

NORTHERN TERRITORY OF AUSTRALIA

STAMP DUTY ACT

As in force at 3 May 2011

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 3 May 2011

STAMP DUTY ACT

An Act relating to stamp duty

Part 1 Preliminary

1 Short title

This Act may be cited as the *Stamp Duty Act*.

2 Commencement

This Act shall come into operation on 1 July 1978.

4 Interpretation

(1) In this Act:

agreement, in relation to a conveyance, includes:

- (a) a memorandum of agreement; and
- (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.

associate, see subsection (2).

authorised stamp means a stamp approved by the Commissioner for use under this Act to denote the payment of duty (or that no duty is payable).

beneficiary includes an object of a discretionary trust.

brother/sister – a person is the brother or sister of another if they have one or both parents in common.

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.

change in control, of a corporation – a change in control of a corporation occurs when a person, or a group of associates, becomes able to exercise, or to control (directly or indirectly) the exercise of, a majority of the votes exercisable at meetings of the directors or shareholders of the corporation.

change in control, of a trust includes the following:

- (a) if a person has a power to appoint and revoke the appointment of the trustee:
 - (i) a change of, or a change in control of, the person who has the power; or
 - (ii) a variation in, or the transfer or some other disposition of, the power;
- (b) a change of trustee, a change in control of a corporate trustee, or the appointment of an additional trustee;
- (c) a change of, or a change in control of, a person in a position to make or influence (directly or indirectly) a decision to vest, or to refrain from vesting, an interest in the trust property in a beneficiary.

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 the following:

- (a) the grant of property but not:
 - (i) the grant of a lease other than a convertible Crown lease; or
 - (ii) the grant of a patent;
- (b) the transfer or assignment of property;
- (c) the vesting of property in, or the accrual of property to, a person;
- (d) the foreclosure of a mortgagor's equity of redemption in mortgaged property;
- (e) a transaction that is taken to be, or treated as, a conveyance under this Act;
- (f) an agreement to make a conveyance;
- (g) an instrument effecting or evidencing a conveyance (including a decree, judgment or order of a court);
- (h) an instrument, agreement, transaction or arrangement that would operate as a conveyance but for a statutory condition requiring Ministerial approval or registration.

conveyee means a person to whom property is granted, transferred or assigned, in whom property is vested, or to whom property accrues under a conveyance.

declaration of trust means a declaration (other than a declaration by will or testamentary instrument) that property vested, or to be vested, in the declarant is, or is to be, held in trust and includes such a declaration whether made unilaterally or by agreement and whether made with or without the knowledge of the beneficiaries.

discretionary trust means a trust under which:

- (a) the identity of a beneficiary, or the quantum of the interest in trust property to be taken by a beneficiary, is to be determined by the trustee or some other person; or
- (b) an interest in trust property vests if a discretion conferred under the terms of the trust is not exercised; or

- (c) an interest in trust property has vested but is liable, under the terms of the trust, to be divested on the exercise of a discretion by the trustee or some other person;

and includes a trust classified by regulation as a discretionary trust but does not include a trust solely for charitable purposes or a trust of a class excluded by regulation from the ambit of this definition.

dutiable instrument means an instrument:

- (a) that is classified as a dutiable instrument in Schedule 1; or
- (b) that is liable to duty under any other provision of this Act.

dutiable property means:

- (a) land; and
- (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; and
- (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; and
- (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; and
- (e) a right to use in the Territory information or technical knowledge connected with such a business undertaking; and
- (f) a patent, a registered design or a copyright; and
- (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 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; and

- (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 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; and
- (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; or
 - (ii) materials held for use in manufacture; or
 - (iii) goods under manufacture; or
 - (iv) livestock; or
 - (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 to the conveyee; or
 - (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.

dutiable transaction – a transaction is a dutiable transaction if:

- (a) a liability to ad valorem duty is imposed under this Act in respect of the transaction; or
- (b) an instrument effecting, or evidencing, the transaction is liable to ad valorem duty under this Act; or
- (c) the transaction was not effected by an instrument but, if it had been, the instrument would have been liable to ad valorem duty under this Act; or

- (d) a statement or return is required under this Act in relation to the transaction and the statement or return is liable to ad valorem duty.

dutiable value, see section 4AB.

duty means stamp duty.

entity A, for a merger vesting of property, see section 4E(2).

entity B, for a merger vesting of property, see section 4E(4).

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.

exempt entity, see section 4F(1).

exempt instrument or transaction means an instrument or transaction that:

- (a) is exempt from duty under Schedule 2 or any other provision of this Act; or
- (b) is exempted from duty under the regulations.

exempt use, see section 4F(2) and (3).

family means 2 or more persons connected with each other by family relationships.

family company means a company of which all shareholders are members of the same family.

family relationship means any of the following relationships:

- (a) the relationship between a person and the person's spouse;
- (b) the relationship between a person and the person's child or remoter lineal descendant;
- (c) the relationship between a person and the child or remoter lineal descendant of the person's spouse;
- (d) the relationship between a person and the person's brother or sister;

- (e) the relationship between a person and the child or remoter lineal descendant of a brother or sister;
- (f) the relationship between a person and the spouse of a person with whom a relationship exists under paragraph (b), (c), (d) or (e).

family trust means a trust whose beneficiaries are, and may only be, any of the following in relation to a particular family:

- (a) members of the family;
- (b) family companies of the family.

farm-in agreement means a written agreement under which a person is entitled to acquire an interest in (but not full ownership of) a mining tenement by carrying out exploration work, or contributing a proportionate part of the cost of exploration work to be carried out, on the area of that mining tenement after the date of the agreement.

farming land means land, or an estate or interest in land, that is farming property.

farming property means property used solely or principally for farming purposes and includes an estate or interest in such property.

farming purposes means:

- (a) the business of primary production; or
- (b) a purpose classified by regulation as a farming purpose.

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

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.

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.

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; and
- (b) the granting of a cover note or 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:

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

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

interest in property includes the potential beneficial interest of an object of a discretionary trust.

interposed trust, for Part 3, Division 8A, see section 56C(1).

land means land in the Territory and includes:

- (a) an estate or interest in land; and
- (b) a lease of land or mining tenement (or an interest in a lease of land or mining tenement); and
- (c) a fixture to land (including a tenant's fixture or a fixture associated with mining operations conducted, or formerly conducted, on the land).

land-holding corporation means a land-holding corporation as defined for Part 3, Division 8A and includes a unit trust scheme that is treated as a land-holding corporation for the purposes of that Division.

lease includes:

- (a) a lease granted under an Act; and
- (b) a sublease; and
- (c) an agreement for a lease or sublease; and
- (d) a franchise arrangement.

legislation includes subordinate legislation and an instrument made under principal or subordinate legislation.

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; and

- (b) insurance under an instrument securing the grant of an annuity for a term dependent upon the termination or continuance of human life; and
- (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.

listed corporation, for Part 3, Division 8A, see section 56C(1).

listed unit trust scheme, for Part 3, Division 8A, see section 56C(1).

majority shareholder, of a corporation, means a person who has a substantial holding (as defined in section 9 of the Corporations Act 2001) related to voting shares carrying 50% or more of the votes attached to voting shares in the corporation.

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; and
- (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.

merger vesting, of property, see section 4E.

merging entities, for a merger vesting of property, see section 4E(2) or (3).

merging entity or entities, for a merger vesting of property, see section 4E(4).

mining tenement means a statutory licence, lease or authorisation to explore for, recover or exploit resources (such as minerals or geothermal resources) to be found in or under the surface of the earth and includes an exploration licence or an exploration retention licence under the *Mining Act*.

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*.

object, of a discretionary trust, means a person in whom an interest in the trust property might vest, or might be vested, under the terms of the trust.

partnership acquisition, see section 27(2).

partnership interest means a partnership interest as defined in Part 3, 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.

primary production means:

- (a) the growing or cultivation of trees, crops or other vegetation (including fungi) for sale or for sale of their produce; or
- (b) the breeding, rearing or maintenance of living creatures for sale as food or for the production of skins, shells or bodily produce for sale.

property includes an estate or interest in property.

recognised financial market means a financial market that is a member of the World Federation of Exchanges or is declared by regulation to be a recognised financial market.

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

related – a corporation is related to another corporation if they are related corporations under section 50 of the Corporations Act 2001.

relevant acquisition has the meaning in section 56P.

relevant entity, for a merger vesting of property, see section 4E(5).

rent includes any amount of GST payable in relation to the supply of the property for which rent is paid or payable.

responsible party, to a dutiable instrument or dutiable transaction, means the party responsible for the payment of duty on the instrument or transaction and includes, where a dutiable transaction is not effected by a dutiable instrument, a person who would have been liable to pay duty on a dutiable instrument if such an instrument had existed.

spouse includes de facto partner.

stamp duty means duty imposed under this Act or the former *Stamp Duty Act*.

statutory vesting means the vesting of property by or under legislation of the Commonwealth, a State or Territory of the Commonwealth or a jurisdiction outside Australia.

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

tax avoidance scheme has the meaning in section 4B.

trust property includes both capital and income of a trust.

trustee includes the following:

- (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.

unencumbered value of property, see section 4A.

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.

unlisted unit trust scheme, for Part 3, Division 8A, see section 56C(1).

- (2) A person is an associate of another if:
- (a) they are members of the same family; or
 - (b) they are related corporations; or
 - (c) one is a corporation and the other is a director of, or a shareholder in, the corporation; or
 - (d) they are both trustees of the same trust, or of different trusts with a common beneficiary, or one is a trustee and the other is a beneficiary of the same trust; or
 - (e) a chain of relationships can be traced between them under one or more of the above paragraphs.
- (3) Legislation is taken to provide for the statutory vesting of property if it makes a person or body the successor in title to property of another person or body.
- (4) An instrument is duly stamped if the payment of duty on the instrument or the non-liability of the instrument to duty is indicated by:
- (a) an authorised stamp on the instrument; or
 - (b) an endorsement made on the instrument in a manner and form approved by the Commissioner.

4A Unencumbered value

- (1) The unencumbered value of property is the full value of the property free from encumbrances (including any GST payable on the supply of the property).

- (2) The unencumbered value of land is to be determined with regard to:
- (a) the use of the land that would best enhance its commercial value; and
 - (b) commercial advantages (such as goodwill) that:
 - (i) attach to the location or other aspects of the land; and
 - (ii) would affect the price that a reasonable purchaser would be willing to pay for the land; and
 - (c) information about the land that would, if known to a reasonable purchaser, affect the price the purchaser would be willing to pay for the land.

Examples

- 1 *The value that accrues to premises because they have been licensed or approved for a particular commercial purpose would be taken into account under paragraph (b) in valuing the premises.*
- 2 *Information about the results achieved from exploratory or other operations in the area of a mining tenement would be taken into account under paragraph (c) in valuing the tenement.*

- (3) Information relevant to the value of property will, for the purposes of valuation, be regarded as an attribute of the property and not as a separate form of property to which an independent value can be attributed.
- (4) An encumbrance includes:
- (a) a mortgage or charge; or
 - (b) a debt or liability that might give rise to a right of recourse against the property; or
 - (c) any agreement or arrangement (including a lease) that has the effect of reducing the value of the property unless:
 - (i) the parties to the agreement or arrangement are not associates; and
 - (ii) the Commissioner is satisfied that the agreement or arrangement was not made for a purpose (collateral or otherwise) of reducing the value of the property;

but does not include an easement or restrictive covenant unless the Commissioner is of the opinion that it was created or entered into for a purpose (collateral or otherwise) of reducing the value of the property.

- (5) For the purpose of assessing duty on a particular conveyance the Commissioner may, if satisfied that improvements on land subject to the conveyance have been built by, or at the expense of, the conveyee, reduce the unencumbered value of the land by an amount that reflects, in the Commissioner's opinion, the value of the improvements at the date of the conveyance.

4AB Dutiable value

- (1) The dutiable value of dutiable property is:
- (a) if consideration is, or is to be, given for the property – the amount or value of the consideration or the unencumbered value of the property (whichever is the greater); or
 - (b) if no consideration is given for the property – the unencumbered value of the property.
- (2) If the amount of consideration is dependent on future contingencies, the dutiable value of the property will be assessed on the assumption that the contingencies will operate so as to maximise the consideration to be given for the property.
- (3) However, if it is later shown, on an application for reassessment of duty, that the consideration actually given is less than the assumed consideration, and there is no further scope for contingent increase, the Commissioner may reassess the dutiable value of the property taking into account the amount or value of the consideration actually given.
- (4) If:
- (a) dutiable property consists of an interest in an exploration licence or exploration retention licence under the *Mining Act*; and
 - (b) the conveyance of the interest arises out of the operation of a farm-in agreement; and
 - (c) the exploration work, or the contribution to the cost of exploration work, in respect of which the right to the interest arises under the farm-in agreement has actually been carried out or made;

then, for the purpose of assessing the dutiable value of the interest, its unencumbered value will be determined as at the date of the farm-in agreement and the consideration will be taken to be the amount by which the consideration given for the interest exceeds the reasonable cost of the exploration work or (where the consideration consists of a contribution to the cost of exploration

work) the relevant proportion of that reasonable cost.

4AC Valuing certain interests in property

- (1) If property is held in common by 2 or more persons, the value of the interest of an owner in the property is assessed by multiplying the total value of the property by a fraction representing the owner's proportionate share of ownership.
- (2) The interest of a joint owner of property is valued as if both or all joint owners were tenants in common in equal shares.
- (3) This section is applicable both to unencumbered and dutiable value.

4B Tax avoidance schemes

- (1) In this section:

scheme includes:

- (a) an agreement, arrangement or undertaking:
 - (i) in whatever form; and
 - (ii) wherever entered into, made or given; and
 - (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) A tax avoidance scheme is a scheme of which a purpose (collateral or otherwise) is, in the Commissioner's opinion:
 - (a) to avoid or reduce the duty that would be payable, apart from the scheme, under this Act; or
 - (b) to obtain the benefit of an exemption or concession from duty that would not be available apart from the scheme.
 - (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 as if it were a conveyance of that dutiable property from the franchisee mentioned in paragraph (a) to the person who is the franchisee under it.

4D Surrender of property amounts to conveyance in certain circumstances

- (1) A person surrenders property:
 - (a) if the person relinquishes, renounces or abandons the property; or
 - (b) if the person owns the property and it is cancelled, abrogated, forfeited or extinguished.
- (2) A surrender of property is a conveyance of the property if:
 - (a) the surrender results in an accretion to the interest of someone (the **conveyee**) in property to which the surrender relates; or

Example

The surrender of a reversionary interest, or an interest in remainder.

- (b) the surrender removes a restriction on the right that someone (the **conveyee**) has to use the property to which the surrender relates; or

Example

The surrender of a lease over property.

- (c) the surrender enables someone (the **conveyee**) to convey the property or substantially similar property to a third person.

Example

The surrender of a franchise arrangement.

4E Merger vesting of property

- (1) This section prescribes circumstances in which there is a **merger vesting** of property.
- (2) A merger of 2 or more relevant entities (the **merging entities**) in circumstances where another relevant entity (**entity A**) results as a consequence of the merger is taken to be a merger vesting of all of the property of the merging entities in entity A.
- (3) A merger of 2 or more relevant entities (the **merging entities**) with and into each other in circumstances where each of the merging entities continues in existence is taken to be a merger vesting in the merging entities, jointly, of 50% (in value) of all of the property of the merging entities.
- (4) The merger of 1 or more relevant entities (the **merging entity or entities**) with and into another entity (**entity B**) in any other circumstances is taken to be a merger vesting of all of the property of the merging entity or entities in entity B.

- (5) In this section:

relevant entity means a company or unit trust scheme.

4F Exempt entities and uses

- (1) An **exempt entity** is:
- (a) a public hospital; or
 - (b) a public benevolent institution; or
 - (c) a religious institution; or
 - (d) a public education institution; or

- (e) a council, society, organisation or other body established or carried on exclusively or principally for the promotion of the interests of a school (other than a school carried on for profit); or
 - (f) a non-profit organisation having as its sole or dominant purpose a charitable, benevolent, philanthropic or patriotic purpose.
- (2) An **exempt use**, of property by an exempt entity, is a use for purposes other than the carrying on of a commercial activity by or on behalf of the entity.
- (3) However, a use that competes with another entity in the conduct of the other entity's business undertaking is not an exempt use regardless of how the exempt entity uses any funds received from the use.

Part 2 Stamp duty

5 Imposition of duty

- (1) Stamp duty is imposed, in accordance with this Act:
- (a) on dutiable instruments; and
 - (b) in respect of dutiable transactions.
- (2) However, duty is not imposed on, or in respect of, an exempt instrument or transaction.

6 Rate of duty

The rate of duty is the rate specified in Schedule 1 for an instrument or transaction of the relevant class.

Part 3 Liability to duty

Division 1 General

9 Time for lodgement of instrument etc.

- (1) Subject to this Act, a dutiable instrument must be lodged with the Commissioner for the assessment of duty:
- (a) within 60 days after it is first executed; or

- (b) if it becomes legally effective without execution – within 60 days after it becomes legally effective.
- (2) The obligation imposed by subsection (1) applies:
 - (a) whether the instrument is first executed within or outside the Territory; and
 - (b) whether the instrument is within or outside the Territory.
- (3) However, the obligation to lodge a dutiable instrument for the assessment of duty does not extend to:
 - (a) a motor vehicle certificate of registration; or
 - (b) a policy of insurance (or life insurance); or
 - (c) an instrument that is exempt from duty under any of the following provisions of Schedule 2:
 - (i) items 9 to 13;
 - (ii) item 15.
- (3A) In addition, the obligation to lodge and pay duty on a dutiable instrument does not apply to a conveyance (other than a conveyance to which Division 8AB applies) or grant of a lease that does not proceed unless a subsequent sale or other disposition of the dutiable property the subject of the transaction (the **relevant transaction**):
 - (a) is a sub-sale or transaction having the effect of a sub-sale, even if the subsequent conveyance is executed by the person who was the vendor in the relevant transaction; or
 - (b) is the result of a conveyance by direction, whether in writing or not, initiated by the conveyee in the relevant transaction.
- (4) If the instrument is a statement or return it must be lodged on or before the last day allowed for its lodgement.
- (5) Duty on an instrument, or to be assessed by reference to an instrument, must be paid on or before the last day allowed for lodgement of the instrument unless a later date is fixed in a notice of assessment of duty.

- (6) A person who is liable to duty on an instrument, or to be assessed by reference to an instrument, must ensure that:
- (a) the instrument is lodged with the Commissioner for the assessment of duty on or before the last day allowed for its lodgement; and
 - (b) the duty is paid on or before the last day allowed for payment.
- (7) If this Act does not make a particular party to a dutiable transaction liable for payment of duty on the transaction, or an instrument related to the transaction, then all parties are jointly and severally liable for the payment of duty.

9A Unstamped instruments not to be registered

A person must not register, enrol or enter a dutiable instrument in an official register or record unless it is duly stamped.

Maximum penalty: 50 penalty units.

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 Apportioning dutiable property in or related to Territory

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.

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

- (1) For section 9BA, 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:

$$\text{Error! Bookmark not defined.} V \times \frac{(TS-IS)}{TS}$$

where:

V is the dutiable value of all the property subject to the conveyance that would, assuming it were wholly situated in the Territory or wholly related to the business carried on in the Territory, be dutiable property; 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; 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:

$$\text{Error! Bookmark not defined.} V \times \frac{NTS}{TS}$$

where:

V is the dutiable value of all the property subject to the conveyance that would, assuming it were wholly situated in the Territory or wholly related to the business carried on in the Territory, be dutiable property; and

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.

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; and
- (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 (including any applicable interest and penalty tax), 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 Duty on statutory corporations and Government Business Divisions

An instrument to which a statutory corporation or a Government Business Division is a party is not exempt from stamp duty unless the instrument is of a class exempted by or under this Act from duty.

11 Denotation of payment of duty

- (1) The payment of duty is denoted by authorised stamp or in some other way approved by the Commissioner.
- (2) If the tax officer responsible for stamping a document indicates the amount of duty paid in handwriting placed on or near an authorised stamp, the handwriting is taken to form part of the authorised stamp.

15 Single instrument relating to multiple transactions

If a single instrument relates to 2 or more distinct transactions in respect of which duty is payable, the instrument is separately liable to duty in respect of each of those transactions.

16 Multiple instruments relating to a single transaction

- (1) If 2 or more instruments together relate to the same transaction, and both or all instruments are required to give effect to the transaction, the instruments must be treated as a single instrument executed at the time when the instruments became legally effective.

Example

If a conveyance consists of a written offer followed by a written acceptance, both instruments would be treated as a single instrument of conveyance taking effect on the date of the acceptance.

- (2) If one such instrument is duly stamped with the duty applicable to the transaction as a whole, another instrument relating to the same transaction and referring to the duly stamped instrument, will also be regarded as duly stamped.

17 Stamping of counterparts or copies

The Commissioner must, if satisfied that an instrument is a counterpart or copy of an instrument that has been duly stamped, stamp the counterpart or copy with a stamp indicating that the original has been duly stamped.

17A Stamp duty on related instruments

(1) A conveyance to give effect to an agreement to convey dutiable property is to be stamped without payment (or further payment) of ad valorem duty if:

- (a) the agreement is duly stamped as a conveyance; and
- (b) the conveyance is subsequent to, and in conformity with, the agreement; and
- (c) no further dutiable transaction affecting the dutiable property has occurred between the date of the agreement and the date of the conveyance.

(2) However:

- (a) the conveyee must be the person, identified in the agreement, to whom the dutiable property was agreed to be conveyed; or
- (b) the Commissioner must be satisfied that the person so identified entered into the agreement as agent for the conveyee; or
- (c) the Commissioner must be satisfied that the person so identified entered into the agreement on behalf of:
 - (i) a corporation that was, as at the date of the agreement, yet to be incorporated or acquired by the person so identified; or
 - (ii) a trust that was, at the date of the agreement, yet to be established by the person so identified;

and that the conveyee is the corporation or the trustee of the trust.

(2A) In addition, a transfer of dutiable property is to be stamped without payment (or further payment) of ad valorem duty if:

- (a) an agreement for the conveyance of the property is duly stamped; and

- (b) the purchaser under the agreement and transferee under the transfer:
 - (i) are related under subsection (2B) when the agreement is made and when it is completed or settled; and
 - (ii) except for the trustee of a family trust mentioned in subsection (2B)(c), will not hold the property as trustee; and
 - (c) no valuable consideration is given by the transferee to the purchaser; and
 - (d) the transfer occurs at the same time as, or proximately with, the completion or settlement of the agreement.
- (2B) The purchaser and transferee are related if:
- (a) they are in a family relationship; or
 - (b) one of them is an individual who is a shareholder of a family company and the other is the family company; or
 - (c) one of them is a beneficiary in a family trust and the other is a trustee of the family trust; or
 - (d) they are related corporations.
- (3) In this section, a reference to a conveyance extends to a lease that is liable to ad valorem duty.

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; or
- (b) been party to an agreement or a beneficiary or trustee of a trust; or

- (c) issued or sold any shares or rights relating to shares other than subscriber shares, rights relating to subscriber shares or shares issued to replace subscriber shares of the same value on their redemption.

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; or
- (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) A conveyance of shares in a corporation (the **target corporation**) is not dutiable as the acquisition of a relevant interest in a land-holding corporation if:
 - (a) the target corporation becomes, as a result of the conveyance, the subsidiary of another corporation (the **interposed corporation**); and
 - (b) this section applies to the conveyance.
- (2) Subject to subsection (3), this section applies to a conveyance of shares if, and only if:
 - (a) the interposed corporation is a corporation with limited liability; and

- (b) the interposed corporation was dormant from its registration until the resolution to acquire the shares in the target corporation; and
 - (c) the interposed corporation acquires at least 90% of the issued shares in, and the voting control over, the target corporation as a result of the conveyance; and
 - (d) at least 90% of the consideration for the conveyance of the shares in the target corporation consists of shares in the interposed corporation that are issued to the shareholders of the target corporation; and
 - (e) the value of the consideration for the acquisition of the shares conveyed from each shareholder in the target corporation is equal to the value of the shares held by the shareholder immediately before the shares were conveyed; and
 - (f) immediately after the conveyance of the shares in the target corporation at least 90% of the shares in the interposed corporation consisted of the shares issued to the shareholders of the target corporation as consideration for the acquisition of their shares; and
 - (g) if, because of the conveyance of shares, 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 target corporations before the conveyance took effect.
- (3) However, this section does not apply to a conveyance of shares if:
- (a) the conveyance is a tax avoidance scheme, or part of a tax avoidance scheme; or
 - (b) the Commissioner is of the opinion that the conveyance is a scheme, or part of a scheme, of which a purpose (collateral or otherwise) is to frustrate the recovery of duty, tax or royalty that is payable to the Territory.

20 Exemption: conveyances and transfers between group corporations

- (1) Subject to subsections (2) and (4):
- (a) duty is not payable on a conveyance of dutiable property, or a transfer of a motor vehicle certificate of registration, from one group corporation to another group corporation; and

- (b) duty mentioned in Division 8A is not payable in respect of a relevant acquisition if, and to the extent that, the relevant acquisition is the result of a conveyance of marketable securities from one group corporation to another group corporation.
- (2) Subsection (1) does not apply unless:
- (a) the conveyer or transferor did not hold, and the conveyee or transferee will not hold, the property as trustee; and
 - (b) the conveyer and conveyee, or the transferor and transferee, of the property are group corporations in the same corporate group; and
 - (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; or
 - (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
 - (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; or
 - (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:
- (a) the conveyance or transfer is a tax avoidance scheme, or part of a tax avoidance scheme; or
 - (b) the Commissioner is of the opinion that the conveyance or transfer is a scheme, or part of a scheme, of which a purpose (collateral or otherwise) is to frustrate the recovery of duty, tax or royalty that is payable to the Territory.

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); or
- (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; or
- (c) the conveyor and conveyee or transferor and transferee are interposed corporation and target corporation (within the meaning of section 19); or
- (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; or

- (e) the conveyer 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.

23 Reassessment of duty

- (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 19 or 20; and
 - (b) within 3 years after the conveyance, transfer or relevant acquisition:
 - (i) the conveyer 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 a reassessment of the duty payable on the conveyance, transfer or relevant acquisition as if the exemption from duty under section 19 or 20 had never applied to the conveyance, transfer or relevant acquisition.

- (2) The Commissioner must make a reassessment under subsection (1) even if:
 - (a) the limitation period for making reassessments of tax under the *Taxation Administration Act* has expired; or
 - (b) he or she has made a ruling under section 25 that the exemption from duty under section 19 or 20 applies to the conveyance, transfer or relevant acquisition.
- (3) If the Commissioner makes a reassessment under subsection (1), all corporations that belonged to the relevant corporate group at the time the property was conveyed or transferred, or the relevant acquisition was made, are jointly and severally liable to pay the reassessed duty (including interest and penalty tax).
- (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 subsection (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 12 months 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 reassessment required

- (1) 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 to the Commissioner that the event has occurred; and
 - (b) lodge with the Commissioner all documents necessary for the reassessment of duty.
- (2) If subsection (1) is not complied with, each party to the conveyance, transfer or relevant acquisition is guilty of an offence.

Maximum 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 or 20 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 must be accompanied by all relevant information.
- (3) The Commissioner must give the applicant notice of the ruling.

26 Application for exemption regarding corporate re-construction

- (1) The parties to a conveyance, transfer or relevant acquisition referred to in section 19 or 20 may apply to the Commissioner for an exemption under that section from the payment of duty.
- (2) The application must be accompanied by all relevant information.
- (3) If the Commissioner is satisfied that the applicant is entitled to the exemption sought in the application, the Commissioner must grant the exemption accordingly.

- (4) If the Commissioner previously gave a ruling in favour of the applicant in relation to the relevant transaction, the Commissioner is bound by the ruling unless it appears to the Commissioner that:
- (a) the circumstances of the actual transaction differ in a material respect from the circumstances of the proposed transaction as disclosed in the application for the ruling (or the accompanying information); or
 - (b) the applicant failed to disclose, or misrepresented, a material fact in the application for the ruling.

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; or
 - (b) if the partner is entitled only to share in the profits of the partnership and has given or is required to give consideration, or has made or is required to make a contribution to the capital of the partnership, for the 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; and
 - (b) a person's partnership interest may increase:
 - (i) under the terms of a partnership agreement; or
 - (ii) on the retirement of a partner from a partnership; or
 - (iii) on a change in the terms of a partnership agreement effecting a change in the interests of the partners; 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.
- (3) The acquisition of a partnership interest (a **partnership acquisition**) is a conveyance.
- (4) The partnership interest is taken to be a proportionate interest in dutiable property held by or on behalf of the partnership equivalent to the percentage defining the extent of the partnership interest.

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; and
 - (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 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; or
- (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 duty on policies of insurance

Stamp duty 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 duty is imposed unless the insurer is registered under this Division.

Maximum penalty: 50 penalty units.

- (2) Nothing in subsection (1) affects the liability of an Australian insurer for duty 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 that intends to grant, issue or renew a policy of insurance on which duty is imposed may apply to the Commissioner for registration in the Register.
- (2) The Commissioner must, on 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 must notify the insurer of its registration under this Division.
- (4) The Commissioner must revoke the registration of an insurer under this Division on receiving notification of the winding-up of the insurer, or on receiving an application from the insurer to revoke the registration.

42 Returns in respect of insurance business

An Australian insurer registered, or required to be registered, under this Division must, within 21 days after the end of each month:

- (a) lodge with the Commissioner a return detailing all premiums received in that month by the insurer in respect of which duty is imposed; and
- (b) pay the duty payable in respect of those premiums.

43 Refund of duty for surrendered or cancelled insurance

If an insurer pays duty in respect of a premium that is later refunded in whole or part to the insured because of cancellation of the policy

of insurance, a refund of overpaid duty is to be made under the *Taxation Administration Act* if (and only if) the Commissioner is satisfied, on application by the insurer, that the refund would not result in a windfall gain to the insurer.

44 Insurer may recover duty from the insured person

Nothing in this Act prevents an insurer from recovering duty paid or payable on a policy of insurance from the person who pays the premiums on the policy.

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 (directly or indirectly) by an overseas insurer must, within 30 days after effecting the insurance, lodge with the Commissioner a return containing the approved particulars (including details of the premiums paid for policies of insurance in respect of which duty is imposed) and pay the relevant amount of duty.

(2) 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 duty 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 duty on life policies

Stamp duty 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 must not carry on, in the Territory, the business of a life insurer issuing life policies in respect of which duty is imposed unless it is registered under this Division.

Maximum penalty: 50 penalty units.

- (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 intending to issue a life policy in respect of which duty is imposed may apply to the Commissioner for registration.
- (2) The Commissioner must, on 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 must notify the life insurer of its registration under this Division.
- (4) The Commissioner must revoke the registration of a life insurer under this Division on receiving notification of the winding-up of the life insurer, or on receiving an application from the life insurer to revoke the registration.

48 Returns in respect of life insurance business

A life insurer registered, or required to be registered, under this Division must, within 21 days after the end of each month:

- (a) lodge with the Commissioner a return of all life policies issued in that month by the life insurer in respect of which duty is imposed; and
- (b) pay the duty payable in respect of those policies.

49 Life insurer not prevented recovering duty from person paying premiums

Nothing in this Act prevents a life insurer from recovering duty paid or payable under this Act on a life policy from the person who pays the premiums on the 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 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 duty and charge duty accordingly.

Division 8 Conveyances and leases

50 Persons liable to pay duty

Subject to this Act:

- (a) duty imposed on a conveyance is payable by the conveyee;
and
- (b) 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; and
 - (b) a statement under section 83B; and
 - (c) a memorandum created for the purposes of section 86, 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 86 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
 - (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.

56A Refund or remission of duty if transaction does not proceed etc.

- (1) If:
- (a) duty has been paid, or is payable, on a conveyance (other than a conveyance to which Division 8AB applies) or on the grant of a lease; and

- (b) the conveyance or grant does not proceed:
 - (i) because of non-execution by an essential party, non-fulfilment of a condition precedent or the operation of some provision of the instrument; or
 - (ii) because the entitlements purportedly conferred by the conveyance or grant are extinguished by rescission, cancellation or annulment of the conveyance or grant;

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

- (1A) Subsection (1) does not apply in relation to the grant of a lease if the lessee or an associate of the lessee has occupied the leased property (or property substantially the same as the leased property), except as a result of the sale of the property to the lessee or associate, after the date when the grant did not proceed.
- (1B) In addition, the Commissioner must remit the duty assessed (but not paid) on a dutiable instrument if, under section 9(3A), there is no obligation to pay duty on the instrument because the transaction does not proceed.
- (2) A refund or remission of duty may only be made or granted under the *Taxation Administration Act* on an application:
 - (a) made within 90 days (or a longer period allowed by the Commissioner) after it first became apparent that the conveyance or grant would not proceed (which, in the case of rescission, cancellation or annulment, will be taken to be the date of the rescission, cancellation or annulment); and
 - (b) supported by all documents relevant to the application and such other evidence as the Commissioner may require.
- (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 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 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.
- (5) If duty has been remitted or refunded under subsection (1) or (1B) for a transaction, and the Commissioner subsequently forms the opinion there has been a subsequent sale or other disposition of the dutiable property the subject of the transaction of a type mentioned in subsection (4)(a) or (b), the instruments evidencing the transaction remain liable to duty.
- (6) An assessment may be made under subsection (5) even though the period of limitation for making reassessments has expired.

Division 8AA Declarations of trust

56BA Declaration of trust

- (1) A declaration of trust is a conveyance.
- (2) The declaration is to be assessed for duty as a conveyance to the declarant of all the dutiable property subject to the trust (irrespective of whether the declarant has, or may acquire, a beneficial interest under the trust).

Division 8AAA Changes in beneficiaries and trustees of discretionary trusts

56BAB Imposition of duty on addition or change of beneficiary under discretionary trust

- (1) The following transactions are conveyances for the re-constitution of a trust:
 - (a) the addition of a person or class of persons as a beneficiary or beneficiaries of a discretionary trust;
 - (b) the sale (or other disposition) of a beneficial interest (or potential beneficial interest) by a beneficiary of a discretionary trust;
 - (c) an amendment or variation to the terms of a non-discretionary trust that has the effect of creating a discretionary trust.
- (2) Such a conveyance is to be assessed for duty as a conveyance of all the dutiable property subject to the trust.
- (3) All the trustees and any person who becomes a beneficiary as a result of the conveyance are jointly and severally liable for the duty payable on the conveyance.

- (4) A transaction is not dutiable under this section if:
- (a) all the existing beneficiaries, and all new beneficiaries, are members of the same family; or
 - (b) the Commissioner is satisfied the transaction is not a tax avoidance scheme or part of a tax avoidance scheme.

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

- (1) Subject to this section, if:
- (a) a change in control of a corporate beneficiary under a discretionary trust and a change in control 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;

the changes in control together constitute a conveyance occurring on the date of the later of the changes.

- (2) The conveyance is to be regarded as a conveyance for the reconstitution of the trust and is to be assessed for duty as a conveyance of all the dutiable property subject to the trust.
- (3) The beneficiary subject to the change in control, and all the trustees, are jointly and severally liable for the duty imposed on the conveyance.
- (4) However, duty is not payable if the Commissioner is satisfied that the concurrent or consecutive changes in control are not a tax avoidance scheme or part of a tax avoidance scheme.

Division 8AB Options to convey dutiable property

56BB Definitions

In this Division:

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

option property means the dutiable property 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; 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 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 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) If the option property is conveyed to a third person, the reduction of ad valorem duty available to the first person under subsection (6) will only extend to the third person if the Commissioner is satisfied:
- (a) that:
 - (i) the first person was, at the time of the transfer of the call option, acting as agent of the third person; or
 - (ii) the third person is a corporation or the trustee of a trust that the first person was, at the time of the transfer of the call option, in the process of incorporating, establishing or acquiring; and
 - (b) that there has been no sub-sale or other dutiable dealing with the option property between the time of the transfer of the call option and the conveyance to the third person.

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; and
 - (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 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) A refund or remission of duty may only be made or granted under the *Taxation Administration Act* on an application:
- (a) made within 90 days (or a longer period allowed by the Commissioner) after the expiry of the put or call option (whichever is last to expire); and
 - (b) supported by all documents relevant to the application and such other evidence as the Commissioner may require.

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***); and
 - (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; or
- (b) if the business is a company – a shareholder in the business;
or
- (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 Relevant acquisitions in certain corporations and unit trust schemes entitled to land

56C Interpretation

(1) In this Division:

acquire, in relation to an interest or a shareholding in a land-holding corporation, includes acquire the interest or shareholding in any of the following ways:

- (a) the allotment or issue of a share, not being the issue of a share to a member on registration of the corporation;
- (b) the redemption, surrender or cancellation of a share;
- (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 over shares;
- (cc) if shares are held subject to a discretionary trust – the addition of a beneficiary or class of beneficiaries to the existing beneficiaries under the trust;
- (cd) if shares are held subject to a discretionary trust – a change in control of a corporate beneficiary under the trust and a change in control of the trust if both changes:
 - (i) occur within a 12 month period; and
 - (ii) arise from (or substantially from) one transaction or one series of transactions;
- (ce) a statutory vesting of shares;
- (cf) a merger vesting of shares;

but does not include an acquisition:

- (d) that occurs solely as the result of:
 - (i) the appointment of a receiver or trustee in bankruptcy; or
 - (ii) the appointment of a liquidator; or

- (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; and
 - (B) has been approved by the court; and
 - (C) is not a tax avoidance scheme or part of a tax avoidance scheme; or
- (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.

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 has the meaning in section 56Q, and includes a significant interest.

interposed trust, see section 124-1045 of the *Income Tax Assessment Act 1997* (Cth).

land includes anything fixed to the land (irrespective of whether it would be regarded as a fixture at common law).

linked entity, of a corporation, has the meaning in section 56NA(1).

listed corporation means a corporation that is on the official list of a recognised financial market if the listing is not a tax avoidance scheme or part of a tax avoidance scheme.

listed unit trust scheme means a unit trust scheme that is on the official list of a recognised financial market if the listing is not a tax avoidance scheme or part of a tax avoidance 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.

significant interest has the meaning in section 56Q(4).

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.

unlisted unit trust scheme means a unit trust scheme that is not a listed unit trust scheme.

- (3) For the purposes of this Division, the following persons are related:
 - (a) natural persons who are spouses of each other, or who are related as parent and child;
 - (b) related corporations;
 - (c) trustees of the same trust, or of different trusts if there is a beneficiary common to both trusts;
 - (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 of a trust of which the natural person is a beneficiary;
 - (f) a corporation and a trustee of a trust of which:
 - (i) the corporation, or a majority shareholder, director or secretary of the corporation, is a beneficiary; or
 - (ii) a related corporation is a beneficiary;

- (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 the acquisition of an interest in a corporation by a declaration of trust over shares – the trustees and beneficiaries of the 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 to the existing beneficiaries under a discretionary trust – the trustees of, and the additional beneficiary or class of beneficiaries under, the trust.
- (4) But a person will not be regarded as related to another if the Commissioner is satisfied that they are not, and have not been, acting in concert in relation to the acquisition of interests in a corporation.
- (6) For the purposes of this Division, and subject to section 56CA, 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 (whether acting alone or together with related persons) 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 (whether acting alone or together with related persons) by reason of having acquired an interest in the corporation to:
 - (i) effect or compel an alteration to the constitution or rules; or
 - (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, and subject to section 56CA, 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.
- (9) Farming land is not to be taken into account as land of a land-holding corporation for the purpose of assessing duty on a relevant acquisition if:
- (a) the transaction would, assuming it were a conveyance of the farming land between the parties to the relevant acquisition, be exempt from duty under section 87; and
 - (b) the parties acquiring the relevant interest intend that the farming land will continue to be used solely or principally for farming purposes; and
 - (c) the parties from whom the relevant interest is acquired held the relevant interest for at least 5 years before the date of the relevant acquisition or the land-holding corporation acquired the farming land before those parties acquired their interest in it.
- (10) For this Division, if an interest or a shareholding in a corporation is acquired by virtue of a declaration of trust over shares:
- (a) the interest or shareholding vested or to be vested in the declarant is taken to be the interest or shareholding acquired; and
 - (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 to the existing beneficiaries under a discretionary trust:
- (a) the interest or shareholding over which the trust is declared is taken to be the interest or shareholding acquired; and
 - (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.
- (11A) For this Division, the addition of a beneficiary or class of beneficiaries to the existing beneficiaries under a discretionary trust includes any of the following:
- (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;
 - (d) the transfer or other disposition by a beneficiary of his or her beneficial interest under the trust.
- (11B) If the effect of an amendment or variation of the terms of a non-discretionary trust is to create a discretionary trust, this Division applies in relation to the discretionary trust as if, at the time the amendment or variation is made:
- (a) there are beneficiaries or classes of beneficiaries already existing under the discretionary trust; and
 - (b) the beneficiaries or classes of beneficiaries under the discretionary trust are added to the existing beneficiaries or classes of beneficiaries.

- (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 mentioned in paragraph (cd) of the definition of **acquire**:
- (a) the interest or shareholding over which the trust is declared is taken to be the interest or shareholding acquired; and
 - (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:
- (a) the interest or shareholding that vests in the person or body concerned is taken to be the interest or shareholding acquired; and
 - (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.
- (14) The following provisions apply to a merger vesting of shares in a land-holding corporation:
- (a) for a merger vesting mentioned in section 4E(2):
 - (i) a 100% shareholding in each of the merging entities is taken to be the shareholding acquired; and
 - (ii) entity A is taken to be the person who acquired the shareholding; and
 - (iii) the acquisition is taken to have occurred when the merger is completed;
 - (b) for a merger vesting mentioned in section 4E(3):
 - (i) a 50% shareholding in each of the merging entities is taken to be the shareholding acquired; and
 - (ii) the merging entities are taken together to be the persons who acquired the shareholding; and

- (iii) the acquisition is taken to have occurred when the merger is completed;
 - (c) for a merger vesting mentioned in section 4E(4):
 - (i) a 100% shareholding in, or in each of, the merging entity or entities is taken to be the shareholding acquired; and
 - (ii) entity B is taken to be the person who acquired the shareholding; and
 - (iii) the acquisition is taken to have occurred when the merger is completed.
- (15) Subsection (16) applies to an acquisition of an interest in a corporation if all of the following conditions are satisfied:
 - (a) the acquisition is made only for one of the following purposes:
 - (i) to enable the person (other than the corporation) from whom the interest is acquired to obtain finance under an arrangement (the **finance arrangement**), whether by way of renewal of the finance arrangement or otherwise;
 - (ii) to enable the person to obtain an extension of the period for which finance was obtained under the finance arrangement;
 - (b) one of the following applies:
 - (i) the acquisition alone does not constitute a significant interest in the corporation;
 - (ii) an amount was deducted from the duty charged on a statement lodged under section 56K in relation to the acquisition under section 56M(2)(c)(ix).
- (16) For this Division, if the conditions in subsection (15) are satisfied:
 - (a) the person from whom the interest is acquired is taken to be still holding the interest; and
 - (b) the person acquiring the interest is taken not to be holding the interest.
- (17) Subsection (16) ceases to have effect in relation to the persons mentioned in that subsection at the earlier of the following:
 - (a) the enforcement or termination of the finance arrangement;

- (b) the person mentioned in subsection (16)(b) is required under section 56K(7) to reodge a statement.

56CA Arrangement relating to certain entitlement

- (1) This section applies if the Commissioner is satisfied:
 - (a) any of the following entitlements of a person is reduced (including reduced to nil) as a direct or indirect result of an arrangement:
 - (i) an entitlement in the distribution of the property of a corporation as a shareholder on the winding up of the corporation as described in section 56C(6);
 - (ii) an entitlement on the distribution of a trust as described in section 56C(7); and
 - (b) one of the following (a **relevant transaction**) occurs:
 - (i) an acquisition of an interest or shareholding by a person in a land-holding corporation;
 - (ii) an event that would be such an acquisition apart from the arrangement.
- (2) Unless the Commissioner is satisfied the arrangement is not a tax avoidance scheme or part of a tax avoidance scheme:
 - (a) the arrangement must be disregarded for the purposes of this Act in relation to the relevant transaction; and
 - (b) the Commissioner may determine that, in relation to the relevant transaction, on a specified date:
 - (i) the person has made an acquisition of an interest or shareholding in the land-holding corporation that is 100% or a lesser specified percentage; or
 - (ii) the person has an entitlement to receive 100%, or a lesser specified percentage, of the unencumbered value of the property of the corporation or trust mentioned in subsection (1)(a).

Example for subsection (2)(a) and (b)(i)

An amendment of the constitution of a corporation has the effect of reducing to nil the entitlement of all of its shareholders to the distribution of its property on its winding up. The Commissioner considers the amendment is an arrangement covered by this section.

There has been a transfer of shares in the corporation (which is a relevant transaction in relation to a land-holding corporation mentioned in subsection (1)(b)). The reduction of the shareholders' entitlement must be disregarded for this Act in relation to the transfer under subsection (2)(a). In addition, the Commissioner determines under subsection (2)(b)(i) that, in relation to the transfer, a person has acquired a 90% interest in the corporation on a specified day. As a result, the person is liable to pay stamp duty in relation to the acquisition.

- (3) To avoid doubt, subsection (2) has effect in relation to the application of section 56C(6) and (7) for the purposes of this Act.
- (4) Without limiting subsection (1), an **arrangement** includes:
 - (a) a scheme as defined in section 4B(1); and
 - (b) all or part of the constitution or rules of a corporation, or of the constituent document of a trust; and
 - (c) an amendment to the constitution, rules or constituent document.

56CAA Acquisition of interest by share transfer

- (1) This section applies to an acquisition of an interest in a corporation that is, or is to be, evidenced by a transfer of shares.
- (2) For this Act, the acquisition is taken to occur, on the earliest of the following dates:
 - (a) the date on which the documents evidencing the transfer of, or the title to, the shares are delivered to the person acquiring the shares or someone else on that person's behalf;
 - (b) the date on which all or any part of the consideration for the shares is given to the person from whom the shares are acquired or someone else on that person's behalf;
 - (c) the date on which the name of the person acquiring the shares is registered on the register of the members of the corporation.
- (3) Subsection (4) applies if:
 - (a) the acquisition is taken to occur on the date mentioned in subsection (2)(b); and
 - (b) none of the events mentioned in subsection (2)(a) and (c) has occurred; and
 - (c) the transaction for the transfer of the shares is rescinded, annulled or otherwise terminated.

- (4) The Commissioner may:
 - (a) determine the acquisition did not occur; and
 - (b) assess or reassess a person's liability to pay duty accordingly.
- (5) If an acquisition of an interest in relation to shares in a corporation is taken to have occurred on a day under subsection (2):
 - (a) the person acquiring the interest is taken to have become a shareholder of the corporation in relation to those shares on that day; and
 - (b) the person from whom the interest is acquired is taken to have ceased to be a shareholder of the corporation in relation to those shares on that day.
- (6) If the Commissioner subsequently determines under subsection (4) that the acquisition did not occur:
 - (a) the person mentioned in subsection (5)(a) is taken never to have been the shareholder of the corporation in relation to those shares as provided under that subsection; and
 - (b) the person mentioned in subsection (5)(b) is taken never to have ceased to be a shareholder of the corporation in relation to those shares as provided under that subsection.

56D Lodgement of statements by trustees

- (1) If a person by a relevant acquisition acquires an interest in a land-holding corporation 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 beneficiary under a trust is related to another person who has acquired an interest in a corporation; and
 - (b) the beneficiary's interest when combined with that of the related person exceeds the trustee's interest;

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.

56K When statement to be lodged

- (1) Where, by a relevant acquisition, a person acquires an interest in a land-holding corporation, that person shall prepare and lodge with the Commissioner a statement in respect of that acquisition.
 - (2) If a relevant acquisition occurs through the aggregation of the interests of related persons, the requirement imposed by subsection (1) extends to each related person, but compliance by one of them is to be regarded as compliance by all.
 - (3) The statement under subsection (1) must be lodged within 60 days after the occurrence of the relevant acquisition.
 - (4) The statement must include:
 - (a) the name and address of the person who has made the relevant acquisition (including the names and addresses of any related persons to whom subsection (2) applies); and
 - (b) the date of the relevant acquisition; and
 - (c) particulars of the interest acquired and of all interests previously acquired by the person or a related person and the date on which each of those interests was acquired; and
 - (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 each acquisition of an interest in the corporation by the person or a related person during the relevant period; and
 - (e) details of any duty paid under this Division in respect of any such acquisition within the relevant period.
 - (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.
- (5A) Subsection (5B) applies if:
- (a) an amount is deducted from duty chargeable on a statement prepared and lodged under subsection (1) for a relevant acquisition of an interest by a person in a land-holding corporation because of section 56M(2)(c)(i); and
 - (b) the interposed trust becomes an unlisted unit trust scheme at any time within 3 years after the scheme is completed.

- (5B) Despite section 56M(3), the person must, within 60 days after the interposed trust becomes an unlisted unit trust scheme:
- (a) relodge the statement; and
 - (b) pay duty (including interest and penalty tax) on it as if the deduction had never applied.
- (6) Subsection (7) applies if:
- (a) an amount is deducted from the duty chargeable on a statement prepared and lodged under subsection (1) for a relevant acquisition of an interest by a person in a corporation because of section 56M(2)(c)(ix); and
 - (b) it becomes apparent that neither of the following events will occur within 5 years after the relevant acquisition (or a longer period approved by the Commissioner in writing):
 - (i) the person from whom the interest was acquired reacquiring the interest;
 - (ii) if the relevant acquisition was by way of a mortgage – the mortgagee exercising the mortgagee's power of sale in selling the interest to someone other than the person mentioned in subparagraph (i).
- (7) The person mentioned in subsection (6)(a) must, within 30 days after it becomes apparent that the event mentioned in subsection (6)(b)(i) or (ii) will not occur within the 5 years or longer period mentioned in that subsection:
- (a) relodge the statement; and
 - (b) pay duty (including interest and penalty tax) on the statement as if the deduction had never applied.
- (8) The Commissioner may reassess duty on an instrument in relation to an acquisition, even though the time limit for reassessment under the *Taxation Administration Act* may have passed, if:
- (a) the duty was assessed on the basis that an amount is to be deducted under section 56M(2)(c)(ix); but
 - (b) a statement is required to be relodged in relation to the acquisition under subsection (7) (whether or not the statement is in fact relodged).

- (9) A person commits an offence if the person fails to comply with subsection (1), (2), (3), (5B) or (7).

Maximum penalty: 100 penalty units.

56M Statement chargeable with duty

- (1) A statement lodged under section 56K is chargeable with duty at the ad valorem rate applicable to a conveyance of dutiable property with a dutiable value determined under section 56R.
- (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* as in force before 1 July 2006 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 this paragraph; or
 - (ii) paid in respect of the acquisition of an interest referred to in paragraph (c); and
 - (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) if each of the following applies:
 - (A) the acquisition is made for giving effect to a scheme that would qualify as a roll-over under Subdivision 124-Q of the *Income Tax Assessment Act 1997* (Cth);
 - (B) when the scheme is completed, the interposed trust will not be an unlisted unit trust scheme;

- (C) the acquisition is not a tax avoidance scheme or part of a tax avoidance scheme;

Note for subparagraph (i)

If the interposed trust becomes an unlisted unit trust scheme at any time within 3 years after the scheme is completed, the statement lodged under section 56K(1) is required to be relogged for the Commissioner to reassess and impose duty as if the deduction did not apply, see section 56K(5A) and (5B).

- (v) if the interest is acquired within the relevant period by virtue of the vesting of marketable securities under a declaration of trust over shares 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 to the existing beneficiaries under a discretionary trust and either of the following applies:
- (A) the existing and the additional beneficiaries are members of the same family;
- (B) the addition is not a tax avoidance scheme or part of a tax avoidance scheme;
- (vii) the acquisition occurs through a change in control of a corporate beneficiary and a change in control of a discretionary trust and the Commissioner is satisfied that the changes are not a tax avoidance scheme or part of a tax avoidance scheme;
- (ix) the Commissioner is satisfied the acquisition is made only for any of the following purposes:
- (A) to enable a person (other than the corporation) from whom the interest is acquired to obtain finance under an arrangement (the **finance arrangement**), whether by way of renewal of the finance arrangement or otherwise;
- (B) to enable the person to obtain an extension of the period for which finance was obtained under the finance arrangement;

- (C) to enable the person or someone providing finance to the person under the finance arrangement to enforce or terminate the finance arrangement;
 - (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 as in force before 1 July 2006 or by virtue of section 19 or 20 as in force on or after 1 July 2006; and
 - (d) the amount, if any, paid under Division 8B (but not refunded) for the part of the duty for a merger vesting of land within the relevant period in relation to the relevant acquisition.
- (2A) Subject to subsection (2B), there is to be deducted from the duty chargeable on a statement lodged under section 56K the amount payable by a person under this Division in respect of the proportion of the dutiable value of the acquisition of an interest in the corporation in respect of land to which the corporation is entitled if the interest is acquired within the relevant period by the person or any related persons and a direct conveyance of the land from the person who held the interest to the person who acquired the interest:
- (a) would not be liable to ad valorem duty because of a law of the Territory (other than Division 2); or
 - (b) would be exempt from duty because of an order under the *Family Law Act 1975* (Cth):
 - (i) relating to the marriage or former marriage (including a void marriage) of the person who held the interest and the person who acquired the interest; and
 - (ii) the person who acquired the interest is not an agent or trustee of another person.
- (2B) Subsection (2A) applies only if an amount payable in respect of the acquisition of the interest in the corporation has not been deducted under subsection (2)(c).
- (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 – within 60 days after the occurrence of the relevant acquisition.

56N Corporation to which Division applies

- (1) This Division applies to a land-holding corporation in which a person acquires a relevant acquisition.
- (2) A land-holding corporation is a corporation entitled to land that has an unencumbered value of at least \$500 000.

56NA Linked entity

- (1) A linked entity of a corporation is a person who is part of a chain of persons:
 - (a) that includes the corporation; and
 - (b) that is comprised of one or more links; and
 - (c) in which a link exists if a person, whether alone or together with other linked entities, would be entitled to receive at least 20% of the unencumbered value of the property of another person in the chain (the *property-holder*).
- (2) For subsection (1)(c), a person's entitlement at a particular time is determined in the following way:
 - (a) if the property-holder is a corporation – as an entitlement to participate as a shareholder in the distribution of the property on a winding-up of the corporation, at that time, calculated in accordance with section 56C(6);
 - (b) if the property-holder is a trustee of a trust – as an entitlement on the distribution of the trust, at that time, determined in accordance with section 56C(7).

56NB Unencumbered value of land of corporation

- (1) The unencumbered value of land to which a corporation is entitled at a particular time is the aggregate of the following amounts:
 - (a) the unencumbered value, at that time, of land to which the corporation is entitled in its own right;
 - (b) the portion of the unencumbered value, at that time, of land to which the corporation would be entitled if each linked entity were to be wound up.
- (2) For subsection (1)(b), the portion of the unencumbered value to which the corporation would be entitled is the value determined without regard to any liabilities of a linked entity.

- (3) For this section:
- (a) a person is taken to be entitled to land that is subject to an agreement for the sale or purchase of the land by the person; and
 - (b) a person who is entitled to land as a co-owner of the land is taken to be entitled to the whole of the land unless the Commissioner is satisfied the reason for the person being a co-owner is not to defeat the object of this Division.

56P Meaning of *relevant acquisition*

- (1) An acquisition of an interest in a corporation by a person is a ***relevant acquisition*** for this Division:
- (a) if it is an acquisition that alone constitutes a significant interest in the corporation; or
 - (b) if, when aggregated with other interests in the corporation held by the person, or the person and related persons, it constitutes a significant interest in the corporation; or
 - (c) if, by the acquisition, a person who has a significant interest in the corporation or an interest referred to in paragraph (b) acquires a further interest in the corporation.
- (2) In addition, the Commissioner may determine a person has made a relevant acquisition on a specified date of an interest in a corporation that is 100% or a lesser specified percentage if the Commissioner considers:
- (a) the person has acquired the control of the corporation; and
 - (b) the control is acquired otherwise than by a relevant acquisition mentioned in subsection (1).
- (3) For subsection (2), a person acquires the control of a corporation if the person acquires the capacity to determine or influence the outcome of decisions about any of the corporation's financial and operating policies (whether directly or indirectly), taking into account all of the following:
- (a) any enforceable rights the person has over those policies;
 - (b) any practical influence the person can exert over those policies;

- (c) any other practice or behaviour of the person that might affect those policies (whether or not the practice or behaviour involves a breach of an agreement or of a trust).
- (4) A reference to a person in subsections (2) and (3) includes a reference to a person acting alone or together with related persons.

56Q Interest and significant interest in 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.
- (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.
- (4) A person has a significant interest in a corporation if the person's entitlement, as mentioned in subsection (3), is:
 - (a) for a listed corporation or listed unit trust scheme:
 - (i) for a merger vesting of shares – 50% or more of all the property of the corporation or scheme; or
 - (ii) otherwise – 90% or more of all the property of the corporation or scheme; or
 - (b) for another corporation or unit trust scheme – 50% or more of all the property of the corporation or scheme.

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 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.

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; and
 - (b) the corporation in which the interest is acquired; and
 - (c) any related person with whose interest the person's interest is aggregated;

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

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

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

- (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

Unless the context indicates or requires otherwise, this Division applies to a unit trust scheme as if:

- (a) the unit trust scheme were a corporation; and
- (b) a unit in the unit trust scheme were a share in a corporation; and
- (c) the acquisition of units in the unit trust scheme were the acquisition of shares in a corporation; and

- (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.

Division 8B Imposition of duty on statutory vesting and merger vesting of dutiable property

56W Duty on a statutory and merger vesting of dutiable property

- (1) The statutory or merger vesting of dutiable property is a conveyance of the property.
- (2) The relevant entity, body or person in whom the dutiable property vests is liable for duty on the conveyance at the ad valorem conveyance rate.
- (3) The relevant entity, body or person in whom the dutiable property vests must, within 60 days after the date of the vesting, lodge a statement with the Commissioner:
 - (a) identifying the dutiable property subject to the vesting; and
 - (b) stating the unencumbered value of the dutiable property.

Maximum penalty: 50 penalty units.

- (4) Duty is payable on the statement as if it were the instrument of conveyance.

Division 9 Motor vehicle certificate of registration

57 Owner to pay duty

- (1) If a certificate of registration for a motor vehicle is, on issue, liable to duty, the applicant for registration of the motor vehicle must, before the issue of the certificate, pay to the Registrar an amount equal to the duty payable on the certificate.

Maximum penalty: 50 penalty units.

- (2) If a motor vehicle:
 - (a) has been kept in the Territory for a period of less than 12 months; and

- (b) has, during that period, been available for hire or lease to the public from a person carrying on the business of hiring or leasing motor vehicles (without provision of a driver) to the public;

the Commissioner may, on application, assess the duty payable on the certificate as a proportion of the duty actually paid that the number of months the vehicle was kept in the Territory during the registration period (counting a part of a month as a whole month) bears to the number of months in the registration period.

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 dutiable value of the motor vehicle.
- (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; and
- (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 15 Transactions otherwise than by dutiable instruments

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

- (1) If:
 - (a) a dutiable transaction occurs; and
 - (b) the transaction is not effected or evidenced by a dutiable instrument or such an instrument existed but has been lost or destroyed;

the responsible party must lodge a statement in respect of the transaction with the Commissioner.

- (2) The statement:
 - (a) must be in the approved form; and

- (b) must be lodged within 60 days after the date of the dutiable transaction to which it relates.
- (3) The statement is a dutiable instrument that is liable to duty in the same way, and to the same extent, as if it were an instrument effecting the dutiable transaction executed on the date of that transaction.
- (4) Duty on the statement must be paid on or before the last day allowed for its lodgement or a later date fixed in a notice of assessment of duty.
- (5) If a statement is not lodged, or duty is not paid, as required by this section, the responsible party is guilty of an offence.

Maximum penalty: 100 penalty units.

- (6) A statement is not liable to duty under this section if the Commissioner is satisfied that the relevant transaction:
 - (a) is not a tax avoidance scheme or part of a tax avoidance scheme; and
 - (b) the relevant transaction is:
 - (i) the appointment of a receiver or trustee in bankruptcy; or
 - (ii) the appointment of a liquidator under the Corporations Act 2001; or
 - (iii) the making of a compromise or arrangement under Part 5.1 of the Corporations Act 2001; or
 - (iv) the issue or redemption of units in a unit trust scheme; or
 - (v) a transfer of property by way or pledge or security; or
 - (vi) the release or termination of an option to purchase dutiable property.

83C Stamping of other instruments related to same transaction

- (1) If a statement relating to a dutiable transaction is duly stamped under this Division, the statement is to be regarded as a duly stamped instrument evidencing the relevant transaction.
- (2) It follows that, if an instrument effecting the relevant transaction or another instrument evidencing the transaction is later produced for stamping, it may be stamped without further payment of ad valorem duty.

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.

Maximum penalty: \$10,000.

Part 4 Assessment and stamping of instruments**84 Assessment of duty on instruments**

- (1) The Commissioner must assess the duty payable on an instrument lodged for assessment.
- (2) On payment of the amount of duty assessed (together with any interest and penalty tax), the Commissioner must stamp the instrument with a stamp indicating the payment of duty.
- (3) An instrument is not to be stamped until the assessed duty (together with any interest and penalty tax) has been paid.
- (4) If the Commissioner decides, on the assessment, that no duty is payable, the Commissioner may stamp the instrument with a stamp indicating that no duty is payable.

85 Retaining and impounding of instruments

- (1) The Commissioner may retain possession of an instrument lodged for assessment of duty until the assessment is completed and any duty payable (including interest and penalty tax) has been paid.
- (2) The Commissioner may retain possession of a dutiable instrument seized in the course of an authorised investigation until an assessment is completed and any duty payable (including interest and penalty tax) has been paid.

- (3) This section does not relieve the Commissioner from the obligation to produce the instrument before a court when required to do so by order or process of a court.

86 Creation of memorandum for the purpose of assessment

- (1) If the Commissioner has reason to suspect that:
- (a) a dutiable transaction has occurred; but
 - (b) one of the following applies:
 - (i) no instrument has been lodged in relation to the transaction for the assessment of duty;
 - (ii) it is impractical or impossible for the instrument, or a copy of the instrument, to be lodged for assessment or reassessment of duty;

the Commissioner may create a memorandum of the transaction.

- (2) The memorandum is to be assessed for duty as if it were a dutiable instrument relating to the dutiable transaction brought into existence on the date of the dutiable transaction and lodged for the assessment of duty under this Act on the date of its creation by the Commissioner.

- (3) If:
- (a) a motor vehicle registered under the *Motor Vehicles Act* is sold or disposed of; and
 - (b) one of the following applies:
 - (i) the new owner does not apply to the Registrar for transfer of registration of the vehicle within the period required by that Act;
 - (ii) the duty paid by the new owner in relation to the registration of the vehicle is not based on the dutiable value of the vehicle as worked out under section 59;

the Commissioner may create a memorandum and assess it for duty as the certificate of registration that might have been issued if an application for transfer of registration had been made as required.

- (4) If a memorandum is created under subsection (3), the new owner of the vehicle is liable to interest and penalty tax on the basis that a default in the payment of the duty assessed on the memorandum

occurred at the end or the period within which an application for transfer of registration should have been made.

Part 5 Exemptions, concessions and rebates

Division 1 Family farming properties

87 Exemption from duty on conveyance of family farming property to family members, family companies or family trusts

- (1) A conveyance of farming property is exempt from stamp duty if the Commissioner is satisfied, on an application for exemption, that:
 - (a) the main purpose of the conveyance is to pass, or facilitate the passing, of a farming property, or the benefit of a farming property, from one generation of a family to a later generation or between members of the same generation; and
 - (b) the conveyance is eligible for exemption from stamp duty under this section.
- (2) A conveyance of farming property is eligible for exemption from stamp duty if the conveyor is a natural person who does not hold the property as trustee and the property is conveyed to one or more of the following:
 - (a) a member of the conveyor's family who will not hold the property as trustee;
 - (b) a company that will not hold the property as trustee if:
 - (i) all the shareholders are members of the conveyor's family; and
 - (ii) no shareholder holds or will hold any shares in the company as trustee;
 - (c) a person who will hold the property as trustee if:
 - (i) all the beneficiaries of the trust are members of the conveyor's family; and
 - (ii) the trust deed includes provisions, that cannot be altered, specifying that only members of the conveyor's family may be beneficiaries of the trust and no beneficiary may be the trustee of another trust.

- (3) A conveyance of farming property is eligible for exemption from stamp duty if the conveyor is a family company that does not hold the property as trustee (the **conveyor company**) and the property is conveyed to one or more of the following:
- (a) a member of the same family as the shareholders of the conveyor company who will not hold the property as trustee;
 - (b) a family company that will not hold the property as trustee (the **conveyee company**) if:
 - (i) the shareholders of the conveyor company and the conveyee company are all members of the same family; and
 - (ii) no shareholder of the conveyee company holds or will hold any shares in that company as trustee;
 - (c) a person who will hold the property as trustee if:
 - (i) the beneficiaries of the trust and the shareholders of the conveyor company are all members of the same family; and
 - (ii) the trust deed includes provisions, that cannot be altered, specifying that only members of the relevant family may be beneficiaries of the trust and no beneficiary may be the trustee of another trust.
- (4) A conveyance of farming property is eligible for exemption from stamp duty if the conveyor is the trustee of a family trust (the **conveyor trust**) and the property is conveyed to one or more of the following:
- (a) a member of the family for which the conveyor trust is established who will not hold the property as trustee;
 - (b) a family company that will not hold the property as trustee if:
 - (i) the shareholders of the company and the beneficiaries of the conveyor trust are all members of the same family; and
 - (ii) no shareholder holds or will hold any shares in the company as trustee;

- (c) a person who will hold the property as trustee of a family trust (the **conveyee trust**) if:
 - (i) the beneficiaries of the conveyor trust and the conveyee trust are all members of the same family; and
 - (ii) the trust deed includes provisions, that cannot be altered, specifying that only members of the relevant family may be beneficiaries of the conveyee trust and no beneficiary may be the trustee of another trust.
- (5) However, a conveyance is not eligible for exemption from stamp duty under this section:
 - (a) if the Commissioner is satisfied the conveyance arises from a scheme with the principal purpose of taking advantage of the benefit of the exemption from stamp duty; or
 - (b) if a conveyee does not intend to use the farming property solely or principally for farming purposes; or
 - (c) if the conveyance also conveys property that is not farming property; or
 - (d) if any prescribed condition is not complied with; or
 - (e) if the conveyance occurs within 5 years after the date of an earlier conveyance of the same, or part of the same, farming property for which an exemption was allowed under this section (or a corresponding previous enactment).

Division 2 Home incentive schemes

88 Interpretation

- (1) In this Division:

Australian citizen, see the *First Home Owner Grant Act*.

built – a home is taken to have been built on land if it is relocated, and affixed, to the land.

comprehensive home building contract, see section 3 of the *First Home Owner Grant Act*.

conveyance includes the grant or transfer of a lease or sublease mentioned in section 5(2) of the *First Home Owner Grant Act*.

conveyee includes a lessee and sublessee under a lease or sublease mentioned in section 5(2) of the *First Home Owner Grant Act*.

first home owner concession means a concession from the payment of duty on a conveyance of land equal to the lesser of:

- (a) the total amount of duty assessed as payable on the conveyance; or
- (b) the duty payable on a conveyance of land with a dutiable value of \$540 000.

home, see the *First Home Owner Grant Act*.

off-the-plan contract, see section 13B of the *First Home Owner Grant Act*.

owner builder, see section 3 of the *First Home Owner Grant Act*.

period for occupancy, of a home, means:

- (a) if the home is built on the land at the relevant time – 12 months after the date the conveyees become entitled to possession of the land under the conveyance; or
- (b) if there is no home built on the land at the relevant time and the conveyees are owner builders of the home or have entered into a comprehensive home building contract for the home – the earlier of the following:
 - (i) 5 years after the date the conveyees become entitled to possession of the land;
 - (ii) 12 months after completion of the building of the home; or
- (c) if there is no home built on the land at the relevant time and the conveyees have entered into an off-the-plan contract for the home – 12 months after the date the conveyees become entitled to possession of the land under the conveyance; or
- (d) in any case – the longer period approved by the Commissioner under this Division.

permanent resident, see the *First Home Owner Grant Act*.

prescribed period means:

- (a) a continuous period of 6 months; or

- (b) a shorter continuous period approved by the Commissioner under this Division.

principal place of residence rebate means a concession from the payment of duty on a conveyance of land equal to the lesser of:

- (a) the total amount of duty assessed as payable on the conveyance; or
- (b) \$3 500.

relevant interest means:

- (a) an interest (other than a non-conforming interest) that is a relevant interest under section 5 of the *First Home Owner Grant Act*; or
- (b) an interest in residential property in a State or another Territory of the Commonwealth that is a relevant interest (but not a non-conforming interest) under a law of that State or Territory corresponding to the *First Home Owner Grant Act*.

relevant time, in relation to a conveyance of land, means:

- (a) if one instrument effects or evidences the conveyance – the time when the instrument is executed; or
- (b) if more than one instrument effects or evidences the conveyance – the time when the first of the instruments is executed.

residential property, see the *First Home Owner Grant Act*.

senior, pensioner and carer concession means a concession from the payment of duty on a conveyance of land equal to the lesser of the following:

- (a) the total amount of duty assessed as payable on the conveyance;
 - (b) \$8 500.
- (2) If the Commissioner is satisfied that, at the relevant time, a person:
- (a) is married but not cohabiting with the spouse to whom the person is married (the ***married spouse***); and
 - (b) has no intention of resuming cohabitation;

the married spouse is not to be regarded for the purposes of the application as the person's spouse.

89 First home owner concession

- (1) The conveyee or conveyees of land are entitled to the first home owner concession if, on an application for the concession, the Commissioner is satisfied that:
- (a) the conveyee or each of the conveyees is an individual; and
 - (b) the conveyee is, or at least one of the conveyees is, at least 18 years of age at the relevant time; and
 - (c) the conveyee, or at least one of the conveyees, is an Australian citizen or a permanent resident at the time of making the declaration mentioned in subsection (8); and
 - (d) no conveyee and no spouse of a conveyee at the relevant time has previously received the first home owner concession or a corresponding concession under an earlier enactment; and
 - (e) no conveyee, and no spouse of a conveyee at the relevant time, has previously had a relevant interest in a residential property that was occupied by the conveyee or spouse as a residence; and
 - (f) no conveyee has a beneficial interest in the land the subject of the conveyance; and
 - (g) the conveyee or conveyees will acquire the whole beneficial interest in the land the subject of the conveyance; and
 - (h) no conveyee will acquire an interest in the land in the capacity of a trustee; and
 - (i) the conveyee or conveyees will occupy a home on the land or to be built on the land as their principal place of residence for the prescribed period commencing within the period for occupancy; and
 - (j) either of the following applies:
 - (i) if at the relevant time there is a home on the land or the conveyance is an off-the-plan contract – the dutiable value of the land does not exceed \$750 000;
 - (ii) if at the relevant time there is no home on the land – the dutiable value of the land does not exceed \$385 000; and

- (k) the conveyee or conveyees become entitled to possession of the land within:
 - (i) 12 months after settlement of the conveyance; or
 - (ii) the longer period approved by the Commissioner under subsection (12).
- (3) If a conveyee or conveyees fail, or will fail, to occupy a home on the land as their principal place of residence:
 - (a) within the period for occupancy; or
 - (b) for the prescribed period in accordance with this section;

the conveyee or conveyees must, within 30 days after the date on which it first becomes apparent that the failure will occur, give written notice to the Commissioner of the failure or impending failure.

Maximum penalty: 50 penalty units.

Note

This subsection does not apply to a conveyee who has an exemption from the relevant occupancy requirement.

- (3A) The Commissioner may reassess duty on the conveyance even though the time limit for reassessment under the *Taxation Administration Act* has passed if the conveyee or conveyees would otherwise receive the concession if the time limit had not passed.
- (4) If a conveyee or conveyees fail to occupy a home on the land as their principal place of residence:
 - (a) within the period for occupancy; or
 - (b) for the prescribed period in accordance with this section;

the Commissioner must, even though the time limit for reassessment under the *Taxation Administration Act* may have passed, reassess duty on the conveyance on the basis that the conveyee or conveyees were not eligible for the first home owner concession unless, in the Commissioner's opinion, there are special reasons for not making the reassessment.

- (5) If duty is reassessed under subsection (4), and duty (and any interest and penalty tax) payable on the reassessment is paid, then, for the purposes of any future application by the conveyee, or any of the conveyees, for the first home owner concession:
- (a) the grant of the concession will be ignored; and
 - (b) the interest in residential property acquired under the conveyance on which duty was reassessed will be ignored.
- (6) This section applies to the acquisition by a person, other than the Chief Executive Officer (Housing), of an interest in land under a scheme administered by the Chief Executive Officer (Housing) under section 22 or 24 of the *Housing Act* as if the person were acquiring 100% of the land or, if 2 or more persons are acquiring the interest, the persons were acquiring 100% of the land in the same proportions as they are acquiring the interest.
- (7) If a person acquires land or an interest in land as guardian of a person under a legal disability, this section applies as if the person under the legal disability were:
- (a) the conveyee of the land or interest; and
 - (b) the applicant for the first home owner concession; and
 - (c) if the concession is granted – the recipient of the concession.
- (8) A person applying for the first home owner concession, and the person's spouse (if any), must give to the Commissioner a declaration, in the approved form, providing the information relating to the application that the Commissioner requires.
- (9) The Commissioner may exempt a conveyee from the requirement that the conveyee be at least 18 years of age at the relevant time if the Commissioner is satisfied that the conveyance does not form part of a scheme to circumvent limitations on, or requirements affecting, eligibility for or entitlement to a first home owner concession.
- (10) If the Commissioner refuses to exempt a conveyee under subsection (9), the conveyee's acquisition of a relevant interest in residential property under the conveyance will be ignored for the purposes of a future application by the conveyee for the first home owner concession.

- (11) If satisfied there are special reasons to do so, the Commissioner may:
- (a) approve either or both of the following for a conveyee:
 - (i) an extension of the period for occupancy;
 - (ii) a reduction of the prescribed period; or
 - (b) exempt a conveyee from the requirement under subsection (1)(i).
- (12) If satisfied there are special reasons to do so, the Commissioner may approve an extension of the period in which a conveyee is required under subsection (1)(k) to become entitled to possession of the land.

89A Senior, pensioner and carer concession

- (1) The conveyees of a conveyance of land are entitled to the senior, pensioner and carer concession if the Commissioner, on an application for the concession, is satisfied:
- (a) all the conveyees are individuals; and
 - (b) at the relevant time, at least one conveyee is:
 - (i) 60 years of age or older; or
 - (ii) the holder of an NT Pensioner and Carer Concession Card; and
 - (c) the conveyees are not entitled to the first home owner concession for the conveyance; and
 - (d) no conveyee has a beneficial interest in the land; and
 - (e) the conveyees will acquire the whole beneficial interest in the land; and
 - (f) no conveyee will acquire an interest in the land in the capacity of a trustee; and
 - (g) the conveyees will occupy a home on the land or to be built on the land as their principal place of residence for the prescribed period commencing within the period for occupancy; and

- (h) either of the following applies:
 - (i) if, at the relevant time there is a home on the land or the conveyance is an off-the-plan contract – the dutiable value of the land does not exceed \$750 000;
 - (ii) if, at the relevant time there is no home on the land – the dutiable value of the land does not exceed \$385 000; and
 - (i) the conveyees become entitled to possession of the land within:
 - (i) 12 months after settlement of the conveyance; or
 - (ii) the longer period approved by the Commissioner under subsection (11A).
- (3) A conveyee must, within 30 days after the date on which it first becomes apparent that he or she will fail to comply with any of the occupancy requirements, give written notice of that fact to the Commissioner.
- Maximum penalty: 50 penalty units.
- (4) Subsection (3) does not apply to a conveyee in relation to an occupancy requirement if an exemption under subsection (2) covers that conveyee and requirement.
 - (5) The Commissioner may reassess duty on the conveyance even though the time limit for reassessment under the *Taxation Administration Act* has passed if the conveyees would otherwise receive the concession if the time limit had not passed.
 - (6) The Commissioner must reassess duty on the conveyance on the basis the conveyees were not entitled to the concession (whether or not the time limit for reassessment under the *Taxation Administration Act* has passed) if a conveyee fails to comply with any of the occupancy requirements.
 - (7) Subsection (6) does not apply if:
 - (a) the failure is covered by an exemption under subsection (2); or
 - (b) the Commissioner is satisfied there are special reasons for not making the reassessment.

- (8) This section applies to the acquisition by a person, other than the Chief Executive Officer (Housing), of an interest in land under a scheme administered by the Chief Executive Officer (Housing) under section 22 or 24 of the *Housing Act* as if:
- (a) the person were acquiring 100% of the land; or
 - (b) if 2 or more persons are acquiring the interest – the persons were acquiring 100% of the land in the same proportions as they are acquiring the interest.
- (9) If a person acquires land or an interest in land as the guardian of a person (the **disabled person**) who is under a legal disability, this section applies as if the disabled person were:
- (a) the conveyee of the land or interest; and
 - (b) the applicant for the senior, pensioner and carer concession; and
 - (c) if the concession is granted – the recipient of the concession.
- (10) A person applying for the senior, pensioner and carer concession must give to the Commissioner a declaration in the approved form providing the information relating to the application that the Commissioner requires.
- (11) If satisfied there are special reasons to do so, the Commissioner may:
- (a) approve either or both of the following for a conveyee:
 - (i) an extension of the period for occupancy;
 - (ii) a reduction of the prescribed period; or
 - (b) exempt a conveyee from the requirement under subsection (1)(g).
- (11A) If satisfied there are special reasons to do so, the Commissioner may approve an extension of the period in which a conveyee is required under subsection (1)(i) to become entitled to possession of the land.
- (12) In this section:
- NT Pensioner and Carer Concession Card** means a concession card administered for the Northern Territory Pensioner and Carer Concession Scheme by the Territory.

90 Principal place of residence rebate

- (1) The conveyee or conveyees of land are entitled to the principal place of residence rebate if, on application for the rebate, the Commissioner is satisfied that:
- (a) the conveyee or each of the conveyees is an individual; and
 - (b) the conveyee or conveyees are not entitled to the first home owner concession, or the senior, pensioner and carer concession, for the conveyance; and
 - (c) no conveyee has a beneficial interest in the land the subject of the conveyance; and
 - (d) the conveyee or conveyees will acquire the whole beneficial interest in the land the subject of the conveyance; and
 - (e) no conveyee will acquire an interest in the land in the capacity of a trustee; and
 - (f) the conveyee or conveyees will occupy a home on the land or to be built on the land as their principal place of residence for the prescribed period commencing within the period for occupancy; and
 - (g) the conveyee or conveyees become entitled to possession of the land within:
 - (i) 12 months after settlement of the conveyance; or
 - (ii) the longer period approved by the Commissioner under subsection (9).
- (3) If a conveyee or conveyees fail, or will fail, to occupy a home on the land as their principal place of residence:
- (a) within the period for occupancy; or
 - (b) for the prescribed period in accordance with this section;

the conveyee or conveyees must, within 30 days after the date on which it first becomes apparent that the failure will occur, give written notice to the Commissioner of the failure or impending failure.

Maximum penalty: 50 penalty units.

Note

This subsection does not apply to a conveyee who has an exemption from the relevant occupancy requirement.

- (3A) The Commissioner may reassess duty on the conveyance even though the time limit for reassessment under the *Taxation Administration Act* has passed if the conveyee or conveyees would otherwise receive the rebate if the time limit had not passed.
- (4) If a conveyee or conveyees fail to occupy a home on the land as their principal place of residence:
- (a) within the period for occupancy; or
 - (b) for the prescribed period in accordance with this section;
- the Commissioner must, even though the time limit for reassessment under the *Taxation Administration Act* may have passed, reassess duty on the conveyance on the basis that the conveyee or conveyees were not eligible for the principal place of residence rebate unless, in the Commissioner's opinion, there are special reasons for not making the reassessment.
- (5) This section applies to the acquisition by a person, other than the Chief Executive Officer (Housing), of an interest in land under a scheme administered by the Chief Executive Officer (Housing) under section 22 or 24 of the *Housing Act* as if the person were acquiring 100% of the land or, if 2 or more persons are acquiring the interest, the persons were acquiring 100% of the land in the same proportions as they are acquiring the interest.
- (6) If a person acquires land or an interest in land as guardian of a person under a legal disability, this section applies as if the person under the legal disability were:
- (a) the conveyee of the land or interest; and
 - (b) the applicant for the principal place of residence rebate; and
 - (c) if the rebate is granted – the recipient of the rebate.
- (7) A person applying for the principal place of residence rebate must give to the Commissioner a declaration, in the approved form, providing the information relating to the application that the Commissioner requires.
- (8) If satisfied there are special reasons to do so, the Commissioner may:
- (a) approve either or both of the following for a conveyee:
 - (i) an extension of the period for occupancy;
 - (ii) a reduction of the prescribed period; or

- (b) exempt a conveyee from the requirement under subsection (1)(f).
- (9) If satisfied there are special reasons to do so, the Commissioner may approve an extension of the period in which a conveyee is required under subsection (1)(g) to become entitled to possession of the land.

Division 3 Matrimonial property settlements

91 Conveyances of matrimonial property

- (1) A conveyance of dutiable property between a person and the person's spouse or former spouse is exempt from duty if, within 12 months after the date of the conveyance, an order, with which the terms of the conveyance are consistent, is made by the Family Court for the distribution of property between the parties to the conveyance under Part VIII of the *Family Law Act 1975* (Cth).
- (2) If duty is paid on such a conveyance before it becomes exempt, the Commissioner must (subject to the *Taxation Administration Act*) refund the duty.

Division 4 Managed investment schemes

92 Managed investment scheme conveyance

- (1) A managed investment scheme conveyance is not liable to ad valorem duty.
- (2) Each of the following transactions is a managed investment scheme conveyance:
 - (a) a conveyance of dutiable property from a person as vendor to the custodian for a responsible entity of a registered scheme, where:
 - (i) the conveyance is made pursuant to an agreement for the conveyance of the dutiable property between the person as vendor and the responsible entity as purchaser; and
 - (ii) the dutiable property is acquired by the responsible entity as scheme property; and
 - (iii) the agreement has been stamped with ad valorem duty;

- (b) a conveyance of dutiable property that is either from the responsible entity of a registered scheme to the custodian for that responsible entity or from the custodian of a responsible entity of a registered scheme to that responsible entity, where:
 - (i) the dutiable property is scheme property of that registered scheme; and
 - (ii) the conveyance is not part of an arrangement under which:
 - (A) the scheme property or an interest in the scheme property ceases to be scheme property; or
 - (B) the members of the registered scheme do not have the same trust interest in the scheme property after the conveyance of that property as they had immediately before the arrangement was entered into;
 - (c) a conveyance of dutiable property that is scheme property which is a consequence of the retirement of the responsible entity or custodian of a registered scheme or the appointment of a new responsible entity or custodian of the registered scheme, where the Commissioner is satisfied that:
 - (i) the only interest acquired by a person in relation to the property as a result of the conveyance is an interest acquired by the replacement or new responsible entity or custodian; and
 - (ii) the replacement or new responsible entity or custodian acquired that interest only because of its appointment as the responsible entity or custodian for the registered scheme.
- (3) In this section:

custodian means a corporation appointed under section 601FB of the Corporations Act 2001 to hold the property of a registered scheme as agent for the responsible entity of the registered scheme.

registered scheme, see the Corporations Act 2001.

responsible entity, see the Corporations Act 2001.

scheme property means the dutiable property of a registered scheme held by a person as the responsible entity of the registered scheme or as a custodian for the responsible entity of the registered scheme.

Part 6 Miscellaneous

93 Authorised stamps

- (1) The Commissioner must decide the form of stamps (***authorised stamps***) for use under this Act.
- (2) Equipment for affixing authorised stamps must be kept under the Commissioner's control and used only as directed by the Commissioner.

94 Forgery etc. of authorised stamp

- (1) A person must not:
 - (a) forge an authorised stamp; or
 - (b) dishonestly stamp an instrument with a stamp that could reasonably be taken to be an authorised stamp.

Maximum penalty: Imprisonment for 2 years.

- (2) A person must not, without lawful authority or excuse, have possession of equipment capable of being used to forge an authorised stamp.

Maximum penalty: Imprisonment for 2 years.

95 Regulatory offences

An offence against any of the following provisions is a regulatory offence:

- (a) section 9A;
- (b) section 24;
- (c) section 39;
- (d) section 45;
- (e) section 56K(6);
- (f) section 57;

(g) section 59(5).

96 Admissibility of unstamped instruments

- (1) A dutiable instrument that is not duly stamped is not admissible in evidence in any court in support or defence of a civil claim.
- (2) However, the court may receive such an instrument in evidence if the party seeking to tender the instrument pays into court the duty payable on the instrument (together with any penalty).
- (3) If duty is paid into court under subsection (2):
 - (a) the proper officer of the court must remit the payment to the Commissioner together with the instrument; and
 - (b) the Commissioner must stamp the instrument and return it to the proper officer of the court.

97 Former transitional provisions

Despite the repeal of former transitional provisions (Parts IX to XII), the effect of those provisions is preserved so far as they may have continuing relevance.

97A Transitional provision (rates of duty)

- (1) Subject to subsection (2), the relevant amendments apply to a conveyance first executed on or after 6 May 2008 and, if a conveyance was first executed before that date, this Act applies as if the relevant amendments had not been made.
- (2) This Act also applies to a conveyance as if the relevant amendments had not been made if:
 - (a) the conveyance replaces an earlier conveyance, first executed before 6 May 2008, of the same or substantially similar property; or
 - (b) the conveyee entered into a contract or option, before 6 May 2008, to purchase the property to which the conveyance relates, or substantially similar property; or
 - (c) the conveyor had an option, granted before 6 May 2008, to require the conveyee to purchase the property to which the conveyance relates or substantially similar property.

(3) In this section:

relevant amendments means:

- (a) the amendment made by the *Revenue Law Reform (Budget Initiatives) Act 2008* to the definition of **first home owner concession** in section 88; and
- (b) the amendments made by the *Revenue Law Reform (Budget Initiatives) Act 2008* to the rate of ad valorem conveyance duty under this Act.

97B Transitional provision (dutiable property)

(1) A conveyance of relevant property is not liable to duty if:

- (a) the conveyance was first executed before the commencement of the relevant amendment; or
- (b) the conveyance is made before 1 July 2009 in pursuance of an agreement to make the conveyance entered into before the commencement of the relevant amendment.

(2) In this section:

relevant amendment means the amendment made by *Revenue Law Reform (Budget Initiatives) Act 2008* under which certain mining tenements that were not formerly dutiable property became dutiable property.

relevant property means property that becomes dutiable property as a result of the relevant amendment.

98 Regulations

The Administrator may make regulations under this Act.

Part 7 Transitional matters for Revenue Legislation Amendment Act 2009

99 Application

- (1) Section 56C(6)(b) as amended by section 24(2) of the amending Act applies only to a calculation for the acquisition of an interest that occurs on or after the introduction day.

- (2) Section 56CA as inserted by section 25 of the amending Act, and section 56C(6) and (7) as amended by section 24(1) and (3) of the amending Act, apply as follows:
- (a) the Commissioner may make a determination under section 56CA that takes effect from, and specifying, a date that is on or after the introduction day;
 - (b) the determination must relate to a relevant transaction mentioned in that section that occurred on or after the introduction day;
 - (c) the determination may relate to an arrangement mentioned in that section that is made on, or takes effect from, a date that is the introduction day or before or after that day.
- (3) Section 56P as amended by section 26 of the amending Act applies as follows:
- (a) the Commissioner may make a determination under that section that takes effect from, and specifying, a date that is on or after the introduction day; and
 - (b) the determination must relate to the acquisition of the control of a corporation as mentioned in that section that occurs on or after the introduction day.
- (4) In this section:

amending Act means the *Revenue Legislation Amendment Act 2009*.

introduction day means the day on which the Bill for the amending Act is introduced in the Legislative Assembly.

Part 8 Transitional matters for Revenue and Other Legislation Amendment Act 2010

100 Definition

In this Part:

2010 amending Act means the *Revenue and Other Legislation Amendment Act 2010*.

101 Arrangement for provision of finance

- (1) The relevant amendments do not apply to an arrangement that was:
- (a) covered by section 56C(1), definition **acquire**, paragraph (d)(v) as in force immediately before 4 May 2010; and
 - (b) entered into before 4 May 2010 (whether or not it was completed before that date).
- (2) In this section:

relevant amendments means the amendments made by sections 11 to 13 of the 2010 amending Act.

102 Increase in first home owner concession and principal place of residence rebate and new senior, pensioner and carer concession

- (1) Subject to subsection (2):
- (a) the relevant amendments apply to a conveyance first executed on or after 4 May 2010; and
 - (b) if a conveyance was first executed before that date, this Act applies as if the relevant amendments had not been made.
- (2) This Act also applies to a conveyance as if the relevant amendments had not been made if:
- (a) the conveyance replaces an earlier conveyance, first executed before 4 May 2010, of the same or substantially similar land; or
 - (b) the conveyees entered into a contract or option, before 4 May 2010, to purchase the land to which the conveyance relates or substantially similar land; or
 - (c) the conveyor had an option, granted before 4 May 2010, to require the conveyees to purchase the land to which the conveyance relates or substantially similar land.
- (3) In this section:

relevant amendments means the amendments made by sections 14(2), (3) and (5), 16 and 17(1) of the 2010 amending Act.

103 Extension of period for occupancy for entitlement to first home owner concession and principal place of residence rebate

- (1) This section applies if, before 4 May 2010, duty was assessed on a conveyance of land on the basis that the conveyees were not entitled to the concession or rebate merely because the conveyees did not satisfy the requirement that a home be built on the land within 3 years after the relevant time for the conveyance.
- (2) On application by the conveyees, the Commissioner may, under the *Taxation Administration Act*, reassess duty on the conveyance as if the relevant amendments had commenced.
- (3) On making the reassessment, the Commissioner must refund to the conveyees the difference between the amount of duty paid on the assessment and the amount of duty payable on the reassessment.
- (4) Subsection (3) applies subject to the *Taxation Administration Act*.
- (5) In this section:

concession or rebate means the first home owner concession or principal place of residence rebate, and includes a corresponding concession or rebate under an earlier enactment.

relevant amendments means the amendments made by sections 14(1) and (4), 15 and 17(2) to (5) of the 2010 amending Act.

104 Acquisition of interest by transfer of shares

- (1) This section applies if, for the purposes of Part 3, Division 8:
 - (a) an acquisition of an interest in a corporation is, or is to be, evidenced by a transfer of shares; and
 - (b) the transfer of the shares was not made before 1 July 2010; and
 - (c) one or more of the dates mentioned in section 56CAA(2) occur on or after 1 July 2010 (whether or not any of those dates occurs before 1 July 2010).
- (2) Despite section 56CAA(2), the acquisition of the interest is taken to occur on the earliest of those dates that occurs on or after 1 July 2010.

Part 9 Transitional matters for Revenue Legislation Amendment Act 2011

105 Occupancy requirements – Commissioner may reassess earlier conveyance

- (1) This section applies if, before 3 May 2011, duty was assessed on a conveyance of land on the basis that the conveyee or conveyees was or were not entitled to a home incentive concession or rebate merely because of a failure to satisfy an occupancy requirement.
- (2) On application by the conveyee or conveyees, the Commissioner may:
 - (a) exercise the Commissioner's powers under section 89, 89A and 90; and
 - (b) reassess duty on the conveyance under the *Taxation Administration Act*;

as if the occupancy amendments had commenced before the conveyance occurred.

- (3) In this section:

home incentive concession or rebate means any of the following, or a corresponding concession or rebate under an earlier enactment:

- (a) the first home owner concession;
- (b) the senior, pensioner and carer concession;
- (c) the principal place of residence rebate.

occupancy amendments means the amendments made by sections 9, 10 and 11 of the *Revenue Legislation Amendment Act 2011*.

occupancy requirement, for a conveyance of land, means a requirement that a conveyee:

- (a) occupy a home on the land as the conveyee's principal place of residence; or
- (b) commence to occupy a home on the land as the conveyee's principal place of residence within a particular period; or

- (c) occupy a home on the land as the conveyee's principal place of residence for a particular period.
- (4) A term defined in section 88 for Part 5, Division 2 has the same meaning in this section.

Schedule 1 Dutiable instruments and rates of duty

section 4(1)
definition ***dutiable instrument***
and section 6

1 Conveyances

- (1) A conveyance of dutiable property is a dutiable instrument.
- (2) Subject to this clause, the duty payable on a conveyance of dutiable property is determined at the ad valorem rate as follows:
 - (a) if the dutiable value of the dutiable property subject to the conveyance does not exceed \$525 000:
$$D = (0.06571441 \times V^2) + 15V$$

where:

D is the duty (expressed in dollars)

V is 1/1 000 of the dutiable value (expressed in dollars)
 - (b) if the dutiable value exceeds \$525 000, the duty is 4.95% of the dutiable value.
- (3) A conveyance of dutiable property by or to joint tenants is, if the conveyer, or one or more of the conveyors, retains an interest in the property, assessed for duty as a conveyance of the interest that is not retained by the conveyer or conveyors rather than the form of the conveyance but an additional \$5 is payable.

Examples

- 1 *If property is held jointly by 2 persons, and they convey the property to one of them, the conveyance is assessed for ad valorem duty as a conveyance of a half-share of the property and the total amount of the duty is the amount so assessed plus \$5.*
 - 2 *If a sole owner conveys property to him/herself jointly with another, the conveyance is assessed for ad valorem duty as a conveyance of a half-share of the property and the total amount of the duty is the amount so assessed plus \$5.*
- (4) If the conveyance is for partition of land between persons who own the land as joint tenants or as tenants in common:
 - (a) in the case of a symmetrical partition of the land:
 - (i) if no consideration is given for the conveyance – the duty is \$20; or

- (ii) if consideration is given for the conveyance – the duty is assessed at the ad valorem rate on the amount or value of the consideration; or
- (b) in the case of an asymmetrical partition of the land – ad valorem duty is to be assessed on the basis that the conveyance is a conveyance of a proportion of the whole land from the person or persons who take a lesser share (i.e. a share less than their proportionate interest prior to the partition) to the person or persons who take a greater share (i.e. a share greater than their proportionate interest prior to the partition).

Note

It follows from this that, if consideration is given for an asymmetrical partition, ad valorem duty will be calculated on the amount of the consideration or the relevant proportion of the unencumbered value of the land (whichever is the greater) and, if consideration is not given, on the relevant proportion of the unencumbered value of the land.

- (5) For subclause (4), a symmetrical partition of land is one in which the portions resulting from the partition are in accordance with the proportionate interests of the owners prior to the partition; otherwise, the partition is to be regarded as asymmetrical.
- (6) If the conveyance is made subsequent to, and in conformity with, an agreement for the conveyance that has been stamped with ad valorem duty, the duty payable on the conveyance is \$5.
- (6A) If the conveyance is made of dutiable property as mentioned in section 17A(2A), the duty payable on the transfer is \$5.
- (7) If:
 - (a) a conveyance of dutiable property is made on terms under which the conveyee is to hold the property on trust; and
 - (b) a declaration of trust is made in anticipation of the conveyance of dutiable property to the declarant to be held on trust; and
 - (c) both instruments relate to the same dutiable property; and
 - (d) ad valorem duty has been paid on one of the instruments;the duty payable on the other instrument is \$5.
- (8) The duty payable on a managed investment scheme conveyance is \$20.

- (9) If a conveyance is a grant by the Territory of an estate in fee simple in land, or of a convertible Crown lease, for monetary consideration, the duty is calculated at the ad valorem rate:
- (a) if paragraphs (b) and (c) do not apply – on the amount of the consideration; or
 - (b) if all of the consideration is unascertainable at the time of the grant – the unencumbered value of the land at that time; or
 - (c) if part of the consideration is unascertainable at the time of the grant – on the greater of the following:
 - (i) the amount of the consideration that is ascertainable at that time;
 - (ii) the unencumbered value of the land at that time.
- (10) If a conveyance is a foreclosure order, the duty is calculated at the ad valorem rate on the dutiable value of dutiable property subject to the mortgage to which the foreclosure relates.

2 Deeds not otherwise charged

- (1) A deed:
- (a) that is not chargeable with ad valorem duty; and
 - (b) that:
 - (i) constitutes a trust; or
 - (ii) varies a trust in any way; or
 - (iii) deals with actual, potential or contingent interests or entitlements under a trust; or
 - (iv) extinguishes a trust;
- is a dutiable instrument.
- (2) The duty payable on such a deed is \$20.
- (3) This item does not apply to Special Disability Trust as defined in the *Social Security Act 1991* (Cth) or *Veterans Entitlement Act 1986* (Cth).

3 Instrument for the appointment of a trustee

- (1) An instrument for the appointment of a trustee is a dutiable instrument.

- (2) The duty payable on such an instrument is \$20.

4 Lease of land in the Territory

- (1) A lease of land in the Territory is a dutiable instrument if duty is chargeable on the grant of the lease.
- (2) Duty is only chargeable on the grant of a lease if, in addition to or instead of rent payable for the lease, valuable consideration is given:
- (a) for the lease; or
 - (b) for an option under which the lease is granted.
- (3) If valuable consideration in addition to, or instead of, rent is given for a lease, duty is to be calculated at the ad valorem conveyance rate on the amount or value of the consideration.
- (4) However, if a lease is entered into subsequent to, and in conformity with, an agreement for the lease that has been stamped with ad valorem duty, the duty payable on the lease is \$5.

5 Motor vehicle certificate of registration

- (1) A motor vehicle certificate of registration is a dutiable instrument.
- (2) The duty payable on a motor vehicle certificate of registration is \$3 for every \$100 or fractional part of \$100 of the dutiable value of the motor vehicle.

6 Policy of insurance

- (1) A policy of insurance is a dutiable instrument.
- (2) This clause extends to a policy of life insurance.
- (3) The duty on a policy of insurance (other than a policy of life insurance):
- (a) is payable on the issue and each renewal of the policy; and
 - (b) is:
 - (i) for a policy issued, or renewed, for one year or less – 10% of the amount of the premium; and
 - (ii) for a policy issued or renewed for a term of more than one year – 10% of the amount of the premium for each year and any fractional part of a year in the term.

- (4) The duty on a policy of life insurance is:
- (a) for a policy other than a temporary or term policy – 10c for every \$100 or fractional part of \$100 of the sum insured; or
 - (b) for a temporary or term policy – 5% of the first year's premium.

7 Instrument to correct error

- (1) An instrument to correct an error in a duly stamped instrument (the ***principal instrument***) is itself a dutiable instrument.
- (2) If the Commissioner is satisfied that the sole purpose of the instrument is to correct an error that would not have increased the liability of the principal instrument to duty, the duty payable on such an instrument is \$20.
- (3) If the Commissioner is not so satisfied, the duty is the difference between the amount of duty that should have been paid, and the amount actually paid, on the principal instrument plus interest and penalty tax assessed by the Commissioner on the basis that the person liable for duty on the principal instrument has been in default in respect of that sum since duty on the principal instrument fell due for payment.

8 Counterpart or copy of duly stamped instrument

The Commissioner must, on lodgement of a counterpart or copy of a duly stamped instrument, stamp the counterpart or copy with a stamp indicating that the original has been duly stamped on payment to the Commissioner of a fee of \$5.

Note

A counterpart or copy is itself dutiable in the same way as the original if the original has not been duly stamped.

Schedule 2 Exemptions from duty

section 4(1)
definition ***exempt instrument or transaction***

Conveyances

- 1 Conveyance to the Territory, to a Government Business Division declared by regulation to be a Government Business Division to which this exemption applies or to an authority of the Territory other than a Government Business Division. (If a conveyance falls partially within and partially outside the terms of this exemption, duty is to be calculated as if the conveyance were not exempt and then proportionately reduced to reflect the extent of the exemption.)
- 2 Conveyance to the Commonwealth or to an authority of the Commonwealth.
- 3 Conveyance for the purposes of a compulsory transfer of business under Part 4 of the *Financial Sector (Business Transfer and Group Restructure) Act 1999* (Cth).
- 4 Statutory vesting:
 - (a) by which property vests in a company only because of its registration under Part 5B.1 of the *Corporations Act 2001*; or
 - (b) by which property held by a person for or on behalf of an association vests in the association under section 12 of the *Associations Act* only because of its incorporation under that Act; or
 - (c) by which property vests in the executor or administrator of a deceased person's estate under section 52 of the *Administration and Probate Act*.
- 5 Conveyance during the winding-up of a company of its property to a shareholder of the company where the shareholder is entitled to the property on a distribution in specie unless the conveyance is or is part of a tax avoidance scheme.
- 6 Conveyance:
 - (a) that the Commissioner is satisfied is made solely for the purpose of effecting the appointment of a new trustee on the retirement of a trustee or as an additional trustee, if:
 - (i) no beneficial interest passes in the property conveyed; and

- (ii) the trust is a discretionary trust – no change of potential beneficial interest occurs as a result of the transaction; and
 - (iii) the property conveyed was acquired by the retiring trustee or existing trustee in the capacity of trustee by virtue of an instrument that was duly stamped, was exempt from duty under this Schedule (or a corresponding previous enactment) or was for some other reason not liable to duty; or
- (b) made by a trustee of a non-discretionary trust to a beneficiary where:
 - (i) the conveyance is made in accordance with the terms of the trust (but not for valuable consideration); and
 - (ii) the property conveyed was acquired by the trustee by virtue of an instrument that was duly stamped, was exempt from duty under this Schedule (or a corresponding previous enactment) or was for some other reason not liable to duty; or
- (c) made by a trustee of a discretionary trust to a beneficiary where:
 - (i) the beneficiary is an individual and, as a result of the conveyance, becomes absolute owner of the property conveyed; and
 - (ii) the conveyance is not made for valuable consideration (which may take any form including the forgiveness of or release from a debt or obligation) given or to be given by the beneficiary or anyone else; and
 - (iii) the conveyance is in accordance with the terms of the trust and the property conveyed was acquired by the trustee by virtue of an instrument that was duly stamped, was exempt from duty under this Schedule (or a corresponding previous enactment) or was for some other reason not liable to duty; or
- (d) made by a trustee as executor of the will, or administrator of the estate, of a deceased person, to a beneficiary of the deceased person's estate in accordance with the provisions of the will or the rules of intestate distribution; or

- (e) in relation to which the Commissioner is satisfied of both of the following:
 - (i) no valuable consideration is given for the conveyance;
 - (ii) the conveyance is made to a Special Disability Trust as defined in the *Social Security Act 1991* (Cth) or *Veterans Entitlement Act 1986* (Cth).

- 7 Conveyance where the Commissioner is satisfied that:
 - (a) there are 2 parties to the conveyance and each is the spouse of the other; and
 - (b) the property subject to the conveyance is the principal place of residence of the parties to the conveyance; and
 - (c) no consideration is given for the conveyance; and
 - (d) the effect of the conveyance is that both parties to the conveyance will own the place of residence to which the conveyance relates in equal shares; and
 - (e) no other person takes an interest under the conveyance.

- 8 Conveyance to a former bankrupt from the estate of the former bankrupt (except where the bankrupt takes the property as trustee of a trust).

- 9 Grant of a mining tenement, or of a statutory licence or permission used in or in connection with a business undertaking, unless, in the opinion of the Commissioner, the grant forms part of a wider transaction amounting, in effect, to a transfer of the mining tenement, licence or permission.

- 10 Transfer under the *Commercial Passenger (Road) Transport Act* of a taxi licence or an agreement to make such a transfer.

- 11 Temporary transfer agreement under section 12A of the *Fisheries Act* unless, in the opinion of the Commissioner, the transfer forms part of a wider transaction amounting, in effect, to the permanent transfer of the licence.

- 12 Grant of an estate in fee simple or other lesser estate in land from the Crown other than:
- (a) a grant of an estate in fee simple or lesser estate after the surrender of a convertible Crown lease held over the same land the subject of the grant where:
 - (i) the grantee was not the person who surrendered the convertible Crown lease; and
 - (ii) the grant, in the opinion of the Commissioner, forms part of a wider transaction amounting, in effect, to a transfer of the estate in the land; or
 - (b) a grant of an estate in fee simple or convertible Crown lease for which monetary consideration is given or agreed to be given (whether or not the consideration is subject to specified conditions and whether or not those conditions have been met); or
 - (c) a grant of a mining tenement.
- 13 Transfer under the *Petroleum Act*, the *Energy Pipelines Act*, the *Petroleum (Submerged Lands) Act* or the *Petroleum (Prospecting and Mining) Act* (repealed) of a lease, licence, permit or other authority, or any agreement to make such a transfer.
- 14 Conveyance of dutiable property to an exempt entity if the property is to be used solely by the entity for an exempt use.

Leases

- 15 Lease that is a residence contract under the *Retirement Villages Act*.
- 16 Lease to the Territory, to a Government Business Division declared by regulation to be a Government Business Division to which this exemption applies or to an authority of the Territory other than a Government Business Division.
- 17 Lease to the Commonwealth or to an authority of the Commonwealth.
- 18 Lease of property to an exempt entity if the property is to be used solely by the entity for an exempt use.

Insurance

- 19 An insurance cover-note in pursuance of which a duly stamped policy is issued within 3 months of the date of the cover-note.

- 20 A policy of insurance issued to the original insured or the insured's personal representative in pursuance of a cover-note which has been duly stamped as a policy.
- 21 A policy of insurance taken out as required under the *Workers Rehabilitation and Compensation Act*.
- 22 A policy of insurance issued in the course of a health insurance business by a person registered as a private health insurer within under Part 4-3 of the *Private Health Insurance Act 2007* (Cth).
- 22A A life policy issued by a life insurer that is a first home saver account under the *First Home Saver Accounts Act 2008* (Cth).

Motor vehicle certificates of registration

- 23 Any of the following motor vehicle certificates of registration:
- (a) a motor vehicle certificate of registration issued to the person in whose name the vehicle was last registered before it was issued (whether registered in the Territory or elsewhere and whether or not that registration has expired) other than:
 - (i) a motor vehicle certificate of registration issued in respect of a motor vehicle that:
 - (A) was at any time registered under the *Interstate Road Transport Act 1985* (Cth); and
 - (B) is being registered under the *Motor Vehicles Act* by a person who has, until so registering the motor vehicle, never paid any stamp duty in relation to the motor vehicle under any law in force in the Commonwealth or a State or Territory of the Commonwealth; or
 - (ii) a motor vehicle certificate of registration issued in respect of a motor vehicle that:
 - (A) is a motor vehicle in which seating is provided for not less than 12 persons; and
 - (B) is being registered under the *Motor Vehicles Act* by a person who has, until so registering the motor vehicle, never paid any stamp duty in relation to that motor vehicle under any law in force in the Commonwealth or a State or Territory of the Commonwealth; or

- (iii) a motor vehicle certificate of registration, or a motor vehicle certificate of registration belonging to a class of motor vehicle certificates of registration, prescribed for the purposes of this subparagraph;
- (b) a motor vehicle certificate of registration issued following a conveyance of the motor vehicle:
 - (i) to a person who is the spouse, parent or child of the person in whose name the vehicle was last registered (whether in the Territory or elsewhere) before the issue of the motor vehicle certificate of registration; or
 - (ii) to or from the spouse, parent or child jointly with that person;if the conveyance is wholly by way of gift;
- (c) a motor vehicle certificate of registration issued to a person who is engaged solely or principally in the business of agricultural or pastoral production other than in respect of a vehicle designed primarily and principally for the transport of persons;
- (d) a motor vehicle certificate of registration issued to a person to give effect to:
 - (i) a change in that person's name; or
 - (ii) a change in the name of the business carried on by that person;
- (e) a motor vehicle certificate of registration issued to a person:
 - (i) who is the executor or administrator of, or the person administering, the estate of a deceased person for the purpose of transferring the vehicle to a person beneficially entitled to the vehicle; or
 - (ii) who is the executor or administrator of, or the person administering, the estate of a deceased person for the purpose of sale in the course of winding-up the estate of a deceased person; or
 - (iii) who is beneficially entitled to the vehicle under the estate of a deceased person;
- (f) a duplicate motor vehicle certificate of registration;

- (g) a motor vehicle certificate of registration issued on an application for registration by the Territory, by a Government Business Division declared by regulation to be a Government Business Division for the purposes of this item or by a person acting on behalf of the Territory other than a Government Business Division;
- (h) a motor vehicle certificate of registration issued in the name of an exempt entity;
- (i) a motor vehicle certificate of registration issued to a person who, in the opinion of the Commissioner, is engaged principally in the business of buying and selling motor vehicles (a **motor vehicle trader**) in respect of:
 - (i) a vehicle acquired by the motor vehicle trader for the purpose of resale by the motor vehicle trader in the ordinary course of business; or
 - (ii) a new motor vehicle used solely or principally by the motor vehicle trader to sell new motor vehicles of the same class;other than:
 - (iii) a vehicle used solely or principally by the motor vehicle trader, a member of the motor vehicle trader's staff or a member of the motor vehicle trader's family; or
 - (iv) a vehicle used for general purposes in the motor vehicle trader's business;
- (j) a motor vehicle certificate of registration issued in respect of a vehicle that is:
 - (i) a motorised wheelchair; or
 - (ii) an experimental or research vehicle that has no readily ascertainable market value; or
 - (iii) a vehicle that has been brought into the Territory principally to take part in, or be part of, a specific event or specific events; or
 - (iv) registered under the *Motor Vehicles Act* as an enthusiast vehicle; or

- (v) a trailer that has a gross vehicle mass of not more than 4.5 t;

Note for subparagraph (v)

*A caravan is a trailer within the meaning of the definition **trailer** in the Motor Vehicles Act.*

- (k) a motor vehicle certificate of registration issued:
 - (i) to a veteran who is eligible to receive a pension at the rate specified by section 22(4) or 24(4) of the *Veterans' Entitlements Act 1986* (Cth); and
 - (ii) in respect of a motor vehicle for the veteran's non-commercial use;
- (l) a motor vehicle certificate of registration issued to a person solely to correct an error on another motor vehicle certificate of registration on which stamp duty has been paid.

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 = Gazette	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 (Gaz 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 to 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, 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, 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 to 8, 14, 16 to 22, 24, 25, 27 to 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 to 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; pt 6: 23 June 2004 (s 2)

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)

Taxation (Administration) Amendment (Objections and Appeals) Act 2005 (Act No. 5, 2005)

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
Commenced 18 May 2005 (s 2, s 2 *Australian Crime Commission (Northern Territory) Act 2005* (Act No. 6, 2005) and Gaz G20, 18 May 2005, p 2)

Taxation (Administration) Amendment Act 2005 (Act No. 28, 2005)

Assent date 18 July 2005
Commenced s 3 and pts 2 and 3: 3 May 2005; pts 4 and 5: 1 July 2005;
rem: 18 July 2005 (s 2)

Statute Law Revision Act 2005 (Act No. 44, 2005)

Assent date 14 December 2005
Commenced 14 December 2005

Treasury Legislation and Consequential Amendment Act 2006 (Act No. 19, 2006)

Assent date 28 June 2006
Commenced pt 1: 28 June 2006; pt 2: 2 May 2006; rem: 1 July 2006 (s 2)

Statute Law Revision Act 2007 (Act No. 4, 2007)

Assent date 8 March 2007
Commenced 8 March 2007

Revenue (Budget Initiatives) Amendment Act 2007 (Act No. 12, 2007)

Assent date 30 June 2007
Commenced pt 2, div 2 and pt 3, div 2: 1 May 2007; rem: 1 July 2007 (s 2)

Revenue Law Reform (Stamp Duty) Act 2007 (Act No. 27, 2007)

Assent date 29 October 2007
Commenced 1 January 2008 (s 2)

Law Reform (Work Health) Amendment Act 2007 (Act No. 30, 2007)

Assent date 12 December 2007
Commenced 1 July 2008 (Gaz S29, 25 June 2008)

Revenue Law Reform (Budget Initiatives) Act 2008 (Act No. 23, 2008)

Assent date 30 June 2008
Commenced pt 1, ss 3, 12(1), 18 and 19: 1 January 2008; ss 7, 10
and 11(1): 6 May 2008; rem: 1 July 2008 (s 2)

Local Government (Consequential Amendments) Act 2008 (Act No. 28, 2008)

Assent date 14 November 2008
Commenced 1 July 2008 (s 2)

Revenue Legislation Amendment Act 2009 (Act No. 17, 2009)

Assent date 25 June 2009
 Commenced pt 1 and pt 3 divs 1 and 2: 1 October 2008;
 pt 3 div 3: 6 May 2009; pt 2 divs 1 and 2, pt 3, div 4 and pts 4
 and 5: June 2009; pt 3, dev 5: 1 July 2009; pt 2, div 3 and
 pt 3, div 6: 1 January 2010 (s 2 and Gaz G49,
 9 December 2009, p 3)

Revenue and Other Legislation Amendment Act 2010 (Act No. 21, 2010)

Assent date 30 June 2010
 Commenced pt 2 and pt 4 divs 1 and 2: 4 May 2010; rem: 1 July 2010 (s 2)

Revenue Legislation Amendment Act 2011 (Act No. 21, 2011)

Assent date 24 June 2011
 Commenced pt 2: 3 May 2011; rem: 1 July 2011 (s 2)

3 SAVINGS AND TRANSITIONAL PROVISIONS

s 4 *Taxation (Administration) Act (No. 2) 1978* (Act No. 96, 1978)
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 ss 24 and 25(2) *Taxation (Administration) Amendment Act 2000* (Act No. 36, 2000)
 s 30 *Taxation (Administration) Amendment Act 2001* (Act No. 47, 2001)
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- s 7 amd No. 31, 1987, s 15; No. 4, 1988, s 7; No. 42, 1989, s 5; No. 59, 1993,
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- s 9A ins No. 78, 1982, s 4
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sub No. 27, 2007, s 16
- s 9B ins No. 31, 1987, s 6
- s 9BA ins No. 80, 1991, s 5
amd No. 50, 2002, s 8; No. 19, 2006, s 37
- s 9BB ins No. 47, 2001, s 7
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- s 17 amd No. 72, 1979, s 5; No. 78, 1982, s 5; No. 31, 1987, ss 8 and 15; No. 60, 1993, s 7; No. 43, 1994, s 7; No. 19, 2006, s 27
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