

2022

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

REVENUE LEGISLATION AMENDMENT BILL 2022

**EXPLANATORY STATEMENT
and
HUMAN RIGHTS COMPATIBILITY STATEMENT
(*Human Rights Act 2004, s 37*)**

**Presented by
Andrew Barr MLA
Treasurer
December 2022**

REVENUE LEGISLATION AMENDMENT BILL 2022

The Bill **is not** a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.

Introduction

This explanatory statement relates to the Revenue Legislation Amendment Bill 2022 ('the Bill') as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.

The explanatory statement must be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

OVERVIEW OF THE BILL

The Bill is part of an ongoing series of bills to promote the effective and efficient administration and operation of the ACT tax system. Specifically, the Bill amends the following taxation legislation:

- *Duties Act 1999* (Duties Act); and
- *Land Tax Act 2004* (Land Tax Act).

Note This Bill also amends *Civil Law (Sale of Residential Property) Act 2003* (see sch 1).

The amendments in the Bill make provision for an initial stage of updates to the landholder duty provisions under Chapter 3 of the Duties Act to:

- clarify the prescription of how duty is imposed on a 'relevant acquisition' in a 'landholder';
- allow for regulations to prescribe circumstances where the requirement for an 'acquisition statement' is unnecessary;
- affirm that an agreement for the sale of land under the meaning of 'landholding' includes the grant of Crown lease;
- amend the application of the joint and several liability provision for landholder duty to include the landholder and trustee for a private unit trust scheme to align with other jurisdictions;
- amend the constructive ownership provisions of 'linked bodies' to align with other jurisdictions;
- amend the definition of an 'associated person' to reduce the potential to use interposed entities to reduce the landholdings against the intent of the provisions;

- consolidate the definition of a ‘complying superannuation fund’ and remove superseded references;
- replace superseded references to marketable securities.

The Bill also makes minor and technical amendments to the Duties Act and Land Tax Act.

Duties Act

The Bill makes amendments to simplify and modernise the drafting of the landholder duty provisions. The amendments will bring the ACT’s landholder duty regime into closer alignment with other states and territories as part of a staged update.

Relevant acquisitions and acquisition statements

The Bill amends the Duties Act to remove unnecessary references to acquisition statements in the context of when a liability for duty arises with a ‘relevant acquisition’.

Amendments within the Bill, however, maintain that a person lodges an acquisition statement with the Commissioner for ACT Revenue (Commissioner) when a relevant acquisition is made. The circumstances where an acquisition statement is unnecessary will be prescribed under regulations.

The amendments also give greater specification to what information must be provided relating to the ‘unencumbered value’ of the landholdings and for applying for an exemption from duty. It updates the provision for electronic contact details via email, refines drafting for sections relating to the provision of details for a relevant acquisition, identifies the type of information required to evidence the unencumbered value of landholdings, and the need for information to support eligibility for an exemption from duty.

Meaning of landholding—Crown lease

The Bill makes clear with the insertion of a new section 80 (5) that an agreement for the sale of land includes the grant of a Crown lease.

Landholder Duty Calculations

The Bill provides additional clarity on how landholder duty is payable on relevant acquisitions of a single interest, aggregated interests, and on further interests. Duty is payable on the value of the landholder’s landholdings. Landholdings includes land the landholder owns directly and landholdings it constructively owns through linked bodies and discretionary trusts.

A new default provision will ensure that the unencumbered value of landholdings in respect of ‘another acquisition’ (section 90A) and *initial acquisition* (section 90B) in the definition of ‘UVL’ will be determined on the date of the relevant acquisition. The Commissioner will have the discretion to make an unencumbered value determination under section 90C (2) in respect of another acquisition if they are satisfied that the value of the landholdings is supported by a valuation report prepared within 12 months after the other acquisition or any other evidence.

Linked bodies

The constructive ownership provisions in section 81 of the Duties Act are intended to ensure landholdings constructively owned by the landholder are included in duty calculations.

At present, the Duties Act has a limited definition of ownership structures (such as ‘linked entity’) that are captured for the purposes of constructive ownership of a landholding. Amendments in the Bill are to include a broader range of commercial relationships with a new definition of a ‘linked body’ reducing the ability for tax planning strategies to defeat ownership tracing rules. The amendments also align with recent amendments in NSW and Victoria.

Amendments in the Bill will deem a landholder (referred to in this section as an entity) to have an interest in land held by a linked body if they:

- would be entitled to receive a distribution of property; and
- either of the following applies:
 - any linked body would receive at least 50 per cent of the unencumbered value of the property held by any linked body;
 - or would receive 50 per cent of the aggregated value of all the property held by each linked body if they were all wound-up.

Liability for landholder duty

The Bill amends the Duties Act to extend the liability for repayment of landholder duty to include the landholder or trustee of a unit trust scheme. This amendment supports debt recovery because when the landholder is also the owner of the parcel a charge can be placed on the land under section 56H of the *Taxation Administration Act 1999* (Taxation Administration Act). This supports the integrity of landholder arrangements and matches other jurisdictions that have made the landholder (often the entity which holds the legal title to the land) jointly and severally liable for the landholder duty.

Where a taxpayer makes a relevant acquisition, being an interest of at least 50 per cent, it gives that taxpayer a controlling interest in the landholder, and it is that acquisition that is the point at which a liability for landholder duty arises.

Associated persons

The definition of associated person is an integrity provision discouraging people from splitting acquisitions to avoid acquiring a significant interest that would be subject to duty.

The Bill amends the definition of associated person to enable private companies to be associated if ‘minority shareholders’ common to each company would together be a majority shareholder if those interests were aggregated and deems two persons to be associated if they have an associated person in common.

The proposed change aligns with how companies and persons are associated under the *Duties Act 2000* (Vic).

Technical and minor amendments

The Bill replaces references to marketable securities, which are no longer dutiable and includes various technical and minor amendments.

Other Acts

The Bill includes further technical and minor amendments to address section cross-referencing within the Land Tax Act and the *Civil Law (Sale of Residential Property) Act 2003*.

CONSULTATION ON THE PROPOSED APPROACH

Amendments to the landholder duty provisions of the Duties Act align with arrangements in other jurisdictions.

CONSISTENCY WITH HUMAN RIGHTS

Rights engaged

The Bill engages and limits the right to privacy and reputation under section 12 of the *Human Rights Act 2004* (HR Act).

Rights Limited

1. Nature of the right and the limitation (s 28 (a) and (c))

Section 12 of the HR Act provides that everyone has the right not to have their privacy, family, home, or correspondence interfered with unlawfully or arbitrarily and not to have their reputation unlawfully attacked. The proposed amendments to acquisition statements under Section 87 of the Duties Act require taxpayers to provide taxpayer information such as their email address and evidence for supporting an exemption application to the Commissioner. As taxpayer information is personal information, such disclosure requirements may limit the right to privacy under section 12.

2. Legitimate purpose (s 28 (b))

The legitimate purpose of the amendments is to preserve the tax system's integrity. Updating the requirements of an acquisition statement to include an email address and information relied upon for an exemption will ensure that the Commissioner can promptly contact taxpayers and accurately assess their eligibility for an exemption.

3. Rational connection between the limitation and the purpose (s 28 (d))

There is a clear connection between the limitation and the legitimate purpose, as the collection of this information will support the Commissioner in making informed decisions on whether to grant an exemption. The Commissioner cannot be satisfied that a transaction is exempt without supporting evidence. Approving exemption applications without reviewing transaction details against the eligibility criteria would undermine revenue collection and the integrity of the tax system.

Similarly, requiring an email address will also help uphold the integrity of the tax system by ensuring that the Commissioner can quickly resolve queries, and enabling any notice of assessment to be electronically issued. When a notice of assessment is posted there may be a delay, which reduces the time for taxpayers to pay any duty by the due date. It will also mitigate against the risk that the taxpayer does not receive the posted notice.

4. Proportionality (s 28 (e))

Limiting a taxpayer's right to privacy by requiring additional information to be provided in an acquisition statement is considered to be justified and proportionate to the legitimate purpose of preserving the integrity of the tax system.

An assessment has been made as to whether there is any less restrictive means available to achieve the purposes of the Act, such as: voluntary disclosure of this information. Often taxpayers will voluntarily provide information to support an application for an exemption. However, the issue arises when taxpayers claim an exemption but provide no evidence, even when requested. The Commissioner will then issue an assessment based on the information available at that time, which would result in the exemption application being declined. Taxpayers may lodge an objection to the decision under section 100 (1) of the Taxation Administration Act and then provide required exemption information. Section 100 (5) of the Taxation Administration Act states the debt is still due and payable whilst the objection is processed and interest on the outstanding balance accrues during this time. Promoting the giving of information to support a correct assessment of the tax liability of a person through an acquisition statement first being lodged will benefit both the taxpayer and the ACT Revenue Office to avoid the above-described issue.

The management of taxpayer information is subject to strict secrecy provisions. Division 9.4 of the Taxation Administration Act prohibits the disclosure of information about an individual taxpayer's affairs. Failure to respect confidentiality may result in maximum penalties of 50 penalty units and/or imprisonment for six months, as outlined in section 95 of the Taxation Administration Act.

The current practice within the ACT Revenue Office provides additional safeguards for taxpayer information and privacy. Taxation officers must sign a form to acknowledge their understanding of the strict obligations imposed under the Taxation Administration Act in respect of confidentiality. Taxation officers are aware that serious sanctions are imposed for breaches of these obligations (for example, penalties and/or imprisonment under sections 95 and 98). Taxation officers are also required to attend mandatory training in handling taxpayer information. If in doubt of the scope of disclosure, officers must contact the information officer for further advice.

Revenue Legislation Amendment Bill 2022

Human Rights Act 2004 - Compatibility Statement

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **Revenue Legislation Amendment Bill 2022**. In my opinion, having regard to the Bill and the outline of the policy considerations and justification of any limitations on rights outlined in this explanatory statement, the Bill as presented to the Legislative Assembly is consistent with the *Human Rights Act 2004*.

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Shane Rattenbury MLA
Attorney-General

CLAUSE NOTES

Part 1 Preliminary

Clause 1 Name of Act

This clause provides the name of the Act as the *Revenue Legislation Amendment Act 2022*.

Clause 2 Commencement

This clause provides the Act commences:

- after the day of notification—the Act (other than part 2); and
- on a day fixed by the Minister by written notice—part 2 (Duties Act 1999) and schedule 1.

Clause 3 Legislation amended

This clause provides the Act amends the legislation mentioned in schedule 1, as follows:

- *Duties Act 1999* (Duties Act); and
- *Land Tax Act 2004* (Land Tax Act).

Note This Act also amends *Civil Law (Sale of Residential Property) Act 2003* (see schedule 1).

Part 2 Duties Act 1999

Clause 4 Dictionary Section 2A, note 1

This clause substitutes Note 1 that refers to the dictionary of the Duties Act and signpost definitions to other terms defined elsewhere in the Act and in other legislation.

Clause 5 No double duty Sections 17 (7)

Clause 45 Dictionary, definition of *trustee*, paragraphs (e) and (f)

These clauses replace outdated references to marketable securities to an ‘interest’ in a landholder.

- Clause 6** Section 17 (9), new definition of *related person*
- Clause 12** New section 77A
- Clause 13** Definitions—part 3.2
Section 78, definition of *associated person and landholder*
- Clause 18** Meaning of *associated person*—part 3.2
Section 83A
- Clause 44** Dictionary, definitions of *related body corporate and related person*

These clauses amend and consolidate the definition of ‘associated person’ in the Duties Act (previously defined in the Dictionary and other sections) to apply to enable ‘private companies’ to be associated if ‘minority shareholders’ common to each company would be a significant interest if those interests were aggregated (new section 77A (3)). These clauses also deems two persons to be associated if they have an associated person in common (new subsection 77A (2)).

These clauses consolidate the definitions of ‘related person’ and ‘related body corporate’ from the dictionary into section 77A (3) for associated person.

Clause 7 Sections 28 and 29 (3)

This clause makes a minor omission to align the provisions with current drafting practice.

- Clause 8 Exemptions**
Part 2.5 heading, new note
- Clause 31 Exemptions—ch 3 transactions**
Part 3.7 heading, new note
- Clause 33 Exemptions**
Part 9.2 heading, new note
- Clause 34 General exemptions from duty**
Chapter 11 heading, new note

These clauses insert notes to indicate additional exemption provisions relevant to duty matters.

- Clause 9 Transfer of property from one superannuation fund to another**
Section 62 (3)
- Clause 10 Transfers between trustee and custodians of superannuation funds or trusts**
Section 63 (2), definition of *complying superannuation fund*
- Clause 36 Dictionary, definition of *acquisition statement and associated person***
- Clause 39 Dictionary, definition of *chapter 3 transaction and complying superannuation fund***

These clauses will amend the Dictionary and other provisions of the Duties Act to update definition for various terms for the Act.

Clause 11 Section 76

This clause defines transactions and property for the purposes of chapter 3 of the Duties Act. It also substitutes the definition of ‘acquisition statement’ in section 76 referring to a statement under section 87 of the Duties Act to the new definition provided in section 87 (1). See also clause 36.

Clause 14 Section 79

Clause 40 Dictionary, definition of *landholder*

These clauses omit the definition of landholder and extends the definition of ‘landholder’ provided under section 79 for the purposes of part 3.2 to apply to Duties Act overall.

Clause 15 Meaning of *landholding*—part 3.2 Section 80 (2) (b)

This clause makes a technical amendment to refer to a private unit trust scheme.

Clause 16 New section 80 (5)

This clause inserts a new subsection to clarify that the sale of land includes the grant of a Crown lease.

Clause 17 Section 81

This clause amends section 81 to strengthen the constructive ownership of landholdings provisions. Specifically, under section 81 (1) an ‘entity’, being a landholder under the definitions of section 78A (1) and section 79, will be deemed to hold an interest in land held by a ‘linked body’ of the entity (in addition to any interest in land that the entity holds in its own right) if, on the ‘winding-up’ of all linked bodies of the entity:

- the entity would be ‘entitled’ to a distribution of any of the property held by any of the linked bodies; and
- either of the following applies:
 - any linked body would be entitled to receive at least 50 per cent of the ‘unencumbered value’ of all the property held by any other linked body.
 - if the unencumbered value of all the property held by each linked body were aggregated, the entity would be entitled to receive at least 50 per cent of the aggregated value.

Section 81 (3) is amended to adjust for the revised form of sections 80 (1) and (2), however the basis for determining duty payable is unchanged. The value of the entity or landholders deemed interest is the proportion of the unencumbered value of the property held by the linked body to which the entity would be entitled to receive on the winding-up of all linked bodies of the entity.

Section 81 (4) provides that the liabilities of a linked body must be disregarded when determining the value of property held by a body. The liabilities of any body must be disregarded throughout section 81 as evidenced using unencumbered value

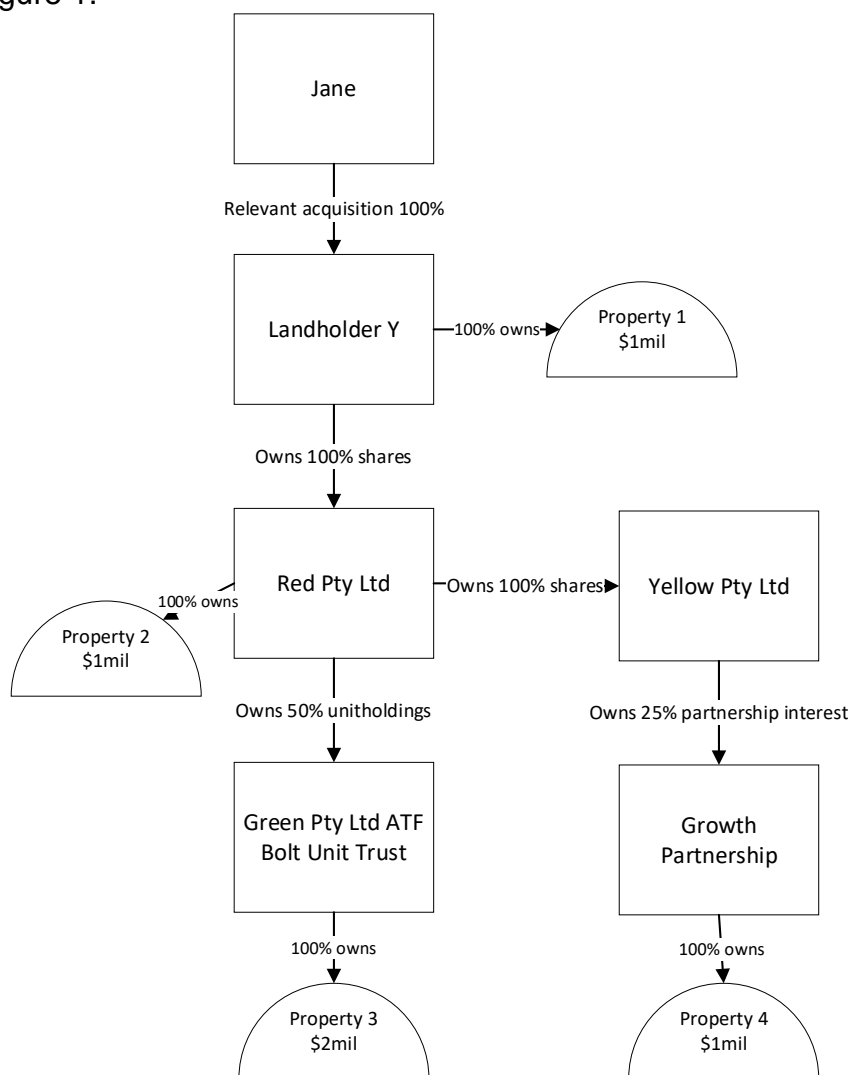
throughout sections 81 (1) (b) and subsection (3) in addition to the specific reference to disregard in subsection (4).

Section 81 (5) is amended to provide consequential definitions of ‘body’, entitled, ‘linked’, linked body and winding-up. The definition of a body includes an entity, a partnership and a trust but does not include an individual, a discretionary trust (addressed in section 82), a ‘listed company’ or a ‘public unit trust scheme’. The inclusion of a trust ensures that a broader range of trusts are captured, including but not limited to, constructive trusts, resulting trusts and bare trusts. The definitions align with definitions for constructive ownership in other jurisdictions. Listed companies and public unit trust schemes are excluded from the definition of body because the landholder provisions generally do not apply to acquisitions in public companies or public unit trusts.

Example 1

Jane made a ‘relevant acquisition’ of 100 per cent in Landholder Y on 30 September 2022 as shown in Figure 1 below.

Figure 1.



Landholder Y directly owns Property 1 with an unencumbered value of \$1 million. For the landholder duty provisions in part 3.2 it is necessary to consider the landholdings Landholder Y directly owns and constructively owns under section 81 (and if relevant section 82).

Note, liabilities of any linked body are to be disregarded throughout section 81.

Landholder Y has a deemed interest in the land of a linked body if they would be entitled to receive a distribution of any property of a linked body. Applying section 81 to the facts in Figure 1 is a five-step process.

Step 1 – Who is a body?

The first step is to determine who meets the definition of a body. Red Pty Ltd is a private company, therefore it will be an entity within the meaning of section 78A (1) 'entity' (a) and section 81 (4) 'body' (a) (i). Bolt Unit Trust is a private unit trust scheme; therefore, it is both an entity under section 78A (1) 'entity' (b) and a trust, thus it will meet the definition of a body under subparagraph (i) and (iii). Yellow Pty Ltd is a private company, therefore it will be a body under subparagraph (i). Growth Partnership is a partnership; therefore, it will be a body under subparagraph (ii).

Step 2 – Who is a linked body?

The second step is to determine which body is a linked body, which will also require consideration of linked, entitled and winding-up as defined in subsection (5). The word 'entitled' takes its ordinary meaning except for when trusts and partnerships are entitled to receive property of a linked body.

A body is a linked body of an entity if they are part of a chain of bodies that includes (a) the entity, that being Landholder Y, and (b) each body is linked to the next body in the chain. A body is linked to another body if they would be entitled to receive the first body's property on a winding-up. Winding-up of a linked body is defined in paragraph (a) as any process in which any property held by the body is distributed and (b) if the linked body is a trust, the vesting of the trust's property in its beneficiaries.

Landholder Y is linked to Red Pty Ltd as they are the sole shareholder and would receive 100 per cent of their property upon a winding-up. Red Pty Ltd is linked to the Bolt Unit Trust scheme as their unitholdings entitle them to receive 50 per cent of Bolt Unit Trust's property upon a winding-up of the trust. Red Pty Ltd is linked to Yellow Pty Ltd as they would be entitled to receive 100 per cent of their property upon a winding up as the sole shareholder. Yellow Pty Ltd is linked to Growth Partnership as they would be entitled to receive 25 per cent of the partnership property upon a winding-up as they have a 25 per cent interest in the partnership.

Red Pty Ltd is linked body to Bolt Unit Trust in one chain. Red Pty Ltd is a linked body to Yellow Pty Ltd and Growth Partnership in another chain as they are linked to each of these bodies in the chain. Red Pty Ltd is part of the chain

that includes Landholder Y, as the entity, because Landholder Y is the sole shareholder of Red Pty Ltd. In Figure 1, every body is a linked body of Landholder Y.

Step 3 – Landholder’s entitlement to property of linked bodies

Step three examines whether Landholder Y is entitled to receive any property held by any of the linked bodies under section 81 (1) (a). Landholder Y is entitled to receive 100 per cent of the property of Red Pty Ltd as the sole shareholder and therefore any property any linked body, which includes Bolt Unit Trust, Yellow Pty Ltd and Growth Partnership which will include Property 2, Property 3, and Property 4.

Step 4 – Section 81 (1) (b)

The fourth step requires consideration of whether section 81 (1) (b) is met. Subparagraph (i) would be met if any linked body were entitled to receive at least 50 per cent of the unencumbered value of all the property held by any other linked body. Red Pty Ltd is entitled to receive 50 per cent of the property of the Bolt Unit Trust in one chain of linked bodies and 100 per cent of the property of Yellow Pty Ltd in another chain of linked bodies, therefore, section 81 (1) (b) (i) is satisfied. Landholder Y is deemed to have an interest in the land owned by Red Pty Ltd, Bolt Unit Trust and Growth Partnership, that being Property 2, Property 3, and Property 4 as Red Pty Ltd is entitled to receive at least 50 per cent of the property held by the Bolt Unit Trust scheme and Yellow Pty Ltd.

It is not necessary for Yellow Pty Ltd to be entitled to 50 per cent of the property of Growth Partnership for Landholder Y to be entitled to the Growth Partnership’s property under subparagraph (i), as it merely requires ‘any linked body’ to be entitled to 50 per cent of all the property held by ‘any other linked body’.

Step 5 – Calculating unencumbered value of deemed interest in land

The final step relates to the calculation of the value of Landholder Y’s deemed interest in land. Landholder Y is entitled to the portion of the unencumbered value of the property held by the linked body that Landholder Y would receive if all the linked bodies were wound-up as per subsection (3).

Property 2 has an unencumbered value of \$1 million and Landholder Y is entitled to 100 per cent of the property. Property 3 has an unencumbered value of \$2 million and Landholder Y is entitled to 50 per cent of the property, so it has a value of \$1 million under subsection (3). Property 4 has an unencumbered value of \$1 million and Landholder Y is entitled to 25 per cent of the property, so it has a value of \$0.25 million under subsection (3). The total value of Landholder Y’s deemed interest in land through the linked bodies is \$2.25 million (\$1 million + \$1 million + \$0.25 million).

Jane would be charged duty on Landholder Y’s total landholdings, which as per subsection (2) is any deemed landholdings in addition to any interest in

land that they hold directly. Landholder Y also owns property with an unencumbered value of \$1 million. Jane would be charged landholder duty with reference to Landholder Y having landholdings with an unencumbered value of \$3.25 million.

**Clause 19 What is a *relevant acquisition*?—part 3.2
Section 86 (1), and note**

This clause amends section 86 of the Duties Act with minor stylistic changes that do not alter the current operation of the provision. A supporting example shows how a person can make a relevant acquisition through acquiring multiple interests through associated persons.

Clause 20 Section 87

This clause amends the Duties Act to prescribe by regulation when a person is not required to lodge an acquisition statement with the Commissioner (section 87 (2)). The clause also identifies what information must be provided regarding the unencumbered value of the landholdings and for an exemption application.

Specifically, section 87 (4) (a) introduces a new requirement for a person to provide an email address when they make a relevant acquisition.

Section 87 (4) (i) makes clear that a person applying for an exemption needs to provide information showing how they meet the eligibility requirements. The information required to satisfy the Commissioner will vary dependent upon the relevant exemption criteria.

Clause 21 Sections 89 and 90

This clause amends section 89 of the Duties Act to make landholders jointly and severally liable to pay duty with the person making a relevant acquisition. The clause deems that the trustee of a private unit trust scheme is the landholder for the purpose of this provision.

This clause also substitutes section 90 with expanded provisions to clarify the calculation of landholder duty payable by type of relevant acquisition. The new sections detail the calculation methods with further formulas and related definitions. Sections 90 – 90B is redrafted to reference specific relevant acquisition types under section 86.

Section 90 (5) has not been replicated in the Bill as sections 90 to 90B are already subject to division 3.2.4. Notes have been included to indicate that division 3.2.4 also applies when applying sections 90 to 90B. In particular, when determining the extent of a person's interest in a landholder, regard must be had to the maximisation of entitlement provisions contained in section 92.

There is also a new section 90C to address the administration of circumstances where a valuation report of landholdings does not provide a valuation in respect of each interest acquired within the 'relevant period' (defined in section 78 in paragraph (a) of the definition), that being within three years of the relevant acquisition.

There is no practical change to the amount of landholder duty payable from these amendments.

Single Interest Calculation – New section 90

New section 90 deals with relevant acquisitions involving a single interest to replace the previous section 90 (1).

The substituted section 90 provides that duty is payable on a relevant acquisition (under section 86 (1) (a) (i)) of a single significant interest, that is 50 per cent or more, in a landholder in a single transaction. The heading refers to the relevant acquisition as a ‘single interest’ because under sections 90 (1) (b) – (c) the provision does not apply if any other interest was acquired in the relevant period by the person, or an associated person, or any other person in an associated transaction as these will be addressed by sections 90A or 90B.

Subsection (2) outlines the steps involved in calculating duty on the relevant acquisition. Paragraph (a) outlines that the dutiable amount is calculated by multiplying the ‘UVL’ by the relevant interest.

UVL is defined as the unencumbered value of all landholdings in the ACT on the day the person made the relevant acquisition. The UVL references all landholdings of the landholder, this will include any landholdings that the landholder constructively owns under section 81 – 82. Taxpayers in their acquisition statement are required to provide evidence, preferably in a valuation report, of the unencumbered value of the landholdings on the day every interest in the landholder was acquired under sections 87 (4) (e) – (f).

The ‘relevant interest’ is the interest that acquired through a relevant acquisition expressed as a percentage of the total interest held in the landholder. Under section 90, the relevant interest is a reference to the acquisition under section 84 that was a relevant acquisition under section 86 (1) (a) (i), which would entitle the person to 50 per cent or more of the property of the landholder.

The duty payable is calculated under paragraph (b) when the dutiable amount is multiplied by the ‘relevant rate’. The relevant rate is the determined rate on the day the relevant acquisition was made.

Example 2

On 1 June 2023, Company A acquires a 50 per cent interest in Landholder H. As a result, Company A has acquired a significant interest in a landholder and has made a relevant acquisition of a significant interest under section 86 (1) (a) (i). Company A is liable for duty under section 90, as a significant interest was acquired, and no other interests were acquired during the relevant period. To calculate the duty payable, it is necessary to determine the UVL of Landholder H on 1 June 2023. Landholder H provided a valuation report from an accredited valuer to provide evidence of the unencumbered value of their landholdings on 1 June 2023 of \$5 million.

The valuation report identified that Landholder H beneficially owns two leasehold properties in the ACT with a total unencumbered value of \$4 million.

Landholder H has a 50 per cent interest (tenants in common) in a third property with an unencumbered value of \$2 million. The value of the third property for duty purposes for Landholder H is \$1 million. Landholder H's directly owned landholdings in the ACT have a total unencumbered value of \$5 million.

The total UVL for Landholder H on 1 June 2023 is \$5 million.

Company A will be charged duty in relation to Landholder H's UVL of \$5 million.

The calculation under section 90 (2) (a) applies as follows:

UVL (\$5 million) x relevant interest (50 per cent) = \$2.5 million.

Duty is calculated under section 90 (2) (b) on the duty rate applicable on 1 June 2023 x \$2.5 million.

Aggregated Interest Calculation – New section 90A

New section 90A provides that duty is payable on a relevant acquisition of aggregated interests. The heading refers to relevant acquisitions of 'aggregated interests' because under the new section 90 (1) a person must be aggregating the interest acquired with another interest in the landholder that they are taken to have made under sections 86 (1) (a) (ii) or (iii).

Subsection (2) outlines the steps involved in calculating duty on the relevant acquisition. If multiple acquisitions were made during the relevant period, then duty will be calculated by reference to paragraphs (a) to (e).

Paragraph (a) calculates the amount for the relevant interest, which will be the last interest acquired in time that resulted in a person making a relevant acquisition. Paragraph (b) calculates the amount of each interest acquired during the relevant period, but was not the relevant interest, which is defined as 'another interest'.

For example, a person acquired a 10 per cent interest on 1 January 2020, a 20 per cent interest on 30 March 2020 and a 30 per cent interest on 1 June 2020. Paragraph (a) would be used to calculate the amount for the acquisition on 1 June 2020. Paragraph (b) would be used to calculate the amount for the acquisitions on 1 January 2020 and 30 March 2020.

If another acquisition was made outside of the relevant period, then duty will only be calculated with reference to paragraphs (a), (c) – (d) and will not include any interests under paragraph (b).

For example, a person acquired a 20 per cent interest on 11 December 2010 and a 40 per cent interest on the 15 July 2022. Paragraph (a) would be used to calculate the amount for the acquisition on 15 July 2022. However, the acquisition on 11 December 2010 would not be subject to the duty calculation in paragraph (b) because the interest was acquired outside of the relevant period.

The definition for 'UVL' varies dependent on whether the Commissioner makes an unencumbered value determination under section 90C (2). Ordinarily, the UVL is the unencumbered value of all their landholdings in the ACT on the day of the relevant

acquisition for both the relevant acquisition and another acquisition as per paragraph (a) and (b) (i) of the definition. If the Commissioner exercises their discretion under section 90C (2), the UVL will be the amount that the Commissioner determines. The Commissioner will be inclined to exercise their discretion if a person has provided valuation evidence from an accredited valuer of the unencumbered value of the landholdings of the landholder on the day of another acquisition, that is, any other acquisition acquired within the relevant period.

The dutiable amounts under paragraph (c) are calculated by adding together the amounts calculated under paragraphs (a) and (b), noting that the calculation for another acquisition in paragraph (b) may need to be repeated several times if there were multiple acquisitions. For example, if a person acquired a 10 per cent interest in a landholder on the first day of the month for five months, the first four acquisitions would be calculated with reference to paragraph (b) whilst the final acquisition would be calculated with reference to paragraph (a).

Paragraph (d) states that the dutiable amount is multiplied by the relevant rate, which will be on the day of the relevant acquisition.

Paragraph (e) will only apply in very limited circumstances because duty reductions will more commonly apply under section 90B for the acquisition of a further interest. One envisaged circumstance for applying paragraph (e) is where:

- a person was assessed for duty under section 90A for acquiring a significant interest; and
- a person's total interest in the landholder was reduced to less than 50 per cent in a subsequent transaction; and
- within the relevant period the person reacquired an interest in the landholder that resulted in a relevant acquisition.

Subsection (3) states that if more than one acquisition occurs on the same day, they are deemed to have occurred on the same day regardless of the time of day. The subsection resolves any uncertainty that may arise when the time is not identifiable in respect of the transaction.

Subsection (4) replicates the existing provision in section 90 (4) which gives the Commissioner the discretion to exclude the other interests of associated persons from the calculation of duty if they are satisfied that the interests were acquired independently and for no common purpose. The Commissioner does not have any discretion to exclude associated transactions from the duty calculations under section 90 (4) as the transactions will by their definition not be independently acquired or for no common purpose.

Example 3

On 10 July 2020, Person Y purchased 40 per cent of the ordinary shares in Landholder X (private company with only ordinary shares on issue). Person Y did not acquire a significant interest as after the acquisition they only held a 40 per cent interest in Landholder X, which is not a significant interest.

Person Y is not required to submit an acquisition statement to the ACT Revenue Office or pay duty on the acquisition at this time.

On 30 December 2022, Person B purchased 30 per cent of the ordinary shares in Landholder X. Person B satisfied section 90A (1) (a) on 30 December 2022 when they purchased an interest in Landholder X. Section 90A (1) (b) will be met if the interests of Person Y and Person B can be aggregated. Person Y and Person B are siblings; therefore, they are related persons under section 77A (3) (a) (ii) of the definition. Related persons are associated persons under section 77A (1) (a) (a) (i). The interests are aggregated under section 86 (1) (a) (ii) to deem that Person B made a relevant acquisition, thus, satisfying section 90A (1) (b).

Person B is liable to pay landholder duty on the relevant acquisition under section 85. Under section 89, Person Y is jointly and severally liable to pay duty as the relevant acquisition results from an aggregation of their interest with Person B.

The Commissioner may, under section 90A (4), decide to exclude the interest of Person Y from the duty calculation under subsection (2) (b) if the Commissioner is satisfied that the Person B acquired the interest independently and for no common purpose. Person B purchased the interest to participate in a profitable business with their sibling, Person Y, as they would now jointly have majority control and ownership of Landholder X. As a result, the Commissioner would not exercise their discretion under section 90A (4) as the interests were acquired for a common purpose.

Person B provided a valuation report prepared by an accredited valuer with a valuation date of 20 December 2022, which valued Landholder X's landholdings at \$10 million.

The principal application of the duty for aggregated interests acquired under section 86 (1) (a) (ii) or (iii) is calculated under section 90A (2) in paragraphs (a) to (e).

Step 1 – Calculating the amount – Relevant interest

Paragraph (a) outlines that the amount for a relevant interest is to be calculated by multiplying the UVL of the relevant interest. The relevant interest in section 90A (5) refers to section 90 (3) which stated it was a proportion of the interest in the landholder in the relevant acquisition, in this case by Person B on 30 December 2022.

The UVL is the unencumbered value of all landholdings in the ACT of Landholder X as defined under subsection (5), which would include any constructively owned landholdings under sections 81 and 82. The UVL for the relevant acquisition is to be determined on the date of the relevant acquisition under paragraph (a). The UVL on the day of the relevant acquisition is \$10 million.

UVL (\$10 million) x relevant interest (30 per cent) = \$3 million.

The amount of the relevant interest for section 90A (2) (a) is = \$3 million.

Step 2 – Calculating the amount – Other Interest

Paragraph (b) outlines that the amount for another acquisition is to be calculated by multiplying the UVL by the other interest. The other interest in section 90A (5) is defined to mean the proportion of interest in a landholder acquired by a person in another acquisition under section 90A (2) (b), in this case by Person Y on 10 July 2022.

If Person B does not provide adequate valuation evidence of Landholder X's landholdings on 10 July 2022 as required under section 87 (4) (e) (ii) and paragraph (f), the Commissioner may make an unencumbered value determination under section 90C (2). If the Commissioner does not exercise their discretion to make an unencumbered value determination under section 90C (2) then section 90A (5) 'UVL' (b) (i) applies. The UVL for Landholder X on 30 December 2022 would also be applied for the acquisition on 20 July 2022.

Person B did not provide a valuation report for the unencumbered value of Landholder X's landholdings on 20 July 2022. Person B provided a valuation from an accredited valuer with a valuation date of 20 December 2022, which is within 12 months of the acquisition and would likely satisfy section 90C (3) (a) if there was no evidence of a change in circumstances which would affect the unencumbered value of the landholdings. The Commissioner would exercise their discretion to make an unencumbered value determination under section 90C (2) to determine that the unencumbered value of all landholdings on 20 July 2022 was \$10 million.

Amount = UVL (\$10 million) x other interest (30 per cent) = \$3 million.

Step 3 – Calculate the dutiable amount

Paragraph (c) outlines that the amounts calculated in paragraphs (a) to (b) should be added together to calculate the dutiable amount.

Dutiable amount = \$3 million (Step 1) + \$3 million (Step 2).

Dutiable amount = \$6 million.

Step 4 – Apply duty rate on the dutiable amount

Paragraph (d) outlines that duty will then be determined using the dutiable amount calculated in paragraph (c) multiplied by the determined rate in force on the day of the relevant acquisition.

Duty = \$6 million multiplied by the determined rate on 30 December 2022.

Duty = \$300,000.

Step 5 – Subtract any duty previously paid or payable

Paragraph (e) outlines that duty paid or payable can be reduced by each other acquisition from the amount calculated in paragraph (d). This paragraph will not apply to this calculation, as neither Person Y or Person B has previously paid duty or been liable for duty under this division.

Further Interest Calculation – Section 90B

Section 90B provides that duty is payable on a relevant acquisition of a further interest under section 86 (1) (b). A further interest is acquired when a person or associated person has an interest of more than 50 per cent under section 86 (1) (a) and then acquires an additional interest in the landholder.

If any previous acquisition occurred during the relevant period, that is within three years of the current relevant acquisition, then duty is calculated under section 90B (2) (a). Under section 90B (2) (e) a duty credit can be applied for any duty paid or payable on the initial acquisition.

If the previous acquisition occurred outside the relevant period, that is more than three years prior to the current relevant acquisition, then duty is calculated under section 90B (2) (b). Duty is calculated only on the acquisition of the further interest; therefore, there is no duty credit.

Example 4

On 16 July 2021, Blue Company purchased 60 per cent of the units on issue in Landholder A (private unit trust scheme). Blue Company made a relevant acquisition of a significant interest under section 86 (1) (a) (i). Therefore, section 90B (1) (a) has been met.

Blue Company provided the Commissioner with a valuation report prepared by an accredited valuer with their acquisition statement that stated that the unencumbered value of the landholdings on 16 July 2021 was \$7 million. Blue Company paid \$210,000 in duty on the relevant acquisition.

On 22 February 2022, Blue Company purchased an additional 20 per cent of the units on issue in Landholder A, which is the acquisition of an interest under section 84 (2) (a) (i). Blue Company made a further acquisition under section 86 (1) (b) and section 90B (1) (b) as they now had a total interest of 80 per cent in Landholder A.

Blue Company provided the Commissioner with a valuation report prepared by an accredited valuer with their acquisition statement that stated that the unencumbered value of the landholdings on 22 February 2022 remained at \$7 million.

The principal application of the duty for further interests acquired under section 86 (1) (b) is calculated under section 90B (2) (a) in subparagraphs (i) to (v).

Step 1 – Calculating the dutiable amount for the initial acquisition

The amount to be calculated under subparagraph (i) is dependent upon how the initial acquisition was acquired with reference to section 86 (1) (a).

If the acquisition was of itself a significant interest, that is a 50 per cent interest under section 86 (1) (a) (i) then the amount will be calculated with reference to section 90 (2) (a).

If the acquisition was an aggregated interest, as no single acquisition was a 50 per cent interest, under section 86 (1) (a) (ii) or (iii) then the amount will be calculated with reference to section 90A (2) (a) to (c). In considering the UVL of initial acquisition under section 90A (2) (a) to (c) the Commissioner may make an unencumbered value determination under section 90C (2) if applicable.

Blue Company made a relevant acquisition of a 60 per cent interest under section 86 (1) (a) (i) therefore, under section 90B (2) (a) (i) (A) the amount for the initial interest will be calculated with reference to section 90 (2) (a).

The calculation under section 90 (2) (a) and section 90B (2) (a) (i) (A) applies as follows:

$$\text{UVL (\$7 million)} \times \text{relevant interest (60 per cent)} = \$4.2 \text{ million.}$$

The amount of the initial acquisition for section 90B (2) (a) (i) is \$4.2 million.

Step 2 – Calculating the dutiable amount for the further acquisition

Subparagraph (ii) outlines the amount of the further interest is to be calculated by multiplying the UVL by the further interest, being the proportion of the interest in a landholder acquired by the person in the further acquisition. The UVL is the unencumbered value of the landholdings on the day of the further acquisition.

The calculation under section 90B (2) (a) (ii) applies as follows:

$$\text{UVL (\$7 million)} \times \text{further interest (20 per cent)} = \$1.4 \text{ million.}$$

The amount of the further acquisition under section 90B (2) (a) (ii) is \$1.4 million.

Step 3 – Calculate the dutiable amount

Subparagraph (iii) outlines that the amounts calculated in subparagraphs (i) and (ii) should be added together to calculate the dutiable amount.

$$\$4.2 \text{ million (Step 1)} + \$1.4 \text{ million (Step 2)} = \$5.6 \text{ million.}$$

The dutiable amount is \$5.6 million.

Step 4 – Apply duty rate on the dutiable amount

Subparagraph (iv) outlines that duty will then be determined using the dutiable amount calculated in paragraph (iii) multiplied by the determined rate in force on the day of the further acquisition.

Duty is calculated under section 90B (2) (a) (iv) on the rate applicable on 22 February 2022 x \$5.6 million.

Duty = \$280,000.

Step 5 – Duty reduction

Paragraph (v) outlines that any duty paid or payable under section 90 or 90A on the initial acquisition will be subtracted from the duty payable under subparagraph (iv) in step 4.

Duty of \$280,000 will be reduced by \$210,000, being the amount of duty previously paid by Blue Company on the acquisition on 16 July 2021.

Duty payable by Blue Company on the relevant acquisition on 22 February 2022 = \$70,000.

Unencumbered value determination – Section 90C

The ‘unencumbered value determination’ in section 90C (2) provides a mechanism for the Commissioner to determine the unencumbered value of the landholdings in the ACT of the landholder on the day another acquisition was made (in relation to section 90A) or the day an initial acquisition was made (in relation to section 90B (2) (a) (i) (B)).

The Commissioner has discretion to make an unencumbered value determination only if the Commissioner is satisfied the unencumbered value is proven by either: (a) a valuation report prepared by an accredited valuer with a valuation date not more than 12 months after the day of another acquisition or initial acquisition; or (b) any other equivalent evidence. The Commissioner has a broad discretion under paragraph (b) for what other equivalent evidence they may accept.

The Commissioner cannot use the unencumbered value determination to determine the value of the landholdings of the landholder on the date of the relevant acquisition. However, the Commissioner has general powers under section 11 of the Taxation Administration Act to use any source of information at the time an assessment is made to make an assessment including by way of estimate.

Clause 22 Valuation of property

Section 93 (1)

Clause 27 Duty concession—acquisitions securing financial accommodation

Section 95 (1) (a)

Clause 28 Section 95 (2)

Clause 29 Section 95 (3)
Clause 32 Exemption for relevant acquisitions
Section 115J (1)

These clauses variously omit or substitute references to acquisition statements to align the requirements stated in those sections with the making of a relevant acquisition rather than (the lodgement of) an acquisition statement.

Clause 23 Section 93 (1)
Clause 24 Section 93 (2)
Clause 25 Section 93 (2)

These clauses substitute references of dutiable value or value of landholdings to unencumbered value of landholdings.

Clause 26 Section 94

This clause amends section 94 to reflect current drafting practice to step out the requirements for when the Commissioner must assess or reassess landholder duty payable as if the landholder no longer owned land included in the assessment for duty.

Consequential amendments are made to section 94 (3) to align with the amendments to linked body provisions under section 81.

Clause 30 When does a liability for duty arise?
Section 103 (2)
Clause 37 Dictionary, definition of *Australian Stock Exchange*
Clause 38 Dictionary, new definition of *Australian Securities Exchange*
Clause 41 Dictionary, new definition of *listed company*
Clause 42 Dictionary, definition of *listed trust*
Clause 43 Dictionary, definition of *private company*

The ACT does not impose landholder duty in relation to acquisitions acquired in public companies or public unit trust schemes.

These clauses amend the drafting of section 103 (2) and the Dictionary of the Duties Act to simplify the definition of a 'private company' to be a company that is not a listed company.

Clauses 41 and 42 extend the definitions of listed companies and listed trusts to include those quoted on specific stock exchanges who are not members of the World Federation of Exchanges. The amendment replicates recent amendments to the *Duties Act 1997* (NSW).

Clause 35 Objections
Section 252 (f)

This clause is a consequential amendment to the redrafting of section 90 of the Duties Act to sections 90 to 90C. This will ensure that objection rights under the Taxation Administration Act are maintained in determining whether duty should be imposed on the aggregated interests of an associated person under the new section 90A.

Part 3 Land Tax Act 2004

- Clause 46 Land partly owned by corporation or trustee**
Sections 16 (1) (b) (i)
- Clause 47 Section 16 (4)**
- Clause 48 Payment of land tax**
Section 17 (3)
- Clause 49 Imposition of foreign ownership surcharge**
Section 17E (2) (a)
- Clause 50 Unit subdivisions—land tax**
Section 27 (5) (b) (i)

These clauses amend various sections of the Land Tax Act to update cross references.

Schedule 1 Consequential amendments

Part 1.1 Civil Law (Sale of Residential Property) Act 2003—
consequential amendments

- [1.1] Section 3, note**
- [1.2] Section 6 (4), new definition of related person**
- [1.3] Dictionary, definition of related person**

Schedule 1 contains technical amendments of legislation initiated by the Parliamentary Counsel's Office.

These clauses amend various sections of the *Civil Law (Sale of Residential Property) Act 2003* to update cross references following the amendment of related person in the Duties Act.

Part 1.2 Land Tax Act 2004

- [1.4] Dictionary, definition of associated person**

Schedule 1 contains technical amendments of legislation initiated by the Parliamentary Counsel's Office.

The clause amends the Land Tax Act dictionary definition for associated person to refer to section 77A of the Duties Act.