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**STAMP DUTIES AMENDMENT ACT 1989**

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**No. 55 of 1989**

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**STAMP DUTIES AMENDMENT ACT 1989**

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**No. 55 of 1989**

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**AN ACT to amend the *Stamp Duties Act 1931*****[Royal Assent 21 December 1989]**

**B**E it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

**Short title**

1—This Act may be cited as the *Stamp Duties Amendment Act 1989*.

**Commencement**

2—(1) This Act, except sections 16, 17, 23, 30 (c), 30 (d) and 31 (g), commences on the day on which it receives the Royal Assent.

(2) Sections 16 and 17 shall be deemed to have commenced on 1st January 1988.

(3) Sections 23 and 31 (g) commence on 1st January 1990.

(4) Section 30 (c) and (d) shall be deemed to have commenced on 19th September 1989.

## Principal Act

**3**—In this Act, the *Stamp Duties Act 1931*\* is referred to as the Principal Act.

## Section 3 amended (Interpretation)

**4**—Section 3 (1) of the Principal Act is amended as follows:—

(a) by omitting the definition of “person on section 37” and substituting the following definition:—

“**personal property**” includes an estate or interest in personal property;

(b) by omitting the definition of “premium income”;

(c) by omitting the definition of “receipt” and inserting the following definition:—

“**real property**” includes an estate or interest in real property;

(d) by inserting the following definition after the definition of “unit trust scheme”:—

“**Valuer-General**” means the person appointed as Valuer-General under the *Land Valuation Act 1971*;

## Section 6 amended (Provision of stamps and licences to sell stamps)

**5**—Section 6 (2) of the Principal Act is amended by omitting “as may be prescribed, not exceeding 2.5 per cent of the value of the stamp issued to such person, being stamps—

(a) printed on adhesive paper for the purpose of being affixed to instruments chargeable with duty; or” and substituting “as the Treasurer may determine”.

## Section 7 amended (Refund of value of spoiled or unused stamps)

**6**—Section 7 of the Principal Act is amended by omitting subsection (1A).

## Section 11 amended (Denoting of duties)

**7**—Section 11 (4A) of the Principal Act is amended as follows:—

(a) by omitting “section 12 (f)” and substituting “section 12 (1)”;

\* 22 Geo. V No. 19. For this Act as amended to 1st September 1987, see the continuing Reprint of Statutes. Subsequently amended by No. 94 of 1987 and No. 6 of 1988.

(b) by inserting the following subsection after subsection (4A):—

(4AB) Subsection (4A), in relation to instruments referred to in paragraphs (d), (e), (ea) and (eb) of section 12 (1), only applies to such instruments which are executed on or after 1st January 1990.

**Section 12 amended (Cases in which duty may be denoted by adhesive stamps)**

**8**—Section 12 (1) of the Principal Act is amended by omitting paragraph (a).

**Section 12A amended (Payment of duty by return in certain cases)**

**9**—Section 12A of the Principal Act is amended by inserting the following subsections after subsection (7C):—

(7D) Where an approved person does not lodge a return and pay stamp duty in accordance with subsection (7), a penalty of an amount of 20 per cent of the amount due is payable by that person to the Crown in addition to any other penalty payable under this Act.

(7E) The Commissioner may remit in whole or part any penalty payable under this section.

**Section 15 amended (Late stamping of instruments)**

**10**—Section 15 of the Principal Act is amended as follows:—

(a) by omitting from subsection (1) (c) “an amount, in the case of a receipt, of \$1, and in other cases, of”;

(b) by inserting the following subsection after subsection (1):—

(2) The Commissioner may remit in whole or in part any penalty payable under this section.

**Section 23 repealed**

**11**—Section 23 of the Principal Act is repealed.

**Section 25 amended (Assessment and payment of duty on certain instruments where consideration inadequate)**

**12**—Section 25 of the Principal Act is amended as follows:—

- (a) by omitting from subsection (1) (e) “relevant rights” and substituting “relevant real property”;
- (b) by omitting subsection (2) and substituting the following subsection:—

(2) Where, for the purposes of subsection (1), the Valuer-General determines the unencumbered value of relevant real property and charges the Commissioner a fee for that determination, the Commissioner may recover that fee from the person who is liable to pay duty in respect of any instrument referred to in this section.

- (c) by omitting subsection (5).

**Part III: Division 3A inserted**

**13**—Part III of the Principal Act is amended by inserting the following Division after Division 3:—

***Division 3A—Powers of authorized officers***

**Interpretation of Division**

**27A**—In this Division, unless the contrary intention appears—

“authorized officer” means—

- (a) an employee within the meaning of the *Tasmanian State Service Act 1984* who is authorized in writing by the Commissioner, either generally or in a particular case, to exercise the powers conferred on an authorized officer by this Division; or
- (b) a person appointed as an assessor under section 5 (1);

“books” includes any accounts, document, instrument, register or other record of information or accounting however compiled, recorded or stored.

**Powers of Commissioner and authorized officers**

**27B**—(1) The Commissioner or an authorized officer, at any reasonable time and where there are reasonable grounds for suspecting that in or on premises there are books that are relevant to the assessment and payment of duty, may—

- (a) enter and remain in or on those premises for a reasonable period; and

(b) inspect any such books.

(2) The Commissioner or an authorized officer in the exercise of the powers referred to in subsection (1), may require any person—

- (a) to produce any books which relate to, or which the Commissioner or authorized officer reasonably suspects relate to, the assessment and payment of duty and which, at the time of the request, is in the possession or under the control of that person; and
- (b) to produce a statement, written in the English language, setting out the particulars contained in any of those books that are not written in the English language; and
- (c) to answer any question with respect to any of those books or that statement; and
- (d) who was party to the compilation of the books to make a statement providing any explanation that the person concerned is able to provide as to any matter relating to the compilation of books or to any matter to which the books relate.

(3) Where any books are produced under this section, the Commissioner or an authorized officer—

- (a) may take and retain possession of the books for such period as is necessary to enable the books to be inspected and copies of, or extracts from, the books to be made or taken by or on behalf of the Commissioner; and
- (b) while those books are in their possession, shall permit a person who would be entitled to inspect the books if they were not in their possession, to inspect the books at any reasonable time.

(4) Where a person takes and retains possession of any books under this section, that person shall give a receipt with respect to the matter to the person from whom it was so taken.

(5) Where a person has a lien on any books to which this section applies, nothing done under this section in relation to the books prejudices the lien.

(6) It is not lawful for an authorized officer to enter or remain in or on any premises without producing, when requested to do so by a person apparently in charge of those premises, an authority in writing by the Commissioner stating that the authorized officer is authorized to enter and remain in those premises.

### **Power to impound instruments**

27C—(1) Where an instrument that is required to be stamped under this Act is produced to an authorized officer for the purposes of inspection under section 27B or an assessment or reassessment under this Act and the instrument is not stamped or is insufficiently stamped, the authorized officer may impound the instrument and deliver it to the Commissioner.

(2) The Commissioner—

- (a) may retain any instrument produced under section 27B or lawfully in the Commissioner's possession that is chargeable with duty and is not stamped or is insufficiently stamped until it is stamped or sufficiently stamped; and
- (b) while an instrument is in the possession of the Commissioner, shall permit a person who would be entitled to inspect the instrument if it were not in the possession of the Commissioner to inspect it at any reasonable time.

(3) Where an instrument has been retained under subsection (2), the Commissioner may require the person by whom the duty on the instrument was payable to have it stamped or sufficiently stamped in accordance with section 15 within such period of not less than 15 days as the Commissioner may specify.

(4) Where a person fails or neglects to comply with a requirement under subsection (3), the unpaid duty, together with any penalty payable under section 15, is recoverable from that person in accordance with section 32.

(5) Upon payment of duty and penalty under subsection (4), the instrument shall be stamped or sufficiently stamped.

(6) Where an authorized officer impounds an instrument under subsection (1), the authorized officer shall give a receipt with respect to that matter to the person from whom it was so impounded.



**Evidence**

27D—(1) A certificate purporting to be signed by the Commissioner certifying any or all of the following matters:—

- (a) that a person specified in the certificate was an authorized officer at a time or during a period so specified;
- (b) that any specified assessment or reassessment of duty has been made in accordance with this Act;
- (c) that the amount of any specified duty payable under this Act has not been paid on the date on which it was due to be paid and, where appropriate, that the duty had not been paid at the time when the certificate was issued;
- (d) that a person specified in the certificate is liable to pay a specified duty in respect of a specified period;
- (e) that an application was or was not received from or on behalf of a specified person;
- (f) that a person specified in the certificate was required to furnish specified information and failed or neglected to do so—

is admissible in any proceedings under this Act and is evidence of the matters so certified.

(2) The production of a document signed by the Commissioner purporting to be a copy of or extract from any notice of assessment or reassessment, document, instrument, return, statement or licence is evidence, where applicable—

- (a) that an assessment or reassessment was made; and
- (b) that the notice of assessment or reassessment, document, instrument, return, statement or licence was issued by the Commissioner; and
- (c) of the matters specified in the notice of assessment or reassessment, document, instrument, return, statement or licence—

and is admissible in any proceedings under this Act without production of the original.

**Offences**

27E—(1) Any person who—

- (a) prevents, obstructs or hinders or attempts to prevent, obstruct or hinder the Commissioner or an authorized officer from exercising any power conferred under this Division; or

- (b) fails to provide reasonable assistance to the Commissioner or an authorized officer in the exercise of any such power; or
- (c) fails to comply with a requirement made under section 27B (2)—

is guilty of an offence and is liable on summary conviction to a fine not exceeding 50 penalty units, and, in the case of an offence under paragraph (c), to an additional fine not exceeding 5 penalty units for every day during which the offence continues.

(2) A person is not guilty of an offence under subsection (1) (c) by reason of failing to answer any question referred to in section 27B (2) (c) if that person proves to the satisfaction of the court that he or she did not know, and could not with reasonable diligence have ascertained, the answer to the question.

(3) A person is not excused from answering any question if required to do so under section 27B (2) (c) on the ground that the answer might tend to incriminate that person or make that person liable to a penalty, but the information provided shall not be admissible against that person in any civil or criminal proceedings except in proceedings for an offence under section 76.

#### **Part IV: Division 1 repealed and substituted**

14—Division 1 of Part IV of the Principal Act is repealed and the following Division is substituted:—

#### ***Division 1—Duty on relevant acquisitions in land-holding corporations and unit trusts***

#### **Interpretation: Division 1 of Part IV**

33—(1) In this Division, unless the contrary intention appears—  
 “acquire”, in relation to an interest in a corporation, includes acquire an interest by virtue of—

- (a) the allotment or issue of any share which is not the initial allotment of shares to a subscriber to a memorandum of the corporation; or
- (b) the redemption, surrender or cancellation of any share by the corporation or by any other person; or

(c) the variation, abrogation or alteration of a right pertaining to any share—

but does not include an acquisition—

(d) that occurs solely as the result of—

- (i) the appointment of a receiver or trustee in bankruptcy; or
- (ii) the appointment of a liquidator; or
- (iii) the making of a compromise or arrangement under Part VIII of the *Companies (Tasmania) Code* which has been approved by the court; or
- (iv) the distribution of the estate of a deceased person; or
- (v) an arrangement to obtain finance (whether by renewal or otherwise); or
- (vi) an arrangement to obtain an extension of the period for which finance was obtained under an earlier arrangement; or
- (vii) an arrangement to enforce or terminate an arrangement for the provision of finance;

“associated person”, in relation to a corporation, means, subject to subsection (2)—

- (a) a related corporation; or
- (b) a related person; or
- (c) a director or secretary of the corporation or a related corporation; or
- (d) a person who is entitled to any shareholding in the corporation or a related corporation; or
- (e) a relative of any person referred to in paragraph (b), (c) or (d); or
- (f) a corporation in which the corporation or any person referred to in paragraph (c), (d) or (e) is entitled to any shareholding—

but excludes a person to whom subsection (2) applies;

“corporation” has the same meaning as in the *Companies (Tasmania) Code*;

“director” has the same meaning as in the *Companies (Tasmania) Code*;

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

(b) will occur in the event that a discretion conferred under the trust is not exercised—

but does not include a trust that is solely a charitable trust;

**“entitled”** means beneficially entitled;

**“interest”**, in relation to a corporation, means a shareholding in the corporation that entitles the holder to participate (otherwise than as a creditor or other person to whom the corporation is liable) in the distribution of the property of the corporation on the winding up of the corporation and includes a majority interest and a further interest;

**“further interest”**, in relation to a corporation, means an interest in the corporation which is in addition to a majority interest in the corporation;

**“land-holding corporation”** means a corporation as described in section 35;

**“majority interest”**, in relation to a corporation, means a shareholding in the corporation that entitles the holder to participate (otherwise than as a creditor or other person to whom the corporation is liable) in the distribution of the property of the corporation on the winding up of the corporation to an extent greater than 50 per cent of the value of property distributable to all the shareholders in the corporation;

**“majority shareholder”**, in relation to a corporation, means a person who has a substantial shareholding in the corporation in accordance with section 136 of the *Companies (Tasmania) Code* as if the reference in that section to the prescribed percentage were a reference to 50 per cent;

**“private unit trust scheme”** means a unit trust scheme if, at the time of the acquisition of a unit, the deed relating to the scheme—

- (a) has not been approved for the purposes of Division 6 of Part IV of the *Companies (Tasmania) Code* or the corresponding provisions of the law in force in another State or Territory; or
- (b) has been so approved but—
  - (i) no units have been issued to the public; or
  - (ii) fewer than 50 persons are beneficially entitled to units under the scheme; or
  - (iii) 20 or fewer persons are beneficially entitled to 75 per cent or more of the total issued units under the scheme;

**“related corporation”** means a related corporation within the meaning of section 7 (5) of the *Companies (Tasmania) Code*;

**“related persons”** means, subject to subsection (3)—

- (a) natural persons who are spouses of each other or between whom the relationship is that of parent and child; and
- (b) related corporations; and
- (c) a trustee and another trustee if there is any beneficiary common to the trusts of which they are trustees, whether the beneficiary has a vested share or is contingently entitled or may benefit from a discretionary trust; and
- (d) a natural person and a corporation if the natural person is a majority shareholder, director or secretary of the corporation or a related corporation; and
- (e) a natural person and a trustee if the natural person is a beneficiary under the trust of which the trustee is a trustee, whether the person has a vested share or is contingently entitled or may benefit from a discretionary trust; and
- (f) a corporation and a trustee if—
  - (i) the corporation, a majority shareholder, director or secretary of the corporation is a beneficiary of the trust of which the trustee is a trustee; or

- (ii) a related corporation to the corporation is a beneficiary of the trust of which the trustee is a trustee—

whether any such beneficiary has a vested share or is contingently entitled or may benefit from a discretionary trust; and

- (g) persons who acquire interests in a land-holding corporation by virtue of acquisitions that together form or arise from substantially one transaction or one series of transactions;

**“relative of a person”** means—

- (a) a child or remoter lineal descendant of the person or the spouse of the person; and
- (b) a parent or remoter lineal ancestor of the person or the spouse of the person; and
- (c) a brother or a sister of the person or the spouse of the person; and
- (d) the spouse of the person and a spouse of any person referred to in paragraph (a), (b) or (c);

**“relevant acquisition”** means an acquisition as described in section 36;

**“share”** means a share in the share capital of a land-holding corporation and includes stock and an interest in a share or stock and **“shareholding”** has a corresponding meaning;

**“spouse”** includes a *de facto* spouse;

**“subsidiary”** means—

- (a) a subsidiary corporation within the meaning of section 7 of the *Companies (Tasmania) Code*; or
- (b) the trustee of any trust if the corporation or a subsidiary corporation of the corporation—
  - (i) is entitled to a share or interest in the trust, whether vested or contingent; or
  - (ii) in the case of a discretionary trust, may benefit from that trust—

and, at the time of the relevant acquisition, the corporation or subsidiary corporation is entitled to more than 50 per cent of the value of the property held by the trustee as trustee of the trust (being the value determined on the basis of a distribution of the property at that time); or

(c) any other corporation, if the trustee of a trust to which paragraph (b) applies in which the corporation or a subsidiary corporation—

(i) is entitled to a share or interest, whether vested or contingent; or

(ii) in the case of a discretionary trust, may benefit from that trust—

is entitled to participate (otherwise than as a creditor or other person to whom the other corporation is liable) in a distribution of the property of the other corporation on the winding up of the corporation to an extent greater than 50 per cent of the value of the property distributable to all the shareholders in the other corporation; or

(d) any other corporation or the trustee of any other trust that is a subsidiary of a corporation that is a subsidiary of another corporation;

**“unit”** means any right or interest of a beneficiary under a unit trust scheme, and includes an interest in a unit;

**“unit trustee”** means a trustee of a private unit trust scheme.

(2) In relation to a loan of money by a corporation or subsidiary, a person is not an associated person in relation to the corporation if the Commissioner is satisfied that the money was not lent to the person for the purpose of defeating the object of this Division.

(3) In relation to an acquisition of an interest in a corporation, persons are not related persons if the Commissioner is satisfied that the persons were not acting in concert in relation to that acquisition.

(4) For the purpose of determining the number of persons beneficially entitled to units in a private unit trust scheme, the following units are deemed to be held by one person:—

(a) units to which—

(i) a land-holding corporation is entitled; or

(ii) a person who is entitled to more than 50 per cent of the issued share capital of the corporation is entitled; or

(iii) a related corporation is entitled; and

(b) units to which—

(i) a trustee of a trust (including a unit trust scheme) is entitled; or

- (ii) if the trust is a discretionary trust, a person who has an entitlement on the distribution of that trust is entitled; or
  - (iii) a person whose share or interest in the trust, whether vested or contingent, constitutes more than 50 per cent of the trust property or of the issued units in the trust is entitled.
- (5) This Division applies to a private unit trust scheme as if—
- (a) the private unit trust scheme were a corporation; and
  - (b) a unit in a private unit trust scheme were a share in the corporation; and
  - (c) the acquisition of units in a private unit trust scheme were the acquisition of shares in the corporation; and
  - (d) a reference to the memorandum and articles of association of a corporation were a reference to the constituent documents of a private unit trust scheme; and
  - (e) a reference to a winding up of a corporation were a reference to a termination of a private unit trust scheme.

#### **Entitlement on distribution of property of a corporation or trust**

34—(1) Subject to subsections (2), (3) and (4), the entitlement of a person to participate (otherwise than as a creditor or other person to whom the corporation is liable) in the distribution of the property of the corporation on a winding up of the corporation shall be determined as if the winding up were carried out in accordance with the memorandum and articles of association of the corporation and any law relevant to the winding up.

(2) Where the Commissioner is of the opinion that, in order to defeat the purposes of this Division—

- (a) the memorandum or articles of association for a corporation have been or may be altered; or
- (b) the rights conferred by shares in the corporation have been or may be varied; or
- (c) shares in the corporation have been or may be substituted or replaced with other shares in the corporation—

the entitlement of a person pursuant to this section shall be determined in accordance with subsection (3) or (4).

(3) Where any of the actions or events referred to in subsection (2) have occurred, the entitlement of a person under this section shall be determined—

- (a) as if the action or event did not occur; and



(b) as if the person had, immediately prior to the winding up, exercised all powers and discretions exercisable by the person by reason of having acquired an interest in the corporation in such manner as to maximize that amount—

(i) to effect or compel an alteration to the memorandum or articles of association; or

(ii) to vary the rights conferred by shares in the corporation; or

(iii) to effect or compel the substitution or replacement of shares in the corporation with other shares in the corporation.

(4) Where the Commissioner is of the opinion that any of the actions or events referred to in subsection (2) may occur, the entitlement of a person under this section shall be determined as if the person had, immediately prior to the winding up, exercised all powers and discretions exercisable by the person by reason of having acquired an interest in the corporation in such manner as to maximize that amount—

(a) to effect or compel an alteration to the memorandum or articles of association; or

(b) to vary the rights conferred by shares in the corporation; or

(c) to effect or compel the substitution or replacement of shares in the corporation with other shares in the corporation.

(5) The entitlement of a person on the distribution of a trust is the greatest entitlement that the person could derive at any time from the trust whether by the fulfilment of any condition, the outcome of any contingency or the exercise of any power or discretion or otherwise.

(6) For the purpose of subsection (5), a person who may benefit from, or the trust property of another trust that may comprise or be augmented by a benefit from, a discretionary trust is entitled to—

(a) the property subject to the discretionary trust unless the Commissioner determines otherwise; or

(b) such part of that property as the Commissioner determines.

**Land-holding corporations**

35—(1) In this Division, a reference to a land-holding corporation is a reference to a corporation—

- (a) whose shares in the capital of which are not listed on a recognized stock exchange within the meaning of the *Securities Industry (Tasmania) Code*; and
- (b) which, at the date of a relevant acquisition, it and any of its subsidiaries—
  - (i) are together entitled to real property in Tasmania and the unencumbered value of the real property is not less than \$1 000 000; and
  - (ii) the value of all real property to which the corporation and any of its subsidiaries are entitled, whether in Tasmania or elsewhere, is 80 per cent or more of the value of all property to which they are entitled excluding property referred to in subsection (2).

(2) The following property of a land-holding corporation or of any of its subsidiaries is not included for the purpose of calculating the value of property under subsection (1) (b):—

- (a) cash or money in an account at call;
- (b) negotiable instruments, and money on deposit with any person;
- (c) money lent by the corporation or a subsidiary to—
  - (i) an associated person; or
  - (ii) any person at call or in terms that require or allow full repayment to the company within 12 months after the money is lent;
- (d) any share or interest in a subsidiary;
- (e) any prescribed property unless it is shown to the Commissioner's satisfaction that a reason for the corporation's ownership is not for the purpose of defeating the object of this Division.

(3) A corporation is entitled to real property or property at the date of a relevant acquisition to the extent that a subsidiary is entitled to that real property or property.

**Relevant acquisitions**

36—(1) A relevant acquisition by a person or a person and a related person is an acquisition occurring on or after 1st January 1990—

- (a) of an interest that alone constitutes a majority interest in a land-holding corporation; or
- (b) of an interest that together with any other acquisitions of interests in the corporation during the 3 years immediately preceding the day on which the acquisition occurs, constitutes a majority interest in the corporation, whether or not those other acquisitions occurred—
  - (i) before 1st January 1990; or
  - (ii) at a time when the corporation was not a land-holding corporation; or
- (c) of a further interest in the corporation by a person or a person and a related person who already has a majority interest in that corporation.

(2) For the purposes of subsection (1) (b), where a person who acquires an interest in a land-holding corporation—

- (a) becomes entitled to a right to acquire a further shareholding in the corporation within a period of 3 years of that acquisition; and
- (b) exercises that right—

that person is deemed to acquire that further shareholding within that period notwithstanding that the right is exercised after the expiration of that period.

(3) Where the acquisition of an interest in a land-holding corporation is evidenced by a transfer of shares, the acquisition is deemed to occur on the date on which it is first executed.

**Lodgment of returns relating to relevant acquisitions**

37—(1) Where, a person acquires a relevant acquisition, that person shall lodge with the Commissioner a return in respect of that acquisition.

(2) Where a person and a related person acquire a relevant acquisition, one of those persons shall lodge with the Commissioner a return in respect of that acquisition.

(3) A return referred to in subsections (1) and (2) shall be—

- (a) in a form approved by the Commissioner; and

(b) lodged within 30 days after the occurrence of the relevant acquisition.

(4) A return lodged under this section is deemed to be an instrument executed on the day on which the relevant acquisition occurs.

### **Duty chargeable on returns**

38—(1) Subject to subsection (5), a return lodged under section 37 is chargeable with duty as provided by this section.

(2) If a person acquires, or a person and a related person acquire, a relevant acquisition in a land-holding corporation and at the date of that acquisition the real property to which it is entitled under section 39 (3) does not exceed \$1.5m, the duty chargeable on the return shall be calculated in accordance with the following formula:—

$$\left[ \frac{A - \$1\,000\,000}{\$500\,000} \right] \times B + \left[ 1 - \left\{ \frac{A - \$1\,000\,000}{\$500\,000} \right\} \right] \times C$$

where—

A is the value of the real property in Tasmania to which the corporation is entitled as provided in section 39 (3) at the time of the relevant acquisition; and

B is the duty calculated under item 7 (a) of Schedule 2 on the dutiable value determined under section 39 (1); and

C is the duty calculated under item 36 (a) of Schedule 2 on the value of the shares comprised in the relevant acquisition had the acquisition been effected by an instrument chargeable under that item.

(3) If a person acquires, or a person and a related person acquire, a relevant acquisition in a land-holding corporation and at the date of that acquisition the value of the real property to which it is entitled under section 39 (3) exceeds \$1.5m, the duty chargeable on the return shall be calculated on the dutiable value of the relevant acquisition determined under section 39 (1) at the rate provided under item 7 (a) of Schedule 2.

(4) There shall be deducted from the duty chargeable on a return, any duty paid under item 36 (a) of Schedule 2 in respect of any instrument effecting or evidencing the acquisition of any interest, except any duty previously deducted under this subsection in respect of a return previously lodged under section 37.

(5) Where a person who is exempted from the payment of duty under item 7 of Schedule 3 or from all duties under Schedule 2 acquires a relevant acquisition, a return lodged under section 37 in respect of that acquisition, is not chargeable with duty under this section.

### **Dutiable value of relevant acquisitions**

39—(1) The dutiable value of a relevant acquisition is calculated in accordance with the following formula:—

(a) where it is a relevant acquisition within the meaning of section 36 (1) (a)—

$$D = P \times R$$

(b) where it is a relevant acquisition within the meaning of section 36 (1) (b) and that relevant acquisition was acquired on or before 1st January 1993—

$$D = (P - G) \times R$$

(c) where it is a relevant acquisition within the meaning of section 36 (1) (b) and that relevant acquisition was acquired after 1st January 1993—

$$D = P \times R$$

(d) where it is a relevant acquisition within the meaning of section 36 (1) (c)—

$$D = (P - H) \times R$$

where—

D is the dutiable value of the relevant acquisition; and

P is the proportion of the property of the land-holding corporation which the person would be entitled under subsection (2) after the relevant acquisition; and

R is the unencumbered value of the real property in Tasmania to which the land-holding corporation is entitled at the date of the acquisition under subsection (3); and

G is the proportion of the property of the land-holding corporation which the person would be entitled under subsection (2) at 1st January 1990; and

H is the proportion of the property of the land-holding corporation which the person would be entitled under subsection (2) immediately before the relevant acquisition.

(2) The proportion of the property of a land-holding corporation that a person is, or a person and a related person are, entitled to is the same proportion as they would be entitled to if the corporation were wound up.

(3) The unencumbered value of the real property in Tasmania to which a land-holding corporation is entitled at any time is the sum of—

- (a) the unencumbered value of the real property to which the corporation is entitled; and
- (b) the amount to which the land-holding corporation would be entitled in respect of the unencumbered value at that time of real property to which the subsidiary is, or all subsidiaries are, entitled, if the property of a subsidiary or of all subsidiaries in the chain of relationships were to be distributed at that time, without having regard to any liabilities.

### **Valuation of real property**

40—(1) The Commissioner may—

- (a) require a person who is required to lodge a return under section 37 to furnish evidence concerning the unencumbered value of any real property; and
- (b) assess duty in accordance with the evidence of value referred to in paragraph (a).

(2) Where the Commissioner is not satisfied with the evidence of value furnished under subsection (1), the Commissioner may assess the duty chargeable on the basis of a valuation made at the request of the Commissioner by the Valuer-General or a person authorized by the Valuer-General for that purpose.

(3) Where a valuation is made pursuant to subsection (2) and the Commissioner is charged with a fee for that valuation, the Commissioner may recover that fee from a person referred to in subsection (1) (a).

### **Liability for duty**

41—(1) Where a return is required to be lodged under section 37 (1)—

- (a) the person who is required to lodge the return; and
- (b) the land-holding corporation in which the interest is acquired—

are jointly and severally liable for the duty chargeable and any penalty payable in respect of that return.

(2) Where a return is required to be lodged under section 37 (2)—

- (a) the person and any related person acquiring the relevant acquisition in respect of which the return is required to be lodged; and
- (b) the land-holding corporation in which the interest is acquired—

are jointly and severally liable for any duty chargeable and any penalty payable in respect of that return.

(3) Any person who has paid any duty or penalty in respect of a return is entitled to recover from any other person who is jointly or severally liable, other than the land-holding corporation, a proper proportion of the amount paid.

### Section 56A repealed

15—Section 56A of the Principal Act is repealed.

### Section 59 amended (Statements to be lodged by registered persons with Commissioner)

16—Section 59 of the Principal Act is amended as follows:—

- (a) by omitting from subsection (3) (b) “Tasmania, but a registered person shall supply to the Commissioner such particulars of the matters referred to in this subsection as are in any particular case required by the Commissioner” and substituting “Tasmania; or”;
- (b) by adding in subsection (3) the following paragraph after paragraph (b):—
  - (c) any rental business which forms part of the gross profit on gaming for the purpose of calculating tax payable in respect of a casino licence issued under the *Northern Casino Act 1978* or the *Wrest Point Casino Licence and Development Act 1968*—

but a registered person shall supply to the Commissioner such particulars relating to the matters referred to in this subsection as the Commissioner may require.

### Section 59C amended (Transactions with unregistered persons)

17—Section 59C (7) of the Principal Act is amended as follows:—

- (a) by inserting the following paragraph after paragraph (b):—
  - (ba) with a person carrying on rental business in Tasmania who is not required to be registered under this Division by virtue of section 58 (3);

- (b) by inserting in paragraph (c) “except a body corporate carrying on the business of banking” after “Commonwealth” secondly occurring.

**Section 65 amended (Special provisions relating to the furnishing of returns of sales and purchases of marketable securities in certain cases)**

**18**—Section 65 of the Principal Act is amended by inserting in subsection (3) the following paragraph after paragraph (b):—

(ba) any sale or purchase of marketable securities made by a broker on the broker's own account within 10 clear days (not including any day on which the stock exchange of which the broker is a member is closed)—

- (i) in the case of a sale, of the purchase by the broker of those marketable securities; or
- (ii) in the case of a purchase, of the sale by the broker of those marketable securities;

**Section 66 amended (Returns as to sales or purchases of marketable securities in certain cases)**

**19**—Section 66 (1) of the Principal Act is amended by omitting paragraph (b) and substituting the following paragraph:—

(b) pay to the Commissioner as duty in respect of the sales and purchases included in the return an amount calculated in accordance with subsection (4).

**Section 69A amended (Payment of duty in respect of transfers of marketable securities recorded in branch register kept outside State)**

**20**—Section 69A of the Principal Act is amended by omitting subsections (12) and (13).

**Section 70 amended (Special provisions relating to contracts of sale)**

**21**—Section 70 of the Principal Act is amended as follows:—

(a) by omitting subsections (1) and (2) and substituting the following subsection:—

(1) For the purposes of this section and of item 6 in Schedule 2 “contract of sale” includes—

- (a) an agreement for the sale, disposal, exchange, conveyance or transfer of real property; and



- (b) an assignment of the rights of a purchaser under an agreement under paragraph (a); and
- (c) a statutory declaration made pursuant to section 70B.
- (b) by omitting from subsection (4) “Where” and substituting “Subject to section 70C, where”;
- (c) by omitting from subsection (5) “Where” and substituting “Subject to section 70C,”.

### **Sections 70B and 70C inserted**

**22**—After section 70A of the Principal Act, the following sections are inserted in Division 5:—

#### **Provisions relating to trustees**

**70B**—(1) Where real property is vested in a person as trustee and the beneficial interest in the real property is transferred to that person, the person shall, not later than 14 days after the transfer, make a statutory declaration setting out full details of the transfer.

(2) Where real property is vested in a person and—

- (a) that person enters into an agreement for the disposal of the real property to another person as trustee; and
- (b) before the conveyance is executed the first-mentioned person is appointed trustee in place of the other person—

the first-mentioned person shall, not later than 14 days after being appointed trustee, make a statutory declaration setting out full details of the agreement for the disposal of the real property.

(3) Where real property is vested in a person and that person is trustee of a trust and the beneficial interest in the real property is transferred to the trust, the person shall, not later than 14 days after the transfer, make a statutory declaration setting out full details of the transfer.

(4) A statutory declaration made pursuant to this section—

- (a) is deemed to be an instrument and is dutiable as a contract of sale; and
- (b) shall be in a form approved by the Commissioner.

**Provisions relating to transfers**

70c—(1) Where the purchaser in a contract of sale is not the transferee in the conveyance or transfer made pursuant to that contract of sale, duty is chargeable as follows:—

- (a) on the contract of sale, under item 6 of Schedule 2;
- (b) on the conveyance made pursuant to that contract of sale, under item 7 (a) of Schedule 2.

(2) Duty is not chargeable on a contract of sale where—

- (a) the Commissioner is of the opinion that the purchaser in that contract of sale was, at the time when that contract of sale was executed, acting as the agent of the transferee in the conveyance or transfer made pursuant to that contract; and
- (b) the Commissioner endorses the conveyance or transfer accordingly; and
- (c) the conveyance or transfer is duly stamped.

(3) Where—

- (a) the Commissioner is of the opinion that the purchaser in a contract of sale entered into the contract with the intention that the property be transferred to a corporation which is yet to be incorporated; and
- (b) at the time the contract of sale was entered into action was being taken to incorporate the corporation; and
- (c) duty has been paid on the contract of sale—

a conveyance or transfer of the property by the vendor under the contract of sale to the corporation after it has been incorporated is chargeable with duty under item 7 (b) of Schedule 2.

**Section 71A amended (Interpretation: Division 6A, Part IV)**

23—Section 71A (1) of the Principal Act is amended by inserting the following paragraph after paragraph (ja) in the definition of “exempt account”:—

- (jb) an account kept by the Commission for Conservation of Antarctic Marine Living Resources;

**Section 74 amended (Duty to be paid on certain applications under the *Traffic Act 1925*)**

**24—**Section 74 of the Principal Act is amended as follows:—

(a) by omitting from subsection (4) (b) “, and the amount of duty specified in the assessment may be recovered from the applicant in accordance with section 32”;

(b) by inserting the following subsections after subsection (4B):—

(4C) A person who is liable to pay a duty under subsection (4) is, in addition to that duty, liable to a penalty of an amount equal to the amount of duty payable under that subsection.

(4D) Any duty payable under subsection (4) and any penalty imposed under subsection (4C) is payable—

(a) where a declaration was lodged under subsection (3) on behalf of an applicant by the holder of a certificate of exemption granted under subsection (5), by the holder of that certificate; or

(b) in any other case, by the applicant.

(4E) Any amount payable under this section may be recovered in accordance with section 32.

(4F) the Commissioner may remit in whole or in part any penalty payable under this section.

(c) by omitting subsection (6A) and substituting the following subsection:—

(6A) A certificate of exemption granted under subsection (5) is issued on the condition that the holder of the certificate—

(a) lodges with the registering authority a notice in respect of each used motor vehicle or trailer sold or disposed of; and

(b) states the full and true sale price obtained for that vehicle or trailer as provided in the notice; and

(c) pays any amount due by the holder of the certificate under subsection (4) or (4C); and

(d) complies with any request made by the Commissioner under section 27B; and

(e) complies with any other conditions which the Commissioner may from time to time determine.

(d) by inserting the following subsections after subsection (6C):—

(6D) The holder of a certificate of exemption granted under subsection (5) who states in a notice an amount for the sale price obtained for a used motor vehicle or trailer that is false or misleading is guilty of an offence and is liable on summary conviction to a fine not exceeding 50 penalty units.

(6E) It is a defence to a charge under subsection (6D) if it is proved that at the time the notice was lodged, the defendant believed on reasonable grounds that the sale price stated on that notice was neither false nor misleading.

(e) by inserting in subsection (10) the following definition after the definition of “new motor vehicle”:—

“notice” means a written notification which under the *Traffic Act 1925* is required to be lodged with the registering authority by the owner of a motor vehicle or trailer upon the sale or other disposal of that motor vehicle or trailer;

#### **Section 74A amended (Special provisions as to leases)**

**25**—Section 74A of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:—

(1) Where the rent reserved by a lease is not, at the time of the execution of the lease, ascertainable from the terms of the lease as a sum certain, duty is payable in the first instance on that part of the rental which is fixed and ascertainable.

#### **Section 75 amended (Special provision for unlimited bank mortgages)**

**26**—Section 75 of the Principal Act is amended by omitting from subsection (1) “duty may” and substituting “duty shall”.

#### **Section 76 amended (Offences)**

**27**—Section 76 of the Principal Act is amended as follows:—

(a) by omitting subsections (4), (4A), (4B), (4C) and paragraphs (a), (b) and (c) of subsection (5);

(b) by omitting subsection (5B) and substituting the following subsection:—

(5B) A person who is guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding 10 penalty units.

(c) by omitting from subsection (10) “item 15” and “item 14” and substituting “item 9” and “item 8” respectively;

(d) by omitting from subsection (11) “Division 1 of Part IV or”.

### Section 79 amended (Refunds of excess duty)

28—Section 79 (1) of the Principal Act is amended by inserting “, section 38,” after “section 12A”.

### Section 80 amended (Regulations)

29—Section 80 of the Principal Act is amended by omitting subsection (3).

### Schedule 2 amended (Scales and Rates of Duties)

30—Schedule 2 to the Principal Act is amended as follows:—

(a) by omitting paragraphs (a) and (b) from item 16 in Part I and substituting the following paragraphs:—

(a) where the term of the lease is for a period of less than 12 months

1 per cent of the total rent payable for the term of the lease or \$5, whichever is the greater.

(b) where the term of the lease is for a period of 12 months or more or for an indefinite term

1 per cent of the equivalent of the yearly rental or \$5, whichever is the greater.

(b) by omitting item 26 of Part I;

(c) by omitting from paragraph (a) of item 31 in Part II all the words in the column headed “Duty or rate payable” and substituting the following:—

“8 per cent of the amount of premium paid or payable in respect of the grant or issue of the policy.”

- (d) by omitting from paragraph (b) of item 31 in Part II all the words in the column headed "Duty or rate payable" and substituting the following:—

"8 per cent of the amount of the renewal premium".

### Schedule 3 amended (Instruments exempted from Duty)

31—Schedule 3 to the Principal Act is amended as follows:—

- (a) by adding at the end of item 16 in Part I the following:—  
"Any residential lease.";
- (b) by adding at the end of item 25 in Part I the following:—  
"Any instrument or statutory declaration made under section 71 in respect of an addition to a complying Superannuation Fund within the meaning of the *Income Tax Assessment Act 1936* of the Commonwealth."
- (c) by omitting from item 31 (a) (iii) in Part I "to Australia from another country or from Australia to another country";
- (d) by omitting from item 31 (a) (iv) in Part I "international";
- (e) by omitting from item 31 (b) (vi) in Part I "sea to Australia from another country or from Australia to another country; or" and substituting "sea;";
- (f) by omitting from item 31 (b) (vii) in Part I "international transit for fee or reward of any goods." and substituting "transit for fee or reward of any goods; or";
- (g) by adding the following subparagraph after subparagraph (vii) of item 31 (b) in Part I:—  
(viii) A policy of insurance taken out by the Commission for Conservation of Antarctic Marine Living Resources.
- (h) by omitting from item 39 in Part I "An application made by a person who was the owner of the motor vehicle or trailer when it was last registered, whether that registration was effected in this State or elsewhere" and substituting the following:—  
"An application made in respect of a motor vehicle or trailer by the person in whose name such motor vehicle or trailer was last registered, providing duty has been paid under this Act or a corresponding Act or law of a State or Territory of the Commonwealth on, or in relation to, a previous application to register that motor vehicle or trailer".
- (i) by omitting Part II.

**Schedule 4 amended (Rules to be applied in calculation of Duty)**

**32—Schedule 4 is amended as follows:—**

- (a) by omitting rules 1 (c) and 1 (d);
- (b) by omitting from rule 3 (e) “his security.” and substituting “the mortgagee’s security;”;
- (c) by adding in rule 3 the following paragraphs after paragraph (e):—

(f) where a security creates a charge upon property in Tasmania and property outside Tasmania, the duty chargeable under this Act in respect of the security shall be calculated by reference only to that part of the amount to be paid or repaid under the security that bears to the total amount to be paid or repaid the same proportion as the value of the property in Tasmania bears to the total value of the property subject to the charge; or

(g) where—

(i) a security creates a charge upon property outside Tasmania and not upon property in Tasmania; and

(ii) duty has been paid under a corresponding Act or law of a State or Territory of the Commonwealth on or in relation to the security—

the duty chargeable under this Act in respect of the security shall, subject to any exemption under this Act, be the duty specified in item 11 of Schedule 2.

(d) by adding the following rules after rule 3:—

4. Duty is not chargeable on a policy of insurance which is issued, or the renewal of which is effected, in Tasmania to the extent to which the amount insured under the policy relates to—

(a) property which, at the time of issue or renewal, is outside Tasmania; or

(b) a risk concerning an act or omission which, in the normal course of events, can only occur outside Tasmania.

4A. For the purposes of calculating the duty payable on a policy of insurance, the premium shall be the premium including any discount, commission, tax or charge other than stamp duty but excluding any portion of the premium that is paid by way of reinsurance effected in Tasmania with another insurer.

- (e) by omitting from rule 5 (d) “except in the case of a receipt in the body of the instrument for the consideration paid on a conveyance, mortgage, or other transaction given effect to by the instrument and in respect of which the instrument is subject to duty, which receipt shall be ignored”.

**Amendments relating to penalties**

**33**—The Principal Act is amended as set out in Schedule 1.

**Repeal of *Stamp Duties (Receipts) Act 1970***

**34**—The *Stamp Duties (Receipts) Act 1970* is repealed

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**SCHEDULE 1****Section 33****AMENDMENTS OF PRINCIPAL ACT RELATING TO  
PENALTIES**

1. Section 12A (11)—Omit “penalty not exceeding \$500” and substitute “fine not exceeding 50 penalty units”.
2. Section 12A (12)—Omit “penalty not exceeding \$500” and substitute “fine not exceeding 50 penalty units”.
3. Section 60B (1)—Omit “Penalty: \$500” and substitute “Penalty: Fine not exceeding 25 penalty units”.
4. Section 70 (6) (c)—Omit “to a penalty of \$200” and substitute “on summary conviction to a fine not exceeding 50 penalty units”.
5. Section 70A (3)—Omit “penalty not exceeding \$1 000” and substitute “fine not exceeding 50 penalty units”.
6. Section 76 (1)—Omit “Penalty: \$200” and substitute “Penalty: Fine not exceeding 50 penalty units”.
7. Section 76 (2)—Omit “Penalty: \$100” and substitute “Penalty: Fine not exceeding 50 penalty units”.
8. Section 76 (8)—Omit “penalty of \$200” and substitute “fine not exceeding 10 penalty units”.
9. Section 76 (9A)—Omit “to a penalty of \$1 000” and substitute “on summary conviction to a fine not exceeding 25 penalty units”.
10. Section 76 (10)—Omit “Penalty: \$100” and substitute “Penalty: Fine not exceeding 50 penalty units”.

