

1998
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Treasurer)

Duties Bill 1998

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1998
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Treasurer)

Duties Bill 1998

A BILL

FOR

An Act to create and charge various duties

The Legislative Assembly for the Australian Capital Territory enacts as follows:

PART I—PRELIMINARY

1. Short title

5 This Act may be cited as the *Duties Act 1998*.

2. Commencement

(1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions commence on a day fixed by the Minister
10 by notice in the *Gazette*.

(3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which this Act

is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

3. Incorporation of *Taxation Administration Act 1998*

The *Taxation Administration Act 1998* is incorporated and shall be read as one with this Act.

4. Interpretation

In this Act, unless the contrary intention appears—

“Act imposing duty” means—

- (a) a corresponding Act; or
- (b) an Act to which the *Taxation Administration Act* applies;

“ADR” means a negotiable certificated receipt issued by a depository resident outside Australia acknowledging the interest of the registered holder of the receipt in shares in a Territory company held by the depository, or deposited with a depository to hold, as trustee for the holder,

“application to register a motor vehicle” means—

- (a) an application under the *Motor Traffic Act* to register a motor vehicle; and
- (b) an application under the *Motor Traffic Act* to transfer the registration of a motor vehicle;

“approved” means approved by the Commissioner;

“associated person” means a person who is associated with another person in accordance with any of the following provisions:

- (a) persons are associated persons if they are related persons;
- (b) natural persons are associated persons if they are partners in a partnership to which the *Partnership Act 1963* applies;
- (c) private companies are associated persons if common shareholders have a majority interest in each private company;
- (d) trustees are associated persons if any person is a beneficiary common to the trusts (not including a public unit trust scheme) of which they are trustees;
- (e) a private company and a trustee are associated persons if a related body corporate of the company (within the meaning of the *Corporations Law*) is a beneficiary of the trust (not including a public unit trust scheme) of which the trustee is a trustee;

and, for the purposes of Part II of Chapter 3, a public company

and a subsidiary of a public company are taken to be associated persons;

“Australian register” has the same meaning as in the *Corporations Law*;

5 “Australian Stock Exchange” means the Australian Stock Exchange Limited;

“bankrupt” includes applying to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounding with creditors or making an assignment of remuneration for their benefit;

“broker” has the meaning given by section 115;

10 “business asset” has the meaning given by paragraph 10 (g);

“charge” includes impose;

15 “charitable organisation” means an association, society, institution or body carried on for a religious, educational, benevolent or charitable purpose, other than one carried on for the purpose of securing pecuniary benefits to its members;

“CHESS” means Clearing House Electronic Subregister System;

“commercial hire business” has the meaning given by section 162;

20 “Commissioner” means the Commissioner for Australian Capital Territory Revenue appointed under the Taxation Administration Act;

25 “company title dwelling” means a separate dwelling in a building containing more than 1 separate dwelling situated on land in the Territory owned or leased by a company in which shares issued by the company are owned by persons who, by virtue of the ownership of their shares, have an exclusive right to occupy a part of the building;

30 “complying approved deposit fund” means an entity that is a complying approved deposit fund in accordance with section 43 of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth;

“complying superannuation fund” means an entity that is—

(a) a complying superannuation fund in accordance with section 42 of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth; or

35 (b) an exempt public sector superannuation scheme within the meaning of that Act;

“corporation” means a body corporate, whether incorporated in this

jurisdiction or elsewhere;

“corresponding Act” means an Act of another Australian jurisdiction that corresponds to this Act;

5 “corresponding law”, in relation to a law of the Territory, means a law of a State or another Territory that is similar, or has a similar effect, to that law of the Territory;

“cost”, in relation to a lease, has the meaning given by section 135,

10 “Crown lease” includes any lease of land granted by or in the name of the Commonwealth or by the Federal Capital Commission appointed under the *Seat of Government (Administration) Act 1924* of the Commonwealth;

“CUFS” means any interest, issued by or on behalf of CHES Depositary Nominees Pty Limited, that provides beneficial ownership in respect of—

- 15 (a) shares in a corporation incorporated outside Australia; or
(b) units in a public unit trust scheme;

being shares or units that are quoted on the market operated by the Australian Stock Exchange;

“determined amount”, in relation to duty, means an amount—

- 20 (a) determined by the Minister; or
(b) calculated in a manner determined by the Minister;

under section 139 of the Taxation Administration Act for the purposes of the provision in which the expression occurs;

25 “determined rate”, in relation to duty, means a rate determined by the Minister under section 139 of the Taxation Administration Act for the purposes of the provision in which the expression occurs;

“disabled person” means a person who is 16 years of age or older and who is—

- 30 (a) permanently blind; or
(b) permanently incapacitated for work;

“discretionary trust” means a trust under which the vesting of the whole or any part of the capital of the trust estate, or the whole or any part

of the income from that capital, or both—

- (a) is required to be determined by a person either in respect of the identity of the beneficiaries, or the quantum of interest to be taken, or both;
- 5 (b) will occur if a discretion conferred under the trust is not exercised; or
- (c) has occurred but under which the whole or any part of that capital or the whole or any part of that income, or both, will be divested from the person or persons in whom it is vested
10 if a discretion conferred under the trust is exercised;

“domestic partner” means a person who is a party to a domestic relationship and includes a person who was a party to such a relationship that has ceased, whether the cessation took effect in Australia or elsewhere;

15 “domestic relationship” has the same meaning as in the *Domestic Relationships Act 1994*;

“duly stamped”, in relation to an instrument, means duly stamped as mentioned in section 234;

“dutiabale property” has the meaning given by section 10;

20 “dutiabale transaction” has the meaning given by subsection 7 (2);

“dutiabale value”, in relation to a motor vehicle, has the meaning given by section 202;

“dutiabale value”, in relation to dutiabale property other than a motor vehicle, has the meaning given by section 20;

25 “eligible rollover fund” means an entity that is an eligible rollover fund in accordance with section 242 of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth and includes an entity the trustee of which is satisfied will be an eligible rollover fund within 12 months after the date on which a liability to duty
30 arises (or would otherwise arise);

“error transaction” means a sale or purchase of shares made to reverse a sale or purchase of shares made mistakenly not more than 7 days earlier, and the sale or purchase so reversed;

35 “fit-out costs” in relation to a lease, means improvements made by or on behalf of, or at the expense of, the lessee and that remain the property of the lessee;

“foreign resident” means a person who at the relevant time—

- (a) in the case of a person, other than a person referred to in paragraph (b) or (c), is not resident or domiciled in Australia;
- 5 (b) in the case of a body corporate, is not incorporated under a law of an Australian jurisdiction and—
 - (i) does not have its central management and control in Australia; and
 - 10 (ii) does not have its voting power controlled by shareholders who are residents of Australia;
- (c) in the case of a partnership or other unincorporated association or body of persons, does not have a member who is resident in Australia; or
- (d) in the case of a trust estate—
 - 15 (i) does not have a trustee who is resident in Australia; and
 - (ii) does not have its central management and control in Australia;

20 “franchise” means the package of rights held by a franchisee under a franchise arrangement;

“franchise arrangement” means an agreement or other arrangement between 2 or more persons by which one of them (the franchisor) authorises or permits another (the franchisee)—

- 25 (a) to engage in the business of offering, selling or distributing goods and services within or partly within the Territory, and the franchisee is required to do so—
 - (i) in accordance with a specified marketing, business or technical plan or system; and
 - 30 (ii) under a common format or procedure (or format and procedure); and
- (b) to use a mark or common trade name, in such a manner that the business carried on by the franchisee is, or is capable of being, identified by the public as being substantially associated with the mark or name identifying, commonly
35 connected with or controlled by the franchisor or a related person;

“franchisee” has the meaning given in the definition of “franchise arrangement”;

40 “franchisor” has the meaning given in the definition of “franchise arrangement”;

“futures broker” has the same meaning as in the *Corporations Law*;

“futures contract” has the same meaning as in the *Corporations Law*;

“general insurance” has the meaning given by section 174;

“hire of goods” has the meaning given by section 151;

5 “hire purchase agreement” means a letting of goods with an option to purchase and an agreement for the purchase of goods by instalments (whether the agreement describes the instalments as rent or hire or otherwise), but does not include any agreement—

10 (a) by which the property in the goods the subject of the agreement passes at the time of the agreement or on or at any time before the delivery of the goods; or

(b) for the letting of goods, or for the purchase of goods, together with a letting or purchase of—

15 (i) real property or an estate or interest in real property; or

(ii) a business or an interest in a business;

“hiring charges” has the meaning given by section 154;

“hospital” means a recognised hospital within the meaning of the *Health Insurance Act 1973* of the Commonwealth;

20 “identification code”, in relation to an SCH participant, means a code that, for the purpose of the SCH business rules, is the SCH participant’s identification code or 1 of the SCH participant’s identification codes;

25 “impressed stamp” means a stamp impressed by means of a die or other device made pursuant to section 232;

“index trust” means any of the following:

(a) Benchmark Australian All Ordinaries Trust;

(b) Australian Index Trust;

(c) Industrial Index Trust;

30 (d) Resources Index Trust;

(e) Property Index Trust;

(f) Gold Index Trust;

(g) Tower 20 Leaders Index Trust;

“instalment warrant” means a warrant—

35 (a) that is issued by the warrant issuer in accordance with the Business Rules of the Australian Stock Exchange;

- (b) that is an option contract within the meaning of section 9 of the *Corporations Law*;
- (c) that provides beneficial ownership in respect of marketable securities that are quoted on the market operated by the Australian Stock Exchange; and
- (d) that provides legal ownership of marketable securities to the warrant holder on payment of the final instalment, being a payment that the warrant holder makes under the terms of issue of the warrant;

5

10 “instrument” includes a written document and a written statement;

“insurance” includes assurance;

“insurance intermediary” has the same meaning as in the *Insurance (Agents and Brokers) Act 1984* of the Commonwealth;

“insurer” has the meaning given by section 174;

15

“intellectual property” means—

- (a) a business name, trading name, trade mark, industrial design, patent, registered design or copyright; or
- (b) a right, whether or not under a franchise arrangement, to use or exploit—
- (i) a business name, trading name, trade mark or industrial design; or
- (ii) a thing, system or process that is the subject of a patent, registered design or copyright (or an adaptation or modification of such a thing, system or process);

20

25

“interest” includes an estate, an interest under a lease or a sublease, a proprietary right and a beneficial interest;

“interest”, in relation to a land-rich corporation, has the meaning given by subsection 82 (1);

30

“international trade insurance” means—

- (a) insurance of freight against loss or damage in the course of, or incidental to, international transport of the freight;
- (b) insurance of an aircraft or ship against loss or damage during a particular period when the aircraft or ship is under construction or undergoing refitting, maintenance or repairs where, at the time the insurance was effected, the aircraft or ship was intended by the owner to be used wholly or principally for the international transport of freight for an indefinitely continuing period commencing immediately

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after the completion of the construction, refitting, maintenance or repairs, as the case may be;

- 5
- (c) insurance of an aircraft or ship against loss or damage in the course of, or incidental to, a particular journey or journeys where, at the time the insurance was effected, it was intended by the owner that the journey or journeys would be wholly or principally for the international transport of freight; or
- 10
- (d) insurance of an aircraft or ship against loss or damage during a particular period where, at the time the insurance was effected, the aircraft or ship was intended by the owner to be used during that period wholly or principally for the international transport of freight;

15 “international transport”, in relation to freight, means the transport, in connection with trade or commerce, of the freight between—

- (a) a place in a foreign country; and
- (b) a place in—
- (i) another foreign country;
- (ii) Australia; or
- 20 (iii) an external Territory;

“IR” means any security, not being an option contract within the meaning of section 9 of the *Corporations Law*, issued by a trustee that provides—

- 25 (a) beneficial ownership, to the holder of the security, of marketable securities that are quoted on the market operated by the Australian Stock Exchange; and
- (b) legal ownership of the marketable securities to the holder of the security on payment of the final instalment, being a payment that the holder is obliged to make under the terms
- 30 of issue of the security;

“land” includes a stratum;

“land used for primary production” means land used primarily for—

- (a) the cultivation of the land for the purpose of selling the produce of the cultivation;
- 35 (b) the maintenance of animals or poultry on the land for the purpose of selling them or their natural increase or bodily produce;
- (c) the keeping of bees on the land for the purpose of selling their honey;
- 40 (d) a plant nursery;

(e) the propagation for sale of mushrooms, orchids or flowers;
or

(f) aquaculture,

5 “land use entitlement” means an entitlement to occupy land within the Territory conferred through an ownership of shares in a company or an ownership of units in a unit trust scheme, or a combination of a shareholding or ownership of units together with a lease or licence;

“lease” has the meaning given by section 132;

10 “life company” has the same meaning as in the *Life Insurance Act 1995* of the Commonwealth,

“life insurance” has the meaning given by section 174;

“majority shareholder”, in relation to a private company, means—

15 (a) in the case of a company the voting shares in which are not divided into classes—a person entitled to not less than 50% of those shares, and

(b) in the case of a company the voting shares in which are divided into classes—a person entitled to not less than 50% of the shares in one of those classes;

20 “managed investment scheme” means a managed investment scheme within the meaning of the *Corporations Law* that complies with Chapter 5C of that Law, and includes a public unit trust scheme;

25 “market value”, in relation to a motor vehicle, means the amount for which the motor vehicle might reasonably be sold, free of encumbrances, on the open market;

“marketable securities”, except in Chapter 4, means the following:

(a) shares referred to in paragraph 10 (d);

(b) units referred to in paragraph 10 (e);

(c) relevant interests referred to in paragraph 10 (f);

30 (d) an interest in shares, units or relevant interests referred to in paragraphs (a), (b) and (c) (other than an interest described in subparagraph 10 (l) (iii));

“mortgage” means any charge on land created merely for securing a debt;

35 “Motor Traffic Act” means the *Motor Traffic Act 1936*;

“motor vehicle” means—

(a) a motor vehicle or trailer within the meaning of the Motor

Traffic Act; or

(b) a caravan;

5 “new motor vehicle” means a motor vehicle that has not previously been registered under the Motor Traffic Act or the law of another Australian jurisdiction;

“non-commercial Commonwealth authority” means a body corporate (not being an incorporated company, society or association) that—

- 10 (a) is incorporated for a public purpose by or under a law of the Territory or the Commonwealth; and
(b) does not have as its sole or principal function the carrying on of an activity in the nature of a business, whether or not for profit;

“partnership interest” has the meaning given by paragraph 10 (i);

15 “pooled superannuation trust” means an entity that is a pooled superannuation trust in accordance with section 44 of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth;

20 “private company” means a company that is not limited by shares, or whose shares are not listed on the Australian Stock Exchange or a recognised stock exchange;

“private corporation” has the meaning given by section 77;

“private unit trust scheme” means a unit trust scheme that is not a public unit trust scheme;

25 “proper SCH transfer” has the same meaning as in section 9 of the *Corporations Law*;

“public unit trust scheme” means a unit trust scheme—

- 30 (a) any of the units of which are listed for quotation on the Australian Stock Exchange or on a recognised stock exchange;
(b) that is the subject of a deed that is an approved deed for the purposes of Division 5 of Part 7.12 of the *Corporations Law* or a corresponding law, but only if—
35 (i) some or all of its units have been offered to the public; and
(ii) no fewer than 50 persons hold units in it;
(c) that is a managed investment scheme within the meaning of the *Corporations Law* that complies with Chapter 5C of that Law and in respect of which—

- 5
- (i) some or all of the units have been offered to the public; and
 - (ii) not less than 50 persons hold units in it;
- (d) that is exempted from the requirements of Part 7 12 of the *Corporations Law* and in respect of which—
- (i) some or all of the units have been offered to the public; and
 - (ii) not less than 50 persons hold units in it, or
- 10
- (e) that, in the opinion of the Commissioner, will be a public unit trust scheme within 12 months after the Commissioner gives written notification of that opinion to a person who has requested the Commissioner to express that opinion in relation to the unit trust scheme;
- 15
- “recognised stock exchange” means a stock exchange recognised in accordance with the Business Rules of the Australian Stock Exchange;
- “registered independent options trader” has the same meaning as in the Business Rules of the Australian Stock Exchange,
- 20
- “registered insurer” means an insurer registered under Part IV of Chapter 8;
- “related body corporate” has the same meaning as in the *Corporations Law*;
- “related person” means a person who is related to another person in accordance with any of the following provisions:
- 25
- (a) natural persons are related persons if—
 - (i) one is the spouse or domestic partner of the other, or
 - (ii) the relationship between them is that of parent and child, brothers, sisters, or brother and sister;
 - (b) private companies are related persons if they are related bodies corporate within the meaning of the *Corporations Law*;
 - (c) a natural person and a private company are related persons if the natural person is a majority shareholder or director of the company or of another private company that is a related body corporate of the company within the meaning of the *Corporations Law*;
 - (d) a natural person and a trustee are related persons if the natural person is a beneficiary of the trust (not being a public unit trust scheme) of which the trustee is a trustee;
 - (e) a private company and a trustee are related persons if the
- 30
- 35
- 40

company, or a majority shareholder or director of the company, is a beneficiary of the trust (not being a public unit trust scheme) of which the trustee is a trustee;

“relevant interest” has the meaning given by paragraph 10 (f);

5 “relevant SCH participant”, in relation to an SCH-regulated transfer, means the participant who is liable under Division 1 of Part IV of Chapter 2 to pay duty chargeable in respect of the transfer or, if no duty is chargeable, the SCH participant who would be so liable if duty were chargeable;

10 “replica” has the meaning given by section 227;

“responsible entity”, in relation to a managed investment scheme, has the same meaning as in the *Corporations Law*;

15 “right”, in relation to shares or units, means any right (whether actual, prospective or contingent) of a person to have shares or units issued by a company or trust to the person, whether or not on payment of money or for other consideration, but does not include a convertible note;

“SCH” means the securities clearing house registered by the Commissioner under Division 2 of Part IV of Chapter 2;

20 “SCH business rules” has the same meaning as in section 9 of the *Corporations Law*;

“SCH participant” has the same meaning as in section 9 of the *Corporations Law*;

25 “SCH-regulated transfer” has the same meaning as in section 9 of the *Corporations Law*;

“scheme” includes—

30 (a) an agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; or

(b) a plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise;

“SEATS” means the Stock Exchange Automated Trading System operated by the Australian Stock Exchange;

35 “shares” includes rights to shares;

“solicitor” means a legal practitioner who practises as a solicitor, either on his or her own account or as a member of a partnership;

“special hiring agreement” means a written agreement for the hire of

goods—

(a) that describes the goods in such a way as to enable the nature or character of the goods to be clearly and readily identified, including the number of items; and

5

(b) that does not include—

(1) provisions under which the goods may, at any time, be replaced in whole or in part by other goods, except to the extent that the agreement allows replacement if the goods—

10

(A) are lost, destroyed or stolen;

(B) fail or malfunction in the normal course of operation or use; or

15

(C) are temporarily replaced during the servicing, maintenance or repair of the goods; or

(ii) provisions under which other goods, whether of the same or a different type, may be additionally provided;

20

“spouse”, in relation to a person, includes another person who is in a domestic relationship within the meaning of the *Domestic Relationships Act 1994* with the person;

“subsidiary” of a private corporation has the meaning given by subsection 80 (3) or (5);

25

“Taxation Administration Act” means the *Taxation Administration Act 1998*;

30

“tax avoidance scheme” means a scheme where the person who has, or 1 or more of the persons who have, entered into or carried out the scheme or a part of the scheme did so for the purpose of securing—

(a) that an amount of duty would not be payable by a person, being an amount that would have been, or might reasonably be expected to have been, payable by the person;

35

(b) that an amount of duty payable by a person would be less than the amount that would have been, or might reasonably be expected to have been, payable by the person; or

(c) that a refund of duty would be payable to a person, being a refund that would not have been or might reasonably be expected not to have been, payable to the person;

40

if the scheme had not been entered into or carried out, or for purposes of which that purpose was the dominant purpose;

“tenement” includes an office, room or apartment in a tenement;

5 “Territory company” means a company incorporated, or taken to be incorporated, under the *Corporations Law* of the Territory and includes a body corporate that is incorporated under any Territory Act and that is not a company incorporated, or taken to be incorporated, under the *Corporations Law* of a State or another Territory;

10 “trading stock”, in relation to a vehicle dealer licensed under the *Sale of Motor Vehicles Act 1977* or a corresponding law, means a vehicle offered or exposed for sale by the dealer in the course of the dealer’s business, except a vehicle used—

- (a) personally by the dealer or a member of the dealer’s staff; or
- (b) for the general purposes of the dealer’s business;

“transfer” includes an assignment and an exchange;

15 “transfer document” has the same meaning as in section 1097 of the *Corporations Law*;

“transfer identifier for an SCH-regulated transfer” means the distinctive number allocated to the transfer by SCH;

“transfer value of marketable securities” means—

- 20 (a) in the case of a transfer on sale—the consideration for the sale or the unencumbered value of the marketable securities at the date of completion of the transfer, whichever is the greater; or
- 25 (b) in any other case—the unencumbered value of the marketable securities at the date of completion of the transfer;

“trustee” includes—

- (a) a person who is a trustee under an implied or constructive trust;
- 30 (b) in relation to a deceased person—an executor of the will, or an administrator of the estate, of the deceased person;
- (c) a receiver, guardian, committee or manager of the property of a person under a legal or other disability;
- 35 (d) a receiver or manager of the property of a company, or a liquidator of a company for the purpose of its winding up;
- 40 (e) a broker who executes a transfer of a marketable security as transferee on behalf of another person for the purpose of safeguarding the interests of that person in relation to dividends payable to the holder of the marketable security or in relation to the issue of other marketable securities to

which the holder of the first-mentioned marketable security becomes entitled because of being the holder,

- (f) a person who holds a marketable security for the benefit of another person; and
- 5 (g) a person who may be required to exercise his or her voting power in relation to a marketable security at the direction of another person;

“unencumbered value” has the meaning given by section 22;

“unit”, in relation to a unit trust scheme, means—

- 10 (a) a right or interest (whether described as a unit or a sub-unit or otherwise) of a beneficiary under the scheme; or
- (b) a right to any such right or interest;

15 “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, income or distribution of assets arising from the acquisition, holding, management or disposal of any property whatever pursuant to the trust;

20 “variation”, in relation to a lease, means a variation made for any reason or on any basis and includes a further variation;

“warrant” means an option contract within the meaning of the *Corporations Law* that is admitted to trading status on the stock market of the Australian Stock Exchange in accordance with section 8 of the Business Rules of the Australian Stock Exchange;

25 “warrant-issuer” means a person who is a warrant-issuer under the Business Rules of the Australian Stock Exchange.

5. Duty a debt payable to the Territory

A duty charged by this Act is, when a liability to pay the duty is created, a debt due to the Territory.

30 CHAPTER 2—TRANSACTIONS CONCERNING DUTIABLE PROPERTY

PART I—INTRODUCTION AND OVERVIEW

6. Interpretation

In this Chapter—

35 “declaration of trust” means any declaration (other than by a will or

5 testamentary instrument) that any identified property vested or to be vested in the person making the declaration is or is to be held in trust for the person or persons, or the purpose or purposes, mentioned in the declaration although the beneficial owner of the property, or the person entitled to appoint the property, may not have joined in or assented to the declaration;

“transfer” includes an assignment, an exchange and a buy-back of shares in accordance with Division 2 of Part 2J.1 of the *Corporations Law*.

10 **7. Imposition of duty on certain transactions concerning dutiable property**

(1) This Chapter charges duty on—

(a) a transfer of dutiable property; and

(b) the following transactions:

15 (i) an agreement for the sale or transfer of dutiable property;

(ii) a declaration of trust over dutiable property;

(iii) a grant of a Crown lease;

(iv) a surrender of an interest in land in the Territory, not being a surrender of a Crown lease to the Commonwealth or a

20 surrender of a sublease to the lessor;

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

(vi) a vesting of dutiable property by or as a consequence of a statute or court order, being dutiable property that was in existence before the vesting.

25 (2) A transfer or transaction referred to in subsection (1) is a dutiable transaction for the purposes of this Act.

(3) In this section a reference to the granting of a Crown lease shall be read as including a reference to the granting of a new Crown lease over land the subject of a Crown lease that has been surrendered or determined.

30 **8. Imposition of duty on dutiable transactions that are not transfers**

(1) The duty charged by this Chapter on a dutiable transaction referred to in paragraph 7 (1) (b) is to be charged as if each such dutiable transaction were a transfer of dutiable property.

35 (2) For the purpose of charging duty under this Chapter, in relation to a

dutiable transaction specified in Column 1 of the following Table:

- (a) the property specified opposite the dutiable transaction in Column 2 is taken to be the property transferred (and a reference in this Act to property transferred includes a reference to such property);
- 5 (b) a person specified opposite the dutiable transaction in Column 3 is taken to be the transferee of the dutiable property (and a reference in this Act to a transferee includes a reference to such a person);
- 10 (c) the transfer of the dutiable property is taken to have occurred at the time specified opposite the dutiable transaction in Column 4 (and a reference in this Act to the time at which a transfer occurs includes a reference to such a time).

TABLE

Column 1	Column 2	Column 3	Column 4
Dutiable transaction	Property transferred	Transferee	When transfer occurs
Agreement for sale or transfer	The property agreed to be sold or transferred	The purchaser or transferee	When the agreement is entered into
Grant of a Crown lease	The leasehold interest	The lessee	When the lease is granted
Declaration of trust	The property vested or to be vested in the declarant	The person declaring the trust	When the declaration is made
Surrender	The surrendered property	The person to whom the property is surrendered	When the surrender takes place
Foreclosure	The mortgaged property	The mortgagee	When the order for foreclosure is made
Vesting by statute	The vested property	The person in whom the property is vested	When the vesting occurs
Vesting by order of a court	The vested property	The person in whom the property is vested	When the order is made

15

9. Form of a dutiable transaction

It is immaterial whether or not a dutiable transaction is effected by a written instrument or by any other means, including electronic means.

10. Dutiable property

Dutiable property is any of the following:

- (a) land in the Territory;
- (b) a Crown lease;
- 5 (c) a land use entitlement;
- (d) shares in—
 - (i) a Territory company; or
 - (ii) a corporation incorporated outside Australia that—
 - 10 (A) in the case of an SCH-regulated transfer, has a registered office in the Territory; or
 - (B) in any other case, being shares that are kept on the Australian register kept in the Territory;
- (e) units in a unit trust scheme, being units—
 - (i) registered on a register kept in the Territory; or
 - 15 (ii) that are not registered on a register kept in Australia, but in respect of which the manager (or, if there is no manager, the trustee) of the unit trust scheme is a Territory company or is a natural person resident in the Territory;
- (f) a relevant interest, being—
 - 20 (i) CUFS providing beneficial ownership in respect of—
 - (A) shares in a corporation incorporated outside Australia that has a registered office in the Territory; or
 - (B) units in a public unit trust scheme, being units to which subparagraph (e) (i) or (ii) applies;
 - 25 (ii) IRs providing beneficial ownership in respect of shares in a Territory company;
 - (iii) an ADR;
 - (iv) instalment warrants providing beneficial ownership in respect of shares in a Territory company; or
 - 30 (v) a security quoted on a market operated by the Australian Stock Exchange that is—
 - (A) related to shares in a Territory company; and
 - (B) prescribed for the purposes of this subparagraph;

- (g) a business asset, being, at any relevant time—
- (i) the goodwill of a business if, during the previous 12 months, a sale of goods or services, or goods and services, has been made to a Territory customer of the business;
 - 5 (ii) intellectual property that has been used or exploited in the Territory during the previous 12 months, but only if the intellectual property is the subject of a dutiable transaction that is, or forms part of, a sale of a business; or
 - 10 (iii) a statutory licence or permission under a Commonwealth law, if the rights under the licence or permission have been exercised, during the previous 12 months, in respect of the Territory or in an area that includes the Territory or a part of the Territory;
- (h) a statutory licence or permission under a Territory law;
- 15 (i) a partnership interest, being an interest in a partnership that has partnership property that is dutiable property elsewhere referred to in this section;
 - (j) goods in the Territory, if the subject of an arrangement that includes a dutiable transaction over any dutiable property (other than intellectual property) elsewhere referred to in this section, not including the following:
 - 20 (i) goods that are stock-in-trade;
 - (ii) material held for use in manufacture;
 - (iii) goods under manufacture;
 - 25 (iv) goods held or used in connection with land used for primary production;
 - (v) livestock;
 - (vi) a registered motor vehicle;
 - (vii) a ship or vessel;
 - 30 (k) an option to purchase land in the Territory or a Crown lease over land in the Territory;
 - (l) an interest in any dutiable property referred to in paragraphs (a) to (k) (inclusive), except to the extent that—
 - 35 (i) it arises as a consequence of the ownership of a unit in a unit trust scheme and is not a land use entitlement;
 - (ii) it is, or is attributable to, an option over dutiable property; or
 - (iii) it is an interest in a marketable security, being an interest that is traded on the Australian Stock Exchange or the Sydney Futures Exchange and that is not included in
 - 40

paragraph (f).

11. When does a liability for duty arise

(1) A liability for duty charged by this Chapter arises when a transfer of dutiable property occurs.

5 (2) However, if a transfer of dutiable property is effected by a written instrument, liability for duty charged by this Chapter arises when the instrument is first executed.

12. Who is liable to pay the duty

10 Duty charged by this Chapter is payable by the transferee, unless this Chapter requires another person to pay the duty.

13. The liability of joint tenants

For the purpose of assessing duty charged by this Chapter, joint tenants of dutiable property are taken to hold the dutiable property as tenants in common in equal shares.

15 **14. Necessity for written instrument or written statement**

(1) If a dutiable transaction that is liable to ad valorem duty under this Chapter is not effected by a written instrument, the transferee shall make a written statement in a form approved by the Commissioner.

20 (2) The written statement shall be made within 90 days after the liability arises.

(3) This section does not apply to an SCH-regulated transfer to which Division 1 of Part IV applies.

(4) If a dutiable transaction—

- 25 (a) is completed by an SCH-regulated transfer; or
(b) is completed or evidenced by a written instrument;

30 within 90 days after the date on which the dutiable transaction occurs, the requirement to lodge a statement and pay duty in respect of the statement may be satisfied by the payment of duty under Division 1 of Part IV, or by the lodgment of and payment of duty on the written instrument, within 90 days after the date on which the dutiable transaction occurs.

15. Lodging written instrument or written statement with Commissioner

35 (1) A transferee who is liable to pay duty in respect of a dutiable transaction shall, within 90 days after the liability arises, lodge with the Commissioner—

- (a) the written instrument that effects the dutiable transaction or, if there is more than 1 such written instrument, each of them; or

(b) the written statement made in accordance with section 14.

(2) This section does not apply to—

(a) the transfer of a marketable security on which duty is paid in accordance with Division 1 or 3 of Part IV, or

5 (b) an SCH-regulated transfer, or a transfer to which Division 3 of Part IV applies, that is exempt from duty

16. When must duty be paid?

(1) A tax default does not occur for the purposes of the Taxation Administration Act if duty is paid within 90 days after the liability to pay it arises.

(2) This section does not apply to duty payable on the lodgment of a return under Division 1 or 3 of Part IV.

17. No double duty

(1) If a dutiable transaction is effected by more than 1 instrument, 1 instrument is to be stamped with the duty payable on the transaction and in respect of the other instruments—

(a) no duty is chargeable on an instrument that is lodged with the Commissioner for stamping at the same time as the instrument to be stamped with the duty payable on the transaction; and

20 (b) duty of \$20 is chargeable on an instrument lodged with the Commissioner for stamping at any other time.

(2) If a transfer of dutiable property is made in conformity with an agreement for the sale or transfer of the property—

25 (a) no duty is chargeable in respect of the transfer if it is lodged with the Commissioner for stamping at the same time as the agreement for sale or transfer; and

(b) duty of \$20 is chargeable in respect of the transfer if it is lodged for stamping at any other time.

(3) The duty chargeable in respect of a transfer of dutiable property that is not made in conformity with an agreement for the sale or transfer of the dutiable property is \$20 if—

(a) the duty chargeable in respect of the agreement has been paid;

(b) the transfer would be in conformity with the agreement if the transferee was the purchaser under the agreement; and

35 (c) the purchaser under the agreement and the transferee under the transfer were related persons at the time the agreement was entered into.

(4) The duty chargeable on a transfer to a trustee of dutiable property

subject to a declaration of trust is \$20 if ad valorem duty has been paid on the declaration of trust in respect of the same dutiable property.

5 (5) The duty chargeable on a transfer of dutiable property as a consequence of a foreclosure order is \$20 if ad valorem duty has been paid on the foreclosure.

(6) The duty chargeable on a declaration of trust that declares the same trusts as those upon and subject to which the same dutiable property was transferred to the person declaring the trust is \$20 if ad valorem duty has been paid on the transfer.

10 (7) A dutiable transaction in respect of marketable securities that confer a land use entitlement is taken to be a dutiable transaction in respect of the land use entitlement only and, if duty has been paid on the dutiable transaction in accordance with a law of another Australian jurisdiction, the duty charged by this Chapter on the dutiable transaction is to be reduced by the amount of the
15 duty so paid.

18. Rate of duty

Duty is charged on the dutiable value of the dutiable property subject to the dutiable transaction at the relevant rate set out in Part III.

19. Concessions and exemptions from duty

20 Concessions and exemptions from duty charged by this Chapter are dealt with in Parts VI and VII.

PART II—DUTIABLE VALUE

20. What is the “dutiable value” of dutiable property?

25 (1) The dutiable value of dutiable property that is subject to a dutiable transaction is the greater of—

(a) the consideration (if any) for the dutiable transaction (being the amount of a monetary consideration or the value of a non-monetary consideration); and

(b) the unencumbered value of the dutiable property.

30 (2) The dutiable value of dutiable property transferred by way of foreclosure is the unencumbered value of the dutiable property and not the value of the debt secured by the mortgaged property.

(3) The dutiable value of a business asset referred to in paragraph 10 (g) that also has a relevant connection with the Commonwealth or another
35 Australian jurisdiction is to be apportioned in accordance with section 27.

(4) The dutiable value of a partnership interest referred to in section 28 is to be determined in accordance with that section.

21. What is the consideration for the transfer of dutiable property?

5 (1) The consideration for the transfer of dutiable property is taken to include the amount or value of all encumbrances, whether certain or contingent, subject to which the dutiable property is transferred.

10 (2) The consideration for the transfer of the interest of a transferee under an uncompleted agreement for the sale or transfer of dutiable property is taken to include the balance of the amount or value of the consideration that would be required from the transferee under the agreement in order to complete it in accordance with its terms.

(3) The consideration for the transfer of the goodwill of a business is taken to include the amount or value of the consideration for any restraint of trade arrangement entered into in connection with the transfer of the goodwill.

15 (4) Where a Crown lease is granted subject to a requirement that the lessee carry out, or cause to be carried out, works on land other than the land the subject of the lease, the cost of carrying out those works shall be taken to form part of the consideration for the lease.

(5) Where a Crown lease is granted—

20 (a) for an initial term; and

(b) subject to a right provided by the lease for the lessee to be granted a further term (whether or not the exercise of that right is subject to conditions);

25 the lease shall be taken to be granted for a term equal to the aggregate of the initial term and the further term, up to a maximum of 99 years, and the consideration for the lease shall be taken to be the aggregate of—

(c) any lump sum paid for the grant of the lease;

(d) any lump sum payable for renewal of the lease;

30 (e) the rent payable under the lease during the term for which it is to be taken to have been granted; and

(f) any costs that are to be taken to form part of the consideration by virtue of subsection (4).

22. What is the “unencumbered value” of dutiable property?

35 (1) The unencumbered value of dutiable property is the value of the property determined without regard to any encumbrance to which the property is subject.

(2) The unencumbered value of the goodwill of a business is taken to include the value of any restraint of trade arrangement entered into by the vendor in order to protect the value of the goodwill.

(3) If, before land is transferred to a transferee, the transferee has made improvements to the land, the unencumbered value of the land is to be determined as if those improvements had not been made.

5 (4) The unencumbered value of a Crown lease at the time it is granted shall, for the purposes of this Chapter, be taken to be the sum determined by the Land Department to be that value.

(5) In determining the unencumbered value of a Crown lease at the time it is granted the Land Department shall assume—

- 10 (a) that the consideration for the lease is to be paid as a lump sum; and
(b) that the lessee is not obliged by the lease to carry out any works, or to cause any works to be carried out, whether on the land the subject of the lease or elsewhere.

(6) In this section—

15 “Land Department” means the administrative unit responsible for the administration of Part V of the *Land (Planning and Environment) Act 1991*.

(7) In this section, a reference to the granting of a Crown lease over a parcel of land shall be read as including a reference to the granting of a second or subsequent Crown lease over the land.

20 **23. Arrangements that reduce the dutiable value**

If any arrangement affecting the dutiable value of dutiable property that was entered into within 12 months before a dutiable transaction was brought about by any person with the intention of reducing the dutiable value of the dutiable property, the Commissioner may—

- 25 (a) cause a valuation of the dutiable property to be made;
(b) direct the valuer to disregard the arrangement for the purposes of the valuation; and
(c) assess duty on the basis of the valuation carried out in accordance with the direction.

30 **24. Aggregation of dutiable transactions**

(1) Dutiable transactions relating to separate items of dutiable property, or separate parts of, or interests in, dutiable property are to be aggregated and treated as a single dutiable transaction if—

- 35 (a) they occur within 12 months;
(b) the transferee is the same or the transferees are associated persons; and
(c) the dutiable transactions together form, evidence, give effect to or arise from what is, substantially, 1 arrangement relating to all of

the items or parts of, or interests in, the dutiable property.

(2) Dutiable transactions are not to be aggregated under this section if the Commissioner is satisfied that it would not be just and reasonable to do so in the circumstances.

5 (3) The dutiable value of aggregated dutiable property is the sum of the dutiable values of the items or parts of, or the interests in, the dutiable property as at the time at which each dutiable transaction occurs.

(4) The amount of duty payable in accordance with this section is to be reduced by the amount of any ad valorem duty paid on a prior dutiable transaction that is, or prior dutiable transactions that are, aggregated in
10 accordance with this section.

(5) Duty may be apportioned to the instruments effecting or evidencing the dutiable transactions, or may be charged in accordance with subsection 17 (1), as determined by the Commissioner.

15 (6) A transferee to whom this section applies shall disclose to the Commissioner, in writing, at or before the time at which an instrument or statement relating to the dutiable transactions is lodged for stamping, details known to the transferee of—

20 (a) all of the items or parts of, or interests in, the dutiable property included or to be included in the arrangement referred to in subsection (1); and

(b) the consideration for each item or part of, or interest in, that dutiable property.

Penalty:

25 (a) in the case of a natural person—50 penalty units;

(b) in the case of a body corporate—250 penalty units.

(7) A reference in this section to dutiable property does not include a reference to marketable securities.

30 **25. Value of goods in certain transactions also involving other property**

The Commissioner, if satisfied that it would not be just and reasonable in the circumstances to charge duty on the dutiable value of all the dutiable property in a dutiable transaction involving goods and other property, may disregard the value of the goods, or any of them, in
35 determining the dutiable value of the property involved.

26. Apportionment—dutiable property and other property

(1) If a dutiable transaction relates to dutiable property and property that is not dutiable property, it is chargeable with duty under this Chapter only to the extent that it relates to dutiable property.

(2) If a dutiable transaction relates to different types of dutiable property for which different rates of duty are chargeable under this Chapter, the dutiable transaction is chargeable with duty under this Chapter as if a separate dutiable transaction had occurred in relation to each such type of dutiable property.

27. Apportionment—business assets in this and other jurisdictions

(1) This section applies to a business asset referred to in paragraph 10 (g), being—

- (a) the goodwill of a business if sales of goods or services, or goods and services, have also been made to a non-Territory customer of the business during the previous 12 months;
- (b) intellectual property that has also been used or exploited in 1 or more other Australian jurisdictions during the previous 12 months; or
- (c) a statutory licence or permission under a Commonwealth law if the rights under the licence or permission have been exercised during the previous 12 months in respect of 1 or more other Australian jurisdictions.

(2) The dutiable value (DV) of a business asset to which this section applies is to be determined in accordance with the following formula:

$$DV = A \times \frac{X}{Y}$$

where—

- A** is the unencumbered value of the business asset, or so much of the consideration for the dutiable transaction as relates to the business asset, whichever is the greater;
- X** is the gross amount of the sales of goods and services (expressed in Australian dollars) made to Territory customers of the business during the last 3 completed financial years preceding the dutiable transaction; and
- Y** is the gross amount of the sales of goods and services (expressed in Australian dollars) made to both Territory customers and non-Territory customers of the business during the last 3 completed financial years preceding the dutiable transaction.

(3) If the dutiable property included in a dutiable transaction includes—

- (a) goodwill referred to in paragraph (1) (a); and
- (b) intellectual property referred to in paragraph (1) (b);

subsection (2) applies in respect of the goodwill and the intellectual property

as if they comprised a single business asset.

(4) If an apportionment cannot be made under subsection (2), the Commissioner may make an apportionment on such basis as the Commissioner considers appropriate in the circumstances.

5 (5) For the purposes of this Chapter, a sale of goods or services is taken to be made to—

(a) a Territory customer of a business if the goods are delivered, or the services are provided, in the Australian Capital Territory to the customer; and

10 (b) a non-Territory customer of a business if the goods are delivered, or the services are provided, outside the Australian Capital Territory to the customer.

28. Partnership interests

15 The dutiable value of a partnership interest (**DV**) is to be determined in accordance with the following formula:

$$DV = A \times \frac{X}{Y}$$

where—

20 **A** is the value of the partnership interest, or so much of the consideration for the dutiable transaction as relates to the partnership interest, whichever is the greater;

X is the unencumbered value of all dutiable property of the partnership; and

Y is the unencumbered value of all assets of the partnership.

29. Partitions

25 (1) For the purposes of this section, a partition occurs when property (some or all of which is dutiable property) that is held by persons jointly (as joint tenants or tenants in common) and beneficially is transferred or agreed to be transferred to 1 or more of those persons.

30 (2) For the purposes of this section and sections 15 and 17, a partition is taken to be a single dutiable transaction.

(3) The dutiable value of a partition (**DV**) is to be determined in accordance with the following formula:

$$DV = A \times \frac{X}{Y}$$

where—

35 **A** is the sum of the amounts by which the unencumbered value of the

property transferred or agreed to be transferred to a person exceeds the unencumbered value of the interest held by the person in that property immediately before the partition, or the sum of any consideration for the partition paid by any of the parties, whichever is the greater;

5

X is the unencumbered value of all dutiable property the subject of the partition; and

Y is the unencumbered value of all property the subject of the partition.

10 (4) The minimum duty chargeable on a transaction that effects a partition is \$20.

(5) Duty charged by this section is payable by the persons making the partition or any 1 or more of them.

30. Effect of alteration in purchase price

15 (1) If after an agreement for the sale or transfer of dutiable property is entered into and before the property is transferred—

(a) the consideration under the agreement is reduced and the reduced consideration is not less than the unencumbered value of the dutiable property when the consideration was reduced;

20 (b) the consideration under the agreement is reduced because the parties have agreed not to transfer some of the dutiable property previously agreed to be transferred and the reduced consideration is not less than the unencumbered value of the dutiable property that remained to be transferred when the consideration was reduced; or

25

(c) the consideration under the agreement is increased and the dutiable value when the consideration was increased is greater than the dutiable value when the agreement was entered into;

30 the Commissioner shall assess or reassess the liability to duty of the agreement in accordance with the change in the consideration.

(2) The liability to pay additional duty arising from an increase in the consideration occurs on the day on which the consideration is agreed to be increased.

PART III—RATES OF DUTY

35 31. General rate

Except as provided by this Chapter, duty at the determined rate is chargeable on a dutiable transaction.

32. Shares, units and interests (marketable securities)

(1) Duty is chargeable on a dutiable transaction in respect of marketable securities, other than marketable securities to which subsection (2) applies, at the determined rate.

5 (2) Subject to Chapter 4, duty is chargeable on a dutiable transaction in respect of marketable securities quoted on the market operated by the Australian Stock Exchange at the determined rate.

(3) A minimum rate of duty of \$20 is chargeable under this section on dutiable transactions in respect of marketable securities.

10 (4) A rate of duty chargeable under this section does not apply to a dutiable transaction that confers a land use entitlement.

PART IV—OFF-MARKET TRANSFERS OF MARKETABLE SECURITIES

Division 1—SCH-regulated transfers (CHES)

15 **33. Application of Division**

(1) This Division applies to an SCH-regulated transfer of marketable securities only if—

(a) the transfer is a proper SCH transfer; and

20 (b) the body approved as the securities clearing house under section 779B of the *Corporations Law* is registered by the Commissioner under Division 2.

(2) This Division does not apply to a transfer to which Division 3 applies.

34. SCH participant liable to pay duty

25 (1) An SCH participant who is a party to a transfer to which this Division applies is liable to pay the duty but if more than 1 SCH participant is a party to the transfer, the SCH participant who acts for the transferee is liable to pay the duty.

30 (2) If the SCH participant liable to pay duty in respect of an SCH-regulated transfer is not the transferee under the transfer, the participant may recover from the transferee the amount of the duty paid as a debt and may, in reimbursement of that amount, retain any money in the participant's hands belonging to the transferee.

35. Record of SCH-regulated transfers

35 (1) The relevant SCH participant shall make a record that complies with this section immediately on making an SCH-regulated transfer of marketable securities to which this Division applies.

(2) The record shall show the following particulars:

- (a) the date of the transfer;
- (b) the transfer identifier of the transfer;
- 5 (c) the name of the transferee and, unless another SCH participant controls the transferor's holding, the name of the transferor;
- (d) the identification code of the SCH participant making the record and the identification code of the other SCH participant (if any) who is a party to the transfer;
- (e) the quantity and full description of the marketable securities transferred;
- 10 (f) the transfer value of the marketable securities;
- (g) the amount of duty chargeable in respect of the transfer;
- (h) if ad valorem duty is not chargeable in respect of the transfer, the duty-type category for the transfer;
- 15 (i) in the case of an error transaction to reverse an earlier transfer that was made mistakenly, the transfer identifier of that earlier transfer.

36. Particulars to be included by relevant SCH participant in transfer document

20 The relevant SCH participant shall include in the transfer document for an SCH-regulated transfer to which this Division applies the particulars required by the Commissioner under the conditions of registration of the SCH.

Penalty:

- 25 (a) in the case of a natural person—50 penalty units;
- (b) in the case of a body corporate—250 penalty units.

37. Relevant SCH participant's identification code equivalent to stamping

30 When the relevant SCH participant includes the participant's identification code in the transfer document for an SCH-regulated transfer to which this Division applies, the transfer document is taken to be duly stamped but without affecting the participant's liability to pay any duty payable under section 38.

38. Returns to be lodged and duty paid

35 (1) The relevant SCH participant shall, not more than 7 days after the end of a month in which the participant has been party to an SCH-regulated transfer to which this Division applies—

- (a) lodge with the SCH a return in respect of the transfer in the form, and containing the details, required by the Commissioner under the

conditions of registration of the SCH; and

(b) if duty is payable in respect of the transfer, pay the duty to the SCH.

5 (2) If the relevant SCH participant lodges the return with, and pays the duty (and any interest) to, the SCH later than the fifteenth day after the end of each month—

(a) without limiting the Taxation Administration Act, the SCH participant commits a tax default for the purposes of that Act; and

10 (b) the SCH shall identify the return as a late return and lodge it with the next monthly return that is lodged with the Commissioner under section 40.

Division 2—The securities clearing house

39. Registration as the securities clearing house

15 (1) The Commissioner shall, on application by the body approved as the securities clearing house under section 779B of the *Corporations Law*, register the body under this Division.

(2) The registration is subject to conditions determined by the Commissioner from time to time and notified to the SCH in writing.

20 (3) Subject to subsection (5), the Commissioner may, by order in writing, suspend the registration for a specified period if the SCH contravenes this Division or a condition of registration.

25 (4) Before suspending the registration, the Commissioner shall give the SCH 7 days written notice specifying the grounds on which the Commissioner proposes to suspend the registration and the proposed period of suspension.

(5) The SCH may, within 7 days after receipt of a notice under subsection (4), apply to the Commissioner for a review of the proposed decision.

(6) The Commissioner shall not suspend the registration unless—

30 (a) the period of 7 days notice referred to in subsection (4) has elapsed; and

(b) the SCH has been given an opportunity to make submissions on the matter and, if it has made any such submissions, the submissions are not acceptable to the Commissioner.

35 (7) The registration continues in force—

(a) until cancelled on the application of the body registered; or

(b) subject to an order of suspension made under subsection (3).

40. Monthly return

The SCH shall, on or before the fifteenth day of each month—

- 5
- (a) lodge with the Commissioner a return in the form, and containing the particulars, required by the Commissioner under the conditions of the registration of the SCH; and
 - (b) pay to the Commissioner any duty (and any interest) paid to the SCH under this Act in respect of an SCH-regulated transfer made in the preceding month.

41. Returns to be kept by the SCH

10 The SCH shall keep a return lodged with it under this Part by an SCH participant.

42. Disclosure to the SCH of information

15 Nothing in this Act or the Taxation Administration Act prevents the disclosure to the SCH of information acquired in connection with the administration of this Part.

Division 3—London Stock Exchange

43. Application of Division 3

(1) This Division applies to the transfer of the beneficial interest in shares held by a prescribed person, being shares—

- 20
- (a) in a Territory company; or
 - (b) in a corporation incorporated outside Australia that are kept on the Australian register kept in the Territory;

25 unless duty is chargeable on the acquisition of those shares under Chapter 4 or the provisions of an Act of another Australian jurisdiction that correspond to Chapter 4.

(2) In this Division—

“prescribed person” means—

- (a) Sepon (Australia) Pty Limited; or
- (b) a person prescribed by the regulations.

30 **44. Payment of duty**

(1) Duty is chargeable on a transfer to which this Division applies at half the rate otherwise chargeable under this Chapter on a transfer of shares.

(2) No duty is chargeable under this Chapter on an associated transfer.

35 (3) The prescribed person shall, on or before the twenty-eighth day of each month—

- (a) lodge with the Commissioner a return in the form and containing the particulars required by the Commissioner relating to all

transfers to which this Division applies that were made during the preceding month; and

(b) pay to the Commissioner the duty payable in relation to those transfers.

5 (4) If duty is liable to be paid by a prescribed person in relation to a transfer to which this Division applies, no other person is liable to duty in relation to the transfer or any associated transfer of the shares by any other person that is made in accordance with the rules and practices of the London Stock Exchange.

10 (5) The duty is to be paid by periodic return in accordance with Part VI of the Taxation Administration Act.

(6) In this section—

“associated transfer”, in relation to shares, means—

15 (a) a transfer effected by a transaction that, in accordance with the rules and practices of the London Stock Exchange, is a stock loan transaction;

(b) a transfer to a member of the London Stock Exchange as principal where the beneficial interest of the member in the shares is disposed of within a period of 10 clear days (not including any day on which the London Stock Exchange is closed for business) after the transfer; and

20 (c) a transfer by an intermediary to an intermediary in the capacity of an intermediary,

25 “intermediary” means a person who is an intermediary within the meaning of the *Finance Act 1997* of the United Kingdom.

Division 4—Payment by periodic return

45. Application for approval to pay duty by periodic return

(1) A person may apply to the Commissioner for approval to pay duty on transactions to which this Part applies by periodic return.

30 (2) Applicants may include, but are not limited to the following:

(a) a broker;

35 (b) a recognised stock exchange (within the meaning of the rules of the Australian Stock Exchange) or a person who is authorised by such a recognised stock exchange to make an application to which this section applies;

(c) a company, including a nominee company;

(d) a person who manages a share registry.

(3) The application shall be made in accordance with Part VI of the

Taxation Administration Act.

Division 5—Miscellaneous

46. Reduction of duty—payment in non-Australian jurisdiction

5 (1) The amount of duty chargeable under this Chapter on a transfer of marketable securities is to be reduced by the amount of duty of a similar kind paid in relation to the transfer in accordance with the law of a place outside Australia.

10 (2) In this section, a reference to a transfer of marketable securities includes a reference to a dealing or arrangement affecting marketable securities by means of a dutiable transaction other than a transfer.

47. Certain transfers not chargeable with duty

15 (1) If an SCH-regulated transfer of marketable securities is made within 3 months after an instrument of transfer or an agreement for the transfer of the marketable securities to or for the benefit of the same transferee is first executed, the dutiable transaction effected by the instrument is not chargeable with duty under this Act.

20 (2) Notwithstanding the other provisions of this Chapter, no duty is chargeable on a transfer of marketable securities quoted on the market operated by the Australian Stock Exchange if the transfer is one described in section 17, 29, 53, 54, 55, 57, 62 or 68 and the duty otherwise chargeable on the transfer is \$20.

PART V—SPECIAL PROVISIONS

48. Interim payment of duty

25 (1) If the full dutiable value of dutiable property subject to an agreement for sale or transfer cannot, in the Commissioner's opinion, be immediately ascertained, the Commissioner may make an assessment by way of estimate under subsection 11 (2) of the Taxation Administration Act.

30 (2) The written instrument or the written statement required by section 14 may be stamped "Interim stamp".

(3) When the full dutiable value has been ascertained, the Commissioner shall reassess the duty payable on the agreement.

(4) If no further duty is payable, the interim stamp is to be cancelled and any amount paid in excess of the amount assessed is to be refunded.

35 (5) If further duty is payable, liability for the further duty arises when the notice of assessment issues, notwithstanding section 11.

(6) On payment of the balance of the duty (and any interest or penalty tax), the written instrument or the written statement required by section 14 is to be stamped with the amount of the balance and marked to indicate that duty has been duly paid.

5 **49. Cancelled agreements**

(1) An agreement for the sale or transfer of dutiable property that is rescinded or annulled is not liable to duty under this Chapter if the Commissioner is satisfied—

- 10 (a) that the agreement was not rescinded or annulled to give effect to a subsale;
- (b) that the purchaser or transferee under the agreement is a promoter of a named company proposed to be incorporated and that the Company is the purchaser or transferee of the dutiable property under a subsequent agreement; or
- 15 (c) that the purchaser or transferee under the agreement and the purchaser or transferee under a subsequent agreement relating to the same dutiable property were related persons when the agreement that is rescinded or annulled was entered into.

20 (2) If duty has been paid on an agreement that is not liable to duty under this Chapter because of this section, the Commissioner shall reassess and refund the duty if an application for a refund is made within—

- (a) 5 years of the initial assessment; or
- (b) 12 months after the agreement is rescinded or annulled;
- whichever is the later.

25 **50. Grant of certain Crown leases on surrender of development leases**

(1) Duty of \$20 is chargeable on the grant of a Crown lease (in this subsection referred to as the “new lease”) on the surrender of a development lease where—

- 30 (a) the new lease is granted to the person who was the lessee under the development lease at the time of its surrender; and
- (b) the whole of the land comprised in the new lease is land that was comprised in the development lease.

(2) Where—

- 35 (a) a Crown lease (in this subsection referred to as the “new lease”) is granted on the surrender of a development lease;
- (b) the new lease is granted to the person who was the lessee under the development lease at the time of its surrender; and
- (c) only part of the land comprised in the new lease is land that was

comprised in the development lease;

the duty chargeable on the new lease is the amount by which the duty that would, but for this subsection, have been chargeable on the new lease under Part III exceeds the duty that would have been chargeable under that Part on a grant of a Crown lease over so much of the land comprised in the new lease as was comprised in the development lease, being a Crown lease granted on the same terms as the new lease.

(3) In this section—

“development lease” means a Crown lease that is expressed to be granted for the purpose of developing the land comprised in the lease for subdivision and resale.

51. Refund if Crown lease surrendered

(1) Where—

- (a) an amount of duty has been paid on a grant of a Crown lease;
- (b) the lease is surrendered or determined; and
- (c) part or all of the amount paid in respect of the grant of the lease is refunded under section 178 of the *Land (Planning and Environment) Act 1991*;

there shall be refunded to the person who paid the duty an amount calculated in accordance with the formula $\frac{D \times R}{P}$ where—

D is the amount of duty;

R is the amount that would be refundable under that section if no deduction were made for administrative expenses; and

P is the amount paid in respect of the grant of the lease.

(2) A refund of duty is not payable unless the person lodges with the Commissioner, within 12 months after the refund referred to in paragraph (1) (c) was made, a written application, with such information as the Commissioner requires to enable the amount of the refund to be calculated.

52. Transfers arising from mortgages of land

(1) The mortgagor and the mortgagee are jointly and severally liable to pay the duty chargeable on a transfer by way of mortgage of dutiable property that is Territory land.

(2) If the Commissioner is satisfied that—

- (a) duty has been paid in accordance with this section on a transfer of dutiable property to which this section applies; and
- (b) the dutiable property has been re-transferred to the mortgagor (or a person to whom the land has been transmitted by death or

bankruptcy) and the mortgagor (or person) is the registered proprietor of the land;

the Commissioner shall refund the ad valorem duty paid on the transfer less an amount of \$20.

5 **PART VI—CONCESSIONAL RATES OF DUTY**

Division 1—Trusts

53. Change in trustees

(1) In this section—

10 “new trustee” means a trustee appointed in substitution for a trustee or a trustee appointed in addition to a trustee or trustees;

 “responsible entity” means a responsible entity within the meaning of the *Corporations Law*.

15 (2) Duty of \$20 is chargeable in respect of a transfer of dutiable property to a person as a consequence of the retirement of a trustee or the appointment of a new trustee, if the Commissioner is satisfied that, as the case may be—

(a) none of the continuing trustees remaining after the retirement of a trustee is or can become a beneficiary under the trust;

(b) none of the trustees of the trust after the appointment of a new trustee is or can become a beneficiary under the trust;

20 (c) the transfer is not part of a scheme for conferring an interest, in relation to the trust property, on a new trustee or any other person, whether as a beneficiary or otherwise, to the detriment of the beneficial interest or potential beneficial interest of any person; and

(d) the transfer is not made in connection with a tax avoidance scheme;

25 and, if the Commissioner is not so satisfied, the transfer is chargeable with the same duty as a transfer to a beneficiary under and in conformity with the trusts subject to which the property is held.

30 (3) Duty of \$20 is chargeable in respect of a transfer of dutiable property to a responsible entity if the Commissioner is satisfied that the transfer is a necessary consequence of an undertaking to which Division 11 of Part 11.2 of the *Corporations Law* applies becoming a registered scheme within the meaning of that Division.

54. Transfer to custodian of managed investment scheme

35 Duty of \$20 is chargeable in respect of a transfer of dutiable property from a responsible entity of a managed investment scheme or a trustee of a responsible entity to a custodian or agent of the responsible entity.

55. Property vested in an apparent purchaser

(1) Duty of \$20 is chargeable in respect of—

(a) a declaration of trust made by an apparent purchaser in respect of identified dutiable property—

5 (i) vested in the apparent purchaser upon trust for the real purchaser who provided the money for the purchase of the dutiable property; or

(ii) to be vested in the apparent purchaser upon trust for the real purchaser, if the Commissioner is satisfied that the money for the purchase of the dutiable property has been or will be provided by the real purchaser; or

10 (b) a transfer of dutiable property from an apparent purchaser to the real purchaser in a case where dutiable property is vested in an apparent purchaser upon trust for the real purchaser who provided the money for the purchase of the dutiable property.

(2) In this section—

“purchase” includes an allotment.

56. Transfers back from a nominee

(1) If—

20 (a) dutiable property (other than marketable securities) that was transferred to a person to be held by that person as trustee for the transferor is transferred back to the transferor by the trustee for no consideration; and

25 (b) no person other than the transferor has had a beneficial interest in the dutiable property (other than the trustee’s right of indemnity) between its transfer to the trustee and its transfer back to the transferor;

the duty chargeable on the transfer of the dutiable property back to the transferor is \$20.

30 (2) If duty of \$20 has been paid on a transfer under subsection (1), the initial transfer to the trustee is also chargeable with duty of \$20 and the Commissioner shall reassess the initial transfer and refund any duty paid in excess of \$20 if an application for a refund is made within—

(a) 5 years after the initial assessment; or

35 (b) 12 months after the transfer back to the original transferor;

whichever is the later.

(3) In this section—

“trustee” includes a trustee appointed in substitution for a trustee or a

trustee appointed in addition to a trustee or trustees.

57. Property passing to beneficiaries

5 (1) Subject to subsections (2) and (3), duty of \$20 is chargeable in respect of a transfer for no consideration of dutiable property to a beneficiary made under and in conformity with the trusts contained in a declaration of trust.

(2) Subsection (1) applies only to the extent that the property being transferred is property that the Commissioner is satisfied is—

10 (a) wholly or substantially the same as the dutiable property the subject of the declaration of trust and that—

(i) duty charged by this Act has been paid in respect of the declaration of trust over that property; or

(ii) the declaration of trust is exempt from duty;

15 (b) dutiable property representing the proceeds of re-investment of property referred to in paragraph (a); or

(c) property to which both paragraphs (a) and (b) apply.

(3) Subsection (1) applies only if the transferee was a beneficiary at the time at which duty became chargeable in respect of the declaration of trust.

20 **58. Establishment of a trust relating to unidentified property and non-dutiable property**

(1) Duty of \$200 is chargeable in respect of an instrument executed in the Territory that declares a trust over property none of which is dutiable property.

25 (2) Duty of \$200 is chargeable in respect of an instrument executed in the Territory that declares that property, although not identified in the instrument, when vested in the person executing the instrument is to be held in trust for a person or persons or a purpose or purposes mentioned in the instrument.

30 (3) It is immaterial whether or not the beneficial owner or person entitled to appoint the property has joined in or assented to the instrument.

(4) A liability for duty charged by this section arises when the instrument is first executed.

(5) Duty charged by this section is payable by the person declaring the trust.

35 **59. Instrument relating to managed investment scheme**

(1) Duty of \$20 is chargeable in respect of an instrument that—

(a) amends, varies or replaces an instrument that establishes or

- governs a managed investment scheme;
- (b) does not transfer, or have the effect of transferring, any dutiable property to a person who does not hold units in the scheme; and
- (c) does not have the effect of reducing the number of persons who hold units in the scheme.
- 5
- (2) Duty of \$20 is chargeable in respect of a declaration of trust—
- (a) that is made by a trustee in respect of dutiable property that, immediately before the trust is declared, is held by the trustee as trustee of the responsible entity of a managed investment scheme; and
- 10
- (b) that is made for the purpose of holding the dutiable property on trust for the responsible entity of the managed investment scheme.

Division 2—Superannuation

60. Instruments relating to superannuation

- 15 (1) The following instruments are liable to duty of \$20:
- (a) an instrument that establishes, or that amends provisions governing, a superannuation fund, an approved deposit fund, a pooled superannuation trust or an eligible rollover fund, being a fund or trust that, in the opinion of the trustees, will be a complying superannuation fund, a complying approved deposit fund, a pooled superannuation trust or an eligible rollover fund within 12 months after the instrument or amending instrument takes effect;
- 20
- (b) an instrument under which an employer agrees to participate in or contribute to a complying superannuation fund or a superannuation fund that, in the opinion of the trustees, will become a complying superannuation fund within 12 months after the employer agrees to participate in or contribute to the fund;
- 25
- (c) an instrument that is executed in order to set out or vary the terms of custodial arrangements concerning a complying superannuation fund, a complying approved deposit fund, a pooled superannuation trust or an eligible rollover fund (whether or not the instrument contains any other terms) or concerning a fund or trust that, in the opinion of the trustees, will be a complying superannuation fund, a complying approved deposit fund, a pooled superannuation trust or an eligible rollover fund within 12 months after the instrument takes effect.
- 30
- 35
- (2) A liability for duty charged by this section arises when the instrument is first executed.
- 40 (3) The persons liable to pay the duty are the parties to the instrument.

(4) Notwithstanding subsection (1), an instrument to which this section applies is not liable to duty if—

- (a) it is exempt from duty under a corresponding Act; or
- (b) the duty for which it is liable under a corresponding Act has been paid.

5

61. Transfer of property from one superannuation fund to another

(1) This section applies to the transfer of dutiable property from one superannuation fund to another for no consideration where—

- 10 (a) the transfer is made from a complying superannuation fund or from a fund that was a complying superannuation fund within the period of 12 months before the transfer was made;
- (b) the transfer is made to a complying superannuation fund or to a superannuation fund that, in the opinion of the trustees, will be a
15 complying superannuation fund within 12 months after the transfer is made; and
- (c) the transfer occurs in connection with a person's ceasing to be a member of, or otherwise ceasing to be entitled to benefits in respect of, the fund from which the dutiable property is transferred
20 and the person's becoming a member of, or otherwise becoming entitled to benefits in respect of, the fund to which the dutiable property is transferred.

(2) Subject to subsection (3), the duty chargeable on a transfer to which this section applies is ad valorem duty in accordance with this Chapter or
25 \$200, whichever is the lesser.

(3) A minimum rate of duty of \$20 is chargeable on a transfer to which this section applies.

(4) An application for an assessment of duty in accordance with this section is to be accompanied by the following:

- 30 (a) a brief explanation of the background to the transfer and the entitlements to be extinguished and created;
- (b) copies of the governing rules of the complying superannuation funds concerned;
- (c) a statement of the property to be transferred;
- 35 (d) a copy of each instrument relating to the transfer;
- (e) a statutory declaration from a trustee (or a director of a corporate trustee) of each of the superannuation funds concerned stating that, in the opinion of the trustee (or director), the fund will be a complying superannuation fund within 12 months after the transfer
40 occurs.

(5) The Commissioner may require further information.

(6) In this section—

“complying superannuation fund” includes a complying approved deposit fund and an eligible rollover fund.

5 **62. Transfers to trustees or custodians of superannuation funds or trusts**

(1) This section applies to the transfer of, or an agreement to transfer, dutiable property to a trustee or custodian of a complying superannuation fund, a complying approved deposit fund, a pooled superannuation trust or an eligible rollover fund, or a fund or trust that, in the opinion of the trustees, will be a complying superannuation fund, a complying approved deposit fund, a pooled superannuation trust or an eligible rollover fund within 12 months after the transfer takes effect, where there is no change in the beneficial ownership of the property.

10 (2) A transfer of, or an agreement to transfer, property to or from a trustee or custodian of a pooled superannuation trust in exchange for the issue or redemption of units in the trust does not, for the purposes of this section, effect a change in the beneficial ownership of the property.

(3) The duty chargeable on a dutiable transaction to which this section applies is—

- 20 (a) except as provided by paragraph (b), ad valorem duty in accordance with this Chapter or \$200, whichever is the lesser; or
(b) if the dutiable property transferred, or agreed to be transferred, is marketable securities, \$20.

25 **Division 3—Miscellaneous**

63. Transfer of land to certain authorities and other bodies

(1) Duty of \$20 is chargeable in respect of a grant of a Crown lease to—

- (a) the Commissioner for Housing; or
(b) a non-commercial Commonwealth authority.

30 (2) Duty of \$20 is chargeable in respect of a grant or transfer of land to a hospital, school or charitable organisation or to trustees in trust for a hospital, school or charitable organisation.

64. Transfer of land in accordance with section 253Y of the Industrial Relations Act

35 Duty of \$20 is chargeable in respect of a transfer of land made in accordance with section 253Y of the *Industrial Relations Act 1988* of the Commonwealth.

65. Conveyances to prescribed persons

Duty of \$20 is chargeable in respect of a grant or transfer of land to a prescribed person.

66. Conversion of property to unit title

The duty chargeable on the transfer of a unit within the meaning of the *Unit Titles Act 1970* is \$20 if the Commissioner is satisfied that—

- (a) the transferee, immediately before registration of the units plan, held a land use entitlement in respect of the land or part of the land the subject of the units plan; and
- (b) the transfer is part of an arrangement under which the transferee will take an interest in the unit similar in effect to and in substitution for the interest the transferee had under the land use entitlement immediately before registration of the units plan.

67. Surrender and regrant of Crown lease

Duty of \$20 is chargeable in respect of the grant of a Crown lease to the lessee under a previous Crown lease because of the surrender of the previous Crown lease, where the surrender was solely for the purpose of—

- (a) changing the purpose for which the parcel of land to which the lease relates may be used;
- (b) reducing rent to an amount not exceeding 5 cents per annum; or
- (c) correcting errors or omissions,

and the land comprised in the new Crown lease is identical to the land comprised in the surrendered Crown lease.

68. Deceased estates

Duty of \$20 is chargeable in respect of—

- (a) a transfer of dutiable property not made for valuable consideration by the legal personal representative of a deceased person to a beneficiary, being—
 - (i) a transfer made under and in conformity with the trusts contained in the will of the deceased person or arising on an intestacy; or
 - (ii) a transfer of property the subject of a trust for sale contained in the will of the deceased person;
- (b) a consent by a legal personal representative of a deceased person to a transmission application by a beneficiary; and
- (c) a transmission application to a devisee who is also the sole legal personal representative.

69. Certain transfers of marketable securities

Duty of \$20 is chargeable in respect of a transfer of marketable securities—

- 5 (a) issued by a municipal council or other local government body or by a public authority constituted by or under a law of the Territory or of the Commonwealth, a State or another Territory;
- (b) made to a hospital, school or charitable organisation or to trustees in trust for a hospital, school or charitable organisation;
- (c) made solely for the purpose of—
 - 10 (i) qualifying the transferee as the director of a company (in this paragraph referred to as the “subsidiary company”) to act and vote, as directed, on behalf of another company; or
 - (ii) re-transferring the marketable security from the director so qualified to the other company;
 - 15 being another company that—
 - (iii) controls the appointment or removal of all or a majority of the board of directors of the subsidiary company;
 - (iv) controls more than half of the voting power in the subsidiary company; or
 - 20 (v) beneficially owns more than half of the paid-up capital of the subsidiary company;
- (d) made solely for the purpose of rectifying a clerical error in an instrument of transfer; or
- 25 (e) made in accordance with section 253ZA of the *Industrial Relations Act 1988* of the Commonwealth.

70. Bankruptcy or insolvency

Duty of \$20 is chargeable in respect of a dutiable transaction if—

- 30 (a) it occurs as a consequence of the appointment of a receiver or trustee in bankruptcy;
- (b) it occurs as a consequence of the appointment of a liquidator; or
- (c) it is a transfer of dutiable property for no consideration to a former bankrupt from the estate of the former bankrupt.

71. Transfers related to certain personal relationships

35 (1) Duty of \$20 is chargeable in respect of a transfer of dutiable property—

- (a) made pursuant to an order of a court under the *Family Law Act 1975* of the Commonwealth or the *Married Persons' Property Act 1986*;
- (b) made pursuant to an order of a court for the distribution of

property consequent on the termination of a relationship between spouses, not being an order referred to in paragraph (a); or

5 (c) made pursuant to a domestic relationship agreement, or a termination agreement, within the meaning of the *Domestic Relationships Act 1994*, being an agreement that—

(i) is in writing;

(ii) has been signed by the parties, and

10 (iii) has endorsed on it, or is accompanied by, a certificate in relation to each party given by a solicitor before the signing of the agreement to the effect that the solicitor had advised that party, independently of the other party, as to the following matters:

(A) the effect of the agreement on the rights of the parties under the *Domestic Relationships Act 1994*;

15 (B) whether it was advantageous, financially or otherwise, for that party to enter into the agreement;

(C) whether it was prudent for that party to enter into the agreement;

20 (D) whether the agreement was fair and reasonable in the light of the circumstances that were then reasonably foreseeable.

(2) Duty of \$20 is payable in respect of a transfer by a person to his or her spouse of dutiable property consisting of an interest in property that is, at the date of the transfer of the interest, used as their principal place of residence, if the transfer results in the property being held by the spouses as—

(a) joint tenants;

(b) tenants in common in equal shares; or

30 (c) tenants in common in shares that are proportionate to the contributions of the spouses towards the purchase and improvement of the property or in such proportions as are prescribed.

PART VII—EXEMPTIONS

72. Transfers to a State, another Territory or a prescribed authority

35 (1) A transfer of dutiable property to a State or another Territory is exempt from duty under this Chapter.

(2) A transfer of dutiable property to a prescribed authority of the Commonwealth, a State or another Territory is exempt from duty under this

Chapter.

73. Transactions relating to mortgages

A dutiable transaction is exempt from duty under this Chapter if it is—

- 5 (a) a dutiable transaction over dutiable property arising from the discharge or transfer of a mortgage or declaration of trust over a mortgage; or
- (b) a dutiable transaction comprising—
- (i) a transfer by way of discharge of mortgage; or
- 10 (ii) a transfer by way of mortgage (not being a transfer by way of mortgage of land, or an estate or interest in land, under the *Land Titles Act 1925*).

74. Marketable securities

(1) No duty is chargeable under this Chapter on a dutiable transaction in respect of marketable securities—

- (a) if a transfer of those marketable securities is endorsed under Chapter 4; or
- (b) if duty is chargeable on the sale or purchase of those marketable securities, or the sale or purchase is exempt from duty, or the transfer of those marketable securities is endorsed, under the provisions of an Act of another Australian jurisdiction that correspond to Chapter 4 and that are declared by the Minister by notice published in the *Gazette* to be corresponding provisions.

(2) No duty is chargeable under this Chapter on a transfer, or an agreement for the sale or transfer, of marketable securities quoted on the market operated by the Australian Stock Exchange if the transfer or agreement is for the sole purpose of—

- (a) lending the marketable securities to the transferee for not more than 12 months;
- 30 (b) returning marketable securities borrowed from the transferee not more than 12 months before, being such marketable securities as are necessary to restore the shareholding of the transferee to the exact number and class of marketable securities of which the transferee would have otherwise been the registered holder, if the loan had not taken place; or
- 35 (c) a securities lending transaction that is completed within 12 months.

(3) No duty is chargeable under this Chapter in respect of—

- (a) an SCH-regulated transfer made to reverse an SCH-regulated transfer that was made mistakenly not more than 7 days earlier; or

- (b) the SCH-regulated transfer so reversed.
- (4) No duty is chargeable under this Chapter on—
- 5 (a) a transfer of marketable securities made by the transferor to a trustee or nominee to be held solely as trustee or nominee of the transferor without any change in beneficial ownership and without contemplation of any such change;
- (b) a re-transfer of marketable securities to a transferor if—
- 10 (i) the marketable securities were transferred to a trustee or nominee to be held solely as trustee or nominee for the transferor; and
- (ii) no person other than the transferor has had a beneficial interest in the marketable securities (other than the trustee's or nominee's right of indemnity) between their transfer to the trustee or nominee and their transfer back to the transferor;
- 15 (c) without limiting paragraph (a) or (b), a transfer of marketable securities to or from—
- (i) SECH Nominees Pty Limited,
- (ii) CHES Depositary Nominees Pty Limited; or
- 20 (iii) a nominee company that holds marketable securities solely for the purpose of facilitating marketable security transaction settlements by a broker;
- (d) a transfer of marketable securities or IRs by or on behalf of an applicant for an instalment warrant to a trustee in exchange for the issue of an instalment warrant by a warrant issuer to the applicant or the nominee of the applicant; or
- 25 (e) a transfer of marketable securities from a trustee to an instalment warrant holder in accordance with the terms of issue of the instalment warrant.
- 30 (5) No duty is chargeable under this Chapter on a transfer, or an agreement for the sale or transfer, of shares in a Territory company, being a public company, comprising a buy-back of the shares in accordance with Division 2 of Part 2J.1 of the *Corporations Law*, unless the buy-back is effected by the purchaser pursuant to 1 or more agreements, understandings or arrangements that the purchaser will issue marketable securities.
- 35 (6) No duty is chargeable under this Chapter on the transfer to a person of rights to shares if an earlier transfer of the shares to the person included a right to shares and duty in respect of the rights was paid in connection with that earlier transfer or the earlier transfer was exempt from duty.
- 40 (7) No duty is chargeable under this Chapter on the transfer of shares to a person (in this subsection referred to as the "transferee") if—

- (a) as a consequence of the transfer of shares in a company—
- (i) in respect of which ad valorem duty under this Act or a corresponding Act has been paid or that is exempt from duty; and
 - (ii) that is not registered in the share register of the company; the transferee is, on a bonus issue or the issue of a right to shares subsequent to the transfer, entitled to other shares registered in the name of the transferor; and
- (b) the transferee pays the amount, if any, necessary to take up the other shares.

(8) No duty is chargeable under this Chapter on a transfer, or an agreement for the sale or transfer—

- (a) of marketable securities listed on a recognised stock exchange located outside Australia to—
 - (i) a foreign resident on the foreign resident's own behalf; or
 - (ii) a foreign resident acting on behalf of or as trustee for another foreign resident; and
- (b) that is to be registered on an overseas register of legal or beneficial title.

(9) No duty is chargeable under this Chapter on a transfer, or an agreement for the sale or transfer—

- (a) of an ADR that relates to shares quoted on the Australian Stock Exchange or a recognised stock exchange located outside Australia or an ADR that relates to rights to shares that upon issue, on exercise of those rights, will be quoted on the Australian Stock Exchange or a recognised stock exchange located outside Australia, to—
 - (i) a foreign resident on the foreign resident's own behalf; or
 - (ii) a foreign resident acting on behalf of a trustee for another foreign resident; and
- (b) that is to be registered on an overseas register of legal or beneficial title.

(10) No duty is chargeable under this Chapter on a transfer or transfers, on any one day, of marketable securities—

- (a) to the trustee of an index trust in exchange for the issue of units in the trust; or
- (b) from the trustee of that trust in exchange for the redemption of units in the trust;

if the total amount of the marketable securities so transferred between the

transferor and the transferee represents a portfolio of securities in such volumes as are contained in the relevant stock exchange index on that day.

CHAPTER 3—CERTAIN TRANSACTIONS TREATED AS TRANSFERS

5

PART I—PRELIMINARY

75. Interpretation

In this Chapter, unless the contrary intention appears—

“acquisition statement” means a statement under section 86;

10 “Chapter 3 transaction” means a transaction that is treated as a transfer by virtue of this Chapter.

76. Imposition of duty

This Chapter charges duty on certain transactions that are not dutiable transactions to which Chapter 2 applies.

15

PART II—ACQUISITION OF INTERESTS IN CERTAIN LANDHOLDERS

Division 1—Landholding private corporations

77. Interpretation

In this Part, unless the contrary intention appears—

20 “private corporation” means a private company or a private unit trust scheme.

78. When is a private corporation a landholder?

For the purposes of this Part, a private corporation is a landholder if it holds land in the Territory.

79. Landholdings of private corporations

25 (1) A reference in this Part to a landholding shall be read as a reference to any interest in land other than the estate or interest of a mortgagee, chargee or other secured creditor or a profit à prendre but shall not be read as including—

- 30 (a) such an interest in land of a private company unless the interest of the company in the land is a beneficial interest; or
- (b) such an interest in land of a unit trust scheme unless the interest is held by the trustees in their capacity as trustees of the scheme.

(2) This section is in aid of, but does not limit, the operation of any provision of this Part providing for constructive ownership of interests.

(3) For the purposes of this Part, the vendor and the purchaser under an uncompleted agreement for the sale of land shall be taken to be separately entitled to the whole of the land.

80. Constructive ownership of landholdings and other property: subsidiaries

(1) In addition to any interest in land or other property that it may hold in its own right, a private corporation shall be taken, for the purposes of this Part, to hold an interest in land or other property held by a subsidiary of the private corporation.

(2) The value, for duty purposes, of the interest in land or other property that a private corporation is to be taken, in accordance with subsection (1), to hold by virtue of a holding of a subsidiary (in this section referred to as the "actual landholder") is that portion of the interest's unencumbered value to which the private corporation would be entitled on a winding-up of—

- (a) the actual landholder; and
- (b) every subsidiary of the private corporation that stands between the private corporation and the actual landholder in the ownership chain.

(3) For the purposes of this Part, a private company is a subsidiary of another private company if it is a subsidiary of the other private company within the meaning of the *Corporations Law*.

(4) For the purposes of this Part, a private company is the subsidiary of a unit trust scheme if the trustees of the scheme, in their capacities as trustees of the scheme, have a majority interest in the private company.

(5) For the purposes of this Part, a unit trust scheme is the subsidiary of a private corporation if the corporation has a majority interest in the scheme.

81. Constructive ownership of landholdings and other property: discretionary trusts

(1) A person or a member of a class of persons in whose favour, by the terms of a discretionary trust, capital the subject of the trust may be applied—

- (a) in the event of the exercise of a power or discretion in favour of the person or class; or
- (b) in the event that a discretion conferred under the trust is not exercised;

is, for the purposes of this section, a beneficiary of the trust.

(2) A beneficiary of a discretionary trust shall be taken to own or to be

otherwise entitled to the property the subject of the trust, unless the Commissioner, being satisfied that the application of this subsection in the particular case would be inequitable, determines otherwise.

5 (3) For the purposes of this Part, any property that is the subject of a discretionary trust is taken to be the subject of any other discretionary trust—

(a) that is; or

(b) any trustee of which (in the capacity of trustee) is;

10 a beneficiary of it, unless the Commissioner, being satisfied that the application of this subsection in the particular case would be inequitable, determines otherwise.

(4) Subsection (3) extends to apply to property that is the subject of a discretionary trust only by the operation of that subsection.

(5) In this section—

15 “person” includes a private corporation.

Division 2—Acquisitions of interests in private corporations

82. What are “interests” and “majority interests” in private corporations?

20 (1) For the purposes of this Part, a person shall be taken to have an interest in a private corporation if the person has an entitlement (otherwise than as a creditor or other person to whom the corporation is liable) to a distribution of property from the corporation on a winding up of the corporation or otherwise.

25 (2) A person who, by virtue of subsection (1), is to be taken to have an interest in a private corporation shall be taken to have a majority interest in the corporation if the person, in the event of a distribution of all the property of the corporation immediately after the interest was acquired, would be entitled to more than 50% of the property distributed.

(3) In this section—

30 “person” includes a private corporation.

83. How may an interest be “acquired”?

For the purposes of this Part, an interest in a landholding private corporation may be acquired by means of—

35 (a) the purchase, gift, allotment or transfer of any share or unit in a private corporation;

(b) the variation, abrogation or alteration of a right attaching to any such share or unit; or

(c) the redemption, surrender or cancellation of any such share or unit;

or by any combination of the means referred to in paragraphs (a), (b) and (c).

Division 3—Charging of duty

84. When does a liability for duty arise?

5 A liability for duty charged by this Part arises when a relevant acquisition is made.

85. What is a “relevant acquisition”?

For the purposes of this Division, a person who—

- (a) acquires an interest in a landholding private corporation—
 - 10 (i) that is of itself a majority interest in the corporation; or
 - (ii) that, when aggregated with other interests in the corporation held by the person or an associated person, results in an aggregation that amounts to a majority interest in the corporation; or
- 15 (b) having a majority interest, or an interest described in subparagraph (a) (i), in a landholding private corporation, acquires a further interest in the corporation;

shall be taken to have made a relevant acquisition.

86. Acquisition statements

20 (1) A person who has made a relevant acquisition shall prepare a statement and lodge it with the Commissioner.

(2) The acquisition statement shall be prepared in a form approved by the Commissioner and shall contain the following information:

- 25 (a) the name and address of the person who has acquired the interest;
- (b) the date of the relevant acquisition;
- (c) particulars of the interest acquired;
- (d) particulars of the total interest of the person and any associated person in the private corporation at that date;
- 30 (e) the unencumbered value of all landholdings in the Territory of the private corporation as at the date of the relevant acquisition and as at the date of acquisition of each interest acquired in the corporation during the 3 years prior to the date of the relevant acquisition;
- (f) the unencumbered value of the property of the private corporation at the date of the relevant acquisition;
- 35 (g) the amount of duty paid under this Act or under a law of another Australian jurisdiction in respect of each earlier acquisition of an interest referred to in paragraph (e);

(h) such other information as the Commissioner may require.

87. When must duty be paid?

5 A tax default does not occur for the purposes of the Taxation Administration Act if duty is paid within 90 days after the liability to pay it arises.

88. Who is liable to pay the duty?

(1) Subject to subsection (2), duty chargeable under this Part is payable by the person who makes the relevant acquisition.

10 (2) If a relevant acquisition results from an aggregation of the interests of associated persons, the person who made the relevant acquisition and the associated person or persons are jointly and severally liable for payment of the duty.

89. How duty is charged on relevant acquisitions

15 (1) If an acquisition statement does not disclose any acquisitions during the 3 years preceding the relevant acquisition, duty is chargeable, at the rate specified under this Act for a transfer of dutiable property, on the amount calculated by multiplying the unencumbered value of all land holdings of the private corporation in the Territory (calculated at the date of acquisition of the interest acquired) by the proportion of that value represented by the
20 interest acquired in the relevant acquisition.

(2) If an acquisition statement discloses 1 or more acquisitions during the 3 years preceding the relevant acquisition, duty is chargeable, at the rate specified under this Act for a transfer of dutiable property, on the aggregate of amounts severally calculated, in the manner provided by subsection (1),
25 in respect of each interest required to be disclosed in the statement.

(3) Duty payable under this section is to be reduced by the sum of the duty paid or payable under this Act in respect of the acquisition, during the 3 years preceding the relevant acquisition, by the person or any associated person of an interest in the same private corporation, but only in proportion
30 to the extent to which the duty paid or payable is attributable to the amount of the duty payable under this section.

(4) Duty payable under this section is to be reduced by an amount (if any) calculated in accordance with the following formula:

$$\frac{A}{B} \times C$$

35 where—

A is the unencumbered value of the landholdings in the Territory of the private corporation at the time the dutiable acquisition was made;

B is the unencumbered value of all property of the private corporation at that time; and

C is the sum of—

(a) the duty under this Act paid or payable in respect of—

(i) a dutiable transaction in relation to the shares or units;

(ii) a capital reduction or a rights alteration under Part III by which an interest in the private corporation was acquired; or

(iii) an allotment under Part V by which an interest in the private corporation was acquired; and

(b) any duty of a like nature so paid or payable under a law of another Australian jurisdiction.

(5) If a relevant acquisition is made owing to the aggregation of the interests of associated persons, but the Commissioner is satisfied that the associated persons acquired their respective interests independently and for no common purpose, the Commissioner may assess and charge duty on the relevant acquisition without aggregating the interests of the person who made it with the interests of associated persons.

(6) This section is subject to Division 4.

Division 4—General and supplemental

90. Transactions subject to prescribed duty

Duty of \$20 is chargeable in respect of a Chapter 3 transaction—

(a) in which the transferee is a hospital, school or charitable organisation or a trustee who is to hold the property transferred in trust for a hospital, school or charitable organisation;

(b) made consequent on the death of a person where the transferor is the executor of the will of the deceased person, the administrator of the estate of the deceased person or a beneficiary of the will or estate of the deceased person;

(c) made by operation of law on the bankruptcy of a person or the winding up of a company;

(d) made pursuant to an order of a court under the *Family Law Act 1975* of the Commonwealth or the *Married Persons' Property Act 1986*;

(e) made pursuant to an order of a court for the distribution of property consequent on the termination of a relationship between spouses, not being an order referred to in paragraph (d); or

(f) made pursuant to a domestic relationship agreement, or a termination agreement, within the meaning of the *Domestic*

Relationships Act 1994, being an agreement that—

- (i) is in writing,
- (ii) has been signed by the parties, and
- (iii) has endorsed on it, or is accompanied by, a certificate in relation to each party given by a solicitor before the signing of the agreement to the effect that the solicitor had advised that party, independently of the other party, as to the following matters:
 - (A) the effect of the agreement on the rights of the parties under the *Domestic Relationships Act 1994*,
 - (B) whether it was advantageous, financially or otherwise, for that party to enter into the agreement,
 - (C) whether it was prudent for that party to enter into the agreement;
 - (D) whether the agreement was fair and reasonable in the light of the circumstances that were then reasonably foreseeable.

91. Maximisation of entitlements on distribution of property

(1) This section applies to any calculation, for the purposes of this Part, of the entitlement of a person (in this section referred to as the “interested person”) to participate in a distribution of the property of a private corporation, whether on a winding up of the private corporation or otherwise.

(2) A calculation is to be made based, firstly, on a distribution carried out in accordance with the constitution of the private corporation, and with any law relevant to the distribution, as in force at the time of distribution, and the entitlement of the interested person is to be evaluated accordingly.

(3) Next, a calculation is to be made based on a distribution carried out after the interested person, and any other person whom the interested person has power to direct with respect to such a distribution or who is, in relation to the interested person, an associated person, had exercised all powers and discretions exercisable by them by reason of having acquired an interest in the private corporation concerned—

- (a) to effect or compel an alteration to the constitution of the private corporation;
- (b) to vary the rights conferred by shares or units in the private corporation; and
- (c) to effect or compel the substitution or replacement of shares or units in the private corporation with other shares or units in it;

in such a manner as would maximise the value of the entitlement, and the

entitlement of the interested person is to be evaluated accordingly.

- 5 (4) The results obtained by an evaluation of the interested person's entitlement in accordance with subsections (2) and (3) are then to be compared, and whichever evaluation results in a greater entitlement is the correct evaluation, for the purposes of this Part, of the entitlement, unless the Commissioner, being satisfied that the application of this subsection in the particular case would be inequitable, determines otherwise.

92. Valuation of property

- 10 (1) The provisions of this Act that apply to the ascertainment of the value of transfers chargeable with ad valorem duty apply in the same way to an acquisition statement under this Part and the value of land holdings mentioned in it.

- 15 (2) If any arrangement affecting the dutiable value of dutiable land holdings that was entered into within 12 months before a relevant acquisition was brought about by any person with the intention of reducing the dutiable value of the land holdings, the Commissioner may—

- 20 (a) cause a valuation of the landholding to be made;
(b) direct the valuer to disregard the arrangement for the purposes of the valuation; and
(c) assess duty on the basis of the valuation carried out in accordance with the direction.

93. Agreements for sale or conveyance of land

- (1) If—

- 25 (a) at the time of acquisition of an interest by any person in a landholding private corporation that necessitates the lodgment of an acquisition statement under Division 3, the corporation was the vendor under an uncompleted agreement for the sale or conveyance of land; and
(b) the agreement is subsequently completed;

30 the Commissioner shall assess or reassess the statement as though the land the subject of the agreement was not, at the time of the acquisition concerned, a landholding of the corporation.

- (2) If—

- 35 (a) at the time of acquisition of an interest by any person in a landholding private corporation that requires the lodgment by any person of an acquisition statement under Division 3, the private corporation was the purchaser under an uncompleted agreement for the sale or conveyance of land; and
(b) the agreement is subsequently rescinded, annulled or otherwise

terminated without completion;

the Commissioner shall assess or reassess the statement as though the land the subject of the agreement was not, at the time of the acquisition concerned, a landholding of the corporation

- 5 (3) In this section, a reference to a landholding private corporation includes a reference to a subsidiary of the corporation.

94. Duty concession—acquisitions securing financial accommodation

10 (1) If the person lodging an acquisition statement under this Part in relation to the acquisition of an interest in a landholding private corporation—

(a) informs the Commissioner at the time the statement is lodged that the acquisition is effected for the purpose of securing financial accommodation; and

15 (b) the Commissioner is satisfied that the acquisition is effected for that purpose;

the statement, in so far as it relates to that acquisition, is not chargeable with duty, except as provided by subsection (2).

20 (2) The statement is chargeable with duty at the expiration of the period of 5 years after the date of the acquisition (or such longer period as may be determined by the Commissioner in the particular case) if the interest concerned is not—

(a) re-acquired by the person from whom it was acquired; or

25 (b) in the case of an acquisition by way of mortgage, conveyed by the mortgagee to a third person in exercise of the mortgagee's power of sale;

within that period (or that longer period).

(3) Section 85 does not apply to the re-acquisition by a person of the interest concerned.

30 **PART III—ENTITLEMENTS ARISING FROM CAPITAL REDUCTIONS OR ALTERATIONS OF RIGHTS**

95. Interpretation

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

“capital reduction” means—

35 (a) the redemption, surrender or cancellation of a share (including cancellation as part of a buy-back of shares in accordance with Division 2 of Part 2J.1 of the *Corporations*

Law); or

(b) a reduction in the paid up value of a share;

“company” means a Territory company that is a public company within the meaning of the *Corporations Law*;

5 “dutable entitlement” means a voting share entitlement in respect of whose acquisition a statement is required to be lodged under section 99;

“person” includes persons who are associated persons;

10 “rights alteration”, in relation to voting shares, means a variation, abrogation or alteration of rights relating to the shares;

“voting shares” has the same meaning as in section 9 of the *Corporations Law*.

(2) For the purposes of this Part, if voting shares acquired by associated persons severally do not, but taken in the aggregate would, confer an entitlement to which this Part applies, the voting shares acquired by the associated persons are taken to be aggregated and are taken to confer the entitlement on the associated person who last acquired any of those voting shares.

20 (3) If, by virtue of subsection (2), an entitlement to voting shares is taken to exist as the aggregate of voting shares of associated persons, the associated persons are jointly and severally liable for payment of the duty chargeable on the statement required to be lodged under this Part.

25 (4) Voting shares are not to be aggregated in accordance with subsection (2) if the Commissioner is satisfied that the associated persons concerned acquired their several shares independently and for no common purpose.

96. When does a liability for duty arise?

A liability for duty charged by this Part arises when a dutable entitlement is acquired.

97. When must duty be paid?

30 A tax default does not occur for the purposes of the Taxation Administration Act if duty is paid within 90 days after the liability to pay it arises.

98. Who is liable to pay the duty?

35 (1) Duty chargeable under this Part is payable by the person who acquires a dutable entitlement.

(2) If the dutable entitlement results from an aggregation of the voting share entitlements of associated persons, the associated persons are jointly

and severally liable for payment of the duty.

99. Entitlement to voting shares arising from capital reduction or rights alteration

(1) If—

- 5 (a) a person becomes entitled to at least 50% of the voting shares of a company by means of capital reduction or rights alteration, or both; or
- 10 (b) a person who is entitled to at least 50% of the voting shares of a company becomes entitled to at least 10% more of the voting shares over a period of not more than 12 months by means of capital reduction or rights alteration, or both;

the person shall lodge a statement with the Commissioner in respect of the entitlement.

- 15 (2) The statement shall be lodged within 90 days after the entitlement arises.

100. Form of statement

A statement required to be lodged by a person under section 99 shall be in a form approved by the Commissioner and contain the following information:

- 20 (a) the name and address of the person;
- (b) the name of the company;
- (c) the date on which each relevant capital reduction or rights alteration, or both, occurred;
- 25 (d) if the person's entitlement has arisen—
- (i) from capital reduction—the total of the unencumbered value, immediately prior to each relevant capital reduction, of the shares the subject of the capital reduction;
- 30 (ii) from rights alteration—the total of the unencumbered value, immediately prior to each relevant rights alteration, of the shares the subject of the rights alteration; or
- (iii) from capital reduction and rights alteration—the aggregate of the totals under subparagraphs (i) and (ii);
- (e) the total consideration paid to the person in relation to all relevant capital reductions or rights alterations, or both;
- 35 (f) such other information as may be required by the Commissioner.

101. Assessment of duty

A statement required to be lodged by a person under section 99 is chargeable with duty—

(a) in the case of a company whose shares are quoted on the market operated by the Australian Stock Exchange—30 cents for every \$100, or part, of the higher of—

(i) the total or aggregate obtained under paragraph 100 (d); and

(ii) the total obtained under paragraph 100 (e); or

(b) in the case of a company whose shares are not quoted on the market operated by the Australian Stock Exchange—60 cents for every \$100, or part, of the higher of—

(i) the total or aggregate obtained under paragraph 100 (d); and

(ii) the total obtained under paragraph 100 (e).

PART IV—ACQUISITION OF LAND USE ENTITLEMENTS BY ALLOTMENT OF SHARES OR ISSUE OF UNITS

102. When does a liability for duty arise?

A liability for duty charged by this Part arises when a land use entitlement is acquired by an allotment of shares or an issue of units to any person otherwise than in circumstances to which Part V applies.

103. When must duty be paid?

A tax default does not occur for the purposes of the Taxation Administration Act if duty is paid within 90 days after the liability to pay it arises.

104. Who is liable to pay the duty?

Duty chargeable under this Part is payable by the person who acquires the land use entitlement.

105. Acquisition of land use entitlement

(1) A person who acquires a land use entitlement by an allotment of shares or an issue of units shall lodge with the Commissioner a statement of the entitlement.

(2) The statement shall be lodged within 90 days after the entitlement is so acquired.

106. Form of statement

A statement required to be lodged by a person under section 105 shall be in a form approved by the Commissioner and contain the following information:

(a) the name and address of the person;

(b) the name of the relevant company or unit trust;

(c) the date on which the land use entitlement was acquired;

- (d) the consideration paid by the person for the relevant shares or units;
- (e) such other information as may be required by the Commissioner.

107. Assessment of duty

- 5 The share allotment or unit issue by which a person acquires a land use entitlement is chargeable with duty at the general rate of duty determined for the purposes of section 31 on the dutiable value of the land use entitlement.

PART V—ALLOTMENT OF SHARES BY DIRECTION

10 **108. Application of Part**

This Part applies to an allotment of shares to any person by a Territory company at another person's direction, in discharge of an obligation to that other person, whether that obligation arises as consideration for the purchase of property by the company or otherwise.

15 **109. When does a liability for duty arise?**

A liability for duty charged by this Part arises when the relevant shares are allotted.

110. When must duty be paid?

- 20 A tax default does not occur for the purposes of the Taxation Administration Act if duty is paid within 90 days after the liability to pay it arises.

111. Who is liable to pay the duty?

Duty chargeable under this Part is payable by the person to whom the relevant shares are allocated.

25 **112. Acquisition of shares by allotment**

(1) A person to whom any shares are allotted in an allotment to which this Part applies shall lodge with the Commissioner a statement in respect of the allotment.

- 30 (2) The statement shall be lodged within 90 days after the shares are allotted.

113. Allotment statement

A statement required to be lodged by a person under section 112 shall be in a form approved by the Commissioner and contain the following information:

- 35 (a) the name and address of the person;

- (b) the name of the relevant company;
- (c) the date on which the shares were allotted to the person;
- (d) such other information as may be required by the Commissioner.

114. Assessment of duty

5 An allotment to which this Part applies is chargeable with duty at the rate of duty determined for the purposes of section 32 in respect of a transfer of marketable securities on the dutiable value of the shares.

**CHAPTER 4—ON-MARKET TRANSFERS OF
MARKETABLE SECURITIES**

10 **PART I—PRELIMINARY**

115. Interpretation

In this Chapter, unless the contrary intention appears—

“broker” means a person who is a broker within the meaning of the Business Rules of the Australian Stock Exchange;

15 “exempt transaction” means a transaction specified in section 118;

“marketable securities” means any of the following:

- (a) shares;
- (b) units;
- (c) CUFS;
- 20 (d) IRs;
- (e) instalment warrants;
- (f) any other securities prescribed for the purposes of this paragraph.

116. Presumptions regarding broking

25 If a broker, or the agent or employee of a broker, who is in the Territory sells marketable securities to, or purchases marketable securities from, a person who is not a broker, or the agent or employee of a broker—

- (a) the broker, agent or employee is to be taken, for the purposes of this Chapter, to have acted on the orders of both the vendor and the purchaser; and
- 30 (b) the orders are to be taken to have been received by the broker, agent or employee in the Territory.

PART II—LIABILITY FOR DUTY

117. Imposition of duty

(1) This Chapter imposes liability for duty—

- 5 (a) on a sale or purchase of marketable securities that are quoted on the market operated by the Australian Stock Exchange, if the sale or purchase is—
- (i) conducted on the market operated by the Australian Stock Exchange; or
 - 10 (ii) reported to it, in accordance with the Business Rules of the Australian Stock Exchange;
- and if an order for the sale or purchase concerned was received in the Territory;
- 15 (b) on a sale or purchase of marketable securities that are not quoted on the market operated by the Australian Stock Exchange, if the sale or purchase is—
- (i) of marketable securities of a body corporate incorporated under the law of an Australian jurisdiction that are to be registered on an Australian register;
 - 20 (ii) conducted on a recognised stock exchange; and
 - (iii) made pursuant to an order received in the Territory;
- (c) on a sale or purchase of marketable securities on a broker's own account, if the sale or purchase is effected in the Territory; and
- (d) on an associated transaction with a broker in the Territory (being a transaction referred to in paragraph 118 (1) (e), (f) or (g)).

25 (2) For the purposes of paragraph (1) (a), an order for a sale or purchase is received in the Territory if—

- (a) in the case of a manual client order, it is received by an individual who is a broker, or an employee or agent of a broker—
- 30 (i) who is present in the Territory at the time the order is received; or
 - (ii) who is outside Australia at the time the order is received, and an individual instructs a SEATS operator in the Territory to put the order into the market;
- 35 (b) in the case of an automated client order, it is received by a broker by electronic means—
- (i) in the Territory; or
 - (ii) outside Australia and is put by a broker into SEATS in the Territory; or
- (c) it did not arise from a manual client order or an automated client

order, and an individual, being the broker or an employee or agent of the broker, who is present in the Territory, instructed a SEATS operator to report a trade to the market.

5 (3) For the purposes of paragraph (1) (c), a sale or purchase on a broker's own account is effected in the Territory if—

- (a) it arises from a manual broker order that an individual, being the broker or an employee or agent of the broker, who is present in the Territory, instructed a SEATS operator to put into the market;
- 10 (b) it arises from an automated broker order that was put by the broker into SEATS from the Territory; or
- (c) it did not arise from a manual broker order or an automated broker order, and an individual, being the broker or an employee or agent of the broker, who is present in the Territory, instructed a SEATS operator to report a trade to the market.

15 (4) For the purposes of this Chapter, a reference to a sale or purchase of marketable securities includes a reference to a transaction that, on completion by the parties, results in a company buying back its own shares in accordance with Division 2 of Part 2J.1 of the *Corporations Law*.

(5) In this section—

20 “automated broker order” means an order that is submitted into SEATS on a broker's own account without being keyed or rekeyed by an individual;

25 “automated client order” means an order received by a broker that is submitted into SEATS without being keyed or rekeyed by an individual;

“manual broker order” means an order that is submitted into SEATS on a broker's own account by being keyed or rekeyed by an individual;

30 “manual client order” means an order received by a broker that is submitted into SEATS by being keyed or rekeyed by an individual.

118. Exemptions

(1) Duty is not chargeable under this Chapter on the following sales or purchases of marketable securities, or transactions concerning marketable securities:

- 35 (a) a sale or purchase of marketable securities issued by a municipal council or other local government body or by a public authority constituted under a law of the Commonwealth or a State or Territory;
- (b) a sale or purchase of a marketable security by a prescribed

- authority of the Commonwealth or a Territory;
- (c) a sale or purchase of a marketable security by a hospital, school or charitable organisation or by a trustee for a hospital, school or charitable organisation acting in that capacity,
- 5 (d) a sale or purchase made by a broker (not acting on his or her own account) on behalf of another broker who—
- (i) has paid or will pay duty on the sale or purchase under this Chapter or the law of another Australian jurisdiction that corresponds to this Chapter; or
- 10 (ii) has not paid duty on the sale or purchase because the sale or purchase is exempt from duty under this Chapter or the law of another Australian jurisdiction that corresponds to this Chapter;
- (e) a sale or purchase of marketable securities quoted on the market operated by the Australian Stock Exchange that is for the sole purpose of—
- 15 (i) lending the marketable securities to the transferee for not more than 12 months;
- (ii) returning marketable securities borrowed from the transferee not more than 12 months before, being such marketable securities as are necessary to restore the shareholding of the transferee to the exact number and class of marketable securities of which the transferee would have otherwise become the registered holder, if the loan had not taken place;
- 20 or
- (iii) a securities lending transaction that is completed within 12 months;
- (f) a transaction by—
- (i) SECH Nominees Pty Limited;
- 30 (ii) CHES Depositary Nominees Pty Limited; or
- (iii) a nominee company that holds marketable securities solely for the purpose of facilitating share transaction settlements by a broker;
- (g) a transaction made to reverse a sale or purchase made mistakenly not more than 7 days earlier, and the sale or purchase so reversed;
- 35 (h) a purchase comprising a buy-back, in the ordinary course of trading on the market operated by the Australian Stock Exchange, of the marketable securities in accordance with Division 2 of Part 2J.1 of the *Corporations Law* by a company, unless the buy-back is effected by the purchaser pursuant to 1 or more agreements, understandings or arrangements that the purchaser will issue marketable securities.
- 40

- 5 (2) For the purpose of ascertaining whether or not a purchase of marketable securities made on behalf of a client by a broker is not made pursuant to 1 or more agreements, understandings or arrangements that the purchaser will issue marketable securities referred to in paragraph (1) (h), a broker is entitled to rely on representations made in writing by the client.

PART III—RATES OF DUTY

119. Three rates

(1) The following rates of duty are applicable for the purposes of this Chapter:

- 10 (a) the general rate, which is a rate of 15 cents for every \$100, or part, of the consideration for a sale or purchase;
- (b) the concessional rate, which is a rate of 0.25 cents for every \$100, or part, of the consideration for a sale or purchase;
- 15 (c) the differential rate, which is a rate of 14.75 cents for every \$100, or part, of the consideration for a sale or purchase.

(2) The rates of duty specified in subsection (1) shall be taken to have been determined by the Minister under section 139 of the Taxation Administration Act on the commencement of this section.

20 (3) For the purpose of facilitating revocation or variation by determination under section 139 of the Taxation Administration Act of the rates of duty provided for in subsection (1), the Minister may, by notice published in the *Gazette*, make a determination that is expressed to determine rates of duty applicable for the purposes of this Chapter that are to have effect in place of the rates specified in subsection (1).

25 (4) Upon the publication in the *Gazette* of a determination referred to in subsection (3), subsection (1) shall be taken to have expired.

(5) A determination referred to in subsection (3) is not a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

30 (6) A determination referred to in subsection (3) has effect according to its terms and may be revoked or varied as if it had been made under section 139 of the Taxation Administration Act.

120. Duty at general rate

35 Duty payable by a broker on a sale or purchase that is dutiable in accordance with this Chapter is payable at the general rate, unless specified in a subsequent provision of this Chapter to be payable at another rate.

121. Marketable securities held on broker's own account

(1) Duty is payable by a broker at the concessional rate on—

- 5 (a) a purchase by a broker, on the broker's own account, of marketable securities, being securities of the same type as those intended to be sold by the broker during the period of 3 months after the purchase;
- 10 (b) a sale by the broker, on the broker's own account, of marketable securities of the same type as those purchased by the broker during the period of 3 months before the sale on which duty was payable under paragraph (1) (a) or (2) (a);
- (c) a sale by the broker, on the broker's own account, of marketable securities of the same type as those intended to be purchased by the broker during the period of 3 months after the sale; and
- 15 (d) a purchase by the broker, on the broker's own account, of marketable securities of the same type as those sold by the broker during the period of 3 months before the purchase on which duty was payable under paragraph (1) (c) or (2) (c).

(2) Duty is payable by a broker at the concessional rate on—

- 20 (a) a purchase by the broker, on behalf of another broker who is acting on its own account as principal (in this section referred to as the "principal broker") of marketable securities, being securities of the same type as those intended to be sold by the principal broker during the period of 3 months after the purchase;
- 25 (b) a sale by the principal broker, or by another broker on behalf of the principal broker, of marketable securities of the same type as those purchased on behalf of the principal broker during the period of 3 months before the sale on which duty was payable under paragraph (1) (a) or (2) (a);
- 30 (c) a sale by the broker on behalf of a principal broker of marketable securities of the same type as those intended to be purchased by the principal broker during the period of 3 months after the sale; and
- 35 (d) a purchase by the principal broker, or by another broker on behalf of the principal broker, of marketable securities of the same type as those sold on behalf of the principal broker during the period of 3 months before the purchase on which duty was payable under paragraph (1) (c) or (2) (c).

(3) Duty payable on a sale or purchase under subsection (2) is payable by the broker who effects or reports the sale or purchase through SEATS.

40 (4) For the purpose of ascertaining whether or not a sale or purchase of marketable securities on behalf of a principal broker is made for a purpose relevant to subsection (2), a broker is entitled to rely on representations made in writing by the principal broker.

122. Marketable securities held on account of options traders and futures brokers

(1) Duty is payable by a broker at the concessional rate on—

- 5
- (a) a purchase by the broker of marketable securities on behalf of a registered independent options trader or futures broker who is acting as principal and in his or her capacity as an options trader or a futures broker, if—
- 10
- (i) the options trader or futures broker intends to sell marketable securities of the same type during the period of 3 months after the purchase; and
- 15
- (ii) the purchase is made for the purpose of hedging risk in respect of an options contract or futures contract over marketable securities of a type in respect of which options or futures contracts are traded or the price of which is included in the calculation of an index in respect of which options or futures contracts are traded;
- 20
- (b) a sale by the broker on behalf of a registered independent options trader or futures broker of marketable securities of the same type as those purchased by the broker (or another broker) during the period of 3 months before the sale on which duty was payable under paragraph (a);
- 25
- (c) a sale by the broker of marketable securities on behalf of a registered independent options trader or futures broker who is acting as principal and in his or her capacity as an options trader or a futures broker, if—
- 30
- (i) the options trader or futures broker intends to purchase marketable securities of the same type during the period of 3 months after the sale; and
- (ii) the sale is made for the purpose of hedging risk in respect of an options contract or futures contract over marketable securities of a type in respect of which options or futures contracts are traded or the price of which is included in the calculation of an index in respect of which options or futures contracts are traded; and
- 35
- (d) a purchase by the broker on behalf of a registered independent options trader or futures broker of marketable securities of the same type as those sold by the broker (or another broker) during the period of 3 months before the purchase on which duty was payable under paragraph (c).
- 40
- (2) For the purpose of ascertaining whether or not a sale or purchase of marketable securities on behalf of a client is made for a purpose relevant to this section, a broker is entitled to rely on representations made in writing by the client.

123. Marketable securities held on account of warrant-issuers

(1) Duty is payable by a broker at the concessional rate on a sale made by the broker of marketable securities on behalf of a warrant-issuer, who is acting as principal and in his or her capacity as a warrant-issuer, if the sale is made for the purpose of hedging risk in respect of a warrant over marketable securities of a type in respect of which warrants are traded or the price of which is included in the calculation of an index over which warrants are traded.

(2) Duty is payable by a broker at the concessional rate on a purchase made by the broker of marketable securities on behalf of a warrant-issuer, who is acting as principal and in his or her capacity as a warrant-issuer, if the purchase is made for the purpose of hedging risk in respect of a warrant over marketable securities of a type in respect of which warrants are traded or the price of which is included in the calculation of an index over which warrants are traded.

(3) For the purpose of ascertaining whether or not a sale or purchase of marketable securities on behalf of a client is made for a purpose relevant to this section, a broker is entitled to rely on representations made in writing by the client.

124. Additional duty on marketable securities held otherwise than for short terms

- (1) Duty is payable by a broker at the differential rate on—
- (a) a purchase by a broker, on the broker's own account, of marketable securities on which concessional duty was paid under paragraph 121 (1) (a) if marketable securities of the same type were not sold by the broker during the period of 3 months after the purchase;
 - (b) a sale by the broker on the broker's own account, of marketable securities on which the concessional duty was paid under paragraph 121 (1) (c) if marketable securities of the same type were not purchased by the broker during the period of 3 months after the sale;
 - (c) a purchase by a principal broker, on the broker's own account of marketable securities on which concessional duty was paid under paragraph 121 (2) (a) if marketable securities of the same type were not sold by the principal broker during the period of 3 months after the purchase; and
 - (d) a sale by the principal broker on the broker's own account of marketable securities on which the concessional duty was paid under paragraph 121 (2) (c) if marketable securities of the same type were not purchased by the principal broker during the period of 3 months after the sale.

(2) Duty is payable by a registered independent options trader or futures broker at the differential rate on—

- 5 (a) a purchase of marketable securities made on his or her behalf by a broker and on which concessional duty was paid under paragraph 122 (1) (a) if marketable securities of the same type were not sold by the registered independent options trader or futures broker during the 3 months after the purchase; and
- 10 (b) a sale of marketable securities made on his or her behalf by a broker and on which concessional duty was paid under paragraph 122 (1) (c) if marketable securities of the same type were not purchased by the registered independent options trader or futures broker during the 3 months after the sale.

(3) Duty is payable by a warrant-issuer at the differential rate on—

- 15 (a) a sale of marketable securities made on his or her behalf by a broker and on which concessional duty was paid under subsection 123 (1), if marketable securities of the same type were not purchased by the warrant-issuer during the period of 30 days after the last day on which the relevant warrant could be exercised; and
- 20 (b) a purchase of marketable securities made on his or her behalf by a broker and on which concessional duty was paid under subsection 123 (2), if marketable securities of the same type were not sold by the warrant-issuer during the period of 30 days after the last day on which the relevant warrant could be exercised.

25 (4) Duty payable under this section is in addition to duty payable under sections 121, 122 and 123.

(5) In this section—

“principal broker” has the same meaning as in section 121.

125. Low exercise price options

30 The rate of duty chargeable under this Chapter on the sale or purchase of marketable securities that is made as a result of the exercise of an option to purchase the marketable securities is to be calculated on the premium paid on the option for the marketable securities (rather than on the consideration for the sale or purchase) if the premium is greater than the consideration.

35 PART IV—RECORDS OF TRANSFERS

126. Records of sales, purchases and transactions—generally

(1) Immediately after a sale or purchase of, or a transaction that transfers, marketable securities that is dutiable under this Chapter, or that is exempt from duty under this Chapter, is made by a broker, the broker shall

make a record of the sale, purchase or transaction that shows the following:

- (a) its date;
- (b) the principal's name (if relevant);
- 5 (c) the name of the broker on the other side of the transaction (if relevant);
- (d) the quantity and full description of the marketable securities;
- (e) the selling or purchase price;
- (f) the amount of duty chargeable;
- 10 (g) in the case of a sale, purchase or transaction that is dutiable at the concessional rate or that is exempt from duty, such particulars as are required to establish that the sale, purchase or transaction is dutiable at the concessional rate or is exempt from duty.

(2) Immediately after a sale or purchase of, or a transaction that transfers, marketable securities is made by a broker—

- 15 (a) on the order of another broker; or
- (b) of marketable securities that are exempt from duty;

the broker shall make a record of the sale, purchase or transaction that shows the particulars set out in subsection (1).

Penalty:

- 20 (a) in the case of a natural person—20 penalty units;
- (b) in the case of a body corporate—100 penalty units.

127. Records of sales, purchases and transactions—options traders, futures brokers and warrant-issuers

(1) Immediately after a sale or purchase of, or a transaction that transfers, marketable securities that is dutiable under this Chapter, or that is exempt from duty under this Chapter, being a sale, purchase or transaction by a broker on behalf of a registered independent options trader, futures broker or warrant-issuer in that capacity, the options trader, futures broker or warrant-issuer shall make a record of the sale, purchase or transaction that shows the following:

- 30 (a) its date;
- (b) the name of the broker who effected the sale, purchase or transaction;
- (c) the quantity and full description of the marketable securities;
- 35 (d) the selling or purchase price of each security and the total price of all the securities sold or purchased;
- (e) in the case of a sale, the date on which the marketable securities were purchased;

- (f) in the case of a purchase, the date on which the marketable securities were sold;
 - (g) in the case of a transaction, the date on which the transaction took place.
- 5 (2) The record shall be kept separately from any record required to be kept by the registered independent options trader, futures broker or warrant-issuer in any other capacity.

Penalty:

- (a) in the case of a natural person—20 penalty units;
- 10 (b) in the case of a body corporate—100 penalty units.

PART V—PERIODIC RETURNS AND PAYMENT OF DUTY

128. Lodgment of returns and payment of duty by brokers

- 15 (1) A broker shall, not later than 14 days after the end of each month, lodge with the Commissioner a return in the approved form of the sales, purchases and transactions required to be recorded under section 126 that have been made by the broker during that month and pay to the Commissioner the appropriate amount of duty calculated in accordance with Part III in respect of the sales, purchases and transactions required to be included in the return (other than any exempt transactions).
- 20 (2) Not later than 14 days after the end of a month in which a broker becomes liable to pay duty under section 124, the broker shall lodge with the Commissioner a return in the approved form of the sales, purchases and transactions for which duty is payable, and pay to the Commissioner the appropriate amount of duty calculated in accordance with Part III in respect of the sales, purchases and transactions required to be included in the return
- 25 (other than any exempt transactions).

129. Lodging of returns—registered independent options traders, futures brokers and warrant-issuers

- 30 Not later than 14 days after the end of a month in which a registered independent options trader, futures broker or warrant-issuer is liable to pay duty under section 124, the options trader, futures broker or warrant-issuer shall lodge with the Commissioner a return in the approved form of the sales, purchases and transactions for which duty is payable, and pay to the Commissioner the appropriate amount of duty calculated in accordance with
- 35 Part III in respect of the sales, purchases and transactions required to be included in the return (other than any exempt transactions).

PART VI—MISCELLANEOUS

130. Endorsement of transfer as to payment of duty

(1) This section applies to a broker immediately after the broker makes a record as required by section 126.

5 (2) The broker shall endorse the transfer by including the broker's identification code in the transfer document if the sale, purchase or transaction is an SCH-regulated transfer.

(3) A broker, in circumstances where subsection (2) does not apply, shall—

10 (a) endorse the written transfer with a statement that the duty (if any) on the sale, purchase or transaction has been or will be paid by the broker or that the sale, purchase or transaction is exempt from duty;

(b) note the date of the endorsement on the written transfer; and

15 (c) stamp the written transfer with the broker's stamp.

(4) A transfer dealt with in accordance with this section is to be taken to be duly stamped.

20 (5) A broker shall not, without reasonable excuse, deal with a transfer in accordance with subsection (2) or (3) before a record required by subsection 126 (1) has been made.

Penalty:

(a) in the case of a natural person—20 penalty units;

(b) in the case of a body corporate—100 penalty units.

(6) A person, other than a broker, shall not—

25 (a) impress a broker's stamp on a transfer without the broker's authority;

(b) impress a stamp resembling or purporting to be a broker's stamp on a transfer; or

30 (c) endorse a transfer document with a participant identifier without the SCH participant's authority.

Penalty:

(a) in the case of a natural person—100 penalty units or imprisonment for 12 months, or both;

(b) in the case of a body corporate—500 penalty units.

35 (7) In this section—

“participant identifier”, in relation to an SCH participant, means a code that, for the purposes of the SCH business rules, is the SCH participant's identification code.

131. Recovery of duty by broker from vendor or purchaser

(1) The amount of any duty paid under this Chapter by a broker in respect of a transaction made on behalf of a client (whether vendor or purchaser) is, from the time of payment of the duty to the Commissioner, a debt due to the broker from the client.

(2) Without affecting any remedy available to a broker for the recovery of debts, a broker may recover a debt created by this section by appropriating the amount out of any money held by the broker for the client.

CHAPTER 5—LEASE INSTRUMENTS

PART I—PRELIMINARY

132. Interpretation

In this Chapter, unless the contrary intention appears—

“lease” means—

- (a) a lease of land in the Territory or an agreement for a lease of land in the Territory;
- (b) an agreement (such as a licence) by which a right to use land in the Territory at any time and for any purpose is conferred on or acquired by a person; or
- (c) a franchise arrangement that is held in respect of a place or area located in the Territory;

but does not include a Crown lease;

“lease instrument” means an instrument that evidences or effects a lease;

“lessee” includes—

- (a) in the case of a franchise arrangement, the franchisee;
- (b) any assignee for the time being of the rights of the lessee under a lease and the assignee of a franchisee; and
- (c) a person who has a right to use land of the kind referred to in paragraph (b) of the definition of “lease”;

“lessor” includes a person who grants a right of the kind referred to in paragraph (b) of the definition of “lease”.

PART II—LIABILITY FOR DUTY

133. Imposition of duty

This Chapter charges duty on a lease instrument.

134. How duty is charged on a lease instrument

Duty is chargeable on a lease instrument—

- 5
- (a) in the case of a lease for which there is no consideration in money or money's worth, at the rate prescribed under this Chapter on the unencumbered value of the lease; or
 - (b) in any other case, at the rate prescribed under this Chapter, on the cost of the lease, as determined in accordance with this Chapter.

135. What is the "cost" of a lease?

10 (1) For the purposes of this Chapter the cost of a lease (other than a franchise arrangement) is the aggregate of the following:

- 15 (a) the rent payable during the term of the lease or in advance of the lease and any amount paid or payable for the right to use land under the lease;
- (b) any premium payable for the lease;
- 15 (c) any rates and taxes paid or payable on behalf of the lessor in connection with the lease;
- (d) the value of improvements and additions to the leased premises made or undertaken to be made by or on behalf of, or at the expense of, the lessee under an agreement or covenant by the lessee (other than fit-out costs), to the extent provided by section 20 145;
- (e) any royalties payable under the lease, including royalties for the right to enter onto and remove something from the land.

25 (2) A reference in subsection (1) to rent shall be read as including a reference to any payment under the lease expressed to be rent.

30 (3) For the purposes of this Chapter, the cost of a franchise arrangement is the aggregate of all amounts payable for the grant of the franchise (including any renewal fees where the franchise arrangement is entered into by way of renewal of a previous franchise arrangement) and the exercise of the franchisee's rights during the term of the arrangement, to the extent that any of those amounts are referable to the Territory and the cost includes any amounts so payable under the arrangement for—

- 35 (a) the right to use the goodwill of the business (including payments by way of royalty or as a percentage of turnover);
- (b) the right to use systems and processes, instruction manuals and operation manuals, business names, logos, trademarks, patents and copyright material in connection with the business; or
- (c) the use of goods;

40 but does not include any amounts payable under the arrangement for goods that are stock-in-trade or materials provided for use in manufacture.

(4) If a franchise arrangement applies to an area that comprises the whole or part of the Territory and a place outside the Territory, duty is not payable on that proportion of the cost of the franchise arrangement that represents the extent to which the franchise has been granted in respect of the place that is outside the Territory.

136. Splitting or redirection of cost of franchise arrangement

The Commissioner may include, as part of the amount payable as the cost of a franchise arrangement, any of the following:

- (a) any payments under the arrangement that the Commissioner is satisfied have been increased for the purpose of minimising duty under this Chapter;
- (b) any payments that would be included in the cost of a franchise arrangement except for the fact that they are paid to a person other than the person who grants the franchise arrangement.

137. Who is liable to pay the duty?

The person liable to pay the duty is—

- (a) in the case of a franchise agreement, the franchisee; or
- (b) in any other case, the lessor.

138. When must the duty be paid?

(1) A lease instrument becomes liable to duty on the day of first execution.

(2) A lease instrument also becomes liable to duty on the making of a variation to the lease that increases the cost of the lease and where such a variation is made duty is chargeable on the amount of additional cost resulting from the variation.

(3) Duty shall be paid to the Commissioner within 90 days after the lease instrument becomes liable to duty, except as otherwise provided by this Chapter.

PART III—RATES OF DUTY

139. General rate

Except as otherwise provided by this Chapter, duty is payable on the total cost of a lease at the determined rate.

140. Rates of duty on certain long-term leases

Where—

- (a) a lease has been granted for a term exceeding 30 years; or
- (b) a lease has been granted for an initial term not exceeding 30 years

but with an option for renewal of the lease for 1 or more terms that in aggregate with the initial term exceed 30 years;

duty is payable on the total cost of the lease at the determined rate.

141. Exemption from duty and nominal duty

- 5 (1) If a lease instrument is made subsequently to and in conformity with an agreement for a lease—
- (a) no duty is payable on the lease instrument if it is lodged with the Commissioner for stamping at the same time as the agreement for the lease; and
 - 10 (b) duty of \$20 is payable on the lease instrument if it is lodged for stamping at any other time
- (2) Duty of \$20 is payable on an instrument that evidences a variation of a lease.

PART IV—UNASCERTAINABLE LEASE COSTS

15 **142. Operation of Part**

- (1) The object of this Part is to enable an unascertainable component of the cost of a lease to be determined as a definite sum for duty assessment purposes.
- 20 (2) For the purposes of this Part an amount of a cost component of a lease is unascertainable if it cannot, at the time duty is liable to be paid in respect of it, be ascertained as a definite sum with the consequence that the total cost of the lease over its whole term cannot at that time be so ascertained.
- 25 (3) Cost of components whose amounts are partly unascertainable are to be dealt with under section 143 or 144 and cost components whose amounts are wholly unascertainable are to be dealt with under subsection 146 (2).
- (4) Section 145 applies to the quantification of the value of lessees' improvements.

143. Estimate and subsequent adjustment

- 30 (1) This section applies in order to determine as a definite sum any unascertainable cost components of a lease, except where the Commissioner and the lessor agree that section 144 should apply instead.
- (2) The Commissioner shall make an initial estimate of the cost of the lease.
- 35 (3) The initial estimate shall be the sum of—
- (a) the amount of each cost component payable in the course of the

lease, so far as it is ascertainable;

- 5 (b) in respect of any interval in the term of the lease in which the amount of a cost component, although unascertainable, is subject to a certain minimum rate—the amount of the cost component that would be paid if it were payable at that minimum rate; and
- 10 (c) in respect of any interval in the term of the lease in which the amount of a cost component is unascertainable and to which paragraph (b) cannot be applied—the amount of the cost component that would be paid during the interval if it were payable at the highest certain rate prevailing immediately before the commencement of the interval.

(4) Following the initial estimate, duty is to be paid to the Commissioner on the cost of the lease determined on the basis of an estimate under this section of the relevant unascertainable cost components.

15 (5) Periodic estimates shall be made, at such dates (in this section referred to as “estimate dates”) as the Commissioner, having regard to the provisions of the lease, determines, of the amount of any cost components dealt with under this section payable during the term of the lease, and periodic adjustments of duty are to be made accordingly.

20 (6) A periodic estimate and a periodic assessment of duty may be made more than 5 years after the initial estimate.

(7) Within 1 month after each estimate date, the lessor shall produce to the Commissioner a duly stamped part of the lease instrument and a statutory declaration stating—

- 25 (a) the amount of each cost component dealt with under this section that was paid between the initial estimate date or the last previous estimate, as the case may be, and the date of the current estimate; and
- 30 (b) the rate at which that cost component is payable as at the date of the current estimate.

Penalty:

- (a) in the case of a natural person—50 penalty units;
- (b) in the case of a body corporate—250 penalty units.

35 (8) If the amount of a cost component actually paid during a period between estimation dates is higher than the estimated amount so payable for that period, the Commissioner may make a reassessment of duty in respect of the lease for that period and the balance of the term of the lease, and the lessor shall, within 90 days after the date of issue of the notice of assessment, pay any additional duty assessed.

40 (9) If the amount of a cost component actually paid during a period between estimation dates is lower than the estimated amount so payable for

that period, the Commissioner shall, after the lessor has complied with subsection (7), make a refund to the lessor of duty overpaid.

144. CPI method

5 (1) This section applies, if the Commissioner and the lessor agree to apply it, in order to determine as a definite sum any unascertainable amounts of any particular cost component of a lease

10 (2) The amount of the relevant cost component payable during any interval of the term of the lease for which it cannot be ascertained shall be taken to be payable at an annual rate ascertained by compounding the rate at which it is payable during the first year of the lease by the annual percentage increase in the Consumer Price Index last issued before the commencement of the lease.

15 (3) If the rate at which the cost component is payable is unascertainable for a part of the first year, the rate for that year shall be calculated in accordance with paragraphs 143 (3) (b) and (c).

20 (4) In the application of subsection (2) in relation to a cost component of a lease, if there was an annual percentage decrease in the Consumer Price Index last issued before the commencement of the lease, that decrease shall be disregarded and the subsection shall be applied as if there had been no annual percentage increase in the Index.

(5) The Commissioner may assess and levy duty on the cost of a lease based on a determination under this section of the value of the relevant cost component.

25 (6) Duty assessed in accordance with this section may not be varied merely because the actual amount of the cost component paid under the lease is different from the value of the cost component determined under this section.

(7) In this section—

30 “Consumer Price Index” means the number appearing in the *Consumer Price Index (All Groups Index) for Canberra* published by the Australian Bureau of Statistics under the *Census and Statistics Act 1905* of the Commonwealth.

145. Quantification of lessee’s improvements

The value of so much of the cost of a lease as comprises—

- 35 (a) an undertaking by the lessee to make or pay for additions or improvements to the land the subject of the lease; or
- (b) the making of, or payment for, such additions or improvements by the lessee;

is taken to be the percentage, determined by the following table, of the value

of the additions or improvements:

Table

Term of lease	Percentage of value of additions or improvements
10 years or less	100
More than 10 years but not more than 20 years	75
More than 20 years but not more than 30 years	50
More than 30 years but not more than 40 years	25
More than 40 years	Nil
Periodic lease or lease for a term that cannot be ascertained when the lease is made	100

PART V—MISCELLANEOUS

146. Interim stamping of lease instrument

5 (1) A lease instrument on which duty is assessed under section 143 is to be marked "Interim stamp only".

(2) A lease instrument on which no part of the duty under this Chapter is immediately ascertainable is, on payment of a duty of \$20, to be stamped accordingly and marked "Interim stamp only".

10 (3) Section 48 applies to a lease instrument marked "Interim stamp only" in the same way as it applies to a written instrument or written statement referred to in that section marked "Interim stamp only".

147. Reassessment of duty—early termination

15 (1) A lessor may apply in writing to the Commissioner for a reassessment of duty paid on a lease instrument if the lease is terminated before the end of its term.

(2) Subsection (1) applies in relation to a lease instrument irrespective of how the lease is terminated.

20 (3) The application shall be made within 5 years after the initial assessment or 12 months after the termination, whichever is the later, and shall be supported by such documents and information as the Commissioner specifies.

(4) The Commissioner—

(a) if satisfied that the lease has been terminated before the commencement of the term, shall refund the whole of the duty paid, or

5 (b) if satisfied that the lease has been terminated early, shall refund the difference between the duty actually paid and the duty that would have been payable if the lease had been granted for a term equal to the period for which the lease actually remained in force before termination.

10 (5) In this section, a reference to the termination of a lease includes a reference to a lease coming to an end.

148. Reassessment of duty—reduction of cost

(1) A lessor may apply in writing to the Commissioner for a reassessment of duty paid on a lease instrument if the lease is subsequently varied so as to reduce the total cost of the lease.

15 (2) The application shall be made within 5 years after the initial assessment or 12 months after the variation, whichever is the later, and shall be supported by such documents and information as the Commissioner specifies.

20 (3) The Commissioner, if satisfied that the lease has been varied so as to reduce the total cost of the lease, shall refund the difference between the duty actually paid and the duty that would have been payable if the lease had been granted on the terms as so varied.

149. Exemptions

25 A lease instrument for any of the following leases is not chargeable with duty under this Chapter:

(a) a lease for a term of less than 1 year whose total cost is not more than \$3,000;

(b) a lease for a term of 1 year or more whose total cost is not more than \$3,000 per year;

30 (c) a lease for residential purposes;

(d) a lease to a hospital, school or charitable organisation or to a trustee for a hospital, school or charitable organisation in that capacity;

(e) a lease to a prescribed person.

35 CHAPTER 6—HIRE OF GOODS

PART I—PRELIMINARY

150. Interpretation

In this Chapter, unless the contrary intention appears—

“equipment financing arrangement” means a hire of goods that consists of—

- (a) a hire purchase agreement; or
- (b) some other agreement for a term of not less than 9 months and under which the final payment is payable not earlier than 8 months after the agreement is entered into;

“goods” includes all chattels personal and fixtures severable from realty but does not include money, livestock or things in action.

151. What is a “hire of goods”?

(1) A reference in this Chapter to a hire of goods is a reference to an arrangement under which goods are or may be used at any time by a person other than the person hiring out the goods, unless the arrangement is excluded under section 152.

(2) For the purposes of this Chapter there are 2 kinds of hire of goods, namely—

- (a) an equipment financing arrangement; and
- (b) an ordinary (that is, any other) hire of goods.

152. Exclusions from the definition of “hire of goods”

(1) A hire of goods does not include any of the following:

- (a) an arrangement that gives a person a right to use goods that is conferred incidentally with a lease of, or a licence to occupy or use, land if—
 - (i) there is no apportionment of consideration between the right to use the goods and the right to occupy or use the land; and
 - (ii) duty is chargeable under Chapter 5 in respect of the lease or licence;
- (b) a franchise arrangement that is chargeable with duty under Chapter 5;
- (c) an arrangement for the hire of an aircraft, a ship or vessel, or for the hire of an engine or other component part of an aircraft, ship or vessel;
- (d) an arrangement for the provision of goods to a trader for the purpose of displaying or demonstrating the goods pending their sale or hire to a third party;
- (e) an arrangement comprising a “wet hire” (that is, an arrangement under which an operator is provided by or at the direction of the person hiring out the goods to operate the goods for the hirer);

- 5 (f) an arrangement for the use of goods the provision of which is incidental and ancillary to the provision of a service if the provision of the goods is solely to enable the contractual provision of the service;
- (g) an arrangement made between related bodies corporate;
- (h) an arrangement under which a motor vehicle is subleased by an employee to an employer in connection with the employee's remuneration or other employment benefits;
- 10 (i) an arrangement for the use, by a person who is partially or totally incapacitated, of an invalid aid or prosthetic device or of any similar aid, device or appliance;
- (j) an arrangement for the use of goods by a hospital, school or charitable organisation;
- 15 (k) a credit contract within the meaning of the Consumer Credit (Australian Capital Territory) Code;
- (l) an arrangement relating to the use of—
- (i) a book;
 - (ii) an electricity, gas or water meter; or
 - (iii) a caravan that is to remain on site.
- 20 (2) Duty is not chargeable under this Chapter on a hire of goods if the person who hires out the goods acquired them at the request of the hirer and has paid duty under Chapter 2 on their transfer to that person.

153. What form may a hire of goods take?

25 For the purposes of this Chapter, a hire of goods may take any form and it is immaterial whether or not a hire of goods is effected or evidenced by an instrument in writing.

154. What are "hiring charges"?

30 (1) A reference in this Chapter to hiring charges is a reference to payments made to the person who hires out the goods by or on behalf of the hirer, for—

- (a) the hire of the goods; or
 - (b) a liability that arises as an incident of the hire of the goods;
- and includes a reference to charges made for—
- (c) payments for damage waiver or for damage excess; and
 - 35 (d) late return fees.

(2) For a hire of goods to which Part IV applies, any residual payment payable by the hirer as an indemnity for the agreed value of the goods at the end of the hire is to be taken to be included in the hiring charges.

155. Payments exempted from “hiring charges”

(1) A reference in this Chapter to hiring charges does not include a reference to—

- 5 (a) payments for delivery, repositioning, erection, installation, maintenance or cleaning of the goods hired;
- (b) refundable cash deposits or bonds (unless appropriated as hiring charges);
- (c) insurance premiums payable by the hirer;
- (d) duty paid or payable under this Act or a corresponding Act;
- 10 (e) payments for the sale of goods (such as fuel, replacement parts or theft replacement); or
- (f) any prescribed payment.

(2) Duty is not chargeable under this Chapter on a payment by the hirer under a hire of goods if title to the goods passes to the hirer as a
15 consequence of the payment.

**156. Hire of goods to which this Chapter applies—
jurisdictional nexus**

(1) This Chapter applies to the hire of goods and to a person who hires
20 out goods only if the goods are used solely or predominantly in the Territory during any period for which a liability to duty is required to be determined.

(2) A motor vehicle, however, that is registered under the law of an Australian jurisdiction and that is the subject of an equipment financing arrangement is to be taken to be used, at all times in the course of that arrangement, in the jurisdiction under whose law it is registered.

25 (3) If goods hired under a hire of goods are not used solely or predominantly in any particular Australian jurisdiction, the goods are to be taken to be predominantly used in the Territory if, under the hire of goods, the goods are initially delivered in the Territory.

(4) For the purposes of this section, goods are predominantly used in the
30 Territory if they are used more in the Territory than in any other single Australian jurisdiction.

PART II—IMPOSITION AND RATES OF DUTY

157. Imposition of duty

This Chapter charges duty on the hire of goods.

35 **158. Rates of duty**

(1) Duty is chargeable at the determined rate on the total amount of the hiring charges of an equipment financing arrangement.

(2) Duty is chargeable at the determined rate on the total amount of the hiring charges of an ordinary hire of goods.

(3) The maximum amount of duty chargeable in respect of a special hiring agreement is \$10,000.

5 **159. Credit for duty paid in another Australian jurisdiction**

(1) The duty chargeable under this Chapter on a hire of goods is to be reduced by the amount of duty paid on the hire under a corresponding Act.

10 (2) Notwithstanding subsection (1), the duty on a special hiring agreement that is chargeable with the maximum amount of duty of \$10,000 cannot be reduced below \$6,000.

160. Splitting or redirection of hiring charges

The Commissioner may include, as part of the amount received as hiring charges, either or both of the following:

15 (a) any payments under the arrangement that are not hiring charges, including charges referred to in section 155, that the Commissioner is satisfied have been increased for the purpose of minimising duty under this Chapter;

20 (b) any payments that would be hiring charges except for the fact that they are paid to a person other than the person who hires out the goods.

161. Ascertainment and disclosure of place of use of goods

25 (1) A person who hires out goods may, in determining the person's liability to duty, rely on a statement of the hirer as to where the goods will be solely or predominantly used in the course of the hire or, in the case of an unregistered motor vehicle, where the motor vehicle will be registered during the course of the hire, unless the person knows that the statement is false.

30 (2) A person who hires out goods is not bound to inquire as to any change in the place of use of the goods or, in the case of a motor vehicle, the place of its registration.

35 (3) If goods are solely or predominantly used or, in the case of a motor vehicle, are registered in a place other than the place advised by the hirer in a statement referred to in subsection (1), the Commissioner may assess or reassess the duty payable according to the actual place of sole or predominant use of the goods or, in the case of a motor vehicle, the place of its registration.

(4) A failure to pay duty on the hire of goods by a person who hires out the goods in due reliance on a statement referred to in subsection (1), is not a tax default for the purposes of the Taxation Administration Act if the duty is

paid within 90 days after the issue of a notice of assessment of the duty.

(5) A hirer who knowingly falsely represents to the person who hires out goods (or to any person acting for that person) that the goods will be used solely or predominantly outside the Territory is guilty of an offence.

5 Penalty for contravention of subsection (5):

- (a) in the case of a natural person—50 penalty units or imprisonment for 6 months, or both;
- (b) in the case of a body corporate—250 penalty units.

10 **PART III—ARRANGEMENTS APPLICABLE TO PERSONS
ENGAGED IN THE BUSINESS OF HIRING OUT GOODS**

162. Interpretation

In this Part, unless the contrary intention appears—

15 “commercial hire business” means persons who hire out goods as a business whether or not the hiring out of goods is the principal business or is ancillary to some other form of business and whether or not any such principal or ancillary business is carried on wholly or partly outside the Territory.

163. Application of Part

This Part applies to persons who are a commercial hire business.

20 **164. Commercial hire businesses to be registered**

(1) A commercial hire business shall be registered under this Part if, in any month, the total amount of the hiring charges received in the month exceeds \$6,000.

25 (2) An application for registration shall be made within 21 days after the end of the month in which the amount received in hiring charges first exceeds \$6,000.

Penalty:

- (a) in the case of a natural person—50 penalty units;
- (b) in the case of a body corporate—250 penalty units.

30 **165. Registration of commercial hire businesses**

(1) The Commissioner shall register a commercial hire business that applies in the approved form for registration under this Part.

(2) The Commissioner may register a commercial hire business that has not applied for registration.

35 (3) The Commissioner shall give written notice to the commercial hire

business of its registration

166. Cancellation of registration of commercial hire business

(1) A registered commercial hire business that ceases to hire out goods as a business shall—

- 5 (a) give written notice of that fact to the Commissioner;
- (b) lodge the return required to be lodged under this Part; and
- (c) pay the duty payable in connection with the return on or before the twenty-first day of the month after which the notice is given.

Penalty:

- 10 (a) in the case of a natural person—50 penalty units;
- (b) in the case of a body corporate—250 penalty units.

(2) The Commissioner shall cancel the registration of a commercial hire business on receipt of a notice under subsection (1).

15 (3) The Commissioner may cancel the registration of a commercial hire business if the Commissioner has reason to believe that registration is no longer required by the business.

(4) The Commissioner shall not cancel the registration of a commercial hire business under subsection (3) unless he or she has given the business not less than 30 days notice in writing of his or her intention to do so.

20 (5) A cancellation of registration has effect from the day specified for the purpose by the Commissioner in a written notice of cancellation given to the commercial hire business.

167. Duty base

25 (1) Duty under this Part is to be assessed on the total amount of the hiring charges received in a month by the commercial hire business.

30 (2) The Commissioner may, however, by notice in writing approve a different basis of calculation of hiring charges if it appears to the Commissioner that duty payable on that basis will, over a period of time, approximate the duty payable in accordance with subsection (1) and an amount calculated under any method so approved is to be taken for duty purposes, while the approval remains in force, to be the amount of hiring charges received.

35 (3) An approval under subsection (2) may be revoked by the Commissioner at any time by notice in writing to the commercial hire business concerned.

(4) A registered commercial hire business may, with the Commissioner's written consent, change the basis (as between a receipts basis and an approved basis) from month to month but it cannot change the

basis within a month.

- 5 (5) If consent is given under subsection (4), the Commissioner may assess or reassess the duty payable in any period prior to the change of basis to include any hiring charges that would not be accounted for, or to exclude any hiring charges that would be accounted for twice, because of the change of basis.

168. Lodgment of returns and payment of duty

- (1) A commercial hire business shall, on or before the twenty-first day of each month—
- 10 (a) lodge with the Commissioner a return in the approved form; and
(b) pay to the Commissioner the appropriate amount of duty calculated in accordance with section 158 in respect of the previous month, subject to the amount of the duty-free hiring charges referred to in subsection (2).
- 15 (2) Duty is payable only in respect of so much of hiring charges received by a commercial hire business during a month from ordinary hires that are not special hiring arrangements as exceeds \$6,000.
- (3) A commercial hire business is not required to lodge a return in respect of any month in which all hiring charges received by the commercial hire business were from ordinary hires and the hiring charges so received did not exceed \$6,000.
- 20 (4) The Commissioner may, by notice in writing, approve of the lodgment by a commercial hire business of returns in respect of a period of more than 1 month, and in such a case—
- 25 (a) the return shall be lodged, and the duty paid, on or before the twenty-first day of the month following the last month to which the return relates; and
(b) the duty payable on the return is the sum of the duties payable on a monthly basis in accordance with this section for each month to which the return relates.
- 30 (5) A commercial hire business may elect to pay the duty payable on a special hiring agreement by lodging a statement under section 171 and, if it does so, returns under this section in respect of the agreement are not necessary.
- 35 (6) If, in relation to a special hiring agreement—
(a) a commercial hire business makes an election under subsection (5); and
(b) the special hiring agreement is terminated before the expiry of the term expressed in the agreement;

the commercial hire business may request a reassessment of duty as if the duty had been paid on a return under this section.

169. Returns of related bodies corporate

- 5 (1) A single return may be lodged on behalf of 2 or more commercial hire businesses that are related bodies corporate.
- (2) The duty-free amount of hire charges referred to in subsection 168 (2) applies to the aggregated hiring charges required to be included in such a single return and it does not apply individually to the hiring charges of each commercial hire business included in the return.
- 10 (3) If 2 or more commercial hire businesses that are related bodies corporate lodge individual returns for the same month, the duty-free amount of hiring charges referred to in subsection 168 (2) applies to the hiring charges of only one of them and those commercial hire businesses may nominate to the Commissioner the one that is to have the benefit of the duty-free amount.
- 15

**PART IV—ARRANGEMENTS APPLICABLE TO PERSONS
OTHER THAN THOSE ENGAGED IN THE BUSINESS OF
HIRING OUT GOODS**

170. Statement of transaction

- 20 (1) If a hire of goods is effected otherwise than by a commercial hire business and the total amount of hiring charges paid or payable for the hire of the goods is not less than \$1,000, the person hiring out the goods shall prepare a written statement that sets out—
- 25 (a) the name and address of each party;
- (b) a description of the goods;
- (c) the commencement date and the term of the hire;
- (d) the total of the hiring charges (including any residual payment referred to in subsection 154 (2)) paid or payable over the term of the hire; and
- 30 (e) the intervals at which the hiring charges are paid or payable.
- (2) The written statement shall be prepared not later than—
- (a) the time when the person hiring out the goods receives the first or only payment of hiring charges; or
- (b) the time when the hiring charges become payable;
- 35 whichever first occurs.
- (3) This section does not require a separate written statement to be prepared if the hire is already evidenced by another document that otherwise

complies with this section and, in such a case, the other document is to be taken to be the written statement.

171. Lodgment of statement and payment of duty

- 5 (1) Within 90 days after the written statement is required to be prepared, the person hiring out the goods shall—
- (a) lodge the statement with the Commissioner; and
 - (b) pay to the Commissioner the appropriate rate of duty calculated under section 158 in respect of hiring charges for the whole period of the hire.
- 10 (2) If the person hiring out the goods has not complied with subsection (1) within the 90 day period, the Commissioner may, at any time thereafter, issue a notice of assessment under the Taxation Administration Act of the duty that would be payable if a statement had been lodged.
- 15 (3) For the purposes of the assessment, both the person hiring out the goods and the hirer are jointly and severally liable to pay duty in accordance with this section.
- (4) The hirer may, at any time, make out and lodge a statement and pay duty in accordance with this section.

20 **172. Method of calculating total hiring charges if they are not readily ascertainable**

- (1) The Commissioner, if satisfied at the time a written statement is lodged that it is not reasonably practicable to calculate the total of the hiring charges payable over the term of the hire, may require the person hiring out the goods to make out 1 or more further written statements at such time or times as the Commissioner specifies in a written notice given to the person.
- 25 (2) A further written statement shall include the same information as is specified in section 170.
- (3) Within 90 days after a further written statement is required to be made out, the person hiring out the goods shall—
- 30 (a) lodge the statement with the Commissioner; and
- (b) pay duty calculated in accordance with section 158 to the extent that the total hiring charges are ascertainable.
- (4) The amount of duty paid on a prior statement relating to the same hire of goods shall be deducted from the duty payable on the further written statement.
- 35

CHAPTER 7—MORTGAGES

173. Liability for duty

Duty is charged on a mortgage instrument only if it is liable to duty under another Chapter.

CHAPTER 8—INSURANCE

PART I—PRELIMINARY

174. Interpretation

In this Chapter, unless the contrary intention appears—

“general insurance” means any kind of insurance that is applicable to—

- (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;

or both, but does not include life insurance, a life insurance rider or insurance that is exempt from duty by virtue of Part VI;

“general insurer” means a person—

- (a) who writes general insurance otherwise than as an insurance intermediary; and
- (b) who is registered under the *Insurance Act 1973* of the Commonwealth;

“insurer” means a life company that writes life insurance or a general insurer;

“life insurance” means insurance described in paragraphs 9 (1) (a) to (g) (inclusive) and section 9A of the *Life Insurance Act 1995* of the Commonwealth in respect of—

- (a) a life or lives; or
- (b) any event or contingency relating to or depending on a life or lives;

of a person whose principal place of residence is, or persons whose principal places of residence are, in the Territory at the time the policy that effects the insurance is issued;

“life insurance rider” means insurance that—

- (a) is attached to a policy of life insurance;
- (b) adds specified events and contingencies to those insured

under the policy; and

(c) is subject to the terms and conditions of the policy;

5 “premium”, in relation to general insurance, means the total consideration given to an insurer by or on behalf of the insured person to effect insurance without deductions for any amounts paid or payable, or allowed or allowable, by way of commission or discount to an insurance intermediary and includes any amount charged in respect of a levy paid or payable under the *Insurance Levy Act 1998* in connection with insurance by an insurer or any other person but does not include—

10 (a) an amount paid to an insurance intermediary by the insured person as a fee, provided that the amount can be clearly identified as a fee; or

(b) an amount of duty under this or a corresponding Act;

15 “third party insurance” means insurance effected for the purpose of, and in accordance with the requirements of, a law of the Territory or a State or another Territory relating to the compulsory insurance of owners and drivers of motor vehicles, as defined by that law, against liability in respect of the death of, or bodily injury to, persons caused by or arising out of the use of motor vehicles.

20

175. When is a premium “paid”?

(1) For the purposes of this Chapter, a premium, or an instalment of a premium, is to be taken to be paid when the first of the following events occurs—

25 (a) the premium or instalment is received by the insurer; or

(b) an account of the insurer is credited with the amount of the premium or instalment.

(2) A premium or instalment of a premium (apart from the case where the premium or instalment is received directly by an insurer) is to be taken to have been received by an insurer if it is received by another person on the insurer’s behalf.

30

PART II—GENERAL INSURANCE

176. Imposition of duty

35 (1) This Part charges duty on the amount of the premium paid in relation to a contract of insurance that effects general insurance (whether or not it also effects other kinds of insurance).

(2) The amount of duty is required to be paid each time a premium is paid in relation to a contract of insurance that effects general insurance.

177. Rate of duty

Duty is chargeable on the premium paid in relation to a contract of general insurance at the determined rate.

178. Who is liable to pay the duty?

5 Subject to section 179, the general insurer is liable to pay the duty.

179. Circumstances in which duty is payable by the insured person

10 (1) This section applies to a person who obtains, effects, or renews any general insurance as an insured person with a person who is not a registered insurer.

(2) A person to whom this section applies shall, within 21 days after the end of the month in which the premium relating to the insurance is paid to an insurer (not being a registered insurer) or an insurance intermediary—

15 (a) lodge with the Commissioner a return in the approved form containing such particulars and information as to the premium and the insurance as the Commissioner may require; and

(b) pay to the Commissioner as duty the amount calculated in accordance with section 177.

20 (3) A person to whom this section applies is taken to have complied with this section if the person's duty under this section is discharged by another person acting on the person's behalf.

(4) The payment of a periodic premium in respect of disability income insurance that is continued, but not renewed, on the payment of the premium shall be taken to effect the insurance for the purposes of this section.

25 **180. Records to be kept**

A person to whom section 179 applies shall maintain records that contain particulars of—

(a) the nature and location of the property insured;

30 (b) the nature and location of each risk, contingency or event insured; and

(c) the amount of the premiums paid in relation to each contract of insurance.

181. Refunds where premiums are returned

35 (1) A general insurer or a person to whom section 179 applies is entitled to a refund of duty if the general insurer refunds, or there is refunded to the person, the whole or a part of a dutiable premium in respect of the contract of insurance for which duty has been paid.

(2) The refund shall be the duty paid on the amount of the premium

refunded.

(3) A general insurer to whom duty is refunded may apply the amount of the refund to offset any other payment required to be made under this Act by the general insurer.

5

PART III—LIFE INSURANCE

182. Imposition of duty

This Part charges duty on—

- (a) a policy of life insurance; and
- (b) a life insurance rider.

10

183. Obligation to make out and execute a policy of life insurance

A life company shall, on or before the twenty-first day of each month—

- 15
- (a) prepare and execute a policy of life insurance for each contract or agreement for life insurance effected by or on behalf of the life company in the preceding month; and
 - (b) endorse the policy in the manner approved by the Commissioner.

184. Rates of duty

20 (1) The determined amount of duty is chargeable in respect of a policy of life insurance, other than a temporary or term insurance policy, or a policy of disability income insurance.

(2) Duty is chargeable at the determined rate on the first year's premium for a policy of temporary or term insurance.

25 (3) Duty is chargeable at the determined rate on the first year's premium for a life insurance rider.

(4) Duty is chargeable at the determined rate on the premium paid to effect disability income insurance, being insurance under which an amount is payable in the event of the disablement of the insured by accident or sickness.

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185. Who is liable to pay the duty?

Subject to section 186, the life company or the person issuing the policy or life insurance rider is liable to pay the duty.

186. Circumstances in which duty is payable by the insured person

35 (1) This section applies to a person (not being a registered insurer) who

effects a policy of life insurance or life insurance rider as an insured person with a person who is not a registered insurer

5 (2) A person to whom this section applies shall, within 21 days after the end of the month in which the policy of life insurance or life insurance rider was effected—

(a) lodge with the Commissioner a return in the approved form containing such particulars and information as the Commissioner may require; and

10 (b) pay to the Commissioner as duty the amount calculated in accordance with section 184.

(3) A person to whom this section applies is to be taken to have complied with this section if the person's duty under this section is discharged by another person acting on the person's behalf.

187. Refund on cancellation of policy of life insurance

15 If a premium is refunded to a person because the person cancels a policy of life insurance within 30 days after receiving the policy, a person who has paid duty in respect of the policy is entitled to a refund of the duty.

PART IV—PAYMENT OF DUTY BY INSURERS

188. Insurers to be registered

20 An insurer shall be registered under this Part.

Penalty: 250 penalty units.

189. Application for registration

The Commissioner shall register an insurer who applies in the approved form for registration under this Part.

25 190. Cancellation of registration by the Commissioner

(1) The Commissioner may, by written notice, cancel an insurer's registration under this Part—

30 (a) if the insurer's registration under the *Insurance Act 1973* of the Commonwealth is terminated;

(b) if the insurer is made bankrupt or, being a company, is wound up;

(c) if the insurer is convicted of an offence under an Act imposing duty;

35 (d) if the insurer's registration was made in error or as a consequence of a false or misleading statement made in relation to the application for registration; or

(e) for any other reason the Commissioner thinks sufficient.

(2) A cancellation of registration has effect from the date specified for the purpose by the Commissioner in the notice of cancellation.

191. Cessation of business and cancellation of registration by an insurer

5 (1) A registered insurer who ceases to write insurance business in the Territory shall—

- (a) give written notice of that fact to the Commissioner;
- (b) lodge the return required to be lodged under this Part; and
- 10 (c) pay the duty payable in connection with the return on or before the twenty-first day of the month after which the notice is given.

Penalty: 250 penalty units.

(2) The notice cancels the insurer's registration under this Part on the day on which it is received by the Commissioner.

192. Register of insurers

15 (1) The Commissioner shall keep a register of the insurers who are registered under this Part.

(2) Anyone may inspect the register without charge at the Commissioner's principal office during the hours that the office is open to the public.

20 **193. Monthly returns and payment of duty**

A registered insurer shall, on or before the twenty-first day of each month—

- (a) lodge with the Commissioner a return in the approved form showing—
 - 25 (i) the total amount of all premiums for general insurance paid to the registered insurer in the preceding month;
 - (ii) the total duty payable on policies of life insurance other than temporary or term insurance effected in the preceding month;
 - 30 (iii) the total amount of all first year's premiums for temporary or term life insurance received by or on behalf of the registered insurer in the preceding month; and
 - (iv) the total amount of all first year's premiums for life insurance riders received by or on behalf of the registered insurer in the preceding month; and
- 35 (b) pay to the Commissioner as duty the amounts determined in accordance with sections 177 and 184.

194. Recovery of duty by registered insurer

- (1) A registered insurer may require a person to whom insurance is written to pay the insurer an amount equal to the duty chargeable.
- (2) The requirement is duly made if it is contained in a written request that is given to the person and that specifies the amount of the duty.
- (3) If the amount is not paid, the insurer may recover it as a debt.

PART V—APPORTIONMENT

Division 1—Apportionment of premiums and other amounts between Australian jurisdictions

195. Application of Division

This Division applies to a contract of insurance—

(a) that insures—

(i) property in the Territory as well as 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 as well as within, or partly within, another place;

or both; or

(b) that insures—

(i) lives; or

(ii) any event or contingency relating to or depending on lives; or both, of persons whose principal places of residence are variously in the Territory or another place at the time the policy is issued.

196. Object of Division

The object of this Division is to—

(a) provide the means for apportioning premiums paid and other amounts in relation to a contract of insurance having regard to the principles in the definitions of “general insurance” and “life insurance” in section 174;

(b) avoid multiple duty as between Australian jurisdictions; and

(c) give Australian jurisdictions their appropriate share of duty by means of the apportionment.

197. Schedule of Apportionment

(1) The Commissioner may, from time to time, adopt a Schedule of Apportionment for the purpose of apportioning premiums, or premiums paid for specific classes of insurance, and other amounts in relation to insurance in accordance with this Division.

(2) The Schedule of Apportionment may be developed in consultation with any person the Commissioner considers suitable.

198. Apportionment in practice

(1) Subject to subsections (3) and (4) a premium or an amount is to be apportioned in accordance with the Schedule of Apportionment adopted for the time being.

(2) An insurer or an insured person may apply in writing to the Commissioner to apportion a premium or an amount on a basis other than that provided by the Schedule of Apportionment.

(3) On receiving an application under subsection (2) in relation to a premium or amount, the Commissioner may apportion the premium or amount on the basis specified in the application.

(4) If the Commissioner is not satisfied that a premium paid or another amount in relation to a contract of insurance has been properly apportioned for each risk insured, he or she may determine the apportionment, reassess the liability to duty and charge duty accordingly.

Division 2—Apportionment of premiums and other amounts as between different types of insurance

199. Apportionment between different types of insurance

(1) This section applies to apportionment between different types of insurance that are relevant to determining liability for duty but not to the apportionment of a premium or another amount between the Territory and another place.

(2) If the Commissioner is not satisfied that a premium paid or another amount in relation to a contract of insurance that effects different types or classes of insurance has been properly apportioned, he or she may determine the apportionment, reassess the liability to duty and charge duty accordingly.

PART VI—EXEMPT INSURANCE

200. Insurance that is exempt from duty

- (1) The following insurances are exempt from duty under this Chapter:
- (a) third party insurance;
 - (b) insurance under a law of the Territory insuring an employer against liability to persons under contract of employment or apprenticeship

with the employer;

- (c) general insurance for the provision of benefits by a friendly society or trade union for its members or their dependants;
- 5 (d) medical benefits insurance, being insurance effected by a contract of insurance that is issued by an organisation registered under Part VI of the *National Health Act 1953* of the Commonwealth and that provides hospital benefits or medical benefits (or both), whether or not other benefits are also provided;
- 10 (e) insurance by, or on property of, a prescribed authority of the Commonwealth or of a State or Territory;
- (f) insurance on property of, or property held in trust for, a hospital, school or charitable organisation, or other general insurance taken out by a hospital, school or charitable organisation;
- (g) international trade insurance;
- 15 (h) an annuity—
 - (i) issued, created or sold by a life company; or
 - (u) purchased by a person from a life company.

(2) For the purposes of paragraph (1) (h), a contract is an annuity if it satisfies the following requirements:

- 20 (a) the contract provides for the periodic payment of money to the annuitant in fee for life or for a specified term of years as an annual or more frequent entitlement;
- (b) the periodic payment is a sum certain expressed as a dollar amount, but may be varied according to a predetermined formula;
- 25 (c) the periodic payments are not derived from the money paid for the contract but are derived solely from the contract and comprise income and not the repayment of capital.

PART VII—MISCELLANEOUS

30 201. Effect on contract of insurance of failure to comply with this Chapter

A failure to comply with this Chapter does not render a contract of insurance illegal or invalid.

CHAPTER 9—MOTOR VEHICLE REGISTRATION

PART I—IMPOSITION AND RATES OF DUTY

35 202. Interpretation

In this Part, unless the contrary intention appears—

“dutiabale value”, in relation to a motor vehicle, means—

- (a) the consideration in money or money’s worth given for the acquisition of the vehicle; or
- (b) the market value of the vehicle at the time duty is payable;

5 whichever is the greater, but does not include—

- (c) sales tax if the applicant for registration of the vehicle is exempt from the payment of sales tax; or
- (d) a premium paid for extended warranty insurance.

203. Imposition of duty

10 This Chapter charges duty on an application to register a motor vehicle under the Motor Traffic Act if—

- (a) the vehicle has not previously been registered under that Act; or
- (b) the person in whose name the vehicle is to be registered differs (or the persons in whose names the motor vehicle is to be registered differ) from the person or persons in whose name or names the vehicle was last registered.

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204. Lodgment of statement of dutiable value

20 A person who is required by law to make an application to register a motor vehicle under the Motor Traffic Act shall lodge with the application for registration a statement of the dutiable value of the vehicle, unless the application is not chargeable with duty under this Chapter.

205. Who is liable to pay the duty?

Duty is payable by the applicant for registration of the motor vehicle.

206. When does duty become payable?

25 Duty becomes payable when the motor vehicle is registered pursuant to the relevant application.

207. Rate of duty

30 (1) Subject to subsection (2), duty in respect of an application to register a motor vehicle is payable on the dutiable value of the motor vehicle at the determined rate.

(2) Duty in respect of an application to register a passenger motor vehicle, being a motor vehicle that has a dutiable value of not less than \$45,000 and that is constructed primarily for the carriage of not more than 9 occupants, including a sedan, station wagon, coupe, convertible, four wheel drive vehicle with seats for more than 3 persons, two wheel drive panel van with seats for more than 3 persons, three wheel car, forward control

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passenger vehicle, small bus (seating not more than 9 persons, including the driver), motor home, and snow vehicle, but not including a motor cycle (with or without a side car), large bus (seating more than 9 persons, including the driver), hearse or invalid conveyance, is payable on the
5 dutiable value of the vehicle at the determined rate.

PART II—EXEMPTIONS

208. Government vehicles

Duty under this Chapter is not chargeable on an application to register a motor vehicle if the applicant is—

- 10 (a) the Territory;
- (b) the Commonwealth;
- (c) a State or another Territory,
- (d) an authority established by or under a law of the Commonwealth that is, by virtue of that law, not liable to pay tax under a law of the
15 Commonwealth, the Territory, a State or another Territory;
- (e) a prescribed Territory authority; or
- (f) a prescribed authority of a State or another Territory.

209. Hospitals, schools and charitable organisations

20 Duty under this Chapter is not chargeable on an application to register a motor vehicle if the applicant is—

- (a) a hospital, school or charitable organisation; or
- (b) a person who is to hold the vehicle on behalf of, or as a trustee for, a hospital, school or charitable organisation.

210. Certain disabled persons

25 Duty under this Chapter is not chargeable on an application to register a motor vehicle if—

- (a) the applicant is a person who has served in the Defence Force or in any other armed forces of Her Majesty and who, as a result of that service—
 - 30 (i) has lost a leg or both arms or has had a leg, or both arms, rendered permanently and wholly useless; or
 - (ii) is in receipt of a pension under Part II of the *Veterans' Entitlements Act 1986* of the Commonwealth and is a veteran (within the meaning of that Part) to whom section
35 24 of that Act applies;and the vehicle is for use for the person's own transportation; or
- (b) the applicant is a person in respect of whom the Secretary to the

5 Department of Social Security of the Commonwealth, or an officer appointed by the Secretary for the purpose, has certified that the person has lost the use of a leg or both legs to such an extent that he or she is permanently unable to use public transport and the vehicle is for use in transporting the person to and from gainful employment.

211. Successors of deceased persons

(1) Duty under this Chapter is not chargeable on an application to register a motor vehicle made by—

- 10 (a) a person in whom an interest in the vehicle has vested as a personal representative of a deceased person in whose name the vehicle was registered in the Territory; or
- 15 (b) a person who has become beneficially entitled to the vehicle following the death of a person in whose name the vehicle was registered in the Territory.

(2) Duty under this Chapter is not chargeable on an application to register a motor vehicle made by a person or persons who have become beneficially entitled to the vehicle by a right of survivorship following the death of a former joint owner if, at the time of the death of the deceased, the

20 vehicle was registered in the Territory.

(3) In this section—

“interest” means a proprietary interest and includes an entitlement to such an interest under the will, or on the intestacy, of a deceased person.

25 **212. Vehicles transferred pursuant to certain court orders and agreements**

Duty under this Chapter is not chargeable in respect of an application to transfer the registration of a motor vehicle following a transfer of property in the vehicle to the applicant pursuant to—

- 30 (a) an order of a court under the *Family Law Act 1975* of the Commonwealth or the *Married Persons' Property Act 1986*;
- (b) an order of a court for the distribution of property consequent on the termination of a relationship between spouses, not being an order referred to in paragraph (a); or
- 35 (c) a domestic relationship agreement, or a termination agreement, within the meaning of the *Domestic Relationships Act 1994*, being an agreement that—
- (i) is in writing; and
- (ii) has been signed by the parties.

213. Motor dealers—demonstrator vehicles and trading stock

(1) Duty under this Chapter is not chargeable on an application by a licensed vehicle dealer to register a motor vehicle that is a demonstrator vehicle or trading stock.

5 (2) However, if the licensed vehicle dealer has not disposed of a vehicle so registered within 12 months after its registration by the dealer, the dealer becomes liable to pay the duty on the application that would have been payable if the exemption had not applied.

(3) In this section—

10 “demonstrator motor vehicle” means a new motor vehicle used solely or primarily for the sale of another motor vehicle of the same class;

“licensed vehicle dealer” means a person who is a licensed dealer under the *Sale of Motor Vehicles Act 1977*;

15 “trading stock” means a vehicle offered or exposed for sale by a motor dealer in the course of a dealer’s business, other than a vehicle used—

- (a) personally by the dealer or a member of the dealer’s staff; or
- (b) for the general purposes of the dealer’s business.

214. Organisations registered under Industrial Relations Act

20 Duty under this Chapter is not chargeable on an application to register a motor vehicle made by an organisation registered under the *Industrial Relations Act 1988* of the Commonwealth where the registration is to occur in accordance with section 253ZB of that Act.

215. Hire purchase agreements and lease agreements

25 (1) Duty under this Chapter is not chargeable on an application to register a motor vehicle that is or was the subject of a hire-purchase agreement or a lease if—

(a) the vehicle was last registered, under the Motor Traffic Act or a corresponding law, in the name of the hirer or lessee;

30 (b) the person or persons who was or were the owner or owners of the vehicle at the time of that last registration subsequently acquired possession of it—

(i) by way of repossession or voluntary return in accordance with the hire-purchase agreement or the law applicable to the agreement; or

35 (ii) in accordance with the rights of the lessor under the lease; and

(c) the registration is solely in the name or names of the person or

persons referred to in paragraph (b).

(2) In subsection (1)—

“owner”, in relation to a vehicle, means—

- 5 (a) if the vehicle is the subject of a hire-purchase agreement—
the person agreeing to let, hire or sell the vehicle; or
- (b) if the vehicle is the subject of a lease—the lessor of the
vehicle;

10 being a person carrying on the business of letting, hiring or selling
vehicles under hire-purchase agreements or of leasing vehicles
respectively, whether or not that business is part of, or is carried
on in conjunction with, any other business.

216. Veteran, vintage and historic vehicles

(1) Duty under this Chapter is not chargeable on an application to
register a veteran, vintage or historic vehicle if—

- 15 (a) the vehicle had not been registered under the Motor Traffic Act or a
corresponding law during the 2 years immediately preceding the
application for registration;
- (b) the registration would be the first registration of the vehicle after its
restoration; and
- 20 (c) upon registration the vehicle would be allocated number-plates that
carry the words “veteran car”, “vintage car” or “historic car”.

(2) Where—

- 25 (a) within the period of 3 years immediately following a registration in
relation to which no duty is chargeable under subsection (1) a
further application is made for registration of the relevant vehicle
under the Motor Traffic Act;
- (b) the vehicle is owned by the person who owned it at the time of the
registration referred to in subsection (1); and
- 30 (c) upon the further registration the vehicle would not be allocated
number-plates that carry the words “veteran car”, “vintage car” or
“historic car”;

there is payable, on the first such further application for registration, an
amount of tax equal to the tax that would have been payable on the first
application for registration of the vehicle after its restoration if subsection (1)
35 had not been applicable.

(3) In this section “veteran vehicle”, “vintage vehicle” and “historic
vehicle” have the same respective meanings as they have in the Motor Traffic
Act.

217. Avoidance of double duty—duty paid in a corresponding Australian jurisdiction

Duty is not chargeable in respect of an application to register a motor vehicle in the Territory if—

- 5 (a) at the time the application was made, the motor vehicle is or was registered by the person making the application under the law of an Australian jurisdiction that corresponds to the Motor Traffic Act, and
- (b) duty was paid in that jurisdiction in respect of the registration.

10 **218. Reassessment of duty—repossession of stolen motor vehicle**

(1) Duty is not chargeable on an application for registration of a motor vehicle that has been repossessed from a person because, before the person acquired it, it had been stolen.

- 15 (2) If requested by a person who has paid duty on an application for registration to which subsection (1) applies, the Commissioner shall assess or reassess the duty accordingly.

PART III—MISCELLANEOUS

219. Interpretation

20 In this Part, unless the contrary intention appears—

“licensed vehicle dealer” means a licensed dealer within the meaning of the *Sale of Motor Vehicles Act 1977*;

“Registrar” means the Registrar of Motor Vehicles under the Motor Traffic Act.

25 **220. Prerequisites for registration**

(1) Notwithstanding anything in the Motor Traffic Act, the Registrar shall not register a motor vehicle unless—

- 30 (a) the vehicle had previously been registered under that Act or a corresponding law and the last previous registration was solely in the name of the person or persons who are applying for registration;
- (b) the application for registration is accompanied by a certificate issued under section 221 in respect of the vehicle to the person or persons in whose name the vehicle is to be registered, and the registration is not made in the name of any other person;
- 35 (c) in the case of an application for registration that is claimed to be exempt from duty under section 213—the application is solely in the name of a person who certifies in writing that—

- (i) he or she is carrying on a business in respect of which he or she is a licensed dealer under the *Sale of Motor Vehicles Act 1977* or a corresponding law; and
- (ii) the vehicle is held by him or her as a demonstrator vehicle or trading stock;
- (d) in the case of an application for registration that is claimed to be exempt from duty under section 216—the application is accompanied by a certificate by the owner that states—
- (i) whether the registration is the first registration of the vehicle after its restoration; and
- (ii) whether the vehicle has been registered under the Motor Traffic Act or a corresponding law during the period of 2 years immediately preceding the date of the application and, if it has been, the date on which the last registration expired; or
- (e) the applicant for the registration (not being registration referred to in subsection (2)) pays the amount of the duty chargeable in respect of the application for registration, and the application is accompanied by a statement by the applicant, in writing, of—
- (i) the amount that, to the best of his or her knowledge and belief, is or will be the market value of the vehicle at the time the application is made;
- (ii) the purchase price paid for the vehicle by the applicant; and
- (iii) if the stated market price differs from the purchase price—the reason for the difference.
- (2) The Registrar shall not—
- (a) register a vehicle sold by a person who is a licensed vehicle dealer if the registration would be the first registration of the vehicle after the sale; or
- (b) transfer the registration of a vehicle sold by a licensed vehicle dealer if the transfer would be the first transfer of the registration of the vehicle after the sale;

unless the dealer's licence code is endorsed on the application for, or for transfer of, registration.

- (3) A person claiming exemption of an application for the registration of a vehicle from duty by virtue of section 216 shall give the Registrar any relevant information that the Registrar requires.

221. Certificates of exemption

- (1) If, on considering an application by a person, the Commissioner is satisfied that an application for the registration of a motor vehicle in the name

of the person is exempt from duty—

- (a) by virtue of section 209, 210, 211, 212, 214 or 215; or
- (b) by virtue of the *Diplomatic Privileges and Immunities Act 1967* of the Commonwealth;

5 the Commissioner may issue a certificate to that effect.

(2) The applicant shall give the Commissioner any information relevant to the application that the Commissioner requires.

222. Registrar's returns

10 As soon as practicable after the end of each month the Registrar shall give the Commissioner particulars of all certificates given, statements made and information given for the purposes of section 220 during that month.

223. Rectification of errors in registration

15 Duty of \$20 is chargeable on an application to register a motor vehicle where the application is made solely to rectify an error or omission in a previous registration of the vehicle in the Territory.

224. Refund of duty on cancellation of sale

If a person satisfies the Commissioner—

- (a) that duty has been paid on an application to register a motor vehicle purchased by him or her; and
- 20 (b) that, after the purchase—
 - (i) the transaction by which the purchase was made was cancelled;
 - (ii) the motor vehicle has been returned to the person from whom it was purchased; and
 - 25 (iii) all monies refundable on the cancellation (other than on account of duty) have been refunded to the person who purchased the vehicle;

the Commissioner shall refund the duty paid on the application.

225. Certificates as evidence

30 A certificate of the Registrar to the effect that a specified vehicle was or was not registered in the name of a specified person on a specified date is evidence of those matters and the facts on which they are based.

CHAPTER 10—MISCELLANEOUS DUTIES

226. Duplicates and counterparts

35 (1) Duty is not chargeable on a duplicate or counterpart of—

- (a) an instrument that effects a dutiable transaction; or
- (b) an instrument chargeable with duty;

if the duplicate or counterpart is lodged with the Commissioner for stamping at the same time as the original instrument.

5 (2) Duty of \$20 is chargeable on a duplicate or counterpart of an instrument referred to in paragraph (1) (a) or (b) if the duplicate or counterpart is not lodged with the Commissioner for stamping at the same time as the original instrument.

10 (3) The person liable to pay the duty chargeable under subsection (2) is the person liable to pay the duty on the original instrument.

(4) The duplicate or counterpart referred to in subsection (2) is not to be stamped as a duplicate or counterpart unless it is proved to the Commissioner's satisfaction that the proper duty has been paid on the original instrument of which it is the duplicate or counterpart.

15 **227. Replicas**

(1) Duty of \$20 is chargeable on a replica.

(2) The persons liable to pay the duty are the parties to the replica or any 1 or more of them.

20 (3) A replica that is duly stamped is to be marked in such manner as the Commissioner thinks fit to denote that it is a replica.

(4) In this section—

“replica” means an instrument that—

(a) is executed to replace; and

25 (b) contains the same terms as, but no other terms than, those contained in;

a previously executed instrument that—

(c) had been duly stamped; and

(d) has been lost, spoiled or destroyed.

30 **228. Minimum amount of duty**

(1) Subject to subsection (2), notwithstanding any other provision of this Act or the regulations, if the amount of duty chargeable under this Act in respect of a transaction or an instrument would, but for this section, be less than \$20, the amount of duty chargeable is \$20.

(2) This section does not apply to—

35 (a) transfers of marketable securities included in a return under section 38;

- (b) transfers of beneficial interests in shares included in a return under section 44;
- (c) sales and purchases of marketable securities, or transactions concerning marketable securities, that are included in a return under Part V of Chapter 4; or
- (d) transactions and instruments in respect of which duty is imposed by Chapter 8.

CHAPTER 11—GENERAL EXEMPTIONS FROM DUTY

229. Intergenerational rural transfers

(1) Duty under this Act is not chargeable in respect of a transfer or agreement for the sale or transfer of land, a lease of land, or a transfer or assignment of a lease or permit in respect of land, used for primary production together with any other property that is an integral part of the business of primary production, if the Commissioner is satisfied that—

- (a) the land was land used for primary production by the transferor, lessor or assignor immediately before the transaction or the date of first execution of the instrument;
- (b) the land will continue to be land used for primary production by the transferee, lessee or assignee,
- (c) the parties are persons of a class identified in guidelines determined by the Minister; and
- (d) the transaction satisfies such other requirements as may be contained in those guidelines.

(2) The Minister may, by instrument, determine guidelines for the purposes of paragraph (1) (c) or (d).

(3) A determination under subsection (2) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

230. Specialised agencies

Duty under this Act is not chargeable on any instrument executed by or on behalf of a Specialised Agency within the meaning of the Convention on the Privileges and Immunities of the Specialised Agencies that was approved by the General Assembly of the United Nations on 21 November 1947 in respect of which instrument the Specialised Agency is the person described in this Act as the person liable to pay the duty.

231. Members of a group of corporations

(1) Duty under this Act is not chargeable on a dutiable transaction approved by the Commissioner in accordance with guidelines determined

by the Minister by which dutiable property is transferred by, or agreed to be transferred by, or vests in, a corporation that is a member of a group of corporations to another corporation that is a member of the same group.

5 (2) Duty under this Act is not chargeable on an application to register a motor vehicle approved by the Commissioner in accordance with guidelines determined by the Minister by a corporation that is a member of a group of corporations if, immediately before the application was made, the motor vehicle was registered in the name of another corporation that is a member of the same group.

10 (3) The approval of the Commissioner may be given subject to such conditions as he or she determines.

(4) The Minister may, by instrument, determine guidelines for the purposes of subsection (1) or (2).

15 (5) A determination under subsection (4) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

(6) In this section—

“corporation” includes a unit trust scheme.

CHAPTER 12—MISCELLANEOUS

PART I—STAMPING INSTRUMENTS

20 232. Impressed stamps

The Commissioner shall arrange for dies or other devices for making impressed stamps denoting—

- (a) the payment of amounts of duty; or
- (b) that duty is not payable;

25 to be made and used as the Commissioner directs.

233. Stamping of instruments

30 The Commissioner shall stamp an instrument in respect of which duty is chargeable under this Act, or that effects or evidences a dutiable transaction, and that has been lodged for stamping with the Commissioner if the duty, and any interest or penalty tax under Part V of the Taxation Administration Act, is paid in full.

234. Duly stamped instruments

An instrument shall be taken to have been duly stamped if—

- (a) where the instrument effects a dutiable transaction or is chargeable

with duty—a stamp indicating the amount of duty paid, being an amount not less than the amount of duty chargeable, has been impressed on the instrument by the Commissioner;

- 5 (b) where no duty is chargeable in relation to the transaction effected by the instrument and the instrument is not chargeable with duty—the instrument has been stamped pursuant to section 236; or
- (c) in the case of a duplicate or counterpart of an instrument that is exempt from duty by virtue of subsection 226 (1)—the duplicate or counterpart has been stamped pursuant to section 235.

10 **235. Stamping duplicates or counterparts of instruments**

If an instrument is duly stamped and a duplicate or counterpart of the instrument has been lodged with the Commissioner in accordance with subsection 226 (1), the Commissioner shall put an impressed stamp in an approved style on the duplicate or counterpart of the instrument.

15 **236. Stamping instruments if no duty chargeable**

If the Commissioner is satisfied that no duty is chargeable in relation to an instrument, the Commissioner may put an impressed stamp in an approved style on the instrument or a duplicate or counterpart of the instrument.

20 **237. Stamps defaced or removed**

If an instrument has been duly stamped, the instrument shall be regarded as having been duly stamped notwithstanding that the stamp has been defaced or removed from the instrument.

238. Fraudulent use of stamps

- 25 A person shall not, with intent to defraud, impress on an instrument a stamp that is or resembles an impressed stamp.

Penalty:

- (a) in the case of a natural person—100 penalty units or imprisonment for 12 months, or both;
- 30 (b) in the case of a body corporate—500 penalty units.

239. Possession of counterfeiting equipment

(1) A person shall not, without lawful authority, make, sell, use or have in his or her possession a die or other device for making impressed stamps.

Penalty:

- 35 (a) in the case of a natural person—100 penalty units or imprisonment for 12 months, or both;

(b) in the case of a body corporate—500 penalty units.

(2) A stamp, die, plate or device made, sold, used or had in possession in contravention of subsection (1) is forfeited to the Territory.

240. Illegal stamping

5 A person shall not—

- (a) impress a stamp in an approved style on an instrument without lawful authority; or
- (b) impress a stamp on an instrument in a style that resembles or purports to be an approved style.

10 Penalty:

- (a) in the case of a natural person—100 penalty units or imprisonment for 12 months, or both;
- (b) in the case of a body corporate—500 penalty units.

241. Instruments to be separately charged with duty in certain cases

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Where an instrument relates to several distinct matters in respect of which duty is chargeable, for the purposes of this Act each matter shall be treated as if it were dealt with in a separate instrument.

242. Execution of instruments

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(1) For the purposes of this Act, an instrument shall be taken to be first executed the first time that it is signed and sealed, or signed (as the case may be) by any party to it.

(2) However, a contract made by acceptance of an offer contained in an instrument shall be taken to be first executed when the offer is accepted.

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(3) If an instrument is ineffective by reason of a failure of the necessary parties to execute it, a refund may be made of any money paid for stamping.

243. Stamping of instruments after execution

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(1) Except where otherwise expressly provided by this or another Act, a person liable with respect to any instrument chargeable with duty or any dutiable transaction shall cause the instrument, or an instrument that effects or evidences the transaction, to be duly stamped or, in accordance with the provisions of this Act, marked "Interim stamp only" within 6 months after it was first executed.

Penalty:

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- (a) in the case of a natural person—50 penalty units;
- (b) in the case of a body corporate—250 penalty units.

(2) For the purposes of this section, a written statement that is required to be stamped is taken to be first executed when the transaction to which the statement relates occurs.

244. Stamping taken to constitute an assessment

5 For the purposes of this Act, the stamping of an instrument (excluding a return) by the Commissioner shall be taken to be evidence of an assessment of the duty payable under this Act in respect of the instrument.

245. Deferred payments for certain stamped instruments

(1) The Minister may—

- 10 (a) in circumstances in which (in the course of an industrial dispute involving persons engaged in the administration of this Act) an instrument liable to duty is not stamped by reason of the refusal of those persons to exercise functions relating to the administration of this Act or of any other law; and

15 (b) in such other circumstances as are prescribed;

authorise the stamping of instruments on which duty is payable, even though the duty has not yet been paid, if an undertaking, in a form approved by the Commissioner, has been given by a prescribed person, or a person belonging to a prescribed class of persons, as to the payment of duty in
20 respect of the instrument.

(2) The Minister's authorisation shall provide for the manner in which, and the time within which, unpaid duty is to be paid in respect of instruments stamped under the authorisation.

25 (3) An instrument that has been stamped under the Minister's authorisation is, except for the purposes of the recovery of any unpaid duty (including any interest or penalty with which the instrument is charged under the Taxation Administration Act) in respect of the instrument, taken to be duly stamped.

30 (4) If the duty payable in respect of an instrument that has been stamped under the Minister's authorisation is not paid in accordance with the terms of the authorisation, the Taxation Administration Act applies to the payment of that duty in the same manner as if the instrument had not been so stamped.

(5) For the purposes of subsection (1), the following persons are prescribed persons:

- 35 (a) a person who is liable to pay duty in respect of an instrument;
- (b) a person who is authorised (whether by a person who is liable to pay duty in respect of an instrument or by another person) to arrange for the stamping of the instrument on behalf of a person who is liable.

PART II—ENFORCEMENT

246. Registration of instruments

A person shall not register in a register of legal or beneficial interests in dutiable property an instrument that effects a dutiable transaction or an instrument chargeable with duty unless—

- (a) it is duly stamped; or
- (b) it is marked by the Commissioner or in a manner approved by the Commissioner.

Penalty:

- (a) in the case of a natural person—50 penalty units;
- (b) in the case of a body corporate—250 penalty units.

247. Registration of transfers of shares

(1) A corporation, company or society shall not enter in its records a transfer of shares on which duty is charged under this Act or a transfer made as a consequence of a sale or purchase of shares in respect of which duty is charged under this Act unless—

- (a) a transfer has been delivered to the corporation, company or society; and
- (b) the transfer, including an SCH-regulated transfer, is duly stamped.

Penalty: 250 penalty units.

(2) For the purposes of this section, a corporation, company or society is entitled to assume that an instrument is duly stamped if—

- (a) it bears any of the following:
 - (i) an impressed stamp;
 - (ii) a broker's stamp and identification number;
 - (iii) an SCH participant's identification code;
 - (iv) an endorsement in accordance with an approval under Division 2 of Part VI of the Taxation Administration Act;
 - (v) an exempt stamp;
 - (vi) a current foreign resident declaration; or
- (b) it is accompanied by a current exemption certificate.

248. Registration of transfers of units

(1) The trustee or manager of a unit trust scheme shall not enter in its records a transfer of units on which duty is charged under this Act or a transfer made as a consequence of a sale or purchase of units in respect of which duty is charged under this Act unless—

- (a) a proper instrument of transfer has been delivered to the trustee or manager; and
- (b) the instrument is duly stamped.

Penalty:

- 5 (a) in the case of a natural person—50 penalty units;
- (b) in the case of a body corporate—250 penalty units.

(2) For the purposes of this section, the trustee or manager of a unit trust scheme is entitled to assume that an instrument is duly stamped if—

- 10 (a) it bears any of the following:
 - (i) an impressed stamp,
 - (ii) a broker's stamp and identification number;
 - (iii) an SCH participant's identification code;
 - (iv) an endorsement in accordance with an approval under Division 2 of Part VI of the Taxation Administration Act;
 - 15 (v) an exempt stamp;
 - (vi) a current foreign resident declaration; or
- (b) it is accompanied by a current exemption certificate.

249. Receipt of instruments in evidence

20 (1) An instrument that effects a dutiable transaction or is chargeable with duty under this Act is not available for use in law or equity for any purpose and may not be presented in evidence in a court or tribunal exercising civil jurisdiction unless—

- (a) it is duly stamped; or
- 25 (b) it is marked by the Commissioner or in a manner approved by the Commissioner.

(2) A court or tribunal may admit in evidence an instrument that effects a dutiable transaction, or is chargeable with duty in accordance with the provisions of this Act, and that does not comply with subsection (1)—

- 30 (a) if the instrument is, after its admission, transmitted to the Commissioner in accordance with arrangements approved by the court or tribunal; or
- (b) if (where the person who produces the instrument is not the person liable to pay the duty) the name and address of the person so liable is forwarded, together with the instrument, to the Commissioner in accordance with arrangements approved by the court or tribunal.
- 35

(3) A court or tribunal may admit in evidence an unexecuted copy of an instrument that effects a dutiable transaction, or is chargeable with duty in accordance with the provisions of this Act, if the court or tribunal is satisfied

that the instrument of which it is a copy is duly stamped, or is marked in a manner approved by the Commissioner.

250. Valuation of property

- 5 (1) The Commissioner may require a person who is liable to pay duty determined by reference to the value of property to provide a declaration by a competent valuer of the unencumbered value of the property or to provide such other evidence of that value as the Commissioner thinks fit.
- (2) The Commissioner may assess duty in accordance with the value so declared.
- 10 (3) The Commissioner may have property valued if he or she is not satisfied with the value so declared and may assess duty on the basis of the valuation.
- (4) The Commissioner may recover the cost of obtaining a valuation under this section of the dutiable property.

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PART III—MISCELLANEOUS

251. Objections and review of decisions

- (1) Objection may be made by a taxpayer under Division 1 of Part X of the Taxation Administration Act to a decision of the Commissioner—
- 20 (a) under section 23 assessing duty on the basis of a valuation of dutiable property made under the section;
- (b) under subsection (2) of section 24 refusing to exempt a transaction from aggregation under that section;
- 25 (c) under section 25 refusing to disregard the value of goods involved in a dutiable transaction in determining the dutiable value of dutiable property involved in that transaction;
- (d) under subsection 39 (3) suspending the registration of a body under Division 2 of Part IV of Chapter 2;
- 30 (e) under subsection 81 (2) refusing to determine that a beneficiary of a discretionary trust is not to be taken to own or to be otherwise entitled to the property the subject of the trust;
- (f) under subsection 81 (3) refusing to determine that property that is the subject of a discretionary trust is not to be taken to be the subject of another discretionary trust;
- 35 (g) under subsection 89 (5) refusing to assess and charge duty on a relevant acquisition without aggregating the interests of the person who made it with the interests of associated persons;
- (h) under subsection 91 (4) refusing to determine that a person's entitlement to participate in a distribution of the property of a

private corporation is to be evaluated otherwise than in accordance with whichever of subsections 91 (2) or (3) results in a greater entitlement;

- 5 (i) under section 136 including, as part of the amount payable as a cost of a franchise arrangement, a payment referred to in paragraph (a) or (b) of that section;
- (j) under section 160 including, as part of the amount received as hiring charges, a payment referred to in paragraph (a) or (b) of that section;
- 10 (k) under subsection 166 (3) cancelling the registration of a commercial hire business;
- (l) under subsection 167 (3) revoking an approval under subsection 167 (2);
- (m) under subsection 190 (1) cancelling an insurer's registration;
- 15 (n) under subsection 198 (3) refusing to apportion a premium or amount on the basis specified in an application under subsection 198 (2);
- (o) under subsection 198 (4) reassessing liability to duty;
- (p) under subsection 199 (2) reassessing liability to duty;
- 20 (q) under subsection 229 (1) refusing to treat a transfer or agreement for the sale or transfer of land, a lease of land, or a transfer or assignment of a lease or permit in respect of land, used for primary production together with any other property that is an integral part of a business of primary production as exempt from duty; or
- 25 (r) under subsection 231 (3) imposing a condition on an approval under subsection 231 (1) or (2).

(2) Subject to Division 2 of Part X of the Taxation Administration Act, application may be made to the Administrative Appeals Tribunal under that Division for a review of a determination by the Commissioner of an objection by a taxpayer to a decision referred to in subsection (1).

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(3) In this section—

“taxpayer” has the same meaning as in the Taxation Administration Act.

252. Regulations

- (1) The Executive may make regulations for the purposes of this Act.
- 35 (2) The regulations may prescribe a penalty for an offence against the regulations not exceeding—
- (a) if the offender is a natural person—10 penalty units; or
- (b) if the offender is a body corporate—50 penalty units.

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NOTE

Penalty units

See section 33AA of the *Interpretation Act 1967*