



New South Wales

Duties Amendment (Land Rich) Act 2003 No 79

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New South Wales

Duties Amendment (Land Rich) Act 2003 No 79

Act No 79, 2003

An Act to amend the *Duties Act 1997* to prevent the erosion of duty payable on certain transactions treated as transfers of dutiable property; and for other purposes. [Assented to 27 November 2003]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Duties Amendment (Land Rich) Act 2003*.

2 Commencement

This Act is taken to have commenced on the day on which the Bill for this Act was introduced into the Legislative Assembly.

3 Amendment of Duties Act 1997 No 123

The *Duties Act 1997* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Section 3)

[1] Chapter 3 Certain transactions treated as transfers

Omit Parts 1 and 2. Insert instead:

Part 1 Preliminary

105 Introduction and overview

This Chapter charges duty at the same rate as for a transfer of dutiable property under Chapter 2 on certain transactions which are not “dutiable transactions” under Chapter 2.

Note. Duty is chargeable under Part 2 on the acquisition by a person of an interest consisting of:

- certain unitholdings in a private unit trust scheme, or
- certain unitholdings in a wholesale unit trust scheme, or
- certain shareholdings in a private company,

which has land holdings in New South Wales with an unencumbered value of \$2 million or more and the land holdings in all places of which comprise 60% or more of the unencumbered value of all its property.

The duty is chargeable at the general rate for a dutiable transaction under Chapter 2.

A person who acquires a prescribed interest in such a private unit trust scheme or private company must lodge an acquisition statement. Duty on an acquisition statement is chargeable only on interests acquired within a 3-year period.

Duty is chargeable:

- under Part 3 on transactions by which corporate capital is reduced by redemption, surrender or cancellation of shares or reduction of share value or alteration of share rights, and
- under Part 4 on the allotment of units or shares that confer a land use entitlement, and
- under Part 5 on the allotment of shares by direction.

Part 2 Acquisition of interests in certain landholders

Division 1 Landholders

106 Meaning of “landholder”

- (1) For the purposes of this Part, a *landholder* is any of the following:

- (a) a private unit trust scheme,
- (b) a wholesale unit trust scheme,
- (c) a private company.

Note. *Private unit trust scheme*, *wholesale unit trust scheme* and *private company* are defined in the Dictionary.

- (2) A landholder is *land rich* if:
 - (a) it has land holdings in New South Wales with an unencumbered value of \$2,000,000 or more, and
 - (b) its land holdings in all places, whether within or outside Australia, comprise 60% or more of the unencumbered value of all its property.

Note. As to what constitutes a land holding, see section 107.

As to ownership through linked entities or discretionary trusts, see sections 109 and 110.

- (3) In calculating the unencumbered value of the property of a landholder for the purposes of subsection (2), property of any of the following kinds is not counted:
 - (a) cash, whether in Australian or other currency,
 - (b) money on deposit with any person, negotiable instruments or debt securities,
 - (c) loans that, according to their terms, are to be repaid on demand by the lender or within 12 months after the date of the loan,
 - (d) if the landholder is a private unit trust scheme or a wholesale unit trust scheme, loans to persons who, in relation to a trustee or beneficiary of the scheme, are associated persons,
 - (e) if the landholder is a private company, loans to persons who, in relation to the company or to a majority shareholder or director of the company, are associated persons,
 - (f) land use entitlements,
 - (g) units or shares in a linked entity of the landholder,
 - (h) property consisting of an interest as a beneficiary in a discretionary trust (within the meaning of section 110).

Note. *Associated person*, *land use entitlement* and *majority shareholder* are defined in the Dictionary.

- (4) In addition to subsection (3), property is not to be counted in calculating the unencumbered value of all the property of a landholder for the purposes of subsection (2) if the landholder is unable to satisfy the Chief Commissioner that the property was obtained otherwise than to reduce, for the purposes of this Part, the ratio of its land holdings in all places, whether within or outside Australia, to the unencumbered value of all its property.

107 What are the “land holdings” of a landholder?

- (1) For the purposes of this Part, a *land holding* is an interest in land other than the estate or interest of a mortgagee, chargee or other secured creditor or a profit à prendre. An interest in land, however:
- (a) is not a land holding of a unit trust scheme unless the interest is held by the trustees in their capacity as trustees of the scheme, and
 - (b) is not a land holding of a private company unless the interest of the private company in the land is a beneficial interest.
- (2) This section is in aid of, but does not limit, the operation of any provision of this Part providing for constructive ownership of interests.

108 Effect of uncompleted agreements

- (1) For the purposes of this Part, the transferor and the transferee under an uncompleted agreement for the transfer of land are taken to be separately entitled to the whole of the land.
- Note.** If duty is charged on an acquisition that relates to a land holding to which subsection (1) applies, the Chief Commissioner may defer payment of duty under section 47 of the *Taxation Administration Act 1996*.
- A refund may be payable in relation to the completion or rescission of an agreement referred to in subsection (1)—see section 122.
- (2) For the purposes of this Part:
- (a) if a landholder has agreed to dispose of property other than land, the agreement is taken to have been completed even if it is not completed, and
 - (b) if a landholder has agreed to acquire property other than land and has not completed the agreement, the agreement is to be disregarded.

109 Constructive ownership of land holdings and other property: linked entities

- (1) In addition to any interest in land or other property that it may hold in its own right, a unit trust scheme or a private company is taken, for the purposes of this Part, to hold an interest in land or other property held by a linked entity of the unit trust scheme or private company.
- (2) In this section, a *linked entity* of a unit trust scheme or a private company (the *principal entity*) means a person:
 - (a) who is part of a chain of persons:
 - (i) which includes the principal entity, and
 - (ii) which is comprised of one or more links, and
 - (iii) in which a link exists if a person would be entitled to receive not less than 20% of the unencumbered value of the property of another person if the other person were to be wound up, and
 - (iv) in which the principal entity would be entitled to receive not less than 20% of the unencumbered value of the property of the person if all the persons in the chain (other than the principal entity) were to be wound up, and
 - (v) which does not include in any of the links between the person and the principal entity, a public unit trust scheme, a wholesale unit trust scheme or a company whose shares are listed on the Australian Stock Exchange or an exchange of the World Federation of Exchanges, and
 - (b) who is not a public unit trust scheme, a wholesale unit trust scheme or a company whose shares are listed on the Australian Stock Exchange or an exchange of the World Federation of Exchanges.
- (3) The value, for duty purposes, of the interest in land or other property that a unit trust scheme or a private company (being a principal entity) is taken, by subsection (1), to hold because of a holding by a linked entity is that portion of the interest's unencumbered value to which the unit trust scheme or private company would be entitled (without regard to any liabilities of the linked entity or any other person in the ownership chain) if each entity in the chain of entities were to be wound up.

110 Constructive ownership of land holdings and other property: discretionary trusts

- (1) A person or a member of a class of persons in whose favour, by the terms of a discretionary trust, capital the subject of the trust may be applied:
 - (a) in the event of the exercise of a power or discretion in favour of the person or class, or
 - (b) in the event that a discretion conferred under the trust is not exercised,is, for the purposes of this section, a *beneficiary* of the trust.
- (2) A beneficiary of a discretionary trust is taken to own or to be otherwise entitled to the property the subject of the trust.
- (3) For the purposes of this Part, any property that is the subject of a discretionary trust is taken to be the subject of any other discretionary trust:
 - (a) that is, or
 - (b) any trustee of which (in the capacity of trustee) is, a beneficiary of it.
- (4) Subsection (3) extends to apply to property that is the subject of a discretionary trust only by the operation of that subsection.
- (5) In this section, *person* includes a landholder.

Note. *Discretionary trust* is defined in the Dictionary.

Division 2 Acquisitions of interests in landholders

111 What are “interests” and “significant interests” in landholders?

- (1) A person has an *interest* in a landholder if the person has an entitlement (otherwise than as a creditor or other person to whom the landholder is liable) to a distribution of property from the landholder on a winding up of the landholder or otherwise.

- (2) A person who, by virtue of subsection (1), has an interest in a landholder has a *significant interest* in the landholder if the person, in the event of a distribution of all the property of the landholder immediately after the interest was acquired, would be entitled to:
 - (a) in the case of a private unit trust scheme—20% or more of the property distributed, or
 - (b) in the case of a landholder other than a private unit trust scheme—50% or more of the property distributed.
- (3) An interest in a landholder is not counted for the purposes of this section if the interest concerned is an interest in:
 - (a) a unit trust scheme acquired before 10 June 1987, or
 - (b) a private company acquired before 21 November 1986, or
 - (c) the interest concerned was acquired at a time when the landholder did not hold land in New South Wales.
- (4) In this section, *person* includes a landholder.

Note. Section 120 is relevant to ascertaining a person's entitlements on a distribution of property.

112 How may an interest be “acquired”?

- (1) A person acquires an interest in a land rich landholder if the person obtains an interest, or the person's interest increases, in the landholder regardless of how it is obtained or increased.
- (2) Without limiting subsection (1), a person may acquire an interest in a land rich landholder in the following ways:
 - (a) the purchase, gift, allotment or issue of a unit or share,
 - (b) the cancellation, redemption or surrender of a unit or share,
 - (c) the abrogation or alteration of a right for a unit or share,
 - (d) the payment of an amount owing for a unit or share.
- (3) To remove any doubt, it is declared that an acquisition of units or shares is not necessary to acquire an interest in a land rich landholder.

Division 3 Charging of duty

113 When does a liability for duty arise?

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

114 What is a “relevant acquisition”?

- (1) For the purposes of this Division, a person who:
 - (a) acquires an interest in a land rich landholder:
 - (i) that is of itself a significant interest in the landholder, or
 - (ii) that, when aggregated with other interests in the landholder held by a person or an associated person, results in an aggregation that amounts to a significant interest in the landholder, or
 - (iii) that, when aggregated with other interests in the landholder acquired by the person or other persons under transactions that form, evidence, give effect to or arise from what is substantially one arrangement between the acquirers, results in an aggregation that amounts to a significant interest in the landholder, or
 - (b) having a significant interest, or an interest described in paragraph (a) (ii), in a land rich landholder, acquires a further interest in the landholder,
- has made a relevant acquisition.

Note. Associated person is defined in the Dictionary.

The interests of associated persons are not always taken into account—see section 118 (6).

- (2) However, an acquisition of an interest in a land rich landholder under an arrangement that results in the land rich landholder ceasing to be a landholder is not a relevant acquisition because of subsection (1) (a) (iii).
- (3) For the purposes of this Chapter, persons in their capacity as qualifying investors (within the meaning of the definition of *wholesale unit trust scheme*) of a wholesale unit trust scheme are taken not to be associated persons.

115 Acquisition statements

- (1) A person who has made a relevant acquisition must prepare a statement (an *acquisition statement*) and lodge it with the Chief Commissioner.
- (2) The acquisition statement is to be prepared in an approved form and must contain the following information:
 - (a) the name and address of the person who has acquired the interest,
 - (b) in relation to each interest acquired, the date on which it was acquired and whether it is an exempt acquisition,
 - (c) if the relevant acquisition results from the aggregation of the interests of associated persons, particulars of the interests acquired by the person and any associated persons on the date of the relevant acquisition,
 - (d) particulars of the total interest of the person and any associated person in the landholder at that date,
 - (e) the unencumbered value of all land holdings in New South Wales of the landholder as at the date of the relevant acquisition and as at the date of acquisition of each interest acquired in the landholder during the 3 years prior to the date of the relevant acquisition,
 - (f) the unencumbered value of the property of the landholder at the date of the relevant acquisition,
 - (g) the amount of duty paid under this Act or under a law of another Australian jurisdiction in respect of each earlier acquisition of an interest referred to in paragraph (e),
 - (h) such other information as the Chief Commissioner may require.

Note. In ascertaining whether or not a liability to lodge a statement under this section exists, it is necessary to have regard to provisions of this Part that deal with:

- acquisition generally (section 112), and
- acquisitions that are exempt from the operation of this Part (section 119), and
- how a person may be taken to have acquired an interest in a land rich landholder because of the interests in a linked entity (section 109).

Sometimes there is a joint and several liability for the duty as between the person lodging the acquisition statement and an associated person—see section 117 (2).

116 When must duty be paid?

A tax default does not occur for the purposes of the *Taxation Administration Act 1996* if duty is paid within 3 months after the liability to pay the duty arises.

117 Who is liable to pay the duty?

- (1) Duty chargeable under this Part is payable by the person who makes the relevant acquisition, except as provided by subsection (2).
- (2) If a relevant acquisition results from an aggregation of the interests of associated persons, the person who made the relevant acquisition and the associated person or persons are jointly and severally liable for payment of the duty.

118 How duty is charged on relevant acquisitions

- (1) If an acquisition statement does not disclose any acquisitions during the 3 years preceding the relevant acquisition, duty is chargeable, at the rate specified under this Act for a transfer of dutiable property, on the amount calculated by multiplying the unencumbered value of all land holdings of the landholder in New South Wales (calculated at the date of acquisition of the interest acquired) by the proportion of that value represented by the interest acquired in the relevant acquisition.
- (2) If a relevant acquisition results from the aggregation of the interests of associated persons, the reference in subsection (1) to the interest acquired includes a reference to any interests acquired by associated persons on the same date.
- (3) If an acquisition statement discloses one or more acquisitions during the 3 years preceding the relevant acquisition, duty is chargeable, at the rate specified under this Act for a transfer of dutiable property, on the aggregate of amounts severally calculated, in the manner provided by subsection (1), in respect of each interest required to be disclosed in the statement.

- (4) Duty payable under this section is to be reduced by the sum of the duty paid or payable under this Act in respect of the acquisition, during the 3 years preceding the relevant acquisition, by the person or any associated person of an interest in the same landholder, but only in proportion to the extent to which the duty paid or payable is attributable to the amount of the duty payable under this section.
- (5) Duty payable under this section is to be reduced by an amount (if any) calculated in accordance with the following formula:
- $$\frac{A}{B} \times C$$
- where:
- A** is the unencumbered value of the land holdings in New South Wales of the landholder at the time the dutiable acquisition was made, and
- B** is the unencumbered value of all property of the landholder at that time, and
- C** is the sum of:
- (a) the duty under this Act paid or payable in respect of:
 - (i) a dutiable transaction in relation to the units or shares, or
 - (ii) a capital reduction or a rights alteration under Part 3 by which an interest in the landholder was acquired, or
 - (iii) an allotment under Part 5 by which an interest in the landholder was acquired, and
 - (b) any duty of a like nature so paid or payable under a law of another Australian jurisdiction.
- (6) If a relevant acquisition is made owing to the aggregation of the interests of associated persons, but the Chief Commissioner is satisfied that the associated persons acquired their respective interests independently, the Chief Commissioner may assess and charge duty on each separate acquisition without aggregating the interests of the person who made it with the interests of associated persons.
- (7) If:
- (a) a relevant acquisition is made in a landholder that is a primary producer, and

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- (b) when the acquisition is made, the landholder's land holdings in all places, whether within or outside Australia, comprise less than 80% of the unencumbered value of all its property,
- no duty is chargeable under this Part in respect of the acquisition.
- (8) However, if at any time within the period of 5 years after a relevant acquisition to which subsection (7) applies is made, the landholder in whom the acquisition is made ceases for any length of time to be a primary producer:
- (a) the person who made the acquisition must immediately notify the Chief Commissioner:
- (i) that the landholder has ceased to be a primary producer, and
- (ii) of the date on which the landholder ceased to be a primary producer, and
- (b) duty is chargeable under this Part in respect of the acquisition on the date on which the landholder ceased to be a primary producer, and
- (c) the Chief Commissioner must make an assessment of the duty so chargeable.
- (9) Duty is not chargeable under this section on the acquisition of an interest in a landholder that is required to be disclosed in an acquisition statement if the acquisition is an exempt acquisition.
- (10) This section is subject to Division 4.
- Note.** In ascertaining the duty payable under this section, it is necessary to have regard to provisions of Division 4 of this Part that deal with:
- acquisitions that are exempt from the operation of this Part (section 119), and
 - rescission of agreements for the sale or conveyance of land (section 122), and
 - acquisitions for securing financial accommodation (section 123).
- (11) In this section, *primary producer* means a landholder whose land holdings in all places, whether within or outside Australia, wholly or predominantly comprise land used for primary production (with the meaning of section 274).

Division 4 General and supplemental

119 Exemptions

- (1) An acquisition by a person of an interest in a landholder is an exempt acquisition:
 - (a) if the interest was acquired in the person's capacity as:
 - (i) a receiver or trustee in bankruptcy, or
 - (ii) a liquidator, or
 - (iii) an executor or administrator of the estate of a deceased person, or
 - (b) if the interest was acquired solely as the result of the making of a compromise or arrangement under Part 5.1 of the *Corporations Act 2001* of the Commonwealth that has been approved by the court, not being a compromise or arrangement that the Chief Commissioner is satisfied was made with the intention of defeating the operation of this Part, or
 - (c) if the interest concerned is acquired solely from a pro rata increase in the interests of all unitholders or shareholders, or
 - (d) if the interest was acquired solely as the result of the distribution of the estate of a deceased person, whether effected in the ordinary course of execution of a will or codicil or administration of an intestate estate or as the result of the order of a court, made under the *Family Provision Act 1982* or otherwise, varying the application of the provisions of a will or codicil or varying the application of the rules governing the distribution of the property of an intestate estate, or
 - (e) if the interest was acquired by the parties to a marriage that is dissolved or annulled, or in the opinion of the Chief Commissioner has broken down irretrievably, or by either of them, or by a child or children of either of them, as a result of a transfer made in accordance with:
 - (i) a financial agreement made under section 90B, 90C or 90D of the *Family Law Act 1975* of the Commonwealth that, under that Act, is binding on the parties to the agreement, or
 - (ii) an order of a court made under that Act, or

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- (iii) an agreement that the Chief Commissioner is satisfied has been made for the purpose of dividing matrimonial property as a consequence of the dissolution, annulment or breakdown of the marriage, or
 - (f) if the interest was acquired by the parties to a domestic relationship that has, in the opinion of the Chief Commissioner, been terminated, or by either of them, or by a child or children of either of them, as a result of a transfer made in accordance with:
 - (i) an order of a court made under the *Property (Relationships) Act 1984*, or
 - (ii) a termination agreement within the meaning of section 44 of the *Property (Relationships) Act 1984* that has been certified in accordance with section 47 of that Act, or
 - Note. Domestic relationship** (defined in the Dictionary) has the same meaning as in the *Property (Relationships) Act 1984*.
 - (g) to the extent that:
 - (i) for purposes of or ancillary to the acquisition of an interest referred to in paragraph (e) or (f), the acquisition consists of the transfer of a share that is matrimonial property or relationship property to a person not a party to the relevant marriage or domestic relationship, in order to comply with a requirement of or prescribed under the *Corporations Act 2001* of the Commonwealth, or
 - (ii) the acquisition consists of a declaration of trust, by the transferee of a share transferred as referred to in subparagraph (i), for the benefit of a party to the marriage or relationship, or
 - (h) if the land holding of the landholder comprises land used for primary production and the Chief Commissioner is satisfied that:
 - (i) the land was used for primary production immediately before the acquisition, and
 - (ii) the land will continue to be used for primary production after the acquisition, and
 - (iii) the parties between whom the acquisition has occurred are persons of a class identified in guidelines approved under section 274, and

- (iv) the acquisition satisfies such other requirements as may be contained in those guidelines, or
- (i) if the person acquiring the interest is:
 - (i) a society or institution for the time being approved by the Chief Commissioner for the purposes of section 275 (a), or
 - (ii) a society or institution of which the Chief Commissioner has formed the opinion referred to in section 275 (b) and the acquisition is for such purposes as the Chief Commissioner may approve in accordance with guidelines approved under section 275 (b).
- (2) An acquisition by a person of an interest in a landholder is an exempt acquisition if the Chief Commissioner, being satisfied that the application of this Part to the acquisition in the particular case would not be just and reasonable, so determines.
- (3) If:
 - (a) duty was paid on the acquisition of matrimonial property by the parties to a marriage or by either of them, or by a child or children of either of them, and
 - (b) the interest acquired was acquired as a result of a transfer made in accordance with an agreement or order referred to in subsection (1) (e) (i), (ii) or (iii), and
 - (c) the marriage has been dissolved or annulled or has broken down irretrievably,the person who paid the duty is entitled to a refund of it.
- (4) If:
 - (a) duty was paid on the acquisition of relationship property by the parties to a domestic relationship or by either of them, or by a child or children of either of them, and
 - (b) the interest acquired was acquired as a result of a transfer made in accordance with an order or agreement referred to in subsection (1) (f) (i) or (ii), and
 - (c) the domestic relationship has been terminated,the person who paid the duty is entitled to a refund of it.

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- (5) A party to a marriage or domestic relationship may provide a statement to the Chief Commissioner, in the form of a statutory declaration, to the effect that:
- (a) in the case of a marriage:
 - (i) the party intends to apply for a dissolution or an annulment of the marriage, or
 - (ii) the parties to the marriage have separated, and there is no reasonable likelihood of cohabitation being resumed, or
 - (b) in the case of a domestic relationship, the domestic relationship has been terminated.

The Chief Commissioner is required to have regard to any such statement in exercising his or her functions under subsection (1) (e) or (f).

- (6) Subsection (5) does not limit the functions of the Chief Commissioner under section 72 of the *Taxation Administration Act 1996*.
- (7) In this section:

land used for primary production has the same meaning as in section 274.

marriage includes a void marriage.

matrimonial property of a marriage means property of the parties to the marriage or of either of them.

party to a marriage includes a person who was a party to a marriage that has been dissolved or annulled, in Australia or elsewhere.

relationship property of a domestic relationship means property of the parties to the relationship or of either of them.

120 Maximisation of entitlements on distribution of property

- (1) This section applies to any calculation, for the purposes of this Part, of the entitlement of a person (the *interested person*) to participate in a distribution of the property of a landholder, whether on a winding up of the landholder or otherwise.

- (2) A calculation is to be made based, firstly, on a distribution carried out in accordance with the constitution of the landholder, and with any law relevant to the distribution, as in force at the time of distribution, and the entitlement of the interested person is to be evaluated accordingly.
- (3) Next, a calculation is to be made based on a distribution carried out after the interested person, and any other person whom the interested person has power to direct with respect to such a distribution or who is, in relation to the interested person, an associated person, had exercised all powers and discretions exercisable by them by reason of having acquired an interest in the landholder concerned:
 - (a) to effect or compel an alteration to the constitution of the landholder, and
 - (b) to vary the rights conferred by units or shares in the landholder, and
 - (c) to effect or compel the substitution or replacement of units or shares in the landholder with other units or shares in it,in such a manner as would maximise the value of the entitlement, and the entitlement of the interested person is to be evaluated accordingly.
- (4) The results obtained by an evaluation of the interested person's entitlement in accordance with subsections (2) and (3) are then to be compared, and whichever evaluation results in a greater entitlement is the correct evaluation, for the purposes of this Part, of the entitlement, unless the Chief Commissioner, being satisfied that the application of this subsection in the particular case would be inequitable, determines otherwise.

121 Valuation of property

- (1) The provisions of this Act for ascertaining the value of transfers chargeable with ad valorem duty apply in the same way to an acquisition statement under this Part and the value of land holdings mentioned in it.
- (2) In determining the dutiable value of dutiable land holdings under this Part, any arrangement made in respect of the dutiable land holdings that has the effect of reducing the dutiable value is to be disregarded, subject to subsection (3).

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- (3) An arrangement is not to be disregarded if the Chief Commissioner is satisfied that the arrangement was not made as part of an arrangement or scheme with a collateral purpose of reducing the duty otherwise payable in relation to the relevant acquisition.
 - (4) In considering whether or not he or she is satisfied for the purposes of subsection (3), the Chief Commissioner may have regard to:
 - (a) the duration of the arrangement before the relevant acquisition, and
 - (b) whether the arrangement has been made with an associated person, and
 - (c) whether there is any commercial efficacy to the making of the arrangement other than to reduce duty, and
 - (d) any other matters the Chief Commissioner considers relevant.

122 Agreements for sale or conveyance of land

- (1) If:
 - (a) at the time of acquisition of an interest by any person in a land rich landholder that necessitates the lodgment of an acquisition statement under Division 3, the landholder was the vendor under an uncompleted agreement for the sale or conveyance of land, and
 - (b) the agreement is subsequently completed,the Chief Commissioner is to assess or reassess the statement as though the land the subject of the agreement was not, at the time of the acquisition concerned, a land holding of the landholder.
- (2) If:
 - (a) at the time of acquisition of an interest by any person in a land rich landholder that requires the lodgment by any person of an acquisition statement under Division 3, the landholder was the purchaser under an uncompleted agreement for the sale or conveyance of land, and
 - (b) the agreement is subsequently rescinded, annulled or otherwise terminated without completion,

the Chief Commissioner is to assess or reassess the statement as though the land the subject of the agreement was not, at the time of the acquisition concerned, a land holding of the landholder.

- (3) In this section, a reference to a *landholder* includes a reference to a linked entity of the landholder.

123 Duty concession: acquisitions securing financial accommodation

- (1) If the person lodging an acquisition statement under this Part in relation to the acquisition of an interest in a land rich landholder:

- (a) informs the Chief Commissioner at the time the statement is lodged that the acquisition is effected for the purpose of securing financial accommodation, and
- (b) the Chief Commissioner is satisfied that the acquisition is effected for that purpose,

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

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

- (a) re-acquired by the person from whom it was acquired, or
- (b) in the case of an acquisition by way of mortgage, conveyed by the mortgagee to a third person in exercise of the mortgagee's power of sale,

within that period (or that longer period).

- (3) Section 115 does not apply to the re-acquisition by a person of the interest concerned.

124 Disqualifying circumstances for certain unit trust schemes

- (1) In this section, *disqualifying circumstance* means a circumstance that causes:

- (a) a unit trust scheme to fail to satisfy paragraph (a) or (b) of the definition of *public unit trust scheme* within the

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- 12-month period (or within such longer period as the Chief Commissioner may determine) following the expression of the Chief Commissioner's opinion as referred to in paragraph (c) of that definition, or
- (b) a unit trust scheme to fail to satisfy paragraph (a) of the definition of *wholesale unit trust scheme* within the 12-month period (or within such longer period as the Chief Commissioner may determine) following the expression of the Chief Commissioner's opinion as referred to in paragraph (b) of that definition.
- (2) If a disqualifying circumstance occurs in respect of a unit trust scheme:
- (a) the trustee of the unit trust scheme must give the Chief Commissioner notice of the disqualifying circumstance within 28 days after it occurs, and
 - (b) the unit trust scheme is taken to have not been a public unit trust scheme or a wholesale unit trust scheme at any time after the Chief Commissioner's opinion in relation to the scheme was expressed, and
 - (c) the Chief Commissioner must make an assessment of duty chargeable under this Act as if the unit trust scheme had not been a wholesale unit trust scheme or a public unit trust scheme, as the case requires, at any time after the Chief Commissioner's opinion in relation to the scheme is expressed, and
 - (d) a tax default occurs for the purposes of the *Taxation Administration Act 1996* if the whole of any duty assessed under paragraph (c) is not paid to the Chief Commissioner within 3 months after the assessment.

[2] Schedule 1 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Duties Amendment (Land Rich) Act 2003

[3] Schedule 1

Insert at the end of the Schedule with appropriate Part and clause numbers:

Part Provisions consequent on enactment of Duties Amendment (Land Rich) Act 2003

Meaning of “commencement date”

In this Part, *commencement date* means the date on which Part 2 of Chapter 3, as substituted by the *Duties Amendment (Land Rich) Act 2003*, commenced.

Acquisition of interests in private unit trust schemes

- (1) This clause applies only to landholders that are private unit trust schemes.
- (2) Words and expressions used in this clause have the same meanings as in Part 2 of Chapter 3.
- (3) If:
 - (a) a person who made an acquisition in a landholder before the commencement date makes a relevant acquisition in the landholder after the commencement date, and
 - (b) the aggregation of the relevant interests would entitle the person, in the event of the distribution of all the property of the landholder immediately after the later or latest acquisition was made, to 20% or more of the property distributed but less than 50% of that property,duty is chargeable under section 118 only in respect of the relevant acquisition that occurred after the commencement date.

Exempt acquisitions

An acquisition by a person before the commencement date of an interest in:

- (a) a private unit trust scheme, or
- (b) a wholesale unit trust scheme,

that was a public unit trust scheme immediately before the commencement date is an exempt acquisition.

[4] Dictionary

Insert in alphabetical order:

linked entity of a landholder has the same meaning as in section 109 (2).

wholesale unit trust scheme means:

- (a) a unit trust scheme in which not less than 80% of the units in the unit trust scheme are held by qualifying investors, being any of the following:
 - (i) the trustee of a complying superannuation fund which has not less than 300 members,
 - (ii) the trustee of a complying approved deposit fund which has not less than 300 members,
 - (iii) the trustee of a pooled superannuation trust,
 - (iv) the trustee of a public unit trust,
 - (v) a life company if its holding of the units in the unit trust scheme is an investment of a statutory fund maintained by it under the *Life Insurance Act 1995* of the Commonwealth (and, for the purposes of this subparagraph, the holding of units by a life company by way of an investment of a statutory fund of the life company is taken to be a holding of units by the life company in a separate capacity from a holding of units by the life company by way of investment of another statutory fund of the life company),
 - (vi) a custodian for a trustee or life company referred to in any of the preceding subparagraphs in its capacity as such a custodian,
 - (vii) the trustee of another wholesale unit trust scheme,
- and in which:
- (viii) each qualifying investor holds less than 50% of the units in the unit trust scheme, subject to subparagraph (ix), or
 - (ix) if a qualifying investor holds units in the unit trust scheme in more than one capacity, the qualifying investor holds less than 50% of the units in each capacity, or

- (b) a unit trust scheme that, in the opinion of the Chief Commissioner, will satisfy paragraph (a) within 12 months (or such longer period as the Chief Commissioner may determine) after the Chief Commissioner gives written notice of that opinion to a person who has requested the Chief Commissioner to express that opinion in relation to the unit trust scheme, and in which units issued in the trust during the 12-month period (or the longer period) are issued only for the purpose of the unit trust scheme becoming a wholesale unit trust scheme and are the only units issued from the time the Chief Commissioner gives the written notice until the unit trust scheme becomes a wholesale unit trust scheme, subject to section 124.

[5] Dictionary, definition of “private company”

Omit “a recognised stock exchange”.

Insert instead “any exchange of the World Federation of Exchanges”.

[6] Dictionary, definition of “private unit trust scheme”

Insert “or a wholesale unit trust scheme” after “public unit trust scheme”.

[7] Dictionary, definition of “public unit trust scheme”

Omit the definition. Insert instead:

public unit trust scheme means any of the following unit trust schemes:

- (a) a listed trust, being a unit trust scheme any of the units in which are listed for quotation on the Australian Stock Exchange or any exchange of the World Federation of Exchanges,
- (b) a widely held trust, being a unit trust scheme which has not less than 300 unitholders none of whom, individually or together with any associated person, is beneficially entitled to more than 20% of the units in the trust,
- (c) an imminent public trust, being a unit trust scheme:

- (i) that, in the opinion of the Chief Commissioner, will satisfy paragraph (a) or (b) within 12 months (or such longer period as the Chief Commissioner may determine) after the Chief Commissioner gives written notice of that opinion to a person who has requested the Chief Commissioner to express that opinion in relation to the unit trust scheme, and
- (ii) in which units issued in the trust during the 12-month period (or the longer period) are issued only for the purpose of the unit trust scheme becoming a public unit trust scheme and are the only units issued from the time the Chief Commissioner gives the written notice until the unit trust scheme becomes a public unit trust scheme,

subject to section 124.

[8] Dictionary, definition of “recognised stock exchange”

Omit paragraph (a). Insert instead:

- (a) a stock exchange that is a member of the World Federation of Exchanges, or

[9] Dictionary, definition of “subsidiary”

Omit the definition.

[Second reading speech made in—

Legislative Assembly on 14 November 2003

Legislative Council on 19 November 2003]

BY AUTHORITY