

South Australia



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A.D. 2000

**STAMP DUTIES (LAND RICH ENTITIES AND REDEMPTION)
AMENDMENT ACT 2000**

No. 80 of 2000

[Assented to 14 December 2000]

An Act to amend the Stamp Duties Act 1923.

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The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Stamp Duties (Land Rich Entities and Redemption) Amendment Act 2000*.

(2) The *Stamp Duties Act 1923* is referred to in this Act as "the principal Act".

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Insertion of heading

3. The following heading is inserted before section 1 of the principal Act:

DIVISION 1—SHORT TITLE

Insertion of heading

4. The following heading is inserted before section 2 of the principal Act:

DIVISION 2—INTERPRETATIVE PROVISIONS

Amendment of s. 2—Interpretation

5. Section 2 of the principal Act is amended—

(a) by inserting after the definition of "assessment" the following definition:

"beneficial interest" means an equitable interest or an interest vested both at law and in equity in the holder of the interest and includes a potential beneficial interest;;

(b) by inserting after the definition of "instrument" the following definitions:

"intellectual property" includes—

- (a) a registered patent, circuit layout, or design;
- (b) a right under the *Plant Breeder's Rights Act 1994* (Cwth);
- (c) a trade mark;
- (d) a copyright;

"interest" in property means a legal or equitable interest and includes a potential, contingent, expectant or inchoate interest;

"jurisdiction" means—

- (a) a State or Territory of Australia; or
- (b) a country or place subject to the laws of a particular legislative authority;;

(c) by inserting after the definition of "money" the following definitions:

"potential beneficial interest" means the rights, expectancies or possibilities of an object of a discretionary trust in, or in relation to, property subject to the discretionary trust;

"property" means real or personal property and includes—

(a) intellectual property (except know-how and confidential information); and

(b) an interest in property;

"recognised stock exchange" means—

(a) the Australian Stock Exchange Limited; or

(b) a stock exchange classified by regulation as a recognised stock exchange;;

(d) by inserting after the definition of "right in respect of a marketable security" the following definitions:

"sale" of property includes any transaction under which the property is converted into money;

"spouse" of a person includes a *de facto* husband or wife of the person who has been co-habiting continuously with the person for at least three years;;

(e) by inserting after the definition of "stock" the following definition:

"transfer", in relation to property, means transfer, assure or vest at law or in equity (whether or not the transfer assurance or vesting is subject to registration, the issue of a certificate of title or some other similar requirement);;

(f) by inserting after the definition of "stamp" the following definition:

"State" includes the Australian Capital Territory and the Northern Territory;;

(g) by inserting after its present content as amended by this section (now to be designated as subsection (1)) the following subsection:

(2) An interest of a particular kind in the proceeds of the sale of property is, until the property is sold, taken to be an interest of the same kind in the property.

Example—

A beneficial interest in the proceeds of the sale of property is, until the property is sold, taken to be a beneficial interest in the property.

(3) A person is taken to transfer a leasehold or other interest in land held from the Crown if the person surrenders the interest so that the Crown may grant to a person other than the surrenderor a leasehold or other interest in the land.

Insertion of Division 3

6. The following Division is inserted after section 3 of the principal Act:

DIVISION 3—TERRITORIAL APPLICATION OF ACT**Principles for determining territorial relationship**

3A. (1) An instrument relates to property situated in a particular jurisdiction if it—

- (a) creates, transfers, redeems, renounces, surrenders, cancels or extinguishes an interest in property situated in the relevant jurisdiction; or
- (b) deals with an interest in property situated in the relevant jurisdiction in any other way; or
- (c) acknowledges, evidences or records a transaction to which paragraph (a) or (b) refers.

(2) A potential, contingent, expectant or other inchoate interest is to be regarded as an interest in property in a particular jurisdiction if the realisation of the potentiality, contingency or expectancy, or the occurrence of any act or event necessary to perfect the interest could result in—

- (a) an interest in property situated in that jurisdiction; or
- (b) an interest in the proceeds of the sale of property situated in that jurisdiction.

(3) For the purpose of calculating duty on an instrument that relates to a potential, contingent, expectant or other inchoate interest—

- (a) the interest is to be treated as an actual interest ie as if the potentiality, contingency or expectancy had been realised or anything necessary to perfect the interest had occurred; and
- (b) if the interest is dependent in any way on the exercise of a discretion or any other contingency, it will be presumed that the discretion has been exercised, or the contingency has been realised, so as to give rise to the greatest possible liability to duty in this State.

(4) An interest in property is taken to be situated in the jurisdiction in which the property to which the interest relates is situated.

Territorial application of Act

3B. (1) This Act applies in respect of an instrument that relates to property situated, or a matter or thing to be done, in South Australia irrespective of whether—

- (a) the instrument is within or outside South Australia; or
- (b) the instrument was executed within or outside South Australia.

(2) If an instrument relates to property situated in part in South Australia and in part outside South Australia, duty is to be calculated as if the instrument related only to the property situated in South Australia.

(3) This section operates subject to any other specific provision dealing with how duty is to be calculated on an instrument that relates to property within and outside South Australia.¹

¹ Section 81B deals with the duty payable on a mortgage over property within and outside the State.

Special rules for determining location of certain forms of intangible property

3C. (1) This section applies to intangible property of the following kinds—

- (a) business or product goodwill;
- (b) intellectual property (except know-how and confidential information);
- (c) rights conferred under a franchise agreement or licence (including a statutory licence granted under the law of the Commonwealth but not a statutory licence granted under the law of the State).

(2) If intangible property to which this section applies is a business asset, it is taken to be wholly situated in South Australia if the business is carried on wholly in South Australia and, if not, is taken to be situated in the various jurisdictions in which the business is carried on in proportion to the volume of business carried on in each.

(3) The Commissioner is to determine proportions for the purposes of subsection (2) having regard to—

- (a) the turnover of the business; and
- (b) the relative extent of income generated by the business in each jurisdiction in which the business is carried on; and
- (c) the relative extent of the work carried on in each of the relevant jurisdictions; and
- (d) any other relevant factors.

(4) If intangible property to which this section applies is not a business asset, it is taken to be situated in the jurisdiction in which the owner—

- (a) if a company—is incorporated; or
- (b) if a natural person—is ordinarily resident.

Statutory licence

3D. The property in a statutory licence granted under the law of South Australia, and in any rights deriving from such a licence, is taken to be situated in South Australia.

Repeal of s. 5

7. Section 5 of the principal Act is repealed.

Amendment of s. 60—Interpretation

8. Section 60 of the principal Act is amended by striking out "and also includes a surrender to the Crown of any lease or other interest in land, in order that the Crown may grant to a person other than the surrenderor a lease of, or other interest in, the same land or any part thereof" from the definition of "conveyance".

Amendment of s. 60A—Value of property conveyed or transferred

9. Section 60A of the principal Act is amended by striking out from subsection (8) the definition of "spouse".

Insertion of s. 60C

10. The following section is inserted after section 60B:

Refund of duty on reconveyance of property subject to a common law mortgage

60C. (1) If—

- (a) *ad valorem* duty is paid on a conveyance of property (the **prior conveyance**); and
- (b) the sole purpose of the conveyance is to secure a liability under a loan, indemnity or guarantee; and
- (c) a conveyance (the **later conveyance**) reconveys the property to the person by whom the security was given under the terms of the security or on extinguishment or termination of the secured liability,

this section applies to the later conveyance.

(2) If the Commissioner is satisfied that a conveyance is one to which this section applies—

- (a) no stamp duty is payable on the conveyance; and
- (b) the Commissioner must, on application by the person to whom the property is reconveyed, refund the duty paid on the prior conveyance.

Insertion of s. 62

11. The following section is inserted in the principal Act after section 61:

Land use entitlements

62. (1) This section applies to a transaction under which a person—

- (a) acquires a share in a company or an interest under a trust; or
- (b) becomes entitled, as the owner of a share in a company or an interest under a trust, to the possession of land.

(2) A person who acquires a right to possession of land as a result of a transaction to which this section applies is taken to acquire a notional interest in the land.

(3) An instrument that gives effect to, or acknowledges, evidences or records a transaction to which this section applies is dutiable as a conveyance of a notional interest in land.

(4) The value of the notional interest acquired as a result of the transaction is determined as follows—

- (a) if the person acquires a right to exclusive possession of land—the value of the notional interest is equivalent to the value of an unencumbered estate in fee simple in the land;
- (b) in any other case—the value of the notional interest is a proportion of the value of an unencumbered estate in fee simple in the land reflecting the more limited extent of the possessory right.

Amendment of s. 71—Instruments chargeable as conveyances operating as voluntary dispositions *inter vivos*

12. Section 71 of the principal Act is amended—

(a) by striking out subsection (3)(a)(iii) and substituting the following subparagraphs:

- (iii) the creation of an interest in property subject to a trust; or
- (iv) a transfer of an interest in property subject to a trust; or
- (v) the surrender or renunciation of an interest in property subject to a trust; or
- (vi) the redemption, cancellation or extinguishment of an interest in property subject to a trust,;

(b) by striking out from subsection (4) "or a potential beneficial interest";

(c) by striking out paragraph (a) of subsection (5);

(d) by striking out from subsection (5)(d) "or potential beneficial interest";

(e) by striking out from subsection (5)(i) "or potential beneficial interest";

(f) by inserting after subsection (5)(i) the following paragraph:

- (ia) a transaction under which there is a *pro rata* increase or diminution of the number of units held by the unitholders in a unit trust so that each unitholder's holding, expressed as a proportion of the aggregate number of units, remains unaffected by the transaction;

(g) by striking out from subsection (6) "or potential beneficial interest";

(h) by striking out from subsection (15) the definitions of "potential beneficial interest" and "transfer".

Insertion of s. 71AA

13. The following section is inserted in the principal Act after section 71:

Instruments disclaiming etc. an interest in the estate of a deceased person

71AA. (1) This section applies to an instrument under which a person who is, or may be, entitled to share in the distribution of the estate of a deceased person—

- (a) disclaims an interest in the estate; or
- (b) assigns or transfers an interest in the estate to another.

(2) An instrument to which this section applies is taken to be a conveyance of property operating as a voluntary disposition *inter vivos* (whether or not consideration is given for the transaction).

(3) For the purpose of calculating *ad valorem* duty payable on an instrument to which this section applies, the value of the interest subject to the conveyance is to be determined as if the estate had been distributed and the interest were an interest in possession.

Amendment of s. 71CB—Exemption from duty in respect of certain transfers between spouses or former spouses

14. Section 71CB of the principal Act is amended by striking out "five" from the definition of "spouses" and substituting "three".

Amendment of s. 71CC—Exemption from duty in respect of conveyance of a family farm

15. Section 71CC of the principal Act is amended by striking out from subsection (5) the definition of "spouse".

Amendment of s. 71E—Transactions otherwise than by dutiable instrument

16. Section 71E of the principal Act is amended by striking out paragraph (d) of subsection (2).

Amendment of s. 90A—Interpretation

17. Section 90A of the principal Act is amended by striking out the definition of "recognised stock exchange".

Amendment of s. 90V—Proclaimed countries

18. Section 90V of the principal Act is amended by inserting after subsection (2) the following subsection:

- (3) This section does not operate to exempt a transaction from duty under Part 4.

Substitution of Part 4

19. Part 4 of the principal Act (comprising sections 91 to 105C inclusive) is repealed and the following Part is substituted:

**PART 4
LAND RICH ENTITIES**

DIVISION 1—PRELIMINARY

Interpretation

91. (1) In this Part—

"asset" includes any form of property;

"associate"—see subsection (4);

"constituent documents" of a private entity means—

- (a) for a private company—its constitution; or
- (b) for a unit trust scheme—the instruments constituting or governing the administration of the scheme;

"corresponding law" means a law of another State, or a Territory, of the Commonwealth that imposes duties corresponding to those imposed by this Act;

"direct interest"—*see* section 92(1);

"executive officer" of a company has the same meaning as in the Corporations Law;

"group" means a group of associates;

"hold"—a person holds a share or unit in a private entity if the person—

- (a) is registered as the holder; or
- (b) is beneficially entitled to the share or unit; or
- (c) controls the exercise of rights attached to the share or unit;

"indirect interest"—*see* section 92B;

"land asset" means an interest in land (including a right to explore for minerals, petroleum or other substances on land or to recover minerals, petroleum or any other substance from land) but does not include—

- (a) a mortgage, lien or charge; or
- (b) an interest under a warrant or writ;

"local land asset" means a land asset consisting of an interest in land in South Australia;

"majority interest" in a land rich entity means a proportionate interest in the entity of more than 50 per cent;

"notional interest"—*see* section 93;

"private company" means—

- (a) a company that is limited by shares but whose shares are not listed on a recognised stock exchange; or
- (b) a company that is not limited by shares;

"private entity" means a private company or a private unit trust scheme;

"private trust" means a trust other than one in which the public is (or has been) invited to invest;

"private unit trust scheme" means—

- (a) a unit trust scheme in which less than 50 persons hold units; or
- (b) a unit trust scheme in which 50 or more persons hold units if 20 or fewer persons hold 75 per cent or more in number or value of the units on issue;

but does not include a unit trust scheme that is an approved deposit fund or a pooled superannuation trust within the meaning of the *Superannuation Industry (Supervision) Act 1993 (Cwth)*;

"proportionate interest" in a private entity means—

- (a) for a person or group that has a direct or indirect interest in the entity—the percentage representing the extent of that interest; or
- (b) for a person or group that has both a direct and an indirect interest in the entity—an aggregate percentage representing the extent of both those interests;

"related"—see section 92A;

"relative" of a person means a spouse, brother, sister, parent or child of the person;

"underlying"—the underlying assets (or a particular class of underlying assets) of a private entity include both the assets (or assets of the relevant class) held beneficially by the private entity and its notional interests in the assets (or assets of the relevant class) of related entities;

"unit" in a unit trust scheme means—

- (a) a right to participate in profits, income or distribution of assets under the scheme; or
- (b) a right to any such right of participation;

"unit trust scheme" means an arrangement under which investors may acquire rights to participate, as beneficiaries under a trust, in profits, income or distribution of assets arising from the acquisition, holding, management, use or disposal of property;

"winding up"—a unit trust scheme is wound up if the assets subject to the scheme are distributed in their entirety.

(2) Property is taken to be held beneficially by a unit trust scheme if it is held by the trustees of the scheme in trust for the unitholders.

(3) A private entity or other person that is an object of a discretionary trust is to be regarded, for the purposes of this Part, as beneficially entitled to the trust property unless—

- (a) the private entity or other person satisfies the Commissioner that this subsection operates unreasonably in the circumstances of the particular case; and
- (b) the Commissioner determines that the private entity or other person is not, in the circumstances of the particular case, to be regarded as beneficially entitled to the trust property.

(4) A person is an associate of, or associated with, another if—

- (a) they are married or in a relationship of de facto marriage; or
- (b) one is the parent, child, brother or sister of the other; or
- (c) they are in partnership; or
- (d) they are private companies which are related bodies corporate for the purposes of the *Corporations Law*; or
- (e) one is a private company and the other is a director or executive officer of, or shareholder in, the company; or
- (f) they are both trustees of a private trust or one is a trustee of a private trust and the other is a beneficiary of the private trust; or
- (g) a chain of relationships can be traced between them under one or more of the above paragraphs,

(but a person is not to be regarded as an associate of another if the Commissioner is satisfied that the association has not arisen as a result of a common commercial interest or purpose and they will act entirely independently of each other).

(5) An obligation or liability imposed under this Part on a unit trust scheme attaches to the trustees for the time being of the scheme jointly and severally.

(6) An obligation or liability imposed under this Part on a group attaches to the members of the group jointly and severally.

Direct interests

92. (1) A person has a **direct interest** in a private entity if the person holds a share or unit in the private entity.

(2) A direct interest that a person or group has in a private entity is to be expressed as a proportionate interest.

(3) The **proportionate interest** is the highest of the following:

- (a) a percentage representing the proportion of votes that the person or members of the group would be entitled to exercise (or control) at a general meeting of shareholders or unitholders assuming that all shareholders or unitholders exercised their voting rights;
- (b) a percentage representing the extent the person or members of the group are entitled to participate in dividends or distributions of income;
- (c) a percentage representing the extent to which the person or members of the group would be entitled to participate in the distribution of assets on a winding up of the private entity.

(4) The proportionate interest of a person or group in a private entity is to be determined as if any power that the person has, or the members of the group or any of them have, to increase the extent of an interest (by varying the constituent documents of the private entity or in any other way) had been exercised so as to maximise the relevant interest in the private entity.

Related entities

92A. (1) Two private entities are **related entities** if—

- (a) one has a direct interest in the other; or
- (b) a series of such relationships can be traced between them through another or other related entities (**intermediate entities**).

(2) If a private entity is related to another private entity by a relationship traced through an intermediate entity or intermediate entities, the private entity's proportionate interest in the other is calculated by multiplying the relevant fractions together and expressing the result as a percentage.

Example—

Entity A (a private company) holds a 75 per cent proportionate interest in entity B (a private unit trust scheme) which in turn holds a 50% proportionate interest in entity C (a private company). In this case the proportionate interest of entity A in entity C (insofar as it is traced through entity B) is 37.5 per cent.

Indirect interests

92B. (1) If a person or group has a direct interest in a private entity (entity A) which is related to another private entity (entity B), the person or group has an **indirect interest** in entity B.

(2) An indirect interest that a person or group has in a private entity is to be expressed as a proportionate interest.

(3) The proportionate interest is calculated by multiplying together—

- (a) a fraction representing the proportionate interest of the person or group in entity A; and

(b) a fraction representing entity A's proportionate interest in entity B,
and expressing the result as a percentage.

Example—

X holds a proportionate interest of 33¹/₃% in entity A (a private company) which in turn holds a 75% proportionate interest in entity B (a private unit trust scheme) which in turn holds a 50% proportionate interest in entity C (a private company). In this case the X's indirect interest in entity C is to be expressed as a proportionate interest of 12.5%.

Notional interest in assets of related entity

93. (1) A private entity has a notional interest in an asset held beneficially by a related entity if—

- (a) the private entity holds a majority interest in the related entity; or
- (b) a chain of majority interests can be traced between the private entity and the related entity.

Example—

Entity A holds a 75% proportionate interest in entity B which in turn holds a 60% proportionate interest in entity C which in turn holds a 40% proportionate interest in entity D. In this case entity A has a notional interest in the assets held beneficially by entity B and entity C but not in the assets held by entity D.

(2) The value of the notional interest is calculated as follows:

$$V = V_1 \times P$$

Where—

- V_1 is the unencumbered value of the asset;
- p is a fraction representing the proportionate interest of the private entity in the related entity.

DIVISION 2—LAND RICH ENTITY

Land rich entity

94. (1) A private entity is a land rich entity if—

- (a) the unencumbered value of the underlying local land assets of the private entity and associated private entities is \$1m or more; and
- (b) the unencumbered value of the entity's underlying land assets comprises 80 per cent or more of the unencumbered value of the entity's total underlying assets.

(2) In determining the unencumbered value of a private entity's total underlying assets, assets of the following classes are to be excluded from consideration—

- (a) money in cash or on deposit with a financial institution;
- (b) negotiable instruments;
- (c) shares or units in a related private entity;
- (d) contractual rights or interests other than—
 - (i) an interest in land arising from a contract or option to purchase the land; or
 - (ii) a right or interest under a loan transaction that is to be taken into account under subsection (4);
- (e) monetary entitlements from shareholders or unitholders under the terms on which shares or units were issued;
- (f) an asset of a class that is, under the regulations, to be excluded from consideration.

(3) Further, in determining the value of a private entity's total underlying assets as at a particular time, any asset (other than a land asset) acquired by the entity or a related entity within the previous 2 years is to be excluded from consideration unless the private entity satisfies the Commissioner that the asset was not acquired solely or mainly for the purpose of avoiding duty under this Part.

(4) A loan transaction is to be taken into account for the purposes of subsection (2)(d)(ii) unless—

- (a) the loan is repayable on demand or within 12 months of the date of the loan; or
- (b) the loan is to a director, shareholder, trustee or beneficiary, or a relative of a director, shareholder, trustee or beneficiary, of the private entity or an associated private entity.

DIVISION 3—DUTIABLE TRANSACTIONS

General principle of liability to duty

95. (1) A person or group that acquires a majority interest, or increases its majority interest, in a land rich entity notionally acquires an interest in the underlying local land assets of the entity and is liable to duty in respect of the notional acquisition.

(2) The following transactions are therefore dutiable:

- (a) a transaction as a result of which a person or group has a majority interest in a land rich entity; or
- (b) a transaction as a result of which a person or group that has a majority interest in a land rich entity increases its majority interest in the entity.

(3) A transaction is dutiable under this Part even though the person or group that has a majority interest, or increases its majority interest, in the land rich entity as a result of the transaction—

- (a) is not a party to the transaction; or
- (b) has a passive role in the transaction.

(4) For example, any of the following is capable of being a dutiable transaction:

- (a) an allotment of shares in a company or units in a unit trust scheme; or
- (b) the variation or abrogation of rights attaching to shares in a company or units in a unit trust scheme; or
- (c) the redemption, surrender or cancellation of shares in a company or units in a unit trust scheme.

(5) However, if a private entity acquires a local land asset and, as a result of the acquisition, becomes a land rich entity, and conveyance duty is paid in respect of the transaction, the transaction is not dutiable under this Part.

Value of notional interest acquired as a result of dutiable transaction

96. (1) If a person or group has, as a result of a dutiable transaction, a majority interest in a land rich entity the value of the notional interest acquired in the entity's underlying local land assets is determined as follows:

$$NV = TV \times P$$

Where—

- NV is the value to be of the notional interest acquired.
- TV is the total unencumbered value of all the entity's underlying local land assets.
- P is the fraction representing the proportionate interest of the person or group in the entity.

(2) If a person or group that has a majority interest in a land rich entity increases its majority interest as a result of a dutiable transaction the value of the notional interest acquired in the entity's underlying local land assets is determined as follows:

$$NV = TV \times (P_2 - P_1)$$

Where—

- NV is the value to be ascertained.
- TV is the total unencumbered value of all the entity's underlying local land assets.

- P₁** is the fraction representing the proportionate interest in the entity before the increase.
- P₂** is the fraction representing the proportionate interest in the entity after the increase.

Calculation of duty

97. (1) If the total unencumbered value of the entity's underlying local land assets is \$1.5m or more, duty in respect of a transaction under which a person or group acquires a majority interest in a land rich entity is to be equivalent to the duty payable on a conveyance of land with an unencumbered value equivalent to the value of the acquirer's notional interest in the entity's underlying local land assets.

(2) If the total unencumbered value of the entity's underlying local land assets is less than \$1.5m, duty is to be calculated in accordance with the following formula:

$$D = \left[\frac{(TV - \$1m)}{\$0.5m} \times d_1 \right] + \left[\left(1 - \frac{(TV - \$1m)}{\$0.5m} \right) \times d_2 \right]$$

Where—

- D** is the amount of the duty.
- TV** is the total unencumbered value of all the entity's underlying local land assets.
- d₁** is the duty that would be payable if subsection (1) were applicable.
- d₂** is the duty that would be payable in respect of a transaction for the acquisition of marketable securities with a dutiable value equivalent to the value of the notional interest.

(3) Duty on a dutiable transaction under which a person or group increases its majority interest in a land rich entity is to be calculated as follows:

$$D = d_1 - d_2$$

Where—

- D** is the amount of the duty.
- d¹** is the amount that would have been payable if the person or group had acquired the whole of its interest in a single transaction at the time of the increase.
- d₂** is the amount that would have been payable if the person or group had acquired its pre-existing interest in a single transaction at the time of the increase.

(4) However, if any part of a majority interest in a land rich entity was acquired by the relevant person or group more than 3 years before the date of a dutiable transaction (the **earlier acquisition**), the duty calculated under the above provisions is to be rebated by a percentage representing the extent of the earlier acquisition as a proportion of the majority interest as a whole.

(5) If a person or group acquires or increases a majority interest in a land rich entity through the acquisition of marketable securities and duty has been paid under this Act or a corresponding law in respect of the transaction for the acquisition of the marketable securities, the duty calculated under this section is to be reduced by the amount of the duty paid.

DIVISION 4—PAYMENT AND RECOVERY OF DUTY

Acquisition statement

98. (1) If a dutiable transaction occurs, the person or group that acquires or increases its majority interest in the land rich entity must, within 2 months after the date of the dutiable transaction—

- (a) lodge a return with the Commissioner; and
- (b) pay the relevant amount of duty.

Maximum penalty: \$10 000.

(2) The return must contain the following information:

- (a) the name and address of the person, or the name and address of each member of the group, that has the majority interest or has increased its majority interest as a result of the transaction; and
- (b) the date of the transaction; and
- (c) particulars of—
 - (i) the interest acquired as a result of the transaction; and
 - (ii) any other interests held and the dates and circumstances of their acquisition; and
 - (iii) the underlying land assets and the underlying local land assets of the land rich entity as at the date of the transaction; and
 - (iv) the underlying assets of the land rich entity as at the date of the transaction; and
 - (v) amounts of duty paid under this Act or a corresponding law in relation to the acquisition of the majority interest in the land rich entity; and
- (d) other information required by the Commissioner.

Recovery from entity

99. (1) If a person or group fails to pay duty as required under this Part, the Commissioner may recover the duty, as a debt, from the relevant private entity.

(2) Instead of, or as well as, proceeding against the private entity for recovery of duty as a debt, the Commissioner may register a charge on any of its land for the amount of the unpaid duty.

(3) The Commissioner must give written notice of the registration of a charge under this section to—

- (a) the registered proprietor of the land; and
- (b) the person in default, or each member of the group in default.

(4) If the duty remains unpaid 6 months after the registration of the charge, the Commissioner may apply to the District Court for an order for the sale of the land.

(5) On an application under subsection (4), the Court may make an order for sale of the land by public auction and, in that event, the proceeds of sale are to be applied as follows:

- (a) firstly—in payment of the costs of the sale and other costs of proceeding under this section; and
- (b) secondly—in discharging liabilities secured by an instrument registered in priority to the registered charge; and
- (c) thirdly—in discharging the liability to duty; and
- (d) fourthly—in discharging other liabilities as directed by the Court; and
- (e) fifthly—in payment to the registered proprietor of the land immediately before the completion of the sale.

(6) If the Commissioner recovers duty under this section, the private entity may recover the amount paid to, or recovered from, the entity from the person or persons principally liable for the payment of the duty.

DIVISION 5—MISCELLANEOUS**Valuation of interest under contract or option to purchase land**

100. If an interest in land consists of an interest arising under a contract or option to purchase the land, the interest is to be valued, for the purposes of this Part, by subtracting from the market value of the land the amount that the purchaser under the contract or the holder of the option would be required to pay in order to complete the purchase.

Exempt transactions

101. (1) A transaction under which a person or a group acquires an interest in a land rich entity is exempt from duty under this Part if it takes place in circumstances in which a conveyance of an interest in the underlying local land assets would not attract *ad valorem* duty.

Example—

Suppose that A is entitled under the will of B to 60% of the shares in X Pty Ltd, a land rich entity, owning land in the State valued at \$2m. A's acquisition of the shares on distribution of the estate is exempt from duty because a conveyance of the land itself would, if it occurred in these circumstances (*ie* on distribution of the estate), be exempt from *ad valorem* duty.

(2) The regulations may exempt a transaction from duty under this Part.

Multiple incidences of duty

102. (1) If it is possible under this Part to assess the incidence of duty in different ways in respect of the same transaction, duty will be assessed so as to maximise the return to the revenue but not so as to extend the incidence of duty beyond a single person or group identified in the assessment.

(2) If a person or a group acquires a majority interest in a land rich entity, and another person or group later acquires a majority interest in the land rich entity without diminishing the former majority interest, the Commissioner may, if satisfied that it is just and equitable to do so, exempt the later acquisition, wholly or partly, from duty under this Part.

Example—

Suppose the shares of X Pty Ltd, a land rich entity, are divided into Class A and Class B. The Class A shares confer rights to dividends but no rights to share in the distribution of assets on winding up of the company. The Class B shares confer no rights to dividends but do confer rights to share in the distribution of assets on the winding up of the company. Suppose that A acquires all the Class A shares and pays duty under this Part on the acquisition of a majority interest in the company. Suppose that B then acquires all the Class B shares. In this case, the Commissioner could, if satisfied that it would be just and equitable to do so, grant relief under the above subsection.

(3) If a group acquires a majority interest in a land rich entity as a result of a dutiable transaction, and a person or group that is a member or subgroup of the group acquires that majority interest from the group, the Commissioner may, if satisfied that it is just and equitable to do so, exempt the later acquisition, wholly or partly, from duty under this Part.

Amendment of Sched. 2

20. Schedule 2 to the principal Act is amended—

(a) by striking out item 1 of the exemptions related to the item commencing "CONVEYANCE or TRANSFER on sale of any property" and substituting the following exemption:

1. Conveyance or transfer of a mortgage or an interest in a mortgage (including such a conveyance or transfer under which a chose in action consisting of the debt secured by that mortgage or part of that debt is also conveyed or transferred).;

(b) by striking out item 2 of the exemptions related to the item commencing "CONVEYANCE operating as a voluntary disposition *inter vivos* of any property" and substituting the following exemption:

2. Conveyance or transfer of a mortgage or an interest in a mortgage (including such a conveyance or transfer under which a chose in action consisting of the debt secured by that mortgage or part of that debt is also conveyed or transferred).;

(c) by inserting after item 25 of the exemptions related to the item commencing "GENERAL EXEMPTIONS FROM ALL STAMP DUTIES" the following exemption:

26. A transaction (or an instrument effecting or acknowledging, evidencing or recording a transaction) by a trustee of a regulated superannuation fund (within the meaning of the *Superannuation Industry (Supervision) Act 1993* (Cwlth)) in the ordinary course of administering the fund—

(a) creating an interest in the fund in favour of a beneficiary of the superannuation scheme; or

(b) redeeming, cancelling or extinguishing such an interest.

Amendments relating to redemption to operate retrospectively and prospectively

21. (1) The MSP amendments operate both prospectively and retrospectively.

(2) However—

(a) the MSP amendments do not operate retrospectively in respect of an instrument or transaction made or occurring before the relevant date but on or after 30 September 1999; and

(b) the MSP amendments only operate to impose a liability in respect of an instrument or transaction made or occurring before 30 September 1999 if—

(i) no assessment of duty in respect of the instrument or transaction had been made before the relevant date; or

(ii) an assessment of duty in respect of the instrument or transaction had been made before the relevant date but—

• no objection to the assessment was made within 60 days after the date of the assessment; or

• an objection to the assessment was made and the objection was disallowed; and

(c) the MSP amendments do not validate the assessment of duty made in relation to the transaction that was the subject of the High Court's judgment in the case of *MSP Nominees Pty Ltd and another v Commissioner of Stamps*¹ or authorise a reassessment of duty in that case.

(3) In this section—

"MSP amendments" means the amendments made by sections 5, 6, 7 and 12 of this Act insofar as they are applicable to the redemption, cancellation or extinguishment of an interest in a unit trust scheme;

"relevant date" means the date of the introduction of the Bill for this Act into the Parliament.

¹ (1999) 166 ALR 149.