

CLAUSE NOTES

Duties Amendment

(Landholder and Corporate Reconstruction and Consolidation) Bill 2016

- Clause 1** Short title
- Clause 2** Allows for provisions in the legislation to commence on the day on which the Act receives Royal Assent.
- Clause 3** In this Act, the *Duties Act 2001* is referred to as the Principal Act.
- Clause 4** Inserts, amends or omits the following definitions from section 3 of the Act:
- a) The definition of 'associated person' is amended to omit the term 'majority interest'. A new term, 'significant interest' is substituted in its place.

A significant interest refers to a right of a person to a distribution of at least 50 per cent of a private landholder's property or 90 per cent of a public landholder's property (refer section 66).
 - b) The term 'associated person' is amended to include public companies with shareholders in common, where those shareholders own a majority of the shares in both companies.
 - c) The term 'associated person' is amended to include where shares in a company and units in a unit trust scheme can only be traded together as a single security.

Where units in a unit trust scheme can only be traded together as a single security with units in one or more other unit trust schemes, the trustees of all those unit trust schemes are considered to be associated persons.
 - d) The term 'beneficiary of a discretionary trust' is amended so that the reference to section 63(1) of the existing provisions has been substituted with reference to section 77(1) of the proposed provisions.
 - e) The definition of 'exempt acquisition' is omitted from section 3 of the Act. An exempt acquisition now has the meaning given under new sections 83 or 84.
 - f) 'interest' in a land-rich corporation - this term is omitted altogether and is replaced with the new term referenced in section 59, 'interest' in a landholder;
 - g) 'land holding' - this term is now referenced in section 59 and defined in section 62;
 - h) 'majority interest' - this term is replaced with a new term 'significant interest' referenced in section 59 and defined in section 66;
 - i) 'majority shareholder' - the word 'private' is omitted so that the term

majority shareholder is relevant to both public and private companies;

- j) 'private corporation' - this term has been replaced altogether with the term 'private landholder' referenced in section 59 and defined in section 61(2); and
- k) 'relevant acquisition' - this term is now referenced in section 59 and defined in section 65.

Clause 5

Repeals Parts 1 and 2 (sections 58 to 77 inclusive) of Chapter 3 of the Act and substitutes new sections 58 - 84B.

SUBSTITUTION OF PART 1

PRELIMINARY (SECTIONS 58 TO 63).

Section 58 provides that the purpose of Chapter 3 is to charge duty on certain transactions that are not dutiable transactions in Chapter 2. It also establishes that a relevant acquisition in a landholder is charged at the rate or a portion of the rate specified under section 29.

Section 59 'interpretation' clarifies the following terms:

- 'listed company' as a company that has shares listed on the Australian Stock Exchange, or any other recognised stock exchange;
- 'person' as a term that includes a landholder; and
- 'marketable security' in relation to another jurisdiction has the meaning of the corresponding Act of that jurisdiction.

In addition, section 59 provides section references to terms used in Chapter 3 (notes on these terms are contained within the relevant sections).

Section 60, subsections 1 and 2 provide that any land or goods held on trust by a trustee of a unit trust are taken to be held by the unit trust itself and that any act done by a trustee is taken to have been done by the unit trust itself.

Subsection 3 provides that this also applies to acts done or land or goods held by a custodian or a sub-custodian of a trustee of a unit trust scheme. These deeming provisions for trustees are necessary because a trust is not a separate legal entity and is unable to be a legal owner of land or act in its own right. The deeming provisions make it clear that where an act is done by a trustee, then that act is considered to have been done by the unit trust and where land or goods are held by the trustee, they are considered to be held by the unit trust.

Section 61 defines the meaning of private landholders (as private companies and private unit trust schemes) and public landholders (as listed companies and public unit trust schemes).

Subsection 1 provides that a company or unit trust scheme is a landholder if it has land holdings in Tasmania with a total unencumbered value (defined in section 20 of the Act) of \$500 000 or more (refer also section 81 which clarifies provisions for determining the unencumbered value of landholdings and goods).

The \$500 000 threshold value applies to 'land holdings' and does not include the value of 'goods' (refer section 63 which details what are goods of a

company or unit trust scheme).

Importantly, the land ratio test used under the land-rich regime is removed and is no longer used to determine whether an entity is subject to duty on transactions provided for under Chapter 3. This simplifies the determination of whether an entity is a land holding entity by eliminating the need to calculate the ratio of its land value to total assets.

Sections 2 and 3 define what private and public landholders are.

Section 62 sets out what is included as land holdings of a landholder.

Subsection 1 provides that a land holding is an interest in land – but does not include an interest of a mortgagee, chargee or other secured creditor or a *profit a prendre*. This is similar to the current provisions for indirect acquisitions of interests in land.

Subsection 2 provides that, for a unit trust scheme, an interest in land is a land holding only to the extent that the interest is held by the trustee in their capacity as trustee of the unit trust scheme (this also applies to custodians and sub-custodians of the trustee). As discussed below, this ensures that all applicable interests are taken into account but are not double counted.

Subsections 3 and 4 provide that when a company holds an interest in land on trust, this is not a land holding of the company in its own right - unless the company is also a beneficiary of the trust.

Where a company holds land on trust and is also a beneficiary of the trust, it is possible that the land may be counted as being owned by the company (in its own right) and also as a beneficiary. Subsection 4 also provides the Commissioner of State Revenue with a discretion to determine that the land held on trust is not property of the company in its own right; this avoids the land being counted twice when it would not be reasonable to do so.

Subsection 5 deals with mineral tenements and gas pipelines. An interest in a mineral tenement (as defined by the *Mineral Resources and Development Act 1995*) and an interest in a gas pipeline (as defined by the *Gas Pipelines Act 2000*) are both taken to be an interest in land.

Subsection 6, 7 and 8 provides that where something is fixed to the land, it is taken to be part of the land as a fixture regardless of whether it is owned separately from the land. A landholder's entitlement to, or interest in, an item fixed to land (where the land is not owned by the landholder) is also included in the landholder's land holdings to the extent of their interest in it.

Specifically, subsection 7 provides the Commissioner with a discretion to disregard an item fixed to land from the land holdings of a landholder where the Commissioner considers that it is just and reasonable to do so.

Subsection 9 defines what is a 'thing fixed to the land'.

Section 63 sets out what are goods of a landholder, unit trust scheme or company.

Subsection 1 does not include certain goods as being goods of a landholder (for example, stock-in-trade and materials held in use for manufacture), and their

value is excluded from the dutiable value of an acquisition (this is consistent with Chapter 2 provisions).

Subsection 2 explains that goods are goods of a landholder, unit trust scheme or company where the landholder has an interest in the goods but not where their interest is as a mortgagee, chargee or other secured creditor.

Subsection 3 explains the extent to which goods are included for a trustee (or the custodian or sub-custodian of the trustee) of a unit trust scheme.

Subsection 4 and 5 provide that similar to land (refer section 62 above), goods are not goods of a company if the interest the company has in the goods is held on trust and the company is *not* a beneficiary of the trust.

Subsection 5 provides the Commissioner with a discretion to disregard the goods as goods of the company where the company holds goods on trust and where the company is also a beneficiary of the trust.

SUBSTITUTION OF PART 2

CHARGING OF DUTY ON ACQUISITIONS OF INTERESTS OF LANDHOLDERS (SECTIONS 64 TO 72).

Section 64 provides that, a duty liability arises when a relevant acquisition is made. This is similar to the current land-rich provisions.

Section 65, subsections 1 and 2 define what a 'relevant acquisition' is.

A relevant acquisition occurs when a person (note, that a person includes a landholder) acquires an interest in a landholder that:

- is a significant interest (refer section 66 for the meaning of significant interest); or
- when aggregated with other interests in the landholder held by the person or an associated person amounts to a significant interest - unless an acquisition in a private landholder is made under an arrangement that results in the landholder ceasing to be a private landholder; or
- increases an existing significant interest.

Subsections 3 through to 5 clarify how a trustee's multiple interests in a landholder are aggregated (or otherwise). This is necessary to prevent the avoidance of duty by splitting acquisitions of interests between multiple trusts and also to prevent duty being applied twice where it would not be appropriate.

Subsection 3 specifically provides that interest acquired or held by a trustee that acts as trustee for two or more trusts are considered to be held independently for the separate trusts.

However the interests of separate trusts may be aggregated in certain circumstances. For example, where a trustee acts as trustee for two or more trusts, the interests of the separate trusts will be aggregated if the persons have a common beneficiary.

Subsections 6 through to 8 make special provision for life companies holding an

interest in a landholder for separate funds.

Section 66 explains the terms 'interest' and 'significant interest'.

Subsection 1 provides that an 'interest' in a landholder means any entitlement to the property of the landholder upon a notional winding up (a property distribution) of the landholder.

Subsection 2 provides that a 'significant interest' in a landholder is determined differently for a 'private landholder' and a 'public landholder'. For a private landholder, a significant interest arises where a person (alone or jointly with an associated person) acquires an interest (or interests) in a landholder that entitles them to 50 per cent (or more) of the property on a notional winding up of the landholder.

For a public landholder, a significant interest arises where a person (alone or jointly with an associated person) acquires an interest (or interests) in a landholder that entitles them to 90 per cent or more of the property on a notional winding up of the landholder.

The 90 per cent threshold for public landholders recognises that shareholders of listed companies have a lesser ability to influence the use, disposal and distribution of company-held land upon wind-up. It is also the point at which a bidder may compulsorily acquire all shares in a listed company.

Section 67, subsection 1 provides that a person acquires an interest in a landholder regardless of how the interest is obtained or increased. Subsection 2 lists (without limiting) some specific instances of how a person may acquire an interest in a landholder.

Subsection 3 provides that a person may acquire an interest in a landholder without directly acquiring units or shares in the landholder (for example, they may be acquired by virtue of a trust being declared over shares/units).

Section 68, subsection 1, requires a person who has made a relevant acquisition to prepare an acquisition statement in an approved form and lodge it with the Commissioner within three months of the relevant acquisition.

Subsection 2 operates so that where the acquisition results from the aggregation of interests acquired by associated persons, each of the associated parties are subject to the requirement. However, once one party has complied with the requirement to prepare and lodge an acquisition statement, then each party is taken to have met the requirement.

Subsection 3 details the information to be included in the statement. It requires all interests in the landholder to be disclosed in the acquisition statement.

Subsection 4 clarifies that only the acquisitions made within the 'statement period' are aggregated for the purpose of calculating duty.

Subsection 5 provides that information regarding property values is not required to be provided in the statement if the acquisition was an exempt or concessional acquisition.

Subsection 6 defines the statement period is a period of three years prior to the date of the relevant acquisition (ending on the date of the relevant

acquisition).

Subsections 7 and 8 specifically provides that the 'statement period' may be extended if an earlier acquisition (outside of the three year period) was made as part of the same arrangement with the most recent relevant acquisition.

Subsections 9 and 10 operate so that if a statement in relation to a relevant acquisition is not lodged, the Commissioner can prepare one based on any information available to the Commissioner and may make estimates based on that information.

Section 69 provides that a duty liability must be paid within three months of the liability arising; otherwise it is considered a tax default for the purposes of the *Taxation Administration Act 1997*. This is consistent with payment of duty on transfers of dutiable property under Chapter 2 of the Act.

Section 70, subsection 1 provides that the person making the relevant acquisition is liable for duty arising under this Part.

Subsection 2 provides that where a relevant acquisition occurs because interests of associated persons have been aggregated the person making the relevant acquisition and the associated person have a joint and several liability to pay the duty.

Section 71 provides for how duty is charged on relevant acquisitions for private landholders taking into account different circumstances.

Subsection 1 applies where an acquisition statement discloses a relevant acquisition in a private landholder - and no other acquisitions are disclosed in the statement period. It provides that duty is charged at the applicable rate (refer section 29 of the Duties Act) on the amount calculated by multiplying the unencumbered value of all land holdings and goods of the landholder in Tasmania by the proportion of the interest acquired.

The unencumbered value of the land holdings and goods is to be calculated at the date of acquisition of the interest acquired.

Subsections 2 and 3 provide that, despite subsection 1:

- no duty is chargeable under section 71 if the acquisition is an exempt acquisition (refer also subsection (6)(a) and (d) which deal with acquisition statements containing at least one exempt acquisition) and;
- in the case of a concessional acquisition, the relevant concessional rate of duty is applied instead (refer also subsection (6)(b) and (e) which deal with acquisitions statements containing at least one concessional acquisition) at the relevant concessional rate of duty under part 5 of Chapter 2 of the Act.

Note that exempt and concessional acquisitions are dealt with in Part 3B of the Act.

Subsection 4 provides for the aggregation of the interests of associated persons.

Subsection 5 provides for the calculation of duty when an acquisition statement

discloses a relevant acquisition made in a private landholder, together with one or more other acquisitions. In this case duty is still calculated using the rate specified in section 29, but it is charged on the aggregate of amounts individually calculated on each interest required to be disclosed in the statement (in the manner provided by subsection 1 of this section).

Subsection 6 clarifies how duty is calculated in situations where more than one acquisition is disclosed in the statement and the relevant acquisition is an exempt or concessional acquisition.

It also provides for where a statement contains a relevant acquisition as well as another acquisition which may be an exempt or concessional acquisition. The intent of the subsection is for the value of land and goods associated with exempt and concessional acquisitions to be taken to be zero; and for the concessional amount of duty (calculated in accordance with the relevant concessional rate of duty under Part 5 of Chapter 2 of the Act) to be added to the to the amount of duty otherwise payable.

Subsection 6 also clarifies that where any of the other acquisitions referred to under subsection 5 occurred when the landholder did not own land in Tasmania, the value of any goods that the landholder held at the time of the other acquisition is taken to be zero. This is to ensure that duty is not charged on acquisitions made at a time when the entity did not own land in Tasmania.

Subsection 7 provides for a reduction in the amount of duty paid or payable in relation to an acquisition in the same landholder (within the same statement period). That is, where duty has previously been paid on an acquisition in that landholder, and a further acquisition is made, the duty previously paid is deducted from the duty payable on the later acquisition in the same landholder.

Subsection 8 provides that the dutiable value may be reduced by the proportion of marketable securities duty paid (or payable) in another jurisdiction in relation to the relevant acquisition (noting that Tasmania does not charge marketable securities duty).

Subsection 9 provides for the aggregation of interests of associated persons and that in situations where the Commissioner is satisfied that the associated persons acquired their respective interests independently, (not part of the same arrangement) the Commissioner may assess (and charge) duty on each separate acquisition without aggregating the interests when calculating the dutiable value. This results in the effective rate of duty imposed being lower than had the interests been assessed on an aggregated basis. This is consistent with the treatment of direct transfers under Chapter 2 of the Act.

Subsection 10 clarifies that section 71 is subject to parts 3A and 3B of the Act which deal with general principles applied under Chapter 3 and exemptions and concessions respectively.

Section 72 provides for how duty is charged on relevant acquisitions in public landholders taking into account different circumstances.

Subsection 1 applies where a relevant acquisition is made in a public landholder. Duty on the relevant acquisition in a public landholder is charged at 10 per cent

of the duty that would be payable on a transfer of dutiable property assessed at the applicable rate (see section 29). Duty is charged on the unencumbered value of all the Tasmanian land holdings and goods of the landholder at the date of the relevant acquisition.

The application of the reduced amount of duty is in line with all other states that apply duty to public landholders.

The remaining subsections provide for the treatment of duty and taking into account similar considerations as in section 71.

Subsection 2 specifies that the dutiable value is the unencumbered value of those landholdings and goods at the date of the relevant acquisition.

Subsection 3 provides that where an acquisition is an exempt or concessional acquisition, the duty payable is to be calculated after deducting from the dutiable value, the proportion of the value represented by the proportion of exempt or concessional interest acquired. The subsection requires that, for a concessional acquisition, the relevant concessional amount of duty (under Part 5 of Chapter 2 of the Act) be added to the amount of duty otherwise payable.

Subsection 4 provides that the dutiable value may be reduced by the proportion of marketable securities duty paid (or payable) in another jurisdiction in relation to the relevant acquisition (Tasmania does not charge marketable securities duty).

Subsection 5 provides that where duty is chargeable in respect of a relevant acquisition made by a person in a public landholder, no duty is chargeable for any further acquisition made by that person in that landholder. This is because duty has already been applied to 100 per cent of the unencumbered value of the landholder's land and goods in Tasmania at the time when 90 per cent of the entity was acquired.

Subsection 6 clarifies that section 72 is subject to Parts 3A and 3B of the Act which deal with general principles applied under Chapter 3 and exemptions and concessions respectively.

SUBSTITUTION OF PART 3

CHARGING OF DUTY ON ACQUISITIONS MADE BY TRUSTEES (SECTIONS 73 TO 75).

Section 73, subsection 1 provides that Part 3 applies where a person acquires or holds an interest in a landholder as a bare trustee for another person.

Subsection 2 specifies that a bare trustee includes a custodian - except for a custodian of a unit trust scheme. (Note that bare trusts were not specifically provided for under the current land-rich provisions.)

Section 74, subsection 1 provides that where a person acquires or holds an interest in a landholder as bare trustee for another person, that other person is the beneficial owner of the interest in the landholder.

Subsection 2 and 3 provides that there may be a series of beneficial owners and section 74 explains that the ultimate beneficial owner is the person who is

the final beneficial owner (that does not hold that interest as a bare trustee for another person) (refer also section 75).

Section 75, subsection 1 provides that, rather than the legal owner, the beneficial owners are taken to have acquired and to hold the interest in the landholder. This is because beneficial owners control the actions of the trust and ultimately own the shares or units, rather than the legal owner.

Subsection 2 provides that, accordingly, the ultimate beneficial owner is liable for duty on acquisitions in a landholder and is responsible for lodging acquisition statements.

Subsection 3 clarifies that in determining whether a person makes a relevant acquisition under section 65, section 65 applies as if a person who acquires or holds an interest in a landholder is the ultimate beneficial owner of the interest, rather than the legal owner.

Subsection 4 specifically provides that acquisitions of interests are also aggregated (including with other interests held by associated person of the ultimate beneficial owner). This process of succession, arriving at the ultimate beneficial owner ensures that duty is paid once by the ultimate beneficial owner and that landholdings are aggregated appropriately.

These provisions act to prevent the splitting of interests between multiple bare trustees (acting on behalf of the same beneficiary) to avoid any of the individual interests meeting the significant interest threshold.

SUBSTITUTION OF PART 3A

GENERAL PRINCIPLES TO BE APPLIED UNDER THIS CHAPTER (SECTIONS 76 TO 82).

Section 76, subsection 1 provides for the concept of constructive ownership of landholdings and other property through a linked entity.

Subsections 2 and 3 describe what a linked entity of a private landholder or a public landholder is and that in addition to any interest in land or goods a company or a unit trust holds in its own right, an entity is taken to hold an interest in land or other property held by a linked entity.

Subsection 4 specifically provides that the value of the interest in the land holdings in a linked entity is calculated by determining the proportion of the land and goods the landholder would be entitled to receive on a successive winding-up of each of the linked entities in the ownership chain.

Section 77 provides for the constructive ownership of landholdings and other property in relation to discretionary trusts.

Unlike in the case of a fixed trusts, beneficiaries of discretionary trusts do not have a fixed entitlement or interest in the trust funds. Instead, the trustee of a discretionary fund has the discretion to determine which of the beneficiaries are to receive the capital and income of the trust and how much each beneficiary receives.

Subsection 1 and 2 provide that if a company or unit trust is a beneficiary of a

discretionary trust, the constructive ownership provisions deem the beneficiary to own, or be entitled to, all of the property that is the subject of the trust.

Subsection 3 (and subsection 4 by extension) provide that any property that is the subject of a discretionary trust is taken to be the subject of any other discretionary trust if the other discretionary trust (or the trustee of that other discretionary trust in its capacity as trustee), is a beneficiary of the first trust.

Section 78, subsection 1 provides that the land holdings for a private unit trust scheme, private company or of a linked entity are taken to include any land holdings or goods that had been recently transferred to either the person acquiring the interest, or an associated person. This is similar to the current land-rich provisions.

Subsection 2 provides that a 'land holding' or 'good' is recently transferred if it has been transferred within the 12 months prior to the acquisition of the interest.

This is necessary so that a person cannot reduce or avoid duty by means of decreasing the land holdings of an entity by receiving a direct transfer of land or goods from the landholder prior to making a relevant acquisition.

Subsection 3 provides the Commissioner with a discretion to disregard a landholding or good as being recently transferred if the Commissioner determines that it is just and reasonable to do so.

Subsection 4, provides that where the person or associated person paid *ad valorem* duty in respect to the transfer under Chapter 2, the duty payable under Chapter 3 is to be reduced by that amount.

Subsection 5, specifically states that a reference to a transfer, in relation to a land holding or goods, includes a reference to any dutiable transaction that effects a change in beneficial ownership of the landholdings or goods in favour of the person referred to in subsection 1 of this section.

Section 79 clarifies arrangements for uncompleted agreements for the sale or transfer of land, goods or land and goods.

Subsection 1 clarifies that the transferor and the transferee are taken to be separately entitled to the land, or land and goods in question.

Subsection 2 provides that the Commissioner may defer payment of duty arising from subsection 1 under section 59 of the *Taxation Administration Act 1997*.

The remaining subsections provide for when an agreement is subsequently completed.

Specifically, subsections 3 and 4 provide that the duty assessed on the relevant acquisition is reassessed as if the land or goods, or land and goods that were the subject of the agreement were not (at the time of the acquisition concerned) a land holding or goods, or a landholding and goods, of the landholder. Further, it provides that any amount paid in excess of the amount reassessed is to be refunded.

Subsections 5 and 6 provide that if the agreement is subsequently rescinded or otherwise terminated, then the relevant acquisition is to be reassessed as if the

land or goods, or land and goods, that were the subject of the agreement were not (at the time of the acquisition concerned) a land holding or goods, or landholding and goods, of the landholder. Similar to subsection 4, any amount paid in excess of the amount reassessed is to be refunded.

Subsection 7 clarifies that a linked entity of the landholder is included in these provisions.

Section 80 clarifies the arrangement for the sale or issue of shares or units in a landholder.

Subsections 1 and 2 provide that where an agreement is made to purchase or issue a share or unit in a *private* landholder, an interest is acquired in a landholder (and an entitlement to a distribution of the property is conferred) on the first of the following events:

- the agreement is completed;
- the transfer or title documents are delivered to the person acquiring the shares or units; or
- consideration for the purchase or issue is paid.

At the same time, the registered interest of the vendor is disregarded.

Subsection 3 provides that this section does not apply in respect to shares or units in a public landholder (which are traded on a stock exchange).

Section 81, subsection 1 clarifies provisions for determining the unencumbered value (defined in section 20 of the Duties Act) of land holdings and goods used to determine whether a unit trust or company is a landholder. The unencumbered value of land holdings and goods is used to calculate the dutiable value of an acquisition.

Subsection 2 provides that any arrangement relevant to land holdings or goods that has the effect of reducing the unencumbered value of the land holdings or goods will be disregarded by the Commissioner in determining the unencumbered value of land holdings or goods (subject to subsection 3).

Subsections 3 and 4 provide that the Commissioner may decide not to disregard an arrangement if he or she is satisfied (taking into account relevant matters) that it was not made as part of a scheme to reduce the duty payable in relation to a relevant acquisition.

Note that the unencumbered value of the real property may also be determined with reference to a valuation provided by the Office of the Valuer-General under sections 248(2), 248(2A) or 248(3) of the Duties Act.

Section 82 sets out how a person's entitlement to a distribution of property from a landholder is to be determined.

Subsections 2 and 3 provide that the Commissioner may undertake a calculation based on the presumption that the person would, if there were to be a distribution of property, exercise all powers and rights they have to maximise their own entitlement.

Subsections 4 and 5 provide that unless the Commissioner determines

otherwise, the correct evaluation of the entitlement of an interested person in a distribution of property on the winding up of a landholder is the greater of:

- the entitlement of the person in accordance with the constitution of the landholder or any law relevant to the distribution; and
- a distribution where the person (or any other relevant person that is associated or under the control of the person) had exercised all control over how a distribution from the landholder could be directed to maximise their entitlement.

SUBSTITUTION OF PART 3B

EXEMPTIONS, CONCESSIONS AND REFUNDS (SECTIONS 83 TO 84B).

Section 83, subsection 1 provides that an exemption will be available for an acquisition of an interest in a landholder where the Commissioner is satisfied that the acquisition, had it been a dutiable transaction, would have been entitled to an exemption under Part 6 of Chapter 2 (as applicable) of the Act.

Subsection 2 achieves this outcome by deeming the shares/units to be dutiable property of the landholder where duty is based on the proportion of those shares or units to the total number of shares or units in the landholder.

Further, subsection 2 clarifies that the person whose interest in the landholder increases as a result of the acquisition is the transferee; and the person whose interest in the landholder decreases as a result of the acquisition is the transferor.

Section 83 (together with the sections 84, 84A and 84B) more closely aligns the equitable treatment of direct (Chapter 2) and indirect transfers (Chapter 3) in the Act.

Section 84, similar to the current land-rich provisions, provides for where a financier acquires an interest in a landholder as a condition of providing financial accommodation.

Subsections 1 and 2 provide that where the Commissioner is satisfied that the acquisition was acquired for that purpose, the acquisition is not chargeable with duty – provided the interest is re-transferred by the acquirer within five years (or a longer period as determined by the Commissioner).

Subsection 3 specifies that a person is not required to lodge an acquisition statement where an interest was re-acquired by the person from whom it was acquired under subsection 2.

Section 84A, subsection 1 provides that a concessional rate of duty will be available for an acquisition of an interest in a landholder where the Commissioner is satisfied that the acquisition, had it been a dutiable transaction, would have been entitled to a concession under Part 5 of Chapter 2 (as applicable).

Subsection 2, is similar to section 83 subsection 2, where this has been achieved by deeming the shares/units to be dutiable property of the landholder.

Section 84B provides for the Commissioner to refund duty paid in relation to

an acquisition that is subsequently found to be exempt or concessional.

Clause 6 Amends section 90 by omitting the word 'general'. This is an administrative change and has no material effect.

Clause 7 Amends section 225(2) of the Duties Act that deals with the exemption for intergenerational rural transfers to amend the cross reference to section 65 (which has been re-numbered from section 67 in the drafting process). No other changes are made to intergenerational rural transfers.

Clause 8 After section 226 of the Principal Act, the following part is inserted in Chapter 10.

PART 1A - CORPORATE RECONSTRUCTION TRANSACTIONS AND CORPORATE CONSOLIDATION TRANSACTIONS

Section 226A defines terms or refers to sections that provide definitions used throughout Part 1A.

Specifically, subsection 1 clarifies that:

- the term corporation also includes a unit trust scheme; and
- a security of a corporation (other than a unit trust scheme) means an issued share of the corporation or, in the case of a unit trust scheme, it means a unit issued under the scheme;

Subsection 2 includes that a reference in Part 1A to anything done or held by a unit trust scheme (including any voting control held by a unit trust scheme) includes a reference to anything done by or held by a trustee (or custodian or sub-custodian) of the scheme as trustee of it.

Section 226B defines the meaning of a 'corporate group'.

Subsections 1 through to 3 provide that a corporate group is formed between a parent corporation and one or more of its subsidiary companies or unit trusts where the parent corporation owns 90 per cent or more of the shares or units and holds voting control in the other entity. A group also includes any subsidiaries of the parent entity's subsidiaries.

Subsection 4 provides that where the securities of a corporate group cannot be traded except as a single security with the securities of one or more other corporations, those other corporations and their subsidiaries are also included in the corporate group.

Subsection 5 provides that a unit trust scheme can be a member of a corporate group if the transaction is undertaken between the trustee of the unit trust scheme (in its capacity of trustee) and another corporation that is a member of the same corporate group as the unit trust scheme.

Subsection 6 specifies detail on when a corporation is not a member of a corporate group for the purposes of a corporate reconstruction transaction.

Section 226C provides that a corporate reconstruction transaction is one that takes place between members of the same corporate group.

Subsection 1 defines the types of transactions that are included.

Subsection 2 limits a corporate reconstruction transaction to one where the members of the corporate group were members for at least 12 months before the day on which the transaction occurred or, where a member company was newly incorporated or a unit trust newly established, since that entity's incorporation or establishment, as relevant (the pre-association test).

Despite subsection 2, subsection 3 makes provision for the pre-association period to be less than 12 months. This is where, in the case of the acquisition of a company, the company has not derived any business income or incurred business expenses between the time of incorporation and acquisition and was acquired from a person that, in the ordinary course of business, registers shelf companies for sale. In addition, the company must remain a member of the corporate group.

Subsection 4 clarifies that a transaction is taken not to be a corporate reconstruction transaction unless the Commissioner is satisfied that the members of the corporate group are likely to satisfy the requirements of section 226H(1)(a) that provides for a post association test.

Section 226D allows for an exemption on an eligible corporate consolidation transaction.

Subsection 1 provides that a corporate consolidation transaction relates to the interposing of a company or unit trust (the head corporation) between another company or unit trust (the affected corporation) and the holders of the affected corporations securities (the members).

To be eligible for a corporate consolidation exemption, a transaction must involve an acquisition of either shares or units in:

- the affected corporation by the head corporation, where the only consideration given by the head corporation is the issue or transfer of units or shares to the original shareholders or unit holders of the affected corporation; or
- the head corporation by a shareholder or unit holder of the affected corporation (that is, the landholder).

In addition, subsection 2 and 3 specifies the following eligibility conditions must also be satisfied:

- the head corporation cannot hold any dutiable property or an interest in a corporation immediately before the acquisition ; and
- immediately following the issue or transfer of the head corporation's shares/units, each person who holds those shares/units is a person who held shares or units (and in the same proportions) in the affected corporation immediately before the transaction.

Subsection 4 provides that corporate consolidation transactions are also limited by pre-association and post-association requirements in a similar way as corporate reconstruction transactions (refer section 226C).

Despite subsection 4, subsection 5 makes provision for the pre-association period to be less than 12 months. This is where, in the case of the acquisition of a company, the company has not derived any business income or incurred business expenses between the time of incorporation and acquisition and was acquired from a person that, in the ordinary course of business, registers shelf companies for sale. In addition, the company must remain a member of the corporate group.

Subsection 6 clarifies that a transaction is taken not to be a corporate consolidation transaction unless the Commissioner is satisfied that the members of the corporate group are likely to satisfy the requirements of section 226H(1)(a) that provides for a post association test.

Section 226E provides exemptions for corporate reconstruction transactions and corporate consolidation transactions.

Subsection 1 provides that for such an exemption to be granted, the Commissioner must be satisfied that the transaction is undertaken for the purpose of changing the structure of the group or changing the holding of assets within the group.

Further, subsection 1 clarifies that the exemption will not be applied to transactions undertaken for the purpose of reducing duty on another transaction under the *Duties Act 2001*, or reducing another tax liability in Australia.

Subsection 2 also defines what 'transaction' means in this section.

Section 226F, subsection 1 provides that an application for an exemption is to be made to the Commissioner once the transaction occurs. This is consistent with all other exemptions within the Duties Act.

Subsection 2 provides that an exemption may be granted with or without conditions.

Subsection 3 outlines that the Commissioner will be required to reassess any duty payable on a transaction if an exemption is granted.

Section 226G provides for a refund of duty in circumstances where duty has been paid, and a corporate reconstruction or consolidation exemption is subsequently granted.

Section 226H, subsection 1 provides that an exemption may be revoked if the post-association requirement is not met, or the exemption was granted based on false or misleading information provided to the Commissioner.

Subsection 2 also provides for specific circumstances where the post-association requirement would not apply (for example, where a public float occurred within 12 months after the day on which the transaction occurred).

Subsections 3 and 4 provide that where an exemption is revoked, the Commissioner must assess the liability for duty on the transaction and each member of the corporate group is jointly and severally liable for the duty

chargeable on the transaction.

Subsection 5 defines the meaning of 'public float' within section 226H.

Clause 9 **Section 248(3)** is an inconsequential amendment replacing the reference to a repealed section of the Act with reference to section 65 that specifically explains a relevant acquisition.

Clause 10 **Section 259F** is inserted to provide for savings and transitional provisions that will apply as a result of enactment of the *Duties Amendment (Landholder and Corporate Reconstruction) Act 2016*.

As a statement period capturing previous acquisitions in a landholder covers three years (and can be longer), it is possible that acquisitions made under the current land-rich provisions may be aggregated with an acquisition made under the landholder provisions. Given that the current land-rich provisions differ from the new (landholder) provisions in several important ways, it is necessary for transitional provisions to be adopted.

Subsection 1 provides that for private landholders, a relevant acquisition made at any time before the date of commencement of the amendments is counted in determining:

- whether the person has made a relevant acquisition in a landholder after commencement; and
- the duty that may be chargeable.

This policy aligns the treatment of indirect transfers of land (under Chapter 3) with direct transfers of land under Chapter 2.

Subsection 2, in determining whether a relevant acquisition in a landholder is made after the commencement of the landholder provisions, requires earlier acquisitions by a person in the landholder to be disclosed on the acquisition statement (for both private and public landholders).

Subsection 3 provides that where a statement includes an acquisition that occurred before commencement, and also includes an acquisition that occurred after the commencement date, the unencumbered value of the goods of the landholder is disregarded for any acquisition made prior to the commencement date. This reflects that goods are not dutiable under the current land-rich regime and that it would be unfair to capture goods held at a time that the land-rich regime was in place.

Subsection 4 provides that for private landholders, the former Chapter 3 provisions (that is, those provisions that will have been in force immediately before the commencement of the *Duties Amendment (Landholder and Corporate Reconstruction) Act 2016*) will continue to apply in respect of any former relevant acquisition in a land-rich corporation before the commencement of the landholder regime.

Subsection 5 provides for the treatment of a 'prescribed acquisition', which is defined in subsection 10 as an acquisition, other than a relevant acquisition, within the meaning of the current land-rich provisions. Subsection 5 clarifies that the former Chapter 3 also applies to these acquisitions that were made before

the commencement day that are not taken into account for the purpose of determining whether a relevant acquisition is made on or after the commencement day.

Subsection 6 provides that for public landholders, acquisitions made before the commencement date are counted for the purpose of determining whether the person has made a relevant acquisition in the public landholder. However, subsection 7 provides that acquisitions made in public landholders before the commencement date are exempt from duty.

Subsection 8 provides that duty is not chargeable on a relevant acquisition made by a person in a public landholder if the person's intention to make the acquisition was announced to the Australian Stock Exchange (or any other recognised stock exchange on which the landholder is listed) before the commencement date.

Subsection 9 refers to provisions at 71(7) and clarifies that any duty paid or payable for an acquisition under the current land-rich provisions is taken to be paid or payable under Chapter 3. This is necessary to ensure that duty previously paid can be deducted from the duty payable on any later acquisition in the same landholder.

Subsection 10 provides clarification and defines terms that are used throughout the savings and transitional provisions at section 259F.

Clause 11

Section 1A in Schedule 1 is an administrative provision that provides references to sections and terms, their application in time and repeals the following outdated clauses:

- subclause 4 from clause 2
- clause 6
- clauses 8 and 9
- clause 15
- clause 17

Clause 12

Provides for the amendment Act to be repealed.