dutiable property by a trust, a person acquires a trust interest in the property, transfer duty is not imposed on the acquisition of the trust interest if—

- (a) the trustee has paid transfer duty for the acquisition of the property; or
  - (b) the dutiable transaction that is the acquisition of the property is exempt from transfer duty; or
  - (c) duty is not imposed on the acquisition of the property by the trustee.
- (3) If, because of the termination of a trust of dutiable property, a person surrenders a trust interest in the property, transfer duty is not imposed on the surrender if—
- (a) transfer duty has been paid for the dutiable transaction that is the termination of the trust of the property; or
  - (b) the dutiable transaction that is the termination of the trust of the property is exempt from transfer duty.

## **67 Parties to trust acquisition and trust surrender**

- (1) For a trust acquisition, the beneficiary acquiring the trust interest is the party to the dutiable transaction.
- (2) For a trust surrender, the trustee and the beneficiary whose trust interest is surrendered are the parties to the dutiable transaction.

*Note—*

Under section 17, the parties to a dutiable transaction are liable to pay transfer duty imposed on the transaction.

## **Division 7 Public unit trusts**

### **Subdivision 1 Preliminary**

#### **68 What is a *public unit trust***

A *public unit trust* is—

- (a) a listed unit trust; or
- (b) a widely held unit trust; or
- (c) a wholesale unit trust; or

- (d) a pooled public investment unit trust; or
- (e) a declared public unit trust.

## **Subdivision 2 Basic concepts about listed unit trusts**

### **69 What is a *listed unit trust***

A *listed unit trust* is a unit trust the units in which are quoted on the market operated by a recognised stock exchange.

## **Subdivision 3 Basic concepts about widely held unit trusts**

### **70 What is a *widely held unit trust***

- (1) A *widely held unit trust* is a unit trust, other than a listed unit trust, that is a registered managed investment scheme for which—
  - (a) units in the trust have been issued to the public; and
  - (b) 50 or more persons are beneficially entitled to the units in the trust; and
  - (c) more than 20 persons are beneficially entitled to at least 75% of the total units in the trust.

*Note—*

Also, under section 71, the commissioner may treat a unit trust as a widely held unit trust.

- (2) However, for a trust acquisition or trust surrender of a trust interest in a trust, a unit trust is not a widely held unit trust if subsection (1)(b) and (c) is not satisfied before and after the trust acquisition or trust surrender.
- (3) For subsection (2), a trust acquisition or trust surrender of a trust interest in a unit trust includes a series of trust acquisitions or trust surrenders under an arrangement.
- (4) If subsection (2) applies to a unit trust, the trust is not a widely held unit trust from immediately before the trust acquisition or

trust surrender or the first acquisition or surrender under the arrangement.

- (5) For subsection (1), a person is taken to be beneficially entitled to all units held by the person and related persons of the person.

## **71 When unit trust may be treated as widely held unit trust**

- (1) This section applies if the commissioner is satisfied—
- (a) units in a unit trust (the *start up units*) will be issued to the public to an extent and with the entitlements mentioned in section 70(1) within 1 year after the first issue of units to the public; and
  - (b) the start up units are the only units in the unit trust to be issued from and including the first issue to the public until the unit trust becomes a widely held unit trust (the *start-up period*).
- (2) The commissioner may treat the unit trust as a widely held unit trust for the start-up period.
- (3) However, if the start-up units are not issued in the way mentioned in subsection (1)(a) or are not the only units issued in the unit trust in the start-up period (the *disqualifying circumstances*)—
- (a) the trustee must, within 28 days after the disqualifying circumstances happen, give the commissioner notice about the disqualifying circumstances; and
  - (b) the unit trust is taken not to have been a widely held unit trust in the start-up period; and
  - (c) the commissioner must make an assessment for transfer duty for each trust acquisition or trust surrender in the start-up period as if the trust were not a widely held unit trust in the period; and
  - (d) the start date for the Administration Act, section 54(4), is 61 days after the relevant trust acquisition or trust surrender.

## **Subdivision 4      Basic concepts about wholesale unit trusts**

### **72      What is a *wholesale unit trust***

- (1) A *wholesale unit trust* is a unit trust, other than a listed unit trust—
  - (a) that is established and managed by a funds manager; and
  - (b) the units in which are predominantly acquired by, for or on account of, wholesale investors.
- (2) A *wholesale unit trust* includes a unit trust that holds land in Queensland, or has an indirect interest in land in Queensland, only if the trust was established, and continues, solely for the investment of funds placed with it by wholesale investors using the funds manager's funds management and investment services.
- (3) However, for a trust acquisition or trust surrender of a trust interest in a trust, a unit trust is not a wholesale unit trust if—
  - (a) the trust is established or managed for a particular person; or
  - (b) subsection (1)(b) or if applicable subsection (2) is not satisfied before and after the trust acquisition or trust surrender.
- (4) For subsection (3), a trust acquisition or trust surrender of a trust interest in a unit trust includes a series of trust acquisitions or trust surrenders under an arrangement.
- (5) If subsection (3) applies to a unit trust, the trust is not a wholesale unit trust from immediately before the trust acquisition or trust surrender or the first acquisition or surrender under the arrangement.

### **73      What is a *funds manager***

- (1) A *funds manager* is—



- (a) a body corporate that provides funds management and investment services to wholesale investors as its principal business if—
    - (i) the body corporate manages funds of more than \$500 000 000 invested with it; and
    - (ii) the business is not conducted to provide the services only to particular wholesale investors; and
    - (iii) the body corporate is recognised by other funds managers as a competitor with them for the services; or
  - (b) a body corporate that is a member of a corporate group of a financial institution or an insurer whose principal business is providing funds management and investment services to wholesale investors if—
    - (i) the body corporate or the corporate group manages funds of more than \$500 000 000 invested with it by wholesale investors; and
    - (ii) the business is not conducted to provide the services only to particular wholesale investors; and
    - (iii) the body corporate is recognised by other funds managers as a competitor with them for the services.
- (2) Subsection (3) applies if the commissioner is satisfied a body corporate or corporate group will provide funds management and investment services to wholesale investors to the extent mentioned in subsection (1)(a) or (b) within the start-up period.
- (3) The commissioner may treat the body corporate as a funds manager for the start-up period.
- (4) However, if the body corporate or corporate group does not provide funds management and investment services as mentioned in subsection (1) in the start-up period—
- (a) the body corporate must, within 28 days after the end of the start-up period, give the commissioner notice of that fact; and
  - (b) the body corporate is taken not to have been a funds manager in the start-up period; and

- (c) the commissioner must make an assessment for transfer duty for each trust acquisition or trust surrender in the start-up period as if the body corporate were not a funds manager in the period; and
  - (d) the start date for the Administration Act, section 54(4), is 61 days after the relevant trust acquisition or trust surrender.
- (5) In this section—
- start-up period*, for a body corporate, means 1 year after the first acquisition by a wholesale investor of a trust interest in a unit trust established and managed by the body corporate.

#### **74 Who is a *wholesale investor***

A *wholesale investor* in a wholesale unit trust is—

- (a) a funds manager, other than the funds manager that established and manages the trust, investing funds of another wholesale unit trust managed by the funds manager; or
- (b) the trustee of another wholesale unit trust investing funds of another wholesale unit trust managed by the trustee; or
- (c) the trustee of a superannuation fund under the *Superannuation Industry (Supervision) Act 1993* (Cwlth) having more than \$10 000 000 in assets; or
- (d) a person who has more than \$10 000 000 invested in wholesale unit trusts.

### **Subdivision 5 Basic concepts about pooled public investment unit trusts**

#### **75 What is a *pooled public investment unit trust***

- (1) A *pooled public investment unit trust* is a unit trust, other than a listed unit trust, widely held unit trust, wholesale unit trust or declared public unit trust, that is a registered managed

investment scheme or exempt managed investment scheme for which—

- (a) either of the following apply—
    - (i) units in the trust have been issued to the public;
    - (ii) at least 75% of the total units in the trust are held by 2 or more large qualified holders; and
  - (b) at least 50 persons are entitled to units in the trust; and
  - (c) more than 20 persons are entitled to at least 75% of the total units in the trust.<sup>12</sup>
- (2) However, for a trust acquisition or trust surrender of a trust interest in a trust, a unit trust is not a pooled public investment unit trust unless—
- (a) if subsection (1)(a)(i) applies—subsection (1)(b) and (c) is satisfied before and after the trust acquisition or trust surrender; or
  - (b) if subsection (1)(a)(ii) applies—subsection (1)(a)(ii), (b) and (c) is satisfied before and after the trust acquisition or trust surrender.
- (3) For subsection (2), a trust acquisition or trust surrender of a trust interest in a unit trust includes a series of trust acquisitions or trust surrenders under an arrangement.
- (4) If subsection (2) applies to a unit trust, the trust is not a pooled public investment unit trust from immediately before the trust acquisition or trust surrender or the first acquisition or surrender under the arrangement.

## **76 Who is a *qualified holder* and a *large qualified holder***

- (1) A *qualified holder* of units in a unit trust is—
  - (a) the trustee of a listed unit trust, widely held unit trust, wholesale unit trust or declared public unit trust; or
  - (b) the trustee of a complying superannuation fund; or
  - (c) the trustee of a complying approved deposit fund; or

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12 See sections 77 (Who is holder of units in pooled public investment unit trust) and 78 (Who is entitled to units in pooled public investment unit trust).

- (d) a life company if the units held represent an investment of its statutory funds maintained by it under the *Life Insurance Act 1995* (Cwlth).
- (2) A **large qualified holder** of units in a unit trust is a qualified holder with more than 50 members.

## **77 Who is holder of units in pooled public investment unit trust**

- (1) For section 75, a qualified holder is taken to hold the units in a unit trust held for the holder by a custodian.
- (2) For section 75(1)(b) and (c)—
  - (a) a trustee of a complying superannuation fund that has invested in a pooled superannuation trust is taken to hold the number of units in a unit trust held by the trustee of the pooled superannuation trust that is worked out by applying the fund's interest in the pooled superannuation trust to the units held by the trustee; and
  - (b) a member of a pooled public investment unit trust is taken to hold the number of units in a unit trust held by the trustee of the pooled public investment unit trust that is worked out by applying the member's interest in the pooled public investment unit trust to the units held by the trustee.
- (3) For subsection (2)(a), a complying superannuation fund's interest in a pooled superannuation trust is the proportion that the fund's investment bears to the total of all investments in the trust expressed as a percentage.
- (4) For subsection (2)(b), a member's interest in a pooled public investment unit trust is the proportion that the value of the member's entitlement as a member bears to the value of the entitlements of all members in the trust expressed as a percentage.

## **78 Who is entitled to units in pooled public investment unit trust**

- (1) For section 75(1)(b) and (c)—

- (a) a member of a large qualified holder of units in a unit trust is taken to be entitled to the number of units in the trust that is worked out by applying the member's interest in the holder to the units in the trust held by the holder; and
  - (b) another holder of units in the trust is entitled to the units held.
- (2) For subsection (1)(a), a member's interest in a large qualified holder is the proportion that the value of the member's entitlement as a member bears to the value of the entitlements of all members in the holder expressed as a percentage.
- (3) For section 75, a person who is entitled to units in the unit trust is taken to be entitled to all units that, under subsection (1)(a) and (b), the person and related persons of the person are entitled.

## **Subdivision 6      Basic concepts about declared public unit trusts**

### **79      What is a *declared public unit trust***

A *declared public unit trust* is a unit trust declared under a regulation to be a public unit trust for this division.

## **Subdivision 7      Majority trust acquisitions in land holding trusts**

### **80      What is a *majority trust acquisition***

A person who makes a trust acquisition in a land holding trust makes a *majority trust acquisition* if—

- (a) the person, or the person and related persons of the person (whether alone or jointly), acquire a trust interest in the trust of more than 50%; or
- (b) the person, or related persons of the person (whether alone or jointly), acquire a trust interest in the trust that, when aggregated with trust interests already held by the

person and related persons of the person (whether alone or jointly), is more than 50%.

### **81 Interpretation for majority trust acquisitions**

- (1) This section applies for imposing transfer duty on majority trust acquisitions.
- (2) An indirect trust interest in a land holding trust being acquired by a person is taken to be a trust interest in the trust.
- (3) Also, an indirect trust interest in a land holding trust already held by an acquirer or related person of the acquirer is taken to be a trust interest in the trust.
- (4) For an indirect trust interest in a land holding trust taken to be a trust interest under subsection (2) or (3), the acquirer and any related persons of the acquirer are taken to be beneficiaries.
- (5) An indirect trust acquisition is taken to be a trust acquisition in the land holding trust in which the indirect trust interest is acquired.

### **81A Particular trust interests disregarded for majority trust acquisitions**

- (1) This section applies if—
  - (a) under section 80, a person would have made a majority trust acquisition in a wholesale unit trust; and
  - (b) all the persons who held or acquired the trust interests comprising the majority trust acquisition are group companies of a corporate group; and
  - (c) the funds manager of the wholesale unit trust is a group company of the corporate group; and
  - (d) there is no arrangement to avoid the imposition of transfer duty.
- (2) For section 80, the trust interest of a person mentioned in subsection (1)(b) who is a qualified holder must be disregarded.

- (3) To remove any doubt, it is declared that section 80 applies to other trust interests, including trust interests held through the qualified holder.

## **82 Deduction—transfer duty for majority trust acquisition**

- (1) This section applies if—
- (a) transfer duty has been paid or is payable on a dutiable transaction that is a majority trust acquisition; and
  - (b) transfer duty or land rich duty is imposed or has been paid on indirect trust acquisitions and trust acquisitions relating to the majority trust acquisition.
- (2) The duty mentioned in subsection (1)(b) must be reduced by the amount of the transfer duty paid or payable under subsection (1)(a) to the extent that the indirect trust interests and trust interests were included in working out the dutiable value of the majority trust acquisition.

## **Subdivision 8 Indirect trust interests**

### **83 Person's indirect trust interest is proportionate to land holding trust's dutiable property**

A person's indirect trust interest in a land holding trust is the proportion that the unencumbered value of the person's entitlement in the land holding trust bears to the unencumbered value of dutiable property held by the land holding trust expressed as a percentage.

### **84 What is the value of person's entitlement in land holding trust**

- (1) The unencumbered value of a person's entitlement in a land holding trust is the amount worked out by—
- (a) if the person has a subordinate interest in an entity (the *first beneficiary*) that is a beneficiary of the land holding trust—

- (i) first applying to the unencumbered value of the dutiable property held by the land holding trust, the first beneficiary's trust interest in the land holding trust; and
    - (ii) applying to the amount worked out under subparagraph (i), the person's subordinate interest in the first beneficiary; or
  - (b) if paragraph (a) does not apply—
    - (i) first applying to the unencumbered value of the dutiable property held by the land holding trust, the subordinate interest of the entity (also the ***first beneficiary***) that is a beneficiary of the land holding trust; and
    - (ii) applying to the amount worked out under subparagraph (i), the subordinate interest of the next entity in the series of entities that is a shareholder, partner or beneficiary of the first beneficiary connecting the land holding trust to the person; and
    - (iii) applying the calculation in subparagraph (ii) for each of the other entities in the series until the person's subordinate interest is applied to the amount worked out under the application of subparagraph (ii) for the entity in which the person's subordinate interest is held.
- (2) For subsection (1)(b)(iii)—
- (a) the reference in subsection (1)(b)(ii) to the amount worked out under subsection (1)(b)(i) is a reference to the amount worked out under the previous application of subsection (1)(b)(ii); and
  - (b) the reference to the first beneficiary is a reference to the next shareholder, partner or beneficiary in the series for which subsection (1)(b)(ii) is being applied.



## **Part 9                      Concessions for homes**

### **Division 1                Preliminary**

#### **85        Purpose of pt 9**

The purpose of this part is to provide for concessions for transfer duty for a dutiable transaction that is the transfer, or agreement for the transfer, of a home or first home.

### **Division 2                Some basic concepts about concessions for homes**

#### **86        What is a *home* and a *first home***

- (1) A residence is a person's *home* if the person's occupation date for the residence is within 1 year after the person's transfer date for the residential land.

*Note—*

For transfer duty to be imposed for residential land, it must be in Queensland, see section 10(1)(a).<sup>13</sup>

- (2) A person's home is the person's *first home* if, before acquiring the home, the person did not hold and never before held, an interest in other residential land in Queensland or elsewhere other than—
- (a) as trustee for another person; or
  - (b) as lessee; or
  - (c) as the holder of a security interest.

#### **87        What is a *residence***

A *residence* is a building, or part of a building, that is—

- (a) fixed to land; and

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13 Section 10 (What is *dutiable property*)

- (b) designed, or approved by a local government, for human habitation by a single family unit; and
- (c) used for residential purposes.

**88 What is a person's *occupation date* for a residence**

A person's *occupation date* for a residence is the date the person, as owner of the residence, starts occupying it as the person's principal place of residence.

**89 What is a person's *transfer date* for residential land**

A person's *transfer date* for residential land is the date the person is entitled to possession of the land under the dutiable transaction that is the transfer, or agreement for the transfer, of the land.

**90 What is the *dutiable value* of residential land**

The *dutiable value* of residential land the subject of a dutiable transaction that is a transfer, or agreement for the transfer, of land is the part of the dutiable value of the transaction that is attributable to the residential land.

**Division 3 Concessions for homes and first homes**

**91 Concession for transfer duty—home**

- (1) This section applies if—
  - (a) a dutiable transaction is the transfer, or agreement for the transfer, of residential land; and
  - (b) either of the following apply—
    - (i) the transferees are individuals and are not trustees and the residence will be their home;
    - (ii) the transferees are trustees of a trust, other than a discretionary or unit trust, the beneficiaries are individuals all of whom are under a legal disability

and the residence would be the home of all the beneficiaries if they were the transferees of the land.

- (2) The transfer duty imposed on the dutiable transaction is the amount worked out under subsection (3) or (5).
- (3) If the dutiable value of the residential land is not more than \$300 000, the transfer duty is the total of—
  - (a) \$1 for each \$100, or part of \$100, of the dutiable value of the land; and
  - (b) the amount worked out by deducting, from transfer duty on the dutiable value of the dutiable transaction, the amount worked out by applying the relevant rate to the dutiable value of the residential land.
- (4) For subsection (3), the relevant rate is the rate of transfer duty stated in schedule 3, column 2, opposite the part of the dutiable value of the dutiable transaction attributable to the dutiable value of the residential land stated in schedule 3, column 1.
- (5) If the dutiable value of the residential land is more than \$300 000, the transfer duty is the total of—
  - (a) \$3 000; and
  - (b) the amount worked out by deducting, from transfer duty on the dutiable value of the dutiable transaction, the amount worked out by applying the relevant rate to \$300 000.
- (6) For subsection (5), the relevant rate is the rate of transfer duty stated in schedule 3, column 2, for \$300 000.

## **92 Concession for transfer duty—first home**

- (1) This section applies if—
  - (a) a dutiable transaction is the transfer, or agreement for the transfer, of residential land; and
  - (b) either of the following apply—
    - (i) the transferees are all individuals of at least 18 years of age on the day the liability for transfer

duty arises, the residence will be the first home of all of the transferees and none of the transferees are trustees;

- (ii) the transferees are trustees of a trust, other than a discretionary or unit trust, the beneficiaries are individuals all of whom are under a legal disability and the residence would be the first home of all the beneficiaries if they were the transferees of the land and other residential land previously the subject of a trust of which they were beneficiaries; and
  - (c) the consideration for the transfer of the dutiable property the subject of the transaction is at least the unencumbered value of the dutiable property.
- (1A) However, if subsection (1)(b)(ii) applies and 1 or more of the beneficiaries is under a legal disability only because the beneficiary is not at least 18 years of age, this section applies in relation to the dutiable transaction only if the commissioner is satisfied there is no avoidance scheme in relation to the transaction.
- (2) The transfer duty imposed on the dutiable transaction is the amount of transfer duty worked out under section 91 less the concession amount stated in schedule 4A.<sup>14</sup>
  - (3) The commissioner may exempt a transferee from the requirement under subsection (1)(b)(i) that the transferee be at least 18 years of age if the commissioner is satisfied there is no avoidance scheme in relation to the dutiable transaction.

### **93 Concession for transfer duty—mixed and multiple claims for homes and first homes for individuals**

- (1) This section applies if—
  - (a) a dutiable transaction is the transfer, or agreement for the transfer, of residential land; and

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<sup>14</sup> See section 551 (Application of amendments about concession for transfer duty or mortgage duty for first home) in relation to dutiable transactions made on or after 1 May 2004 but relating to arrangements made before 1 May 2004.

*Duties Act 2001*

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- (b) there is more than 1 transferee of the dutiable property the subject of the transaction; and
  - (c) the residence is—
    - (i) the home or first home of all the transferees (the *relevant transferees*); or
    - (ii) the home or first home of 1 or more of the transferees (also the *relevant transferees*) but not all transferees; and
  - (d) the relevant transferees are individuals.
- (2) Also, this section applies if—
- (a) a dutiable transaction is the transfer, or agreement for the transfer, of residential land on which more than 1 residence is constructed; and
  - (b) 1 or more of the residences is, for 1 or more of the transferees (also the *relevant transferees*), a home or first home; and
  - (c) the relevant transferees are individuals.
- (3) In addition, this section applies if a dutiable transaction is the transfer, or agreement for the transfer, of a part interest in residential land that, if it were a transfer, or agreement for the transfer, of the whole interest in the land, would be a dutiable transaction to which this section applies under subsection (1) or (2), other than the requirement for more than 1 transferee.
- (3A) For subsections (1)(c) and (2)(b), a residence may be treated as the first home of a relevant transferee only if the relevant transferee is at least 18 years of age on the day the liability for transfer duty arises.
- (3B) The commissioner may exempt a relevant transferee from the requirement that the relevant transferee be at least 18 years of age if the commissioner is satisfied there is no avoidance scheme in relation to the dutiable transaction.
- (4) The transfer duty imposed on a dutiable transaction to which this section applies under subsection (1)(c)(i) or (2) is the total of—

*Duties Act 2001*

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- (a) for each relevant transferee, the amount worked out by applying the transferee's interest to the concessional duty; and
  - (b) the amount worked out by deducting, from transfer duty on the dutiable value of the transaction, the amount (the ***deduction amount***) worked out by applying the relevant rate to the lesser of the following—
    - (i) the total of the value of each relevant transferee's interest;
    - (ii) \$300 000.
- (5) The transfer duty imposed on a dutiable transaction to which this section applies under subsection (1)(c)(ii) or (3) is the total of—
- (a) for each relevant transferee, the amount worked out by applying the transferee's interest to the concessional duty; and
  - (b) the amount worked out by deducting, from transfer duty on the dutiable value of the transaction, the amount (also the ***deduction amount***) worked out by applying the relevant rate to the lesser of the following—
    - (i) the total of the value of each relevant transferee's interest;
    - (ii) the total of the relevant transferees' interests multiplied by \$300 000.
- (6) For subsections (4) and (5)—
- (a) the concessional duty is the transfer duty that—
    - (i) if section 91 were to apply to the dutiable transaction—would be equal to the amount worked out under section 91(3)(a) or the amount stated in section 91(5)(a); or
    - (ii) if section 92 were to apply to the dutiable transaction—would be equal to the amount worked out under section 91(3)(a) or the amount stated in section 91(5)(a) less the amount of the deduction under section 92(2); and

- (b) the relevant transferee's interest is the proportion that the share of the transferee in the whole dutiable property bears to the total of the shares of—
    - (i) for a dutiable transaction to which this section applies under subsection (3)—all the co-owners, or the owner, on completion of the transaction; or
    - (ii) for another dutiable transaction—all the transferees; and
  - (c) the value of a relevant transferee's interest is worked out by applying the transferee's interest to the dutiable value of the residential land; and
  - (d) the relevant rate is the rate of transfer duty stated in schedule 3, column 2, opposite the part of the dutiable value of the dutiable transaction attributable to the deduction amount as stated in schedule 3, column 1.
- (6A) For working out the concessional duty under subsection (6)(a) for a relevant transferee under subsection (2), the residential land mentioned in section 91(3) or (5), and schedule 4A, is the part of the residential land relating to the transferee's home or first home.
- (7) For a relevant transferee under subsection (2), the residential land mentioned in subsection (6)(c) is the part of the residential land relating to the transferee's home or first home.

**94 Concession for transfer duty—mixed and multiple claims for homes and first homes**

- (1) This section applies if—
  - (a) a dutiable transaction is the transfer, or agreement for the transfer, of residential land; and
  - (b) the transferee is a trustee of a trust, other than a discretionary or unit trust; and
  - (c) the beneficiaries of the trust are individuals all of whom are under a legal disability.
- (2) Section 93 applies to the transaction as if the beneficiaries are the transferees of the residential land.

- (3) However, section 93(3A) and (3B) applies in relation to a beneficiary only if the beneficiary is under a legal disability only because the beneficiary is not at least 18 years of age.

**95 Application for concession for transfer duty for home or first home**

An application for a concession for transfer duty on a dutiable transaction that is the transfer, or agreement for the transfer, of a home or first home must be made in the approved form.

**Division 4 Miscellaneous**

**95A Occupation date—particular arrangements for retirement village**

- (1) This section applies if—
- (a) a dutiable transaction is the transfer, or an agreement for the transfer, of residential land that is an accommodation unit in a retirement village; and
  - (b) the transferee enters into a retirement village leasing arrangement for the unit.
- (2) A reference in section 88 to a person occupying a residence as owner of the residence includes the transferee occupying the unit under the sublease.



## **Part 10                      Concessions for dutiable transactions for particular family businesses**

### **Division 1                      Preliminary**

#### **96                      Purpose of pt 10**

The purpose of this part is to provide concessions for transfer duty on particular dutiable transactions by way of gift of dutiable property used to carry on particular family businesses of primary production and prescribed businesses.

#### **97                      Dutiable transactions to which pt 10 applies**

- (1) This part applies to each of the following dutiable transactions if the conditions applying to the transaction are satisfied—
- (a) the transfer, or agreement for the transfer, of business property;
  - (b) a partnership acquisition if property of the partnership includes business property;
  - (c) a trust acquisition, other than a trust acquisition on the creation of a trust or a trust acquisition for a unit trust, if property of the trust includes business property;
  - (d) the creation of a trust, or trust acquisition on the creation of a trust, of—
    - (i) business property; or
    - (ii) an indirect interest in dutiable property if the dutiable property includes business property; or
    - (iii) dutiable property that is a Queensland marketable security of a family company that holds business property;
  - (e) a trust acquisition for a unit trust if the property of the trust includes business property;

- (f) the transfer, or agreement for the transfer, of a marketable security in a corporation if the property of the corporation includes business property.
- (2) For subsection (1)(d)(ii), an indirect interest in dutiable property is a partnership or trust interest in a family partnership, family trust or family unit trust that holds the dutiable property.

**98 Conditions for transfer or agreement for transfer of business property**

- (1) The conditions applying to a dutiable transaction mentioned in section 97(1)(a) are as follows—
  - (a) the transferor or person directing the transfer is an ancestor of the transferee;
  - (b) the transferee does not acquire the business property as—
    - (i) trustee, other than as trustee of a trust for the beneficiaries mentioned in subsection (2); or
    - (ii) agent or nominee of another person;
  - (c) the business for which the business property is used is carried on by the ancestor, whether alone or with others;
  - (d) the business is intended to be carried on by the transferee, whether alone or with others.
- (2) For subsection (1)(b)(i)—
  - (a) the beneficiary of the trust is—
    - (i) a descendant of the person creating the trust; and
    - (ii) a minor; and
  - (b) there are no other beneficiaries of the trust, other than a person who would become a beneficiary of the trust on the death of the beneficiary mentioned in paragraph (a).

**99 Conditions for partnership acquisitions**

- (1) The conditions applying to a dutiable transaction mentioned in section 97(1)(b) are as follows—

- (a) the partnership is a family partnership for the acquirer;
  - (b) the transferor or person directing the acquisition is an ancestor of the acquirer;
  - (c) the acquirer does not acquire the partnership interest as—
    - (i) trustee, other than as trustee of a trust for the beneficiaries mentioned in subsection (2); or
    - (ii) agent or nominee of another person;
  - (d) the business for which the business property is used is carried on by the ancestor with the other partners;
  - (e) the business is intended to be carried on by the acquirer, whether alone or with other partners.
- (2) For subsection (1)(c)(i)—
- (a) the beneficiary of the trust is—
    - (i) a descendant of the person creating the trust; and
    - (ii) a minor; and
  - (b) there are no other beneficiaries of the trust, other than a person who would become a beneficiary of the trust on the death of the beneficiary mentioned in paragraph (a).

## **100 Conditions for particular trust acquisitions**

- (1) The conditions applying to a dutiable transaction mentioned in section 97(1)(c) are as follows—
- (a) the trust is a family trust for the acquirer;
  - (b) the person disposing of the interest or directing the acquisition is an ancestor of the acquirer;
  - (c) the acquirer does not acquire the interest as—
    - (i) trustee, other than as trustee of a trust for the beneficiaries mentioned in subsection (2); or
    - (ii) agent or nominee of another person;
  - (d) the business for which the business property is used is carried on by the ancestor, whether alone or with others;

- (e) the business is intended to be carried on by the acquirer, whether alone or with others.
- (2) For subsection (1)(c)(i)—
  - (a) the beneficiary of the trust is—
    - (i) a descendant of the person creating the trust; and
    - (ii) a minor; and
  - (b) there are no other beneficiaries of the trust, other than a person who would become a beneficiary of the trust on the death of the beneficiary mentioned in paragraph (a).

### **101 Conditions for creation of trusts and particular trust acquisitions**

The conditions applying to a dutiable transaction mentioned in section 97(1)(d) are as follows—

- (a) the trust is a family trust for the acquirer;
- (b) the beneficiary of the trust is—
  - (i) a descendant of the person creating the trust; and
  - (ii) a minor;
- (c) there are no other beneficiaries of the trust other than a person who would become a beneficiary of the trust on the death of the beneficiary mentioned in paragraph (b);
- (d) the acquirer does not acquire the interest as agent or nominee of another person;
- (e) the business for which the business property is used is carried on by the person creating the trust, whether alone or with others;
- (f) the business is intended to be carried on for the beneficiary, whether alone or with others.

### **102 Conditions for acquisitions of interest in family unit trusts**

- (1) The conditions applying to a dutiable transaction mentioned in section 97(1)(e) are as follows—

- (a) the trust is a family unit trust for the acquirer;
  - (b) the person disposing of the interest or directing the acquisition is an ancestor of the acquirer;
  - (c) the acquirer does not acquire the interest as—
    - (i) trustee, other than as trustee of a trust for the beneficiaries mentioned in subsection (2); or
    - (ii) agent or nominee of another person;
  - (d) the business for which the business property is used is carried on by the ancestor, whether alone or with others;
  - (e) the business is intended to be carried on by the acquirer, whether alone or with others.
- (2) For subsection (1)(c)(i)—
- (a) the beneficiary of the trust is—
    - (i) a descendant of the person creating the trust; and
    - (ii) a minor; and
  - (b) there are no other beneficiaries of the trust, other than a person who would become a beneficiary of the trust on the death of the beneficiary mentioned in paragraph (a).

### **103 Conditions for transfer or agreement for transfer of Queensland marketable security**

- (1) The conditions applying to a dutiable transaction mentioned in section 97(1)(f) are as follows—
- (a) the corporation is a family company for the transferee;
  - (b) the transferor or person directing the transfer is an ancestor of the transferee;
  - (c) the transferee does not acquire the Queensland marketable security as—
    - (i) trustee, other than as trustee of a trust for the beneficiaries mentioned in subsection (2); or
    - (ii) agent or nominee of another person;
  - (d) the business for which the business property is used is carried on by the ancestor whether alone or with others;

- (e) the business is intended to be carried on by the transferee, whether alone or with others.
- (2) For subsection (1)(c)(i)—
  - (a) the beneficiary of the trust is—
    - (i) a descendant of the person creating the trust; and
    - (ii) a minor; and
  - (b) there are no other beneficiaries of the trust, other than a person who would become a beneficiary of the trust on the death of the beneficiary mentioned in paragraph (a).

#### **104 Dutiable transactions by way of gift**

For this part, a dutiable transaction is by way of gift if there is no consideration or the unencumbered value of the dutiable property is greater than the consideration for the transaction.

### **Division 2 Concessions for transfer duty for dutiable transactions**

#### **105 How transfer duty is assessed on dutiable transaction**

- (1) This section applies for assessing transfer duty on a dutiable transaction to which this part applies to the extent it is by way of gift.
- (2) The unencumbered value of the business property is—
  - (a) if the business is a primary production business—taken to be nil; or
  - (b) if the business is a prescribed business—limited to the amount by which the value exceeds \$500 000.
- (3) Also, the family company is taken to have no liabilities.
- (4) In addition, if the dutiable property the subject of the dutiable transaction includes residential land adjacent to land used to carry on the business and the business is a primary production

business, the unencumbered value of the residential land is taken to be nil.

- (5) Subsection (2)(b) has effect subject to section 106.

**106 Special provision for assessing transfer duty if total gifts of property used for prescribed business exceed \$500 000**

- (1) This section applies to a dutiable transaction to which this part applies if—
- (a) business property to which the transaction relates is used to carry on a prescribed business; and
  - (b) the transferee or acquirer has, since 12 December 1984, been gifted business property, a partnership interest, a trust interest or a marketable security; and
  - (c) the gift was made by or at the direction of the ancestor of the transferee or acquirer; and
  - (d) the ancestor was a party to, or directed, the transaction; and
  - (e) the gifted business property or the business property of the partnership, trust or corporation to which the gifted interest or security relates is also used to carry on the prescribed family business.
- (2) The unencumbered value of the business property to which the transaction relates is limited to the amount by which the total value of the property mentioned in subsection (1)(a) and (e) exceeds \$500 000.

**107 Application for concession for transfer duty under pt 10**

An application for a concession for transfer duty on a dutiable transaction under this part must—

- (a) be made in the approved form; and
- (b) be lodged when the instrument that effects or evidences the transaction or transfer duty statement for the transaction is lodged for assessment.

## **Part 11**

# **Concessions for superannuation**

### **108 Dutiable transactions to which pt 11 applies**

- (1) This part applies to the following dutiable transactions—
  - (a) a transfer of dutiable property between superannuation funds to effect a merger of 2 or more superannuation funds or the splitting of a superannuation fund into 2 or more superannuation funds, if the trustees of the funds declare the new fund or funds will be complying superannuation funds within 1 year after the merger or split;
  - (b) the creation of a trust of dutiable property because of the variation or reconstitution of a superannuation fund if the trustees of the fund declare that the fund, after the variation or reconstitution, will be a complying superannuation fund within 1 year after the creation of the trust.
- (2) However, this part does not apply if the dutiable transaction is part of an arrangement the sole or dominant purpose of which is to avoid duty on the disposition of dutiable property of, or to, a superannuation fund.

### **109 Concession for transfer duty**

Transfer duty imposed on a dutiable transaction to which this part applies is \$20.

### **110 Documents to accompany application**

An application for an assessment of duty under this part must be accompanied by the following—

- (a) an explanation of the background to the dutiable transaction and the entitlements, if any, to be extinguished or created;
- (b) copies of the governing rules of the superannuation funds and any proposed amendments of the rules;





- (a) the dutiable transaction must be made for giving effect to the conversion of a prescribed interest scheme to a registered managed investment scheme; and
- (b) the transaction must be entered into in the conversion period; and
- (c) the persons who are members of the registered managed investment scheme must have the same beneficial interest in the property of the scheme immediately before the transaction was entered into as they had immediately after the transaction was entered into.

**113 Concession for conversion of interests in prescribed interest schemes**

Transfer duty imposed on a dutiable transaction to which this part applies is \$100.

**114 Expiry of pt 12**

This part expires 1 year after the end of the conversion period.

**Part 13****Exemptions for transfer duty****Division 1****Exemptions for cancelled agreements and particular agreements entered into before registration of companies****115 Exemption—cancelled agreements**

- (1) Transfer duty is not imposed on a dutiable transaction that is an agreement for the transfer of dutiable property (the *cancelled agreement*) if—
  - (a) the agreement is ended because of a breach of it by a party to it; or
  - (b) the agreement is ended because of non-fulfilment of a condition of it; or
  - (c) the agreement is brought to an end by frustration; or
  - (d) the agreement is ended with the consent of the parties to it and there is no resale agreement.
- (2) For subsection (1)(d), an agreement is a resale agreement if—
  - (a) under the agreement, any of the dutiable property the subject of the cancelled agreement is or will be transferred or is agreed to be transferred; and
  - (b) the transferee under the cancelled agreement receives, or will receive, directly or indirectly a financial benefit other than—
    - (i) being released from the transferee's obligation under the cancelled agreement; or
    - (ii) an interest in the dutiable property to the extent that the unencumbered value of the interest does not represent a profit for the transferee because of the resale agreement.
- (3) If, on an assessment, transfer duty has been paid on an agreement that is not liable to transfer duty because of this section, the commissioner must make a reassessment if an

application is made within 6 months after the agreement is ended or within the longer period the commissioner allows.

- (4) The applicant must lodge the cancelled agreement with the application.

### **116 Exemption—particular agreements entered into before registration of company**

- (1) Subsection (2) applies if—
  - (a) a transferee enters into an agreement (the *first agreement*) for, or for the benefit of, a company proposed to be registered under the Corporations Act; and
  - (b) the company is named in the first agreement; and
  - (c) the company, or a company that is reasonably identifiable with it, is registered under the Corporations Act; and
  - (d) the first agreement is ended so that the company can enter into an agreement as the transferee of the dutiable property.
- (2) Transfer duty is not imposed on the dutiable transaction that is the first agreement for the transfer of the dutiable property.
- (3) Subsection (4) applies if—
  - (a) a transferee enters into an agreement for, or for the benefit of, a company proposed to be registered under the Corporations Act; and
  - (b) the company is named in the agreement; and
  - (c) the company, or a company that is reasonably identifiable with it, is registered under the Corporations Act; and
  - (d) under the Corporations Act, section 131, the company ratifies the agreement after it is registered.
- (4) Transfer duty is not imposed on the dutiable transaction that is the transfer of the dutiable property to the company if transfer duty imposed on the agreement is paid.

- (5) If, on an assessment, transfer duty has been paid on a dutiable transaction that is not liable to transfer duty because of this section, the commissioner must make a reassessment if an application is made within 6 months after the agreement is ended or ratified or the longer period the commissioner allows.
- (6) The applicant must lodge the first agreement or transfer with the application.

## **Division 2 Exemptions for trusts**

### **117 Exemption—change of trustee**

Transfer duty is not imposed on a dutiable transaction for the sole purpose of giving effect to a change of a trustee if—

- (a) the transaction is not part of an arrangement—
  - (i) involving a change in the rights or interest of a beneficiary of the trust; or
  - (ii) terminating the trust; and
- (b) transfer duty has been paid on all trust acquisitions for which transfer duty is imposed for the trust before the transaction.

### **118 Exemption—trust acquisition or surrender in family trust**

- (1) Transfer duty is not imposed on a dutiable transaction that is a trust acquisition or trust surrender of a trust interest if—
  - (a) the commissioner is satisfied the trust is established as a discretionary trust primarily for the benefit of the members of a particular family or family company; and
  - (b) the person acquiring or surrendering the trust interest is a member of the family who, or is a family company that, does not benefit in the capacity of trustee.
- (2) Also, transfer duty is not imposed on a dutiable transaction that is a trust acquisition or trust surrender if the commissioner is satisfied—

- (a) the trust is established primarily for the benefit of the members of a particular family or family company; and
- (b) the trust acquisition or trust surrender is a result of—
  - (i) a member of the family becoming or ceasing to be a member of a class of beneficiaries of the trust because of the birth or death of the member; or
  - (ii) the person becoming or ceasing to be a member of a class of beneficiaries of the trust comprising the children, stepchildren or grandchildren of a named member or members of the family.
- (3) The commissioner may be satisfied of the matter mentioned in subsection (1)(a) or (2)(a), even if an exempt institution is the last taker in default of an appointment by the trustee of the trust.
- (4) In this section—
 

*family company*, for a trust, means a corporation in which all directors and shareholders are members of the particular family for which the trust is established.

### **119 Exemption—trust acquisition or surrender in superannuation fund**

Transfer duty is not imposed on a dutiable transaction that is a trust acquisition or trust surrender of a trust interest—

- (a) of a member in a superannuation fund if the transaction is for the sole purpose of providing superannuation benefits for the member; or
- (b) to the extent the transaction gives effect to a distribution of benefits of a person who was a member of a superannuation fund on the person's death.

### **120 Exemption—trust acquisition or surrender for membership of particular unincorporated association**

- (1) Transfer duty is not imposed on a dutiable transaction that is a trust acquisition or trust surrender of a trust interest of a member of an unincorporated association to which this section applies if—

- (a) the transaction is solely the result of a person becoming a member of the association for the sole purpose of enjoying the benefits of membership and no consideration is paid or payable by the person other than membership fees; or
  - (b) the transaction is solely the result of a person ceasing to be a member of the association and no consideration is received by the person other than a refund of membership fees.
- (2) This section applies to an unincorporated association that—
- (a) has at least 7 members; and
  - (b) is not formed or carried on for providing financial gain for its members; and
  - (c) does not have as its main purpose the holding of property—
    - (i) in which its members have a disposable interest; or
    - (ii) that the members have a right to divide between all or some of them; or
    - (iii) for use by some or all of its members or among persons claiming through, or nominated by, some or all of its members; or
    - (iv) for distribution, or for distribution of the income from it, among some or all of its members or among persons claiming through, or nominated by, some or all of its members; and
  - (d) does not have an object of raising a fund by subscription of its members to make loans to them.
- (3) For subsection (2)(b), an association is not formed or carried on for providing financial gain for its members merely because 1 or more of the circumstances mentioned in the *Associations Incorporation Act 1981*, section 4, apply to it.

**121 Exemption—trust acquisition or surrender for dutiable property comprising only existing rights**

Transfer duty is not imposed on a dutiable transaction that is a trust acquisition or trust surrender of a trust interest if—

- (a) the only dutiable property of the trust are existing rights of the holder of a mortgage, charge, bill of sale or other security over dutiable property located in Queensland; and
- (b) the existing rights have been given in favour of the trustee for the sole purpose of being held for the benefit of the beneficiaries of the trust who have provided, or will from time to time provide, financial accommodation.

### **123 Exemption—particular distribution of dutiable property to a beneficiary**

- (1) Transfer duty is not imposed on a dutiable transaction that is the transfer, or agreement for the transfer, of dutiable property to a beneficiary, or the surrender of a trust interest of a beneficiary, to the extent it represents the beneficiary's trust interest on a distribution by the trustee under a trust.
- (2) However, subsection (1) applies only if the commissioner is satisfied—
  - (a) the dutiable property being distributed to the beneficiary—
    - (i) is the same property held on trust at the time the beneficiary acquired the beneficiary's trust interest; or
    - (ii) represents the proceeds of re-investment of property held on trust when the beneficiary acquired the beneficiary's trust interest in the trust; and
  - (b) under this chapter—
    - (i) transfer duty imposed has been paid for the dutiable transactions that are the creation of a trust of the dutiable property or the trust acquisition of the beneficiary's trust interest; or
    - (ii) the transactions are exempt from transfer duty.
- (3) Also, subsection (1) applies only to the extent transfer duty is paid for the distribution of the dutiable property if—



- (a) a concession for transfer duty has been provided under part 10 for the dutiable property; and
- (b) either of the following apply—
  - (i) the beneficiary is not a descendant of the person who created the trust; or
  - (ii) the property is not, at the time of the distribution, business property or the business is not intended to be carried on by the beneficiary, whether alone or with others.

#### **124 Exemption—deceased person’s estate**

Transfer duty is not imposed on the following dutiable transactions<sup>15</sup>—

- (a) a transfer, or agreement for the transfer, of dutiable property to the extent that it gives effect to a distribution in the estate of a deceased person;
- (b) the creation of a trust of dutiable property to the extent that it gives effect to a distribution in the estate of a deceased person;
- (c) a transfer, or agreement for the transfer, of dutiable property to the extent that it gives effect to a court order under the *Succession Act 1981*, part 4.

#### **125 Exemption—particular vestings of dutiable property**

Transfer duty is not imposed on a dutiable transaction that is, or arises from—

- (a) a vesting of dutiable property on a statutory trust for sale or partition under the *Property Law Act 1974*, part 5; or
- (b) a vesting of dutiable property in a receiver or trustee in bankruptcy or a retransfer of the property to the bankrupt on the bankrupt’s discharge from bankruptcy.

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<sup>15</sup> Also, see section 66 (When no transfer duty on trust acquisition or trust surrender).

**126 Exemption—transactions for trust created for person under legal disability**

Transfer duty is not imposed on a dutiable transaction that is—

- (a) the transfer, or agreement for the transfer, of dutiable property from the trustee of a trust created under the *Public Trustee Act 1978*, section 59,<sup>16</sup> to the beneficiary of the trust; or
- (b) the surrender of a trust interest of the beneficiary as a result of the transfer or agreement for the transfer.

**127 Exemption—declaration of charitable trust**

Transfer duty is not imposed on a dutiable transaction that is—

- (a) the creation of a trust, that is a charitable trust only, of dutiable property; or
- (b) a trust acquisition in a trust that is a charitable trust only.

**128 Exemption—community purpose associations**

Transfer duty is not imposed on a dutiable transaction that is the creation of a trust of dutiable property or a trust acquisition for which details of the trust are required to be registered under the *Land Title Act 1994* if—

- (a) the association of persons for which the property is held on trust is formed for providing recreation or amusement, promoting religion, charity, patriotism or the arts or achieving another object that, in the commissioner's opinion, is useful to the community; and
- (b) the association's constitution provides for the application of its funds to its objects and prohibits the distribution of any part of its funds or profits to its members.

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<sup>16</sup> *Public Trustee Act 1978*, section 59, (Compromise of actions by or on behalf of persons under a legal disability claiming moneys or damages valid only with sanction of court or public trustee)

### **Division 3 Exemptions for particular investment schemes**

#### **129 Exemption—transfer by direction to primary custodian for responsible entity of registered managed investment scheme**

- (1) Transfer duty is not imposed on a transfer of dutiable property from a person as vendor to another person as primary custodian for the responsible entity of a registered managed investment scheme.
- (2) However, subsection (1) applies only if—
  - (a) the transfer is made under a dutiable transaction that is the agreement for the transfer of the property entered into between the person as vendor and the responsible entity as purchaser; and
  - (b) the property is acquired by the responsible entity as scheme property; and
  - (c) transfer duty imposed on the transaction has been paid.

#### **130 Exemption—other transfers of scheme property of registered managed investment scheme**

- (1) Transfer duty is not imposed on a transfer, or agreement for the transfer, of scheme property of a registered managed investment scheme from—
  - (a) the responsible entity of the scheme to a person as primary custodian for the responsible entity; or
  - (b) a person as primary custodian for the responsible entity of the scheme to the responsible entity.
- (2) However, subsection (1) does not apply if the transfer or agreement is part of an arrangement under which—
  - (a) the scheme property, or an interest in the scheme property, ceases to be scheme property; or
  - (b) the persons who are members of the registered managed investment scheme do not have the same trust interest in the scheme property after the property is transferred or

agreement is made as they had immediately before the arrangement was entered into.

## **Division 3A Exemptions for public superannuation entities**

### **130A Exemption—transfer by direction to custodian for a superannuation entity**

- (1) Transfer duty is not imposed on a transfer of dutiable property from a person as vendor to another person as custodian for the approved trustee of a public superannuation entity.
- (2) However, subsection (1) applies only if—
  - (a) the transfer is made under a dutiable transaction that is the agreement for the transfer of the property entered into between the person as vendor and the approved trustee as purchaser; and
  - (b) the property is acquired by the approved trustee as fund property; and
  - (c) transfer duty imposed on the transaction has been paid.

### **130B Exemption—other transfers of fund property of public superannuation entities**

- (1) Transfer duty is not imposed on a transfer, or agreement for the transfer, of fund property of a public superannuation entity from—
  - (a) the approved trustee of the entity to a person as custodian for the approved trustee; or
  - (b) a person as custodian for the approved trustee of the entity to the approved trustee.
- (2) However, subsection (1) does not apply if the transfer or agreement is part of an arrangement under which—
  - (a) the fund property, or an interest in the fund property, ceases to be fund property; or
  - (b) the persons who are members of the public superannuation entity do not have the same trust interest

in the fund property after the property is transferred or agreement is made as they had immediately before the arrangement was entered into.

## **Division 3B Exemptions for asset-backed securities**

### **Subdivision 1 Some basic concepts for asset-backed securities**

#### **130C What is an *asset-backed security***

- (1) An *asset-backed security* is—
  - (a) an entitlement or interest of a person in—
    - (i) an entitlement of a financier for a financial asset or pool of financial assets; or
    - (ii) amounts payable to a financier under a financial asset or pool of financial assets whether or not on the same conditions applying under the asset and whether or not the person is entitled to a transfer of the asset or pool of assets; or
  - (b) a debenture, promissory note, bill of exchange, stock, bond, note or other security creating, evidencing or acknowledging indebtedness issued or made by a corporation if the payments under the security are received by the corporation—
    - (i) substantially from the receipts, whether of capital or income, from a financial asset or pool of financial assets; or
    - (ii) if another extent is prescribed under a regulation—to the extent prescribed, from the receipts, whether of capital or income, from a financial asset or pool of financial assets; or
  - (c) a security by which an interest in, or mortgage or charge over, an entitlement, interest or security mentioned in paragraph (a) or (b) is created.

- (2) However, the term does not include—
  - (a) a mortgage, other than a mortgage mentioned in subsection (1)(c); or
  - (b) a transfer of a mortgage or financial asset.
- (3) It does not matter whether an asset-backed security is effected by an instrument or another way.

### **130D Who is a *financier***

A *financier* is a lender or bailor who provides financial accommodation under a financial asset.

### **130E What is a *financial asset***

- (1) A *financial asset* is any of the following—
  - (a) a loan, including any security for the loan;
  - (b) a credit card account;
  - (c) a hire purchase agreement;
  - (d) a chattel lease, whether finance or operating;
  - (e) a vehicle dealer floor plan agreement;
  - (f) the rights of a financier that are—
    - (i) usually conferred in relation to an asset mentioned in paragraphs (a) to (e); and
    - (ii) incidental to the asset.
- (2) In this section—

*credit card account* means an account kept by a credit card provider for a credit card holder recording the balance of account between the provider and the holder for credit card transactions for the holder's credit card.

*credit card transaction* means a debit or adjustment to a credit card holder's credit card account that—

- (a) is for—
  - (i) a payment by a credit card provider to a merchant to whom the holder's credit card is produced; or

- (ii) a cash advance made by a credit card provider to, or at the direction of, the holder; and
- (b) involves the giving of credit by the provider or an adjustment of credit previously given by the provider.

**130F What is a *pool of financial assets***

- (1) A *pool of financial assets* is a pool or collection of assets that consists solely of financial assets.
- (2) Also, a *pool of financial assets* is a pool or collection of assets that consists substantially or, if another extent is prescribed under a regulation, to the extent prescribed, of financial assets or amounts paid under financial assets, or a combination of them, if the other assets in the pool or collection are cash or an authorised investment.

**130G What is an *authorised investment***

An *authorised investment*, for a pool of financial assets, is any of the following—

- (a) a bond, debenture, stock or Treasury bill of the Commonwealth or a State;
- (b) a debenture or stock of a public statutory body established under an Act of the Commonwealth or a State;
- (c) a note or other security of the Commonwealth or a State;
- (d) a deposit with, or a certificate of deposit or another security issued by, a financial institution;
- (e) a bill of exchange, promissory note or other negotiable instrument accepted, drawn or endorsed by a financial institution;
- (f) an asset-backed security or mortgage-backed security.

## **Subdivision 2 Exemptions**

### **130H Exemption—particular transactions for asset-backed securities**

- (1) Transfer duty is not imposed on a dutiable transaction that is a transfer, or agreement for the transfer, of—
  - (a) an asset-backed security; or
  - (b) a financial asset or pool of financial assets for creating, issuing, marketing or securing an asset-backed security.
- (2) Also, transfer duty is not imposed on a dutiable transaction that—
  - (a) is the creation of a trust of dutiable property or a trust acquisition; and
  - (b) is required for creating, issuing, marketing, acquiring or securing an asset-backed security.
- (3) In addition, transfer duty is not imposed on a dutiable transaction that is a trust surrender required to give effect to a redemption of an asset-backed security.

## **Division 3C Exemptions for mortgage-backed securities**

### **130I Exemption—mortgage-backed securities**

- (1) Transfer duty is not imposed on a dutiable transaction that is a transfer, or agreement for the transfer, of a mortgage or pool of mortgages for creating, issuing, marketing or securing a mortgage-backed security.
- (2) Also, transfer duty is not imposed on a dutiable transaction that—
  - (a) is the creation of a trust of dutiable property or a trust acquisition; and
  - (b) is required for creating, issuing, marketing, acquiring or securing a mortgage-backed security.



- (3) In addition, transfer duty is not imposed on a dutiable transaction that is a trust surrender required to give effect to a redemption of a mortgage-backed security.

## **Division 4 Exemptions for dealings under particular Acts**

### **131 Exemption—dealings under Aboriginal and Torres Strait Islander Land Acts**

Transfer duty is not imposed on the following dutiable transactions—

- (a) the issue, under the *Aboriginal Land Act 1991* or *Torres Strait Islander Land Act 1991*, of a deed of grant in fee simple;
- (b) the issue of—
  - (i) an Aboriginal lease under the *Aboriginal Land Act 1991* or a lease prepared for section 83 or 136 of that Act; or
  - (ii) a Torres Strait Islander lease under the *Torres Strait Islander Land Act 1991* or a lease prepared for section 80 or 133, of that Act;
- (c) a surrender, under or for the *Aboriginal Land Act 1991* or *Torres Strait Islander Land Act 1991*, of a deed of grant or lease mentioned in paragraph (a) or (b);
- (d) the acquisition of an interest in land because the *Aboriginal Land Act 1991*, section 84, or the *Torres Strait Islander Land Act 1991*, section 81, ceases to apply to the land.

### **132 Exemption—vesting under boundary adjustment plans**

Transfer duty is not imposed on the vesting of land because of the registration of—

- (a) a boundary adjustment plan under the *Integrated Resort Development Act 1987*, part 5, division 4, subdivision B; or

- (b) a boundary adjustment plan under the *Mixed Use Development Act 1993*, part 5, division 11; or
- (c) a stratum boundary adjustment plan under the *Mixed Use Development Act 1993*, part 6, division 2; or
- (d) a boundary adjustment plan under the *South Bank Corporation Act 1989*, section 42.

### **133 Exemption—building units and group titles plans and community titles schemes**

Transfer duty is not imposed on the following dutiable transactions—

- (a) a transfer, or agreement for the transfer, of a lot under a building units or group titles plan registered under the *Building Units and Group Titles Act 1980* if—
  - (i) the transferor is a corporation (the *transferor corporation*); and
  - (ii) when the plan was registered, the transferor corporation held the fee simple of the land in the plan; and
  - (iii) the transferee held shares in the transferor corporation that were surrendered to obtain the transfer of the lot from the transferor corporation; and
  - (iv) the separate area that the lot comprises corresponds with the separate area the transferee had a right to occupy immediately before surrendering the transferee's shares; and
  - (v) the separate area that the lot comprises has been used for residential purposes immediately before the transferee surrendered the transferee's shares and will, after registration of the plan and the transfer of the lot to the transferee, be used for residential purposes;
- (b) a transfer, or agreement for the transfer, of a lot that, under the *Body Corporate and Community Management Act 1997*, is a lot included in a community titles scheme if—

- (i) the transferor is a corporation (the *transferor corporation*); and
- (ii) under that Act, the transferor corporation is the original owner for the scheme; and
- (iii) the transferee held shares in the transferor corporation that were surrendered to obtain the transfer of the lot from the transferor corporation; and
- (iv) the separate area that the lot comprises corresponds with the separate area the transferee had a right to occupy immediately before surrendering the transferee's shares; and
- (v) the separate area that the lot comprises has been used for residential purposes immediately before the transferee surrendered the transferee's shares and will, after registration of the plan and the transfer of the lot to the transferee, be used for residential purposes.

### **134 Exemption—forfeiture orders**

Transfer duty is not imposed on a dutiable transaction that is the transfer, or agreement for the transfer, of dutiable property under—

- (a) any of the following under the *Criminal Proceeds Confiscation Act 2002*—
  - (i) third party order;
  - (ii) an exclusion order;
  - (iii) an innocent interests exclusion order;
  - (iv) a buy-back order;
  - (v) a request under section 175;<sup>17</sup> or
- (b) the *Drugs Misuse Act 1986*, section 39(4).

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<sup>17</sup> *Criminal Proceeds Confiscation Act 2002*, section 175 (If Attorney-General asked to return property)

**135 Exemption—industrial organisations**

Transfer duty is not imposed on a dutiable transaction that is—

- (a) the vesting of dutiable property in an industrial organisation under the *Industrial Relations Act 1999*, chapter 12, part 15; or
- (b) the transfer, or agreement for the transfer, of dutiable property from trustees of an industrial organisation under the *Industrial Relations Act 1999* to the organisation.

**136 Exemption—dealings under Land Act**

Transfer duty is not imposed on the following dutiable transactions—

- (a) a grant under the *Land Act 1994*, in fee simple in trust, of unallocated State land for a community purpose under that Act;
- (b) a grant under the *Land Act 1994*, in fee simple, of land comprised in a freeholding lease, grazing homestead perpetual lease, or perpetual lease for pastoral purposes, under that Act, to the lessee;
- (c) a grant under the *Land Act 1994*, section 506H, in fee simple, of land comprised in a purchase lease;
- (d) a surrender under the *Land Act 1994* of land held in fee simple to the State;
- (e) a transfer, or agreement for the transfer, of a road licence issued under the *Land Act 1994*, section 103, if the value of the licence is not more than \$200;
- (f) a transfer, or agreement for the transfer, of a pastoral lease under the *Land Act 1994*, other than a preferential pastoral holding issued under the *Land Act 1962*, from the mortgagee to the mortgagor having the effect of a release of the mortgage;
- (g) the acquisition of a new right that is a change of tenure under the *Land Act 1994*, section 504 or 505;

- (h) the acquisition of a new right that is a lease, licence or permit issued under the *Land Act 1994*, other than a post-Wolfe freeholding lease under that Act.

### **137 Exemption—mining and petroleum legislation**

- (1) Transfer duty is not imposed on a dutiable transaction that is—
  - (a) the grant of a mineral development licence, mining claim or mining lease under the *Mineral Resources Act 1989*; or
  - (b) the transfer, or an agreement for the transfer, of a mining claim, or a share in a mining claim, under the *Mineral Resources Act 1989* if the consideration is not more than \$100.
- (2) Transfer duty is not imposed on a dutiable transaction that is—
  - (a) the grant of a tenure under the *Offshore Minerals Act 1998*; or
  - (b) the transfer, or agreement for the transfer, of a tenure or interest in a tenure, under that Act.
- (3) Transfer duty is not imposed on a dutiable transaction that is the grant of a sublease under a unitisation arrangement under the *Petroleum Act 1923*, section 62.
- (4) Transfer duty is not imposed on a dutiable transaction that is—
  - (a) the grant of an access authority, licence, permit or pipeline licence under the *Petroleum (Submerged Lands) Act 1982*; or
  - (b) the transfer, agreement for the transfer or surrender, of—
    - (i) an authority, licence or permit mentioned in paragraph (a); or
    - (ii) an interest in an authority, licence or permit mentioned in paragraph (a).

- (5) Subsection (1) applies to a dutiable transaction if liability for transfer duty arose or arises on or after 1 March 2002.

### 138 Exemption—manufactured homes

- (1) Transfer duty is not imposed on any of the following dutiable transactions—
- (a) a transfer, or agreement for the transfer, of a manufactured home positioned on a site under a site agreement;
  - (b) a transfer, or agreement for the transfer, of a manufactured home not positioned on a site if—
    - (i) the manufactured home is acquired for positioning on a site under a site agreement; and
    - (ii) the transfer or agreement is not part of a transaction involving the transferor’s agreement for the transfer of ownership of land;
  - (c) a transfer, or agreement for the transfer, of a person’s rights and obligations as occupier of a manufactured home under a site agreement for the home.

- (2) In this section—

*manufactured home* see the *Manufactured Homes (Residential Parks) Act 2003*, section 10.<sup>18</sup>

*site* see the *Manufactured Homes (Residential Parks) Act 2003*, section 13.<sup>19</sup>

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18 *Manufactured Homes (Residential Parks) Act 2003*, section 10—

A *manufactured home* is a structure, other than a caravan or tent, that—

- (a) has the character of a dwelling house; and
- (b) is designed to be able to be moved from one position to another; and
- (c) is not permanently attached to land.

19 *Manufactured Homes (Residential Parks) Act 2003*, section 13—

A *site* is land that is available for rent under a site agreement.

**139 Exemption—dealings under South Bank Corporation Act**

Transfer duty is not imposed on a dutiable transaction that is—

- (a) the transfer, or agreement for the transfer, of dutiable property for which no fee or charge is payable under the *South Bank Corporation Act 1989*, section 23; or
- (b) the determination or partial determination of a lease under the *South Bank Corporation Act 1989*, schedule 4, part 2 or 3.<sup>20</sup>

**140 Exemption—particular water entitlements**

Transfer duty is not imposed on a dutiable transaction that is the grant of a water entitlement to the extent that it replaces and represents—

- (a) a water entitlement held by the grantee; or
- (b) an authority to take water under the repealed *Water Resources Act 1989* held by the grantee immediately before the repeal of that Act.

**141 Exemption—particular statutory bodies**

- (1) Transfer duty is not imposed on a dutiable transaction that is the transfer, or agreement for the transfer, of dutiable property to any of the following bodies—
  - (a) the Library Board of Queensland constituted under the *Libraries and Archives Act 1988*;
  - (b) The National Trust of Queensland constituted under the *National Trust of Queensland Act 1963*;
  - (c) the Queensland Art Gallery Board of Trustees constituted under the *Queensland Art Gallery Act 1987*;
  - (d) the Queensland Museum Board of Trustees constituted under the *Queensland Museum Act 1970*;

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<sup>20</sup> *South Bank Corporation Act 1989*, schedule 4 (Modified Building Units and Group Titles Act), part 2 (Subdivision of land) or 3 (Variation or termination of leasehold building units plan)

- (e) the Queensland Performing Arts Trust constituted under the *Queensland Performing Arts Trust Act 1977*;
  - (f) the Raine Island Corporation constituted under the *Meaker Trust (Raine Island Research) Act 1981*;
  - (g) the Royal Queensland Theatre Company constituted under the *Royal Queensland Theatre Company Act 1970*.
- (2) Transfer duty is not imposed on a dutiable transaction that is a gift of dutiable property under the *Queensland Institute of Medical Research Act 1945*, section 14, to the Council of the Queensland Institute of Medical Research constituted under that Act.

## Division 5                      Miscellaneous exemptions

### 142      Exemption—exempt institutions

- (1) Transfer duty is not imposed on a transfer, or agreement for the transfer, of dutiable property to—
- (a) an exempt institution to conduct an art union, if the prize for the art union is to be represented wholly or partly by the dutiable property transferred; or
  - (b) the winner of a prize in the art union.
- (2) In this section—

*art union* see the *Charitable and Non-Profit Gaming Act 1999*, section 6.

*exempt institution* does not include an exempt institution under section 459(2)(a).

### 143      Exemption—change of tenure

Transfer duty is not imposed on a transfer, or the agreement for the transfer, effecting a change in the registered ownership of property from joint tenants to tenants in common or vice versa, if the value of the co-owners' interests at the time of the transaction is not changed.



**144 Exemption—joint tenancy**

Transfer duty is not imposed on a dutiable transaction that arises by operation of law because of the death of a joint tenant.

**145 Exemption—transfer to State for public or community purpose**

Transfer duty is not imposed on a dutiable transaction that is a transfer of land to the State for—

- (a) a public purpose under the *Acquisition of Land Act 1967*; or
- (b) a community purpose under the *Land Act 1994*.

**146 Exemption—lease duty**

Transfer duty is not imposed on an acquisition of a new right that is a lease of land in Queensland that, under section 244,<sup>21</sup> is exempt from lease duty if a premium, fine or other consideration is not payable for the grant of the lease.

**147 Exemption—surrender of lease**

Transfer duty is not imposed on a dutiable transaction that is a surrender of a lease of land in Queensland if—

- (a) there is no premium, fine or other consideration paid or payable for the surrender; or
- (b) any premium, fine or other consideration paid or payable for the surrender is paid by the lessor.

**148 Exemption—marketable securities etc.**

- (1) Transfer duty is not imposed on any of the following dutiable transactions—

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21 Section 244 (Exemption—particular residences)

- (a) a transfer, or agreement for the transfer, of stock, debentures or bonds of an authority established under a State Act or an Act of another State;
  - (b) a transfer, or agreement for the transfer, of a corporate debt security;
  - (c) a transfer, or agreement for the transfer, of a Queensland marketable security to or from a corporation that is—
    - (i) a financial institution; or
    - (ii) trustee company under the *Trustee Companies Act 1968*; or
    - (iii) a related body corporate of the corporation; or
    - (iv) a corporation of a class prescribed under a regulation;
  - (d) a transfer, or agreement for the transfer, of an Exchanging Instalment Note Series 2 issued under the deed poll signed by the State on 8 October 1998.
- (2) However, subsection (1)(c) applies only if the corporation's principal business is to hold property as trustee or nominee for another person and—
- (a) for a transfer to the corporation—the property is to be held on trust solely for the transferor and the transfer is not part of arrangement under which the security will be held on trust for another person; or
  - (b) for a transfer from the corporation—the transfer is a retransfer to the owner in the same capacity as the security was previously held by the owner.

### **149 Exemption—debt factoring agreements**

- (1) Transfer duty is not imposed on a transfer, or agreement for the transfer, of a business asset that is a book debt if the transaction is part of a debt factoring agreement between the parties.
- (2) In this section—

*debt factoring agreement* means an agreement for purchasing, acquiring or factoring a book debt for providing finance to the transferor of the book debt.

### **150 Exemption—particular chattels**

- (1) Transfer duty is not imposed on a dutiable transaction that is the transfer, or agreement for the transfer, of any of the following chattels taken under a statutory licence, profit a prendre, sharefarming agreement or other similar arrangement if the condition in subsection (2) for the chattel is complied with—
  - (a) standing timber;
  - (b) gas, petroleum or mineral;
  - (c) gravel, rock, stone, sand, clay, earth or soil;
  - (d) primary produce;
  - (e) fish or livestock;
  - (f) water.
- (2) For subsection (1), the condition is—
  - (a) for a chattel mentioned in paragraphs (a) to (d)—it must be severed or released, and taken, from land in Queensland by the transferee; or
  - (b) for a chattel mentioned in paragraph (e) or (f)—it must be taken from land in Queensland by the transferee.

### **151 Exemption—particular residences**

Transfer duty is not imposed on a dutiable transaction that is the transfer, or agreement for the transfer, by way of gift, from 1 party to a subsisting marriage or de facto relationship to the other party to the marriage or de facto relationship, of an interest in residential land if—

- (a) after the transfer, the residential land will be owned by the parties as joint tenants or tenants in common in equal shares; and
- (b) the residence will be the principal residence of the parties.

**152 Exemption—to correct error in previous dutiable transaction**

Transfer duty is not imposed on a dutiable transaction to correct an error in a previous dutiable transaction about the same property if—

- (a) no additional consideration is paid or payable; and
- (b) the beneficial interests in the property change only to the extent necessary to correct the error.

**Part 14 Reassessments for transfer duty****Division 1 Reassessments for concessions for homes****153 Reassessment—noncompliance with occupancy requirements after occupation date for residence**

- (1) This section applies if—
  - (a) transfer duty on a dutiable transaction that is the transfer, or agreement for the transfer, of residential land is assessed on the basis of a concession under section 91, 92 or 93; and
  - (b) a transferee, within the year after the transferee's occupation date for the residence, disposes of the land by—
    - (i) transferring part or all of it; or
    - (ii) leasing or otherwise granting exclusive possession of part or all of it to another person.
- (1A) For subsection (1)(b), a transferee does not dispose of land if—
  - (a) the transferee transfers part of the land to the transferee's spouse; and

- (b) the transfer is exempt from duty under section 151.
- (1B) Also, for subsection (1)(b), a transferee does not dispose of residential land that is an accommodation unit in a retirement village only by entering into a retirement village leasing arrangement for the unit.
- (2) The commissioner must make a reassessment to impose further transfer duty on the dutiable transaction worked out using the following formula—

$$TD = \frac{C \times (365 - OD)}{365}$$

where—

*C* means the difference between the transfer duty that would have been imposed on the dutiable transaction if the concession had not applied to the transferee and transfer duty assessed on the dutiable transaction.

*OD* means the number of days between the transferee's occupation date for the residence and the date of disposal of the residential land, both days inclusive.

*TD* means the further transfer duty payable on the reassessment.

- (3) If—
- (a) under subsection (1A) or section 154(2A), this section or section 154 does not apply to a transferee's transfer of part of the land to the transferee's spouse; and
- (b) under subsection (1)(b), the transferee later disposes of the land or part of it;

this section applies to the later disposal as if the transferee had not transferred the part of the land to the transferee's spouse.

## **154 Reassessment—other noncompliance with occupancy requirements**

- (1) This section applies if—
- (a) transfer duty on a dutiable transaction that is the transfer, or agreement for the transfer, of residential land

*Duties Act 2001*

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is assessed on the basis of a concession under section 91, 92 or 93; and

- (b) before the occupation date, a transferee disposes of the land or, other than because of an intervening event, a transferee's occupation date for the residence on the land is not within the year after the transfer date for the land.
- (2) For subsection (1)(b), a transferee disposes of land if the transferee transfers, leases or otherwise grants exclusive possession of, part or all of the land, to another person, other than if—
- (a) another person (the *occupier*) has exclusive possession of the land before the occupation date; and
  - (b) the occupier—
    - (i) is the transferor of the land; or
    - (ii) has exclusive possession of the land under a lease granted by the transferor of the land before the transfer date; and
  - (c) the occupier—
    - (i) if paragraph (b)(i) applies—vacates the land as soon as reasonably practicable or within 6 months after the transfer date, whichever is the earlier; or
    - (ii) if paragraph (b)(ii) applies—vacates the land on the termination of the current term of the lease, or within 6 months after the transfer date, whichever is the earlier.
- (2A) Also, for subsection (1)(b), a transferee does not dispose of land if—
- (a) the transferee transfers part of the land to the transferee's spouse; and
  - (b) the transfer is exempt from duty under section 151.
- (2B) Also, for subsection (1)(b), a transferee does not dispose of residential land that is an accommodation unit in a retirement village only by entering into a retirement village leasing arrangement for the unit.

- (3) The commissioner must make a reassessment to impose transfer duty on the dutiable transaction as if the concession had never applied to the transferee.
- (4) If—
  - (a) under subsection (2A), this section does not apply to a transferee's transfer of part of the land to the transferee's spouse; and
  - (b) under subsection (1)(b), the transferee later disposes of the land or part of it;

this section applies to the later disposal as if the transferee had not transferred the part of the land to the transferee's spouse.

### **155 When transferees must give notice for reassessment**

- (1) This section applies if a notifiable event happens after an assessment, on the basis of a concession under section 91, 92 or 93, of transfer duty on a dutiable transaction that is the transfer, or agreement for the transfer, of residential land.
- (2) Within 28 days after the notifiable event happens, each transferee to the transfer or agreement must—
  - (a) give notice in the approved form to the commissioner; and
  - (b) ensure the instruments required for the assessment of duty for the transaction are lodged for a reassessment of transfer duty on the transaction.

*Note—*

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

- (3) In this section—

*lease* does not include a lease or sublease entered into as part of a retirement village leasing arrangement.

*notifiable event*, for residential land, means—

- (a) the transfer, lease or otherwise granting of exclusive possession of all or part of the land within 1 year after the transferee's occupation date for the residence on the land; or

- (b) failure to comply with the occupancy requirement for the residence on the land.

## **Division 2                      Reassessments for concessions and exemptions for superannuation**

### **156      Reassessment—noncomplying superannuation fund or public superannuation entity**

- (1) This section applies if—
  - (a) transfer duty has been assessed on a dutiable transaction on the basis of—
    - (i) a concession under part 11; or
    - (ii) an exemption under part 13, division 3A, for a fund or trust mentioned in the definition *public superannuation entity*, paragraph (e); and
  - (b) at the first anniversary of the transaction—
    - (i) if paragraph (a)(i) applies—the superannuation funds created by the split, merger, variation or reconstitution are not complying superannuation funds; or
    - (ii) if paragraph (a)(ii) applies—the fund or trust is not a public superannuation entity.
- (2) Within 28 days after the first anniversary, the trustees of the funds mentioned in subsection (1)(b)(i) or trustees of the fund or trust mentioned in subsection (1)(b)(ii) must—
  - (a) give notice in the approved form to the commissioner; and
  - (b) ensure the instruments required for the assessment of duty for the transaction are lodged for a reassessment of transfer duty on the transaction.

*Note—*

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



- (3) The commissioner must make a reassessment to impose transfer duty on the transaction as if the concession or exemption had never applied.

## **Chapter 3      Land rich duty and corporate trustee duty**

### **Part 1            Land rich duty**

#### **Division 1        Preliminary**

##### **157    Imposition of land rich duty**

- (1) This part imposes duty (*land rich duty*) on relevant acquisitions.

*Note—*

Exemptions for land rich duty are dealt with in division 5. Also, particular acquisitions relating to corporate reconstructions are exempt from land rich duty under chapter 10, part 1.

- (2) Land rich duty is imposed on the dutiable value of a relevant acquisition.

#### **Division 2        Some basic concepts for land rich duty**

##### **Subdivision 1    Some basic concepts about acquiring interests in corporations**

##### **158    What is a *relevant acquisition***

- (1) A person makes a *relevant acquisition* if—

- (a) the person acquires a majority interest in a land rich corporation; or
  - (b) the person acquires an interest in a corporation and, when the following are aggregated, the aggregation results in a majority interest in a land rich corporation—
    - (i) interests acquired by the person in the land rich corporation in the preceding 3 years;
    - (ii) interests acquired by related persons of the person in the land rich corporation if the interests were acquired in the preceding 3 years;
    - (iii) interests held by related persons of the person in the land rich corporation if the person and the related persons became related persons in the preceding 3 years; or
  - (c) having acquired a majority interest in a land rich corporation under paragraph (a) or (b) for which land rich duty was imposed, the person's interest in the corporation increases.
- (2) Subsection (3) applies if—
- (a) a person acquires an interest in a land rich corporation (the *preliminary acquisition*); and
  - (b) within 3 years before or after the preliminary acquisition the person or a related person of the person, either alone or together, became entitled to a right to acquire an interest in the corporation (an *option*); and
  - (c) the option is exercised.
- (3) For subsection (1)(b), a person is taken to acquire the interest acquired because of the exercise of the option within 3 years after the preliminary acquisition.

### **159 What are *interests* and *majority interests* in a corporation**

- (1) A person has an *interest* in a corporation if the person has an entitlement as a shareholder to a distribution of the corporation's property on its winding up.
- (2) A person has a *majority interest* in a corporation if the person has an interest in the corporation of more than 50%.

**160 Interest in corporation is percentage of distributable property on winding up**

A person's interest in a corporation is the person's entitlement expressed as a percentage of the value of all of the corporation's property that would be distributed if the corporation were to be wound up immediately after the person acquires the interest.

**161 Entitlement on distribution of corporation's property**

- (1) The entitlement of a person on a distribution of a corporation's property is the greater of the entitlement of the person as a shareholder, based on a distribution carried out—
  - (a) under the corporation's constitution and the Corporations Act; or
  - (b) after the person or the person's representative, has, to maximise the person's entitlement, exercised all powers and discretions to—
    - (i) effect or compel a change of the corporation's constitution; or
    - (ii) vary the rights conferred by the shares in the corporation; or
    - (iii) pay up any uncalled amount owing to the corporation for the shares; or
    - (iv) satisfy conditions in the corporation's constitution relating to the shares; or
    - (v) effect or compel the substitution or replacement of shares in the corporation with other shares in the corporation.
- (2) However, the commissioner may decide the entitlement be based on a distribution carried out under subsection (1)(a) if the commissioner considers the application of subsection (1)(b) would be inequitable.
- (3) Also, if a person makes a relevant acquisition because interests are aggregated under section 158(1)(b)(ii) or (iii), the entitlements under subsection (1)(b) of the person and the related persons of the person must not be more than 100%.

(4) In this section—

*representative*, of another person, means someone who is accustomed, or under an obligation, or reasonably expected to act under the directions, instructions or wishes of the other person.

## **162 Acquiring an interest in a corporation**

- (1) A person acquires an interest in a corporation if the person obtains an interest, or the person's interest increases, in the corporation regardless of how it is obtained or increased.
- (2) Without limiting subsection (1), a person may acquire an interest in a corporation in the following ways—
  - (a) the purchase, gift, allotment or issue of a share;
  - (b) the cancellation, redemption or surrender of a share;
  - (c) the abrogation or alteration of a right for a share;
  - (d) the payment of an amount owing for a share.
- (3) To remove any doubt, it is declared that an acquisition of shares is not necessary to acquire an interest in a corporation.

## **163 When is an interest in a corporation acquired**

- (1) A person acquires an interest in a corporation—
  - (a) if there is an agreement to acquire the interest, whether conditional or not, and paragraph (b) does not apply—when the agreement is made; or
  - (b) if there is an agreement to acquire the interest, whether conditional or not, and the corporation is not a land rich corporation when the agreement is made but is a land rich corporation when the agreement is completed—when the agreement is completed; or
  - (c) otherwise—when the interest is acquired.
- (2) Also, if a person holds a security interest in a corporation, the acquisition of which was an exempt acquisition under section 190 and the person later acquires the interest free from any interest or equity of the previous holder of the interest (the

*later acquisition*), the person acquires an interest in the corporation at the time of the later acquisition.

## 164 Who is a *related person*

- (1) A person is a *related person* of another person if—
  - (a) for individuals—they are members of the same family; or
  - (b) for an individual and a corporation—the person or a member of the person's family is a majority shareholder, director or secretary of the corporation or a related body corporate of the corporation, or has a majority interest in it; or
  - (c) for an individual and a trustee—the person or a related person under another provision of this section is a beneficiary of the trust; or
  - (d) for corporations—they are related bodies corporate; or
  - (e) for a corporation and a trustee—the corporation or a related person under another provision of this section is a beneficiary of the trust; or
  - (f) for trustees—
    - (i) there is a person who is a beneficiary of both trusts; or
    - (ii) a person is beneficiary of 1 trust and a related person under another provision of this section is a beneficiary of the other trust.
- (2) Also, a person is a *related person* of another person if the persons acquire interests in a corporation and the acquisitions form, evidence, give effect to or arise from what is substantially 1 arrangement.
- (3) However, for an acquisition that is a relevant acquisition because of the aggregation of an interest mentioned in section 158(1)(b)(iii), a person is not a *related person* of another person under subsection (1), other than subsection (1)(d), if the commissioner is satisfied the interests of the persons will be used independently and will not be used for a common purpose.

- (4) In addition, for another acquisition, a person is not a *related person* of another person under subsection (1), other than subsection (1)(d), if the commissioner is satisfied the interests of the persons—
- (a) were acquired, and will be used, independently; and
  - (b) were not acquired, and will not be used, for a common purpose.

## **Subdivision 2      Some basic concepts about land rich corporations, subsidiaries and their land-holdings and property**

### **165      What is a *land rich corporation***

- (1) A *land rich corporation* is an unlisted corporation that—
- (a) has land-holdings in Queensland, the unencumbered value of which are \$1 000 000 or more; and
  - (b) has land-holdings, whether within or outside of Australia, comprising 80% or more of the unencumbered value of all of its property.
- (2) Also, an unlisted corporation is a *land rich corporation* if it would satisfy the criteria in subsection (1) if the land-holdings and property of its subsidiaries were disregarded.

### **166      What is a *subsidiary* of a corporation**

- (1) An unlisted corporation is a *subsidiary* of another corporation if, under the Corporations Act, it is a subsidiary of the other corporation.
- (2) Also, each of the following is a *subsidiary* of the other corporation—
- (a) a trustee of a trust if the other corporation or a subsidiary of it, whether under this or another subsection, is a beneficiary of the trust (a *relevant trust*);
  - (b) an unlisted corporation in which—

- (i) the trustee of a relevant trust has a majority interest; or
- (ii) a majority interest is held on trust and the trustee of a relevant trust is a beneficiary of that trust.

*Example for subsections (1) and (2)—*

A Pty Ltd has a 51% shareholding in B Pty Ltd. B Pty Ltd has a trust interest in the C Trust of which C Pty Ltd acts as trustee. C Pty Ltd as trustee of the C trust has a 51% shareholding in D Pty Ltd.

Under subsection (1), B Pty Ltd is the subsidiary of A Pty Ltd because, under the Corporations Act, it is a subsidiary of A Pty Ltd.

Under subsection (2)(a), C Pty Ltd is the subsidiary of A Pty Ltd because B, a subsidiary of A Pty Ltd, is a beneficiary of the trust.

Under subsection (1), D Pty Ltd is the subsidiary of C Pty Ltd because, under the Corporations Act, it is a subsidiary of C Pty Ltd.

Under subsection (2)(b)(i), D Pty Ltd is the subsidiary of A Pty Ltd because C Pty Ltd, a relevant trust, has a majority interest in D Pty Ltd.

- (3) In addition, an unlisted corporation or trustee is a **subsidiary** of the other corporation if, under subsection (1) or (2), it is a subsidiary of a subsidiary of the other corporation.

## 167 What are a corporation's *land-holdings*

- (1) A corporation's **land-holdings** means the following—
  - (a) the corporation's interest<sup>22</sup> in land and anything fixed to the land that may be separately owned from the land, other than—
    - (i) a security interest; or
    - (ii) an interest in a trust;
  - (b) rights held by the corporation that—
    - (i) relate to, or affect, the use of the corporation's land and other land; and
    - (ii) enhance the value of the corporation's land;

<sup>22</sup> *Acts Interpretation Act 1954*, section 36—

**interest**, in relation to land or other property, means—

- (a) a legal or equitable estate in the land or other property; or
- (b) a right, power or privilege over, or in relation to, the land or other property.

- (c) an interest in land, and anything fixed to the land, that is the subject of a purchase agreement or sale agreement made by the corporation.
- (2) Also, a corporation's *land-holdings* includes the land-holdings, under subsection (1), of a subsidiary of the corporation as if a reference in the subsection to a corporation were a reference to the subsidiary.
- (3) However, a corporation's land-holdings do not include land-holdings held on trust by the corporation or a subsidiary of it unless the corporation or any subsidiary of it is a beneficiary of the trust.

### **168 What is a corporation's *property***

- (1) A corporation's *property* means the corporation's interest in any property other than a security interest or interest in a trust.
- (2) Also, a corporation's *property* includes any property under subsection (1) of a subsidiary of the corporation as if a reference in the subsection to a corporation were a reference to the subsidiary.
- (3) However, the corporation's property does not include property held on trust by the corporation or a subsidiary of it unless the corporation or any subsidiary of it is a beneficiary of the trust.

## **Subdivision 3 Some basic concepts about unencumbered values of land-holdings and property**

### **169 Application of sdiv 3**

This subdivision applies for determining whether a corporation is a land rich corporation.

### **170 Value of co-owned land-holdings**

- (1) If a corporation's land-holdings include land-holdings in which it has an interest as co-owner, the unencumbered value



of the interests of all co-owners in the land-holdings must be included in working out the unencumbered value of the corporation's land-holdings.

*Note—*

Even though the unencumbered value of the interests of all co-owners of the land-holdings is included for determining whether a corporation is a land rich corporation, only the unencumbered value of the corporation's interest in the land-holdings is used under division 4 for working out land rich duty imposed on the dutiable value of a relevant acquisition, see section 184.

- (2) However, subsection (1) does not apply if the commissioner is satisfied that the co-ownership is not intended to avoid the imposition of land rich duty.

### **171 Value of land-holdings in uncompleted agreement for transfer included**

To remove any doubt, it is declared that the unencumbered value of the land the subject of a purchase agreement or sale agreement made by the corporation or a subsidiary of the corporation must be included in working out the unencumbered value of a corporation's land-holdings.

### **172 Value of particular property disregarded**

- (1) For working out the unencumbered value of a corporation's property, the following kinds of property must be disregarded—
  - (a) cash;
  - (b) money on deposit with any person;
  - (c) negotiable instruments;
  - (d) loans to associated persons of the corporation;
  - (e) loans that are to be repaid on demand or within 1 year after the money is lent;
  - (f) amounts paid or payable to the corporation or a subsidiary of the corporation under a sale agreement for land made by the corporation or subsidiary;

- (g) amounts owing to the corporation or a subsidiary of the corporation for shares issued by the corporation or subsidiary;
  - (h) the corporation's shareholding in a subsidiary of the corporation;
  - (i) the shareholding of a subsidiary of the corporation in another subsidiary of the corporation.
- (2) Also, property must be disregarded, if the commissioner is satisfied the reason for the corporation's ownership of the property is to avoid the imposition of land rich duty.

**173 Value of land-holdings and property—business property disregarded**

For an acquisition of an interest in a corporation that is a dutiable transaction to which chapter 2, part 10, applies, business property taken to have no value under the part must be disregarded in working out the unencumbered value of the land-holdings or property of the corporation.

**Division 3 Liability for land rich duty**

**174 When liability for land rich duty arises**

A liability for land rich duty imposed on a relevant acquisition arises when the acquisition is made.

**175 Who is liable to pay land rich duty**

- (1) Land rich duty imposed on a relevant acquisition must be paid by the acquirer.
- (2) However, if a person makes a relevant acquisition because interests are aggregated under section 158(1)(b)(ii) or (iii), the person and the related persons of the person are jointly and severally liable for the payment of the land rich duty.

**176 Rate of land rich duty**

The rate of land rich duty imposed on the dutiable value of a relevant acquisition stated in schedule 3, column 1, is stated opposite the value in schedule 3, column 2.

**177 Land rich duty statement**

The acquirer under a relevant acquisition, or for a relevant acquisition mentioned in section 175(2), the acquirer or the related persons of the acquirer must within 30 days after the acquisition is made, lodge a statement in the approved form (a *land rich duty statement*).

Maximum penalty—40 penalty units.

**178 Effect of lodging land rich duty statement by acquirer or related person**

The lodging, under section 177, of a land rich duty statement by the acquirer or a related person of the acquirer relieves the other person from complying with the section.

**Division 4 Dutiable value of relevant acquisitions****179 Working out dutiable value of relevant acquisition**

- (1) The dutiable value of a relevant acquisition is the unencumbered value of all Queensland land-holdings of the land rich corporation at the time of the relevant acquisition multiplied by the interest in, or total of interests in, the corporation constituting the relevant acquisition.<sup>23</sup>
- (2) Subsection (3) applies to the following relevant acquisitions—
  - (a) a relevant acquisition mentioned in section 158(1)(c);
  - (b) a relevant acquisition made by a person in the following circumstances—

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<sup>23</sup> See section 14 (What is the *unencumbered value* of property).

- (i) the person together with related persons of the person had a majority interest in the land rich corporation immediately before the relevant acquisition;
  - (ii) the interests of the person and related persons were previously aggregated so that duty under subsection (1) was paid for a relevant acquisition in the land rich corporation;
  - (iii) since the relevant acquisition mentioned in subparagraph (ii), no other related person of the person has acquired an interest in the corporation.
- (3) For applying subsection (1) to a relevant acquisition mentioned in subsection (2), the interest is the increased interest in the land rich corporation that is acquired by the person by the relevant acquisition.

*Examples for subsections (2) and (3)—*

1. A and B are related persons. A holds a 30% interest in a land rich corporation. B acquires a 25% interest and, when aggregated with A's interest, a majority interest. If A acquires another 5% bringing its interest to 35%, for working out the dutiable value, the interest constituting the relevant acquisition is 5%.
  2. A and B are related persons. A holds a 30% interest in a land rich corporation. B acquires a 25% interest and, when aggregated with A's interest, a majority interest. If A acquires B's 25% interest, for working out the dutiable value, the interest constituting the relevant acquisition is 25%.
- (4) For applying subsection (1) to a relevant acquisition, the interest mentioned in section 409(2) must be disregarded.

*Note—*

Under section 409(2), land rich duty is not imposed on particular interests acquired under a corporate reconstruction.

- (5) This section has effect subject to a deduction allowed under sections 185 to 188.

## **180 Aggregation of particular relevant acquisitions**

- (1) This section applies for aggregating relevant acquisitions that together form, evidence, give effect to or arise from what is,

substantially 1 arrangement if a person makes a relevant acquisition mentioned in section 179(2).

- (2) For assessing land rich duty on each of the relevant acquisitions, the acquisitions must be aggregated and treated as a single relevant acquisition.
- (3) For subsection (1), all relevant circumstances relating to the relevant acquisitions must be taken into account in deciding whether they together form, evidence, give effect to or arise from what is, substantially 1 arrangement.
- (4) For subsection (3), relevant circumstances include the following—
  - (a) whether any of the acquisitions are conditional on entry into, or completion of, any of the other acquisitions;
  - (b) whether the parties to any of the acquisitions are the same;
  - (c) whether any party to an acquisition is a related person of another party to any of the other acquisitions;
  - (d) the time over which the acquisitions take place;
  - (e) whether, after the acquisitions take place, the acquirers' interests will be used together or dependently with one another;
  - (f) whether, before the acquisitions take place, the interests were used together or dependently with one another.
- (5) Land rich duty imposed on the relevant acquisition aggregated under this section must—
  - (a) be assessed on the total of the dutiable values of the acquisitions when the liability for land rich duty for each of the acquisitions arose; and
  - (b) be apportioned between the acquisitions as decided by the commissioner.
- (6) The acquirer must, when lodging the land rich duty statement relating to the acquisition, give notice to the commissioner stating details known to the acquirer about—
  - (a) all of the interests of the acquirer and related persons of the acquirer included or to be included in the arrangement mentioned in subsection (1); and

- (b) the dutiable value of each relevant acquisition.

*Note—*

Under the Administration Act, the requirement under this subsection is a lodgment requirement for which a failure to comply is an offence under section 121 of that Act.

### **181 Unencumbered value of Queensland land-holdings of land rich corporation**

- (1) For section 179, the unencumbered value of the Queensland land-holdings of a land rich corporation at the date of a relevant acquisition is—
- (a) for a corporation that is a land rich corporation under section 165(1)—the unencumbered value of the corporation's land-holdings in Queensland at the date of the relevant acquisition; or
- (b) for a corporation that is a land rich corporation under section 165(2)—the unencumbered value of the corporation's land-holdings in Queensland other than the land-holdings mentioned in section 165(2), at the date of the relevant acquisition.
- (2) This section has effect subject to sections 182 to 184.

### **182 Unencumbered value of land-holdings of subsidiary of land rich corporation**

- (1) Subsection (2) applies for working out the unencumbered value of the Queensland land-holdings of a land rich corporation mentioned in section 181(1)(a) to the extent that the land-holdings comprise land-holdings of a subsidiary of the corporation.
- (2) The unencumbered value of the Queensland land-holdings of the corporation is the proportion of the unencumbered value of the land-holdings in Queensland of all the subsidiaries to which the corporation would be entitled if they were wound up at the same time without regard to their liabilities.
- (3) For subsection (2), if the subsidiary is a trustee of a trust, the unencumbered value of the Queensland land-holdings of the corporation on the winding up of all the subsidiaries is the

greatest proportion of the unencumbered value of the land-holdings in Queensland of the trust that the corporation could derive at any time from the trust without regard to the liabilities of any of the subsidiaries.

- (4) Without limiting subsection (3), land-holdings may be derived by—
  - (a) the fulfilment of a condition; or
  - (b) the outcome of a contingency; or
  - (c) the exercise or non-exercise of a power or discretion.
- (5) To remove any doubt it is declared that land-holdings may be derived by the corporation even if a subsidiary of the corporation is a beneficiary of a trust.
- (6) If there is more than 1 subsidiary of the corporation that is a beneficiary of a trust, for subsection (2), the proportion of the unencumbered value of the Queensland land-holdings that may be derived from the trust must not be more than the whole.

### **183 Land transferred for shares to be disregarded**

- (1) This section applies if the relevant acquisition is the issue of shares to a person in the following circumstances—
  - (a) the shares are issued to the person in consideration of a transfer of land to the corporation by the person;
  - (b) transfer duty is paid for the transfer;
  - (c) the land is not the only land of the corporation;
  - (d) the person is not the only shareholder of the corporation.
- (2) In working out the unencumbered value of the Queensland land-holdings of a land rich corporation, the value of the land must be disregarded.

### **184 Value of co-owned land-holdings**

The value of land-holdings in which a corporation has an interest as co-owner, is the unencumbered value of the corporation's interest in the land-holdings.

**185 Deduction—corporate trustee duty**

- (1) This section applies if—
  - (a) corporate trustee duty has been paid or is payable on a relevant acquisition under part 2; and
  - (b) land in which the corporate trustee, or relevant corporation for a corporate trustee, has an interest at the time of the relevant acquisition under part 2, has been included in working out the dutiable value of a relevant acquisition under this part; and
  - (c) the relevant acquisitions are part of the 1 arrangement.
- (2) Land rich duty imposed on the relevant acquisition must be reduced by the amount of corporate trustee duty paid or payable for the land to the extent that the land was included in working out the dutiable value of the relevant acquisition under this part.

**186 Deduction—transfer duty for particular trusts**

- (1) This section applies if—
  - (a) transfer duty has been paid or is payable on a dutiable transaction that is a trust acquisition for a trust, other than a discretionary trust; and
  - (b) land held by the trustee as trustee of the trust at the time of the transaction has been included in working out the dutiable value of the relevant acquisition under this part; and
  - (c) the acquisitions are part of the 1 arrangement.
- (2) Land rich duty imposed on the relevant acquisition must be reduced by the amount of transfer duty paid or payable for the land to the extent that the land was included in working out the dutiable value of the relevant acquisition under this part.

**187 Deduction—transfer duty for marketable securities**

- (1) This section applies if—
  - (a) transfer duty is paid or payable for marketable securities the subject of a dutiable transaction or an equivalent



duty in another State is paid or payable for the marketable securities; and

- (b) the dutiable transaction is a relevant acquisition.
- (2) Land rich duty imposed on the relevant acquisition must be reduced by an amount worked out using the following formula—

$$R = \frac{LV \times TD}{PV}$$

where—

*LV* means the unencumbered value of all Queensland land-holdings of the land rich corporation at the time of the relevant acquisition under section 181.

*PV* means the unencumbered value of all the property of the land rich corporation at the time of the relevant acquisition.

*R* means the amount of the reduction.

*TD* is the transfer or equivalent duty paid or payable for the marketable securities.

## **188 Deduction—mortgage duty**

- (1) This section applies if—
- (a) mortgage duty has been paid on a transfer, or agreement for the transfer, of shares by way of security; and
  - (b) afterwards, the transferee acquires ownership of the shares free from any interest or equity of the previous holder of the shares; and
  - (c) the transferee and related persons of the transferee were to newly acquire all of the shares they hold in the corporation at the time of the acquisition mentioned in paragraph (b), the acquisition would be a relevant acquisition.
- (2) Also, this section applies if—
- (a) mortgage duty has been paid on a transfer, or agreement for the transfer, of shares by way of security; and

- (b) the commissioner is not satisfied of the matter mentioned in section 190; and
  - (c) the acquisition mentioned in paragraph (a) is a relevant acquisition.
- (3) For subsection (1), the transferee is taken to have made a relevant acquisition of the shares owned by the transferee and related persons of the transferee.
- (4) Land rich duty imposed on the relevant acquisition must be reduced by the mortgage duty paid.

## **Division 5                      Exempt acquisitions**

### **189      Exemption—particular share issues**

- (1) Land rich duty is not imposed on an acquisition by a person of an interest on the initial allotment of shares on the registration of a corporation.
- (2) Also, land rich duty is not imposed on an acquisition by a person if—
- (a) the interest was acquired on the issue of shares to a person in consideration of a transfer of land to the corporation by the person; and
  - (b) transfer duty is paid or payable for the acquisition of the land by the corporation; and
  - (c) the land is the only land of the corporation; and
  - (d) the person is the only shareholder of the corporation.
- (3) In addition, land rich duty is not imposed on an acquisition by a person if—
- (a) the interest is acquired on a dealing in shares for all of the shareholders of the corporation; and
  - (b) the interests of the shareholders after the dealing are, as near as practicable, the same as the proportions in which they held the shares before the dealing; and
  - (c) the rights among the shareholders have not changed significantly because of the dealing in the shares.

(4) In this section—

*dealing*, for shares, means the issue, cancellation, redemption or buy-back of the shares.

### **190 Exemption—security interests**

Land rich duty is not imposed on an acquisition of a security interest if the commissioner is satisfied the interest was not acquired with the intention of avoiding the imposition of land rich duty.

### **191 Exemption—change of trustee**

Land rich duty is not imposed on a relevant acquisition for the sole purpose of giving effect to a change of a trustee if—

- (a) the acquisition is not part of an arrangement—
  - (i) involving a change in the rights or interest of a beneficiary of the trust; or
  - (ii) terminating the trust; and
- (b) the acquisition is not part of an arrangement to avoid the imposition of duty; and
- (c) transfer duty has been paid on all trust acquisitions for which transfer duty is imposed for the trust before the acquisition.

### **192 Exemption—acquisition by liquidator**

Land rich duty is not imposed on a relevant acquisition by a person if the interest was acquired solely in the person's capacity as a liquidator.

### **193 Exemption—compromise or arrangements**

Land rich duty is not imposed on a relevant acquisition by a person if—

- (a) the interest was acquired solely because of the making of a compromise or arrangement with creditors approved under the Corporations Act, part 5.1; and

- (b) the commissioner is satisfied the compromise or arrangement was not made with the intention of avoiding the imposition of land rich duty.

#### **194 Exemption—if transfer duty not imposed**

Land rich duty is not imposed on a relevant acquisition that is a dutiable transaction on which transfer duty is not imposed because of an exemption under any of the following provisions—

- sections 123 to 126
- sections 129 and 130
- sections 130A and 130B
- sections 134 and 135
- section 141
- section 143
- section 148(1)(c).<sup>24</sup>

#### **195 Exemption—no liability for transfer duty on acquisition in other way**

Land rich duty is not imposed on an acquisition by a person if—

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<sup>24</sup> Sections 123 (Exemption—particular distribution of dutiable property to a beneficiary), 124 (Exemption—deceased person’s estate), 125 (Exemption—particular vestings of dutiable property), 126 (Exemption—transactions for trust created for person under legal disability), 129 (Exemption—transfer by direction to primary custodian for responsible entity of registered managed investment scheme), 130 (Exemption—other transfers of scheme property of registered managed investment scheme), 130A (Exemption—transfer by direction to custodian for a superannuation entity), 130B (Exemption—other transfers of fund property of public superannuation entities), 134 (Exemption—forfeiture orders), 135 (Exemption—industrial organisations), 141 (Exemption—particular statutory bodies), 143 (Exemption—change of tenure) and 148 (Exemption—marketable securities etc.)

- (a) the land-holdings of a corporation could have been acquired by the person without incurring a liability to pay transfer duty for the acquisition of land other than under chapter 10, part 1;<sup>25</sup> and
- (b) the commissioner is satisfied the acquisition would not have been part of an arrangement to avoid the imposition of land rich duty.

### **196 Interests acquired under exempt acquisitions disregarded for particular purposes**

An interest acquired under an exempt acquisition, other than an exempt acquisition under section 195, must be disregarded as an interest in a land rich corporation when—

- (a) deciding whether a person has, under section 158(1)(b)(i) or (ii), acquired an interest in the corporation; or
- (b) aggregating interests under section 158(1)(b)(i) or (ii).

## **Division 6 Reassessments for land rich duty**

### **197 When commissioner must make reassessment**

- (1) The commissioner must make a reassessment of land rich duty imposed for a relevant acquisition if—
  - (a) at the time of the relevant acquisition, the corporation's land-holdings included land the subject of—
    - (i) a sale agreement that was later completed; or
    - (ii) a purchase agreement that was not completed; and
  - (b) the commissioner is satisfied the agreement was not made or was not part of an arrangement made for the purpose of avoiding the imposition of land rich duty.
- (2) Also, the commissioner must make a reassessment of land rich duty imposed for a relevant acquisition if at the time of

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<sup>25</sup> Chapter 10 (General exemptions), part 1 (Exemptions for particular duties for corporate reconstruction)

the relevant acquisition a person is taken to have acquired an interest in a corporation under an agreement to acquire the interest but the agreement is not completed.

- (3) When reassessing land rich duty under subsection (1), the commissioner must disregard the land mentioned in the subsection in—
  - (a) deciding whether the corporation is a land rich corporation; and
  - (b) working out the dutiable value of the relevant acquisition.
- (4) When reassessing the land rich duty under subsection (2), the commissioner must disregard the interest mentioned in the subsection.
- (5) For a reassessment under subsection (1) or (2), the acquirer under the relevant acquisition must lodge the land rich duty statement for the acquisition.
- (6) Subsection (1) or (2) applies to the reassessment despite the limitation period under the Administration Act for reassessments.<sup>26</sup>

## **Division 7            Enforcement**

### **Subdivision 1        Charges**

#### **198    Registration of charge over land for unpaid land rich duty**

- (1) This section applies if land rich duty is not paid by the date by which the duty must be paid.<sup>27</sup>
- (2) The liability to pay the outstanding amount of land rich duty is a charge on land owned by the land rich corporation concerned in the relevant acquisition for which the land rich duty is payable and any subsidiary of the corporation.

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<sup>26</sup> See the Administration Act, part 3 (Assessments of tax), division 3 (Reassessments).

<sup>27</sup> See the Administration Act, section 32 (Time for payment of other amounts).

- (3) The commissioner may lodge a request with the registrar that the charge be registered over stated land owned by the corporation or its subsidiary.
- (4) The request must be in the appropriate form.
- (5) The registrar must register the charge over the land on lodgment of—
  - (a) the request; and
  - (b) a certificate of the commissioner stating there is a charge over the land under this section for the outstanding amount of land rich duty.

## **199 Release of charge**

- (1) This section applies if—
  - (a) the outstanding amount of land rich duty is paid; or
  - (b) under a reassessment, no land rich duty is payable.
- (2) The commissioner must, as soon as practicable after payment of the outstanding amount of land rich duty or the reassessment, lodge with the registrar a request to release the charge in the appropriate form.
- (3) The registrar must register the release of the charge over the land.
- (4) This section does not prevent the commissioner requesting the release of the charge in other circumstances.

## **Subdivision 2 Power of sale**

### **200 Commissioner may apply to Supreme Court for order to sell**

- (1) This section applies if—
  - (a) under subdivision 1, a charge has been registered over land; and
  - (b) the outstanding amount of land rich duty 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 notice to the person liable to pay the land rich duty and the owner of the land of the commissioner's intention to apply to the Supreme Court for an order to sell the land unless the outstanding amount of land rich duty is paid within 6 months after the date of the notice.

### **201 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 200; and
  - (b) there is an outstanding amount of land rich duty 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 202(a) to (d).

### **202 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 amounts secured by a security interest or charge on the land recorded before the charge, unless the land is sold subject to the security interest or charge;
- (d) fourth, in payment of the outstanding amount of land rich duty under the Administration Act, section 42;<sup>28</sup>
- (e) fifth, any balance must be applied as the court orders.

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28 Administration Act, section 42 (Application of payments to assessment liability)



**203 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.

**204 Corporation or subsidiary may recover proceeds of sale as debt**

- (1) The amount equal to the proceeds of the sale of land under the order less an amount paid under section 202(c) is a debt payable to the corporation or subsidiary that previously owned the land by the persons liable to pay the land rich duty for which the order was made.
- (2) The corporation or subsidiary may recover the debt in a court of competent jurisdiction.

**Part 2 Corporate trustee duty****Division 1 Preliminary****205 Imposition of corporate trustee duty**

- (1) This part imposes duty (*corporate trustee duty*) on relevant acquisitions.

*Note—*

Exemptions for corporate trustee duty are dealt with in division 6.

- (2) Corporate trustee duty is imposed on the dutiable value of a relevant acquisition.

**206 Interpretation for property held by partnership or trust**

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

**Division 2 Some basic concepts for corporate trustee duty****207 What is a *relevant acquisition***

A person makes a *relevant acquisition* if—

- (a) the person acquires a share interest in a corporate trustee or relevant corporation for a corporate trustee; and
- (b) the acquisition is part of an arrangement under which any person obtains, directly or indirectly, a benefit relating to the property held by the corporate trustee on trust.

**208 What is a *share interest***

A *share interest* is a person's interest as a shareholder in a corporate trustee or relevant corporation for a corporate trustee.

**209 What is a *corporate trustee***

A *corporate trustee* is an unlisted corporation, other than an authorised trustee corporation, that is the trustee of a discretionary trust that—

- (a) holds dutiable property on trust for the discretionary trust; or
- (b) has an indirect interest in dutiable property and that interest is held on trust for the discretionary trust.

**210 What is a corporate trustee's *indirect interest* in dutiable property**

A corporate trustee has an *indirect interest* in dutiable property if it—

- (a) has a partnership interest or trust interest in an ultimate entity; or
- (b) through a series of partnership interests or trust interests, or a combination of any of them, there is a connection between the corporate trustee and dutiable property of a partnership or trust in the series.

**211 What is a *relevant corporation* for a corporate trustee**

- (1) A corporation is a *relevant corporation* for a corporate trustee if the corporation is an unlisted corporation that has an interest in the corporate trustee.
- (2) For subsection (1), a corporation has an interest in a corporate trustee if—
  - (a) it has a share interest in the corporate trustee; or
  - (b) it has a share interest in a corporation that has a share interest in the corporate trustee.

**212 Acquiring share interest in corporation**

- (1) A person acquires a share interest in a corporate trustee or relevant corporation for a corporate trustee if—
  - (a) the person becomes a shareholder of the corporate trustee or relevant corporation; or
  - (b) being a shareholder, the person's share interest increases.
- (2) However, the acquisition of a share interest by a beneficiary from the personal representative in the administration of the estate of a deceased person is not an acquisition for this part.

**213 Contracted property**

- (1) For a corporate trustee or relevant corporation for a corporate trustee, contracted property is taken to be dutiable property held by the corporate trustee or relevant corporation.
- (2) For determining the dutiable value of a relevant acquisition—
  - (a) a sale agreement made by the corporate trustee or relevant corporation is taken not to have been made; and
  - (b) a purchase agreement made by the corporate trustee or relevant corporation is taken to have been completed.
- (3) If contracted property is included in determining the dutiable value of a relevant acquisition and the sale agreement for the property is later completed or the purchase agreement for the property is later rescinded, the commissioner must make a reassessment as if the contracted property were never held by the corporate trustee or relevant corporation.
- (4) For the reassessment, the acquirer under the relevant acquisition must lodge the corporate trustee duty statement for the acquisition.

**Division 3 Liability for corporate trustee duty****214 When liability for corporate trustee duty arises**

A liability for corporate trustee duty imposed on a relevant acquisition arises when the acquisition is made.

**215 Who is liable to pay corporate trustee duty**

Corporate trustee duty imposed on a relevant acquisition must be paid by the acquirer.

**216 Rate of corporate trustee duty**

The rate of corporate trustee duty imposed on the dutiable value of a relevant acquisition is—

- (a) for dutiable property that is a Queensland marketable security—60c for each \$100, or part of \$100, of the dutiable value relating to the security; and
- (b) for other dutiable property—stated in schedule 3, column 2, opposite the dutiable value relating to the property in schedule 3, column 1.

### **217 Corporate trustee duty statement**

The acquirer under a relevant acquisition, must within 30 days after the acquisition is made, lodge a statement in the approved form (a *corporate trustee duty statement*).

Maximum penalty—40 penalty units.

## **Division 4 Apportionment of unencumbered value for particular relevant acquisitions**

### **218 Apportionment—head office or principal place of business in Queensland**

- (1) This section applies for determining the unencumbered value of dutiable property that is a Queensland business asset, other than a debt or personal property, of a Queensland business that has its head office or principal place of business in Queensland if, at any time during the 3 financial years preceding the relevant acquisition concerned—
  - (a) a supply of land, money, credit or goods or any interest in them, or provision of services, has been made by the business to customers outside Queensland; or
  - (b) the asset has been used, exploited or exercised in, or relates to, a place outside Queensland.
- (2) A reference in this chapter to the unencumbered value of the property is taken to be a reference to the amount (the

*apportioned amount*) worked out using the following formula—

$$AA = UV \times \frac{(TS - OS)}{TS}$$

where—

*AA* means the apportioned amount.

*OS* means the gross amount of the supplies and provision of services made by the business to its customers in other States during the 3 completed financial years preceding the relevant acquisition.

*TS* means the gross amount of supplies and provision of services made by the business to all its customers during the 3 completed financial years preceding the relevant acquisition.

*UV* means the unencumbered value of the Queensland business asset mentioned in subsection (1).

- (3) However, the commissioner may decide the unencumbered value of the dutiable property on another basis if the commissioner is satisfied the other basis would be more appropriate in particular circumstances.

## **219 Apportionment—head office or principal place of business in another State**

- (1) This section applies for determining the unencumbered value of dutiable property that is a Queensland business asset, other than a debt or personal property, of a Queensland business that does not have its head office or principal place of business in Queensland if, at any time during the 3 financial years preceding the relevant acquisition concerned—
- (a) a supply of land, money, credit or goods or any interest in them, or provision of services, has been made by the business to customers in Queensland; or
  - (b) the asset has been used, exploited or exercised in, or relates to, Queensland.
- (2) A reference in this chapter to the unencumbered value of the property is taken to be a reference to the amount (the

*apportioned amount*) worked out using the following formula—

$$AA = UV \times \frac{QS}{TS}$$

where—

*AA* means the apportioned amount.

*QS* means the gross amount of the supplies and provision of services made by the business to its Queensland customers during the 3 completed financial years preceding the relevant acquisition.

*TS* means the gross amount of supplies and provision of services made by the business to all its customers during the 3 completed financial years preceding the relevant acquisition.

*UV* means the unencumbered value of the Queensland business asset mentioned in subsection (1).

- (3) However, the commissioner may decide the unencumbered value of the dutiable property on another basis if the commissioner is satisfied the other basis would be more appropriate in particular circumstances.

## **220 Apportionment of particular acquisitions relating to existing rights**

- (1) This section applies for determining the unencumbered value of dutiable property that is an existing right if the right is exercisable or relates to the conduct of a business or an activity outside Queensland.
- (2) A reference in this chapter to the unencumbered value of the right is taken to be a reference to the amount that represents the same proportion of the unencumbered value that the unencumbered value of the right to the extent it is exercisable or relates to the conduct of a business or activity in Queensland bears to the total unencumbered value of the right.
- (3) However, the commissioner may decide the unencumbered value of the right on another basis if the commissioner is

satisfied the other basis would be more appropriate in particular circumstances.

## **Division 5                      Dutiable value of relevant acquisitions**

### **221      Acquirer's share interest is proportionate to shares in corporate trustee or relevant corporation**

- (1) For a relevant acquisition that is an acquisition of a share interest in a corporate trustee, the acquirer's share interest is the proportion that the number of shares the acquirer has bears to the total issued shares in the corporate trustee expressed as a percentage.
- (2) For a relevant acquisition that is an acquisition of a share interest in a relevant corporation for a corporate trustee if the relevant corporation has an interest in the corporate trustee as mentioned in section 211(2)(a), the acquirer's share interest is worked out by applying the acquirer's share interest in the relevant corporation to the relevant corporation's share interest in the corporate trustee.
- (3) For a relevant acquisition that is an acquisition of a share interest in a relevant corporation for a corporate trustee if the relevant corporation has an interest in the corporate trustee as mentioned in section 211(2)(b), the acquirer's share interest is worked out by applying—
  - (a) the acquirer's share interest in the relevant corporation to the relevant corporation's share interest in the other relevant corporation; and
  - (b) the result worked out under paragraph (a) to the other relevant corporation's share interest in the corporate trustee.
- (4) For subsections (2) and (3)—
  - (a) the acquirer's share interest in the relevant corporation is the proportion that the number of shares the acquirer acquires bears to the total issued shares in the relevant corporation expressed as a percentage; and



- (b) the relevant corporation's share interest in the corporate trustee is the proportion that the number of shares the relevant corporation holds bears to the total issued shares in the corporate trustee expressed as a percentage.
- (5) Also, for subsection (3), the relevant corporation's share interest in the other relevant corporation is the proportion that the number of shares the relevant corporation holds bears to the total issued shares in the other relevant corporation expressed as a percentage.
- (6) However, if the commissioner is satisfied the acquirer's share interest worked out under subsection (1), (2) or (3) does not accurately represent the acquirer's rights and obligations as a shareholder when compared with the rights and obligations of the other shareholders, the commissioner may decide the acquirer's share interest.
- (7) For applying subsection (1), (2) or (3) to a relevant acquisition that is an increase in the acquirer's share interest, the acquirer's share interest is taken to be the increase in the acquirer's share interest.

## **222 What is the dutiable value of a relevant acquisition**

- (1) The dutiable value of the relevant acquisition is the total of the amounts worked out by applying the acquirer's share interest to the unencumbered value, when the liability for corporate trustee duty arises, of—
  - (a) the dutiable property held on trust by the corporate trustee;<sup>29</sup> and
  - (b) any indirect interest in dutiable property held on trust by the corporate trustee.

*Note—*

Under section 213(1), dutiable property includes contracted property.

- (2) For subsection (1)(b), the unencumbered value of an indirect interest of a corporate trustee under section 210(a) is the amount worked out by applying to the unencumbered value of

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<sup>29</sup> See section 14 (What is the *unencumbered value* of property).

the dutiable property held by the entity in which the corporate trustee has a trust interest or partnership interest the corporate trustee's trust interest or partnership interest in the entity.

- (3) For subsection (1)(b), the unencumbered value of an indirect interest of a corporate trustee under section 210(b) is the amount worked out by—
  - (a) first applying to the unencumbered value of the dutiable property held by the ultimate entity, the trust interest or partnership interest of the trust or partnership (the *last beneficiary or partner*) that is a beneficiary or partner of the ultimate entity; and
  - (b) applying to the amount worked out under paragraph (a), and the unencumbered value of any dutiable property held by the last beneficiary or partner, the trust interest or partnership interest of the next trust or partnership in the series of trusts or partnerships that is a beneficiary or partner of the last beneficiary or partner; and
  - (c) applying the calculation in paragraph (b) for each of the other trusts or partnerships in the series until the first entity's trust interest or partnership interest is used in the calculation; and
  - (d) applying to the amount last worked out under paragraph (c) and the unencumbered value of any dutiable property held by the first entity, the trust interest or partnership interest of the corporate trustee.
- (4) Schedule 4 contains an example of how the dutiable value of a relevant acquisition is worked out.
- (5) If the corporate trustee is trustee of more than 1 discretionary trust, the unencumbered value of the dutiable property of each trust and each indirect interest held on trust by the corporate trustee must be aggregated in working out the dutiable value of the relevant acquisition.

## **223 Aggregation of particular relevant acquisitions**

- (1) This section applies for aggregating relevant acquisitions that together form, evidence, give effect to or arise from what is, substantially 1 arrangement.

- (2) For assessing corporate trustee duty on each of the relevant acquisitions, the acquisitions must be aggregated and treated as a single relevant acquisition.
- (3) For subsection (1), all relevant circumstances relating to the relevant acquisitions must be taken into account in deciding whether they together form, evidence, give effect to or arise from what is, substantially 1 arrangement.
- (4) For subsection (3), relevant circumstances include the following—
  - (a) whether any of the acquisitions are conditional on entry into, or completion of, any of the other acquisitions;
  - (b) whether the parties to any of the acquisitions are the same;
  - (c) whether any party to an acquisition is a related person of another party to any of the other acquisitions;
  - (d) the time over which the acquisitions take place;
  - (e) whether, after the acquisitions take place, the acquirers' interests will be used together or dependently with one another;
  - (f) whether, before the acquisitions take place, the interests were used together or dependently with one another.
- (5) Corporate trustee duty imposed on the relevant acquisition aggregated under this section must—
  - (a) be assessed on the total of the dutiable values of the acquisitions when the liability for corporate trustee duty for each of the acquisitions arose; and
  - (b) be apportioned between the acquisitions as decided by the commissioner.
- (6) The acquirer must, when lodging the corporate trustee duty statement relating to the acquisition, give notice to the commissioner stating details known to the acquirer about—
  - (a) all of the interests of the acquirer and related persons of the acquirer included or to be included in the arrangement mentioned in subsection (1); and
  - (b) the dutiable value of each relevant acquisition.

*Note—*

Under the Administration Act, the requirement under this subsection is a lodgment requirement for which a failure to comply is an offence under section 121 of that Act.

## **Division 6 Exempt acquisitions**

### **224 Exemption—change of trustee**

Corporate trustee duty is not imposed on a relevant acquisition for the sole purpose of giving effect to a change of a trustee if—

- (a) the acquisition is not part of an arrangement—
  - (i) involving a change in the rights or interest of a beneficiary of the trust; or
  - (ii) terminating the trust; and
- (b) the acquisition is not part of an arrangement to avoid the imposition of duty; and
- (c) transfer duty has been paid on all trust acquisitions for which transfer duty is imposed for the trust before the acquisition.

### **225 Exemption—relevant acquisition in family trust**

- (1) Corporate trustee duty is not imposed on a relevant acquisition if—
  - (a) the commissioner is satisfied the trust of which the corporate trustee is trustee is established primarily for the benefit of the members of a particular family or family company; and
  - (b) the acquirer under the relevant acquisition is a member of the family who, or is a family company that, does not hold the shares acquired as trustee.
- (2) The commissioner may be satisfied of the matter mentioned in subsection (1)(a), even if an exempt institution is the last taker in default of an appointment by the trustee of the trust.
- (3) In this section—

*family company*, for a trust, means a corporation in which all directors and shareholders are members of the particular family for which the trust is established.

## **226 Exemption—if transfer duty not imposed**

Corporate trustee duty is not imposed on a relevant acquisition that is a dutiable transaction on which transfer duty is not imposed because of an exemption under sections 123 to 126.<sup>30</sup>

## **Division 7 Deductions and reassessments**

### **227 Deduction—transfer duty for marketable securities**

- (1) This section applies if—
  - (a) transfer duty is paid or payable for a transfer, or agreement for the transfer, of shares of a corporate trustee or relevant corporation for a corporate trustee or an equivalent duty in another State is paid or payable for the transfer or agreement; and
  - (b) the transfer or agreement is a relevant acquisition.
- (2) Corporate trustee duty imposed on the relevant acquisition must be reduced by the amount of transfer or equivalent duty paid or payable.

### **228 Deduction—transfer duty for trust acquisition**

- (1) This section applies if—
  - (a) a person makes a trust acquisition for which transfer duty is paid or payable; and
  - (b) the acquisition is a relevant acquisition.

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<sup>30</sup> Sections 123 (Exemption—particular distribution of dutiable property to a beneficiary), 124 (Exemption—deceased person's estate), 125 (Exemption—particular vestings of dutiable property) and 126 (Exemption—transactions for trust created for person under legal disability)

- (2) Corporate trustee duty imposed on the relevant acquisition must be reduced by the amount of transfer duty paid or payable.

## **229 When commissioner must make reassessment**

- (1) The commissioner must make a reassessment of corporate trustee duty imposed for a relevant acquisition if at the time of the relevant acquisition a person is taken to have acquired a share interest in a corporation under an agreement to acquire the interest but the agreement is not completed.
- (2) When reassessing the corporate trustee duty under subsection (1), the commissioner must disregard the interest mentioned in the subsection.
- (3) For the reassessment, the acquirer under the relevant acquisition must lodge the corporate trustee duty statement for the acquisition.

# **Chapter 4 Lease duty**

## **Part 1 Preliminary**

### **230 Imposition of duty**

- (1) This chapter imposes duty (*lease duty*) on instruments that are—
  - (a) leases; or
  - (b) occupancy rights.

*Note—*

Exemptions for lease duty are dealt with in part 4. Also, other exemptions are dealt with in chapter 10.

- (2) Lease duty is imposed on the cost of a lease or occupancy right.

**Part 2****Some basic concepts about leases and occupancy rights****231 What is a *lease***

A *lease* is—

- (a) a lease, or agreement for lease, of land in Queensland; or
- (b) an offer for the grant of exclusive possession of land in Queensland.

**232 What is an *occupancy right***

- (1) An *occupancy right*, is an agreement granting, or an offer for the grant of, a right to occupy premises in Queensland if—
  - (a) the occupier intends to use the premises for conducting a business; and
  - (b) the occupier does not obtain a right to exclusive possession but the occupier's use and enjoyment of the premises as a place of business is not adversely affected by the absence of the right to exclusive possession; and
  - (c) one of the following subparagraphs applies—
    - (i) the right is for a term of less than 1 month and there is an arrangement for extension or renewal of the right beyond 1 month and the cost of the right is more than \$10 000 on an annual basis;
    - (ii) the right is for a term of at least 1 month but less than 1 year and the cost of the right is more than \$10 000 on an annual basis;
    - (iii) the right is for a term of at least 1 year and the consideration for the term of the right is more than \$10 000 annually.
- (2) In deciding whether the occupier's use and enjoyment of the premises is adversely affected, the following must be taken into account—

- (a) the periods the occupier's right to occupation is not exclusive;
- (b) the times when the occupier's right to occupy may be interrupted or denied.

### **233 What is the *cost* of a lease**

- (1) The *cost* of a lease is the rent payable for the lease.
- (2) However, the rent payable for the lease does not include the following—
  - (a) amounts paid for reasonable outgoings for the lease;
  - (b) penal rent, or increased rent in the nature of penal rent, payable for the lease;
  - (c) amounts paid in consideration of the termination or surrender of an existing lease or agreement relating to the leased premises;
  - (d) premiums, fines or other consideration payable for the grant of the lease;
  - (e) consideration paid for, or the value of, any moveable chattels taken over by the lessee from the lessor or outgoing lessee;
  - (f) if, on the leased premises, a business is to be carried on and an amount in excess of what would be the rent if a business was not carried on is charged for the lease—the excess amount.

### **234 What is the *cost* of an occupancy right**

- (1) The *cost* of an occupancy right is the consideration payable for the right.
- (2) However, the term does not include an amount payable for reasonable outgoings.



**235 Cost of lease or occupancy right variable**

If the cost of a lease or occupancy right may vary up to a maximum amount, the maximum amount is the cost of the lease or right.

**236 Cost of lease or occupancy right paid in goods or services**

- (1) If the cost of a lease or occupancy right includes the provision of goods or services, the value of the goods or services is included in the cost.
- (2) If the lease or occupancy right provides that the value of the goods or services must be at least, or must not be more than, a stated amount, or provides a conversion rate, the amount, or the amount worked out using the conversion rate, is the value of the goods or services for subsection (1).

**Part 3 Liability for, payment and reassessments of lease duty****237 When liability for lease duty arises**

- (1) A liability for lease duty arises for a lease or occupancy right when the lessee or grantee takes possession of the leased premises in accordance with the lease or right.
- (2) Also, if the lessee or grantee continues in possession of the leased premises after the lease or right ends, a liability for lease duty arises when the continued possession starts.

**238 Who is liable to pay lease duty**

Lease duty imposed on a lease or occupancy right must be paid by the lessor and lessee of the lease or the grantor and grantee of the right.

**239 Rate of lease duty**

The rate of lease duty imposed on a lease or occupancy right is 35c for each \$100, or part of \$100, of the cost of the lease or right.

**240 Lodging instrument**

The lessor of a lease or grantor of an occupancy right must, within 30 days after the liability for lease duty arises, lodge the lease or right.

**241 Lodging statements and payment of lease duty**

- (1) If, when the liability for lease duty arises, the cost of the lease or occupancy right, or part of the cost, is ascertainable (the *ascertainable amount*), the lessor or grantor must, within 30 days after the liability arises, lodge a statement in the approved form stating the ascertainable amount.
- (2) If, when the liability for lease duty arises, other than a liability mentioned in section 237(2), the cost of the lease or occupancy right, or part of the cost, is not ascertainable (the *unascertainable amount*), the lessor or grantor must, within the time stated in subsection (3)—
  - (a) lodge the lease or right and a statement in the approved form stating the unascertainable amount; and
  - (b) pay to the commissioner the amount of lease duty to the extent it relates to the unascertainable amount and any assessed interest and penalty tax.
- (3) For subsection (2), the stated time is 30 days after—
  - (a) if possession or occupation of the leased premises is terminated within the term of the lease or right—the end of possession; or
  - (b) if paragraph (a) does not apply—the final rent review carried out under the lease or right or, if no rent review is carried out, the end of the lease.
- (4) If, when the liability for lease duty mentioned in section 237(2) arises, the cost of the lease or occupancy right, or part of the cost, is not ascertainable (also the

*unascertainable amount*), the lessor or grantor must, within the time stated in subsection (5)—

- (a) lodge the lease or right and a statement in the approved form stating the unascertainable amount; and
  - (b) pay to the commissioner the amount of lease duty to the extent it relates to the unascertainable amount and any assessed interest and penalty tax.
- (5) For subsection (4), the stated time is 30 days after—
- (a) the first anniversary of the liability arising and each later anniversary; and
  - (b) the continued possession ceases.
- (6) However, the lessor or grantor does not have to comply with subsection (2) or (4) if the unascertainable amount is not more than \$10 000.
- (7) If a lease or occupancy right contains an option for a further period—
- (a) lease duty is only assessed under subsections (1) and (2) on the cost of the term of the lease or right; and
  - (b) if the option is exercised, liability to lease duty under subsections (1) and (2) for the further period arises when the option is exercised.
- (8) If during the term of a lease or occupancy right the cost of the lease is increased by agreement, other than under the terms of the lease, liability for the increased cost arises when the agreement is made.
- (9) For this section, the cost of a lease or occupancy right, or part of the cost, is ascertainable if the lease or right states the amount or provides how it is to be worked out and all factors necessary to work out the amount are known when the liability for lease duty arises.
- (10) For the Administration Act,<sup>31</sup> a statement under subsection (2) or (4) is taken to be a return for a self assessment for the cost of the lease or occupancy right.

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31 See the Administration Act, section 32 (Time for payment of other amounts).

**242 Reassessment of lease duty for particular earlier termination of lease or occupancy right**

- (1) This section applies if the commissioner is satisfied a lease or occupancy right is terminated because—
  - (a) the leased premises are destroyed during its term; or
  - (b) the lessee or grantee dies.
- (2) The commissioner must make a reassessment of lease duty on application made by—
  - (a) the lessor or grantor and lessee or grantee; or
  - (b) the lessor or grantor and personal representative of the lessee or grantee.
- (3) In making the reassessment, the cost of the lease or right relating to the unexpired term of the lease or right must be disregarded.
- (4) The application must be made within 6 months after the termination of the lease or right.
- (5) The applicant must lodge the lease or right with the application.
- (6) Subsection (2) applies to the reassessment despite the limitation period under the Administration Act for reassessments.<sup>32</sup>

**243 Credit for lease duty paid**

- (1) Subsection (2) applies if a lease or occupancy right is terminated and a replacement lease or occupancy right is entered into or granted in either of the following circumstances—
  - (a) the real property description of the leased premises changes because of a strata title or group title plan being registered over the land comprising the leased premises;
  - (b) the lessee takes a new lease or the grantee is granted a new occupancy right over premises in the same building because of the refurbishment of the leased premises.

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<sup>32</sup> See the Administration Act, part 3 (Assessments of tax), division 3 (Reassessments).

- (2) In assessing the lease duty on the replacement instrument, a credit must be allowed for the amount of lease duty paid to the extent that it relates to the unexpired term of the original lease or occupancy right.
- (3) Subsection (4) applies if—
  - (a) a liability for lease duty arises because of the exercise of an option for a further period contained in a lease or occupancy right (the *option period*);<sup>33</sup> and
  - (b) a new lease or occupancy right in substantial conformity with the option is entered into or granted, the term of which includes the option period.
- (4) In assessing the lease duty on the new lease or occupancy right, a credit must be allowed for the amount of lease duty paid for the option.
- (5) Subsection (6) applies if—
  - (a) a liability for lease duty arises because, at the end of a lease or occupancy right, the lessee or grantee continues in possession of the leased premises;<sup>34</sup> and
  - (b) a new lease or occupancy right is entered into or granted, the term of which includes the period the lessee or grantee continued in possession of the leased premises after the end of the lease or occupancy right (the *holding over period*).
- (6) In assessing the lease duty on the new lease or occupancy right, a credit must be allowed for the amount of lease duty paid for the holding over period.

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33 See section 241(7) (Lodging statements and payment of lease duty).

34 See section 237(2) (When liability for lease duty arises).

## Part 4 Exemptions for lease duty

### 244 Exemption—particular residences

Lease duty is not imposed on the following instruments if the leased premises are not used for carrying on a business or commercial venture—

- (a) a lease of a dwelling house;
- (b) a site agreement.

### 245 Exemption—leases under Land Act

Lease duty is not imposed on a lease issued under the *Land Act 1994*.

### 246 Exemption—National Trust leases and occupancy rights

Lease duty is not imposed on a lease, or grant of an occupancy right, to The National Trust of Queensland constituted under the *National Trust of Queensland Act 1963*.

## Chapter 5 Mortgage duty

### Part 1 Preliminary

#### 247 Imposition of mortgage duty

- (1) This chapter imposes duty (*mortgage duty*) on instruments that are mortgages, particular caveats claiming an interest under mortgages and particular releases of mortgages.

*Note—*

Concessions and exemptions for mortgage duty are dealt with in parts 6 and 7. Also, other exemptions are dealt with in chapter 10.

- (2) Mortgage duty is imposed on the amount secured by a mortgage.<sup>35</sup>

## **Part 2**                      **Some basic concepts for mortgage duty**

### **248**    **What is a *mortgage***

- (1) An instrument is a *mortgage* if it is—
- (a) a security by way of mortgage or charge over property wholly or partly in Queensland; or
  - (b) a security by way of a transfer of property wholly or partly in Queensland to a trustee, to be sold or otherwise converted into money, redeemable before the sale or conversion, other than if the transfer is made for the benefit of creditors who accept the transfer in full satisfaction of debts owed to them; or
  - (c) any transfer, or agreement for the transfer, of property wholly or partly in Queensland that is apparently absolute but is intended only as security;<sup>36</sup> or
  - (d) an instrument that, on the deposit of instruments of title to property wholly or partly in Queensland, becomes a mortgage or evidences the terms of a mortgage.
- (2) However, for this chapter, an instrument mentioned in subsection (1)(a) is a mortgage only if it is a security by way of mortgage or charge over property wholly or partly in Queensland at the liability date.

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<sup>35</sup> See part 4 (Amount secured by a mortgage).

<sup>36</sup> See section 32 (Transfer by way of security—land).

- (3) For sections 262, 268, 269, 276 and 281,<sup>37</sup> a reference to a mortgage or previous mortgage includes a reference to a mortgage first signed before the repeal of the repealed Act.

## 249 What is an *advance*

- (1) An *advance* is the provision or obtaining of funds by way of financial accommodation by—
- (a) a loan; or
  - (b) a bill facility that is 1 or more agreements, understandings or arrangements as a consequence of which a bill of exchange or promissory note—
    - (i) is drawn, accepted, endorsed or made; or
    - (ii) is held, negotiated or discounted.
- (2) Subsection (1)(b) applies whether or not the funds are obtained from—
- (a) the person who draws, accepts, endorses or makes the bill of exchange or promissory note; or
  - (b) a person who is a party to any of the agreements, understandings or arrangements.
- (3) An *advance* includes a contingent liability under section 259.
- (4) However, the term does not include an amount provided or obtained on the security of a mortgage for—
- (a) insurance of the secured property against fire; or
  - (b) keeping or effecting a policy of life insurance; or
  - (c) payment of duty for the security or any loan other than a current account secured by the mortgage.

## 250 What is a *loan*

Each of the following is a *loan*—

- (a) an advance of money;

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<sup>37</sup> Sections 262 (Collateral mortgage), 268 (Caveats), 269 (Releases of mortgages), 276 (What is a *home refinance mortgage*) and 281 (Further concession for particular home refinance mortgages)



- (b) the payment of money for or on account of, or at the request of, any person;
- (c) a forbearance to require the payment of money owing on any account;
- (d) any transaction, whatever its terms or form, that in substance effects a loan of money.

## **251 Location of property**

- (1) For this chapter, the following property is taken to be located in the place stated—
  - (a) marketable securities of a company—in the State the company is taken to be registered under the Corporations Act;
  - (b) units in a unit trust—in the place where the register on which the units are registered is kept or, if the register is not kept in Australia, in the place of residence of the manager or responsible entity of the unit trust;
  - (c) debt securities of a government of a State—in that State;
  - (d) an insured person's interest in, or right to receive amounts payable under, a policy of insurance that is security for a premium funding agreement—the place of residence of the insured person.
- (2) Subsection (1)(a) is declared to be a Corporations legislation displacement provision for the Corporations Act, section 5G,<sup>38</sup> in relation to section 1070A(4)<sup>39</sup> of that Act.

## **251A Treatment of mortgages affecting property in Victoria**

For this chapter, a mortgage or mortgage package affecting property located in Victoria is taken to have been properly stamped, stamped with similar duty, duly stamped or exempt from duty under the *Duties Act 2000* (Vic) only to the extent

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38 Corporations Act, section 5G (Avoiding direct inconsistency arising between the Corporations legislation and State and Territory laws)

39 Corporations Act, section 1070A (Nature of shares and certain other interests in a company or registered scheme)

the mortgage or mortgage package was properly stamped, stamped with similar duty, duly stamped or exempt from duty under that Act before 1 July 2004.

## **Part 3                      Liability for mortgage duty**

### **252      When liability for mortgage duty arises**

- (1) A mortgage is liable to mortgage duty when it is first signed.
- (2) A mortgage is liable to mortgage duty on the making of an advance or further advance that results in the total amount secured by the mortgage exceeding the amount secured by it for which it has been properly stamped, or is exempt from duty, under this or a corresponding Act.
- (3) Subsection (4) applies to an instrument of security if—
  - (a) the instrument does not affect property in Queensland when it is first signed; and
  - (b) the instrument affects property in Queensland—
    - (i) for land, other than a security interest—within 1 year after the instrument is first signed; or
    - (ii) for other property—at any time after the instrument is first signed; and
  - (c) for other property mentioned in paragraph (b)(ii)—
    - (i) the property is specifically identified, whether or not in the instrument, when the instrument is first signed; and
    - (ii) under an arrangement in place when the instrument is first signed, the property is intended to be secured by the security.
- (4) The instrument of security is liable for mortgage duty when it first affects the property or land unless it is stamped with, or is exempt from, similar duty under a corresponding Act.
- (5) An instrument that, on the deposit of instruments of title to property in Queensland, becomes a mortgage or evidences the

terms of a mortgage is liable to mortgage duty on the deposit of the instruments.

**253 Who is liable to pay mortgage duty**

Mortgage duty imposed on a mortgage must be paid by the mortgagor.

**254 Rate of mortgage duty**

The rate of mortgage duty imposed on a mortgage is 40c for each \$100, or part of \$100, of the amount secured by the mortgage as determined under part 4.

**255 Lodging mortgage**

The mortgagor or mortgagee under a mortgage must, within 30 days after the liability for mortgage duty arises, lodge the mortgage.

**256 Effect of lodging mortgage by mortgagor or mortgagee**

The lodging, under section 255, of a mortgage by the mortgagor or mortgagee relieves the other person from complying with the section.

**257 Stamping before advance**

- (1) A mortgage may be stamped before an advance whether or not an earlier advance has been made.
- (2) A mortgage mentioned in section 260 or 261 may be stamped to secure any amount exceeding that to which it is already stamped based on the dutiable proportion for the mortgage when it is stamped.

## Part 4 Amount secured by a mortgage

### 258 What is the amount secured by a mortgage

- (1) The amount secured by a mortgage is the amount of advances actually secured by it and recoverable under it.
- (2) However, if—
  - (a) a mortgage has been properly stamped, or is exempt from duty, under this or a corresponding Act for an amount of advances secured by the mortgage; and
  - (b) a further advance secured by the mortgage is made; and
  - (c) the total amount secured by the mortgage exceeds the amount for which the mortgage has been properly stamped;

the amount secured by the mortgage is, for section 247(2), the excess amount mentioned in paragraph (c).

### 259 Contingent liabilities

- (1) This section applies to a mortgage securing or capable of securing, whether directly or indirectly, an amount contingently payable (the *secured amount*) in connection with an advance (the *primary advance*)—
  - (a) by a guarantor or indemnifying party under a guarantee or indemnity; or
  - (b) by another party under another type of instrument.
- (2) Mortgage duty must be assessed on the secured amount as if it were a separate advance secured by the mortgage.
- (3) For subsection (2), the contingent liability is limited to the amount of the primary advance.
- (4) This section—
  - (a) does not apply if the commissioner is satisfied there is no connection between the mortgage and the primary advance; and
  - (b) does not require mortgage duty to be paid more than once for an advance.

**260 Mortgage over property not wholly in Queensland**

- (1) Mortgage duty must be assessed for a mortgage over property that is partly in and partly outside Queensland as if the amount secured by it were only the dutiable proportion.
- (2) For subsection (1), the dutiable proportion is the proportion of the amount secured by the mortgage on which mortgage duty is imposed that, at the liability date, the value of property in Queensland affected by the mortgage bears to the value of all property affected by it, other than property located outside Australia or in a Territory or in Victoria.
- (3) The dutiable proportion must be worked out by reference to the property values according to a referable point.
- (4) For subsection (3), a referable point is any of the following prepared in the year before the liability date for the mortgage—
  - (a) an independent valuation of the secured property;
  - (b) a statement of the mortgagee based on information obtained by the mortgagee in deciding to make the advance to the mortgagor;
  - (c) property valuations used by the mortgagor in preparing an annual return to be lodged under the Corporations Act;
  - (d) a financial report of the mortgagor, certified by an independent auditor as presenting a true and fair view of a corporation's financial position;
  - (e) agreed property valuations that form the basis of the mortgagor's insurance policies;
  - (f) another document the commissioner considers to be appropriate for working out the dutiable proportion.
- (5) However, if there is more than 1 referable point for a mortgage, the referable point is the later or latest of the referable points.
- (6) Also, the acceptable referable point must be the same acceptable referable point used to determine liability to duty under a corresponding Act.

**261 Advances secured by mortgage package**

- (1) If—
  - (a) at a liability date, 2 or more security instruments secure or partly secure the same amount; and
  - (b) at least 1 of the instruments is a security affecting property wholly or partly outside Queensland; and
  - (c) at least 1 of the instruments is a mortgage;the instruments are a *mortgage package*.
- (2) Also, a *mortgage package* includes—
  - (a) a mortgage signed after the liability date if the commissioner is satisfied the mortgage was intended to be part of the package; and
  - (b) a mortgage previously collateral to an earlier advance under 1 or more of the other mortgages in the package.
- (3) Mortgage duty must be assessed under this part on the mortgage package as if the instruments comprising the mortgage package were 1 mortgage, first signed on the day the last of the signed instruments was signed.
- (4) One of the mortgages in the mortgage package must be stamped with the mortgage duty paid in Queensland for the mortgage package and all other mortgages in the mortgage package must be stamped as a collateral mortgage.

**262 Collateral mortgage**

- (1) Mortgage duty is not imposed on the part of the amount secured by a collateral mortgage that is secured by—
  - (a) a mortgage or security instrument that is properly stamped under this Act or a corresponding Act; or
  - (b) a mortgage package that has been properly stamped under section 261 or a corresponding Act.
- (1A) However, a mortgage (a *secondary mortgage*) that secures all or part of the same amount as another mortgage, security instrument or mortgage package that affects property located in Victoria and has been properly stamped under this Act or a corresponding Act is taken not to be a collateral mortgage if

the commissioner is satisfied there was an arrangement to avoid the imposition of mortgage duty on the secondary mortgage.

- (2) A collateral mortgage that no longer secures an amount secured by a mortgage, instrument or mortgage package mentioned in subsection (1) is not security for another advance unless mortgage duty for the amount of the other advance is paid.

### **263 Extent mortgage is enforceable**

- (1) A mortgage or mortgage package for which mortgage duty is imposed or a similar duty is chargeable under a corresponding Act is enforceable only to the extent of the amount secured by the mortgage or mortgage package for which duty has been paid, or the mortgage or mortgage package is exempt from duty, under this Act or the corresponding Act.
- (2) For subsection (1), mortgage duty has been paid on a mortgage or mortgage package affecting property that is partly in and partly outside Queensland if—
  - (a) duty has been paid on the total advances under the mortgage or mortgage package when the mortgage duty paid is taken with the duty paid under a corresponding Act; and
  - (b) the dutiable proportion of the mortgage or mortgage package is not incorrect by more than 5%.

*Note—*

Under section 260(3), the dutiable proportion must be worked out by reference to property values according to a referable point.

- (3) For subsection (1), if an advance is made on or after 1 July 2004 under a mortgage or mortgage package that, before 1 July 2004, affected property located in Victoria and was properly stamped under the *Duties Act 2000* (Vic), the mortgage or mortgage package is taken to be a mortgage or mortgage package for which a similar duty is chargeable under a corresponding Act.

**264 Limit on security provided by stamped and collateral mortgages**

- (1) A stamped or collateral mortgage that was, but is no longer, part of the same mortgage package and no longer secures the same amount secured by the package is not security for another advance unless mortgage duty for the amount of the other advance is paid.

*Example for subsection (1)—*

A has property in 5 States, each valued at \$150 000. A borrows \$100 000 secured by a mortgage package comprising 5 mortgages. The mortgages secure the full \$100 000 and are stamped under this Act and the corresponding Acts of the other States on the basis that the dutiable proportion for each mortgage is \$20 000.

Under a restructure of the loans, the Queensland mortgage no longer secures the \$100 000 which remains secured by the other mortgages on which duty has been paid in the other States.

Under this subsection, if A takes out a new loan, the Queensland mortgage is not security for the new loan unless mortgage duty imposed on it is paid.

- (2) The fact that the stamped or collateral mortgage is no longer part of the mortgage package does not affect the amounts for which the remaining mortgages in the mortgage package provide security.

**265 Multi-jurisdictional statement**

- (1) If mortgage duty is imposed on the dutiable proportion of a mortgage, (whether for a mortgage over property not wholly in Queensland, a mortgage package or on original or subsequent advances), the mortgagor or mortgagee must make a statement in the approved form about the location and value of the secured property.

Maximum penalty—40 penalty units.

- (2) The making of a statement under subsection (1) by the mortgagor or mortgagee relieves the other person from complying with the subsection.
- (3) The statement may be taken to be the mortgage, or mortgages comprising the mortgage package.



**Part 5****Mortgage duty on particular debenture issues, caveats and releases of mortgages****266 Mortgage duty associated with particular debenture issues**

- (1) This section applies if—
  - (a) a corporation offers debentures to the public for subscription; and
  - (b) the corporation is a party to an instrument of trust relating to the debentures; and
  - (c) a mortgage secures the repayment of debentures issued by the corporation.
- (2) Mortgage duty must be assessed on the mortgage for the offer of debentures as if it were a mortgage securing the payment of an amount equal to the total amount of debentures, other than exempt short-term debentures, subscribed for by the public in Queensland from time to time.
- (3) On or before 31 July in each year, the trustee under the instrument of trust must—
  - (a) lodge a statutory declaration stating the total amount subscribed for in Queensland for the corporation's debentures and exempt short-term debentures in the year ending on the previous 30 June; and
  - (b) pay to the commissioner mortgage duty on the amount subscribed for in the year for the debentures, other than exempt short-term debentures.
- (4) If mortgage duty is paid under subsection (3), the instrument of trust and debentures are not liable to duty under this Act.
- (5) In this section, a reference to an amount subscribed for relating to debentures does not include an amount represented by debentures issued on the conversion or renewal of an existing holding of debentures or other marketable securities.

**267 What is an *exempt short-term debenture***

- (1) A debenture issued by a public company is an *exempt short-term debenture* if—
  - (a) the amount repayable under the debenture is repayable within 6 months after it is issued or is not repayable within a fixed or certain period but the amount is later paid or repaid within 6 months after it is issued; and
  - (b) the debenture is not part of an arrangement, the effect of which is to extend the period for repayment of an amount to more than 6 months after it is issued.
- (2) If a debenture is reissued or renewed, the combined terms of debentures is taken into account when deciding when the amount under the debenture is repayable for subsection (1).
- (3) Also, for subsection (1), debentures subscribed for by a corporation include debentures subscribed for by a related body corporate unless the commissioner decides otherwise.

**268 Caveats**

- (1) Mortgage duty is imposed on a caveat claiming an interest in land, or a water allocation, under a mortgage if mortgage duty is imposed, but not paid, on the mortgage.
- (2) The amount of mortgage duty imposed on the caveat is the amount of mortgage duty that would be imposed on the mortgage.
- (3) The mortgagor must pay the duty as if it were assessed on the mortgage.
- (4) To the extent that mortgage duty is paid on the caveat, mortgage duty is not imposed on the mortgage.

**269 Releases of mortgages**

- (1) Mortgage duty is imposed on a release of mortgage to the extent that mortgage duty is imposed, but not paid, on the mortgage.
- (2) Immediately after the release, the mortgagor must—

- (a) lodge a statement in the approved form; and
- (b) pay the duty as if it were assessed on the mortgage.

## **Part 6                      Concessions for home mortgages and first home mortgages**

### **Division 1                Preliminary**

#### **270    Purpose of pt 6**

The purpose of this part is to provide for concessions for mortgage duty on home mortgages and home refinance mortgages.

### **Division 2                Concessions for mortgage duty for home mortgages**

#### **Subdivision 1        Some basic concepts about concessions for mortgage duty for home mortgages**

#### **271    What is a *home mortgage***

- (1) A *home mortgage* is a mortgage given by a person to the extent that the mortgage secures an advance to the person to finance the purchase or construction of the person's home or a further interest in the person's home.
- (2) A home mortgage or, if there is more than 1 home mortgage, at least 1 of them, must be over the residential land.

**272 What is a *home* and *first home* for div 2**

- (1) For this division, a residence that is to be constructed is the person's *home* or *first home* if, when constructed, it will be the person's home or first home under section 86.
- (2) For subsection (1), section 86 applies as if the person's transfer date for the residential land were the date the mortgage was first signed.

**273 Who is a *home borrower* and a *first home borrower***

- (1) A person is a *home borrower* if the person is the mortgagor under a home mortgage.
- (2) A home borrower is a *first home borrower* if—
  - (a) the borrower's home mortgage secures an advance to the borrower to finance the purchase or construction of the borrower's first home; and
  - (b) the borrower is an individual of at least 18 years of age on the day the liability for mortgage duty arises.
- (3) The commissioner may exempt an individual from the requirement that the individual be at least 18 years of age if the commissioner is satisfied there is no avoidance scheme in relation to the home mortgage.

**Subdivision 2 Concessions for home mortgages****274 Concession for mortgage duty—home mortgage**

- (1) If all owners of a home are home borrowers, mortgage duty is not imposed on the part of the amount secured by the home mortgage that is the lesser of the following—
  - (a) the qualifying amount;
  - (b) if—
    - (i) all the owners are first home borrowers—\$250 000; or
    - (ii) all the owners are not first home borrowers—\$70 000.

- (2) For owners who are home borrowers to which subsection (1) does not apply, mortgage duty is not imposed on the part of the amount secured by the home mortgage that is the lesser of the following—
- (a) the total of—
    - (i) for each home borrower—the borrower’s interest multiplied by \$70 000; and
    - (ii) for each first home borrower—the borrower’s interest multiplied by \$250 000;
  - (b) the qualifying amount.
- (3) The total amount of concessions for mortgage duty on all home mortgages must not be more than the maximum amount of concessions applicable to the borrowers under subsection (1)(b) or (2)(a).
- (4) For subsection (2), a home borrower or first home borrower’s interest is the proportion that the value of the borrower’s interest in the residential land bears to the value of the land.
- (5) Also, for subsections (1) and (2), the qualifying amount is the proportion of—
- (a) for a home mortgage to which section 260 applies or a mortgage package—the dutiable proportion; or
  - (b) for another home mortgage—the amount secured by the mortgage;
- that corresponds to the part of the advances secured by the mortgage that are used or to be used to finance the purchase or construction of the home by the borrowers to whom the concession relates.
- (6) For subsection (5), advances used to refinance an existing home mortgage for the home must be disregarded in working out the advances that are used or to be used to finance the purchase or construction of the home.

## **275 Concession for mortgage duty—particular trusts**

- (1) This section applies if—

- (a) the trustee of a trust, other than a discretionary or unit trust, gives a mortgage to secure an advance to the trustee to finance the purchase or construction of a home or a further interest in a home; and
  - (b) the beneficiaries are individuals all of whom are under a legal disability; and
  - (c) the residence is the home of all or some of the beneficiaries.
- (2) This division applies as if—
- (a) the mortgage were a home mortgage; and
  - (b) the beneficiaries were the home borrowers or first home borrowers under it; and
  - (c) the beneficiaries were the owners of the home.
- (3) However, section 273(2)(b) and (3) applies in relation to a beneficiary only if the beneficiary is under a legal disability only because the beneficiary is not at least 18 years of age.

### **Division 3                      Concessions for mortgage duty for home refinance mortgages**

#### **Subdivision 1                Some basic concepts about concessions for mortgage duty for home refinance mortgages**

##### **276    What is a *home refinance mortgage***

- (1) A *home refinance mortgage* is a mortgage securing advances to the person, all or part of which are used or to be used to repay the balance outstanding under a previous mortgage over the person's home.
- (2) A home refinance mortgage, or if there is more than 1 home refinance mortgage, at least 1 of them must be over the person's home.

**277 What is a *home* for div 3**

For this division, a person's *home* is a residence the person has occupied as the person's principal place of residence for whichever is the shorter of the following—

- (a) 6 months before signing the home refinance mortgage;
- (b) since the borrower has owned the residence.

**278 Who is a *home refinance borrower***

A person is a *home refinance borrower* if the person is the mortgagor under a home refinance mortgage.

**Subdivision 2 Concessions for home refinance mortgages****279 Concession for mortgage duty—home refinance mortgage**

- (1) If all of the owners of a home are home refinance borrowers, mortgage duty is not imposed on the part of the amount secured by the home refinance mortgage that is the lesser of the following—
  - (a) the refinance qualifying amount;
  - (b) \$100 000.
- (2) If all of the owners of a home are not home refinance borrowers, mortgage duty is not imposed on the part of the amount secured by the home refinance mortgage up to the amount that is the lesser of the following—
  - (a) home refinance borrowers' interests multiplied by \$100 000;
  - (b) the refinance qualifying amount.
- (3) The total amount of concessions for mortgage duty on all home refinance mortgages must not be more than the maximum amount of concessions applicable to the borrowers under subsection (1)(b) or (2)(a).

- (4) For subsection (2), a home refinance borrower's interest is the proportion that the value of the home refinance borrower's interest in the residential land bears to the value of the land.
- (5) Also, for subsections (1) and (2), the refinance qualifying amount is the proportion of—
  - (a) for a home refinance mortgage to which section 260 applies or a mortgage package—the amount of the dutiable proportion; or
  - (b) for another home refinance mortgage—the amount secured or to be secured by the home refinance mortgage;

that corresponds to the part of the advances secured by the mortgage that are used or to be used to repay the balance outstanding on the previous mortgage by the borrowers to whom the concession relates.

- (6) For subsection (5), advances used to finance the acquisition of a home or first home must be disregarded in working out the advances that are used or to be used to repay the balance outstanding under the previous mortgage.

## **280 Concession for mortgage duty—particular trusts**

- (1) This section applies if—
  - (a) the trustee of a trust, other than a discretionary or unit trust, gives a mortgage to secure an advance to the trustee, all or part of which is used, or to be used, to repay the balance outstanding under a previous mortgage over a home; and
  - (b) the beneficiaries are individuals all of whom are under a legal disability; and
  - (c) the residence is the home of all or some of the beneficiaries.
- (2) This division applies as if—
  - (a) the mortgage were a home refinance mortgage; and



- (b) the beneficiaries were the home refinance borrowers under it; and
- (c) the beneficiaries were the owners of the home.

## **Division 4                      Miscellaneous provisions**

### **281      Further concession for particular home refinance mortgages**

- (1) This section applies if the amount secured by a home refinance mortgage, or the dutiable proportion of a home refinance mortgage, is more than—
  - (a) the amount determined under section 279(1) or (2); or
  - (b) if there is also a home borrower for the mortgage—the total of the amount determined under section 279(2) and any amount determined under section 274(2) for the borrower.
- (2) The non-concessional balance for the home refinance mortgage is reduced by the amount by which the amount secured for which duty has been paid in Queensland under the previous mortgage is more than—
  - (a) for a mortgage or mortgage package to which section 260 or 261 applies—the balance outstanding under the previous mortgage multiplied by the dutiable proportion; or
  - (b) for another mortgage—the balance outstanding under the previous mortgage.
- (3) For subsection (2), the non-concessional balance for the home refinance mortgage is—
  - (a) the part of the amount secured by the mortgage for which a concession for mortgage duty is not given under section 279; or
  - (b) if there is also a home borrower for the mortgage—the total of the amount mentioned in paragraph (a) and the part of the amount secured by the mortgage for which a concession for mortgage duty is not given under section 274.

**282 Application for concession for mortgage duty**

An application for a concession for mortgage duty on a home mortgage or home refinance mortgage must be made in the approved form.

**Part 7 Exemptions for mortgage duty****Division 1 Particular debentures and instruments of trust, transfer of land by security and mortgages under particular Acts****283 Exemption—particular debentures and instruments of trust**

- (1) Mortgage duty is not imposed on an exempt short-term debenture.
- (2) Mortgage duty is not imposed on a mortgage that is—
  - (a) a debenture issued by a financial corporation or related corporation of a financial corporation under an instrument of trust—
    - (i) to which the financial corporation or related corporation is a party; and
    - (ii) that protects the interests of the holders of the debentures; or
  - (b) a debenture issued by a financial corporation or related corporation of a financial corporation, the repayment for which is secured by a mortgage given by the financial corporation or related corporation; or
  - (c) an instrument of trust—
    - (i) to which a financial corporation or related corporation of a financial corporation is a party; and

- (ii) that protects the interests of the holders of debentures issued under the instrument of trust.
- (3) Mortgage duty is not imposed on a mortgage given by a financial corporation or a related corporation of a financial corporation to secure the repayment of debentures issued by the financial corporation or related corporation.
- (4) This section applies to debentures issued, a mortgage given or an instrument of trust signed, by a related corporation of a financial corporation only so far as the debentures are issued, the mortgage is given or the instrument of trust is signed, for raising funds to be used by the financial corporation.
- (5) In this section—

*financial corporation* means a corporation whose sole or principal business is providing finance to the public.

*related corporation*, of a financial corporation, means a corporation that is a related body corporate of the financial corporation.

#### **284 Exemption—transfer of land by way of security**

Mortgage duty is not imposed on a mortgage that is a transfer of land by way of security if transfer duty is paid on the dutiable transaction that is the transfer.

#### **285 Exemption—mortgages under particular Acts**

Mortgage duty is not imposed on the following instruments—

- (a) a mortgage given to secure an advance to a cooperative registered under the *Cooperatives Act 1997* whose members are primary producers, if the mortgage secures advances to finance—
  - (i) the acquisition of primary produce; or
  - (ii) payments to suppliers on account of primary produce marketed for the suppliers; or
  - (iii) working or other expenses, other than capital expenses, incidental to the acquisition, processing or marketing of primary produce;

- (b) a mortgage given to secure an advance to a parents and citizens association formed under the *Education (General Provisions) Act 1989*;
- (c) a mortgage given by a society registered as a cooperative housing society under the *Financial Intermediaries Act 1996* to secure—
  - (i) an advance made, or to be made to the society, by the Treasurer; or
  - (ii) an advance guaranteed by the Treasurer and made, or to be made, to the society by—
    - (A) a financial institution; or
    - (B) another entity prescribed under a regulation;
- (d) a mortgage given to secure an advance made by the Brigalow Corporation under the *Land Act 1994*, chapter 8, part 7A;
- (e) a mortgage given to secure an advance to The National Trust of Queensland constituted under the *National Trust of Queensland Act 1963*;
- (f) a mortgage of a tenure, or interest in a tenure, under the *Offshore Minerals Act 1998*;
- (g) a mortgage of, or a mortgage of an interest in, an access authority, licence, permit or pipeline licence under the *Petroleum (Submerged Lands) Act 1982*.

## **Division 2                      Asset-backed and mortgage-backed securities**

### **Subdivision 1                Some basic concepts for mortgage-backed securities**

#### **286      What is a *mortgage-backed security***

- (1) A *mortgage-backed security* is—
  - (a) an entitlement or interest of a person in—

- (i) an entitlement of a mortgagee or another entitlement for a mortgage or pool of mortgages; or
    - (ii) amounts payable by a mortgagor under a mortgage or pool of mortgages whether or not on the same conditions applying under the mortgage and whether or not the person is entitled to a transfer of the mortgage or pool of mortgages; or
  - (b) a debenture, promissory note, bill of exchange, stock, bond, note or other security creating, evidencing or acknowledging indebtedness issued or made by a corporation if the payments under the security are received by the corporation—
    - (i) substantially from the receipts, whether of capital or income, from a mortgage or pool of mortgages; or
    - (ii) if another extent is prescribed under a regulation—to the extent prescribed, from the receipts, whether of capital or income, from a mortgage or pool of mortgages; or
  - (c) a security by which an interest in, or mortgage or charge over, an entitlement, interest or security mentioned in paragraph (a) or (b) is created.
- (2) However, the term does not include—
- (a) a mortgage, other than a mortgage mentioned in subsection (1)(c); or
  - (b) a transfer of a mortgage.
- (3) It does not matter whether a mortgage-backed security is effected by an instrument or another way.

### **287 What is a *mortgage***

A *mortgage* is a mortgage of, or charge over, land regardless of whether the land is situated in Queensland or elsewhere.

### **288 What is a *pool of mortgages***

- (1) A *pool of mortgages* is a pool or collection of assets that consists solely of mortgages.

- (2) Also, a ***pool of mortgages*** is a pool or collection of assets that consists substantially or, if another extent is prescribed under a regulation, to the extent prescribed, of mortgages or amounts paid under mortgages, or a combination of them, if the other assets in the pool or collection are cash or an authorised investment.

## **289 What is an *authorised investment***

An ***authorised investment***, for a pool of mortgages, is any of the following—

- (a) a bond, debenture, stock or Treasury bill of the Commonwealth or a State;
- (b) a debenture or stock of a public statutory body established under an Act of the Commonwealth or a State;
- (c) a note or other security of the Commonwealth or a State;
- (d) a deposit with, or a certificate of deposit or another security issued by, a financial institution;
- (e) a bill of exchange, promissory note or other negotiable instrument accepted, drawn or endorsed by a financial institution;
- (f) an asset-backed security or mortgage-backed security.

## **Subdivision 2 Exemption**

### **289A Exemption—asset-backed security**

Mortgage duty is not imposed on the following—

- (a) a mortgage of an asset-backed security or release of mortgage of an asset-backed security;
- (b) a mortgage of a financial asset or pool of financial assets or part of a pool of financial assets for creating, issuing, marketing or securing an asset-backed security—
  - (i) to a person entitled to an asset-backed security or a trustee or agent for a person entitled to an asset-backed security; or

- (ii) by or to a person who issues, makes or endorses an asset-backed security; or
  - (iii) to a person who provides security, whether as guarantor, surety or otherwise, to a person entitled to an asset-backed security or a trustee or agent for a person entitled to an asset-backed security;
- (c) a mortgage of an instrument—
- (i) issued or made for creating, issuing, marketing or securing payments under an asset-backed security; and
  - (ii) that is of a class prescribed under a regulation.

## **290 Exemption—mortgage-backed security**

Mortgage duty is not imposed on the following—

- (a) a mortgage of a mortgage-backed security or release of mortgage of a mortgage-backed security;
- (b) a mortgage of a mortgage or pool of mortgages or part of a pool of mortgages for creating, issuing, marketing or securing a mortgage-backed security—
  - (i) to a person entitled to a mortgage-backed security or a trustee or agent for a person entitled to a mortgage-backed security; or
  - (ii) by or to a person who issues, makes or endorses a mortgage-backed security; or
  - (iii) to a person who provides security, whether as guarantor, surety or otherwise, to a person entitled to a mortgage-backed security or a trustee or agent for a person entitled to a mortgage-backed security;
- (c) a mortgage of an instrument—
  - (i) issued or made for creating, issuing, marketing or securing payments under a mortgage-backed security; and
  - (ii) that is of a class prescribed under a regulation.

## **Part 8                                Reassessments for mortgage duty**

### **290A    Reassessment—stamping before advance**

- (1) This section applies in relation to a mortgage mentioned in section 260 or 261 if—
- (a) the mortgage was first signed before 1 July 2004 and partly affected property located in Victoria; and
  - (b) the mortgage was properly stamped or exempt from duty, and mortgage duty was paid for the mortgage before 1 July 2004, under the *Duties Act 2000* (Vic), section 161,<sup>40</sup> in relation to an advance made under the mortgage on or after the commencement of this section; and
  - (c) before 1 July 2004, the mortgage was stamped under section 257(1) and (2) in relation to the advance; and
  - (d) after the commencement of this section, the duty mentioned in paragraph (b) (the *Victorian duty*) is refunded because the mortgage is no longer stamped before the advance.
- (2) Section 257(1) and (2) are taken not to have authorised the stamping of the mortgage and the commissioner must make a reassessment to impose mortgage duty on the mortgage based on the dutiable proportion at the liability date.
- (3) The mortgagor or mortgagee must, within 28 days of the Victorian duty being refunded—
- (a) give written notice to the commissioner stating that the Victorian duty has been refunded; and
  - (b) ensure the mortgage is lodged for a reassessment of mortgage duty on the mortgage.

*Note—*

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

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40 *Duties Act 2000* (Vic), section 161 (Stamping before advance)



- (4) Compliance with subsection (3) by the mortgagor or mortgagee relieves the other person from complying with the subsection.

## **291 Reassessment—concession under pt 6**

- (1) This section applies if mortgage duty on a home mortgage is assessed on the basis of a concession under part 6 and one of the following events happen—
- (a) before the occupation date for the residence, the home borrower disposes of the residential land under section 154(2);
  - (b) other than because of an intervening event, the home borrower's occupation date for the residence is not within 1 year after the later of the transfer date for the land or when the mortgage was first signed;
  - (c) in the year following the home borrower's occupation date for the residence, the home borrower disposes of the residential land by—
    - (i) transferring part or all of it; or
    - (ii) leasing or otherwise granting exclusive possession of part or all of it to another person.
- (1A) For subsection (1)(a) or (c), a home borrower does not dispose of land if—
- (a) the home borrower transfers part of the land to the home borrower's spouse; and
  - (b) the transfer is exempt from duty under section 151.
- (1AB) Also, for subsection (1)(a) or (c), a home borrower does not dispose of land that is an accommodation unit in a retirement village only by entering into a retirement village leasing arrangement for the unit.
- (2) Within 28 days after the event happens, each home borrower under the mortgage must—
- (a) give notice in the approved form to the commissioner; and

*Duties Act 2001*

- (b) ensure the mortgage is lodged for a reassessment of mortgage duty on the mortgage.

*Note—*

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

- (3) If subsection (1)(a) or (b) applies, the commissioner must make a reassessment to impose mortgage duty on the mortgage as if the concession for mortgage duty had never applied.
- (4) If subsection (1)(c) applies, the commissioner must make a reassessment to impose further mortgage duty on the mortgage worked out using the following formula—

$$MD = \frac{C \times (365 - OD)}{365}$$

where—

**C** means the concession received by the home borrower, being the difference between the mortgage duty that would have been imposed on the home mortgage if the concession had not applied and the mortgage duty assessed on the mortgage.

**MD** means the further mortgage duty payable on the reassessment.

**OD** means the number of days between the home borrower's occupation date for the residence and the date of disposal of the residential land, both days inclusive.

- (5) If—
- (a) under subsection (1A), this section does not apply to a home borrower's transfer of part of the land to the home borrower's spouse; and
- (b) under subsection (1)(a) or (c), the home borrower later disposes of the land or part of it;

this section applies to the later disposal as if the home borrower had not transferred the part of the land to the home borrower's spouse.

**292 Reassessment—noncomplying use by cooperatives**

- (1) This section applies if—
  - (a) under section 285(a), mortgage duty is not imposed on a mortgage given to secure an advance to a cooperative registered under the *Cooperatives Act 1997*; and
  - (b) the advance or part of it is not used for a purpose mentioned in the section (the *noncomplying use*).
- (2) Within 28 days after starting to use the advance or part of it for the noncomplying use, the cooperative must—
  - (a) give notice in the approved form to the commissioner; and
  - (b) ensure the mortgage is lodged for a reassessment of mortgage duty on the mortgage.

*Note—*

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

- (3) The commissioner must make a reassessment to impose mortgage duty on the mortgage as if the exemption from duty had never applied.

*Note—*

Unpaid tax interest and penalty tax may be payable under the Administration Act, part 5.

- (4) Subsection (3) applies to the reassessment despite the limitation period under the Administration Act for reassessments.<sup>41</sup>

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41 See the Administration Act, part 3 (Assessments of tax), division 3 (Reassessments).

## Chapter 6      Credit business duty

### Part 1              Preliminary

#### 293      Imposition of credit business duty

- (1) This chapter imposes duty (*credit business duty*) on credit transactions.

*Note—*

Exemptions for credit business duty are dealt with in part 5. Also, other exemptions are dealt with in chapter 10, part 4.

- (2) Credit business duty is imposed on the credit amount for a credit transaction.

#### 294      Credit transactions to which ch 6 applies—jurisdictional link

- (1) This chapter applies to a credit transaction only if—
  - (a) for a loan—the loan is to a Queensland resident or any negotiations for the loan take place in Queensland; or
  - (b) for a discount transaction—the transaction relates to book debts or other things in action that are situated or enforceable in Queensland; or
  - (c) for a credit arrangement—the credit arrangement relates to goods sold or services provided in Queensland.
- (2) For subsection (1)(a), a person is a Queensland resident if the person's address last known to the credit provider entering into the loan, or at the person's direction, is in Queensland.
- (3) Despite subsection (1), this chapter does not apply to a credit transaction if none of the negotiations for the transaction take place in Queensland, and the amount or goods obtained were obtained for the purpose of being spent or used exclusively outside Queensland.

## Part 2 Some basic concepts for credit business duty

### 295 **What is a *credit transaction***

- (1) Each of the following is a *credit transaction*—
  - (a) a loan;
  - (b) a discount transaction;
  - (c) a credit arrangement.
- (2) However, only the following transactions entered into by a financial institution that is a credit provider is a *credit transaction*—
  - (a) loans other than an overdraft on a current account;
  - (b) discount transactions for bills of exchange or promissory notes;
  - (c) loans, discount transactions or credit arrangements for which a credit card is produced.
- (3) Also, a credit purchase agreement or equipment financing arrangement is not a credit transaction.

### 296 **What is a *loan* for ch 6**

- (1) For this chapter, a *loan*<sup>42</sup> does not include the following—
  - (a) a forbearance through an extension of time for payment of an existing loan for which credit business duty has already been paid if the extension does not result in an increase in the value or amount of the loan payable on maturity;
  - (b) a loan from one corporation to another corporation that—
    - (i) is for \$50 000 or more; and
    - (ii) is for a term of not more than 180 days; and

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42 For what is a loan generally, see section 250.

- (iii) is by way of temporary investment of surplus funds or to a financial institution or to or by an eligible money market dealer or dealer in the unofficial short-term money market;
  - (c) a loan advanced on security of debentures issued for an amount borrowed by—
    - (i) a body or instrumentality that represents the State; or
    - (ii) a local government; or
    - (iii) an entity prescribed under a regulation;
  - (d) a loan obtained solely for financing all or part of the cost of constructing or acquiring a residence if the borrower has made a statutory declaration in the approved form;
  - (e) the part of a loan secured on an interest mentioned in subsection (2) that is equal to the value of the interest on which the loan is secured.
- (2) For subsection (1)(e), the interest must be in 1 of the following that is the subject of a credit transaction on which credit business duty has been paid—
- (a) another loan;
  - (b) a book debt;
  - (c) a thing in action.

## **297 What is a *discount transaction***

- (1) A *discount transaction* is the purchasing, acquiring or factoring of book debts or other things in action, other than marketable securities, for a consideration less than the amount of the book debt or nominal or face value of the thing in action.
- (2) However, the term does not include a transaction mentioned in subsection (1) that—
- (a) is between related bodies corporate if the consideration for the discount transaction is at least 96% of the amount of the book debt or the nominal or face value of the thing in action; or

- (b) relates solely to an amount payable to a person in Australia for goods exported from Australia by the person; or
  - (c) is between corporations for an exempt bill of exchange or exempt promissory note; or
  - (d) relates to book debts or other things in action the subject of a credit transaction on which credit business duty has been paid.
- (3) For subsections (1) and (2)(a), the amount of a book debt or the nominal or face value of a thing in action does not include an amount payable as interest or appropriated to interest.

## 298 What is a *credit arrangement*

A *credit arrangement* is any arrangement for providing credit of more than \$200 relating to the sale of goods or providing of services, if any amount in excess of the cash price may be charged for the goods or services under the arrangement.

## 299 Who is a *credit provider*

- (1) A *credit provider* is a person carrying on the business of entering into credit transactions.
- (2) However, the term does not include a person carrying on business as a pawnbroker within the meaning of the *Second-hand Dealers and Pawnbrokers Act 2003*.<sup>43</sup>
- (3) For this section, it is immaterial whether the business is the principal business or is ancillary to some other business and whether or not the principal or ancillary business is carried on wholly or partly outside Queensland.

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43 Under the *Second-hand Dealers and Pawnbrokers Act 2003*, a *pawnbroker* is a person who—

- (a) carries on the business of advancing, on interest or in expectation of profit or reward, an amount on the principal or collateral security of property taken by the person as a pawn; and
- (b) holds a pawnbrokers licence.

**300 Form of credit transactions**

- (1) A credit transaction may take any form.
- (2) It is immaterial whether a credit transaction is effected or evidenced by an instrument.

**Part 3 Liability for credit business duty****301 Who is liable to pay credit business duty**

Credit business duty imposed on a credit transaction must be paid by the credit provider for the transaction.

**302 Rate of credit business duty**

- (1) The rates of credit business duty imposed on the credit amount for a short-term credit transaction are the following—
  - (a) if the credit amount for the transaction is not more than \$1 000 000—0.0025%;
  - (b) if the credit amount for the transaction is more than \$1 000 000—the lesser of the following—
    - (i) \$208.33;
    - (ii) the total of \$25 and 0.00125c for each dollar of the credit amount in excess of \$1 000 000.
- (2) The rates of credit business duty imposed on the credit amount of another credit transaction are the following—
  - (a) if the credit amount for the transaction is not more than \$1 000 000—0.03%;
  - (b) if the credit amount for the transaction is more than \$1 000 000—the lesser of the following—
    - (i) \$2 500;
    - (ii) the total of \$300 and 0.015c for each dollar of the credit amount in excess of \$1 000 000.



**303 What is the *credit amount* for a credit transaction**

- (1) For a loan, the *credit amount* for a credit transaction is—
  - (a) for a short-term loan that is a current account—the maximum amount of principal payable on the loan at any time in a month; or
  - (b) for another short-term loan—the principal of the loan if it was made in the previous year and is still outstanding at the end of a month or it was made and repaid in a month; or
  - (c) for another loan—the principal amount of the loan.
- (2) For a discount transaction, the *credit amount* for a credit transaction is—
  - (a) for a short-term discount transaction—the amount spent in the transaction if it was entered into in the previous year for book debts or things in action still unrealised at the end of a month or it was entered into and completed in a month; or
  - (b) for another discount transaction—the amount spent in the transaction.
- (3) For a credit arrangement, the *credit amount* for a credit transaction is—
  - (a) for a short-term credit arrangement—the maximum amount outstanding under the arrangement in a month; or
  - (b) for another credit arrangement—the amount debited under the arrangement, less amounts credited against amounts debited for goods returned or services not provided.
- (4) For subsection (3)(b), if an arrangement provides an amount in excess of the cash price is or may be charged for the sale of goods or provision of services if the cash price is not paid within a period of not more than 60 days, the amount of the cash price is an amount debited under the arrangement only if the cash price is not paid at the end of the period.
- (5) The *credit amount* for a credit transaction does not include the amount of duty payable under this Act or a corresponding Act.

## **Part 4 Arrangements applying to credit providers**

### **304 Credit providers to be registered**

- (1) A credit provider must not carry on business in Queensland unless the credit provider is registered under chapter 12, part 1, to carry on the business.

Maximum penalty—200 penalty units.

- (2) For subsection (1), a credit provider is carrying on business in Queensland if the credit provider undertakes negotiations in Queensland with the object of entering into credit transactions.
- (3) However, subsection (1) does not apply to a credit provider who is not liable to credit business duty under section 306.

### **305 Credit business duty base**

Credit business duty must be assessed on the total of the credit amounts for a registered credit provider's credit transactions for a month.

### **306 When credit provider not liable for credit business duty**

- (1) A credit provider is not liable to credit business duty for a month if—
  - (a) the credit provider does not have to lodge returns as a commercial hirer; and
  - (b) the credit transactions entered into by the credit provider comprise solely credit arrangements; and
  - (c) the total of the credit amounts for the credit arrangements entered into by the credit provider in the previous 12 months did not exceed \$400 000.
- (2) If the credit provider is carrying on business in Queensland, other than in a Commonwealth place, and is also carrying on business in a Commonwealth place in Queensland, the total of the credit amounts for the credit arrangements is, for subsection (1)(c), the total of—

- (a) the total credit amounts for the business carried on in Queensland, other than in the Commonwealth place; and
- (b) the total credit amounts for the business carried on in the Commonwealth place.

**307 Lodging return and payment of credit business duty—registered credit provider**

- (1) If a registered credit provider has a liability to credit business duty for a month in a return period, the credit provider must on or before the return date—
  - (a) lodge a return in the approved form; and
  - (b) pay to the commissioner the amount of credit business duty on all credit transactions that relate to the return period and any assessed interest and penalty tax.
- (2) However, subsection (3) applies if—
  - (a) credit business duty has been paid for a loan; and
  - (b) the loan is repaid within 10 months after the loan is made; and
  - (c) the credit business duty paid was not paid at the short-term rate.
- (3) The credit provider may deduct from the amount required to be paid under subsection (1), an amount equal to one-twelfth of the credit business duty paid for each complete month between the repayment of the loan and the end of 1 year from the date the loan is made.

*Note—*

For provisions about reassessments and refunds, see the Administration Act, part 3 (Assessments of tax), division 2 (Self assessments) and part 4 (Payments and refunds of tax and other amounts), division 2 (Refunds of tax and other amounts).

**308 Lodging statement and payment of credit business duty—unregistered credit providers**

- (1) This section applies if—

- (a) a credit provider who is required under section 304 to be registered is not registered; and
  - (b) the credit provider has a liability to credit business duty for a month.
- (2) The credit provider must, within 14 days after the end of the month—
- (a) lodge a statement in the approved form; and
  - (b) pay to the commissioner the amount of credit business duty on all credit transactions for the month and any assessed interest and penalty tax.
- (3) For the Administration Act,<sup>44</sup> the statement is taken to be a return for a self assessment for the credit transactions for the month.

## **Part 5 Exemptions**

### **309 Exemption—government entities**

Credit business duty is not imposed on a credit transaction entered into by a registered credit provider with—

- (a) the government of the Commonwealth or a State; or
- (b) an entity prescribed under a regulation.

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<sup>44</sup> See the Administration Act, section 32 (Time for payment of other amounts).

## Chapter 7 Hire duty

### Part 1 Preliminary

#### 325 Imposition of hire duty

- (1) This chapter imposes duty (*hire duty*) on—
  - (a) a hire of goods under which a commercial hirer hires out the goods; and
  - (b) a hire of goods effected by an instrument under which another person hires out the goods.

*Note—*

Exemptions for hire duty are dealt with in part 7. Also, other exemptions are dealt with in chapter 10.

- (2) Hire duty is imposed on the hiring charges for the hire of goods.

#### 326 Hire of goods to which ch 7 applies—jurisdictional link

- (1) This chapter applies to a hire of goods only if they are solely or predominantly used in Queensland during any period for which a liability to hire duty arises.
- (2) A motor vehicle that is registered under the Vehicle Registration Act, or an Act of another State that corresponds to the Vehicle Registration Act, that is the subject of an equipment financing arrangement is taken to be used at all times in the course of the arrangement, in the State in which it is registered.
- (3) A motor vehicle that is the subject of an ordinary hire of goods is taken at all times in the course of the hiring to be used in Queensland if it was initially delivered in Queensland to the hirer.
- (4) If goods hired under a hire of goods are not used solely or predominantly in any particular Australian jurisdiction, the goods are taken to be predominantly used in Queensland if, under the hire of goods, the goods are initially delivered in Queensland.

- (5) For this section, goods are predominantly used in Queensland if they are used more in Queensland than any other State.

## Part 2                      **Some basic concepts for hire duty**

### **327      What are *goods***

*Goods* includes all chattels personal and fixtures severable from land, but does not include money, livestock, books and things in action.

### **328      What is a *hire of goods***

- (1) A *hire of goods* is an arrangement under which goods are or may be used at any time by a person other than the person hiring out the goods.
- (2) However, a *hire of goods* does not include—
- (a) an arrangement giving a person the right to use goods in conjunction with a lease of, or a licence to occupy or use, land; or
  - (b) an arrangement providing goods to a trader for displaying or demonstrating the goods pending their sale or hire; or
  - (c) an arrangement for the hire of an aircraft or boat or for the hire of an engine or other component part of an aircraft or boat; or
  - (d) an arrangement under which an operator is provided by or at the direction of the person hiring out the goods to operate the goods for the hirer; or
  - (e) an arrangement under which a motor vehicle is subleased by an employee to an employer in connection with the employee's remuneration or other employment benefits.
- (3) The 3 kinds of hire of goods are as follows—

- (a) a credit purchase agreement;
- (b) an equipment financing arrangement;
- (c) an ordinary hire of goods.

### **329 What is a *credit purchase agreement***

A *credit purchase agreement* is an agreement for the purchase of goods under which, regardless of when property in the goods passes or is to pass to the purchaser—

- (a) the purchase price, or any part of it, is paid or payable by at least 6 instalments payable over at least 6 months; and
- (b) any of the instalments are to be paid after the goods have been delivered to the purchaser.

### **330 What is an *equipment financing arrangement***

An *equipment financing arrangement* is a hire of goods that consists of—

- (a) a hire-purchase agreement; or
- (b) another agreement for a term of at least 9 months and under which the final payment is payable not earlier than 8 months after the agreement is made.

### **331 What is a *hire-purchase agreement***

- (1) A *hire-purchase agreement* is—
  - (a) a letting of goods with an option to purchase the goods; or
  - (b) an agreement for the purchase of goods by instalments, whether the agreement describes the instalments as rent, hire or otherwise.
- (2) A *hire-purchase agreement* may be constituted by 2 or more agreements, none of which by itself constitutes a hire-purchase agreement under subsection (1).
- (3) However, the term does not include an agreement by which the property in the goods comprised in the agreement passes

when the agreement is made or on or at any time before delivery of the goods.

### **332 What are *hiring charges***

- (1) *Hiring charges* are payments made to the person who hires out goods by or for the hirer, for (or that arise as an incident of) the hire of the goods.
- (2) Also, *hiring charges* include the following—
  - (a) payments for the delivery, erection and installation of the goods;
  - (b) payments for the maintenance, cleaning and repair of the goods;
  - (c) payments for insurance of the goods;
  - (d) fees payable for the late return of the goods.
- (3) In addition, *hiring charges* include the following—
  - (a) any payments under an arrangement that are not hiring charges, including exempt payments, that have been increased for minimising hire duty;
  - (b) any payments that would be hiring charges except for the fact that they are paid to a person other than the person who hires out the goods.
- (4) Further, *hiring charges* include a charge, made by a person who hires out goods or a related person of the person, for giving the hirer of the goods any information about, or any right relating to, the use of the goods for the purpose for which they are hired out.
- (5) Subject to subsection (3)(a), exempt payments are not *hiring charges*.

### **333 What is an *exempt payment***

- (1) For all kinds of hires of goods, each of the following is an *exempt payment*—
  - (a) a refundable cash deposit or bond, unless appropriated as hiring charges;



- (b) duty paid or payable under this Act or a corresponding Act;
  - (c) GST paid on the supplies constituted by the hire of the goods;
  - (d) a payment for the sale of goods, including, for example, fuel, replacement parts or theft replacement;
  - (e) a payment by the hirer of goods if title to the goods passes to the hirer because of the payment.
- (2) Also, for a hire of goods that is a credit purchase agreement or hire-purchase agreement, each of the following is an *exempt payment*—
- (a) the deposit or other consideration paid or given to the person who hires out the goods at or before making the agreement;
  - (b) a payment for maintenance, freight, vehicle registration or insurance for the goods.
- (3) In addition, an interest payment is an *exempt payment* for a hire of goods that is—
- (a) a credit purchase agreement; or
  - (b) a hire purchase agreement made before the commencement of this subsection.

### **334 Who is a *commercial hirer***

- (1) A person who hires out goods as a business is a *commercial hirer*.
- (2) For subsection (1), it is immaterial whether the hiring out of the goods is the person's principal business or is ancillary to some other business and whether or not the principal or ancillary business is carried on wholly or partly outside Queensland.

## **Part 3                      Liability for hire duty**

### **335      Who is liable to pay hire duty**

Hire duty imposed on a hire of goods must be paid by the person who hires out the goods.

*Note—*

For circumstances in which a commercial hirer is not liable for hire duty, see section 342.

### **336      Rate of hire duty**

The rate of hire duty imposed on a hire of goods is 0.43% of the total amount of the hiring charges for the goods.

### **337      Credit for duty paid in another State**

Hire duty imposed on a hire of goods must be reduced by the amount of duty paid on the hire under a corresponding Act.

## **Part 4                      Obligations of parties to hire of goods**

### **338      Hirer to advise of place of registration of motor vehicle or sole or predominant use of other goods**

- (1) A hirer of a motor vehicle under an equipment financing arrangement must advise the person who hires out the vehicle—
  - (a) for a registered motor vehicle—where it is registered; or
  - (b) for an unregistered motor vehicle—where it will be, or is intended to be, registered during the course of the hire.

Maximum penalty—40 penalty units.

- (2) A hirer of goods, other than a motor vehicle, under a hire of goods must advise the person who hires out the goods where

the goods will be, or are intended to be, solely or predominantly used in the course of the hire.

Maximum penalty—40 penalty units.

- (3) A hirer of goods under a hire of goods must advise the person who hires out the goods of any change in the State in which the goods are solely or predominantly used or, for a motor vehicle, in the place of registration, within 30 days after the change.

Maximum penalty—40 penalty units.

- (4) A hirer of goods under a hire of goods must not state anything to the person who hires out the goods that the hirer knows is false or misleading.

Maximum penalty—200 penalty units.

- (5) It is enough for a complaint for an offence against subsection (4), to state the statement made was ‘false or misleading’ to the person’s knowledge, without specifying which.

### **339 Ascertainment and disclosure of place of use of goods**

- (1) A person who hires out goods may, in determining the person’s liability to hire duty, rely on a statement by the hirer in compliance with section 338(1) or (2) unless the person knows the statement is false or misleading.
- (2) A person who hires out goods is not bound to inquire about any change in the place of use of the goods, or for a motor vehicle, the place of registration.
- (3) However, if the person becomes aware that the goods are or will be solely or predominantly used or, for a motor vehicle, are or will be registered, in a place other than the place advised in a statement by the hirer, the person can not continue to rely on the statement of the hirer.
- (4) If the goods are solely or predominantly used or, for a motor vehicle, registered, in a place other than the place advised in a statement by the hirer, the commissioner may make an assessment or reassessment of the hire duty payable according to the actual place of sole or predominant use of the goods or, for a motor vehicle, the place of registration.

- (5) Subsection (4) applies to the reassessment despite the limitation period under the Administration Act for reassessments.<sup>45</sup>

## **Part 5 Arrangements applying to commercial hirers**

### **340 Commercial hirer to be registered**

- (1) A commercial hirer must not carry on business in Queensland unless the hirer is registered under chapter 12, part 1, to carry on the business.

Maximum penalty—200 penalty units.

- (2) For subsection (1), a commercial hirer is carrying on business in Queensland if the hirer undertakes negotiations in Queensland with the object of hiring out goods.

### **341 Hire duty base**

- (1) Hire duty must be assessed on the total amount of the hiring charges received in a month by a commercial hirer.
- (2) However, the commissioner may, by notice given to the commercial hirer, approve a different basis of working out hiring charges if the commissioner is satisfied hire duty payable on the basis will, over a period of time, be approximately the same as the hire duty payable under subsection (1).
- (3) In addition, if the commissioner is satisfied it is not reasonably practicable for the commercial hirer to work out the hiring charges received by the hirer, the commissioner may decide the way the hiring charges are to be worked out.
- (4) In deciding the way the hiring charges are to be worked out, the commissioner must take into account the representations made to the commissioner by the hirer.

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<sup>45</sup> See the Administration Act, part 3 (Assessments of tax), division 3 (Reassessments).

- (5) Subsection (4) does not limit the matters the commissioner may take into account in making the decision.
- (6) An amount worked out under a method approved or decided under subsection (2) or (3) is, for hire duty purposes, taken to be the amount of hiring charges received while the approval or decision is in force.
- (7) The commissioner may, at any time, revoke the approval or decision by notice given to the hirer.

### **342 When commercial hirer not liable for hire duty**

- (1) A commercial hirer is not liable to hire duty for a month if—
  - (a) the total hiring charges received by the hirer in the preceding 12 months did not exceed \$100 000; and
  - (b) the hirer does not have to lodge a return as a registered credit provider for the month.
- (2) If a commercial hirer is carrying on business in Queensland other than in a Commonwealth place, and is also carrying on business in a Commonwealth place in Queensland, the total amount of hiring charges received by the hirer is, for subsection (1)(a), the total of—
  - (a) the total hiring charges received by the hirer for the business carried on in Queensland, other than in the Commonwealth place; and
  - (b) the total hiring charges received by the hirer for the business carried on in the Commonwealth place.

### **343 Lodging returns and payment of hire duty—registered commercial hirer**

If a registered commercial hirer has a liability to hire duty for a month in a return period, the hirer must on or before the return date—

- (a) lodge a return in the approved form; and
- (b) pay to the commissioner—
  - (i) for a hiring arrangement that is a credit purchase agreement entered into in the return period—the

amount of hire duty on the total hiring charges payable under the agreement; and

- (ii) for another hiring arrangement—the amount of hire duty on the hiring charges that relate to the return period; and
- (iii) for all hiring arrangements—any assessed interest and penalty tax.

**344 Lodging statement and payment of hire duty—unregistered commercial hirer**

- (1) This section applies if—
  - (a) a commercial hirer who is required under section 340 to be registered is not registered; and
  - (b) the hirer has a liability to hire duty for a month.
- (2) The hirer must, within 14 days after the end of the month—
  - (a) lodge a statement in the approved form; and
  - (b) pay to the commissioner—
    - (i) for a hiring arrangement that is a credit purchase agreement entered into in the month—the amount of hire duty on the total hiring charges payable under the agreement; and
    - (ii) for another hiring arrangement—the amount of hire duty on the hiring charges that relate to the month; and
    - (iii) for all hiring arrangements—any assessed interest and penalty tax.
- (3) For the Administration Act,<sup>46</sup> the statement is taken to be a return for a self assessment for the hire of the goods.

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<sup>46</sup> See the Administration Act, section 32 (Time for payment of other amounts).

## **Part 6 Arrangements applying to other persons**

### **345 Application of pt 6**

This part applies if a person, other than a commercial hirer—

- (a) hires out goods under a hire of goods; and
- (b) the total hiring charges paid or payable under the hire of goods is at least \$1 000.

### **346 Lodging instrument**

The person hiring out the goods must, within 30 days after the hiring of the goods lodge the instrument for the hire of the goods.

### **347 Hire of goods for indefinite period**

- (1) For imposing hire duty, if the hire of goods is for an indefinite period, it is taken to be a hire of goods for 3 years.
- (2) However, if the hire of the goods ends within 6 months after entering into it, the commissioner must, on application made by the person, make a reassessment of hire duty on the basis of the actual period the goods were hired out.
- (3) The applicant must lodge the instrument for the hire of the goods with the application.

## **Part 7 Exemptions for hire duty**

### **348 Exemption—particular credit purchase agreements**

Hire duty is not imposed on a credit purchase agreement for the purchase of goods together with—

- (a) freehold land or land leased under the *Land Act 1994*; or
- (b) a business or interest in a business.

## Chapter 8 Insurance duty

### Part 1 Preliminary

#### 349 Imposition of insurance duty

- (1) This chapter imposes duty (*insurance duty*) on each of the following—
  - (a) a contract of insurance that effects general insurance;
  - (b) a contract of insurance that effects life insurance;
  - (c) accident insurance.

*Note—*

Exemptions for insurance duty are dealt with in part 7. Also, other exemptions are dealt with in chapter 10.

- (2) Insurance duty is imposed on the following—
  - (a) for general insurance—premiums for the insurance;
  - (b) for life insurance—premiums for the insurance or the sum insured, depending on the type of the insurance;
  - (c) for accident insurance—net premiums charged for the insurance.

### Part 2 Some basic concepts for insurance duty

#### 350 What is *general insurance*

- (1) *General insurance* is any kind of insurance that is applicable to either or both of the following—
  - (a) property in Queensland;
  - (b) a risk, contingency or event concerning an act or omission that in the normal course of events may happen wholly or partly in Queensland.



- (2) However, the term does not include the following—
- (a) life insurance;
  - (b) accident insurance.

**351 What is *life insurance***

*Life insurance* is insurance applying to a life or lives, or any event or contingency relating to or depending on a life or lives, of a person or persons whose place of residence is in Queensland when the policy effecting the insurance is issued.

**352 What is *accident insurance***

*Accident insurance* is accident insurance under the *Workers' Compensation and Rehabilitation Act 2003*.

**353 What is a *premium***

- (1) A *premium* for general insurance or life insurance is the total consideration given to a general insurer or life insurer by or for the insured person to effect the insurance without deductions for any amounts paid or payable, allowed or allowable, by way of commission or discount to an insurance intermediary.
- (2) However, a *premium* does not include—
- (a) an amount paid to an insurance intermediary by the insured person as a fee under a contract between the insured person and the intermediary if the amount can be clearly identified as a fee; or
  - (b) an amount of duty under this or a corresponding Act.
- (3) It is immaterial where the amount is paid or where the insurance is effected.

**354 Who is a *general insurer***

A *general insurer* is a person who—

- (a) writes general insurance, other than as an insurance intermediary; and

- (b) is authorised under the *Insurance Act 1973* (Cwlth) to carry on an insurance business.

### **355 Who is a *life insurer***

A *life insurer* is a person who—

- (a) writes life insurance, other than as an insurance intermediary; and
- (b) is registered under the *Life Insurance Act 1995* (Cwlth).

### **356 What are *net premiums charged***

*Net premiums charged*, for accident insurance, are all amounts charged to policy holders under the *Workers' Compensation and Rehabilitation Act 2003* for premiums after any adjustments are made for any previous period.

## **Part 3 Liability for insurance duty**

### **357 Who is liable to pay insurance duty**

- (1) Insurance duty imposed on general insurance must be paid by the general insurer.
- (2) Insurance duty imposed on life insurance must be paid by the life insurer.
- (3) Insurance duty imposed on accident insurance must be paid by WorkCover Queensland.

### **358 When insurance duty is payable—general insurance**

Insurance duty must be paid each time a premium is paid for a contract of general insurance.

### **359 When premium is paid—general insurance**

- (1) For this chapter, a premium is paid when the first of the following happens—

- (a) the premium is received by the insurer;
  - (b) a part of the premium is received by the insurer.
- (2) For subsection (1), a premium or part of a premium is taken to be received by an insurer if—
- (a) it is received by the insurer or another person on behalf of the insurer; or
  - (b) an account of the insurer is credited with the amount of the premium or part of the premium.

**360 When insurance duty is payable—life insurance**

Insurance duty must be paid each time a life insurer writes a contract of life insurance.

**361 When insurance duty is payable—accident insurance**

Insurance duty must be paid each time net premiums are charged for accident insurance.

**362 Rate of insurance duty—general and accident insurance**

- (1) The rate of insurance duty imposed on a premium for general insurance is—
- (a) 7.5% of the premium to the extent to which the premium is paid to effect class 1 general insurance; or
  - (b) 5% of the premium to the extent to which the premium is paid to effect class 2 general insurance.
- (2) The rate of insurance duty imposed on a premium for CTP insurance is 10c.
- (3) The rate of insurance duty imposed on net premiums charged for accident insurance is 5%.
- (4) This section has effect subject to part 4.

**363 Rate of insurance duty—life insurance**

- (1) The rate of insurance duty imposed on a contract of life insurance that effects temporary or term insurance is 5% of the first year's premium.
- (2) The rate of insurance duty imposed on another contract of life insurance is—
  - (a) if the sum insured is not more than \$2 000—.05% of the sum insured; or
  - (b) if the sum insured is more than \$2 000—
    - (i) .05% of the first \$2 000; and
    - (ii) .1% of the balance of the sum insured.

**Part 4 Apportionment of premiums****Division 1 Apportionment between States****364 Application of div 1**

- (1) This division applies to a contract of general insurance that insures either or both of the following—
  - (a) property in Queensland as well as property in another State;
  - (b) a risk, contingency or event about an act or omission that in the normal course of events may happen wholly or partly in Queensland as well as wholly or partly in another State.
- (2) Also, this division applies to a contract of life insurance that insures lives, or any event or contingency relating to or depending on lives, of persons resident in Australia, at least one of whom has a place of residence in Queensland when the policy effecting the insurance is issued.

**365 Purpose of div 1**

The purpose of this division is—

- (a) to provide a way for apportioning premiums or parts of premiums paid for insurance; and
- (b) to avoid multiple duty between the States; and
- (c) to give the States their appropriate share of duty by way of the apportionment.

**366 Apportionment of premiums**

- (1) A regulation may state how premiums for insurance are to be apportioned.
- (2) A premium or part of a premium must be apportioned under the regulation.
- (3) However, the commissioner may, on the written application of an insurer or an insured person, apportion a premium or part of a premium on another basis if the commissioner is satisfied the apportionment on that basis would result in less insurance duty being paid.

**Division 2 Other apportionments****367 Apportionment between different types or classes of insurance**

If the commissioner is not satisfied a premium paid for a contract of insurance effecting different types or classes of insurance has been properly apportioned for assessing insurance duty, the commissioner may decide the basis of the apportionment.

**368 Apportionment of premiums between 2 or more policies**

- (1) This section applies if—
  - (a) 2 or more contracts of insurance (the *primary contracts*) are effected with—
    - (i) 1 insurer; or

- (ii) separate insurers between whom there is an arrangement about the insurance; and
  - (b) 1 or more of the premiums under the primary contracts—
    - (i) are conditional on 1 or more other contracts of insurance (the *secondary contracts*) being effected; or
    - (ii) are part of an arrangement that applies only if 1 or more other contracts of insurance (also the *secondary contracts*) are effected; and
  - (c) 1 or more of the premiums under the primary contracts attract insurance duty at a different rate to 1 or more of the premiums under the secondary contracts; and
  - (d) the commissioner is not satisfied a premium for 1 of the contracts reflects the relative risk of the contract.
- (2) The commissioner may apportion part of the total premiums payable to each of the contracts of insurance as the commissioner considers appropriate.

*Note—*

For objections and appeals against assessments, see the Administration Act, part 6.

## **Part 5 Arrangements applying to general insurers, life insurers and Workcover Queensland**

### **369 General and life insurers to be registered**

A general insurer or life insurer must not carry on business in Queensland as a general insurer or life insurer unless the insurer is registered under chapter 12, part 1, to carry on the business.

Maximum penalty—200 penalty units.

**370 Lodging returns and payment of insurance duty**

- (1) If a registered general insurer has a liability to insurance duty for a return period, the general insurer must on or before the return date—
  - (a) lodge a return in the approved form; and
  - (b) pay to the commissioner the amount of insurance duty based on the total amount of the premiums received in the return period by the general insurer and any assessed interest and penalty tax.
- (2) If a registered life insurer has a liability to insurance duty for a return period, the life insurer must, on or before the return date—
  - (a) lodge a return in the approved form; and
  - (b) pay to the commissioner the amount of insurance duty based on—
    - (i) for contracts of life insurance that effect temporary or term insurance—the total amount of the premiums received in the return period by the life insurer; and
    - (ii) for other contracts of life insurance—the amounts of the sums insured for the contracts written in the return period by the life insurer; and
  - (c) pay to the commissioner any assessed interest and penalty tax.
- (3) If a general insurer or life insurer refunds the whole or part of a premium for a contract of general insurance or life insurance for which insurance duty has been paid, the insurer may deduct from the amount required to be paid under subsection (1) or (2) the insurance duty paid on the amount of the premium refunded.

*Note—*

For provisions about reassessments and refunds, see the Administration Act, part 3 (Assessments of tax), division 2 (Self assessments) and part 4 (Payments and refunds of tax and other amounts), division 2 (Refunds of tax and other amounts).

- (4) If WorkCover Queensland has a liability to insurance duty for a month, it must—

- (a) lodge a statement in the approved form; and
  - (b) pay to the commissioner the amount of insurance duty based on the total amount of the net premiums charged in the month and any assessed interest and penalty tax.
- (5) WorkCover Queensland must comply with subsection (4) within 14 days after the end of the month or the longer period the commissioner allows.
- (6) For the Administration Act,<sup>47</sup> the statement is taken to be a return for a self assessment for the accident insurance.

## **Part 6 Arrangements applying to other persons**

### **371 Application of pt 6**

This part applies if a person, other than a registered general insurer or registered life insurer, effects or renews general insurance or life insurance.

### **372 Lodging statement and payment of insurance duty**

- (1) The person must, within 30 days after payment of the premium for the insurance—
- (a) lodge a statement in the approved form; and
  - (b) pay to the commissioner the amount of insurance duty for the insurance.
- (2) For the Administration Act, the statement is taken to be a return for a self assessment for the insurance.

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<sup>47</sup> See the Administration Act, section 32 (Time for payment of other amounts).



## Part 7 Exemptions for insurance duty

### 373 Exemption—particular marine insurance

Insurance duty is not imposed on a contract of insurance for the physical loss or damage to the hull of a boat used primarily for commercial purposes.

### 374 Exemption—goods in transit

Insurance duty is not imposed on a contract of insurance for the physical loss or damage to goods in transit or for the loss of freight of goods in transit.

### 375 Exemption—health insurance

Insurance duty is not imposed on a contract of insurance entered into in the course of an insurer's health insurance business as defined in the *National Health Act 1953* (Cwlth), section 67.

### 376 Exemption—reinsurance

Insurance duty is not imposed on a contract of reinsurance between one insurer and another insurer.

## Chapter 9 Vehicle registration duty

### Part 1 Preliminary

#### 377 Imposition of vehicle registration duty

- (1) This chapter imposes duty (*vehicle registration duty*) on—
  - (a) an application to register a vehicle; and

- (b) an application to transfer a vehicle if the person in whose name the vehicle is to be registered differs from the person in whose name the vehicle is registered.

*Note—*

Exemptions for vehicle registration duty are dealt with in part 4. Also, other exemptions are dealt with in chapter 10.

- (2) Vehicle registration duty is imposed on the dutiable value of the vehicle.
- (3) However, the vehicle registration duty imposed on an application for a special vehicle is the amount stated in section 382(2)(a).

## Part 2 Some basic concepts for vehicle registration duty

### 378 What is the *dutiable value* of a vehicle

- (1) The *dutiable value* of a vehicle that has not previously been registered, whether in Queensland or another State, and for which there is a list price is the total of the following—
- (a) the vehicle's list price;
- (b) the price of all items of optional equipment not included in the list price.
- (2) The *dutiable value* of a vehicle that has previously been registered, whether in Queensland or another State, or for which there is no list price is the greater of the following—
- (a) the total consideration, in monetary terms, payable by the purchaser including any deposit, trade-in allowance and the price of all items of optional equipment;
- (b) the market value of the vehicle.

### 379 What is the *market value* of a vehicle

The *market value* of a vehicle is the amount for which the vehicle might reasonably be sold, free of encumbrances, on

the open market when the transaction to which an application to register or transfer the vehicle is made.

## **Part 3                      Liability for vehicle registration duty**

### **380      Who is liable to pay vehicle registration duty**

- (1) For an application to register a vehicle, the applicant is liable to pay the vehicle registration duty.
- (2) For an application to transfer a vehicle, the transferee and the transferor are liable to pay the vehicle registration duty.

### **381      When vehicle registration duty must be paid**

- (1) For an application to register a vehicle, the applicant must pay the vehicle registration duty on the application when making it.
- (2) For an application to transfer a vehicle, the transferee and the transferor must pay the vehicle registration duty on the application when making it.

### **382      Assessment of vehicle registration duty**

- (1) On the making of an application to register or transfer a vehicle—
  - (a) the commissioner is taken to have made an assessment of vehicle registration duty on the application; and
  - (b) the application is taken to be an assessment notice for the duty; and
  - (c) the commissioner is taken to have given the assessment notice to the persons liable to pay the duty.
- (2) The liability for the vehicle registration duty on the application is the following amount—
  - (a) if the application is for a special vehicle—\$25; or

- (b) if paragraph (a) does not apply—the amount worked out by applying the rate of vehicle registration duty to the dutiable value of the vehicle at the dutiable day.

### **383 Rate of vehicle registration duty, other than for a special vehicle**

The rate of vehicle registration duty imposed on an application to register or transfer a vehicle, other than a special vehicle, is \$2 for each \$100, and each part of \$100, of the dutiable value of the vehicle.

### **384 Reduction in vehicle registration duty payable**

- (1) The amount of vehicle registration duty assessed under section 382(2) must be reduced if—
- (a) the application to register or transfer the vehicle is made in relation to a dutiable transaction; and
  - (b) the dutiable value of the dutiable transaction relating to the dutiable property includes an amount representing the market value or part of the market value of the vehicle; and
  - (c) transfer duty in schedule 3 has been paid or is payable on the dutiable transaction.
- (2) The reduction must be worked out using the following formula—

$$R = \frac{DP \times MVV}{DVDP}$$

where—

***DP*** means the duty paid or payable on the dutiable transaction that was worked out by applying the rate of transfer duty under schedule 3.

***DVDP*** means the dutiable value of the dutiable transaction relating to the dutiable property on which transfer duty in schedule 3 was worked out.

**MVV** means the market value of the vehicle or part of the market value of the vehicle mentioned in subsection (1)(b).

**R** means the amount of the reduction.

*Example for subsection (2)—*

A dutiable transaction comprises the transfer of the following dutiable property for the consideration stated—

- Queensland marketable securities (\$2 000)
- a statutory business licence (\$5 000)
- personal property (\$15 000) including a vehicle (\$10 000).

Assuming the consideration for the transaction is the dutiable value, transfer duty is imposed on the transaction under chapter 2 as follows—

- for the marketable securities—\$12, being the amount worked out at the rate stated in section 24(1)
- for the licence and personal property—\$300, being the amount worked out at the applicable rate of duty stated in schedule 3.

In working out the reduction—

- factor DP is \$300, being transfer duty on the transaction so far as it relates to the licence and personal property (transfer duty on the marketable securities is disregarded)
- factor MVV is \$10 000, being the market value of the vehicle
- factor DVDP is \$20 000, being the dutiable value of the transaction relating to the licence and personal property on which transfer duty is imposed at the applicable rate of duty stated in schedule 3.

Applying the formula, the reduction is \$150.

- (3) However, the reduction must not be more than the amount of vehicle registration duty that is otherwise payable under section 382(2).

## **Part 4 Exemptions for vehicle registration duty**

### **385 Exemption—registration of previously registered vehicle**

Vehicle registration duty is not imposed on an application to register a vehicle if—

- (a) the vehicle was registered under the Vehicle Registration Act; and
- (b) the registration expired or was cancelled under that Act; and
- (c) the application is made by the same person in whose name the vehicle was registered immediately before the expiry or cancellation.

**386 Exemption—registration of interstate registered vehicle**

- (1) Subject to subsection (3), vehicle registration duty is not imposed on an application to register a vehicle if—
  - (a) the vehicle is registered under an Act of another State that corresponds to the Vehicle Registration Act; and
  - (b) duty under a corresponding Act was paid in that State for the registration of the vehicle; and
  - (c) the application is made by a person or persons mentioned in subsection (2).
- (2) For subsection (1)(c), the applicant or applicants must be—
  - (a) if there is only 1 registered operator—
    - (i) the registered operator; or
    - (ii) the registered operator and a relative of the registered operator; or
    - (iii) a relative of the registered operator; or
  - (b) if there is more than 1 registered operator—
    - (i) the registered operators; or
    - (ii) 1 of the registered operators if the other registered operators are the applicant's relatives; or
    - (iii) 1 of 2 registered operators and a relative of the other registered operator; or
    - (iv) a relative of the registered operators; or
    - (v) a relative of each of 2 registered operators.
- (3) Subsection (1) applies only if the registration of the vehicle, or an interest in the vehicle, in the name of a relative of a

registered operator constitutes a gift of the vehicle or interest by the operator to the relative.

- (4) For subsections (2) and (3), a person is a relative of another person if the person is a relative of the other person under section 390(2).

### **387 Exemption—registration of heavy vehicle**

Vehicle registration duty is not imposed on an application for registration of a vehicle if—

- (a) the vehicle has a GVM under the Vehicle Registration Act of more than 4.5 t; and
- (b) immediately before 1 July 1995, the vehicle was registered under the *Interstate Road Transport Act 1985* (Cwlth); and
- (c) the application is the first application for registration of the vehicle in a State; and
- (d) the application is made by the same person in whose name the vehicle is registered under the Act mentioned in paragraph (b).

### **388 Exemption—business name**

Vehicle registration duty is not imposed on an application to register or transfer a vehicle if—

- (a) the vehicle is registered in the name of a business; and
- (b) vehicle registration duty or duty under a corresponding Act was paid for the registration of the vehicle; and
- (c) the application is made by or for the owners of the business to register or transfer the vehicle—
  - (i) in the sole names of the owners; or
  - (ii) in the name of another business owned solely by the owners; or
  - (iii) for an application to register a vehicle registered under a corresponding Act in a business name—in the name of the business owned solely by the owners.

**389 Exemption—vehicle dealer**

Vehicle registration duty is not imposed on—

- (a) an application to register a vehicle in the name of a vehicle dealer or to transfer a vehicle to a vehicle dealer if the vehicle is acquired as trading stock; or
- (b) an application to register a new vehicle in the name of a vehicle dealer if the vehicle is acquired for the dealer's use as a demonstrator.

**390 Exemption—particular persons and entities**

(1) Vehicle registration duty is not imposed on an application to register a vehicle in the name of, or an application to transfer a vehicle to, any of the following persons—

- (a) the Governor;
- (b) the personal representative of the estate of a deceased person;
- (c) a person who is beneficially entitled to the vehicle in the estate of a deceased person;
- (d) a person who is in the business of financing the purchase or use of vehicles if the vehicle the subject of the application is repossessed by, or voluntarily surrendered to, the person;
- (e) a hirer who redeems a previously repossessed vehicle if the registration will be in the same name as before the repossession;
- (f) a government entity;
- (g) a local government;
- (h) a consul or officer of a consulate if the person is a national of the country represented;
- (i) a primary producer if—
  - (i) the vehicle is a vehicle with a GVM under the Vehicle Registration Act of more than 6 t; and
  - (ii) the primary producer lodges a statutory declaration stating that the primary producer intends to use the vehicle solely in a business of primary production;



- (j) an ex-serviceperson who, under the Vehicle Registration Act, is entitled to concessional registration fees for the vehicle;
  - (k) an entity if the vehicle is a motorised wheelchair for a disabled person's use;
  - (l) a person who has lost the use of 1 or both legs if the vehicle is for use for transport to and from the person's place of employment because the person can not use public transport.
- (2) Also, vehicle registration duty is not imposed on an application to transfer a vehicle or an interest in a vehicle wholly by way of gift to any of the following persons or any 2 or more of them jointly—
- (a) the registered operator's spouse;
  - (b) a parent or grandparent of the registered operator;
  - (c) a parent or grandparent of the registered operator's spouse;
  - (d) a child, stepchild or grandchild of the registered operator;
  - (e) a child, stepchild or grandchild of the registered operator's spouse;
  - (f) the spouse of anyone in paragraphs (b) to (e).

### **391 Exemption—forfeiture orders**

Vehicle registration duty is not imposed on an application to transfer a vehicle under—

- (a) any of the following under the *Criminal Proceeds Confiscation Act 2002*—
  - (i) third party order;
  - (ii) an exclusion order;
  - (iii) an innocent interests exclusion order;
  - (iv) a buy-back order;

- (v) a request under section 175;<sup>48</sup> or
- (b) the *Drugs Misuse Act 1986*, section 38(4) or 39(4).

### **392 Exemption—industrial organisations**

Vehicle registration duty is not imposed on an application, under the *Industrial Relations Act 1999*, chapter 12, part 15, to register a vehicle in the name of, or to transfer a vehicle to, an organisation under that Act.

### **393 Exemption—disposal under particular Acts**

Vehicle registration duty is not imposed on an application to transfer a vehicle under—

- (a) the *Libraries and Archives Act 1988*, section 28; or
- (b) the *Queensland Art Gallery Act 1987*, section 28; or
- (c) the *Queensland Museum Act 1970*, section 21; or
- (d) the *Queensland Performing Arts Trust Act 1977*, section 19; or
- (e) the *Royal Queensland Theatre Company Act 1970*, section 18.

## **Part 5 Reassessments for vehicle registration duty**

### **394 Reassessment—noncomplying use by primary producer**

- (1) This section applies if—
  - (a) vehicle registration duty is not paid on an application to register or transfer a vehicle in the name of a primary producer on the basis of an exemption under section 390(1)(i); and

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<sup>48</sup> *Criminal Proceeds Confiscation Act 2002*, section 175 (If Attorney-General asked to return property)

- (b) within 5 years after the application to register or transfer the vehicle, the primary producer starts using the vehicle other than in the business of primary production, or sells or otherwise transfers the vehicle.
- (2) Within 28 days after the event mentioned in subsection (1)(b) happens, the primary producer must give notice in the approved form to the commissioner.

*Note—*

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

- (3) The commissioner must make a reassessment to impose vehicle registration duty on the application to register the vehicle as if the exemption from duty had never applied.

*Note—*

Unpaid tax interest and penalty tax may be payable under the Administration Act, part 5.

### **395 Reassessment of vehicle registration duty**

- (1) This section applies if the commissioner is satisfied that—
  - (a) after an application to register or transfer a vehicle is made, the vehicle is repossessed from a person because it was stolen before it was acquired by the person; or
  - (b) vehicle registration duty was paid for an application to register or transfer a vehicle and the transaction is cancelled within 3 months after the application is made.
- (2) On application made by the person who paid the vehicle registration duty on the application to register or transfer the vehicle, the commissioner must make a reassessment of the duty paid as if it were exempt from vehicle registration duty.
- (3) An application under subsection (2) must be made within 1 year after the application to register or transfer the vehicle was made.

## **Part 6**                      **Miscellaneous provisions**

### **396**      **Obligations of vehicle dealers**

- (1) This section applies if—
  - (a) under section 389, vehicle registration duty is not imposed on an application to register a vehicle in the name of a vehicle dealer or to transfer a vehicle to a vehicle dealer; and
  - (b) the vehicle dealer sells the vehicle.
- (2) The vehicle dealer must—
  - (a) give the purchaser of the vehicle a statement showing the consideration for the purchase of the vehicle and the value of any trade-in; and
  - (b) keep a copy of the statement.<sup>49</sup>

Maximum penalty—100 penalty units.

## **Chapter 10**            **General exemptions**

### **Part 1**                      **Exemptions for particular duties for corporate reconstruction**

#### **Division 1**              **Preliminary**

#### **397**      **Purpose of pt 1**

This part provides for exemptions for particular duties on particular transactions carried out for a corporate reconstruction.

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<sup>49</sup> See the Administration Act, section 118 (Period for keeping records).

## **Division 2                    Some basic concepts about exemptions for duty for corporate reconstructions**

### **Subdivision 1                Basic concepts about corporate reconstructions**

#### **398    What is a *corporate reconstruction***

- (1) A *corporate reconstruction* happens if—
- (a) through a transaction or series of transactions, property is transferred, or agreed to be transferred, for the purpose of changing a corporate structure to make internal adjustments to corporate arrangements; and
  - (b) the transaction or each transaction is necessary to give effect to the purpose and is not undertaken for any other purpose; and
  - (c) the transfer, or agreement for the transfer, of the property is not part of an arrangement under which any company involved with any of the transactions ceases to belong to the same corporate group other than in the circumstances mentioned in section 412(4).
- (2) For subsection (1)(b), a transaction that is 1 in a series of transactions is taken to be necessary to give effect to the purpose if it is necessary for an exemption to apply to the transaction.

### **Subdivision 2                Basic concepts about companies, group companies, parent companies and subsidiaries**

#### **399    What is a *company***

A *company* is a body corporate other than a corporation sole.

**400 What are *group companies*, a *group company* and a *corporate group***

- (1) If a company is the subsidiary of another company, the companies are *group companies*.
- (2) Also, if 2 or more companies are the subsidiary of another company, all the companies are *group companies*.
- (3) Each of the group companies is a *group company*.
- (4) All companies that are group companies form a *corporate group*.

**401 What is a *parent company***

A company is the *parent company* of another company if—

- (a) it directly owns, other than as trustee, at least 90% of the issued shares in the other company; and
- (b) has voting control over the other company.

**402 What is a *subsidiary***

A company (the *first company*) is a *subsidiary* of another company if at least 90% of the issued shares in the first company are owned, other than as trustee, and voting control of the first company is held, by 1 or more of the following companies—

- (a) the other company;
- (b) 1 or more other subsidiaries of the other company;
- (c) the other company and 1 or more other subsidiaries of the other company.

**403 Example of corporate group structure**

- (1) Schedule 5 contains an example of a corporate group structure.
- (2) The example shows the group companies, the parent companies and subsidiaries in the group.

**404 How part applies to particular transactions**

For this part—

- (a) an application to transfer a vehicle is treated as an agreement for the transfer of dutiable property to the applicant transferee from the applicant transferor; and
- (b) a vesting, under a court order, of dutiable property is treated as a transfer of the property to the person in whom it is vested from its owner immediately before the order is made; and
- (c) a surrender of dutiable property is treated as a transfer of the property to the person to whom it is surrendered from the person who surrenders it; and
- (d) a share buy-back for a Queensland marketable security is treated as a transfer of the security to the corporation from the former holder; and
- (e) a partnership acquisition is treated as a transfer of dutiable property to the partner from the former owner; and
- (f) a trust acquisition, under which a person becomes a beneficiary or the person's trust interest increases because of a transfer, or agreement for the transfer, of a trust interest, is treated as a transfer of dutiable property to the acquiring beneficiary from the transferor.

**Division 3 Exemptions for corporate reconstructions****405 Exemption—interposing new company between existing companies and their shareholders**

- (1) Subsection (2) applies to a corporate reconstruction constituted by a parent company (the *new parent company*) being interposed between a company (the *existing company*) and the shareholders of the existing company.
- (2) Transfer duty is not imposed on a transfer, or agreement for the transfer, of shares from a shareholder of the existing company to the new parent company carried out solely for the

corporate reconstruction if the conditions in subsections (3) and (4) are complied with.

- (3) For subsection (2), the conditions are as follows—
- (a) the new parent company is a company with limited liability;
  - (b) the new parent company has been dormant from its registration until the resolution to become the new parent company of the existing company;
  - (c) under the dutiable transaction, the new parent company acquires at least 90% of the issued shares, and voting control of, the existing company;
  - (d) at least 90% of the consideration for the acquisition is the issue of shares in the new parent company to the shareholders of the existing company;
  - (e) each shareholder of the existing company whose shares are acquired by the new parent company receives consideration equal in value to the value of the shareholder's shares in the existing company;
  - (f) immediately after the transfer of shares in the existing company, at least 90% of the issued shares in the new parent company consists of the shares it issued as consideration for the acquisition of the shares in the existing company.
- (4) Also, if the new parent company is interposed between more than 1 existing company and their shareholders, it is a condition for subsection (2) that, before the acquisition by the new parent company, the same shareholders—
- (a) owned, directly or indirectly, at least 90% of the issued shares in the existing companies; and
  - (b) had voting control of the existing companies.

#### **406 Exemption—intra-group transfers of property**

- (1) Transfer duty or vehicle registration duty is not imposed on a transfer, or agreement for the transfer, of dutiable property



carried out for a corporate reconstruction if the conditions in subsection (2) are complied with.<sup>50</sup>

- (2) For subsection (1), the conditions are as follows—
- (a) the transferor did not hold, and the transferee will not hold, the property as trustee;
  - (b) the transferor and transferee of the property are group companies;
  - (c) the dutiable transaction has not been made under an arrangement under which—
    - (i) part or all of the consideration for the dutiable transaction has or is to be provided or received, directly or indirectly by a person other than a group company; or
    - (ii) a group company is to be enabled to provide any of the consideration by a person other than as mentioned in subsection (3); or
    - (iii) a group company is to dispose of any of the consideration through a payment or other disposition—
      - (A) to a person other than a group company; or
      - (B) to a person other than by way of loan on ordinary commercial terms;
  - (d) the property transferred is, at the time of the transfer, group property under section 407.
- (3) For subsection (2)(c)(ii), consideration may be provided—
- (a) by a financial institution by way of loan on ordinary commercial terms; or
  - (b) by a group company; or
  - (c) under an offer and sale of shares to the public in the circumstances mentioned in section 412(4)(b).

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50 See section 404 (How part applies to particular transactions).

**407 Group property for intra-group transfer of property**

- (1) For section 406(2)(d), property is group property if—
  - (a) the transferor and transferee—
    - (i) were group companies before the property, or an interest of at least 90% in the property, was first owned by the transferor or another group company; and
    - (ii) have been group companies at all times subsequent during which the property, or an interest of at least 90% in the property, has been continuously owned by the transferor or another group company; or
  - (b) the transferor and transferee—
    - (i) were group companies before the property, or an interest of at least 90% in the property, came into the ownership of the transferor or another group company by way of a transaction for which transfer duty, or an equivalent duty under a corresponding Act, has been paid; and
    - (ii) have been group companies at all times subsequent during which the property, or an interest of at least 90% in the property, has been continuously owned by the transferor or the other group company; or
  - (c) the transferor or transferee is the new parent company of the other party to the transfer and the transferor and the transferee became group companies in the circumstances mentioned in section 405; or
  - (d) the transferee is the parent company of the transferor and land rich duty was imposed and paid for the transferee acquiring its shares in the transferor; or
  - (e) the transferee is the parent company of the transferor, and the transferee acquired at least 70% of the shares of the transferor because of a takeover bid, under the Corporations Act, chapter 6, for the shares if they were quoted securities under that Act; or
  - (f) the transferor and transferee have been group companies for 3 years.
- (2) For section 406(2)(d), property is also group property if—

- (a) the transfer is between a parent company and a subsidiary of it; and
- (b) either of the following apply—
  - (i) the parent company became the parent company of the subsidiary on its registration;
  - (ii) the parent company became the parent company of the subsidiary after its registration and the subsidiary has been dormant since its registration; and
- (c) the parent company remained the parent company of the subsidiary from its registration or from when it became the subsidiary's parent company until the property is transferred.

#### **408 Exemption—trustees**

- (1) Transfer duty or vehicle registration duty is not imposed on a transfer, or agreement for the transfer, of dutiable property carried out for a corporate reconstruction if the following conditions are complied with—
  - (a) the transferor of the property holds the property as trustee for the beneficiaries of a fixed trust, including a unit trust;
  - (b) the transferor of the property holds at least 90% of the issued shares of the transferee as trustee for the beneficiaries or, for a unit trust, the unitholders;
  - (c) the conditions mentioned in section 406(2) are complied with.<sup>51</sup>
- (2) For subsection (1), section 406(2) and division 5 apply as if—
  - (a) a reference to the transferor of the property were a reference to the unitholders or beneficiaries; and
  - (b) the issued shares in the transferee held by the transferor were held other than as trustee.

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<sup>51</sup> See section 404 (How part applies to particular transactions).

**409 Exemption—land rich duty**

- (1) This section applies if—
  - (a) under section 405, a transfer, or agreement for the transfer, of shares is exempt from transfer duty and the acquisition of shares in the existing company by the new parent company or the issue of the shares in the new parent company to the shareholders of the existing company is a relevant acquisition; or
  - (b) under section 406 or 408, a transfer, or agreement for the transfer, of shares is exempt from transfer duty and the acquisition of the shares by the transferee is a relevant acquisition.
- (2) Land rich duty is not imposed on the acquisition to the extent of the interest acquired by the new parent company or transferee under the dutiable transaction.<sup>52</sup>
- (3) Subsection (1) applies to a transfer, or agreement for the transfer, of shares that are not Queensland marketable securities as if the transfer or agreement were a dutiable transaction.

**Division 4 Applications for rulings and exemptions****410 Application for ruling for proposed dutiable transaction or relevant acquisition**

- (1) A company that proposes being party to a dutiable transaction or relevant acquisition, may apply to the commissioner for a ruling whether the proposed transaction or acquisition will be exempt from duty under this part.
- (2) The application must—
  - (a) be in the approved form; and
  - (b) be accompanied by enough information to enable the commissioner to make a ruling.

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52 See section 179(4) (Working out dutiable value of relevant acquisition).

- (3) The commissioner must give the applicant notice of the commissioner's ruling on the application.

**411 Application for exemption for dutiable transaction or relevant acquisition**

- (1) The parties to a dutiable transaction or acquirer under a relevant acquisition may apply to the commissioner for an exemption from duty under division 3.
- (2) The application must—
  - (a) be in the approved form; and
  - (b) be supported by enough information to enable the commissioner to make an assessment.
- (3) On the application, the commissioner must make an assessment of nil duty for the dutiable transaction or relevant acquisition if—
  - (a) the commissioner is satisfied the transaction or acquisition is exempt from duty under division 3; or
  - (b) the commissioner has, on an application for a ruling, decided the transaction or acquisition would be exempt from duty under division 3.
- (4) However, subsection (3)(b) does not apply if—
  - (a) the instruments submitted with the application for exemption differ in a material particular to drafts of instruments lodged with the application for the ruling; or
  - (b) the circumstances existing in relation to the transaction or acquisition at the time of the application for exemption are materially different from the circumstances existing at the time of the application for the ruling; or
  - (c) the information given with the application for the ruling was false or misleading in a material particular; or
  - (d) each of the following applies—

- (i) after the ruling is made but before the application for the exemption is decided, a legislative change takes effect or a judgment of a court is given;
- (ii) the change or judgment would, if it had taken effect or been given before the ruling was made, have materially affected the ruling made by the commissioner.

## **Division 5                      Reassessments for corporate reconstructions**

### **412      Reassessment—exemption for intra-group transfers of property, trustees and land rich duty**

- (1) This section applies if—
  - (a) duty is assessed on a dutiable transaction or relevant acquisition on the basis of an exemption under section 406, 408 or 409; and
  - (b) within 3 years after the transaction or acquisition—
    - (i) the transferor or transferee has ceased to belong to the same corporate group; or
    - (ii) part or all of the consideration for the transaction or acquisition is provided or received other than as permitted by section 406(2)(c)(ii) or (iii).
- (2) The commissioner must make a reassessment to impose duty on the dutiable transaction or relevant acquisition as if the exemption from duty had never applied.

*Note—*

Unpaid tax interest and penalty tax may be payable under the Administration Act, part 5.

- (3) Subsection (2) applies to the reassessment despite the following—
  - (a) the limitation period under the Administration Act for reassessments;<sup>53</sup>

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53 See the Administration Act, part 3 (Assessments of tax), division 3 (Reassessments).

- (b) the commissioner's ruling under section 410 for the dutiable transaction or relevant acquisition.
- (4) However, subsection (2) does not apply—
  - (a) if the transferor or transferee ceases to exist, other than under an arrangement, a significant purpose of which was to avoid the requirement that the transferor and transferee belong to the same corporate group for the 3 years mentioned in subsection (1); or
  - (b) if—
    - (i) the transferor or transferee ceases to be a group company in the corporate group because its shares, or the shares of a new parent company interposed between the transferor and transferee, are offered and sold to the public; and
    - (ii) the shares are quoted on the market operated by a recognised stock exchange within 1 year after the offer to the public; or
  - (c) if less than 5% of the value of the property held, directly or indirectly, by the company that ceases to be a group company is dutiable property.
- (5) Without limiting subsection (4)(a), a company registered under the Corporations Act ceases to exist if it is deregistered under that Act.

#### **413 When parties must give notice for reassessment**

- (1) This section applies if an event mentioned in section 412(1)(b) happens within 3 years after a dutiable transaction or relevant acquisition to which an exemption under this part was applied.
- (2) Within 28 days after the event happens, a party to the dutiable transaction or person making the relevant acquisition must—
  - (a) give notice in the approved form to the commissioner; and
  - (b) ensure the instruments required for the assessment for the dutiable transaction or relevant acquisition are

lodged for a reassessment of duty on the transaction or acquisition.

*Note—*

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

## **Part 2 Exemptions for particular duties for exempt institutions**

### **Division 1 Exemptions for exempt institutions**

#### **414 Exemption—particular duties for exempt institutions**

- (1) Duty is not imposed on the following—
  - (a) a dutiable transaction under which an exempt institution acquires dutiable property;
  - (b) a dutiable transaction that is—
    - (i) the creation or termination of a trust of dutiable property for the benefit of an exempt institution; or
    - (ii) a trust acquisition or trust surrender by an exempt institution;
  - (c) a lease to an exempt institution;
  - (d) a mortgage given to secure an advance to an exempt institution;
  - (e) a hire of goods by an exempt institution;
  - (f) a premium for general insurance for property or undertaking of an exempt institution;
  - (g) an application to register or transfer a vehicle in the name of an exempt institution.
- (2) Subsection (1) applies only if the use requirements under division 2 are complied with.



## **Division 2                    Use requirements for exemptions**

### **415    Use requirement**

- (1) Property acquired, leased, hired or insured by, or property held on trust for, or an advance to, an exempt institution must be used solely or almost solely by the exempt institution for 1 or more of the following purposes (a *qualifying exempt purpose*)—
  - (a) activities of a religious nature;
  - (b) public benevolent purposes;
  - (c) educational purposes;
  - (d) conducting a kindergarten or preschool;
  - (e) the care of the sick, aged, infirm, afflicted or incorrigible persons;
  - (f) the relief of poverty;
  - (g) the care of children under section 459(2)(i);
  - (h) another charitable purpose or promotion of the public good;
  - (i) providing a residence to a minister, or members of a religious order who are engaged in an object or pursuit of a kind mentioned in paragraphs (a) to (h).
- (2) For subsection (1)(a) to (h), the property acquired, leased, hired, insured or held is not used, or the advance is not made, solely or almost solely for a qualifying exempt purpose if the property is used or the advance is made for an employment or salary package of an officer or employee of the institution.

### **416    Start of use requirement**

- (1) For property held on trust for an exempt institution, the commissioner must be satisfied—
  - (a) the property will start to be used for the exempt institution for a qualifying exempt purpose on or before the date that is 6 months after the liability for transfer

duty on the transaction would, apart from the exemption under division 1, arise (the *start date*); and

- (b) the property will be used solely or almost solely for the institution for a qualifying exempt purpose for the period starting on the date the property is used for the exempt institution for a qualifying exempt purpose and ends 1 year after that date or the later date fixed by the commissioner by notice given to the institution (the *duration period*).
- (2) For other property or an advance, the commissioner must be satisfied—
- (a) the property acquired, leased, hired or insured or the advance will start to be used by the exempt institution for a qualifying exempt purpose on or before the date stated in subsection (3) (also the *start date*); and
  - (b) the property or advance will be used solely or almost solely by the institution for a qualifying exempt purpose for the period stated in subsection (4) (also the *duration period*).
- (3) For subsection (2)(a), the start date is—
- (a) for a dutiable transaction that is an acquisition of dutiable property—6 months after the liability for transfer duty on the transaction would, apart from the exemption under division 1, arise; or
  - (b) for a lease—immediately after the lease is entered into; or
  - (c) for an advance—immediately after the advance is made; or
  - (d) for a hire of goods—immediately after the hiring of the goods; or
  - (e) for a premium for a contract of general insurance—immediately after the premium is paid; or
  - (f) for an application to register or transfer a vehicle—immediately after the application is made.
- (4) For subsection (2)(b), the duration period starts—

- (a) for a dutiable transaction that is an acquisition of dutiable property—on the date the exempt institution starts to use the property for a qualifying exempt purpose and ends 1 year after that date or the later date fixed by the commissioner by notice given to the institution; or
- (b) for a lease—on the start date and ends on the earlier of the following—
  - (i) 1 year after the lease is entered into;
  - (ii) the end of the term of the lease; or
- (c) for an advance—on the start date and ends 1 year after the advance is made; or
- (d) for a hire of goods—on the start date and ends on the earlier of the following—
  - (i) 1 year after the hiring of the goods;
  - (ii) the end of the life of the goods;
  - (iii) the end of the term of the hire; or
- (e) for a premium for a contract of general insurance—on the start date and ends 1 year after payment of the premium; or
- (f) for an application to register or transfer a vehicle—on the start date and ends 1 year after the application is made.

#### **417 Commissioner to extend start date and duration period**

- (1) This section applies if, after an assessment made on the basis of an exemption under division 1, the commissioner is satisfied the property acquired, leased, hired, insured or held or the advance—
  - (a) has not been used solely or almost solely for a qualifying exempt purpose; but
  - (b) will be used solely or almost solely for a qualifying exempt purpose by a later date (the *new start date*), and for the period, fixed by the commissioner (the *new duration period*) by notice given to the institution.

- (2) The commissioner must not make a reassessment merely because the property or advance has not been used solely or almost solely for a qualifying exempt purpose if the property or advance starts to be so used by the new start date.

### **Division 3                      Reassessments for exempt institutions**

#### **418      Reassessment on application of exempt institution**

- (1) This section applies if, under an assessment, duty is imposed on an instrument or transaction because the use requirements under division 2 will not be complied with.
- (2) If, on application by the exempt institution concerned, the commissioner is satisfied the property acquired, leased, hired, insured or held or the advance, has been used solely, or almost solely, for a qualifying exempt purpose from the start date for the duration period, the commissioner must make a reassessment on the basis of compliance with division 2.
- (3) For the reassessment, the exempt institution must lodge the instruments required for the original assessment.

#### **419      Reassessment—noncompliance with use requirements**

- (1) This section applies if—
  - (a) duty is assessed on an instrument or transaction on the basis of an exemption under division 1; and
  - (b) after the assessment, the property acquired, leased, hired, insured or held or the advance—
    - (i) is used for a purpose other than a qualifying exempt purpose; or
    - (ii) is not used for a qualifying exempt purpose by the start date or new start date; or
    - (iii) is not used for a qualifying exempt purpose for the duration period or new duration period.
- (2) Within 28 days after the event mentioned in paragraph (b) happens, the exempt institution must—

- (a) give notice in the approved form to the commissioner; and
- (b) ensure the instruments required for the assessment of duty are lodged for a reassessment of duty on the instrument or transaction.

*Note—*

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

- (3) The commissioner must make a reassessment to impose duty on the instrument or transaction as if the exemption had never applied.

*Note—*

Unpaid tax interest and penalty tax may be payable under the Administration Act, part 5.

## **Part 3 Exemptions for matrimonial and de facto relationship instruments**

### **Division 1 Some basic concepts for matrimonial and de facto relationship instruments**

#### **420 What is a *matrimonial instrument***

- (1) An instrument mentioned in subsection (2) that provides for the transfer of matrimonial property from 1 party to a marriage to only the other party to the marriage is a ***matrimonial instrument*** on the dissolution or annulment of the marriage.
- (2) For subsection (1), the instruments are the following—
  - (a) an agreement registered or approved under the *Family Law Act 1975* (Cwlth);

- (b) an order of a court under the *Family Law Act 1975* (Cwlth);
- (c) an instrument made under an instrument mentioned in paragraph (a) or (b);
- (d) an instrument made after the start of a proceeding for the dissolution or annulment of the marriage.

**421 What is *matrimonial property***

*Matrimonial property* is property of the parties to a marriage or of either of them that is—

- (a) residential land, the residence on which is for use as the principal residence of the party to whom it is to be or is being transferred; or
- (b) a vehicle for use for private purposes by the party to whom it is to be or is being transferred.

**422 What is a *de facto relationship instrument***

A *de facto relationship instrument* is any of the following instruments to the extent it deals with de facto relationship property—

- (a) a recognised agreement under the *Property Law Act 1974*, section 266;
- (b) an order of a court under the *Property Law Act 1974*, part 19;
- (c) an instrument made under an instrument mentioned in paragraph (a) or (b).

**423 What is *de facto relationship property***

*De facto relationship property* is property of the de facto partners of a de facto relationship or of either of them.

## **Division 2 Exemptions and reassessments**

### **424 Exemption—matrimonial and de facto relationship instruments**

Duty is not imposed on a transaction to the extent that it gives effect to a matrimonial instrument or de facto relationship instrument.

*Note—*

Exemptions for duty for particular maintenance agreements are provided in the *Family Law Act 1975* (Cwlth), sections 90 and 90L.

### **425 Reassessment on application**

- (1) This section applies if—
  - (a) duty has been paid on a transaction to the extent that it gives effect to an instrument for the transfer, or agreement for the transfer, of—
    - (i) matrimonial property from 1 party to a marriage to the other party; or
    - (ii) de facto relationship property from 1 de facto partner to the other; and
  - (b) duty was paid on the basis that the instrument was not a matrimonial instrument or de facto relationship instrument; and
  - (c) either of the following apply—
    - (i) when the duty was paid, the instrument was a matrimonial instrument or de facto relationship instrument for the property;
    - (ii) after the duty was paid, the instrument becomes a matrimonial instrument or de facto relationship instrument for the property.
- (2) On application made by a party to the marriage or 1 of the de facto partners, the commissioner must make a reassessment of duty for the transfer as if it were exempt from duty under section 424.
- (3) The application must be made within 6 months after—

- (a) if subsection (1)(c)(i) applies—the instrument is made; or
  - (b) if subsection (1)(c)(ii) applies—the instrument becomes a matrimonial instrument or de facto relationship instrument for the property.
- (4) The applicant must lodge the matrimonial instrument or de facto relationship instrument for the property with the application.

## Part 4 Other exemptions

### 426 Exemption—State

The State is not liable to pay duty unless this Act expressly provides otherwise.<sup>54</sup>

### 427 Exemption—particular instruments and transactions under Associations Incorporation Act

Duty is not imposed on an instrument or transaction for a vesting of property in an incorporated association under the *Associations Incorporation Act 1981*, because of its incorporation under part 2 or part 9, division 2, of that Act.

### 428 Exemption—particular instruments and transactions under Gas Pipelines Access (Queensland) Act

Duty is not imposed on—

- (a) a transaction that is an exempt matter under the *Gas Pipelines Access (Queensland) Act 1998*, section 54; or
- (b) an instrument or transaction for an exempt matter mentioned in paragraph (a).

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<sup>54</sup> See sections 17(1) (Who is liable to pay transfer duty) and 357 (Who is liable to pay insurance duty).



**429 Instruments and transactions under Housing Act 2003**

- (1) Duty is not imposed on an instrument or transaction entered into or made under the *Housing Act 2003* by the housing chief executive on behalf of the State.
- (2) However, subsection (1) does not apply to any of the following transactions or an instrument entered into for the transaction—
  - (a) the transfer, or agreement for the transfer, of land to a person who does not receive financial assistance from the housing chief executive on behalf of the State to enable the person to purchase the land;
  - (b) a transfer, agreement for the transfer, grant of freehold title or grant of a perpetual lease for residential purposes of land by the housing chief executive on behalf of the State to a person to enable the person to build a residence on the land, unless the consideration under the instrument or for the transaction includes the future provision of a housing service;
  - (c) a transfer, or agreement for the transfer, of land by the housing chief executive on behalf of the State if—
    - (i) immediately before the transfer, or agreement for the transfer, was entered into, the land was subject to a lease to a person to enable the person to provide housing for an employee of the person; and
    - (ii) the transferee is the lessee under the lease mentioned in subparagraph (i) or a related person of the lessee.
- (3) Subsection (2) does not make the housing chief executive or the State liable to pay duty.
- (4) In this section—

***housing chief executive*** means the chief executive of the department in which the *Housing Act 2003* is administered.

***housing service*** see the *Housing Act 2003*, section 8.

**430 Exemption—instruments and transactions under other Acts**

Duty is not imposed on an instrument or transaction entered into or made—

- (a) for the proper performance of the agreement under the *Anzac Square Development Project Act 1982* or to give effect to that Act or the agreement; or
- (b) because of, or for a purpose connected with or arising out of, the *Government Owned Corporations Act 1993*, chapter 2 or chapter 3, part 3; or
- (c) for giving effect to a provision of the *Ipswich Trades Hall Act 1986*; or
- (d) for implementing a reviewable local government matter under the *Local Government Act 1993*; or
- (e) under the *River Improvement Trust Act 1940*, section 14B, by a trust constituted under that Act.

**431 Exemption—Queensland Investment Corporation**

Duty is not imposed on an instrument or transaction entered into or made by the Queensland Investment Corporation established under the *Queensland Investment Corporation Act 1991*.

**431A Exemption—Queensland Treasury Corporation and its affiliates**

- (1) This section applies to a financial arrangement, or other arrangement, entered into or made by the Queensland Treasury Corporation or an affiliate of the corporation.
- (2) Subject to the conditions in subsection (3), duty is not imposed on an instrument or transaction that gives effect to, or is a part of, the arrangement.
- (3) The conditions are—
  - (a) the corporation or affiliate must be a party to the instrument or transaction or another instrument or transaction that gives effect to, or is part of, the arrangement; and

- (b) the Treasurer must certify the arrangement has as its objective—
- (i) the advancement of the State's financial interests;  
or
  - (ii) the development of the State or a part of the State;  
or
  - (iii) the benefit of persons, or a class of person, resident in or having or likely to have an association with the State.
- (4) In this section—

*affiliate*, of the Queensland Treasury Corporation, means an affiliate of the corporation under the *Queensland Treasury Corporation Act 1988*.

*financial arrangement* means a financial arrangement under the *Queensland Treasury Corporation Act 1988*.

*Queensland Treasury Corporation* means the Queensland Treasury Corporation constituted under the *Queensland Treasury Corporation Act 1988*.

## Chapter 11 Avoidance schemes

### 432 Purpose and operation of ch 11

- (1) The purpose of this chapter is to deter artificial, blatant or contrived schemes to reduce liability to duty.
- (2) Subject to subsection (1), nothing in this Act limits the operation of this chapter.

### 433 Application of ch 11

- (1) This chapter applies if—
  - (a) an entity (the *avoider*) has obtained, or would apart from this chapter obtain, a duty benefit from a scheme started

to be carried out after the commencement of this chapter; and

- (b) the duty benefit is not attributable to an exemption or concession under this Act for duty; and
  - (c) taking into account the matters mentioned in section 435, it is reasonable to conclude that an entity, whether alone or with others, that entered into or carried out the scheme, or part of the scheme, did so for the sole or dominant purpose of enabling the entity or another entity to obtain a duty benefit from the scheme.
- (2) It does not matter—
- (a) whether the scheme, or any part of the scheme is entered into or carried out inside or outside Queensland; or
  - (b) whether or not the duty benefit the entity obtained is the same kind of duty benefit mentioned in subsection (1)(a).

#### **434 When is a *duty benefit* obtained**

- (1) An entity obtains a *duty benefit* if an amount of duty payable by the entity under this Act apart from this chapter is, or could reasonably be expected to be, less than it would have been apart from the scheme or a part of the scheme.
- (2) The amount of the duty benefit is the difference between the amount of duty payable and the amount of duty that would have been payable apart from the scheme or part of the scheme.

#### **435 Matters to be considered in deciding purpose for scheme**

- (1) For section 433, the following matters must be taken into account in deciding an entity's purpose in entering into or carrying out the scheme from which the avoider obtained, or would obtain, a duty benefit—
  - (a) the way in which the scheme was entered into or carried out;
  - (b) the form and substance of the scheme, including—

- (i) the legal rights and obligations involved in the scheme; and
  - (ii) the economic and commercial substance of the scheme;
  - (c) when the scheme was entered into and the length of the period during which the scheme was carried out;
  - (d) the purpose of this Act or a provision of this Act, whether or not the purpose is expressly stated;
  - (e) the effect that this Act would have in relation to the scheme apart from this chapter;
  - (f) any change in the avoider's financial position that has resulted, will result, or may reasonably be expected to result from the scheme;
  - (g) any change in the financial position of any person who has, or has had, any connection, whether of a business, family or other nature, with the avoider, being a change that has resulted, will result, or may reasonably be expected to result from the scheme;
  - (h) any other consequence for the avoider or a person mentioned in paragraph (g) of the scheme having been entered into or carried out;
  - (i) the nature of the connection, whether of a business, family or other nature, between the avoider and any person mentioned in paragraph (g);
  - (j) the circumstances surrounding the scheme.
- (2) Subsection (1) applies for considering an entity's purpose in entering into or carrying out part of a scheme from which the avoider obtains, or would obtain, a duty benefit, as if the part were itself the scheme from which the avoider obtains, or would obtain, the benefit.

#### **436 Assessments because of duty benefit from scheme**

- (1) If a duty benefit has been obtained, or would apart from this chapter be obtained, by the avoider from a scheme, the commissioner may decide that the amount of the duty benefit is payable as duty as decided by the commissioner.

- (2) The commissioner must—
- (a) give notice of the decision, and the reasons for the decision, to the avoider; and
  - (b) make an assessment of duty on the basis of the decision.

*Note—*

For objections and appeals against assessments, see the Administration Act, part 6.

- (3) Subsection (4) applies if the commissioner—
- (a) has made an assessment under subsection (2); and
  - (b) is satisfied—
    - (i) a person, other than the avoider is liable to duty that would not have been assessed if the scheme had not been entered into or carried out; and
    - (ii) it would be fair and reasonable that the amount or part of the amount of duty should not have been assessed.
- (4) Despite the limitation period under the Administration Act for reassessments,<sup>55</sup> the commissioner must, for the other person, make a reassessment on the basis that the amount or part of the amount of duty is not payable.
- (5) For the reassessment, the other person must lodge the instruments required for the original assessment.

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<sup>55</sup> See the Administration Act, part 3 (Assessments of tax), division 3 (Reassessments).

## **Chapter 12 Registered persons**

### **Part 1 Registration of persons carrying on particular businesses and their registration as self assessors**

#### **437 Application for registration to carry on particular businesses**

- (1) A person may apply to be registered to carry on business in Queensland as a credit provider, commercial hirer, general insurer or life insurer.
- (2) The application must be made to the commissioner in the approved form.

#### **438 Registration to carry on business**

On receipt of the application, the commissioner must register the person to carry on the business.

#### **439 Registration as self assessor**

On registration of the person to carry on the business, the commissioner must also register the person as a self assessor for duty on instruments or transactions to which the person is or becomes a party for carrying on the business.

#### **440 Notice of registration**

- (1) The commissioner must give notice to the person of the person's registration to carry on the business and as a self assessor.
- (2) The notice must state the following—
  - (a) the date of registration;
  - (b) the dates for lodging returns, and for paying duty, by the self assessor;





**444 Registration of self assessor without application**

The commissioner may, by notice given to a person, register the person as a self assessor for duty on particular instruments or transactions to which the person is or becomes a party.

**445 Notice of registration**

- (1) On registration of a person as a self assessor, the commissioner must give notice to the person of the registration.
- (2) The notice must state the following—
  - (a) the date of registration;
  - (b) the instruments and transactions to which the registration relates and for which returns are required or permitted to be lodged;
  - (c) the dates for lodging returns, and for paying duty, by the self assessor;
  - (d) the periods to be covered by the returns;
  - (e) the documents required to accompany the returns;
  - (f) the records required to be kept relating to the instruments and transactions;
  - (g) the endorsements to be made on the instruments;
  - (h) the types of reassessments the self assessor is required or permitted to make;
  - (i) whether the self assessor is permitted to remit the whole or part of unpaid tax interest or penalty tax.
- (3) However, a matter mentioned in subsection (2) may, instead of being stated in the notice, be stated in a document issued by the commissioner and accompanying the notice.
- (4) A matter mentioned in subsection (2) and stated in a document mentioned in subsection (3) is taken to have been stated in the notice.

**446 Refusal of application**

If the commissioner refuses the application, the commissioner must give the applicant an information notice for the decision.

**446A Registration to defer endorsement for particular mortgages**

- (1) This section applies to a financial institution that—
  - (a) applies to be registered as a self assessor under this part; or
  - (b) is registered as a self assessor under this part.
- (2) The financial institution may apply to be registered under this section to defer the endorsement, under section 455(1)(c), of mortgages for further advances under those mortgages.
- (3) The application may be made, and the financial institution registered, only for mortgages under which the institution is mortgagee and for which mortgage duty has been paid on the original advance.
- (4) Sections 441 to 443 and 446 apply, with necessary changes, to the application as if it were an application for registration as a self assessor.
- (5) If the commissioner approves the application, the commissioner must—
  - (a) for an institution mentioned in subsection (1)(a)—state in the notice of registration given to the institution on its registration as a self assessor when the mortgages to which the registration under this section relates must be endorsed; or
  - (b) for an institution mentioned in subsection (1)(b)—amend the institution’s registration by notice given to it, stating when the mortgages to which the registration under this section relates must be endorsed.

**447 Restriction on assessment by commissioner**

- (1) A self assessor who, under the self assessor’s notice of registration, is required to lodge returns for particular



**452 Notice of registration**

- (1) On registration of a person as a self assessor, the commissioner must give notice to the person of the registration.
- (2) The notice must state the following—
  - (a) the date of registration;
  - (b) the instruments and transactions to which the registration relates and for which returns are required or permitted to be lodged;
  - (c) the dates for lodging returns, and for paying duty, by the self assessor;
  - (d) the periods to be covered by the returns;
  - (e) the documents required to accompany the returns;
  - (f) the records required to be kept relating to the instruments and transactions;
  - (g) the endorsements to be made on the instruments;
  - (h) the types of reassessments the self assessor is required or permitted to make;
  - (i) whether the self assessor is permitted to remit the whole or part of unpaid tax interest or penalty tax.
- (3) However, a matter mentioned in subsection (2) may, instead of being stated in the notice, be stated in a document issued by the commissioner and accompanying the notice.
- (4) A matter mentioned in subsection (2) and stated in a document mentioned in subsection (3) is taken to have been stated in the notice.

**453 Refusal of application**

If the commissioner refuses the application, the commissioner must give the applicant an information notice for the decision.

**454 Restriction on assessment by commissioner**

- (1) A self assessor who, under the self assessor's notice of registration, is required to lodge returns for particular

instruments or transactions, must not lodge an instrument, or an instrument for the transaction, of that type for assessment by the commissioner.

- (2) This section has effect subject to the Administration Act, section 11(2)(a).<sup>57</sup>

## **Part 4** **Returns and reassessments by self assessors**

### **455 Lodging returns**

- (1) A self assessor registered under part 2 or 3, must—
- (a) lodge returns, and documents required to accompany returns, for the return periods as required by the notice of the self assessor's registration; and
  - (b) pay any duty, assessed interest and penalty tax to the commissioner when each return is lodged; and
  - (c) endorse the instruments to which each return relates in the way mentioned in subsection (2) not later than when the duty, assessed interest and penalty tax on the instruments has been paid to the commissioner.

Maximum penalty—100 penalty units.

*Note—*

For provisions about payments by self assessors who are tax agents under the Administration Act, see section 35 of that Act.

- (2) For subsection (1)(c)—
- (a) an instrument for which duty is imposed must be endorsed as follows—
    - (i) 'Queensland duty paid';
    - (ii) the amount of duty;

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<sup>57</sup> Administration Act, section 11 (When commissioner makes an assessment)

- (iii) another endorsement stated in the self assessor's notice of registration; and
  - (b) another instrument must be endorsed in the way stated in the self assessor's notice of registration.
- (3) However, a self assessor registered under part 3, does not have to comply with subsection (1) to the extent that the self assessor has not received payment of duty, assessed interest or penalty tax by the persons liable to pay it.
- (4) Also, a self assessor registered under section 446A may defer the endorsement of mortgages under subsection (1)(c) as provided by the self assessor's notice of registration.

#### **456 When self assessor may make reassessments**

- (1) A self assessor may make a reassessment only if—
  - (a) the assessor is required or permitted under the assessor's notice of registration; and
  - (b) the assessor is satisfied the duty imposed under a self assessment is not correct.
- (2) A self assessor must not make a self assessment of a reassessment made by the commissioner.

## **Part 5 Registration of exempt institutions**

#### **457 Application for registration**

- (1) A person authorised by an institution may apply to the commissioner for registration of the institution under this part.
- (2) The application must—
  - (a) be in the approved form; and
  - (b) be supported by enough information to enable the commissioner to decide the application, including, the following—

- (i) a copy of the institution's constitution, however described;
- (ii) a certificate of the institution's incorporation, if applicable;
- (iii) details of the institution's current or proposed activities;
- (iv) details of fees charged for its activities.

**458 Decision on application**

The commissioner must approve or refuse the application.

**459 Restrictions on registration**

- (1) The commissioner may register the institution only if it is an institution mentioned in subsection (2) to (4).
- (2) Each of the following may be registered—
  - (a) a religious body or a body—
    - (i) that is controlled by, or associated with, a religious body; and
    - (ii) whose principal object and pursuit is the conduct of activities of a religious nature;
  - (b) a public benevolent institution;
  - (c) a university or university college;
  - (d) a primary or secondary school;
  - (e) an agricultural college as defined in the *Agricultural Colleges Act 1994*;
  - (f) a kindergarten or preschool;
  - (g) an institution whose principal object or pursuit is the care of the sick, aged, infirm, afflicted or incorrigible persons;
  - (h) an institution whose principal object or pursuit is the relief of poverty;
  - (i) an institution whose principal object or pursuit is the care of children by—

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- (i) being responsible for them on a full time basis; and
  - (ii) providing them with all the necessary food, clothing and shelter; and
  - (iii) providing for their general wellbeing and protection.
- (3) Also, an institution may be registered if it—
  - (a) has as a principal object or pursuit—
    - (i) fulfilling a charitable object; or
    - (ii) promotion of the public good; and
  - (b) does not have an object or pursuit involving a leisure, recreational, social or sporting activity.
- (4) In addition, the trustees of an institution mentioned in subsection (2) or (3), other than a university or university college, may be registered.
- (5) However, an institution, other than an institution or trustee of an institution mentioned in subsection (2)(a), (c) or (e), must not be registered, unless under its constitution, however described—
  - (a) its income and property is used solely for promoting its objects; and
  - (b) no part of its income or property is to be distributed, paid or transferred by way of bonus, dividend or other similar payment to its members; and
  - (c) on its dissolution, the assets remaining after satisfying all debts and liabilities must be transferred—
    - (i) to an institution that, under this section, may be registered; or
    - (ii) to an institution the commissioner is satisfied has a principal object or pursuit mentioned in subsection (3)(a); or
    - (iii) for a purpose the commissioner is satisfied is charitable or for the promotion of the public good.



**460 Approval of application**

If the commissioner approves the application, the commissioner must register the institution.

**461 Refusal of application**

If the commissioner refuses the application, the commissioner must give notice of the decision to the institution.

*Note—*

If, because of the decision, the commissioner makes an assessment on the basis that the institution is not an exempt institution, the institution may object to the decision as part of an objection to the assessment. For objections and appeals against assessments, see the Administration Act, part 6.

**462 Later registration**

- (1) If the commissioner refuses the application, the commissioner may state in the notice of the decision a later date when the commissioner will reconsider the application on the facts and circumstances known at the later date.
- (2) If at the later date the commissioner is satisfied the institution is entitled to be registered, the commissioner must approve the application and register the institution.
- (3) The date of registration must be the date that the institution would have been registered had the commissioner approved the application in the first instance.

**463 Notice of registration**

- (1) On registration of an institution, the commissioner must give notice to the institution of its registration.
- (2) The notice must state the following—
  - (a) the date of registration;

- (b) the duties from which the institution is exempt and the use requirements applying to the exemption.<sup>58</sup>
- (3) The date of registration may be a date before the date of the application or notice.

## **Part 6                      Amendment, suspension and cancellation of registration of self assessors and exempt institutions**

### **Division 1                      Self assessors**

#### **464      Amendment of self assessor's registration**

- (1) The commissioner may amend a self assessor's registration by notice given to the self assessor.
- (2) The notice must state the particulars of the self assessor's notice of registration that are amended.
- (3) If the commissioner amends a self assessor's registration, the commissioner must give the self assessor an information notice for the decision.

#### **465      Grounds for suspension or cancellation**

Each of the following is a ground for suspending or cancelling a self assessor's registration—

- (a) the self assessor or a representative of the self assessor has been convicted of an offence against this Act, the Administration Act or the repealed Act;

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58 See chapter 10 (General exemptions), part 2 (Exemptions for particular duties for exempt institutions), divisions 1 (Exemptions for exempt institutions) and 2 (Use requirements for exemptions).

- (b) the self assessor or a representative of the self assessor has contravened a provision of this Act or the repealed Act (being a provision a contravention of which is not an offence against this Act, the Administration Act or the repealed Act);
- (c) the self assessor was registered because of a materially false or misleading representation or declaration.

#### **466 Show cause notice**

- (1) If the commissioner believes a ground exists to suspend or cancel a self assessor's registration, the commissioner may give the self assessor a notice under this section (a *show cause notice*).
- (2) The show cause notice must state the following—
  - (a) the commissioner proposes to suspend or cancel the self assessor's registration (the *proposed action*);
  - (b) the grounds for the proposed action;
  - (c) an outline of the facts and circumstances forming the basis for the grounds;
  - (d) if the proposed action is suspension of registration—the proposed suspension period;
  - (e) an invitation to the self assessor to show within a stated period (the *show cause period*) why the proposed action should not be taken.
- (3) The show cause period must be a period ending at least 21 days after the show cause notice is given to the self assessor.

#### **467 Representations about show cause notices**

- (1) The self assessor may make representations about the show cause notice to the commissioner in the show cause period.
- (2) The commissioner must consider all written representations (the *accepted representations*) made under subsection (1).

**468 Ending show cause process without further action**

- (1) This section applies if, after considering the accepted representations for the show cause notice, the commissioner no longer believes a ground exists to suspend or cancel the self assessor's registration.
- (2) The commissioner must not take any further action about the show cause notice.
- (3) Notice that no further action is to be taken about the show cause notice must be given to the self assessor by the commissioner.

**469 Suspension or cancellation of registration**

- (1) This section applies if, after considering the accepted representations for the show cause notice, the commissioner—
  - (a) still believes a ground exists to suspend or cancel the self assessor's registration; and
  - (b) believes suspension or cancellation of the self assessor's registration is warranted.
- (2) This section also applies if there are no accepted representations for the show cause notice.
- (3) The commissioner may—
  - (a) if the proposed action stated in the show cause notice was to suspend the self assessor's registration for a stated period—suspend the registration for not longer than the stated period; or
  - (b) if the proposed action stated in the show cause notice was to cancel the self assessor's registration—either cancel the registration or suspend the self assessor for a period.
- (4) The commissioner must immediately give the self assessor an information notice for the decision.
- (5) The decision takes effect on—
  - (a) the day the information notice is given to the self assessor; or

- (b) if a later day of effect is stated in the information notice—the later day.

#### **470 Cancellation of registration—ceasing to carry on business**

- (1) This section applies if a self assessor registered under part 1 or 3 ceases to carry on, in Queensland, the business for which the self assessor is registered.
- (2) Within 14 days after the ceasing to carry on the business, the self assessor must give notice to the commissioner in the approved form.
- (3) On receiving the notice, the commissioner must give notice to the self assessor who—
  - (a) for a self assessor registered under part 1—the self assessor’s registration to carry on the business and as self assessor is cancelled effective from the day stated in the notice; or
  - (b) for a self assessor registered under part 3—the self assessor’s registration is cancelled effective from the day stated in the notice.
- (4) The stated day must be the return date for the return period in which the commissioner received the notice.

## **Division 2 Exempt institutions**

#### **471 Cancellation of registration**

- (1) The commissioner may cancel an exempt institution’s registration if the commissioner is satisfied the institution—
  - (a) has ceased to exist; or
  - (b) has ceased to be entitled to be registered under part 5; or
  - (c) was registered because of a materially false or misleading representation or declaration.
- (2) If the commissioner cancels the institution’s registration under subsection (1)(b) or (c), the commissioner must give notice to

the institution that its registration is cancelled effective from the day stated in the notice.

- (3) The stated day may be a date before the date of the notice.

*Note—*

If the commissioner makes an assessment on the basis of the decision to cancel the institution's registration, the institution may object to the decision as part of an objection to the assessment. For objections and appeals against assessments, see the Administration Act, part 6.

## **Chapter 12A Provisions for parties to self assessable instruments or transactions**

### **Part 1 Preliminary**

#### **471A Who is a *liable party***

A party to an instrument or transaction who is liable to pay duty on it is a *liable party* to the instrument or transaction.

#### **471B What is a *relevant lodgment requirement***

- (1) A *relevant lodgment requirement* for an instrument or transaction is a lodgment requirement, within the meaning of the Administration Act, that applies to the instrument or a document for the instrument or transaction.
- (2) However, a requirement under this Act to lodge a return for a self assessment for the instrument or transaction is not a relevant lodgment requirement.
- (3) For subsection (2), a return for a self assessment does not include another document that is, under a provision of this Act, taken to be a return for a self assessment.

*Example of another document taken to be a return—*

a statement under section 241(2) or (4)

## **Part 2                      Provisions applicable if agent registered as self assessor**

### **471C    Application of pt 2**

- (1) This part applies to an instrument or transaction for which a liable party engages a self assessor who is—
  - (a) registered under chapter 12, part 3;<sup>59</sup> and
  - (b) required or permitted under the self assessor's notice of registration to lodge returns for the instrument or transaction.
- (2) However, if the self assessor is not permitted to make a reassessment of duty on the instrument or transaction, this part does not apply to the instrument or transaction for the making of the reassessment.

### **471D    Effect of engagement of self assessor on relevant lodgment requirement**

A relevant lodgment requirement for the instrument or transaction does not apply for the instrument or transaction.

### **471E    Liable party must give documents, and pay duty, to self assessor**

- (1) A liable party to the instrument or transaction must, not later than the date mentioned in subsection (2)—
  - (a) ensure that the self assessor is given all instruments and other documents relating to the instrument or transaction to which a relevant lodgment requirement

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<sup>59</sup> Chapter 12 (Registered persons), part 3 (Registration of agents as self assessors)

for the instrument or transaction would apply if section 471D did not apply; and

- (b) pay to the self assessor the amount of the duty, assessed interest and penalty tax on the instrument or transaction.

Maximum penalty—100 penalty units.

- (2) For subsection (1), the date is the return date for lodgment by the self assessor of a return, and any document required to accompany the return, for the instrument or transaction.
- (3) The liable party complies with subsection (1)(a) only if—
  - (a) all instruments or documents required to be given to the self assessor under the subsection have been given as required under section 471F; and
  - (b) for a document required under the subsection to be given as an approved form—the form contains enough information for the purpose for which it is given.
- (4) To remove doubt, it is declared that compliance with subsection (1)(b) does not limit the party's liability to pay unpaid tax interest on the duty payable on the instrument or transaction.

#### **471F Giving documents to self assessor**

- (1) A document is given by a liable party to a self assessor only if the document is—
  - (a) left at an office of the self assessor; or
  - (b) sent by post to the self assessor.
- (2) A document given to the self assessor in the way mentioned in subsection (1)(a) is taken to be given to the self assessor when it is actually received by the self assessor.<sup>60</sup>

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<sup>60</sup> For the time of giving a document by post, see the *Acts Interpretation Act 1954*, section 39A(1)(b).



**471G Prohibition on giving false or misleading documents to self assessor**

- (1) A liable party to the instrument or transaction must not give the instrument or a document relating to the instrument or transaction to the self assessor if the instrument or document contains information the party knows, or should reasonably know, is false or misleading in a material particular.

Maximum penalty—100 penalty units.

- (2) Subsection (1) does not apply to a liable party who, when giving the instrument or document to the self assessor—
  - (a) tells the self assessor of the extent to which the instrument or document is false or misleading; and
  - (b) to the extent the party has, or can reasonably get, the correct information—gives the correct information to the self assessor.
- (3) It is enough for a complaint against a person for an offence against subsection (1) to state the instrument or document was ‘false or misleading’, without specifying which.

**471H Prohibition on giving false or misleading information to self assessor**

- (1) A liable party to the instrument or transaction must not state to the self assessor anything relating to the instrument or transaction that the party knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

- (2) It is enough for a complaint against a person for an offence against subsection (1) to state the statement made was ‘false or misleading’, without specifying which.

## **Part 3**

# **Provisions applicable if party registered as self assessor**

### **471I Application of pt 3**

- (1) This part applies to an instrument or transaction for which there is a self assessor who is—
  - (a) registered under chapter 12, part 2;<sup>61</sup> and
  - (b) required or permitted under the self assessor's notice of registration to lodge returns for the instrument or transaction.
- (2) However, if the self assessor is not permitted to make a reassessment of duty on the instrument or transaction, this part does not apply to the instrument or transaction for the making of the reassessment.

### **471J Effect of engagement of self assessor on relevant lodgment requirement**

A relevant lodgment requirement for the instrument or transaction does not apply for the instrument or transaction if—

- (a) the self assessor is required to lodge a return for the instrument or transaction; or
- (b) the self assessor—
  - (i) is permitted to lodge a return for the instrument or transaction; and
  - (ii) includes the instrument or transaction in a return lodged as required under section 455.

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61 Chapter 12 (Registered persons), part 2 (Registration of parties to instruments and transactions as self assessors)

## Chapter 13      Reviews and appeals

### Part 1              Reviews

#### 472      **Applying for a review of an original decision**

- (1) A dissatisfied person may apply for a review of an original decision.

*Note—*

For objections and appeals against assessments of duty, see the Administration Act, part 6.

- (2) The application must—
  - (a) be made to the commissioner within 28 days after the applicant receives notice of the decision; and
  - (b) state fully and in detail the grounds of the review.
- (3) If the commissioner is satisfied a dissatisfied person has a reasonable excuse for failing to apply for a review within the 28 day period, the commissioner may extend the time for applying for the review.
- (4) The application does not stay the original decision.

#### 473      **Deciding review**

- (1) After considering the application, the commissioner may make a decision (the *review decision*) to—
  - (a) confirm the decision; or
  - (b) set aside the decision and substitute another decision.
- (2) If the original decision was made by a delegate of the commissioner, the delegate must not decide the application.

#### 474      **Notice of review decision**

- (1) The commissioner must give notice to the applicant of the review decision.
- (2) The notice must state the following—

- (a) the reasons for the decision;
- (b) the applicant may, within 28 days after receiving the notice, appeal against the decision;
- (c) how to appeal.

## **Part 2 Appeals**

### **475 Right of appeal**

The applicant for the review of the original decision who is dissatisfied with the review decision may appeal against the decision.

### **476 How to start appeal**

- (1) The appeal is started by—
  - (a) filing notice of appeal with the clerk of the court of the Magistrates Court nearest the place where the application for the review was lodged; and
  - (b) giving a copy of the notice of appeal to the commissioner within 7 days after the notice of appeal is filed.
- (2) The notice of appeal must be filed within 28 days after the appellant receives notice of the review decision.
- (3) The court may at any time extend the time for filing the notice of appeal.
- (4) The notice of appeal must state fully the grounds of the appeal and the facts relied on.

### **477 Grounds of appeal**

The grounds of the appeal are limited to the grounds of review unless the Magistrates Court orders otherwise.

**478 Hearing procedures**

In deciding the appeal, the Magistrates Court—

- (a) is not bound by the rules of evidence; and
- (b) must comply with natural justice; and
- (c) may hear the appeal in court or chambers.

**479 Decision on appeal**

- (1) On the appeal, the Magistrates Court may—
  - (a) confirm the decision; or
  - (b) set aside the decision and substitute another decision; or
  - (c) set aside the decision and return the issue to the commissioner with the directions the court considers appropriate.
- (2) If the court substitutes another decision, the substituted decision is taken for this Act, other than this part, to be the commissioner's decision.

## **Chapter 14 Enforcement and legal proceedings**

**480 Offences about self assessments**

- (1) A self assessor registered under chapter 12, part 2, must not endorse an instrument under section 455 unless the amount of duty and any assessed interest and penalty tax has—
  - (a) if paragraph (b) does not apply—been paid to the commissioner; or
  - (b) if the self assessor is a financial institution and the instrument is a mortgage under which the self assessor is the mortgagee—been received by the self assessor.

Maximum penalty—200 penalty units.

- (2) A self assessor registered under chapter 12, part 3, must not endorse an instrument under section 455 unless the amount of duty and any assessed interest and penalty tax has been received by the self assessor.

Maximum penalty—200 penalty units.

#### **481 Offence to endorse instrument unless self assessor**

A person must not endorse an instrument in the way mentioned in section 455(1)(c) unless the person is a self assessor or officer or employee of the self assessor.

Maximum penalty—200 penalty units.

#### **482 Obligations relating to unstamped instruments**

- (1) A person who acts under an instrument that has not been properly stamped must immediately give notice in the approved form to the commissioner.

Maximum penalty—200 penalty units.

- (2) However, a person does not commit an offence against subsection (1) if the person proves the person did not know and could not reasonably have been expected to have known that—
- (a) duty is imposed on the instrument or transaction to which it relates; or
  - (b) the instrument was not properly stamped.

#### **483 Registration of instruments and transactions**

A person must not record an instrument or transaction in a register of interests in property unless the instrument that effects or evidences the transaction, or the instrument, is properly stamped.

Maximum penalty—100 penalty units.

**484 Registration of instrument disposing of particular marketable securities etc.**

A person must not enter in the records of a corporation or society an instrument that effects or evidences a dutiable transaction for a share or right relating to a share, or a relevant acquisition under chapter 3, part 1 or 2, unless the instrument is properly stamped.

Maximum penalty—100 penalty units.

**485 Registration of instrument disposing of units in unit trust etc.**

The trustee or responsible entity of a unit trust must not record in the trust's records an instrument that effects or evidences a trust acquisition or trust surrender of units in a unit trust, unless the instrument is properly stamped.

Maximum penalty—100 penalty units.

**486 Saving of title—marketable securities and units in unit trust**

The right or title of the transferee or subsequent holder of a marketable security or unit in a unit trust, other than a public unit trust, is not invalidated merely because the instrument that effects or evidences the transaction, acquisition or surrender was recorded in contravention of section 484 or 485.

**487 Receipt of instruments in evidence**

- (1) Unless an instrument is properly stamped, it—
  - (a) is not available for use in law or equity or for any purpose; and
  - (b) must not be received in evidence in a legal proceeding, other than a criminal proceeding.
- (2) However, a court may receive the instrument in evidence if—
  - (a) after it is received in evidence, the instrument is given to the commissioner as required by arrangements approved by the court; or

- (b) if the person who produces the instrument is not the person liable to pay the duty, the name and address of the person so liable, and the instrument, is given to the commissioner as required by arrangements approved by the court.
- (3) A court may receive in evidence an unsigned copy of an instrument that is imposed with duty or effects or evidences a transaction that is imposed with duty if the court is satisfied—
  - (a) the instrument of which it is a copy is properly stamped; or
  - (b) the copy is properly stamped under section 494.

#### **488 Commissioner may require payment of penalty**

- (1) This section applies if—
  - (a) a self assessor does not lodge a return or pay an amount in contravention of section 455(1)(a) or (b); or
  - (b) a self assessor gives the commissioner a return containing false or misleading information in contravention of the Administration Act, section 122 or 123; or
  - (c) a person, in making an application to register or transfer a vehicle, other than a special vehicle, gives false or misleading information about the dutiable value of the vehicle in contravention of the *Transport Operations (Road Use Management) Act 1995*, section 53.

*Note—*

The self assessor does not commit an offence against the Administration Act, section 122 or 123, if the self assessor merely gives the commissioner a return containing information provided by a taxpayer that the self assessor does not know, or could not reasonably know, is false or misleading.

- (2) The commissioner may, by notice given to the person, require the person to pay a penalty (the *penalty amount*) of the greater of the following—
  - (a) not more than 75% of the amount of duty payable under the return or application;
  - (b) \$100.



- (3) The notice must state the following—
- (a) the date for payment of the penalty amount being a day that is at least 30 days after the person receives the notice;
  - (b) the reasons for the decision to require payment of the penalty amount;
  - (c) the person may apply for a review of the decision within 28 days;
  - (d) how to apply for the review.

*Note—*

The penalty amount is a debt payable to the commissioner and may be recovered in a court of competent jurisdiction, see the Administration Act, section 45.

- (4) The commissioner must give the person an information notice for the requirement to pay the penalty amount.
- (5) The commissioner may enter into an arrangement for payment of the penalty amount by instalments.
- (6) The arrangement may include provision for the payment of interest calculated at the rate for unpaid tax interest for the period starting on the start date and ending on the date the penalty amount is paid in full, both dates inclusive.
- (7) For subsection (6), the start date is the day after the failure or contravention mentioned in subsection (1).
- (8) In this section—

*self assessor* means a self assessor registered under chapter 12, part 2 or 3.

#### **489 Penalty amounts to be alternative to prosecution**

- (1) This section applies if a penalty amount, including a part of a penalty amount, becomes payable by a person because of the person's contravention of a provision mentioned in section 488(1).
- (2) If a proceeding is started against the person for an offence against the provision for the contravention and the penalty amount has not been paid to the commissioner, the penalty amount is payable only if the proceeding is withdrawn.

- (3) If the penalty amount has been paid to the commissioner, but a proceeding is started against the person for an offence against the provision for the contravention, the penalty amount must be refunded by the commissioner.
- (4) Despite subsection (3), if the commissioner withdraws the proceeding for the offence, the person again becomes liable to pay the penalty amount.

## Chapter 15      **Signing and stamping of instruments**

### **490      When is an instrument *first signed***

- (1) An instrument is *first signed* the first time it is signed by a party to it.
- (2) However, an agreement made by acceptance of an offer contained in an instrument is *first signed* when the offer is accepted.

### **491      When is an instrument *properly stamped***

- (1) An instrument is *properly stamped* if it is stamped under section 492 or endorsed under section 455(1)(c).
- (2) An application to register or transfer a vehicle is taken to be *properly stamped* if—
  - (a) duty imposed on the application and any assessed interest or penalty tax on the application is paid in full; or
  - (b) no duty is imposed on the application because of an exemption under this or another Act.
- (3) Also, a mortgage, security instrument or mortgage package is taken to be *properly stamped* for the following provisions if a self assessor has deferred the endorsement of the instrument under section 455(4)—
  - section 252(2)

- 258(2)(a) or (c)
- 262(1)(a) or (b)
- schedule, definition *collateral mortgage*.

#### **492 Way instruments are stamped**

The commissioner must stamp an instrument that has been lodged—

- (a) if duty imposed on the instrument or transaction to which the instrument relates, and any assessed interest or penalty tax on the instrument or transaction, is paid in full—with an impressed stamp indicating the payment; or
- (b) if no duty is imposed on the instrument or transaction to which the instrument relates, because of an exemption under this or another Act—with an impressed stamp indicating no duty is imposed on the instrument or transaction because of the exemption; or
- (c) if no duty is imposed on the instrument or transaction to which the instrument relates, other than because of an exemption under this or another Act—with a stamp indicating no duty is payable on the instrument or transaction.

#### **493 Stamping of instrument dependant on another instrument or transaction**

- (1) This section applies if—
  - (a) duty imposed on an instrument (the *first instrument*) or a transaction (the *first transaction*) depends in any way on the payment of duty imposed on another instrument or transaction (the *second instrument or transaction*); and
  - (b) all instruments are produced to the commissioner.
- (2) On application made by the parties liable to pay the duty on the second instrument or transaction, the commissioner may indicate the payment of that duty on the first instrument or the

instrument relating to the first transaction in the way the commissioner considers appropriate.

#### **494 Copies of instruments**

- (1) Duty may be imposed on a copy of an original instrument as if it had been signed in the same way and at the same time as the original instrument, unless the commissioner is satisfied the original instrument has been properly stamped.
- (2) A copy of an original instrument may be stamped as if it had been signed in the same way as the original instrument, unless the commissioner is satisfied the original instrument has been properly stamped.
- (3) For this section, an original instrument is taken to be properly stamped if a copy of it is properly stamped.
- (4) In this section—

*copy*, of an original instrument, includes a facsimile copy, duplicate copy and a photocopy, of the original instrument.

#### **495 Instrument must not be delivered until duty or fee paid**

- (1) If an instrument that is not properly stamped comes into the commissioner's possession, other than in the circumstances mentioned in subsection (2), the commissioner must keep the instrument until any duty, assessed interest and penalty tax on the instrument or transaction is paid.
- (2) Subsection (3) applies if—
  - (a) a person lodges an instrument for a decision by the commissioner as to whether the instrument, or transaction to which it relates, is imposed with duty; and
  - (b) the commissioner decides the instrument or transaction is not imposed with duty.
- (3) The commissioner must keep the instrument until the fee prescribed under a regulation is paid.
- (4) However, the commissioner may waive payment of the fee if the commissioner considers it is appropriate having regard to the type of instrument and the circumstances in which the instrument was lodged.

## Chapter 16 Miscellaneous provisions

### 496 Lodging declaration stating facts and circumstances

- (1) This section applies if, for the assessment of a person's liability to duty, the person lodges an instrument that does not state all the facts and circumstances affecting the liability to duty or the amount of duty that may be imposed on it or a transaction to which it relates.
- (2) The person must lodge a statutory declaration stating the facts and circumstances when lodging the instrument.

*Note—*

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

- (3) For determining the person's liability to duty, the commissioner must take into account the facts and circumstances stated in the declaration as if they were in the instrument.

### 497 Recognition of duty paid for Commonwealth places

If this Act requires regard to be had to duty previously paid or payable, regard must be had to any duty previously paid or payable under the applied Act if regard would have been had under this Act to that duty if that duty were paid or payable under this Act.

### 498 Special provisions for working out value of particular shares

- (1) For chapters 2 and 3, a reference to property in Queensland or dutiable property includes shares in a land rich corporation if, the holder of the shares and all related persons<sup>62</sup> of the holder were to newly acquire the shares in the corporation, a relevant acquisition under the chapter would have been made.
- (2) If it is necessary to determine the unencumbered value of the shares for imposing duty, the value is taken to be the amount

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62 See section 164 (Who is a *related person*).

that is equal to the greater of the amounts mentioned in subsection (3).

- (3) For subsection (2), the amounts are the following—
  - (a) the amount worked out by applying the interests of the shareholder and related persons, or total of their interests, in the land rich corporation to the unencumbered value of all the corporation's Queensland land-holdings;
  - (b) the dutiable value of the dutiable transaction relating to the shares if they were to be transferred.
- (4) For chapters 2 and 3, a reference to property in Queensland or dutiable property includes shares in a corporate trustee or relevant corporation for a corporate trustee.
- (5) If it is necessary to determine the unencumbered value of the shares for imposing duty, the value is taken to be the dutiable value under section 222 had they been acquired.
- (6) This section applies despite any provision of chapter 2 or 3.

#### **499 Reassessments of duty in particular circumstances**

- (1) This section applies if—
  - (a) a person, directly or by the person's agent, pays duty on an instrument or transaction effected or evidenced by an instrument; and
  - (b) 1 of the events in subsection (2) happens.
- (2) For subsection (1)(b), the events are—
  - (a) before having any legal effect, the instrument is—
    - (i) inadvertently damaged, defaced or destroyed; or
    - (ii) in any way, rendered unfit for the purpose intended; or
  - (b) the instrument is void on its making; or
  - (c) the instrument was voidable on its making and is rendered void before having legal effect; or

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- (d) before having any legal effect, the instrument is unfit for the purpose intended because of an error or mistake in it; or
  - (e) the instrument has no legal effect, but on having legal effect would have an unintended effect because of a mistake in it, and is imposed with duty because of the unintended effect; or
  - (f) for a mortgage—
    - (i) the mortgagor is not and does not become, nor has a right to become, the owner of the property purported to be mortgaged; or
    - (ii) it secures an unlimited amount and the highest amount advanced under the mortgage has been wrongly overstated; or
    - (iii) duty has been wrongly paid on more than 1 instrument for the advance secured by the mortgage; or
  - (g) for a transfer—the transferor is not and does not become, nor has a right to become, the owner of the property purported to be transferred; or
  - (h) for a transfer by way of gift—the gift is not accepted by the donee.
- (3) Even though the signing of an instrument by the parties is evidence the instrument gives effect to the intention of the parties, the instrument has an unintended effect for subsection (2)(e) if—
- (a) when it was signed, the parties had a specific intention that was to be given effect to by the instrument; and
  - (b) the instrument does not give effect to the intention or gives effect to the intention but also achieves some other effect that was not contemplated by the parties.
- (4) For this section an instrument is taken to have legal effect only if—
- (a) a right has been exercised under it; or
  - (b) an obligation has been fulfilled under it; or
  - (c) it has been relied on in another way.

- (5) The person may lodge an application for a reassessment in the approved form within 1 year after the event happens.
- (6) The person must lodge the instrument with the application.
- (7) The commissioner must make a reassessment of duty for the instrument or transaction to which it relates.
- (8) The commissioner may keep or otherwise dispose of the instrument in the way the commissioner considers appropriate.

**500 Application of Administration Act, pt 6, to particular decisions**

- (1) This section applies if—
  - (a) under a provision of this Act, the commissioner is required to make a reassessment for a particular instrument or transaction if particular circumstances apply; and
  - (b) a person asks the commissioner to make a reassessment for the instrument or transaction; and
  - (c) the commissioner decides not to make the reassessment because the commissioner is not satisfied the circumstances apply for the instrument or transaction.
- (2) As soon as practicable after making the decision, the commissioner must give the person notice stating the following—
  - (a) the decision;
  - (b) the reasons for the decision;
  - (c) the person may, within 60 days after the notice is given, object to the decision;
  - (d) how to object.
- (3) The Administration Act, part 6,<sup>63</sup> applies for the decision as if—

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63 Administration Act, part 6 (Objections and appeals against assessments)



- (a) the decision were an assessment; and
- (b) the notice were an assessment notice.

### **501 Consideration for instruments and transactions on which duty imposed**

- (1) It does not matter whether the consideration for an instrument or transaction on which duty is imposed is paid or given or is required to be paid or given.
- (2) If the consideration, or any part of the consideration, for an instrument or transaction on which duty is imposed consists of property, other than a security, the consideration or part of the consideration is the unencumbered value of the property when the liability for duty arises.
- (3) If the consideration, or any part of the consideration, for an instrument or transaction on which duty is imposed consists of a security, other than a marketable security or debenture issued, or to be issued, by a corporation, the consideration or part of the consideration is the amount of principal and interest owing when the liability for duty arises.
- (4) If the consideration, or any part of the consideration, for an instrument or transaction on which duty is imposed is a marketable security or debenture issued, or to be issued, by a corporation, the value of the consideration is the market value of the security or debenture when the liability for duty arises.
- (5) However, if the marketable security or debenture has not issued when the liability for duty arises, the value of the consideration is the market value of the security or debenture at the date of issue.

### **502 Consideration based on contingency**

- (1) Subsection (2) applies for determining the consideration payable under an instrument or transaction if the consideration payable—
  - (a) may be increased or decreased depending on a particular thing happening or not happening; or
  - (b) may or may not actually become payable depending on a particular thing happening or not happening; or

- (c) is agreed to be a minimum amount, whether or not depending on a particular thing happening or not happening; or
  - (d) is agreed to be a maximum amount, whether or not depending on a particular thing happening or not happening; or
  - (e) is agreed to be either a minimum or maximum amount, whether or not depending on a particular thing happening or not happening.
- (2) Regardless of whether the thing happens or does not happen, the consideration is—
- (a) if subsection (1)(a) or (b) applies—the highest consideration payable under the instrument or transaction; or
  - (b) if subsection (1)(c) applies—the minimum amount; or
  - (c) if subsection (1)(d) or (e) applies—the maximum amount.

### **503 Amounts stated in foreign currency**

If, in an instrument, an amount is stated in a foreign currency for an instrument or transaction, for imposing duty, the amount is the amount expressed in Australian dollars according to the rate of exchange applicable in Queensland at—

- (a) the date the instrument was signed or the date of the transaction; or
- (b) if the rate is not obtainable for Queensland on that date—the last preceding date on which the rate was obtainable for Queensland.

### **504 Aggregate minimum value and unencumbered value of particular shares**

- (1) Despite any other provision of this Act, the shares comprising all of the issued capital of a corporation or society are taken to have an aggregate minimum value of \$800.

- (2) The unencumbered value of each share is taken to be not less than the proportion of \$800 that the share bears to the total issued share capital of the corporation or society.

### **505 Valuation or evidence of value of property**

- (1) For determining whether a person is liable for duty or a person's liability for duty, the commissioner may—
  - (a) by notice given to the person, require the person to lodge a valuation of property prepared by a registered valuer or to provide the other evidence of value the commissioner considers appropriate; or
  - (b) have property valued; or
  - (c) rely on a valuation of property prepared by a registered valuer, or other person the commissioner is satisfied is properly qualified to provide evidence of value of the property, for any purpose, whether or not for determining liability for duty.
- (2) If the commissioner is not satisfied with the valuation or evidence lodged or provided under subsection (1)(a), the commissioner may—
  - (a) have the property valued; or
  - (b) rely on a valuation of the property prepared by a registered valuer, or another person the commissioner is satisfied is properly qualified to provide evidence of value of the property, for any purpose, whether or not for determining liability for duty under this Act.
- (3) The commissioner may recover the cost of obtaining a valuation under this section from the person or persons liable for the duty.
- (4) The commissioner may assess duty on the basis of a valuation or evidence obtained under this section.

### **506 Requirement to keep particular instruments**

- (1) The trustee of a unit trust must keep an instrument that effects or evidences an acquisition or disposition of a unit in the trust.

- (2) A corporation or society must keep an instrument that effects or evidences a dutiable transaction for a share or a right relating to a share, or a relevant acquisition under chapter 3, part 1 or 2, in the corporation or society.<sup>64</sup>

### **506A Refunding stamp duty**

- (1) This section applies to a stamp duty refund that, on or after the commencement of this section, the State is required to, or may, make to a person.
- (2) The State must not make the refund unless the commissioner is satisfied—
- (a) the person has not received, and will not receive, an amount from another person for all or part of the stamp duty paid; or
  - (b) if the person has received an amount (the *amount received*) from another person for all or part of the stamp duty paid—the person will reimburse the other person for the amount received.
- (3) Subsection (2) has effect despite the terms of a court order relating to the refund.
- (4) If subsection (2)(b) applies, the person must—
- (a) within 90 days after receiving the refund (the *relevant period*), reimburse the other person for the amount received; and
  - (b) within 7 days after the relevant period, give the commissioner written notice that the other person has been reimbursed for the amount received.
- (5) Also, if subsection (2)(b) applies and the person does not, within the relevant period, reimburse the other person for the amount received, the person must, within 7 days after the relevant period—
- (a) give the commissioner written notice that the other person was not reimbursed for the amount received; and

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64 See the Administration Act, section 118 (Period for keeping records).

- (b) pay the commissioner the amount received plus interest at the rate of 10% a year calculated from the date the refund was made to the date the amount received is paid to the commissioner.

Maximum penalty—50 penalty units.

- (6) An amount payable under subsection (5)(b) is a debt payable by the person to the State.
- (7) In this section—  
*stamp duty* means stamp duty paid, or purportedly paid, under the repealed Act, whether or not under a mistake of law or fact.

### **507 Approved forms**

- (1) The commissioner may approve forms for use under this Act.
- (2) A form may be approved for use under this Act that is combined with, or is to be used together with, an approved form under another Act.

### **508 Regulation-making power**

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may—
- (a) be made about fees payable under this Act; or
  - (b) provide for a maximum penalty of not more than 20 penalty units for a contravention of a regulation.
- (3) A regulation may exempt from the imposition of duty an instrument or transaction for a financial arrangement entered into by a statutory body as defined in the *Statutory Bodies Financial Arrangements Act 1982* as provided in that or another Act.

### **508A End of succession debts**

- (1) The purpose of this section is to end, from 31 January 2003, succession debts.

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- (2) Subsection (3) applies to a succession debt—
- (a) that was owed on or before the commencement of this section; or
  - (b) that would otherwise arise after the commencement of this section.
- (3) The succession debt is taken to have been extinguished on 31 January 2003.
- (4) Subsection (3) applies despite the following provisions of the repealed *Statute Law Revision Act 1995*—
- (a) schedule 9, entries for the succession duties Acts;
  - (b) schedule 10, section 3.
- (5) To remove doubt, it is declared that a person is not entitled to a refund of a succession debt paid before 31 January 2003.
- (6) If a succession duty charge affected land on the commencement of this section—
- (a) the charge is taken to have been discharged or satisfied; and
  - (b) the relevant person must, as soon as practicable after this section commences, remove the charge from the land register in which the charge is recorded.
- (7) No fee is payable for removing a succession duty charge from a land register under subsection (6)(b).
- (8) A word or expression used in this section and defined in the repealed *Succession Duties Act 1892* has, if the context permits, the meaning given under that Act.
- (9) In this section—
- dutiable succession*** means a succession conferred on a successor if the entitlement or interest of the successor vested in the successor in possession before 1 January 1977.
- land register*** means any of the following—
- (a) the freehold land register kept under the *Land Title Act 1994*;

(b) a register kept under the *Property Law Act 1974*, part 18;<sup>65</sup>

(c) a register kept under the *Land Act 1994*.

**registrar** means the registrar of titles under the *Land Title Act 1994*.

**relevant person** means the registrar or, for a land register kept under the *Land Act 1994*, the chief executive of the department administering that Act.

**succession debt** means—

(a) a debt to the State for duty payable under the succession duties Acts in relation to a dutiable succession; or

(b) an unpaid penalty, expense or other amount recoverable by the commissioner under the succession duties Acts in relation to a dutiable succession.

**succession duties Acts** means each of the following repealed Acts—

(a) the *Succession Duties Act 1892*;

(b) the *Succession Duties Act 1892 Amendment Act 1895*;

(c) the *Succession Duties Act 1904*.

**succession duty charge** means a charge created under the repealed *Succession Duties Act 1892*, section 43,<sup>66</sup> including, for example, a ‘succession duty not paid’ recording in a land register.

(10) This section expires on 1 September 2005.

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65 *Property Law Act 1974*, part 18 (Unregistered land)

66 *Succession Duties Act 1892*, section 43 (Duty of Registrar of Titles)

## **Chapter 17      Repeal, savings and transitional provisions**

### **Part 1              Repeal of Stamp Act 1894**

#### **509      Act repealed**

The *Stamp Act 1894* is repealed.

### **Part 2              Savings and transitional provisions for repeal of Stamp Act 1894**

#### **Division 1          Interpretation**

##### **510      Definition for pt 2**

In this part—

*commencement day* means the day section 509 commences.

#### **Division 2          Application of this Act and repealed Act**

##### **511      Application of this Act**

- (1) This Act applies to instruments signed, and transactions entered into, on or after the commencement day.
- (2) Subsection (1) has effect subject to the following provisions—
  - (a) division 3, subdivision 1 and sections 521, 522, 528, 530, 530A and 538;
  - (b) a regulation made under section 550.



**512 Continued application of repealed Act**

- (1) Despite its repeal, the repealed Act continues to apply in relation to instruments signed, and transactions entered into, before the commencement day.

*Note—*

Because of this declaration, a provision of the repealed Act that, for example, provides for an exemption, concession or reassessment for duty for an instrument or transaction continues to apply to it.

- (2) This section has effect subject to the following provisions—
- (a) sections 523(4), 526, 527 and 535;
  - (b) the Administration Act, part 13, division 2;
  - (c) a regulation made under section 550.

**513 Delegations**

A delegation under the repealed Act and in force immediately before the commencement day continues in force.

**Division 3 Provisions for transfer duty****Subdivision 1 Provisions for continuing repealed Act for particular transactions****514 Repealed Act applies to particular agreements to transfer**

- (1) Subsection (2) applies if—
- (a) under section 54<sup>67</sup> of the repealed Act, stamp duty is chargeable on a contract or agreement for the sale of property; and
  - (b) a transfer of the property to the transferee under the contract or agreement is entered into on or after the commencement day.

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<sup>67</sup> *Stamp Act 1894*, section 54 (Certain contracts to be chargeable as conveyances)

- (2) The repealed Act applies to the transfer of the property to the transferee.
- (3) Subsection (4) applies if—
  - (a) under section 54 of the repealed Act, stamp duty is chargeable on a contract or agreement for the sale of property; and
  - (b) the transferee under the contract or agreement is acting as agent of another person; and
  - (c) a transfer of the property to the other person is entered into on or after the commencement day.
- (4) The repealed Act applies to the transfer of the property to the other person.

**515 Repealed Act applies to particular acquisitions after transfer by way of security of other property**

- (1) Subsection (2) applies if—
  - (a) before the commencement day, a conveyance or transfer by way of security of property, other than land, was assessed to or exempted from duty under the repealed Act or another Act; and
  - (b) after the commencement day, the transferee or the transferee's assignee, acquires ownership of the property free from any interest of the transferor or the transferor's assignee.
- (2) The repealed Act applies to the acquisition.<sup>68</sup>

**516 Repealed Act applies to particular dealings with statutory business licences**

- (1) Subsection (2) applies if—
  - (a) before the commencement day, the holder of a statutory business licence surrendered or relinquished, or agreed

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<sup>68</sup> See the *Stamp Act 1894*, section 56E (Conveyance of other property by way of security).

- not to apply for an extension of, the licence as mentioned in section 54AD(2)<sup>69</sup> of the repealed Act; and
- (b) after the commencement day, the licence or an extension or renewal of the licence or another licence for the same type of activity is granted.
- (2) The repealed Act applies to the grant, extension or renewal of the licence.

### **517 Repealed Act applies to particular dispositions of units in unit trust schemes**

- (1) Subsection (2) applies if—
- (a) under section 56B<sup>70</sup> of the repealed Act, stamp duty is chargeable on an agreement to dispose of units in a unit trust scheme; and
- (b) a disposition of the units under the agreement is made on or after the commencement day.
- (2) The repealed Act applies to the disposition.

## **Subdivision 2 Provisions for applying this Act for transactions before commencement day**

### **518 Aggregation of dutiable transactions**

- (1) An instrument of conveyance as defined in section 53(1)<sup>71</sup> of the repealed Act that was made or entered into before the commencement day is taken to be a dutiable transaction for section 30.<sup>72</sup>
- (2) For applying section 30, a reference to the dutiable value of the dutiable transaction is taken to be a reference to the full

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69 *Stamp Act 1894*, section 54AD (Statutory business licences)

70 *Stamp Act 1894*, section 56B (Unit trust schemes)

71 *Stamp Act 1894*, section 53 (Directions as to duty in certain cases)

72 Section 30 (Aggregation of dutiable transactions)

unencumbered value, under the repealed Act, of the property the subject of the transaction.

### **519 Transfers by way of security—land**

- (1) Subsection (2) applies if—
  - (a) a dutiable transaction that is the retransfer of land mentioned in section 32(1)(d)<sup>73</sup> is entered into on or after the commencement day; and
  - (b) before the commencement day, a conveyance or transfer by way of security of the land was made to the transferor under the retransfer.
- (2) Section 32 applies to the retransfer as if—
  - (a) a reference to the original transfer were a reference to the conveyance or transfer mentioned in subsection (1)(b); and
  - (b) a reference to mortgage duty were a reference to stamp duty that would have been chargeable under the repealed Act.

### **520 Particular transfers for deceased persons' estates not dutiable transactions**

- (1) Subsection (2) applies if—
  - (a) under the repealed Act, stamp duty is paid on an agreement to convey or transfer property for carrying into effect any distribution under a will or in intestacy; and
  - (b) a transfer of the property is made on or after the commencement day.
- (2) Transfer duty is not imposed on the transfer.

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73 Section 32 (Transfer by way of security—land)

### **Subdivision 3 Provisions for public unit trusts**

#### **521 Repealed Act applies to particular trust acquisitions and trust surrenders in widely held unit trusts**

- (1) Subsection (2) applies if—
  - (a) a disposition of units in a public unit trust scheme mentioned in repealed Act, section 56B(1),<sup>74</sup> definition *public unit trust scheme*, paragraphs (b) to (d), that is one in a series of dispositions relating to the trust was not chargeable with stamp duty under that Act; and
  - (b) a trust acquisition or trust surrender of a trust interest in the series mentioned in paragraph (a) in the unit trust is made on or after the commencement day; and
  - (c) under section 70(2),<sup>75</sup> the unit trust is not a widely held unit trust.
- (2) The repealed Act applies to the disposition that is the trust acquisition or trust surrender.

#### **522 Repealed Act applies to issue of particular units in widely held unit trusts**

- (1) Subsection (2) applies if—
  - (a) a unit trust scheme is taken to be a public unit trust scheme under section 56B(1A)<sup>76</sup> of the repealed Act; and
  - (b) the start-up period for the scheme ends on or after the commencement day; and
  - (c) the disqualifying circumstances mentioned in section 71(3)<sup>77</sup> apply to the issue of units in the unit trust.

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74 *Stamp Act 1894*, section 56B (Unit trust schemes)

75 Section 70 (What is a *widely held unit trust*)

76 *Stamp Act 1894*, section 56B (Unit trust schemes)

77 Section 71 (When unit trust may be treated as widely held unit trust)

- (2) The repealed Act applies to the issue of units during the start-up period.

## **Division 4                    Provisions for land rich duty**

### **523    Aggregations for land rich duty**

- (1) Subsection (2) applies if—
- (a) before the commencement day, an interest was acquired in a corporation to which the prescribed provisions under section 56F<sup>78</sup> of the repealed Act apply; and
  - (b) the interest may have been aggregated under the prescribed provisions.
- (2) The acquisition of the interest is an acquisition of an interest in the corporation for chapter 3, part 1.<sup>79</sup>
- (3) However, section 158(1)(b)(iii)<sup>80</sup> applies only to aggregate interests of persons who become related persons on or after the commencement day.
- (4) If an option mentioned in section 158(2) is exercised on or after the commencement day, chapter 3, part 1, applies to the preliminary acquisition to which the option relates.
- (5) Subsection (4) applies regardless of whether the option or preliminary acquisition was given or made before or after the commencement day.
- (6) For section 179(2)(b)(ii),<sup>81</sup> the reference to interests previously aggregated includes a reference to interests aggregated under the repealed Act.

### **524    References to majority interests in land rich corporations**

For chapter 3, part 1—

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78 *Stamp Act 1894*, section 56F (Meaning of *prescribed provisions*)

79 Chapter 3 (Land rich duty and corporate trustee duty), part 1 (Land rich duty)

80 Section 158 (What is a *relevant acquisition*)

81 Section 179 (Working out dutiable value of relevant acquisition)

- (a) a reference to a land rich corporation includes a reference to a corporation to which the prescribed provisions under section 56F of the repealed Act apply; and
- (b) a reference to a majority interest in a corporation includes a reference to a majority interest in a corporation under section 56FN<sup>82</sup> of the repealed Act.

### **525 Particular acquisitions included as exempt acquisitions**

For section 163(2), the reference to an exempt acquisition under section 190 includes a reference to a transfer by way of security mentioned in the repealed Act, section 56FA(1), definition *acquire*, paragraph (e).<sup>83</sup>

### **526 Application of ch 3, pt 1, to particular acquisitions of security interests**

- (1) Subsection (2) applies if—
  - (a) before the commencement day, stamp duty under the repealed Act was paid on a transfer of shares by way of security; and
  - (b) on or after the commencement day, the commissioner ceases to be satisfied of the matter mentioned in section 190.<sup>84</sup>
- (2) Chapter 3, part 1, applies to the acquisition mentioned in paragraph (a).

### **527 Application of ch 3, pt 1, div 7, to particular amounts**

- (1) This section applies if, before the commencement day, the commissioner may have requested registration of a charge, under section 56FD(1) of the repealed Act, for an amount of

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82 *Stamp Act 1894*, sections 56F (Meaning of *prescribed provisions*) and 56FN (Meaning of *interest, majority interest* and *further interest*)

83 Sections 163 (When is an interest in a corporation acquired) and 190 (Exemption—security interests) and *Stamp Act 1894*, section 56FA (Interpretation)

84 Section 190 (Exemption—security interests)

stamp duty chargeable, or penalty payable, on or in relation to a statement mentioned in the section.

- (2) Chapter 3, part 1, division 7, applies to the amount of stamp duty or penalty as if it were an outstanding amount of land rich duty.

## **Division 5                      Provisions for corporate trustee duty**

### **528      Repealed Act applies to particular dispositions of shares**

- (1) Subsection (2) applies if—
  - (a) under section 56C<sup>85</sup> of the repealed Act, stamp duty is chargeable on an agreement to dispose of shares in a company to which the section applied; and
  - (b) a disposition of the shares under the agreement is made on or after the commencement day.
- (2) The repealed Act applies to the disposition.

### **529      Aggregation of relevant acquisitions for corporate trustee duty**

- (1) An acquisition made before the commencement day that was chargeable with stamp duty under section 56C of the repealed Act is taken to be a relevant acquisition for section 223.<sup>86</sup>
- (2) For applying section 223, a reference to the dutiable value of the relevant acquisition is taken to be a reference to the value of the acquisition on which duty was calculated under the repealed Act.

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85 *Stamp Act 1894*, section 56C (Companies involving trusts)

86 *Stamp Act 1894*, section 56C (Companies involving trusts) and section 223 (Aggregation of particular relevant acquisitions)



## **Division 6                      Provisions for lease duty**

### **530      Repealed Act applies to particular leases and agreements for leases**

- (1) Subsection (2) applies if—
  - (a) before the commencement day, stamp duty under the repealed Act was chargeable or paid on an agreement for lease; and
  - (b) a lease that is in substantial conformity with the agreement is entered into on or after the commencement day.

- (2) The repealed Act applies to the lease.

*Note—*

Because of this declaration, a provision of the repealed Act, including, for example, section 64C (Refund of duty) applies to it.

- (3) Subsection (4) applies if—
  - (a) before the commencement day, stamp duty under the repealed Act was chargeable or paid on—
    - (i) a written offer for a lease; or
    - (ii) a written offer for a lease and an agreement for lease that is in substantial conformity with the offer; and
  - (b) on or after the commencement day—
    - (i) if paragraph (a)(i) applies—a lease or agreement for lease that is in substantial conformity with the offer is entered into; or
    - (ii) if paragraph (a)(ii) applies—a lease that is in substantial conformity with the agreement for lease is entered into.
- (4) The repealed Act applies to the lease or agreement for lease mentioned in subsection (3)(b).
- (5) Also, the repealed Act applies to a lease entered into in substantial conformity with an agreement for lease to which the repealed Act applies under subsection (4).

**530A Repealed Act applies to instruments increasing rent in relation to particular leases etc.**

- (1) This section applies if—
  - (a) before the commencement day, stamp duty under the repealed Act was chargeable or paid on any of the following (a *prescribed lease*)—
    - (i) a lease or agreement for lease;
    - (ii) a transaction mentioned in section 54AB(1)(b)<sup>87</sup> of the repealed Act;
    - (iii) a contract or agreement for which a statement under section 64D(3)<sup>88</sup> of the repealed Act was or should have been made; and
  - (b) the rent payable in relation to the prescribed lease is increased by an instrument effected on or after the day this section commences.
- (2) The repealed Act applies to the instrument mentioned in subsection (1)(b).

**531 Credit allowed for particular leases**

- (1) Subsection (2) applies if—
  - (a) before the commencement day, stamp duty under the repealed Act was chargeable or paid on an agreement for lease; and
  - (b) a lease that is in substantial conformity with the agreement is entered into on or after the commencement day; and
  - (c) on the exercise of an option for a further period contained in the lease, a new lease is entered into.
- (2) For assessing lease duty imposed on the new lease, a credit must be allowed for stamp duty paid on the lease mentioned in subsection (1)(b) for the option period.
- (3) Subsection (4) applies if—

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87 *Stamp Act 1894*, section 54AB (Duty payable where no dutiable instrument)

88 *Stamp Act 1894*, section 64D (Licence to occupy premises)

- (a) before the commencement day, stamp duty under the repealed Act was chargeable or paid on a lease; and
  - (b) on the exercise of an option for a further period contained in the lease, a new lease is entered into on or after the commencement day.
- (4) For assessing lease duty imposed on the new lease, a credit must be allowed for stamp duty paid on the lease mentioned in subsection (3)(a) for the option period.

### **532 Credit or refund for termination of particular leases etc.**

- (1) This section applies if, before the commencement day, stamp duty under the repealed Act was paid for any of the following—
- (a) a lease or agreement for lease;
  - (b) a transaction mentioned in section 54AB(1)(b) of that Act;
  - (c) a contract or agreement mentioned in section 64D of that Act.<sup>89</sup>
- (2) If the lease, transaction, contract or agreement is terminated on or after the commencement day, section 242<sup>90</sup> applies to the termination as if it were the termination of a lease or occupancy right.
- (3) Subsection (4) applies if, on or after the commencement day—
- (a) the lease, transaction, contract or agreement is terminated; and
  - (b) a lease or occupancy right is entered or granted in replacement of the lease, transaction, contract or

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89 *Stamp Act 1894*, sections 54AB (Duty payable where no dutiable instrument) and 64D (Licence to occupy premises)

90 Section 242 (Reassessment of lease duty for particular earlier termination of lease or occupancy right)

agreement in circumstances mentioned in section 243(1).<sup>91</sup>

- (4) Section 243(2) applies to the replacement lease or right.

## **Division 7 Provisions for mortgage duty**

### **533 Liability for mortgage duty for particular mortgages first signed before commencement day**

- (1) This section applies if—
- (a) a mortgage is first signed before the commencement day; and
  - (b) an advance or further advance is made on or after the commencement day; and
  - (c) the amount of the advances secured by the mortgage exceeds the amount for which the mortgage has been duly stamped under the repealed Act or a corresponding Act.
- (1A) To remove any doubt, it is declared that the mortgage is a mortgage for section 248 and section 252(2) applies to it.<sup>92</sup>
- (2) Section 261<sup>93</sup> applies as if a reference to liability to duty arising under this Act were a reference to liability to stamp duty arising under the repealed Act.

### **534 Credit allowed for particular agreements for mortgage**

- (1) Subsection (2) applies if—
- (a) before the commencement day, stamp duty under the repealed Act was paid on an agreement to grant a mortgage; and

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91 Section 243 (Credit for lease duty paid)

92 Sections 248 (What is a *mortgage*) and 252 (When liability for mortgage duty arises)

93 Section 261 (Advances secured by mortgage package). See also section 252 (When liability for mortgage duty arises).

- (b) under the agreement, a mortgage as defined in section 248 is first signed on or after the commencement day.
- (2) For assessing mortgage duty imposed on the mortgage, a credit must be allowed for stamp duty paid on the agreement to grant the mortgage.

**535 Particular mortgages imposed with mortgage duty on commencement day**

- (1) A mortgage, as defined in section 248(1), that was first signed before the commencement day and had not been duly stamped under the repealed Act immediately before that day is, on that day, taken to be imposed with mortgage duty under chapter 5.
- (2) Despite subsection (1), for a mortgage that is over property partly in and partly outside Queensland, mortgage duty is worked out in the way stamp duty on the mortgage would have been worked out under the repealed Act.

**Division 8 Provision for hire duty**

**536 Liability for hire duty for hires of goods entered into before commencement day**

To remove any doubt it is declared that chapter 7 does not apply to impose hire duty on hiring charges for a hire of goods entered into before the commencement day.

*Note—*

Under section 512, the repealed Act continues to apply to the hire of goods.

**Division 9 Provisions for vehicle registration duty**

**537 Reduction in vehicle registration duty**

- (1) Subsection (2) applies if—

- (a) ad valorem duty chargeable on an instrument under the repealed Act was paid; and
  - (b) the duty was worked out by including the value of a vehicle; and
  - (c) an application to register or transfer the vehicle is made on or after the commencement day.
- (2) Section 384(2) and (3) apply for reducing the vehicle registration duty assessed under section 382(2)<sup>94</sup> as if—
- (a) factor DP were a reference to the stamp duty paid under the repealed Act; and
  - (b) factor DVDP were the value of the property on which the ad valorem duty was paid under the repealed Act, schedule 1, paragraph 4(a) under the heading ‘Conveyance or transfer’; and
  - (c) factor MVV were a reference to the value of the vehicle or the part the value of the vehicle used to calculate the duty paid under the repealed Act.

## **Division 10                      Provisions for corporate reconstructions**

### **538      Repealed Act applies to particular agreements**

- (1) Subsection (2) applies if—
- (a) under section 49C(1) or (2)<sup>95</sup> of the repealed Act, stamp duty is not chargeable on an agreement for or in connection with the transfer of shares or for conveying, transferring or assigning a beneficial interest in property; and
  - (b) the conveyance, transfer or assignment of the property under the agreement is made on or after the commencement day.

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94 Sections 382 (Assessment of vehicle registration duty) and 384 (Reduction in vehicle registration duty payable)

95 *Stamp Act 1894*, section 49C (Relief from conveyance and transfer duty upon company reconstruction or amalgamation)

- (2) The repealed Act applies to the conveyance, transfer or assignment.

### **539 Group property for intra-group transfers of property**

For section 407(1)(c)<sup>96</sup>—

- (a) the reference to new parent company includes a reference to the transferee company under section 49C(1) of the repealed Act; and
- (b) the reference to the transferor and transferee becoming group companies in the circumstances mentioned in section 405<sup>97</sup> includes a reference to the transferor and transferee becoming associated companies in the circumstances mentioned in section 49C(1) of the repealed Act.

## **Division 11 Provisions for approved and registered persons**

### **540 Approved persons**

A person who, immediately before the commencement day, was an approved person under section 13A<sup>98</sup> of the repealed Act is taken to be a self assessor registered under—

- (a) if the person's approval relates to instruments signed by or in favour of the person—chapter 12, part 2; and
- (b) if the person's approval relates to instruments regularly received by or on which the person acts in the course of the person's business—chapter 12, part 3.<sup>99</sup>

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96 Section 407 (Group property for intra-group transfer of property)

97 Section 405 (Exemption—interposing new company between existing companies and their shareholders)

98 *Stamp Act 1894*, section 13A (Duty accounted for by returns)

99 Chapter 12 (Registered persons), parts 2 (Registration of parties to instruments and transactions as self assessors) and 3 (Registration of agents as self assessors)

**541 Registered persons**

- (1) Subsection (2) applies to a person who, immediately before the commencement day, was registered under section 35A<sup>100</sup> of the repealed Act to carry on a credit business or rental business.
- (2) The person is taken to be—
  - (a) a registered credit provider or registered commercial hirer; and
  - (b) a self assessor, registered under chapter 12, part 1.<sup>101</sup>

**543 Approved insurers**

- (1) A person who, immediately before the commencement day, was an approved insurer under section 46F<sup>102</sup> of the repealed Act is taken to be—
  - (a) if the person's approval relates to carrying on insurance business as a general insurer—a registered general insurer; or
  - (b) if the person's approval relates to carrying on insurance business as a life insurer—a registered life insurer.
- (2) Also, the person is taken to be a self assessor, registered under chapter 12, part 1.

**544 Effect of continued registration of persons**

- (1) This section applies to a person who, under sections 540 to 543, is taken to be registered under chapter 12, parts 1 to 3.
- (2) The person's date of registration is the commencement day.
- (3) Subject to section 464,<sup>103</sup> the matters required to be stated in a notice of registration for a self assessor are, for the person, the

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100 *Stamp Act 1894*, section 35A (Persons carrying on credit or rental business to be registered)

101 Chapter 12 (Registered persons), part 1 (Registration of persons carrying on particular businesses and their registration as self assessors)

102 *Stamp Act 1894*, section 46F (Approved insurers to pay duty by return)

103 Section 464 (Amendment of self assessor's registration)



matters applying to the person immediately before the commencement day.

#### **545 Exempt charitable institutions**

- (1) An institution that before the commencement day received an exemption from stamp duty under the repealed Act because it was an exempt charitable institution is taken to be an exempt institution.
- (2) The institution's date of registration is the commencement day.
- (3) As soon as practicable after the commencement, the commissioner must give a notice of registration to the institution.

#### **546 Registration of particular institutions following reassessment**

- (1) This section applies if, before the commencement day, the commissioner had given a notice under section 59E(8), 69A(2) or 72(4)<sup>104</sup> of the repealed Act to an institution stating a later time to decide whether an instrument would be exempt from stamp duty under that Act and the later time is after the commencement day.
- (2) If, at the later time, the commissioner is satisfied the institution is an exempt institution, the commissioner must register the institution under chapter 12, part 5, and give the institution a notice of registration.

*Note—*

The reassessment of stamp duty is made under the repealed Act, see section 512.

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104 *Stamp Act 1894*, section 59E (Conveyance duty exemption for educational, religious and other institutions), 69A (Securities for loans to or debts of educational, charitable or religious bodies) or 72 (Exemptions for charitable institutions)

## **Division 12                      Miscellaneous provisions**

### **547      Particular references to related persons**

- (1) Subsection (2) applies if, for imposing duty on an instrument or transaction, it is necessary to take into account a transaction or other arrangement entered into before the commencement day by or in relation to a related person of another person.
- (2) A reference in this Act to a related person of another person is taken to be a reference to a related person of the other person within the meaning of section 56FA(3)<sup>105</sup> of the repealed Act.

### **548      Instruments stamped under repealed Act**

An instrument that has been stamped under the repealed Act is taken to have been properly stamped to the extent it is duly stamped under that Act.

### **549      References in Acts or documents**

- (1) In an Act or document—
  - (a) a reference to the repealed Act is, if the context permits, taken to be a reference to this Act; and
  - (b) a reference to stamp duty is, if the context permits, taken to be a reference to—
    - (i) if the reference is made in relation to a particular instrument or transaction—the duty under this Act applicable to the instrument or transaction; or
    - (ii) otherwise—duty under this Act.
- (2) A reference in this Act to a particular type of duty for the imposition or assessment of, or a deduction or credit for, the duty includes a reference to stamp duty under the repealed Act.
- (3) Also, a reference in another Act to duty, or a particular type of duty, is, if the context permits, taken to be a reference to stamp duty under the repealed Act.

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105 *Stamp Act 1894*, section 56FA (Interpretation)

- (4) A reference in this Act to a dutiable transaction or relevant acquisition is, if the context permits, taken to be a reference to an instrument chargeable with or exempt from stamp duty under the repealed Act that gives effect to or evidences an equivalent transaction or acquisition.

### **550 Transitional regulation-making power**

- (1) A regulation (a *transitional regulation*) may make provision about a matter for which—
- (a) it is necessary to make provision to allow or facilitate the doing of anything to achieve the transition from the operation of the repealed Act to the operation of this Act and the Administration Act; and
  - (b) this Act does not make provision or sufficient provision.
- (2) A transitional regulation may have retrospective operation to a day not earlier than the commencement day.
- (3) A transitional regulation must declare it is a transitional regulation.
- (4) This section and any transitional regulation expire 5 years after the commencement day.

## **Part 3 Transitional provision for Duties Amendment Act 2004**

### **551 Application of amendments about concession for transfer duty or mortgage duty for first home**

- (1) Chapter 2, part 9, division 3 and chapter 5, part 6, division 2 as in force on 1 May 2004 apply to dutiable transactions and mortgages only if liability for transfer duty or mortgage duty arises on or after 1 May 2004.

- (2) However, chapter 2, part 9, division 3,<sup>106</sup> as in force immediately before 1 May 2004, applies to a dutiable transaction that is the transfer, or agreement for the transfer, of residential land made on or after 1 May 2004 if—
- (a) the transfer or agreement replaces a transfer, or an agreement for the transfer, that included the residential land and was made before 1 May 2004; or
  - (b) the transferee had an option to purchase the residential land, or the transferor had an option to require the transferee to purchase the residential land, granted before 1 May 2004 and exercised on or after 1 May 2004; or
  - (c) another arrangement was made before 1 May 2004 the sole or main purpose of which was to defer the making of the transfer or agreement until 1 May 2004 or later so the concession for transfer duty under the division, as in force on or after 1 May 2004, would apply in relation to the dutiable transaction.

## **Part 4**                      **Transitional provisions for Duties Amendment Act (No. 2) 2004**

### **552**    **Application of amendments about concession for transfer duty for home**

- (1) Chapter 2, part 9, division 3<sup>107</sup> as in force on 1 August 2004 applies to dutiable transactions only if liability for transfer duty arises on or after 1 August 2004.
- (2) However, the division as in force immediately before 1 August 2004 applies to a dutiable transaction that is the

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106 Chapter 2 (Transfer duty), part 9 (Concessions for homes), division 3 (Concessions for homes and first homes)

107 Chapter 2 (Transfer duty), part 9 (Concessions for homes), division 3 (Concessions for homes and first homes)

transfer, or agreement for the transfer, of residential land made on or after 1 August 2004 if—

- (a) the transfer or agreement replaces a transfer, or an agreement for the transfer, that included the residential land and was made before 1 August 2004; or
- (b) the transferee had an option to purchase the residential land, or the transferor had an option to require the transferee to purchase the residential land, granted before 1 August 2004 and exercised on or after 1 August 2004; or
- (c) another arrangement was made before 1 August 2004 the sole or main purpose of which was to defer the making of the transfer or agreement until 1 August 2004 or later so the concession for transfer duty under the division, as in force on or after 1 August 2004, would apply in relation to the dutiable transaction.

### **553 Application of amendments about credit card duty**

- (1) Chapter 6, part 2 as in force immediately before 1 August 2004 applies in relation to credit card transactions in a partial period.
- (2) For subsection (1), a partial period is taken to be a billing period.
- (3) A term used in this section and defined in chapter 6, part 2 as in force immediately before 1 August 2004 has the meaning given by the part as in force immediately before 1 August 2004.
- (4) In this section—  
*partial period* for a billing period that starts, but has not ended, before 1 August 2004 means the period from the start to 31 July 2004.

**Part 11****Savings and transitional provisions for Revenue and Other Legislation Amendment Act (No. 2) 2008****608 Meaning of *commencement day***

In this part—

*commencement day* means the day of commencement of the provision in which the term is used.

**609 Limitation period—particular retirement village arrangements**

- (1) This section applies to duty imposed before the commencement day if—
  - (a) the duty was—
    - (i) transfer duty on the transfer, or agreement for the transfer, of residential land; or
    - (ii) mortgage duty imposed on a mortgage over residential land; and
  - (b) the land was an accommodation unit in a retirement village; and
  - (c) on or after the commencement day, the transferee enters into a retirement village leasing arrangement for the unit.
- (2) The limitation period for a reassessment of the duty does not apply.

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## **Schedule 2      When liability for transfer duty on dutiable transaction arises**

section 16

<b>Column 1</b>	<b>Column 2</b>
<b>Dutiable transaction</b>	<b>When liability for transfer duty arises</b>
Transfer of dutiable property	The earlier of the following— (a) when the property is transferred; (b) if an instrument effects, or when recorded in a register will effect, the transfer—when the instrument is signed by the parties to the transaction
Agreement for transfer of dutiable property	When the agreement is made
Surrender of dutiable property that is land in Queensland or a transferable site area	The earlier of the following— (a) when the property is surrendered; (b) if an instrument effects, or when recorded in a register will effect, the surrender—when the instrument is signed by the parties to the transaction
A share buy-back of a Queensland marketable security	When the security is cancelled

## Schedule 2 (continued)

<b>Column 1</b>	<b>Column 2</b>
<b>Dutiable transaction</b>	<b>When liability for transfer duty arises</b>
Vesting of dutiable property by, or expressly authorised by, statute law of this or another jurisdiction, whether inside or outside Australia	When the vesting takes place
Vesting of dutiable property by a court order, of this or another jurisdiction, whether inside or outside Australia	When the order is made
Foreclosure of a mortgage over dutiable property	When a foreclosure order is made for the property
Acquisition of a new right	<p>The earlier of the following—</p> <ul style="list-style-type: none"> <li>(a) when the right is acquired;</li> <li>(b) if an instrument effects, or when recorded in a register will effect, the acquisition—when the instrument is signed by the parties to the transaction;</li> <li>(c) if a written agreement evidences the acquisition—when the agreement is made</li> </ul>



## Schedule 2 (continued)

<b>Column 1</b>	<b>Column 2</b>
<b>Dutiable transaction</b>	<b>When liability for transfer duty arises</b>
Partnership acquisition	The earlier of the following— <ul style="list-style-type: none"><li data-bbox="676 547 1109 615">(a) when the partnership interest is acquired;</li><li data-bbox="676 633 1109 839">(b) if an instrument effects, or when recorded in a register will effect, the acquisition—when the instrument is signed by the parties to the transaction;</li><li data-bbox="676 869 1109 1010">(c) if a written agreement evidences the acquisition—when the agreement is made</li></ul>

## Schedule 2 (continued)

<b>Column 1</b>	<b>Column 2</b>
<b>Dutiable transaction</b>	<b>When liability for transfer duty arises</b>
Creation or termination of a trust of dutiable property	<p>The earlier of the following—</p> <ul style="list-style-type: none"> <li>(a) when the trust is created or terminated;</li> <li>(b) if an instrument effects, or when recorded in a register will effect, the creation or termination—when the instrument is signed by the parties to the transaction</li> </ul>
Trust acquisition or trust surrender	<p>The earlier of the following—</p> <ul style="list-style-type: none"> <li>(a) when the interest is acquired or surrendered;</li> <li>(b) if an instrument effects, or when recorded in a register will effect, the acquisition or surrender—when the instrument is signed by the parties to the transaction;</li> <li>(c) if a written agreement evidences the acquisition or surrender—when the agreement is made</li> </ul>

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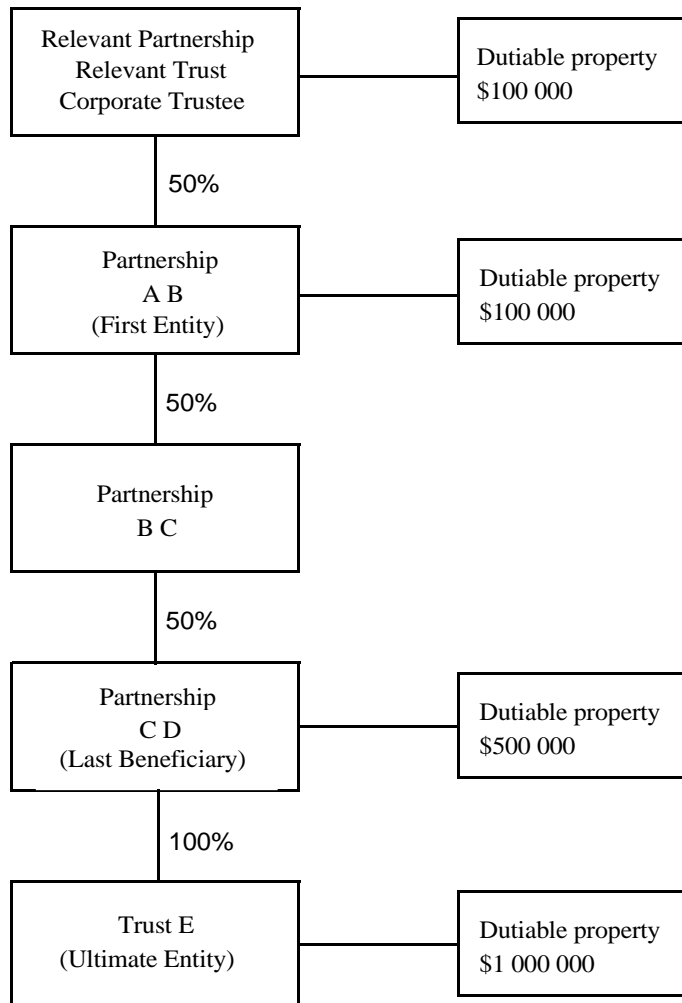
## **Schedule 3      Rates of duty on dutiable transactions and relevant acquisitions for land rich and corporate trustee duty**

sections 24(4), 176 and 216(b)

<b>Column 1</b>	<b>Column 2</b>
<b>Dutiable value of dutiable transaction or relevant acquisition</b>	<b>Rate of duty</b>
Not more than \$20 000	\$1.50 for each \$100, or part of \$100
More than \$20 000 but not more than \$50 000	\$300 plus \$2.25 for each \$100, or part of \$100, by which the dutiable value is more than \$20 000
More than \$50 000 but not more than \$100 000	\$975 plus \$2.75 for each \$100, or part of \$100, by which the dutiable value is more than \$50 000
More than \$100 000 but not more than \$250 000	\$2 350 plus \$3.25 for each \$100, or part of \$100, by which the dutiable value is more than \$100 000
More than \$250 000 but not more than \$500 000	\$7 225 plus \$3.50 for each \$100, or part of \$100, by which the dutiable value is more than \$250 000
More than \$500 000	\$15 975 plus \$3.75 for each \$100, or part of \$100, by which the dutiable value is more than \$500 000

## Schedule 4      Example for partnership and trust acquisitions and relevant acquisitions for corporate trustees

sections 46(4), 63(5) and 222(4)



**Schedule 4 (continued)**

This example shows how the value of a partnership acquisition or trust acquisition or dutiable value of a relevant acquisition under chapter 3, part 2, is worked out in the following circumstances—

- (a) a person acquires a 20% interest in—
  - (i) for a partnership acquisition—a relevant partnership under section 46; or
  - (ii) for a trust acquisition—a relevant trust under section 63; or
  - (iii) for a relevant acquisition under chapter 3, part 2—a corporate trustee;
- (b) the relevant partnership, relevant trust or corporate trustee holds dutiable property the unencumbered value of which is \$100 000 and has a 50% partnership interest in partnership AB;
- (c) partnership AB holds dutiable property the unencumbered value of which is \$100 000 and has a 50% partnership interest in partnership BC;
- (d) partnership BC has a 50% partnership interest in partnership CD;
- (e) partnership CD holds dutiable property the unencumbered value of which is \$100 000 and is the sole beneficiary in trust E;
- (f) trust E holds dutiable property the unencumbered value of which is \$1 000 000.

In this example—

- (a) trust E is the ultimate entity because it holds dutiable property and there is no other partnership or trust lower in the series holding dutiable property; and
- (b) under section 46(3)(a), 63(4)(a) or 222(3)(a), partnership CD is the last beneficiary.

The value of the partnership acquisition or trust acquisition or dutiable value of the relevant acquisition is worked out as follows—

**Schedule 4 (continued)****Step 1**

Partnership CD's trust interest in trust E (100%) is applied to the unencumbered value of the dutiable property held by the trust (\$1 000 000).

The result is \$1 000 000.

**Step 2**

Partnership BC's partnership interest in partnership CD (50%) is applied to—

- (a) the result under step 1 (\$1 000 000); and
- (b) the unencumbered value of the dutiable property held by the partnership (\$500 000).

The result is \$750 000.

**Step 3**

Partnership AB's partnership interest in partnership BC (50%) is applied to the amount worked out under step 2 (\$750 000).

The result is \$375 000.

**Step 4**

The partnership interest of the relevant partnership, relevant trust or corporate trustee in partnership AB (50%) is applied to—

- (a) the result under step 3 (\$375 000); and
- (b) the unencumbered value of the dutiable property held by the partnership (\$100 000).

The result is \$237 500.

**Step 5**

The acquirer's interest (20%) is applied to—

- (a) the result under step 4 (\$237 500); and
- (b) the unencumbered value of the dutiable property held by the relevant partnership, relevant trust or corporate trustee (\$100 000).

The value of the partnership acquisition or trust acquisition or dutiable value of the relevant acquisition is \$67 500.

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## **Schedule 4A      Amount of concession for transfer duty—first home**

sections 92(2) and 93(6A)

<b>Dutiable value of the residential land</b>	<b>Concession amount</b>
Not more than \$259 999	\$2 500
\$260 000—\$269 999	\$2 400
\$270 000—\$279 999	\$2 300
\$280 000—\$289 999	\$2 200
\$290 000—\$299 999	\$2 100
\$300 000—\$309 999	\$2 000
\$310 000—\$319 999	\$1 900
\$320 000—\$329 999	\$1 800
\$330 000—\$339 999	\$1 700
\$340 000—\$349 999	\$1 600
\$350 000—\$359 999	\$1 500
\$360 000—\$369 999	\$1 400
\$370 000—\$379 999	\$1 300
\$380 000—\$389 999	\$1 200
\$390 000—\$399 999	\$1 100
\$400 000—\$409 999	\$1 000
\$410 000—\$419 999	\$900

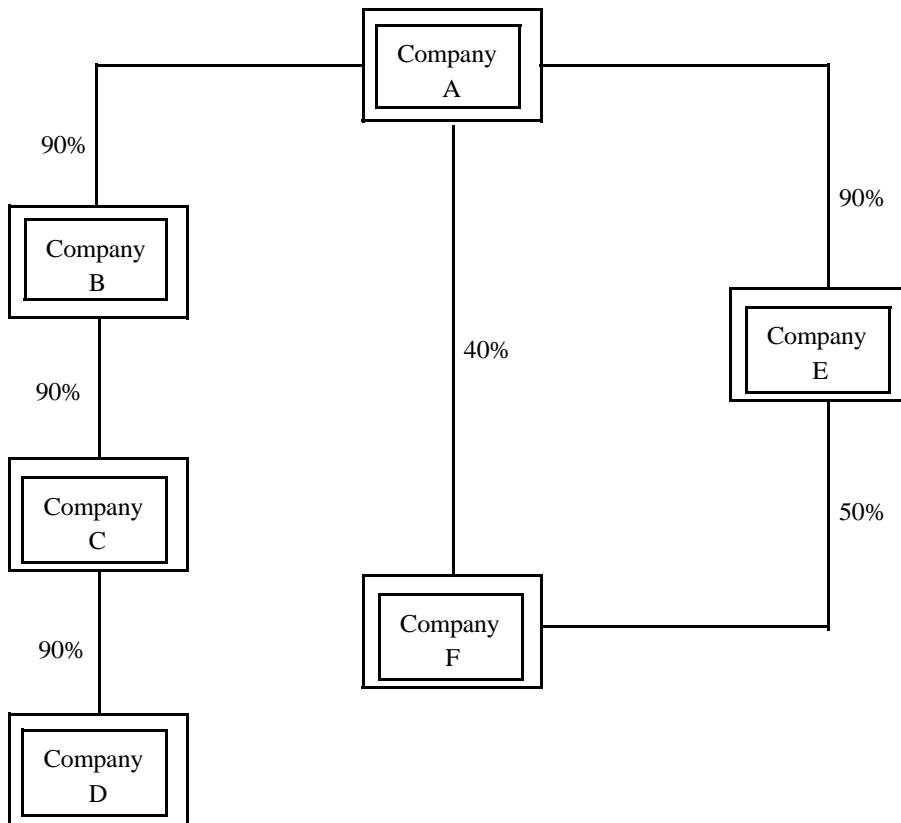
## Schedule 4A (continued)

<b>Dutiable value of the residential land</b>	<b>Concession amount</b>
\$420 000—\$429 999	\$800
\$430 000—\$439 999	\$700
\$440 000—\$449 999	\$600
\$450 000—\$459 999	\$500
\$460 000—\$469 999	\$400
\$470 000—\$479 999	\$300
\$480 000—\$489 999	\$200
\$490 000—\$499 999	\$100



## Schedule 5 Example for corporate reconstruction

section 403



### Parent companies—

Company A owns 90% of the shares in, and has voting control over, companies B and E. Under section 401, company A is the parent company of companies B and E.

Company B owns 90% of the shares in, and has voting control over, company C. Under section 401, company B is the parent company of company C.

**Schedule 5 (continued)**

Company C owns 90% of the shares in, and has voting control over, company D. Under section 401, company C is the parent company of company D.

No company is the parent company of company F, because no company holds 90% of its issued shares, and has voting control, over it.

**Subsidiaries—**

Under section 402—

- companies B and E are subsidiaries of company A
- company C is a subsidiary of company B and, because company B is a subsidiary of company A, company C is also a subsidiary of company A
- company D is a subsidiary of company C and, because company C is a subsidiary of companies B and A, company D is also a subsidiary of companies A and B.
- company F is a subsidiary of company A because company A, with its subsidiary company E, holds 90% of the issued shares in, and has voting control over, company F.

**Group companies—**

Under section 400(2), all the companies are group companies because companies B, C, D, E and F are subsidiaries of company A.

**Corporate group—**

Under section 400(4), the corporate group comprises the group companies A, B, C, D, E and F.

## Schedule 6 Dictionary

### section 3

***accepted representations*** see section 467(2).

***accident insurance*** see section 352.

***accommodation unit*** see the *Retirement Villages Act 1999*, schedule.

***acquirer***, for chapter 2, part 8, division 7, means a person who acquires an indirect trust interest in a land holding trust.

***Administration Act*** means the *Taxation Administration Act 2001*.

***ancestor***, of a person, means—

- (a) a parent or grandparent of the person or person's spouse;  
or
- (b) a spouse of a parent or grandparent mentioned in paragraph (a).

***application to register***, for a vehicle, means an application under the Vehicle Registration Act to register the vehicle.

***application to transfer***, for a vehicle, means an application under the Vehicle Registration Act to transfer the registration of the vehicle.

***applied Act*** means this Act as a law applied under the *Commonwealth Places (Mirror Taxes) Act 1998* (Cwlth).

***approved form*** means a form approved under section 507.

***approved trustee*** see the *Superannuation Industry (Supervision) Act 1993* (Cwlth), section 10.

***assessed interest*** see the Administration Act, section 54(3).

***assessment*** see the Administration Act, schedule 2.

***assessment notice*** see the Administration Act, section 26(1).

***asset-backed security*** see section 130C.

## Schedule 6 (continued)

**associated person**, of a corporation (*the first corporation*), means any of the following—

- (a) a person who, under section 164, is a related person of the first corporation;
- (b) a person who has an interest in the first corporation or a related body corporate of the first corporation;
- (c) a person who is a beneficiary of a trust if the property of the trust includes an interest in the first corporation or a related body corporate of the first corporation;
- (d) a member of the family of a person mentioned in paragraphs (a) to (c);
- (e) another corporation in which the first corporation, or a person mentioned in paragraph (a) to (d), has an interest;
- (f) another corporation (*the second corporation*) if—
  - (i) the first corporation or a person mentioned in paragraph (a) to (d) is a beneficiary of a trust; and
  - (ii) the property of the trust includes an interest in the second corporation.

**Australian register** see the Corporations Act, section 9.

**Australian Stock Exchange** means the Australian Stock Exchange Limited (ACN 008 624 691).

**authorised investment** for—

- (a) a pool of financial assets—see section 130G; or
- (b) a pool of mortgages—see section 289.

**authorised trustee corporation** means a corporation declared under the Corporations Act to be an authorised trustee corporation for any provision of that Act.

**avoidance scheme** means—

- (a) for chapter 2, part 9, division 3—a scheme to circumvent limitations on, or requirements affecting, eligibility or entitlement for a concession for transfer duty under the division; or

## Schedule 6 (continued)

- (b) for chapter 5, part 6, division 2—a scheme to circumvent limitations on, or requirements affecting, eligibility or entitlement for a concession for mortgage duty under the division.

**avoider**, for chapter 11, see section 433(1)(a).

**boat** means a floating vessel of any size or kind, and includes a hovercraft.

**business** includes any profession, trade, employment, vocation or calling.

**business asset** see section 35.

**business of primary production** means a business of agriculture, pasturage or dairy farming.

**business property** means—

- (a) land primarily used to carry on a business of primary production or a prescribed business; or
- (b) personal property used to carry on the business on the land.

**caveat** means—

- (a) for an interest in freehold land—a caveat under the *Land Title Act 1994*; or
- (b) for an interest in a water allocation—a caveat under the *Land Title Act 1994*, as applied by the *Water Act 2000*, section 150.

**change**, for a trustee, means the trustee's retirement or the appointment of a new or additional trustee.

**chattel** includes a chattel authority.

**chattel authority** means a licence, permit or other authority that is granted or issued under a law—

- (a) for using a chattel; and
- (b) transferable only with the chattel.

## Schedule 6 (continued)

***circuit layout right*** means an exclusive right under the *Circuit Layouts Act 1989* (Cwlth) for an eligible layout under that Act.

***class 1 general insurance*** means general insurance other than class 2 general insurance or CTP insurance.

***class 2 general insurance*** means general insurance for, or relating to, any of the following—

- (a) professional indemnity;
- (b) personal injury to a person relating to the person's travel on an aircraft;
- (c) a motor vehicle, other than CTP insurance;
- (d) a home mortgage that is a first mortgage;
- (e) a life insurance rider.

***collateral mortgage*** means a mortgage that secures all or part of the same amount as another mortgage, security instrument or mortgage package that has been properly stamped under this Act or a corresponding Act.

***commercial hirer*** see section 334.

***commissioner*** means the Commissioner of State Revenue appointed under the Administration Act.

***Commonwealth place*** means a place in Queensland acquired by the Commonwealth for a public purpose.

***company***, for—

- (a) chapter 10—see section 399; or
- (b) otherwise—means a company registered under the Corporations Act.

***complying approved deposit fund*** means a complying approved deposit fund under the *Superannuation Industry (Supervision) Act 1993* (Cwlth), section 43.

***complying superannuation fund*** means—

## Schedule 6 (continued)

- (a) a complying superannuation fund under the *Superannuation Industry (Supervision) Act 1993* (Cwlth), section 42 or 42A; or
- (b) an exempt public sector superannuation scheme under that Act.

***compulsory acquisition***, of property by a statutory entity, includes the acquisition of the property under an agreement if, had the agreement not been made, the statutory entity would have compulsorily acquired the property.

***contracted property*** means dutiable property the subject of a purchase or sale agreement.

***conversion period*** means the period from 1 July 1998 to the last day permitted by the Corporations Act or the Australian Securities and Investments Commission for the transition of a prescribed interest scheme to a registered managed investment scheme.

***corporate debt security***, of a corporation or society, means—

- (a) a debenture, debenture stock, bond or note or other similar security of the corporation or society; or
- (b) any right relating to a thing mentioned in paragraph (a), whether or not the right is a charge on the assets of the corporation or society.

***corporate group*** see section 400(4).

***corporate reconstruction*** see section 398.

***corporate trustee*** see section 209.

***corporate trustee duty*** see section 205(1).

***corporate trustee duty statement*** see section 217.

***corporation*** see the Corporations Act, section 57A.<sup>108</sup>

***corresponding Act*** means an Act of another State that corresponds to this Act or the applied Act.

***cost*** for—

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108 Corporations Act, section 57A (Meaning of corporation)

## Schedule 6 (continued)

- (a) a lease—see section 233; or
- (b) an occupancy right—see section 234.

**credit amount** see section 303.

**credit arrangement** see section 298.

**credit business duty** see section 293(1).

**credit card** means a card, or other thing, for which the credit card provider agrees, whether or not on conditions, to—

- (a) make payment to a merchant to whom the card is produced; or
- (b) provide a cash advance to the credit card holder.

**credit card holder** means a person—

- (a) to whom a credit card has been issued; and
- (b) whose address last known to the credit card provider, or at the person's direction, is in Queensland.

**credit card provider** means—

- (a) a person who has issued a credit card and, in the ordinary course of business, may make a payment or provide credit under an obligation accepted by the person on the issue of the credit card; or
- (b) a prescribed credit card provider.

**credit provider** see section 299.

**credit purchase agreement** see section 329.

**credit transaction** see section 295.

**CTP insurance** means insurance cover the subject of a policy of insurance under the *Motor Accident Insurance Act 1994*.

**custodian** means—

- (a) for chapter 2, part 12 and part 13, division 3—the corporation that has been or will be appointed under the Corporations Act, section 601FB, to hold the property of a registered managed investment scheme as agent for the responsible entity of the scheme; or



## Schedule 6 (continued)

- (b) for a public superannuation entity for chapter 2, part 13, division 3A—a custodian under the *Superannuation Industry (Supervision) Act 1993* (Cwlth), section 10, that—
- (i) itself performs custodial functions for assets of the entity; and
  - (ii) satisfies the eligibility requirements for a custodian under part 15 of that Act.

***declared public unit trust*** see section 79.

***de facto partner*** means 1 of 2 persons who is a de facto partner within the meaning of the *Acts Interpretation Act 1954*, section 32DA, if the persons are living, and for at least 2 years have lived, together as a couple on a genuine domestic basis within the meaning of the *Acts Interpretation Act 1954*, section 32DA, or have so lived together as a couple for at least 2 years.

***de facto relationship*** means the relationship between de facto partners.

***de facto relationship instrument*** see section 422.

***de facto relationship property*** see section 423.

***demonstrator*** means a new vehicle used solely or primarily for the sale of another new vehicle of the same type.

***descendant***, of a person, means—

- (a) a child or grandchild of the person or the person's spouse; or
- (b) a spouse of a child or grandchild mentioned in paragraph (a).

***discount transaction*** see section 297.

***dissatisfied person*** means—

- (a) for a decision of the commissioner to refuse to register a person as a self assessor—the applicant; or

## Schedule 6 (continued)

- (b) for a decision of the commissioner to amend, suspend or cancel a self assessor's registration—the self assessor; or
- (c) for a decision of the commissioner to refuse to register a financial institution under section 446A—the applicant; or
- (d) for a decision of the commissioner to require a person to pay a penalty amount—the person.

***dormant***, for a company for a period, means the company has not, in the period—

- (a) had any assets or liabilities other than share capital for subscriber shares or shares issued to replace subscriber shares of the same value on their redemption; or
- (b) been party to an agreement or a beneficiary or trustee of a trust; or
- (c) issued or sold any shares or rights relating to shares other than subscriber shares, rights relating to subscriber shares or shares issued to replace subscriber shares of the same value on their redemption.

***duration period*** see section 416(1)(b) and (2)(b).

***dutiable day***, for the dutiable value of a vehicle, means—

- (a) for an application to register a vehicle—the day the application is made; or
- (b) for an application to transfer a vehicle—the day the transaction to which the transfer relates takes place.

***dutiable property*** see section 10.

***dutiable proportion***, for a mortgage, means the proportion of the amount secured by the mortgage worked out under section 260.

***dutiable transaction*** see section 9.

***dutiable value*** for—

- (a) a dutiable transaction—see section 11; or
- (b) residential land—see section 90; or

## Schedule 6 (continued)

- (c) a relevant acquisition under chapter 3, part 1 or 2—means the dutiable value of the acquisition worked out under chapter 3, part 1, division 4 or part 2, division 5; or
- (d) a vehicle as defined for chapter 9—see section 378.

**duty** means a duty imposed under this Act.

**duty benefit**, for chapter 11, see section 434(1).

**eligible money market dealer** see the Corporations Act, section 9.<sup>109</sup>

**eligible rollover fund** see the *Superannuation Industry (Supervision) Act 1993* (Cwlth), section 242.

**entity** for—

- (a) chapter 2, part 8, division 7, means a corporation, partnership, person or trust; or
- (b) chapter 11, includes—
  - (i) a trust; and
  - (ii) a superannuation fund under the *Superannuation Industry (Supervision) Act 1993* (Cwlth).

**equipment financing arrangement** see section 330.

**executive officer**, of a body corporate, means a person who is concerned in, or takes part in, the management of the body, regardless of the person's designation and whether or not the person is a director of the body.

**exempt acquisition** means—

- (a) a relevant acquisition for which land rich duty is not imposed under chapter 3, part 1, division 5 or chapter 10, parts 2 to 4; or
- (b) a relevant acquisition for which corporate trustee duty is not imposed under chapter 3, part 2, division 6 or chapter 10, parts 2 to 4.

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Schedule 6 (continued)

***exempt bill of exchange*** means a bill of exchange that—

- (a) is for \$50 000 or more and a term of not more than 180 days; and
- (b) is drawn, accepted or endorsed by a financial institution, an eligible money market dealer or dealer in the unofficial short-term money market.

***exempt foreign company*** see the Corporations Act, section 9.<sup>110</sup>

***exempt institution*** means an institution registered under chapter 12, part 5.

***exempt managed investment scheme*** means a unit trust that is a managed investment scheme under the Corporations Act that, under the Corporations Act, section 601ED, does not have to be registered because of the issue of units in the trust only to professional investors mentioned in the Corporations Act, section 708(11).

***exempt payment*** see section 333.

***exempt promissory note*** means a promissory note that is for \$50 000 or more and a term of not more than 180 days if—

- (a) the only security provided to the person who discounts the note is the note; or
- (b) the security is comprised of—
  - (i) the note and a guarantee by or for the government of the Commonwealth or a State; or
  - (ii) the note and a guarantee of a related body corporate of the corporation making the note; or
  - (iii) the note and a letter of credit from a financial institution.

***exempt proprietary company*** means a proprietary company, other than an exempt foreign company, no share or interest in which is held by a body corporate other than another

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110 Corporations Act, section 9 (Dictionary)

## Schedule 6 (continued)

proprietary company that is not an exempt foreign company, whether directly or through interposed companies or trusts.

***exempt short-term debenture*** see section 267(1).

***existing company*** see section 405(1).

***existing right*** means any of the following—

- (a) an existing statutory licence, other than a statutory business licence, granted by the State;
- (b) an existing statutory licence, other than a statutory business licence, granted by the Commonwealth if the rights under the licence are exercisable in Queensland;
- (c) an existing right to use a statutory licence, other than a statutory business licence, granted by the State;
- (d) an existing right to use a statutory licence, other than a statutory business licence, granted by Commonwealth if the rights under the licence are exercisable in Queensland;
- (e) an existing concession or licence to conduct a business in Queensland, other than a franchise arrangement;
- (f) an existing lease or licence of a business conducted in Queensland, other than a franchise arrangement;
- (g) existing rights under a joint venture agreement if the joint venture has dutiable property not solely comprising chattels;
- (h) an existing right of the holder of a mortgage, including the debt secured by the mortgage, other than the holder of a mortgage-backed security;
- (i) an existing option to acquire dutiable property if the acquisition of the property would be a dutiable transaction;
- (j) an existing right of pre-emption for dutiable property;
- (k) an existing right to acquire dutiable property;
- (l) an existing right to exploit dutiable property, other than a business asset that is intellectual property;

## Schedule 6 (continued)

(m) an existing right to the income from dutiable property.

**false or misleading** includes false or misleading because of the omission of a statement.

**family company**, for a person, means an exempt proprietary company at least 50% of the value of the shares of which are owned by members of the person's family.

**family partnership**, for a person, means a partnership of which the total partnership interests of the partners who are members of the person's family is at least 50%.

**family trust**, for a person, means a trust—

- (a) the trustee of which started to hold the property on trust at the direction of an ancestor of the person; and
- (b) the beneficiaries of which are members of the person's family.

**family unit trust**, for a person, means a unit trust that—

- (a) is a private unit trust; and
- (b) at least 50% of the trust interests in the trust are held by the person or members of the person's family.

**financial asset** see section 130E.

**financier** see section 130D.

**first entity**, in a series of partnerships or trusts, means the partnership or trust in which the relevant partnership, relevant trust or corporate trustee has a partnership interest or trust interest.

**first home**—

- (a) generally—see section 86(2); or
- (b) for chapter 5, part 6—also see section 272(1).

**first home borrower** see section 273(2).

**first signed** see section 490.

## Schedule 6 (continued)

**foreign company** see the Corporations Act, section 9.<sup>111</sup>

**franchise arrangement** means an agreement or other arrangement between 2 or more persons by which 1 of them (the **franchisor**) who carries on a business authorises or permits another (the **franchisee**)—

- (a) to engage in the business of offering, selling or distributing goods and services within or partly within Queensland at a place other than the place of business of the franchisor, and the franchisee is required to do so under—
  - (i) a stated marketing, business or technical plan or system; and
  - (ii) a common format or procedure or common format and procedure; and
- (b) to use a mark or common trade name in a way that the business carried on by the franchisee is or is capable of being identified by the public as being substantially associated with the mark or name identifying, commonly connected with or controlled by the franchisor or a related person of the franchisor.

**franchisee** see definition *franchise arrangement*.

**franchisor** see definition *franchise arrangement*.

**fund property** means dutiable property of a public superannuation entity held by a person as—

- (a) the approved trustee of the entity; or
- (b) a custodian for the approved trustee of the entity.

**funds manager** see section 73.

**general insurance** see section 350.

**general insurer** see section 354.

**goods**, for chapters 6 and 7, see section 327.

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111 Corporations Act, section 9 (Dictionary)

## Schedule 6 (continued)

**government entity** see the *Public Service Act 1996*, section 21.

**grantee**, of an occupancy right, includes an assignee of the grantee of the right.

**grantor**, of an occupancy right, includes an assignee of the grantor of the right.

**group companies** see section 400(1) and (2).

**group company** see section 400(3).

**hire duty** see section 325(1).

**hire of goods** see section 328.

**hire-purchase agreement** see section 331.

**hiring charges** see section 332.

**home** see—

- (a) for chapter 5, part 6, division 2—section 272; or
- (b) for chapter 5, part 6, division 3—section 277; or
- (c) otherwise—section 86(1).

**home borrower** see section 273(1).

**home mortgage** see section 271(1).

**home refinance borrower** see section 278.

**home refinance mortgage** see section 276(1).

**indirect interest**, in dutiable property, held by—

- (a) a partnership—see section 43; or
- (b) a trust—see section 58; or
- (c) for a corporate trustee—see section 210.

**indirect trust acquisition** means an acquisition of an indirect trust interest in a land holding trust.

**indirect trust interest**, for a land holding trust, means a person's interest in the land holding trust through 1 or more corporations, partnerships or trusts, or a combination of any of them.



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Schedule 6 (continued)

**information notice**, for a decision of the commissioner, is a notice stating the following—

- (a) the decision;
- (b) the reasons for the decision;
- (c) the person to whom the notice is given may apply for a review of the decision within 28 days;
- (d) how to apply for the review.

**instrument** means a written document in hard copy form.

**insurance duty** see section 349(1).

**insurance intermediary** see the *Insurance (Agents and Brokers) Act 1984* (Cwlth), section 9.<sup>112</sup>

**insured person** includes the holder of a policy of insurance.

**insurer** means—

- (a) a person who is authorised under the *Insurance Act 1973* (Cwlth) to carry on an insurance business; or
- (b) a life company.

**intellectual property** means—

- (a) a patent, trademark, industrial design, copyright, registered design, plant breeder right or circuit layout right; or
- (b) a right, whether or not under a franchise arrangement, to use or exploit—
  - (i) a patent, trademark, industrial design; or
  - (ii) a thing, system or process that is the subject of a patent, copyright, registered design, plant variety breeder or circuit layout right; or
  - (iii) an adaptation or modification of a thing, system or process mentioned in subparagraph (ii).

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112 *Insurance (Agents and Brokers) Act 1984* (Cwlth), section 9 (Definitions)

## Schedule 6 (continued)

**interest**, of a person in a corporation for chapter 3, part 1, see section 159(1).

**intervening event** means—

- (a) a natural disaster, including, for example, fire and flood; or
- (b) the death or incapacity of a transferee or home borrower to whom section 154 or 291 apply; or
- (c) another event prescribed under a regulation.

**issued shares**, for a corporation, are all the shares issued by the corporation that carry the right to unlimited participation in the distribution of income and capital of the corporation.

**land** includes airspace above land and the coastal waters of the State, but does not include—

- (a) an exploration or prospecting permit under the *Mineral Resources Act 1989*; or
- (b) an authority to prospect under the *Petroleum Act 1923*; or
- (c) an exploration permit under the *Petroleum (Submerged Lands) Act 1982*.

**land-holdings** see section 167.

**land holding trust** means a wholesale unit trust or pooled public investment unit trust that holds, or has an indirect interest in, land in Queensland.

**land rich corporation** see section 165.

**land rich duty** see section 157(1).

**land rich duty statement** see section 177.

**large qualified holder** see section 76(2).

**lease** see section 231.

**leased premises** includes land the subject of an occupancy right.

**lease duty** see section 230(1).

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Schedule 6 (continued)

**lessee** includes an assignee or sublessee of a lessee.

**lessor** includes an assignee or sublessor of a lessor.

**liable party**, for chapter 12A, see section 471A.

**liability date**, for a mortgage, means the date the mortgage is liable under section 252 for mortgage duty.

**life company** see the *Life Insurance Act 1995* (Cwlth), schedule.<sup>113</sup>

**life insurance** see section 351.

**life insurance rider** means insurance that—

- (a) is attached to a policy of life insurance for which the premium or the part of the premium attributable to the attached insurance is stated separately on the policy; and
- (b) provides for an additional capital payment in the event of the disablement, or the death by accident, of the insured.

**life insurer** see section 355.

**limitation period**, for a reassessment, see the Administration Act, schedule 2.

**listed unit trust** see section 69.

**list price**, of a vehicle, means the recommended retail price or, if there is more than 1 recommended retail price, the highest recommended retail price, of the manufacturer, importer or principal distributor at Brisbane of—

- (a) for a truck—the relevant make and model of the cab-chassis; or
- (b) for another vehicle—the vehicle.

**loan**—

- (a) generally—see section 250; or
- (b) for chapter 6—see section 296(1).

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113 *Life Insurance Act 1995* (Cwlth), schedule (Dictionary)

## Schedule 6 (continued)

**lodge** means lodge with the commissioner.

**majority interest**, of a person in a corporation for chapter 3, part 1, see section 159(2).

**majority shareholder**, of a corporation, means a person who—

- (a) is the holder of at least 50% of the voting shares in the corporation; or
- (b) has the power, whether direct or indirect, to exercise, or control the exercise of, a right to vote attached to at least 50% of the voting shares.

**majority trust acquisition** see section 80.

**management member**, of an unincorporated body, means—

- (a) if the body has a management committee—each member of the management committee; or
- (b) otherwise—a person who is concerned with, or takes part in, the body's management, whatever name is given to the member's position in the body.

**marketable security** means—

- (a) any share or right relating to a share; or
- (b) any right or interest, whether described as a unit or otherwise, of a beneficiary under a public unit trust.

**market value**, of a vehicle, see section 379.

**marriage** includes a void marriage.

**matrimonial instrument** see section 420.

**matrimonial property** see section 421.

**member**, of a person's family, means the person and each of the following—

- (a) the person's spouse;
- (b) the parents of the person or the person's spouse;
- (c) the grandparents of the person or the person's spouse;

## Schedule 6 (continued)

- (d) a brother, sister, nephew or niece of the person or the person's spouse;
- (e) a child, stepchild or grandchild of the person;
- (f) the spouse of anyone mentioned in paragraph (d) or (e).

**member**, of a qualified holder, includes a unit holder, beneficiary and a policy owner.

**merchant** means a person who—

- (a) supplies goods, services, money or money's worth; and
- (b) relies, partly or wholly, on a credit card for payment or recoupment for the supply.

**mortgage** see—

- (a) for chapter 5, other than part 7, division 2—section 248; or
- (b) for chapter 2, part 13, division 3C and chapter 5, part 7, division 2—section 287; or
- (c) otherwise—section 248(1).

**mortgage-backed security** see section 286.

**mortgage duty** see section 247(1).

**mortgagee** includes a person who accepts or takes a security of a type mentioned in section 248.

**mortgage package** see section 261.

**mortgagor** includes a person who gives a security of a type mentioned in section 248.

**motor vehicle**, for chapter 8, means a motor vehicle as defined in the Vehicle Registration Act, but does not include a caravan.

**net premiums charged** see section 356.

**new duration period** see section 417(1)(b).

**new parent company** see section 405(1).

**new right** means any of the following—

## Schedule 6 (continued)

- (a) land in Queensland, other than the following interests in land—
  - (i) a security interest;
  - (ii) a partner's interest in a partnership;
  - (iii) a trust interest;
  - (iv) the interest of a discretionary object of a trust that holds dutiable property;
- (b) a lease or licence of a business, other than a franchise arrangement, conducted in Queensland;
- (c) an option to acquire dutiable property if the acquisition of the property would be a dutiable transaction;
- (d) a right to use an existing statutory licence granted by the State;
- (e) a right to use an existing statutory licence granted by the Commonwealth if the rights under the licence are exercisable in Queensland;
- (f) a cane production area granted under the *Sugar Industry Act 1999* or the grant under that Act of an increase in the number of hectares included in a cane production area;
- (g) a cane railway easement granted under the *Sugar Industry Act 1999*;
- (h) a water entitlement;
- (i) a licence or right to do a thing that is—
  - (i) prescribed under a regulation; and
  - (ii) sold or granted by the State, a government entity or a government owned corporation.

***new start date*** see section 417(1)(b).

***new vehicle*** means a vehicle as defined for chapter 9 that has not been previously registered in Queensland or another State.

***notice*** means written notice.

***notice of registration***, for a self assessor, means a notice of the self assessor's registration under chapter 12, part 1 to 3,

## Schedule 6 (continued)

and includes the notice of amendment of the self assessor's registration given under section 446A(5)(b) or 464(1).

**objection**, for an assessment, see the Administration Act, schedule 2.

**occupancy requirement**, for a person's residence, means the person's occupation date for the residence is within 1 year after the person's transfer date for the residential land.

**occupancy right** see section 232.

**occupation date**, for a residence, see section 88.

**optional equipment**, for a vehicle as defined for chapter 9, means equipment and features that—

- (a) are not included in the vehicle's list price; and
- (b) are fitted to the vehicle or otherwise provided with the vehicle when the purchaser takes possession of it.

**original assessment** see the Administration Act, schedule 2.

**original decision** means a decision of the commissioner to—

- (a) refuse an application to register a person as a self assessor; or
- (b) amend, suspend or cancel a self assessor's registration; or
- (c) refuse to register a financial institution under section 446A; or
- (d) require a person to pay a penalty amount.

**outstanding amount**, for land rich duty, includes unpaid tax interest and penalty tax for the duty.<sup>114</sup>

**parent company** see section 401.

**partition** see section 31(1).

**partnership acquisition** see section 41.

**partnership interest** see section 42.

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114 See the Administration Act, sections 54 (Unpaid tax interest) and 58 (Liability for penalty tax).

Schedule 6 (continued)

**party**, to a marriage, includes a person who was a party to a marriage that has been dissolved or annulled, whether in Australia or elsewhere.

**penalty amount** see section 488(2).

**penalty tax** see the Administration Act, section 58(1).

**personal property** means a personal chattel.

*Examples of personal property—*

1. An aircraft, boat or motor vehicle.
2. Livestock.
3. Material held for use in manufactured or partially manufactured goods.
4. Plant or equipment.
5. Trading stock.

**place** includes land and premises.

**plant breeder right** means—

- (a) a plant breeder's right under the *Plant Breeder's Rights Act 1994* (Cwlth); or
- (b) a plant breeder's right corresponding to a right mentioned in paragraph (a).

**pooled public investment unit trust** see section 75.

**pooled superannuation trust** see the *Superannuation Industry (Supervision) Act 1993* (Cwlth), section 10.<sup>115</sup>

**pool of financial assets** see section 130F.

**pool of mortgages** see section 288.

**premises** means—

- (a) a building or structure of any kind or part of a building or structure of any kind; or
- (b) a building or structure of any kind or part of a building or structure of any kind together with the land, or part of the land, on which the building or structure is situated.



## Schedule 6 (continued)

**premium**, for general insurance or life insurance, see section 353.

**premium funding agreement** means an agreement under which—

- (a) a person agrees to make a loan, to the insured person under a policy of insurance of any kind, of an amount payable for premiums under the policy; and
- (b) the person obtains from the insured person an assignment of either or both of the following as security for payment of the loan—
  - (i) the insured person's interest in the policy;
  - (ii) all amounts payable under the policy.

**prescribed business** means a business involving solely an activity prescribed under a regulation.

**prescribed credit card provider** means a corporation that—

- (a) is principally engaged in supplying goods or services or is a related body corporate of a corporation (the **related corporation**) that is principally engaged in supplying goods or services; and
- (b) issues a credit card principally for use in connection with transactions between the credit card holder and the corporation or the related corporation for the supply of goods or services by the corporation or the related corporation; and
- (c) is prescribed under a regulation to be a corporation to which this paragraph applies.

**prescribed interest scheme** means an investment scheme that offers prescribed interests as that term was defined in the former Corporations Law as in force on 30 June 1998.

**primary custodian**—

1. The *primary custodian* for the responsible entity of a registered managed investment scheme means the corporation that has been appointed under the

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Schedule 6 (continued)

Corporations Act, section 601FB(2), to hold property of the scheme as agent for the responsible entity.

2. However, the term does not include a person who, under the Corporations Act, section 601FB(3), is taken to be an agent appointed by the responsible entity to do something for subsection (2) of the section.

***primary producer*** means—

- (a) for chapter 9—a person who, under the Vehicle Registration Act, is entitled to concessional registration for a primary production vehicle under that Act; or
- (b) otherwise—a person engaged in the business of primary production.

***principal***, for a loan, means the amount actually lent.

***properly stamped*** see section 491.

***property***—

- (a) generally—includes dutiable property and a new right; or
- (b) of a corporation for chapter 3, part 1—see section 168.

***proposed action*** see section 466(2)(a).

***proprietary company*** see the Corporations Act, section 45A(1).<sup>116</sup>

***public company*** means a company other than a proprietary company.

***public offer superannuation fund*** see the *Superannuation Industry (Supervision) Act 1993* (Cwlth), section 18.

***public superannuation entity*** means—

- (a) a complying approved deposit fund, other than an excluded approved deposit fund under the *Superannuation Industry (Supervision) Act 1993* (Cwlth), section 10; or

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116 Corporations Act, section 45A (Proprietary companies)

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Schedule 6 (continued)

- (b) an eligible rollover fund; or
- (c) a pooled superannuation trust; or
- (d) a public offer superannuation fund; or
- (e) a fund or trust the approved trustee of which declares will be a fund or trust mentioned in paragraphs (a) to (d) within 1 year after the creation of the fund or trust.

**public unit trust** see section 68.

**purchase agreement** means an uncompleted agreement, whether or not conditional, for the acquisition of dutiable property.

**qualified holder** see section 76(1).

**qualifying exempt purpose** see section 415(1).

**Queensland business** see section 36.

**Queensland business asset** see section 34.

**Queensland company** means a company within the meaning of the Corporations Act that is taken to be registered in Queensland under that Act.

**Queensland marketable security**—

1. A *Queensland marketable security* means—
  - (a) any share or right relating to a share in a Queensland company or society; or
  - (b) any share or right relating to a share in a foreign company that is kept on the Australian register kept in Queensland; or
  - (c) any right or interest, whether described as a unit or otherwise, of a beneficiary under a public unit trust registered on a register kept in Queensland.
2. However, the term does not include any share, right or interest that—
  - (a) is quoted on the market operated by a recognised stock exchange; or
  - (b) relates to a share mentioned in paragraph (a).

## Schedule 6 (continued)

**reassessment** see the Administration Act, schedule 2.

**recognised stock exchange** means—

- (a) the Australian Stock Exchange; or
- (b) another stock exchange prescribed under a regulation.

**referable point**, for the dutiable proportion of a mortgage, means the document used to work out the dutiable proportion under section 260.

**registered**, for a vehicle, means registered under the Vehicle Registration Act or the Act of another State that corresponds to the Vehicle Registration Act.

**registered commercial hirer** means a commercial hirer registered under chapter 12, part 1.

**registered credit provider** means a credit card provider registered under chapter 12, part 1.

**registered general insurer** means a general insurer registered under chapter 12, part 1.

**registered life insurer** means a life insurer registered under chapter 12, part 1.

**registered managed investment scheme** means a managed investment scheme registered under the Corporations Act, section 601EB.

**registered operator**, of a vehicle, means the person in whose name the vehicle is registered.

**registered valuer** means a valuer registered under the *Valuers Registration Act 1992*.

**registrar** means the registrar of titles or another person responsible for keeping a register for dealings in land.

**related body corporate** see the Corporations Act, section 50.<sup>117</sup>

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117 Corporations Act, section 50 (Related bodies corporate)

## Schedule 6 (continued)

***related person***—

- (a) for chapter 2, part 8—see section 61; or
- (b) for chapter 3 or section 498—see section 164; or
- (c) otherwise—see section 61(1).

***release of mortgage*** includes—

- (a) a retransfer of the property secured by a mortgage or the benefit of that property; and
- (b) a release or discharge of a mortgage or the obligations under a mortgage.

***relevant acquisition*** for—

- (a) chapter 3, part 1, chapter 10, part 1 or section 498—see section 158; or
- (b) chapter 3, part 2—see section 207.

***relevant corporation***, for a corporate trustee, see section 211.

***relevant lodgment requirement***, for chapter 12A, see section 471B.

***repealed Act*** means the repealed *Stamp Act 1894* as in force immediately before its repeal.

***representative***, of a self assessor, means—

- (a) for a body corporate—an executive officer of the body; or
- (b) for a partnership—a partner of the partnership; or
- (c) for an unincorporated body—a management member of the body.

***residence*** see section 87.

***resident***, of a retirement village, see the *Retirement Villages Act 1999*, section 9.

***residential land***—

- (a) generally—means land, or the part of land, on which a residence is constructed, and includes the curtilage

## Schedule 6 (continued)

attributable to the residence if the curtilage is used for residential purposes; and

- (b) for chapter 5, part 6—includes land, or the part of land, on which a residence is to be constructed.

**responsible entity**, for a unit trust that is a registered management investment scheme, means the responsible entity under the Corporations Act for the unit trust.

**retirement village** see the *Retirement Villages Act 1999*, section 5.

**retirement village leasing arrangement** means an arrangement—

- (a) entered into between an owner of an accommodation unit in a retirement village and the scheme operator; and
- (b) under which the owner leases the unit to the scheme operator but occupies the unit, as the owner's principal place of residence, under a sublease from the scheme operator; and
- (c) that is the only arrangement available to the owner for occupying the unit.

**return** means a form of return approved under this Act for lodgment by a self assessor.

**return date**, for lodgment of returns by a self assessor, means the date stated in the notice of registration given to the self assessor for lodging returns and paying duty.

**return period**, for lodgment of returns by a self assessor, means the period stated in the notice of registration given to the self assessor to be covered by the returns.

**review decision** see section 473(1).

**sale agreement** means an uncompleted agreement, whether or not conditional, for the disposal of dutiable property.

**scheme** means—

- (a) any agreement, arrangement, understanding, promise or undertaking—

## Schedule 6 (continued)

- (i) whether it is express or implied; and
- (ii) whether or not it is, or is intended to be enforceable, by legal proceedings; or
- (b) any scheme, plan, proposal, action, course of action or course of conduct whether unilateral or otherwise.

***scheme operator*** means a retirement village scheme operator within the meaning of the *Retirement Villages Act 1999*, section 8.

***scheme property*** means dutiable property of a registered managed investment scheme held by a person as—

- (a) the responsible entity of the scheme; or
- (b) a primary custodian for the responsible entity of the scheme.

***security interest*** means the estate or interest of a mortgagee, chargee or other secured creditor.

***self assessor*** means a person registered under chapter 12, part 1, 2 or 3, as a self assessor.

***share***—

- (a) for chapter 10, part 1—means a share or stock of a corporation or society; or
- (b) otherwise—means a share or stock of a corporation or society, or an interest in a share or stock of a corporation or society.

***share buy-back*** means a share buy-back under the Corporations Act, part 2J.1, division 2.

***share interest*** see section 208.

***short-term***, for a credit transaction, means—

- (a) a credit transaction that a registered credit provider treats as a short-term credit transaction; or
- (b) any loan on a current account other than a loan on a current account that a registered credit provider does not treat as a short-term credit transaction.

## Schedule 6 (continued)

**show cause notice** see section 466(1).

**show cause period** see section 466(2)(e).

**site agreement** see the *Manufactured Homes (Residential Parks) Act 2003*, section 14.<sup>118</sup>

**society** means—

- (a) a society registered under the *Financial Intermediaries Act 1996* as a cooperative housing society; or
- (b) a body registered under the *Cooperatives Act 1997* as a cooperative.

**special vehicle** means any of the following—

- (a) a vehicle that is, or will be on its registration, registered under the *Transport Operations (Road Use Management—Vehicle Registration) Regulation 1999*, section 10A(2);<sup>119</sup>
- (b) mobile machinery within the meaning of the *Transport Operations (Road Use Management—Vehicle Registration) Regulation 1999*, schedule 4, other than mobile machinery built on a truck chassis.

**spouse** includes a de facto partner.

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118 *Manufactured Homes (Residential Parks) Act 2003*, section 14—

A **site agreement** is an agreement between a park owner and a home owner that—

- (a) provides for—
  - (i) the rental by the home owner of particular land in a residential park; and
  - (ii) the positioning on the land of a manufactured home; and
  - (iii) the home owner’s non-exclusive use of the park’s common areas and communal facilities; and
- (b) includes provision about anything else required or permitted by this Act to be in the agreement.

*Example for paragraph (b)—*

provision about how site rent may be increased

119 *Transport Operations (Road Use Management—Vehicle Registration) Regulation 1999*, section 10A (Conditional registration)



## Schedule 6 (continued)

**start date** see section 416(1)(a) and (2)(a).

**statutory business licence** means a statutory licence that is required to be held by a person to carry out an activity for gain or reward.

**statutory dutiable transaction** means a dutiable transaction mentioned in section 9(1)(a) to (c) or (e) under which a statutory entity makes a compulsory acquisition of dutiable property.

**statutory entity** means—

- (a) a constructing authority under the *Acquisition of Land Act 1967*; or
- (b) an entity that is established under an Act and authorised under the Act to acquire property.

**statutory licence** means a licence, permit or other authority issued or given under a Queensland or Commonwealth Act, other than the following—

- (a) a chattel authority;
- (b) an exploration or prospecting permit under the *Mineral Resources Act 1989*;
- (c) an authority to prospect under the *Petroleum Act 1923*;
- (d) an exploration permit under the *Petroleum (Submerged Lands) Act 1982*.

**subordinate interest**, for chapter 2, part 8, division 7, means—

- (a) for a corporation—a shareholder's interest in the corporation being the proportion that the number of the shareholder's shares bears to the total issued shares of the corporation expressed as a percentage; or
- (b) for a partnership—a partnership interest; or
- (c) for a trust—a trust interest.

**subsidiary** for—

- (a) chapter 3—see section 166; or

## Schedule 6 (continued)

(b) chapter 10—see section 402.

**supply right**, of a business, means a right under an uncompleted contract for the supply of goods or services of the business.

**surrender** includes the following—

- (a) abandonment;
- (b) abrogation;
- (c) cancellation;
- (d) extinguishment;
- (e) forfeiture;
- (f) redemption;
- (g) relinquishment.

**the State** includes a body or instrumentality that represents the State.

**trading stock**, for chapter 9, means a used vehicle offered or exposed for sale by a vehicle dealer in the course of the dealer's business, other than a vehicle used—

- (a) solely or principally by the dealer or a member of the dealer's staff or family; or
- (b) for the general purposes of the dealer's business.

**transfer** includes assignment and exchange.

**transferable site area** means a floor space area that—

- (a) is recorded in a register kept by a local government; and
- (b) derives from the unused development potential of land in Queensland that contains improvements of heritage value; and
- (c) may, subject to obtaining all necessary consent and approvals, be used in the development of other land in Queensland.

**transfer date**, for residential land, see section 89.

**transfer duty** see section 8(1).

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Schedule 6 (continued)

**transfer duty statement** see section 18.

**truck** see the Vehicle Registration Act, schedule 4.<sup>120</sup>

**trust acquisition** see section 55.

**trustee** includes a former trustee.

**trust interest** see section 57(1).

**trust surrender** see section 56.

**ultimate entity** means a partnership or trust in a series of partnerships or trusts if it holds dutiable property and does not hold an indirect interest in dutiable property.

**unencumbered value**, of property, see section 14.

**unit**, in a unit trust, means a right or interest (however described) of a beneficiary under the trust, and includes an interest in a unit in the trust.

**unlisted corporation** means a corporation whose shares are not quoted on the market operated by a recognised stock exchange.

**unpaid tax interest** see the Administration Act, section 54(1).

**vehicle** means a vehicle that is required to be registered under the Vehicle Registration Act, but does not include the following—

- (a) a caravan;
- (b) a trailer.

**vehicle dealer** means—

- (a) the holder of a motor dealer's licence under the *Property Agents and Motor Dealers Act 2000* or the holder of an equivalent licence or other authority under or an Act of another State that corresponds to that Act; or

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<sup>120</sup> *Transport Operations (Road Use Management) Act 1995*, schedule 4 (Dictionary)—

**truck** means a motor vehicle with a GVM over 4.5 t, other than a bus, tractor or tram.

## Schedule 6 (continued)

- (b) a person who carries on the business of selling new vehicles.

**Vehicle Registration Act** means the *Transport Operations (Road Use Management) Act 1995*.

**vehicle registration duty** see section 377(1).

**voting control**, for a company, means being in a position to cast, or control the casting of, 90% or more of the maximum votes that can be cast at a general meeting of the company other than under a debenture or trust deed securing the issue of a debenture.

**water allocation** see the *Water Act 2000*, schedule 4.<sup>121</sup>

**water entitlement** see the *Water Act 2000*, schedule 4.

**wholesale investor** see section 74.

**wholesale unit trust** see section 72(1) and (2).

**widely held unit trust** see section 70(1).

**WorkCover Queensland** means WorkCover Queensland established under the *Workers' Compensation and Rehabilitation Act 2003*.

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<sup>121</sup> *Water Act 2000*, schedule 4 (Dictionary)

## **Endnotes**

### **1 Index to endnotes**

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### **2 Date to which amendments incorporated**

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 29 November 2004. Future amendments of the Duties Act 2001 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No. [X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
num	= numbered	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 2002
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered
prev	= previous		

### 4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

### 5 List of legislation

#### **Duties Act 2001 No. 71**

date of assent 13 November 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 March 2002 (2002 SL No. 10)

Note—For the arrangement made under the *Commonwealth Places (Mirror Taxes) Act 1998* (Cwlth), s 9, for Queensland see proc pubd Cwlth of Australia Gaz 20 February 2002 No. GN 7.

amending legislation—

#### **Revenue and Other Legislation Amendment Act 2002 No. 17 ss 1, 2(5), (8), pt 3**

date of assent 17 May 2002

ss 1–2, 9–10 commenced on date of assent (see s 2(8))

remaining provisions commenced 1 March 2002 (see s 2(5))

**Treasury Legislation Amendment Act 2002 No. 56 ss 1, 2(1), pt 2**

date of assent 1 November 2002

ss 1–2 commenced on date of assent

remaining provisions commenced on date of assent (see s 2(1))

**Revenue Legislation Amendment Act 2002 No. 65 pts 1–2, sch**

date of assent 28 November 2002

ss 1–2 commenced on date of assent

s 29 commenced 1 March 2003 (2003 SL No. 10)

ss 3, 13–14, 24(1)–(2), 27, 33, 39–40, amds 8–9, 14–16, 20 of the sch commenced 1 March 2002 (see s 2(1))

remaining provisions commenced on date of assent

**Criminal Proceeds Confiscation Act 2002 No. 68 ss 1–2(1), 339 sch 4**

date of assent 29 November 2002

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 2003 (see s 2(1))

**Discrimination Law Amendment Act 2002 No. 74 ss 1–2, 90 sch**

date of assent 13 December 2002

ss 1–2 commenced on date of assent

s 90 commenced 31 March 2003 (2003 SL No. 51)

remaining provisions commenced 1 April 2003 (2003 SL No. 51)

**South Bank Corporation Act 1989 No. 37 s 117(3) (prev s 43(3)) (this Act is amended, see amending legislation below)**

amending legislation—

**South Bank Corporation and Other Act Amendment Act 2003 No. 24 ss 1, 2(2), 39 (amends 1989 No. 37 above)**

date of assent 16 May 2003

ss 1–2 commenced on date of assent

remaining provisions commenced 25 June 2003 (2003 SL No. 124)

**Workers' Compensation and Rehabilitation Act 2003 No. 27 ss 1–2(2), 622 sch 5**

date of assent 23 May 2003

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2003 (see s 2(2))

**Housing Act 2003 No. 52 ss 1–2, 153 sch 2**

date of assent 15 September 2003

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 2004 (2003 SL No. 332)

**Manufactured Homes (Residential Parks) Act 2003 No. 74 ss 1–2, 155 sch 1**

date of assent 22 October 2003

ss 1–2 commenced on date of assent

remaining provisions commenced 1 March 2004 (2003 SL No. 336)

**Duties Amendment Act 2004 No. 2**

date of assent 29 April 2004

ss 1–2 commenced on date of assent

remaining provisions commenced 1 May 2004 (see s 2)

**Sugar Industry Reform Act 2004 No. 3 ss 1, 2(3), 37 sch**

date of assent 6 May 2004  
 ss 1–2 commenced on assent  
 remaining provisions commence 1 January 2005 (see s 2(3))

**Duties Amendment Act (No. 2) 2004 No. 15**

date of assent 24 June 2004  
 ss 1–2 commenced on date of assent  
 remaining provisions commenced 1 August 2004 (see s 2)

**Revenue Legislation Amendment Act 2004 No. 18 pts 1–2**

date of assent 24 August 2004  
 ss 1–2 commenced on date of assent  
 ss 7, 9–12 commenced 1 October 2004 (2004 SL No. 171)  
 s 13 commenced 5 July 2004 (see s 2(2) and 2004 SL No. 118)  
 ss 14–17, 27, 32, 33(1), (4) commenced 1 September 2004 (2004 SL No. 171)  
 remaining provisions commenced on date of assent

**Petroleum and Gas (Production and Safety) Act 2004 No. 25 ss 1, 2(2), ch 16 pt 5**

date of assent 12 October 2004  
 ss 1–2 commenced on date of assent  
 remaining provisions not yet proclaimed into force (see s 2(2))

**Statute Law (Miscellaneous Provisions) Act 2004 No. 53**

date of assent 29 November 2004  
 commenced on date of assent  
 later retrospective amending legislation—

**Revenue and Other Legislation Amendment Act (No. 2) 2008 No. 75 ss 1–2(1), pt 2 div 2**

date of assent 11 December 2008  
 ss 1–2 commenced on date of assent  
 pt 2 div 2 commenced 26 July 2002 (see s 2(1))

## 6 List of annotations

**Definitions**

s 3 amd 2002 No. 74 s 90 sch

**Declaration of excluded matter for Corporations Act**

s 7A ins 2002 No. 65 s 4

**What is a “dutiable transaction”**

s 9 amd 2002 No. 56 s 4; 2002 No. 65 s 5

**When credit to be allowed for duty paid**

prov hdg amd 2002 No. 65 s 3(2) sch

s 23 amd 2002 No. 65 s 6

**Rates of transfer duty**

s 24 amd 2002 No. 65 s 7; 2004 No. 18 s 4



**Payment of transfer duty for deeds of grant and particular freeholding leases**  
s 25 sub 2002 No. 65 s 8

**Apportionment—head office or principal place of business in Queensland**  
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**Apportionment—head office or principal place of business in another State**  
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**Form 16.1 Version 2—Reassessment-Particular Circumstances**

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**Form 24 Version 3—Property Transfer Information**

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## **8 Information about retrospectivity**

Retrospective amendments that have been consolidated are noted in the list of legislation and list of annotations. Any retrospective amendment that has not been consolidated is noted in footnotes to the text.