

NORTHERN TERRITORY OF AUSTRALIA

TAXATION (ADMINISTRATION) ACT

As in force at 18 May 2005

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Schedule

ENDNOTES

NORTHERN TERRITORY OF AUSTRALIA

As in force at 18 May 2005

TAXATION (ADMINISTRATION) ACT

An Act relating to the assessment, payment and collection of stamp duty and tax

Part I Preliminary

1 Short title

This Act may be cited as the *Taxation (Administration) Act*.

2 Commencement

This Act shall come into operation on 1 July 1978.

3 Repeal and saving

- (1) The Ordinances set out in the Schedule are repealed.
- (2) An instrument that was in existence before the date of commencement of this Act and on which duty was payable under the repealed Ordinances shall be liable to duty under this Act in the same manner as it would have been under those Ordinances had they not been repealed.
- (3) Where an instrument executed before the commencement of this Act and not being liable to duty under the repealed Ordinances provides for the execution of another instrument that was liable to duty under those Ordinances, and the last-mentioned instrument is executed on or after the commencement of this Act, that last-mentioned instrument is liable to duty under this Act at a rate:
 - (a) equal to the duty that would have been payable on that instrument under those Ordinances had they not been repealed; or
 - (b) equal to the duty payable on that instrument under any other law of the Territory to which this Act is by that law declared to apply,

whichever is the higher.

4 Interpretation

(1) In this Act, unless the contrary intention appears:

adhesive stamp means an adhesive stamp made in pursuance of section 8(1).

agreement, in relation to a conveyance, includes:

- (a) a memorandum of agreement;
- (b) an arrangement or understanding, whether wholly or partly in writing or otherwise and whether or not between all the parties to the agreement, constituting or forming part of the agreement; and
- (c) an application to transfer a licence under the *Fisheries Act* or to transfer a share, unit or other right or interest attaching to such a licence.

approved means approved for the purposes of this Act by the Commissioner.

assessment means an assessment under this Act by the Commissioner, or under Division 9 of Part III by the Registrar, of the amount of duty or tax payable, and includes an amended assessment of duty or tax and an assessment of duty or tax in respect of a return.

business undertaking includes all business undertakings whether or not carried on with a view to profit including a business carried on under or in pursuance of a franchise arrangement.

cancel, in relation to an adhesive stamp, means cancel the stamp as provided by section 14(1).

Commissioner means the Commissioner of Taxes and includes, subject to this Act, the Deputy Commissioner of Taxes and an acting Commissioner and, in respect of matters as to which the Commissioner has delegated his powers and functions under this Act, that delegate.

company includes a body, society, association, authority or institution, whether corporate or unincorporate, but does not include a partnership.

consideration, in relation to a conveyance, means the consideration for the conveyance without any deduction or discount for the amount of GST (if any) payable in relation to the supply of the property conveyed.

convertible Crown lease means a lease granted by or in the name of the Territory under the terms of which the lessee has the right to surrender the lease in exchange for the grant of an estate in fee simple in the land or part of the land held under the lease.

conveyance includes a transfer or assignment (or an agreement to transfer or assign), grant, exchange, appointment, settlement, foreclosure, acquisition of a partnership interest, declaration of trust, a statement under section 83B and a decree, judgment or order of a court, whereby dutiable property or a marketable security is transferred or assigned to (or agreed to be transferred or assigned to) vested in or accrues to a person, but does not include the grant of a lease, other than a convertible Crown lease, or a patent.

conveyee means a person to whom dutiable property or a marketable security is conveyed.

court includes a tribunal or other similar body.

discretionary trust means:

- (a) a trust under which the vesting of the whole or a part of the capital of the trust property, or the whole or a part of the income from that capital, or both:
 - (i) is required to be determined by a person either in respect of the identity of the beneficiaries, or the quantum of interest to be taken, or both; or
 - (ii) will occur in the event that a discretion conferred under the trust is not exercised; or
- (b) a trust declared by the Regulations to be a discretionary trust, but does not include a trust that is:
 - (c) solely a charitable trust; or
 - (d) declared by the Regulations not to be a discretionary trust.

dutiable property means:

- (a) land;

- (b) the goodwill of a business undertaking carried on or to be carried on in the Territory, or in the Territory and elsewhere, including any restraint of trade arrangement which, in the opinion of the Commissioner, enhances or is likely to enhance the value of the business;
- (c) a right to use in the Territory a business name, trading name or trade mark that is used in connection with such a business undertaking;
- (d) a right to use in the Territory a thing, system or process that is used in connection with such a business undertaking and is the subject of a patent, a registered design or copyright, or a right to use an adaption or modification of such a thing, system or process;
- (e) a right to use in the Territory information or technical knowledge connected with such a business undertaking;
- (f) a patent, a registered design or a copyright;
- (g) a statutory licence or permission given, granted or issued under a law of the Commonwealth and used in connection with such a business undertaking, including a licence or permission surrendered or relinquished or for which an application for renewal is not made and the licence or permission, or a similar licence or permission, is given, granted or issued to another person where, in the opinion of the Commissioner, the giving, grant or issue amounts to or has the same effect as a transfer of the licence or permission;
- (ga) a statutory licence or permission given, granted or issued under a law of the Territory and used in connection with a business undertaking wherever the undertaking is carried on or to be carried on, including a licence or permission surrendered or relinquished or for which an application for renewal is not made and the licence or permission, or a similar licence or permission, is given, granted or issued to another person where, in the opinion of the Commissioner, the giving, grant or issue amounts to or has the same effect as a transfer of the licence or permission;
- (h) an option to purchase dutiable property or an interest in dutiable property; and

- (j) chattels, if part of a transaction in which other dutiable property is conveyed, acquired or created or the beneficial ownership is changed, other than:
 - (i) goods, wares or merchandise that are stock-in-trade;
 - (ii) materials held for use in manufacture;
 - (iii) goods under manufacture;
 - (iv) livestock;
 - (v) any motor vehicle in respect of which a motor vehicle certificate of registration is or will, in the opinion of the Commissioner, be issued;
 - (vi) cash or money in an account at call; or
 - (vii) negotiable instruments, and money on deposit with any person,

and includes an estate or interest (which may be a partnership interest) in dutiable property.

duty means stamp duty or other impost imposed by a law of the Territory to which this Act is declared by that law to apply.

execute, in relation to an instrument, means sign the instrument and, if the instrument is under seal, sign and seal the instrument, and, for the purposes of this Act, an instrument is first executed the first time that it is signed or, as the case may require, signed and sealed, by any party to it, but an agreement made by acceptance of an offer contained in an instrument is first executed when the offer is accepted in writing.

financial market has the same meaning as in section 767A of the Corporations Act 2001.

franchise means the rights that a franchisee may use under a franchise arrangement.

franchise arrangement means an agreement or an arrangement by which a person authorises another person to use certain rights belonging to the first-mentioned person to engage in a business in a specified place for a specified period:

- (a) in accordance with a specified system or marketing plan; or

- (b) in a manner that will be substantially or materially associated with a trade mark, advertising or a commercial symbol that is:
 - (i) owned, used or licensed by the first-mentioned person; or
 - (ii) specified by the first-mentioned person.

franchisee means the person who is authorised under a franchise arrangement to use rights that belong to another person in accordance with the conditions specified in the franchise arrangement.

franchisor means the person who authorises another person under a franchise arrangement to use certain rights that belong to the first-mentioned person in accordance with the conditions specified in the franchise arrangement.

goods includes all chattels personal other than money or things in action.

Government Business Division has the same meaning as in the *Financial Management Act*.

GST has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth.

hire-purchase agreement means:

- (a) a letting of goods with an option to purchase; or
- (b) an agreement for the purchase of goods by instalments (whether the agreement describes the instalments as rent, hire or otherwise),

but does not include an agreement by which the property in the goods the subject of the agreement passes at the time of the agreement or on or at any time before the delivery of the goods.

hiring arrangement includes a hire purchase agreement or other arrangement under which goods are or may be used at or during any time by a person other than the owner of those goods where:

- (a) the arrangement is entered into in the Territory;
- (b) the goods are supplied or delivered or agreed to be supplied or delivered in the Territory; or
- (c) the goods are used solely or principally in the Territory,

but does not include:

- (d) an arrangement between a lender and a motor vehicle dealer relating to the supply of a motor vehicle for display or demonstration by the dealer before sale or lease to another person;
- (e) an arrangement relating to the use of an electricity, gas or water meter, a motion picture film, a video cassette, a book or a caravan on a site in a caravan park;
- (f) an arrangement made under a lease of real property where the rental or other consideration in respect of which duty is chargeable also includes rental or other consideration for goods;
- (g) an arrangement between related persons unless the lender under the arrangement also enters into a hiring arrangement as the lender with a person in respect of whom the lender is not a related person; or
- (h) an arrangement under which an operator is provided by or at the direction of the person hiring out the goods under the arrangement to operate the goods for the person who is hiring the goods under the arrangement.

impressed stamp means a stamp impressed by the Commissioner by means of a die or other device made in pursuance of section 8(1).

instrument includes any document.

insurance means an undertaking of liability to make good, or indemnify against, loss or damage (including liability to pay damages or compensation), or insuring the payment of money, contingent upon the happening of a specified event, and includes:

- (a) the accepting of a premium in consideration of the granting, issuing or renewal of a policy of insurance;
- (b) the granting of a cover note or the receiving of a letter or declaration of interest attaching to a policy of insurance; and
- (c) the carrying out, by means of insurance effected outside the Territory, of a contract or undertaking in the Territory to effect that insurance,

but does not include:

- (a) re-insurance effected with another insurer;
- (b) the insurance of the hull of a floating vessel that is being used primarily for commercial purposes; or
- (c) the insurance of goods or merchandise or the freight of goods or merchandise, carried by sea, land or air.

insurer means a person who grants, issues or renews, or intends to grant, issue or renew, a policy of insurance in respect of which tax is imposed.

judge includes a magistrate or any other person acting judicially.

land means land in the Territory and includes:

- (a) a lease of land;
- (b) a mining tenement under the *Mining Act*, including information relating to the tenement; and
- (c) a fixture to land, including a fixture to land comprised in a lease or mining tenement.

lease includes a lease granted under an Act, a sub-lease, an agreement for a lease or sub-lease and a franchise arrangement to the extent that the business the subject of the arrangement is or is to be carried on in the Territory, but does not include:

- (a) an attornment under a mortgage or contract of sale;
- (b) a right granted by a company to a shareholder of the company, by virtue of his being such a shareholder, to occupy or use land owned or held under lease by the company; or
- (c) an option to renew a lease.

lender:

- (a) in relation to a hiring arrangement, means the person from whom goods are hired under the hiring arrangement; and
- (b) in relation to a hire-purchase agreement, includes the person agreeing to sell goods under the hire-purchase agreement.

lessee means:

- (a) a person to whom a lease is granted or agreed to be granted;
or
- (b) a franchisee.

life insurance means insurance insuring the payment of money on death (not being death by accident only or specified sickness only) or on the happening of a contingency dependent upon the termination or continuance of human life (either with or without provision for a benefit under a continuous disability contract referred to in paragraph (c) of this definition), and includes:

- (a) insurance under an instrument evidencing a contract that is subject to payment of premiums for a term dependent upon the termination or continuance of human life;
- (b) insurance under an instrument securing the grant of an annuity for a term dependent upon the termination or continuance of human life;
- (c) insurance under a continuous disability insurance contract (that is by its terms expressed to be of more than one year's duration and is incorporated in a life policy) under which a person is to become entitled to a benefit in the event of the occurrence, within the duration of the contract, of death by accident or by another cause specified in the contract, or injury or disability caused by accident or sickness; and
- (d) insurance under a sinking fund policy insuring the payment of a sum, or series of sums, of money on a future date or dates in consideration of one or more premiums.

life insurer means a company carrying on the business of, or in relation to, the issuing of, or the undertaking of liability under, life policies and includes a person who receives or takes credit for a premium or consideration for any life insurance.

life policy means a policy effecting life insurance.

marketable security means a marketable security not quoted on a recognised financial market and includes:

- (a) a share in the capital of a company that is not quoted on a recognised financial market;

- (b) a right (whether existing or future and whether contingent or not) of a person to have issued or transferred to the person a share of a kind referred to in paragraph (a), whether on payment of money or other consideration or not; and
- (c) any right or interest (whether described as a unit, sub-unit or otherwise) of a beneficiary under a unit trust scheme that is not quoted on a recognised financial market.

motor vehicle certificate of registration means a certificate of registration issued on the registration or the transfer of the registration of a motor vehicle under the *Motor Vehicles Act*.

non-resident means a person who is not a resident of the Territory.

partnership interest means a partnership interest within the meaning of Part III, Division 3.

premium, in relation to insurance, means the gross amount charged or payable in respect of the insurance (which amount does not include any stamp duty paid or payable under this Act):

- (a) without deduction for an amount paid or payable or allowed or allowable by way of discount or commission to an agent or other person for securing or arranging that insurance for or on behalf of the insurer; and
- (b) without any deduction or discount for the amount of GST (if any) payable in relation to the supply of the insurance,

and includes an instalment of a premium.

recognised financial market means a financial market prescribed as a recognised financial market for the purposes of this Act.

registered lender means a person who is registered under Division 13 of Part III.

Registrar means the Registrar within the meaning of the *Motor Vehicles Act*.

rent includes:

- (a) an amount paid or payable (whether directly or indirectly) for the grant, renewal or extension of the term of a franchise arrangement, and an amount paid or payable (whether directly or indirectly) during the term of a franchise arrangement for the franchise the subject of the franchise arrangement, to the extent that the amount is referable to the business the subject

of the arrangement that is or is to be carried on in the Territory; and

- (b) the amount of GST (if any) payable in relation to the supply of the property in respect of which rent is paid or payable,

but does not include an amount paid or payable in the nature of a penal rent or for reasonable outgoings in respect of a lease of land.

repealed Ordinances means the Ordinances repealed by section 3(1).

return means a return under section 17A(5), 29N, 42, 48, or 75 or the *Financial Institutions Duty Act*.

stamp duty means stamp duty imposed by the *Stamp Duty Act*.

supply has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth.

tax means a tax or duty imposed by an Act which is declared to be incorporated and read as one with this Act or to which this Act is, by that Act, otherwise declared to apply, and includes duty payable on an instrument or transaction in relation to which a return is by this Act required to be lodged.

tax avoidance scheme has the meaning in section 4B.

this Act includes the *Stamp Duty Act* and the *Financial Institutions Duty Act*.

trustee includes:

- (a) a person constituted a trustee under an implied or constructive trust;
- (b) an executor of the will, or an administrator of the estate, of a deceased person;
- (c) a receiver, guardian, committee or manager of the property of a person under a legal or other disability;
- (d) a receiver or manager of the property of a company or a liquidator of a company for the purpose of its winding-up; and
- (f) a person who may be required to exercise his voting power in relation to a marketable security at the direction of, or holds the marketable security for the benefit of, another person.

unencumbered value, in relation to property (including an estate or interest in property), means full value:

- (a) without regard to:
 - (i) any encumbrances;
 - (ii) if the property is subject to a trust, not being a public unit trust – any debts or liability of the trustee; or
 - (iii) if the property is held by the partners of a partnership – any debts or liability of the partnership,whether certain or contingent; and
- (b) including the amount of GST (if any) payable in relation to the supply of the property.

unit trust scheme means any arrangements made for the purpose, or having the effect, of providing, for persons having funds available for investment, facilities for the participation by them, as beneficiaries under a trust, in any profits or income arising from the acquisition, holding, management or disposal of any property whatsoever pursuant to that trust.

user:

- (a) in relation to a hiring arrangement, means the person to whom goods are hired under the hiring arrangement; and
 - (b) in relation to a hire-purchase agreement, includes the person agreeing to buy goods under the hire-purchase agreement.
- (2) For the purposes of paragraph (c) of the definition of **hiring arrangement**, goods are used principally in the Territory if they are used more in the Territory than elsewhere.
- (2A) For the purposes of paragraph (g) of the definition of **hiring arrangement**, the following are related persons:
- (a) related bodies corporate within the meaning of the Corporations Act 2001;
 - (b) corporations in which the same person has, or the same persons have together, a controlling interest;
 - (c) a natural person and a corporation where the person has a controlling interest in the corporation;

- (d) partnerships in which the same person has, or the same persons have together, a controlling interest;
- (e) a natural person and a partnership where the person has a controlling interest in the partnership;
- (f) a corporation and a partnership where the same person has, or the same persons have together, a controlling interest in both the corporation and the partnership.

(2B) For the purposes of subsection (2A):

- (a) a person has, or persons have together, a controlling interest in a corporation if that person or those persons may exercise, control the exercise of, or substantially influence the exercise of, whether directly or indirectly, more than 50% of:
 - (i) the voting power at meetings of the corporation's directors; or
 - (ii) the voting power attached to voting shares issued by the corporation; and
- (b) a person has, or persons have together, a controlling interest in a partnership if that person or those persons:
 - (i) own or own together (whether beneficially or not) more than 50% of the capital of the partnership; or
 - (ii) is or are together entitled (whether beneficially or not) to more than 50% of the profits of the partnership.

(3) For the purposes of this Act, a reference to the duly stamping of an instrument is a reference:

- (a) in relation to an instrument the duty on which is required or permitted by this Act to be denoted by an adhesive stamp – to the affixing of an adhesive stamp to the instrument having a value not less than the amount of the duty and the cancellation of the stamp in accordance with this Act; and
- (b) in relation to an instrument the duty on which is required or permitted by this Act to be denoted by impressed stamp – to the impressing on the instrument by the Commissioner of a stamp of the amount of the duty.

4A Unencumbered value: arrangements to reduce stamp duty

- (1) For the purposes of the definition of ***unencumbered value*** in section 4(1), in determining the full value of property:
 - (a) an agreement or arrangement between related parties that has the effect of reducing the value of the property is to be disregarded; and
 - (b) an agreement or arrangement between unrelated parties that has the effect of reducing the value of the property is to be disregarded unless the Commissioner is satisfied that the agreement or arrangement was not made with a purpose (collateral or otherwise) of reducing the value of the property.
- (2) For the purpose of subsection (1)(a), parties to an agreement or arrangement are related if:
 - (a) the parties are a corporation and a person who, in relation to the corporation, is an associated person of a kind specified in section 56C(2)(a)(i) to (vi) (inclusive);
 - (b) a party is, in relation to the other party, a relative of a kind specified in section 56C(2)(c)(i) to (iv) (inclusive); or
 - (c) the parties have a relationship of a kind specified in section 56C(3)(a) to (i) (inclusive).
- (3) For the purpose of subsection (1)(b), in considering whether or not an agreement or arrangement is to be disregarded, the Commissioner may have regard to the following:
 - (a) the duration of the agreement or arrangement before the conveyance of the property or the acquisition of an interest that is a relevant acquisition within the meaning of section 56P;
 - (b) the nature of the relationship between:
 - (i) the transferor and transferee of the property and a party to or affected by the agreement or arrangement; or
 - (ii) persons who acquire, have acquired or will acquire an interest in a corporation and a party to or affected by the agreement or arrangement;
 - (c) the reasons (commercial and otherwise) for making the agreement or arrangement other than to reduce stamp duty;

- (d) other matters the Commissioner considers relevant.

4B Tax avoidance schemes

- (1) In this section:

scheme includes:

- (a) an agreement, arrangement or undertaking:
 - (i) in whatever form;
 - (ii) wherever entered into, made or given;
 - (iii) whether unilateral, bilateral or multilateral; and
 - (iv) whether enforceable or not; and
- (b) an act done or omitted to be done, or a course of conduct carried out or not or engaged in or not, by any person whomever in any place wherever.

- (2) For this Act, a tax avoidance scheme is a scheme that, in the opinion of the Commissioner, has or is intended to have a collateral purpose of:

- (a) reducing the tax or duty otherwise payable under this Act; or
- (b) obtaining the benefit of an exemption or concession under this Act,

in respect of any of the following:

- (c) a conveyance of dutiable property or marketable securities;
- (d) the addition of a beneficiary or class of beneficiaries under a discretionary trust to which Part III, Division 8AAA applies;
- (e) a change in control of a beneficiary under, and a change of or in control of a trustee of, a discretionary trust to which Part III, Division 8AAA applies;
- (f) an acquisition to which Part III, Division 8A applies;
- (g) a change in the beneficial ownership of dutiable property to which Part III, Division 15 applies that occurs as the consequence of the issue or redemption of units in a unit trust scheme.

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- (3) In considering whether a scheme is a tax avoidance scheme, the Commissioner may have regard to any matter whatever that the Commissioner thinks is relevant.

4C Duty assessable on certain franchise arrangements as if conveyance of dutiable property

If:

- (a) a franchisee does not renew or extend the term of the franchise arrangement; and
- (b) another person enters into a franchise arrangement which authorises the other person to use the same or similar rights to engage in a business as under the franchise arrangement referred to in paragraph (a) and which, in the opinion of the Commissioner, by so authorising has the effect as if the franchise arrangement referred to in paragraph (a) were transferred to the other person,

the franchisee referred to in paragraph (a) is taken to have renewed or extended the term of the franchise arrangement referred to in that paragraph and then conveyed the dutiable property that is the subject of the franchise arrangement to the person who is the franchisee under the franchise arrangement first-mentioned in paragraph (b), and duty on the franchise arrangement first-mentioned in paragraph (b) is assessed:

- (c) as if it were a conveyance of that dutiable property from the franchisee referred to in paragraph (a) to the person who is the franchisee under it; and
- (d) as if it were a lease granted to the person who is the franchisee under it.

Part II Administration

5 Commissioner of Taxes

- (1) There shall be a Commissioner of Taxes who shall be appointed by the Administrator.
- (2) The Commissioner has the general administration of this Act.
- (3) For the purposes of:
 - (a) this Act;

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- (b) the *Stamp Duty Act*;
 - (c) the *Pay-roll Tax Act*;
 - (d) the *Business Franchise Act*; and
 - (e) the *Energy Resource Consumption Levy Act*,

the Commissioner is authorized to perform the functions of a State taxation officer under Part IIIA of the *Taxation Administration Act 1953* of the Commonwealth.

5A Deputy Commissioner of Taxes and Assistant Commissioners

- (1) There may, pursuant to the *Public Sector Employment and Management Act*, be appointed:
 - (a) a Deputy Commissioner of Taxes; and
 - (b) such Assistant Commissioners of Taxes as are required to assist the Commissioner in the exercise of the Commissioner's powers and the performance of the Commissioner's functions.
- (2) Subject to section 5B, the Deputy Commissioner of Taxes:
 - (a) shall perform such functions and exercise such powers as are delegated to the Deputy Commissioner pursuant to section 6; and
 - (b) shall, during a vacancy in the office of Commissioner or during an illness, absence from duty or from the Territory or other temporary incapacity of the Commissioner, have and may perform all the functions and exercise all the powers of the Commissioner.

5B Acting appointments

- (1) Notwithstanding that there may be a Deputy Commissioner of Taxes, the Minister may, by instrument in writing, appoint an employee as defined in the *Public Sector Employment and Management Act* to act as Commissioner:
 - (a) during a vacancy in the office of Commissioner; or
 - (b) during any period, or during all periods, when the Commissioner is ill, or is absent from duty or from the Territory or is, for any other reason, unable to perform the functions of office,

but a person so appointed to act during a vacancy shall not continue to act for more than 12 months.

- (2) An appointment under subsection (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.
- (3) Where a person is acting as Commissioner in accordance with this section and the office of Commissioner becomes vacant, then, subject to subsection (2), that person may continue to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.
- (4) The Minister may at any time terminate the appointment of a person appointed under this section.
- (5) The appointment of a person under this section ceases to have effect if the person delivers a written resignation from the appointment to the Minister.
- (6) The validity of anything done by a person purporting to act in accordance with this section shall not be called in question on the ground that the occasion for the appointment had not arisen, that there is a defect or irregularity in or in connection with the appointment, that the appointment had ceased to have effect or that the occasion to act had not arisen or had ceased.

6 Delegation

- (1) The Commissioner may, in writing, delegate to a person all or any of the Commissioner's powers and functions under this Act, other than this power of delegation.
- (2) A delegation under this section may be to a named person or to a person from time to time holding, acting in or performing the duties of an office, designation or position.
- (3) A power or function delegated under this section is, when exercised or performed by the delegate, to be taken to have been exercised or performed by the Commissioner.
- (4) A delegation under this section does not prevent the exercise of a power or the performance of a function by the Commissioner.

7 Secrecy

(1) Subject to this section, a person who is employed by the Territory shall not, either directly or indirectly, except for the purposes of this Act:

- (a) make a record of, or communicate to a person, information concerning the affairs of another person acquired by him under this Act by reason of that employment; or
- (b) produce to a person or permit a person to have access to a document furnished to him for the purposes of this Act.

Penalty: Imprisonment for 2 years.

(2) Subsection (1) does not apply to the communication of information or the production of a document by the Commissioner, or by a person authorized by him, to:

- (aa) the Auditor-General for the purposes of performing functions or exercising powers in relation to an audit of the office of the Commissioner imposed or conferred on the Auditor-General by or under the *Audit Act* or any other Act, and nothing in this section prevents the Auditor-General from disclosing that information or publishing that document if the disclosure or publication does not directly or indirectly divulge information identifying the affairs of a particular person;
- (a) a person performing, in pursuance of employment by the Territory, a function under an Act administered by the Commissioner for the purpose of enabling that person to carry out that function;
- (ab) a person performing, in pursuance of employment by the Territory, a function under:
 - (i) the *Mineral Royalty Act*; or
 - (ii) the *Petroleum Act* in relation to a royalty payable under that Act;
- (ac) if the communication of the information or the production of a document is for the purposes of Part III, Division 9 – a person performing, in pursuance of employment by the Territory, a function under the *Motor Vehicles Act*; or

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- (b) a person performing a function under a law of the Commonwealth, a State or another Territory of the Commonwealth relating to stamp duty or other taxation in accordance with Part VIIA.
 - (3) Nothing in this section prevents a person to whom it applies from disclosing information obtained under this Act where the person from whom it was obtained consents to that disclosure.
 - (4) A person to whom this section applies shall not be required to produce in court any document connected with the administration or execution of this Act in the person's custody in the course of his or her employment or to divulge or communicate to a court any matter or thing coming under the person's notice in the course of employment, unless the production, divulgence, communication or publication is made:
 - (a) with the consent of the person from whom the information or document was obtained;
 - (b) in connection with the administration or execution of this Act; or
 - (c) for the purposes of a legal proceeding arising out of this Act or of a report of such proceedings.
 - (5) In this section **this Act** includes the *Business Franchise Act*.

8 Duty stamps

- (1) For the purposes of this Act, the Commissioner shall cause adhesive stamps for denoting the payment of amounts of duty or of additional amounts payable by way of penalty under section 96 to be made and sold as he directs, and shall cause dies or other devices for the making of impressed stamps for denoting the payment of amounts of duty or tax, for denoting the payment of additional amounts of duty or for the purposes of section 17 to be made and used as he directs.
- (2) A person shall not, without lawful authority:
 - (a) make, sell, use, utter or have in his possession a counterfeit adhesive stamp knowing it to be counterfeit;
 - (b) make, sell, use or have in his possession a die, plate or other device for printing or making adhesive stamps; or

- (c) make, sell, use or have in his possession, a die or other device for making impressed stamps.

Penalty: Imprisonment for 2 years.

- (3) A stamp, die, plate or device made, sold, used, uttered or had in possession in contravention of this section is forfeited to the Territory.

Part III Liability to duty or tax

Division 1 General

9 When instruments lodged and duty payable

- (1) Subject to this Act:
 - (a) tax in respect of a return is due and payable by the person required by this Part to furnish the return upon the last day for the due furnishing of that return;
 - (b) duty on an instrument that is required by this Act to be lodged with the Commissioner for assessment is due and payable by the person liable to pay it:
 - (i) at the end of the period within which the instrument is required by this Act to be lodged with the Commissioner for assessment; or
 - (ii) if the notice of assessment specifies a date after the end of the period referred to in subparagraph (i) on which the duty is due and payable – on that date; and
 - (c) duty on any other instrument is due and payable at the time when the instrument is required by this Act to be duly stamped.
- (1A) Except where other express provision is made by this Act or any other Act, a person who is liable with respect to an instrument chargeable with duty shall:
 - (a) where duty on the instrument is to be denoted by an adhesive stamp – cause it to be duly stamped upon execution of the instrument; or
 - (b) in any other case, lodge the instrument with the Commissioner for assessment within 60 days after it is first executed, regardless of whether it was first executed in the Territory or at

a place outside the Territory and regardless of when it is first received in the Territory.

- (1C) A person who fails to comply with subsection (1) or (1A) commits an offence.

Penalty: \$5,000.

- (2) Where the Commissioner extends the time for payment of duty or tax for a period, the duty or tax is not due and payable until the expiration of that period.
- (3) The Commissioner may, in such circumstances as he thinks fit, permit the payment of duty or tax to be made by instalments in such amounts and at such times as he determines, and each instalment of that duty or tax is due and payable at the time so determined in relation to that instalment.
- (4) If an instalment of duty or tax is not paid on or before the time for the due payment of that instalment, the whole of the duty or tax outstanding becomes due and payable at that time.

9A Unstamped instruments not to be registered

A person whose office it is to enrol, register or enter in or upon any rolls, books, or records an instrument chargeable with duty shall not enrol, register or enter such an instrument which is not duly stamped.

Penalty: \$5,000.

9B Liability to duty in respect of instruments outside Territory

Where an instrument that relates to property in the Territory or to a matter or thing done or to be done in the Territory is executed and held outside the Territory, this Act shall extend and apply to and in relation to the instrument, notwithstanding that the instrument is not in the Territory, in all respects as if the instrument were executed in the Territory.

9BA Apportionment

- (1) Where, in the opinion of the Commissioner, dutiable property is wholly or partly situated in the Territory or is wholly or partly related to a business undertaking carried on in the Territory, stamp duty shall be assessed in respect of that proportion of the dutiable property situated in the Territory or related to the business undertaking carried on in the Territory.

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- (2) Duty is payable in respect of the grant, renewal or extension of the term of a franchise arrangement that applies to a place within the Territory and a place outside the Territory on that proportion of the total rent payable under the franchise arrangement that relates to the business carried on in the Territory.

9BB Apportioning certain dutiable property where business in Territory and elsewhere

- (1) For the purposes of section 9BA(1), where a business undertaking is carried on both in and outside the Territory, the proportion of dutiable property situated in the Territory or related to the business undertaking carried on in the Territory is to be determined in accordance with this section.
- (2) Where the principal place of business of the business undertaking is in the Territory, the proportion of dutiable property situated in the Territory or related to the business undertaking carried on in the Territory is calculated in accordance with the following formula:

$$V \times \frac{(TS - IS)}{TS}$$

where:

V is the greater of the consideration for or the unencumbered value of all the property conveyed to the conveyee that would have been dutiable property had that property been wholly situated in the Territory or wholly related to the business undertaking carried on in the Territory;

TS is the volume or gross value of goods supplied and services provided by the business undertaking to all its customers during the last 3 completed financial years; and

IS is the volume or gross value of goods supplied and services provided by the business undertaking to its interstate customers during the last 3 completed financial years.

- (3) Where the principal place of business of the business undertaking is outside the Territory, the proportion of dutiable property situated in the Territory or related to the business undertaking carried on in the Territory is calculated in accordance with the following formula:

$$V \times \frac{(NTS)}{TS}$$

where:

V is the greater of the consideration for or the unencumbered value of all the property conveyed to the conveyee that would have been dutiable property had that property been wholly situated in the Territory or wholly related to the business undertaking carried on in the Territory;

NTS is the volume or gross value of goods supplied and services provided by the business undertaking to its Territory customers during the last 3 completed financial years; and

TS is the volume or gross value of goods supplied and services provided by the business undertaking to all its customers during the last 3 completed financial years.

- (4) Despite subsections (2) and (3), the Commissioner may determine the proportion of dutiable property on another basis if satisfied that the other basis would be more appropriate in the particular circumstances.

- (5) In this section:

dutiable property means the dutiable property referred to in paragraph (b), (c), (d), (e), (f) and (g) of the definition of **dutiable property** in section 4(1).

interstate customer means a customer who takes delivery of the goods or receives the services provided elsewhere in Australia than the Territory.

principal place of business, in relation to a business undertaking, means:

- (a) the place where the head office of the business undertaking is located; or
- (b) the place from which overall control or management emanates.

Territory customer means a customer who takes delivery of the goods or receives the services provided in the Territory.

9BC Apportioning rent payable under franchise arrangement where business in Territory and elsewhere

- (1) In this section:

business means a business carried on under or in pursuance of a franchise arrangement.

interstate customer means a customer who takes delivery of the goods or receives the services provided elsewhere in Australia than the Territory.

principal place of business, means:

- (a) the place where the head office of a business is located; or
- (b) the place from which overall control or management of a business emanates.

Territory customer means a customer who takes delivery of the goods or receives the services provided in the Territory.

- (2) For the purposes of section 9BA(2), where the principal place of business of a business is in the Territory, the proportion of total rent payable under the franchise arrangement that relates to the business carried on in the Territory is calculated in accordance with the following formula:

$$V \times \frac{(TS - IS)}{TS}$$

where:

V is the total rent payable under the franchise arrangement;

TS is the volume or gross value of goods supplied and services provided by the business to all its customers during the last 3 completed financial years; and

IS is the volume or gross value of goods supplied and services provided by the business to its interstate customers during the last 3 completed financial years.

- (3) For the purposes of section 9BA(2), where the principal place of business of the business is outside the Territory, the proportion of the total rent payable under the franchise arrangement that relates to the business carried on in the Territory is calculated in accordance with the following formula:

$$V \times \frac{(NTS)}{TS}$$

where:

V is the total rent payable under the franchise arrangement;

NTS is the volume or gross value of goods supplied and services provided by the business to its Territory customers during the last 3 completed financial years; and

TS is the volume or gross value of goods supplied and services provided by the business to all its customers during the last 3 completed financial years.

- (4) Despite subsections (2) and (3), the Commissioner may determine the proportion of rent payable under a franchise arrangement that relates to the business carried on in the Territory on another basis if satisfied that the other basis would be more appropriate in the particular circumstances.

9C Copies of instruments

- (1) In this section **copy**, in relation to an original instrument, includes:
- (a) a duplicate, facsimile, photocopy or counterpart of the original instrument;
 - (b) an instrument that acknowledges, evidences or records the existence or terms of the original instrument; and
 - (c) an instrument that acknowledges, evidences or records the transaction or a part of the transaction to which the original instrument relates or related.
- (2) Where an original instrument has not been duly stamped or has been destroyed without being duly stamped, or otherwise cannot be produced for stamping, a copy of the original instrument shall, for the purposes of this Act, be chargeable with duty and penalty, if applicable, as if it were the original instrument and be deemed to have been executed by the person or persons who executed the original instrument at the same time as the original instrument was executed.
- (3) Where a copy of an original instrument is duly stamped under this Act, the Commissioner shall, on application and production of the copy, stamp any further copy of the original instrument with a particular stamp denoting that it is duly stamped.

9D Instruments not fully executed may be lodged for assessment

Subject to this Act, where an instrument is required by this Act to be lodged with the Commissioner for assessment, the instrument may be lodged and the duty assessed notwithstanding that the instrument is not executed by all necessary parties to it and, if it is lodged, the date of execution shall be taken to be, for all purposes, the date of first execution of the instrument.

10 Evasion of duty

- (1) A person liable to duty or tax who knowingly evades the duty or tax commits an offence and is liable, on being found guilty, to a penalty not exceeding \$10,000.
- (2) Where a director, servant or agent of a company that is liable to duty or tax knowingly evades the duty or tax, the company and the director, servant or agent, as the case may be, commits an offence and is liable, on being found guilty, to a penalty not exceeding \$10,000.
- (3) Upon the finding of guilt of a person under either subsection (1) or (2) the court may, in addition to the penalty prescribed by the subsection and without affecting the person's liability to pay the amount of duty or tax evaded, order that person to pay to the Commissioner an amount not exceeding an amount equal to double the amount of the duty or tax.
- (4) A certificate of an order under subsection (3), in accordance with an approved form, may be registered in a court of competent jurisdiction.
- (5) Upon registration in accordance with subsection (4), the certificate becomes a record of the court with the same force and effect as a judgment of the court, and the like proceedings (including proceedings in bankruptcy) may be taken upon the certificate as if the order had been a judgment of the court in favour of the Commissioner.
- (6) Nothing in this section shall prejudice any other right or remedy that exists, or action that may be taken, under this or any other Act against a person in relation to the evasion of duty or tax or duty or tax evaded.

11 Duty denoted by stamps

- (1) Subject to this Act, payment of duty shall be denoted by adhesive stamp or impressed stamp and, payment of tax by impressed stamp.

- (2) The Commissioner may superimpose or place on or near a stamp impressed in accordance with this section handwriting to indicate the amount of tax or duty paid.
- (3) Handwriting superimposed or placed in pursuance of subsection (2) shall constitute a part of the impressed stamp as though the handwriting were itself impressed.

12 Fraudulently removing, &c., stamps

- (1) A person shall not, with intent to defraud:
 - (a) deface an adhesive stamp;
 - (b) remove an adhesive stamp from an instrument liable to duty;
 - (c) affix an adhesive stamp that has been so removed from an instrument to another instrument liable to duty; or
 - (d) impress on an instrument a stamp that is or resembles an impressed stamp.

Penalty: Imprisonment for 2 years.

- (2) An instrument shall be regarded as being duly stamped notwithstanding that an adhesive stamp has been defaced or removed if the Commissioner is satisfied that an adhesive stamp denoting the duty payable had been duly affixed to the instrument.

13 Refunds for spoilt, &c., stamps

- (1) Where an adhesive stamp has been spoilt by a person or has been affixed by a person to an instrument in error, the person may deliver the stamp or the instrument to the Commissioner and apply to him, in accordance with an approved form, for a refund of the amount of duty denoted by the stamp.
- (2) If the Commissioner is satisfied that an adhesive stamp has been so spoilt or has been so affixed to an instrument in error, he shall cause the stamp to be destroyed and shall refund to the applicant the amount of duty denoted by the stamp.

14 Cancellation of stamps

- (1) Subject to this section, where duty on an instrument is required or permitted by this Act to be denoted by adhesive stamp, and an adhesive stamp is accordingly affixed to the instrument, the person affixing the stamp shall, immediately after affixing it, cancel the stamp:
 - (a) by writing in ink on or across the stamp, his name or initials, or by so writing the name or initials, or by impressing the seal, of a firm or company on whose behalf the instrument is executed on or across the stamp; and
 - (b) by writing in ink on or across the stamp the date on which the cancellation is made.

Penalty: \$5,000.

- (2) If there are several parties executing an instrument at the time an adhesive stamp is affixed to it, the cancellation shall be regarded as effectual if made as provided by subsection (1) by any one of the parties.
- (3) A person shall not fraudulently remove from an adhesive stamp any writing placed on it under subsection (1).

Penalty: Imprisonment for 2 years.

15 Matters subject to duty or tax

- (1) Where one instrument relates to several distinct matters in respect of which duty or tax is payable, each of those matters shall, for the purposes of this Act, be treated as if it were expressed in a separate instrument.
- (2) Where 2 or more instruments together but not separately relate to the same matter, the instruments shall be treated, for the purposes of this Act, as a single instrument executed at the time when the last instrument was executed.

16 Money in foreign currency to be valued

Where duty or tax in respect of an instrument is imposed in respect of an amount of money expressed in the instrument otherwise than in Australian currency, the duty or tax shall be calculated in Australian currency at the rate of exchange current at the date of the instrument.

17 Instrument on which no duty is payable

- (1) Where the Commissioner is satisfied that an instrument liable to duty has been duly stamped, he may put an impressed stamp in accordance with an approved style on a counterpart or copy of that instrument.
- (2) Where the Commissioner is satisfied that no duty or tax is payable in respect of an instrument, he may put an impressed stamp in accordance with an approved style on the instrument or on a counterpart or copy of the instrument.
- (4) A person shall not, without lawful authority, impress a stamp or print on or perforate an instrument in accordance with a style that resembles or purports to be an approved style under this section.

Penalty: Imprisonment for 2 years.

- (5) Subject to subsection (5A), an agreement for a conveyance or for the grant of a lease shall, for the purposes of this Act, be treated as the original of the conveyance or grant made subsequently to give effect to the agreement where that conveyance or lease is in conformity with the agreement, and the conveyance or lease so made or granted shall be treated as the counterpart of the agreement.
- (5A) A conveyance or lease shall not, for the purposes of subsection (5), be in conformity with an agreement to convey or lease where the conveyee or lessee is a person other than the conveyee or lessee named in the agreement.
- (5B) Notwithstanding subsection (5A), a conveyance shall be in conformity with an agreement to convey dutiable property or a marketable security notwithstanding that the conveyee is not the person named in the agreement, where the Commissioner is satisfied that the purchaser under the agreement to convey:
 - (a) was, at the time the agreement was executed, acting as the agent for the conveyee in the conveyance made pursuant to the agreement and:
 - (i) the Commissioner endorses the agreement accordingly; and
 - (ii) the agreement to convey is duly stamped; or

(b) entered into the agreement intending to convey the dutiable property or the marketable security purchased to:

- (i) a corporation that the purchaser intended to incorporate or acquire or was in the process of incorporating or acquiring; or
- (ii) a trust that the purchaser intended to constitute or was in the process of constituting,

and the agreement to convey is duly stamped,

and the Commissioner is satisfied that there has not been a sub-sale or other dutiable dealing in the property before the execution of the conveyance.

(6) Where:

- (a) 2 or more instruments together but not separately relate to the same matter, being a matter in respect of which duty is payable;
- (b) each such instrument contains a reference to the other instrument or instruments; and
- (c) one of those instruments is duly stamped,

each such instrument shall be deemed to be duly stamped.

17A Duty accounted for by returns

(1) In this section:

approved person means a person or firm granted permission under subsection (3) to pay duty in respect of a class of instruments or transactions to which the permission relates.

firm means an unincorporated body of persons and includes a partnership.

- (2) A person or firm may, in an approved form, apply to the Commissioner for permission to pay duty in respect of any class of instruments or transactions specified in the application (not being instruments in respect of which the person or firm is required by any other provision of this Part to furnish returns to the Commissioner) in accordance with this section as an alternative to paying duty by the individual stamping of an instrument on which duty is payable, or otherwise.

- (3) The Commissioner may, in writing, grant or refuse permission applied for under subsection (2) and may at any time, in writing, revoke permission so granted.
- (4) Where permission is granted under subsection (3), the Commissioner shall in that permission specify the date on which the permission comes into force and the class of instruments or transactions to which it relates.
- (5) Subject to subsections (5A) or (6), an approved person shall, within 15 days after the end of the month to which the return relates, lodge with the Commissioner:
 - (a) a return in an approved form; and
 - (b) if one or more instruments have been made or transactions effected during that month, a remittance for the amount of duty that, if the permission concerned had not been granted, would have been payable in respect of each individual instrument or transaction to which that return relates.
- (5A) Despite subsection (5), the Commissioner may, by notice in writing, determine a different period for:
 - (a) including an instrument or transaction or a class of instruments or transactions in a return; or
 - (b) the lodgement of a remittance for an amount of duty in respect of an instrument or transaction or for a class of instruments or transactions.
- (6) If no instruments or transactions of the class to which the Commissioner's permission relates are made in any one month, the approved person shall lodge with the Commissioner a nil return in respect of that month.
- (7) An approved person shall make a record, at such times and of such particulars relating to an instrument or transaction to which the permission concerned relates, as the Commissioner, in writing, requires.
- (8) An approved person shall endorse on every instrument of a class to which the permission concerned relates the words "Northern Territory Stamp Duty Paid" and such other words or particulars (if any) as the Commissioner, in writing, requires.
- (9) An instrument bearing an endorsement made under subsection (8), details of which are to be included in a return lodged under subsection (5) with the Commissioner and on which duty is paid by

a remittance made under that subsection, shall be deemed to be duly stamped.

(10) An approved person paying duty in accordance with a permission granted under subsection (3) shall retain the records required to be made under subsection (7) for a period of 5 years from the date on which they were made and make those records available to the Commissioner or a person authorized by the Commissioner for that purpose for checking at all reasonable times within that period.

(11) An approved person who:

- (a) fails to lodge a return in accordance with subsection (5);
- (b) lodges with the Commissioner a return which is false in a material particular; or
- (c) contravenes or fails to comply with any other requirement of or under this section,

is guilty of an offence.

Penalty: \$5,000.

(12) The following applies where an approved person is a firm:

- (a) if a member of the firm commits an offence against this Act in circumstances connected with or arising out of the furnishing of a return or the remittance of an amount of duty under this section, every other member of the firm at the relevant time is to be taken to have committed the same offence;
- (b) if an amount is required to be paid under this Act by the firm or a member of the firm in circumstances connected with or arising out of the furnishing of a return or the remittance of an amount of duty under this section, each member of the firm at the relevant time is jointly and severally liable to pay the amount.

(13) It is a defence to a prosecution for an offence against this Act committed by virtue of subsection (12)(a) if the defendant proves:

- (a) that the member of the firm who committed the offence that the defendant is to be taken to have committed by virtue of subsection (12)(a) would have been able to establish a defence to the offence; or

- (b) that the defendant did not know, and ought not reasonably be expected to have known, the offence was to be or was being committed and took all reasonable steps to prevent or stop the commission of the offence or a similar offence.

Division 2 Exemptions for corporate re-constructions

18 Interpretation

- (1) In this Division:

corporate group means a group of corporations that are related because each corporation in the group is the parent corporation or a subsidiary of another corporation in the group.

dormant, in relation to a corporation, means the corporation has not, during a specified 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;
- (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.

group corporation means a corporation that is a member of a corporate group (whether because it is the parent corporation or subsidiary of another member of the group).

parent corporation means a corporation that owns at least 90% of the shares issued in, and has the voting control over, one or more other corporations, other than in the capacity of a trustee.

subsidiary means a corporation under the control of another corporation because at least 90% of its shares are owned, and voting control over it is held, by:

- (a) another corporation;
- (b) another corporation and one or more of its subsidiaries; or
- (c) one or more corporations that are subsidiaries of the same corporation,

other than in the capacity of a trustee.

- (2) For the purposes of this Division, a corporation has voting control over another corporation when it is 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 other corporation other than under a debenture or trust deed securing the issue of a debenture.

19 Exemption: interposing new corporation between existing corporation and its shareholders

- (1) In this section:

interposed corporation means a corporation that, because of a conveyance of shares referred to in subsection (2), becomes the parent corporation of a corporation that was already in existence before the conveyance.

subsidiary means a corporation that, because of a conveyance of shares referred to in subsection (2), becomes a subsidiary of an interposed corporation.

- (2) Subject to subsections (3) and (4), duty is not payable on a conveyance of shares from the shareholders of a corporation to another corporation which results in the first-mentioned corporation becoming a subsidiary of the second-mentioned corporation.

- (3) Subsection (2) does not apply unless:

- (a) the interposed corporation is a corporation with limited liability;
- (b) the interposed corporation was dormant from its registration until the resolution to become the parent corporation of the subsidiary;
- (c) the interposed corporation acquires at least 90% of the issued shares in, and the voting control over, the subsidiary as a result of the conveyance;
- (d) at least 90% of the consideration for the conveyance of the shares in the subsidiary consists of shares in the interposed corporation that are issued to the shareholders of the subsidiary;
- (e) the value of the consideration for the acquisition of the shares conveyed from a shareholder in the subsidiary is equal to the value of the shares held by the shareholder immediately before the shares were conveyed;

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- (f) immediately after the conveyance of the shares in the subsidiary, at least 90% of the shares in the interposed corporation consists of the shares issued to the shareholders of the subsidiary as consideration for the acquisition of their shares; and
 - (g) if, because of a conveyance of shares referred to in subsection (2), the interposed corporation becomes the parent corporation of more than one subsidiary – the same shareholders owned at least 90% of the issued shares in, and had voting control over, each of the subsidiaries before the acquisition of the shares in the subsidiaries by the interposed corporation.
- (4) Subsection (2) does not apply if the conveyance is a tax avoidance scheme or part of a tax avoidance scheme.

20 Exemption: conveyances and transfers between group corporations

- (1) Subject to subsections (2) and (4), duty is not payable on a conveyance of dutiable property or a marketable security, or a transfer of a motor vehicle certificate of registration, from one group corporation to another group corporation.
- (2) Subsection (1) does not apply unless:
- (a) the conveyor or transferor did not hold, and the conveyee or transferee will not hold, the property as trustee;
 - (b) the conveyor and conveyee, or the transferor and transferee, of the property are group corporations in the same corporate group;
 - (c) the conveyance or transfer has not been made pursuant to an arrangement under which:
 - (i) part or all of the consideration for the conveyance or transfer has or is to be provided or received, directly or indirectly, by a person who is not a group corporation in the same corporate group;
 - (ii) a group corporation in the same corporate group may provide any of the consideration for the conveyance or transfer other than in a manner specified in subsection (3); or

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- (iii) a group corporation is required to dispose of any of the consideration through a payment or other disposition to:
 - (A) a person other than a group corporation in the same corporate group; or
 - (B) a person other than by way of loan on ordinary commercial terms; and
 - (d) the property conveyed or transferred is, at the time of the conveyance or transfer, group property within the meaning of section 21.
 - (3) For the purposes of subsection (2)(c)(ii), consideration for the conveyance or transfer may be provided:
 - (a) by a financial institution by way of loan on ordinary commercial terms;
 - (b) by a group corporation in the same corporate group; or
 - (c) under an offer and sale of shares to the public in the circumstances specified in section 23(4)(b).
 - (4) Subsection (1) does not apply if the conveyance or transfer is a tax avoidance scheme or part of a tax avoidance scheme.

21 Meaning of *group property* in section 20

For the purposes of section 20, property that is conveyed or transferred is group property if:

- (a) the conveyor and conveyee, or the transferor and transferee, were group corporations in the same corporate group before, and at all times since, the property was first wholly owned by a group corporation in the same corporate group (which may have been the conveyor or transferor or another group corporation);
- (b) the conveyor and conveyee or the transferor and transferee:
 - (i) were group corporations in the same corporate group before the property came into the ownership of the conveyor or transferor or another group corporation in the same corporate group by way of a transaction for which duty, or an equivalent duty under a law of a State or another Territory of the Commonwealth that corresponds with this Act, has been paid; and

- (ii) have been group corporations in the same corporate group at all times since the property has been continuously owned by the conveyor or transferor or the other group corporation;
- (c) one of the following conditions applies:
 - (i) that the conveyor or transferor is the interposed corporation (within the meaning of section 19) and the conveyee or transferee is the subsidiary (within the meaning of that section);
 - (ii) that the conveyee or transferee is the interposed corporation (within the meaning of section 19) and the conveyor or transferor is the subsidiary corporation (within the meaning of that section);
- (d) the conveyee or transferee is the parent corporation of the conveyor or transferor and duty under Division 8A has been paid for by the conveyee or transferee acquiring its shares in the conveyor or transferor;
- (e) the conveyor and conveyee, or the transferor and transferee, have been group corporations in the same corporate group for at least 3 years; or
- (f) the conveyance or transfer is between 2 corporations of which one is the parent corporation and the other its subsidiary and both of the following conditions apply:
 - (i) that the corporation that is the parent corporation became the parent corporation of the subsidiary either:
 - (A) on the subsidiary's registration; or
 - (B) after the subsidiary's registration and, if so, the subsidiary has been dormant since that registration;
 - (ii) that the parent corporation has remained the parent corporation of the subsidiary since the subsidiary's registration or becoming the parent corporation of the subsidiary until the conveyance or transfer of the property.

22 Exemption from payment of duty imposed under Division 8A for transactions referred to in section 19 or 20

- (1) Duty referred to in Division 8A is not payable in respect of a relevant acquisition within the meaning of that Division if, and to the extent that, the relevant acquisition is the result of a conveyance or transfer exempted under section 19 or 20.
- (2) Subsection (1) applies:
 - (a) to a conveyance of shares in a corporation that is not referred to in section 67(a) as if the conveyance of the shares were a conveyance of shares in a corporation referred to in section 67(a); and
 - (b) to a conveyance of units in a unit trust scheme that is not referred to in section 67(c) as if the conveyance of the units were a conveyance of units referred to in section 67(c).

23 Reassessment for the purposes of paying duty on a conveyance, transfer or relevant acquisition exempted under section 20 or 22

- (1) If:
 - (a) duty has been assessed on a conveyance, transfer or relevant acquisition on the basis that it is exempt from duty under section 20 or 22; and
 - (b) within 3 years after the conveyance, transfer or relevant acquisition:
 - (i) the conveyor or conveyee, or the transferor or transferee, ceases to be in the same corporate group; or
 - (ii) part or all of the consideration for the property conveyed or transferred, or for the relevant acquisition, is provided or received other than in accordance with section 20,

the Commissioner must make an assessment of the duty payable on the conveyance, transfer or relevant acquisition as if the exemption from duty under section 20 or 22 had never applied to the conveyance, transfer or relevant acquisition.

- (2) The Commissioner must make an assessment under subsection (1) even if:
 - (a) the limitation period under section 97(1) has expired; or

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- (b) he or she has made a ruling under section 25 that the exemption from duty under section 20 or 22 applies to the conveyance, transfer or relevant acquisition.
- (3) If the Commissioner makes an assessment under subsection (1), all the group corporations that belonged to the same corporate group as the conveyor and conveyee, or the transferor and transferee, when the property was conveyed or transferred, or the relevant acquisition was made, are jointly and severally liable to pay the duty and penalty (if any) assessed.
- (4) This section does not apply:
- (a) if the conveyor or conveyee, or transferor or transferee, ceases to exist (other than under an arrangement, a significant purpose of which is to avoid the requirement that the conveyor or conveyee, or the transferor or transferee, belong to the same corporate group for the 3 year period referred to in section 23(1)(b));
 - (b) if:
 - (i) the conveyor or conveyee, or transferor or transferee, ceases to be a group corporation in the same corporate group because its shares, or the shares of another corporation (which becomes a parent corporation) interposed between the conveyor and conveyee, or the transferor and transferee, are offered and sold to the public; and
 - (ii) the shares are quoted on a recognised financial market within 1 year after the offer to the public; or
 - (c) if the conveyor or transferor ceases to be a group corporation in the same corporate group as the conveyee or transferee, or the conveyee or transferee ceases to be a group corporation in the same corporate group as the conveyor or transferor, in circumstances where the corporation ceasing to be in the corporate group has, immediately before doing so, no assets or no assets other than cash, money in an account at call or on deposit with any person or a negotiable instrument.
- (5) For the purposes of subsection (4)(a), a corporation that is registered under the Corporations Act 2001 ceases to exist if it is deregistered under that Act.

24 Time for parties to give notice that require reassessment

If an event specified in section 23(1)(b) occurs in relation to a conveyance, transfer or relevant acquisition referred to in section 23(1)(a), a party to the conveyance, transfer or relevant acquisition must, within 30 days of the event occurring:

- (a) give notice in the approved form to the Commissioner that the event has occurred; and
- (b) lodge with the Commissioner all documents necessary for the Commissioner to assess the duty payable on the property conveyed or transferred, or on the relevant acquisition.

Penalty: 500 penalty units.

25 Application for ruling regarding proposed corporate re-construction

- (1) A corporation that proposes to be a party to a conveyance, transfer or relevant acquisition referred to in section 19, 20 or 22 may apply to the Commissioner for a ruling whether the proposed conveyance, transfer or relevant acquisition would be exempt from duty under that section.
- (2) The application is to:
 - (a) be in the approved form; and
 - (b) be accompanied by sufficient information to enable the Commissioner to make a ruling.
- (3) The Commissioner must give the applicant written notice of his or her ruling.

26 Application for exemption regarding corporate re-construction

- (1) The parties to a conveyance, transfer or relevant acquisition referred to in section 19, 20 or 22 may apply to the Commissioner for an exemption under that section from the payment of duty.
- (2) An application under subsection (1) is to:
 - (a) be in the approved form; and
 - (b) be accompanied by sufficient information to enable the Commissioner to determine whether duty is payable.

- (3) On considering the application, the Commissioner must put an impressed stamp on the instrument or instruments evidencing the conveyance, transfer or relevant acquisition in accordance with section 17(2) if:
 - (a) the Commissioner is satisfied that the conveyance, transfer or relevant acquisition is exempt from duty under section 19, 20 or 22; or
 - (b) subject to subsection (4) – the Commissioner has made a ruling under section 25 that the conveyance, transfer or relevant acquisition would be exempt from duty under section 19, 20 or 22.
- (4) Subsection (3)(b) does not apply if:
 - (a) the information that accompanies the application under subsection (1) differs in a material particular to the information that accompanied the application for the ruling;
 - (b) the circumstances relating to the conveyance, transfer or relevant acquisition are materially different from those referred to in the application for the ruling and the information that accompanied the application for the ruling; or
 - (c) the application for the ruling or the information that accompanied the application for the ruling was false or misleading in a material particular.

Division 3 Partnerships

27 Interpretation: partnership property and partnership interest

- (1) A reference in this Division to a partnership is a reference to the holding of property by the partners of a partnership for the partnership.
- (2) For the purposes of this Division, a person makes a partnership acquisition if the person acquires a partnership interest, within the meaning of subsection (3), in a partnership that holds dutiable property.
- (3) A partner's partnership interest is:
 - (a) if the partner has a partnership entitlement in a partnership under which, in the ordinary course of determining the partner's entitlement to share in the profits of the partnership or obligation to contribute to the capital or losses of the partnership, the entitlement to share in the profits or obligation

to contribute to capital or losses varies or may vary from time to time – the percentage that represents the proportion that the value of the partner's entitlement as a partner bears to the value of the entitlements of all the partners in the partnership;

- (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 entitlement to share in the profits – the percentage that represents the proportion that the partner's entitlement to the profits of the partnership bears to the entitlements to the profits of the partnership of all the partners in the partnership; or
- (c) if the percentage referred to in paragraph (a) or (b) does not apply, the greater of:
 - (i) the percentage of the capital of the partnership the partner has contributed or is obliged to contribute; or
 - (ii) the percentage of the losses of the partnership the partner is required to bear.

28 Acquiring a partnership interest

- (1) A person acquires a partnership interest if:
 - (a) a partnership (of which he or she becomes a partner) is formed; or
 - (b) the person's partnership interest increases.
- (2) For the purposes of subsection (1):
 - (a) a partnership may be formed by a change in the membership of a partnership or the merger of 2 or more partnerships;
 - (b) a person's partnership interest may increase:
 - (i) under the terms of a partnership agreement;
 - (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; and

- (c) a partner's partnership entitlement referred to in section 27(3)(a) does not increase if:
 - (i) the person's entitlement to share in the profits of the partnership or obligation to contribute to the capital or losses increases by reason only of the person's performance as a partner; and
 - (ii) there is no arrangement stating the extent of the future variation to the partner's entitlement to share in the profits of the partnership or obligation to contribute to the capital or losses or the consideration for the variation.

29 Value of partnership acquisition

- (1) Subject to subsections (2) and (3), the unencumbered value of a partner's partnership acquisition is determined by applying the partner's partnership interest to the unencumbered value of all the dutiable property held by the partnership.
- (2) Subject to sections 29AA and 29A, in determining the unencumbered value of a partner's partnership acquisition on the formation of a partnership, the unencumbered value of any dutiable property the partner contributed to the partnership on its formation is to be disregarded.
- (3) In determining the unencumbered value of a partner's partnership acquisition that is an increase in the partner's partnership interest (other than an increase in the partner's partnership interest on the formation of a partnership), the acquisition is taken to be the increase in the partner's partnership interest.

29AA Value of partnership acquisition if change in membership of partnership by admission of one or more new partners

Where a new partnership is formed by a change in the membership of a partnership by the admission of one or more new partners, the unencumbered value of a partner's partnership acquisition on the formation of the new partnership is determined by:

- (a) applying the partner's partnership interest to the unencumbered value of all dutiable property held by the new partnership on its formation; and
- (b) deducting from that:
 - (i) if the partner was not a partner of the former partnership – the value that would be the unencumbered value of the partner's partnership acquisition in the new

partnership on its formation if the dutiable property of the partnership comprised only the dutiable property (if any) that the partner contributed to it on its formation; or

- (ii) if the partner was a partner in the former partnership – the lesser of the following:
 - (A) the value that would be the unencumbered value of the partner's partnership acquisition in the new partnership on its formation if the dutiable property of that partnership comprised only the dutiable property of the former partnership;
 - (B) the value that represents the unencumbered value of the partner's partnership interest in the former partnership before the formation of the new partnership.

29A Value of partnership acquisition where merger of 2 or more partnerships

- (1) This section applies if:
 - (a) a person first makes a partnership acquisition on the merger of 2 or more partnerships;
 - (b) immediately before the merger, the person had a partnership interest in one of the former partnerships; and
 - (c) the unencumbered value of that partnership interest included all or part of the unencumbered value of the dutiable property of the former partnership which, on the merger, becomes dutiable property of the merged partnership.
- (2) The unencumbered value of the person's acquisition on the merger of the partnerships must be reduced by the lesser of:
 - (a) the value that would be the unencumbered value of the person's partnership acquisition in the merged partnership if the dutiable property of the merged partnership comprised only the dutiable property of the former partnership of which the person was a partner; or
 - (b) the value that represents the unencumbered value of the person's partnership interest in the former partnership that becomes the dutiable property of the merged partnership.

29B Reduction of dutiable value of dutiable property if conveyed to partner on retirement or dissolution of partnership

- (1) This section applies if, because a person ceases to be a partner in a partnership because he or she retires from the partnership or the partnership is dissolved, dutiable property of the partnership is conveyed or agreed to be conveyed to the person.
- (2) The unencumbered value of the dutiable property conveyed to the person is to be reduced by an amount determined by applying the person's partnership interest in the partnership to the unencumbered value of the dutiable property of the partnership immediately before the person's retirement or the partnership's dissolution.
- (3) If the unencumbered value of dutiable property is reduced under subsection (2) to a value that is more than the consideration for the dutiable property, the amount of duty payable on the conveyance of the dutiable property is:
 - (a) subject to paragraph (b) – the amount of duty determined to be payable on the reduced unencumbered value of the dutiable property; or
 - (b) if the amount of duty determined to be payable on the reduced unencumbered value of the dutiable property is less than \$20 – \$20.

Division 3B Electronic debit transaction duty

29H Interpretation

- (1) In this Division, unless a contrary intention appears:

financial institution means:

- (a) an ADI; or
- (b) a person or class of persons prescribed as being a financial institution for the purposes of this Division,

and includes a branch of such an ADI or financial institution.

liable account means an account kept in the Territory with a financial institution, being an account in respect of which a transaction can be carried out directly by electronic means.

liable account holder means the person in whose name, or either or any of the persons in whose names, a liable account is kept.

liable debit transaction means the debit entered in a liable account as a result of a withdrawal made from that account directly by electronic means. but does not include such a debit:

- (a) made pursuant to section 29Q and reflecting the recovery of electronic debit transaction duty; or
 - (b) made pursuant to section 10(3) of the *Debits Tax Administration Act 1982* of the Commonwealth.
- (2) For the purposes of this Division, a transaction in respect of an account with a financial institution is carried out directly by electronic means if the account holder can initiate, or authorize the initiation of, the transaction by or through the use of an electrically powered machine without the presentation of a cheque, bill of exchange, withdrawal slip or similar instrument to authorize the transaction, and without the necessity for any intermediate action by a human agency.

29J Certain financial institutions to be registered

- (1) A financial institution shall not in the Territory keep or offer to keep a liable account for a person unless that financial institution is registered under this Division.

Penalty: \$5000.

- (2) Nothing in this section shall affect an obligation or liability to the holder of an account kept by a financial institution in contravention of this section.

29K Register of Financial Institutions

For the purposes of this Division, the Commissioner shall keep a register to be called the "Register of Financial Institutions".

29M Registration

- (1) A financial institution keeping or intending to keep a liable account in the Territory may apply to the Commissioner in accordance with an approved form for registration under this Division.
- (2) Upon receipt of an application under subsection (1), the Commissioner shall register the financial institution by entering its name in the Register of Financial Institutions, and shall then give notice of the registration to the applicant.

- (3) Where a financial institution registered under this Division:
- (a) requests the Commissioner to do so;
 - (b) becomes bankrupt, is or is being wound up, has a liquidator or receiver appointed in respect of it, or ceases to carry on business as such; or
 - (c) contravenes or fails to comply with, or evades or attempts to evade, any of the provisions of this Act,
- the Commissioner may revoke its registration.

29N Returns and payment

- (1) Within 15 days after the expiry of each month, a registered financial institution shall forward to the Commissioner a return, in an approved form, setting out:
- (a) the number of liable debit transactions reflected in the accounts kept by the financial institution during that month; and
 - (b) a computation of the amount of electronic debit transaction duty disclosed as being payable in relation to the return.
- (2) A return sent to the Commissioner under subsection (1) shall be verified by the signature of a senior administrative officer of the financial institution.
- (3) Any electronic debit transaction duty disclosed on a return as being payable under subsection (1)(b) shall be payable, in the time specified in subsection (1), by the financial institution which forwarded the return to the Commissioner.
- (4) A registered financial institution which fails to comply with subsection (1) or (2) is guilty of an offence.
- Penalty: \$5000.
- (5) If a registered financial institution fails to comply with subsection (1) or (2), the Commissioner may give notice of that fact in the *Gazette*.
- (6) From the date of publication of a notice under subsection (5) until the date of publication of a further notice revoking that notice, each liable account holder of the registered financial institution that is the subject of the notice shall:
- (a) be primarily liable for unpaid electronic debit transaction duty otherwise payable by the financial institution; and

- (b) within 15 days after the receipt of a statement of account or of transactions from the financial institution:
 - (i) furnish a return to the Commissioner setting out, with any necessary modification, the information specified in subsection (1)(a) and (b); and
 - (ii) pay to the Commissioner any electronic debit transaction duty disclosed on the return as being payable.

Penalty: \$5,000.

29P Extension of time

- (1) The Commissioner may, on the application in writing of a registered financial institution in relation to the time specified in section 29N(1) within which a return must be made and electronic debit transaction duty paid, authorize the extension or variation of that time:
 - (a) specifically, in respect of a particular return or payment; or
 - (b) generally, in respect of all returns or payments,from the registered financial institution.
- (2) The Commissioner may at any time revoke an authority under subsection (1).
- (3) Where the Commissioner authorizes an extension or variation of time under this section, then, for the purposes of this Act, the time specified in section 29N(1) shall be construed as if it were the time so extended or varied.

29Q Financial institution not prevented recovering duty paid from account holder

Nothing in this Act prevents a registered financial institution that has paid or is liable to pay electronic debit transaction duty in respect of the debit transactions of an account holder recovering an amount equal to the duty paid or payable from the account holder.

Division 6 Insurance business

37 Definitions

In this Division:

Australian insurer means an insurer that is:

- (a) a body corporate incorporated, or registered as a company, under a law of the Commonwealth or of a State or Territory of the Commonwealth;
- (b) a body corporate that is registered as a foreign body, or as a foreign company, under a law of the Commonwealth or of a State or Territory of the Commonwealth; or
- (c) the Territory.

overseas insurer means an insurer that is not an Australian insurer.

38 Imposition of tax on policies of insurance

Tax is payable on a policy of insurance in respect of:

- (a) property in the Territory; or
- (b) a risk, contingency or event concerning an act or omission that, in the normal course of events, may occur within or partly within the Territory.

39 Australian insurers to be registered

- (1) An Australian insurer must not grant, issue or renew a policy of insurance in respect of which tax is imposed unless the insurer is registered under this Division.

Penalty: 50 penalty units.

- (2) Nothing in subsection (1) affects the liability of an Australian insurer for tax imposed in respect of a policy of insurance granted, issued or renewed in contravention of this section.

40 Register of Insurers

For the purpose of this Division, the Commissioner shall keep a register to be called "Register of Insurers".

41 Registration

- (1) An Australian insurer who grants, issues or renews, or intends to grant, issue or renew, a policy of insurance in respect of which tax is imposed may apply to the Commissioner in the approved form for registration in the Register kept under section 40.
- (2) The Commissioner shall, upon receiving an application from an insurer under subsection (1), register the insurer by entering the name of the insurer in the Register.
- (3) The Commissioner shall give notice of the registration by instrument served on the insurer.
- (4) The Commissioner shall revoke the registration of an insurer under this Division by removing his name from the Register upon receiving notification of the death or bankruptcy of the insurer, or in the case of a company, of the winding-up of the company, or upon receiving a request from the insurer to revoke the registration.

42 Returns in respect of insurance business

- (1) An insurer registered under this Division shall, within 21 days after the expiration of each month of each year:
 - (a) furnish to the Commissioner a return of all premiums received in that month by the insurer in respect of which tax is imposed; and
 - (b) pay the tax payable in respect of those premiums less the amount of any tax remitted under section 43.

Penalty: \$5,000.

- (2) A return under this section shall be in accordance with an approved form and shall contain such particulars as are required by the form.

43 Refund or remission of tax for surrendered or cancelled insurance

Where the Commissioner is satisfied that:

- (a) a policy of insurance in respect of which tax is imposed has been surrendered or cancelled before the expiration of the policy; and

- (b) the insurer has refunded to the person by whom premiums were payable under the policy an amount equal to the amount of the premiums received by the insurer in respect of a period occurring after the surrender or cancellation,

the Commissioner shall:

- (c) if the insurer has not paid the tax in respect of that amount of premiums – remit the tax payable; and
- (d) if the insurer has paid the tax payable in respect of that amount of premiums – refund to the insurer the amount of the tax so paid.

44 Insurer not prevented recovering tax from person paying premiums

Nothing in this Act prevents an insurer that has paid or is liable to pay tax imposed on a policy of insurance recovering an amount equal to the tax paid or payable from the person who pays the premiums under the policy of insurance.

44A Insurance granted, issued or renewed by overseas insurer

- (1) A person who effects insurance in respect of:
 - (a) property in the Territory; or
 - (b) a risk, contingency or event concerning an act or omission that, in the normal course of events, may occur within or partly within the Territory,

for which a policy of insurance is or is to be granted, issued or renewed (whether directly or indirectly) by an overseas insurer must, within 30 days after effecting the insurance, furnish to the Commissioner a return containing the approved particulars and in the approved form.

Penalty: 50 penalty units.

- (2) The tax in respect of insurance to which subsection (1) applies is payable on lodgement of the return referred to in subsection (1) or within such further time as allowed by the Commissioner.
- (3) The person who effects insurance to which this section applies and the overseas insurer who granted, issued or renewed the policy of insurance for that insurance are jointly and severally liable for the tax imposed in respect of the policy of insurance.

44B Agents and brokers taken to be acting for insurer

- (1) For the purposes of this Division, an insurance agent or insurance broker who arranges for the grant, issue or renewal of a policy of insurance (whether on behalf of the insurer or the person effecting the insurance) is to be taken to have granted, issued or renewed the policy on behalf of the insurer.
- (2) Subsection (1) applies in relation to an insurance agent or insurance broker (wherever the agent or broker carries on business) whether or not the agent or broker is acting in pursuance of a binder within the meaning of section 761A of the Corporations Act 2001.

Division 7 Life policies

44C Imposition of tax on life policies

Tax is payable on a life policy in respect of a person whose principal place of residence, or persons whose principal places of residence are, in the Territory.

45 Life insurer in the Territory to be registered

- (1) A company shall not carry on in the Territory the business of a life insurer issuing life policies in respect of which tax is imposed after the expiration of the period of 14 days from the date of commencement of this Act unless it is registered under this Division.

Penalty: \$5,000.

- (2) Nothing in this section affects the liability (including a contingent liability) of a life insurer under a life policy issued by the life insurer in the course of carrying on the business of a life insurer in the Territory in contravention of this section.

46 Register of Life Insurers

For the purpose of this Division, the Commissioner shall keep a register to be called "Register of Life Insurers".

47 Registration

- (1) A life insurer carrying on or intending to carry on in the Territory the business of life insurance in respect of which tax is imposed may apply to the Commissioner in writing in accordance with an approved form for registration in the Register kept under this Division.

- (2) The Commissioner shall, upon receiving an application from a life insurer under subsection (1), register the life insurer by entering the name of the life insurer in the Register.
- (3) The Commissioner shall give notice of the registration by instrument served on the life insurer.
- (4) The Commissioner shall revoke the registration of a life insurer under this Division by removing his name from the Register upon receiving notification of the winding-up of the life insurer, or upon receiving a request from the life insurer to revoke the registration.

48 Returns in respect of life insurance business

- (1) A life insurer registered under this Division shall, within 21 days after the expiration of each month of each year:
 - (a) furnish to the Commissioner a return of all life policies effected in that month by the life insurer in respect of which tax is imposed; and
 - (b) pay the tax payable in respect of those policies.

Penalty: \$5,000.

- (2) A return under this section shall be in accordance with an approved form and shall contain such particulars as are required by the form.

49 Life insurer not prevented recovering tax from person paying premiums

Nothing in this Act prevents a life insurer that has paid or is liable to pay tax imposed on a life policy recovering an amount equal to the tax paid or payable from the person who pays the premium under the life policy.

Division 7A Apportionment of premiums etc. between Territory and other jurisdictions

49A Application of Division

This Division applies to:

- (a) a policy of insurance in respect of:
 - (i) property in the Territory and property in another place; or
 - (ii) a risk, contingency or event concerning an act or omission that, in the normal course of events, may occur

within or partly within the Territory or within or partly within another place or within or partly within the Territory and another place; or

- (b) a life policy in respect of persons whose principal places of residence are variously in the Territory and another place.

49B Schedule of Apportionment

- (1) The Commissioner may adopt a Schedule of Apportionment for the purpose of apportioning premiums for insurance or life insurance, or premiums paid for specific classes of insurance or life insurance, and other amounts in relation to insurance or life insurance in accordance with this Division.
- (2) The Schedule of Apportionment may be developed in consultation with any person the Commissioner considers suitable.

49C Apportionment in practice

- (1) Subject to this section, a premium or an amount is to be apportioned in accordance with the Schedule of Apportionment adopted for the time being.
- (2) An insurer or an insured person may apply in writing to the Commissioner to apportion a premium or an amount on a basis other than that provided by the Schedule of Apportionment and the Commissioner may apportion the premium or amount on the other basis.
- (3) If the Commissioner is not satisfied that a premium paid or another amount in relation to a policy of insurance or life policy has been properly apportioned for each risk insured, the Commissioner may determine the apportionment, reassess the liability to tax and charge tax accordingly.

Division 8 Conveyances and leases

50 Persons liable to pay duty

- (1) Duty imposed on a conveyance is payable by the conveyee.
- (2) Duty imposed on a lease is payable by the lessee.

52A Computation of duty where 2 or more instruments

- (1) This section applies to the following instruments:
- (a) an instrument by which, or evidencing a transaction or part of a transaction by which, dutiable property is conveyed;
 - (b) a statement under section 83B; and
 - (c) a memorandum created for the purposes of section 94, where the memorandum relates to an instrument under paragraph (a) or the failure to lodge a statement under section 83B.
- (2) In this section, **relevant transaction** means a transaction which is or should be evidenced by an instrument referred to in subsection (1)(b) or (c).
- (3) Where 2 or more instruments to which this section applies together form, or arise from, substantially one transaction or one series of transactions, those instruments shall, unless the Commissioner is satisfied that it would not be just and reasonable in the circumstances, be chargeable with ad valorem duty as a single transaction calculated at the rate appropriate to the dutiable property conveyed on the sum of the amounts by reference to which ad valorem duty on each of those instruments would, but for this subsection, have been calculated, and that duty shall be apportioned to the various instruments as determined by the Commissioner.
- (4) Where a person conveys dutiable property to the same person (whether that person takes alone or with the same or different persons) by an instrument to which this section applies:
- (a) which has been, or appears to have been, executed within 12 months of:
 - (i) another such instrument; or
 - (ii) a relevant transaction; or
 - (b) being a statement under section 83B or a memorandum under section 94 evidencing a relevant transaction which, in the opinion of the Commissioner, was entered into within 12 months of:
 - (i) another relevant transaction evidenced by such a statement or memorandum; or

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- (ii) the execution of an instrument referred to in paragraph (a),

it shall be presumed, unless the Commissioner is satisfied to the contrary, that the instruments arose out of one transaction or one series of transactions.

- (5) Where ad valorem duty has been paid in respect of an instrument referred to in subsection (3), the duty otherwise payable under that subsection shall be reduced by the amount of duty already paid.
- (6) Except as provided by subsection (5), this section does not operate to reduce the duty payable on any instrument.

53 Interpretation in rent by instrument

A period specified in a lease as the period during which the lease is to continue shall be regarded as the term of the lease notwithstanding that the lease is expressed to be for a weekly, monthly, quarterly, half-yearly or yearly tenancy or otherwise.

54 Increase in rent by instrument

- (1) Where an instrument provides for an increase in the rent that has been reserved by a lease (in this section referred to as an original lease) granted after the commencement of this Act (whether or not that original lease is in writing), the instrument shall, for the purposes of this Act, be treated as a lease granted for a consideration equal to the amount of the additional rent provided by the instrument for the remaining term of the lease.
- (2) Where, apart from this subsection, an original lease would be liable to additional duty by reason of an increase in rent of a description referred to in subsection (1), no additional duty is payable on that original lease.

55 Payment of duty where rent unascertainable

- (1) This section applies to unascertainable rent, which is rent or a component of rent payable under a lease that cannot be ascertained as a definite amount at the time duty is payable on the lease.
- (2) The Commissioner may make a reasonable estimate of unascertainable rent.
- (3) Where rent consists of unascertainable rent only, duty is payable on the estimate by the Commissioner under subsection (2) of the unascertainable rent.

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- (4) Where rent consists of both ascertainable and unascertainable rent, duty is payable on the sum of the ascertainable rent and the estimate by the Commissioner under subsection (2) of the unascertainable rent.
 - (5) Once unascertainable rent under a lease is actually paid, the lessee may resubmit the lease to the Commissioner for a reassessment of the duty payable on the lease and, if the duty paid on the lease based on an estimate of unascertainable rent exceeds the duty that would have been payable had it been based on the rent actually paid, the lessee is entitled to a refund of the difference.
 - (6) During the term of a lease, the Commissioner:
 - (a) may make periodic estimates of the unascertainable rent payable under a lease on the dates that the Commissioner, having regard to the provisions of the lease, determines; and
 - (b) after each periodic estimate, may adjust the duty payable on the unascertainable rent by the difference between the duty that was paid on the unascertainable rent and the duty that would have been payable had it been based on the rent actually paid.
 - (7) An adjustment under subsection (6) may be made:
 - (a) by adjusting the duty payable as a result of the next periodic estimate; or
 - (b) if there are no further periodic estimates – by refunding the difference to the lessee or requiring the lessee to pay the difference, as the case requires.
 - (8) A lease in respect of which periodic estimates are made under subsection (6) is to be marked "interim stamp only".
 - (9) Within one month after the date of a periodic estimate under subsection (6), the lessee must resubmit the lease to the Commissioner together with a statement setting out:
 - (a) the amount of unascertainable rent actually paid under the lease; and
 - (b) the amount of duty paid on the unascertainable rent under the lease.
 - (10) Nothing in section 97(1) is to be taken to prevent the Commissioner from reassessing duty under this section at any time during the term of a lease.

55AA Payment of duty on lease containing rent review clause

(1) Where:

- (a) the rent or a component of the rent payable under a lease can be ascertained at the time duty is payable on the lease or estimated under section 55; and
- (b) the lease contains a provision under which that rent or component of rent may be increased at intervals during the lease,

the Commissioner may estimate the increase in the rent payable under the lease by compounding the rate at which rent is payable during the first interval by the annual percentage increase in the Consumer Price Index published immediately before the lease was executed.

- (2) Once rent under a lease to which this section applies is actually paid, the lessee may resubmit the lease to the Commissioner for a reassessment of the duty payable on the lease and, if the duty paid on the lease based on an estimate of the rent payable under subsection (1) exceeds the duty that would have been payable had it been based on the rent actually paid, the lessee is entitled to a refund of the difference.
- (3) In this section, **Consumer Price Index** means the number appearing in the Consumer Price Index (All Groups Index) for Darwin published under the *Census and Statistics Act 1905* of the Commonwealth.

55A Refund of duty where party fails to execute

Where duty has been paid or is payable on a conveyance which had been or is lodged with the Commissioner for assessment and the conveyance had not been or is not fully executed, the Commissioner shall, if satisfied that the conveyance is ineffective by reason of a failure of the necessary parties to execute it, refund the amount of duty paid or, as the case may require, remit the duty otherwise payable.

56 Refund of duty where early determination of lease

- (1) Where duty has been paid on a lease that has been granted for a term of not less than 2 years and the lease is determined before the expiration of that term, an amount equal to the amount of the difference between the amount of duty so paid and the amount of duty that would have been payable on the lease if the lease had been granted for a term expiring on the date of the determination of

the lease shall, subject to this section, be refunded to the person who was the lessee immediately before the determination of the lease.

- (2) A refund under this section is not payable to a person unless he furnishes to the Commissioner, within 90 days after the determination of the lease or within the further period allowed by the Commissioner under section 56B, an application in accordance with an approved form together with such information as the Commissioner requires to enable him to determine the amount of the refund.

56A Refund or remission of duty if transaction does not proceed or is rescinded, cancelled etc.

- (1) Where:
- (a) duty has been paid or is payable in respect of a conveyance of dutiable property or marketable securities (other than a conveyance to which Division 8AB applies) or the grant of a lease; and
 - (b) the conveyance or grant does not proceed or the entitlement to the dutiable property or marketable securities is, as a result of the rescission, cancellation, annulment or operation of the transaction by which it was conveyed, extinguished,

the Commissioner must refund the duty paid or remit the duty payable, as the case requires.

- (2) Remission is not available, nor a refund payable, under subsection (1) to a person unless the person furnishes to the Commissioner, within 90 days after the rescission, cancellation, annulment, abandonment or relevant operation of the transaction to which that remission or refund relates or within the further period allowed in writing by the Commissioner under section 56B:
- (a) an application in an approved form, together with such information as the Commissioner requires to enable him to determine that the transaction has been rescinded, cancelled, annulled or abandoned or operates as claimed; and
 - (b) all instruments evidencing the transaction.
- (3) All instruments evidencing a transaction in respect of which duty has, in pursuance of this section, been remitted or refunded shall have a note of that fact endorsed on them by the Commissioner and, on being so endorsed, they shall have no effect in law or in equity to convey dutiable property or marketable securities or grant

a lease.

- (4) This section does not apply to or in relation to a transaction where the Commissioner is of the opinion that a subsequent sale or other disposition of the dutiable property or marketable securities the subject of the transaction:
- (a) is a sub-sale or a transaction having the effect of a sub-sale, notwithstanding that the subsequent conveyance is executed by the person who was the vendor in that first-mentioned transaction; or
 - (b) is the result of a conveyance by direction, whether in writing or not, initiated by the conveyee in that transaction.

56B Extension of time to apply for refund

The Commissioner may allow a further period to furnish an application or information under section 56 or 56A if satisfied that there is a reasonable excuse that prevented a person from furnishing the application or information within the 90-day period.

Division 8AA Declarations of trust

56BA Imposition of duty on declarations of trust

- (1) Duty is payable on a declaration of trust over dutiable property or marketable securities as if the declaration were a conveyance of the property or securities.
- (2) For the purposes of subsection (1):
 - (a) the dutiable property or marketable securities vested or to be vested in the declarant is to be taken to be the property or securities conveyed;
 - (b) the declarant is to be taken to be the conveyee; and
 - (c) the conveyance is to be taken to have occurred at the time the declaration is made.
- (3) In this section, ***declaration of trust*** means a declaration (other than by a will or testamentary instrument) that identified dutiable property or marketable securities vested or to be vested in the person making the declaration is or is to be held in trust for the person or persons, or for the purpose or purposes, mentioned in the declaration although the beneficial owner of the property or securities or the person entitled to appoint the property or securities may not have joined in or assented to the declaration.

Division 8AAA Changes in beneficiaries and trustees of discretionary trusts

56BAA Definitions

In this Division:

beneficiary, in relation to a discretionary trust, means a person in whom the trustee may determine to vest the whole or part of the trust property and includes a person in whom the whole or part of the trust property vests if the trustee does not make such a determination.

change in control, in relation to a beneficiary, trustee or other body corporate, means a change in the person or the persons acting together who may (directly or indirectly) exercise, control the exercise of, or substantially influence the exercise of:

- (a) the majority of voting power at meetings of the directors of the beneficiary, trustee or other body corporate; or
- (b) more than 50% of the voting power attached to voting shares issued by the beneficiary, trustee or other body corporate;

family member, in relation to a beneficiary, means:

- (a) a spouse or de facto partner of the beneficiary;
- (b) a child or other remoter lineal descendant of the beneficiary;
- (c) an adopted child or a stepchild of the beneficiary;
- (d) a lineal descendant of an adopted child or stepchild of the beneficiary;
- (e) a spouse or de facto partner of:
 - (i) a child or other remoter lineal descendant of the beneficiary; or
 - (ii) an adopted child or a stepchild of the beneficiary; or
 - (iii) a lineal descendant of an adopted child or stepchild of the beneficiary;
- (f) a sibling of the beneficiary or a spouse or de facto partner of the beneficiary; or
- (g) a lineal descendant of a sibling of the beneficiary or a spouse or de facto partner of the beneficiary.

56BAB Imposition of duty on addition of beneficiaries under discretionary trust

- (1) Subject to this section, duty is payable where a beneficiary or class of beneficiaries is added to the existing beneficiaries or classes of beneficiaries under a discretionary trust as if:
 - (a) the addition were a conveyance of the dutiable property or marketable securities over which the discretionary trust is declared;
 - (b) the trustees were the conveyees; and
 - (c) the conveyance had occurred at the time of the addition.
- (2) The additional beneficiaries or the members of the additional class of beneficiaries and the trustees are jointly and severally liable for the duty imposed in respect of the addition.
- (3) Duty is not payable under subsection (1):
 - (a) if the existing beneficiaries and the additional beneficiary, or the members of the existing classes of beneficiaries and the members of the additional class of beneficiaries, are family members; or
 - (b) if the addition is not a tax avoidance scheme or part of a tax avoidance scheme.
- (4) For the purposes of this section, the addition of a beneficiary or class of beneficiaries includes:
 - (a) the addition of a beneficiary who is a natural person or a body corporate;
 - (b) the addition of a class of beneficiaries the members of which are natural persons, bodies corporate or both;
 - (c) the addition of a person or class of persons in whom the whole or part of the trust property vests if the trustee does not make a determination to vest that whole or part; and
 - (d) the transfer or other disposition by a beneficiary of his or her beneficial interest under the trust.

- (5) Where the effect of an amendment or variation of the terms of a non-discretionary trust is to create a discretionary trust, this section applies in relation to the discretionary trust as if, at the time the amendment or variation was made:
- (a) there were beneficiaries or classes of beneficiaries already existing under the discretionary trust; and
 - (b) the beneficiaries or classes of beneficiaries under the discretionary trust were added to the existing beneficiaries or classes of beneficiaries.

56BAC Imposition of duty where change in beneficiary and trustee under discretionary trust

- (1) Subject to this section:
- (a) where a change in control of a beneficiary under a discretionary trust and a change of or in control of a trustee of the discretionary trust occur within a 12-month period; and
 - (b) the changes arise from one transaction or one series of transactions or substantially from one transaction or one series of transactions,
- duty is payable as if:
- (c) there had been a conveyance of the dutiable property or marketable securities over which the trust is declared;
 - (d) the trustees were the conveyees; and
 - (e) the conveyance had occurred at the time of the later of the changes.
- (2) The beneficiary in which the change in control occurred and all the trustees are jointly and severally liable for the duty imposed in respect of the changes described in subsection (1).
- (3) Duty is not payable under subsection (1) if the changes described in subsection (1) are not a tax avoidance scheme or part of a tax avoidance scheme.
- (4) For the purposes of this section, a change of or in control of a trustee includes the following:
- (a) a change of or in control of the person who has the power to appoint and revoke the appointment of the trustee;

- (b) a variation in, or the transfer or other disposition of, that power;
 - (c) a change of or in control of a person who is in a position to influence (directly or indirectly) a determination by the trustee to vest the whole or part of the trust property;
 - (d) the appointment of an additional trustee.
- (5) Where duty is paid or payable under subsection (1):
- (a) the instrument effecting or evidencing the changes referred to in subsection (1)(a) is to be stamped; or
 - (b) if there are 2 or more instruments effecting or evidencing the changes – all or any of the instruments may be stamped and the duty is to be apportioned among the instruments as determined by the Commissioner.

Division 8AB Options to convey dutiable property or marketable securities

56BB Definitions

In this Division:

call option has the meaning in section 56BC(1)(a).

option property means the dutiable property or marketable securities that is common to the call option and the put option.

put option has the meaning in section 56BC(1)(b).

56BC Duty payable on call and put option

- (1) This section applies if:
- (a) there is a conveyance to a person (**the first person**) of an option (**the call option**) to require another person (**the second person**) to convey to the first person, or to a person with whom the first person has an agreement, arrangement or understanding (**a third person**), dutiable property or marketable securities; and
 - (b) the second person has an option (**the put option**) to require the first person or a third person referred to in paragraph (a) to be the conveyee in a conveyance of the dutiable property or marketable securities from the second person.

- (2) The conveyance of the call option is taken to be a conveyance of the option property from the second person to the first person and duty is payable by the first person accordingly.
- (3) The conveyance of the option property is taken to have occurred when the later of the conveyance of the call option occurs or the put option comes into existence.
- (4) Duty is payable by the first person under subsection (2):
 - (a) regardless of when the call option or the put option is exercisable; and
 - (b) even though the call option or the put option is exercisable over dutiable property or marketable securities in addition to the option property.
- (5) The duty imposed is payable on the greater of:
 - (a) the sum of the consideration for the conveyance of the call option over the option property and the consideration for the exercise of the call option over the option property; or
 - (b) the unencumbered value of the option property.
- (6) If, as a result of the exercise of the call option or the put option, the option property is conveyed from the second person to the first person, the ad valorem duty payable on the conveyance is reduced by the amount of duty paid or payable by the first person under subsection (2).
- (7) Subject to section 17(5), if the option property is conveyed to a third person referred to in subsection (1)(a) (whether as a result of the exercise of the call option or the put option or otherwise), ad valorem duty is payable by the third person on the conveyance even though duty has been paid or is payable by the first person under subsection (2).

56BD Duty payable if neither option exercised

- (1) This section applies if:
 - (a) both the call option and the put option expire without being exercised;
 - (b) the failure to exercise either option is not a tax avoidance scheme or part of a tax avoidance scheme; and

- (c) the option property has not been conveyed to a third person referred to in section 56BC(1)(a) (whether as a result of the exercise of the call option or the put option or otherwise).
- (2) Duty is payable on the last conveyance of the call option as an option to purchase the dutiable property or marketable securities the subject of the call option.
- (3) The duty imposed is payable by the last conveyee of the call option.
- (4) However, the conveyee liable to pay duty under subsection (3) is entitled to a remission or refund of an amount equal to the difference between:
 - (a) the amount of duty paid or payable on the call option by the conveyee under section 56BC(2); and
 - (b) the amount of duty paid or payable on the call option by the conveyee under subsection (3).
- (5) The remission is not available or the refund is not payable unless a person furnishes to the Commissioner, within 90 days after the expiry of the call option or the put option (whichever occurs last) or within the further period allowed under subsection (6), an application in an approved form and the information that the Commissioner requires to determine the amount of the remission or refund.
- (6) The Commissioner may allow a further period to furnish the application or information if satisfied that the person has a reasonable excuse for not furnishing the application or information within the 90-day period.

56BE Circumstances in which duty is not payable

- (1) Duty is not payable on a conveyance under section 56BC if the conveyance of the call option occurred, and the put option came into existence, before 23 June 2004.
- (2) Duty is not payable under section 56BC(2) if the Commissioner is satisfied that:
 - (a) the call option and the put option are part of a scheme of call options and put options granted by the proprietors of a business, the only purpose of which is to facilitate the continuation of the business by one or some of the proprietors (***the continuing proprietors***);

- (b) the call options and put options forming the scheme are only exercisable on the occurrence of a specified event that would cause the continuing proprietors to seek to acquire the interest in the business of another of the proprietors; and
 - (c) the call option and the put option are not a tax avoidance scheme or part of a tax avoidance scheme.
- (3) In subsection (2):

proprietor, of a business, means a natural person who is:

- (a) if the business is a partnership – a partner in the business;
- (b) if the business is a company – a shareholder in the business;
- (c) if the business is a unit trust scheme – a unit holder in the business; or
- (d) if (a), (b) and (c) do not apply – a person determined by the Commissioner to be a proprietor of the business.

Division 8A Change of control of certain land-owning corporations and unit trusts

56C Interpretation

- (1) In this Division, unless the contrary intention appears:

acquire, in relation to an interest or a shareholding in a corporation to which this Division applies, includes acquire the interest or shareholding by virtue of:

- (a) the allotment or issue of a share to the person or another person, not being the issue of a share to a member on registration of the corporation;
- (b) the redemption, surrender or cancellation of a share by the corporation or by the person or another person;
- (c) the variation, abrogation or alteration of a right pertaining to a share;
- (ca) the payment of an amount owing for a share,
- (cb) a declaration of trust to which Division 8AA applies;
- (cc) the addition of a beneficiary or class of beneficiaries under a discretionary trust to which Division 8AAA applies;

- (cd) a change in control of a beneficiary under, and a change of or in control of a trustee of, a discretionary trust to which Division 8AAA applies; and
- (ce) a statutory vesting to which Division 8B applies, but does not include an acquisition:
- (d) that occurs solely as the result of:
 - (i) the appointment of a receiver or trustee in bankruptcy;
 - (ii) the appointment of a liquidator;
 - (iii) the making of a compromise or arrangement under Part 5.1 of the Corporations Act 2001 that:
 - (A) has been made with the corporation's creditors or a class of them;
 - (B) has been approved by the court; and
 - (C) is not a tax avoidance scheme or part of a tax avoidance scheme;
 - (iv) the distribution of the estate of a deceased person, including an acquisition that occurs as the result of:
 - (A) a will, a codicil or an order of a court varying or modifying the provisions of a will or codicil; or
 - (B) an intestacy or an order of a court varying or modifying the application, in relation to the estate of a deceased person, of the provisions of a law relating to the distribution of the assets of persons who die intestate; or
 - (v) an arrangement (whether entered into before or after the commencement of section 6 of the *Taxation (Administration) Amendment Act (No. 2) 1988*) relating to the provision of finance or the enforcement or termination of such an arrangement.

corporation has the same meaning as in the Corporations Act 2001.

director has the same meaning as in the Corporations Act 2001.

entitled means beneficially entitled.

interest includes a majority interest as defined in section 56Q.

private unit trust scheme means a unit trust scheme of which, at the time of an acquisition in the scheme, the deed:

- (a) has not been approved for the purposes of Chapter 5C of the Corporations Act 2001 or the corresponding provisions of the law in force in a State or another Territory of the Commonwealth; or
- (b) has been approved for the purposes of Chapter 5C of the Corporations Act 2001 or the corresponding provisions of the law in force in a State or another Territory of the Commonwealth but at least one of the following applies:
 - (i) no units have been issued to the public;
 - (ii) fewer than 50 persons are beneficially entitled to units under the scheme;
 - (iii) 20 or fewer persons are beneficially entitled to 75% or more of the total issued units under the scheme.

relevant period, in relation to a relevant acquisition, means:

- (a) the period of 3 years ending on the date of the relevant acquisition; or
- (b) if a person makes a relevant acquisition because the person acquires an interest by exercising a right to acquire the interest – the period commencing 3 years before the day on which the person or a related person acquired the right to acquire the interest and ending on the date of the relevant acquisition.

share means a share in the share capital of a corporation and includes stock and an interest in a share or stock, and **shareholding** has a corresponding meaning.

unit means a right or interest, whether described as a unit or sub-unit or otherwise, of a beneficiary under a unit trust scheme, and includes an interest in a unit.

unit trustee means a trustee of a unit trust scheme.

(1A) For the purposes of the definition of ***private unit trust scheme***, in determining the number of persons beneficially entitled to units in a unit trust scheme:

(a) the units to which:

- (i) a corporation;
- (ii) a person who is entitled to more than 50% of the issued share capital of the corporation; and
- (iii) a related corporation (as defined in section 50 of the Corporations Act 2001) of the corporation,

are entitled are taken to be held by one person; and

(b) the units to which:

- (i) a trustee of a trust (including a unit trust scheme);
- (ii) if the trust is a discretionary trust – a person who has an entitlement on the distribution of the trust; and
- (iii) a person whose share or interest in the trust, whether vested or contingent, constitutes more than 50% of the trust property or of the issued units in the trust,

are entitled are taken to be held by one person.

(2) For the purposes of section 56N:

(a) the following are associated persons in relation to a corporation:

- (i) a related corporation as defined in section 50 of the Corporations Act 2001;
- (ii) a related person within the meaning in subsection (3);
- (iii) a director or secretary of the corporation or a related corporation;
- (iv) a person who is entitled to a shareholding in the corporation or a related corporation;
- (v) a relative of a natural person referred to in subparagraph (ii), (iii) or (iv); and

- (vi) a corporation in which the corporation or a person referred to in subparagraph (iii), (iv) or (v) is entitled to a shareholding;
- (b) in relation to a loan of money by a corporation or subsidiary, a person is not an associated person in relation to the corporation if the Commissioner is satisfied that the money was not lent to the person for the purpose of defeating the object of this Division; and
- (c) the following are relatives of a person for the purposes of paragraph (a)(v):
 - (i) a child or remoter lineal descendant of the person or a spouse or de facto partner of the person;
 - (ii) a parent or remoter lineal ancestor of the person or a spouse or de facto partner of the person;
 - (iii) a brother or a sister of the person or a spouse or de facto partner of the person; and
 - (iv) a spouse or de facto partner of the person and a spouse or de facto partner of a person referred to in subparagraph (i), (ii) or (iii).
- (3) For the purposes of this Division, the following persons are related:
 - (a) natural persons who are a spouses or de facto partners of each other or between whom the relationship is that of parent and child;
 - (b) related corporations as defined in section 50 of the Corporations Act 2001;
 - (c) a trustee and another trustee if there is any beneficiary common to the trusts of which they are trustees, whether the beneficiary has a vested share or is contingently entitled or may benefit from a discretionary trust;
 - (d) a natural person and a corporation if the natural person is a majority shareholder, director or secretary of the corporation or a related corporation;
 - (e) a natural person and a trustee if the natural person is a beneficiary under the trust of which the trustee is a trustee, whether the person has a vested share or is contingently entitled or may benefit from a discretionary trust;

- (f) a corporation and a trustee if:
 - (i) the corporation, a majority shareholder, director or secretary of the corporation is a beneficiary of the trust of which the trustee is a trustee; or
 - (ii) a related corporation to the corporation is a beneficiary of the trust of which the trustee is a trustee,whether any such beneficiary has a vested share or is contingently entitled or may benefit from a discretionary trust;
 - (g) persons who acquire interests in a corporation by virtue of acquisitions that together form or arise from substantially one transaction or one series of transactions;
 - (h) in relation to an acquisition of an interest in a corporation by virtue of a declaration of trust to which Division 8AA applies – the trustees of, and the beneficiaries under, the trust, whether any beneficiary has a vested share or is contingently entitled or may benefit from a discretionary trust;
 - (i) in relation to an acquisition of an interest in a corporation by virtue of the addition of a beneficiary or class of beneficiaries under a discretionary trust to which Division 8AAA applies – the trustees of, and the additional beneficiary or class of beneficiaries under, the trust.
- (4) For the purposes of subsection (3), persons are not related persons in relation to an acquisition of an interest in a corporation if the Commissioner is satisfied that the persons were not acting in concert in relation to the acquisition.
- (5) For the purposes of subsections (2) and (3):
- (b) a majority shareholder, in relation to a corporation, is a person who would have a substantial holding (within the meaning of section 9 of the Corporations Act 2001) in the corporation if the reference in paragraph (a) of the definition of **substantial holding** in that section to 5% were a reference to 50%.

- (6) For the purposes of this Division, the entitlement of a person to participate as a shareholder in the distribution of the property of a corporation on a winding up of the corporation is an entitlement to an amount calculated as if:
- (a) the winding up were carried out in accordance with the constitution or rules of the corporation and the law relevant to the winding up, as the constitution or rules and law exist at the time of the winding up; or
 - (b) the person had, immediately before the winding up, paid up any uncalled amount for the shares in the corporation and exercised all powers and discretions exercisable by the person by reason of having acquired an interest in the corporation to:
 - (i) effect or compel an alteration to the constitution or rules;
 - (ii) vary the rights conferred by shares in the corporation; or
 - (iii) effect or compel the substitution or replacement of shares in the corporation with other shares in the corporation,in such manner as to maximize that amount,
- whichever of the amounts under paragraph (a) or (b) results in the greater amount, unless the Commissioner determines, where the calculation under paragraph (b) results in the greater amount, that the amount of the entitlement should be calculated under paragraph (a).
- (7) For the purposes of this Division, the entitlement of a person on the distribution of a trust shall be determined as the greatest entitlement that the person could derive at any time from the trust whether by the fulfilment of a condition, the outcome of a contingency or the exercise of a power or discretion or otherwise and, in particular, a person that may benefit from, or the trust property of another trust that may comprise or be augmented by a benefit from, a discretionary trust shall be deemed to be entitled to or comprise, or be augmented by:
- (a) the property subject to the discretionary trust, unless the Commissioner determines otherwise; or
 - (b) such part of that property as the Commissioner determines.

- (8) For the purposes of this Division, if the acquisition of an interest in a corporation is, or is to be, evidenced by a transfer of shares, the acquisition shall be deemed to occur on the date the transfer is made.
- (9) For the purposes of this Division:
- land** does not include prescribed property within the meaning of section 8E(1) of the *Stamp Duty Act* if:
- (a) an interest that is a relevant acquisition in a corporation entitled to prescribed property is acquired from one or more natural persons by one or more other natural persons who are family members (within the meaning of section 8E(1) of the *Stamp Duty Act*) of the first-mentioned persons;
 - (b) no monetary consideration is given or agreed to be given for the acquisition of the interest;
 - (c) a person who acquires the interest will not hold the interest as a member of a body corporate or as an agent or trustee or otherwise for or on behalf of another person;
 - (d) each of the family members acquiring the interest in the corporation intends that the prescribed property to which the corporation is entitled will be used for farming purposes within the meaning of section 8E(1) of the *Stamp Duty Act*; and
 - (e) the person from whom the interest in the corporation is acquired did not acquire the interest within 5 years before the relevant acquisition or, if that person acquired the interest within that 5 year period, the land to which the corporation was entitled at the time when that person acquired the interest included the prescribed property.
- (10) For this Division, if an interest or a shareholding in a corporation is acquired by virtue of a declaration of trust to which Division 8AA applies:
- (a) the interest or shareholding vested or to be vested in the declarant is taken to be the interest or shareholding acquired;
 - (b) the declarant is taken to be the person who acquired the interest or shareholding; and
 - (c) the acquisition is taken to have occurred at the time the declaration is made.

- (11) For this Division, if an interest or a shareholding in a corporation is acquired by virtue of the addition of a beneficiary or class of beneficiaries under a discretionary trust to which Division 8AAA applies:
- (a) the interest or shareholding over which the trust is declared is taken to be the interest or shareholding acquired;
 - (b) the trustees are taken to be the persons who acquired the interest or shareholding; and
 - (c) the acquisition is taken to have occurred at the time of the addition.
- (12) For this Division, if an interest or a shareholding in a corporation is acquired by virtue of a change in control of a beneficiary under, and a change of or in control of a trustee of, a discretionary trust to which Division 8AAA applies:
- (a) the interest or shareholding over which the trust is declared is taken to be the interest or shareholding acquired;
 - (b) the trustees are taken to be the persons who acquired the interest or shareholding; and
 - (c) the acquisition is taken to have occurred at the time of the later of the changes.
- (13) For this Division, if an interest or a shareholding in a corporation is acquired by virtue of a statutory vesting to which Division 8B applies:
- (a) the interest or shareholding that vests in the person or body concerned is taken to be the interest or shareholding acquired;
 - (b) the person or body in whom the interest or shareholding vests is taken to be the person or body who acquired the interest or shareholding; and
 - (c) the acquisition is taken to have occurred at the time the law by or under which the vesting occurs determines when the interest or shareholding vests in the person or body.

56D Lodgement of statements by trustees

- (1) If a person by a relevant acquisition acquires an interest in a corporation to which this Division applies in the capacity of a trustee, the liability to prepare and lodge a statement under section 56K is not affected by the fact that the acquisition is not

made by the person beneficially, and this Division applies as if the acquisition had been made beneficially.

(2) Where the Commissioner considers that:

- (a) a person beneficially entitled to a share or interest in trust property, whether the person has a vested share or is contingently entitled or may benefit from a discretionary trust, is related to another person, within the meaning of section 56C(3), who has acquired an interest in a corporation; and
- (b) the beneficial interest of the beneficiary in the corporation, when taken with that of such a related person, amounts to a greater interest than the interest of the trustee of the trust and a person who is related to the trustee,

on payment of the duty payable on the statement required to be lodged under section 56K by the beneficiary any duty paid by the trustee in respect of the acquisition giving rise to the requirement for that statement to be lodged shall be refunded to the trustee.

56E Valuation of land

(1) The Commissioner may:

- (a) require a person who is required to lodge a statement under section 56K to furnish a further statement in an approved form concerning the unencumbered value of any land, or such other evidence of that value as the Commissioner thinks fit; and
- (b) assess duty in accordance with the evidence of value referred to in paragraph (a).

(1A) A person must comply with a requirement of the Commissioner under subsection (1)(a).

Penalty: \$5,000.

(2) Where the Commissioner is not satisfied with the evidence of value furnished under subsection (1), the Commissioner may assess the duty chargeable on the basis of a valuation made at the request of the Commissioner by the Valuer-General appointed under the *Valuation of Land Act* or a person authorized by the Valuer-General.

56F Notice may be registered on title

- (1) Where in relation to the acquisition of an interest in a corporation:
- (a) a statement has been lodged under section 56K(1) with the Commissioner or ought to have been so lodged;
 - (b) the Commissioner has made an assessment of duty payable under section 56M on the value of land to which the corporation is entitled; and
 - (c) the assessment has not been paid or has not been paid in full, the Commissioner may, if the corporation or a subsidiary as defined in section 56N(5) is the registered proprietor of the land, deliver to the Registrar-General a notice in the appropriate form within the meaning of the *Land Title Act* relating to the duty and any penalty that is payable under this Act, and the Registrar-General shall make the appropriate entries in the land register kept under the *Land Title Act* to give effect to the notice.
- (2) While the entries under subsection (1) are in the land register, the Registrar-General shall not register an instrument affecting the land unless:
- (a) the instrument relates to a security interest in the land arising under an agreement entered into before the entries were made or that was lodged with the Registrar-General within 5 business days after the entries were made;
 - (b) the instrument is a duly stamped conveyance:
 - (i) that was executed under an agreement entered into before the entries were made;
 - (ii) made as a result of a sale of land under section 56H; or
 - (iii) made as a result of a sale of land by the holder of a security interest in the land registered before the entries were made or a security interest referred to in paragraph (a); or
 - (c) the Commissioner consents in writing.
- (3) An instrument registered in accordance with subsection (2)(a) has effect, in relation to the entries made under subsection (1), as if it had been registered before the entries were made.

- (4) Where an instrument referred to in subsection (2)(b) affecting land is registered by the Registrar-General, the entries made in accordance with subsection (1) shall be deemed to be cancelled on the registration of the instrument and the Registrar-General shall make the appropriate entries to give effect to the cancellation.
- (5) When:
- (a) the duty and penalty (if any) in respect of which an entry has been made in the land register has been paid; or
 - (b) the Commissioner determines to withdraw a notice given under subsection (1),
- the Commissioner shall deliver to the Registrar-General a notice to that effect.
- (6) The Registrar-General shall make the appropriate entries in the land register to give effect to the notice under subsection (2) and thereupon the land ceases to be subject to that subsection.
- (7) If the Commissioner delivers a notice under subsection (1) to the Registrar-General relating to land of which a corporation or subsidiary is the registered proprietor, the Commissioner shall send a copy of the notice to the corporation or subsidiary with a direction that the corporation or subsidiary send a copy of the notice to each person the corporation or subsidiary believes may be affected by the operation of this section.
- (8) The Commissioner shall not deliver a notice in relation to a corporation or subsidiary under subsection (1) or, where the Commissioner has delivered such a notice, shall withdraw the notice if, on an application in accordance with subsection (9), the Commissioner determines that the application of the proceeds of sale of the land under section 56H would reduce the value of the interest of the holder of an interest in the corporation or subsidiary.
- (9) An application for the purposes of subsection (8) may be made by the holder of an interest in the corporation or subsidiary where the holder is not related to a person making a relevant acquisition in the corporation or subsidiary and the application is made within 60 days after the copy of the notice under subsection (7) is given to the corporation or subsidiary.
- (10) A person may appeal against a decision of the Commissioner under subsection (8) to the Taxation and Royalty Appeals Tribunal or the Supreme Court and Part V applies (with the necessary changes) as if the decision were a decision on an objection.

56G Charges on land

Where an entry has been made under section 56F in the land register in relation to the certificate of title to land, any duty and penalty to which the notice relates is a charge on the land and the charge continues in force until the duty and penalty (if any) is paid, the Commissioner withdraws the notice given under section 56F(1) or the entry is cancelled, whichever first occurs.

56H Power of sale

(1) Where:

- (a) duty has been assessed on the value of land in accordance with section 56M;
- (b) the duty and penalty (if any) has not been paid at the expiration of one year from the date of the assessment; and
- (c) an entry has been made under section 56F in the land register in relation to the certificate of title to the land,

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

- (2) A copy of a notice under subsection (1) shall be served on the registered proprietor of the land and such other persons as appear by the land register to be affected, which service may be effected by posting the document on the land if service cannot reasonably be effected in the Territory by other means.
- (3) The Commissioner may apply to the Supreme Court for the sale of so much of the land described in the notice under subsection (1) as may be necessary, and the Court shall, on being satisfied by affidavit or otherwise that the amount is lawfully due and that all things required by this Act to be done by the Commissioner have been done, order the sale of the land and that the proceeds be applied in accordance with section 56J(a).

56J Application of proceeds of sale

Where land has been sold under section 56H:

- (a) the purchase money arising from the sale shall be applied in accordance with section 93 of the *Law of Property Act* as if the relevant entry under section 56F in the land register were an overriding statutory charge to which section 93 of the *Law of Property Act* applies and the Commissioner were the person entitled to the benefit of an overriding statutory charge for the purposes of that section;
- (b) the conveyance shall be executed by the officer of the Court nominated by the Court for such purpose to the purchaser, in such form as approved by the Court; and
- (c) the conveyance shall vest the land sold in the purchaser as completely and effectually as if the conveyance had been executed by the owner of the land freed and discharged from all liability on account of the charge and any mortgage, charge or encumbrances registered or notified in the land register subsequent thereto; and
- (d) the Registrar-General shall, on production of the conveyance, register it in the land register.

56K When statement to be lodged

- (1) Where, by a relevant acquisition, a person acquires an interest in a corporation to which this Division applies, that person shall prepare and lodge with the Commissioner a statement in respect of that acquisition.
- (1A) Subsection (1) does not apply if, at the time the person acquires the interest in the corporation, the corporation:
 - (a) is quoted on a recognised financial market; or
 - (b) is a unit trust scheme that is not a private unit trust scheme.
- (2) Where a requirement under subsection (1) arises in circumstances where a person makes a relevant acquisition by reason of interests held by that person and a related person or related persons being aggregated, one of those persons shall prepare and lodge a statement under that subsection of all acquisitions on behalf of all those persons.
- (3) The statement under subsection (1) shall be lodged within 3 months after the occurrence of the relevant acquisition.

- (4) The statement under subsection (1) shall be in an approved form and shall include:
- (a) the name and address of the person who has made the relevant acquisition and of any related person referred to in subsection (2);
 - (b) the date of the relevant acquisition;
 - (c) particulars of the interest acquired and all interests previously acquired by the person and related persons in the corporation and the date on which each of those interests was acquired;
 - (d) the person's estimate of the unencumbered value of all land to which the corporation is entitled as at the date of the relevant acquisition and as at the date of the acquisition of each interest acquired in the corporation by the person and any related persons within the relevant period in relation to the relevant acquisition;
 - (e) the person's estimate of the unencumbered value of the assets of the corporation as at the date of the acquisition of each interest acquired in the corporation by the person and any related persons before 27 May 2003, but within the relevant period in relation to the relevant acquisition; and
 - (f) details of any duty paid under this Division in respect of each interest acquired before the date of the relevant acquisition, but within the relevant period in relation to the relevant acquisition.
- (5) A statement under subsection (1) shall be deemed, for the purposes of this Act, to be an instrument executed on the day on which the relevant acquisition occurred.
- (6) A person who fails to comply with subsection (1), (2) or (3) commits an offence.

Penalty: \$5,000.

56M Statement chargeable with duty

- (1) A statement lodged under section 56K is chargeable, in accordance with section 56R, with duty at the rate provided for in Schedule 1, item 5(1) to the *Stamp Duty Act* calculated on the dutiable value determined under section 56R(3).

- (2) However, there is to be deducted from the duty chargeable on a statement lodged under section 56K:
- (a) the amount, if any, paid under Schedule 1, item 20 to the *Stamp Duty Act* in respect of any instrument effecting or evidencing the acquisition of an interest in the corporation within the relevant period in relation to the relevant acquisition, except duty:
 - (i) previously deducted under:
 - (A) this subsection as in force before 27 May 2003; or
 - (B) this paragraph on or after 27 May 2003; or
 - (ii) paid in respect of the acquisition of an interest referred to in paragraph (c);
 - (b) the amount, if any, paid under this Division (but not refunded) on another statement lodged under section 56K in respect of the portion of the dutiable value of the relevant acquisition specified in that other statement that relates to the dutiable value of the acquisition of an interest in the corporation by the person or any related persons within the relevant period in relation to the relevant acquisition; and
 - (c) the amount payable under this Division in respect of the acquisition of an interest in the corporation by the person or any related persons in any of the following circumstances:
 - (i) where the interest is acquired within the relevant period in relation to the relevant acquisition, but while the corporation was a corporation whose shares were quoted on a recognised financial market;
 - (ii) if the corporation is a unit trust scheme – where the interest is acquired within the relevant period in relation to the relevant acquisition, but while the unit trust scheme was not a private unit trust scheme;
 - (iii) where the interest is acquired before 20 August 2001, but only if the relevant acquisition is not made because of the exercise of a right to acquire an interest, being a right acquired by the person or a related person within 12 months before or 3 years after the acquisition of the interest first-mentioned in this subparagraph;
 - (iv) where the interest is acquired before 27 May 2003, but within the relevant period in relation to the relevant

acquisition, while the corporation was not a land-holder referred to in section 56N(2)(b) as in force immediately before 27 May 2003;

- (v) if the interest is acquired within the relevant period by virtue of the vesting of marketable securities under a declaration of trust to which Division 8AA applies and duty has already been paid under this Division in respect of an acquisition of that interest by virtue of the declaration of trust having been made when the marketable securities were to be vested in the declarant;
- (vi) if the interest is acquired within the relevant period by virtue of the addition of a beneficiary or class of beneficiaries under a discretionary trust to which Division 8AAA applies and either of the following applies:
 - (A) the existing beneficiaries and the additional beneficiary, or the members of the existing classes of beneficiaries and the members of the additional class of beneficiaries, are family members within the meaning of section 56BAA;
 - (B) the addition is not a tax avoidance scheme or part of a tax avoidance scheme;
- (vii) if the interest is acquired within the relevant period by virtue of a change in control of a beneficiary under, and a change of or in control of a trustee of, a discretionary trust to which Division 8AAA applies and the changes are not a tax avoidance scheme or part of a tax avoidance scheme;
- (viii) if the interest is acquired within the relevant period and the person who acquires the interest could have acquired the land to which the corporation is entitled, including:
 - (A) land to which each of the corporation's subsidiaries within the meaning of section 56N(5) is entitled; and
 - (B) land subject to an agreement for sale or purchase by the corporation or any of those subsidiaries,

without ad valorem duty being payable under Schedule 1, item 5 of the *Stamp Duty Act* other than by virtue of Part III, Division 2 of this Act, but not including the acquisition of an interest in the corporation that is the result of:

- (C) a declaration of trust to which Division 8AA applies;
 - (D) the addition of a beneficiary or class of beneficiaries under a discretionary trust to which Division 8AAA applies; or
 - (E) a change in control of a beneficiary under, and a change of or in control of a trustee of, a discretionary trust to which Division 8AAA applies;
- (ix) if the interest is acquired within the relevant period and is units in a unit trust scheme – the units were acquired solely pursuant to an arrangement entered into or carried out by any of the parties to the arrangement for the sole purpose of enabling the unit trust scheme or a related person to:
- (A) obtain finance (whether by way of renewal or otherwise);
 - (B) obtain an extension of the period for which finance was obtained under an earlier arrangement; or
 - (C) enforce or terminate an arrangement for the provision of finance;
- (x) if the interest is acquired within the relevant period in relation to the relevant acquisition and duty is not payable in respect of the interest by virtue of section 22.
- (3) Despite section 9, duty on a statement lodged under section 56K is due and payable by the person liable to pay it:
- (a) on the date specified in the notice of assessment of the duty as the date on which the duty is due and payable; or
 - (b) if no date is specified or no notice is served – 30 days after the date on which the person is informed of the assessment.

56N Corporations to which this Division applies

- (1) This Division applies to a relevant acquisition in a corporation that is a land-holder within the meaning of subsection (2).

- (2) A corporation is a land-holder for the purposes of this Division if, at the time of a relevant acquisition:
- (a) it is entitled to land, including land that is subject to an agreement for the sale or purchase of the land by the corporation, and the unencumbered value of the land is not less than \$500 000; or
 - (b) it is entitled to land, including land that is subject to an agreement for the sale or purchase of the land by the corporation, as a co-owner of the freehold or a lesser estate in the land and the unencumbered value of the land is not less than \$500 000.
- (5) Without limiting the meaning of **entitled**, a corporation shall be deemed to be entitled to land, including land that is subject to an agreement for the sale or purchase of the land by a subsidiary, at the time of a relevant acquisition to the extent that the subsidiary is entitled to that land, and for the purposes of this subsection **subsidiary** means:
- (a) a subsidiary corporation within the meaning of section 9 of the Corporations Act 2001;
 - (b) the trustee of a trust if the corporation or a subsidiary corporation of the corporation, as defined in paragraph (a):
 - (i) is entitled to a share or interest in the trust, whether vested or contingent; or
 - (ii) in the case of a discretionary trust, may benefit from that trust,and, at the time of the relevant acquisition, the corporation or subsidiary is entitled to more than 50% of the value of the property held by the trustee as trustee of the trust (being the value determined on the basis of a distribution of the property at that time);
 - (c) any other corporation, if the trustee of a trust to which paragraph (b) applies in which the corporation or a subsidiary corporation:
 - (i) is entitled to a share or interest, whether vested or contingent; or
 - (ii) in the case of a discretionary trust, may benefit from that trust,

would be entitled if the other corporation were to be wound up, after the time of the relevant acquisition, to participate as a shareholder in a distribution of the property of the other corporation to an extent greater than 50% of the value of the property distributable to all of the holders of shares in the other corporation; or

- (d) any other corporation or the trustee of any other trust that would, by an application of this subsection, be a subsidiary of a corporation that is a subsidiary of the first – mentioned corporation in this subsection.
- (6) A corporation that is a co-owner of an estate in land is not a co-owner for the purposes of subsection (2) if the Commissioner is satisfied that the reason for the corporation being a co-owner is not for the purpose of defeating the object of this Division.

56P Meaning of *relevant acquisition*

An acquisition of an interest in a corporation by a person is a relevant acquisition for the purposes of this Division:

- (a) if it is an acquisition that alone constitutes a majority interest in the corporation;
- (b) if, when aggregated with other interests in the corporation held by the person, or the person and related persons, it constitutes a majority interest in the corporation; or
- (c) if, by the acquisition, a person who has a majority interest in the corporation or an interest referred to in paragraph (b) acquires a further interest in the corporation.

56Q Meaning of *interest* and *majority interest* in a corporation

- (1) A person has an interest in a corporation if the person has or would have, on the winding up of the corporation, an entitlement as a shareholder to a distribution of the corporation's property.
- (2) A person has a majority interest in a corporation if the person has an interest in the corporation of 50% or more.
- (3) A person's interest in a corporation is the person's entitlement expressed as a percentage of the value of all of the corporation's property that would be distributed if the corporation were wound up immediately after the person acquires the interest.

56R How dutiable value determined

- (1) Where section 56M(1) applies, duty is chargeable in accordance with this section on the basis of the unencumbered value (in this section called **the dutiable value**) of the land to which the corporation is entitled.
- (2) The dutiable value of an interest in a corporation is the amount calculated by multiplying the interest by the unencumbered value of the land to which the corporation is entitled, as provided by subsection (4), at the date the interest is acquired.
- (3) Where a person acquires an interest in a corporation that is a relevant acquisition, the dutiable value of the acquisition is the aggregate of the amounts, severally calculated as provided by subsection (2), of the value of that interest and of the value of each other interest acquired by the person or a related person within the relevant period in relation to the relevant acquisition.
- (4) For the purposes of subsection (2), the unencumbered value of the land to which a corporation is entitled at any time is the sum of:
 - (a) in the case of land to which the corporation is entitled without reference to section 56N(5), including land that is subject to an agreement for sale or purchase by the corporation – the unencumbered value of the land at that time; and
 - (b) in the case of land to which a subsidiary is entitled as mentioned in section 56N(5), including land that is subject to an agreement for sale or purchase by the subsidiary – the amount to which, if the property of a subsidiary or of all subsidiaries in the chain of relationships were to be distributed at that time (in the case of a corporation, on the basis of a winding up), without having regard to any liabilities of the subsidiary or subsidiaries, the first-mentioned corporation in this subsection would be entitled in respect of the unencumbered value at that time of land to which the subsidiary is, or all subsidiaries are, entitled (including land that is subject to an agreement for sale or purchase by the subsidiary or subsidiaries).

56S Liability for duty

- (1) Where a statement is required to be lodged under section 56K:
 - (a) the person who is required to lodge the statement;
 - (b) the corporation in which the interest is acquired; and

- (c) where the acquisition is a relevant acquisition by reason of a person and a related person acquiring an interest in the corporation, the related person,

are jointly and severally liable for the duty chargeable under this Division.

- (2) A person, other than a related person, may recover as a debt due and payable to the person from the person required to lodge the statement under section 56K or a related person required to lodge such a statement, the amount of any duty chargeable under this Division and penalty (if any) paid by the first-mentioned person.

- (3) If:

- (a) an agreement to purchase land by a corporation or a subsidiary of a corporation is not completed but duty has been assessed and imposed under this Division as if the corporation or subsidiary owned the land; or
- (b) an agreement to sell land by a corporation or a subsidiary of a corporation is completed but duty has been assessed and imposed under this Division before the completion of the agreement as if the corporation or subsidiary owned the land,

the Commissioner must amend the assessment of duty imposed and, in doing so, must disregard the land for the purposes of determining whether the corporation is a land-holder and assessing duty payable.

- (4) Section 97 applies to and in relation to the amending of an assessment under subsection (3).
- (5) Subsection (3) does not apply if an agreement referred to in that subsection is a tax avoidance scheme or part of a tax avoidance scheme.

56T Unit trust schemes

- (3) This Division applies to a unit trust scheme as if:
 - (a) the unit trust scheme were a corporation;
 - (b) a unit in the unit trust scheme were a share in a corporation;
 - (c) the acquisition of units in the unit trust scheme were the acquisition of shares in a corporation;

- (d) a reference to the constitution or rules of a corporation were a reference to the constituent documents of a unit trust scheme; and
 - (e) a reference to a winding up of a corporation were a reference to a termination of a unit trust scheme.
- (4) Where a unit trustee has a majority interest in another corporation or unit trust scheme, all land to which the corporation or unit trust scheme is beneficially entitled for the purposes of this Division shall be deemed to be an undivided share in land held by the unit trustee.
- (5) The extent of the undivided share in land referred to in subsection (4) is the same proportion of the value of the land to which the corporation or unit trust scheme is beneficially entitled for the purposes of this Division as the proportion of the property of the corporation or the unit trust scheme which the trustee would be entitled to claim in a distribution of property, as provided in section 56C(6) and (7), if the corporation or the unit trust scheme were to be wound up or terminated, as the case may be, at the time of the acquisition effected or evidenced by the relevant transfer or instrument.
- (6) A unit trustee has a majority interest in another corporation or unit trust scheme if the trustee has a shareholding in the corporation or unit holding in the unit trust scheme that would entitle the trustee, if the corporation or the unit trust scheme were to be wound up or terminated, as the case may be, at the time of the acquisition effected or evidenced by the relevant transfer or instrument, to participate as a shareholder or holder of units in a distribution of the property of the corporation or unit trust scheme as provided in section 56C(6) and (7), to an extent greater than 50% of the value of the property distributable to all the holders of shares in the corporation or units in the unit trust scheme.

Division 8B Imposition of duty on statutory vesting

56V Definition

In this Division and for Schedule 2, item 8A of the *Stamp Duty Act*:

statutory vesting means the vesting of dutiable property or marketable securities by or under a law of the Commonwealth, a State or Territory of the Commonwealth or a jurisdiction outside Australia (including the vesting of dutiable property or marketable securities by or under a law that states that it is continuing a person or body in existence or establishing a new person or body that is

the successor in law of a person or body in which the property or securities were previously vested).

56W Imposition of duty

- (1) Duty is payable on a statutory vesting as if it were a conveyance of dutiable property or marketable securities.
- (2) For the purposes of subsection (1):
 - (a) the dutiable property that vests or marketable securities that vest in the person or body concerned is or are taken to be the property or securities that is or are conveyed;
 - (b) the person or body in whom the dutiable property vests or marketable securities vest is taken to be the conveyee; and
 - (c) the conveyance is taken to occur at the time the law by or under which the vesting occurs determines when the dutiable property vests or marketable securities vest in the person or body.

Division 9 Motor vehicle certificate of registration

57 Owner to pay duty

- (1) The applicant for registration of a motor vehicle in respect of which a motor vehicle certificate of registration is, on issue, liable to duty shall, before the issue of the certificate, pay to the Registrar an amount equal to the duty payable on that certificate.

Penalty: \$5,000.

- (2) Where a motor vehicle:
 - (a) has been kept in the Territory for a period of less than 12 months; and
 - (b) during that period has been available for hire or lease to the public from a lender or registered lender under Division 13 of Part III,

the Commissioner may, on application in writing by the applicant for the certificate of registration issued in respect of the vehicle, reassess the duty payable on the certificate as being that proportion of the duty actually paid that the number of months the vehicle was kept in the Territory after registration bears to 12, and the provisions of section 97 apply accordingly.

- (3) For the purposes of subsection (2), a part of a month shall be deemed to be equivalent to a whole month.

58 Registrar not to register unless duty paid

- (1) The Registrar notwithstanding anything contained in the *Motor Vehicles Act*, shall not register a motor vehicle where the motor vehicle certificate of registration in respect of that vehicle is liable to duty unless:
- (a) there has been paid to the Registrar in respect of the registration the duty payable on the certificate; and
 - (b) the Registrar is satisfied that the duty paid on the certificate was based on the consideration for the transfer of the motor vehicle or the market value of the motor vehicle, as the case requires.
- (2) The Registrar shall pay to the Commissioner the amount of the duty received by him under this section.

59 Assessment of duty payable on motor vehicle certificate of registration

- (1) In this section:

additional equipment means all equipment which is an integral part of the motor vehicle or added to the motor vehicle before registration and, without limiting the meaning, includes all features actually fitted by the manufacturer or usually fitted by a manufacturer, including air conditioning.

application for registration of a motor vehicle includes an application for the transfer of registration.

dutiable value means:

- (a) in the case of the transfer of a motor vehicle by a sale and purchase at arm's length – the sum of the amount for which the motor vehicle and any additional equipment in or added to the motor vehicle was sold (which is to include any deposit paid and any trade-in allowance) and the amount paid for dealer delivery charges; or
- (b) in any other case – the market value of the motor vehicle and the additional equipment in or added to the motor vehicle as at the date the transaction that gives rise to the application for registration of the motor vehicle is entered into or at the date the application for registration is made, whichever is the

greater.

- (1A) For the purposes of this section, the dutiable value of a motor vehicle is to be calculated without any deduction or discount for the amount of GST (if any) payable in relation to the supply of the vehicle.
- (2) Where a motor vehicle certificate of registration is liable to duty, it shall be assessed on the dutiable value of the motor vehicle and the applicant for registration of the motor vehicle shall declare the dutiable value on an approved form.
- (3) Where an application for registration relates to the transfer of a motor vehicle, within 14 days after the date of the transfer, the transferor shall notify on the form of application or in another approved manner the amount received as consideration for the transfer.
- (4) The Commissioner or the Registrar may require the applicant or transferor (as the case requires) to provide, within the time specified, the further information that the Commissioner or Registrar considers necessary to determine:
 - (a) whether duty is payable under this Division; or
 - (b) if duty is payable, the amount of duty.
- (5) A person must not:
 - (a) fail, refuse or neglect to comply with subsection (2) or (3) or a requirement under subsection (4); or
 - (b) in purported compliance with subsection (2) or (3) or a requirement under subsection (4), provide information that is false in a material particular.

Penalty: 50 penalty units.

59A Refund of duty if sale of motor vehicle cancelled

The Commissioner must refund the amount of duty paid on a motor vehicle certificate of registration if the Commissioner is satisfied that:

- (a) the transaction to which the motor vehicle certificate of registration relates has been cancelled;
- (b) the motor vehicle the subject of the transaction has been returned to the person from whom it was purchased; and

- (c) all money refundable on the cancellation of the transaction (other than the amount of duty paid) has been refunded to the person who purchased the vehicle.

60 How duty denoted

The payment of duty on a motor vehicle certificate of registration shall be denoted by an approved means.

61 Exemption to be claimed in declaration

A person claiming an exemption from paying duty on a motor vehicle certificate of registration shall, with his application for registration, lodge with the Registrar a declaration stating the grounds on which the exemption is claimed.

Division 11 Conveyances of marketable securities liable to duty

67 Conveyances subject to tax or stamp duty

Except where otherwise provided by or under this Act, stamp duty calculated at a rate specified in paragraph (4) of item 20 of Schedule 1 to the *Stamp Duty Act* is payable on a conveyance of a marketable security:

- (a) of an Australian company taken to be registered in the Territory by virtue of section 119A of the Corporations Act 2001;
- (b) of a company, other than an Australian company:
 - (i) if the marketable security was, immediately before the conveyance was executed, registered in a register kept in the Territory by a company; or
 - (ii) where there is no register of marketable securities kept by the company in Australia – if the place of the registered office of the company is in the Territory; or
- (c) that is a unit of a unit trust scheme where the principal register of the trust is situated in the Territory.

67A Buy-backs of marketable securities

- (1) For the purposes of section 67, an instrument under which the holder of marketable securities transfers or divests those marketable securities to give effect to a transaction under which a company buys back its own marketable securities is a conveyance

of those marketable securities.

(2) This section applies:

- (a) to an instrument whether created or executed before or after the commencement of this section; and
- (b) whether the transfer or divestiture of the marketable securities occurred before or occurs after the commencement of this section.

(3) This section does not apply in relation to redeemable preference shares unless they are bought back on terms different from those on which they were on issue.

68 Duty payable by conveyee

Duty imposed on an instrument of conveyance of a marketable security is payable by the conveyee.

69 How duty denoted

The payment of duty imposed on an instrument of conveyance referred to in section 67 shall be denoted by impressed stamp.

Division 13 Hiring Arrangements

70 Meaning of *special hiring arrangement*

In this Division:

special hiring arrangement means a written agreement for a hiring arrangement:

- (a) that describes the goods in such a way as to enable the nature or character of the goods to be clearly and readily identified, including the number of items; and
- (b) that does not include:
 - (i) an arrangement under which the goods may, at any time, be replaced in whole or in part by other goods, except to the extent that the agreement allows replacement if the goods:
 - (A) are lost, destroyed or stolen;
 - (B) fail or malfunction in the normal course of operation or use;

- (C) are temporarily replaced during the servicing, maintenance or repair of the goods; or
- (D) are otherwise not fit for the purpose for which they are hired; or
- (ii) an arrangement under which other goods, whether of the same or a different type, may be additionally provided.

71 Instrument to be made out

- (1) Subject to subsection (4), a lender shall make an instrument at the time the first or only payment is made under a hiring arrangement.
- (2) An instrument made out under subsection (1) shall clearly and truly set out:
 - (a) the full name and address of the lender;
 - (b) the full name and address of the user;
 - (c) a description of the goods sufficient to indicate their nature; and
 - (d) the total amount paid or payable to the lender in relation to the hiring arrangement, or the amount calculated under section 78.
- (3) A lender shall, upon making an instrument under subsection (1):
 - (a) mark it with the words "Original Instrument" on its front or first page;
 - (b) lodge it as a hiring arrangement with the Commissioner for assessment;
 - (c) pay the amount of duty assessed; and
 - (d) retain the instrument for a period of 12 months or such further time as the Commissioner may specify.
- (4) This section does not apply to and in relation to a registered lender or to a hiring arrangement in respect of which the Commissioner has under section 78 required the lender to pay duty as though he were a registered lender.

- (6) In the case of a hiring arrangement where the lender is a person resident outside the Territory or is not bound by this Act, the user, if he is resident or domiciled in the Territory, shall, unless duty has been paid on the hiring arrangement in accordance with this Act:
 - (a) furnish to the Commissioner a return setting out the information contained in subsection (2); and
 - (b) pay the same duty as if the return were a hiring arrangement.
- (7) A return under subsection (6) shall:
 - (a) be in accordance with an approved form; and
 - (b) be furnished and the duty paid within 2 months of the date the first or only payment is made in accordance with the hiring arrangement.
- (8) A person shall not fail, refuse or neglect to comply with this section.
Penalty: \$5,000.
- (9) A reference in this section to the total amount paid or payable to a lender in relation to a hiring arrangement or the amount calculated under section 78 in respect of a hiring arrangement is to be read as a reference to the total amount paid or payable or the amount calculated exclusive of the amount of GST (if any) payable in relation to the supply of the property the subject of the hiring arrangement.

72 Register of Lenders

For the purpose of this Division, the Commissioner shall keep a register to be called "Register of Lenders".

73 Registration

- (1) A lender liable to payment of duty under section 71 may apply to the Commissioner in writing in accordance with an approved form for registration in the Register kept under this Division.
- (2) The Commissioner may, upon receiving an application from a lender under subsection (1), register the lender by entering the name of the lender in the Register.
- (3) The Commissioner shall give notice of the registration by instrument served on the lender.

- (4) The Commissioner shall revoke the registration of a lender under this Division by removing his name from the Register upon receiving notification of the winding-up of the lender, or upon receiving a request from the lender to revoke the registration.
- (5) For the purposes of this Division, a lender who becomes registered or ceases to be registered during a month is to be taken to be registered for the whole of that month.

74 Certain particulars to be recorded

- (1) A registered lender shall, at the time the first or only payment is received in accordance with a hiring arrangement, make a record of such particulars relating to the hiring arrangement as the Commissioner may, by notice in writing given to him, require.

Penalty: \$5,000.

- (2) A person making a record in accordance with subsection (1) shall retain that record for a period of 5 years.

Penalty: \$5,000.

75 Returns in respect of hiring arrangements

- (1) A registered lender shall, within 21 days after the expiration of each month of each year:
 - (a) furnish to the Commissioner a return of the total amount paid or payable to the registered lender in relation to hiring arrangements during that month; and
 - (b) pay tax on that total amount of an amount calculated at the same percentage rate of duty as would be chargeable if the return were a hiring arrangement.

Penalty: \$5,000.

- (1A) A registered lender may elect to pay the duty payable on a special hiring arrangement by lodging an instrument under section 71 and, if the registered lender elects to do so, returns under this section in respect of the special hiring arrangement are not necessary.
- (2) A return under this section shall be in accordance with an approved form and shall contain such particulars as are required by the form.
- (3) A reference in this section to the total amount paid or payable to a registered lender in relation to hiring arrangements is to be read as a reference to the total amount paid or payable exclusive of the

amount of GST (if any) payable in relation to the supply of the property the subject of the hiring arrangements.

75AA No duty payable on final payment under hire-purchase agreement

Duty is not payable on the amount of a payment under a hire-purchase agreement if title to the goods passes to the user as a consequence of the payment.

75AB No duty payable on certain payments under hiring arrangements

No duty is payable on an amount paid on or after 18 July 2002 by a person who is hiring goods under an arrangement entered into before that day under which an operator is provided by or at the direction of the person hiring out the goods for the person who is hiring the goods.

75A Duty reduced where paid or payable elsewhere

(1) Despite anything in this Act, where an amount of stamp duty (or duty of a like nature) is paid or payable on or in respect of a hiring arrangement to which this section applies under a law of a State or another Territory of the Commonwealth, the amount of duty chargeable under this Act is reduced by the lesser of:

- (a) the amount of duty paid or payable under the other law; or
- (b) the amount of duty otherwise payable on or in respect of that hiring arrangement.

(2) This section applies to a hiring arrangement:

- (a) in respect of goods (other than a motor vehicle) where one or both of the following apply:
 - (i) the arrangement is entered into in the Territory;
 - (ii) the goods are supplied or delivered or agreed to be supplied or delivered in the Territory,

but the goods are not used solely or principally in the Territory;
or

- (b) in respect of a motor vehicle where the arrangement was entered into in the Territory where one or both of the following apply:
 - (i) the motor vehicle is not supplied or delivered and is not agreed to be supplied or delivered in the Territory;
 - (ii) the motor vehicle is not used solely or principally in the Territory.

76 Where duty paid on return, no further duty payable

- (1) Where tax has been paid in respect of a hiring arrangement in accordance with section 75(1)(b), an instrument evidencing the terms and conditions of that hiring arrangement is not chargeable with duty as a hiring arrangement.
- (2) A registered lender shall, when he makes out an instrument that, but for the provisions of subsection (1) would be chargeable with duty as a hiring arrangement, endorse on that instrument the words "Stamp Duty" followed by his name and signature.

Penalty: \$5,000.

- (3) An instrument endorsed in accordance with subsection (2) shall be deemed to be duly stamped.

77 Offence

A person, not being a registered lender, shall not endorse on an instrument that is chargeable with duty as a hiring arrangement anything suggesting or implying that the instrument is duly stamped under this Division.

Penalty: \$10,000.

78 Total amount not readily ascertainable

- (1) Where the Commissioner is satisfied that it is not reasonably practicable to calculate the total amount payable under a hiring arrangement, he may:
 - (a) calculate the total amount payable in such manner or on such basis as he thinks fit and the amount so calculated shall be deemed to be the total amount payable for the purposes of this Act and the Act imposing the duty; or

- (b) require the lender to pay duty in respect of that hiring arrangement as though he were a registered lender and for that purpose the provisions of this Division relating to a registered lender apply as far as they are able to apply.

78A Commissioner may exempt lender

- (1) If, in the opinion of the Commissioner:
 - (a) a lender will not receive more than a total amount of \$90 000 under one or more hiring arrangements in a financial year; or
 - (b) the quotient of the total amount a lender will receive under one or more hiring arrangements in the financial year in which the lender will commence or cease entering hiring arrangements divided by the number of months (including parts of months) in that financial year after the lender commences or before the lender ceases entering hiring arrangements will not exceed \$7 500,

the Commissioner may exempt the lender from all or specified provisions of this Division.

- (2) An exemption granted under subsection (1) may be subject to such terms and conditions, if any, as the Commissioner thinks fit and specifies in the exemption.
- (3) The Commissioner may, at any time, amend, vary or revoke an exemption granted under subsection (1).
- (4) Where the Commissioner grants an exemption under subsection (1), this Division or the specified provisions of this Division, as the case may be, do not apply to or in relation to the lender while the exemption remains in force.

78B Automatic revocation of exemption

- (1) An exemption under section 78A is, by force of this subsection, revoked if:
 - (a) the lender receives more than a total amount of \$90 000 under one or more hiring arrangements in a financial year; or
 - (b) the quotient of the total amount the lender receives under one or more hiring arrangements in the financial year in which the lender commences or ceases entering hiring arrangements divided by the number of months (including parts of months) in that financial year after the lender commences or before the lender ceases entering hiring arrangements exceeds \$7 500.

- (2) Where an exemption is, by virtue of subsection (1), revoked the lender shall, in respect of hiring arrangements entered into in that financial year:
- (a) be liable to pay tax as if the exemption had never been granted; and
 - (b) for that purpose, furnish to the Commissioner such information as the Commissioner directs.

78C Tax remitted or refunded where receipts do not exceed \$90 000 per year or \$7 500 per month

- (1) Where:
- (a) the total amount received by a lender under one or more hiring arrangements in a financial year does not exceed \$90 000; or
 - (b) the quotient of the total amount a lender received under one or more hiring arrangements in the financial year in which the lender commenced or ceased entering hiring arrangements divided by the number of months (including parts of months) in that financial year after the lender commenced or before the lender ceased entering hiring arrangements does not exceed \$7 500,

despite anything to the contrary in this Act, the Commissioner must refund or remit the amount of the tax paid or payable under this Division in respect of the hiring arrangements.

- (2) A refund by the Commissioner of an amount of tax under subsection (1) is to be made from the public moneys of the Territory and the Allocation for that purpose is established or increased to the extent necessary.

78D Hiring arrangement duly stamped

- (1) Subject to subsection (2), a hiring arrangement referred to in section 78A(1) shall, for the purposes of this Act, be deemed to be duly stamped.
- (2) Nothing in subsection (1) shall be construed as exempting a lender from liability to pay tax in respect of a hiring arrangement in respect of which tax is payable under section 78B.

79 Lender not prevented recovering duty from user

Nothing in this Act prevents a registered lender that has paid or is liable to pay duty imposed on a hiring arrangement recovering an amount equal to the duty paid or payable from the user under the hiring arrangement.

80 How duty denoted

The payment of duty on an instrument to which this Division applies shall be denoted by impressed stamp.

Division 14 Miscellaneous instruments

81 Assessment

- (1) Subject to section 82(1), instruments, other than those referred to in Divisions 3B to 13 (inclusive) of this Part, on which duty is imposed shall be lodged with the Commissioner for assessment.
- (2) An instrument lodged under this section shall be accompanied by an approved form containing such particulars as are required by the form.
- (3) A person who fails to comply with this section commits an offence.
Penalty: \$5,000.

82 How duty denoted

- (1) Where duty on an instrument is a fixed amount it need not be submitted for assessment under section 81(1), but the duty may be denoted by adhesive stamp.
- (2) Otherwise than as provided in subsection (1), duty on an instrument to which this Division applies shall be denoted by impressed stamp.

83 By whom duty payable

Duty on an instrument to which this Division applies is payable by the parties to the instrument, or any one or more of them.

Division 15 Transactions otherwise than by dutiable instruments

83A Application

(1) This Division applies to a transaction that, on or after 17 August 1988, causes or results in a change in the beneficial ownership of dutiable property or causes or results in dutiable property being acquired or created.

(1A) In subsection (1), dutiable property includes:

- (a) a marketable security described in section 67; and
- (b) property prescribed, or of a class prescribed, for the purposes of this subsection.

(1B) For the purposes of subsection (1):

- (a) the addition of a beneficiary or class of beneficiaries under a discretionary trust described in section 56BAB is to be taken to cause or result in a change in the beneficial ownership of all the dutiable property and marketable securities vested in the trustees;
- (b) the changes in relation to a discretionary trust described in section 56BAC are to be taken to cause or result in a change in the beneficial ownership of all the dutiable property and marketable securities vested in the trustees and, for the purposes of section 83B, that change in beneficial ownership is to be taken to have occurred on the date on which the last of the changes described in section 56BAC occurred; and
- (c) a statutory vesting referred to in Division 8B is taken to cause or result in a change in the beneficial ownership of all of the dutiable property or marketable securities that is taken to have been conveyed under section 56W(2)(a) and, for the purposes of section 83B, that change in the beneficial ownership is taken to have occurred on the date the conveyance of the dutiable property or marketable securities is taken to occur under section 56W(2)(c).

(2) A reference to a change in beneficial ownership in subsection (1) does not include a reference to a change in beneficial ownership occurring as the consequence of:

- (a) the appointment of a receiver or trustee in bankruptcy;
- (b) the appointment of a liquidator;

- (c) the making of a compromise or arrangement under Part 5.1 of the Corporations Act 2001 that:
 - (i) has been made with the corporation's creditors or a class of them;
 - (ii) has been approved by the court; and
 - (iii) is not a tax avoidance scheme or part of a tax avoidance scheme;
 - (d) the issue or redemption of units in a unit trust scheme where the issue or redemption of units is not a tax avoidance scheme or part of a tax avoidance scheme;
 - (e) the surrender of a lease of land;
 - (f) the transfer or conveyance of an estate or interest in property as a security, including the pledging or charging of property; or
 - (g) the release or termination of an option for the purchase of property.
- (3) This Division does not apply to a transaction or property which is prescribed, or is of a class prescribed, for the purposes of this subsection.
- (4) Notwithstanding anything to the contrary in any other Act, a regulation made for the purposes of subsection (3) may take effect from 17 August 1988 or a later date.

83B Payment of duty on statements in absence of dutiable instrument

- (1) A person, being a party to a transaction to which this Division applies which is not effected or evidenced by an instrument chargeable with ad valorem duty in accordance with Schedule 1 to the *Stamp Duty Act*:
- (a) item 5, under the heading "Conveyance of Dutiable Property";
 - (b) item 20, under the heading "Conveyance of Marketable Securities"; or
 - (c) any other heading whereby duty is charged as on a conveyance of dutiable property,

shall, if the person would have been liable to pay such ad valorem duty in respect of the transaction had such an instrument been executed, lodge with the Commissioner a statement in respect of the transaction.

(3) A statement under this section shall:

(a) be lodged within 60 days after the change in beneficial ownership or an acquisition or creation of dutiable property which is caused by or results from the transaction;

(b) be in an approved form; and

(c) for the purposes of this Act be deemed:

(i) to be:

(A) an instrument effecting the transaction to which it relates; and

(B) in the case of a marketable security – to be an instrument of conveyance of the marketable security,

and is chargeable with the ad valorem duty referred to in subsection (1) appropriate to the transaction; and

(ii) to have been first executed on the date on which the change in beneficial ownership or an acquisition or creation of dutiable property occurs.

(4) The ad valorem duty with which a statement under this section is chargeable shall be charged on:

(a) the unencumbered value of the dutiable property the subject of the transaction as at the date on which the change in beneficial ownership or an acquisition or creation of dutiable property occurs; or

(b) the amount of the consideration in respect of the transaction,

whichever is the greater, and shall be paid at the time of lodgement of the statement with the Commissioner by the person required to lodge the statement.

83D Effect of execution of dutiable instruments

(1) An instrument executed for the purpose of effecting or evidencing, or apparently for the purpose of effecting or evidencing, a transaction to which this Division applies, being a transaction in

respect of which a statement has been duly stamped in accordance with section 83B, is not chargeable with duty under this Act to the extent to which duty has been paid on the statement.

- (2) Where, within 60 days after a change in beneficial ownership or an acquisition or creation of dutiable property occurs as the result of a transaction to which this Division applies, an instrument chargeable with ad valorem duty (not being a statement under section 83B) is executed for the purpose of effecting or evidencing, or apparently for the purpose of effecting or evidencing, the transaction and the instrument is duly stamped or lodged for assessment, section 83B ceases to apply to the transaction.
- (3) For the purposes of section 9, an instrument referred to in subsection (2) shall be deemed to have been first executed on the date on which the change in beneficial ownership occurs.

83E Aiding and abetting

A person who:

- (a) directly or indirectly, aids, abets, counsels or procures another person to enter into a transaction to which this Division applies; or
- (b) is, in any way, by act or omission, directly or indirectly concerned in, or party to, the entry by another person into a transaction to which this Division applies,

knowing or believing that the other person does not intend to lodge a statement under section 83B and pay duty in accordance with this Division in respect of the transaction, is guilty of an offence.

Penalty: \$10,000.

83F Offences relating to statements

- (1) A person who, in respect of a transaction to which this Division applies, fails to lodge a statement under section 83B within 6 months after the date on which a change in beneficial ownership or an acquisition or creation of dutiable property occurs as a result of the transaction commits an offence.

Penalty: \$5,000.

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- (1A) A person who, in respect of a transaction to which this Division applies, lodges a statement under section 83B that is false or misleading in a material particular commits an offence.

Penalty: \$10,000.

- (2) Proceedings for an offence against subsection (1):
- (a) may not be instituted without the consent of the Minister;
 - (b) may, subject to that consent, be instituted at any time; and
 - (c) may be disposed of:
 - (i) before the Court of Summary Jurisdiction; or
 - (ii) before the Supreme Court in its summary jurisdiction.
- (3) The consent of the Minister to the institution of proceedings for an offence against this section shall be presumed unless the contrary is proved.

Part IV Assessments

84 Assessment of returns

- (1) The Commissioner shall, from a return and any other information in his possession, make an assessment of the amount of tax payable in respect of the return.
- (2) A return purporting to be made and signed by or on behalf of a person shall, unless the contrary is proved, be deemed to have been made and signed by him or with his authority.
- (3) A trustee of a deceased person shall furnish such returns as the deceased person, if he were still living, would be required by this Act to furnish.
- (4) The furnishing of a return for assessment does not relieve the person liable to pay tax in respect of the return of the liability to pay the tax as provided by this Act.
- (5) Where, by reason of an assessment of a return, a person has overpaid tax, the amount of tax overpaid shall be refunded.

85 Lodging of instruments for assessment

- (1) A person liable to pay duty on an instrument that is not required by this Act to be lodged for assessment of duty may, within 60 days after the date of execution of the instrument by him, lodge the instrument with the Commissioner for assessment of duty.
- (2) The lodging of an instrument for assessment of duty does not relieve a person liable to pay duty on the instrument of his liability to pay the duty in accordance with this Act and to cause the instrument to be duly stamped.

86 Information for the purpose of making assessment

- (1) The Commissioner may, at any time, by instrument served on a person who has furnished a return or lodged an instrument for assessment, require that person to furnish, within a specified period, further information by statutory declaration or otherwise in connection with the return so furnished or instrument so lodged.
- (2) Where the Commissioner has reason to believe, for the purpose of the assessment or amendment of an assessment or enquiring into or ascertaining the liability of a person under this Act, that a person is capable of giving information or producing documents that may be used for that purpose, the Commissioner may, by instrument served on that person, require that person:
 - (a) to furnish to him in writing, within the period and in the manner specified in the instrument, any such information;
 - (b) to attend before him or a person specified in the instrument at such time and place as is specified and there to answer questions for that purpose; or
 - (c) to produce to him or to a person specified in the instrument, in accordance with the instrument, any such document.
- (3) The Commissioner or person before whom a person is required to attend under subsection (2) may take evidence on oath or affirmation, and, for that purpose, may administer an oath or affirmation to the person attending.

87 Failure to comply with requirements for further information, &c.

- (1) A person shall not:
- (a) refuse or fail to comply with a requirement in an instrument served under section 86 to the extent to which he is capable of complying with it;
 - (b) in purported compliance with such a requirement, furnish information that is false or misleading in a material particular; or
 - (c) when attending before the Commissioner or a person in pursuance of such a requirement:
 - (i) make a statement or produce a document that is false or misleading in a material particular; or
 - (ii) refuse or fail to be sworn or to make an affirmation.

Penalty: \$10,000.

- (2) It is a defence to a prosecution for an offence against subsection (1) of furnishing information, or making a statement, or producing a document, that is false or misleading in a material particular if the defendant proves that the false or misleading information, statement or document was furnished, made or produced through ignorance or inadvertence.
- (3) Upon the finding of guilt of a person for an offence of refusing or failing to comply with a requirement under subsection (1), the court may order that person within a period fixed by the court, to comply with that requirement.
- (4) A person to whom such an order is given shall not refuse or fail to comply with the order.

Penalty: \$10,000.

- (5) An order under subsection (3) may be given orally by the court to the person or may be served by sending a copy of the order by post addressed to that person at his last-known place of residence or business.
- (6) Upon the finding of guilt of a person for an offence against subsection (1) of furnishing information, or making a statement, or producing a document, that is false or misleading in a material particular, the court may, in addition to the penalty prescribed by

that subsection and without affecting the person's liability to pay the amount of duty or tax properly payable, order that person to pay to the Commissioner an amount not exceeding an amount equal to double the amount of duty or tax that would have been avoided if the information, statement or document had been accepted as correct.

88 False or misleading returns

- (1) A person who is required by this Act to furnish a return to the Commissioner shall not furnish a return that is false or misleading in a material particular.

Penalty: \$10,000.

- (2) It is a defence to a prosecution for an offence against this section if the defendant proves that the false or misleading return was furnished through ignorance or inadvertence.
- (3) Upon the finding of guilt of a person for an offence against this section, the court may, in addition to the penalty prescribed by this section and without affecting the person's liability to pay the amount of duty properly payable, order that person to pay to the Commissioner an amount not exceeding an amount equal to double the amount of tax that would have been avoided if the return had been accepted as correct.

89 False or misleading declarations

- (1) Without derogating from any other provision of this Part, a person shall not furnish information to the Commissioner that is false or misleading in a material particular.

Penalty: \$10,000.

- (1A) Subsection (1) applies whether or not the information:
- (a) is required by or under this Act to be furnished; or
 - (b) is in the form of a declaration.
- (2) It is a defence to a prosecution for an offence against this section if the defendant proves that the false or misleading information was furnished through ignorance or inadvertence.
- (3) Upon the finding of guilt of a person for an offence against this section, the court may, in addition to the penalty prescribed by this section and without affecting the person's liability to pay any amount of duty or tax properly payable, order that person to pay to

the Commissioner an amount not exceeding an amount equal to double the amount of duty or tax that would have been avoided if the information had been accepted as correct.

90 Incriminating information, &c.

A person is not excused from furnishing information or producing a document in compliance with an instrument served on him under section 86 or in compliance with an order of a court under section 87(3) on the ground that the information or document might tend to incriminate him, but his answer to any question asked in the order or instrument or any information furnished by him in pursuance of the order or instrument is not admissible in evidence against him in criminal proceedings other than proceedings under this Act.

91 Enforcement of court orders to pay

- (1) Where a court makes an order for the payment of an additional penalty under section 87 or 88, a certificate of the order in accordance with an approved form may be registered in a court of competent jurisdiction.
- (2) Upon registration under subsection (1), the certificate becomes a record of the court with the same force and effect as a judgment of the court, and the like proceedings (including proceedings in bankruptcy) may be taken upon the certificate as if the order had been a judgment of the court in favour of the Commissioner.

92 Assessment of duty on instruments

- (1) Where an instrument is lodged with the Commissioner for assessment:
 - (a) if he adjudges that duty on the instrument is not payable – he may put an impressed stamp on the instrument as provided by section 17(2); or
 - (b) if he adjudges that duty is payable – he shall assess the amount of the duty.
- (2) The Commissioner shall inform the person lodging the instrument of his assessment under subsection (1), but is not required to give notice in writing of the assessment to that person unless so requested in writing by that person within 30 days after the lodging of the instrument.

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- (3) If an instrument lodged for assessment has been returned before a request for notice in writing of the assessment, the Commissioner may refuse to give the notice in writing unless the person requesting the notice in writing relodges the instrument with him.
 - (4) Where, by reason of an assessment of an instrument in respect of which an amount has been paid as duty, a person has overpaid duty, the amount of duty overpaid shall be refunded.

93 Retaining and impounding of instruments

- (1) Where the Commissioner has reason to believe that an instrument liable to duty has not been duly stamped, or has not been lodged for assessment as required by this Act, a person authorized by the Commissioner may seize the instrument.
- (2) The Commissioner may retain possession of an instrument lodged for assessment of duty, or seized under subsection (1), until his assessment and any duty assessed by him and any additional amount payable by way of penalty in respect of that instrument under this Act has been paid.
- (3) Notwithstanding subsection (2), the Commissioner shall, on being required to do so by subpoena, summons or order of a court, produce the instrument or cause it to be produced to the court for as long as it is required in proceedings in the court.
- (4) This Act applies to an instrument that has been seized under this section as though it had been lodged with the Commissioner for assessment.

94 Default assessments

- (1) Where:
 - (a) a person liable to furnish a return or to lodge a statement under section 83B has failed to furnish the return or lodge the statement, has furnished a return or lodged a statement that is false or misleading in a material particular or has failed to include in a return or statement particulars required by or under this Act to be included;
 - (b) a person has not complied with a requirement under section 86 in respect of a return or instrument; or
 - (c) the Commissioner has reason to believe or suspect that a person is liable to pay duty or tax under this Act,

the Commissioner may make an assessment of the amount of duty or tax that, in his opinion, is payable and for that purpose may create a memorandum of a return, statement, instrument or other document, which memorandum shall be deemed to be an instrument for the purposes of this Act.

(2) Where:

- (a) a motor vehicle registered under the *Motor Vehicles Act* is sold or disposed of; and
- (b) the new owner does not apply to the Registrar for the transfer of the vehicle within the period required by section 20(2) of that Act,

the Registrar or the Commissioner may make an assessment of the duty payable under Division 9 of Part III as if:

- (c) the new owner had applied to the Registrar for the transfer of the vehicle on the date on which it was sold or disposed of; and
- (d) the Registrar had issued to the new owner a motor vehicle certificate of registration for the vehicle on that date,

and for that purpose may create a memorandum that is to be taken to be the application for transfer for the purposes of this Act.

95 Notice of default assessments

As soon as practicable after an assessment made in the circumstances referred to in section 94 under which duty is assessed to be payable, the Commissioner or, in the case of duty payable under Division 9 of Part III, the Registrar shall cause notice in writing of the assessment and the amount of the duty or tax payable to be served on the person who is adjudged by him to be the person liable to pay it.

96 Penalty additional to duty on default assessments

- (1) Where a person is liable to pay duty or tax by virtue of an assessment made under section 94, that person is liable to pay, by way of penalty, in addition to the amount of the duty or tax, an amount equal to double the amount of that duty or tax.
- (2) Where a person furnishes a return or lodges an instrument after the expiration of the period within which he is required by this Act, to furnish or lodge it, that person is liable to pay, by way of penalty, in addition to the amount of duty or tax that he is liable to pay in

respect of that return or instrument, \$20 or an amount calculated at the rate of 1.5% per month upon the amount of that duty or tax, whichever is the greater.

- (2A) Where a person furnishes a return or lodges an instrument to which section 9B applies after the expiration of the period within which the person is required by this Act to furnish or lodge it, that person is liable to pay, by way of penalty, in addition to the amount of duty or tax that he is liable to pay in respect of that return or instrument and to an amount of penalty under subsection (2), a further amount equal to double the amount of that duty or tax.
- (3) For the purposes of subsection (2), the amount calculated at the percentage specified in that subsection shall be computed for the period commencing on the last day of the period within which that person is required to furnish the return or lodge the instrument and ending on the day upon which it is furnished or lodged.
- (4) Where a person fails to include in a return particulars of a matter required by this Act to be included and the amount of tax properly payable in respect of that matter is assessed to be greater than the amount of tax that would be payable on the basis of the particulars furnished by him, that person is liable to pay, by way of penalty, in addition to the amount of tax properly payable, an amount equal to double the amount of the difference between the amount of tax properly payable and the amount of tax that would be payable on the basis of those particulars.
- (5) The Commissioner or the Registrar shall include particulars of an amount payable by way of penalty under this section in a notice given under section 95.
- (6) The Commissioner or, in the case of duty payable under Division 9 of Part III, the Registrar may, in a particular case, for such reasons as in his discretion he thinks sufficient, remit the whole or part of an amount payable by way of penalty under this section.
- (7) The Commissioner or, in the case of duty payable under Division 9 of Part III, the Registrar shall denote on an instrument assessed under section 94 by impressed stamp or adhesive stamp, the payment of an additional amount payable by way of penalty under this section in respect of the instrument.

97 Amended assessment

- (1) The Commissioner may, at any time within a period of 3 years after the date of an assessment by him of duty, amend the assessment by making such alterations or additions to it as he thinks necessary.

- (2) Subsection (1) does not prevent the amendment of an assessment after the expiration of the period referred to in that subsection in order to give effect to a decision on an appeal under Part V, or the amendment of an assessment after the expiration of that period by way of reduction on an objection under that Part or pending such an appeal.
- (3) Where, by reason of an amendment of an assessment, a person has overpaid duty or tax, the amount of duty or tax overpaid shall be refunded.
- (4) As soon as practicable after the amendment of an assessment under this section, the Commissioner shall cause notice in writing of the amended assessment and the amount of duty or tax payable in accordance with the amended assessment, together with the amount of any duty or tax underpaid or overpaid, to be given to the person who is adjudged by him to be the person liable to pay the duty or tax.
- (5) Where duty has been paid under the *Stamp Duty Act* and the Commissioner is satisfied that the person who paid the duty was or has become entitled to a concession under section 8B or 8C of that Act, the Commissioner shall refund to the person an amount equal to the concession that the person was entitled to receive or has become entitled to receive under that section.

98 Assessments in relation to deceased persons

The Commissioner has the same powers of assessment of duty or tax in relation to a trustee of a deceased person as he would have had in relation to that person if he were still living.

99 Validity of assessments

The validity of an assessment is not affected by reason that a provision of this Act has not been complied with.

Part V Objections and appeals

Division 1 Preliminary

100 Definitions

In this Part:

decision maker, for a taxation decision, means:

- (a) if the decision is made under this Act or the PTA – the Commissioner; or
- (b) if the decision is made under the MRA – the Secretary.

MRA means the *Mineral Royalty Act*.

PTA means the *Pay-roll Tax Act*.

Registrar means the Registrar of the Local Court.

royalty payer has the same meaning as in the MRA.

Secretary has the same meaning as in the MRA.

tax includes:

- (a) tax within the meaning of the PTA;
- (b) royalty within the meaning of the MRA;
- (c) additional and further tax; and
- (d) an amount of penalty payable under section 96 included in a notice of assessment under section 95.

taxation decision means:

- (a) an assessment of a person's liability to pay tax that is made under this Act or Part II of the MRA; or
- (b) a decision, determination or assessment made under the PTA by which the person's liability to pay tax is affected,

but does not include:

- (c) an amended assessment as a result of an objection or appeal under this Part; or
- (d) a decision not to amend an assessment.

taxpayer, for a taxation decision, means:

- (a) if the decision is made under this Act – a person in relation to whom the decision is made;
- (b) if the decision is made under the PTA – a person whose liability to pay tax is affected by the decision; or
- (c) if the decision is made under the MRA – a royalty payer in relation to whom the decision is made.

Tribunal means the Taxation and Royalty Appeals Tribunal established by section 105T(1).

Division 2 Objections

101 Right to object

- (1) A taxpayer may object to a taxation decision.
- (2) The taxpayer has no further right of objection in relation to a taxation decision that is an amended assessment than the taxpayer would have had if the amendment had not been made, except to the extent to which a fresh liability is imposed or an existing liability is increased because of the amendment.

102 How to object

- (1) The objection must be in writing and must be lodged with the decision maker within 60 days after notice of the taxation decision is issued by the decision maker.
- (2) The objection must state fully and in detail the grounds of objection.

103 Objections lodged out of time

If the decision maker is satisfied that the taxpayer has a reasonable excuse for not lodging the objection within the 60-day period, the decision maker may extend the time for lodgement.

104 Decision on objection

- (1) The decision maker must consider the objection and may:
 - (a) allow it in whole or in part; or
 - (b) disallow it.

- (2) If an objection to an assessment made under Part II of the MRA alleges the incorrect exercise of a discretion by the Minister under the MRA, the Secretary must refer the objection to the Minister as soon as practicable.
- (3) Within 60 days after the referral, the Minister:
 - (a) must consider the allegation;
 - (b) may confirm or vary the exercise of the discretion; and
 - (c) must inform the Secretary accordingly.
- (4) In making a decision on the objection under subsection (1), the Secretary must give effect to the Minister's confirmation or variation.

105 Notice of decision

- (1) The decision maker must serve written notice of the decision on the taxpayer.
- (2) If the objection is disallowed or allowed in part only, the notice must:
 - (a) state the reasons for the decision; and
 - (b) set out the procedures for commencing an appeal under Divisions 3 and 4.

105A Appeal to Tribunal or Supreme Court

- (1) The taxpayer may appeal against the decision on the objection to:
 - (a) the Tribunal under Division 3; or
 - (b) the Supreme Court under Division 4.
- (2) If the taxpayer's liability or assessment was reduced on the objection, the reduced liability or assessment is the liability or assessment appealed against.
- (3) The appeal is an appeal de novo.
- (4) On the appeal, the burden of proving a decision or determination of the decision maker is incorrect, or an assessment made by the decision maker is excessive, is on the taxpayer.

Division 3 Appeals to Tribunal

105B How to commence appeal

- (1) The taxpayer may commence an appeal to the Tribunal under section 105A(1)(a) by lodging a notice of appeal with the Registrar within 60 days after notice of the decision on the objection is issued by the decision maker.
- (2) However, the taxpayer cannot commence the appeal if the taxpayer has commenced an appeal against the decision on the objection to the Supreme Court under Division 4 (regardless of the outcome of that appeal).

105C Notice of appeal

- (1) The notice of appeal must:
 - (a) be in the form prescribed by the Rules made under section 105X(1);
 - (b) state the name of the appellant;
 - (c) identify the decision being appealed against;
 - (d) state fully and in detail the grounds of appeal;
 - (e) be accompanied by any material relevant to the appeal that was not before the decision maker when making the decision being appealed against; and
 - (f) be accompanied by the prescribed fee.
- (2) The taxpayer must serve the decision maker whose decision is being appealed with a copy of the notice within the 60-day period referred to in section 105B(1).
- (3) The grounds of appeal are not limited to the grounds on which the objection was made.

105D Appeal commenced out of time

If the Tribunal is satisfied that the taxpayer has a reasonable excuse for not commencing the appeal within the 60-day period, the Tribunal may extend the time for commencement.

105E Response of decision maker to notice of appeal

- (1) As soon as practicable after being served under section 105C(2) with notice of the appeal, the decision maker must lodge with the Registrar and serve on the taxpayer a copy of:
 - (a) the records of the decision maker relevant to the appeal, including a copy of the decision being appealed against; and
 - (b) any submissions about the appeal the decision maker wishes to make to the Tribunal.
- (2) The decision maker's response is not limited to the reasons for disallowing the objection or allowing it in part only.

105F Determining appeal

- (1) In determining the appeal, the Tribunal may:
 - (a) confirm the decision appealed against;
 - (b) vary the decision appealed against;
 - (c) substitute another decision that would have been available to the decision maker; or
 - (d) remit the matter to the decision maker for reconsideration, either generally or in respect of specified matters, and for variation of the decision appealed against or substitution of another decision.
- (2) If the matter is remitted, the Tribunal must:
 - (a) advise the decision maker of its reasons for doing so; and
 - (b) give to the decision maker the directions the Tribunal considers appropriate for the reconsideration or otherwise of the whole or any part of the matter.
- (3) The Tribunal's decision under subsection (1)(a), (b) or (c) is taken to be the decision maker's decision (except for this Part and Part VA).

105G Appeal to Supreme Court on question of law

- (1) The taxpayer or the decision maker may appeal against the Tribunal's decision to the Supreme Court only on a question of law.

- (2) In determining the appeal, the Court may:
- (a) confirm the decision appealed against;
 - (b) vary the decision appealed against;
 - (c) substitute its own decision for the decision appealed against;
or
 - (d) remit the matter to the Tribunal for reconsideration, either generally or in respect of specified matters, and for variation of the decision appealed against or substitution of another decision.
- (3) If the matter is remitted, the Court must:
- (a) advise the Tribunal of its reasons for doing so; and
 - (b) give to the Tribunal the directions the Court considers appropriate for the reconsideration or otherwise of the whole or any part of the matter.

105H Referral to Supreme Court

- (1) If the Tribunal considers that it is more appropriate for the appeal to be determined by the Supreme Court, instead of determining the appeal, the Tribunal may refer the appeal to the Court.

Example for subsection (1):

The Tribunal may refer an appeal if it involves complex questions of fact or law or both.

- (2) If the appeal is referred to the Court under subsection (1), it is taken to be an appeal commenced under section 105J(1).

Division 4 Appeals to Supreme Court

105J How to commence appeal

- (1) The taxpayer may commence an appeal to the Supreme Court under section 105A(1)(b) within 60 days after notice of the decision on the objection is issued by the decision maker.
- (2) However, the taxpayer cannot commence the appeal if the taxpayer has commenced an appeal against the decision on the objection to the Tribunal under Division 3 (regardless of the outcome of that appeal).

105K Appeal commenced out of time

If the Court is satisfied that the taxpayer has a reasonable excuse for not commencing the appeal within the 60-day period, the Court may extend the time for commencement.

105L Grounds of appeal and response

- (1) The taxpayer's grounds of appeal are not limited to the grounds on which the objection was made.
- (2) The decision maker's response to the grounds of appeal is not limited to the reasons for disallowing the objection or allowing it in part only.

105M Admissibility of new evidence

- (1) In hearing the appeal, the Court may admit any evidence that was not before the decision maker when making the decision being appealed against if satisfied the evidence is material to the decision.
- (2) If the Court admits evidence under subsection (1), the Court must:
 - (a) adjourn the hearing; and
 - (b) direct the decision maker to reconsider the objection, having regard to that evidence and any other evidence obtained by the decision maker.
- (3) However, subsection (2) does not apply if the decision maker requests the Court to continue to hear the appeal without the decision maker reconsidering the objection.
- (4) In reconsidering the matter, the decision maker has the same powers the decision maker had when making the decision being appealed against.
- (5) If, on reconsideration, the decision maker amends or varies the decision in the taxpayer's favour, the Court may order the taxpayer to pay all or a specified part of the decision maker's costs in the appeal if satisfied that it is fair to do so, having regard to the nature of the amendment or variation.

105N Determining appeal

- (1) In determining the appeal, the Court may:
 - (a) confirm the decision appealed against;

- (b) vary the decision appealed against;
 - (c) substitute another decision that would have been available to the decision maker; or
 - (d) remit the matter to the decision maker for reconsideration, either generally or in respect of specified matters, and for variation of the decision appealed against or substitution of another decision.
- (2) If the matter is remitted, the Court must:
 - (a) advise the decision maker of its reasons for doing so; and
 - (b) give to the decision maker the directions the Court considers appropriate for the reconsideration or otherwise of the whole or any part of the matter.
- (3) The Court's decision under subsection (1)(a), (b) or (c) is taken to be the decision maker's decision (except for this Part and Part VA).

Division 5 Other matters

105P Recovery of tax pending objection or appeal

A pending objection or appeal does not affect:

- (a) the operation of a taxation decision to which the objection or appeal relates; or
- (b) the recovery of the tax to which the objection or appeal relates.

105Q Adjustment of tax on objection or appeal

- (1) If a matter is remitted to a decision maker by the Tribunal under section 105F(1)(d) or the Supreme Court under section 105N(1)(d) for reconsideration, the decision maker must reconsider the matter as soon as practicable.
- (2) If a taxpayer's liability or assessment is varied on or as a result of an objection or appeal, the decision maker must:
 - (a) adjust the liability or assessment as necessary; and
 - (b) serve written notice of the adjusted liability or assessment on the taxpayer.

- (3) If a taxpayer's liability or assessment is varied on or as a result of an objection or appeal:
 - (a) any excess in the amount of tax paid must be refunded; and
 - (b) any shortfall in the amount of tax paid may be recovered as arrears.

105R Interest payable on refunded tax

- (1) If an amount is required to be refunded to a taxpayer under section 105Q(3)(a), the taxpayer is also entitled to be paid interest on that amount in accordance with subsection (2).
- (2) The interest is payable at the prescribed rate for the period commencing on the day on which the amount was paid by the taxpayer and ending on the day on which the refund is paid to the taxpayer.
- (3) In subsection (2):

prescribed rate means:

- (a) the rate prescribed by regulation; or
- (b) if paragraph (a) does not apply – the daily average of the 90-day bank accepted bill rate published by the Reserve Bank of Australia for the month of May in the financial year immediately preceding the financial year in which the refund became due.

105S Certain decisions final

- (1) Subsection (2) applies in relation to the following decisions of the Commissioner:
 - (a) under section 56BAB(3)(b) that the addition of a beneficiary or a class of beneficiaries under a discretionary trust described in section 56BAB is or is not a tax avoidance scheme or part of such a scheme;
 - (b) under section 56BAC(3) that the changes in relation to a discretionary trust described in section 56BAC are or are not a tax avoidance scheme or part of such a scheme;
 - (c) under section 56M(2)(c)(vi)(B) that the addition of a beneficiary or class of beneficiaries under a discretionary trust to which Part III, Division 8AAA applies is or is not a tax avoidance scheme or part of a tax avoidance scheme;

- (d) under section 56M(2)(c)(vii) that a change in control of a beneficiary under, and a change of or in control of a trustee of, a discretionary trust to which Part III, Division 8AAA applies are or are not a tax avoidance scheme or part of a tax avoidance scheme.
- (2) Despite another law of the Territory (including the common law) and except as provided by this Part:
 - (a) the decision is final and conclusive;
 - (b) the decision cannot be investigated, inquired into, reviewed or otherwise called into question by any person or body; and
 - (c) no proceedings can be brought, and no judgment or order can be given or made, in relation to the decision for an injunction, declaration or order for certiorari, prohibition or mandamus.

Part VA Taxation and Royalty Appeals Tribunal

105T Establishment and jurisdiction

- (1) The Taxation and Royalty Appeals Tribunal is established.
- (2) The Tribunal has jurisdiction to determine appeals under Part V, Division 3.

105U Constitution

The Tribunal is constituted for an appeal by:

- (a) the Chief Magistrate; or
- (b) another magistrate chosen by the Chief Magistrate.

105V Conduct of appeals generally

- (1) The Tribunal:
 - (a) is not bound by the rules of evidence but is bound by the rules of natural justice;
 - (b) must determine an appeal on the material lodged by the parties with the Registrar, unless the Tribunal is satisfied the circumstances of the appeal require a hearing to be conducted; and
 - (c) may only conduct a hearing if satisfied the circumstances of the appeal require it.

- (2) The practice and procedure of the Tribunal is:
 - (a) as prescribed by any rules and practice directions made under section 105X; and
 - (b) if paragraph (a) does not apply – as determined by the Tribunal.
- (3) The Tribunal must keep a record of its proceedings.
- (4) The Tribunal must publish written reasons for its decisions.

105W Costs

- (1) Subject to this section, each party to an appeal to the Tribunal must bear his or her own costs.
- (2) The Tribunal may order a party to pay all or a specified part of the costs of another party.
- (3) The Tribunal may make an order under subsection (2) if satisfied it is fair to do so, having regard to the following:
 - (a) whether a party conducted the appeal in a way that unnecessarily disadvantaged another party to the appeal, such as:
 - (i) failing to comply with an order or direction of the Tribunal;
 - (ii) attempting to deceive another party or the Tribunal; or
 - (iii) vexatiously conducting the proceeding;
 - (b) whether a party has been responsible for prolonging unreasonably the time taken to complete the appeal;
 - (c) the relative strengths of the claims made by each of the parties, including whether a claim made by a party was untenable in fact or law;
 - (d) the nature and complexity of the appeal;
 - (e) any other matter the Tribunal considers relevant.
- (4) If the Tribunal considers the representative of a party (rather than the party) is responsible for conduct described in subsection (3)(a) or (b), the Tribunal may order the representative in his or her own capacity to compensate another party for costs incurred unnecessarily.

105X Rules and practice directions

- (1) The Chief Magistrate may make rules, not inconsistent with this Act:
 - (a) relating to the practice and procedure of the Tribunal; or
 - (b) prescribing fees in respect of appeals to the Tribunal.
- (2) The Chief Magistrate may issue practice directions, not inconsistent with this Act or any rules made under subsection (1), relating to the practice and procedure of the Tribunal.

105Y Contempt

A person must not:

- (a) insult a magistrate in relation to the performance of his or her functions or the exercise of his or her powers as the Tribunal;
- (b) interrupt a hearing of the Tribunal;
- (c) create a disturbance, or take part in creating or continuing a disturbance, in or near a place where a hearing of the Tribunal is being conducted; or
- (d) do any other act or thing that would, if the Tribunal were a court of record, constitute contempt of that court.

Penalty: If the offender is a natural person – 100 penalty units or imprisonment for 6 months.

If the offender is a body corporate – 500 penalty units.

Part VI Recovery of duty**106 Recovery of duty or tax**

Duty or tax is, upon becoming due and payable under this Act, a debt due to the Territory and recoverable in a court of competent jurisdiction.

107 Additional penalty for failure to pay duty or tax on time

- (1) Where a person liable to duty or tax fails to pay the duty or tax on or before the day on which it becomes due and payable under this Act, that person is liable to pay, by way of penalty, in addition to the amount of the duty or tax that he has failed to pay or any other amount payable by way of penalty under this Act, \$20 or an amount calculated at the rate of 1.5% per month upon the amount of that

duty or tax, whichever is the greater.

- (1A) For the purposes of subsection (1), the amount calculated at the percentage specified in that subsection shall be computed for the period commencing on the day, or the last day of the period within which, the person is required to pay the duty or tax and ending on the day upon which it is paid.
- (1B) Where the new owner of a motor vehicle registered under the *Motor Vehicles Act* does not apply to the Registrar for the transfer of the vehicle within the period required by section 20(2) of that Act, subsection (1) applies as if:
- (a) the Registrar had issued to the new owner a motor vehicle certificate of registration for the vehicle on the fifteenth day after the date on which it was sold or disposed of; and
 - (b) the person had failed to pay the duty payable on that certificate on that date.
- (2) The Commissioner or, where subsection (1B) applies, the Registrar may, in a particular case, for such reasons as in his discretion he thinks sufficient, remit the whole or a part of an additional amount payable by way of penalty under this section.

108 Recovery of additional penalty

- (1) An additional amount payable by way of penalty under section 96 or 107 is a debt due to the Territory and is recoverable in the same way as duty or tax.
- (2) Where a person is liable to pay such an additional amount and a prosecution for an offence against this Act is instituted in respect of the same subject matter, the additional amount is not payable unless the prosecution is withdrawn.

108A Instrument not to be stamped until penalty paid

No unstamped instrument in respect of the execution or making of which a penalty has been imposed upon a person shall be stamped until the amount of the penalty and costs (if any awarded) has been paid by or on behalf of the person liable to the penalty.

109 Recovery of duty or tax from trustees of deceased persons

- (1) The Commissioner has the same powers and remedies for the recovery of duty or tax from a trustee of a deceased person as he would have had against that person if he were still living.

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- (2) A trustee of a deceased person is subject to any additional amount payable under this Act to the same extent as the deceased person would be if he were still living.

110 Collection of duty or tax from person indebted to person liable to duty or tax

- (1) A person indebted, either alone or jointly with another person, to a person liable to duty or tax shall, when required by the Commissioner by instrument served on the person indebted, pay to the Commissioner the amount of the debt owing or accruing to the person so liable or so much of it as is sufficient to pay that duty or tax.
- (2) Upon the service of an instrument under this section, the amount of the debt owing or accruing to the person is liable to duty or tax, or so much of it as is sufficient to pay the duty or tax, becomes a debt due to the Territory and recoverable in a court of competent jurisdiction.
- (3) The Commissioner shall, in an instrument under subsection (1), specify the time within which the debt owing or accruing shall be paid, not being a time before the debt becomes due.
- (4) The Commissioner may, in an instrument under subsection (1), specify an amount to be paid out of each payment of the debt as it becomes due from time to time to the person liable to duty or tax until the amount of duty or tax is paid.
- (5) The Commissioner shall cause an instrument under this section to be served on the person indebted and a copy of the instrument to be served on the person liable to pay the duty or tax.
- (6) An instrument to be served under this section on the Territory may be served upon the Treasurer.
- (7) A payment in pursuance of an instrument served under this section shall be deemed to have been made with the authority of the person liable to duty or tax and of all other persons served with the instrument or copy of the instrument.
- (8) In this section:

debt, in relation to a person liable to duty or tax, means:

- (a) money that is due or accruing, or that may become due, to that person;

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- (b) money that is held or is subsequently held for or on account of that person, or for or on account of another person for payment to that person; or
 - (c) money authorized by another person to be paid to that person.

duty or tax includes an additional amount payable by way of penalty under this Act, a judgment debt or costs in respect of duty or tax or of such an additional amount, and a fine or costs imposed by a court in respect of an offence against this Act.

person indebted, in relation to a person liable to duty or tax, means a person, the Northern Territory or a statutory corporation by whom or which a debt is owing or accruing to the person liable to duty or tax.

111 Person in receipt, &c., of money for non-resident

- (1) A person resident in the Territory who has authority to receive, control or dispose of money belonging to a non-resident who is liable to duty or tax shall, when required to do so by the Commissioner by instrument served on the person resident in the Territory, pay that duty or tax.
- (2) When so required by the Commissioner, the person resident in the Territory is, by force of this section:
 - (a) authorized and required to retain from time to time any money that comes to him on behalf of the non-resident or so much of it as is sufficient to pay the duty or tax payable by the non-resident;
 - (b) made personally liable for that duty or tax after it becomes due and payable to the extent of any amount that he is required to retain under paragraph (a); and
 - (c) indemnified for all payments that he makes in pursuance of this Act.
- (3) For the purposes of this section, a person who is liable to pay money to a non-resident shall be deemed to be a person who has control of money belonging to the non-resident, and all moneys due by him to the non-resident shall be deemed to be money that comes to him on behalf of the non-resident.

112 Evidence

- (1) In proceedings for the recovery of duty or tax:
- (a) the production of an instrument under the hand of the Commissioner purporting to be a copy or record of a notice of assessment is evidence of the due making of the assessment and that the amount and particulars of the assessment are correct;
 - (b) the production of an instrument under his hand purporting to be a copy or record of an instrument issued or given by him under this Act is evidence that the instrument was so issued or given; and
 - (c) the production of a document certified by instrument under his hand as a copy of, extract from or record of a return or notice of assessment is evidence of the matter set out in the document to the same extent as the original return or notice would be if it were produced.

- (2) In subsection (1):

record means any thing or process:

- (a) on or by which information is recorded or stored; or
- (b) by means of which a meaning can be conveyed in visible or recoverable form,

whether or not the use or assistance of some electronic, electrical, mechanical, chemical or other device or process is required to recover or convey the information or meaning.

Part VII Prosecutions**113 Time of bringing prosecutions**

- (1) A prosecution in respect of an offence against section 10 shall not be instituted later than 3 years after the commission of the offence.
- (2) A prosecution in respect of any other offence against this Act may be instituted at any time.

114 Protection of witnesses

A witness appearing on behalf of the Territory in a prosecution under this Act shall not be compelled to disclose the fact that he

received any information, the nature of the information or the name of the person who gave the information, and a person who is or has been employed by the Territory appearing as a witness shall not be compelled to produce a report made or received by him in his official capacity and containing confidential information.

115 Averment of prosecutor

- (1) In a prosecution under this Act, an averment of the prosecutor contained in the information, complaint, declaration or claim is evidence of the matter averred.
- (2) Where the matter averred is a mixed question of law and fact, the averment is evidence of the fact only.
- (3) This section does not apply to:
 - (a) an averment of the intent of the defendant; or
 - (b) a prosecution for an indictable offence.

116 Certain prosecutions by the Commissioner or an appointed person

A prosecution for an offence against this Act punishable on a summary finding of guilt shall not be instituted except by the Commissioner or by a person appointed by him in that behalf.

Part VIIA Reciprocal powers

116A Interpretation

- (1) In this Part, unless the contrary intention appears:

book includes a register or other record of information and any accounts or accounting records, however compiled, recorded or stored, and also includes an instrument.

Corresponding Commissioner, in relation to a Taxation Act, means the holder of an office declared under subsection (2) to be a corresponding office in relation to the office of Commissioner under that Act.

corresponding law, in relation to a Taxation Act, means a law of the Commonwealth or of a State or of another Territory declared under subsection (2) to be a corresponding law.

information includes a document.

relevant goods means tobacco, petroleum products or other goods to which a corresponding law applies.

Taxation Act means:

- (a) this Act (including the *Stamp Duty Act* and the *Financial Institutions Duty Act*);
- (c) the *Pay-roll Tax Act*;
- (d) the *Business Franchise Act*;
- (e) the *Energy Resource Consumption Levy Act*;
- (f) the *Debits Tax Act*; or
- (g) the *Fuel Subsidies Act*,

and any other Act prescribed for the purposes of this definition.

(2) The Administrator may, by notice in the *Gazette*, declare:

- (a) a law of the Commonwealth or of a State or of another Territory that:
 - (i) corresponds to this Part; or
 - (ii) is a Commonwealth, State or Territory Taxation Act within the meaning of an Act of the Commonwealth, the State or the other Territory corresponding to this Part,

to be a corresponding law for the purposes of this Part in relation to a Taxation Act; and

- (b) an office under such a law to be a corresponding office for the purposes of this Part in relation to the office of Commissioner.

116B Investigations by Corresponding Commissioners

- (1) If the Commissioner has given approval in writing to a proposed investigation by a Corresponding Commissioner, the Corresponding Commissioner may, while the approval is in force and subject to and in accordance with any conditions of that approval, exercise, or authorize in writing a person to exercise, any power referred to in section 116D that the Corresponding Commissioner, or a person authorized by the Corresponding Commissioner, may exercise under the corresponding law.

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- (2) The Commissioner may, in writing given to the Corresponding Commissioner, vary or revoke an approval, or any condition of an approval, given under subsection (1).

116C Investigations on behalf of Corresponding Commissioners

If a Corresponding Commissioner in writing requests the Commissioner to exercise on behalf of the Corresponding Commissioner any power referred to in section 116D that the Corresponding Commissioner, or person authorized by the Corresponding Commissioner, may exercise under the corresponding law, the Commissioner, or a person authorized in writing by the Commissioner for that purpose, may, for and on behalf of the Corresponding Commissioner, exercise that power subject to and in accordance with:

- (a) conditions specified by the Corresponding Commissioner whether in the request or at any later time; and
- (b) conditions determined by the Commissioner.

116D Investigation powers

- (1) For the purposes of and in accordance with sections 116B and 116C, a Corresponding Commissioner or the Commissioner or other person authorized under either of those sections (in this section called an *inspector*) may, in relation to a corresponding law:
- (a) at any reasonable time, on production of a certificate under the hand of the Corresponding Commissioner or the Commissioner, as the case may be, of the authority of the inspector:
 - (i) require a person to produce for inspection any books in that person's possession or under that person's control, the inspection of which may show whether or not the provisions of the corresponding law are being or have been complied with; or
 - (ii) enter land under section 127, and the provisions of that section apply accordingly; or

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- (b) if the corresponding law relates to relevant goods, at any reasonable time, on production of a certificate under the hand of the Corresponding Commissioner or the Commissioner, as the case may be, of the authority of the inspector:
 - (i) require a person to produce for inspection any books in that person's possession or under that person's control, the inspection of which may show whether or not the provisions of the corresponding law are being or have been complied with;
 - (ii) enter and remain in any place at or on which the inspector reasonably suspects the business of selling relevant goods is carried on or which is, or which the inspector reasonably suspects is, being used for the storage or custody of relevant goods or of any books relating to the sale or purchase of relevant goods, and the provisions of section 127 apply accordingly;
 - (iii) seize any such relevant goods; or
 - (iv) request any person holding a licence under the corresponding law or any person reasonably believed by the inspector to be involved in the sale, purchase or storage of relevant goods:
 - (A) to produce any books which relate to, or which the inspector reasonably suspects relate to, the sale or purchase of relevant goods and which at the time of the request are in the possession or under the control of that person; and
 - (B) to answer any question with respect to any such books or the sale or purchase of any relevant goods.
 - (2) In accordance with sections 116B and 116C, a Corresponding Commissioner or the Commissioner may, by notice in writing, require a person:
 - (a) to furnish the Corresponding Commissioner or, as the case may be, the Commissioner with such information as is required; or
 - (b) to attend and give evidence before the Corresponding Commissioner or, as the case may be, the Commissioner or a person authorized in that behalf by the relevant Commissioner,

for the purpose of inquiring into or ascertaining the first person's or any other person's liability or entitlement under the corresponding law and may require the person to produce all books in the person's possession or under the person's control relating to that liability or entitlement.

- (3) For the purposes of subsection (2), the Corresponding Commissioner or the Commissioner or the authorized person may require the information or evidence to be given on oath or affirmation, and either orally or in writing, or to be given by statutory declaration, and for that purpose the Corresponding Commissioner or the Commissioner or authorized person may administer an oath or take an affirmation.
- (4) The Regulations may prescribe scales of expenses to be allowed to persons who attend and give evidence under subsection (2).
- (5) If a person records or stores any matters by means of a mechanical, electronic or other device, a duty imposed by this Part to produce a book containing those matters shall be construed as a duty to make the matters available in written form in the English language or to provide a document containing a clear reproduction in writing in the English language of the matters.
- (6) A person must not fail, neglect or refuse to comply with a request made or requirement under this section by a Corresponding Commissioner or the Commissioner or a person authorized by a Corresponding Commissioner or the Commissioner or delay or obstruct a Corresponding Commissioner or the Commissioner or a person so authorized in exercising their powers under this section.

Penalty: \$10,000.

116E Disclosure of information to Commonwealth, State or Territory officers

- (1) Notwithstanding anything to the contrary in a Taxation Act, the Commissioner and any person authorized by the Commissioner may communicate information respecting the affairs of a person disclosed or obtained under a Taxation Act to:
 - (a) the Commissioner, Second Commissioner or a Deputy Commissioner under a law of the Commonwealth relating to taxation or to a person authorized by the Commissioner, Second Commissioner or Deputy Commissioner;

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- (b) the Commissioner or other officer of a State or other Territory of the Commonwealth administering a law of the State or Territory relating to taxation or to a person authorized by the Commissioner or other officer;
 - (c) the Australian Crime Commission or a person authorized by it;
 - (e) the Australian Securities and Investment Commission or a person authorized by it;
 - (f) the Chief Executive Officer of Customs, appointed under section 5 of the *Customs Administration Act 1985* of the Commonwealth, or a person authorised by him or her; or
 - (g) the Director of the Australian Transaction Report and Analysis Centre, established under section 35 of the *Financial Transactions Report Act 1988* of the Commonwealth, or a person authorised by him or her.
- (2) If the Commissioner gives consent to the communication of information respecting the affairs of a person disclosed to, or obtained under this Act by, a Corresponding Commissioner under a corresponding law, the Corresponding Commissioner and any person authorized by the Corresponding Commissioner, may, subject to and in accordance with the terms of the consent, communicate the information:
- (a) to a person referred to in subsection (1); and
 - (b) to a person to whom they are permitted under the corresponding law to communicate information disclosed or obtained under the corresponding law.
- (3) If a Corresponding Commissioner under a corresponding law gives consent to the communication of information respecting the affairs of a person disclosed to, or obtained under the corresponding law by the Commissioner, the Commissioner and any person authorized by the Commissioner, may, subject to and in accordance with the terms of the consent, communicate the information:
- (a) to a person referred to in subsection (1); and
 - (b) to a person to whom the Commissioner is permitted under a Taxation Act to communicate information disclosed or obtained under that Taxation Act.

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- (4) Except as provided in subsection (2) or (3), a person shall not:
- (a) make a record of, divulge or communicate to any person or publish any information or book that is or was acquired by the person under this Part or under a corresponding law for the purposes of a Taxation Act, by reason of being, or having been, employed for the purposes of or in connection with the administration or execution of a corresponding law; or
 - (b) be required to produce in court any book connected with the administration or execution of a corresponding law acquired by the person under this Part or under a corresponding law for the purposes of a Taxation Act, or to divulge or communicate to any court any matter or thing coming under the notice of the person under this Part or such a corresponding law,
- unless the recording, divulgence, communication, publication or production is made:
- (c) with the consent of the person from whom the information or book was obtained;
 - (d) in connection with the administration or execution of this Part, a Taxation Act or a corresponding law for the purposes of a Taxation Act and in accordance with any consent given by the Commissioner or the Corresponding Commissioner under the corresponding law to the communication of the information; or
 - (e) for the purpose of any legal proceedings arising out of this Part, a Taxation Act or the corresponding law or any report of any such proceedings.

Penalty: Imprisonment for 2 years.

- (5) For the purposes of subsection (4), a person shall be deemed to have divulged or communicated information in contravention of that subsection if the person divulges or communicates that information to any Minister, Minister of State of the Commonwealth or any State Minister.

116F Evidence

The production of a document purporting to be certified by a Corresponding Commissioner as a copy of, or extract from, a document furnished to, or issued by, the Corresponding Commissioner is, for all purposes, sufficient evidence of the matter contained in the document, without production of the original.

Part VIII Miscellaneous**117 Extensions of time, &c.**

Where a person is required by or under this Act to do an act or thing in respect of a specified period or within a specified time, the Commissioner may, by instrument served on that person:

- (a) allow a further period or extend the time for the doing of the act or thing, notwithstanding that the specified period has expired; or
- (b) vary the specified period in respect of which or the time within which that person is required to do that act or thing,

and that person shall do that act or thing accordingly.

118 Refunds and remissions of duty tax

A refund or remission shall not be made of an amount of duty or tax under this Act to a person who has recovered it from another person and has not since repaid it to that other person.

119 Terms on which unstamped or insufficiently stamped instruments may be received in evidence

- (1) Upon the production of an instrument on which duty or tax is payable as evidence in any court of civil judicature, notice shall be taken by the judge of any omission or insufficiency of the duty or tax thereon and, if the instrument is one which may legally be stamped after execution, it may, on payment to an officer of the court of the amount of the unpaid duty or tax and the fine payable by law, be received in evidence, saving all just exceptions on other grounds.
- (2) Where subsection (1) applies, the officer shall detain and immediately transmit to the Commissioner the instrument, together with the duty or tax and fine so paid thereon, and the payment shall be denoted on the instrument accordingly.

120 Secondary evidence of documents

In proceedings in court, secondary evidence of a document may, saving all just exceptions on other grounds, be admitted notwithstanding that the document is subject to duty or tax and has not been duly stamped, if the amount of the duty or tax or the amount of the deficiency of the duty or tax and any fine imposed by this Act are paid to an officer of the court and if the document is one which may legally be stamped after execution.

121 Instruments not duly stamped inadmissible

Subject to sections 119 and 120, an instrument:

- (a) executed in the Territory; or
- (b) relating (wheresoever executed) to property situated or to a matter or thing done or to be done in a part of the Territory,

and which is liable to duty or tax in the Territory shall not, except in criminal proceedings, be pleaded or given in evidence, or admitted to be good, useful, or available in law or equity for any purpose whatsoever, unless it is duly stamped.

122 Rules as to instruments executed out of the Territory

- (1) An instrument executed out of the Territory, and which, by the law of the country in which it was executed, is inadmissible in evidence in that country by reason of its not having been stamped shall not be for that reason inadmissible in evidence in the Territory, unless it is proved that the instrument is, by the statute law of that country, expressly made void if made or executed without being stamped.
- (2) Nothing in this section renders valid an instrument executed out of the Territory that is void by the law of the place in which it was executed for a reason other than that it was not duly stamped.

123 Continuing offences

- (1) If, in committing an offence against a provision of this Act or the Regulations, a person fails to do an act within the time for doing the act specified in the provision, in addition to the offence for failure to do the act within the time the person commits an additional offence on each day after the expiry of the time during which the act continues not to be done.
- (2) On being found guilty of an offence referred to in subsection (1), a person is, in addition to the penalty for failure to do the act within the time, liable to a penalty not exceeding \$100 for each day after the expiry of the time during which the offence continues.

123A Regulatory offences

An offence against section 9, 9A, 14(1), 17A(11), 24, 29J, 29N, 39, 42, 45, 48, 57, 59(5), 71, 74, 75 or 76 is a regulatory offence.

124 Service of documents

- (1) A notice or other instrument that is required by this Act to be given or served on a person other than a company shall be given or served:
 - (a) by delivering the notice or instrument to that person personally;
 - (b) by prepaying and posting the notice or instrument as a letter addressed to that person at:
 - (i) the person's last-known place of residence or last-known residential post office box;
 - (ii) the person's last-known place of business or last-known business post office box; or
 - (iii) if the person is carrying on business at 2 or more places or has 2 or more business post office boxes, at one of those places or boxes;
 - (c) by leaving the notice or instrument at the last-known place of residence of that person with some person apparently an inmate of that place and apparently not less than 16 years of age; or
 - (d) by leaving the notice or instrument at the last-known place of business of that person or, if he is carrying on business at 2 or more places, at one of those places with some person apparently in the service of that person and apparently not less than 16 years of age.
- (2) A notice or other instrument that is required by this Act to be given or served on a person, being a company, shall be given or served:
 - (a) by prepaying and posting the notice or instrument as a letter to the company at:
 - (i) the company's last-known place of business or last-known post office box; or
 - (ii) if the company is carrying on business at 2 or more places or has 2 or more post office boxes, at one of those places or boxes; or
 - (b) by leaving it at that place or at one of those places with some person apparently in the service of the company and apparently not less than 16 years of age.

125 Judicial notice

For the purposes of this Act, all courts and tribunals and all judges and persons acting judicially or authorized by law to hear, receive and examine evidence shall take judicial notice of the signature of a person who holds or has held the office of Commissioner or acting Commissioner.

126 Books, accounts etc.

(1) For the purposes of this Act, a person registered under Divisions 3B, 6, 7 and 13 of Part III or the *Financial Institutions Duty Act*, shall:

- (a) keep proper books and accounts in the English language recording full particulars of all matters in relation to which duty is imposed;
- (b) preserve those books and accounts for a period of 5 years after the completion of those matters; and
- (c) preserve any documents or papers relating to those matters, including copies of instruments, for a period of 5 years after the completion of those matters.

Penalty: \$10,000.

(2) This section does not require the preservation by a person of books, accounts, documents, papers or copies of instruments:

- (a) in respect of which the Commissioner has notified the person that their preservation is not required; or
- (b) of a company that has been wound up.

127 Entry on land, &c.

(1) For the purposes of this Act, an officer authorized by the Commissioner to exercise powers under this section:

- (a) may, at all reasonable times, enter upon any land;
- (b) shall have full and free access at all reasonable times to all books, documents and other papers; and
- (c) may, for those purposes, take extracts from and make copies of any books, documents or papers.

(2) An officer who enters upon land in pursuance of this section is not authorized to remain on the land if, on request by the occupier of

the land, he does not produce a certificate in writing under the hand of the Commissioner certifying that he is an officer authorized to exercise the powers under this section.

- (3) A person shall not, without reasonable excuse, obstruct or hinder an officer in the exercise of his powers under this Act.

Penalty: Imprisonment for 2 years.

128 Appearances by Commissioner

- (1) In an action, prosecution or other proceeding under this Act in a court, the Commissioner may appear either personally or by a barrister or solicitor, or by an officer appointed by him.
- (2) The appearance of an officer appointed under subsection (1), and his statement that he appears by authority of the Commissioner, are sufficient evidence of that authority.

129 Regulations

The Administrator may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular:

- (a) providing for the payment of fees and expenses to witnesses required under this Act to attend and give evidence before the Commissioner or another person;
- (b) prescribing the fees or other payments to be charged in respect of registration, proceedings under this Act or otherwise for the purposes of this Act, and prescribing the manner in which those fees or payments shall be paid;
- (c) providing for the inspection of a register kept under this Act;
- (ca) designating an offence against a regulation as a regulatory offence; and
- (d) prescribing penalties, not exceeding a fine of \$5,000, for offences against the regulations.

Part IX Transitional matters for Taxation (Administration) Amendment (Objections and Appeals) Act 2005

130 Definitions

In this Part:

amendment Act means the *Taxation (Administration) Amendment (Objections and Appeals) Act 2005*.

commencement day means the day on which the amendment Act commences.

new Part V means Part V as inserted by the amendment Act.

old objection and appeal provisions means:

- (a) for a taxation decision under this Act – Part V of this Act as in force immediately before the commencement day;
- (b) for a taxation decision under the *Mineral Royalty Act* – Part III of that Act as in force immediately before the commencement day; or
- (c) for a taxation decision under the *Pay-roll Tax Act* – Part VI of that Act as in force immediately before the commencement day.

taxation decision has the same meaning as in new Part V.

131 Application

- (1) Except as provided by this Part, new Part V does not apply in relation to a taxation decision made before the commencement day.
- (2) Despite their repeal, the old objection and appeal provisions continue to apply in relation to a taxation decision to which new Part V does not apply.

132 Taxation decisions for which no objection lodged before commencement

- (1) Subsection (2) applies in relation to a taxation decision if:
 - (a) the date on which the decision was made is not earlier than 60 days before the commencement day; and

(b) immediately before the commencement day, no objection to the decision had been lodged.

(2) New Part V applies in relation to the decision as if that Part had come into operation on the date on which the decision was made.

133 Objections lodged but not decided before commencement

New Part V applies in relation to an objection to a taxation decision that had been lodged but not decided immediately before the commencement day as if it were an objection lodged under section 102.

134 Decisions on objections under MRA made before 18 May 2004

(1) This section applies in relation to a decision on an objection to a taxation decision made under the MRA if the decision on the objection was made after 1 January 2004 but before 18 May 2004, even though immediately before the commencement day an application for review of the decision on the objection had been made under the old objection and appeal provisions but not decided.

(2) New Part V (except section 105A(1)(a) and Division 3) applies in relation to the decision as if:

(a) that Part had come into operation on the date on which the decision was made; and

(b) the 60-day period referred to in section 105J(1) commences on the day after the commencement day.

135 Decisions on objections made on or after 18 May 2004

(1) Subsection (2) applies in relation to a decision on an objection to a taxation decision if:

(a) the decision on the objection was made on or after 18 May 2004 but before the commencement day; and

(b) immediately before the commencement day, no appeal against or application for review of the decision on the objection had been made under the old objection and appeal provisions.

(2) New Part V applies in relation to the decision on the objection as if:

(a) that Part had come into operation on the date on which that decision was made; and

- (b) the 60-day periods referred to in sections 105B(1) and 105J(1) commence on the day after the later of the following:
 - (i) the commencement day;
 - (ii) the day on which notice of the decision on the objection was or is issued.

Schedule

section 3

Stamp Ordinance 1917

Stamp Ordinance 1929

Stamp Ordinance 1942

Stamp Ordinance 1948

Stamp Ordinance 1955

Stamp Ordinance 1958

Stamp Ordinance 1964

Stamp Ordinance 1965

Stamp Ordinance (No. 2) 1968

Stamp Ordinance 1970

Stamp Ordinance 1974

Stamp Ordinance 1978

ENDNOTES

1 KEY

Key to abbreviations

amd = amended	od = order
app = appendix	om = omitted
bl = by-law	pt = Part
ch = Chapter	r = regulation/rule
cl = clause	rem = remainder
div = Division	renum = renumbered
exp = expires/expired	rep = repealed
f = forms	s = section
Gaz = <i>Gazette</i>	sch = Schedule
hdg = heading	sdiv = Subdivision
ins = inserted	SL = Subordinate Legislation
lt = long title	sub = substituted
nc = not commenced	

2 LIST OF LEGISLATION

Taxation (Administration) Ordinance 1978 (Act No. 49, 1978)

Assent date	30 June 1978
Commenced	1 July 1978 (s 2)

Taxation (Administration) Act (No. 2) 1978 (Act No. 96, 1978)

Assent date	5 September 1978
Commenced	5 September 1978

Taxation (Administration) Act (No. 3) 1978 (Act No. 14, 1979)

Assent date	26 January 1979
Commenced	26 January 1979

Taxation (Administration) Act 1979 (Act No. 72, 1979)

Assent date	26 June 1979
Commenced	26 June 1979

Taxation (Administration) Act (No. 2) 1979 (Act No. 160, 1979)

Assent date	12 December 1979
Commenced	9 May 1980 (<i>Gaz</i> G19, 9 May 1980, p 17)

Taxation (Administration) Amendment Act 1981 (Act No. 68, 1981)

Assent date	31 August 1981
Commenced	1 September 1981 (s 2)

Taxation (Administration) Amendment Act 1982 (Act No. 78, 1982)

Assent date	8 December 1982
Commenced	8 December 1982

Taxation (Administration) Amendment Act 1983 (Act No. 34, 1983)

Assent date	3 October 1983
Commenced	3 October 1983

Criminal Law (Regulatory Offences) Act 1983 (Act No. 68, 1983)

Assent date 28 November 1983
Commenced 1 January 1984 (s 2, s 2 *Criminal Code Act 1983* (Act No. 47, 1983), *Gaz* G46, 18 November 1983, p 11 and *Gaz* G8, 26 February 1986, p 5)

Taxation (Administration) Amendment Act 1985 (Act No. 26, 1985)

Assent date 26 June 1985
Commenced 4 June 1985 (s 2)

Taxation (Administration) Amendment Act (No. 2) 1985 (Act No. 54, 1985)

Assent date 25 November 1985
Commenced 1 December 1985 (s 2)

Companies and Securities (Consequential Amendments) Act 1986 (Act No. 18, 1986)

Assent date 30 June 1986
Commenced 1 July 1986 (s 2)

Taxation (Administration) Amendment Act 1986 (Act No. 61, 1986)

Assent date 19 December 1986
Commenced 19 December 1986

Taxation (Administration) Amendment Act 1987 (Act No. 31, 1987)

Assent date 31 July 1987
Commenced 1 August 1987 (s 2)

Taxation (Administration) Amendment Act (No. 2) 1987 (Act No. 34, 1987)

Assent date 31 July 1987
Commenced 1 August 1987 (s 2)

Taxation (Administration) Amendment Act 1988 (Act No. 4, 1988)

Assent date 21 March 1988
Commenced 24 August 1988 (*Gaz* S44, 24 August 1988)

Taxation (Administration) Amendment Act (No. 2) 1988 (Act No. 53, 1988)

Assent date 17 November 1988
Commenced ss 1: 5: 17 November 1988; ss 6 and 9: 17 August 1988; ss 7 and 8: 1 September 1988 (s 2)

Taxation (Administration) Amendment Act 1989 (Act No. 23, 1989)

Assent date 15 June 1989
Commenced 29 November 1989 (s 2, s 2 *Racing and Betting Amendment Act 1989* (Act No. 12, 1989), s 2 *Unlawful Betting Act 1989* (Act No. 13, 1989) and *Gaz* G17, 3 May 1989, p 2)

Amending Legislation

Statute Law Revision Act 1989 (Act No. 60, 1989)

Assent date 2 October 1989
Commenced 2 October 1989

Taxation (Administration) Amendment Act (No. 2) 1989 (Act No. 42, 1989)

Assent date 20 September 1989
Commenced s 7: 1 December 1989; rem: 20 September 1989 (s 2)

Taxation (Administration) Amendment Act 1990 (Act No. 22, 1990)

Assent date 7 June 1990
Commenced 1 January 1991 (s 2, s 2 *Stamp Duty Amendment Act 1990* (Act No. 21, 1990) and Gaz S76, 21 December 1990)

Local Court (Consequential Amendments) Act 1990 (Act No. 31, 1990)

Assent date 11 June 1990
Commenced 1 January 1991 (s 2, s 2 *Local Court Act 1989* (Act No. 31, 1989) and Gaz G49, 12 December 1990, p 2)

Statute Law Revision Act 1990 (Act No. 33, 1990)

Assent date 11 June 1990
Commenced 11 June 1990

Taxation (Administration) Amendment Act (No. 2) 1990 (Act No. 47, 1990)

Assent date 20 September 1990
Commenced 20 September 1990

Debits Tax Act 1990 (Act No. 55, 1990)

Assent date 14 December 1990
Commenced 1 January 1991 (s 2 and s 2 *Debits Tax Termination Act 1990* (Cth Act No. 136, 1990))

Corporations (Consequential Amendments) Act 1990 (Act No. 59, 1990)

Assent date 14 December 1990
Commenced 1 January 1991 (s 2, s 2 *Corporations (NT) Act 1990* (Act No. 56, 1990) and Gaz S76, 21 December 1990)

Taxation (Administration) Amendment Act 1991 (Act No. 18, 1991)

Assent date 3 June 1991
Commenced 3 June 1991

Real Property (Consequential Amendments) Act 1991 (Act No. 33, 1991)

Assent date 25 June 1991
Commenced 1 October 1991 (Gaz S49, 1 October 1991)

Taxation (Administration) Amendment Act (No. 2) 1991 (Act No. 80, 1991)

Assent date 24 December 1991
Commenced 1 January 1992 (s 2)

Taxation (Administration) Amendment Act 1992 (Act No. 52, 1992)

Assent date 18 September 1992
Commenced 1 July 1992 (s 2)

Public Sector Employment and Management (Consequential Amendments) Act 1993 (Act No. 28, 1993)

Assent date 30 June 1993
Commenced 1 July 1993 (s 2, s 2 *Public Sector Employment and Management Act 1993* (Act No. 11, 1993) and Gaz S53, 29 June 1993)

Taxation (Administration) Amendment Act 1993 (Act No. 59, 1993)

Assent date 5 October 1993
Commenced 31 August 1994 (Gaz G35, 31 August 1994, p 6)

Taxation (Administration) Amendment Act (No. 2) 1993 (Act No. 60, 1993)

Assent date 5 October 1993
Commenced 1 October 1993 (s 2)

Taxation (Administration) Amendment Act 1994 (Act No. 43, 1994)

Assent date 30 June 1994
Commenced 1 July 1994 (s 2)

Taxation (Administration) Amendment Act (No. 2) 1994 (Act No. 71, 1994)

Assent date 15 December 1994
Commenced 15 December 1994

Financial Management (Consequential Amendments) Act 1995 (Act No. 5, 1995)

Assent date 21 March 1995
Commenced 1 April 1995 (s 2, s 2 *Financial Management 1995* (Act No. 4, 1995) and Gaz S13, 31 March 1995)

Taxation (Administration) Amendment Act 1995 (Act No. 49, 1995)

Assent date 15 November 1995
Commenced 1 July 1995 (s 2 and s 2 *Stamp Duty Amendment Act (No. 2) 1995* (Act No. 48, 1995))

Sentencing (Consequential Amendments) Act 1996 (Act No. 17, 1996)

Assent date 19 April 1996
Commenced 1 July 1996 (s 2, s 2 *Sentencing Act 1995* (Act No. 39, 1995) and Gaz S15, 13 June 1996)

Taxation (Administration) Amendment Act 1998 (Act No. 19, 1998)

Assent date 30 March 1998
Commenced 30 March 1998

Taxation (Administration) Amendment Act 1999 (Act No. 14, 1999)

Assent date 1 April 1999
Commenced ss 7(b), 18(a), (b), and (c) and 29(a): 1 July 1998;
rem: 1 April 1999 (s 2)

Statute Law Revision Act 1999 (Act No. 27, 1999)

Assent date 18 June 1999
Commenced 18 June 1999

Statute Law Revision Act (No. 2) 1999 (Act No. 48, 1999)

Assent date 10 November 1999
Commenced 10 November 1999

Statute Law Revision Act 2000 (Act No. 19, 2000)

Assent date 6 June 2000
Commenced 12 July 2000 (Gaz G27, 12 July 2000, p 2)

Financial Relations Agreement (Consequential Provisions) Act 2000 (Act No. 32, 2000)

Assent date 27 June 2000
Commenced 1 July 2001 (s 2)

Taxation (Administration) Amendment Act 2000 (Act No. 36, 2000)

Assent date 27 June 2000
Commenced 1 July 2000 (s 2)

Land Title (Consequential Amendments) Act 2000 (Act No. 45, 2000)

Assent date 12 September 2000
Commenced 1 December 2000 (s 2, s 2 *Land Title Act 2000* (Act No. 2, 2000) and *Gaz* G38, 27 September 2000, p 2)

Statute Law Revision Act 2001 (Act No. 3, 2001)

Assent date 22 March 2001
Commenced 22 March 2001

Corporations Reform (Consequential Amendments NT) Act 2001 (Act No. 17, 2001)

Assent date 29 June 2001
Commenced s 17(1) and (6): 1 July 2001 (s 2(2) and (3))

Taxation (Administration) Amendment Act 2001 (Act No. 47, 2001)

Assent date 19 July 2001
Commenced ss 4(1), 5, 15, 23 and 26: 29 May 2001; ss 4(2) and (3), 6 – 8, 14, 16 – 22, 24, 25, 27 – 29 and 31: 1 July 2001; ss 9, 13 and 30: 1 November 2001 (s 2, s 2 *Financial Relations Agreement (Consequential Provisions) Act* (Act No. 32, 2000) and *Gaz* G42, 24 October 2001, p 4)

Statute Law Revision Act (No. 2) 2001 (Act No. 62, 2001)

Assent date 11 December 2001
Commenced 11 December 2001

Corporations (Financial Services Reform Amendments) Act 2002 (Act No. 16, 2002)

Assent date 7 June 2002
Commenced 11 March 2002 (s 2, s 2 *Financial Services Reform Act 2001* (Cth Act No. 122, 2001), s 2 *Corporations Act 2001* (Cth Act No. 50, 2001) and *Cth Gaz* S285, 13 July 2001)

Statute Law Revision (Financial Provisions) Act 2002 (Act No. 38, 2002)

Assent date 13 September 2002
Commenced 30 October 2002 (*Gaz* G43, 30 October 2002, p 3)

Taxation (Administration) Amendment Act 2001 (Act No. 50, 2002)

Assent date 10 October 2002
Commenced 10 October 2002 (s 2)

Statute Law Revision Act 2003 (Act No. 12, 2003)

Assent date 18 March 2003
Commenced 18 March 2003

Taxation (Administration) Amendment Act 2003 (Act No. 34, 2003)

Assent date 30 June 2003
Commenced ss 4 and 23: nc; ss 11 – 22 and 28: 27 May 2003; rem: 1 July 2003 (s 2)

Statute Law Revision Act (No. 2) 2003 (Act No. 44, 2003)

Assent date 7 July 2003
Commenced 7 July 2003

Law Reform (Gender, Sexuality and De Facto Relationships) Act 2003 (Act No. 1, 2004)

Assent date 7 January 2004
Commenced 17 March 2004 (*Gaz* G11, 17 March 2004, p 8)

Taxation (Administration) Amendment Act 2004 (Act No. 41, 2004)

Assent date 6 July 2004
 Commenced pt 1: 6 July 2004; pt 2: 18 May 2004; pts 3, 4 and 5: 1 July 2004;
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Statute Law Revision Act (No. 2) 2004 (Act No. 54, 2004)

Assent date 15 September 2004
 Commenced 27 October 2004 (Gaz G43, 27 October 2004, p 3)

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Assent date 4 March 2005
 Commenced 31 March 2005 (Gaz S11, 31 March 2005, p 1)

Australian Crime Commission (Consequential Amendments) Act 2005 (Act No. 7, 2005)

Assent date 17 March 2005
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s 83D	ins No. 53, 1988, s 9 amd No. 80, 1991, s 13; No. 71, 1994, s 7; No. 12, 2003, s 18
s 83E	ins No. 53, 1988, s 9 amd No. 14, 1999, s 30
s 83F	ins No. 53, 1988, s 9 amd No. 31, 1990, s 7; No. 14, 1999, s 25
s 84	amd No. 31, 1987, s 15
s 85	amd No. 31, 1987, s 15; No. 47, 2001, s 25
s 86	amd No. 31, 1987, s 15
s 87	amd No. 31, 1987, s 15; No. 71, 1994, s 8; No. 17, 1996, s 6; No. 14, 1999, s 30
s 88	amd No. 31, 1987, s 15; No. 71, 1994, s 9; No. 17, 1996, s 6; No. 14, 1999, s 30
s 89	amd No. 31, 1987, s 15; No. 47, 1990, s 6; No. 71, 1994, s 10; No. 17, 1996, s 6; No. 14, 1999, s 30
s 90	amd No. 31, 1987, s 15
s 93	amd No. 31, 1987, s 15
s 94	amd No. 31, 1987, ss 13 and 15 sub No. 80, 1991, s 14 amd No. 36, 2000, s 34
s 95	amd No. 36, 2000, s 35
s 96	amd No. 72, 1979, s 23; No. 31, 1987, s 14; No. 36, 2000, s 36
s 97	amd No. 43, 1994, s 17; No. 50, 2002, s 21
pt V hdg	sub No. 5, 2005, s 5
pt V	
div 1 hdg	ins No. 5, 2005, s 5
s 100	amd No. 72, 1979, s 24; No. 31, 1987, s 15; No. 36, 2000, s 47 sub No. 5, 2005, s 5
pt V	
div 2 hdg	ins No. 5, 2005, s 5
s 101	sub No. 72, 1979, s 25 amd No. 19, 2000, s 9 sub No. 5, 2005, s 5
s 102	sub No. 72, 1979, s 25; No. 5, 2005, s 5
s 103	rep No. 72, 1979, s 25 ins No. 5, 2005, s 5
ss 104 – 105	sub No. 5, 2005, s 5
s 105A	ins No. 36, 2000, s 48 sub No. 5, 2005, s 5
pt V	
div 3 hdg	ins No. 5, 2005, s 5
s 105B	ins No. 47, 2001, s 26 amd No. 41, 2004, s 10 sub No. 5, 2005, s 5
ss 105C – 105H	ins No. 5, 2005, s 5
pt V	
div 4 hdg	ins No. 5, 2005, s 5
ss 105J – 105N	ins No. 5, 2005, s 5

pt V	
div 5 hdg	ins No. 5, 2005, s 5
ss 105P – 105S	ins No. 5, 2005, s 5
pt VA hdg	ins No. 5, 2005, s 5
ss 105T – 105Y	ins No. 5, 2005, s 5
s 106	amd No. 31, 1987, s 15
s 107	amd No. 72, 1979, s 26; No. 31, 1987, s 15; No. 36, 2000, s 37
s 108	amd No. 31, 1987, s 15
s 108A	ins No. 72, 1979, s 27
ss 109 – 111	amd No. 31, 1987, s 15
s 112	amd No. 31, 1987, s 15; No. 36, 2000, s 49
ss 113 – 115	amd No. 31, 1987, s 15
s 116	amd No. 31, 1987, s 15; No. 17, 1996, s 6
pt VIIA hdg	ins No. 4, 1988, s 10
s 116A	ins No. 4, 1988, s 10 amd No. 142, 1989, s 9; No. 55, 1990, s 22; No. 14, 1999, s 26; No. 47, 2001, s 27
ss 116B – 116C	ins No. 4, 1988, s 10
s 116D	ins No. 4, 1988, s 10 amd No. 14, 1999, s 30
s 116E	ins No. 4, 1988, s 10 amd No. 59, 1990, s 4; No. 19, 1998, s 5; No. 14, 1999, s 30; No. 17, 2001, s 17; No. 7, 2005, s 3
s 116F	ins No. 4, 1988, s 10
s 117	amd No. 31, 1987, s 15
s 118	amd No. 31, 1987, s 15
s 119	amd No. 72, 1979, s 28
s 120	amd No. 31, 1987, s 15
s 121	amd No. 72, 1979, s 29
s 123	amd No. 31, 1987, s 15 sub No. 14, 1999, s 27
s 123A	ins No. 68, 1983, s 92 sub No. 14, 1999, s 28 amd No. 32, 2000, ss 7 and 33; No. 36, 2000, s 38; No. 50, 2002, s 22; No. 34, 2003, s 29
s 124	amd No. 31, 1987, s 15; No. 47, 2001, s 28
s 125	amd No. 31, 1987, s 15
s 126	amd No. 31, 1987, s 15; No. 34, 1987, s 9; No. 42, 1989, s 10; No. 14, 1999, s 30; No. 32, 2000, ss 8 and 34; No. 47, 2001, s 29
s 127	amd No. 31, 1987, s 15; No. 14, 1999, s 30
s 128	amd No. 31, 1987, s 15
s 129	amd No. 31, 1987, s 15; No. 43, 1994, s 18; No. 14, 1999, s 29; No. 32, 2000, s 35
pt IX hdg	ins No. 5, 2005, s 6
ss 130 – 135	ins No. 5, 2005, s 6