

TASMANIA

**TAXATION RELATED LEGISLATION (HOUSING
AVAILABILITY AND PAYROLL RELIEF) BILL
2018**

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**TAXATION RELATED LEGISLATION (HOUSING
AVAILABILITY AND PAYROLL RELIEF) BILL
2018**

*(Brought in by the Treasurer, the Honourable Peter Carl
Gutwein)*

A BILL FOR

An Act to amend the *Payroll Tax Act 2008*, the *Payroll Tax Rebate (Apprentices, Trainees and Youth Employees) Act 2017*, the *Land Tax Act 2000*, the *First Home Owner Grant Act 2000* and the *Duties Act 2001*

Be it enacted by Her 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:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Taxation Related Legislation (Housing Availability and Payroll Relief) Act 2018*.

2. Commencement

- (1) Except as provided for in this section, the provisions of this Act commence on 1 July 2018, but if this Act does not receive the Royal Assent by that date the provisions of this Act are taken to have commenced on that date.

*Taxation Related Legislation (Housing Availability and Payroll
Relief) Act 2018
Act No. of 2018*

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Part 1 – Preliminary

- (2) Part 7 is taken to have commenced on 7 February 2018.
- (3) Part 8 is taken to have commenced on 10 February 2018.

3. Repeal of Act

This Act is repealed on the three hundred and sixty fifth day from the day on which all of its provisions commence.

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Relief) Act 2018
Act No. of 2018*

Part 2 – Payroll Tax Act 2008 Amended

s. 4

PART 2 – PAYROLL TAX ACT 2008 AMENDED

4. Principal Act

In this Part, the *Payroll Tax Act 2008** is referred to as the Principal Act.

5. Schedule 1 amended (Calculation of Payroll Tax Liability for Financial Year Commencing 1 July 2008 and Subsequent Financial Years)

Schedule 1 to the Principal Act is amended as follows:

- (a) by omitting the definition of *R* from clause 1 of Part 1 and substituting the following definitions:

R₁ is 4%;

R₂ is 6.1%;

- (b) by omitting the definition of *TA* from clause 1 of Part 1 and substituting the following definitions:

TA or *threshold amount* is \$1 250 000 for a financial year commencing on or after 1 July 2018;

TTB or *top tax bracket threshold* is \$2 000 000 for a financial year

*No. 16 of 2008

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Part 2 – Payroll Tax Act 2008 Amended

commencing on or after
1 July 2018.

- (c) by inserting the following definition after the definition of *C* in clause 3 of Part 2:

initial threshold, in relation to an employer in a financial year, means the amount calculated under clause 4(1) by the employer in respect of the relevant financial year;

- (d) by inserting the following definition after the definition of *IW* in clause 3 of Part 2:

subsequent threshold, in relation to an employer in a financial year, means the amount calculated, if required, under clause 4(3) by the employer in respect of the relevant financial year;

- (e) by omitting clauses 4 and 5 from Part 2 and substituting the following clause:

4. Payroll tax liability of employers not part of Group

- (1) For the purposes of determining an employer's liability to pay payroll tax in a financial year, the employer is to calculate the initial threshold for the employer in that year in accordance with the following formula:

Taxation Related Legislation (Housing Availability and Payroll Relief) Act 2018
Act No. of 2018

Part 2 – Payroll Tax Act 2008 Amended

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$$TA \times \frac{C}{FY}$$

- (2) An employer is not liable to pay payroll tax for a financial year if the total taxable wages and interstate wages paid or payable by the employer (otherwise than as a member of a group) during that year is not more than the initial threshold for the employer in that year.
- (3) If the total taxable wages and interstate wages paid or payable by an employer (otherwise than as a member of a group) during a relevant financial year is more than the initial threshold for the employer, the employer is to calculate the subsequent threshold for the employer in that year in accordance with the following formula:

$$TTB \times \frac{C}{FY}$$

- (4) If the total taxable wages and interstate wages paid or payable by an employer (otherwise than as a member of a group) during a financial year is more than the initial threshold for that employer in that year but not more than the

Taxation Related Legislation (Housing Availability and Payroll Relief) Act 2018
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Part 2 – Payroll Tax Act 2008 Amended

subsequent threshold for that employer in that year, the employer is liable to pay as payroll tax for that year the amount of dollars calculated in accordance with the following formula:

$$\left[TW - \left[\frac{TW}{TW + IW} \times TA \times \frac{C}{FY} \right] \right] \times R_1$$

- (5) If the total taxable wages and interstate wages paid or payable by an employer (otherwise than as a member of a group) during a financial year is more than the subsequent threshold for that employer in that year, the employer is liable to pay as payroll tax for that year the amount of dollars calculated in accordance with the following formula:

$$\left[[TTB - TA] \times \frac{TW}{TW + IW} \times \frac{C}{FY} \times R_1 \right] + \left[\left[TW - \left[\frac{TW}{TW + IW} \times TTB \times \frac{C}{FY} \right] \right] \times R_2 \right]$$

- (f) by inserting the following definitions after the definition of *GTW* in clause 7 of Part 3:

initial threshold, in relation to a group in a financial year, means the amount calculated under clause

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Act No. of 2018

Part 2 – Payroll Tax Act 2008 Amended

s. 5

8(1) for the group in respect of the relevant financial year;

subsequent threshold, in relation to a group in a financial year, means the amount calculated, if required, under clause 8(2) for the group in respect of the relevant financial year;

- (g) by omitting clauses 8 and 9 from Part 3 and substituting the following clauses:

8. Thresholds for determining relevant rate of payroll tax for group

- (1) For the purposes of determining a group's liability to pay payroll tax in a financial year, the group is to calculate the initial threshold for the group in that year in accordance with the following formula:

$$TA \times \frac{C}{FY}$$

- (2) If the total taxable wages and interstate wages paid or payable by a group during a relevant financial year is more than the initial threshold for the group, the group is to calculate the subsequent threshold for the group in that year in accordance with the following formula:

Taxation Related Legislation (Housing Availability and Payroll Relief) Act 2018
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Part 2 – Payroll Tax Act 2008 Amended

$$\text{TTB} \times \frac{\text{C}}{\text{FY}}$$

9. Payroll of group not more than initial threshold

None of the members of a group is liable to pay payroll tax for the financial year if the total taxable wages and interstate wages paid or payable by the group during that year is not more than the initial threshold for the group in that year.

9A. Payroll of group not more than subsequent threshold

- (1) If the total taxable wages and interstate wages paid or payable by a group during the financial year is more than the initial threshold for the group but not more than the subsequent threshold for the group in that year, payroll tax is payable as provided by subclauses (2) and (3).
- (2) The designated group employer for the group is liable to pay as payroll tax for the financial year the amount of dollars calculated in accordance with the following formula:

Taxation Related Legislation (Housing Availability and Payroll Relief) Act 2018
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Part 2 – Payroll Tax Act 2008 Amended

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$$\left[\text{TW} - \left[\frac{\text{GTW}}{\text{GTW} + \text{GIW}} \times \text{TA} \times \frac{\text{C}}{\text{FY}} \right] \right] \times \text{R}_1$$

- (3) Each member of the group, other than that designated group employer, is liable to pay as payroll tax for the financial year the amount of dollars calculated in accordance with the following formula:

$$\text{TW} \times \text{R}_1$$

9B. Payroll of group more than subsequent threshold

- (1) If the total taxable wages and interstate wages paid or payable by a group during the financial year is more than the subsequent threshold for the group, payroll tax is payable as provided by subclauses (2) and (3).
- (2) The designated group employer for the group is liable to pay as payroll tax for the financial year the amount of dollars calculated in accordance with the following formula:

$$\left[[\text{TTB} - \text{TA}] \times \frac{\text{GTW}}{\text{GTW} + \text{GIW}} \times \frac{\text{C}}{\text{FY}} \times \text{R}_1 \right] + \left[\left[\text{TW} - \left[\frac{\text{GTW}}{\text{GTW} + \text{GIW}} \times \text{TTB} \times \frac{\text{C}}{\text{FY}} \right] \right] \times \text{R}_2 \right]$$

- (3) Each member of the group, other than that designated group

Taxation Related Legislation (Housing Availability and Payroll Relief) Act 2018
Act No. of 2018

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Part 2 – Payroll Tax Act 2008 Amended

employer, is liable to pay as payroll tax for the financial year the amount of dollars calculated in accordance with the following formula:

$$TW \times R_2$$

- (h) by omitting the formula from clause 12 of Part 4 and substituting the following formula:

$$TW \times R_2$$

6. Schedule 2 amended (Tasmania-Specific Provisions)

Schedule 2 to the Principal Act is amended by inserting after clause 6 in Division 2 of Part 3 the following Division:

Division 3 – Businesses relocating to regional Tasmania

6A. Definitions

- (1) In this Division –

eligible employee, of a relocating employer, means an employee who is physically located within regional Tasmania while performing at least 80% of his or her work for that business;

Taxation Related Legislation (Housing Availability and Payroll Relief) Act 2018
Act No. of 2018

Part 2 – Payroll Tax Act 2008 Amended

s. 6

eligible period means the period commencing on 1 July 2018 and ending on 30 June 2021;

regional Tasmania means a municipal area other than the municipal areas of Hobart, Glenorchy, Clarence and Kingborough, within the meaning of the *Local Government Act 1993*;

relocated business means the existing business, or part of that business, of a relocating employer that –

- (a) is relocated or extended into regional Tasmania within the eligible period; and
- (b) makes the employer a relocating employer;

relocating employer – see clause 6B.

- (2) For the avoidance of doubt, a takeover or merger, or similar acquisition, of a business currently operating in Tasmania by an employer does not constitute the relocation or extension of an existing business of that employer.
- (3) For the purposes of this Division, an existing business commences physical operations in regional Tasmania on the

*Taxation Related Legislation (Housing Availability and Payroll
Relief) Act 2018
Act No. of 2018*

s. 6

Part 2 – Payroll Tax Act 2008 Amended

first day when both of the following occur in respect of the business:

- (a) the business operates out of real property in regional Tasmania such as store fronts, offices, storage or similar property;
- (b) an employee of the employer is working at that property and is being paid wages by the employer for that work.

6B. Meaning of relocating employer

- (1) An employer is a relocating employer for the purposes of this Division if the employer –
 - (a) is operating an existing business in a location other than Tasmania; and
 - (b) relocates all or part of that existing business to, or extends that existing business into, regional Tasmania during the eligible period; and
 - (c) as a result of that relocation or extension, the existing business commences physical operations in regional Tasmania; and

Taxation Related Legislation (Housing Availability and Payroll Relief) Act 2018
Act No. of 2018

Part 2 – Payroll Tax Act 2008 Amended

s. 6

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- (d) in the 5-year period immediately before the existing business commences physical operations in regional Tasmania, was not paying taxable wages or exempt wages.
- (2) Despite subclause (1), an employer is not a relocating employer for the purposes of this Division if –
- (a) the employer is a member of a group; and
 - (b) a member of the group has paid taxable wages or exempt wages in the 5-year period immediately before the relocation or extension of an existing business under subclause (1)(b).

6C. Exemption for relocated businesses

Wages are exempt wages if –

- (a) the wages are paid or payable by a relocating employer during the 3-year period immediately after the relocated business of that employer commenced physical operations in regional Tasmania; and
- (b) the wages are paid or payable to an eligible employee in respect of

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Relief) Act 2018
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Part 2 – Payroll Tax Act 2008 Amended

the eligible employee's
employment at that relocated
business; and

- (c) the relocating employer –
 - (i) declares, in a form approved by the Commissioner, the amount of wages paid or payable to an eligible employee in accordance with paragraph (b); and
 - (ii) submits that declaration, and any other information requested by the Commissioner, to the Commissioner not later than 21 days after the end of the financial year in which those wages were paid or payable.

Taxation Related Legislation (Housing Availability and Payroll Relief) Act 2018
Act No. of 2018

Part 3 – Payroll Tax Rebate (Apprentices, Trainees and Youth Employees)
Act 2017 Amended

s. 7

**PART 3 – PAYROLL TAX REBATE (APPRENTICES,
TRAINEES AND YOUTH EMPLOYEES) ACT 2017
AMENDED**

7. Principal Act

In this Part, the *Payroll Tax Rebate (Apprentices, Trainees and Youth Employees) Act 2017** is referred to as the Principal Act.

8. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended by omitting the definition of *eligible period* and substituting the following definition:

eligible period means –

- (a) in relation to an eligible employee, or a class of eligible employees, prescribed for the purposes of this definition, the period commencing on 1 July 2017 and ending on 30 June 2021 inclusive; or
- (b) in relation to any other eligible employee, the period commencing on 1 July 2017 and ending on 30 June 2019 inclusive;

*No. 23 of 2017

Taxation Related Legislation (Housing Availability and Payroll Relief) Act 2018
Act No. of 2018

s. 9 Part 3 – Payroll Tax Rebate (Apprentices, Trainees and Youth Employees)
Act 2017 Amended

9. Section 7 amended (Amount of rebate)

Section 7 of the Principal Act is amended as follows:

- (a) by omitting the definition of *applicable percentage* from subsection (1) and substituting the following definitions:

eligible employee wages, in relation to a claim period, means the taxable wages paid by an employer in respect of each eligible employee of that employer for that claim period;

taxable wages has the same meaning as in the *Payroll Tax Act 2008*.

- (b) by omitting paragraph (a) from subsection (2) and substituting the following paragraph:

- (a) the amount of payroll tax paid by that employer for that claim period that would remain after deducting, from that amount of payroll tax paid, the amount of payroll tax that would have been payable by that employer for that claim period if the taxable wages paid by that employer for that claim period did not include the eligible employee wages payable for that claim period;

Taxation Related Legislation (Housing Availability and Payroll Relief) Act 2018
Act No. of 2018

Part 3 – Payroll Tax Rebate (Apprentices, Trainees and Youth Employees)
Act 2017 Amended

s. 10

10. Section 27 amended (Regulations)

Section 27 of the Principal Act is amended by inserting after subsection (3) the following subsection:

- (4) Regulations made for the purposes of paragraph (a) of the definition of *eligible period* in section 3 –
 - (a) may adopt, either wholly or in part and with or without modification, and either specifically or by reference, any document, standard, rule, code, qualification or course of education or training whether the document, standard, rule, code, qualification or course of education or training is published, issued or established before or after the commencement of Part 3 of the *Taxation Related Legislation (Housing Availability and Payroll Relief) Act 2018*; and
 - (b) may provide for any of those regulations to take effect when Part 3 of the *Taxation Related Legislation (Housing Availability and Payroll Relief) Act 2018* commences or on a later day specified in the regulations, whether the day so specified is

Taxation Related Legislation (Housing Availability and Payroll Relief) Act 2018
Act No. of 2018

s. 11 Part 3 – Payroll Tax Rebate (Apprentices, Trainees and Youth Employees)
Act 2017 Amended

before, on or after the day on
which the regulations are made.

11. Section 29 amended (Repeal of Act)

Section 29 of the Principal Act is amended by
omitting “30 June 2023” and substituting “30
June 2025”.

PART 4 – LAND TAX ACT 2000 AMENDED

12. Principal Act

In this Part, the *Land Tax Act 2000** is referred to as the Principal Act.

13. Sections 19D, 19E and 19F inserted

After section 19C of the Principal Act, the following sections are inserted in Division 2:

19D. Limited exempt land: new properties available for rent

- (1) Land tax is not payable in respect of land on which a dwelling is located, during the exemption period for the land, if –
 - (a) the land is general land; and
 - (b) each dwelling on the land is a new dwelling; and
 - (c) the first occupancy permit issued in respect of the initial dwelling on the land is issued within the period commencing on 8 February 2018 and ending on 7 February 2021; and
 - (d) at the commencement of the exemption period for the land –

*No. 74 of 2000

*Taxation Related Legislation (Housing Availability and Payroll
Relief) Act 2018
Act No. of 2018*

s. 13

Part 4 – Land Tax Act 2000 Amended

- (i) at least one dwelling on the land is the subject of a relevant residential tenancy agreement; and
 - (ii) the owner of the land intends that each dwelling on the land is to be the subject of a relevant residential tenancy agreement; and
 - (e) the owner of the land has applied to the Commissioner, in a form approved by the Commissioner, for land tax to not be payable in respect of the land during the exemption period for the land; and
 - (f) the Commissioner has approved the application referred to in paragraph (e) in respect of the land.
- (2) An exemption under subsection (1) in respect of land ceases to have effect –
- (a) if, during a financial year that forms part of the exemption period for the land –
 - (i) a dwelling on the land is sold; or

Taxation Related Legislation (Housing Availability and Payroll Relief) Act 2018
Act No. of 2018

Part 4 – Land Tax Act 2000 Amended

s. 13

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- (ii) the land ceases to be general land; or
 - (iii) a dwelling that has been the subject of a relevant residential tenancy agreement is no longer subject to such an agreement for a cumulative period of more than 6 weeks in that financial year; or
 - (iv) a dwelling on the land is used for any purpose other than being the subject of a relevant residential tenancy agreement; or
- (b) on the expiry of the exemption period for the land.
- (3) If an exemption ceases to have effect under subsection (2) in respect of land –
- (a) the exemption lapses in respect of the land and cannot be revived or renewed; and
 - (b) if the exemption ceases to have effect under subsection (2)(a) –
 - (i) land tax is payable, in respect of the land, for the entire financial year in

Taxation Related Legislation (Housing Availability and Payroll Relief) Act 2018
Act No. of 2018

s. 13

Part 4 – Land Tax Act 2000 Amended

which the exemption ceases to have effect; and

- (ii) land tax is not payable in respect of the land for any financial year of the exemption period for the land that ends before the financial year in which the exemption ceases to have effect.

(4) In this section –

exemption period, for land, means the 3 consecutive financial years after the financial year in which the first occupancy permit is issued in respect of a dwelling on the land;

new dwelling means a home, within the meaning of the *First Home Owner Grant Act 2000*, that has not previously been occupied or sold as a place of residence;

occupancy permit has the same meaning as in the *Building Act 2016*;

relevant residential tenancy agreement, in relation to a dwelling, means a written residential tenancy agreement, within the meaning of the

Residential Tenancy Act 1997, for a fixed period of at least 12 months, that applies to the dwelling as a whole.

19E. Limited exempt land: former short-stay accommodation properties

- (1) Land tax is not payable in respect of land on which a dwelling is located, during the exemption period for the land, if –
 - (a) the land is general land located in the greater Hobart area; and
 - (b) each dwelling on the land was the subject of a relevant residential tenancy agreement; and
 - (c) the relevant residential tenancy agreement for each dwelling on the land –
 - (i) commenced within the eligible period; and
 - (ii) was in force at the commencement of the exemption period for the land; and
 - (d) the Commissioner is satisfied that each dwelling on the land was lawfully used, or was advertised as available for lawful use, as short-stay accommodation during

Taxation Related Legislation (Housing Availability and Payroll Relief) Act 2018
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s. 13

Part 4 – Land Tax Act 2000 Amended

the majority of the 3-month period immediately before the commencement of the relevant residential tenancy agreement for each dwelling; and

(e) the owner of the land has applied to the Commissioner, in a form approved by the Commissioner, for land tax to not be payable in respect of the land during the exemption period for the land; and

(f) the Commissioner has approved the application referred to in paragraph (e) in respect of the land.

(2) The Commissioner must not approve an application in accordance with subsection (1)(f) in respect of land if a previous application in respect of the land has been approved under this section.

(3) In this section –

eligible period means the period commencing on 15 March 2018 and ending on 14 March 2019;

exemption period, for land, means the single financial year that immediately follows the financial year in which the final relevant

Taxation Related Legislation (Housing Availability and Payroll Relief) Act 2018
Act No. of 2018

Part 4 – Land Tax Act 2000 Amended

s. 13

residential tenancy agreement,
required under subsection (1)(c),
for the land commenced;

greater Hobart area means the
municipal areas of Hobart,
Glenorchy, Clarence and
Kingborough within the meaning
of the *Local Government Act*
1993;

relevant residential tenancy agreement, in relation to a
dwelling, means a written
residential tenancy agreement,
within the meaning of the
Residential Tenancy Act 1997, for
a fixed period of at least 12
months;

short-stay accommodation, in relation
to a dwelling, means that the
dwelling –

- (a) is being used or is
available for use, for
monetary gain by the
owner of the dwelling, as
accommodation for a
person away from his or
her normal place of
residence; and
- (b) is ordinarily intended to
be used as

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s. 13

Part 4 – Land Tax Act 2000 Amended

accommodation by such a person for periods of not more than 4 weeks.

19F. Extension of certain periods

- (1) The Minister, by order and on one or more occasion, may extend one or more of the following periods by omitting the date on which the period ends and substituting a new date:
 - (a) the period specified in section 19D(1)(c) as the period in which an occupancy permit must be issued for a dwelling for the first time;
 - (b) the eligible period within the meaning of section 19E.
- (2) The provisions of section 47(3), (3A), (4), (5), (6) and (7) of the *Acts Interpretation Act 1931* apply to an order under subsection (1) as if the order were regulations within the meaning of that Act.
- (3) An order under subsection (1) –
 - (a) is a statutory rule for the purposes of the *Rules Publication Act 1953*; and
 - (b) is not an instrument of legislative character for the purposes of the

*Taxation Related Legislation (Housing Availability and Payroll
Relief) Act 2018
Act No. of 2018*

Part 4 – Land Tax Act 2000 Amended

s. 13

*Subordinate Legislation Act
1992.*

*Taxation Related Legislation (Housing Availability and Payroll
Relief) Act 2018
Act No. of 2018*

s. 14

Part 5 – First Home Owner Grant Act 2000 Amended

**PART 5 – FIRST HOME OWNER GRANT ACT 2000
AMENDED**

14. Principal Act

In this Part, the *First Home Owner Grant Act 2000** is referred to as the Principal Act.

15. Section 18 amended (Amount of grant)

Section 18(2) of the Principal Act is amended as follows:

- (a) by inserting the following paragraph after paragraph (ae):
 - (af) if the first home owner grant relates to an eligible transaction that satisfies section 18F, the amount is \$20 000; or
- (b) by omitting from paragraph (b) “section 18A, 18B, 18C, 18D or 18E” and substituting “section 18A, 18B, 18C, 18D, 18E or 18F”.

16. Section 18F inserted

After section 18E of the Principal Act, the following section is inserted in Division 5:

*No. 19 of 2000

18F. Conditions on increase in grant

- (1) An eligible transaction satisfies this section if –
 - (a) the commencement date of the eligible transaction is on or after 1 July 2018 but before 1 July 2019; and
 - (b) the eligible transaction is completed in accordance with section 13(5) within 24 months after the commencement date of the eligible transaction.
- (2) If satisfied there are good reasons to do so and if a request by the applicant is made before a decision on the application has been varied or reversed under section 23, the Commissioner may extend the period referred to in subsection (1) for the eligible transaction to be completed, even though the period has expired.
- (3) Despite subsection (1), an eligible transaction does not satisfy this section if the Commissioner considers that the eligible transaction replaces a transaction, entered into before 1 July 2018, that is for the same property and that is between substantially, or that benefits substantially, the same parties.

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s. 16

Part 5 – First Home Owner Grant Act 2000 Amended

- (4) For the avoidance of doubt, a payment of \$20 000 that –
- (a) was made in anticipation of the *Taxation Related Legislation (Housing Availability and Payroll Relief) Act 2018* receiving the Royal Assent; and
 - (b) was made on or after 1 July 2018 but before the *Taxation Related Legislation (Housing Availability and Payroll Relief) Act 2018* received the Royal Assent –

is taken to be a first home owner grant payment, for the purposes of this Act, made in relation to an eligible transaction to which this section, as inserted by that Act, applies.

PART 6 – DUTIES ACT 2001 AMENDED

17. Principal Act

In this Part, the *Duties Act 2001** is referred to as the Principal Act.

18. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended by inserting after the definition of *financial corporation* the following definitions:

foreign corporation – see section 4A;

foreign natural person means a natural person who is not any of the following:

- (a) an Australian citizen within the meaning of the *Australian Citizenship Act 2007* of the Commonwealth;
- (b) the holder of a permanent visa within the meaning of the *Migration Act 1958* of the Commonwealth;
- (c) a New Zealand citizen who is the holder of a special category visa within the meaning of the *Migration Act 1958* of the Commonwealth;

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foreign person means the following:

- (a) a foreign corporation (other than as a trustee acting in its capacity as trustee);
- (b) a foreign natural person (other than as a trustee acting in its capacity as trustee);
- (c) a foreign trustee acting in its capacity as trustee;

foreign trust – see section 4B;

foreign trustee means a person who holds, agrees to hold, or has acquired, dutiable property on trust for a foreign trust;

19. Sections 4A, 4B and 4C inserted

After section 4 of the Principal Act, the following sections are inserted in Part 2:

4A. Meaning of foreign corporation

(1) In this section –

potential voting power has the same meaning as in section 22 of the *Foreign Acquisitions and Takeovers Act 1975* of the Commonwealth;

voting power has the same meaning as in the *Foreign Acquisitions and*

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Takeovers Act 1975 of the Commonwealth.

- (2) For the purposes of this Act, a corporation is a foreign corporation if it is –
- (a) incorporated outside Australia; or
 - (b) a corporation in which foreign persons have a significant interest.
- (3) For the purposes of subsection (2)(b), foreign persons have a significant interest in a corporation if, taking their interests in aggregate, one or more foreign persons –
- (a) are in a position to control 50% or more of the voting power in the corporation; or
 - (b) are in a position to control 50% or more of the potential voting power in the corporation; or
 - (c) have an interest in 50% or more of the issued shares in the corporation.
- (4) For the purposes of subsection (3), a reference to control of the voting power in a corporation is a reference to control that is direct or indirect, including control that is exercisable as a result, or by

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means, of arrangements or practices, whether or not having legal or equitable force, and whether or not based on legal or equitable rights.

- (5) For the purposes of subsection (3), to determine how much potential voting power a person is in a position to control at a particular time, section 22(3) of the *Foreign Acquisitions and Takeovers Act 1975* of the Commonwealth is to be applied.

4B. Meaning of foreign trust

- (1) For the purposes of this Act, a foreign trust is a trust in which foreign persons have a substantial interest in the trust estate.
- (2) For the purposes of subsection (1), foreign persons have a substantial interest in a trust estate if, taking their interests in aggregate, one or more foreign persons have a beneficial interest of 50% or more in the capital of the estate of the trust.
- (3) If, under the terms of a trust, a trustee has a power or discretion as to the distribution of the capital of the trust estate to a person or a member of a class of persons, any such person is taken to have a beneficial interest in the maximum percentage of the capital of the

trust estate that the trustee is empowered to distribute to that person.

4C. Presumption in respect of corporations and trusts

For the purposes of the definition of foreign person –

- (a) all corporations are taken to be foreign corporations; and
- (b) all trusts are taken to be foreign trusts –

unless the Commissioner is satisfied under section 4A or 4B that the corporation or trust is not a foreign corporation or a foreign trust.

20. Chapter 2, Part 3A inserted

After section 29 of the Principal Act, the following Part is inserted in Chapter 2:

PART 3A – ADDITIONAL DUTY ON CERTAIN DUTIABLE TRANSACTIONS INVOLVING FOREIGN PERSONS

30. Meaning of primary production property

For the purposes of this Part, primary production property means the following:

- (a) land in Tasmania that –

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- (i) is capable of being lawfully used solely or primarily for primary production purposes; or
 - (ii) a person intends to develop so the land is capable of being lawfully used solely or primarily for primary production purposes;
- (b) an option to purchase land, to the extent that the option to purchase land relates to land referred to in paragraph (a);
- (c) a land use entitlement, to the extent that the land use entitlement relates to land referred to in paragraph (a);
- (d) a partnership interest, being an interest in a partnership that has partnership property, to the extent that the partnership property relates to –
 - (i) land referred to in paragraph (a); or
 - (ii) an option to purchase land referred to in paragraph (b); or

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- (iii) a land use entitlement referred to in paragraph (c);
 - (e) goods in Tasmania on which duty is chargeable under Part 1 if –
 - (i) those goods are dutiable property in accordance with section 9(1)(j); and
 - (ii) those goods are part of an arrangement involving a dutiable transaction over land referred to in paragraph (a); and
 - (iii) the use of the goods can be directly linked to, or is incidental to the use, or intended use, for primary production purposes, of, all or part of the land referred to in paragraph (a).

30A. Meaning of residential property

For the purposes of this Part, residential property means the following:

- (a) land in Tasmania –
 - (i) which is vacant land on which a building may be

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- lawfully built and occupied as a place of residence so that the land is capable of being lawfully used solely or primarily for residential purposes; or
- (ii) which is capable of being lawfully used solely or primarily for residential purposes; or
- (iii) which includes a building, or part of a building, that a person intends to have refurbished or extended so the land is capable of being lawfully used solely or primarily for residential purposes; or
- (iv) on which a person intends to have a building constructed so the land is capable of being lawfully used solely or primarily for residential purposes; or
- (v) in respect of which a person has undertaken or intends to undertake land development for the purposes of –

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- (A) constructing a building so the land is capable of being lawfully used solely or primarily for residential purposes; or
 - (B) enabling another person to construct a building so the land is capable of being lawfully used solely or primarily for residential purposes;
- (b) an option to purchase land, to the extent that the option to purchase land relates to land referred to in paragraph (a);
 - (c) a land use entitlement, to the extent that the land use entitlement relates to land referred to in paragraph (a);
 - (d) a partnership interest, being an interest in a partnership that has partnership property, to the extent that the partnership property relates to –

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- (i) land referred to in paragraph (a); or
 - (ii) an option to purchase land referred to in paragraph (b); or
 - (iii) a land use entitlement referred to in paragraph (c);
- (e) goods in Tasmania on which duty is chargeable under Part 1 if –
- (i) those goods are dutiable property in accordance with section 9(1)(j); and
 - (ii) those goods are part of an arrangement involving a dutiable transaction over land referred to in paragraph (a); and
 - (iii) the use of the goods can be directly linked to, or is incidental to the use, or intended use, for residential purposes, of, all or part of the land referred to in paragraph (a).

30B. Dutiable transactions relating to more than one parcel of land

For the purposes of calculating duty under this Part, if a dutiable transaction relates to more than one parcel of land, each parcel of land is taken to be a separate item of dutiable property.

30C. Additional duty chargeable for foreign purchasers of residential property

- (1) This section applies to a dutiable transaction if –
 - (a) the dutiable transaction relates to dutiable property that is residential property; and
 - (b) a transferee who is liable to pay duty in respect of the dutiable transaction is a foreign person.
- (2) In addition to the duty otherwise chargeable under Part 1, duty is also chargeable on the dutiable transaction at a rate of 3% of the dutiable value of the residential property.
- (3) Duty under subsection (2) is to be charged only on the proportion of the dutiable value of the residential property that is the same as the proportion of the interest acquired in the residential

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property by a foreign person or foreign persons.

- (4) Except as provided by Division 11 of Part 9 of the *Local Government Act 1993*, if a liability to duty arises under this section on a dutiable transaction that relates to land that is residential property in accordance with section 30A(a), that liability is a first charge on that land in priority to all mortgages, rates, charges, liens and encumbrances.

30D. Duty in respect of change of land to residential property

- (1) This section applies to a dutiable transaction if –
- (a) duty was charged on the dutiable transaction under Chapter 2; and
 - (b) a transferee who was liable to pay duty in respect of the dutiable transaction –
 - (i) was a foreign person at the time of the dutiable transaction; or
 - (ii) became a foreign person within the 3-year period after the dutiable transaction; and

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- (c) within the 3-year period after the dutiable transaction, dutiable property that was the subject of the dutiable transaction became residential property.
- (2) This section does not apply to a dutiable transaction if, at the time the dutiable property referred to in subsection (1)(c) became residential property, the transferee referred to in subsection (1)(b) did not own an interest in the dutiable property.
- (3) A transferee referred to in subsection (1)(b) must, within 14 days of the dutiable property referred to in subsection (1)(c) becoming residential property, notify the Commissioner in an approved form of that fact, if the dutiable property has become residential property within the period specified in subsection (1)(c).

Penalty: Fine not exceeding 100 penalty units.

- (4) If the Commissioner becomes aware that dutiable property referred to in subsection (1)(c) has become residential property within the period specified in that subsection, the Commissioner must reassess the duty payable on the dutiable transaction as if, at the time the dutiable

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transaction occurred, that dutiable property was residential property.

(5) If –

(a) the dutiable property referred to in subsection (1)(c) was primary production property; and

(b) as a consequence of a reassessment under subsection (4), duty is chargeable on that property under this section –

the amount of duty payable under this section on the dutiable transaction is to be reduced by the amount of duty (if any) previously paid in respect of that property under section 30E.

(6) Despite section 10, if duty is charged as a consequence of a reassessment under subsection (4), liability for that duty arises when the dutiable property referred to in subsection (1)(c) becomes residential property.

30E. Additional duty chargeable for foreign purchasers of primary production property

(1) This section applies to a dutiable transaction if –

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- (a) the dutiable transaction relates to dutiable property that is primary production property; and
 - (b) a transferee who is liable to pay duty in respect of the dutiable transaction is a foreign person.
- (2) In addition to the duty otherwise chargeable under Part 1, duty is also chargeable on the dutiable transaction at a rate of 0.5% of the dutiable value of the primary production property.
- (3) Duty under subsection (2) is to be charged only on the proportion of the dutiable value of the primary production property that is the same as the proportion of the interest acquired in the primary production property by a foreign person or foreign persons.
- (4) Except as provided by Division 11 of Part 9 of the *Local Government Act 1993*, if a liability to duty arises under this section on a dutiable transaction that relates to land that is primary production property in accordance with section 30(a), that liability is a first charge on that land in priority to all mortgages, rates, charges, liens and encumbrances.

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30F. Duty in respect of change of land to primary production property

- (1) This section applies to a dutiable transaction if –
 - (a) duty was charged on the dutiable transaction under Chapter 2; and
 - (b) a transferee who was liable to pay duty in respect of the dutiable transaction –
 - (i) was a foreign person at the time of the dutiable transaction; or
 - (ii) became a foreign person within the 3-year period after the dutiable transaction; and
 - (c) within the 3-year period after the dutiable transaction, dutiable property that was the subject of the dutiable transaction became primary production property.
- (2) This section does not apply to a dutiable transaction if the dutiable property referred to in subsection (1)(c) was residential property at the time of the dutiable transaction.
- (3) This section does not apply to a dutiable transaction if, at the time the dutiable

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property referred to in subsection (1)(c) became primary production property, the transferee referred to in subsection (1)(b) did not own an interest in the dutiable property.

- (4) A transferee referred to in subsection (1)(b) must, within 14 days of the dutiable property referred to in subsection (1)(c) becoming primary production property, notify the Commissioner in an approved form of that fact, if the dutiable property has become primary production property within the period specified in subsection (1)(c).

Penalty: Fine not exceeding 100 penalty units.

- (5) If the Commissioner becomes aware that dutiable property referred to in subsection (1)(c) has become primary production property within the period specified in that subsection, the Commissioner must reassess the duty payable on the dutiable transaction as if, at the time the dutiable transaction occurred, that dutiable property was primary production property.
- (6) Despite section 10, if duty is charged as a consequence of a reassessment under subsection (5), liability for that duty arises when the dutiable property referred

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to in subsection (1)(c) becomes primary production property.

30G. Concessions

- (1) Duty is not chargeable on a dutiable transaction under this Part if the dutiable transaction attracted a duty concession under Part 5.
- (2) Subsection (1) does not apply in respect of a dutiable transaction if the dutiable transaction attracted a duty concession under section 50.

30H. Reassessment of duty if transferee becomes a foreign person

- (1) This section applies to a dutiable transaction if –
 - (a) the dutiable transaction related to dutiable property that was residential property or primary production property; and
 - (b) a transferee who was liable to pay duty in respect of the dutiable transaction became a foreign person within the 3-year period after the dutiable transaction.
- (2) This section does not apply to a dutiable transaction if, at the time the transferee referred to in subsection (1)(b) became a

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foreign person, the transferee referred to in subsection (1)(b) did not own an interest in the dutiable property.

- (3) A transferee to whom subsection (1)(b) applies must, within 14 days after becoming a foreign person, give notice of that fact to the Commissioner in an approved form.

Penalty: Fine not exceeding 100 penalty units.

- (4) If the Commissioner becomes aware that a transferee referred to in subsection (1)(b) has become a foreign person within the period specified in that subsection, the Commissioner must reassess the duty payable on the dutiable transaction as if, at the time the dutiable transaction occurred, that transferee was a foreign person.
- (5) Despite section 10, if duty is charged as a consequence of a reassessment under subsection (4), liability for that duty arises when the transferee referred to in subsection (1)(b) becomes a foreign person.

30I. Dutiable transactions before 1 July 2018

For the avoidance of doubt, duty is not chargeable on a dutiable transaction

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under this Part if the dutiable transaction
occurred before 1 July 2018.

21. Sections 63A and 63B inserted

Before section 64 of the Principal Act, the
following sections are inserted in Part 2:

63A. Interpretation of Part 2

In this Part –

primary production property means
the following property:

- (a) land holdings of a landholder if that land holding relates to an interest in land and that land is primary production property in accordance with section 30(a);
- (b) goods of a landholder if –
 - (i) duty is chargeable on the value of those goods under section 71 or 72; and
 - (ii) the use of the goods can be directly linked to, or is incidental to

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the use, or
intended use, of,
all or part of the
land referred to in
paragraph (a) for
primary
production
purposes;

residential property means the
following property:

- (a) land holdings of a landholder if that land holding relates to an interest in land and that land is residential property in accordance with section 30A(a);
- (b) goods of a landholder if –
 - (i) duty is chargeable on the value of those goods under section 71 or 72; and
 - (ii) the use of the goods can be directly linked to, or is incidental to the use, or intended use, of, all or part of the

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land referred to in
paragraph (a) for
residential
purposes.

**63B. Landholdings that include more than one
parcel of land**

For the purposes of calculating duty
under this Part, if land holdings held by a
landholder include more than one parcel
of land, each parcel of land is taken to be
a separate item of property.

22. Section 68 amended (Acquisition statements)

Section 68 of the Principal Act is amended by
inserting after subsection (4) the following
subsection:

- (4A) In the case of a relevant acquisition to
which section 71A or 72A applies, the
statement must also contain the following
information:
- (a) the name of the foreign person
who made the relevant
acquisition and, if the landholder
is a private landholder, the name
of the foreign person who made
the acquisition in the landholder
during the statement period;
 - (b) the value of all residential
property and primary production

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property of the landholder as at the date of the relevant acquisition and, if the landholder is a private landholder, as at the date of acquisition of each interest acquired in the landholder during the statement period.

23. Section 71A inserted

After section 71 of the Principal Act, the following section is inserted in Part 2:

71A. Additional duty for acquisition by foreign person – private landholders

- (1) This section applies to a relevant acquisition in a private landholder if –
 - (a) a person liable to pay duty on the relevant acquisition is a foreign person; and
 - (b) the property of the private landholder includes residential property or primary production property (or both).
- (2) In addition to the duty otherwise chargeable under section 71, duty is also chargeable in accordance with this section.
- (3) If an acquisition statement that discloses a relevant acquisition in a private

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landholder does not disclose any other acquisitions during the statement period, duty is chargeable –

- (a) in respect of residential property held by the landholder, at the rate specified in section 30C on a dutiable transaction, on the amount calculated by multiplying the unencumbered value of all residential property of the landholder (calculated at the date of acquisition of the interest acquired) by the proportion of that value represented by the interest acquired by a foreign person or foreign persons in the relevant acquisition; and
- (b) in respect of primary production property held by the landholder, at the rate specified in section 30E on a dutiable transaction, on the amount calculated by multiplying the unencumbered value of all primary production property of the landholder (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 by a foreign person or foreign persons.

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- (4) Despite subsection (3), duty is not chargeable under this section on a relevant acquisition referred to in that subsection if the acquisition is –
- (a) an exempt acquisition; or
 - (b) a concessional acquisition.
- (5) Subsection (4)(b) does not apply to an acquisition that is a concessional acquisition by virtue of the application of a duty concession under section 50.
- (6) If an acquisition statement disclosing a relevant acquisition in a private landholder also discloses one or more other acquisitions during the statement period, duty is chargeable –
- (a) in respect of residential property held by the landholder, at the rate specified in section 30C on a dutiable transaction, on the aggregate of the amounts severally calculated, in the manner provided in subsection (3)(a), in respect of each interest required to be disclosed in the statement; and
 - (b) in respect of primary production property held by the landholder, at the rate specified in section 30E on a dutiable transaction, on the aggregate of

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the amounts severally calculated,
in the manner provided by
subsection (3)(b), in respect of
each interest required to be
disclosed in the statement.

- (7) For the purpose of calculating duty under this section –
- (a) if the acquisition statement discloses one or more other acquisitions referred to in subsection (6) and the relevant acquisition is an exempt acquisition, the value of residential property and primary production property for the relevant acquisition is taken to be zero; and
 - (b) if the acquisition statement discloses one or more other acquisitions referred to in subsection (6) and the relevant acquisition is a concessional acquisition, the value of residential property and primary production property for the relevant acquisition is taken to be zero; and
 - (c) if any of the other acquisitions referred to in subsection (6) is an exempt acquisition, the value of residential property and primary

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production property acquired for that other acquisition is taken to be zero; and

- (d) if any of the other acquisitions referred to in subsection (6) is a concessional acquisition, the value of residential property and primary production property acquired for that other acquisition is taken to be zero.
- (8) Subsections (7)(b) and (d) do not apply to an acquisition that is a concessional acquisition by virtue of the application of a duty concession under section 50.
- (9) Duty chargeable under this section is to be reduced by the sum of the duty paid, or payable, under this Part in respect of an acquisition, during the acquisition statement period, by the 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.
- (10) If –
 - (a) a person liable to pay duty on a relevant acquisition is a foreign person; and
 - (b) the acquisition statement disclosing the relevant acquisition

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also discloses one or more other
acquisitions during the statement
period –

the person referred to in paragraph (a) is
taken to have been a foreign person at the
time of the other acquisitions referred to
in paragraph (b).

24. Sections 72A, 72B and 72C inserted

After section 72 of the Principal Act, the
following sections are inserted in Part 2:

**72A. Additional duty for foreign acquisition –
public landholders**

- (1) This section applies to a relevant acquisition in a public landholder if –
 - (a) a person liable to pay duty on the relevant acquisition under section 72 is a foreign person; and
 - (b) the land holdings of the public landholder include residential property or primary production property (or both).
- (2) In addition to the duty otherwise chargeable under section 72, duty is also chargeable in accordance with this section.

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- (3) If an acquisition statement discloses a relevant acquisition in a public landholder, duty is chargeable –
- (a) in respect of residential property held by the landholder, at the rate specified in section 30C on a dutiable transaction, on a transfer of all the residential property of the landholder (calculated as if the transfer had occurred at the date of the relevant acquisition); and
 - (b) in respect of primary production property held by the landholder, at the rate specified in section 30E on a dutiable transaction, on a transfer of all the primary production property of the landholder (calculated as if the transfer had occurred at the date of the relevant acquisition).
- (4) For the purposes of subsection (3)(a), the dutiable value of all residential property of the landholder is calculated by multiplying the unencumbered value of all residential property of the landholder by the proportion of that value represented by the interest acquired in the landholder by a foreign person or foreign persons.

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- (5) For the purposes of subsection (3)(b), the dutiable value of all primary production property of the landholder is calculated by multiplying the unencumbered value of all primary production property of the landholder by the proportion of that value represented by the interest acquired in the landholder by a foreign person or foreign persons.
- (6) If an acquisition disclosed in an acquisition statement is an exempt acquisition or a concessional acquisition, the duty chargeable under this section is to be calculated after deducting from the dutiable value of residential property and primary production property the proportion of the dutiable value represented by the interest acquired in the exempt acquisition or concessional acquisition.
- (7) If duty is chargeable in respect of a relevant acquisition made by a person in a public landholder, no duty is chargeable in respect of any further acquisition made by that person in that landholder.

72B. Reassessment of duty if acquirer becomes a foreign person

- (1) This section applies to a relevant acquisition in a private landholder or a public landholder if –

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- (a) at the time the relevant acquisition occurred, the land holdings of the landholder included residential property or primary production property (or both); and
 - (b) within the 3-year period after the relevant acquisition, a person liable to pay duty in respect of the relevant acquisition became a foreign person.
- (2) This section does not apply to a relevant acquisition in a private landholder or a public landholder if, at the time the person referred to in subsection (1)(b) became a foreign person –
 - (a) the person did not own an interest in the landholder; or
 - (b) the landholder did not hold an interest in the land holdings referred to in subsection (1)(a).
- (3) A person referred to in subsection (1)(b) must, within 14 days after becoming a foreign person, give notice of that fact to the Commissioner in an approved form.

Penalty: Fine not exceeding 100 penalty units.
- (4) If the Commissioner becomes aware that a person referred to in subsection (1)(b)

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has become a foreign person within the period specified in that subsection, the Commissioner must reassess the duty payable on the relevant acquisition as if, at the time the relevant acquisition occurred, the person was a foreign person.

- (5) Despite section 64, if duty is charged as a consequence of a reassessment under subsection (4), liability for that duty arises when the person referred to in subsection (1)(b) becomes a foreign person.

72C. Acquisitions before 1 July 2018

- (1) Duty is not chargeable under sections 71A or 72A in respect of a relevant acquisition of an interest in a landholder if the relevant acquisition occurred before 1 July 2018.
- (2) If –
- (a) a relevant acquisition in a private landholder occurs on or after 1 July 2018; and
 - (b) the acquisition statement disclosing the relevant acquisition in the private landholder also discloses one or more other acquisitions that occurred before 1 July 2018 –

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the value of the residential property and primary production property for the other acquisitions referred to in paragraph (b) is, for the purposes of section 71A, taken to be zero.

(3) If –

- (a) a relevant acquisition in a public landholder occurs on or after 1 July 2018; and
- (b) the acquisition statement disclosing the relevant acquisition in the public landholder also discloses one or more other acquisitions that occurred before 1 July 2018 –

the duty chargeable under section 72A is to be calculated after deducting from the dutiable value of the residential property and primary production property the proportion of the dutiable value represented by the interest acquired before 1 July 2018.

25. Sections 84C and 84D inserted

Before section 85 of the Principal Act, the following sections are inserted in Part 4:

84C. Interpretation of Part 4

In this Part –

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goods does not include the following:

- (a) goods that are stock-in-trade;
- (b) materials held for use in manufacture;
- (c) goods under manufacture;
- (d) livestock;
- (e) a registered motor vehicle that is not exempt from motor tax under the *Vehicle and Traffic Act 1999* or the *Transport Act 1981*;

primary production property means the following property:

- (a) land that is primary production property in accordance with section 30(a);
- (b) goods that are the subject of a land use entitlement if the use of the goods can be directly linked to, or is incidental to the use, or intended use, of, all or part of the land referred to in paragraph (a) for

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primary production
purposes;

residential property means the
following property:

- (a) land that is residential property in accordance with section 30A(a);
- (b) goods that are the subject of a land use entitlement if the use of the goods can be directly linked to, or is incidental to the use, or intended use, of, all or part of the land referred to in paragraph (a) for residential purposes.

84D. Land use entitlement that relates to dual-use land

If a land use entitlement relates to property that is both residential property and primary production property, for the purposes of calculating duty under this Part, that land use entitlement is taken to only relate to residential property unless the Commissioner is satisfied that there are good reasons why the land use entitlement is to relate to primary production property only.

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26. Sections 91, 92, 93 and 94 inserted

After section 90 of the Principal Act, the following sections are inserted in Part 4:

91. Additional duty if foreign person acquires land use entitlement

- (1) This section applies if –
 - (a) a land use entitlement is acquired by an allotment of shares, or an issue of units, to a foreign person; and
 - (b) the land use entitlement relates to residential property or primary production property.
- (2) In addition to the duty otherwise chargeable under section 90, duty is also chargeable under this section –
 - (a) in the case of a land use entitlement relating to residential property, at the rate of duty set out in section 30C on the dutiable value of the land use entitlement acquired; and
 - (b) in the case of a land use entitlement relating to primary production property, at the rate of duty set out in section 30E on the dutiable value of the land use entitlement acquired.

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- (3) Duty under subsection (2) is to be charged only on the proportion of the dutiable value of the land use entitlement that is the same as the proportion of the land use entitlement acquired by a foreign person or foreign persons.
- (4) A foreign person who acquires a land use entitlement by an allotment of shares or an issue of units is to disclose the following information to the Commissioner in the acquisition statement:
- (a) that the person is a foreign person;
 - (b) the extent, if any, to which the land use entitlement relates to residential property or primary production property;
 - (c) the value of the residential property or primary production property referred to in paragraph (b).

92. Duty in respect of change of land to residential property

- (1) This section applies to the acquisition of a land use entitlement if –
- (a) duty was charged on the acquisition under section 90; and

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- (b) a person who acquired the land use entitlement –
 - (i) was a foreign person at the time of the acquisition; or
 - (ii) became a foreign person within the 3-year period after the acquisition; and
 - (c) within the 3-year period after the acquisition, the property to which the land use entitlement related became residential property.
- (2) This section does not apply to the acquisition of a land use entitlement if, at the time the property became residential property –
- (a) the person referred to in subsection (1)(b) did not own the land use entitlement; or
 - (b) the land use entitlement did not relate to the property referred to in subsection (1)(c).
- (3) A person referred to in subsection (1)(b) must, within 14 days of the property to which the land use entitlement relates becoming residential property, notify the Commissioner in an approved form of that fact, if the property to which the land use entitlement relates becomes

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residential property within the period specified in subsection (1)(c).

Penalty: Fine not exceeding 100 penalty units.

- (4) If the Commissioner becomes aware that the property to which the land use entitlement relates has become residential property within the period specified in subsection (1)(c), the Commissioner must reassess the duty payable on the acquisition of the land use entitlement as if, at the time the acquisition occurred, the land use entitlement related to residential property.
- (5) If the property referred to in subsection (1)(c) was primary production property before it became residential property, the amount of duty payable under section 91(2)(a) is to be reduced by the amount of duty (if any) previously paid in respect of the acquisition of the land use entitlement under section 91(2)(b).
- (6) Despite section 85, if duty is charged as a consequence of a reassessment under subsection (4), liability for that duty arises when the property referred to in subsection (1)(c) becomes residential property.

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93. Duty in respect of change of land to primary production property

- (1) This section applies to the acquisition of a land use entitlement if –
 - (a) duty was charged on the acquisition under section 90; and
 - (b) a person who acquired the land use entitlement –
 - (i) was a foreign person at the time of the acquisition; or
 - (ii) became a foreign person within the 3-year period after the acquisition; and
 - (c) within the 3-year period after the acquisition, the property to which the land use entitlement related became primary production property.
- (2) This section does not apply to the acquisition of a land use entitlement if the property referred to in subsection (1)(c) was residential property at the time of that acquisition.
- (3) This section does not apply to the acquisition of a land use entitlement if at the time the property referred to in

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subsection (1)(c) became primary production property –

- (a) the person referred to in subsection (1)(b) did not own the land use entitlement; or
 - (b) the land use entitlement did not relate to the land referred to in subsection (1)(c).
- (4) A person referred to in subsection (1)(b) must, within 14 days of the property to which the land use entitlement relates becoming primary production property, notify the Commissioner in an approved form of that fact, if the property to which the land use entitlement relates becomes primary production property within the period specified in subsection (1)(c).

Penalty: Fine not exceeding 100 penalty units.

- (5) If the Commissioner becomes aware that the property to which the land use entitlement relates has become primary production property within the period specified in subsection (1)(c), the Commissioner must reassess the duty payable on the acquisition of the land use entitlement as if, at the time the acquisition occurred, the land use entitlement related to primary production property.

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- (6) Despite section 85, if duty is charged as a consequence of a reassessment under subsection (5), liability for that duty arises when the property referred to in subsection (1)(c) becomes primary production property.

94. Reassessment of duty if acquirer becomes a foreign person

- (1) This section applies to the acquisition of a land use entitlement relating to residential property or primary production property if –
- (a) at the time the acquisition occurred, a person who acquired the land use entitlement was not a foreign person; and
 - (b) within the 3-year period after the time the acquisition occurred, the person referred to in paragraph (a) became a foreign person.
- (2) This section does not apply to the acquisition of a land use entitlement if, at the time the person referred to in subsection (1)(b) became a foreign person –
- (a) the person did not own the land use entitlement; or

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- (b) the land use entitlement did not relate to the same land as it related to at the time it was acquired by that person.
- (3) If a person referred to in subsection (1)(a) becomes a foreign person within the period specified in subsection (1)(b), that person must, within 14 days after becoming a foreign person, give notice of that fact to the Commissioner in an approved form.

Penalty: Fine not exceeding 100 penalty units.

- (4) If the Commissioner becomes aware that a person referred to in subsection (1)(a) has become a foreign person within the period specified in subsection (1)(b), the Commissioner must reassess the duty payable on the acquisition of the land use entitlement as if, at the time acquisition occurred, that person was a foreign person.
- (5) Despite section 85, if duty is charged as a consequence of a reassessment under subsection (4), liability for that duty arises when the person referred to in subsection (1)(a) becomes a foreign person.

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PART 7 – DUTIES ACT 2001 FURTHER AMENDED

27. Principal Act

In this Part, the *Duties Act 2001** is referred to as the Principal Act.

28. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended by omitting the definition of *home* and substituting the following definition:

home –

- (a) subject to paragraph (b), means a private dwelling and includes a private dwelling which is a company title dwelling and a farming property on which a private dwelling is erected; and
- (b) for the purposes of Divisions 2A and 2B of Part 5 of Chapter 2 has the same meaning as in the *First Home Owner Grant Act 2000*;

29. Chapter 2, Part 5, Division 2A inserted

After section 46 of the Principal Act, the following Division is inserted in Part 5:

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Division 2A – First home buyer duty concession

46A. Interpretation of Division 2A

In this Division –

eligible first home buyer – see section 46C;

eligible period means the period commencing on 7 February 2018 and ending on 6 February 2019;

eligible transaction – see section 46D;

established home means a home other than a new home;

new home has the same meaning as in the *First Home Owner Grant Act 2000*;

owner has the same meaning as in the *First Home Owner Grant Act 2000*;

residence requirement means a requirement that a person occupy an established home as his or her principal place of residence in accordance with section 46F(1).

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46B. Extension of eligible period

- (1) The Minister, by order and on one or more occasions, may extend the eligible period by omitting the date on which the period ends and substituting a new date.
- (2) Section 47(3), (3A), (4), (5), (6) and (7) of the *Acts Interpretation Act 1931* apply to an order under subsection (1) as if the order were regulations within the meaning of that Act.
- (3) An order under subsection (1) –
 - (a) is a statutory rule for the purposes of the *Rules Publication Act 1953*; and
 - (b) is not an instrument of a legislative character for the purposes of the *Subordinate Legislation Act 1992*.

46C. Eligible first home buyer

- (1) For the purposes of this Division, a person is an eligible first home buyer if the Commissioner is satisfied that the person –
 - (a) is a natural person; and
 - (b) has attained the age of 18 years; and

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- (c) subject to subsection (3), is an Australian citizen or a permanent resident.
- (2) The Commissioner may exempt a person from the requirement in subsection (1)(b), in respect of a transfer of land on which an established home is situated, if the Commissioner is satisfied that –
- (a) the person will comply with the residence requirement in relation to that home; and
 - (b) the transfer of land to the person does not form part of a scheme to circumvent requirements affecting eligibility for a duty concession under section 46E.
- (3) If, in respect of an eligible transaction, there is more than one transferee and one of the transferees is an Australian citizen or a permanent resident, it is not necessary for the other transferees to be Australian citizens or permanent residents.
- (4) A person is not an eligible first home buyer if –
- (a) the person or the person’s spouse has previously been the owner of a home in Tasmania or a home in any other State or a Territory; or

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- (b) the person or the person's spouse has previously been paid a first home owner grant under the *First Home Owner Grant Act 2000*; or
- (c) a previous transfer of property to that person or to the person's spouse attracted a duty concession under this Division.

46D. Eligible transaction

- (1) For the purposes of this Division, an ***eligible transaction*** means a transfer of land on which an established home is situated if that transfer meets the following requirements:
 - (a) the transfer occurs within the eligible period;
 - (b) each of the transferees is an eligible first home buyer;
 - (c) the Commissioner is satisfied that each of the transferees intends to meet the residence requirement in relation to the established home;
 - (d) the dutiable value of the dutiable property does not exceed the prescribed amount or, if no amount is prescribed, \$400 000.

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- (2) Subsection (1)(b) does not apply in relation to a transfer of land on which an established home is situated if the Commissioner is satisfied that there are good reasons why a transferee is not an eligible first home buyer.

46E. First home buyer duty concession

The duty chargeable on an eligible transaction is 50% of the duty that would be chargeable, at the rate specified in section 29, on a transfer of the dutiable property.

46F. Residence requirements

- (1) If duty was charged on a transfer of land in accordance with section 46E, each transferee must occupy the established home situated on that land as his or her principal place of residence for a continuous period of at least 6 months (or any lesser period approved by the Commissioner under subsection (2)) commencing –
- (a) within the 12-month period immediately after the eligible transaction; or
 - (b) within such longer period as is approved by the Commissioner.

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- (2) The Commissioner may approve a lesser period of occupation of an established home under subsection (1) if the Commissioner is satisfied that there are good reasons why the transferee cannot comply with the requirement to occupy the home for 6 months.
- (3) A decision to approve a lesser period of occupation of an established home under subsection (2), or to approve a longer period before occupation is commenced under subsection (1)(b), may be made at any time before the Commissioner makes a reassessment of duty under section 46G(2) on the transfer of the land on which that established home is situated.
- (4) The Commissioner may, in respect of an eligible transaction, exempt a transferee (*the non-complying transferee*) from the requirements of this section if –
 - (a) the transferee is one of 2 or more joint transferees; and
 - (b) at least one of the transferees complies with the residence requirement; and
 - (c) there are, in the Commissioner’s opinion, good reasons to exempt the non-complying transferee from the residence requirement.

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(5) If duty was charged on a transfer of land in accordance with section 46E, each transferee must retain his or her interest in that land until the residence requirement has been satisfied.

(6) If –

(a) duty was charged on a transfer of land in accordance with section 46E; and

(b) a transferee fails to comply with subsections (1) or (5) –

the transferee must give written notice of that fact to the Commissioner within 14 days after the failure to comply.

Penalty: Fine not exceeding 100 penalty units.

46G. Reassessment of duty

(1) If the Commissioner becomes aware that a dutiable transaction in respect of which duty was charged in accordance with section 46E did not satisfy the requirements of section 46D, the Commissioner may reassess the duty that would otherwise be payable in respect of that transaction, having regard to the amount of duty that may already have been paid.

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(2) If –

- (a) duty was charged on a transfer of land in accordance with section 46E; and
- (b) the Commissioner becomes aware that a transferee failed to comply with the requirements of section 46F –

the Commissioner may reassess the duty that would otherwise be payable in respect of that dutiable transaction as if the transaction was not an eligible transaction, having regard to the amount of duty that may already have been paid.

46H. Refund provisions

If the Commissioner is satisfied that a dutiable transaction attracts a duty concession under section 46E, the Commissioner is to refund any amount of duty paid in relation to the relevant dutiable transaction that exceeds the amount of the duty payable taking into account that duty concession.

46I. Anticipatory duty concessions

- (1) An eligible first home buyer is not entitled to a refund under section 46H in respect of an eligible transaction if,

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before the day on which the *Taxation Related Legislation (Housing Availability and Payroll Relief) Act 2018* receives the Royal Assent –

- (a) the eligible first home buyer received a refund of duty or a payment or benefit in relation to that dutiable transaction; and
 - (b) the refund of duty, payment or benefit was made under a deed of grant in anticipation of this Division applying to that dutiable transaction.
- (2) For the avoidance of doubt, if, before the day on which the *Taxation Related Legislation (Housing Availability and Payroll Relief) Act 2018* receives the Royal Assent, a refund of duty, payment or benefit was made under a deed of grant in anticipation of this Division applying to a dutiable transaction, that refund of duty, payment or benefit is taken to be a duty concession under this Division, attracted to an eligible transaction to which this Division applies.

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**PART 8 – DUTIES ACT 2001 FURTHER FURTHER
AMENDED**

30. Principal Act

In this Part, the *Duties Act 2001** is referred to
as the Principal Act.

31. Chapter 2, Part 5, Division 2B inserted

After section 46I of the Principal Act, the
following Division is inserted in Part 5:

Division 2B – Pensioner duty concession

46J. Interpretation of Division 2B

In this Division –

eligible pensioner – see section 46L;

eligible period means the period
commencing on
10 February 2018 and ending on
9 February 2019;

eligible property, in relation to an
eligible transaction, means the
dutable property that is the
subject of the eligible transaction;

eligible transaction – see
section 46M;

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former property, in relation to a person, means land in Tasmania on which was situated a home that the person occupied as his or her principal place of residence;

owner has the same meaning as in the *First Home Owner Grant Act 2000*.

46K. Extension of eligible period

- (1) The Minister, by order and on one or more occasions, may extend the eligible period by omitting the date on which the period ends and substituting a new date.
- (2) Section 47(3), (3A), (4), (5), (6) and (7) of the *Acts Interpretation Act 1931* apply to an order under subsection (1) as if the order were regulations within the meaning of that Act.
- (3) An order under subsection (1) –
 - (a) is a statutory rule for the purposes of the *Rules Publication Act 1953*; and
 - (b) is not an instrument of a legislative character for the purposes of the *Subordinate Legislation Act 1992*.

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46L. Eligible pensioner

- (1) For the purposes of this Division, a person is an eligible pensioner if the Commissioner is satisfied that –
 - (a) the person has attained the age of 60 years; and
 - (b) the person is –
 - (i) the holder of a Pensioner Concession Card under a relevant Act of the Commonwealth; or
 - (ii) the holder of a Seniors Health Card within the meaning of the *Social Security Act 1991* of the Commonwealth; or
 - (iii) in receipt of a special rate pension under the *Veterans' Entitlements Act 1986* of the Commonwealth.
- (2) A person is not an eligible pensioner if a previous transfer of dutiable property to that person, or to that person's spouse, attracted a duty concession under this Division.

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46M. Eligible transaction

For the purposes of this Division, an *eligible transaction* means a transfer of land on which a home is situated if that transfer meets the following requirements:

- (a) a transferee is an eligible pensioner;
- (b) the Commissioner is satisfied that the eligible pensioner intends to occupy the home as his or her principal place of residence for a continuous period of at least 6 months commencing within –
 - (i) the 12-month period immediately after the transfer; or
 - (ii) such longer period as is approved by the Commissioner;
- (c) the dutiable value of the dutiable property does not exceed the prescribed amount or, if no amount is prescribed, \$400 000.

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46N. Pensioner duty concession if home sold before eligible transaction

- (1) This section applies in relation to an eligible transaction if –
 - (a) a transferee who is an eligible pensioner transferred a former property within –
 - (i) the 6-month period immediately before the eligible transaction; and
 - (ii) the eligible period; and
 - (b) the former property referred to in paragraph (a) was the eligible pensioner's principal place of residence for the 6-month period (or any lesser period approved by the Commissioner under subsection (2)) immediately before he or she transferred that former property; and
 - (c) the dutiable value of the former property referred to in paragraph (a) (as at the time of its transfer) is greater than the dutiable value of the eligible property (as at the time of the eligible transaction); and
 - (d) the ownership of the eligible property is in the same name or

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names as the ownership of the former property of the transferee, referred to in paragraph (a), before its transfer as referred to in that paragraph.

- (2) The Commissioner may approve a lesser period under subsection (1)(b) if the Commissioner is satisfied that there are good reasons why the former property was not the principal place of residence for the eligible pensioner for the 6-month period immediately before he or she transferred the former property.
- (3) The duty chargeable on the eligible transaction is 50% of the duty that would be chargeable, at the rate specified in section 29, on a transfer of the dutiable property.
- (4) Subsection (1)(d) does not apply in relation to an eligible transaction if the Commissioner is satisfied that there are good reasons why the ownership of the eligible property is not in the same name or names as the ownership of the former property.
- (5) This section does not apply to an eligible transaction if the eligible pensioner, or the eligible pensioner's spouse, at the time of the eligible transaction was the owner of a home in Tasmania or a home

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in any other State or a Territory (other than the eligible property).

46O. Pensioner duty concession if home sold after eligible transaction

(1) This section applies in relation to an eligible transaction if –

(a) a transferee who is an eligible pensioner transferred a former property within –

(i) the 6-month period immediately after the eligible transaction; and

(ii) the eligible period; and

(b) the former property referred to in paragraph (a) was the eligible pensioner's principal place of residence for the 6-month period (or any lesser period approved by the Commissioner under subsection (2)) immediately before –

(i) he or she transferred that former property; or

(ii) the eligible transaction; and

(c) the dutiable value of the former property referred to in

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paragraph (a) (as at the time of its transfer) is greater than the dutiable value of the eligible property (as at the time of the eligible transaction); and

- (d) the ownership of the eligible property is in the same name or names as the ownership of the former property of the transferee referred to in paragraph (a), before its transfer as referred to in that paragraph.
- (2) The Commissioner may approve a lesser period under subsection (1)(b) if the Commissioner is satisfied that there are good reasons why the former property was not the eligible pensioner's principal place of residence for the period specified in that subsection.
 - (3) The duty chargeable on the eligible transaction is 50% of the duty that would be chargeable, at the rate specified in section 29, on a transfer of the dutiable property.
 - (4) Subsection (1)(d) does not apply in relation to an eligible transaction if the Commissioner is satisfied that there are good reasons why the ownership of the eligible property is not in the same name or names as the ownership of the former property.

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- (5) This section does not apply to an eligible transaction if the eligible pensioner, or the eligible pensioner's spouse, at the time of the eligible transaction was the owner of a home in Tasmania or a home in any other State or a Territory (other than the former property or the eligible property).

46P. Reassessment of duty

If the Commissioner becomes aware that a dutiable transaction, in respect of which duty was charged in accordance with this Division, did not satisfy the requirements of this Division in relation to that dutiable transaction, the Commissioner may reassess the duty that would otherwise be payable in respect of that transaction, having regard to the amount of duty that may already have been paid.

46Q. Refund provisions

If the Commissioner is satisfied that an eligible transaction attracts a duty concession under section 46N(3) or section 46O(3), the Commissioner is to refund any amount of duty paid in relation to the relevant dutiable transaction that exceeds the amount of the duty payable taking into account that rate of duty.

46R. Anticipatory duty concessions

- (1) An eligible pensioner is not entitled to a refund under section 46Q in respect of an eligible transaction if, before the day on which the *Taxation Related Legislation (Housing Availability and Payroll Relief) Act 2018* receives the Royal Assent –
 - (a) the eligible pensioner received a refund of duty or a payment or benefit in relation to that dutiable transaction; and
 - (b) the refund of duty, payment or benefit was made under a deed of grant in anticipation of this Division applying to that dutiable transaction.
- (2) For the avoidance of doubt, if, before the day on which the *Taxation Related Legislation (Housing Availability and Payroll Relief) Act 2018* receives the Royal Assent, a refund of duty, payment or benefit was made under a deed of grant in anticipation of this Division applying to a dutiable transaction, that refund of duty, payment or benefit is taken to be a duty concession under this Division, attracted to an eligible transaction to which this Division applies.