Queensland

Duties Act 2001

Current as at 22 October 2026

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Duties Act 2001

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Duties Act 2001

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.

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(2) The definition *spouse* in schedule 6 applies despite the *Acts Interpretation Act 1954*, section 32DA(6).

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, or reviews of, assessments of duty;

(e) record keeping obligations of taxpayers;

(f) investigative powers, offences, legal proceedings and evidentiary matters;

(g) service of documents;

(h) registration of charitable institutions.

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.

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(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, in relation to section 1070A(1)(a), (3) and (4) of that Act.

Chapter 2 Transfer duty

Part 1 Preliminary

8 Imposition of transfer duty

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

Notes—

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

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

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

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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 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;

(e) a foreclosure of a mortgage over dutiable property;

(f) an acquisition of a new right on its creation, grant or issue;

(g) a partnership acquisition;

Note—

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

(h) the creation or termination of a trust of dutiable property;

Note—

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

(i) a trust acquisition or trust surrender.

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Note—

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

(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.

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)(d), 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***—

(a) land in Queensland;

(b) a transferable site area;

(c) an existing right;

(d) a Queensland business asset;

(e) a chattel in Queensland.

Note—

Section 498 includes provision about references to dutiable property.

(2) A reference to property in subsection (1) includes a reference to an interest in the property, other than the following—

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(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.

Note—

See the *Acts Interpretation Act 1954*, schedule 1, definition *interest*.

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 of the following amounts payable for the lease—

(a) premiums, fines or other consideration payable for the grant of the lease;

(b) consideration paid for, or the value of, any moveable chattels taken over by the lessee from the lessor or outgoing lessee;

(c) 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.

(5) The ***dutiable value*** of a dutiable transaction that is a partnership acquisition is determined under part 7, division 3.

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(6) The ***dutiable value*** of a dutiable transaction that is a trust acquisition or trust surrender is determined under part 8, division 5.

(6A) The ***dutiable value*** of a dutiable transaction that is an agreement for the transfer of dutiable property that is a farm-in agreement is determined under part 8A.

(7) Subject to section 48, 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.

11A References to consideration

To remove any doubt, it is declared that a reference to consideration is not limited to monetary consideration.

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.

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(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.

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.

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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 mentioned in section 9(1)(a), (b) or (d) for which the dutiable property is 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.

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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.

Note—

In relation to a dutiable transaction that is an ELN transfer or ELN lodgement, see also sections 156H and 156K.

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, ELN transaction document or statement

If a dutiable transaction is not effected or evidenced by an instrument or ELN transaction document, 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, ELN transaction document or statement

(1) The statutory entity under a statutory dutiable transaction must lodge—

(a) the instrument or ELN transaction document that effects or evidences the transaction; or

(b) the transfer duty statement for the transaction.

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(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 or ELN transaction document 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, ELN transaction document or statement by 1 party

The making of a transfer duty statement, or the lodging under section 19 of an instrument, ELN transaction document 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, ELN transaction document 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.

Notes—

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

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2 For a dutiable transaction that is an ELN transfer or ELN lodgement, see also part 15, division 2.

(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.

Note—

For a dutiable transaction that is an ELN transfer or ELN lodgement, see also part 15, division 2.

(2A) Also, if a payment commitment is made for a dutiable transaction that is an agreement for the transfer of dutiable property, no transfer duty is imposed on an ELN transfer of the dutiable property to the transferee under the agreement.

Notes—

1 For a dutiable transaction that is an ELN transfer, see also part 15, division 2.

2 See part 15, division 3 in relation to the making of a payment commitment for an agreement for the transfer of dutiable property.

(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***

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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.

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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 under repealed chapter 4 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.

(4) In this section—

repealed chapter 4 means chapter 4 (Lease duty) as it was in force from time to time before its repeal by the *Revenue Legislation Amendment Act 2005*.

24 Rates of transfer duty

(1) 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—

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(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.

(2) 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

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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—

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

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.

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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—

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

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.

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(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.

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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 $50,000,000. 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 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.

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(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. 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.

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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 transactions and relevant acquisitions for landholder 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, ELN transaction document 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 lodgement 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 an exchange of dutiable property.

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31 Partitions

(1) This section applies to a dutiable transaction under which the following happens (the ***partition***)—

(a) dutiable property held by persons jointly as joint tenants or tenants in common (each a ***co-owner***) is transferred, or agreed to be transferred, to 1 or more of the co-owners;

(b) the dutiable property transferred, or agreed to be transferred, includes the interest held by the transferee in the property immediately before the transaction.

(2) The dutiable value of the dutiable transaction 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) This section does not apply to a transaction if section 48 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

(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***).

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(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.

Note—

See the Administration Act, part 3 (Assessments of tax), division 3 (Reassessments).

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

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33A Boost to buy arrangement

(1) For assessing liability for transfer duty on a dutiable transaction that is the transfer, or an agreement for the transfer, of land purchased under a boost to buy arrangement, the State and the Queensland Treasury Corporation are taken not to have an interest in the land.

(2) Transfer duty is not imposed on a transfer of an interest in land under a boost to buy arrangement from the State or the Queensland Treasury Corporation to an individual who is a party to the arrangement.

(3) In this section—

boost to buy arrangement means an arrangement between the Queensland Treasury Corporation, on behalf of the State, and an individual under which the individual participates in the boost to buy scheme.

boost to buy scheme see the *Rural and Regional Adjustment Regulation 2011*, section 2A.

33B Help to buy arrangement

(1) For assessing liability for transfer duty on a dutiable transaction that is the transfer, or an agreement for the transfer, of land purchased under a help to buy arrangement, the Commonwealth and Housing Australia are taken not to have an interest in the land.

(2) Transfer duty is not imposed on a transfer of an interest in land under a help to buy arrangement from the Commonwealth or Housing Australia to an individual who is a party to the arrangement.

(3) In this section—

help to buy arrangement see the *Help to Buy Act 2024* (Cwlth), section 6.

Housing Australia means Housing Australia continued in existence under the *Housing Australia Act 2018* (Cwlth), section 7.

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Part 6 Special provisions about dutiable 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—

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(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.

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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.

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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.

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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.

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Note—

Section 498 includes provision about references to 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—

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(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.

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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***

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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.

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(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 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

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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.

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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.

Notes—

1 For subsection (2), see division 7 (Public unit trusts), subdivisions 7 (Majority trust acquisitions in land holding trusts) and 8 (Indirect trust interests).

2 An acquisition of an interest in a listed unit trust that is a landholder may be dutiable under chapter 3, part 1 (Landholder duty).

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.

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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 and trust interests

(1) For a trust, contracted property is taken to be dutiable property held by the trust.

(1A) If a trust has made a purchase or sale agreement for a trust interest, the trust is taken to have an indirect interest in the trust-related dutiable property.

(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) Subsection (3A) applies if—

(a) contracted property, or an indirect interest in dutiable property mentioned in subsection (1A), is included in determining the dutiable value of a trust creation, trust termination, trust acquisition or trust surrender; and

(b) afterwards, the sale agreement for the property or trust interest is completed or the purchase agreement for the property or trust interest is not completed.

(3A) The commissioner must make a reassessment as if the contracted property or indirect interest 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

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surrender must lodge the instruments required for the original assessment.

(5) In this section—

purchase agreement includes an uncompleted agreement, whether or not conditional, for the acquisition of a trust interest through which the trust would have, if the agreement were completed, an indirect interest in dutiable property (the ***trust-related dutiable property***).

sale agreement includes an uncompleted agreement, whether or not conditional, for the disposal of a trust interest through which the trust has an indirect interest in dutiable property (also the ***trust-related dutiable property***).

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

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property when it was held for trust 1 and that person's trust interest increases.

Note—

Section 498 includes provision about references to dutiable property.

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.

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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.

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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

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(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—

(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 an interest of 50% or more 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

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(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

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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. Also, under section 52(1A), the relevant trust may be taken to hold an indirect interest in dutiable property through a trust interest that is the subject of a purchase or sale agreement.

(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

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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 50% or more 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.

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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.

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(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.

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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.

Notes—

1 Section 498A includes provision about when the quotation of securities is suspended.

2 An acquisition of an interest in a listed unit trust that is a landholder may be dutiable under chapter 3, part 1 (Landholder duty).

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.

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(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

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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(5), 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.

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(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.

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(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(5), is 61 days after the relevant trust acquisition or trust surrender.

(5) In this section—

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.

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

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(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 Act 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, exempt managed investment scheme or pooled superannuation trust for which—

(a) either of the following applies—

(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.

Note—

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).

(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—

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(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

(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); or

(e) a person of a class approved under section 76A; or

(f) a person approved under section 76B.

(2) A ***large qualified holder*** of units in a unit trust is a qualified holder with more than 50 members.

76A Approval of class of foreign unit holders as qualified holders

The commissioner may, by gazette notice, approve a class of persons as qualified holders of units in a unit trust if the commissioner is satisfied persons of that class hold the units

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in a capacity that, under the law of a foreign country or external Territory, corresponds to—

(a) an entity mentioned in section 76(1)(a) other than the trustee of a declared public unit trust; or

(b) an entity mentioned in section 76(1)(b) to (d).

76B Approval of particular foreign unit holder as qualified holder

(1) The trustee of a unit trust may apply to the commissioner for the approval, for section 76(1)(f), of a stated person who holds units in the trust (the ***unit holder***).

(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.

(3) The commissioner may approve the application if satisfied the unit holder holds the units in a capacity that, under the law of a foreign country or external Territory, corresponds to—

(a) an entity mentioned in section 76(1)(a) other than the trustee of a declared public unit trust; or

(b) an entity mentioned in section 76(1)(b) to (d).

(4) If the commissioner reasonably requires advice about a particular matter before deciding the application, the commissioner may refuse to deal further with the application until the applicant pays, or agrees to pay, the reasonable costs of obtaining the advice.

(5) The commissioner may give approval subject to conditions the commissioner considers appropriate.

Example—

A condition may state that the approval ends if there is a particular change in the circumstances of the person to whom the approval relates.

(6) The commissioner must give notice of the decision on the application to the applicant.

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(7) If, because of the decision, the commissioner makes an assessment on the basis that a particular person is not approved, or is approved on stated conditions, an objection to the decision may be made as part of an objection to the assessment.

Note—

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

(8) An approval takes effect on the day it is given or on the later day stated in the notice of the decision to give the approval.

76C Approval holders must notify commissioner of material changes

(1) This section applies to an approval in force under section 76B if there is a material change in the circumstances existing when the approval was given.

(2) Within 28 days after the approval holder becomes aware, or ought reasonably to have become aware, of the change, the approval holder must give the commissioner notice of the change.

Note—

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

76D Cancellation or variation of approvals

(1) The commissioner may, by notice to the holder of an approval in force under section 76B, cancel the approval or vary it in a stated way if the commissioner considers—

(a) a condition of the approval is no longer being satisfied or complied with; or

(b) there has been a material change in the circumstances existing when the approval was given.

(2) The cancellation or variation has effect on the day stated in the notice (the ***effective day***).

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(3) The effective day may be earlier than the day the notice is given but not earlier than the day the condition mentioned in subsection (1)(a) stopped being satisfied or complied with or the day of the material change in the circumstances mentioned in subsection (1)(b).

(4) If, because of the decision to cancel or vary the approval, the commissioner makes an assessment on the basis that, at a particular time, a particular person was not approved or was approved on stated conditions, an objection to the decision may be made as part of an objection to the assessment.

Note—

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

76E Exempt managed investment schemes

(1) For section 75(1), a unit trust that is a managed investment scheme is taken to be an exempt managed investment scheme, during the deeming period for the trust, if the scheme has been approved under section 76F as a deregistered managed investment scheme.

(2) In this section—

deeming period, for a unit trust, means the period—

(a) starting immediately before the first trust acquisition or trust surrender of a trust interest in the trust following its deregistration under the Corporations Act, section 601PA; and

(b) ending immediately before the time that either of the following happens—

(i) the ASIC order mentioned in section 76F(3)(a) ceases to apply;

(ii) a unit in the trust is issued or transferred to a person who is not a wholesale client.

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76F Approval of unit trust as a deregistered managed investment scheme

(1) The trustee of a unit trust that is a managed investment scheme may apply to the commissioner for the approval of the scheme as a deregistered managed investment scheme.

Note—

See section 76E(1).

(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.

(3) The commissioner may give the approval if—

(a) ASIC made an exemption or declaration under the Corporations Act, section 601QA (the ***ASIC order***), enabling an application for deregistration of the scheme (the ***deregistration application***) to be made under the Corporations Act, section 601PA; and

(b) for the purpose of the deregistration application, all the members of the scheme agreed the scheme should be deregistered; and

(c) all the members of the scheme were wholesale clients—

(i) when they acquired (by way of issue or transfer) their interest in the scheme; and

(ii) when the deregistration application was made; and

(d) ASIC deregistered the scheme under the Corporations Act, section 601PA, applying chapter 5C of that Act under the ASIC order; and

(e) the scheme is not required to be registered under the Corporations Act, section 601ED because of an exemption from that section under the ASIC order; and

(f) the commissioner is satisfied it would be appropriate to give the approval, having regard to—

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(i) the reasons why the members of the scheme agreed the scheme should be deregistered; and

(ii) the reasons for the decision by ASIC to deregister the scheme; and

(iii) the terms of the ASIC order; and

(iv) whether the scheme has ever been a public unit trust and, if so, why it is no longer a public unit trust; and

(v) the circumstances of the scheme's operation since it was deregistered by ASIC; and

(vi) the purposes of this division.

(4) The commissioner must give the applicant notice of the decision on the application.

(5) If, because of the decision on the application, the commissioner makes an assessment on the basis that the scheme is not an exempt managed investment scheme for section 75(1), an objection to the decision may be made as part of an objection to the assessment.

(6) If the approval is given, it takes effect on—

(a) the day it is given; or

(b) if the notice of the decision to give the approval states a day on which the approval takes effect—that day.

(7) The day mentioned in subsection (6)(b) may be earlier or later than the day the approval is given.

76G Approval holders must notify commissioner if deeming period ends

(1) This section applies in relation to an approval for a unit trust in force under section 76F if either of the following happens (the ***notifiable event***)—

(a) the ASIC order mentioned in section 76F(3)(a) ceases to apply;

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(b) a unit in the trust is issued or transferred to a person who is not a wholesale client.

(2) Within 28 days after the trustee becomes aware, or ought reasonably to have become aware, of the notifiable event, the trustee must give the commissioner notice of the notifiable event.

Note—

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

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

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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.

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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 50% or more; 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 50% or more.

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.

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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 landholder 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.

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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.

Note—

Section 498 includes provision about references to dutiable property.

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

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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 8A Concessions for farm-in agreements

Division 1 Some basic concepts about farm-in agreements

84A Who is a *farmor*

(1) A ***farmor*** is—

(a) a person to whom an exploration authority, is granted under the relevant Act for the authority, even if the person is yet to be registered as the holder of the authority under that Act; or

(b) another person to whom the exploration authority has been transferred under the relevant Act for the authority,

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even if the other person is yet to be registered as the holder of the authority under that Act.

(2) For subsection (1), the ***relevant Act*** for an exploration authority is the Act under which the authority is granted.

84B What is an *upfront farm-in agreement*

(1) An ***upfront farm-in agreement*** is a written agreement entered into by a farmor and another person (the ***farmee***) in relation to an exploration authority, under which—

(a) the farmor must make 1 or more transfers to the farmee of a stated interest in the exploration authority, each interest being less than 100% of the total interest in the authority; and

(b) on the transfer of each interest, the interest is held by the farmee subject to the farmee spending a stated amount (an ***exploration amount***) on relevant exploration or development—

(i) after the agreement is entered into; and

(ii) on or before the expenditure completion date for the amount; and

(c) the farmee must, if the obligation under the agreement mentioned in paragraph (b) is not complied with for the interest transferred, transfer the interest back to the farmor.

(2) However, if the farm-in agreement is a 100% transfer farm-in agreement, the last interest in the exploration authority to be transferred under the agreement need not be held by the farmee subject to an obligation mentioned in subsection (1)(b).

84C What is a *deferred farm-in agreement*

(1) A ***deferred farm-in agreement*** is a written agreement entered into by a farmor and another person (the ***farmee***) in relation to an exploration authority, under which—

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(a) the farmee is entitled to 1 or more transfers from the farmor of a stated interest in the exploration authority, each interest being less than 100% of the total interest in the authority; and

(b) the entitlement to each transfer arises only if the farmee spends a stated amount (an ***exploration amount***) on relevant exploration or development—

(i) after the agreement is entered into; and

(ii) on or before the expenditure completion date for the amount.

(2) However, if the farm-in agreement is a 100% transfer farm-in agreement, the last interest in the exploration authority to be transferred under the agreement need not be subject to an obligation mentioned in subsection (1)(b).

84D What is a *100% transfer farm-in agreement*

A ***100% transfer farm-in agreement***, for an exploration authority, is a deferred farm-in agreement or upfront farm-in agreement under which, on the completion of all the transfers of interests in the exploration authority that are proposed to be made by the farmor under the agreement, 100% of the interest in the exploration authority will be held by the farmee.

84E What is the *expenditure completion date* and an *ECD variation*

(1) The ***expenditure completion date*** for an exploration amount for the transfer of an interest in an exploration authority under a farm-in agreement is—

(a) the day stated in the agreement on or before which the exploration amount must be spent; or

(b) if the farmor and farmee agree to vary the day mentioned in paragraph (a)—the day as varied; or

(c) if the day mentioned in paragraph (b) is further varied—the day as further varied.

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(2) A variation mentioned in subsection (1)(b) or (c) is an ***ECD variation***.

84F What is *relevant exploration or development*

Exploration or development is ***relevant exploration or development*** for an exploration amount relating to an interest in an exploration authority the subject of a farm-in agreement if—

(a) the exploration or development is comprised of, or associated with, the carrying out of an activity under the exploration authority; and

(b) all of the exploration or development is carried out after the farm-in agreement is entered into.

Division 2 Transfer duty for farm-in agreements

84G Farm-in agreement is an agreement for the transfer of dutiable property

(1) A farm-in agreement is an agreement for the transfer of dutiable property mentioned in section 9(1)(b).

(2) Section 21 does not apply in relation to the agreement.

84H Exemption—particular transfers to farmor under upfront farm-in agreement

If transfer duty imposed on an upfront farm-in agreement is paid, no transfer duty is imposed on a transfer of an interest in the exploration authority from the farmee to the farmor made because of the obligation mentioned in section 84B(1)(c).

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84I Exclusion of s 22(2) for particular dutiable transactions under farm-in agreement

Section 22(2) does not apply to the transfer of an interest in an exploration authority if—

(a) both of the following apply—

(i) the transfer is made under a 100% transfer farm-in agreement; and

(ii) the transfer results in the farmee holding 100% of the interest in the exploration authority; or

(b) the interest is transferred to the farmee for a deferred farm-in agreement, even though the farmee has failed to spend all or part of the exploration amount for the transfer under the agreement in the way mentioned in section 84C(1)(b).

Division 3 Concessions for transfer duty for farm-in agreements

84J How transfer duty is initially assessed on farm-in agreement

(1) This section applies for assessing liability for transfer duty on a farm-in agreement.

(2) The dutiable value of a farm-in agreement is the consideration paid or payable to the farmor, or a related person of the farmor, for the farmor entering into the agreement, other than an exploration amount.

(3) Section 502(1)(a) and (b) and (2)(a)—

(a) applies in relation to the consideration mentioned in subsection (2); and

(b) does not apply in relation to any other consideration payable under the agreement.

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Division 4 Lodgement and notice requirements for upfront farm-in agreements

84K Lodgement requirement on expenditure of exploration amount

The farmee under an upfront farm-in agreement must, within 14 days after spending the exploration amount for each interest in the exploration authority, lodge—

(a) information, in the approved form, about the expenditure of the exploration amount; and

(b) the upfront farm-in agreement or a transfer duty statement for the agreement.

Note—

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

84L Notice requirement for farmee in particular circumstances

(1) This section applies if—

(a) an interest in an exploration authority is transferred to the farmee under an upfront farm-in agreement; and

(b) the farmee fails, under the agreement, to spend all or part of the exploration amount for the interest on or before the expenditure completion date for the amount.

(2) The farmee must, within 30 days after the expenditure completion date—

(a) give notice to the commissioner, in the approved form, of the matter mentioned in subsection (1)(b); and

(b) lodge the farm-in agreement or a transfer duty statement for the agreement.

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Note—

Failure to give the notice mentioned in paragraph (a) is an offence under the Administration Act, section 120. Also, the requirement under paragraph (b) is a lodgement requirement under the Administration Act for which a failure to comply is an offence under section 121 of that Act.

(3) If the original expenditure completion date is varied under the farm-in agreement, the farmee must comply with subsection (2) in relation to a failure to spend an exploration amount on or before each of the following—

(a) the original expenditure completion date for the amount;

(b) the original expenditure completion date, as varied under the agreement;

(c) each variation to the date mentioned in paragraph (b) made under the agreement.

(4) In this section—

original expenditure completion date, for an exploration amount for an interest in an exploration authority under an upfront farm-in agreement, means the day stated in the agreement on or before which the exploration amount must be spent.

Division 5 Reassessments

84M When commissioner must reassess transfer duty

(1) The commissioner must make a reassessment of transfer duty for a farm-in agreement if, under the agreement, either of the following events happen (each a ***reassessment event***)—

(a) for an upfront farm-in agreement, the farmee is required to—

(i) lodge the information and farm-in agreement or a transfer duty statement for the agreement under section 84K; or

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(ii) give notice and lodge the farm-in agreement or a transfer duty statement for the agreement under section 84L(2);

(b) for a deferred farm-in agreement—an interest in an exploration authority is transferred by the farmor to the farmee.

Note—

See also section 84P for when the commissioner must make a reassessment.

(2) However, subsection (1)(a)(ii) does not apply if—

(a) the farmee transfers the interest back to the farmor under the agreement before the expiry of—

(i) the period for complying with section 84L(2); or

(ii) if the commissioner considers a longer period is appropriate—the longer period; or

(b) both of the following apply—

(i) an ECD variation has been made for the expenditure of the exploration amount;

(ii) the commissioner is satisfied the ECD variation is not part of an arrangement to avoid the imposition of transfer duty.

(3) Also, subsection (1) does not apply if—

(a) the requirement mentioned in subsection (1)(a) relates to the transfer of an interest in an exploration authority under an upfront farm-in agreement that is a 100% farm-in agreement and, on the completion of the transfer, 100% of the interest in the authority will be held by the farmee; or

(b) the transfer of an interest in an exploration authority mentioned in subsection (1)(b) is made under a deferred farm-in agreement that is a 100% farm-in agreement and, on the completion of the transfer, 100% of the interest in the authority will be held by the farmee.

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(4) Subsection (1) applies despite the limitation period under the Administration Act for reassessments.

Note—

See the Administration Act, part 3 (Assessments of tax), division 3 (Reassessments).

84N How transfer duty is reassessed on farm-in agreements

(1) Subject to subsections (3) and (4), for a reassessment under section 84M the dutiable value of the farm-in agreement includes each of the following, other than an exploration amount—

(a) the consideration paid or payable to the farmor, or a related person of the farmor, for the farmor entering into the agreement;

(b) an amount relating to the transfer of an interest in the exploration authority the subject of a reassessment event, paid or payable on or before the day the latest reassessment event happens;

(c) any other consideration under the agreement paid or payable to the farmor, or a related person of the farmor, on or before the day the latest reassessment event happens.

(2) If subsection (1) applies for a reassessment, section 502(1)(a) and (b) and (2)(a)—

(a) applies in relation to the consideration mentioned in subsection (1); and

(b) does not apply in relation to any other consideration payable under the agreement.

(3) Subsection (4) applies to a reassessment for a reassessment event mentioned in section 84M(1)(a)(ii) in relation to an interest if the farmee has failed to transfer the interest back to the farmor under the agreement within the time mentioned in section 84M(2)(a) and—

(a) an ECD variation has not been made for the expenditure of the exploration amount; or

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(b) both of the following apply—

(i) an ECD variation has been made for the expenditure of the exploration amount;

(ii) the commissioner is satisfied the variation is part of an arrangement to avoid the imposition of transfer duty.

(4) The commissioner must make the reassessment to impose transfer duty on the transaction that is the agreement mentioned in section 84M(1) as if the transaction were not a farm-in agreement under this part.

(5) This section applies despite section 84J.

Division 6 Miscellaneous

84O Application of penalty tax under Administration Act

The Administration Act, section 58(1)(c) does not apply in relation to a reassessment made by the commissioner under section 84M, unless—

(a) section 84N(4) applies for the reassessment; or

(b) the farmee has failed to comply with—

(i) a lodgement requirement for the reassessment event to which the reassessment relates; or

(ii) a requirement to give the commissioner notice under section 84L(2) for the reassessment event to which the reassessment relates.

84P Exclusion of arrangements to avoid the imposition of transfer duty

(1) This section applies to a dutiable transaction that is a farm-in agreement if the transaction is part of an arrangement to avoid the imposition of transfer duty.

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(2) The commissioner must make an assessment to impose transfer duty on the transaction as if the transaction were not a farm-in agreement under this part.

(3) Subsection (2) applies despite the limitation period under the Administration Act for reassessments.

Note—

See the Administration Act, part 3, division 3.

Part 9 Concessions for homes

Division 1 Preliminary

85 Purpose of part

The purpose of this part is to provide for concessions for transfer duty for a dutiable transaction that is—

(a) the transfer, or agreement for the transfer, of a home, first home or first home and new home or of vacant land on which a first home is to be constructed; or

(b) the acquisition, on its creation, grant or issue, of a new right that is a lease—

(i) of residential land on which a home, first home or first home and new home is constructed or of vacant land on which a first home is to be constructed; and

(ii) for which a premium, fine or other consideration is payable; or

Note—

In relation to paragraph (b), see also section 614.

(c) the vesting, under section 9(1)(d), of a home, first home or first home and new home or of vacant land on which a first home is to be constructed.

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Division 2 Some basic concepts about concessions for homes

86 What is a *home*, a *first home* and a *new 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).

(2) A person's home is the person's ***first home*** if, before acquiring the home—

(a) the person did not hold, and never before held, an interest in other residential land in Queensland or elsewhere other than—

(i) as trustee for another person; or

(ii) as lessee; or

(iii) as the holder of a security interest; and

(b) the person was not, and had never been, a vacant land concession beneficiary in relation to land other than the residential land on which the home is constructed.

(3) Subsection (2)(a)(ii) does not apply to the interest in land of a lessee of a lease—

(a) of residential land on which a home or first home is constructed; and

(b) for which a premium, fine or other consideration is payable.

(4) A person's home is a ***new home*** if the home—

(a) has not been previously occupied or sold as a place of residence; or

(b) is a substantially renovated home.

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(4A) However, if a person's home has been previously sold as a place of residence, the home may be a new home under subsection (4)(a) if it has only been previously sold as a place of residence under a builders' terms arrangement.

(5) For subsection (4)(b), a person's home is a substantially renovated home if—

(a) the home is the subject of a dutiable transaction that is—

(i) the transfer, or agreement for the transfer, of residential land; or

(ii) the acquisition, mentioned in section 85(b), of a lease of residential land; and

(b) the sale or lease of the home under the transaction is, under the *A New Tax System (Goods and Services Tax) Act 1999* (Cwlth), a taxable supply as a sale or supply of new residential premises as defined under section 40-75(1)(b) of that Act; and

(c) the home, as renovated, has not been previously occupied or sold as a place of residence.

(6) In this section—

builders' terms arrangement means an arrangement under which—

(a) a licensed builder under the *Queensland Building and Construction Commission Act 1991* enters into a contract with a developer of land to purchase land that is vacant; and

(b) the builder is allowed, under the contract, to enter the land and build a residence on the land; and

(c) both of the following happen before settlement of the contract—

(i) the building is ready for occupation as a residence;

(ii) a final inspection certificate under the *Building Act 1975* has been issued in relation to the building.

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86A What is *residential land*

Residential land is land, or the part of land, on which a residence is constructed, and includes the curtilage attributable to the residence if the curtilage is used for residential purposes.

86B What is a *first home* for a residence to be constructed on vacant land

(1) A residence that is to be constructed on vacant land is a person's ***first home*** if—

(a) the person's occupation date for the residence is within 2 years after the person's transfer date for the vacant land; and

(b) before acquiring the vacant land—

(i) the person did not hold, and never before held, an interest in 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; and

(ii) the person was not, and had never been, a vacant land concession beneficiary in relation to land other than the vacant land on which the residence is to be constructed.

(2) Subsection (1)(b)(i)(B) does not apply to the interest in land of a lessee of a lease—

(a) of residential land on which a home or first home is constructed; and

(b) for which a premium, fine or other consideration is payable.

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86C What is *vacant land* and *residential vacant land*

(1) A person's land is ***vacant land*** if—

(a) a residence is to be constructed on the land; and

(b) when the person acquired the land, there was no building or part of a building on the land.

(1A) If, when the person acquired the land, there was a building or part of a building on the land, subsection (1)(b) is taken to be satisfied if each building or part of a building on the land is an eligible building.

(2) ***Residential vacant land*** is vacant land, or the part of vacant land, on which the residence is to be constructed, and includes the curtilage that is to be attributable to the residence if the curtilage is to be used for residential purposes.

(3) In this section—

Building Code of Australia see the *Building Act 1975*, section 12.

eligible building means a building or part of a building, other than a building or part of a building that—

(a) is fixed to land; and

(b) is either—

(i) designed, or approved by a local government, for human habitation by a single family unit; or

(ii) a class 1, 2, 3, 4, 5, 6, 7, 8 or 9 building or part of a building under the Building Code of Australia.

86D What is a *vacant land concession beneficiary*

(1) A person is a ***vacant land concession beneficiary*** in relation to particular land if—

(a) the person was—

(i) a transferee under a dutiable transaction that was the transfer, or agreement for the transfer, of the land; or

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(ii) a lessee under a dutiable transaction that was the acquisition, mentioned in section 85(b), of a lease of the land; or

(iii) a vested person for the land under a dutiable transaction that was the vesting, mentioned in section 85(c), of the land; and

(b) under a concession provision, a concession applied to the transaction; and

(c) at the time of the transaction, the land was vacant land.

(2) For subsection (1)(b), a transaction that was assessed on the basis of a concession under a concession provision is taken to be a transaction to which a concession under a concession provision applied even if the transaction was reassessed under section 153 or 154.

(3) In this section—

concession provision means—

(a) section 92 or 93A as in force before the commencement of this definition; or

(b) section 92B or 93B.

87 What is a *residence*

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

(a) fixed to land; and

(b) designed, or approved by a local government, for human habitation by a single family unit; and

(c) used for residential purposes.

(2) Subsection (3) applies if, under section 86C(1A), section 86C(1)(b) is taken to be satisfied for a person's land because each building or part of a building on the land when the person acquired the land is an eligible building within the meaning of section 86C(3).

(3) Despite subsection (1), a building or part of a building on the land that is comprised, either wholly or partly, of a building or

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part of a building mentioned in subsection (2) is not a ***residence*** for the land.

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 or vacant land

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

(a) the transfer, or agreement for the transfer, of the land; or

(b) the acquisition, mentioned in section 85(b), of a lease of the land; or

(c) the vesting, mentioned in section 85(c), of the land.

90 What is the *dutiable value* of residential land, vacant land or residential vacant land

(1) Subsection (2) applies to a dutiable transaction that is 1 of the following in relation to residential land, vacant land or residential vacant land—

(a) a transfer, or agreement for the transfer, of the land;

(b) an acquisition, mentioned in section 85(b), of a lease of the land;

(c) a vesting, mentioned in section 85(c), of the land.

(2) The ***dutiable value*** of the land to which the transaction relates is as follows—

(a) for a transaction mentioned in subsection (1)(a) or (c)—the part of the dutiable value of the transaction that is attributable to the land;

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(b) for a transaction mentioned in subsection (1)(b)—the part of the dutiable value of the transaction that is attributable to the interest acquired in the land.

90A Who is a *specified resident*

A ***specified resident*** is an individual who is—

(a) an Australian citizen; or

(b) a permanent resident; or

(c) a specified foreign retiree under section 246(2).

Division 3 Concessions for homes, first homes and new homes

91 Concession—home

(1) This section applies if—

(a) a dutiable transaction is 1 of the following—

(i) the transfer, or agreement for the transfer, of residential land;

(ii) the acquisition, mentioned in section 85(b), of a lease of residential land;

(iii) the vesting, mentioned in section 85(c), of residential land; and

(b) either of the following applies—

(i) the transferees, lessees or vested persons are individuals and are not trustees and the residence will be their home;

(ii) the transferees, lessees or vested persons 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

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transferees or lessees of, or vested persons for, the land; and

(c) each transferee, lessee or vested person mentioned in paragraph (b)(i), or each beneficiary mentioned in paragraph (b)(ii), is a specified resident on the day the liability for transfer duty arises.

(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 $350,000, 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 $350,000, the transfer duty is the total of—

(a) $3,500; 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 $350,000.

(6) For subsection (5), the relevant rate is the rate of transfer duty stated in schedule 3, column 2, for $350,000.

92 Concession—first home other than new home—residential land

(1) This section applies if—

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(a) a dutiable transaction is 1 of the following—

(i) the transfer, or agreement for the transfer, of residential land;

(ii) the acquisition, mentioned in section 85(b), of a lease of residential land;

(iii) the vesting, mentioned in section 85(c), of residential land; and

(aa) the residence is not a new home; and

(b) either of the following applies—

(i) the transferees, lessees or vested persons 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, lessees or vested persons and none of the transferees, lessees or vested persons are trustees;

(ii) the transferees, lessees or vested persons 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 or lessees of, or vested persons for, the land and other residential land or vacant land previously the subject of a trust of which they were beneficiaries; and

(ba) each transferee, lessee or vested person mentioned in paragraph (b)(i), or each beneficiary mentioned in paragraph (b)(ii), is a specified resident on the day the liability for transfer duty arises; and

(c) either—

(i) the unencumbered value of the residential land is not more than $700,000; or

(ii) if the unencumbered value of the residential land is more than the amount stated in subparagraph (i), the consideration for the dutiable transaction is at least the unencumbered value of the land.

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(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.

(3) The commissioner may exempt a transferee, lessee or vested person from the requirement under subsection (1)(b)(i) that the transferee, lessee or vested person be at least 18 years of age if the commissioner is satisfied there is no avoidance scheme in relation to the dutiable transaction.

92A Concession—first home and new home—residential land

(1) This section applies if—

(a) a dutiable transaction is 1 of the following—

(i) the transfer, or agreement for the transfer, of residential land;

(ii) the acquisition, mentioned in section 85(b), of a lease of residential land;

(iii) the vesting, mentioned in section 85(c), of residential land; and

(b) the residence is a new home; and

(c) either of the following applies—

(i) the transferees, lessees or vested persons 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, lessees or vested persons and none of the transferees, lessees or vested persons are trustees;

(ii) the transferees, lessees or vested persons are trustees of a trust, other than a discretionary or unit

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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 or lessees of, or vested persons for, the residential land and other residential land or vacant land previously the subject of a trust of which they were beneficiaries; and

(ca) each transferee, lessee or vested person mentioned in paragraph (c)(i), or each beneficiary mentioned in paragraph (c)(ii), is a specified resident on the day the liability for transfer duty arises; and

(d) the consideration for the dutiable transaction is at least the unencumbered value of the residential land.

(2) However, if subsection (1)(c)(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.

(3) The transfer duty imposed on the dutiable transaction is 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 dutiable value of the residential land as stated in schedule 3, column 1.

(5) The commissioner may exempt a transferee, lessee or vested person from the requirement under subsection (1)(c)(i) that the transferee, lessee or vested person be at least 18 years of age if the commissioner is satisfied there is no avoidance scheme in relation to the dutiable transaction.

92B Concession—first home—vacant land

(1) This section applies if—

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(a) a dutiable transaction is 1 of the following—

(i) the transfer, or agreement for the transfer, of vacant land;

(ii) the acquisition, mentioned in section 85(b), of a lease of vacant land;

(iii) the vesting, mentioned in section 85(c), of vacant land; and

(b) either of the following applies—

(i) the transferees, lessees or vested persons 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, lessees or vested persons and none of the transferees, lessees or vested persons are trustees;

(ii) the transferees, lessees or vested persons 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 or lessees of, or vested persons for, the vacant land and other residential land or vacant land previously the subject of a trust of which they were beneficiaries; and

(ba) each transferee, lessee or vested person mentioned in paragraph (b)(i), or each beneficiary mentioned in paragraph (b)(ii), is a specified resident on the day the liability for transfer duty arises; and

(c) the consideration for the dutiable transaction is at least the unencumbered value of the vacant land.

(2) 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.

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(3) The transfer duty imposed on the dutiable transaction is 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 vacant land.

(4) For subsection (3), the relevant rate is the rate of transfer duty stated in schedule 3, column 2 opposite the dutiable value of the residential vacant land as stated in schedule 3, column 1.

(5) The commissioner may exempt a transferee, lessee or vested person from the requirement under subsection (1)(b)(i) that the transferee, lessee or vested person 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—mixed and multiple claims for individuals—home, or first home other than new home

(1) This section applies if—

(a) a dutiable transaction is 1 of the following (each a ***relevant transaction***)—

(i) the transfer, or agreement for the transfer, of residential land;

(ii) the acquisition, mentioned in section 85(b), of a lease of residential land;

(iii) the vesting, mentioned in section 85(c), of residential land; and

(b) there is more than 1 transferee or lessee of, or vested person for, the residential land to which the transaction relates; and

(c) the residence is—

(i) the home, or the first home but not a new home, of all the transferees, all the lessees or all the vested persons (each ***relevant persons***); or

(ii) the home, or the first home but not a new home, of 1 or more of the transferees, 1 or more of the

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lessees or 1 or more of the vested persons (each also ***relevant persons***) but not all the transferees, all the lessees or all the vested persons; and

(d) the relevant persons are individuals.

(2) Also, this section applies if—

(a) a dutiable transaction is a relevant transaction in relation to 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, 1 or more of the lessees or 1 or more of the vested persons (each also ***relevant persons***), a home, or a first home but not a new home; and

(c) the relevant persons are individuals.

(3) In addition, this section applies if a dutiable transaction is a relevant transaction in relation to a part interest in residential land that, if it were in relation to 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, lessee or vested person for the land.

(3A) However, this section does not apply if—

(a) a dutiable transaction is a relevant transaction; and

(b) the residence, or 1 or more of the residences, is the first home and new home of 1 or more of the transferees, 1 or more of the lessees or 1 or more of the vested persons.

(4) For subsections (1)(c) and (2)(b)—

(a) a residence may be treated as the home of a relevant person only if the relevant person is a specified resident on the day the liability for transfer duty arises; or

(b) a residence may be treated as the first home of a relevant person only if, on the day the liability for transfer duty arises, the relevant person—

(i) is a specified resident; and

(ii) is at least 18 years of age.

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(5) The commissioner may exempt a relevant person from the requirement that the relevant person be at least 18 years of age if the commissioner is satisfied there is no avoidance scheme in relation to the dutiable transaction.

(6) The transfer duty imposed on a dutiable transaction to which this section applies under subsection (1)(c)(i) or (2) is the total of—

(a) for each relevant person, the amount worked out by applying the transferee's, lessee's or vested person'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 person's interest;

(ii) $350,000.

(7) 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 person, the amount worked out by applying the person'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 person's interest;

(ii) the total of the relevant persons' interests multiplied by $350,000.

(8) For subsections (6) and (7)—

(a) the concessional duty is the transfer duty that—

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(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 person's interest is the proportion that the share of the person 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, all the lessees or all the vested persons; and

(c) the value of a relevant person's interest is worked out by applying the person'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.

(9) For working out the concessional duty under subsection (8)(a) for a relevant person 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 person's home or first home.

(10) For a relevant person under subsection (2), the residential land mentioned in subsection (8)(c) is the part of the residential land relating to the person's home or first home.

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93A Concession—mixed and multiple claims for individuals—first home and new home

(1) This section applies if—

(a) a dutiable transaction is 1 of the following (each a ***relevant transaction***)—

(i) the transfer, or agreement for the transfer, of residential land;

(ii) the acquisition, mentioned in section 85(b), of a lease of residential land;

(iii) the vesting, mentioned in section 85(c), of residential land; and

(b) there is more than 1 transferee or lessee of, or vested person for, the residential land to which the transaction relates; and

(c) the residence is a new home; and

(d) the residence is—

(i) the first home of 1 or more of the transferees, 1 or more of the lessees or 1 or more of the vested persons and the home of each other transferee, each other lessee or each other vested person; or

(ii) the first home of 1 or more of the transferees, 1 or more of the lessees or 1 or more of the vested persons and not the home of all the transferees, all the lessees or all the vested persons; and

(e) the relevant persons are individuals.

(2) Also, this section applies if—

(a) a dutiable transaction is a relevant transaction in relation to 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, 1 or more of the lessees or 1 or more of the vested persons, a first home and a new home; and

(c) the relevant persons are individuals.

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(3) In addition, this section applies if a dutiable transaction is a relevant transaction in relation to a part interest in residential land that, if it were in relation to 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, lessee or vested person for the land.

(4) A transferee, lessee or vested person for residential land mentioned in subsection (1) or (2) is a ***relevant person*** if the residence is the home or first home of the transferee, lessee or vested person.

(4A) For subsection (1)(d), a residence may be treated as the home of a relevant person only if the relevant person is a specified resident on the day the liability for transfer duty arises.

(5) For subsections (1)(d) and (2)(b), a residence may be treated as the first home of a relevant person only if, on the day the liability for transfer duty arises, the relevant person—

(a) is a specified resident; and

(b) is at least 18 years of age.

(6) The commissioner may exempt a relevant person from the requirement that the relevant person be at least 18 years of age if the commissioner is satisfied there is no avoidance scheme in relation to the dutiable transaction.

(7) The transfer duty imposed on a dutiable transaction to which this section applies under subsection (1)(d)(i) or (2) is the total of—

(a) for each relevant person, the amount worked out by applying the person'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 worked out by applying the relevant rate to the lesser of the following amounts (the ***relevant amount***)—

(i) the total of the value of each relevant person's interest;

(ii) $350,000.

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(8) The transfer duty imposed on a dutiable transaction to which this section applies under subsection (1)(d)(ii) or (3) is the total of—

(a) for each relevant person, the amount worked out by applying the person'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 worked out by applying the relevant rate to the lesser of the following amounts (also the ***relevant amount***)—

(i) the total of the value of each relevant person's interest;

(ii) the total of the relevant persons' interests multiplied by $350,000.

(9) For subsections (7) and (8)—

(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); or

(iii) if section 92A 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 transfer duty otherwise payable under section 91; and

(b) a relevant person's interest is the proportion that the share of the person in the whole dutiable property bears to the total of the shares of—

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(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 or all the lessees or all the vested persons; and

(c) the value of a relevant person's interest is worked out by applying the person'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 relevant amount as stated in schedule 3, column 1.

(10) For working out the concessional duty under subsection (9)(a) for a relevant person to whom this section applies under subsection (2), the residential land mentioned in section 91 and schedule 4A is the part of the residential land relating to the person's home or first home.

(11) For a relevant person to whom this section applies under subsection (2), the residential land mentioned in subsection (9)(c) is the part of the residential land relating to the person's home or first home.

93B Concession—mixed and multiple claims for individuals—first home—vacant land

(1) This section applies if—

(a) a dutiable transaction is 1 of the following (each a ***relevant transaction***)—

(i) the transfer, or agreement for the transfer, of vacant land;

(ii) the acquisition, mentioned in section 85(b), of a lease of vacant land;

(iii) the vesting, mentioned in section 85(c), of vacant land; and

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(b) there is more than 1 transferee or lessee of, or vested person for, the vacant land to which the transaction relates; and

(c) the residence, when constructed, will be the first home of 1 or more of the transferees, 1 or more of the lessees or 1 or more of the vested persons (each ***relevant persons***) but not all the transferees, all the lessees or all the vested persons; and

(d) the relevant persons are individuals.

(2) In addition, this section applies if a dutiable transaction is a relevant transaction in relation to a part interest in vacant land that, if it were in relation to the whole interest in the land, would be a dutiable transaction to which this section applies under subsection (1), other than the requirement for more than 1 transferee, lessee or vested person for the land.

(3) For subsection (1)(c), a residence may be treated as the first home of a relevant person only if, on the day the liability for transfer duty arises, the relevant person—

(a) is a specified resident; and

(b) is at least 18 years of age.

(4) The commissioner may exempt a relevant person from the requirement that the relevant person be at least 18 years of age if the commissioner is satisfied there is no avoidance scheme in relation to the dutiable transaction.

(5) The transfer duty imposed on a dutiable transaction to which this section applies under subsection (1) is the amount worked out by deducting, from transfer duty on the dutiable value of the transaction, the total amount worked out by, for each relevant person, applying the relevant person's interest to transfer duty on the dutiable value of the residential vacant land.

(6) The transfer duty imposed on a dutiable transaction to which this section applies under subsection (2) is the amount worked out by deducting, from transfer duty on the dutiable value of the transaction, the amount worked out by applying the

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relevant rate to the relevant person's interest in the dutiable value of the residential vacant land.

(7) For subsections (5) and (6)—

(a) a relevant person's interest is the proportion that the share of the person 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 (1)—all the transferees, all the lessees or all the vested persons; or

(ii) for a dutiable transaction to which this section applies under subsection (2)—all the co-owners, or the owner, on completion of the transaction; and

(b) the relevant rate is the rate of transfer duty stated in schedule 3, column 2 opposite the dutiable value of the dutiable transaction attributable to the relevant person's interest in the residential vacant land as stated in schedule 3, column 1.

94 Concession—mixed and multiple claims for trustees—residential land

(1) This section applies if—

(a) a dutiable transaction is 1 of the following—

(i) the transfer, or agreement for the transfer, of residential land;

(ii) the acquisition, mentioned in section 85(b), of a lease of residential land;

(iii) the vesting, mentioned in section 85(c), of residential land; and

(b) the transferee, lessee or vested person 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.

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(2) Sections 93 and 93A apply to the transaction as if the beneficiaries are the transferees or lessees of, or vested persons for, the residential land.

(3) However, sections 93(4)(b)(ii) and (5) and 93A(5)(b) and (6) apply 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.

94A Concession—mixed and multiple claims for trustees—vacant land

(1) This section applies if—

(a) a dutiable transaction is 1 of the following—

(i) the transfer, or agreement for the transfer, of vacant land;

(ii) the acquisition, mentioned in section 85(b), of a lease of vacant land;

(iii) the vesting, mentioned in section 85(c), of vacant land; and

(b) the transferee, lessee or vested person 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 93B applies to the transaction as if the beneficiaries are the transferees or lessees of, or vested persons for, the vacant land.

(3) However, section 93B(3)(b) and (4) apply 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

An application for a concession for transfer duty on a dutiable transaction under this division must be made in the approved form.

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Division 4 Miscellaneous

95A Occupation date—particular arrangements for retirement village

(1) This section applies if—

(a) a dutiable transaction is the transfer, agreement for the transfer, or vesting mentioned in section 85(c), of residential land that is an accommodation unit in a retirement village; and

(b) the transferee, or the vested person for the land, 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, or the vested person for the land, occupying the unit under the sublease.

Part 10 Concessions for dutiable transactions for particular family businesses

Division 1 Preliminary

96 Purposes of pt 10

The purposes of this part are to—

(a) provide a concession for transfer duty on particular dutiable transactions for dutiable property used to carry on particular family businesses of primary production; and

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

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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;

(e) a trust acquisition for a unit trust if the property of the trust 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—

(i) if the business property is used to carry on a business of primary production—a defined relative of the transferee; or

(ii) otherwise—an ancestor of the transferee;

(b) the transferee does not acquire the business property as—

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(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 defined relative or 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 a minor, and—

(i) if the business property is used to carry on a business of primary production—the minor is a defined relative of the person creating the trust; or

(ii) otherwise—the minor is a descendant of the person creating the trust; 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—

(i) if the business property is used to carry on a business of primary production—a defined relative of the acquirer; or

(ii) otherwise—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

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(ii) agent or nominee of another person;

(d) the business for which the business property is used is carried on by the defined relative or 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 a minor, and—

(i) if the business property is used to carry on a business of primary production—the minor is a defined relative of the person creating the trust; or

(ii) otherwise—the minor is a descendant of the person creating the trust; 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—

(i) if the business property is used to carry on a business of primary production—a defined relative of the acquirer; or

(ii) otherwise—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;

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(d) the business for which the business property is used is carried on by the defined relative or 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 a minor, and—

(i) if the business property is used to carry on a business of primary production—the minor is a defined relative of the person creating the trust; or

(ii) otherwise—the minor is a descendant of the person creating the trust; 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 a minor, and—

(i) if the business property is used to carry on the business of primary production—the minor is a defined relative of the person creating the trust; or

(ii) otherwise—the minor is a descendant of the person creating the trust;

(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;

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(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—

(i) if the business property is used to carry on a business of primary production—a defined relative of the acquirer; or

(ii) otherwise—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 defined relative or 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 a minor, and—

(i) if the business property is used to carry on a business of primary production—the minor is a defined relative of the person creating the trust; or

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(ii) otherwise—the minor is a descendant of the person creating the trust; 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—primary production business

(1) This section applies for assessing transfer duty on a dutiable transaction to which this part applies if business property to which the transaction relates is used to carry on a primary production business.

(2) The dutiable value of the business property is taken to be nil.

(3) In addition, if the dutiable property the subject of the dutiable transaction includes residential land adjacent to land used to carry on the business, the dutiable value of the residential land is taken to be nil.

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

(1) This section applies for assessing transfer duty on a dutiable transaction to which this part applies—

(a) if business property to which the transaction relates is used to carry on a prescribed business; and

(b) to the extent the transaction is by way of gift.

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(2) The unencumbered value of the business property is limited to the amount by which the value exceeds $500,000.

(3) Subsection (2) has effect subject to section 106.

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.

(3) Subsection (1)(b) does not apply to a marketable security gifted on or after 1 January 2007.

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

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(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.

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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;

(c) a statement of the dutiable property the subject of the transaction;

(d) a copy of each instrument relating to the transaction;

(e) a statutory declaration from a trustee of each of the superannuation funds concerned stating that, in the trustee's opinion, the fund will be a complying superannuation fund within 1 year after the transaction.

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

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(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 or a related person of the transferee receives, or will receive, directly or indirectly a financial benefit other than—

(i) the release of the transferee 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

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(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.

Note—

See also section 241A in relation to the imposition of AFAD on the agreement in particular circumstances.

(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.

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Division 2 Exemptions for trusts

117 Exemption—change of trustee

(1) 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 or trust surrenders for which transfer duty is imposed for the trust before the transaction.

(2) Also, 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 part of an arrangement involving a change in the rights or interest of a beneficiary of the trust; and

(b) transfer duty has been paid on all trust acquisitions or trust surrenders—

(i) of trust interests in the trust made under the arrangement; and

(ii) for which transfer duty is imposed; and

(c) transfer duty has been paid on all trust acquisitions or trust surrenders for which transfer duty is imposed for the trust before the transaction; and

(d) the change of trustee is not part of an arrangement to avoid the imposition of duty.

Note—

In relation to subsection (2), see also section 615.

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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 trust is established and maintained as a discretionary trust primarily for the benefit of the members of a particular family or a 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—

(a) the trust is established and maintained primarily for the benefit of the members of a particular family or a 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 acquiring or surrendering the trust interest becoming or ceasing to be a member of a class of beneficiaries of the trust consisting of the children, stepchildren or grandchildren of a named member or members of the family.

(3) For subsection (1)(a) or (2)(a), a discretionary trust is established and maintained primarily for the benefit of the members of a particular family or a family company if—

(a) the primary beneficiaries of the trust consist only of members of the family or the family company; and

(b) the takers in default of an appointment for capital by the trustee of the trust consist only of members of the family or the family company.

(4) However, subsection (3)(b) is taken to be satisfied if the last taker in default of an appointment for capital by the trustee of the trust is—

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(a) a person decided under the *Succession Act 1981*; or

(b) a charitable institution.

(5) For subsection (2)(a), a trust other than a discretionary trust is established and maintained primarily for the benefit of the members of a particular family or a family company if at least 90% of the trust interests in the trust are held by members of the family or the family company.

(6) For applying this section, a person (the ***first person***) is a member of the particular family of another person (the ***other person***) if—

(a) the first person is the spouse of the other person; or

(b) the first person, or the first person's spouse, is any of the following in relation to the other person, or the other person's spouse—

(i) child, stepchild or adopted child;

(ii) grandchild or great grandchild;

(iii) brother, sister, aunt, uncle or cousin;

(iv) parent, step-parent, adoptive parent, grandparent or great grandparent.

(7) In this section—

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

spouse includes former spouse.

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

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(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

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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.

122 Exemption—restructure of stapled entities

(1) Transfer duty is not imposed on a dutiable transaction that is a trust acquisition or trust surrender of a trust interest in a listed unit trust or a widely held unit trust if—

(a) the purpose of the transaction is to give effect to a scheme that qualifies or would, on its completion, qualify as a roll-over under the *Income Tax Assessment Act 1997* (Cwlth), subdivision 124.Q; and

(b) when the scheme is completed, the interposed trust will be a listed unit trust or a widely held unit trust; and

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(c) the transaction is not part of an arrangement to avoid the imposition of transfer duty.

(2) Subsection (1) does not apply if—

(a) the interposed trust is not a listed unit trust or a widely held unit trust when the scheme is completed; or

(b) the interposed trust ceases to be a listed unit trust or a widely held unit trust within 3 years after the scheme is completed; or

(c) the interposed trust does not retain all the ownership interests in the stapled entities for at least 3 years after the date of the transaction.

(3) Despite subsection (2)(c), subsection (1) continues to apply if the commissioner is satisfied the interposed trust did not retain all the ownership interests because 1 or more of the stapled entities ceased to exist other than under an arrangement, a significant purpose of which was to avoid the requirement to retain all the ownership interests for at least 3 years.

(4) If subsection (1) does not apply, the commissioner must make a reassessment to impose transfer duty on the transaction as if the exemption from duty had never applied.

(5) Subsection (4) applies to the reassessment despite the limitation period under the Administration Act for reassessments.

Note—

See the Administration Act, part 3, division 3.

(6) If an event mentioned in subsection (2) happens, a party to the transaction must, within 28 days after the event happens—

(a) give notice of the event to the commissioner in the approved form; and

(b) ensure the instruments required for the assessment of duty on the transaction are lodged for reassessment.

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Note—

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

(7) Without limiting subsection (3), a company registered under the Corporations Act ceases to exist if it is deregistered under that Act.

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) The trust acquisition of a beneficiary's trust interest is not exempt from transfer duty for the purposes of subsection (2)(b)(ii) if transfer duty is not imposed on the acquisition because of the operation of section 66(2).

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(4) 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) any of the following applies—

(i) if the property of the trust is business property used to carry on a business of primary production—the beneficiary is not a defined relative of the person who created the trust;

(ii) if the property of the trust is business property used to carry on a prescribed business—the beneficiary is not a descendant of the person who created the trust;

(iii) the property of the trust 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—

(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;

(d) a vesting of dutiable property under the *Succession Act 1981*, section 45;

(e) a vesting of dutiable property under the *Aboriginal and Torres Strait Islander Land Holding Act 2013*,

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section 69A, including the section as it continues to apply under section 96 of that Act.

Note—

Also, see section 66 (When no transfer duty on trust acquisition or trust surrender).

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 in a trustee for the sale or physical division of the property under the *Property Law Act 2023*, 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.

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, 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.

126A Exemption—special disability trusts

(1) Transfer duty is not imposed on a dutiable transaction that is—

(a) the transfer, or agreement for the transfer, of an eligible home to the trustee of a special disability trust; or

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(b) the creation of a special disability trust holding dutiable property, to the extent the dutiable property is an eligible home; or

(c) a trust acquisition in a special disability trust, to the extent the trust interest acquired relates to an eligible home.

(2) In this section—

eligible home, in relation to a special disability trust, means residential land that is being, or will be, used as the principal place of residence by the beneficiary of the trust.

special disability trust means a special disability trust under—

(a) the *Social Security Act 1991* (Cwlth), section 1209L; or

(b) the *Veterans' Entitlements Act 1986* (Cwlth), section 52ZZZW.

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

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(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.

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 the following dutiable transactions (***relevant transactions***)—

(a) for scheme property of a registered managed investment scheme other than a trust interest—a transfer, or agreement for the transfer, of the scheme property from 1 property holder for the scheme to the other property holder for the scheme; or

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(b) for scheme property of a registered managed investment scheme that is a trust interest—a trust acquisition made by 1 property holder for the scheme, if the trust interest was held by the other property holder for the scheme immediately before the acquisition.

(2) However, subsection (1) does not apply if the relevant transaction 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 relevant transaction happens as they had immediately before the arrangement was entered into.

(3) In this section—

property holder, for a registered managed investment scheme, means—

(a) the responsible entity of the scheme; or

(b) a person as primary custodian for the responsible entity of the scheme.

scheme property includes a trust interest of a registered managed investment scheme held by a property holder for the scheme.

Division 3A Exemptions for eligible superannuation entities

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

(1) Subject to subsections (2) and (3), transfer duty is not imposed on a transfer of dutiable property from a person as vendor to another person as custodian for the trustee of one of the following entities (each an ***eligible superannuation entity***)—

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(a) a public superannuation entity;

(b) a complying superannuation fund, if the trustee has, under the Superannuation Industry Act, section 19(4), given a written notice electing to apply that Act in relation to the fund to APRA or an entity other than APRA.

(2) 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 trustee as purchaser; and

(b) the property is acquired by the trustee as fund property; and

(c) transfer duty imposed on the transaction has been paid.

(3) If the trustee of the eligible superannuation entity has given a written notice to an entity other than APRA as mentioned in subsection (1)(b), subsection (1) applies only if the transfer of dutiable property is the transfer of an acquirable asset to the custodian to be held on trust for the trustee in compliance with the Superannuation Industry Act, section 67A(1)(b).

(4) In this section—

APRA see the *Superannuation Industry Act*, section 10.

130B Exemption—other transfers of fund property of eligible superannuation entities

(1) Subject to subsections (2) and (3), transfer duty is not imposed on a transfer, or agreement for the transfer, of fund property of an eligible superannuation entity from—

(a) the trustee of the entity to a person as custodian for the trustee; or

(b) a person as custodian for the trustee of the entity to the trustee.

(2) Subsection (1) does not apply if the transfer or agreement is part of an arrangement under which—

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(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 eligible 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.

(3) If the trustee of the eligible superannuation entity has given a written notice to an entity other than APRA as mentioned in section 130A(1)(b), subsection (1) applies to the transfer or agreement only if—

(a) for a transaction mentioned in subsection (1)(a)—the property the subject of the transfer or agreement is an acquirable asset that is, on completion of the transfer, held on trust by the custodian for the trustee in compliance with the Superannuation Industry Act, section 67A(1)(b); or

(b) for a transaction mentioned in subsection (1)(b)—the property the subject of the transfer or agreement is an acquirable asset that, immediately before the transfer, was held on trust by the custodian for the trustee in compliance with the Superannuation Industry Act, section 67A(1)(b).

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—

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(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; or

(d) a covered bond within the meaning of the *Banking Act 1959* (Cwlth), section 26, if the cover pool for the covered bond under that section consists of either of the following—

(i) a financial asset;

(ii) a pool of financial assets.

(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.

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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.

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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—

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(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.

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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 a lease prepared for the *Aboriginal Land Act 1991*, section 287 or the *Torres Strait Islander Land Act 1991*, section 191;

(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 199, or the *Torres Strait Islander Land Act 1991*, section 148, 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.

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133 Exemption—community titles schemes

(1) Subject to subsection (2), transfer duty is not imposed on 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—

(a) the transferor is a corporation (the ***transferor corporation***); and

(b) under that Act, the transferor corporation is the original owner for the scheme; and

(c) the transferee held shares in the transferor corporation that were surrendered to obtain the transfer of the lot from the transferor corporation; and

(d) 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

(e) 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.

(2) Subsection (1) applies to the transfer or agreement for the transfer of a lot by a transferor corporation on or after the commencement day only if—

(a) before the commencement day—

(i) shares were issued by the transferor corporation; and

(ii) the corporation's constitution provided, and on and from the commencement day continues to provide, that a person who holds the shares has the right to occupy the separate area mentioned in subsection (1)(d); or

(b) before the commencement day, the transferee entered into an agreement with the transferor corporation under which—

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(i) the transferee is entitled to purchase the shares mentioned in subsection (1)(c) from the transferor corporation; and

(ii) because of the purchase of the shares, the transferee has the right to occupy the separate area mentioned in subsection (1)(d).

(3) In this section—

commencement day means the day this section commences.

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; or

(b) the *Drugs Misuse Act 1986*, section 39(4).

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 2016*, chapter 12, part 14; or

(b) the transfer, or agreement for the transfer, of dutiable property from trustees of an industrial organisation under the *Industrial Relations Act 2016* to the organisation.

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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 any of the following purposes under that Act—

(i) a community purpose;

(ii) provision of services beneficial to Aboriginal people particularly concerned with the land;

(iii) provision of services beneficial to Torres Strait Islanders particularly concerned with the land;

(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 surrender under the *Land Act 1994* of land held in fee simple to the State;

(d) 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;

(e) 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;

(f) the acquisition of a new right that is a change of tenure under the *Land Act 1994*, section 504 or 505;

(g) 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.

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137 Exemption—mining, petroleum and other particular legislation

(1) Transfer duty is not imposed on a dutiable transaction that is—

(a) the grant of a resource authority; 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—

(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).

(4) 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—

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(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.

site see the *Manufactured Homes (Residential Parks) Act 2003*, section 13.

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.

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—

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(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 Act 1988*;

(b) the Queensland Art Gallery Board of Trustees constituted under the *Queensland Art Gallery Act 1987*;

(c) the Queensland Museum Board of Trustees constituted under the *Queensland Museum Act 1970*;

(d) the Queensland Performing Arts Trust constituted under the *Queensland Performing Arts Trust Act 1977*;

(e) the Queensland Theatre Company constituted under the *Queensland Theatre Company Act 1970*.

(2) Transfer duty is not imposed on a dutiable transaction that is a gift of dutiable property to the Council of the Queensland Institute of Medical Research continued in existence under the *Queensland Institute of Medical Research Act 2025*, to which section 46 of that Act applies.

141A Exemption—mandatory buyback under Retirement Villages Act 1999

Transfer duty is not imposed on a dutiable transaction under the *Retirement Villages Act 1999*, section 63A.

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Division 5 Miscellaneous exemptions

142 Exemption—charitable institutions

(1) Transfer duty is not imposed on a transfer, or agreement for the transfer, of dutiable property to—

(a) a charitable 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.

charitable institution does not include a charitable institution mentioned in the Administration Act, section 149C(2)(a).

143 Exemption—change of tenure

(1) Transfer duty is not imposed on an agreement for a transfer entered into, or a transfer made, solely for the purpose of changing the registered ownership of property—

(a) from tenants in common to joint tenants; or

(b) from joint tenants to tenants in common.

(2) Subsection (1) applies only if—

(a) the total value of the co-owners' interests in the property immediately before the agreement was entered into, or the transfer had effect, is not changed; and

(b) either—

(i) for subsection (1)(a)—immediately before the agreement was entered into or the transfer had effect, the owners held the property as tenants in common in equal shares; or

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(ii) for subsection (1)(b)—after the transfer has effect, the owners hold the property as tenants in common in equal shares.

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, or vesting of land in a way mentioned in section 9(1)(d)(i) in, the State for—

(a) a public purpose under the *Acquisition of Land Act 1967*; or

(b) any of the following purposes under the *Land Act 1994*—

(i) a community purpose;

(ii) provision of services beneficial to Aboriginal people particularly concerned with the land;

(iii) provision of services beneficial to Torres Strait Islanders particularly concerned with the land.

146 Exemption—leases of particular residences

(1) Transfer duty is not imposed on an acquisition of a new right that is a lease of land in Queensland if—

(a) the new right is an instrument that is—

(i) a lease of a dwelling house; or

(ii) a site agreement; and

(b) the leased premises are not used for carrying on a business or commercial venture; and

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(c) there is no premium, fine or other consideration payable for the grant of the new right.

(2) In this section—

leased premises includes the land the subject of a site agreement.

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.

Transfer duty is not imposed on any of the following dutiable transactions—

(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.

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.

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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

(1) 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, de facto relationship or civil partnership, to the other party to the marriage, de facto relationship or civil partnership, 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.

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(2) Subsection (1) applies even if liability under a mortgage over the interest in the land, in existence immediately before the transaction, is assumed by the other party under the transaction.

Note—

In relation to subsection (2), see also section 616.

151A Exemption—indigenous land use agreements

(1) Transfer duty is not imposed on the following dutiable transactions, if the dutiable transaction satisfies the requirements stated in subsection (2)—

(a) a transfer, or agreement for the transfer, of land;

(b) the acquisition of a new right that is land in Queensland.

(2) For subsection (1), the requirements are—

(a) the dutiable transaction is expressly provided for in an indigenous land use agreement; and

(b) the sole purpose of the dutiable transaction is to give effect to the indigenous land use agreement; and

(c) the transfer or agreement for the transfer of land, or the acquisition of the right, is in exchange for the surrender of native title rights and interests under the *Native Title Act 1993* (Cwlth) for an area of land to which the indigenous land use agreement relates; and

(d) the commissioner is satisfied the land will be used by the transferee or acquirer for an eligible use on or before the day that is 6 months after the transferee or acquirer is entitled to possession of the land, or the later day fixed by the commissioner by notice given to the transferee or acquirer (the ***start date***); and

(e) the commissioner is satisfied the land will be used for the eligible use for at least 12 months from the start date (the ***duration period***).

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(3) Subsection (4) applies if, after an assessment is made on the basis of an exemption under subsection (1), the commissioner is satisfied the land the subject of the dutiable transaction—

(a) has not been used for an eligible use by the start date; but

(b) will be used—

(i) for an eligible use by a later date (the ***new start date***) fixed by the commissioner by notice given to the transferee or acquirer; and

(ii) for the eligible use for at least 12 months from the new start date (the ***new duration period***).

(4) The commissioner must not make a reassessment merely because the land has not been used for an eligible use by the start date if the land starts to be used for the eligible use by the new start date.

(5) In this section—

indigenous land use agreement means an indigenous land use agreement registered on the register of indigenous land use agreements under the *Native Title Act 1993* (Cwlth), part 8.

152 Exemption—to correct clerical error in previous dutiable transaction

(1) Transfer duty is not imposed on a dutiable transaction to correct a clerical 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.

Examples of clerical errors in a dutiable transaction about property—

- an accidental misdescription of the property
- an accidental misdescription of a party to the transaction

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(2) To remove any doubt, it is declared that an error by a party about the appropriateness of a transaction to achieve a particular intended legal result is not a clerical error in the transaction.

(3) A dutiable transaction to which this section applies is a ***section 152 exempt transaction***.

152A Exemption—previous dutiable transaction for a section 152 exempt transaction if clerical error is a misdescription of property

(1) Transfer duty is not imposed on a dutiable transaction that is the previous dutiable transaction for a section 152 exempt transaction if—

(a) the previous dutiable transaction is the transfer, or agreement for the transfer, of dutiable property; and

(b) the clerical error in the previous dutiable transaction is a misdescription of the property; and

(c) in addition to the section 152 exempt transaction, there is another transfer, or agreement for the transfer, of dutiable property (the ***third dutiable transaction***) that, other than for the error, would have been the subject of the previous dutiable transaction; and

(d) the sole purpose of the third dutiable transaction is to correct the error; and

(e) no consideration is paid or payable for any dutiable transaction entered into to correct the error, other than the consideration already paid or payable for the previous dutiable transaction; and

(f) the beneficial interests in the property the subject of the previous dutiable transaction and third dutiable transaction change only to the extent necessary to correct the error.

(2) If, under an assessment, transfer duty is imposed on a previous dutiable transaction to which subsection (1) applies, on application in the approved form by a party to the previous

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dutiable transaction the commissioner must make a reassessment of transfer duty on the basis that transfer duty is not imposed on the previous dutiable transaction.

(3) In this section—

previous dutiable transaction means a previous dutiable transaction mentioned in section 152(1) in relation to a section 152 exempt transaction.

Part 14 Reassessments for transfer duty

Division 1 Reassessments for concessions for homes

153 Reassessment—disposal after occupation date for residence

(1) This section applies if—

(a) transfer duty on a dutiable transaction that is 1 of the following is assessed on the basis of a concession under section 91, 92, 92A, 92B, 93, 93A or 93B—

(i) the transfer, or agreement for the transfer, of residential land or vacant land;

(ii) the acquisition, mentioned in section 85(b), of a lease of residential land or vacant land;

(iii) the vesting, mentioned in section 85(c), of residential land or vacant land; and

(b) a transferee, lessee or vested person for the land, within the year after the transferee's, lessee's or vested person's occupation date for the residence, disposes of the land, other than because of an intervening event, by—

(i) transferring part or all of it; or

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(ii) leasing or otherwise granting exclusive possession of part or all of it to another person; or

(iii) for a lease of residential land on which a home, first home or first home and new home is constructed or of vacant land on which a first home is to be constructed and for which a premium, fine or other consideration is payable—surrendering the lease.

(1A) For subsection (1)(b), a transferee, lessee or vested person for land does not dispose of land if—

(a) the transferee, lessee or vested person transfers part of the land to the transferee's, lessee's or vested person's spouse; and

(b) the transfer is exempt from duty under section 151.

(1B) Also, for subsection (1)(b), a transferee or vested person for land 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.

(1C) Also, for subsection (1)(b)(ii), a transferee, lessee or vested person for land does not dispose of land only by entering into a residential lease of part, but not all, of the land.

(2) The commissioner must make a reassessment to impose further transfer duty on the dutiable transaction worked out using the following formula—

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

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, lessee or vested person and transfer duty assessed on the dutiable transaction.

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OD means the number of days between the transferee's, lessee's or vested person's occupation date for the residence and the date of disposal of the 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, lessee's or vested person's transfer of part of the land to the transferee's, lessee's or vested person's spouse; and

(b) under subsection (1)(b), the transferee, lessee or vested person later disposes of the land or part of it;

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

(4) In this section—

residential lease, of part of land, means a lease, or other grant of exclusive possession, of the part to a person for use for residential purposes.

154 Reassessment—noncompliance with occupancy requirements

(1) This section applies if—

(a) transfer duty on a dutiable transaction that is 1 of the following is assessed on the basis of a concession under section 91, 92, 92A, 92B, 93, 93A or 93B—

(i) the transfer, or agreement for the transfer, of residential land or vacant land;

(ii) the acquisition, mentioned in section 85(b), of a lease of residential land or vacant land;

(iii) the vesting, mentioned in section 85(c), of residential land or vacant land; and

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(b) either of the following happens other than because of an intervening event—

(i) a transferee, lessee or vested person for land disposes of the land before the occupation date;

(ii) a transferee's, lessee's or vested person's occupation date for the residence on the land is not within—

(A) if the dutiable transaction related to residential land—1 year after the transfer date for the land; or

(B) if the dutiable transaction related to vacant land—2 years after the transfer date for the land.

(2) For subsection (1)(b)(i), a transferee, lessee or vested person for land disposes of land if—

(a) the lessee of a home or vacant land lease surrenders the lease; or

(b) the transferee, lessee or vested person transfers, leases or otherwise grants exclusive possession of part or all of the land to another person; or

(c) the transferee, lessee or vested person acquires the land subject to a lease, granted before the transfer date, over all or part of the land.

(2AA) Subsection (2) does not apply 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 the owner of the land immediately before the vesting; or

(ii) has exclusive possession of the land under a lease granted before the transfer date; and

(c) the occupier—

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(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 referred to in subsection (2)(c), or within 6 months after the transfer date, whichever is the earlier.

(2A) Also, for subsection (1)(b)(i), a transferee, lessee or vested person for land does not dispose of land if—

(a) the transferee, lessee or vested person transfers part of the land to the transferee's, lessee's or vested person's spouse; and

(b) the transfer is exempt from duty under section 151.

(2B) Also, for subsection (1)(b)(i), a transferee or vested person for land 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, lessee or vested person.

(4) If—

(a) under subsection (2A), this section does not apply to a transferee's, lessee's or vested person's transfer of part of the land to the transferee's, lessee's or vested person's spouse; and

(b) under subsection (1)(b)(i), the transferee, lessee or vested person later disposes of the land or part of it;

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

(5) In this section—

home or vacant land lease means a lease—

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(a) of residential land on which a home, first home or first home and new home is constructed or of vacant land on which a first home is to be constructed; and

(b) for which a premium, fine or other consideration is payable.

154A Reassessment—decrease in dutiable value of residential vacant land

(1) This section applies if—

(a) transfer duty on a dutiable transaction that is 1 of the following is assessed on the basis of a concession under section 92B or 93B—

(i) the transfer, or agreement for the transfer, of vacant land;

(ii) the acquisition, mentioned in section 85(b), of a lease of vacant land;

(iii) the vesting, mentioned in section 85(c), of vacant land; and

(b) when the residence is constructed—

(i) for transfer duty assessed on the basis that all of the vacant land is residential vacant land—only part of the vacant land is residential land; or

(ii) for transfer duty assessed on the basis that part of the vacant land is residential vacant land—the part of the vacant land that is residential land is different to the part of the vacant land on which the transfer duty was assessed; and

(c) the amount of transfer duty that would have been imposed on the transaction if the residential land had been used for assessing the concession is more than the amount of transfer duty assessed on the transaction.

(2) The commissioner must make a reassessment to impose transfer duty on the dutiable transaction on the basis that a

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reference in section 92B or 93B to residential vacant land were a reference to the residential land.

155 When transferees, lessees and vested persons for land 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, 92A, 92B, 93, 93A or 93B, of transfer duty on a dutiable transaction that is 1 of the following (each a ***relevant transaction***)—

(a) the transfer, or agreement for the transfer, of residential land or vacant land;

(b) the acquisition, mentioned in section 85(b), of a lease of residential land or vacant land;

(c) the vesting, mentioned in section 85(c), of residential land or vacant land.

(2) Within 28 days after the notifiable event happens, the notifier for land in relation to the relevant transaction 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 or vacant land, means—

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

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(b) if the relevant transaction is the acquisition, mentioned in section 85(b), of a lease of residential or vacant land—the surrender of the lease before, or within 1 year after, the lessee's occupation date for the residence on the land; or

(c) failure to comply with the occupancy requirement for the residence on the land; or

(d) a transferee, lessee or vested person for the vacant land in relation to a relevant transaction becomes aware, or ought reasonably to be aware, of the matters mentioned in section 154A(1)(b) and (c) for the vacant land in relation to the transaction.

notifier, for residential land or vacant land in relation to a relevant transaction, means—

(a) for a notifiable event mentioned in the definition *notifiable event*, paragraph (d)—the transferee, lessee or vested person mentioned in the paragraph; or

(b) for another notifiable event—each transferee, lessee or vested person for the land in relation to the relevant transaction.

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

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(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.

Division 3 Reassessments for cancelled transfers of dutiable property

156A Reassessment of duty for cancelled transfer of dutiable property

(1) This section applies if—

(a) transfer duty has been assessed on a transfer of dutiable property effected or evidenced by an instrument or ELN transaction document; and

(b) the instrument or ELN transaction document is cancelled by the parties before it has legal effect; and

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(c) the dutiable property has not been transferred to the transferee or a related person of the transferee; and

(d) the instrument or ELN transaction document was not cancelled—

(i) to give effect to a resale agreement; or

(ii) as part of an arrangement under which any of the dutiable property is or will be transferred, or is agreed to be transferred, to the transferee or a related person of the transferee.

(2) For this section, an instrument or ELN transaction document has legal effect if—

(a) for an instrument or ELN transaction document that, when recorded in a register, will effect the transfer of dutiable property—the instrument or ELN transaction document is lodged for recording in the register; or

(b) a right has been exercised, or an obligation fulfilled, under the instrument or ELN transaction document; or

(c) the instrument or ELN transaction document has been relied on in any other way.

(3) For subsection (1)(d)(i), an agreement is a resale agreement if—

(a) under the agreement, any of the dutiable property is or will be transferred or is agreed to be transferred; and

(b) the transferee, or a related person of the transferee, receives or will receive, directly or indirectly, a financial benefit, other than the release of the transferee from the transferee's obligation under the transaction mentioned in subsection (1)(a).

(4) The person may lodge an application for a reassessment in the approved form within 6 months after the instrument or ELN transaction document is cancelled.

(5) The person must lodge the instrument, ELN transaction document or a copy of the ELN transaction document with the

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application, unless the commissioner decides lodgement is unnecessary.

(6) The commissioner must make a reassessment of transfer duty for the transaction on the basis that transfer duty is not imposed on the transaction.

Division 4 Reassessments for exemptions for indigenous land use agreements

156B Reassessment on application

(1) This section applies if—

(a) under an assessment, duty is imposed on a dutiable transaction because the commissioner is not satisfied of a matter under section 151A(2)(d) or (e) for land; and

(b) on application by the transferee or acquirer concerned, the commissioner is satisfied, under section 151A(2)(d) and (e), that the land has been used for an eligible use from the start date and for the duration period for the land (the ***relevant requirements***).

(2) The commissioner must make a reassessment of duty for the transaction on the basis of compliance with section 151A(2)(d) and (e).

(3) Subsection (2) applies to the reassessment despite the Administration Act, section 21.

(4) However, if the application is made by the transferee or acquirer after the limitation period for reassessments under the Administration Act has expired, the application must be made within 6 months after the relevant requirements are satisfied.

Note—

See the Administration Act, part 3 (Assessments of tax), division 3 (Reassessments).

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156C Reassessment—noncompliance with particular requirements

(1) This section applies if—

(a) duty is assessed on a dutiable transaction on the basis of an exemption under section 151A; and

(b) after the assessment, the land transferred or acquired—

(i) is not used for an eligible use before the start date, or new start date, for the land under section 151A(2)(d) or (3)(b)(i); or

(ii) is not used for an eligible use for the duration period, or new duration period, for the land under section 151(2)(e) or (3)(b)(ii).

(2) Within 28 days after the event mentioned in subsection (1)(b) happens, the transferee or acquirer must—

(a) give notice of the event 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 dutiable transaction.

Note—

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

(3) The commissioner must make a reassessment of duty on the transaction as if the exemption had never applied.

Note—

Unpaid tax interest and penalty tax may be payable under the Administration Act, part 5.

(4) The reassessment must be made within the later of the following—

(a) the limitation period for the reassessment under the Administration Act;

(b) 12 months after the event mentioned in subsection (1)(b) happens.

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(5) Subsection (4)(b) applies despite the Administration Act, section 22.

Part 15 Provisions for ELN transfers and ELN lodgements

Division 1 Preliminary

156D Definitions for part

In this part—

completed lodgement means a dutiable transaction—

(a) that is a transfer, surrender or vesting of dutiable property or an acquisition of a new right; and

(b) for which an instrument or ELN transaction document for an ELN lodgement is registered under the *Land Title Act 1994*, the *Land Act 1994* or the *Water Act 2000*; and

(c) on which a liability for transfer duty is imposed.

completed transfer means a transfer of dutiable property—

(a) for which an instrument or ELN transaction document for an ELN transfer is registered under the *Land Title Act 1994*; and

(b) on which a liability for transfer duty is imposed.

eligible land means land, an instrument of transfer of which must comply with the requirements of the *Land Title Act 1994*, section 61 for transferring the land under that Act.

ELN lodgement means a dutiable transaction, other than an ELN transfer—

(a) that is a transfer, surrender or vesting of land, or an acquisition of a new right that is land, registered under the *Land Title Act 1994*, the *Land Act 1994* or the *Water Act 2000*; and

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(b) for which an ELN workspace exists; and

(c) that is not eligible for a concession, exemption or other reduction for transfer duty, other than a concession, exemption or reduction for transfer duty for an ELN lodgement prescribed by regulation.

ELN transaction document means a document under the Electronic Conveyancing National Law (Queensland) that—

(a) is—

(i) for an ELN transfer—an instrument of transfer under the *Land Title Act 1994*, section 61 for a relevant transfer agreement, alone or together with an instrument of transfer under the *Land Act 1994*, chapter 6 or the *Water Act 2000*, section 170 that is under the same relevant transfer agreement; or

(ii) for an ELN lodgement—an instrument under the *Land Title Act 1994*, the *Land Act 1994* or the *Water Act 2000*; and

(b) would effect a dutiable transaction that is an ELN transfer or ELN lodgement if the document were—

(i) digitally signed; and

(ii) lodged electronically under the Electronic Conveyancing National Law (Queensland), section 7; and

(iii) registered under the *Land Title Act 1994*, the *Land Act 1994* or the *Water Act 2000*.

Note—

Under the Electronic Conveyancing National Law (Queensland), schedule 1, section 12(1) definition *document*, a document includes a record of information that exists in a digital form and is capable of being reproduced, transmitted, stored and duplicated by electronic means.

ELN transfer—

(a) means a transfer of dutiable property—

(i) that includes eligible land; and

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(ii) for which an ELN workspace exists; and

(iii) that is to the transferee under a relevant transfer agreement and for the same consideration as provided for under the agreement; but

(b) does not include a transaction for which—

(i) there is an agreement for the transfer of dutiable property (the ***first agreement***); and

(ii) 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 take place (the ***intervening agreements***); and

(iii) to give effect to the first agreement and the intervening agreements, 1 or more transfers of dutiable property will be effected by 1 or more parties to the first agreement and the intervening agreements.

ELN workspace, for an ELN transfer or ELN lodgement, means the part of an ELN on which information is entered and kept for the ELN transfer or ELN lodgement.

incomplete ELN lodgement means an ELN lodgement for which the ELN workspace is unlocked before an ELN transaction document for the ELN lodgement is registered under the *Land Title Act 1994*, the *Land Act 1994* or the *Water Act 2000*.

incomplete ELN transfer means an ELN transfer for which the ELN workspace is unlocked before an ELN transaction document for the ELN transfer is registered under the *Land Title Act 1994*.

locked, in relation to an ELN workspace for an ELN transfer or ELN lodgement, see section 156F(1).

lodgement information, in an ELN workspace for an ELN lodgement, means information in the ELN workspace that is necessary for either of the following purposes in relation to an ELN transaction document for the ELN lodgement—

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(a) complying with a provision of the *Land Title Act 1994*, the *Land Act 1994* or the *Water Act 2000* in relation to the registration of the document;

(b) endorsing the document under this Act.

lot means a lot under the *Body Corporate and Community Management Act 1997* or the *Building Units and Group Titles Act 1980*.

outstanding liability, for division 4, see section 156P(1)(b).

payment commitment, for an agreement for the transfer of dutiable property that is a relevant transfer agreement, see section 156N.

related see section 156G.

relevant transfer agreement means an agreement for the transfer of dutiable property—

(a) that includes eligible land; and

(b) on which transfer duty is imposed; and

(c) that is not eligible for a concession, exemption or other reduction for transfer duty, other than a concession, exemption or reduction for transfer duty for an ELN transfer prescribed by regulation; and

(d) that—

(i) is aggregated under section 30 with a transfer of other dutiable property under that agreement; or

(ii) is aggregated under section 30 only with another agreement for the transfer of dutiable property that complies with paragraphs (a) to (c); or

(iii) if subparagraph (i) or (ii) does not apply—is not aggregated under section 30 with any other dutiable transaction.

signed—

(a) in relation to an ELN transaction document for an ELN transfer—see section 156E(1); or

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(b) in relation to an ELN transaction document for an ELN lodgement—see section 156E(2).

subscriber see the Electronic Conveyancing National Law (Queensland), section 3.

transfer information, in an ELN workspace for an ELN transfer, means information in the ELN workspace that is necessary for either of the following purposes in relation to an ELN transaction document for the ELN transfer—

(a) complying with a provision of the *Land Title Act 1994* in relation to the registration of the document; or

(b) endorsing the document under this Act.

unlocked, in relation to an ELN workspace for an ELN transfer or ELN lodgement, see section 156F(2).

156E When an ELN transaction document is *signed*

(1) An ELN transaction document for an ELN transfer is ***signed*** when all transfer information in the ELN workspace for the ELN transfer is digitally signed by or for all parties to the ELN transfer.

(2) An ELN transaction document for an ELN lodgement is ***signed*** when all lodgement information in the ELN workspace for the ELN lodgement is digitally signed by or for all parties to the ELN lodgement.

156F When an ELN workspace is *locked* and *unlocked*

(1) An ELN workspace for an ELN transfer or ELN lodgement is ***locked*** when the subscribers to the ELN workspace are unable to amend the transfer information or lodgement information in the ELN workspace.

(2) An ELN workspace for an ELN transfer or ELN lodgement is ***unlocked*** if, after the ELN workspace has been locked, the subscribers to the ELN workspace are no longer unable to amend the transfer information or lodgement information in the ELN workspace.

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156G When dutiable transactions are *related*

(1) For this part, an incomplete ELN transfer and a completed transfer, or an incomplete ELN transfer and another incomplete ELN transfer, are ***related*** to each other if both are transfers—

(a) of the same dutiable property; and

(b) to the same transferee; and

(c) under the same relevant transfer agreement.

Note—

There may be more than 1 ELN transfer of the same dutiable property to the same transferee under the same relevant transfer agreement—see section 156H.

(2) Also for this part, an incomplete ELN lodgement and a completed lodgement, or an incomplete ELN lodgement and another incomplete ELN lodgement, are ***related*** to each other if—

(a) both are dutiable transactions of the same dutiable property; and

(b) the parties to the transactions are the same; and

(c) if an agreement has been entered into by the parties in relation to the transactions—

(i) 1 or both transactions are transfers of dutiable property; and

(ii) both transactions are under the same agreement; and

(iii) the agreement is not a relevant transfer agreement.

Note—

There may be more than 1 ELN lodgement of the same dutiable property that have the same parties to the transaction—see section 156H.

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Division 2 Provisions about liability for transfer duty

Subdivision 1 Preliminary

156H Effect of multiple locking events for ELN workspace

(1) Each time a multiple locking event happens for the ELN workspace for an ELN transfer or ELN lodgement, when the ELN workspace is locked again—

(a) another ELN transaction document is taken to exist, regardless of whether another ELN transaction document has been created in the ELN workspace; and

(b) the document is taken to be signed by the parties to the dutiable transaction; and

(c) to remove any doubt, it is declared that—

(i) for an ELN transfer—another dutiable transaction that is an ELN transfer is taken to arise; or

(ii) for an ELN lodgement—another dutiable transaction that is an ELN lodgement is taken to arise.

(2) For this section, a ***multiple locking event*** happens for the ELN workspace for an ELN transfer or ELN lodgement if, after the ELN workspace has been unlocked, the ELN workspace is locked again.

156I Liability for transfer duty not affected by particular events

(1) To remove any doubt, it is declared that the following events do not affect a liability for transfer duty imposed on an ELN transfer or ELN lodgement—

(a) an unlocking of the ELN workspace for the ELN transfer or ELN lodgement;

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(b) an unsigning of the ELN transaction document for the ELN transfer or ELN lodgement;

(c) after an event mentioned in paragraph (a) or (b)—

(i) a signing of an ELN transaction document for another ELN transfer that is related to the ELN transfer; or

(ii) a signing of an ELN transaction document for another ELN lodgement that is related to the ELN lodgement; or

(iii) another locking of the ELN workspace;

(d) the signing of an instrument that, when recorded in a register, would effect—

(i) a completed transfer related to the ELN transfer; or

(ii) a completed lodgement related to the ELN lodgement.

(2) In this section—

unsigning, in relation to an ELN transaction document, means unsigning of the ELN transaction document for the purposes of the Electronic Conveyancing National Law (Queensland).

Note—

See the Electronic Conveyancing National Law (Queensland), section 12(3).

Subdivision 2 No multiple duty for particular incomplete ELN transfers and incomplete ELN lodgements

156J Application of subdivision

This subdivision applies if—

(a) 1 or more incomplete ELN transfers are related to a completed transfer; or

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(b) 1 or more incomplete ELN lodgements are related to a completed lodgement.

156K When liability for transfer duty is imposed

(1) Subsection (2) applies to a liability for transfer duty imposed on each of the following—

(a) any incomplete ELN transfer related to the completed transfer, other than the first related transfer;

(b) the completed transfer.

(2) The liability is taken to be imposed when the liability for transfer duty is imposed on the first related transfer.

(3) Subsection (4) applies to a liability for transfer duty imposed on each of the following—

(a) any incomplete ELN lodgement related to the completed lodgement, other than the first related lodgement;

(b) the completed lodgement.

(4) The liability is taken to be imposed when the liability for transfer duty is imposed on the first related lodgement.

(5) This section applies despite section 16.

(6) In this section—

first related lodgement means the incomplete ELN lodgement related to the completed lodgement for which the ELN workspace is first locked.

first related transfer means the incomplete ELN transfer related to the completed transfer for which the ELN workspace is first locked.

156L Deemed compliance with duty obligation

(1) A duty obligation for an incomplete ELN transfer that is related to the completed transfer is taken to be complied with

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when the duty obligation under the same provision is complied with in full for the completed transfer.

(2) A duty obligation for an incomplete ELN lodgement that is related to the completed lodgement is taken to be complied with when the duty obligation under the same provision is complied with in full for the completed lodgement.

(3) In this section—

duty obligation means an obligation under any of the following provisions—

(a) a provision for a lodgement requirement under the Administration Act;

(b) the Administration Act, section 30, 31, 32, 35, 54 or 58;

(c) section 455A(1)(b) or 471E(1).

Subdivision 3 Other provisions

156M Exclusion of ss 21 and 22(2) and (2A)

(1) To remove any doubt, it is declared that section 21 does not apply to the imposition of transfer duty on any of the following—

(a) an incomplete ELN transfer that is related to—

(i) a completed transfer; or

(ii) another incomplete ELN transfer;

(b) a completed transfer;

(c) an incomplete ELN lodgement that is related to—

(i) a completed ELN lodgement; or

(ii) another incomplete ELN lodgement;

(d) a completed lodgement.

(2) Section 22(2) or (2A) does not apply to an incomplete ELN transfer that is related to a completed transfer.

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(3) The fact that an incomplete ELN transfer is not related to a completed transfer does not affect a liability for transfer duty imposed on the incomplete ELN transfer.

(4) Section 22(2) does not apply to an incomplete ELN lodgement that is related to a completed lodgement and for which there is an agreement that is not a relevant transfer agreement.

(5) The fact that an incomplete ELN lodgement is not related to a completed lodgement does not affect a liability for transfer duty imposed on the incomplete ELN lodgement.

(6) This section does not limit section 156A or 499.

Division 3 Payment commitments

156N Making of *payment commitment* for relevant transfer agreement to transfer dutiable property

(1) A ***payment commitment*** for an agreement for the transfer of dutiable property that is a relevant transfer agreement is made by the parties to the agreement if—

(a) the ELN workspace for an ELN transfer of the dutiable property to the transferee under the agreement is locked; and

(b) the amount (the ***commitment amount***) of transfer duty, assessed interest and penalty tax imposed on the agreement—

(i) is included in the ELN workspace as an amount to be paid; and

Example—

The settlement schedule in the ELN workspace includes the amount of transfer duty, assessed interest and penalty tax imposed on the agreement.

(ii) is outstanding when the ELN workspace becomes locked.

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(2) For subsection (1)(b), an amount is ***outstanding*** if it has not been—

(a) if the relevant self assessor is registered under chapter 12, part 2—paid to the commissioner; or

(b) if the relevant self assessor is registered under chapter 12, part 3—paid to the commissioner or received by the relevant self assessor.

(3) A payment commitment made for an agreement for the transfer of dutiable property that is a relevant transfer agreement has effect until the earlier of the following—

(a) the commissioner is paid all of the commitment amount;

(b) the ELN workspace for an ELN transfer of the dutiable property to the transferee under the agreement is unlocked.

(4) In this section—

relevant self assessor means a self assessor registered under chapter 12, part 2 or 3 who, for the purposes of endorsing an ELN transaction document under section 455A—

(a) assigns a transaction number to the ELN transaction document; or

(b) is notified of a transaction number assigned to the ELN transaction document under a system administered by the commissioner.

156O Payment commitment does not affect liability to pay

To remove any doubt, it is declared that a party's liability under this Act to pay an amount to the commissioner is not affected by the making of a payment commitment for all or part of the amount.

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Division 4 Charge for unpaid transfer duty

156P Charge over transferee's interest in land for unpaid transfer duty for ELN transfer

(1) This section applies if—

(a) an ELN transaction document for an ELN transfer is—

(i) stamped on the basis that duty is not imposed on the transfer under section 22(2A); and

(ii) registered under the *Land Title Act 1994*; and

(b) all or part of the commitment amount for the payment commitment made for the relevant transfer agreement is not paid by the date the amount (the ***outstanding liability***) is payable.

Note—

For when tax must be paid, see the Administration Act, section 30.

(2) The outstanding liability is a first charge on the transferee's interest in the land that is the subject of the ELN transfer.

(3) The charge has priority over all other encumbrances over the transferee's interest in the land.

(4) Subsection (3) applies—

(a) whether the other encumbrances over the transferee's interest in the land—

(i) are registered or unregistered; or

(ii) were created before or after the charge arises under subsection (2); and

(b) despite the *Land Title Act 1994*, part 3, divisions 2 and 2A.

(5) The commissioner may lodge, under the Administration Act, part 4, division 5, a request to register the charge on the land that is the subject of the ELN transfer.

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(6) Despite section 47B of the Administration Act, the registrar must not register the charge if the transferee is no longer the registered owner of the land.

(7) On its registration, the charge is not affected by a disposition of the transferee's interest in the land.

156Q Commissioner may apply to Supreme Court for order to sell

(1) This section applies if—

(a) a charge has been registered over the land under section 156P; and

(b) the outstanding liability has not been paid within 18 months after registration.

(2) The commissioner may apply to the Supreme Court for an order to sell the land stated in the application.

(3) At least 6 months before making the application, the commissioner must give the persons mentioned in subsection (4) notice of the commissioner's intention to apply to the Supreme Court for an order to sell the land unless the outstanding liability is paid within 6 months after the date of the notice.

(4) The persons to whom notice must be given are—

(a) the person liable to pay the outstanding liability; and

(b) the owner of the land.

156R 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 156Q; and

(b) there is an outstanding liability payable to the State.

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(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 156S(a) to (d).

156S Application of proceeds of sale

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

(a) first, in payment of the commissioner's expenses on the application to the court for the order;

(b) second, in payment of expenses properly incurred by the commissioner on the sale or any attempted sale;

(c) third, in payment of the outstanding liability under the Administration Act, section 42;

(d) fourth, in payment of amounts secured by a security interest or charge on the land recorded before the charge mentioned in section 156Q(1)(a), unless the land is sold subject to the security interest or charge;

(e) fifth, any balance must be applied as the court orders.

156T 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.

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156U Former owner may recover proceeds of sale as debt

(1) The amount equal to the proceeds of the sale of land under the order to sell less an amount paid under section 156S(d) is a debt payable to the former owner of the land by the persons liable to pay the outstanding liability for which the order was made.

(2) The former owner may recover the debt in a court of competent jurisdiction.

(3) In this section—

former owner, of land sold under the order to sell, means the person who owned the land immediately before its sale.

Division 5 Miscellaneous

156V Particular information in ELN workspace taken to be stated to commissioner

(1) For this Act and the Administration Act, each party to an ELN transfer or ELN lodgement, and each relevant subscriber, is taken to have stated to the commissioner information that is—

(a) in the ELN workspace for an ELN transfer or ELN lodgement; and

(b) relevant to this Act or the Administration Act.

Note—

For the consequences of stating anything to the commissioner that is false or misleading, see the Administration Act, section 123.

(2) In this section—

relevant subscriber means a subscriber, including a self assessor registered under chapter 12, part 3, who is engaged by a party for the ELN transfer or ELN lodgement.

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156W Effect of self assessor's endorsement of ELN transaction document for incomplete ELN transfer or incomplete ELN lodgement

(1) Subsection (2) applies if—

(a) an ELN transaction document for an ELN transfer is endorsed by a self assessor registered under chapter 12, part 2 or 3; and

(b) the ELN transfer becomes an incomplete ELN transfer.

(2) The endorsement is of no effect from the time the ELN workspace for the incomplete ELN transfer is unlocked.

(3) Subsection (4) applies if—

(a) an ELN transaction document for an ELN lodgement is endorsed by a self assessor registered under chapter 12, part 2 or 3; and

(b) the ELN lodgement becomes an incomplete ELN lodgement.

(4) The endorsement is of no effect from the time the ELN workspace for the incomplete ELN lodgement is unlocked.

Chapter 3 Landholder duty and corporate trustee duty

Part 1 Landholder duty

Division 1 Preliminary

157 Imposition of landholder duty

(1) This part imposes duty (***landholder duty***) on relevant acquisitions.

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Notes—

1 Exemptions for landholder duty are dealt with in division 5 and chapter 10. Particular acquisitions relating to corporate reconstructions are exempt from landholder duty under chapter 10, part 1.

2 Additional foreign acquirer duty is imposed on particular relevant acquisitions under chapter 4.

(2) Landholder duty is imposed—

(a) for a relevant acquisition in a private landholder—on the dutiable value of the relevant acquisition; and

(b) for a relevant acquisition in a public landholder—in the way provided under section 179B.

Division 2 Some basic concepts for landholder duty

Subdivision 1 Some basic concepts about acquiring interests in landholders

158 What is a *relevant acquisition*

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

(a) the person acquires a significant interest in a landholder; or

(b) the person acquires an interest in a landholder and, when the following are aggregated, the aggregation results in a significant interest in the landholder—

(i) interests held by the person in the landholder;

(ii) interests acquired or held by related persons of the person in the landholder; or

(c) having acquired a significant interest in a landholder as mentioned in paragraph (a) or (b) for which acquisition landholder duty was imposed, the person's interest in the landholder increases.

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(2) To remove any doubt, it is declared that for subsection (1)(b), it is not relevant whether, immediately before the person acquires the interest—

(a) an interest mentioned in subsection (1)(b)(i) or (ii) is, of itself, a significant interest in the landholder; or

(b) the aggregation of any interests mentioned in subsections (1)(b)(i) or (ii), of itself, amounts to a significant interest in the landholder.

159 What are *interests* and *significant interests* in a landholder

(1) A person has an ***interest*** in a landholder if the person has an entitlement as a shareholder or unit holder to a distribution of the landholder's property—

(a) for a corporation—on its winding up; or

(b) for a listed unit trust—on its termination.

(2) A person has a ***significant interest*** in a landholder if the person has an interest in the landholder of—

(a) for a private landholder—50% or more; or

(b) for a public landholder—90% or more.

160 Interest in landholder is percentage of distributable property on winding up of a corporation or termination of a listed unit trust

(1) A person's interest in a landholder is the person's entitlement expressed as a percentage of the value of all of the landholder's property that would be distributed if, immediately after the person acquires the interest—

(a) for a corporation—the corporation were to be wound up; or

(b) for a listed unit trust—the trust were to be terminated.

(2) If the landholder's property includes property held for a partnership of which the landholder is a partner, all of the

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property held for the partnership is taken for subsection (1) to be property that could be distributed, regardless of the landholder's interest in the partnership.

161 Entitlement on distribution of corporation's property

(1) Subject to section 161B, 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 do all or any of the following—

(i) effect or compel a change of the corporation's constitution;

(ii) vary the rights conferred by the shares in the corporation;

(iii) pay up any uncalled amount owing to the corporation for the shares;

(iv) satisfy conditions in the corporation's constitution relating to the shares;

(v) effect or compel the substitution or replacement of shares in the corporation with other shares in the corporation.

(2) 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.

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161A Entitlement on distribution of listed unit trust's property

(1) Subject to section 161B, the entitlement of a person on a distribution of a listed unit trust's property is the greater of the entitlement of the person as a unit holder, based on a distribution carried out—

(a) under the instrument creating the trust; or

(b) after the person or the person's representative has, to maximise the person's entitlement, exercised all powers and discretions to do all or any of the following—

(i) effect or compel a change of the instrument creating the trust;

(ii) vary the rights conferred by the units in the trust;

(iii) pay up any uncalled amount owing to the trust for the units;

(iv) satisfy conditions under the instrument creating the trust relating to the units;

(v) effect or compel the substitution or replacement of units in the trust with other units in the trust;

(vi) effect or compel the fulfilment of a condition;

(vii) effect or compel the outcome of a contingency;

(viii) effect or compel the exercise or non-exercise of a power or discretion.

(2) The entitlement of a person under subsection (1) must be worked out without regard to the liabilities of the trust.

(3) 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.

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161B Matters about applying ss 161 and 161A

(1) If the commissioner considers the application of section 161(1)(b) or 161A(1)(b) would be inequitable, the commissioner may decide the entitlement of a person be based on a distribution carried out under section 161(1)(a) or 161A(1)(a).

(2) Also, if a person makes a relevant acquisition because interests are aggregated under section 158(1)(b)(ii), the entitlements under section 161(1)(b) or 161A(1)(b) of the person and the related persons of the person must not be more than 100%.

162 Acquiring an interest in a landholder

(1) A person acquires an interest in a landholder if the person obtains an interest, or the person's interest increases, in the landholder regardless of how it is obtained or increased.

(2) Without limiting subsection (1), a person may acquire an interest in a landholder in the following ways—

(a) the purchase, gift, allotment or issue of a share or unit;

(b) the cancellation, redemption or surrender of a share or unit;

(c) the abrogation or alteration of a right for a share or unit;

(d) the payment of an amount owing for a share or unit;

(e) if the person holds an interest in the landholder, whether or not as trustee—by changing the capacity in which the person holds the interest.

Example of when the capacity in which a person holds an interest changes—

A person holds a share or unit in a corporation or listed unit trust other than as trustee. The person's capacity changes if the person starts holding the share or unit as trustee.

(3) To remove any doubt, it is declared that an acquisition of shares or units is not necessary to acquire an interest in a landholder.

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163 When is an interest acquired

(1) This section applies—

(a) if a person acquires an interest in a landholder; or

(b) for an interest acquired by a person in a landholder when, under section 179(6), definition *excluded interest*, paragraph (b) and 179B(2), definition *excluded interest*, paragraph (b), the landholder did not hold land in Queensland.

(2) The person acquires the interest—

(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 landholder is not a landholder when the agreement is made but is a landholder when the agreement is completed—when the agreement is completed; or

(c) otherwise—when the interest is acquired.

(3) Also, if—

(a) a person holds a security interest in a landholder; and

(b) the acquisition of the security interest was an exempt acquisition under section 190; and

(c) 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 landholder 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

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(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 an interest of 50% or more 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 landholder 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 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.

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Subdivision 2 Some basic concepts about entities and their land-holdings and property

165 What is a *landholder*

A ***landholder*** is an entity that has land-holdings in Queensland, the unencumbered value of which are $2,000,000 or more.

165A What is a *private landholder* and *public landholder*

(1) A ***private landholder*** is a landholder that is an unlisted corporation.

(2) A ***public landholder*** is a landholder that is a listed corporation or listed unit trust.

166 What is a *subsidiary*

(1) A corporation is a ***subsidiary*** of—

(a) another corporation (the ***holding entity***) if, under the Corporations Act, it is a subsidiary of the holding entity; or

(b) a listed unit trust (also the ***holding entity***) if, under subsection (4), the corporation is a subsidiary of the holding entity.

(2) Also, each of the following is a ***subsidiary*** of the holding entity—

(a) a trustee of a trust, if the holding entity or a subsidiary of the holding entity, whether under this or another subsection, is a beneficiary of the trust (a ***relevant trust***);

(b) a corporation in which—

(i) the trustee of a relevant trust has an interest of 50% or more; or

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(ii) an interest of 50% or more 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 an interest of 50% or more in D Pty Ltd.

(3) In addition, a corporation or trustee of a trust is a ***subsidiary*** of a holding entity if, under subsection (1) or (2), it is a subsidiary of a subsidiary of the holding entity.

(4) For subsection (1)(b), a corporation is a subsidiary of a listed unit trust if it is a subsidiary of the trust under the Corporations Act, chapter 1, part 1.2, division 6, applied—

(a) as if a reference to a body corporate includes a reference to a trustee of a listed unit trust; and

(b) as if section 48(2) and (3) of that Act did not apply, to the extent the section disregards shares held or a power exercisable only in a fiduciary capacity; and

(c) with any other necessary changes.

(5) For deciding whether a trustee of a trust is a subsidiary of a holding entity under subsection (2)—

(a) a trust interest sale agreement made by the holding entity or a subsidiary of it is taken not to have been made; and

(b) a trust interest purchase agreement made by the holding entity or a subsidiary of it is taken to have been completed.

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(6) In this section—

trust interest purchase agreement means an uncompleted agreement, whether or not conditional, for the acquisition of an interest as a beneficiary of the trust.

trust interest sale agreement means an uncompleted agreement, whether or not conditional, for the disposal of an interest as a beneficiary of the trust.

167 What are an entity's *land-holdings*

(1) An entity's ***land-holdings*** means the following—

(a) the entity's interest in land, and anything fixed to the land that may be separately owned from the land (whether or not the entity has an interest in the thing fixed to the land), other than—

(i) a security interest; or

(ii) an interest in a trust;

Note—

See the *Acts Interpretation Act 1954*, schedule 1, definition *interest*.

(b) rights held by the entity that—

(i) relate to, or affect, the use of the entity's land and other land; and

(ii) enhance the value of the entity's land;

(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 entity.

(2) Also, an entity's ***land-holdings*** includes the land-holdings, under subsection (1), held by the entity for a partnership of which the entity is a partner as if a reference in the subsection to land, an interest in land or rights, were a reference to land, an interest in land or rights held by the entity for the partnership.

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(3) Also, an entity's ***land-holdings*** includes the land-holdings, under subsection (1) or (2), of a subsidiary of the entity as if a reference in the subsection to an entity were a reference to the subsidiary.

(4) Despite subsections (1) to (3), an entity's land-holdings do not include—

(a) for a corporation—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; or

(b) for a listed unit trust—land-holdings held on trust by a subsidiary of it unless the listed unit trust or any subsidiary of it is a beneficiary of the trust.

168 What is an entity's *property*

(1) An entity's ***property*** means the entity's interest in any property other than a security interest or interest in a trust.

(2) Also, an entity's ***property*** includes any property under subsection (1) held by the entity for a partnership of which the entity is a partner.

(3) Also, an entity's ***property*** includes any property under subsection (1) or (2) of a subsidiary of the entity as if a reference in the subsection to an entity were a reference to the subsidiary.

(4) Despite subsections (1) to (3), the entity's property does not include—

(a) for a corporation—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; or

(b) for a listed unit trust—property held on trust by a subsidiary of it unless the listed unit trust or any subsidiary of it is a beneficiary of the trust.

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

170 Value of co-owned land-holdings

(1) If an entity'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 entity's land-holdings for section 165.

Note—

Even though the unencumbered value of the interests of all co-owners of the land-holdings is included for working out whether an entity is a landholder, only the unencumbered value of the entity's interest in the land-holdings is used under division 4 for working out landholder 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 landholder 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 entity or a subsidiary of the entity must be included in working out the unencumbered value of an entity's land-holdings.

172 Value of land-holdings held for a partnership

If an entity's land-holdings include land-holdings held for a partnership of which the entity is a partner, the unencumbered value of those land-holdings must be included in working out the unencumbered value of the entity's land-holdings regardless of the entity's interest in the partnership.

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

(1) For an acquisition of an interest in an entity 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 entity.

(2) For subsection (1), a repealed s 97(1)(f) transaction is taken to be a dutiable transaction to which chapter 2, part 10, applies.

(3) A ***repealed s 97(1)(f) transaction*** is a transfer, or agreement for the transfer, of a marketable security in a corporation to which the following applies—

(a) the property of the corporation includes business property;

(b) the corporation is a family company for the transferee;

(c) the transferor or person directing the transfer is—

(i) if the business property is used to carry on a business of primary production—a defined relative of the transferee; or

(ii) otherwise—an ancestor of the transferee;

(d) the transferee does not acquire the marketable security as—

(i) trustee, other than as trustee of a trust for the beneficiaries mentioned in subsection (4); or

(ii) agent or nominee of another person;

(e) the business for which the business property is used is carried on by the defined relative or ancestor whether alone or with others;

(f) the business is intended to be carried on by the transferee, whether alone or with others.

(4) For subsection (3)(d)(i)—

(a) the beneficiary of the trust is a minor, and—

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(i) if the business property is used to carry on a business of primary production—the minor is a defined relative of the person creating the trust; or

(ii) otherwise—the minor is a descendant of the person creating the trust; 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).

(5) In this section—

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.

Division 3 Liability for landholder duty

174 When liability for landholder duty arises

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

175 Who is liable to pay landholder duty

(1) Landholder 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), the person and the related persons of the person are jointly and severally liable for the payment of the landholder duty.

177 Landholder 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 ***landholder duty statement***).

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Maximum penalty—40 penalty units.

178 Effect of lodging landholder duty statement by acquirer or related person

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

Division 4 Working out landholder duty for relevant acquisitions

Subdivision 1 Private landholders

178A Rate of landholder duty

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

179 Working out dutiable value of relevant acquisition

(1) The dutiable value of a relevant acquisition in a private landholder is the interest in, or total of interests in, the landholder constituting the relevant acquisition, less any excluded interest of the person at the time of the acquisition, multiplied by the unencumbered value of all Queensland land-holdings of the landholder at the time of the acquisition.

Note—

See also section 14 (What is the *unencumbered value* of property).

(2) Subsection (3) applies to the following relevant acquisitions—

(a) a relevant acquisition mentioned in section 158(1)(c);

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(b) a relevant acquisition made by a person in the following circumstances—

(i) the person together with related persons of the person had a significant interest in the private landholder 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 private landholder;

(iii) since the relevant acquisition mentioned in subparagraph (ii), no other related person of the person has acquired an interest in the landholder.

(3) For applying subsection (1) to a relevant acquisition mentioned in subsection (2), the interest is the increased interest in the private landholder 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 private landholder. B acquires a 25% interest and, when aggregated with A's interest, a significant 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 private landholder. B acquires a 25% interest and, when aggregated with A's interest, a significant 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(3) must be disregarded.

Note—

Under section 409(3), landholder 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.

(6) In this section—

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excluded interest, of a person who makes a relevant acquisition in a private landholder, is any interest constituting the relevant acquisition—

(a) held by the person, or a related person of the person, on or before the day that is 3 years before the relevant acquisition, unless—

(i) the interest was acquired as part of an arrangement; and

(ii) the arrangement includes the interest most recently acquired as part of the relevant acquisition; or

(b) acquired by the person, or a related person of the person, at a time when the landholder did not hold land in Queensland.

Subdivision 2 Public landholders

179A Landholder duty

(1) Subject to section 179B, the landholder duty imposed on a relevant acquisition made by a person in a public landholder is 10% of the amount of transfer duty that would be imposed on a dutiable transaction under chapter 2, if a transfer of all the Queensland land-holdings of the landholder had happened at the time of the relevant acquisition.

(2) However, for a relevant acquisition to which section 158(1)(c) applies, no landholder duty is imposed for an increase in the person's interest if—

(a) landholder duty for a relevant acquisition by the person in the landholder has previously been imposed under this section; and

(b) since making the relevant acquisition for which landholder duty was imposed, the interest of the person constituting the previous acquisition has not reduced.

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

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179B Dutiable value of dutiable transaction for s 179A

(1) For section 179A, in working out the amount of transfer duty that would be imposed under chapter 2, the dutiable value of the dutiable transaction is the unencumbered value of all Queensland land-holdings of the landholder at the time of the acquisition, reduced by the proportion of the value represented by any excluded interest of the person at the time of the acquisition.

(2) In this section—

excluded interest, of a person who makes a relevant acquisition in a public landholder, is any interest constituting the relevant acquisition acquired by the person, or a related person—

(a) before 1 July 2011; or

(b) at a time when the landholder did not hold land in Queensland.

Subdivision 3 Other provisions for working out dutiable value

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 landholder 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—

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(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) Landholder 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 landholder 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 landholder 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 lodgement requirement for which a failure to comply is an offence under section 121 of that Act.

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182 Unencumbered value of land-holdings of subsidiary of landholder

(1) This section applies for working out the unencumbered value of the Queensland land-holdings of a landholder under section 179 or 179B, to the extent the land-holdings comprise land-holdings of a subsidiary of the landholder.

(2) The unencumbered value of the Queensland land-holdings of the landholder is the proportion of the unencumbered value of the land-holdings in Queensland of all the subsidiaries to which the landholder would be entitled, if the subsidiaries, at the same time and without regard to their liabilities—

(a) for subsidiaries that are corporations—were wound up; or

(b) for subsidiaries that are trusts—were terminated.

(3) For subsection (2), the unencumbered value of the Queensland land-holdings of the subsidiary on the winding up or termination of all the subsidiaries is—

(a) if the subsidiary is a corporation, the greatest proportion of the unencumbered value of the land-holdings in Queensland that the landholder would be entitled to under sections 161(1) and 161B(1) applied as if—

(i) a reference to a person were a reference to the landholder mentioned in this section; and

(ii) a reference to a corporation were a reference to the subsidiary; or

(b) if the subsidiary is a unit trust, the greatest proportion of the unencumbered value of the land-holdings in Queensland that the landholder would be entitled to under sections 161A(1), (2) and 161B(1) as if—

(i) a reference to a person were a reference to the landholder mentioned in this section; and

(ii) a reference to a listed unit trust were a reference to the subsidiary; or

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(c) if the subsidiary is a trustee of a trust other than a unit trust—the greatest proportion of the unencumbered value of the land-holdings in Queensland of the trust that the landholder could derive at any time from the trust without regard to the liabilities of any of the subsidiaries.

(4) Without limiting subsection (3)(c), 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) If the Queensland land-holdings of a subsidiary of the landholder includes land-holdings held for a partnership of which the subsidiary is a partner, subsection (2) applies to the unencumbered value of the land-holdings held for the partnership regardless of the subsidiary's interest in the partnership.

(6) To remove any doubt it is declared that land-holdings may be derived by the landholder even if a subsidiary of the landholder is a beneficiary of a trust.

(7) If there is more than 1 subsidiary of the landholder 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 or units to be disregarded

(1) This section applies if the relevant acquisition is the issue of shares or units by a landholder to a person in the following circumstances—

(a) the shares or units are issued to the person in consideration of a transfer of land to the landholder by the person;

(b) transfer duty is paid for the transfer;

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(c) the land is not the only land of the landholder;

(d) the person is not the only shareholder or unit holder of the landholder.

(2) In working out the unencumbered value of the Queensland land-holdings of the landholder, the value of the land must be disregarded.

184 Value of co-owned land-holdings

For sections 179 and 179B, if a landholder has an interest in land-holdings as co-owner, the value of the land-holdings is the unencumbered value of the landholder's interest in the land-holdings.

Subdivision 4 Deductions

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-holdings 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) Landholder duty imposed on the relevant acquisition must be reduced by the amount of corporate trustee duty paid or payable for the land-holdings to the extent that the land-holdings were included in working out the dutiable value of the relevant acquisition under this part.

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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-holdings 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) Landholder duty imposed on the relevant acquisition must be reduced by the amount of transfer duty paid or payable for the land-holdings to the extent that the land-holdings were 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) Landholder duty imposed on the relevant acquisition must be reduced by an amount worked out using the following formula—

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

where—

LV means the unencumbered value of all Queensland land-holdings of the landholder at the time of the relevant acquisition.

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PV means the unencumbered value of all the property of the landholder 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) shares or units in an entity are transferred, or agreed to be transferred, by way of security; and

(b) afterwards, the transferee acquires ownership of the shares or units free from any interest or equity of the previous holder of the shares or units; and

(c) the transferee and related persons of the transferee were to newly acquire all of the shares or units they hold in the entity at the time of the acquisition mentioned in paragraph (b), the acquisition would be a relevant acquisition.

(2) Also, this section applies if—

(a) shares or units in an entity are transferred, or agreed to be transferred, 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 or units owned by the transferee and related persons of the transferee.

(4) Landholder duty imposed on the relevant acquisition must be reduced by any mortgage duty paid on the transfer or agreement to transfer.

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Division 5 Exempt acquisitions

189 Exemption—particular share or unit issues

(1) Landholder duty is not imposed on an acquisition by a person of an interest on the initial allotment of shares or units on the registration of a corporation or the establishment of a listed unit trust.

(2) Also, landholder duty is not imposed on an acquisition by a person if—

(a) the interest was acquired on the issue of shares or units to a person in consideration of a transfer of land to the corporation or trust by the person; and

(b) transfer duty is paid or payable for the acquisition of the land by the corporation or trust; and

(c) the land is the only land of the corporation or trust; and

(d) the person is the only shareholder or unit holder of the corporation or trust.

(3) In addition, landholder duty is not imposed on an acquisition by a person if—

(a) the interest is acquired on a dealing in shares or units for all of the shareholders or unit holders of the corporation or trust; and

(b) the interests of the shareholders or unit holders after the dealing are, as near as practicable, the same as the proportions in which they held the shares or units before the dealing; and

(c) the rights among the shareholders or unit holders have not changed significantly because of the dealing in the shares or units.

(4) In this section—

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

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190 Exemption—security interests

Landholder 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 landholder duty.

191 Exemption—change of trustee

Landholder 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

Landholder 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

Landholder 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

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

193A Exemption—restructure of stapled entities

(1) Landholder duty is not imposed on a relevant acquisition if—

(a) the purpose of the acquisition is to give effect to a scheme that qualifies or would, on its completion, qualify as a roll-over under the *Income Tax Assessment Act 1997* (Cwlth), subdivision 124.Q; and

(b) when the scheme is completed, the interposed trust will be a listed unit trust or a widely held unit trust; and

(c) the acquisition is not part of an arrangement to avoid the imposition of landholder duty.

(2) Subsection (1) does not apply if—

(a) the interposed trust is not a listed unit trust or a widely held unit trust when the scheme is completed; or

(b) the interposed trust ceases to be a listed unit trust or a widely held unit trust within 3 years after the scheme is completed; or

(c) the interposed trust does not retain all the ownership interests in the stapled entities for at least 3 years after the date of the acquisition.

(3) Despite subsection (2)(c), subsection (1) continues to apply if the commissioner is satisfied the interposed trust did not retain all the ownership interests because 1 or more of the stapled entities ceased to exist other than under an arrangement, a significant purpose of which was to avoid the requirement to retain all the ownership interests for at least 3 years.

(4) If subsection (1) does not apply, the commissioner must make a reassessment to impose landholder duty on the relevant acquisition as if the exemption from duty had never applied.

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(5) Subsection (4) applies to the reassessment despite the limitation period under the Administration Act for reassessments.

Note—

See the Administration Act, part 3, division 3.

(6) If an event mentioned in subsection (2) happens, the acquirer under the relevant acquisition must, within 28 days after the event happens—

(a) give notice of the event to the commissioner in the approved form; and

(b) ensure the instruments required for the assessment of duty on the acquisition are lodged for reassessment.

Note—

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

(7) Without limiting subsection (3), a company registered under the Corporations Act ceases to exist if it is deregistered under that Act.

194 Exemption—if transfer duty not imposed

(1) This section applies for a relevant acquisition that would be a dutiable transaction if marketable securities were dutiable property under chapter 2.

(2) Landholder duty is not imposed on the acquisition if transfer duty would not be imposed on the dutiable transaction 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.

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194A Exemption—marketable securities

Landholder duty is not imposed on a relevant acquisition that is a transfer, or agreement for the transfer, of a marketable security to or from a corporation if—

(a) the corporation is—

(i) a financial institution; or

(ii) a 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; and

(b) the corporation's principal business is to hold property as trustee or nominee for another person; and

(c) whichever of the following is relevant applies—

(i) for a transfer to the corporation—

(A) the property is to be held on trust solely for the transferor; and

(B) the transfer is not part of an arrangement under which the security will be held on trust for another person;

(ii) 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.

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

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

(a) the land-holdings of a landholder 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; and

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(b) the commissioner is satisfied the acquisition would not have been part of an arrangement to avoid the imposition of landholder 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 landholder 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 landholder duty

197 When commissioner must make reassessment

(1) The commissioner must make a reassessment of landholder duty imposed for a relevant acquisition if—

(a) at the time of the relevant acquisition, the landholder's land-holdings included—

(i) land the subject of—

(A) a sale agreement that was later completed; or

(B) a purchase agreement that was not completed; or

(ii) land-holdings of a trustee of a trust that was a subsidiary of the landholder because of—

(A) a trust interest sale agreement that was later completed; or

(B) a trust interest purchase agreement that was not completed; and

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(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 landholder duty.

(2) Also, the commissioner must make a reassessment of landholder duty imposed for a relevant acquisition if at the time of the relevant acquisition a person is taken to have acquired an interest in a landholder under an agreement to acquire the interest but the agreement is not completed.

(3) When reassessing landholder duty under subsection (1), the commissioner must disregard the land mentioned in the subsection in—

(a) deciding whether the entity in which the acquisition is made is a landholder; and

(b) working out the dutiable value of the relevant acquisition.

(4) When reassessing the landholder 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 landholder duty statement for the acquisition.

(6) Subsection (1) or (2) applies to the reassessment despite the limitation period under the Administration Act for reassessments.

Note—

See the Administration Act, part 3 (Assessments of tax), division 3 (Reassessments).

(7) In this section—

trust interest purchase agreement see section 166.

trust interest sale agreement see section 166.

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Division 7 Enforcement

Subdivision 1 Charges

198 Charge over land for unpaid landholder duty

(1) This section applies if landholder duty is not paid by the date by which the duty must be paid.

(2) The liability to pay the outstanding amount of landholder duty is a first charge on land owned by the landholder concerned in the relevant acquisition for which the landholder duty is payable and any subsidiary of the landholder.

(3) The commissioner may lodge, under the Administration Act, part 4, division 5, a request to register the charge over stated land owned by the landholder or its subsidiary.

(4) The charge has priority over all other encumbrances over the land.

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 landholder 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 landholder duty and the owner of the land of the commissioner's intention to apply to the Supreme Court for

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an order to sell the land unless the outstanding amount of landholder 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 landholder 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 the outstanding amount of landholder duty under the Administration Act, section 42;

(d) fourth, in payment of amounts secured by a security interest or charge on the land recorded before the charge mentioned in section 200(1)(a), unless the land is sold subject to the security interest or charge;

(e) fifth, any balance must be applied as the court orders.

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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 Landholder 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(d) is a debt payable to the entity or subsidiary that previously owned the land by the persons liable to pay the landholder duty for which the order was made.

(2) The entity 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.

Notes—

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

2 Additional foreign acquirer duty is imposed on particular relevant acquisitions under chapter 4.

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(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

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

Note—

Section 498 includes provision about references to dutiable property.

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

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(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 and trust interests

(1) For a corporate trustee, contracted property is taken to be dutiable property held by the corporate trustee.

(1A) If a corporate trustee has made a purchase or sale agreement for a trust interest, the corporate trustee is taken to have an indirect interest in the trust-related dutiable property.

(2) For determining the dutiable value of a relevant acquisition—

(a) a sale agreement made by the corporate trustee is taken not to have been made; and

(b) a purchase agreement made by the corporate trustee is taken to have been completed.

(3) Subsection (3A) applies if—

(a) contracted property, or an indirect interest in dutiable property mentioned in subsection (1A), is included in determining the dutiable value of a relevant acquisition; and

(b) the sale agreement for the property or trust interest is later completed or the purchase agreement for the property or trust interest is later rescinded.

(3A) The commissioner must make a reassessment as if the contracted property or indirect interest were never held by the corporate trustee.

(4) For the reassessment, the acquirer under the relevant acquisition must lodge the corporate trustee duty statement for the acquisition.

(5) In this section—

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purchase agreement includes an uncompleted agreement, whether or not conditional, for the acquisition of a trust interest through which the corporate trustee would have, if the agreement were completed, an indirect interest in dutiable property (the ***trust-related dutiable property***).

sale agreement includes an uncompleted agreement, whether or not conditional, for the sale of a trust interest through which the corporate trustee has an indirect interest in dutiable property (also the ***trust-related dutiable property***).

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 the rate stated in schedule 3, column 2, opposite the dutiable value relating to the dutiable 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.

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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—

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

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.

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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—

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

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.

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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.

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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

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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; and

(b) any indirect interest in dutiable property held on trust by the corporate trustee.

Notes—

1 Under section 213(1), dutiable property includes contracted property. Also, under section 213(1A), the corporate trustee may be taken to hold an indirect interest in dutiable property through a trust interest that is the subject of a purchase or sale agreement.

2 See section 14 (What is the *unencumbered value* of property).

(2) For subsection (1)(b), the unencumbered value of an indirect interest of a corporate trustee under section 210(a) is the

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amount worked out by applying to the unencumbered value of 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.

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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.

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(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 lodgement 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—

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(a) the trust of which the corporate trustee is trustee is established and maintained primarily for the benefit of the members of a particular family or a 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) A trust is established and maintained primarily for the benefit of the members of a particular family or a family company if—

(a) the primary beneficiaries of the trust consist only of members of the family or the family company; and

(b) the takers in default of an appointment for capital by the trustee of the trust consist only of members of the family or the family company.

(3) However, subsection (2)(b) is taken to be satisfied if the last taker in default of an appointment for capital by the trustee of the trust is—

(a) a person decided under the *Succession Act 1981*; or

(b) a charitable institution.

(4) For applying this section, a person (the ***first person***) is a member of the particular family of another person (the ***other person***) if—

(a) the first person is the spouse of the other person; or

(b) the first person, or the first person's spouse, is any of the following in relation to the other person, or the other person's spouse—

(i) child, stepchild or adopted child;

(ii) grandchild or great grandchild;

(iii) brother, sister, aunt, uncle or cousin;

(iv) parent, step-parent, adoptive parent, grandparent or great grandparent.

(5) In this section—

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

spouse includes former spouse.

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.

Division 7 Deductions and reassessments

227 Deduction—interstate transfer duty for shares

(1) This section applies if—

(a) interstate 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; 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 the interstate transfer duty.

(3) In this section—

interstate transfer duty means a duty in another State equivalent to transfer duty under this Act.

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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(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 Additional foreign acquirer duty

Part 1 Preliminary

230 Relevant transactions

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

(a) dutiable transactions on which transfer duty is imposed under chapter 2;

(b) relevant acquisitions on which landholder duty or corporate trustee duty is imposed under chapter 3.

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231 Imposition of AFAD

(1) This chapter imposes an additional amount of transfer duty, landholder duty or corporate trustee duty on particular relevant transactions.

(2) The additional amount of duty is ***additional foreign acquirer duty*** or ***AFAD***.

(3) Part 3 provides for when AFAD is imposed on a relevant transaction.

Note—

An exemption for AFAD is dealt with in part 4A.

(4) Part 4 provides for how AFAD is calculated.

(5) The AFAD imposed on a relevant transaction is added to the duty imposed on the transaction under chapter 2 or 3.

(6) To remove any doubt, it is declared that, unless the contrary intention appears—

(a) a reference in this Act to transfer duty is a reference to duty imposed under chapter 2 and AFAD relating to transfer duty imposed under this chapter; and

(b) a reference in this Act to landholder duty is a reference to duty imposed under chapter 3, part 1 and AFAD relating to landholder duty imposed under this chapter; and

(c) a reference in this Act to corporate trustee duty is a reference to duty imposed under chapter 3, part 2 and AFAD relating to corporate trustee duty imposed under this chapter.

Part 2 Some basic concepts for AFAD

232 What is *AFAD residential land*

(1) ***AFAD residential land*** is land in Queensland—

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(a) that is, or will be, solely or primarily used for residential purposes; and

(b) to which any of the following applies—

(i) on the land there is, or will be constructed, a building designed or approved by a local government for human habitation by a single family unit;

(ii) on the land there is a building that a person will refurbish, renovate or extend so it becomes a building mentioned in subparagraph (i);

(iii) the land is a lot on which there is a building or a part of a building that, for the separate area the lot comprises, is designed or approved by a local government for human habitation by a single family unit;

(iv) the land will be a lot on which there is a building or a part of a building that, for the separate area the lot comprises, is designed or approved by a local government for human habitation by a single family unit;

(v) the land is a lot on which there will be a building or a part of a building that, for the separate area the lot comprises, is designed or approved by a local government for human habitation by a single family unit;

(vi) a person is undertaking, or will undertake, development of the land so it becomes land mentioned in any of subparagraphs (i) to (v).

(2) For the purpose of imposing AFAD relating to transfer duty, a reference to AFAD residential land includes a reference to a chattel in Queensland if—

(a) the chattel and the land are included in the same dutiable transaction under section 29 or 30, whether or not the chattel is the subject of a separate agreement for transfer; and

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(b) the use of the chattel can be directly linked to, or is incidental to, the use and occupation of the land.

233 Who is an *acquirer*

(1) For the purpose of imposing AFAD relating to transfer duty on a dutiable transaction, a person is an ***acquirer*** if the person is—

(a) for a dutiable transaction mentioned in section 9(1)(a) or (b)—a transferee of the dutiable property under the transaction; or

(b) for a dutiable transaction mentioned in section 9(1)(c) to (e)—a person who, under the transaction, acquires the dutiable property; or

(c) for a dutiable transaction mentioned in section 9(1)(f)—a person who, under the transaction, acquires the new right; or

(d) for a dutiable transaction mentioned in section 9(1)(g)—a person who, under the transaction, acquires a partnership interest; or

(e) for a dutiable transaction mentioned in section 9(1)(h) that is the creation of a trust of dutiable property—a person who, under the transaction, starts to hold the dutiable property in a way mentioned in section 53; or

(f) for a dutiable transaction mentioned in section 9(1)(h) that is the termination of a trust of dutiable property—a person who, under the transaction, starts to hold the dutiable property other than as trustee; or

(g) for a dutiable transaction mentioned in section 9(1)(i) that is a trust acquisition—a person who makes a trust acquisition under the transaction; or

(h) for a dutiable transaction mentioned in section 9(1)(i) that is a trust surrender—a person who is a trustee of the trust in which, under the transaction, the trust interest is surrendered; or

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(i) for a dutiable transaction mentioned in paragraph (a) to (h)—a partner in a partnership in which any of the other partners is (in the capacity of a partner) a person mentioned in the paragraph.

(2) For the purpose of imposing AFAD relating to landholder duty on a relevant acquisition, a person is an ***acquirer*** if the person is—

(a) a person who makes the relevant acquisition under the transaction; or

(b) if a person makes a relevant acquisition because interests are aggregated under section 158(1)(b)(ii), the person or a related person of the person; or

(c) a partner in a partnership in which any of the other partners is (in the capacity of a partner) a person mentioned in paragraph (a) or (b).

(3) For the purpose of imposing AFAD relating to corporate trustee duty on a relevant acquisition, a person is an ***acquirer*** if the person—

(a) makes the relevant acquisition under the transaction; or

(b) is a partner in a partnership in which any of the other partners (in the capacity of a partner) makes the relevant acquisition under the transaction.

(4) In this section—

related person see section 164.

234 Who is a *foreign person*

Each of the following is a ***foreign person***—

(a) a foreign individual;

(b) a foreign corporation;

(c) the trustee of a foreign trust.

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235 Who is a *foreign individual*

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

236 What is a *foreign corporation*

(1) Each of the following is a ***foreign corporation***—

(a) a corporation incorporated outside Australia;

(b) a corporation in which foreign persons have a controlling interest.

(2) A corporation is taken to be a corporation mentioned in subsection (1)(b) if, taking their interests together, 1 or more persons who are foreign persons or related persons of foreign persons—

(a) are in a position to control at least 50% of the voting power in the corporation; or

(b) are in a position to control at least 50% of the potential voting power in the corporation; or

(c) have an interest in at least 50% of the issued shares in the corporation.

(3) In this section—

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

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

237 What is a *foreign trust*

(1) A trust is a ***foreign trust*** if at least 50% of the trust interests in the trust are foreign interests.

(2) In this section—

foreign interest means—

(a) a trust interest of a foreign individual; or

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

(c) a trust interest of a trustee of a foreign trust; or

(d) a trust interest held by a related person of a person mentioned in paragraph (a) to (c).

238 Who are *related persons*

Persons are ***related persons*** if they are—

(a) related persons under section 61; or

(b) partners in a partnership.

239 Property held by partnership or trust

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

Part 3 Liability for AFAD

240 Conditions for imposing AFAD

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

(a) the property condition under section 241 applies; and

(b) an acquirer under the transaction is a foreign person.

(2) Also, AFAD is imposed on a relevant transaction that is an agreement for the transfer of dutiable property if—

(a) the commissioner is satisfied—

(i) a person (the ***agent***) is appointed in writing as an agent for another person (the ***principal***); and

(ii) under the appointment, the agent enters into the agreement for the transfer of the dutiable property

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from a person to the agent on behalf of the principal (the ***agreement***); and

(iii) the principal provided all the consideration, including any deposit paid; and

(b) at the time the liability for transfer duty on the agreement arises—

(i) the property condition under section 241 applies; and

(ii) AFAD is not imposed on the agreement under subsection (1); and

(iii) the principal is a foreign person.

(3) For subsection (2)(a)(i), 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.

241 Property condition for imposing AFAD

(1) This section states the property condition for section 240.

(2) If the relevant transaction is a dutiable transaction, the property condition is that—

(a) for a dutiable transaction mentioned in section 9(1)(a) to (e) or (h) for dutiable property other than an existing right—the dutiable property is AFAD residential land; or

(b) for a dutiable transaction mentioned in section 9(1)(a) to (e) or (h) for dutiable property that is an existing right—the existing right is—

(i) AFAD residential land; or

(ii) an existing right mentioned in schedule 6, definition *existing right*, paragraph (g) or (i) to (m) for which the dutiable property is AFAD residential land; or

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(c) for a dutiable transaction mentioned in section 9(1)(f)—the new right is—

(i) AFAD residential land; or

(ii) a new right mentioned in schedule 6, definition *new right*, paragraph (c) for which the dutiable property is AFAD residential land; or

(d) for a dutiable transaction mentioned in section 9(1)(g)—the partnership acquisition is an acquisition of a partnership interest in a partnership that—

(i) holds dutiable property that is AFAD residential land; or

(ii) has an indirect interest in dutiable property that is AFAD residential land; or

(e) for a dutiable transaction mentioned in section 9(1)(i)—the trust acquisition or trust surrender is an acquisition or surrender of a trust interest in a trust that—

(i) holds dutiable property that is AFAD residential land; or

(ii) has an indirect interest in dutiable property that is AFAD residential land.

(3) If the relevant transaction is a relevant acquisition, the property condition is that—

(a) for landholder duty—the landholder has land-holdings that include AFAD residential land; or

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

241A Imposition of AFAD—pre-incorporation contracts

(1) This section applies if—

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(a) a transferee enters into an agreement for the transfer of dutiable property 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; and

(e) the dutiable property is AFAD residential land; and

(f) the company is a foreign corporation when the dutiable property is transferred to it.

(2) AFAD is imposed on the dutiable transaction that is the agreement.

Note—

Under section 116(4), transfer duty is not imposed on the transfer of the dutiable property to the company if transfer duty imposed on the agreement (including AFAD imposed under subsection (2)) is paid. See also section 231(6).

Part 4 Calculating AFAD

242 Definitions for pt 4

In this part—

foreign acquirer means an acquirer who is a foreign person.

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

Example—

Under a relevant transaction that is a relevant acquisition on which landholder duty is imposed, person A (a foreign acquirer) and person B (not a foreign acquirer) each acquire a 45% interest in a public

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landholder. The proportion of person A's share under the transaction is 50% (a 45% interest of a total interest of 90% acquired under the transaction). Person A's foreign acquirer's interest is therefore 50%.

243 Non-application of concessions

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

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

244 AFAD for transfer duty

(1) This section applies if, under part 3, AFAD relating to transfer duty is imposed on a dutiable transaction.

(2) AFAD is imposed at the rate of 8% on the following amount—

(a) for a dutiable transaction under section 9(1)(a) to (e) or (h) for dutiable property other than an existing right—the dutiable value of the transaction to the extent of the foreign acquirer's interest in the AFAD residential land that is the subject of the transaction;

(b) for a dutiable transaction under section 9(1)(a) to (e) or (h) for dutiable property that is an existing right—the dutiable value of the transaction to the extent of the foreign acquirer's interest in the existing right mentioned in section 241(2)(b) that is the subject of the transaction;

(c) for a dutiable transaction under section 9(1)(f)—the dutiable value of the transaction to the extent of the foreign acquirer's interest in the new right mentioned in section 241(2)(c) that is the subject of the transaction;

(d) for a dutiable transaction under section 9(1)(g) or (i)—the dutiable value of the transaction—

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(i) to the extent the partnership acquisition, trust acquisition or trust surrender relates to AFAD residential land; and

(ii) to the extent of the foreign acquirer's interest in the partnership acquisition, trust acquisition or trust surrender.

(3) However, if AFAD is imposed on a dutiable transaction under section 240(2) or 241A, AFAD is imposed at the rate of 8% on the dutiable value of the transaction to the extent of the acquirer's interest in—

(a) the AFAD residential land that is the subject of the transaction; or

(b) the existing right mentioned in section 241(2)(b) that is the subject of the transaction.

245 AFAD for landholder duty

(1) This section applies if, under part 3, AFAD relating to landholder duty is imposed on a relevant acquisition.

(2) AFAD is imposed on a relevant acquisition made in a private landholder at the rate of 8% on the dutiable value of the acquisition—

(a) to the extent the dutiable value relates to land-holdings of the landholder that are AFAD residential land; and

(b) to the extent of the foreign acquirer's interest in the relevant acquisition.

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

(4) For subsection (3), in relation to the calculation of transfer duty as mentioned in section 179A—

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(a) the dutiable transaction mentioned in that section is treated as being limited to the transfer of the AFAD residential land; and

(b) the amount of transfer duty that would be imposed on the transaction as mentioned in that section is calculated at the rate of 8%.

245A AFAD for corporate trustee duty

(1) This section applies if, under part 3, AFAD relating to corporate trustee duty is imposed on a relevant acquisition.

(2) AFAD is imposed at the rate of 8% on the dutiable value of a relevant acquisition—

(a) to the extent the dutiable property held on trust by the corporate trustee, or in which the corporate trustee has an indirect interest that is held on trust, is AFAD residential land; and

(b) to the extent of the foreign acquirer's interest in the relevant acquisition.

Part 4AA Concessions for eligible BTR developments

Division 1 Preliminary

245B Application of part

(1) This part applies in relation to a relevant transaction that—

(a) is the transfer, or agreement for the transfer, of dutiable property that is AFAD residential land; and

(b) is entered into on or after 1 July 2023.

(2) However, this part does not apply in relation to a relevant transaction mentioned in subsection (1) if—

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(a) the transfer or agreement replaces a transfer, or an agreement for transfer, that—

(i) included the dutiable property; and

(ii) was made before 1 July 2023; or

(b) the transferee had an option to purchase the dutiable property, or the transferor had an option to require the transferee to purchase the dutiable property, that was granted before 1 July 2023 and exercised on or after 1 July 2023; or

(c) another arrangement was made before 1 July 2023 the sole or main purpose of which was to defer the making of the transfer or agreement until 1 July 2023 or later so a concession under this part would apply in relation to the relevant transaction.

245C Definitions for part

In this part—

acquisition year, in relation to a relevant transaction, means the financial year during which the liability for transfer duty on the relevant transaction arises.

build to rent development see the *Land Tax Act 2010*, section 58D.

completed stage, of a staged development, see the *Land Tax Act 2010*, section 58E(4).

eligible BTR development see the *Land Tax Act 2010*, section 58E.

ineligible to obtain a BTR land tax concession, in relation to land for a financial year, see section 245D(3).

land used for an eligible BTR development, for a financial year, see the *Land Tax Act 2010*, section 58C.

obtains a BTR land tax concession, in relation to land for a financial year, see section 245D(1).

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staged development see the *Land Tax Act 2010*, section 58D(4).

245D When a person *obtains a BTR land tax concession* or is *ineligible to obtain a BTR land tax concession*

(1) A person ***obtains a BTR land tax concession***, in relation to land for a financial year, if the person's liability under the *Land Tax Act 2010* for land tax for the financial year is assessed on the basis that a concession under section 58B of that Act applies in relation to the land.

Note—

See the *Land Tax Act 2010*, section 7 for when a liability for land tax arises.

(2) To remove any doubt, it is declared that subsection (1) does not apply if the person's liability for the financial year is later reassessed under the *Land Tax Act 2010*, part 6A, division 5 on the basis that the concession under section 58B of that Act does not apply in relation to the land.

(3) A person is ***ineligible to obtain a BTR land tax concession***, in relation to land for a financial year, if the person's liability under the *Land Tax Act 2010* for land tax for the financial year would be assessed on the basis that a concession under section 58B of that Act does not apply in relation to the land, whether or not—

(a) a liability for land tax for the financial year has arisen; or

(b) the time for making an assessment has arisen.

245E Particular references to land, acquirer and land used for an eligible BTR development

(1) In this part—

(a) a reference to the land, in relation to a relevant transaction, is a reference to the land the subject of the relevant transaction; and

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(b) a reference to the acquirer, in relation to a relevant transaction, is a reference to the acquirer under the relevant transaction.

(2) Also, a reference in this part to land used for an eligible BTR development at a particular time, rather than for a financial year, is a reference to land to which both of the following apply—

(a) the land is land used for an eligible BTR development for the financial year during which the particular time occurs;

(b) during the period starting at midnight on 30 June immediately preceding the particular time and ending at the particular time, nothing has happened that would prevent the land being land used for an eligible BTR development for the financial year starting on the next 1 July.

Examples of matters that would prevent the land being land used for an eligible BTR development for the financial year starting on the next 1 July—

1 During the period mentioned in paragraph (b), the percentage of dwellings in the eligible BTR development that are discounted rent dwellings within the meaning of the *Land Tax Act 2010* is less than 10% for more than 30 days.

2 During the period mentioned in paragraph (b), the dwellings in the eligible BTR development cease to be managed in compliance with the *Land Tax Act 2010*, section 58M.

Division 2 Concessions

245F Concession—land to be used for eligible BTR development

(1) This section applies for calculating the amount of AFAD imposed under this chapter on a relevant transaction if—

(a) at the time the liability for transfer duty on the relevant transaction arises, a build to rent development is not located on the land; and

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(b) the acquirer is a foreign acquirer; and

(c) the acquirer will—

(i) construct a build to rent development on the land on or before 30 June 2030; and

Note—

See the *Land Tax Act 2010*, section 58D for the period during which a building must become suitable for occupation to be a build to rent development and for the modification of that requirement for a staged development.

(ii) use the land and the build to rent development in a way that makes the acquirer eligible to obtain a BTR land tax concession in relation to the land for at least 5 consecutive financial years; and

(d) the acquirer will not transfer or subdivide the land before the acquirer—

(i) has obtained a BTR land tax concession in relation to the land for any financial year; or

(ii) has obtained a BTR land tax concession in relation to the land for at least 5 consecutive financial years.

(2) To the extent of the foreign acquirer's interest under the relevant transaction, the dutiable value of the dutiable property must be discounted by 100%.

245G Concession—land used for eligible BTR development

(1) This section applies for calculating the amount of AFAD imposed under this chapter on a relevant transaction if—

(a) at the time the liability for transfer duty on the relevant transaction arises—

(i) the land is land used for an eligible BTR development; and

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(ii) if the eligible BTR development is a staged development—each stage of the development is a completed stage; and

(b) the transferor obtained a BTR land tax concession in relation to the land for the financial year before the acquisition year; and

(c) the acquirer is a foreign acquirer; and

(d) the acquirer will use the land and the eligible BTR development in a way that makes the acquirer eligible to obtain a BTR land tax concession in relation to the land for at least 5 consecutive financial years; and

(e) the acquirer will not transfer or subdivide the land before the acquirer has obtained a BTR land tax concession in relation to the land for at least 5 consecutive financial years.

(2) To the extent of the foreign acquirer's interest under the relevant transaction, the dutiable value of the dutiable property must be discounted by 100%.

Division 3 Applications for concessions and rulings

245H Application for concession

(1) An application for a concession under division 2 for AFAD on a relevant transaction must be made in the approved form.

(2) The application must be made—

(a) when the instrument that effects or evidences the relevant transaction is lodged for assessment; or

(b) when the acquirer first applies under the *Land Tax Act 2010*, section 58S to have the acquirer's liability for land tax for a financial year assessed on the basis that the land is land used for an eligible BTR development for the financial year.

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245I Application for ruling about concession

(1) This section applies if—

(a) a person proposes—

(i) to be a party to a transaction that would be a relevant transaction to which this part applies; and

(ii) to construct a build to rent development on the land on or before 30 June 2030 and use the land and the build to rent development in the way mentioned in section 245F(1)(c)(ii); and

(b) the person has applied under the *Land Tax Act 2010*, section 58T for a ruling on whether, if the proposed development is carried out, the person's liability for land tax for a financial year will be assessed on the basis that a concession under section 58B of that Act applies in relation to the land.

(2) The person may apply to the commissioner for a ruling on whether, if the proposed development is carried out, the concession under section 245F will apply in relation to the relevant transaction.

(3) The application must—

(a) be in the approved form; and

(b) be supported by enough information to enable the commissioner to make a ruling.

(4) The commissioner must give the applicant notice of the commissioner's ruling on the application.

245J Effect of ruling about concession

(1) This section applies if the commissioner has, on an application for a ruling under section 245I, decided that a relevant transaction will be assessed on the basis that the concession under section 245F will apply in relation to the transaction.

(2) The commissioner must, on an application under section 245H for a concession under section 245F, decide to

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assess the relevant transaction on the basis that the concession under section 245F applies in relation to the transaction.

(3) However, subsection (2) does not apply if—

(a) the information given with the application for the concession differs in a material particular from the information given with the application for the ruling; or

(b) the circumstances existing at the time the application for the concession is made are materially different from the circumstances existing at the time the application for the ruling was made; or

(c) the information given with the application for the ruling was false or misleading in a material particular; or

(d) both of the following apply—

(i) after the ruling is made but before the application for the concession is decided, a legislative change takes effect, a judgment of a court is given or a decision by QCAT is made;

(ii) the legislative change, judgment or decision would, if it had taken effect or been given or made before the ruling was made, have materially affected the ruling made by the commissioner.

(4) In this section—

information includes a document.

Division 4 Reassessment provisions

245K Reassessment—application for AFAD concession made with application for land tax concession

(1) This section applies if—

(a) an application is made under section 245H, at the time mentioned in section 245H(2)(b), for a concession for AFAD on a relevant transaction; and

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(b) the commissioner decides the concession applies in relation to the relevant transaction.

(2) The commissioner must make a reassessment of the relevant transaction on the basis that the concession is applied in relation to the transaction.

(3) Subsection (2) applies despite the limitation period under the Administration Act for reassessments.

Note—

See the Administration Act, part 3 (Assessments of tax), division 3 (Reassessments).

245L Reassessment—avoidance arrangement

(1) This section applies if the commissioner is satisfied an acquirer under a relevant transaction has entered into an arrangement, whether in writing or otherwise, to circumvent limitations on, or requirements affecting, eligibility for a concession under division 2.

(2) The commissioner may make a reassessment to impose AFAD on the relevant transaction, to the extent of the acquirer's interest in the dutiable property, on the basis that the acquirer was not entitled to the concession.

245M Reassessment—noncompliance with requirements for AFAD concession under s 245F

(1) This section applies if AFAD is not imposed on a relevant transaction only because a concession under section 245F is applied in relation to the transaction.

(2) The commissioner must make a reassessment under subsection (3) if the commissioner is satisfied any of the following circumstances apply in relation to the land—

(a) the acquirer does not construct a build to rent development on the land on or before 30 June 2030;

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Note—

See the *Land Tax Act 2010*, section 58D for the period during which a building must become suitable for occupation to be a build to rent development and for the modification of that requirement for a staged development.

(b) the acquirer transfers or subdivides the land before the acquirer has obtained a BTR land tax concession in relation to the land for any financial year;

(c) if the acquirer has not obtained a BTR land tax concession in relation to the land for any financial year before the 2032–2033 financial year—the acquirer does not obtain a BTR land tax concession in relation to the land for the 2032–2033 financial year;

(d) if the acquirer has not obtained a BTR land tax concession in relation to the land for any financial year—an event happens, or does not happen, as a result of which the acquirer is ineligible to obtain a BTR land tax concession in relation to the land for any financial year;

(e) if the acquirer first obtains a BTR land tax concession in relation to the land for the 2032–2033 financial year or an earlier financial year (in either case the ***first concession year***)—

(i) an event happens, or does not happen, as a result of which the acquirer is ineligible to obtain a BTR land tax concession in relation to the land for any 1 of the 4 financial years following the first concession year; or

(ii) the acquirer transfers or subdivides the land before the acquirer has obtained a BTR land tax concession in relation to the land for at least 5 consecutive financial years.

(3) The commissioner must make a reassessment to impose AFAD on the relevant transaction as if, at the time the liability for transfer duty on the transaction arose, the concession did not apply in relation to the transaction.

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(4) For subsection (3), the circumstance mentioned in subsection (2)(c) is taken to apply if the acquirer does not make an application under the *Land Tax Act 2010*, section 58S in relation to the land for the 2032–2033 financial year within the period mentioned in section 58S(2)(b) of that Act.

(5) The reassessment must be made—

(a) for a circumstance mentioned in subsection (2)(a)—on or before 30 June 2035; or

(b) for a circumstance mentioned in subsection (2)(b), (c) or (d)—on or before 30 June 2037; or

(c) for a circumstance mentioned in subsection (2)(e)(i) or (ii)—within 5 years after the end of the last financial year for which the acquirer obtains a BTR land tax concession in relation to the land.

(6) This section applies despite the limitation period under the Administration Act for reassessments.

Note—

See the Administration Act, part 3 (Assessments of tax), division 3 (Reassessments).

245N Reassessment—noncompliance with requirements for AFAD concession under s 245G

(1) This section applies if AFAD is not imposed on a relevant transaction only because a concession under section 245G is applied in relation to the transaction.

(2) The commissioner must make a reassessment under subsection (3) if the commissioner is satisfied any of the following circumstances apply in relation to the land—

(a) the acquirer transfers or subdivides the land during the acquisition year;

(b) a reassessment is made under the *Land Tax Act 2010*, part 6A, division 5 of the acquirer's liability for land tax for a financial year because—

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(i) a reassessment has been made under that division of the transferor's liability for land tax for the acquisition year on the basis that the land was not land used for an eligible BTR development for the acquisition year; and

(ii) section 58I of that Act does not apply;

(c) the acquirer will be ineligible to obtain a BTR land tax concession in relation to the land for the financial year immediately following the acquisition year because—

(i) a reassessment has been made under the *Land Tax Act 2010*, part 6A, division 5 of the transferor's liability for land tax for the acquisition year on the basis that the land was not land used for an eligible BTR development for the acquisition year; and

(ii) section 58I of that Act does not apply;

(d) another event happens, or does not happen, as a result of which the acquirer is ineligible to obtain a BTR land tax concession in relation to the land for the financial year immediately following the acquisition year;

(e) if the acquirer obtains a BTR land tax concession in relation to the land for the financial year immediately following the acquisition year (the ***first concession year***)—

(i) an event happens, or does not happen, as a result of which the acquirer is ineligible to obtain a BTR land tax concession in relation to the land for any 1 of the 4 financial years following the first concession year; or

(ii) the acquirer transfers or subdivides the land before the acquirer has obtained a BTR land tax concession in relation to the land for at least 5 consecutive financial years.

(3) The commissioner must make a reassessment to impose AFAD on the relevant transaction as if, at the time the liability for transfer duty on the transaction arose, the concession did not apply in relation to the transaction.

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(4) The reassessment must be made—

(a) for a circumstance mentioned in subsection (2)(a) or (d)—within 5 years after the end of the acquisition year; or

(b) for a circumstance mentioned in subsection (2)(b) or (c)—within 5 years after an assessment notice is given to the transferor in relation to the reassessment; or

(c) for a circumstance mentioned in subsection (2)(e)(i) or (ii)—within 5 years after the end of the last financial year for which the acquirer obtains a BTR land tax concession in relation to the land.

(5) This section applies despite the limitation period under the Administration Act for reassessments.

Note—

See the Administration Act, part 3 (Assessments of tax), division 3 (Reassessments).

Division 5 Notice requirements

245O Application of division

This division applies if AFAD is not imposed on a relevant transaction because a concession under division 2 is applied in relation to the transaction.

245P Notice of particular decisions about future use of land

(1) This section applies if the acquirer decides not to use the land for the purpose, or otherwise in the way, proposed when the concession was applied in relation to the relevant transaction.

(2) Without limiting subsection (1), each of the following is a decision for this section—

(a) a decision not to construct a build to rent development on the land;

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(b) a decision to construct a build to rent development on the land of a smaller scale than the development originally proposed;

(c) if the land is land used for an eligible BTR development that is a staged development and at least 1 stage of the development is not a completed stage—

(i) a decision not to proceed with the stage; or

(ii) a decision to change the nature of the stage;

(d) a decision to transfer or subdivide the land.

(3) Within 1 month after making the decision, the acquirer must give the commissioner notice in the approved form of the decision.

Note—

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

(4) However, subsection (3) does not apply in relation to a decision mentioned in subsection (2)(d) if, when the decision is made, the acquirer has obtained a BTR land tax concession in relation to the land for at least 5 consecutive financial years.

(5) If the acquirer gives notice under this section of a decision for which the acquirer is also required to give notice under the *Land Tax Act 2010*, section 58ZA, the acquirer is taken to have complied with that section in relation to the decision.

245Q Notice of particular circumstances applying to land—concession under s 245F

(1) This section applies if—

(a) the concession is applied under section 245F; and

(b) any of the circumstances mentioned in section 245M apply in relation to the land.

(2) Within 1 month after the circumstance starts to apply in relation to the land, the acquirer must—

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(a) give the commissioner notice in the approved form of the application of the circumstance; and

(b) ensure the instruments required for the assessment of duty for the relevant transaction are lodged for a reassessment of duty on the transaction.

Note—

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

245R Notice of particular circumstances applying to land—concession under s 245G

(1) This section applies if—

(a) the concession is applied under section 245G; and

(b) any of the circumstances mentioned in section 245N apply in relation to the land.

(2) Within 1 month after the circumstance starts to apply in relation to the land, the acquirer must—

(a) give the commissioner notice in the approved form of the application of the circumstance; and

(b) ensure the instruments required for the assessment of duty for the relevant transaction are lodged for a reassessment of duty on the transaction.

Note—

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

Division 6 Record-keeping requirements

245S Requirement to keep particular records

(1) This section applies if, on an application under section 245H, the commissioner assesses a relevant transaction on the basis

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that a concession under division 2 applies in relation to the transaction.

(2) The acquirer must keep records that show—

(a) for a concession under section 245F—

(i) when the acquirer satisfies the condition mentioned in section 245F(1)(c)(i); and

(ii) the acquirer's continued satisfaction of the condition mentioned in section 245F(1)(c)(ii); or

(b) for a concession under section 245G—the acquirer's continued satisfaction of the condition mentioned in section 245G(1)(d).

Note—

See the Administration Act, section 118 (Period for keeping records).

Part 4A Exemption

246 Exemption—specified foreign retirees

(1) AFAD is not imposed on a relevant transaction to the extent of a relevant acquirer's interest in dutiable property under the transaction if—

(a) the transaction is the transfer, or agreement for transfer, of the property; and

(b) at the time the liability for transfer duty on the transaction arises—

(i) the relevant acquirer is a specified foreign retiree; and

(ii) the property is AFAD residential land; and

(iii) the relevant acquirer's interest in the property is not held on trust; and

(c) the relevant acquirer will occupy a residence on the land as the acquirer's principal place of residence—

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(i) for a residence on the land at the time the liability for transfer duty on the transaction arises—within 1 year after the day on which the acquirer is entitled to possession of the land under the transaction; or

(ii) otherwise—within 2 years after the day on which the acquirer is entitled to possession of the land under the transaction.

(2) In this section—

class of visa means a class of visa under the *Migration Act 1958* (Cwlth), section 31.

interest, of a relevant acquirer in dutiable property under a relevant transaction, means the proportion that the share of the acquirer under the transaction bears to the total of the shares of all acquirers under the transaction.

relevant acquirer, of dutiable property, means—

(a) for the transfer, or agreement for the transfer, of dutiable property under a dutiable transaction—a transferee of the property; or

(b) for an agreement for the transfer of dutiable property entered into by an agent on behalf of a principal within the meaning of section 240(2)(a)—the principal for the property.

specified foreign retiree means—

(a) a foreign individual who holds a class of visa referred to as a Subclass 405 (Investor Retirement) visa or Subclass 410 (Retirement) visa; or

(b) a foreign individual—

(i) who applied on or after 8 May 2018 for a class of visa referred to as a Subclass 103 (Parent) visa or Subclass 143 (Contributory Parent) visa; and

(ii) whose last substantive visa, held before making the application, was the class of visa mentioned in paragraph (a); and

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(iii) whose application has not been decided.

substantive visa see the *Migration Act 1958* (Cwlth), section 5.

Part 5 Reassessments

Note—

See also the reassessment provisions in part 4AA, division 4 relating to concessions for eligible BTR developments.

Division 1 Reassessments—general

246A Reassessment if corporation or trust becomes foreign

(1) This section applies if AFAD is not imposed on a relevant transaction only because an acquirer under the transaction is not a foreign person.

(2) The commissioner must make a reassessment under subsection (3) if—

(a) within 3 years after the time the liability for transfer duty, landholder duty or corporate trustee duty on the transaction arose, a corporation that was an acquirer under the transaction becomes a foreign corporation; or

(b) both of the following apply—

(i) a person was an acquirer under the transaction in the person's capacity as trustee;

(ii) within 3 years after the time the liability for transfer duty, landholder duty or corporate trustee duty on the transaction arose, the trust becomes a foreign trust.

(3) The commissioner must make a reassessment to impose AFAD on the transaction as if, at the time the liability for

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transfer duty, landholder duty or corporate trustee duty on the transaction arose, the acquirer was a foreign person.

(4) Within 28 days after an event mentioned in subsection (2)(a) or (b)(ii) happens, the corporation or trustee of the trust must—

(a) give notice in the approved form to the commissioner; and

(b) ensure the instruments required for the assessment of duty on the transaction are lodged for a reassessment of duty on the transaction.

Note—

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

(5) The commissioner is not required to make a reassessment under subsection (3) if the commissioner is required to make a reassessment under section 246AC.

Division 2 Reassessments relating to agency-related agreements

246AA Application of division

(1) This division applies 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.

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(2) For subsection (1)(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.

246AB Reassessment if principal not foreign person at time of transfer

(1) This section applies if—

(a) the commissioner is satisfied transfer duty imposed on the agreement is paid; and

(b) AFAD is imposed on the agreement, including on a reassessment under section 246AC, because the agent is a foreign person; and

(c) the dutiable property is later transferred to the principal by the original transferor or the agent; and

(d) at the time of the later transfer of the dutiable property, the principal is not a foreign person.

(2) The principal may lodge an application for a reassessment in the approved form within 6 months after the dutiable property is later transferred to the principal.

(3) The principal must lodge the agreement with the application.

(4) The commissioner must make a reassessment of transfer duty on the agreement as if, at the time the liability for transfer duty arose, the acquirer was not a foreign person.

246AC Reassessment if agent or principal becomes foreign person before transfer

(1) This section applies if—

(a) AFAD is not imposed on the agreement only because the agent is not a foreign person and the principal is not a foreign person; and

(b) the dutiable property has not been transferred to the principal by the original transferor or the agent.

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(2) The commissioner must make a reassessment under subsection (3) if any of the following events happen—

(a) the agent was a corporation and within 3 years after the time the liability for transfer duty on the agreement arose the agent becomes a foreign corporation;

(b) the agent acted in the agent's capacity as trustee and within 3 years after the time the liability for transfer duty on the agreement arose the trust becomes a foreign trust;

(c) the principal was a corporation and within 3 years after the time the liability for transfer duty on the agreement arose the principal becomes a foreign corporation;

(d) the principal acted in the principal's capacity as trustee and within 3 years after the time the liability for transfer duty on the agreement arose the trust becomes a foreign trust.

(3) The commissioner must make a reassessment to impose AFAD on the agreement as if, at the time the liability for transfer duty on the agreement arose—

(a) for a reassessment because an event mentioned in subsection (2)(a) or (b) happens—the acquirer was a foreign person; or

(b) otherwise—the agent was not a foreign person but the principal was a foreign person.

(4) Within 28 days after an event mentioned in subsection (2)(a) to (d) happens, the corporation or trustee of the trust must—

(a) give notice in the approved form to the commissioner; and

(b) ensure the instruments required for the assessment of duty on the agreement are lodged for a reassessment of duty on the agreement.

Note—

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

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246AD Reassessment if principal becomes foreign person after transfer

(1) This section applies if—

(a) the dutiable property has been transferred to the principal by the original transferor or the agent; and

(b) AFAD is not imposed on the agreement, including on a reassessment under section 246AB, only because the agent is not a foreign person and the principal is not a foreign person.

(2) The commissioner must make a reassessment under subsection (3) if—

(a) the principal was a corporation and within 3 years after the time the liability for transfer duty on the agreement arose the principal becomes a foreign corporation; or

(b) both of the following apply—

(i) the principal acted in the principal's capacity as trustee;

(ii) within 3 years after the time the liability for transfer duty on the agreement arose the trust becomes a foreign trust.

(3) The commissioner must make a reassessment to impose AFAD on the agreement as if, at the time the liability for transfer duty on the agreement arose, the agent was not a foreign person but the principal was a foreign person.

(4) Within 28 days after an event mentioned in subsection (2)(a) or (b)(ii) happens, the corporation or trustee of the trust must—

(a) give notice in the approved form to the commissioner; and

(b) ensure the instruments required for the assessment of duty on the agreement are lodged for a reassessment of duty on the agreement.

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Note—

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

Division 3 Reassessments relating to pre-incorporation contracts

246AE Reassessment of pre-incorporation contract—company is foreign corporation when property is transferred

(1) If section 241A applies, the commissioner must make a reassessment to impose AFAD on the dutiable transaction that is the agreement for the transfer of the dutiable property.

(2) Within 28 days after the dutiable property is transferred to the company, the company must—

(a) give notice in the approved form to the commissioner; and

(b) ensure the instruments required for the assessment of duty on the agreement are lodged for a reassessment of duty on the agreement.

Note—

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

246AF Reassessment of pre-incorporation contract—company becomes foreign corporation within 3 years

(1) This section applies if—

(a) transfer duty is not imposed on a dutiable transaction because of section 116(4); and

(b) AFAD is not imposed on the agreement for the transfer of the dutiable property; and

(c) the dutiable property is AFAD residential land; and

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(d) the company is not a foreign corporation when the dutiable property is transferred to the company.

(2) The commissioner must make a reassessment under subsection (3) if, within 3 years after the dutiable property is transferred to the company, the company becomes a foreign corporation.

(3) The commissioner must make a reassessment to impose AFAD on the agreement as if the company were a foreign corporation.

(4) Within 28 days after the event mentioned in subsection (2) happens, the company must—

(a) give notice in the approved form to the commissioner; and

(b) ensure the instruments required for the assessment of duty on the agreement are lodged for a reassessment of duty on the agreement.

Note—

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

Division 4 Reassessments of AFAD exemption

246AG Definitions for division

In this division—

AFAD exemption means the exemption from a liability for AFAD under section 246.

dispose, of a relevant acquirer's interest in dutiable property that is AFAD residential land—

(a) means transfer, lease or otherwise grant exclusive possession of part or all of the property; and

(b) includes acquire the property subject to a lease, that was in existence when the property was transferred, over part or all of the property.

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notification event means an event mentioned in section 246AH(1)(b) or 246AI(1)(c).

occupy, in relation to a relevant acquirer's residence, means the acquirer, as owner of the residence, starts occupying it as the acquirer's principal place of residence.

relevant acquirer, of dutiable property, see section 246(2).

relevant period, in relation to a residence, means the period required for occupying the residence under section 246(1)(c).

transfer day, in relation to a relevant transaction, means the day on which the relevant acquirer of dutiable property that is AFAD residential land is entitled to possession of the land under the transaction.

246AH Reassessment of AFAD exemption for not occupying residence

(1) This section applies if—

(a) the AFAD exemption applies to the extent of a relevant acquirer's interest in dutiable property that is AFAD residential land under a relevant transaction; and

(b) the relevant acquirer—

(i) disposes of the acquirer's interest in the property before occupying a residence on the land; or

(ii) does not occupy a residence on the land within the relevant period for the residence.

(2) Subject to section 246AJ, the commissioner must make a reassessment to impose AFAD on the relevant transaction to the extent of the relevant acquirer's interest in dutiable property under the transaction as if the AFAD exemption did not apply to the relevant acquirer.

246AI Reassessment of AFAD exemption for disposal after occupation

(1) This section applies if—

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(a) the AFAD exemption applies to the extent of a relevant acquirer's interest in dutiable property that is AFAD residential land under a relevant transaction; and

(b) the relevant acquirer occupies a residence on the land within the relevant period for the residence; and

(c) the relevant acquirer disposes of the acquirer's interest in the property within 1 year after the day the acquirer occupies the residence.

(2) Subject to section 246AJ, the commissioner must make a reassessment to impose AFAD on the relevant transaction to the extent of the relevant acquirer's interest in dutiable property under the transaction, worked out using the following formula—

$$\mathbf{A} = \frac{\mathbf{E} \times (\mathbf{365} - \mathbf{D})}{\mathbf{365}}$$

where—

A means the AFAD payable on the reassessment.

E means the AFAD that would have been imposed to the extent of the relevant acquirer's interest if the AFAD exemption had not applied.

D means the number of days between the day the relevant acquirer occupied the residence and the day of disposal of the acquirer's interest in the dutiable property, both days inclusive.

246AJ When reassessment is not required

(1) This section applies if section 246AH or 246AI (each the ***relevant section***) applies in relation to a relevant transaction to the extent of a relevant acquirer's interest in dutiable property that is AFAD residential land under the transaction.

(2) Despite the relevant section, the commissioner is not required to make a reassessment to impose AFAD under the section if—

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(a) the notification event to which the section applies happens only because of an intervening event; or

(b) the relevant acquirer disposes of dutiable property that is an accommodation unit in a retirement village by entering a retirement village leasing arrangement for the unit; or

(c) another person (the ***occupier***) has exclusive possession of the AFAD residential land before it is occupied by the relevant acquirer if—

(i) the occupier is the transferor of the land and vacates the land as soon as reasonably practicable, or within 6 months after the transfer day, whichever is the earlier; or

(ii) the occupier has exclusive possession of the land under a lease granted before the transfer day and vacates the land on the termination of the current term of the lease, or within 6 months after the transfer day, whichever is the earlier; or

(d) for a notification event mentioned in section 246AH(1)(b)(i) or 246AI(1)(c)—the relevant acquirer disposes of part of the dutiable property to the acquirer's spouse in a way that is exempt from transfer duty under section 151.

(3) However, subsection (4) applies if AFAD is not reassessed under subsection (2) because—

(a) the relevant acquirer disposes of part of the dutiable property to the acquirer's spouse, as mentioned in subsection (2)(d); and

(b) the relevant acquirer later disposes of the property or part of the property.

(4) The relevant section applies to the later disposal as if the relevant acquirer had not transferred the part of the land to the acquirer's spouse.

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246AK Notification of commissioner for reassessment

(1) This section applies if a notification event happens in relation to a relevant acquirer's interest in dutiable property under a relevant transaction.

(2) Within 28 days after the notification event happens, the relevant acquirer must—

(a) give notice of the event in the approved form to the commissioner; and

(b) ensure the instruments required for the assessment of duty for the relevant transaction are lodged for a reassessment of duty on the transaction.

Note—

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

Part 6 Charge for unpaid transfer duty

246B Charge over interest in land for unpaid transfer duty

(1) This section applies if—

(a) transfer duty including AFAD is imposed on a dutiable transaction; and

(b) all or part of the transfer duty is not paid by the date the amount (the ***outstanding liability***) is payable.

(2) The outstanding liability is a first charge on the interest of the following person (the ***chargee***) in the AFAD residential land that is the subject of the transaction—

(a) for a dutiable transaction mentioned in section 9(1)(a) to (f)—

(i) if AFAD is imposed on the transaction under section 240(2) and the land has not been transferred to the principal—the acquirer under the transaction; or

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(ii) if AFAD is imposed on the transaction under section 240(2) and the land has been transferred to the principal—the principal; or

(iii) if AFAD is imposed on the transaction under section 241A—the company; or

(iv) otherwise—the foreign acquirer under the transaction;

(b) for a dutiable transaction mentioned in section 9(1)(g)—each partner who holds the AFAD residential land to which the partnership acquisition relates;

(c) for a dutiable transaction mentioned in section 9(1)(h) that is the creation of a trust of dutiable property—the person who, under the transaction, starts to hold the AFAD residential land in a way mentioned in section 53;

(d) for a dutiable transaction mentioned in section 9(1)(h) that is the termination of a trust of dutiable property—the person who, under the transaction, starts to hold the AFAD residential land other than as trustee;

(e) for a dutiable transaction mentioned in section 9(1)(i) that is a trust acquisition—the trustee of the trust in which the trust acquisition is made;

(f) for a dutiable transaction mentioned in section 9(1)(i) that is a trust surrender—

(i) the trustee of the trust in which the trust interest is surrendered; or

(ii) if there is no longer a trustee as a result of the surrender, the person who holds the AFAD residential land as a result of the surrender.

(3) The charge has priority over all other encumbrances over the chargee's interest in the land other than a charge under section 156P or 246V.

(4) Subsection (3) applies—

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(a) whether the other encumbrances over the chargee's interest in the land—

(i) are registered or unregistered; or

(ii) were created before or after the charge arises under subsection (2); and

(b) despite the *Land Title Act 1994*, part 3, divisions 2 and 2A.

(5) The commissioner may lodge, under the Administration Act, part 4, division 5, a request to register the charge on the land that is the subject of the transaction.

(6) Despite the Administration Act, section 47B, the registrar must not register the charge if the chargee is no longer the registered owner of the land.

(7) On its registration, the charge is not affected by a disposition of the chargee's interest in the land.

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

(1) This section applies if—

(a) a charge has been registered over the land under section 246B; and

(b) the outstanding liability has not been paid within 18 months after registration.

(2) The commissioner may apply to the Supreme Court for an order to sell the land stated in the application.

(3) At least 6 months before making the application, the commissioner must give the persons mentioned in subsection (4) notice of the commissioner's intention to apply to the Supreme Court for an order to sell the land unless the outstanding liability is paid within 6 months after the date of the notice.

(4) The persons to whom notice must be given are—

(a) the persons liable to pay the outstanding liability; and

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(b) the owner of the land.

246D When court must order sale of land

(1) The court must order the sale of the land if it is satisfied—

(a) proper notice of the application for the order was given under section 246C; and

(b) there is an outstanding liability payable to the State.

(2) However, the court may make an order only for the land the court considers is sufficient to realise proceeds to pay the amounts mentioned in section 246E(a) to (d).

246E Application of proceeds of sale

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

(a) first, in payment of the commissioner's expenses on the application to the court for the order;

(b) second, in payment of expenses properly incurred by the commissioner on the sale or any attempted sale;

(c) third, in payment of the outstanding liability under the Administration Act, section 42;

(d) fourth, in payment of amounts secured by a security interest or charge on the land recorded before the charge mentioned in section 246C(1)(a), unless the land is sold subject to the security interest or charge;

(e) fifth, any balance must be applied as the court orders.

246F Registration of transfer

(1) If land is sold under the order to sell, the person stated in the order for this section must—

(a) sign a transfer in the appropriate form in favour of the purchaser; and

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(b) lodge the transfer with the registrar.

(2) The registrar must register the transfer as if it had been signed by the registered owner of the land.

(3) Subsection (2) applies despite non-production of the relevant instrument of title.

246G Former owner may recover proceeds of sale as debt

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

(2) The former owner may recover the debt in a court of competent jurisdiction.

(3) In this section—

former owner, of land sold under the order to sell, means the person who owned the land immediately before its sale.

Part 7 Miscellaneous

246H Acquirer must lodge AFAD statement

(1) The acquirer under a relevant transaction on which AFAD is imposed, or to which an AFAD exemption or an AFAD concession applies, must, within 30 days after the date of the transaction, lodge a statement in the approved form.

Note—

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

(2) In this section—

AFAD concession means a concession under section 245F or 245G.

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246I Recovery of transfer duty payment from foreign persons

(1) This section applies if—

(a) AFAD relating to transfer duty is imposed on a dutiable transaction; and

(b) a person who is liable under this Act to pay the transfer duty pays an amount to the commissioner as payment for—

(i) all or part of the transfer duty; or

(ii) interest or penalty tax relating to the transfer duty; and

(c) the person—

(i) is not a foreign acquirer under the transaction; and

(ii) is not an agent for a principal who is a foreign person as mentioned in section 240(2); and

(iii) is not a transferee mentioned in section 241A if the dutiable property has been transferred to the company.

(2) The person is entitled to recover the amount from a following person as a debt, to the extent the amount exceeds the amount that would have been payable if AFAD had not been imposed on the transaction—

(a) the foreign acquirer;

(b) the agent for the principal who is a foreign person as mentioned in section 240(2);

(c) the transferee mentioned in section 241A if the dutiable property has been transferred to the company.

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Chapter 4A Windfall duty

Part 1 Preliminary

246J Application of chapter

(1) This chapter applies if—

(a) AFAD was purportedly imposed on a relevant transaction; and

(b) the purported liability for the AFAD for the transaction arose before 8 April 2024; and

(c) the purported liability for the AFAD for the transaction is or was assessed, and an assessment notice for the assessment is or was given by the commissioner, before the decision day; and

(d) the purported imposition of the AFAD on the transaction under this Act was invalid only because chapter 4 and section 688 were to any extent invalid or inoperative under the Commonwealth Constitution, section 109.

(2) Subsection (1)(d) is taken to be satisfied if a corresponding provision is to any extent invalid or inoperative under the Commonwealth Constitution, section 109.

(3) AFAD described in subsection (1) is ***invalid AFAD***.

(4) For subsection (1)(c), the ***decision day*** is the earlier of the following days—

(a) the day a court first decides chapter 4 and section 688 were to any extent invalid or inoperative as mentioned in subsection (1)(d);

(b) the day a court first decides a corresponding provision is to any extent invalid or inoperative as mentioned in subsection (2).

(5) In this section—

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corresponding provision means any of the following provisions, to the extent the provisions impose duty on a transaction involving residential land and a foreign entity, or impose or provide for a rate of tax for a foreign entity who owns land that is taxable—

(a) the *Duties Act 1997* (NSW), chapter 2A or chapter 4, part 2B;

(b) the *Duties Act 2000* (Vic), both—

(i) section 282A; and

(ii) either section 18A or 28A;

(c) the *Duties Act 2001* (Tas), chapter 2, part 3A or section 71A or 72A;

(d) the *Duties Act 2008* (WA), chapter 3A;

(e) the *Stamp Duties Act 1923* (SA), section 72 or 102AB;

(f) the *Land Tax Act 2010*—

(i) both sections 32(1)(b)(ii) and 104; or

(ii) both sections 32(1)(c) and 105;

(g) the *Land Tax Act 1956* (NSW), section 5A;

(h) the *Land Tax Act 2000* (Tas), part 2, division 1A;

(i) the *Land Tax Act 2004* (ACT), part 2A;

(j) the *Land Tax Act 2005* (Vic), both—

(i) section 106A; and

(ii) either schedule 1, part 4 or 5.

246K Commissioner must publish decision day

The commissioner must, within 5 business days after the commissioner becomes aware the decision day has happened, give notice of the decision day by publishing it on the commissioner's website.

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246L Imposition of windfall duty

(1) This chapter imposes duty (***windfall duty***) on a claim for an AFAD windfall.

(2) Windfall duty is imposed on the amount of an AFAD windfall.

Part 2 Some basic concepts for windfall duty

246M What is an *AFAD windfall*

An ***AFAD windfall***, in relation to a relevant transaction on which invalid AFAD is purportedly imposed, is an amount equal to the total of the following—

(a) the invalid AFAD;

(b) any assessed interest and penalty tax for the invalid AFAD;

(c) any amount paid for late payment interest in relation to the invalid AFAD.

246N What is a *claim* for an AFAD windfall

(1) A person makes a ***claim*** for an AFAD windfall if the person, on or after the decision day, gives notice to the commissioner that the person disputes the person's liability for invalid AFAD purportedly imposed on a relevant transaction, including, for example, by—

(a) asking the commissioner for a reassessment to decrease the person's purported liability for the invalid AFAD to nil; or

(b) objecting to the assessment of the person's purported liability for the invalid AFAD under the Administration Act, part 6; or

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(c) starting a proceeding in relation to the person's purported liability for the invalid AFAD; or

(d) advising the commissioner that the person does not intend to pay an amount relating to the person's purported liability for the invalid AFAD; or

(e) asking the commissioner to refund an amount paid for the person's purported liability for the invalid AFAD.

(2) Also, a person is taken to have made a ***claim*** for an AFAD windfall if—

(a) the commissioner is required, under a court order, to repay to the person an amount paid to the commissioner in relation to the person's purported liability for invalid AFAD, other than an order in a proceeding mentioned in subsection (1)(c); or

(b) all of the following apply—

(i) the person had, before the decision day (whether before or after the commencement of this section), objected to an assessment of AFAD for a relevant transaction;

(ii) the question of whether the AFAD is invalid AFAD is relevant to the decision on the objection;

(iii) the commissioner had not, before the decision day, given a written notice to the person of the commissioner's decision on the objection under the Administration Act, section 68;

(iv) the person does not, before the written notice of the commissioner's decision is given, withdraw the objection; or

(c) both of the following apply—

(i) the commissioner and the person are aware of the person's purported liability for invalid AFAD;

(ii) the person does not, by the following day (the ***payment day***), pay an amount that would, if the

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invalid AFAD had been validly imposed, have been payable—

(A) if the person withdrew an objection mentioned in paragraph (b)—the day that is 30 days after the person notified the commissioner of the withdrawal;

(B) otherwise—the day that is 30 days after the decision day.

(3) Subsection (2)(a) applies in relation to a proceeding started before or after the commencement of this section.

Part 3 Liability for windfall duty

246O When liability for windfall duty arises

(1) A person's liability for windfall duty arises when the person makes a claim for an AFAD windfall.

(2) For subsection (1), a claim is made by a person on the following day—

(a) if the person gives notice to the commissioner disputing the person's liability for invalid AFAD imposed on a relevant transaction—the day the commissioner is notified;

(b) if the person is taken to have made a claim under section 246N(2)(a)—the day the order is made;

(c) if the person is taken to have made a claim under section 246N(2)(b)—on the day written notice of the commissioner's decision on the objection is given;

(d) if the person is taken to have made a claim under section 246N(2)(c)—the day after the payment day.

246P Who is liable to pay windfall duty

Windfall duty must be paid by—

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(a) if a person gives notice to the commissioner disputing the person's liability for invalid AFAD imposed on a relevant transaction—the person; or

(b) if a person is taken to have made a claim under section 246N(2)(a)—the person required to be repaid under the order; or

(c) if a person is taken to have made a claim under section 246N(2)(b)—the person who made the objection; or

(d) if a person is taken to have made a claim under section 246N(2)(c)—the person who does not pay the amount by the payment day.

246Q Rate of windfall duty

The rate of windfall duty imposed on a claim for an AFAD windfall is 100% of the amount of the AFAD windfall.

246R Commissioner must apply amounts paid for invalid AFAD to liability for windfall duty

(1) This section applies if—

(a) a person liable for windfall duty has paid an amount to the commissioner in relation to a purported liability for invalid AFAD; and

(b) the person's purported liability for invalid AFAD is, on a reassessment, decreased to nil.

(2) Despite the Administration Act, section 37(1)(a), the person is not entitled to a refund of the amount.

(3) The commissioner must apply the amount to the person's liability for windfall duty in the following order—

(a) firstly, any amount of the AFAD windfall attributable to assessed interest or penalty tax that would have been payable in relation to the invalid AFAD if it had been validly imposed;

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(b) secondly, any amount of the AFAD windfall attributable to an amount paid by the person for late payment interest in relation to the invalid AFAD;

(c) thirdly, the amount of the AFAD windfall attributable to the invalid AFAD that would have been payable if it had been validly imposed.

(4) If the commissioner is required, because of an order of a court or tribunal, to repay an amount to a person for an amount paid in relation to invalid AFAD, the commissioner is taken to have complied with the order if the commissioner applies the amount under subsection (3).

(5) To remove any doubt, it is declared that this section does not affect the operation of the Administration Act, section 42 in relation to payments received by the commissioner for windfall duty.

Part 4 Reassessment of windfall duty

246S Reassessment of windfall duty

(1) This section applies if—

(a) windfall duty is assessed on a claim for an AFAD windfall in relation to a relevant transaction; and

(b) the commissioner would, if the invalid AFAD to which the AFAD windfall relates had been validly imposed on the relevant transaction, have been required or permitted to make a reassessment of liability for AFAD for the relevant transaction under chapter 4 or the Administration Act.

(2) If a reassessment would have been required for the AFAD, the commissioner must make a reassessment of the windfall duty.

(3) If a reassessment would have been permitted for the AFAD, the commissioner may make a reassessment of the windfall duty.

(4) For reassessing the windfall duty—

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(a) chapter 4 applies for working out the amount of the invalid AFAD as if it were validly imposed AFAD; and

(b) the Administration Act, part 5 applies for working out unpaid tax interest and penalty tax in relation to the amount of the invalid AFAD as if it were validly imposed AFAD.

Part 5 Provisions for administering windfall duty

246T Limitation period does not apply for particular reassessments

(1) This section applies if—

(a) invalid AFAD is purportedly imposed on a relevant transaction; and

(b) a person makes a claim for an AFAD windfall in relation to the transaction.

(2) Despite the Administration Act, section 21, a reassessment to decrease the person's liability for the invalid AFAD to nil may be made at any time.

246U Unpaid tax interest

For applying the Administration Act, section 54 to an amount of unpaid windfall duty for an AFAD windfall—

(a) a reference in that section to the amount of primary tax is taken to be a reference to the amount of the AFAD windfall that is attributable to invalid AFAD; and

(b) the Administration Act, section 54(5) does not apply; and

(c) the start date for the Administration Act, section 54(2) and (3) is—

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(i) if the person has paid an amount to the commissioner in relation to the purported liability for the invalid AFAD and, when the last payment was made, late payment interest for the purported liability was paid in full—the day after the last payment was made to the commissioner; or

(ii) otherwise—the day after an assessment notice was given for the assessment of the purported liability for the invalid AFAD.

246V Charge over interest in land for unpaid windfall duty relating to dutiable transaction

(1) This section applies if—

(a) transfer duty has been imposed, and invalid AFAD was purportedly imposed, on a dutiable transaction; and

(b) a person is liable for windfall duty in relation to the invalid AFAD; and

(c) all or part of the windfall duty is not paid by the date the amount (the ***outstanding liability***) is payable.

(2) The outstanding liability is a first charge on the person's interest in AFAD residential land the subject of the dutiable transaction.

(3) The charge has priority over all other encumbrances over the person's interest in the AFAD residential land other than a charge under section 156P.

(4) Subsection (3) applies—

(a) whether the other encumbrances over the person's interest in the land—

(i) are registered or unregistered; or

(ii) were created before or after the charge arises under subsection (2); and

(b) despite the *Land Title Act 1994*, part 3, divisions 2 and 2A.

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(5) The commissioner may lodge, under the Administration Act, part 4, division 5, a request to register the charge on the land that is the subject of the transaction.

(6) Despite the Administration Act, section 47B, the registrar must not register the charge if the person is no longer the registered owner of the land.

(7) On its registration, the charge is not affected by a disposition of the person's interest in the land.

246W Application of ss 246C–246G in relation to charge

Sections 246C to 246G apply in relation to a charge on land registered under section 246V as if—

(a) a reference in the provisions to land were a reference to the AFAD residential land mentioned in section 246V(2); and

(b) a reference in the provisions to a charge mentioned in section 246C(1)(a) were a reference to the charge registered under section 246V; and

(c) a reference in the provisions to an outstanding liability were a reference to the outstanding liability under section 246V(1)(c).

Part 6 Miscellaneous

246X Duty validly imposed under chs 2 and 3 not affected by invalid AFAD

(1) This section applies in relation to assessments of duty for a relevant transaction if invalid AFAD was purportedly imposed on the transaction.

(2) To remove any doubt, it is declared that—

(a) an assessment of duty for the relevant transaction under chapter 2 or 3 is, and always has been, made separately from an assessment of AFAD under chapter 4 for the

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same transaction, whether or not the assessments are the subject of the same assessment notice; and

(b) the purported imposition of the invalid AFAD does not affect—

(i) the validity of an assessment of any other duty for the transaction; or

(ii) any other right or liability acquired or incurred, or an act or omission done or made, in relation to the assessment of other duty for the transaction.

246Y Right to recovery of transfer duty payment under s 246I not affected by invalid AFAD

(1) This section applies if—

(a) a person was entitled to recover an amount from another person in relation to an amount of transfer duty imposed on a dutiable transaction under section 246I; and

(b) invalid AFAD was purportedly imposed on the transaction.

(2) The person's entitlement to recover the amount is not affected merely because the amount is invalid AFAD.

(3) The person may recover the amount from the person as a debt as if the invalid AFAD had been validly imposed.

246Z No payment of interest by commissioner for payment in relation to purported liability for invalid AFAD

A reference in the Administration Act, section 61(1) to a refund of tax or late payment interest does not include a reference to a refund of an amount paid to the commissioner because of the purported imposition of invalid AFAD on a relevant transaction.

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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.

Note—

See part 4 (Amount secured by a mortgage).

247A Abolition of mortgage duty from 1 July 2008

(1) Despite anything to the contrary in this chapter, mortgage duty is not imposed—

(a) on a mortgage first signed, or that first affects property in the State, on or after 1 July 2008; or

(b) in relation to an advance or further advance made on or after 1 July 2008, under a mortgage first signed, or that first affects property in the State, before 1 July 2008; or

(c) on an instrument that, on the deposit of instruments of title to property in Queensland, first becomes a mortgage or evidences the terms of a mortgage on or after 1 July 2008.

(2) This section is subject to chapter 17, part 9, division 1.

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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; or

Note—

See section 32 (Transfer by way of security—land).

(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.

(3) For sections 262, 268, 269, 276 and 281, 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

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(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;

(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.

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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, in relation to section 1070A(4) of that Act.

251A Treatment of mortgages affecting property in Victoria or Tasmania

(1) 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 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.

(2) For this chapter, a mortgage or mortgage package affecting property located in Tasmania is taken to have been properly stamped, stamped with similar duty, duly stamped or exempt from duty under the *Duties Act 2001* (Tas) only to the extent the mortgage or mortgage package was properly stamped, stamped with similar duty, duly stamped or exempt from duty under that Act before 1 July 2007.

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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.

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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 20c 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.

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(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.

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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 or Tasmania.

(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.

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(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

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(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 or Tasmania 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.

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(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.

(4) For subsection (1), if an advance is made on or after 1 July 2007 under a mortgage or mortgage package that, before 1 July 2007, affected property located in Tasmania and was properly stamped under the *Duties Act 2001* (Tas), 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.

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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.

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(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.

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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.

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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) a residence that is constructed is a person's ***home*** or ***first home*** if it is the person's home or first home under section 86; and

(b) a residence that is to be constructed is a 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(2)(b) does not apply.

(3) For subsection (1)(b), section 86 applies as if the reference to a period of 1 year after the person's transfer date for the residential land were a reference to a period of 2 years after 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.

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(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;

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(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.

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(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.

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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—

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(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.

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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.

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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

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(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 co-operative under the Co-operatives National Law (Queensland) 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

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(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 2006*;

(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 of a tenure, or interest in a tenure, under the *Offshore Minerals Act 1998*;

(f) 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—

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(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; or

(d) a covered bond within the meaning of the *Banking Act 1959* (Cwlth), section 26, if the cover pool for the covered bond under that section consists of either of the following—

(i) a loan secured by a mortgage;

(ii) a pool of mortgages, if all mortgages in the pool or collection of assets comprising the pool of mortgages under section 288 are loans secured by a mortgage.

(2) However, the term does not include—

(a) a mortgage, other than a mortgage mentioned in subsection (1)(c); or

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(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;

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(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;

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(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—Victorian property

(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, in relation to an advance made under the

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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.

(4) Compliance with subsection (3) by the mortgagor or mortgagee relieves the other person from complying with the subsection.

290B Reassessment—stamping before advance—Tasmanian property

(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 2007 and partly affected property located in Tasmania; and

(b) the mortgage was properly stamped or exempt from duty, and mortgage duty was paid for the mortgage before 1 July 2007, under the *Duties Act 2001* (Tas),

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section 151, in relation to an advance made under the mortgage on or after the commencement of this section; and

(c) before 1 July 2007, 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 ***Tasmanian 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 Tasmanian duty being refunded—

(a) give written notice to the commissioner stating that the Tasmanian 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.

(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 other than because of an intervening event—

(a) before the occupation date for the residence, the home borrower disposes of the residential land under section 154(2);

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(b) the home borrower's occupation date for the residence is not within the prescribed period 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.

(1B) For subsection (1)(b), the prescribed period is—

(a) for a home mortgage given over residential land on which a residence is constructed—1 year; or

(b) for a home mortgage given over residential land on which a residence is to be constructed—2 years.

(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

(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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(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—

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

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 co-operatives

(1) This section applies if—

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(a) under section 285(a), mortgage duty is not imposed on a mortgage given to secure an advance to a co-operative under the Co-operatives National Law (Queensland); 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 co-operative 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.

Note—

See the Administration Act, part 3 (Assessments of tax), division 3 (Reassessments).

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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—

(i) if a regulation states that duty is payable only on a part of the premium—that part of the premium; or

(ii) otherwise—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—

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(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 an 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.

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354 Who is a *general insurer*

(1) A ***general insurer*** is a person who writes general insurance whether or not the person is authorised under the *Insurance Act 1973* (Cwlth) to carry on an insurance business.

(2) An insurance intermediary is not a general insurer.

355 Who is a *life insurer*

(1) A ***life insurer*** is a person who writes life insurance whether or not the person is registered under the *Life Insurance Act 1995* (Cwlth).

(2) An insurance intermediary is not a life insurer.

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 insurer.

(2) Insurance duty imposed on life insurance must be paid by the 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.

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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 an 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 or, if section 349(2)(a)(i) applies, the part of the premium, is—

(a) 9% of the premium or part of the premium to the extent to which the premium or part of the premium is paid to effect class 1 general insurance; or

(b) 9% of the premium or part of the premium to the extent to which the premium or part of 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.

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(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

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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.

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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.

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Part 5 Arrangements applying to insurers and WorkCover Queensland

369 Insurers to be registered

A general insurer or life insurer must not carry on business in Queensland as an 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 insurer has a liability to insurance duty for a return period, the 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 following—

(i) for general insurance—the total amount of the premiums received in the return period by the insurer;

(ii) for life insurance—

(A) for contracts of life insurance that effect temporary or term insurance—the total amount of the premiums received in the return period by the insurer; and

(B) for other contracts of life insurance—the amounts of the sums insured for the contracts written in the return period by the insurer; and

(c) pay to the commissioner any assessed interest and penalty tax.

(3) If an insurer refunds the whole or part of a premium for a contract of insurance for which insurance duty has been paid,

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the insurer may deduct from the amount required to be paid under subsection (1) 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 21 days after the end of the month or the longer period the commissioner allows.

(6) For the Administration Act, 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

(1) This part applies to a person (the ***insured person***) who effects or renews general insurance or life insurance with a person (the ***insurer***) who is not registered under chapter 12, part 1 or 2.

(2) However, this part does not apply to an insured person who has been charged, by the insurer, an amount for insurance duty in relation to the premium for the insurance.

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372 Lodging statement and payment of insurance duty

(1) The insured 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.

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 that—

(a) is issued by a private health insurer under the *Private Health Insurance Act 2007* (Cwlth); and

(b) provides hospital benefits or medical benefits, or both, whether or not other benefits are also provided.

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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).

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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.

(3) However, if a vehicle is modified for a person with a disability, the ***dutiable value*** of the vehicle is—

(a) for a vehicle mentioned in subsection (1)—the amount worked out under subsection (1) reduced by the value of the modifications; or

(b) for a vehicle mentioned in subsection (2)—the market value of the vehicle without having regard to the value of the modifications.

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.

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379A Who is a *relative*

A ***relative*** of a person is any of the following—

(a) the person's spouse;

(b) a parent or grandparent of the person;

(c) a parent or grandparent of the person's spouse;

(d) a child, stepchild or grandchild of the person;

(e) a child, stepchild or grandchild of the person's spouse;

(f) the spouse of anyone in paragraphs (b) to (e).

379B When is a vehicle *modified for a person with a disability*

A vehicle is ***modified for a person with a disability*** if—

(a) an application to register or transfer the vehicle is made by a person with a disability, or a relative or carer of a person with a disability; and

(b) the vehicle will be used by, or to transport, the person with a disability; and

(c) modifications have been made to the vehicle to enable the person with a disability to—

(i) drive the vehicle; or

(ii) be transported in the vehicle.

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.

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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—

(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

(1) The rate of vehicle registration duty imposed on an application to register or transfer a vehicle, other than a special vehicle, is the total of—

(a) the rate stated in schedule 4C; and

(b) if the dutiable value of the vehicle at the dutiable day is more than $100,000—the rate of $2 for each $100, and each part of $100, of the vehicle's dutiable value.

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(2) Subsection (1)(b) does not apply to a vehicle that has a GVM under the Vehicle Registration Act of more than 4.5t.

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—

$$\mathbf{R} = \frac{\mathbf{DP} \times \mathbf{MVV}}{\mathbf{DVDP}}$$

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—

- a statutory business licence ($5,000)

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- personal property ($15,000) including a vehicle ($10,000).

Assuming the consideration for the transaction is the dutiable value, transfer duty of $225 is imposed on the transaction under chapter 2, being the amount worked out at the applicable rate of duty stated in schedule 3.

In working out the reduction—

- factor DP is $225, being transfer duty on the transaction
- factor MVV is $10,000, being the market value of the vehicle
- factor DVDP is $20,000, being the dutiable value of the transaction on which transfer duty is imposed at the applicable rate of duty stated in schedule 3.

Applying the formula, the reduction is $112.50.

(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—

(i) the same person in whose name the vehicle was registered immediately before the expiry or cancellation (the ***previous registered operator***); or

(ii) a relative of the previous registered operator; or

(iii) the previous registered operator and a relative of the previous registered operator.

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386 Exemption—registration of interstate registered vehicle or previously registered vehicle

(1) Subject to subsection (3), vehicle registration duty is not imposed on an application to register a vehicle if—

(a) either—

(i) the vehicle is registered under an Act of another State that corresponds to the Vehicle Registration Act (a ***corresponding Act***); or

(ii) the vehicle was registered under a corresponding Act and the registration expired or was cancelled under that 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

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registered operator constitutes a gift of the vehicle or interest by the operator to the relative.

(4) In this section—

registered operator, of a vehicle mentioned in subsection (1)(a)(ii), means the person in whose name the vehicle was registered immediately before the expiry or cancellation.

387 Exemption—registration of heavy vehicle

(1) Vehicle registration duty is not imposed on an application to register a vehicle if—

(a) the vehicle has a GVM under the Vehicle Registration Act of more than 4.5t; 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).

(2) Also, vehicle registration duty is not imposed on an application to register a heavy vehicle if—

(a) the application is made during the period starting on 1 July 2018 and ending on 30 June 2019; and

(b) immediately before the application is made, the vehicle is registered under the *Interstate Road Transport Act 1985* (Cwlth); and

(c) the application is the first application to register the vehicle in a State; and

(d) the application is made by the same person in whose name the vehicle is registered under the *Interstate Road Transport Act 1985* (Cwlth).

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(3) Subsection (2) does not apply if the application is part of an arrangement the sole or dominant purpose of which is to avoid the imposition of vehicle registration duty on the application.

(4) In this section—

heavy vehicle means a heavy vehicle under the Heavy Vehicle National Law (Queensland).

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.

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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 6t; 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) a member, or former member, of the defence force who is entitled to pay a concessional registration fee for the vehicle under the *Transport Operations (Road Use Management—Vehicle Registration) Regulation 2021*, section 236;

(k) an entity if the vehicle is a motorised wheelchair for a disabled person's use;

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(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;

(m) a person who has lost the use of 1 or both legs if—

(i) the vehicle is for use for transport to and from the person's place of education because the person can not use public transport; and

(ii) the education is for the purpose of obtaining employment.

(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 a relative of the registered operator.

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; 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 2016*, chapter 12, part 14, to register a vehicle in the name of, or to transfer a vehicle to, an organisation under that Act.

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Part 5 Reassessments for vehicle registration duty

393A Reassessment—noncomplying use by vehicle dealer

(1) This section applies if—

(a) vehicle registration duty is not paid on an application to register a vehicle in the name of a vehicle dealer, or to transfer a vehicle to a vehicle dealer, on the basis of an exemption under section 389; and

(b) the vehicle stops being trading stock, or stops being used as a demonstrator, other than because of a sale of the vehicle in the ordinary course of business.

(2) Within 28 days after the event mentioned in subsection (1)(b) happens, the vehicle dealer 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 or transfer 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.

(4) For subsection (1)(b), the vehicle is taken to stop being trading stock, or stop being used as a demonstrator, on the day that is the prescribed period after the registration or transfer mentioned in subsection (1)(a), unless the vehicle dealer sells the vehicle in the ordinary course of business before that day.

(5) In this section—

prescribed period means the period, at least 1 year, prescribed under a regulation for this section or, if no period is prescribed, 1 year.

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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

(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

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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.

Maximum penalty—100 penalty units.

Note—

See the Administration Act, section 118 (Period for keeping records).

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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.

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

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(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 will or may cease, at any time, 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

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(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 of dutiable property by, or expressly authorised by, statute law is treated as a transfer of the property to the person in whom it is vested from its owner immediately before the vesting takes place; and

(c) 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

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(d) 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

(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

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.

Note—

See section 404 (How part applies to particular transactions).

(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

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(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).

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

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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 409(1)(a) to (c); or

(d) the transferee is the parent company of the transferor and landholder 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

Note—

Section 498A includes provision about when the quotation of securities is suspended.

(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 applies—

(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

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(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.

(3) However, for subsection (1)(a) or (b), property that is a lot on a plan of subdivision registered after the transferor and the transferee became group companies is only group property to the extent that the property comprising the lot was group property under subsection (1)(a) or (b) immediately before registration of the plan of subdivision.

(4) For property mentioned in subsection (3), transfer duty is not imposed on the dutiable value of the part of the lot that is group property, worked out using the following formula—

$$\mathbf{DV_G} = \frac{\mathbf{VP}}{\mathbf{TV}} \times \mathbf{DV_L}$$

where—

DVG means the dutiable value of the part of the lot that is group property for section 406(2)(d).

DVL means the dutiable value of the lot.

TV means the total value, immediately before the plan of subdivision was registered, of the property that forms the lot.

VP means the value, immediately before the plan of subdivision was registered, of property that—

(a) forms part of the lot; and

(b) was group property under subsection (1)(a) or (b) immediately before the plan of subdivision was registered.

(5) In this section—

lot see the *Land Title Act 1994*, schedule 2.

plan of subdivision means—

(a) a plan under the *Building Units and Group Titles Act 1980*; or

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(b) a plan of subdivision under the *Land Title Act 1994*; or

(c) a plan of subdivision under the *Land Act 1994*; or

(d) a plan or scheme, however described, showing the division of, amalgamation into, dedication of or redefinition of, at least 1 lot, that is able to be registered in a land registry under the *Land Act 1994* or the *Land Title Act 1994*.

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.

Note—

See section 404 (How part applies to particular transactions).

(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.

409 Exemption—landholder duty

(1) This section applies if—

(a) there is a corporate reconstruction constituted by a parent company (the ***new parent company***) being

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interposed between a company (the ***existing company***) and the shareholders of the existing company; and

(b) there is 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; and

(c) the following conditions are complied with—

(i) the new parent company is a company with limited liability;

(ii) the new parent company has been dormant from its registration until the resolution to become the new parent company of the existing company;

(iii) under the transaction mentioned in paragraph (b), the new parent company acquires at least 90% of the issued shares, and voting control of, the existing company;

(iv) 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;

(v) 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;

(vi) 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;

(vii) if the new parent company is interposed between more than 1 existing company and their shareholders—before the acquisition by the new parent company, the same shareholders—

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(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; and

(d) 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.

(2) This section also applies if, 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.

(3) Landholder duty is not imposed on the acquisition to the extent of the interest acquired by the new parent company or transferee under the transaction.

Note—

See section 179 (Working out dutiable value of relevant acquisition).

(4) For subsection (2), sections 406, 407 and 408 apply as if a transfer, or agreement for the transfer, of shares 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

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(b) be accompanied by enough information to enable the commissioner to make a ruling.

(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

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(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, a judgment of a court is given or a decision is made by QCAT;

(ii) the change, judgment or decision 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 landholder 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—

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(a) the limitation period under the Administration Act for reassessments;

(b) the commissioner's ruling under section 410 for the dutiable transaction or relevant acquisition.

Note—

See the Administration Act, part 3 (Assessments of tax), division 3 (Reassessments).

(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

Note—

Section 498A includes provision about when the quotation of securities is suspended.

(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.

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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 1A Exemptions for particular duties for small business restructures

Division 1 Some basic concepts for small business restructures

413A What is a *small business entity*

(1) A ***small business entity*** is an individual, partnership or discretionary trust carrying on a relevant Queensland business with an annual turnover of not more than $5m.

(2) In this section—

relevant Queensland business means a business—

(a) conducted on or from a place in Queensland; or

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(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.

413B What is *small business property*

(1) ***Small business property***, of a small business entity, is dutiable property that is directly held and used by a person for the purpose of carrying on the business of the entity.

(2) However, ***small business property*** does not include dutiable property—

(a) that is used as a residence by the person; or

(b) that is investment property the person holds and uses to generate income to fund the business of the entity.

413C What is a *transferee corporation*

A ***transferee corporation*** is an unlisted corporation to which small business property is, or is agreed to be, transferred that has not, since its registration under the Corporations Act, and before the transfer or agreement—

(a) held any assets or liabilities; or

(b) been a party to an agreement; or

(c) been a beneficiary or trustee of a trust; or

(d) issued or sold any shares or rights relating to shares.

413D What is a *share interest*

(1) The ***share interest***, of a person in a transferee corporation, is the person's entitlement as a shareholder of the corporation, expressed as a percentage of the total value of the transferee corporation's property that would be distributed if—

(a) the corporation were to be wound up; and

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(b) the property were distributed immediately after the person acquired the interest in the corporation.

(2) For subsection (1), the entitlement of a person on a distribution of a transferee corporation's property is taken to be the entitlement of a person on a distribution of a corporation's property under section 161, as if a reference in that section to a corporation were a reference to a transferee corporation.

413E Who is a *default beneficiary*

A ***default beneficiary*** of a discretionary trust is a beneficiary who is a taker in default of an appointment by the trustee of the trust, other than a last taker in default of an appointment that is—

(a) a person decided under the *Succession Act 1981*; or

(b) a charitable institution.

Division 2 Exemptions

413F Exemption—transfer of small business property from individual to transferee corporation

(1) This section applies in relation to a dutiable transaction that is a transfer, or an agreement for the transfer, of small business property if—

(a) a small business entity that is an individual transfers, or agrees to transfer, the property to a transferee corporation; and

(b) the individual is a shareholder in the transferee corporation; and

(c) the unencumbered value of the property the subject of the transfer or agreement is not more than $10m.

(2) Transfer duty is not imposed on the dutiable transaction to the extent of the lesser of the following interests—

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(a) the individual's ownership interest in the small business property immediately before the transfer or the agreement was entered into;

(b) the individual's share interest in the transferee corporation immediately after the transfer or the agreement was entered into.

(3) Also, if the small business property includes a vehicle, vehicle registration duty is not imposed on an application to transfer the vehicle.

(4) In this section—

ownership interest, of an individual in small business property, is the interest, other than a beneficial interest, that the individual has in the property, expressed as a percentage.

413G Exemption—transfer of small business property from partnership to transferee corporation

(1) This section applies in relation to a dutiable transaction that is a transfer, or an agreement for the transfer, of small business property if—

(a) 1 or more partners of a small business entity that is a partnership transfer, or agree to transfer, the property of the entity to a transferee corporation; and

(b) all the partners of the partnership are shareholders in the transferee corporation; and

(c) the unencumbered value of the property the subject of the transfer or agreement is not more than $10m.

(2) Transfer duty is not imposed on the dutiable transaction to the extent of the lesser of the following interests in relation to each partner—

(a) the partner's partnership interest in the partnership that held the small business property immediately before the transfer or the agreement was entered into;

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(b) the partner's share interest in the transferee corporation immediately after the transfer or the agreement was entered into.

(3) Also, if the small business property is a vehicle, vehicle registration duty is not imposed on an application to transfer the vehicle.

413H Exemption—transfer of small business property from trustee to transferee corporation

(1) This section applies in relation to a dutiable transaction that is a transfer, or an agreement for the transfer, of small business property if—

(a) the trustee of a small business entity that is a discretionary trust transfers, or agrees to transfer, the property of the entity to a transferee corporation; and

(b) all default beneficiaries of the trust are shareholders in the transferee corporation; and

(c) the unencumbered value of the property the subject of the transfer or agreement is not more than $10m.

(2) Transfer duty is not imposed on the dutiable transaction to the extent of the lesser of the following interests in relation to each default beneficiary—

(a) the beneficiary's trust interest in the discretionary trust that held the small business property immediately before the transfer or the agreement was entered into;

(b) the beneficiary's share interest in the transferee corporation immediately after the transfer or the agreement was entered into.

(3) For applying subsection (2) in relation to more than 1 default beneficiary of a discretionary trust, the default beneficiaries are taken to hold the trust interests in equal shares if the trust deed does not state the percentage of income or property each beneficiary is to receive from the trust.

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(4) Also, if the small business property includes a vehicle, vehicle registration duty is not imposed on an application to transfer the vehicle.

413I Exemption—transfer of small business property from trustee to transferee corporation with sole shareholder

(1) This section applies in relation to a dutiable transaction that is a transfer, or an agreement for the transfer, of small business property if—

(a) the trustee of a small business entity that is a discretionary trust transfers, or agrees to transfer, the property of the entity to a transferee corporation; and

(b) the trustee is the sole shareholder in the transferee corporation; and

(c) the unencumbered value of the property the subject of the transfer or agreement is not more than $10m; and

(d) the rights and interests of the small business beneficiaries of the trust immediately before the transfer or the agreement was entered into are the same immediately after the transfer or the agreement was entered into.

(2) Transfer duty is not imposed on the dutiable transaction.

(3) Also, if the small business property includes a vehicle, vehicle registration duty is not imposed on an application to transfer the vehicle.

(4) In this section—

small business beneficiary, of a discretionary trust, means—

(a) a default beneficiary of the trust; or

(b) a person entitled to income or property from the trust on appointment by the trustee of the trust.

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Part 2 Exemptions for particular duties for charitable institutions

Division 1 Exemptions for charitable institutions

414 Exemption—particular duties for charitable institutions

(1) Duty is not imposed on the following—

(a) a dutiable transaction under which a charitable 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 a charitable institution; or

(ii) a trust acquisition or trust surrender by a charitable institution;

(c) a premium for general insurance for property or undertaking of a charitable institution;

(d) an application to register or transfer a vehicle in the name of a charitable 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 or insured by, or property held on trust for, a charitable institution must be used solely or almost solely by the institution for 1 or more of the following purposes (a ***qualifying exempt purpose***)—

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(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 the Administration Act, section 149C(2)(h);

(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, insured or held is not used solely or almost solely for a qualifying exempt purpose if the property is used 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 a charitable institution, the commissioner must be satisfied—

(a) the property will start to be used for the 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 or the later date fixed by the commissioner by notice given to the institution (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 institution for a qualifying exempt purpose and ends 1

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year after that date or the later date fixed by the commissioner by notice given to the institution (the ***duration period***).

Note—

In relation to subsection (1)(a), see also section 620.

(2) For other property, the commissioner must be satisfied—

(a) the property acquired or insured will start to be used by the charitable institution for a qualifying exempt purpose on or before the date stated in subsection (3) (also the ***start date***); and

(b) the property 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 the later date fixed by the commissioner by notice given to the institution; or

(c) for a premium for a contract of general insurance—immediately after the premium is paid; or

(d) for an application to register or transfer a vehicle—immediately after the application is made.

Note—

In relation to subsection (3)(a), see also section 620.

(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 charitable 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

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(c) for a premium for a contract of general insurance—on the start date and ends 1 year after payment of the premium; or

(d) for an application to register or transfer a vehicle—on the start date and ends 9 months 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, insured or held—

(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 has not been used solely or almost solely for a qualifying exempt purpose if the property starts to be so used by the new start date.

Division 3 Reassessments for charitable institutions

418 Reassessment on application of charitable 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 charitable institution concerned, the commissioner is satisfied the property acquired, insured or held has been used solely, or almost solely, for a qualifying exempt purpose from the start date for the duration period, the

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commissioner must make a reassessment on the basis of compliance with division 2.

(3) For the reassessment, the charitable 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, insured or held—

(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 subsection (1)(b) happens, the charitable 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.

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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.

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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.

Notes—

1 Exemptions for duty for particular instruments and maintenance agreements are provided in the *Family Law Act 1975* (Cwlth), section 90.

2 Exemptions for duty for particular instruments and agreements relating to financial matters, in the event of a breakdown in a marriage, are provided in the *Family Law Act 1975* (Cwlth), section 90L.

3 Exemptions for duty for particular instruments and agreements relating to financial matters, in the event of a breakdown of a de facto relationship, are provided in the *Family Law Act 1975* (Cwlth), section 90WA.

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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 applies—

(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.

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Part 4 Other exemptions

426 Exemption—State

The State is not liable to pay duty unless this Act expressly provides otherwise.

Note—

See sections 17 (Who is liable to pay transfer duty) and 357 (Who is liable to pay insurance duty).

427 Exemption—particular instruments and transactions relating to incorporated associations

(1) 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.

(2) Duty is not imposed on an instrument or transaction for vesting property in an association incorporated under the Corporations Act if—

(a) the association was formed with the object of—

(i) providing recreation or amusement; or

(ii) promoting religion, charity, patriotism or the arts; or

(iii) achieving another object the commissioner is satisfied is useful to the community; and

(b) the association's constitution—

(i) provides for the application of its funds to its objects; and

(ii) prohibits the distribution of any part of its funds or profits to its members; and

(c) because of the association's incorporation, the instrument or transaction is necessary for vesting the property in the association's corporate name.

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428 Exemption—particular instruments and transactions under National Gas (Queensland) Act

Duty is not imposed on—

(a) a transaction that is an exempt matter under the *National Gas (Queensland) Act 2008*, section 13; or

(b) an instrument or transaction for an exempt matter mentioned in paragraph (a).

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

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(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) 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

(b) for giving effect to a provision of the *Ipswich Trades Hall Act 1986*; or

(c) for implementing a local government change under the *Local Government Act 2009*; or

(d) 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*.

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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*.

431B Exemption—particular dutiable transactions or relevant acquisitions for Queensland Future (Debt Retirement) Fund

(1) Subsection (2) applies in relation to a dutiable transaction or relevant acquisition that is, or is part of an arrangement that is,

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intended to advance the purpose of the Queensland Future (Debt Retirement) Fund.

(2) Transfer duty or landholder duty is not imposed on the dutiable transaction or relevant acquisition if the transaction or acquisition is, or is part of an arrangement that is—

(a) for making a contribution to, or an investment for the purpose of, the Queensland Future (Debt Retirement) Fund; or

(b) for a purpose connected with, or arising out of—

(i) a contribution or investment mentioned in paragraph (a); or

(ii) an arrangement prescribed by regulation.

(3) Also, transfer duty is not imposed on a dutiable transaction that is a trust acquisition of a unit in a unit trust if—

(a) the trust acquisition is, or is part of an arrangement that is, intended to advance the purpose of the Queensland Future (Debt Retirement) Fund; and

(b) each unit acquired in the unit trust is held solely and directly for the Queensland Future (Debt Retirement) Fund.

(4) In addition, transfer duty is not imposed on a dutiable transaction that is a trust surrender of a unit in a unit trust if—

(a) the trust surrender is part of an arrangement that is intended to advance the purpose of the Queensland Future (Debt Retirement) Fund; and

(b) under the arrangement, the trust surrender of the unit is because of a trust acquisition of a unit in the unit trust for which an exemption under subsection (3) applies.

(5) In this section—

Queensland Future (Debt Retirement) Fund means the Queensland Future (Debt Retirement) Fund established under the *Queensland Future Fund Act 2020*.

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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) 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).

(3) However, despite subsection (1), this chapter does not apply in relation to a duty benefit that is attributable to an exemption or concession under this Act for duty, unless an entity entered into or carried out a scheme or part of a scheme for the sole or dominant purpose of creating a circumstance or state of affairs to which the exemption or concession would apply.

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(4) For this section, for deciding what was an entity's sole or dominant purpose for entering into or carrying out a scheme or part of a scheme, any purpose relating to eliminating, reducing or postponing a liability for a foreign tax is to be disregarded.

(5) In this section—

foreign tax means a tax, duty or other impost imposed under a law of another State, the Commonwealth or a jurisdiction outside Australia.

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;

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(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.

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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, 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.

Note—

See the Administration Act, part 3 (Assessments of tax), division 3 (Reassessments).

(5) For the reassessment, the other person must lodge the instruments required for the original assessment.

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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 an 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;

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(b) the dates for lodging returns, and for paying duty, by the self assessor;

(c) the periods to be covered by the returns;

(d) the records required to be kept relating to the instruments and transactions to which the registration relates;

(e) the types of reassessments the self assessor is required or permitted to make;

(f) whether the self assessor is permitted to remit the whole or part of unpaid tax interest or penalty tax.

Part 2 Registration of parties to instruments and transactions as self assessors

441 Application for registration

(1) A person may apply to the commissioner to be registered as a self assessor for duty on particular instruments or transactions to which the person is or becomes a party.

(2) The application must be in the approved form.

442 Decision on application

The commissioner must approve or refuse the application for registration.

443 Approval of application

If the commissioner approves the application, the commissioner must register the person as a self assessor for duty on the instruments or transactions mentioned in the application.

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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 or transaction statements are required or permitted to be lodged;

(c) the dates for lodging returns, and for paying duty, by the self assessor;

(ca) the dates for lodging transaction statements by the self assessor and the dates for paying duty;

(d) the periods to be covered by the returns;

(e) the documents required to accompany the returns or transaction statements;

(f) the records required to be kept relating to the instruments and transactions;

(g) any endorsements to be made on the instruments or ELN transaction documents;

(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;

(j) the self assessor's client number.

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(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.

447 Restriction on assessment by commissioner

(1) A self assessor who, under the self assessor's notice of registration, is required to lodge returns or transaction statements for particular instruments or transactions, must not lodge an instrument, or an instrument or ELN transaction document 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).

Part 3 Registration of agents as self assessors

448 Application for registration

(1) A person who, in the ordinary course of business, acts as an agent for parties to instruments or transactions on which duty is imposed may apply to be registered as a self assessor for the duty on the instruments or transactions.

(2) The application must be in the approved form.

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449 Decision on application

The commissioner must approve or refuse the application.

450 Approval of application

If the commissioner approves the application, the commissioner must register the person as a self assessor for duty on the instruments or transactions mentioned in the application.

451 Registration of self assessor without application

The commissioner may, by notice given to a person who, in the ordinary course of business, acts as an agent for parties to instruments or transactions on which duty is imposed, register the person as a self assessor for the duty on the instruments or transactions.

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 or transaction statements are required or permitted to be lodged;

(c) the dates for lodging returns, and for paying duty, by the self assessor;

(ca) the dates for lodging transaction statements by the self assessor and the dates for paying duty;

(d) the periods to be covered by the returns;

(e) the documents required to accompany the returns or transaction statements;

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(f) the records required to be kept relating to the instruments and transactions;

(g) any endorsements to be made on the instruments or ELN transaction documents;

(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;

(j) the self assessor's client number.

(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 or transaction statements for particular instruments or transactions, must not lodge an instrument, or an instrument or ELN transaction document 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).

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Part 4 Returns, transaction statements and reassessments by self assessors

455 Lodging returns

(1) A self assessor registered under part 2 or 3 must for return self assessments—

(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) stamp the instruments to which each return relates by endorsing them 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.

(1A) Subsection (1)(c) does not apply if the self assessor's notice of registration states that no endorsements are required on the instruments.

(2) For subsection (1)(c)—

(a) an instrument for which duty is imposed must be endorsed—

(i) if the self assessor's notice of registration states the way in which the instrument must be endorsed—in the way stated; or

(ii) otherwise, with the following—

(A) a reference to this Act's short title;

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(B) the self assessor's client number;

(C) the transaction number for the instrument;

(D) the amounts of any duty, assessed interest and penalty tax paid on the instrument;

(E) the date the endorsement is made;

(F) the signature of the individual completing the endorsement; 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.

455A Lodging transaction statements

(1) A self assessor registered under part 2 or 3 must for a standard self assessment—

(a) lodge a transaction statement, and the documents required to accompany the statement, for an instrument or transaction as required by the notice of the self assessor's registration; and

(b) stamp the instrument or ELN transaction document to which the transaction statement relates by endorsing it in the way mentioned in subsection (4)—

(i) for a self assessor registered under part 2—not later than when the duty, assessed interest and penalty tax on the instrument or transaction are paid by the self assessor to the commissioner; or

(ii) for a self assessor registered under part 3—

(A) if the duty, assessed interest and penalty tax on the instrument or transaction are received by the self assessor—not later than when the duty, assessed interest and penalty tax are

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paid by the self assessor to the commissioner; or

(B) otherwise—within 1 day after the self assessor becomes aware that the duty, assessed interest and penalty tax on the instrument or transaction have been paid to the commissioner.

Maximum penalty—100 penalty units.

Notes—

1 For provisions about payments by self assessors who are tax agents under the Administration Act, see section 35 of that Act.

2 For when a self assessor is taken to have stamped an ELN transaction document, see subsection (7).

(1A) Subsection (1)(b) does not apply if the self assessor's notice of registration states that no endorsements are required on the instruments or ELN transaction documents.

(2) For subsection (1)(a), if the self assessor is registered under part 2, the self assessor must lodge the transaction statement and documents by the date that is 30 days after the date liability for duty for the instrument or transaction arises.

(3) For subsection (1)(a), if the self assessor is registered under part 3, the self assessor must lodge the transaction statement and documents by the later of the following dates—

(a) the date that is 30 days after the date liability for duty for the instrument or transaction arises;

(b) the date that is 7 days after the self assessor receives, under section 471E(1)(a), all instruments and other documents relating to the instrument or transaction.

(4) For subsection (1)(b)—

(a) an instrument or ELN transaction document for which duty is imposed must be endorsed—

(i) if the self assessor's notice of registration states the way in which the instrument or ELN transaction document must be endorsed—in the way stated; or

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(ii) otherwise, with the following—

(A) a reference to this Act's short title;

(B) the self assessor's client number;

(C) the transaction number for the instrument or ELN transaction document;

(D) the amounts of any duty, assessed interest and penalty tax paid on the instrument or ELN transaction document;

(E) the date the endorsement is made;

(F) the signature of the individual completing the endorsement; and

(b) another instrument must be endorsed in the way stated in the self assessor's notice of registration.

(5) Subsection (4)(a)(ii)(F) does not apply to an ELN transaction document.

(6) Subsection (7) applies if—

(a) a self assessor registered under part 2 or 3 validly assigns a transaction number to an ELN transaction document for an ELN transfer or ELN lodgement; or

(b) a transaction number is assigned to an ELN transaction document for an ELN transfer or ELN lodgement, and notified to a self assessor registered under part 2 or 3, by a system administered by the commissioner.

(7) For subsection (1)(b), the ELN transaction document is taken to have been stamped by the self assessor immediately after the ELN workspace for the ELN transfer or ELN lodgement is locked.

Note—

An endorsement of an ELN transaction document stops having effect if the ELN workspace for the ELN transfer or ELN lodgement is unlocked—see section 156W.

(8) Subsection (7) does not affect the self assessor's compliance with the requirements mentioned in subsection (4).

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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 Amendment, suspension and cancellation of registration of 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;

(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

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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;

(d) the self assessor has been given a notice under section 488(2) and has failed to pay—

(i) the penalty amount by the date for payment stated in the notice; or

(ii) if the commissioner enters into an arrangement for payment of the penalty amount by instalments under section 488(5)—an instalment by the date the instalment is required to be paid under the arrangement;

(e) if section 470 applies to the self assessor—the self assessor has failed to give notice to the commissioner as required under section 470(3);

(f) each of the following applies—

(i) the self assessor has endorsed an ELN transaction document on the basis that section 22(2A) applies to the ELN transfer;

(ii) the ELN transaction document is registered under the *Land Title Act 1994*;

(iii) the commitment amount for the payment commitment made for the relevant transfer agreement was not paid to the commissioner in full as required;

(g) the commissioner reasonably believes that, having regard to the self assessor's conduct, the self assessor's registration poses an unacceptable risk that the self assessor will not comply with an obligation under this Act or the Administration Act.

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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.

(1A) Also, this section applies if—

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(a) the ground mentioned in section 465(f) is the only ground for the proposed action stated in the show cause notice; and

(b) after considering the accepted representations for the show cause notice, the commissioner is reasonably satisfied the reason the commitment amount was not paid to the commissioner in full as required was beyond the self assessor's control.

Example for subsection (1A)—

The commitment amount was not paid because an ELN system occurrence prevented the ELN distributing funds for duty, assessed interest or penalty tax.

(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

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(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.

469A Immediate suspension

(1) This section applies if the commissioner reasonably believes—

(a) a ground exists for suspending or cancelling a self assessor's registration; and

(b) the self assessor's registration must be suspended immediately to—

(i) ensure the integrity of the self assessment system is not jeopardised; or

(ii) remove an immediate, unacceptable risk that the self assessor will not comply with an obligation under this Act or the Administration Act.

(2) The commissioner may decide to immediately suspend the self assessor's registration.

(3) The commissioner must give the self assessor an information notice for the decision.

(4) The information notice must include the period of the suspension.

Note—

See also schedule 6, definition *information notice* for other matters the information notice must state.

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(5) The suspension—

(a) starts immediately after the self assessor is given the information notice; and

(b) ends on the earliest of the following—

(i) the day that is 56 days after the day on which the period started;

(ii) a decision is made by the commissioner under section 469 about a show cause notice given to the self assessor;

(iii) notice is given by the commissioner to the self assessor ending the suspension under subsection (6).

(6) During the period of the suspension, if the commissioner no longer believes subsection (1)(a) or (b) is satisfied, the commissioner must end the suspension by giving notice to the self assessor stating the suspension has ended.

(7) In this section—

self assessment system means the system under this Act and the Administration Act for—

(a) the registration of persons as self assessors; and

(b) the making of self assessments, payments of duty, and compliance with other obligations under the Acts, by self assessors.

470 Suspension or cancellation of registration—ceasing to carry on business

(1) This section applies if a self assessor registered under part 1 or 3 permanently ceases to carry on, in Queensland, the business for which the self assessor is registered.

(2) Also, this section applies if a self assessor registered under part 3 temporarily ceases to carry on, in Queensland, the business for which the self assessor is registered.

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(3) Within 14 days after the ceasing to carry on the business, the self assessor must give notice of the ceasing to the commissioner.

(4) If the self assessor is a self assessor mentioned in subsection (2), the notice given under subsection (3) must state the period (the ***temporary cessation period***) for which the self assessor will temporarily cease to carry on the business.

(5) On receiving the notice, the commissioner must give notice to the self assessor stating—

(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—

(i) if the self assessor permanently ceases to carry on the business—the self assessor's registration is cancelled effective from the day stated in the notice; or

(ii) if the self assessor temporarily ceases to carry on the business—the self assessor's registration is suspended for the period stated in the notice.

(6) For subsection (5)(b)(ii), the period stated in the notice must not be longer than the temporary cessation period.

470A Cancellation of registration—type of duty abolished

(1) The commissioner may cancel a self assessor's registration if the type of duty to which the registration relates is no longer imposed under this Act.

(2) If the commissioner cancels a self assessor's registration, the commissioner must give notice to the self assessor that the registration is cancelled effective from the date stated in the notice.

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(3) Sections 466 to 469 do not apply in relation to the cancellation of a self assessor's registration under this section.

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 lodgement requirement*

(1) A ***relevant lodgement requirement*** for an instrument or transaction is a lodgement 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 or transaction statement for a self assessment for the instrument or transaction is not a relevant lodgement 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 370(4)(a) or 372(1)(a)

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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; and

(b) required or permitted under the self assessor's notice of registration to lodge returns or transaction statements 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 lodgement requirement

A relevant lodgement 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 lodgement requirement for the instrument or transaction would apply if section 471D did not apply; and

(b) for a return self assessment—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.

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(2) For subsection (1), the date is—

(a) for a return self assessment—the return date for lodgement by the self assessor of a return, and any document required to accompany the return, for the instrument or transaction; or

(b) for a standard self assessment—the date that is 30 days after the date liability for duty for the instrument or transaction arises.

(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.

471EA Liability not discharged until commissioner receives payment

(1) This section applies to the liability of a liable party to the instrument or transaction to pay an amount of duty, assessed interest or penalty tax on the instrument or transaction.

(2) The liability is not discharged until the amount is paid to the commissioner.

(3) Subsection (2) applies even though the liable party has paid the amount to the self assessor.

471F Giving documents to self assessor

(1) A document is given by a liable party to a self assessor only if the document is—

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(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.

Note—

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.

Note—

This provision is an executive liability provision under the *Taxation Administration Act 2001*, section 140.

(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.

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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.

Note—

This provision is an executive liability provision under the *Taxation Administration Act 2001*, section 140.

(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; and

(b) required or permitted under the self assessor's notice of registration to lodge returns or transaction statements 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.

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471J Effect of engagement of self assessor on relevant lodgement requirement

A relevant lodgement 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 or transaction statement for the instrument or transaction; or

(b) the self assessor—

(i) is permitted to lodge a return or transaction statement for the instrument or transaction; and

(ii) includes the instrument or transaction in a return lodged as required under section 455, or lodges a transaction statement for the instrument or transaction under section 455A.

Chapter 13 Internal and external reviews

Part 1 Reviews by commissioner

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

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(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 comply with the QCAT Act, section 157(2).

Part 2 Reviews by QCAT

475 Applying for review by QCAT of a review decision

The applicant for the review of the original decision who is dissatisfied with the review decision may apply, as provided under the QCAT Act, to QCAT for a review of the review decision.

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476 QCAT to decide external review on evidence given in the proceeding for the review

(1) This section applies to a proceeding for a review by QCAT of a review decision.

(2) QCAT must—

(a) hear and decide the review of the decision by way of a reconsideration of the evidence before the commissioner when the decision was made, unless QCAT considers it necessary in the interests of justice to allow new evidence; and

(b) decide the review of the decision in accordance with the same law that applied to the making of the original decision to which the proceeding for the review relates.

(3) The grounds for the review by QCAT are limited to the grounds of the review by the commissioner, unless QCAT orders otherwise.

(4) If QCAT decides, under the QCAT Act, section 139, that the proceeding should be reopened, the issues in the proceeding that are reheard must be—

(a) heard and decided by way of a reconsideration of the evidence given in the proceeding for the review of the decision; and

(b) decided in accordance with the same law that applied to the making of the original decision to which the proceeding for the review relates.

(5) In this section—

new evidence means evidence that was not before the commissioner when the review decision was made.

477 Representation of parties before QCAT

(1) This section applies to a party in a proceeding before QCAT relating to an application under section 475.

(2) The party may be represented by a lawyer.

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Chapter 14 Enforcement and legal proceedings

480 Offences about self assessments—endorsements of instruments

(1) A self assessor registered under chapter 12, part 2, must not endorse an instrument under section 455 or 455A 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.

Note—

This provision is an executive liability provision under the *Taxation Administration Act 2001*, section 140.

(2) A self assessor registered under chapter 12, part 3, must not endorse an instrument under section 455 or 455A unless the amount of duty and any assessed interest and penalty tax has been paid to the commissioner or received by the self assessor.

Maximum penalty—200 penalty units.

Note—

This provision is an executive liability provision under the *Taxation Administration Act 2001*, section 140.

480A Offences about self assessments—endorsements of ELN transaction documents

(1) A self assessor registered under chapter 12, part 2 or 3 must not endorse an ELN transaction document for an ELN transfer or ELN lodgement under section 455A on the basis that section 22(2) applies to the ELN transfer or ELN lodgement

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unless the duty amount for the agreement for the transfer of dutiable property has been—

(a) if the self assessor is registered under chapter 12, part 2—paid to the commissioner; or

(b) if the self assessor is registered under chapter 12, part 3—paid to the commissioner or received by the self assessor.

Maximum penalty—200 penalty units.

Note—

This provision is an executive liability provision under the Administration Act, section 140.

(2) A self assessor registered under chapter 12, part 2 or 3 must not endorse an ELN transaction document for an ELN transfer under section 455A on the basis that section 22(2A) applies to the ELN transfer unless a payment commitment has been made for the relevant transfer agreement.

Maximum penalty—200 penalty units.

Note—

This provision is an executive liability provision under the Administration Act, section 140.

(3) However, a self assessor does not commit an offence against this section only because—

(a) the self assessor endorses an ELN transaction document for an ELN transfer or ELN lodgement; and

(b) either—

(i) for an ELN transfer—the ELN transfer becomes an incomplete ELN transfer within the meaning of chapter 2, part 15; or

(ii) for an ELN lodgement—the ELN lodgement becomes an incomplete ELN lodgement within the meaning of chapter 2, part 15.

(4) In this section—

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duty amount, for an agreement for the transfer of dutiable property, means the amount of duty and any assessed interest and penalty tax imposed on the agreement.

481 Offence for person other than self assessor to endorse instrument or ELN transaction document

(1) A person must not make any notation or endorsement on an instrument or ELN transaction document indicating or implying duty has been paid for the instrument or ELN transaction document unless the person is authorised to do so under this Act.

Maximum penalty—200 penalty units.

Note—

This provision is an executive liability provision under the Administration Act, section 140.

(2) A person does not commit an offence against subsection (1) if the person makes a notation on an ELN transaction document required under the Electronic Conveyancing National Law (Queensland) for the completion of an ELN transfer or ELN lodgement.

(3) In this section—

make, a notation or endorsement on an ELN transaction document, includes enter information into the ELN workspace for the ELN transfer or ELN lodgement to which the ELN transaction document relates.

481A Offence to endorse instrument or ELN transaction document incorrectly or illegibly

(1) This section applies if an instrument or ELN transaction document is endorsed—

(a) by a self assessor registered under chapter 12, part 2 or 3 or an officer or employee of a self assessor registered under chapter 12, part 2 or 3; or

(b) by someone else in contravention of section 481.

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(2) The person making the endorsement commits an offence if—

(a) for a person mentioned in subsection (1)(a), the endorsement incorrectly states—

(i) the self assessor's client number; or

(ii) the transaction number for the instrument or ELN transaction document; or

(b) for a person mentioned in subsection (1)(b), the endorsement states a number purporting to be—

(i) a client number; or

(ii) a transaction number for the instrument or ELN transaction document; or

(c) the endorsement incorrectly states the amount of duty, assessed interest or penalty tax paid on the instrument or ELN transaction document; or

(d) the endorsement contains other information that the person knows, or should reasonably know, is false or misleading in a material particular; or

(e) the person—

(i) obscures all or part of the endorsement; or

(ii) otherwise makes all or part of the endorsement illegible.

Maximum penalty—100 penalty units.

Note—

This provision is an executive liability provision under the *Taxation Administration Act 2001*, section 140.

(3) However, the person does not commit an offence against subsection (2)(c) in relation to an endorsement made on an ELN transaction document for an ELN transfer only because—

(a) the endorsement was made on the basis that section 22(2A) applies to the ELN transfer; and

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(b) when the endorsement was made, the commitment amount for the payment commitment had not been paid to the commissioner.

482 Obligations relating to unstamped instruments or ELN transaction documents

(1) A person who acts under an instrument or ELN transaction document 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 or ELN transaction document 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 or ELN transaction document that effects or evidences the transaction, or the instrument, is properly stamped.

Maximum penalty—100 penalty units.

484 Registration of instrument relating to an interest in a corporation

A person must not enter in the records of a corporation or society an instrument that effects or evidences a relevant acquisition under chapter 3, part 1 or 2, unless the instrument is properly stamped.

Maximum penalty—100 penalty units.

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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 or ELN transaction documents in evidence

(1) Unless an instrument or ELN transaction document 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 an instrument or ELN transaction document in evidence if—

(a) after it is received in evidence, the instrument or ELN transaction document is given to the commissioner as required by arrangements approved by the court; or

(b) if the person who produces the instrument or ELN transaction document is not the person liable to pay the duty, the name and address of the person so liable, and the instrument or ELN transaction document, is given to

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the commissioner as required by arrangements approved by the court.

(3) A court may receive in evidence an unsigned copy of an instrument or ELN transaction document that is imposed with duty or effects or evidences a transaction that is imposed with duty if the court is satisfied—

(a) the instrument or ELN transaction document of which it is a copy is properly stamped; or

(b) the copy is properly stamped under section 494.

487A Limitation on use of ELN transaction document endorsed on basis of payment commitment

(1) This section applies if an ELN transaction document has been endorsed under section 455A on the basis that section 22(2A) applies to the ELN transfer to which the document relates.

(2) Until the ELN transaction document is registered under the *Land Title Act 1994*, a person must not use the endorsed ELN transaction document for a purpose other than the completion of the ELN transfer.

Maximum penalty—200 penalty units.

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 does not lodge a transaction statement in contravention of section 455A(1)(a); or

(ba) a self assessor who is a tax agent to which the Administration Act, section 35 applies contravenes paragraph (b) of that section; or

(bb) a self assessor contravenes section 455(1)(c) or 455A(1)(b) in relation to the stamping of an instrument or ELN transaction document; or

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(bc) a self assessor contravenes section 480 in relation to the endorsement of an instrument; or

(bd) a self assessor contravenes section 480A in relation to the endorsement of an ELN transaction document; or

(be) a person contravenes section 481 in relation to making a notation or endorsement on an instrument or ELN transaction document without authority; or

(c) a person contravenes section 481A in relation to the endorsement of an instrument or ELN transaction document; or

(d) a self assessor gives the commissioner a return or transaction statement containing false or misleading information in contravention of the Administration Act, section 122 or 123; or

(e) 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 in relation to the return, transaction statement, instrument or application;

(b) $100.

(3) The notice must state the following—

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(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

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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 or ELN transaction document *properly stamped*

(1) An instrument is ***properly stamped*** if it is stamped under section 455(1)(c), 455A(1)(b) or 492.

(1A) An ELN transaction document is ***properly stamped*** if it is stamped under section 455A(1)(b).

(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

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(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) as in force before 1 July 2008—

- section 252(2)
- section 258(2)(a) or (c)
- section 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—by endorsing it with particulars of 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—by endorsing it with an indication that 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—by endorsing it with an indication that no duty is payable on the instrument or transaction.

493 Stamping of instrument dependent on another instrument or transaction

(1) This section applies if—

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(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—

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(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 or ELN transaction document 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 or ELN transaction document.

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 or ELN transaction document.

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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 to 4, a reference to property in Queensland or dutiable property includes shares in a landholder if, the holder of the shares and all related persons of the holder were to newly acquire the shares in the landholder, a relevant acquisition under the chapter would have been made.

Note—

See section 164 (Who is a *related person*).

(2) If it is necessary to determine the unencumbered value of the shares for imposing duty, the value is taken to be the amount worked out by applying the interests of the shareholder and related persons, or the total of their interests, in the landholder to the unencumbered value of all the landholder's Queensland land-holdings.

(3) For chapters 2 to 4, a reference to property in Queensland or dutiable property includes shares in a corporate trustee or relevant corporation for a corporate trustee.

(4) 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.

(5) This section applies despite any provision of chapter 2, 3 or 4.

498A Suspension of quotation of securities as part of an avoidance arrangement

(1) This section applies to securities quoted on the market operated by a recognised stock exchange if the quotation of the securities is suspended.

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(2) The commissioner may regard the securities as not being quoted on the market during the period of the suspension if the suspension is part of an arrangement to avoid the imposition of duty.

(3) In this section—

security includes a share and a unit in a unit trust.

499 Reassessments of duty in particular circumstances

(1) This section applies if—

(a) transfer duty has been assessed on an instrument, or transaction effected or evidenced by an instrument or ELN transaction document; 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 or ELN transaction document is—

(i) inadvertently damaged, defaced or destroyed; or

(ii) in any way, rendered unfit for the purpose intended; or

(b) the instrument or ELN transaction document is void on its making; or

(c) the instrument or ELN transaction document was voidable on its making and is rendered void before having legal effect; or

(d) before having any legal effect, the instrument or ELN transaction document is unfit for the purpose intended because of an error or mistake in it; or

(e) the instrument or ELN transaction document 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—

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(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 or ELN transaction document by the parties is evidence the instrument or ELN transaction document gives effect to the intention of the parties, the instrument or ELN transaction document 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 or ELN transaction document; and

(b) the instrument or ELN transaction document 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 or ELN transaction document 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.

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(6) The person must lodge the instrument, ELN transaction document or a copy of the ELN transaction document 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, ELN transaction document or a copy of the ELN transaction document 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, applies for the decision as if—

(a) the decision were an assessment; and

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(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

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(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 or ELN transaction document, 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 or ELN transaction document 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.

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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.

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(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—

(a) an acquisition or disposition of a unit in the trust; or

(b) for a listed unit trust—any other acquisition of an interest in the trust.

(2) A corporation or society must keep an instrument that effects or evidences an acquisition of an interest in the corporation or society.

(3) For subsections (1)(b) and (2), an ***acquisition*** of an interest in a corporation, society or listed unit trust includes an acquisition of an interest to which section 162 would apply if the reference in that section to a landholder were a reference to a corporation, society or listed unit trust.

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) A court or QCAT must not make an order relating to the refund that is inconsistent with subsection (2).

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(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

(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.

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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.

Chapter 17 Repeal, savings and transitional provisions

Part 1 Repeal of Stamp Act 1894

509 Act repealed

The Stamp Act 1894 is repealed.

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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;

Note—

Sections 530 and 530A stopped applying on 1 January 2006 (see section 532A).

(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.

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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 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.

(2) The repealed Act applies to the transfer of the property to the transferee.

(3) Subsection (4) applies if—

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(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.

Note—

See the *Stamp Act 1894*, section 56E (Conveyance of other property by way of security).

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 not to apply for an extension of, the licence as mentioned in section 54AD(2) of the repealed Act; and

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(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 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) of the repealed Act that was made or entered into before the commencement day is taken to be a dutiable transaction for section 30.

(2) For applying section 30, a reference to the dutiable value of the dutiable transaction is taken to be a reference to the full 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—

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(a) a dutiable transaction that is the retransfer of land mentioned in section 32(1)(d) 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.

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), definition *public unit trust scheme*, paragraphs (b) to (d), that is

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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), 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) 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) apply to the issue of units in the 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 of the repealed Act apply; and

(b) the interest may have been aggregated under the prescribed provisions.

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(2) The acquisition of the interest is an acquisition of an interest in the corporation for chapter 3, part 1.

(3) However, section 158(1)(b)(iii) 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), 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—

(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 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).

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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.

(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 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 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.

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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.

(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.

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—

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(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) of the repealed Act;

(iii) a contract or agreement for which a statement under section 64D(3) 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—

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(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—

(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.

(2) If the lease, transaction, contract or agreement is terminated on or after the commencement day, section 242 applies to the

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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 agreement in circumstances mentioned in section 243(1).

(4) Section 243(2) applies to the replacement lease or right.

532A Ending of application of div 6

This division stops applying on 1 January 2006.

Note—

See also section 563 (Leases etc. to which repealed Act applied).

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.

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(2) Section 261 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.

Note—

Section 261 (Advances secured by mortgage package). See also section 252 (When liability for mortgage duty arises).

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

(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.

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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) 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) of the repealed Act, stamp duty is not chargeable on an agreement for or in connection with the transfer of shares or for conveying,

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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.

(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)—

(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 409(1)(a) to (c) 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 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.

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543 Approved insurers

(1) A person who, immediately before the commencement day, was an approved insurer under section 46F 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, the matters required to be stated in a notice of registration for a self assessor are, for the person, the 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.

Note—

From 30 June 2010, the registration of charitable institutions is provided for under the Administration Act, part 11A.

(2) The institution's date of registration is the commencement day.

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(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) 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.

Notes—

1 The reassessment of stamp duty is made under the repealed Act, see section 512.

2 From 30 June 2010, chapter 12, part 5 is repealed and the registration of charitable institutions is provided for under the Administration Act, part 11A.

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) of the repealed Act.

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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.

(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.

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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, 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.

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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 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 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.

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(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 5 Transitional and savings provisions for Revenue Legislation Amendment Act 2005

Division 1 Provisions for ending of credit business duty

554 Meaning of particular terms used in div 1

(1) In this division—

pre-repeal credit transaction means a credit transaction entered into by a credit provider before 1 January 2006.

registered credit provider means a person who was, immediately before 1 January 2006, registered under chapter 12, part 1, to carry on business in Queensland as a credit provider and as a self assessor.

repealed, for a provision of this Act, means the provision as in force immediately before 1 January 2006.

(2) A term used in this division and defined in repealed chapter 6 has the meaning given to it under repealed chapter 6.

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555 Savings provision for pre-repeal credit transactions

(1) The credit business duty provisions continue to apply for rights, privileges and liabilities that would have been acquired, accrued or incurred on or after 1 January 2006 in relation to a relevant credit amount for a pre-repeal credit transaction if the provisions had not been repealed.

Example of how the credit business duty provisions continue to apply under this section—

A credit provider may be required to lodge a return or statement, and pay credit business duty, on or after 1 January 2006 in relation to a relevant credit amount for a pre-repeal credit transaction.

(2) Subsection (1) applies subject to section 556.

(3) In this section—

credit business duty provisions means—

(a) repealed chapter 6; and

(b) schedule 6, repealed definition *short-term*.

relevant credit amount, for a pre-repeal credit transaction, means a credit amount for the transaction that exists before 1 January 2006.

556 Cash price for particular credit arrangements not included in credit amount

Repealed section 303(4) does not apply under section 555(1) to the extent it would otherwise provide that the cash price for a credit arrangement that is a pre-repeal credit transaction is an amount debited under the arrangement if—

(a) the cash price is not paid within the period mentioned in the repealed section; and

(b) the period ends on or after 1 January 2006.

557 Ending of registration of credit providers

(1) This section applies to a registered credit provider.

(2) The following are cancelled on 1 January 2006—

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(a) the person's registration under chapter 12, part 1, to carry on business in Queensland as a credit provider;

(b) the person's registration under chapter 12, part 1, as a self assessor for duty on instruments or transactions to which the person becomes a party for carrying on business as a credit provider.

(3) However, subsection (2) does not affect—

(a) the registration of the person under this Act for any other purpose; or

(b) a requirement that applies to the person under this Act or the Administration Act in relation to a pre-repeal credit transaction.

Division 2 Provisions for ending of lease duty

558 Meaning of particular terms used in div 2

(1) In this division—

pre-repeal lease duty liability means a liability for lease duty arising under repealed chapter 4 before 1 January 2006.

repealed, for a provision of this Act, means the provision as in force immediately before 1 January 2006.

(2) A term used in this division and defined in repealed chapter 4 has the meaning given to it under repealed chapter 4.

559 Savings provision for particular leases and occupancy rights

(1) Repealed chapter 4 continues to apply for rights, privileges and liabilities that would have been acquired, accrued or incurred on or after 1 January 2006 in relation to a lease or occupancy right for which there is a pre-repeal lease duty liability if chapter 4 had not been repealed.

(2) Subsection (1) applies subject to section 560 and 561.

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560 Application of repealed s 241

(1) Repealed section 241(2) and (4) applies under section 559(1) only if the relevant event happened before 1 January 2006.

(2) Repealed section 241(9) does not apply under section 559(1) in relation to an agreement increasing the cost of a lease or occupancy right that is made on or after 1 January 2006.

(3) In this section—

relevant event means—

(a) for repealed section 241(2)—the event mentioned in repealed section 241(3)(a) or (b) that starts the 30 day period mentioned in the subsection; or

(b) for repealed section 241(4)—the event mentioned in repealed section 241(5)(a) or (b) that starts the 30 day period mentioned in the subsection.

561 Reassessments under repealed s 242

(1) Repealed section 242 applies under section 559(1) only for a lease or occupancy right that is terminated before 1 January 2016.

(2) Repealed section 242 also applies, despite its repeal, to a section 532 instrument that is terminated before 1 January 2016.

(3) For subsection (2), repealed section 242 applies with any necessary changes to the termination of the instrument as if it were the termination of a lease or occupancy right.

(4) In this section—

section 532 instrument means a lease, transaction, contract or agreement—

(a) mentioned in section 532(1); and

(b) that was in force immediately before 1 January 2006.

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562 Saving of particular provisions for exempt institutions

(1) This section applies if an assessment for lease duty was made before 1 January 2006.

(2) If the assessment was made on the basis that an exemption under chapter 10, part 2, division 1, applied, previous sections 417 and 419 continue to apply in relation to the lease.

(3) For subsection (2), a reassessment made as required under previous section 419(3) imposing duty on the lease must be made as if chapter 4 had not been repealed.

(4) If duty was imposed on the lease because the use requirements under chapter 10, part 2, division 2 would not be complied with, previous section 418 continues to apply for the lease, even if the duration period ends on or after 1 January 2006.

(5) In this section—

previous, for a provision of this Act, means the provision as in force immediately before 1 January 2006.

563 Leases etc. to which repealed Act applied

(1) This section applies for the following—

(a) a lease or agreement to lease to which the repealed Act applied, immediately before 1 January 2006, under section 530;

(b) an instrument increasing rent to which the repealed Act applied, immediately before 1 January 2006, under section 530A.

(2) Section 64C of the repealed Act continues to apply for the lease, agreement to lease or instrument.

564 Ending of registration of self assessor

(1) This section applies to a person who is registered, immediately before 1 January 2006, as a self assessor under chapter 12, part 2 or 3.

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(2) The registration mentioned in subsection (1) is cancelled on 1 January 2006 to the extent it applies for duty on leases or occupancy rights.

(3) However, subsection (2) does not affect—

(a) the registration of the person under this Act for any other purpose; or

Example—

registration of the person under chapter 12, part 2 or 3, as a self assessor for duty on instruments or transactions other than leases or occupancy rights

(b) a requirement that applies to the person under this Act or the Administration Act in relation to a lease or occupancy right for which there is a pre-repeal lease duty liability.

565 No refund of lease duty merely because lease or occupancy right ends on or after 1 January 2006

(1) To remove any doubt, it is declared that a person is not entitled, under a relevant Act or otherwise, to a refund of lease duty paid for a lease or occupancy right only because the lease or right ends on or after the repeal of chapter 4.

(2) In this section—

relevant Act means this Act, the Administration Act or the repealed Act.

Division 3 Provisions for amendments about transfer duty etc.

566 Application of amendments about rates of duty on dutiable transactions and relevant acquisitions for land rich and corporate trustee duty

Schedule 3 as in force on 1 July 2006 applies to dutiable transactions and relevant acquisitions if liability for transfer

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duty, land rich duty or corporate trustee duty arises on or after 1 July 2006.

567 Application of amendments about concession for transfer duty for home

(1) Chapter 2, part 9, division 3 as in force on 1 July 2006 applies to dutiable transactions if liability for transfer duty arises on or after 1 July 2006.

(2) However, the division as in force immediately before 1 July 2006 applies to a dutiable transaction that is the transfer, or agreement for the transfer, of residential land made on or after 1 July 2006 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 July 2006; 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 July 2006 and exercised on or after 1 July 2006; or

(c) another arrangement was made before 1 July 2006 the sole or main purpose of which was to defer the making of the transfer or agreement until 1 July 2006 or later so the concession for transfer duty under the division, as in force on or after 1 July 2006, would apply in relation to the dutiable transaction.

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Part 6 Transitional and savings provisions for Revenue and Other Legislation Amendment Act 2006

Division 1 Preliminary

568 Definitions for pt 6

In this part—

amending Act means the *Revenue and Other Legislation Amendment Act 2006*.

omitted definition means a definition that was in schedule 6 or another provision of this Act but was omitted by the amending Act.

569 References to terms with omitted definitions

A term used in this part that, immediately before 1 January 2007, was defined in an omitted definition has the meaning given to it under the omitted definition.

Division 2 Transitional provisions for amendment of provisions about concessions for homes and first homes

570 Retrospective operation of new s 92(1)(c)

Section 92(1)(c), as inserted by the amending Act, section 12, applies in relation to a dutiable transaction relating to residential land entered into on or after 1 May 2004.

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571 Application of amendments about concession for transfer duty for residential land or vacant land

(1) The relevant provisions, as in force on 1 January 2007, apply to dutiable transactions only if liability for transfer duty arises on or after 1 January 2007.

(2) The relevant provisions, as in force immediately before 1 January 2007, apply to a dutiable transaction that is the transfer, or agreement for the transfer, of residential land or vacant land made on or after 1 January 2007 if—

(a) the transfer or agreement replaces a transfer, or an agreement for the transfer, that included the land and was made before 1 January 2007; or

(b) the transferee had an option to purchase the land, or the transferor had an option to require the transferee to purchase the land, granted before 1 January 2007 and exercised on or after 1 January 2007; or

(c) another arrangement was made before 1 January 2007 the sole or main purpose of which was to defer the making of the transfer or agreement until 1 January 2007 or later so the concession for transfer duty under the relevant provisions, as in force on or after 1 January 2007, would apply in relation to the dutiable transaction.

(3) In this section—

relevant provisions means the following provisions—

- chapter 2, part 9, divisions 2 and 3
- chapter 2, part 14, division 1
- schedule 4A.

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Division 3 Savings and transitional provisions for amendments relating to Queensland marketable securities

572 Meaning of *pre-repeal marketable security transaction*

A transaction is a ***pre-repeal marketable security transaction*** if—

(a) a liability for transfer duty imposed on the transaction arose, or would, apart from an exemption or concession, have arisen, before 1 January 2007; and

(b) the transaction concerned a Queensland marketable security or a Queensland marketable security was otherwise relevant to the imposition of the duty.

573 Savings provision for pre-repeal marketable security transactions

This Act, as in force immediately before 1 January 2007, continues to apply for powers, rights, privileges and liabilities that would have been exercisable, acquired, accrued or incurred on or after 1 January 2007 in relation to a pre-repeal marketable security transaction if the amendments in the amending Act had not commenced.

Example of how this Act continues to apply under this section—

A person or other entity may be required to lodge an instrument or transfer duty statement, and pay transfer duty, on or after 1 January 2007 in relation to a pre-repeal marketable security transaction.

574 Deduction relating to transfer duty for marketable securities

Section 227, as in force immediately before 1 January 2007, continues to apply in relation to transfer duty that was paid or payable, before 1 January 2007, for a transfer, or agreement for the transfer, of shares of a corporate trustee or relevant corporation for a corporate trustee.

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575 Saving of particular provisions for exempt institutions

(1) This section applies to an assessment for transfer duty made in relation to a pre-repeal marketable security transaction.

(2) If the assessment was made on the basis of an exemption under chapter 10, part 2, division 1, then previous sections 417 and 419 continue to apply in relation to the transaction.

(3) For subsection (2), a reassessment made as required under previous section 419(3) imposing duty on the transaction must be made as if the amending Act had not commenced.

(4) If duty was imposed on the transaction because the use requirements under chapter 10, part 2, division 2 would not be complied with, previous section 418 continues to apply for the transaction.

(5) In this section—

previous, for a provision of this Act, means the provision as in force immediately before 1 January 2007.

576 Ending of registration as self assessors

(1) This section applies to a person who, immediately before 1 January 2007, was registered as a self assessor under chapter 12, part 2 or 3.

(2) On 1 January 2007, the person's registration is cancelled to the extent it applied for transfer duty on transactions relating to Queensland marketable securities.

(3) Subsection (2) does not affect—

(a) the registration of the person under this Act for any other purpose; or

(b) a requirement that applies to the person under this Act or the Administration Act in relation to a pre-repeal marketable security transaction.

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577 Transitional provision for s 484

Section 484, as in force immediately before 1 January 2007, continues to apply to an instrument that effects or evidences a dutiable transaction for a share or right relating to a share entered into before 1 January 2007.

Division 4 Savings and transitional provisions for ending of hire duty

578 Definitions for div 4

In this division—

pre-repeal hire means a hire of goods, mentioned in previous section 325(1)(a) or (b), made or effected before 1 January 2007.

pre-repeal hiring charge means—

(a) for a pre-repeal hire that is a credit purchase agreement or an agreement under previous section 345—the total hiring charges paid or payable under the hire; or

(b) for another pre-repeal hire—the hiring charges paid or payable for a period before 1 January 2007.

previous, in relation to a provision of this Act, means the provision as in force immediately before 1 January 2007.

579 Savings provision for pre-repeal hires

(1) The hire duty provisions continue to apply for powers, rights, privileges and liabilities that would have been exercisable, acquired, accrued or incurred on or after 1 January 2007 in relation to a pre-repeal hiring charge if the hire duty provisions had not been repealed.

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Examples of how the hire duty provisions continue to apply under this section—

1 A commercial hirer may be required to lodge a return or statement, and pay hire duty, on or after 1 January 2007 in relation to a pre-repeal hiring charge.

2 A person other than a commercial hirer may be required to lodge the instrument by which a pre-repeal hire is effected, and pay hire duty, on or after 1 January 2007 in relation to a pre-repeal hiring charge.

3 The commissioner may make an assessment or reassessment under previous section 339 of the hire duty payable in relation to a pre-repeal hiring charge.

4 A pre-repeal hire was made in the circumstances mentioned in previous section 345. The hire was for an indefinite period but ended, or ends, within 6 months after it was entered into. An application may be made, and must be dealt with, under previous section 347.

(2) In this section—

hire duty provisions means previous chapter 7 and the omitted definitions.

580 Duty payable for pre-repeal hire relating to a period ending on or after 1 January 2007

(1) To remove any doubt, it is declared that a person is not entitled, under a relevant Act or otherwise, to a refund of hire duty paid on a pre-repeal hire only because the period for which the pre-repeal hire was made or effected ends on or after 1 January 2007.

(2) In this section—

relevant Act means this Act, the Administration Act or the repealed Act.

581 Ending of registration of commercial hirers

(1) This section applies to a person who, immediately before 1 January 2007, was a registered commercial hirer.

(2) The following are cancelled on 1 January 2007—

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(a) the person's registration under chapter 12, part 1, to carry on business in Queensland as a commercial hirer;

(b) the person's registration under chapter 12, part 1, as a self assessor for duty on instruments or transactions to which the person is or becomes a party for carrying on the business.

(3) Subsection (2) does not affect—

(a) the registration of the person under this Act for any other purpose; or

(b) a requirement that applies to the person under this Act or the Administration Act in relation to a pre-repeal hire.

582 Saving of particular provisions for exempt institutions

(1) This section applies to an assessment for hire duty made in relation to a pre-repeal hire.

(2) If the assessment is or was made on the basis of an exemption under chapter 10, part 2, division 1, then previous sections 417 and 419 continue to apply in relation to the hire.

(3) For subsection (2), a reassessment made as required under previous section 419(3) imposing duty in relation to the pre-repeal hiring charges must be made as if chapter 7 had not been repealed.

(4) If duty is or was imposed on the hire because the use requirements under chapter 10, part 2, division 2 would not be complied with, previous section 418 continues to apply for the hire, even if the duration period ends on or after 1 January 2007.

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Division 5 Transitional provisions for amendment of provisions about mortgage duty

583 Application of amendments about concession for mortgage duty for home or first home

Chapter 5, part 6 as in force on 1 January 2007 applies to mortgages only if liability for mortgage duty arises on or after 1 January 2007.

Part 7 Transitional and savings provisions for Revenue and Other Legislation Amendment Act 2007

584 Application of amendment about rate of mortgage duty

(1) Section 254, as in force on 1 January 2008, applies to a mortgage only if the liability date for the mortgage is on or after 1 January 2008.

(2) However, section 254, as in force immediately before 1 January 2008, applies to a mortgage if an arrangement was made before 1 January 2008 the sole or main purpose of which was to defer a liability date for the mortgage until 1 January 2008 or later so the rate of mortgage duty under section 254, as in force on or after 1 January 2008, would apply in relation to the liability date.

(3) Also, a person is not entitled, under a relevant Act or otherwise, to a refund of mortgage duty paid before 1 January 2008 only because a liability date for the mortgage is on or after 1 January 2008.

(4) In this section—

relevant Act means this Act or the Administration Act.

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585 Mortgage duty associated with debenture subscriptions in financial year ending 30 June 2008

(1) This section applies in relation to mortgage duty payable under section 266(3) on the amount subscribed for, in the financial year ending 30 June 2008, for debentures.

(2) The rate of mortgage duty is—

(a) 40c for each $100, or part of $100, of the amount subscribed for in the period from 1 July 2007 to 31 December 2007; and

(b) 20c for each $100, or part of $100, of the amount subscribed for in the period from 1 January 2008 to 30 June 2008.

(3) The rate of mortgage duty under subsection (2)(a) applies to an amount subscribed for debentures if an arrangement was made before 1 January 2008 the sole or main purpose of which was to defer the subscription until 1 January 2008 or later so the rate of mortgage duty under subsection (2)(b) would apply in relation to the subscription.

586 Mortgage duty associated with caveats and releases of mortgage

(1) This section applies in relation to—

(a) mortgage duty imposed under section 268 on a caveat claiming an interest under a mortgage; and

(b) mortgage duty imposed under section 269 on a release of mortgage.

(2) To the extent an amount of mortgage duty imposed on the relevant mortgage is calculated by reference to the rate under pre-amended section 254, the amount of mortgage duty imposed on the caveat or release is also calculated under pre-amended section 254, even if the caveat or release is effected on or after 1 January 2008.

(3) In this section—

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pre-amended section 254 means section 254 as in force before 1 January 2008.

Part 8 Savings and transitional provisions for Revenue and Other Legislation Amendment Act (No. 2) 2007

587 Definitions for pt 8

In this part—

agent self assessor means a self assessor registered under chapter 12, part 3.

amending Act means the *Revenue and Other Legislation Amendment Act (No. 2) 2007*.

588 Delayed application of amendments to agent self assessors

For the period up to and including 2 March 2008—

(a) sections 455, 488 and 491 apply to an agent self assessor as if the amending Act, part 2, division 3, had not commenced; and

(b) section 481A does not apply to an agent self assessor.

589 Savings provision about properly stamped instruments

(1) A reference in this Act to an instrument that is properly stamped includes—

(a) an instrument endorsed under section 455(1)(c) before the commencement day; and

(b) an instrument stamped with an impressed stamp or other stamp under section 492 before the commencement day; and

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(c) an instrument stamped with an impressed stamp or other stamp, during the transitional period, in a way that complies with section 492 as in force immediately before the commencement day.

(2) In this section—

commencement day means—

(a) for an instrument endorsed under section 455(1)(c) by an agent self assessor—3 March 2008; or

(b) for another instrument endorsed under section 455(1)(c)—4 February 2008; or

(c) otherwise—7 January 2008.

transitional period means the period of 1 year starting on 7 January 2008.

Part 9 Transitional provisions for the Revenue and Other Legislation Amendment Act 2008, part 2, division 2

Division 1 Transitional provisions for abolition of mortgage duty

590 Definition for div 1

In this division—

previous, in relation to a provision of this Act, means the provision as in force immediately before 1 July 2008.

591 Requirement to lodge mortgage

On and from 1 July 2008, section 255 continues to apply to a mortgage if the liability for mortgage duty on the mortgage arose before 1 July 2008.

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592 Mortgage packages

(1) Subsection (2) applies if—

(a) a mortgage package consists of 2 or more security instruments signed before 1 July 2008; and

(b) the commissioner is satisfied that a mortgage signed on or after 1 July 2008 was intended to be part of the package.

(2) Mortgage duty must be assessed on the mortgage package—

(a) under previous chapter 5; and

(b) as if the instruments comprising the package were 1 mortgage first signed on the day the last of the instruments signed before 1 July 2008 was signed.

593 Reassessment—stamping before advance

(1) This section applies if—

(a) a mortgage was first signed before 1 July 2008; and

(b) the mortgage was, under section 257, properly stamped for an amount of advances secured by the mortgage; and

(c) the advances were not all made before 1 July 2008.

(2) The mortgagor may apply to the commissioner for a reassessment of mortgage duty paid in relation to the advances not made before 1 July 2008.

(3) The application must—

(a) be in the approved form; and

(b) include the mortgage document; and

(c) be made by 31 December 2008.

(4) The commissioner must make the reassessment.

594 Mortgage duty on caveats

(1) This section applies if—

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(a) before 1 July 2008, mortgage duty was imposed on a mortgage but was not paid; and

(b) on or after 1 July 2008, a caveat claimed an interest in land or a water allocation under the mortgage.

(2) On and from 1 July 2008, section 268 continues to apply to impose mortgage duty on the caveat.

(3) Mortgage duty is imposed on the caveat at the rate applicable at the time the duty was imposed on the mortgage.

595 Mortgage duty on releases of mortgages

(1) This section applies if—

(a) before 1 July 2008, mortgage duty was imposed on a mortgage but was not paid; and

(b) on or after 1 July 2008, the mortgage is released.

(2) On and from 1 July 2008, section 269 continues to apply to impose mortgage duty on the release of the mortgage.

(3) Mortgage duty is imposed on the release at the rate applicable at the time the duty was imposed on the mortgage.

596 Reassessment—Victorian and Tasmanian property

(1) This section applies if, before 1 July 2008, the commissioner was required under section 290A or 290B to make a reassessment to impose mortgage duty on a mortgage.

(2) Sections 290A and 290B apply to require the reassessment to impose duty based on the dutiable proportion at the liability date.

597 Reassessment—concessions for home mortgages and first home mortgages

(1) This section applies if—

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(a) before 1 July 2008, mortgage duty on a home mortgage was assessed on the basis of a concession under chapter 5, part 6; and

(b) on or after 1 July 2008, one of the events mentioned in section 291(1) happens.

(2) Section 291(2) to (4) applies to enable the commissioner to make a reassessment to impose mortgage duty on the mortgage at the rate applicable at the time that, but for the concession, the liability for mortgage duty would have arisen.

598 Reassessment—concessions for cooperatives

(1) This section applies if—

(a) before 1 July 2008, a mortgage was given to secure an advance to a cooperative registered under the *Cooperatives Act 1997*; and

(b) mortgage duty was not imposed on the mortgage; and

(c) on or after 1 July 2008, the advance or part of it was used for a noncomplying use within the meaning of section 292(1).

(2) Section 292(2) to (4) applies to enable the commissioner to make a reassessment to impose mortgage duty on the mortgage at the rate applicable at the time that, but for the exemption, the liability for mortgage duty would have arisen.

599 Saving of previous provisions for exempt institutions

(1) This section applies to an assessment for mortgage duty on a mortgage given to secure an advance made—

(a) to an exempt institution on the basis of an exemption under chapter 10, part 2, division 1; and

(b) before 1 July 2008.

Note—

From 30 June 2010, the registration of charitable institutions is provided for under the Administration Act, part 11A. See the

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Administration Act, section 168 in relation to institutions that were, immediately before 30 June 2010, exempt institutions.

(2) On and after 1 July 2008, previous sections 417 and 419 continue to apply in relation to the advance.

(3) For subsection (2), a reassessment made as required under previous section 419(3) imposing duty in relation to the advance must be made as if the *Revenue and Other Legislation Amendment Act 2008*, part 2 had not commenced.

(4) If mortgage duty was imposed in relation to the advance because the use requirements under chapter 10, part 2, division 2 would not be complied with, previous section 418 continues to apply in relation to the advance.

600 Cancellation of registration to defer endorsement—s 446A

(1) This section applies if, immediately before 1 July 2008, a self assessor was registered under previous section 446A to defer endorsement, under section 455(1)(c), of mortgages for further advances under the mortgages.

(2) On 1 July 2008, the registration is cancelled.

(3) However, the self assessor must, by 1 January 2009, comply with section 455(1)(c) in relation to any endorsement deferred under previous section 455(4).

601 Lapsing of application for registration to defer endorsement

(1) This section applies to an application to be registered under previous section 446A made but not finally decided before 1 July 2008.

(2) On 1 July 2008, the application lapses.

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602 Requirement to lodge returns

On and from 1 July 2008, section 455 continues to apply, to a self assessor registered under part 2 or 3 for mortgage duty, in relation to a return period that started before 1 July 2008.

603 Reassessment of duty in particular circumstances

(1) This section applies if—

(a) before 1 July 2008, a person paid mortgage duty on a mortgage; and

(b) on or after 1 July 2008, an event mentioned in section 499(2)(f) happens.

(2) Section 499(5) to (8) continues to apply in relation to a reassessment of the duty paid.

604 Impact of div 1

The inclusion in this division of a provision affecting the application of a provision of chapter 5 or chapter 10 following the abolition of mortgage duty on 1 July 2008 does not by implication limit the continuing application of another provision of the chapter.

Division 2 Other transitional provisions

605 Application of amendments about rates of transfer duty, land rich duty and corporate trustee duty

Schedule 3 as in force on 1 July 2008 applies to dutiable transactions and relevant acquisitions if liability for transfer duty, land rich duty or corporate trustee duty arises on or after 1 July 2008.

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606 Application of amendments about concession for transfer duty—residential land

(1) The relevant provisions, as in force on 1 July 2008, apply to dutiable transactions only if liability for transfer duty arises on or after 1 July 2008.

(2) The relevant provisions, as in force immediately before 1 July 2008, apply to a dutiable transaction that is the transfer, or agreement for the transfer, of residential land made on or after 1 July 2008 if—

(a) the transfer or agreement replaces a transfer, or an agreement for the transfer, that included the land and was made before 1 July 2008; or

(b) the transferee had an option to purchase the land, or the transferor had an option to require the transferee to purchase the land, granted before 1 July 2008 and exercised on or after 1 July 2008; or

(c) another arrangement was made before 1 July 2008 the sole or main purpose of which was to defer the making of the transfer or agreement until 1 July 2008 or later so the concession for transfer duty under the relevant provisions, as in force on or after 1 July 2008, would apply in relation to the dutiable transaction.

(3) In this section—

relevant provisions means the following provisions—

- chapter 2, part 9, divisions 2 and 3
- chapter 2, part 14, division 1
- schedule 4A.

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Part 10 Transitional provision for the Revenue and Other Legislation Amendment Act 2008, section 24

607 Application of amendments about concession for transfer duty—residential land

(1) The relevant provisions, as in force on 1 September 2008, apply to dutiable transactions only if liability for transfer duty arises on or after 1 September 2008.

(2) The relevant provisions, as in force immediately before 1 September 2008, apply to a dutiable transaction that is the transfer, or agreement for the transfer, of residential land made on or after 1 September 2008 if—

(a) the transfer or agreement replaces a transfer, or an agreement for the transfer, that included the land and was made on or after 1 July 2008 and before 1 September 2008; or

(b) the transferee had an option to purchase the land, or the transferor had an option to require the transferee to purchase the land, granted on or after 1 July 2008 and before 1 September 2008 and exercised on or after 1 September 2008; or

(c) another arrangement was made on or after 1 July 2008 and before 1 September 2008 the sole or main purpose of which was to defer the making of the transfer or agreement until 1 September 2008 or later so the concession for transfer duty under the relevant provisions, as in force on or after 1 September 2008, would apply in relation to the dutiable transaction.

(3) In this section—

relevant provisions means the following provisions—

- chapter 2, part 9, divisions 2 and 3
- chapter 2, part 14, division 1

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- schedule 4A.

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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610 Application of amendment about concession for transfer duty—first home

A reference in section 607 to a relevant provision as in force on 1 September 2008 includes section 92, as amended by the *Revenue and Other Legislation Amendment Act (No. 2) 2008*, as in force on 1 September 2008.

611 Reassessment of vehicle registration duty under s 393A

Section 393A does not apply in relation to an application to register a vehicle in the name of a vehicle dealer, or to transfer a vehicle to a vehicle dealer, made before the commencement day.

612 Non-application of s 471EA to liabilities arising before commencement day

Section 471EA does not apply to a liability to pay an amount of duty, assessed interest or penalty tax that arose before the commencement day.

Part 12 Transitional provision for Fuel Subsidy Repeal and Revenue and Other Legislation Amendment Act 2009

613 Application of amendments about concession for transfer duty—vacant land

(1) The relevant provisions, as in force on 1 July 2009, apply to dutiable transactions only if liability for transfer duty arises on or after 1 July 2009.

(2) The relevant provisions, as in force immediately before 1 July 2009, apply to a dutiable transaction that is the transfer, or agreement for the transfer, of vacant land made on or after 1 July 2009 if—

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(a) the transfer or agreement replaces a transfer, or an agreement for the transfer, that included the land and was made before 1 July 2009; or

(b) the transferee had an option to purchase the land, or the transferor had an option to require the transferee to purchase the land, granted before 1 July 2009 and exercised on or after 1 July 2009; or

(c) another arrangement was made before 1 July 2009 the sole or main purpose of which was to defer the making of the transfer or agreement until 1 July 2009 or later so the concession for transfer duty under the relevant provisions, as in force on or after 1 July 2009, would apply in relation to the dutiable transaction.

(3) In this section—

relevant provisions means the following provisions—

- chapter 2, part 9, divisions 2 and 3
- chapter 2, part 14, division 1
- schedule 4B.

Part 13 Transitional provisions for Revenue and Other Legislation Amendment Act 2010

614 References to an acquisition mentioned in s 85(b)

A provision in either of the following that, on the commencement of this section, includes a reference to an acquisition mentioned in section 85(b) is taken to have included that reference on and from 1 December 2003—

(a) chapter 2, part 9;

(b) chapter 2, part 14, division 1.

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615 Exemption under s 117

Section 117(2) as in force on the commencement of this section is taken to have had effect on and from 13 August 2004.

616 Exemption under s 151

Section 151(2) as in force on the commencement of this section is taken to have had effect on and from 2 May 2003.

617 Charge mentioned in s 198

(1) Section 198 as in force immediately before its amendment by the amending Act continues to apply to a relevant acquisition made before the amendment.

(2) In this section—

amending Act means the *Revenue and Other Legislation Amendment Act 2010*.

618 Registered general insurers and registered life insurers

A person who, immediately before 14 January 2010, was a registered general insurer or registered life insurer is, on and from 14 January 2010, taken to be a registered insurer.

619 Date of effect of particular provisions

The following provisions as in force on the commencement of this section are taken to have had effect on and from 14 January 2010—

- section 73
- sections 353 to 355
- section 357
- section 360
- chapter 8, part 5

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- sections 371 and 372
- section 437
- the schedule, to the extent the definitions *insurer*, *registered general insurer* and *registered life insurer* have been omitted and the definitions *insurer* and *registered insurer* have been inserted.

620 Start of use requirement under s 416

Section 416(1)(a) and (3)(a) as in force on the commencement of this section is taken to have had effect on and from 1 March 2002.

Part 14 Transitional provision for Revenue and Other Legislation Amendment Act 2011

621 Dutiable value of vehicles modified for a person with a disability

The following provisions as in force on the commencement of this section are taken to have had effect on and from 4 March 2009—

(a) sections 378(3) and 379B;

(b) schedule 6, definition *modified for a person with a disability*.

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Part 15 Transitional provisions for Community Ambulance Cover Levy Repeal and Revenue and Other Legislation Amendment Act 2011

Division 1 Transitional provisions for Community Ambulance Cover Levy Repeal and Revenue and Other Legislation Amendment Act 2011

622 Definition for pt 15

In this part—

previous, if followed by a provision number, means the provision of that number as in force immediately before 1 July 2011, as affected by any relevant definition in force for the provision at that time.

Note—

1 July 2011 was the day on which amendments to this Act under the *Community Ambulance Cover Levy Repeal and Revenue and Other Legislation Amendment Act 2011* commenced.

623 Particular references to landholder duty, majority interests and relevant acquisitions

(1) In the provisions mentioned in subsection (2)—

(a) a reference to landholder duty imposed or paid for a relevant acquisition includes a reference to land rich duty imposed or paid under previous chapter 3, part 1; and

(b) a reference to a relevant acquisition includes a reference to a relevant acquisition made under previous chapter 3, part 1; and

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(c) a reference to a significant interest includes a reference to a majority interest under previous chapter 3, part 1.

(2) For subsection (1), the provisions are the following—

(a) section 82;

(b) section 158(1)(c);

(c) chapter 3, part 1, division 4;

(d) section 407(1)(d).

624 Relevant acquisitions made in a land rich corporation before 1 July 2011

(1) This section applies if, before 1 July 2011, a person made a relevant acquisition in a land rich corporation under previous section 158.

(2) Previous chapter 3, part 1 and chapter 10, part 1 continue to apply in relation to the relevant acquisition as if the *Community Ambulance Cover Levy Repeal and Revenue and Other Legislation Amendment Act 2011* had not commenced.

625 Interests acquired before 1 July 2011 included for s 158

(1) This section applies if—

(a) before 1 July 2011, a person or related person of the person acquired an interest in an entity (the ***original interest***); and

(b) on or after 1 July 2011, the person or related person acquires a further interest in the entity; and

(c) when the further interest is acquired, the person or related person still holds the original interest.

(2) To avoid any doubt, it is declared that for section 158, the original interest is an interest held by the person or related person in the entity.

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626 Particular interests taken to be excluded interests for s 179

(1) This section applies if—

(a) before 1 July 2011 a person acquired an interest in a corporation other than a land rich corporation as defined under this Act before that day; and

(b) on or after 1 July 2011—

(i) the corporation is or becomes a landholder; and

(ii) the person makes a relevant acquisition in the corporation.

(2) For working out the dutiable value of the relevant acquisition under section 179, the interest acquired before 1 July 2011 is taken to be an excluded interest.

(3) Section 163(2) applies for working out when the interest was acquired.

627 Application of s 412

A reference in section 412(1)(a) to duty assessed on the basis of an exemption under section 409 includes a reference to duty assessed on the basis of an exemption under previous section 409.

Division 2 Savings provision for repeal

628 Pre-amended home concession provisions continue to apply for particular transactions

(1) This section applies to each of the following dutiable transactions for which liability for transfer duty arose before the commencement—

(a) the transfer, or agreement for the transfer, of a home;

(b) the acquisition, on its creation, grant or issue, of a new right that is a lease—

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(i) of residential land on which a home is constructed; and

(ii) for which a premium, fine or other consideration is payable;

(c) the vesting, as mentioned in section 9(1)(d), of a home.

(2) The following pre-amended provisions continue to apply to the assessment of transfer duty in relation to the transaction—

(a) sections 86, 91 and 93;

(b) sections 153, 154 and 155;

(c) schedules 3, 4A and 4B;

(d) schedule 6, definitions *home* and *occupancy requirement*.

(3) This section does not limit the *Acts Interpretation Act 1954*, section 20.

(4) In this section—

commencement means the commencement of this section.

home means a home under pre-amended section 86(1).

pre-amended, in relation to a provision, means the provision as it was in force immediately before the commencement.

Part 16 Transitional provision for Treasury (Cost of Living) and Other Legislation Amendment Act 2012

629 Application of amendments about concession for transfer duty—home

(1) The relevant provisions, as in force on 1 July 2012, apply to dutiable transactions only if liability for transfer duty arises on or after 1 July 2012.

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(2) The relevant provisions, as in force immediately before 1 July 2012, apply to a dutiable transaction that is the transfer, or agreement for the transfer, of residential or vacant land made on or after 1 July 2012 if—

(a) the transfer or agreement replaces a transfer, or an agreement for the transfer, that included the land and was made before 1 July 2012; or

(b) the transferee had an option to purchase the land, or the transferor had an option to require the transferee to purchase the land, granted before 1 July 2012 and exercised on or after 1 July 2012; or

(c) another arrangement was made before 1 July 2012 the sole or main purpose of which was to defer the making of the transfer or agreement until 1 July 2012 or later so the concession for transfer duty under the relevant provisions, as in force on or after 1 July 2012, would apply in relation to the dutiable transaction.

(3) In this section—

relevant provisions means the following provisions—

- chapter 2, part 9
- chapter 2, part 14, division 1
- schedule 3
- schedule 4A
- schedule 4B.

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Part 17 Transitional and declaratory provisions for Fiscal Repair Amendment Act 2012

Division 1 Preliminary

630 Definitions for pt 17

In this part—

acquirer, in relation to a relevant acquisition in a landholder, includes a related person of the acquirer who, under section 175(2), is jointly and severally liable for the payment of landholder duty on the relevant acquisition.

amending Act means the *Fiscal Repair Amendment Act 2012*.

commencement day means the day this section commences.

retrospectivity period means the period beginning at the start time and ending immediately before the commencement day.

start time means 10.30a.m. on 13 January 2012.

Division 2 Declaratory provision

631 Declaratory provision—effect of amending Act on meaning of *land*

(1) For deciding whether a resource authority, other than an exploration authority, was land under the pre-amended Act, the amendment of schedule 6 by the amending Act is to be disregarded.

(2) In this section—

pre-amended Act means this Act as in force before the commencement day.

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Division 3 Provisions for exploration authorities

Subdivision 1 Preliminary

632 Purpose of div 3

The purpose of this division is to provide for the imposition of duty in relation to exploration authorities during the retrospectivity period.

Subdivision 2 Liability for duty

633 Meaning of *land* for retrospectivity period

(1) During the retrospectivity period, this Act is taken to have applied as if schedule 6, definition *land* had provided as follows—

land—

(a) includes—

(i) airspace above land and the coastal waters of the State; and

(ii) an exploration authority; but

(b) does not include an exploration permit under the *Petroleum (Submerged Lands) Act 1982*.

(2) For subsection (1), schedule 6, definition *exploration authority*, as inserted by section 8 of the amending Act, is taken to have had effect on and from the start time.

634 Meaning of *statutory licence* for retrospectivity period

During the retrospectivity period, this Act is taken to have applied as if schedule 6, definition *statutory licence* had provided as follows—

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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 permit under the *Petroleum (Submerged Lands) Act 1982*.

635 Exemption from transfer duty for exploration authority granted during retrospectivity period

Transfer duty is not imposed on a dutiable transaction mentioned in section 9(1)(f) that is the grant of an exploration authority if liability for transfer duty arose during the retrospectivity period.

636 Exemption from transfer duty for transfer of exploration authority under particular agreements

(1) This section applies to a dutiable transaction mentioned in section 9(1)(a) that is the transfer, on or after the start time, of an exploration authority if—

(a) the transfer is made under an agreement for the transfer of the exploration authority, whether conditional or not; and

(b) the agreement for the transfer was entered into before the start time.

(2) Transfer duty is not imposed on the dutiable transaction.

637 Particular exploration land-holdings not to be taken into account for working out landholder duty

(1) This section applies if—

(a) a relevant acquisition in a landholder is made on or after the start time; and

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(b) there was, before the start time, an agreement to acquire the interest that is the subject of the relevant acquisition, whether the agreement is conditional or not; and

(c) the interest is, under section 163(2)(b), acquired after the start time.

(2) Exploration land-holdings must be excluded from the Queensland land-holdings of the landholder for the purposes of—

(a) if the landholder is a private landholder—working out the dutiable value of the relevant acquisition under section 179; or

(b) if the landholder is a public landholder—working out the landholder duty imposed on the relevant acquisition under section 179A.

(3) In this section—

exploration land-holdings, of a landholder, means land-holdings mentioned in section 167 if the land is an exploration authority.

Subdivision 3 Obligations of parties—transfer duty

638 Transfer duty—transactions previously not dutiable

(1) This section applies to a dutiable transaction for which liability for transfer duty arose during the retrospectivity period, if—

(a) but for this division, the transaction would not have been a dutiable transaction under chapter 2; and

(b) for assessing transfer duty on the dutiable transaction—

(i) section 30 does not apply to the transaction; or

(ii) if section 30 applies to the transaction—paragraph (a) applies to each of the dutiable transactions that are to be aggregated.

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(2) The period within which the parties liable to pay transfer duty relating to the dutiable transaction must comply with section 19(3) is taken to be 30 days after the commencement day.

(3) For a standard self assessment of duty on the dutiable transaction—

(a) the date liability for duty for the transaction arises is, for section 455A(3), taken to be the commencement day; and

(b) the date by which a liable party to the instrument that effects or evidences the transaction must comply with section 471E(1) is taken to be 30 days after the commencement day.

639 Transfer duty—dutiable transactions not assessed before commencement day

(1) This section applies to a dutiable transaction for which liability for transfer duty arose during the retrospectivity period, if—

(a) but for this division, the dutiable value of the transaction would have been required to be assessed without having regard to an exploration authority; and

(b) because of this division, the dutiable value of the transaction is required to be assessed having regard to dutiable property that is an exploration authority; and

(c) before the commencement day, an assessment of a party's liability for transfer duty on the dutiable transaction has not been made, or taken to have been made, by the commissioner.

Note—

A reference in this subsection to a dutiable transaction includes a reference to a dutiable transaction that should have been assessed under section 30 together with 1 or more other dutiable transactions that, but for this division, would not have been dutiable transactions.

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(2) Section 638(2) and (3) applies in relation to the dutiable transaction.

(3) However, to the extent unpaid primary tax relating to the dutiable transaction is attributable to dutiable property other than an exploration authority, section 638(2) and (3) does not affect—

(a) the start date for unpaid tax interest on the unpaid primary tax under the Administration Act, section 54; or

(b) a party's liability for penalty tax.

640 Transfer duty—dutiable transactions assessed before commencement day

(1) This section applies to a dutiable transaction for which liability for transfer duty arose during the retrospectivity period, if—

(a) but for this division, the dutiable value of the transaction would have been required to be assessed without having regard to an exploration authority; and

(b) because of this division, the dutiable value of the transaction is required to be assessed having regard to dutiable property that is an exploration authority; and

(c) before the commencement day, an assessment has been made, or taken to have been made, of a party's liability for transfer duty on the dutiable transaction.

Note—

A reference in this subsection to a dutiable transaction includes a reference to a dutiable transaction that should have been assessed under section 30 together with 1 or more other dutiable transactions that, but for this division, would not have been dutiable transactions.

(2) Transfer duty for the dutiable transaction must be reassessed.

(3) Within 30 days after the commencement day, a party liable for transfer duty on the dutiable transaction must—

(a) give notice in the approved form to the commissioner that the reassessment is required; and

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(b) lodge the instrument that effects or evidences the transaction or the transfer duty statement for the transaction.

Note—

Under the Administration Act, failure to give the commissioner notice about a matter under a tax law is an offence under section 120 of that Act. Also, under the Administration Act, the requirement under paragraph (b) is a lodgement requirement for which a failure to comply is an offence under section 121 of that Act.

(4) If a party complies with subsection (3) for the dutiable transaction, the party is not liable for penalty tax under the Administration Act, section 58(2)(c) to the extent the difference between the transfer duty assessed on the original assessment, and on the reassessment, is attributable to dutiable property that is an exploration authority.

(5) Subsection (6) applies to unpaid tax interest that is payable on unpaid primary tax for the dutiable transaction, to the extent the tax is attributable to dutiable property that is an exploration authority.

(6) For the Administration Act, section 54(2) and (2A), the start date is—

(a) the due date for the reassessment under this section; or

(b) if the party has not complied with subsection (3)—the date that is the same number of days before the due date for the reassessment as the number of days in the periods of noncompliance with the subsection.

Note—

Section 54(2A) was renumbered as section 54(3) by the *Royalty Legislation Amendment Act 2020*.

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Subdivision 4 Obligations of parties—landholder duty and corporate trustee duty

641 Landholder duty and corporate trustee duty—acquisitions not previously dutiable

(1) This section applies to a relevant acquisition in a landholder or corporate trustee for which liability for duty arose during the retrospectivity period, if—

(a) but for this division, the acquisition would not have been a relevant acquisition in a landholder or corporate trustee under chapter 3; and

(b) for assessing landholder duty or corporate trustee duty on the relevant acquisition—

(i) section 180 or 223 does not apply to the acquisition; or

(ii) if section 180 or 223 applies to the acquisition—paragraph (a) applies to each of the acquisitions that are to be aggregated.

(2) The period within which the acquirer must comply with section 177 or 217 is taken to be 30 days after the commencement day.

642 Landholder duty and corporate trustee duty—relevant acquisitions not assessed before commencement day

(1) This section applies to a relevant acquisition in a landholder or corporate trustee for which liability for duty arose during the retrospectivity period, if—

(a) but for this division, the following would have been required to be assessed without having regard to an exploration authority—

(i) for a relevant acquisition in a public landholder—the amount of duty imposed on the relevant acquisition;

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(ii) otherwise—the dutiable value of the relevant acquisition; and

(b) because of this division, the dutiable value of, or the amount of duty imposed on, the relevant acquisition is required to be assessed having regard to—

(i) for landholder duty—land-holdings that are an exploration authority; or

(ii) for corporate trustee duty—dutiable property, or an indirect interest in dutiable property, that is an exploration authority; and

(c) before the commencement day, an assessment of the acquirer's liability for landholder duty or corporate trustee duty on the relevant acquisition has not been made by the commissioner.

Note—

A reference in this subsection to a relevant acquisition includes a reference to a relevant acquisition that should have been assessed under section 180 or 233 together with 1 or more other relevant acquisitions that, but for this division, would not have been relevant acquisitions.

(2) Section 641(2) applies in relation to the relevant acquisition.

(3) However, to the extent unpaid primary tax relating the relevant acquisition is attributable to land-holdings or dutiable property other than an exploration authority, section 641(2) does not affect—

(a) the start date for unpaid tax interest on the unpaid primary tax under the Administration Act, section 54; or

(b) the acquirer's liability for penalty tax.

643 Landholder duty and corporate trustee duty—relevant acquisition assessed before commencement day

(1) This section applies to a relevant acquisition in a landholder or corporate trustee for which liability for duty arose during the retrospectivity period, if—

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(a) but for this division, the following would have been required to be assessed without having regard to an exploration authority—

(i) for a relevant acquisition in a public landholder—the amount of duty imposed on the relevant acquisition;

(ii) otherwise—the dutiable value of the relevant acquisition; and

(b) because of this division, the dutiable value of, or the amount of duty imposed on, the relevant acquisition is required to be assessed having regard to—

(i) for landholder duty—land-holdings that are an exploration authority; or

(ii) for corporate trustee duty—dutiable property, or an indirect interest in dutiable property, that is an exploration authority; and

(c) before the commencement day, an assessment of the acquirer's liability for landholder duty or corporate trustee duty on the relevant acquisition has been made by the commissioner.

Note—

A reference in this subsection to a relevant acquisition includes a reference to a relevant acquisition that should have been assessed under section 180 or 233 together with 1 or more other relevant acquisitions that, but for this division, would not have been relevant acquisitions.

(2) Landholder duty or corporate trustee duty for the relevant acquisition must be reassessed.

(3) Within 30 days after the commencement day, the acquirer must—

(a) give notice in the approved form to the commissioner that the reassessment is required; and

(b) lodge the landholder duty statement or corporate trustee duty statement for the relevant acquisition.

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Note—

Under the Administration Act, failure to give the commissioner notice about a matter under a tax law is an offence under section 120 of that Act. Also, under the Administration Act, the requirement under paragraph (b) is a lodgement requirement for which a failure to comply is an offence under section 121 of that Act.

(4) If the acquirer complies with subsection (3), the acquirer is not liable for penalty tax under the Administration Act, section 58(2)(c) to the extent the difference between the duty assessed on the original assessment, and on the reassessment, is attributable to a land-holding or dutiable property that is an exploration authority.

(5) Subsection (6) applies to unpaid tax interest that is payable on unpaid primary tax for the relevant acquisition, to the extent the tax is attributable to a land-holding or dutiable property that is an exploration authority.

(6) For the Administration Act, section 54(2) and (2A), the start date is—

(a) the due date for the reassessment under this section; or

(b) if the acquirer has not complied with subsection (3)—the date that is the same number of days before the due date for the reassessment as the number of days in the periods of noncompliance with the subsection.

Note—

Section 54(2A) was renumbered as section 54(3) by the *Royalty Legislation Amendment Act 2020*.

Subdivision 5 Obligations of other parties

644 Obligation for self assessor

(1) This section applies to a self assessor registered under chapter 12, part 3 if—

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(a) during the retrospectivity period, the self assessor lodged a transaction statement under section 455 or 455A; and

(b) the transaction statement relates to a dutiable transaction or relevant acquisition to which subdivision 3 or 4 applies.

(2) The self assessor must, within 30 days after the commencement day, give notice to the commissioner that the transaction statement was lodged.

Note—

Under the Administration Act, failure to give the commissioner notice about a matter under a tax law is an offence under section 120 of that Act.

(3) Section 488 applies to a failure by a self assessor to comply with subsection (2).

645 Obligation for other persons in relation to registration of particular instruments

(1) This section applies if, during the retrospectivity period—

(a) a person—

(i) recorded an instrument or transaction in a register of interests in property; and

(ii) the instrument, or the instrument that effects or evidences the transaction, relates to a transaction or acquisition to which subdivision 3 or 4 applies; or

(b) the trustee or responsible entity of a unit trust—

(i) recorded in the trust's records an instrument that effects or evidences a trust acquisition or trust surrender of units in a unit trust; and

(ii) section 638, 639 or 640 applies to the trust acquisition or trust surrender; or

(c) a person—

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(i) entered in the records of a corporation or society an instrument that effects or evidences a relevant acquisition; and

(ii) section 641, 642 or 643 applies to the relevant acquisition.

(2) The person, trustee or responsible entity must, within 30 days after the commencement day, give notice to the commissioner that the record or entry was made.

Note—

Under the Administration Act, failure to give the commissioner notice about a matter under a tax law is an offence under section 120 of that Act.

Subdivision 6 Miscellaneous provisions

646 Offences during retrospectivity period

(1) A person can not be prosecuted under this Act or the Administration Act for an act or omission done or omitted to be done during the retrospectivity period if, when the act or omission occurred, it would not have constituted an offence but for this division.

(2) Subsection (1) does not limit the Criminal Code, section 11.

647 Properly stamped instruments not affected

(1) This section applies to an instrument that was stamped during the retrospectivity period.

(2) If, at the time the instrument was stamped, it was properly stamped under section 491 but for this division, the instrument is taken to have been properly stamped despite this division.

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Division 4 Transitional provisions for other matters

648 Application of s 167

Section 167, as amended by the amending Act, section 5 applies to a relevant acquisition made on or after the commencement day.

649 Application of amended sch 3

Schedule 3 as in force on the commencement day applies to dutiable transactions and relevant acquisitions if liability for transfer duty, landholder duty or corporate trustee duty arises on or after the commencement day.

Part 18 Transitional provisions for Revenue Amendment and Trade and Investment Queensland Act 2013

650 Application of s 152A

Section 152A is taken to apply to a previous dutiable transaction within the meaning of section 152A(3) that happens before the commencement of this section, if the third dutiable transaction under section 152A(1)(c) to correct the clerical error in the previous dutiable transaction is entered into on or after 4 February 2012.

651 Application of amendment of s 155

(1) Section 155, as in force on the commencement of this section, applies to a dutiable transaction only if liability for transfer duty for the transaction arises on or after the commencement of this section.

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(2) Section 155, as in force before the commencement of this section, continues to apply to a dutiable transaction if liability for transfer duty for the transaction arose before the commencement of this section.

652 Application of new rate of insurance duty under s 362

(1) The new rate of insurance duty applies to a premium paid for general insurance on or after the commencement of this section only if the contract that effects the general insurance is entered into on or after the commencement of this section.

(2) In this section—

new rate, of insurance duty, means the rate of insurance duty imposed on the premium under section 362(1), as amended by the *Revenue Amendment and Trade and Investment Queensland Act 2013*, section 17.

Part 19 Transitional provisions for Revenue Legislation Amendment Act 2014

653 Application of amended ch 2, pt 10 and related provisions

(1) The relevant provisions, as in force on the commencement, apply to dutiable transactions only if liability for transfer duty arises on or after the commencement.

(2) In this section—

commencement means the day this section commences.

relevant provisions means the following provisions—

- chapter 2, part 10
- sections 123 and 173
- schedule 6, definitions *defined relative*, *family partnership*, *family trust* and *family unit trust*

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654 Application of existing s 123 concession

(1) This section applies to a dutiable transaction to which section 123 applies if, before the day this section commences, a concession for transfer duty has been provided under chapter 2, part 10 for the dutiable property the subject of the distribution.

(2) Section 123, as in force immediately before the day this section commences, continues to apply in relation to the dutiable transaction.

Part 20 Transitional provisions for Payroll Tax Rebate, Revenue and Other Legislation Amendment Act 2015

655 Definitions for pt 20

In this part—

retrospectivity period means the period beginning at the start time and ending immediately before the commencement.

ruling means the commissioner's ruling called 'DA000.12.1 Transfer duty—exemption for farm-in transactions in the resources sector'.

start time means 10.30a.m. on 13 January 2012.

656 Retrospective operation of s 145

Section 145, as amended by the *Payroll Tax Rebate, Revenue and Other Legislation Amendment Act 2015*, applies to a vesting of land in the State made on or after 25 February 2014.

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657 Retrospective operation of ch 2, pt 8A

(1) Chapter 2, part 8A and any ancillary provision, as inserted or amended by the *Payroll Tax Rebate, Revenue and Other Legislation Amendment Act 2015*, is taken to have had effect on and from the start time.

(2) In this section—

ancillary provision means a provision of this Act necessary to give effect to chapter 2, part 8A.

658 Particular matters relating to upfront farm-in agreements for retrospectivity period

(1) If, during the retrospectivity period, the farmee for an upfront farm-in agreement has lodged the agreement in compliance with paragraph 12 of the ruling the farmee is taken to have complied with section 84K.

(2) Also, if, during the retrospectivity period, the farmee for an upfront farm-in agreement has notified the commissioner in compliance with paragraph 14 of the ruling, the farmee is taken to have complied with section 84L.

(3) To remove any doubt, it is declared that if subsection (2) applies, the commissioner or an investigator under the Administration Act may, under that Act, require a person liable for transfer duty for the agreement to give the commissioner or investigator the agreement, or a transfer duty statement for the agreement, on or after the commencement.

(4) If, during the retrospectivity period, a person to whom paragraph 12 of the ruling applied did not comply with that paragraph, section 84K applies as if the person were required to lodge the information and agreement or a transfer duty statement for the agreement under that section within 14 days after the commencement.

(5) If, during the retrospectivity period, a person to whom paragraph 14 of the ruling applied did not comply with that paragraph, section 84L applies as if the person were required to give the notice and lodge the agreement or a transfer duty

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statement for the agreement under section 84L(2) within 30 days after the commencement.

659 Application of Administration Act, pt 6—farm-in agreements

(1) This section applies if liability for transfer duty arose and was assessed during the retrospectivity period for a dutiable transaction that was—

(a) a farm-in agreement; or

(b) a transfer of an interest in an exploration authority under a farm-in agreement.

(2) Despite the Administration Act, section 65(1)(d), the person liable for transfer duty on the agreement may object to the assessment within 30 days after the commencement.

660 Application of start of use requirement under s 416

(1) This section applies to a dutiable transaction that is an application to register or transfer a vehicle in the name of a charitable institution—

(a) if—

(i) the application was made on or after 26 February 2013 but before 25 February 2014; and

(ii) the period for which the vehicle is used solely or almost solely by the institution for a qualifying exempt purpose has not ended before 25 February 2014; or

(b) if the application was made on or after 25 February 2014.

(2) Section 416(4)(d) as in force on the commencement applies in relation to the application to register or transfer the vehicle.

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

661 Application of amendments relating to s 105

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

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

662 Application of ch 4

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

Part 22 Transitional provisions for Revenue and Other Legislation Amendment Act 2016

663 Application of s 154

(1) Section 154(2) and (2AA) apply to a dutiable transaction mentioned in section 154(1)(a) only if liability for transfer duty on the transaction arises on or after the commencement.

(2) Section 154(2) as in force before the commencement continues to apply to a dutiable transaction mentioned in section 154(1)(a) if liability for transfer duty on the transaction arose before the commencement.

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664 Continuing application of pre-amended s 154 for s 291

Section 154(2) as in force before the commencement continues to apply for the purposes of section 291(1)(a).

665 Retrospective operation of s 375

Section 375, as amended by the *Revenue and Other Legislation Amendment Act 2016*, applies to a contract of insurance for which insurance duty would otherwise be payable on or after 14 October 2014.

666 Retrospective operation of s 404

Section 404, as amended by the *Revenue and Other Legislation Amendment Act 2016*, applies to a vesting of dutiable property that takes place on or after 30 November 2015.

Part 23 Transitional provision for Revenue Legislation Amendment Act 2017

667 Application of amendments applying AFAD to particular agreements

Sections 240(2), 241A, and chapter 4, part 5, divisions 2 and 3, apply in relation to an agreement for the transfer of dutiable property if liability for transfer duty arises on or after the commencement.

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Part 24 Transitional provisions for Revenue Legislation Amendment Act 2018

668 Definition for part

In this part—

amending Act means the *Revenue Legislation Amendment Act 2018*.

669 Application of amendments increasing the rate of AFAD

Sections 244 to 246 as amended by the amending Act apply in relation to a relevant transaction within the meaning of section 230 if liability for transfer duty, landholder duty or corporate trustee duty arises on or after the commencement.

670 Application of amendments about rate of vehicle registration duty

Section 383 as amended by the amending Act applies in relation to an application to register or transfer a vehicle if the application is made on or after the commencement.

Part 25 Transitional provisions for Revenue and Other Legislation Amendment Act 2018

671 Meaning of *amending Act*

In this part—

amending Act means the *Revenue and Other Legislation Amendment Act 2018*.

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672 Retrospective effect of ss 76E–76G

(1) This Act applies, and is taken to have applied since 9 August 2017, to a trust acquisition or trust surrender happening on or after that day, as if sections 76E to 76G were in force from 9 August 2017.

(2) However, to remove any doubt, it is declared that a person can not be prosecuted under this Act or the Administration Act for a contravention of section 76G before the commencement.

(3) A pre-commencement approval has effect, and is taken to have had effect since it was given, to the extent it would have had effect if sections 76E to 76G were in force from 9 August 2017.

(4) In this section—

pre-commencement approval means an approval mentioned in section 76F given by the commissioner on or after 9 August 2017 and before the commencement.

673 Retrospective effect of amended s 179(4)

(1) The amended provision applies, and is taken to have applied since 22 August 2017, to a relevant acquisition for which a liability for landholder duty arose on or after that day.

(2) In this section—

amended provision means section 179(4) as amended by the amending Act.

674 Retrospective effect of amended definition *business property*

(1) The amended definition applies, and is taken to have applied since 12 October 2016, in relation to a dutiable transaction entered into on or after that day.

(2) In this section—

amended definition means schedule 6, definition *business property* as amended by the amending Act.

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Part 26 Transitional provision for Royalty Legislation Amendment Act 2020

675 Retrospective effect of definition *defined relative*

(1) The new definition applies, and is taken to have applied, in relation to a dutiable transaction for which liability for transfer duty arose on or after 23 May 2018.

(2) Subsection (3) applies in relation to a dutiable transaction for which liability for transfer duty arose on or after 23 May 2017 but before 23 May 2018 (the ***relevant period***).

(3) The former definition is, in relation to a person, taken to have included—

(a) a child of an aunt or uncle of the person; and

(b) the spouse of a person mentioned in paragraph (a).

(4) In this section—

former definition means schedule 6, definition *defined relative* as in force during the relevant period.

new definition means schedule 6, definition *defined relative* as amended by the *Royalty Legislation Amendment Act 2020*.

Part 27 Transitional provisions for Revenue Legislation Amendment Act 2022

676 Retrospective effect of new s 124

(1) New section 124(d) applies, and is taken to have applied from 3 April 2017, in relation to a vesting of dutiable property, on or after that date, under the *Succession Act 1981*, section 45.

(2) New section 124(e) applies, and is taken to have applied from 6 August 2019, in relation to a vesting of dutiable property, on

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or after that date, under the *Aboriginal and Torres Strait Islander Land Holding Act 2013*, section 69A.

(3) In this section—

new section 124 means section 124 as amended by the *Revenue Legislation Amendment Act 2022*.

677 Retrospective effect of ss 413F–413H

(1) Sections 413F to 413H apply, and are taken to have applied, in relation to a dutiable transaction for which liability for transfer duty or vehicle registration duty arose from 7 September 2020.

(2) For subsection (1), words defined in chapter 10, part 1A, division 1 and used in sections 413F to 413H are also taken to apply, and have applied, from 7 September 2020.

678 Retrospective effect of s 413I

(1) Section 413I applies, and is taken to have applied, in relation to a dutiable transaction for which liability for transfer duty or vehicle registration duty arose from 28 June 2021.

(2) For subsection (1), words defined in chapter 10, part 1A, division 1 and used in section 413I are also taken to apply, and have applied, from 28 June 2021.

679 Application of AFAD exemption under s 246

(1) Section 246 applies in relation to a relevant transaction that is the transfer, or agreement for transfer, of dutiable property only if the property is transferred, or the agreement is entered into, from the commencement.

(2) However, section 246 does not apply in relation to a transfer or agreement mentioned in subsection (1) if—

(a) it replaces a transfer, or agreement for transfer, that included the dutiable property and was made before the commencement; or

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(b) the transferee had an option to purchase the dutiable property, or the transferor had an option to require the transferee to purchase the dutiable property, granted before the commencement and exercised from the commencement; or

(c) another arrangement was made before the commencement the sole or main purpose of which was to defer the making of the transfer or agreement until 1 January 2023 or later so section 246 would apply in relation to the relevant transaction.

Part 28 Transitional provision for Revenue Legislation Amendment Act 2023

Part 29 Transitional provisions for Revenue and Other Legislation Amendment Act 2024

681 Definitions for part

In this part—

concession provisions means section 92 and schedules 4A and 4B.

former, for a provision of this Act, see section 682(1).

new, for a provision of this Act, see section 682(2).

682 References to *former* or *new* provisions

(1) A reference in a provision of this part (the ***transitional provision***) to a ***former*** provision of this Act is a reference to the provision as in force from time to time before the commencement of the transitional provision.

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Example—

A reference in section 683 to the 'former concession provisions' is a reference to the concession provisions as in force from time to time before the commencement of section 683.

(2) A reference in a provision of this part (the ***transitional provision***) to a ***new*** provision of this Act is a reference to the provision as in force from the commencement of the transitional provision.

Example—

A reference in section 683 to the 'new concession provisions' is a reference to the concession provisions as in force from the commencement of section 683.

683 Application of concession provisions generally

(1) The former concession provisions apply in relation to a dutiable transaction if liability for transfer duty arose before 9 June 2024.

(2) Subject to section 684, the new concession provisions apply in relation to a dutiable transaction if liability for transfer duty arises on or after 9 June 2024.

684 Application of concession provisions to particular transactions

Despite the *Revenue and Other Legislation Amendment Act 2024*, the former concession provisions apply in relation to a dutiable transaction if—

(a) the transaction is the transfer, or agreement for the transfer, of residential land or vacant land; and

(b) the land is transferred, or the agreement is made, on or after 9 June 2024; and

(c) any of the following applies—

(i) the transaction replaces a transfer, or agreement for transfer, that included the land and was made before 9 June 2024;

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(ii) the transferee had an option to purchase the land, or the transferor had an option to require the transferee to purchase the land, granted before 9 June 2024 and exercised on or after 9 June 2024;

(iii) another arrangement was made before 9 June 2024 the sole or main purpose of which was to defer the making of the transfer or agreement until 9 June 2024 or later so the new concession provisions would apply in relation to the transaction.

685 Application of AFAD provisions

(1) Former sections 244, 245 and 245A apply in relation to a relevant transaction for which liability for transfer duty, landholder duty or corporate trustee duty arose before 1 July 2024.

(2) New sections 244, 245 and 245A apply in relation to a relevant transaction for which liability for transfer duty, landholder duty or corporate trustee duty arises on or after 1 July 2024.

(3) In this section—

relevant transaction see section 230.

Part 30 Transitional provisions for Revenue Legislation Amendment Act 2025

686 Non-application of amendments of s 153 to residential leases entered into before commencement

To remove any doubt, it is declared that a reference in section 153(1C) to a residential lease does not include a reference to a lease entered into, or other exclusive possession granted, before the commencement.

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687 Application of concession provisions to transactions

(1) The former concession provisions apply in relation to a dutiable transaction if liability for transfer duty arose before 1 May 2025.

(2) Subject to subsection (3), the new concession provisions apply in relation to a dutiable transaction if liability for transfer duty arises on or after 1 May 2025.

(3) Despite the *Revenue Legislation Amendment Act 2025*, the former concession provisions apply in relation to a dutiable transaction if—

(a) the transaction is the transfer, or agreement for the transfer, of residential land or vacant land; and

(b) the land is transferred, or the agreement is made, on or after 1 May 2025; and

(c) any of the following applies—

(i) the transaction replaces a transfer, or agreement for transfer, that included the land and was made before 1 May 2025;

(ii) the transferee had an option to purchase the land, or the transferor had an option to require the transferee to purchase the land, granted before 1 May 2025 and exercised on or after 1 May 2025;

(iii) another arrangement was made before 1 May 2025 the sole or main purpose of which was to defer the making of the transfer or agreement until 1 May 2025 or later so the new concession provisions would apply in relation to the transaction.

(4) In this section—

former concession provisions means chapter 2, parts 9 and 14, division 1 and schedules 4A and 4B as in force from time to time before the commencement.

new concession provisions means chapter 2, parts 9 and 14, division 1 and schedule 4A as in force from the commencement.

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Part 31 Imposition of AFAD in particular circumstances

688 Imposition of AFAD payable 1 January 2018 to 8 April 2024

(1) This section applies if—

(a) AFAD was purportedly imposed on a relevant transaction under chapter 4; and

(b) the AFAD was purportedly payable on or after 1 January 2018 and before 8 April 2024; and

(c) the purported imposition of AFAD on the relevant transaction was invalid only because the provisions of this Act that purportedly imposed the AFAD were to any extent invalid or inoperative under the Commonwealth Constitution, section 109 because of an inconsistency with a provision of an agreement given the force of law by the *International Tax Agreements Act 1953* (Cwlth), section 5(1).

(2) AFAD is imposed on the relevant transaction.

(3) The liability for AFAD imposed under subsection (2) is taken to have arisen, and to have always arisen, at the same time as liability for the purported duty would have arisen if the purported duty had been validly imposed.

(4) AFAD imposed under subsection (2) is payable by, and is taken to have always been payable by, the person who would have been liable for the purported duty if the purported duty had been validly imposed.

(5) The amount of AFAD payable under subsection (2) is the same amount, and is taken to have always been the same amount, as the amount of AFAD that would have been payable if the purported duty had been validly imposed.

(6) The rights and liabilities of a person in relation to AFAD imposed under subsection (2) are taken to be, and to have always been, the same as the rights and liabilities that the

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person would have had in relation to the purported duty if the purported duty had been validly imposed.

(7) Anything done or omitted to be done by a person in relation to the purported duty has, and is taken to have always had, the same force and effect as if it were done or omitted to be done in relation to AFAD imposed under subsection (2).

(8) In this section—

purported duty, in relation to a relevant transaction, means AFAD referred to in subsection (1) that was purportedly imposed on the relevant transaction.

relevant transactions see section 230.

Part 32 Transitional provisions for Home Ownership and Other Legislation Amendment Act 2026

689 Definition for part

In this part—

new, in relation to a provision of this Act, means the provision as in force from the commencement.

690 Retrospective effect of s 33A

(1) Section 33A is taken to have had effect from 15 December 2025.

(2) For subsection (1), schedule 6, definition *Queensland Treasury Corporation*, as inserted by the *Home Ownership and Other Legislation Amendment Act 2026*, section 12(1), is taken to have had effect from 15 December 2025.

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691 Retrospective effect of s 33B

Section 33B is taken to have had effect from 5 December 2025.

692 Application of new s 86 in relation to particular homes

New section 86(4A) and (6) applies, and is taken to have applied, in relation to a dutiable transaction for which liability for transfer duty arose on or after 1 May 2025.

693 Application of new ss 86C and 87

(1) New sections 86C and 87 apply in relation to a dutiable transaction only if liability for transfer duty on the transaction arises on or after the commencement.

(2) However, former sections 86C and 87 apply in relation to a dutiable transaction that is the transfer, or agreement for the transfer, of land made on or after the commencement if—

(a) the transfer or agreement replaces a transfer, or an agreement for transfer, that included the land and was made before the commencement; or

(b) the transferee had an option to purchase the land, or the transferor had an option to require the transferee to purchase the land, granted before the commencement and exercised on or after the commencement; or

(c) another arrangement was made before the commencement the sole or main purpose of which was to defer the making of the transfer or agreement until on or after the commencement so new sections 86C and 87 would apply in relation to the dutiable transaction.

(3) In this section—

former sections 86C and 87 means sections 86C and 87 as in force from time to time before the commencement.

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Schedule 2 When liability for transfer duty on dutiable transaction arises

section 16

Column 1 Dutiable transaction	Column 2 When liability for transfer duty arises
Transfer of dutiable property	The earlier of the following— (a) when the property is transferred; (b) if the transfer is an ELN transfer—when the ELN workspace for the ELN transfer— (i) includes an ELN transaction document for the ELN transfer signed by the parties to the transaction; and (ii) is locked; (c) if the transfer is an ELN lodgement—when the ELN workspace for the ELN lodgement— (i) includes an ELN transaction document for the ELN lodgement signed by the parties to the transaction; and (ii) is locked;

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Column 1 Dutiable transaction	Column 2 When liability for transfer duty arises
	(d) if an instrument effects, or when recorded in a register will effect, the transfer and the transfer is not an ELN transfer or ELN lodgement—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 the surrender is an ELN lodgement—when the ELN workspace for the ELN lodgement— (i) includes an ELN transaction document for the ELN lodgement signed by the parties to the transaction; and (ii) is locked; (c) if an instrument effects, or when recorded in a register will effect, the surrender and the surrender is not an ELN lodgement—when the instrument is signed by the parties to the transaction

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Column 1 Dutiable transaction	Column 2 When liability for transfer duty arises
Vesting of dutiable property by, or expressly authorised by, statute law of this or another jurisdiction, whether inside or outside Australia	The earlier of the following— (a) when the vesting takes place; (b) if an ELN transaction document for an ELN lodgement evidences the vesting—when the ELN workspace for the ELN lodgement— (i) includes the ELN transaction document signed by the parties to the transaction; and (ii) is locked
Vesting of dutiable property by a court order, of this or another jurisdiction, whether inside or outside Australia	The earlier of the following— (a) when the order is made; (b) if an ELN transaction document for an ELN lodgement evidences the vesting—when the ELN workspace for the ELN lodgement— (i) includes the ELN transaction document signed by the parties to the transaction; and (ii) is locked
Foreclosure of a mortgage over dutiable property	When a foreclosure order is made for the property

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Column 1 Dutiable transaction	Column 2 When liability for transfer duty arises
Acquisition of a new right	The earlier of the following— (a) when the right is acquired; (b) if the acquisition is an ELN lodgement—when the ELN workspace for the ELN lodgement— (i) includes an ELN transaction document for the ELN lodgement signed by the parties to the transaction; and (ii) is locked; (c) if an instrument effects, or when recorded in a register will effect, the acquisition and the acquisition is not an ELN lodgement—when the instrument is signed by the parties to the transaction; (d) if a written agreement evidences the acquisition—when the agreement is made
Partnership acquisition	The earlier of the following— (a) when the partnership interest is acquired; (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; (c) if a written agreement evidences the acquisition—when the agreement is made

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Column 1 Dutiable transaction	Column 2 When liability for transfer duty arises
Creation or termination of a trust of dutiable property	The earlier of the following— (a) when the trust is created or terminated; (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
Trust acquisition or trust surrender	The earlier of the following— (a) when the interest is acquired or surrendered; (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; (c) if a written agreement evidences the acquisition or surrender—when the agreement is made

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Schedule 3 Rates of duty on dutiable transactions and relevant acquisitions for landholder and corporate trustee duty

sections 24(2), 91, 92A, 92B, 93, 93A, 93B, 178A and 216

Column 1 Dutiable value of dutiable transaction or relevant acquisition	Column 2 Rate of duty
Not more than $5,000	Nil
More than $5,000 but not more than $75,000	$1.50 for each $100, or part of $100, by which the dutiable value is more than $5,000
More than $75,000 but not more than $540,000	$1,050 plus $3.50 for each $100, or part of $100, by which the dutiable value is more than $75,000
More than $540,000 but not more than $1m	$17,325 plus $4.50 for each $100, or part of $100, by which the dutiable value is more than $540,000
More than $1m	$38,025 plus $5.75 for each $100, or part of $100, by which the dutiable value is more than $1m

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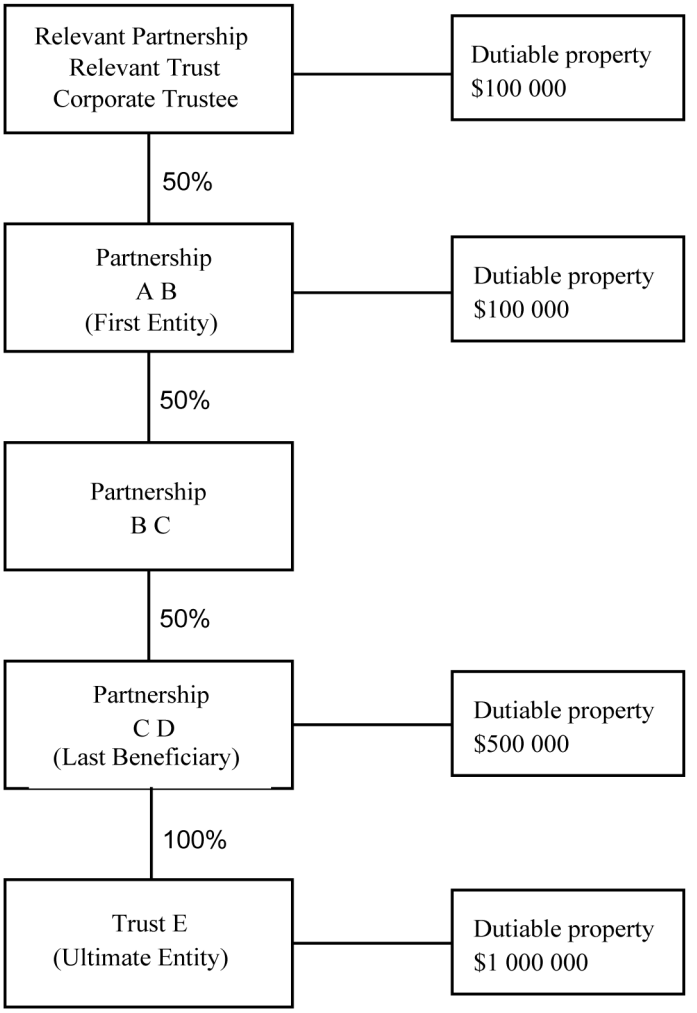
Schedule 4 Example for partnership and trust acquisitions and relevant acquisitions for corporate trustees

sections 46(4), 63(5) and 222(4)



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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 $500,000 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—

Step 1

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Partnership CDs 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 BCs 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 ABs 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 other than new home—residential land

sections 92(2) and 93(9)

Dutiable value of the residential land	Concession amount
Not more than $709,999.99	$17,350 or, if the transfer duty otherwise payable under section 91 is less than $17,350, the amount of duty otherwise payable under that section
$710,000—$719,999.99	$15,615
$720,000—$729,999.99	$13,880
$730,000—$739,999.99	$12,145
$740,000—$749,999.99	$10,410
$750,000—$759,999.99	$8,675
$760,000—$769,999.99	$6,940
$770,000—$779,999.99	$5,205
$780,000—$789,999.99	$3,470
$790,000—$799,999.99	$1,735
$800,000 or more	nil

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Schedule 4C Rate of vehicle registration duty other than for special vehicles

section 383

Type of vehicle	Amount of vehicle registration duty for each $100, and each part of $100, of the vehicle's dutiable value
hybrid vehicle (with any number of cylinders)	$2.00
electric vehicle	
vehicle with 1 to 4 cylinders	$3.00
vehicle with 2 rotors	
steam vehicle	
vehicle with 5 or 6 cylinders	$3.50
vehicle with 3 rotors	
vehicle with 7 or more cylinders	$4.00

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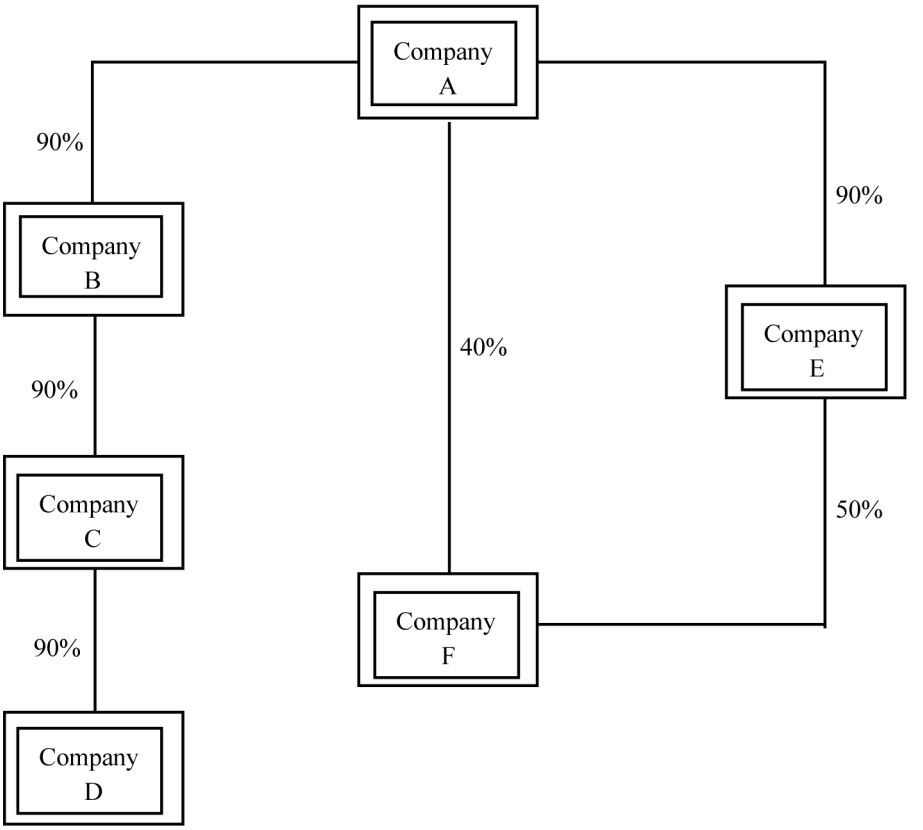
Schedule 5 Example for corporate reconstruction

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.

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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.

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.

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Schedule 6 Dictionary

section 3

100% transfer farm-in agreement see section 84D.

accepted representations see section 467(2).

accident insurance see section 352.

accommodation unit see the *Retirement Villages Act 1999*, schedule.

acquirable asset, for sections 130A and 130B, means an acquirable asset under the Superannuation Industry Act, section 10.

acquirer—

(a) for chapter 2, part 8, division 7, means a person who acquires an indirect interest in a land holding trust; or

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

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

acquisition year, in relation to a relevant transaction, for chapter 4, part 4AA, see section 245C.

additional foreign acquirer duty see section 231(2).

Administration Act means the *Taxation Administration Act 2001*.

advance see section 249.

AFAD stands for additional foreign acquirer duty.

AFAD exemption see section 246AG.

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

AFAD windfall, for chapter 4A, see section 246M.

agent, for chapter 4, part 5, division 2, see section 246AA.

agreement, for chapter 4, part 5, division 2, see section 246AA.

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amending Act—

(a) for chapter 17, part 6, see section 568; or

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

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.

assessed interest see the Administration Act, section 54(4).

assessment see the Administration Act, schedule 2.

assessment notice see the Administration Act, section 26(1).

asset-backed security see section 130C.

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

Australian register see the Corporations Act, section 9.

Australian Securities Exchange means ASX 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.

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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

(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.

build to rent development, for chapter 4, part 4AA, see section 245C.

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

(b) other dutiable property used, on or in relation to land mentioned in paragraph (a), to carry on that business of primary production; or

(c) land primarily used to carry on a prescribed business; or

(d) personal property used, on or in relation to land mentioned in paragraph (c), to carry on that prescribed business.

caveat means—

(a) for an interest in freehold land—a caveat under the *Land Title Act 1994*; or

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(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.

charitable institution means an institution registered under the Administration Act, part 11A.

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.

circuit layout right means an exclusive right under the *Circuit Layouts Act 1989* (Cwlth) for an eligible layout under that Act.

claim, for an AFAD windfall, for chapter 4A, see section 246N.

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.

client number, of a self assessor, means the client number stated in the self assessor's notice of registration.

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.

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commencement day—

(a) for chapter 17, part 2, see section 510; or

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

commissioner means the Commissioner of State Revenue appointed under the Administration Act.

commitment amount see section 156N(1)(b).

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.

completed lodgement, for chapter 2, part 15, see section 156D.

completed stage, of a staged development, for chapter 4, part 4AA, see section 245C.

completed transfer, for chapter 2, part 15, see section 156D.

complying approved deposit fund means a complying approved deposit fund under the Superannuation Industry Act, section 43.

complying superannuation fund means—

(a) a complying superannuation fund under the Superannuation Industry Act, 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.

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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.

corresponding Act means an Act of another State that corresponds to this Act or the applied Act.

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

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provide credit under an obligation accepted by the person on the issue of the credit card; or

(b) a prescribed credit card provider.

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

(b) for an eligible superannuation entity—a custodian under the Superannuation Industry Act, 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.

decision day, for chapter 4A, see section 246J(4).

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.

default beneficiary, of a discretionary trust, for chapter 10, part 1A, see section 413E.

deferred farm-in agreement see section 84C.

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defined relative, of a person, means each of the following—

(a) the person's spouse;

(b) a parent of the person or the person's spouse;

(c) a grandparent of the person or the person's spouse;

(d) a brother, sister, nephew or niece of the person or the person's spouse;

(e) a child or grandchild of the person or the person's spouse;

(f) an aunt or uncle of the person or the person's spouse;

(g) a child of an aunt or uncle of the person or a child of the spouse of an aunt or uncle of the person;

(h) the spouse of anyone mentioned in paragraphs (b) to (g).

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).

digitally sign see the Electronic Conveyancing National Law (Queensland), section 3.

dispose, of a relevant acquirer's interest in dutiable property that is AFAD residential land, for chapter 4, part 5, division 4, see section 246AG.

dissatisfied person means—

(a) for a decision of the commissioner to refuse to register a person as a self assessor—the applicant; or

(b) for a decision of the commissioner to amend, suspend or cancel a self assessor's registration—the self assessor; or

(d) for a decision of the commissioner to require a person to pay a penalty amount—the person.

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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—

(a) for chapter 2, parts 13 and 14—see section 151A(2)(e); and

(b) for chapter 10, part 2—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 or vacant land—see section 90; or

(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.

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duty means a duty imposed under this Act.

duty benefit, for chapter 11, see section 434(1).

ECD variation see section 84E(2).

eligible BTR development, for chapter 4, part 4AA, see section 245C.

eligible land, for chapter 2, part 15, see section 156D.

eligible money market dealer see the Corporations Act, section 9.

eligible rollover fund see the Superannuation Industry Act, section 242.

eligible superannuation entity see section 130A.

eligible use, for land—

(a) means the use of the land solely, or almost solely, for residential or traditional purposes; but

(b) does not include a use for a commercial purpose, including, for example, selling or leasing the land.

ELN means an Electronic Lodgment Network under the Electronic Conveyancing National Law (Queensland).

ELN lodgement see section 156D.

ELN transaction document see section 156D.

ELN transfer see section 156D.

ELN workspace, for an ELN transfer or ELN lodgement, see section 156D.

entity for—

(a) chapter 2, part 8, division 7, means a corporation, partnership, person or trust; or

(b) chapter 3, part 1, means a corporation or listed unit trust; or

(c) chapter 11, includes—

(i) a trust; and

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(ii) a superannuation fund under the Superannuation Industry Act.

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 landholder 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.

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.

exempt managed investment scheme means a unit trust that is a managed investment scheme under the Corporations Act if, under section 601ED(2) of that Act, the unit trust does not have to be registered because of the issue of units in the trust only to wholesale clients within the meaning of section 761G(4) of that Act, including to persons who are not retail clients under section 761GA of that Act.

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

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(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 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 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;

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(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;

(m) an existing right to the income from dutiable property.

expenditure completion date see section 84E(1).

exploration amount—

(a) for an upfront farm-in agreement—see section 84B(1)(b); or

(b) for a deferred farm-in agreement—see section 84C(1)(b).

exploration authority means a following authority—

(a) an authority to prospect under the *Petroleum Act 1923* or *Petroleum and Gas (Production and Safety) Act 2004*;

(b) an exploration permit or prospecting permit under the *Mineral Resources Act 1989*;

(c) a geothermal exploration permit under the *Geothermal Energy Act 2010*;

(d) a GHG exploration permit under the *Greenhouse Gas Storage Act 2009*.

false or misleading includes false or misleading because of the omission of a statement.

family partnership, for a person, means a partnership of which—

(a) if the partnership carries on a business of primary production—the total partnership interests of the partners who are defined relatives of the person is at least 50%; or

(b) otherwise—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—

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(a) the trustee of which started to hold the property on trust at the direction of—

(i) if the trust property is used to carry on a business of primary production—a defined relative of the person; or

(ii) otherwise—an ancestor of the person; and

(b) the beneficiaries of which—

(i) for a trust mentioned in paragraph (a)(i)—are defined relatives of the person; or

(ii) otherwise—are members of the person's family.

family unit trust, for a person, means a unit trust—

(a) that is a private unit trust; and

(b) for which at least 50% of the trust interests in the trust are held by the person, or—

(i) if the trust property is used to carry on a business of primary production—defined relatives of the person; or

(ii) otherwise—members of the person's family.

farmee—

(a) for an upfront farm-in agreement—see section 84B(1); or

(b) for a deferred farm-in agreement—see section 84C(1).

farm-in agreement means a deferred farm-in agreement or an upfront farm-in agreement.

farmor see section 84A.

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—

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(a) for a residence to be constructed on vacant land—see section 86B; or

(b) for chapter 5, part 6, division 2—see section 272; or

(c) otherwise—see section 86(2).

first home borrower see section 273(2).

first signed see section 490.

foreign acquirer, for chapter 4, see section 242.

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

foreign company see the Corporations Act, section 9.

foreign corporation, for chapter 4, see section 236.

foreign individual, for chapter 4, see section 235.

foreign person, for chapter 4, see section 234.

foreign trust, for chapter 4, see section 237.

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*.

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franchisor see definition *franchise arrangement*.

fund property means dutiable property of an eligible superannuation entity held by a person as—

(a) the trustee of the entity; or

(b) a custodian for the trustee of the entity.

funds manager see section 73.

general insurance see section 350.

general insurer see section 354.

government entity see the *Public Sector Act 2022*, section 276.

group companies see section 400(1) and (2).

group company see section 400(3).

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).

incomplete ELN lodgement, for chapter 2, part 15, see section 156D.

incomplete ELN transfer, for chapter 2, part 15, see section 156D.

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.

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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.

ineligible to obtain a BTR land tax concession, in relation to land for a financial year, for chapter 4, part 4AA, see section 245D(3).

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 Contracts Act 1984* (Cwlth), section 11(1).

insured person includes the holder of a policy of insurance.

insurer means a person who is—

(a) either a general insurer or a life insurer; or

(b) both a general insurer and a life insurer.

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

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(iii) an adaptation or modification of a thing, system or process mentioned in subparagraph (ii).

interest, of a person in a corporation for chapter 3, part 1, see section 159(1).

interposed trust see the *Income Tax Assessment Act 1997* (Cwlth), section 124.1045(1).

intervening event means—

(a) a natural disaster, including, for example, fire and flood; or

(b) the death or incapacity of a person to whom section 153, 154, 246AJ or 291 applies; or

(c) another event prescribed under a regulation.

invalid AFAD, for chapter 4A, see section 246J(3).

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—

(a) includes—

(i) airspace above land and the coastal waters of the State; and

(ii) a resource authority; but

(b) does not include an exploration permit under the *Petroleum (Submerged Lands) Act 1982*.

landholder see section 165.

landholder duty see section 157(1).

landholder duty statement see section 177.

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 used for an eligible BTR development, for a financial year, for chapter 4, part 4AA, see section 245C.

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large qualified holder see section 76(2).

lease means—

(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.

leased premises includes land the subject of an occupancy right.

lessee includes an assignee or sublessee of a lessee.

lessor includes an assignee or sublessor of a lessor.

liability date, for a mortgage, means the date the mortgage is liable under section 252 for mortgage duty.

liable party, for chapter 12A, see section 471A.

life company see the *Life Insurance Act 1995* (Cwlth), schedule.

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 corporation means a corporation whose shares are quoted on the market operated by a recognised stock exchange.

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

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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 see section 250.

locked, in relation to an ELN workspace for an ELN transfer or ELN lodgement, see section 156F(1).

lodge means lodge with the commissioner.

lodgement information, for chapter 2, part 15, see section 156D.

lot, for chapter 2, part 15, see section 156D.

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.

managed investment scheme see the Corporations Act, section 9.

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.

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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;

(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.

modified for a person with a disability see section 379B.

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.

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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—

(a) for chapter 2, parts 13 and 14—see section 151A(3)(b)(ii); and

(b) for chapter 10, part 2—see section 417(1)(b).

new home see section 86(4).

new parent company see section 409(1).

new right means any of the following—

(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;

(g) a cane railway easement granted under the *Sugar Industry Act 1999*;

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(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, a government owned corporation or a rail government entity under the *Transport Infrastructure Act 1994*.

new start date—

(a) for chapter 2, parts 13 and 14—see section 151A(3)(b)(i); and

(b) for chapter 10, part 2—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, and includes the notice of amendment of the self assessor's registration given under section 464(1).

notification event, for chapter 4, part 5, division 4, see section 246AG.

objection, for an assessment, see the Administration Act, schedule 2.

obtains a BTR land tax concession, in relation to land for a financial year, for chapter 4, part 4AA, see section 245D(1).

occupancy requirement, for a person's residence, means the person's occupation date for the residence is within 1 year or 2 years after the transfer date for the land, whichever is relevant under section 86(1) or 86B(1)(a).

occupancy right means 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

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(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 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.

occupation date, for a residence, see section 88.

occupy, in relation to a relevant acquirer's residence, for chapter 4, part 5, division 4, see section 246AG.

omitted definition, for chapter 17, part 6, see section 568.

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 other than a decision to cancel the registration under section 470A; or

(d) require a person to pay a penalty amount.

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original transferor, for chapter 4, part 5, division 2, see section 246AA.

outstanding amount, for landholder duty, includes unpaid tax interest and penalty tax for the duty.

Note—

See the Administration Act, sections 54 (Unpaid tax interest) and 58 (Liability for penalty tax).

outstanding liability—

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

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

owner, of a residence or vacant land, includes the lessee of a lease mentioned in section 85(b) of the land on which the residence is constructed or is to be constructed.

ownership interest see the *Income Tax Assessment Act 1997* (Cwlth), section 125.60(1).

parent company see section 401.

partition see section 31(1).

partnership acquisition see section 41.

partnership interest see section 42.

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.

payment commitment, for an agreement for the transfer of dutiable property that is a relevant transfer agreement, see section 156N.

payment day, for chapter 4A, see section 246N(2)(c)(ii).

penalty amount see section 488(2).

penalty tax see the Administration Act, section 58(1).

permanent resident means—

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

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

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 Act, section 10.

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.

premium, for general insurance or life insurance, see section 353.

premium funding agreement means an agreement under which—

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(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.

pre-repeal credit transaction, for chapter 17, part 5, division 1, see section 554(1).

pre-repeal hire, for chapter 17, part 6, division 4, see section 578.

pre-repeal hiring charge, for chapter 17, part 6, division 4, see section 578.

pre-repeal lease duty liability, for chapter 17, part 5, division 2, see section 558(1).

pre-repeal marketable security transaction, for chapter 17, part 6, division 3, see section 572.

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.

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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.

previous—

(a) for chapter 17, part 6, division 4, see section 578; and

(b) for chapter 17, part 9, division 1, see section 590; and

(c) for chapter 17, part 15, see section 622.

primary beneficiary, of a trust, means a person who under the instrument creating the trust is the first taker in default of an appointment for capital by the trustee of the trust.

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 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 heavy 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.

principal, for chapter 4, part 5, division 2, see section 246AA.

private landholder see section 165A(1).

properly stamped see section 491.

property—

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(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).

public company means a company other than a proprietary company.

public landholder see section 165A(2).

public offer superannuation fund see the Superannuation Industry Act, section 18.

public superannuation entity means—

(a) a complying approved deposit fund, other than an excluded approved deposit fund under the Superannuation Industry Act, section 10; or

(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 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.

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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).

Note—

Section 498A includes provision about when the quotation of securities is suspended.

Queensland Treasury Corporation means the corporation sole mentioned in the *Queensland Treasury Corporation Act 1988*, section 5(2) as preserved and continued in existence under the name and style 'Queensland Treasury Corporation'.

reassessment see the Administration Act, schedule 2.

reassessment event see section 84M(1).

recognised stock exchange means—

(a) the Australian Securities 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.

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registered credit provider, for chapter 17, part 5, division 1, see section 554(1).

registered insurer means an insurer registered under chapter 12, part 1.

registered managed investment scheme means a managed investment scheme within the meaning of the Corporations Act, section 9, if the scheme is registered under section 601EB of that Act.

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, for chapter 2, part 15, see section 156G.

related body corporate see the Corporations Act, section 50.

related person—

(a) for chapter 2, part 8—see section 61; or

(b) for chapter 3 or section 498—see section 164; or

(c) for chapter 4—see section 238; or

(d) otherwise—see section 61(1).

relative, for chapter 9, see section 379A.

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 acquirer, of dutiable property, for chapter 4, part 5, division 4, see section 246(2).

relevant acquisition—

(a) for chapter 3, part 1, chapter 10, part 1 or section 431B or 498—see section 158; or

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(b) for chapter 3, part 2—see section 207.

relevant corporation, for a corporate trustee, see section 211.

relevant exploration or development see section 84F.

relevant lodgement requirement, for chapter 12A, see section 471B.

relevant period, in relation to a residence, for chapter 4, part 5, division 4, see section 246AG.

relevant transactions, for chapter 4 and 4A, see section 230.

relevant transfer agreement see section 156D.

repealed—

(a) for chapter 17, part 5, division 1, see section 554(1); and

(b) for chapter 17, part 5, division 2, see section 558(1).

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) see section 86A; and

(b) for chapter 5, part 6 and section 291—includes land, or the part of land, on which a residence is to be constructed.

residential vacant land see section 86C(2).

resource authority means any of the following—

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(a) a geothermal tenure under the *Geothermal Energy Act 2010*;

(b) a GHG authority under the *Greenhouse Gas Storage Act 2009*;

(c) a mining tenement under the *Mineral Resources Act 1989*;

(d) the following petroleum authorities under the *Petroleum and Gas (Production and Safety) Act 2004*—

(i) an authority to prospect;

(ii) a petroleum lease;

(iii) a data acquisition authority;

(iv) a water monitoring authority;

(v) a pipeline licence;

(vi) a petroleum facility licence;

(e) an authority to prospect or lease under the *Petroleum Act 1923*;

(f) a sublease under the following—

(i) a geothermal coordination arrangement under the *Geothermal Energy Act 2010*;

(ii) a GHG coordination arrangement under the *Greenhouse Gas Storage Act 2009*;

(iii) a coordination arrangement under the *Petroleum and Gas (Production and Safety) Act 2004*.

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

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(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.

retrospectivity period, for chapter 17, part 17, see section 630.

return means a form of return approved under this Act for lodgement by a self assessor.

return date, for lodgement 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 lodgement 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.

return self assessment see the Administration Act, schedule 2.

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—

(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—

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(a) the responsible entity of the scheme; or

(b) a primary custodian for the responsible entity of the scheme.

section 152 exempt transaction see section 152(3).

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 interest—

(a) of a person in a transferee corporation, for chapter 10, part 1A—see section 413D; or

(b) otherwise—see section 208.

show cause notice see section 466(1).

show cause period see section 466(2)(e).

signed—

(a) in relation to an ELN transaction document for an ELN transfer—see section 156E(1); or

(b) in relation to an ELN transaction document for an ELN lodgement—see section 156E(2).

significant interest, of a person in a landholder, see section 159.

site agreement see the *Manufactured Homes (Residential Parks) Act 2003*, section 14.

small business entity, for chapter 10, part 1A, see section 413A.

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small business property, for chapter 10, part 1A, see section 413B.

society means—

(a) a society registered under the *Financial Intermediaries Act 1996* as a cooperative housing society; or

(b) a co-operative under the Co-operatives National Law (Queensland).

special vehicle means any of the following—

(a) a vehicle that is, or will be on its registration, conditionally registered under the *Transport Operations (Road Use Management—Vehicle Registration) Regulation 2021*;

(b) mobile machinery within the meaning of the *Transport Operations (Road Use Management—Vehicle Registration) Regulation 2021*, schedule 8, other than mobile machinery built on a truck chassis.

specified resident, for chapter 2, part 9, see section 90A.

spouse includes de facto partner and civil partner.

staged development, for chapter 4, part 4AA, see section 245C.

standard self assessment see the Administration Act, schedule 2.

stapled entity see the *Income Tax Assessment Act 1997* (Cwlth), section 124.1045(2).

start date—

(a) for chapter 2, parts 13 and 14—see section 151A(2)(d); and

(b) for chapter 10, part 2—see section 416(1)(a) and (2)(a).

start time, for chapter 17, part 17, see section 630.

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.

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statutory dutiable transaction means a dutiable transaction mentioned in section 9(1)(a) to (d) 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 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.

subscriber, for chapter 2, part 15, see section 156D.

subsidiary for—

(a) chapter 3—see section 166; or

(b) chapter 10—see section 402.

Superannuation Industry Act means the *Superannuation Industry (Supervision) Act 1993* (Cwlth).

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—

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(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.

traditional purposes means the traditional purposes of Aboriginal people or Torres Strait Islanders under Aboriginal tradition or Island custom, including, for example—

(a) camping, fishing, gathering or hunting; and

(b) performing rites or other ceremonies; and

(c) visiting sites of significance.

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.

transaction number, for an instrument or ELN transaction document endorsed by a self assessor, means the transaction number—

(a) assigned to the instrument or ELN transaction document by the self assessor under a system stated in the self assessor's notice of registration; or

(b) assigned to the instrument or ELN transaction document, and notified to the self assessor, under a system administered by the commissioner.

transaction statement means a form of transaction statement approved under this Act for lodgement by a self assessor.

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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 or vacant land, see section 89.

transfer day, in relation to a relevant transaction, for chapter 4, part 5, division 4, see section 246AG.

transfer duty see section 8(1).

transfer duty statement see section 18.

transfer information, for chapter 2, part 15, see section 156D.

transferee corporation, for chapter 10, part 1A, see section 413C.

truck see the Vehicle Registration Act, schedule 4.

trust acquisition see section 55.

trustee—

(a) generally—includes a former trustee; and

(b) of an eligible superannuation entity for sections 130A and 130B, means—

(i) if the entity's trustee is an RSE licensee under the Superannuation Industry Act, section 10—the RSE licensee; or

(ii) otherwise—the trustee of the entity under the Superannuation Industry Act, section 10.

trust interest see section 57(1).

trust surrender see section 56.

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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 other than a listed corporation.

Note—

Section 498A includes provision about when the quotation of securities is suspended.

unlocked, in relation to an ELN workspace for an ELN transfer or ELN lodgement, see section 156F(2).

unpaid tax interest see the Administration Act, section 54(1).

upfront farm-in agreement see section 84B.

vacant land see section 86C(1).

vacant land concession beneficiary see section 86D.

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 licence under the *Motor Dealers and Chattel Auctioneers Act 2014* or the holder of an equivalent licence or other authority under an Act of another State that corresponds to that Act; or

(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).

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vested person, for property, means a person in whom the property is vested.

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.

water entitlement see the *Water Act 2000*, schedule 4.

wholesale client see the Corporations Act, section 761G(4).

wholesale investor see section 74.

wholesale unit trust see section 72(1) and (2).

widely held unit trust see section 70(1).

windfall duty, for chapter 4A, see section 246L.

WorkCover Queensland means WorkCover Queensland established under the *Workers' Compensation and Rehabilitation Act 2003*.

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