

2023

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

REVENUE LEGISLATION AMENDMENT BILL 2023

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

**Presented by
Andrew Barr MLA**

REVENUE LEGISLATION AMENDMENT BILL 2023

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 2023 ('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 omnibus 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);
- *Rates Act 2004* (Rates Act); and
- *Taxation Administration Act 1999* (TA Act).

Duties Act

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

- simplify and strengthen landholder duty exemptions by consolidating them under Chapter 3 of the Duties Act and base them on actual acquisitions (rather than applying a hypothetical test);
- remove an ACT-specific exemption for beneficiaries of trusts which is replicated through other provisions of the Duties Act;
- clarify the scope of duty exemption for acquisitions made to secure finance;
- provide a definition of 'land' for Part 3.2; and
- clarify duty liability when an acquisition occurs under an agreement, combined acquisitions under an arrangement and uncompleted agreements.

The Duties Act, Chapter 2 is subject to amendments under this Bill to provide new exemptions from duty for alternate financial transactions by individuals, in place of interest-based mortgage acquisitions.

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

Landholder duty

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

Exemptions (general)

The Duties Act (section 115H) provides exemptions for Chapter 3 transactions that are intended to replicate exemptions applying to transfers of real property taxed under Chapter 2. Section 115H is applied based on whether the Chapter 3 transactions (usually land) could have (hypothetically) been acquired directly by the taxpayer in a way that no duty is payable under certain exemptions available under Chapter 2.

The amendments in the Bill, sections 115H to 115HI list the exemptions directly within the Chapter 3 provisions. The exemptions are also based on actual Chapter 3 transactions of Chapter 3 property, rather than a hypothetical transfer of the underlying land. The amendments retain the scope of the current exemptions, except for transfers to beneficiaries of a trust and securing finance (discussed below).

The Bill also explicitly ensures that taxpayers have administrative review rights in respect of the exemptions, with a single exception in relation to section 115HA (7) definition of *applicable period*, paragraph (b).

Property passing to beneficiaries exemption

An exemption under section 115H (2) (g) provides for an exemption from landholder duty if a trustee could have transferred property to a beneficiary.

Constructive ownership rules under section 82 of the Duties Act apply such that land held by the trustees of discretionary trusts may be deemed to be held by a landholder.

The current exemption under section 115H (2) (g) however may conflict with and duplicate the operation of section 82 under certain circumstances.

The amendments in the Bill remove this exemption to support the operation of constructive ownership rules. Any inequitable application of duty involving a discretionary trust would be resolved by use of existing discretion for the Commissioner for ACT Revenue (Commissioner) under section 82 (5) and will be supported by Commissioner's guidance on the application of the discretion.

Securing finance exemption

The Bill amends an exemption under section 95 of the Duties Act for landholder duty involving acquisitions for the sole purpose of 'securing finance'. The exemption will apply when the relevant acquisition is made with the sole purpose of securing finance and the entity making the acquisition is the same entity that provided the finance.

There must also be an intention that the interest is temporarily acquired. For example, if shares in a landholder are acquired by a bank which is granting a loan, and the shares are transferred as a condition of the loan, this transaction would be eligible for the securing finance exemption. This change aligns the ACT's legislation with other jurisdictions.

Further, the amendments make clear that if a person fails to re-transfer the acquired interest within five years the exemption from duty will no longer apply with tax being payable from the time of the initial acquisition along with any associated penalty tax or interest.

Chapter 3 transactions made by apparent purchaser

The exemption in section 115HF replicates the general provision for an exemption under section 56 (1) (b) in respect of transfers from an apparent purchaser to the real purchaser who provided money for the purchase.

The exemption does not extend to replicating the provisions under section 56 (1) (a) as the equivalent taxing provision does not exist under Chapter 3 of the Duties Act.

Defining 'land'

The Bill introduces section 80A of the Duties Act to provide a definition of land for Part 3.2. To promote certainty and consistency with other jurisdictions, the Bill inserts provisions to clarify that the definition of land includes anything attached to the land regardless of whether it is a fixture under law, or owned separately from the land, or appears separate from the land under a law in force in the Territory. Specific items that are excluded from being attached to the land are prescribed.

Agreements to purchase, allot or issue a share or unit

The substitution of section 84 (3) and (4) provides additional clarification on when an agreement to purchase, allot or issue a share or unit is considered to have been entered and completed. An agreement will now be taken to be completed on the earliest of a series of events or within 12 months from the date the agreement is first executed providing certainty on the date an interest is acquired. The amendment aligns with the provisions from NSW.

Duty payable on relevant acquisitions—combined acquisitions

The Bill introduces a new section into the duty payable provisions to tax relevant acquisitions between a person and an associated person that are made within 12 months of each other and together enable the parties to gain effective ownership of a landholding. The provision is intended to replicate the Chapter 2 general concept of aggregating dutiable transactions within section 24 in the context of landholder duty under Part 3.2.

Uncompleted agreements for purchase, allotment or issue of shares or units in landholder

The Bill introduces section 94A to provide a mechanism for the assessment or reassessment of rescinded or terminated agreements to purchase, allot or issue a share or unit in a landholder. The provision ensures that taxpayers are not charged landholder duty on acquiring an interest that is subsequently rescinded or terminated provided the taxpayer received no benefit under the agreement.

Alternative finance exemptions

The Bill includes amendments to the Duties Act to align with exemptions from duty applied in Victoria that eliminate the application of double duty on alternate finance transactions of the kind used where interest is prohibited, such as compliant finance arrangements under Islamic law.

The types of transactions addressed include where:

- land is sold initially to a financial institution and natural person, and then leased to a natural person;
- land is sold initially to a financial institution only and then leased to a natural person with a gradual transfer of ownership under a second contractual agreement between the parties;
- land is sold initially to a financial institution and then re-sold to a natural person;
- land sold initially to a natural person, beneficial interest then transferred to a financial institution;
- as well as consequential provisions, allowing for changes in financial institution or death of the borrower.

Other Acts

The Bill includes further technical and minor amendments.

- Rates Act—
 - Amendments in the Bill clarify the determination of average unimproved value (AUV) where a Crown lease is subject to renewal to provide that averaging of unimproved values continues for the same parcel of land.

- Amendments to update the name of the fire and emergency services levy to the police, fire and emergency services levy as outlined in the ACT Budget 2023-24.
- TA Act—to clarify that tax debt payable by a mortgagee under either section 56HA or 56N is payable under section 48 of the TA Act.

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 promotes the right to recognition and equality before the law under section 8 of the *Human Rights Act 2004* (HR Act).

The introduction of exemptions under the Duties Act for alternate finance transactions provides for the removal of possible double taxation on arrangements that do not involve ‘interest’ (as a price for monies lent). This can be associated with types of transactions suitable for Islamic-based finance, however the amendments are not limited to those transactions with a religious basis.

The Bill engages the right to a fair trial under section 21 of the HR Act by explicitly ensuring that taxpayers have administrative review rights in respect of the exemptions inserting the new section 252 (ga). While there is an exception in the bill to provide that there are no objection rights or rights to a review at the ACT Civil and Administrative Tribunal in respect of the Commissioner failing to exercise their discretion to extend the ‘applicable period’ beyond 5 years for the securing finance exemption in section 115HA (7) (b), people may pursue other avenues for seeking a review, such as under the *Administrative Decisions (Judicial Review) Act 1989*.

Rights limited

Nil. Amendments in the Bill are technical in nature, clarifying or improving the operation of existing settings to support the integrity and existing operation of tax laws.

Revenue Legislation Amendment Bill 2023

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 2023**. 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 2023*.

Clause 2 Commencement

This clause provides that the Act commences on 1 July 2024.

Clause 3 Legislation amended

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

- *Duties Act 1999* (Duties Act);
- *Rates Act 2004* (Rates Act);
- *Taxation Administration Act 1999* (TA Act).

Part 2 Duties Act 1999

Clause 4 Section 57 heading

This clause is a technical amendment to remove reference to ‘nominee’ and replace it with ‘trustee’.

Clause 5 New division 2.5.2A

Clause 18 Dictionary, note 2

Clause 21 Dictionary, new definition of *financial institution*

These clauses insert a new division 2.5.2A (Alternative finance transactions) to provide exemptions from duty for various alternative finance transactions involving individuals and prescribed financial institutions. This ensures that alternate transactions are not subject to double taxation when they occur as part of a scheme, typically when charging interest is not permitted (for example, due to cultural or religious reasons).

A new section 64 defines the meaning of *financial institution* that will be considered for the transactions subject to the exemptions in the division. Specifically, it includes authorised deposit-taking institutions and regulated co-operatives in line with Victorian duty provisions. Allowance is made for the possible future extension of the definition by allowing other bodies to be prescribed by regulation.

New sections 64A to 64D prescribe that duty is not payable in relation to certain transactions as part of a financing scheme for the purchase of land by an individual.

- Secondary transfers are exempted from duty under—section 64A, where land is transferred to a financial institution and an individual as co-owners (including joint tenants or tenants in common) and then leased and transferred to the individual; and section 64B where land transferred to a financial institution is then transferred back to the individual under a contract of sale.
- Where land is transferred to a financial institution then leased and transferred to an individual via an option agreement, section 64C provides an exemption for the agreement and the second transfer.
- Where land is transferred to an individual who then makes a declaration of trust in favour of the financial institution who leases the land to the individual both the declaration and second transfer of the beneficial interest are exempt from duty under section 64D.

New section 64E provides that duty is not payable in the event the individual changes their financial institution. (Note, under Chapter 2 of the Duties Act, a mortgage is not dutiable property and hence a change in mortgagee is not a dutiable event.)

New section 64F provides that duty is not payable if an individual dies before the completion of financial arrangements under section 64A to 64D, and an interest in the land is transferred in conformity with a trust contained in the will, because of a right of survivorship or transfers to the public trustee and guardian, or an executor or administrator. While the general exemption from duty under section 232D provides for components of this exemption, this section ensures that the provisions align with Victoria.

Clause 6 Section 76A

Clause 19 Dictionary, new definition of *chapter 3 property*

This clause replaces the definitions under section 76A for Chapter 3 of the Duties Act, retaining the definition of ***acquisition statement*** by reference to section 87 (1) and adding a definition for ***chapter 3 property***. The term chapter 3 property is used for exemptions under sections 115HD, 115HE, 115HF, 115HG, 115HH, and 115HI.

A consequential amendment is made to the dictionary for the definition of chapter 3 property.

- Clause 7** **Definitions—pt 3.2**
 Section 78, new definition of *land*
- Clause 8** **New section 80A**
- Clause 23** **Dictionary, definition of *land***

These clauses insert a new section 80A and amend the dictionary to prescribe the meaning of ***land*** for Part 3.2. In doing so, the meaning is clarified by specifying the inclusion of anything attached to the land. The new section provides clarity and removes the need to consider if an item is a fixture or chattel under the current common law tests. The item is considered attached to the land if it attaches to the land directly or is attached to a permanent structure on the land. This assists with the valuation of land for duty purposes.

Section 80A (3) provides that land does not include an attachment in specified circumstances. These circumstances are consistent with those provided under the *Duties Act 2008 (WA)*. The Minister may prescribe additional circumstances via disallowable instrument.

Clause 9 **How person *acquires* an interest in a landholder—pt 3.2**
 Section 84 (3) and (4)

This clause substitutes sections 84 (3) and (4) to clarify when an acquisition of an interest in a landholder occurs based on an agreement for the purchase, allotment, or issue of a unit or share. The elements of the previous sections 84 (3) and (4) are retained under sections 84 (3) (b) (i) to (ii), and 84 (4). Additional sections account for circumstances where:

- an entity ceases to be landholder—section 84 (3) (a);
- a benefit is received under the agreement—section 84 (3) (b) (iii);
- at the end of a 12-month period after the execution of the agreement (or longer subject to Commissioner approval)—section 84 (3) (b) (iv);
- the day, in the Commissioner’s opinion, the agreement is completed—section 84 (3) (b) (v).

Clause 10 **New Section 90D**

This clause supports the integrity of the landholder duty provisions by prescribing under new section 90D (1) the application of landholder duty to multiple ‘combined’ relevant acquisitions by a person (and/or associated person) in different landholders that are part of a single arrangement to obtain effective ownership of a landholding. The provision is designed to emulate the requirements of section 24 (aggregation of dutiable transactions) of the *Duties Act* within the context of landholder duty transactions.

For section 90D to apply the following requirements must be met:

- a relevant acquisition in a landholder occurred, described as the **previous acquisition**—section 90D (1) (a); and
- a person or an associated person made an acquisition in another landholder that is also a relevant acquisition, described as the **later acquisition**—section 90D (1) (b); and
- the later acquisition must be within 12 months of the previous acquisition—section 90D (1) (c); and
 - Noting, that if the relevant acquisition was made under section 86 (1) (a) (ii) an aggregated acquisition within the relevant period will also be included in the subsequent calculations with a credit applied (if relevant) under section 90D (2) (d).
- together, the relevant acquisitions form, provide evidence of, give effect to or arise from a single arrangement to gain effective ownership of a landholding—section 90D (1) (d).
 - Effective ownership of a landholding does not require ownership of 100 per cent, it merely refers to the interest in the landholding held by the landholder. Arrangement extends to situations where no legally enforceable rights and obligations are created. A single arrangement can be a unilateral plan or understanding to achieve a purpose or objective of some kind.

The duty calculations are completed under section 90D (2) (a) to (d) with the calculations to be utilised in either section 90 (2) (a) or section 90A (2) (a) to (c) dependent upon whether it was a relevant acquisition of a single interest or an aggregated interest.

An acquisition of a single interest, such as a relevant acquisition of 50 per cent or more in a landholder in a single transaction under section 86 (1) (a) (i) will use section 90 (2) (a).

Whereas a relevant acquisition involving the aggregation of interests held by a person, an associated person, or in an associated transaction under sections 86 (1) (a) (ii) or (iii) will use section 90A (2) (a) to (c).

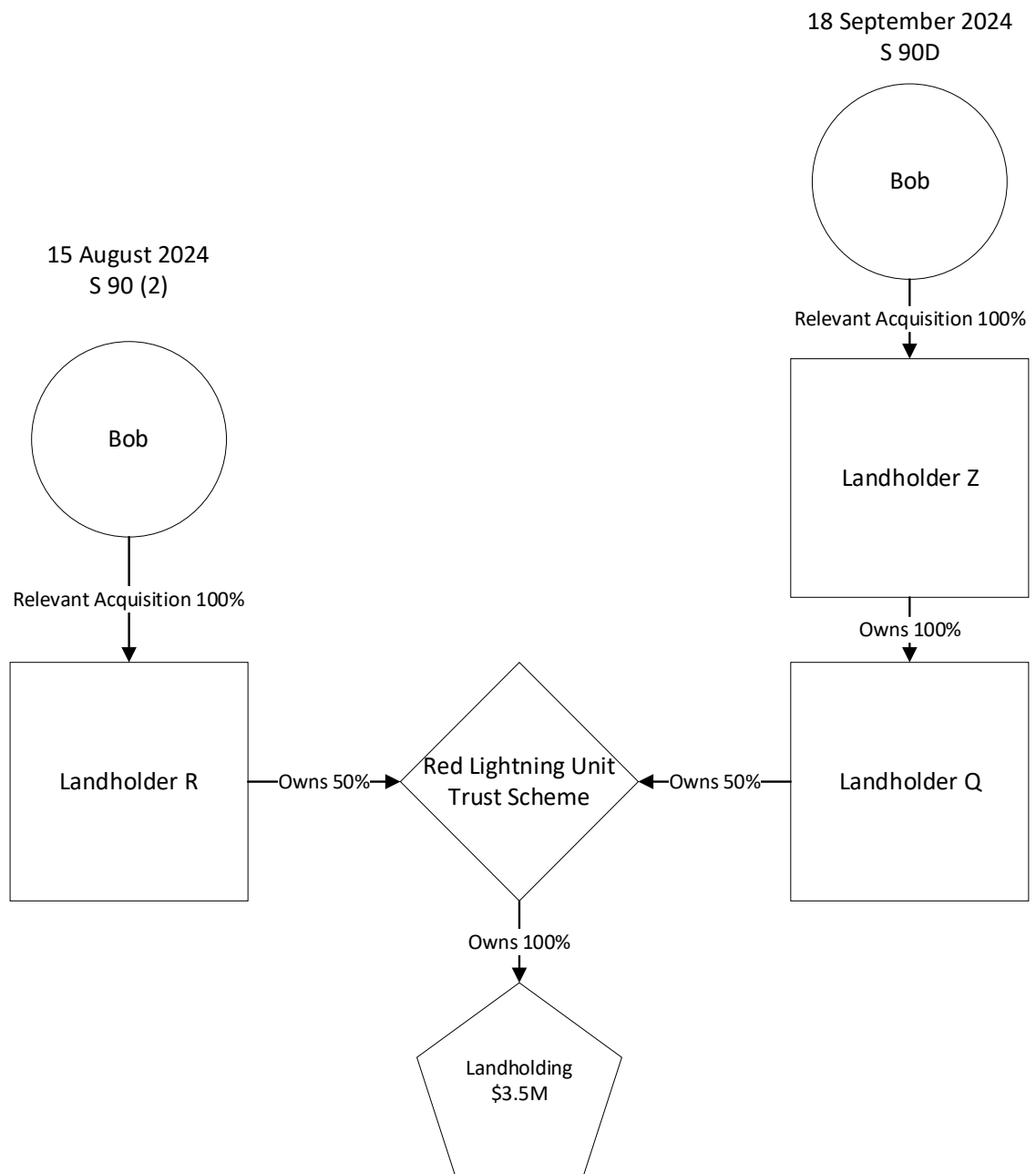
If duty was previously paid or payable in respect of the relevant acquisition under the division then the duty will be subtracted from the amount calculated under section 90D (2) (d) to prevent double duty being imposed.

Section 90D (3) outlines how the UVL is determined on the unencumbered value of all landholdings in the ACT of the landholder on the day of the later acquisition, or if there are more than 1 later acquisition the last of the later acquisitions.

Example 1

Bob wanted to arrange to purchase the landholding held by the Red Lightning Unit Trust Scheme. Bob executed a unilateral plan to effectively purchase the property through buying all the shareholdings of Landholder R and Landholder Z. Bob entered into agreements to purchase the interests in Landholder R and Landholder Z with the current shareholders.

Figure 1: Single relevant acquisitions and section 90D



Bob made a relevant acquisition in Landholder R on 15 August 2024 when he received the share transfer documents, as per section 84 (3) (b) (i). The dutiable amount of the relevant acquisition in Landholder R, as calculated

under section 90 (2) (a) was \$1,750,000 (UVL of \$3,500,000 x 50 per cent) which is below the taxable dutiable amount of \$1,800,000 [assumed to apply under section 7 (2) of the *Taxation Administration (Amounts Payable—Duty) Determination 2023*, (DI2023-162)]. No duty is payable on the transaction, under section 90 (2).

Bob made a relevant acquisition in Landholder Z on 18 September 2024, when he paid the full purchase price for acquisition under the agreement, as per section 84 (3) (b) (ii).

Sections 90D (1) (a) to (c) are easily satisfied as Bob made both relevant acquisitions in different landholders within 12 months. ‘Single arrangement’ is not defined in the legislation but under common law has a broad meaning, including situations where there are no legally enforceable rights and obligations created. Bob had a plan to purchase interests in Landholder Z and Landholder R to acquire effective ownership of the landholding held by the Red Lightning Unit Trust Scheme. As a result, Bob’s relevant acquisitions are deemed to be a combined acquisition under section 90D (1) (d). There is no requirement that the agreements to purchase in respect of Landholder R and Landholder Z are conditional upon the completion of each other to satisfy section 90D (1) (d).

Section 90D (2) outlines the duty calculation method.

Both of Bob’s relevant acquisitions were a relevant acquisition under section 86 (1) (a) (i), therefore section 90D (2) (a) (i) applies.

Calculate the amounts under section 90D (2) (a) (i)

Acquisition 1—15 August 2024

UVL is calculated as at 18 September 2024 (as per section 90D (3) (a)). Landholder R held a 50 per cent interest in Red Lightning Unit Trust Scheme, which had a landholding with an unencumbered value of \$3,500,000. Landholder R’s constructive interest in Red Lightning Unit Trust Scheme is calculated with reference to section 81 (3), which is \$1,750,000 (50 per cent x \$3,500,000).

The UVL of Landholder R is \$1,750,000.

Relevant interest of Bob’s relevant acquisition is 100 per cent.

The amount is \$1,750,000 (UVL of \$1,750,000 x 100 per cent relevant interest).

Acquisition 2—18 September 2024

UVL is calculated as at 18 September 2024 (as per section 90D (3) (a)). Landholder Q held a 50 per cent interest in Red Lightning Unit Trust scheme, which had a landholding with an unencumbered value of \$3,500,000. Landholder Q's interest in the landholding is worth \$1,750,000 (being \$3,500,000 x 50 per cent).

Landholder Z has a 100 per cent interest in Landholder Q, and therefore, their constructive interest in the landholding as calculated with reference to section 81 (3) is \$1,750,000 (100 per cent x \$1,750,000).

The UVL of Landholder Z is \$1,750,000.

Relevant interest of Bob's relevant acquisition is 100 per cent.

The amount is \$1,750,000 (UVL of \$1,750,000 x 100 per cent relevant interest).

Section 90D (2) (b) adds the amounts calculated under section 90D (2) (a) together

$$\begin{aligned}\text{Amounts} &= \$1,750,000 (\text{Acquisition 1}) + \$1,750,000 (\text{Acquisition 2}) \\ &= \$3,500,000.\end{aligned}$$

Section 90D (2) (c) multiplies the amounts under section 90D (2) (b) by the determined rate

Section 90D (2) (c) (i) requires that the amount of \$3,500,000 is multiplied by the determined rate in force on the 18 September 2024, being the day of the later acquisition under section 90D (2) (c) (i). As noted above, the determined rate is assumed to be as presently governed by DI2023-162, which imposes duty at \$5 per \$100 to the dutiable amount if it is more than \$1,800,000, which it is.

$$\text{Duty} = \$175,000 (\$3,500,000 \times (\$5/\$100))$$

Section 90D (2) (d) does not apply in this instance, as Bob was not required to pay duty on the relevant acquisition on 15 August 2024.

Bob had to pay duty of \$175,000 on his combined acquisitions under section 90D.

Example 2

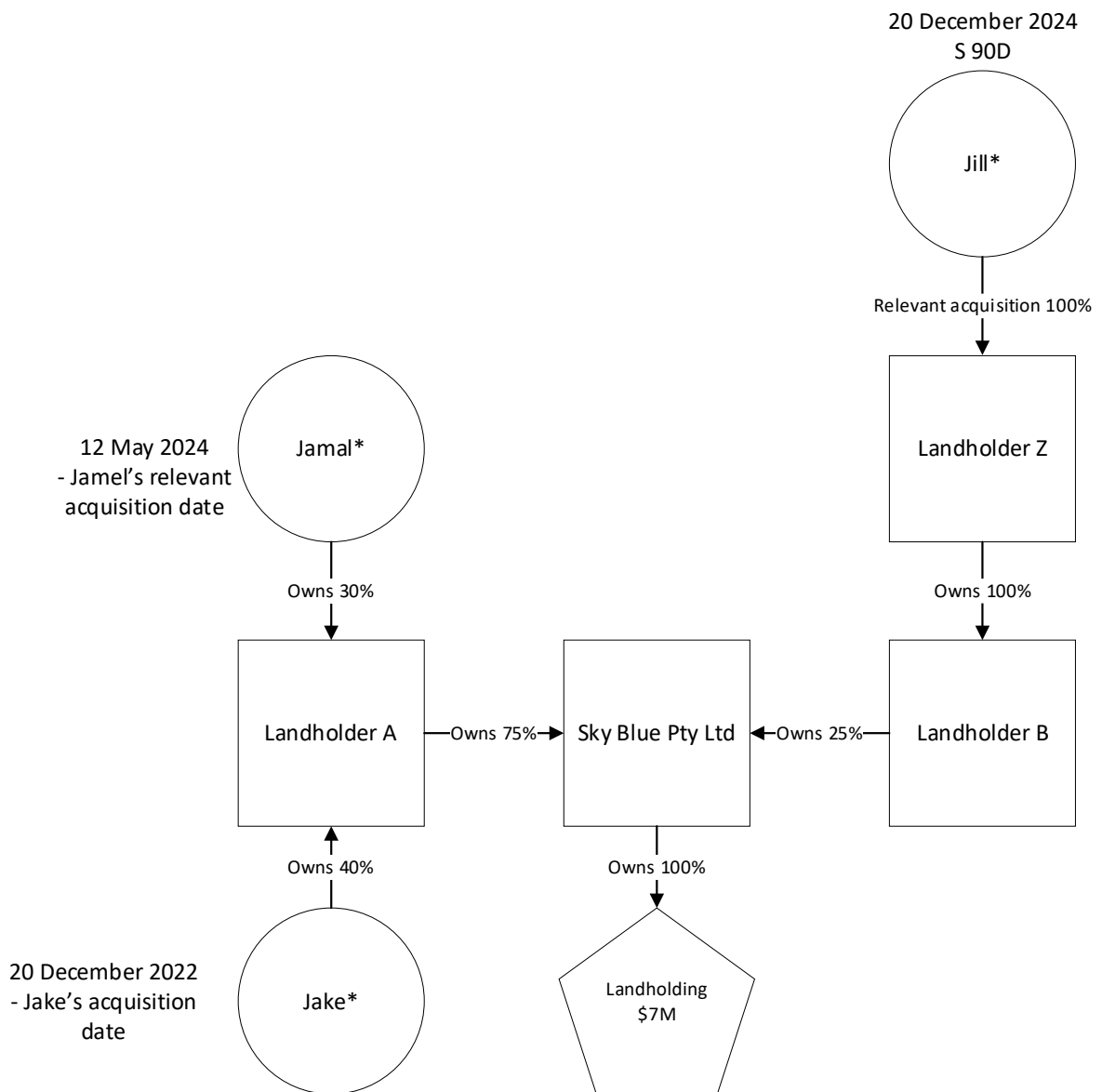
Jamal, Jake and Jill are siblings, and therefore associated persons under section 77A (3) 'related person' (a) (ii). Jamal, Jake and Jill all run a family business that has been operating at the landholding owned by Sky Blue Pty Ltd.

Jake and Jamal decided that they wanted to acquire a majority interest in Sky Blue Pty Ltd to ensure that the lease for the family business would continue. Jill was supportive of her brother's plan.

On 20 December 2022, Jake acquired a 40 per cent interest in Landholder A, this was not a relevant acquisition, therefore no duty was payable.

On 12 May 2024, Jamal purchased a 30 per cent interest in Landholder A. Jamal's interest was a relevant acquisition under section 86 (1) (a) (ii). The unencumbered value of the landholdings held by Sky Blue Pty Ltd was \$7,000,000. Jamal and Jake were liable for and paid landholder duty of \$183,750 under section 90A.

Figure 2: Associated persons and section 90D



James and Jamal then persuaded their sister, Jill to help the family to arrange increase their ownership of Sky Blue Pty Ltd to above 75 per cent to control the voting of the company under the constitution. The family would then have secured control over the landholding that their family business operates on.

Jill made a relevant acquisition in Landholder Z on 20 December 2024, and thus, constructively acquired Landholder B and the 25 per cent interest in the landholding of Sky Blue Pty Ltd through section 81.

Sections 90D (1) (a) to (c) are satisfied with Jill's relevant acquisition in Landholder Z and Jamal's relevant acquisition in Landholder A, which were both within 12 months. The combined acquisitions of Jill and Jamal satisfy the single arrangement criteria under section 90D (1) (d) as it was part of plan to effectively own the landholdings held by Sky Blue Pty Ltd to secure the lease of the family business at the property.

Section 90D (2) outlines the duty calculation method.

Acquisition 1—Jamal & Jake in Landholder A

Jamal made a relevant acquisition under section 86 (1) (a) (ii), as his 30 per cent interest was aggregated with Jake's 40 per cent interest to become a relevant acquisition.

Although Jake's acquisition is outside of the 12-month period in section 90D (1) (c), it is included in the calculations for the purpose of section 90D (2) (a) (ii) because Jamal's acquisition is within the 12-month period, and it was part of the aggregated transactions that became the relevant acquisition (as it was within the relevant period).

Calculate the amounts under section 90D (2) (a)

- Jill's acquisition (Section 90 (2) (a))
UVL \$1,750,000 (25 per cent x 100 per cent x \$7,000,000) x
100 per cent (relevant interest)
Amount = \$1,750,000
- Jamal's acquisition (Section 90A (2) (a))
UVL \$5,250,000 (75 per cent x \$7,000,000) x 30 per cent (relevant
interest)
Amount = \$1,575,000
- Jake's acquisition (Section 90A (2) (b))
UVL \$5,250,000 (75 per cent x \$7,000,000) x 40 per cent (other
interest)

Amount = \$2,100,000

- Add the amounts for Jamal's acquisition and Jake's acquisition (Section 90A (2) (c))

\$1,575,000 (Jamal's) + \$2,100,000 (Jake's)

Amounts = \$3,675,000

Section 90D (2) (b) adds the amounts calculated under section 90D (2) (a) together

Amounts = \$1,750,000 (Jill's) + \$3,675,000 (Jamal's + Jake's)

= \$5,425,000

Section 90D (2) (c) multiplies the amounts under section 90D (2) (b) by the determined rate

Section 90D (2) (c) (i) requires that the dutiable amount of \$5,425,000 is multiplied by the determined rate in force on the 20 December 2024, being the day of the later acquisition under section 90D (2) (c) (i). As noted above, assuming the determined rate is as presently governed by DI2023-162, which imposes duty at \$5 per \$100 to the dutiable amount if it is more than \$1,800,000, which it is.

Duty = \$271,250 (\$5,425,000 x (\$5/\$100))

Section 90D (2) (d) reduces duty payable under section 90D (2) (c) by any amount paid or payable under this division

Jamal and Jake paid \$183,750 of duty for their relevant acquisition in Landholder A on 12 May 2024 under section 90A. Jamal and Jake's acquisitions were included in the duty calculation for Jill as outlined in sections 90D (2) (a) to (c) above. To avoid double taxation of Jamal and Jake's interests, when imposing duty for Jill, the duty payable by Jill is reduced by the duty paid by Jamal and Jake.

Jill's duty = \$271,250 - \$183,750 (Jamal & Jake's duty)

= \$87,500

Clause 11 New Section 94A

This clause inserts a new section to require the Commissioner to reassess duty payable in relation to a relevant acquisition as though the acquisition of a share or a unit in a landholder did not occur, where an agreement for purchase, allotment or issue did not occur if an agreement is terminated or rescinded.

For integrity purposes, the application of this section is restricted to:

- situations where a person has not benefited from the agreement; and
- a period of 3 years from entry into the agreement (aligning with the relevant period for the aggregation of acquisitions for landholder duty).

Clause 12 Duty concession—acquisitions securing financial accommodation

Section 95

Clause 15 Division 3.7.1

Clause 17 Objections

New section 252 (ga)

These clauses consolidate Chapter 3 exemptions from duty payable under a substituted division 3.7.1.

As part of the overarching approach, the sections are drafted to make clear the exemptions are only available on application (new section 115H). Under the previous provisions, taxpayers still had to apply for the exemption, as the Commissioner had to be satisfied that the criteria has been met, so this is not a new requirement. Applications must be in writing, made within 90 days of relevant transaction (or longer subject to commissioner approval) and include information to support consideration by the Commissioner (section 115H (2) refers).

In addition, exemptions are now by reference to actual transactions (as opposed to hypothetical transactions based on Chapter 2 exemptions) while maintaining the same intended outcome. This action is to provide greater certainty in the operation of the exemptions. There are exceptions to the carry-over of exemptions for those previously under sections 95 (Duty concession—acquisitions securing financial accommodation), 115H (2) (e) (Property vested in apparent purchaser) and 115H (2) (g) (Property passing to beneficiaries).

New section 115HA replaces the section 95 exemption with amendments to require that when the relevant acquisition is made it is solely to secure finance (section 115HA (2)) and the entity making the acquisition is the same person that provided the finance (section 115HA (3)).

The new section also requires that parties must intend to transfer back the interest when making the acquisition during the **applicable period** being a 5-year period (or longer if the Commissioner determines). Duty is payable if the acquired interests are not transferred back within the applicable period or if there is a change of intent and the borrower does not intend to reacquire the interest before the end of the applicable period.

The previous section 115H (2) (e) provided an exemption by reference to the Chapter 2 exemption from duty under section 56 (Property vested in apparent purchaser). Therein section 56 of the Duties Act effectively has two components— (1) (a) addressing a ‘declaration of trust’ by an apparent purchaser in dutiable property; and (1) (b) a transfer of dutiable property from an apparent purchaser to the real purchasers. The exemption under section 56 (1) (b) is retained in section 115HF. The component under section 56 (1) (a) is not carried over as the concept of a declaration of trust is not provided for under Chapter 3 of the Duties Act and hence there is no associated liability from a declaration of trust.

The exemption previously provided under section 115H (2) (g) referenced a Chapter 2 exemption under section 58 (Property passing to beneficiaries) is omitted. Any inequitable application of duty involving a discretionary trust will be resolved by use of existing discretion for the Commissioner under section 82 (5).

The following table matches the previous provisions with those under the Bill.

Table 1: Corresponding transaction exemptions

Description	Previous section	New section
Secure financial accommodation	95	115HA (amended)
Bankruptcy or winding-up	115H (1)	115HB
Change in trustees	115H (2) (a)	115HC
Transfer to custodian of managed investment scheme	115H (2) (b)	115HD
Transfers in relation to managed investment schemes	115H (2) (c)	115HD
Transfers in relation to registered schemes	115H (2) (d)	115HE
Property vested in apparent purchaser	115H (2) (e)	115HF (amended)
Transfers back from nominee, if the initial transfer from the transferor to the trustee was a chapter 3 transaction	115H (2) (f) 115H (3)	115HG
Property passing to beneficiaries	115H (2) (g)	Not applicable – see section 82 (5)
Transfer of property from one superannuation fund to another	115H (2) (h)	115HH
Transfers between trustees and custodians of superannuation funds or trusts	115H (2) (i) 115H (4)	115HI

The insertion of new section 252 (ga) provides objection rights in relation to decisions on application of the exemptions (as compared to reliance up objection rights to the assessment of duty). However, there are no objection rights in respect of the Commissioner refusing to exercise their discretion to extend the applicable period under section 115HA (7).

- Clause 13** **Declaration required if business transferred**
Section 115B (1)
- Clause 14** **When does liability for duty arise?**
Section 115C
- Clause 16** **Division 3.7.2 heading**
- Clause 20** **Dictionary, definition of *exchanging members***
- Clause 22** **Dictionary, definition of *interposed trust***

These clauses undertake technical amendments.

Clause 16 replaces the words 'Exempt transactions' with 'Exemptions' in the Division 3.7.2 heading for 'top hatting' arrangements. Consequential amendments are therefore required in clauses 20 and 22 for the definitions of *interposed trust* and *exchanging members* which refers to the division heading.

While in clauses 13 and 14 the update is to remove the word 'a' from the phrase 'voluntary transfer of a business'.

Part 3 **Rates Act 2004**

- Clause 24** **Meaning of *average unimproved value***
New section 13A (3)

This clause clarifies the application of average unimproved value for rateable land. Where a parcel of land is subject to the replacement of a Crown lease with a further lease, as provided under section 289 of the *Planning Act 2023*, averaging of the unimproved values will not be restarted.

In other instances, averaging may be restarted from an appropriate date. For example, the parcel of land under the Crown lease could be changed so that it is no longer the same parcel (such as via, subdivision or consolidation). Also, as per section 13A (2), the lease could be varied such as to be subject to a lease variation charge with chargeable variation of a nominal rent lease.

- Clause 25** **End of application of div 5.2**
Section 36 (1) (c)
- Clause 26** **New section 36 (2A)**

Section 36 (1) (c) is subject to amendment to account for changes to the *Unit Titles Act 2001* (Unit Titles Act) under the *Unit Titles Legislation Amendment Act 2023*, where parties can now apply for unit titling earlier in the development process.

Without amendment, section 36 (1) (c) requires that the owner apply under the Unit Titles Act, Part 3 within a 30-day period *beginning* on the day when a Certificate of Occupancy and Use (COU) under the *Building Act 2004* is issued in order for Division 5.2 to continue. The amendments recognise that unit title applications may be made prior to the issue of a COU. In addition, given the greater upfront flexibility for unit title applications, the opportunity to consider a longer period is amended to apply for exceptional circumstances and applications made within 120 days of the issue of the COU.

- Clause 27** **Schedule 1, section 1.1 heading**
- Clause 28** **Schedule 1, section 1.1 (1) and (2)**
- Clause 29** **Schedule 1, section 2.1A heading**
- Clause 30** **Schedule 1, section 2.1A (2) (a)**
- Clause 31** **Schedule 1, section 3.1 heading**
- Clause 32** **Schedule 1, section 3.1 (2) and (3)**
- Clause 33** **Rebate of levy**
Schedule 1, section 3.2
- Clause 34** **Schedule 1, section 3.2 (5), definition of *FES rebate***

These clauses rename the Fire and Emergency Services Levy as the Police, Fire and Emergency Services Levy. The change was announced in the ACT Budget 2023-24.

Part 4 Taxation Administration Act 1999

- Clause 35** **Recovery of tax from mortgagee**
New section 56HA (7A)
- Clause 36** **Recovery of tax from mortgagee of other land**
New section 56N (7A)

These clauses amend the TA Act, sections 56HA and 56N to avoid doubt that section 48 (Tax payable to the commissioner) includes tax payable by a mortgagee.