

Version No. 050
Duties Act 2000

Act No. 79/2000

Version incorporating amendments as at 10 February 2006

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Version No. 050
Duties Act 2000
Act No. 79/2000

Version incorporating amendments as at 10 February 2006

The Parliament of Victoria enacts as follows:

CHAPTER 1 PRELIMINARY

1. Purpose

The main purpose of this Act is to create and charge a number of duties.

2. Commencement

This Act comes into operation on 1 July 2001.

3. Definitions

(1) In this Act—

"acquisition statement", in Part 2 of Chapter 3, means a statement referred to in section 80(1);

"advance", in Chapter 7, has the meaning given by section 150;

"allotment statement", in Part 4 of Chapter 3, means a statement referred to in section 101;

"approved" means approved by the Commissioner;

"associated person" means a person who is associated with another person in accordance with any of the following provisions—

- (a) persons are associated persons if they are related persons;

S. 3 amended by No. 46/2001 s. 3(2) (ILA s. 39B(1)).

S. 3(1) def. of "associated person" amended by Nos 44/2001 s. 3(Sch. item 32.1(a)), 46/2004 s. 3(1)(a)-(c).

-
- (b) natural persons are associated persons if they are partners in a partnership to which the **Partnership Act 1958** applies;
 - (c) companies are associated persons if—
 - (i) there are minority shareholders common to each company who, if their interests were aggregated, would be majority shareholders in each company; or
 - (ii) any majority shareholder or relative is a majority shareholder in each company;
 - (ca) companies are associated persons if the shares in the companies are "stapled", in that they are unable to be traded other than as if they together represented a single security;
 - (d) trustees are associated persons if any person is a beneficiary common to the trusts (not including a public unit trust scheme) of which they are trustees;
 - (e) a company and a trustee are associated persons if the company or a related body corporate of the company is a beneficiary of the trust (not including a public unit trust scheme) of which the trustee is a trustee;
 - (f) a company and the trustee of a unit trust scheme are associated persons if their shares and units are "stapled", in that they are unable to be traded other than as if they together represented a single security;
-

- (g) trustees of unit trust schemes are associated persons if the units in each of the unit trust schemes are "stapled", in that they are unable to be traded other than as if they together represented a single security;
- (h) a qualified investor and a private company are associated persons if the qualified investor is a majority shareholder in the private company;
- (i) a qualified investor and the trustee of a private unit trust scheme are associated persons if the qualified investor holds 20% or more of the units in the private unit trust scheme;

and, for the purposes of Part 2 of Chapter 3, a public company and a subsidiary of a public company are taken to be associated persons;

"Australian register" has the same meaning as in the Corporations Act;

S. 3(1) def. of "Australian register" amended by No. 9/2002 s. 3(Sch. item 4.1(a)).

"Australian Stock Exchange" means Australian Stock Exchange Limited (A.C.N. 008 624 691);

S. 3(1) def. of "Australian Stock Exchange" substituted by No. 46/2001 s. 3(1)(b).

"authorised deposit-taking institution" has the same meaning as in the Banking Act 1959 of the Commonwealth;

S. 3(1) def. of "authorised deposit-taking institution" inserted by No. 46/2001 s. 3(1)(a).

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Chapter 1 Preliminary

s. 3

S. 3(1) def. of
"collateral
mortgage"
inserted by
No. 46/2001
s. 3(1)(a),
amended by
No. 79/2001
s. 3.

"**calf**" means any cattle less than 6 weeks of age;

"**cattle**" means bull, cow, ox, steer, heifer or buffalo;

"**charge**" includes impose;

"**collateral mortgage**" means a mortgage that secures all or part of the same amount as another mortgage, security instrument or mortgage package that has been duly stamped under this Act or a corresponding Act;

"**commercial hire business**" has the meaning given by section 126;

"**commercial vehicle**" means—

- (a) a motor vehicle or trailer within the meaning of the **Road Safety Act 1986** constructed or adapted principally for the carriage of goods but does not include a motor vehicle of the kind known as a utility, a station wagon or a panel van; or
- (b) a vehicle without motive power of its own and constructed or adapted principally for the carriage of goods and for being drawn by a motor vehicle within the meaning of that Act;

"**Commissioner**" means the Commissioner of State Revenue referred to in section 62 of the **Taxation Administration Act 1997**;

"**complying approved deposit fund**" means an entity that is a complying approved deposit fund in accordance with section 43 of the Superannuation Industry (Supervision) Act 1993 of the Commonwealth;

"complying superannuation fund" means an entity that is a complying superannuation fund in accordance with section 42 or 42A of the Superannuation Industry (Supervision) Act 1993 of the Commonwealth and an exempt public sector superannuation scheme and in section 40 includes a complying approved deposit fund and an eligible rollover fund;

S. 3(1) def. of "complying superannuation fund" amended by No. 46/2001 s. 3(1)(c).

"co-operative" has the same meaning as in the **Co-operatives Act 1996**;

"co-operative housing society" has the same meaning as in the meaning of the **Co-operative Housing Societies Act 1958**;

"corporation" means a body corporate, whether incorporated in this State or elsewhere;

"corresponding Act" means an Act of another State or of a Territory corresponding to this Act;

* * * * *

S. 3(1) def. of "cost" repealed by No. 48/2001 s. 5(a).

"counterpart" includes a duplicate;

"Crown leasehold" means a lease under the **Land Act 1958** or any other Act or enactment in respect of which a Crown grant in fee-simple is by law directed or authorised to be made to the lessee on payment of all sums (whether referred to as rent or otherwise) reserved by the lease and on compliance with the other covenants of the lease;

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Chapter 1 Preliminary

s. 3

S. 3(1) def. of "defacto spouse" repealed by No. 27/2001 s. 3(Sch. 1 item 2.1(b)).

* * * * *

S. 3(1) def. of "demonstrator vehicle" inserted by No. 71/2004 s. 4.

"demonstrator vehicle" means a motor vehicle that is used exclusively for the purpose of sale of another vehicle of the same class;

"discretionary trust" means a trust under which the vesting of the whole or any part of the capital of the trust estate, or the whole or any part of the income from that capital, or both—

- (a) is required to be determined by a person either in respect of the identity of the beneficiaries or the quantum of interest to be taken, or both; or
- (b) will occur if a discretion conferred under the trust is not exercised; or
- (c) has occurred but under which the whole or any part of that capital or the whole or any part of that income, or both, will be divested from the person or persons in whom it is vested if a discretion conferred under the trust is exercised;

S. 3(1) def. of "domestic partner" inserted by No. 27/2001 s. 3(Sch. 1 item 2.1(a)).

"domestic partner" of a person means a person with whom the person is in a domestic relationship;

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"domestic relationship" means the relationship between two people who, although not married to each other, are living together as a couple on a genuine domestic basis (irrespective of gender);

S. 3(1) def. of "domestic relationship" inserted by No. 27/2001 s. 3(Sch. 1 item 2.1(a)).

"dutiable property" has the meaning given by section 10;

"dutiable proportion", for a mortgage, means the proportion of the amount secured by the mortgage worked out under section 159;

S. 3(1) def. of "dutiable proportion" inserted by No. 46/2001 s. 3(1)(a).

"dutiable transaction" has the meaning given by section 7(2);

"dutiable value"—

- (a) of dutiable property has the meaning given by section 20;
- (b) of a motor vehicle has the meaning given by section 219;

"eligible first home owner" has the meaning given by section 61;

"eligible pensioner" has the meaning given by section 58;

"eligible rollover fund" means an entity that is an eligible rollover fund in accordance with section 242 of the Superannuation Industry (Supervision) Act 1993 of the Commonwealth and includes an entity the trustee of which is satisfied will be an eligible rollover fund within 12 months after the date on which a liability to duty arises (or would otherwise arise);

"entitled", in Chapter 3, means beneficially entitled;

"execute", in relation to an instrument not under seal, means sign;

"farm machinery" means—

- (a) a harvester, binder, tractor, plough or other agricultural implement; or
- (b) a boat;
- (c) fishing equipment;
- (d) any other goods of a class commonly used for the purposes of primary production that are determined by the Commissioner to be farm machinery for the purposes of sections 132(j) and 170—

where the goods are acquired for the purposes of primary production;

"financial institution" means—

- (a) an authorised deposit-taking institution within the meaning of the Banking Act 1959 of the Commonwealth; or
- (b) a co-operative within the meaning of the **Co-operatives Act 1996**; or
- (c) a co-operative housing society within the meaning of the **Co-operative Housing Societies Act 1958**; or
- (d) a body approved by the Governor in Council by Order published in the Government Gazette;

S. 3(1) def. of "financial institution" inserted by No. 71/2004 s. 4.

"friendly society" means a body that was a society within the meaning of the Friendly Societies (Victoria) Code immediately before the transfer date within the meaning of the **Financial Sector Reform (Victoria) Act 1999** or is a friendly society for the purposes of the Life Insurance Act 1995 of the Commonwealth;

"general insurance" has the meaning given by section 176;

"general insurer" has the meaning given by section 184;

"GST" has the same meaning as it has in the A New Tax System (Goods and Services Tax) Act 1999 of the Commonwealth except that it includes notional GST of the kind for which payments may be made under Part 3 of the **National Taxation Reform (Consequential Provisions) Act 2000** by a person that is a State entity within the meaning of that Act;

"heavy trailer" means a trailer or semi-trailer within the meaning of the **Road Safety Act 1986** with an MRC exceeding 4.5 tonnes;

"hire of goods" has the meaning given by section 129;

"hire purchase agreement" has the meaning given by section 130(2);

"hiring charges" has the meaning given by section 135;

"industrial organisation" means an association of employees or employers registered as an organisation under the Workplace Relations Act 1996 of the Commonwealth;

S. 3(1) def. of "industrial organisation" inserted by No. 46/2001 s. 3(1)(a).

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"instrument" includes a written document and a written statement;

"insurance" includes assurance;

"insurance intermediary" means—

- (a) a person who arranges contracts of insurance in Victoria—
 - (i) for reward; and
 - (ii) as an agent for a person carrying on a business of insurance; or
- (b) a financial services licensee (within the meaning of section 761A of the Corporations Act) whose licence covers arranging contracts of insurance as an agent for a person carrying on a business of insurance; or
- (c) a regulated principal (within the meaning of section 1430 of the Corporations Act) when carrying on business as an insurance broker that the regulated principal is authorised to carry on by Subdivision D of Division 1 of Part 10.2 of that Act;

"interest" includes an estate or proprietary right;

"interest" in a landholder has the meaning given by section 76(1);

"land use entitlement" means an entitlement to occupy land in Victoria conferred through an ownership of shares in a company or units in a unit trust scheme, or a combination of a shareholding or ownership of units together with a lease or licence;

S. 3(1) def. of "insurance intermediary" substituted by No. 9/2002 s. 3(Sch. item 4.1(b)).

S. 3(1) def. of "interest" inserted by No. 46/2004 s. 3(2)(a).

S. 3(1) def. of "land use entitlement" inserted by No. 46/2004 s. 3(2)(b).

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"liability date", for a mortgage, means the date the mortgage is liable under section 152 for mortgage duty;

S. 3(1) def. of "lease" repealed by No. 48/2001 s. 5(a).

S. 3(1) def. of "liability date" inserted by No. 46/2001 s. 3(1)(a).

"licensed motor car trader" has the same meaning as in the **Motor Car Traders Act 1986**;

"life insurance" has the meaning given by section 198;

"life insurer" has the meaning given by section 202;

"linked entity" has the meaning given in section 74;

S. 3(1) def. of "linked entity" inserted by No. 46/2004 s. 3(2)(b).

"listed trust" means—

S. 3(1) def. of "listed trust" inserted by No. 46/2004 s. 3(2)(b), substituted by No. 85/2005 s. 3(1)(b).

(a) a unit trust scheme all the units in which are quoted on the Australian Stock Exchange; or

(b) a unit trust scheme—

(i) all the units in which are quoted on any exchange of the World Federation of Exchanges (other than the Australian Stock Exchange); and

(ii) that is declared by the Commissioner under sub-section (4)(a) to be a listed trust;

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S. 3(1) def. of
"majority
shareholder"
inserted by
No. 46/2004
s. 3(2)(b).

"majority shareholder" in a company means—

- (a) in the case of a company the shares in which are not divided into classes—a person entitled to not less than 50% of those shares; and
- (b) in the case of a company the shares in which are divided into classes—a person entitled to not less than 50% of the shares in any of those classes;

S. 3(1) def. of
"managed
investment
scheme"
amended by
Nos 44/2001
s. 3(Sch.
item 32.1(b)),
46/2004
s. 3(2)(c).

"managed investment scheme" means a managed investment scheme within the meaning of Chapter 5C of the Corporations Act;

"marketable securities" means the following—

- (a) shares referred to in section 10(1)(b);
- (b) units referred to in section 10(1)(c);
- (c) an interest in shares or units referred to in paragraph (a) or (b);

S. 3(1) def. of
"minority
shareholder"
inserted by
No. 46/2004
s. 3(2)(b).

"minority shareholder" in a company, means a shareholder in that company who is not a majority shareholder;

S. 3(1) def. of
"mortgage"
substituted by
No. 46/2001
s. 3(1)(d).

"mortgage"—

- (a) subject to paragraph (b), has the meaning given by section 149;
- (b) for the purposes of section 251A and the definitions of "mortgage-backed security" and "pool of mortgages" means a mortgage of any estate or interest in land, including a leasehold estate or interest in land, whether the

land is situated in Victoria or elsewhere, and includes a charge over any such land;

"mortgage-backed security" means—

- (a) an interest in a trust that entitles the holder of or beneficial owner under the interest—
 - (i) to the whole or any part of the rights or entitlements of a mortgagee and any other rights or entitlements in respect of a mortgage or any money payable by the mortgagor under the mortgage (whether the money is payable to the holder of or beneficial owner under the interest on the same terms and conditions as under the mortgage or not); or
 - (ii) to the whole or any part of the rights or entitlements of a mortgagee and any other rights or entitlements in respect of a pool of mortgages or any money payable by mortgagors under those mortgages (whether the money is payable to the holder of or beneficial owner under the interest on the same terms and conditions as under the mortgages or not); or

S. 3(1) def. of "mortgage-backed security" inserted by No. 46/2001 s. 3(1)(a), substituted by No. 30/2002 s. 3(1)(a).

(iii) to payments that are derived substantially or, if the regulations prescribe the extent, to the prescribed extent, from the income or receipts of a pool of mortgages—

and that may, in addition, entitle the holder or beneficial owner to a transfer or assignment of the mortgage or mortgages; or

- (b) a debt security (whether or not in writing) the payments under which by the person who issues or makes the debt security are derived substantially or, if the regulations prescribe the extent, to the prescribed extent, from the income or receipts of a pool of mortgages; or
- (c) any of the following—
- (i) an interest in a trust creating, conferring or comprising a right or interest (whether described as a unit, bond or otherwise) of or on a beneficiary in a scheme under which any profit or income in which the beneficiaries participate arises from the acquisition, holding, management or disposal of prescribed property, or any instrument that evidences such a right or interest;
 - (ii) a security (whether or not in writing) the payments under which by the person who issues or makes the security are derived substantially from the income or receipts of prescribed property;
-

- (iii) an interest in a trust, a debt security (whether or not in writing), an instrument or property that creates an interest in or charge over an interest in a trust, a debt security (whether or not in writing) or other instrument or property, to which paragraph (a) or (b) or sub-paragraph (i) or (ii) of this paragraph applies—

but does not include an instrument or property comprising—

- (d) a mortgage; or
(e) the transfer of a mortgage; or
(f) a declaration of trust; or
(g) an instrument of a class or description of instruments, or property of a class or description of property, prescribed not to be a mortgage-backed security for the purposes of this definition;

"mortgage package" has the meaning given by section 160;

"motor vehicle" means—

- (a) a motor vehicle within the meaning of the **Road Safety Act 1986**; or
(b) a heavy trailer;

"MRC" (Mass Rating for Charging) has the same meaning as in the National Schedule;

S. 3(1) def. of "MRC" substituted by No. 85/2005 s. 3(1)(c).

"National Schedule" means the Schedule to the Road Transport Charges (Australian Capital Territory) Act 1993 of the Commonwealth;

S. 3(1) def. of "National Schedule" inserted by No. 85/2005 s. 3(1)(a).

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S. 3(1) def. of
"partner"
inserted by
No. 27/2001
s. 3(Sch. 1
item 2.1(a)).

"partner" of a person means the person's spouse
or domestic partner;

"passenger car" means—

- (a) a motor vehicle constructed principally
for the carriage of passengers; or
- (b) a motor vehicle that—
 - (i) is designed principally for the
conveyance of not more than
8 adults; and
 - (ii) is constructed either on a truck
chassis or with special features for
off-road operation—

but does not include—

- (c) a motor cycle; or
- (d) a motor vehicle having a utility or panel
van type body in which the forward
part of the body form and the greater
part of the mechanical equipment are
the same as those in a passenger car
manufactured by the manufacturer of
the motor vehicle; or
- (e) a motor vehicle constructed for the
carriage of passengers and equipped to
seat more than 8 adults (including the
driver);

"person" includes an unincorporated association and a partnership;

Note: **"person"** also includes a body corporate—see section 38 of the **Interpretation of Legislation Act 1984**.

Note to s. 3(1) def. of "person" inserted by No. 46/2001 s. 3(1)(e).

"pooled superannuation trust" means an entity that is a pooled superannuation trust in accordance with section 44 of the Superannuation Industry (Supervision) Act 1993 of the Commonwealth;

"pool of mortgages" means a pool or collection of assets—

S. 3(1) def. of "pool of mortgages" inserted by No. 46/2001 s. 3(1)(a).

- (a) that consists solely of mortgages; or
- (b) that consists substantially, or to the extent declared under sub-section (2)(d), of mortgages or of money paid under mortgages, or both, and may include—
 - (i) cash;
 - (ii) investments of a kind referred to in section 4(1)(a), (b), (c), (d), (e), (f), (g), (h), (i), (ia), (j), (k) or (o) of the **Trustee Act 1958** as in force immediately before the commencement of section 4 of the **Trustee and Trustee Companies (Amendment) Act 1995**;
 - (iii) assets of a class of assets declared under sub-section (2)(e);

"premium", in relation to general insurance, has the meaning given by section 177;

S. 3(1) def. of
"prescribed
property"
inserted by
No. 30/2002
s. 3(1)(b).

"prescribed property" means any of the following—

- (a) cash;
- (b) investments of a kind referred to in section 4(1)(a), (b), (c), (d), (e), (f), (g), (h), (i), (ia), (j), (k) or (o) of the **Trustee Act 1958** as in force immediately before the commencement of section 4 of the **Trustee and Trustee Companies (Amendment) Act 1995**;

S. 3(1) def. of
"primary
production"
amended by
No. 58/2003
s. 3(a).

"primary production" means the use of land primarily for—

- (a) cultivation for the purpose of selling the produce of cultivation (whether in a natural, processed or converted state); or
- (b) the maintenance of animals or poultry for the purpose of selling them or their natural increase or bodily produce; or
- (c) the keeping of bees for the purpose of selling their honey; or
- (d) commercial fishing, including the preparation for commercial fishing or the storage or preservation of fish or fishing gear; or
- (e) the cultivation or propagation for sale of plants, seedlings, mushrooms or orchids;

"private company" means—

- (a) a corporation that is not limited by shares; or
- (b) a corporation that is not listed and whose shares are not quoted on the Australian Stock Exchange or any exchange of the World Federation of Exchanges; or
- (c) a corporation declared by the Commissioner under sub-section (4)(b) to be a private company;

S. 3(1) def. of "private company" amended by Nos 9/2002 s. 3(Sch. item 4.1(c)), 46/2004 s. 3(2)(d), substituted by No. 85/2005 s. 3(1)(d).

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S. 3(1) def. of "private corporation" repealed by No. 46/2004 s. 3(2)(e).

"private unit trust scheme" means a unit trust scheme that is not—

- (a) a public unit trust scheme; or
- (b) a wholesale unit trust scheme;

S. 3(1) def. of "private unit trust scheme" substituted by No. 46/2004 s. 3(2)(f).

"public unit trust scheme" means any of the following unit trust schemes—

- (a) a listed trust;
- (b) a widely held trust;
- (c) a registered imminent public unit trust scheme;
- (d) a registered declared public unit trust scheme—

S. 3(1) def. of "public unit trust scheme" amended by No. 44/2001 s. 3(Sch. item 32.1(c)), substituted by No. 46/2004 s. 3(2)(g).

but does not include a unit trust scheme that is, or was at any time, a wholesale unit trust scheme or eligible for registration as such;

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S. 3(1) def. of
"qualified
investor"
inserted by
No. 46/2004
s. 3(2)(b).

"qualified investor" has the meaning given in section 89K;

"receiving body", in Chapter 4, has the same meaning as in the Financial Sector (Transfers of Business) Act 1999 of the Commonwealth.

S. 3(1) def. of
"recognised
stock
exchange"
amended by
Nos 46/2001
s. 3(1)(f),
9/2002
s. 3(Sch.
item 4.1(d)),
46/2004
s. 3(2)(h).

"recognised stock exchange" means—

- (a) a stock exchange that is a member of the World Federation of Exchanges; or
- (b) a prescribed financial market (within the meaning of section 9 of the Corporations Act); or
- (c) a licensed market (within the meaning of section 761A of the Corporations Act) that is prescribed as a recognised stock exchange for the purposes of this Act;

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S. 3(1) def. of
"referrable
point"
inserted by
No. 46/2001
s. 3(1)(a).

"referrable point", for the dutiable proportion of a mortgage, means the document or approved method used to work out the dutiable proportion under section 159;

S. 3(1) def. of
"registered
declared
public unit
trust scheme"
inserted by
No. 46/2004
s. 3(2)(b).

"registered declared public unit trust scheme" means a unit trust scheme declared as a public unit trust scheme under Division 7 of Part 2 of Chapter 3;

"registered imminent public unit trust scheme"
means a unit trust scheme that is registered
as an imminent public unit trust scheme
under Division 7 of Part 2 of Chapter 3;

S. 3(1) def. of
"registered
imminent
public unit
trust scheme"
inserted by
No. 46/2004
s. 3(2)(b).

"registered insurer" means an insurer registered
under Part 2 of Chapter 8;

"registered operator" has the same meaning as
in the **Road Safety Act 1986**;

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S. 3(1) def. of
"registered
used car
dealer"
repealed by
No. 30/2002
s. 3(2).

"related body corporate" has the same meaning
as in the Corporations Act;

S. 3(1) def. of
"related body
corporate"
amended by
No. 44/2001
s. 3(Sch.
item 32.1(d)).

"related person" means a person who is related
to another person in accordance with any of
the following provisions—

S. 3(1) def. of
"related
person"
amended by
Nos 44/2001
s. 3(Sch.
item 32.1(d)),
58/2003
s. 3(b),
46/2004
s. 3(2)(i)(i)-(v).

- (a) natural persons are related persons if
one of them is a relative of the other;
- (b) companies are related persons if they
are related bodies corporate within the
meaning of the Corporations Act;
- (c) a natural person and a company are
related persons if the natural person is a
majority shareholder or director of the
company or of another company that is
a related body corporate of the
company within the meaning of the
Corporations Act;

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- (d) a natural person and a trustee are related persons if the natural person is a beneficiary of the trust (not being a public unit trust scheme) of which the trustee is a trustee;
- (e) a company and a trustee are related persons if the company, or a majority shareholder or director of the company, is a beneficiary of the trust (not being a public unit trust scheme) of which the trustee is a trustee;

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S. 3(1) def. of "relative" amended by No. 27/2001 s. 3(Sch. 1 item 2.1(c)).

"relative" in relation to a natural person, means a person who is—

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

S. 3 def. of "responsible entity" amended by No. 44/2001 s. 3(Sch. item 32.1(d)).

"responsible entity" of a managed investment scheme, has the same meaning as in the Corporations Act;

"right" to shares or units means any right (whether actual, prospective or contingent) of a person to have shares or units issued by a company or trust to the person, whether or not on payment of money or for other consideration;

"shares" includes rights to shares;

"special dealer" means a person who would be a motor car trader within the meaning of the **Motor Car Traders Act 1986** but for the fact that the motor vehicles in which the person trades are not motor cars within the meaning of that Act;

"special hiring agreement" has the meaning given by section 133;

"spouse" of a person means a person to whom the person is married;

S. 3 def. of "spouse" substituted by No. 27/2001 s. 3(Sch. 1 item 2.1(d)).

"stamp" means duty stamp whether impressed by machine imprint or adhesive;

"Territory" means Territory of the Commonwealth;

"transfer" includes an assignment, a conveyance, an exchange and a buy-back of shares in accordance with Division 2 of Part 2J.1 of the Corporations Act;

S. 3 def. of "transfer" amended by No. 44/2001 s. 3(Sch. item 32.1(d)).

"trustee" of a unit trust scheme that is a managed investment scheme, includes—

S. 3(1) def. of "trustee" inserted by No. 46/2004 s. 3(2)(b).

- (a) a responsible entity of the scheme; and
- (b) an agent appointed, or other person engaged, by a responsible entity of the scheme under Part 5C.2 of the Corporations Act;

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"unencumbered value" of dutiable property has the meaning given by section 22;

S. 3(1) def. of "unit" amended by No. 46/2004 s. 3(3).

"unit" in a unit trust scheme means—

- (a) a right or interest (whether described as a unit or a sub-unit or otherwise) of a beneficiary under the scheme; or
- (b) a right to any such right or interest—

and, for the purposes of the definitions of "listed trust" and "widely held trust" and Part 2 of Chapter 3, means a unit (within the meaning of paragraph (a) or (b)) that entitles the beneficiary to participate proportionately with other unit holders in a distribution of the property of the trust on its vesting;

"unit trust scheme" means any arrangements made for the purpose, or having the effect, of providing, for persons having funds available for investment, facilities for the participation by them, as beneficiaries under a trust, in any profits, income or distribution of assets arising from the acquisition, holding, management or disposal of any property whatever pursuant to the trust;

S. 3(1) def. of "variation" repealed by No. 48/2001 s. 5(a).

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S. 3 def. of "Victorian company" substituted by No. 44/2001 s. 3(Sch. item 32.1(e)), amended by No. 46/2004 s. 3(2)(j).

"Victorian company" means—

- (a) a company incorporated or taken to be incorporated under the Corporations Act that is taken to be registered in Victoria; or
- (b) any other body corporate that is incorporated under a Victorian Act;

"wholesale unit trust scheme" means a unit trust scheme that is registered under Division 7 of Part 2 of Chapter 3 as a wholesale unit trust scheme, an imminent wholesale unit trust scheme or a declared wholesale unit trust scheme;

S. 3(1) def. of "wholesale unit trust scheme" inserted by No. 46/2004 s. 3(2)(b), amended by No. 36/2005 s. 6.

"widely held trust" means a unit trust scheme—

S. 3(1) def. of "widely held trust" inserted by No. 46/2004 s. 3(2)(b), amended by No. 85/2005 s. 3(1)(e).

- (a) that is a managed investment scheme registered under Part 5C.1 of the Corporations Act; and
 - (b) that has not less than 300 registered unitholders; and
 - (c) in which units have been offered to the public under a prospectus or product disclosure statement lodged with the Australian Securities and Investments Commission; and
 - (d) none of the registered unitholders in which, either individually or together with associated persons, holds or is entitled to more than 20% of the units in the scheme.
- (2) The Governor in Council, by order published in the Government Gazette, may declare—

S. 3(2) inserted by No. 46/2001 s. 3(2).

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S. 3(2)(a)–(c) repealed by No. 30/2002 s. 3(3).

- (d) the extent to which a pool of assets consists of mortgages or money paid under mortgages, or both, to be a pool of mortgages;
- (e) a class of assets to be assets included in a pool of mortgages.

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S. 3(3)
inserted by
No. 27/2001
s. 3(Sch. 1
item 2.2).

(3) For the purposes of the definition of "domestic relationship" in sub-section (1), in determining whether a domestic relationship exists, all the circumstances of the relationship are to be taken into account, including any one or more of the matters referred to in section 275(2) of the **Property Law Act 1958** as may be relevant in a particular case.

S. 3(4)
inserted by
No. 85/2005
s. 3(2).

(4) The Commissioner, by instrument, may—

- (a) declare that a unit trust scheme all the units in which are quoted on any exchange of the World Federation of Exchanges (other than the Australian Stock Exchange) is a listed trust for the purposes of this Act if the Commissioner is satisfied that the listing of the unit trust scheme was not for the purpose of, or as part of a scheme or arrangement with a collateral purpose of, avoiding or reducing duty otherwise chargeable under Part 2 of Chapter 3;
- (b) declare that a corporation is a private company for the purposes of this Act if the Commissioner is satisfied that the listing of the corporation was for the purpose of, or as part of a scheme or arrangement with a collateral purpose of, avoiding or reducing duty otherwise chargeable under Part 2 of Chapter 3.

S. 3(5)
inserted by
No. 85/2005
s. 3(2).

(5) For the purposes of the definition of "widely held trust" in sub-section (1), if a registered unitholder holds units as a trustee of a number of different trusts, the unitholder is taken to be a separate registered unitholder in relation to each trust and the units held are taken to be separate unitholdings, except where the beneficiaries of the trusts are the same or associated persons.

4. Division of Act into Chapters

- (1) This Act is divided into Chapters, Parts and Divisions.
- (2) If a provision of this Act refers to a Chapter by number, the reference must, unless the context otherwise requires, be construed as a reference to the Chapter designated by that number in this Act.
- (3) If a provision of this Act refers to a Part by a number, the reference must, unless the context otherwise requires, be construed as a reference to the Part designated by that number of the Chapter in which the reference occurs.

5. Taxation Administration Act 1997

This Act is to be read together with the **Taxation Administration Act 1997** which provides for the administration and enforcement of this Act and other taxation laws.

6. Act binds the Crown

- (1) This Act binds the Crown in right of Victoria and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.
 - (2) Nothing in this Act makes the Crown in any of its capacities liable to be prosecuted for an offence.
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CHAPTER 2
TRANSACTIONS CONCERNING DUTIABLE
PROPERTY

PART 1—INTRODUCTION AND OVERVIEW

7. Imposition of duty on certain transactions
concerning dutiable property

- (1) This Chapter charges duty on—
- (a) a transfer of dutiable property; and
 - (b) the following transactions—
 - (i) a declaration of trust relating to dutiable property the specification of which forms part of the declaration of trust or part of the transaction constituted by the declaration of trust;
 - (ii) a surrender of an estate in land in Victoria, other than a surrender of a lease, a discharge of a mortgage or a redemption of units in a unit trust scheme;
 - (iia) a disclaimer of an interest or a right in respect of dutiable property (other than dutiable property referred to in section 10(1)(b) or section 10(1)(c)) under the will or codicil of a deceased person or in or under the estate of a deceased person, irrespective of whether the will, codicil or estate has been fully administered;
 - (iib) a vesting of land in Victoria by, or expressly authorised by, statute law of this or another jurisdiction, whether in or outside Australia;

S. 7(1)(b)(iia)
inserted by
No. 71/2004
s. 5.

S. 7(1)(b)(iib)
inserted by
No. 71/2004
s. 5.

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- (iii) a vesting of dutiable property by a court order or an order of the Registrar of Titles;
- (iv) the enlargement of a term into a fee-simple under section 153 of the **Property Law Act 1958**; or
- (v) the granting of a lease of land in Victoria for which any consideration other than the rent reserved is paid or agreed to be paid, and in which any covenant or agreement for the future transfer or sale of the fee-simple on the occurrence of any contingency whatever is expressed or implied; or
- (vi) any other transaction that results in a change in beneficial ownership of dutiable property (other than an excluded transaction).

S. 7(1)(b)(vi) amended by No. 30/2002 s. 4(a), substituted by No. 58/2003 s. 4(1).

(2) Such a transfer or transaction is a "**dutiable transaction**" for the purposes of this Act.

(2A) Despite sub-section (1)(b)(vi), an excluded transaction that results in a change in beneficial ownership of dutiable property is a dutiable transaction if it is part of a scheme or arrangement that, in the Commissioner's opinion, was made with a collateral purpose of reducing the duty otherwise chargeable under this Chapter.

S. 7(2A) inserted by No. 58/2003 s. 4(2).

(3) Despite sub-section (1), the assignment of a term referred to in section 153 of the **Property Law Act 1958** is not a dutiable transaction.

(3A) Despite sub-section (1), a transfer of marketable securities, or a transaction referred to in sub-section (1)(b) in respect of marketable securities, that takes place or occurs on or after 1 July 2002 is not a dutiable transaction.

S. 7(3A) inserted by No. 48/2001 s. 6(1), amended by No. 29/2002 s. 3.

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(4) In this Chapter—

"declaration of trust" means any declaration (other than by a will or testamentary instrument) that any identified property vested or to be vested in the person making the declaration is or is to be held in trust for the person or persons, or the purpose or purposes, mentioned in the declaration although the beneficial owner of the property, or the person entitled to appoint the property, may not have joined in or assented to the declaration;

S. 7(4) def. of "excluded transaction" inserted by No. 58/2003 s. 4(3).

"excluded transaction" means—

- (a) the purchase, gift, allotment or transfer of any unit in a unit trust scheme; or
- (b) the variation, abrogation or alteration of a right attaching to any such unit; or
- (c) the redemption, surrendering or cancellation of any such unit; or
- (d) the variation or alteration of a right of a holder of any such unit; or
- (e) any combination of the transactions referred to in paragraphs (a), (b), (c) or (d).

S. 7A inserted by No. 71/2004 s. 6.

7A. Vesting of land in Victoria by statute law

- (1) Without limiting section 7(1)(b)(iib), land in Victoria is vested under statute law if the law vests the land in an entity that the law states is the successor in law of, continuation of or same entity as, the entity in which the land was previously vested.
 - (2) Despite sub-section (1), land in Victoria is not vested under statute law on the registration of a company under Part 5B.1 of Chapter 5B of the Corporations Act.
-

- (3) The merger of a corporation ("**company A**") with and into another corporation ("**company B**") in circumstances where neither sub-section (4) nor sub-section (5) applies is taken to be a vesting of the land in Victoria of company A in company B by statute law.
- (4) A merger of corporations (the "**merging corporations**") in circumstances where another corporation ("**company C**") results as a consequence of the merger is taken to be a vesting of the land in Victoria of the merging corporations in company C by statute law.
- (5) A merger of corporations (the "**merging corporations**") with and into each other in circumstances where each of the merging corporations continues in existence is taken to be a vesting in the merging corporations, jointly, of 50% (in value) of the land in Victoria of the merging corporations by statute law.

8. Imposition of duty on dutiable transactions that are not transfers

- (1) The duty charged by this Chapter on a dutiable transaction referred to in section 7(1)(b) is to be charged as if each such dutiable transaction were a transfer of dutiable property.
- (2) Accordingly, for the purpose of charging duty under this Chapter, in relation to a dutiable transaction specified in Column 1 of the following Table—
 - (a) the property specified in Column 2 opposite the dutiable transaction is taken to be the property transferred (and a reference in this Act to property transferred includes a reference to such property); and

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- (b) the person specified in Column 3 opposite the dutiable transaction is taken to be the transferee of the dutiable property (and a reference in this Act to a transferee includes a reference to such a person); and
- (c) the transfer of the dutiable property is taken to have occurred at the time specified in Column 4 opposite the dutiable transaction (and a reference in this Act to the time at which a transfer occurs includes a reference to such a time).

S. 8(2) Table amended by Nos 46/2001 s. 4, 71/2004 s. 7.

TABLE

<i>Column 1</i> <i>Dutiable transaction</i>	<i>Column 2</i> <i>Property transferred</i>	<i>Column 3</i> <i>Transferee</i>	<i>Column 4</i> <i>When transfer occurs</i>
declaration of trust	the property vested in the declarant as is subjected to the trust	the person declaring the trust	when the declaration becomes effective
surrender	the surrendered estate	the person to whom the property is surrendered	when the surrender takes place
disclaimer	the disclaimed interest or right under a will, codicil or estate	the person who benefits from the disclaimer	when the interest or right is disclaimed
vesting by statute law	the vested land in Victoria	the person in whom the property is vested	when the vesting by statute law occurs
vesting by court order	the vested property	the person in whom the property is vested	when the order takes effect

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<i>Column 1</i> <i>Dutiable transaction</i>	<i>Column 2</i> <i>Property transferred</i>	<i>Column 3</i> <i>Transferee</i>	<i>Column 4</i> <i>When transfer occurs</i>
vesting by order of the Registrar of Titles	the vested property	the person in whom the property is vested	when the order takes effect
enlargement of interest into fee-simple	the estate in fee simple	the person in whom the term was previously vested	when the interest is enlarged
granting of lease with covenant for future transfer or sale	the property leased	the lessee	when the lease is granted
any other transaction that results in a change in beneficial ownership of dutiable property	the property the beneficial ownership of which is changed (but only to the extent of the change in beneficial ownership)	the person who obtains the beneficial ownership or whose beneficial ownership is increased	when beneficial ownership changes

9. What form must a dutiable transaction take?

- (1) A dutiable transaction may be effected or evidenced—
 - (a) wholly in writing; or
 - (b) partly in writing and partly orally; or
 - (c) wholly orally as evidenced by whole or part performance.
- (2) A dutiable transaction may be effected or recorded by any means, including electronic means.

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10. What is "dutiable property"?

(1) "**Dutiable property**" is any of the following—

S. 10(1)(a)
amended by
No. 46/2004
s. 4(a).

(a) each of the following estates or interests in land in Victoria—

(i) an estate in fee-simple;

S. 10(1)(a)(ia)
inserted by
No. 58/2003
s. 5(1).

(ia) a life estate;

S. 10(1)(a)(ib)
inserted by
No. 58/2003
s. 5(1).

(ib) an estate in remainder;

(ii) a Crown leasehold estate;

(iii) a term referred to in section 153 of the **Property Law Act 1958** that may be enlarged into a fee-simple under that section;

(iv) a leasehold estate, if the lease is of a kind referred to in section 7(1)(b)(v);

S. 10(1)(a)(v)
inserted by
No. 46/2004
s. 4(b).

(v) a land use entitlement;

(b) shares—

(i) in a Victorian company; or

(ii) in a corporation incorporated outside Australia that are kept on the Australian register kept in Victoria;

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- (c) units in a unit trust scheme, being units—
- (i) registered on a register kept in Victoria;
or
 - (ii) that are not registered on a register kept in Australia, but in respect of which the manager (or, if there is no manager, the trustee) of the unit trust scheme is a Victorian company or is a natural person resident in Victoria;
- (d) goods in Victoria, if the subject of an arrangement that includes a dutiable transaction over an estate or interest in land elsewhere referred to in this section, including goods used in connection with a business carried on or in connection with the land, but not including the following—
- (i) goods that are stock-in-trade;
 - (ii) materials held for use in manufacture;
 - (iii) goods under manufacture;
 - (iv) goods held or used in connection with primary production;
 - (v) livestock;
- (e) an interest—
- (i) under the will or codicil of a deceased person disposing of property elsewhere referred to in this section; or
 - (ii) in or under the estate of a deceased person comprising property elsewhere referred to in this section;

S. 10(1)(d)
amended by
Nos 30/2002
s. 4(b),
46/2004
s. 4(c).

S. 10(1)(d)(iv)
amended by
No. 58/2003
s. 5(2).

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S. 10(1)(f)
amended by
No. 46/2004
s. 4(c),
repealed by
No. 36/2005
s. 7.

* * * * *

S. 10(1)(g)
amended by
No. 79/2001
s. 4.

(g) an interest in shares referred to in paragraph (b) or in units referred to in paragraph (c) (other than an interest as mortgagee).

(2) Despite sub-section (1), the following marketable securities are not dutiable property—

S. 10(2)(a)
amended by
No. 9/2002
s. 3(Sch.
item 4.2).

(a) shares, or units in a unit trust scheme, that are listed for quotation on the Australian Stock Exchange or a recognised stock exchange;

S. 10(2)(b)
amended by
No. 9/2002
s. 3(Sch.
item 4.2).

(b) an interest in shares or units referred to in paragraph (a), whether or not the interest is listed for quotation on the Australian Stock Exchange or a recognised stock exchange.

11. When does a liability for duty arise?

(1) A liability for duty charged by this Chapter arises when a dutiable transaction occurs.

S. 11(2)
repealed by
No. 30/2002
s. 4(c).

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12. Who is liable to pay the duty?

Duty charged by this Chapter is payable by the transferee, unless this Chapter requires another person to pay the duty.

13. The liability of joint tenants

For the purpose of assessing duty charged by this Chapter, joint tenants of dutiable property are taken to hold the dutiable property as tenants in common in equal shares.

14. Necessity for written instrument or written statement

- (1) If a dutiable transaction that is liable to ad valorem duty under this Chapter is not effected by a written instrument, the transferee must make a written statement in the approved form.
- (2) The written statement must be made within 3 months after the liability arises.
- (3) If a dutiable transaction is completed or evidenced by a written instrument within 3 months after the date on which the dutiable transaction occurs, the requirement to lodge a statement and pay duty in respect of the statement may be satisfied by the lodgement of, and payment of duty on, the written instrument within 3 months after the date on which the dutiable transaction occurs.
- (4) For the purposes of this Act, an instrument of transfer of an estate in land is to be taken to effect the transfer of dutiable property referred to in section 10(1)(d) in respect of that land.
- (5) This section does not apply in respect of a dutiable transaction that is effected electronically in accordance with the **Electronic Transactions (Victoria) Act 2000**.

S. 14(4)
inserted by
No. 79/2001
s. 5.

S. 14(5)
inserted by
No. 71/2004
s. 8.

15. Lodging written instrument or statement with Commissioner

- (1) A transferee who is liable to pay duty in respect of a dutiable transaction must, within 3 months after the liability arises, lodge with the Commissioner—
 - (a) the written instrument that effects the dutiable transaction or, if there is more than one such written instrument, each one of them as provided by section 10; or

S. 15
amended by
No. 71/2004
s. 9 (ILA
s. 39B(1)).

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(b) the written statement made in compliance with section 14.

S. 15(2)
inserted by
No. 71/2004
s. 9.

(2) This section does not apply in respect of a dutiable transaction that is effected electronically in accordance with the **Electronic Transactions (Victoria) Act 2000**.

16. When must duty be paid?

A tax default does not occur for the purposes of the **Taxation Administration Act 1997** if duty is paid within 3 months after the liability to pay the duty arises.

S. 17
amended by
No. 30/2002
s. 5 (ILA
s. 39B(1)).

17. No double duty

(1) If a dutiable transaction is effected by more than one instrument, one instrument is to be stamped with the duty payable on the dutiable transaction and each other instrument is to be denoted with a statement of the amount, and date of payment, of the duty.

S. 17(1A)
inserted by
No. 71/2004
s. 10.

(1A) If a dutiable transaction is effected electronically (in accordance with the **Electronic Transactions (Victoria) Act 2000**) in whole or in part and duty has been paid, no further duty is payable in respect of an instrument or electronic transaction that forms part of the dutiable transaction.

S. 17(2)
inserted by
No. 30/2002
s. 5.

(2) No duty is chargeable under this Chapter on a transfer to a trustee of dutiable property subject to a declaration of trust if ad valorem duty has been paid on the declaration of trust in respect of the same dutiable property.

S. 17(3)
inserted by
No. 30/2002
s. 5.

(3) No duty is chargeable under this Chapter on a declaration of trust that declares the same trusts as those upon and subject to which the same dutiable property was transferred to the person declaring the trust if ad valorem duty has been paid on the transfer.

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18. What is the rate of duty?

Duty is charged on the dutiable value of the dutiable property the subject of the dutiable transaction at the relevant rate set out in Part 3.

19. Concessions and exemptions from duty

Concessions and exemptions from duty charged by this Chapter are dealt with in Part 5.

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PART 2—DUTIABLE VALUE

S. 20
amended by
No. 58/2003
s. 6 (ILA
s. 39B(1)).

20. What is the "dutiable value" of dutiable property?

- (1) The "**dutiable value**" of dutiable property that is the subject of a dutiable transaction is the greater of—
 - (a) the consideration (if any) for the dutiable transaction (being the amount of a monetary consideration or the value of a non-monetary consideration); and
 - (b) the unencumbered value of the dutiable property.
- (2) In determining the dutiable value of dutiable property, there is to be no discount for the amount of GST (if any) payable on the supply of that property.

S. 20(2)
inserted by
No. 58/2003
s. 6.

21. What is the consideration for the transfer of dutiable property?

- (1) The consideration for the transfer of dutiable property is taken to include the amount or value of all encumbrances, whether certain or contingent, subject to which the dutiable property is transferred.

S. 21(2)
repealed by
No. 36/2005
s. 7.

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- (3) The consideration for the transfer of land on the sale of that land does not include any amount paid or payable in respect of the construction of a building to be constructed on that land on or after the date on which the contract of sale was entered into.

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(4) The consideration for the transfer of land that is a lot on a plan of subdivision within the meaning of the **Subdivision Act 1988** on a sale of that lot is taken not to include an amount, attributable exclusively to that lot, in respect of refurbishment of that lot carried out on or after the date on which the contract of sale was entered into and before the date of the transfer if—

(a) the transferor was a first registered proprietor within the meaning of the **Transfer of Land Act 1958** of that lot; and

S. 21(4)(a)
amended by
No. 79/2001
s. 6(a).

(b) the sale of that lot to the transferee is the first sale of the lot after registration of the plan of subdivision; and

S. 21(4)(b)
amended by
No. 79/2001
s. 6(b).

(c) the transferee has not entered into a contract for refurbishment of the lot, other than in respect of the refurbishment referred to above; and

(d) the transfer, when presented to or lodged with the Commissioner, is accompanied by—

(i) a copy of the building permit, or building approval or permit; and

(ii) a copy of the contract with the transferee for the refurbishment; and

(iii) a statutory declaration in the approved form by the transferor as to the prescribed matters and as to whether or not the transferor has entered into any agreement with the transferee in respect of works (other than refurbishment) to be undertaken in relation to the lot before the transfer; and

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- (iv) if the Commissioner requires, a statutory declaration in the approved form by the transferee declaring that the transferee has not entered any contract, other than the contract referred to in sub-paragraph (ii), for the refurbishment of the lot; and
- (v) if the Commissioner requires, a statutory declaration in the approved form by the person that issued the building permit of building approval or permit.

(5) In this section—

"refurbishment" means building work for which a building permit has been issued under the **Building Act 1993**, being work for the conversion of an existing building for which such a permit or approval is required.

22. What is the "unencumbered value" of dutiable property?

S. 22(1)
substituted by
No. 79/2001
s. 7.

- (1) The **"unencumbered value"** of dutiable property is the amount for which the property might reasonably have been sold in the open market—
 - (a) in the case of a transfer of dutiable property on a sale of the property—at the time the contract of sale was entered into;
 - (b) in any other case—at the time the dutiable transaction occurred—

free from any encumbrance to which the property was subject at that time.

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- (2) In determining the amount for which land or goods might reasonably have been sold free from encumbrances, there must be disregarded subject to sub-section (3), any interest, agreement or arrangement (other than an encumbrance) granted or made in respect of the land or goods, that has the effect of reducing the value of the land or goods.
- (2A) A reference in sub-section (2) to an interest includes a reference to an equitable interest that—
- (a) was created before the time of the transfer of the land or goods; and
 - (b) is in existence at that time.
- (3) An interest, agreement or arrangement referred to in sub-section (2) is not to be disregarded if the Commissioner is satisfied that it was not granted or made as a part of an arrangement or scheme with a collateral purpose of reducing the duty otherwise payable on the transfer of the land or goods.
- (4) In considering whether or not he or she is satisfied for the purposes of sub-section (3), the Commissioner may have regard to—
- (a) the duration of the interest, agreement or arrangement before the transfer; and
 - (b) whether the interest, agreement or arrangement has been granted to or made with an associate, a related corporation or a trustee of the transferor or transferee; and
 - (c) whether there is any commercial efficacy to the granting of the interest or the making of the agreement or arrangement other than to reduce duty; and
 - (d) any other matters he or she considers relevant.

S. 22(2A)
inserted by
No. 46/2004
s. 5.

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s. 22A

S. 22(5)
inserted by
No. 46/2001
s. 5.

(5) In computing for the purposes of this Chapter the unencumbered value of any marketable securities of a company, there must be disregarded any provision in the constitution of the company which, or the operation of which, restricts or would restrict the sale or disposition or reduces or would reduce the unencumbered value of the marketable securities, and the marketable securities are to be valued as if no such provision existed.

S. 22(6)
inserted by
No. 46/2001
s. 5.

(6) Despite anything to the contrary in this section, the Commissioner may adopt as the unencumbered value of any marketable securities of a company the net benefit that, in the opinion of the Commissioner, the holder of the marketable securities would receive after payment of all income taxes in respect of the marketable securities in the event of the company being voluntarily wound up at the time the dutiable transaction occurred, whether or not any such winding up was intended or contemplated at that time.

S. 22A
inserted by
No. 46/2004
s. 6.

22A. Tenant's fixtures to be included in the value of land

- (1) In determining for the purposes of this Part the unencumbered value of land, the value of any tenant's fixtures on that land is to be included in that value.
- (2) However, the value of tenant's fixtures is not to be included if the Commissioner is satisfied that the fixtures are not sold or transferred to the purchaser, the transferee of the land or an associated person of the purchaser or the transferee of the land.

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(3) In this section—

"tenant's fixtures", in relation to land, means fixtures on that land that, under section 28 of the **Landlord and Tenant Act 1958**, are the property of a tenant.

22B. Interdependent sale of land and business goods

S. 22B
inserted by
No. 46/2004
s. 6.

(1) This section applies if—

- (a) an estate or interest in land referred to in section 10(1)(a) is transferred to a person ("**the land transferee**") under a contract of sale of land; and
- (b) business goods relating to that land are sold to another person ("**the goods transferee**") under a contract of sale of goods, or a contract of sale of a business; and
- (c) the land transferee and the goods transferee are not associated persons; and
- (d) the Commissioner is satisfied that the contract of sale referred to in paragraph (a) and the contract of sale referred to in paragraph (b) are not substantially one transaction; and
- (e) at least one of the contracts of sale referred to in paragraph (a) and (b) is conditional on the other.

(2) If this section applies—

- (a) in determining the unencumbered value of the land transferred to the land transferee, the value of the business goods is to be disregarded;
- (b) nothing in section 24 applies to the transfer.

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- (3) However, if at any subsequent time the business goods or any of them are transferred to the land transferee or to an associated person of the land transferee, the value of the business goods transferred is deemed to have formed part of the value of the land and duty payable under this Part is to be assessed or reassessed on that basis.
- (4) Any duty payable because of the operation of sub-section (3) is payable within 3 months after the date on which the business goods were transferred to the land transferee.
- (5) Sub-section (3) does not apply if the Commissioner is satisfied that—
- (a) the land transferee acquired the business goods at least 3 years after acquiring the land; and
 - (b) the acquisition of the business goods by the land transferee at a subsequent time was not contemplated at the time of the contract of sale of the land.
- (6) In this section—
- "business goods"** means goods used in connection with a business carried on or in connection with land, other than goods referred to in section 10(1)(d)(i), (ii), (iii), (iv) or (v).

S. 22B(6) def. of "business goods" amended by No. 36/2005 s. 8.

23. Arrangements that reduce the dutiable value of marketable securities

- (1) In computing for the purposes of this Chapter the unencumbered value of any marketable securities of a company, the Commissioner may include the value of any assets formerly owned or controlled by the company if—
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- (a) those assets were transferred to the ownership or control of the transferee of the marketable securities or to an associated person of the transferee before the transfer of the marketable securities; and
 - (b) those assets are necessary for the continuing operation of the company after the transfer of the marketable securities; and
 - (c) the value of the marketable securities was reduced following the transfer of ownership or control of assets because the proceeds of that transfer were not retained by the company.
- (2) In determining whether assets are necessary for the continuing operation of a company the Commissioner may take into account—
- (a) whether or not the assets were removed from the company's premises after the transfer of ownership or control;
 - (b) whether or not the assets continued to be used by the company under an arrangement with the transferee.
- (3) This section does not apply if the Commissioner is satisfied that the transfer of ownership or control of assets—
- (a) was part of the normal business operations of the transferee; or
 - (b) was not part of a scheme or arrangement devised for the principal purpose of minimising duty chargeable under this Chapter on the transfer of marketable securities.
-

24. Aggregation of certain dutiable transactions

(1) Dutiable transactions relating to separate items of dutiable property referred to in section 10(1)(a) or (d) or section 10(1)(e) as it relates to dutiable property referred to in section 10(1)(a) or (d), or separate parts of such property are to be aggregated and treated as a single dutiable transaction if—

S. 24(1)(a)
substituted by
No. 30/2002
s. 6(1)(a).

(a) either—

(i) in the case of dutiable transactions that are transfers on a sale of an item or part of dutiable property—the contracts of sale are entered into within 12 months; or

(ii) in any other case—the dutiable transactions occur within 12 months; and

S. 24(1)(b)
repealed by
No. 30/2002
s. 6(1)(b).

* * * * *

(c) the dutiable transactions together form, evidence, give effect to or arise from what is, substantially, one arrangement relating to all of the items or parts of the dutiable property.

(2) Dutiable transactions are not to be aggregated under this section if the Commissioner is satisfied that it would not be just and reasonable to do so in the circumstances.

S. 24(2A)
inserted by
No. 46/2001
s. 6.

(2A) Dutiable transactions are not to be aggregated under this section if the Commissioner is satisfied that—

(a) each item or part of dutiable property to which the arrangement referred to in subsection (1) relates is—

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- (i) an estate in land referred to in section 65, 66 or 67 of the **Land Tax Act 2005** (not being a partial interest in a parcel of land); or
- (ii) goods in Victoria held or used in connection with land referred to in sub-paragraph (i); or
- (iii) property referred to in section 10(1)(e) as it relates to property referred to in sub-paragraph (i) or (ii); and
- (b) following the series of dutiable transactions giving effect to or arising from the arrangement referred to in sub-section (1), the land referred to in paragraph (a) will continue to be used for primary production.
- (2B) A transferee of a dutiable transaction referred to in sub-section (2A) must make a written declaration to the Commissioner, at or before the time at which an instrument or statement relating to the transaction is lodged for stamping—
- (a) disclosing details known to the transferee of all of the items or parts of the dutiable property included or to be included in the arrangement referred to in sub-section (1); and
- (b) that following the series of dutiable transactions giving effect to or arising from the arrangement, the land will continue to be used for primary production.
- (2C) A declaration required by sub-section (2B) must be in the approved form.

S. 24(2A)(a)(i) amended by Nos 58/2003 s. 7, 88/2005 s. 117(Sch. 2 item 1.1).

S. 24(2B) inserted by No. 46/2001 s. 6.

S. 24(2C) inserted by No. 46/2001 s. 6.

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S. 24(3)
substituted by
No. 30/2002
s. 6(2).

- (3) The dutiable value of aggregated dutiable property is the sum of the dutiable values of the items or parts of the dutiable property as at—
- (a) in the case of a transfer on a sale of the item or part—the time the contract of sale was entered into;
 - (b) in any other case—the time the dutiable transaction relating to the item or part occurred.
- (4) The amount of duty payable in accordance with this section is to be reduced by the amount of any ad valorem duty paid on a prior dutiable transaction that is, or prior dutiable transactions that are, aggregated in accordance with this section.
- (5) Duty may be apportioned to the instruments effecting or evidencing the dutiable transactions, or may be charged in accordance with section 17, as determined by the Commissioner.
- (6) A transferee to whom this section applies must disclose to the Commissioner, in writing, at or before the time at which an instrument or statement relating to the dutiable transactions is lodged for stamping, details known to the transferee of—
- (a) all of the items or parts of the dutiable property included or to be included in the arrangement referred to in sub-section (1); and
 - (b) the consideration for each item or part of that dutiable property.

Penalty: 100 penalty units.

25. Apportionment—dutiable property and other property

- (1) If a dutiable transaction relates to dutiable property and property that is not dutiable property, it is chargeable with duty under this Chapter only to the extent that it relates to dutiable property.
- (2) If a dutiable transaction relates to different types of dutiable property for which different rates of duty are chargeable under this Chapter, the dutiable transaction is chargeable with duty under this Chapter as if a separate dutiable transaction had occurred in relation to each such type of dutiable property.

26. Partitions of marketable securities

In determining the duty to be paid on any dutiable transaction that gives effect to a partition or division of any marketable securities the Commissioner must, before assessing the duty (if any) payable on the transaction, deduct from the value of those marketable securities the value of the beneficial interest in those marketable securities held prior to the transaction by the transferee.

27. Partitions of land

In determining the duty to be paid on any dutiable transaction that gives effect to a partition or division of any estate in land, the Commissioner must, before assessing the duty (if any) payable on the transaction, deduct from the value of that estate the value of the beneficial interest in that estate held prior to the transaction by the transferee.

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PART 3—RATES OF DUTY

28. General rate

- (1) The rate of duty chargeable on a dutiable transaction is chargeable to the nearest whole dollar of the amount determined as follows or, if that amount is an amount of dollars and fifty cents, to the nearest whole dollar below that amount—

Dutiable value of the dutiable property the subject of the dutiable transaction	Rate of duty
Not more than \$20 000	1.4% of the dutiable value
More than \$20 000 but not more than \$115 000	\$280 plus 2.4% of that part of the dutiable value that exceeds \$20 000
More than \$115 000 but not more than \$870 000	\$2560 plus 6% of that part of the dutiable value that exceeds \$115 000
More than \$870 000	5.5% of the dutiable value

- (2) This rate applies unless other provision is made by this Chapter¹.

29. Marketable securities

The rate of duty chargeable on dutiable transactions in respect of marketable securities is 60 cents per \$100, or part, of the dutiable value of the marketable securities.

PART 4—SPECIAL PROVISIONS

30. Interim payment of duty

- (1) If the full dutiable value of dutiable property the subject of a dutiable transaction cannot, in the Commissioner's opinion, be immediately ascertained, the Commissioner may make an assessment by way of estimate under section 11(2) of the **Taxation Administration Act 1997**.
- (2) The written instrument or the written statement required by section 14 may be stamped "interim stamp only".
- (3) When the full dutiable value has been ascertained, the Commissioner must reassess the duty payable on the dutiable transaction.
- (4) If no further duty is payable, the interim stamp is to be cancelled and any amount paid in excess of the amount assessed is to be refunded.
- (5) If further duty is payable, liability for the further duty arises when the notice of assessment issues, despite section 11.
- (6) On payment of the balance of the duty (and any interest or penalty tax), the written instrument or the written statement required by section 14 is to be stamped with the amount of the balance and marked to indicate that duty has been duly paid.
- (7) This section does not apply in respect of a dutiable transaction that is effected electronically in accordance with the **Electronic Transactions (Victoria) Act 2000**.

S. 30(7)
inserted by
No. 71/2004
s. 11.

Duties Act 2000
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S. 30A
inserted by
No. 71/2004
s. 12.

30A. Interim payment of duty in relation to electronic transactions

- (1) The Commissioner may make an assessment by way of estimate under section 11(2) of the **Taxation Administration Act 1997** of the full dutiable value of dutiable property if—
 - (a) the property is the subject of a contract that is to be settled electronically in accordance with the **Electronic Transactions (Victoria) Act 2000**; and
 - (b) an assessment of the probable duty liability in respect of the dutiable property is sought; and
 - (c) the Commissioner is of the opinion that the duty liability cannot be ascertained immediately.
- (2) When the full dutiable value has been ascertained, the Commissioner must reassess the duty payable on the dutiable transaction.
- (3) If no further duty is payable, any amount paid in excess of the amount assessed is to be refunded.
- (4) If further duty is payable, liability for the further duty arises when the notice of assessment issues, despite section 11.

* * * * *

S. 31
amended by
Nos 44/2001
s. 3(Sch.
item 32.2),
79/2001 s. 8,
58/2003 s. 8,
repealed by
No. 36/2005
s. 9.

32. Transfers arising from mortgages of land

- (1) The mortgagor and the mortgagee are jointly and severally liable to pay the duty chargeable on a transfer by way of mortgage of dutiable property that is land registered under the **Transfer of Land Act 1958**.
- (2) If the Commissioner is satisfied that—
 - (a) duty has been paid in accordance with this section on a transfer of dutiable property to which this section applies; and
 - (b) the dutiable property has been re-transferred to the mortgagor (or a person to whom the land has been transmitted by death or bankruptcy) and the mortgagor (or person) is the registered proprietor of the land—

the Commissioner must refund the ad valorem duty paid on the transfer less the amount of duty that would have been payable on a mortgage under Chapter 7 (Mortgages).
- (3) For the purposes of this section, a transfer by way of mortgage of land registered under the **Transfer of Land Act 1958** means a transfer as a result of which the transferee becomes the registered proprietor of an estate in fee simple in the land but holds that estate, as against the transferor, by way of security.

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s. 32A

Ch. 2 Pt 4A
(Headings
and ss 32A–
32X)
inserted by
No. 36/2005
s. 10.

**PART 4A—TRANSACTIONS TREATED AS SUB-SALES OF
LAND**

Division 1—Introduction

32A. Definitions

In this Part—

"associate" of a person means—

- (a) an associated person of that person; or
- (b) a person acting in concert with that person;

"consideration" means the amount of a monetary consideration or the value of a non-monetary consideration;

"land development" means any one or more of the following in relation to land—

- (a) preparing a plan of subdivision of the land or taking any steps to have the plan registered under the **Subdivision Act 1988**;
- (b) applying for or obtaining a permit under the **Planning and Environment Act 1987** in relation to the use or development of the land;
- (c) applying for or obtaining a permit or approval under the **Building Act 1993** in relation to the land;
- (d) doing anything in relation to the land for which a permit or approval referred to in paragraph (c) would be required;

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s. 32B

- (e) developing or changing the land in any other way that would lead to the enhancement of its value;

"option" means—

- (a) a right, granted by an owner of property to another person, that entitles that other person, or a person to whom the right is assigned, to require the owner to—
- (i) enter into a contract of sale of the property to that other person or a subsequent assignee of that other person; or
 - (ii) transfer the property to that other person or a subsequent assignee of that other person; or
- (b) a right, granted to an owner of property by another person, that entitles the owner to require that other person, or a person approved by the owner and nominated by that other person, to—
- (i) enter into a contract to buy the property from the owner; or
 - (ii) accept a transfer of the property from the owner.

Division 2—Transfers Involving Additional Consideration

32B. Application of Division

- (1) This Division applies to a transfer of dutiable property referred to in section 10(1)(a) or (d) if—
- (a) a person ("**the vendor**") enters into a contract ("**the sale contract**") to sell or transfer the property to another person ("**the first purchaser**"); and

S. 32B
inserted by
No. 36/2005
s. 10.

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- (b) a person other than the first purchaser ("**a subsequent purchaser**") obtains the right to have the property or any part of it transferred, on completion of the sale contract, to the subsequent purchaser ("**transfer right**"); and
 - (c) the subsequent purchaser or an associate of the subsequent purchaser gives or agrees to give additional consideration in order for the subsequent purchaser to obtain the transfer right; and
 - (d) the vendor transfers the property or any part of it to a subsequent purchaser.
- (2) It is immaterial whether a subsequent purchaser obtains a transfer right—
- (a) by way of an assignment, nomination, novation or otherwise; and
 - (b) from the first purchaser or from another subsequent purchaser.
- (3) Each assignment, nomination, novation or other arrangement by which a subsequent purchaser obtains a transfer right is called a "**subsequent transaction**".
- (4) In this section—
- "additional consideration"** for a transfer right means any consideration given or agreed to be given by the subsequent purchaser or an associate of the subsequent purchaser in order for the subsequent purchaser to obtain the transfer right (other than reimbursement of excluded costs)—
- (a) if the subsequent purchaser obtained the transfer right from the first purchaser—that exceeds the consideration given or agreed to be
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given to the vendor by the first purchaser under the sale contract in respect of the property the subject of the transfer right;

- (b) if the subsequent purchaser obtained the transfer right from another subsequent purchaser—that exceeds the consideration given or agreed to be given by that other subsequent purchaser or an associate of that other subsequent purchaser in order for that other subsequent purchaser to obtain a transfer right, to the extent that the consideration relates to the first-mentioned transfer right;

"excluded costs" means—

- (a) legal costs or other fees or charges, including reasonable selling agents' fees and any statutory fees or charges;
- (b) survey or valuation payments;
- (c) GST other than in circumstances where an input tax credit or reduced input tax credit is available;
- (d) any other costs that, in the Commissioner's opinion, were reasonably incurred—
 - (i) if the subsequent purchaser obtained the transfer right from the first purchaser—by the first purchaser as part of the sale contract;

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- (ii) if the subsequent purchaser obtained the transfer right from another subsequent purchaser—by that other subsequent purchaser or an associate of that other subsequent purchaser in order for that other subsequent purchaser to obtain a transfer right.

S. 32C
inserted by
No. 36/2005
s. 10.

32C. How duty is charged on transfer

- (1) Duty on a transfer to which this Division applies is not charged in respect of the transfer from the vendor to the transferee, but is charged separately and distinctly on—
 - (a) the dutiable value of the sale contract as if it had been completed by the first purchaser; and
 - (b) the dutiable value of each subsequent transaction.
- (2) Duty is charged at the rate set out in Part 3 on the dutiable values referred to in sub-section (1).

S. 32D
inserted by
No. 36/2005
s. 10.

32D. Dutiable value of transactions

- (1) For the purposes of this Division, the dutiable value of the sale contract referred to in section 32C(1)(a) is the greater of—
 - (a) the consideration given or agreed to be given under the sale contract; and
 - (b) the amount for which the property might reasonably have been sold if it had been sold, free from encumbrances, in the open market on the date on which the sale contract was entered into.
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s. 32D

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- (2) For the purposes of this Division, the dutiable value of a subsequent transaction referred to in section 32C(1)(b) is the greater of—
- (a) the consideration given or agreed to be given by the subsequent purchaser or an associate of the subsequent purchaser in order for the subsequent purchaser to obtain the transfer right under the transaction, other than—
 - (i) legal costs or other fees or charges, including reasonable selling agents' fees and any statutory fees or charges;
 - (ii) survey or valuation payments;
 - (iii) GST other than in circumstances where an input tax credit or reduced input tax credit is available;
 - (iv) any other costs that, in the Commissioner's opinion, were reasonably incurred—
 - (A) if the subsequent purchaser obtained the transfer right from the first purchaser—by the first purchaser as part of the sale contract;
 - (B) if the subsequent purchaser obtained the transfer right from another subsequent purchaser—by that other subsequent purchaser or an associate of that other subsequent purchaser in order for that other subsequent purchaser to obtain a transfer right; and
 - (b) the amount for which the property might reasonably have been sold if it had been sold, free from encumbrances, in the open market on the date on which the subsequent transaction was entered into.
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Transactions Concerning Dutiable Property

s. 32E

S. 32E
inserted by
No. 36/2005
s. 10.

32E. When does the liability to duty arise?

A liability for duty charged by this Division arises when the transfer occurs.

S. 32F
inserted by
No. 36/2005
s. 10.

32F. Who is liable to pay the duty?

- (1) Duty charged by this Division is payable—
 - (a) in the case of duty referred to in section 32C(1)(a)—by the first purchaser;
 - (b) in the case of duty referred to in section 32C(1)(b)—by the subsequent purchaser who obtains a transfer right under the relevant subsequent transaction.
- (2) A transferee who pays duty payable under this Division by another person may recover the amount of that duty as a debt due to the transferee from the other person.

S. 32G
inserted by
No. 36/2005
s. 10.

32G. Exemptions and concessions

- (1) Duty is not chargeable under section 32C(1)(a) if the sale contract would be exempt from duty under this Chapter if it were a transfer of dutiable property to the first purchaser.
 - (2) If the first purchaser would be entitled to a concession under this Chapter if the sale contract were a transfer to the first purchaser, the first purchaser is entitled to that concession in respect of duty charged under section 32C(1)(a).
 - (3) Duty is not chargeable under section 32C(1)(b) if the subsequent transaction would be exempt from duty under this Chapter if it were a transfer of dutiable property to the subsequent purchaser who obtains the transfer right under the subsequent transaction.
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s. 32H

- (4) If a subsequent purchaser would be entitled to a concession under this Chapter if the subsequent transaction were a transfer to the subsequent purchaser, the subsequent purchaser is entitled to that concession in respect of duty charged under section 32C(1)(b).

32H. No double duty

Duty is not chargeable on a transfer under this Division if duty is chargeable on the transfer under Division 3 or 4.

S. 32H
inserted by
No. 36/2005
s. 10.

Division 3—Transfers Involving Land Development

32I. Application of Division

- (1) This Division applies to a transfer of dutiable property referred to in section 10(1)(a) or (d) if—
- (a) a person ("**the vendor**") enters into a contract ("**the sale contract**") to sell or transfer the property to another person ("**the first purchaser**"); and
 - (b) a person other than the first purchaser ("**a subsequent purchaser**") obtains the right to have the property or any part of it transferred, on completion of the sale contract, to the subsequent purchaser ("**transfer right**"); and
 - (c) after the sale contract is entered into, but before the property or any part of it is transferred, land development occurs in relation to the property or part; and
 - (d) the vendor transfers the property or any part of it to a subsequent purchaser.

S. 32I
inserted by
No. 36/2005
s. 10.

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s. 32J

- (2) It is immaterial whether a subsequent purchaser obtains a transfer right—
 - (a) by way of an assignment, nomination, novation or otherwise; and
 - (b) from the first purchaser or from another subsequent purchaser.
- (3) Each assignment, nomination, novation or other arrangement by which a subsequent purchaser obtains a transfer right is called a "**subsequent transaction**".

S. 32J
inserted by
No. 36/2005
s. 10.

32J. How duty is charged on transfer

- (1) Duty on a transfer to which this Division applies is not charged in respect of the transfer from the vendor to the transferee, but is charged separately and distinctly on—
 - (a) the dutiable value of the sale contract as if it had been completed by the first purchaser; and
 - (b) the dutiable value of each subsequent transaction.
- (2) Duty is charged at the rate set out in Part 3 on the dutiable values referred to in sub-section (1).
- (3) Despite sub-section (1), duty is not charged under this Division on the dutiable value of a sale contract if—
 - (a) the consideration given or agreed to be given by the first purchaser under the sale contract included consideration for the land development; or
 - (b) the land development did not occur until after a subsequent transaction occurred.

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s. 32K

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- (4) Sub-section (3)(a) does not apply if the first purchaser or an associate of the first purchaser undertook or participated in the land development at any time before a subsequent transaction occurred.
- (5) Despite sub-section (1), duty is not charged under this Division on the dutiable value of a subsequent transaction if—
- (a) the consideration given or agreed to be given by the subsequent purchaser or an associate of the subsequent purchaser in order for the subsequent purchaser to obtain a transfer right under the transaction included consideration for the land development; or
 - (b) the land development did not occur at any time at which the subsequent purchaser held a transfer right.

32K. Dutiable value of transactions

S. 32K
inserted by
No. 36/2005
s. 10.

- (1) For the purposes of this Division, the dutiable value of the sale contract referred to in section 32J(1)(a) is the greater of—
- (a) the consideration given or agreed to be given under the sale contract; and
 - (b) the amount for which the property might reasonably have been sold if it had been sold, free from encumbrances, in the open market on the date the sale contract was entered into.
- (2) For the purposes of this Division, the dutiable value of a subsequent transaction referred to in section 32J(1)(b) is the greater of—
- (a) the consideration given or agreed to be given by the subsequent purchaser or an associate of the subsequent purchaser in order for the subsequent purchaser to obtain the transfer right under the transaction, other than—

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- (i) legal costs or other fees or charges, including reasonable selling agents' fees and any statutory fees or charges;
- (ii) survey or valuation payments;
- (iii) GST other than in circumstances where an input tax credit or reduced input tax credit is available;
- (iv) any other costs that, in the Commissioner's opinion, were reasonably incurred—
 - (A) if the subsequent purchaser obtained the transfer right from the first purchaser—by the first purchaser as part of the sale contract;
 - (B) if the subsequent purchaser obtained the transfer right from another subsequent purchaser—by that other subsequent purchaser or an associate of that other subsequent purchaser in order for that other subsequent purchaser to obtain a transfer right; and
- (b) the amount for which the property might reasonably have been sold if it had been sold, free from encumbrances, in the open market on the date the subsequent transaction was entered into.

S. 32L
inserted by
No. 36/2005
s. 10.

32L. When does the liability to duty arise?

A liability for duty charged by this Division arises when the transfer occurs.

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Transactions Concerning Dutiable Property

s. 32M

32M. Who is liable to pay the duty?

S. 32M
inserted by
No. 36/2005
s. 10.

- (1) Duty charged by this Division is payable—
 - (a) in the case of duty referred to in section 32J(1)(a)—by the first purchaser;
 - (b) in the case of duty referred to in section 32J(1)(b)—by the subsequent purchaser who obtains a transfer right under the relevant subsequent transaction.
- (2) A transferee who pays duty payable under this Division by another person may recover the amount of that duty as a debt due to the transferee from the other person.

32N. Exemptions and concessions

S. 32N
inserted by
No. 36/2005
s. 10.

- (1) Duty is not chargeable under section 32J(1)(a) if the sale contract would be exempt from duty under this Chapter if it were a transfer of dutiable property to the first purchaser.
- (2) If the first purchaser would be entitled to a concession under this Chapter if the sale contract were a transfer to the first purchaser, the first purchaser is entitled to that concession in respect of duty charged under section 32J(1)(a).
- (3) Duty is not chargeable under section 32J(1)(b) if the subsequent transaction would be exempt from duty under this Chapter if it were a transfer of dutiable property to the subsequent purchaser who obtains the transfer right under the subsequent transaction.
- (4) If a subsequent purchaser would be entitled to a concession under this Chapter if the subsequent transaction were a transfer to the subsequent purchaser, the subsequent purchaser is entitled to that concession in respect of duty charged under section 32J(1)(b).

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s. 32O

S. 32O
inserted by
No. 36/2005
s. 10.

32O. No double duty

Duty is not chargeable on a transfer under this Division if duty is chargeable on the transfer under Division 4.

Division 4—Transfers Resulting from Options

S. 32P
inserted by
No. 36/2005
s. 10.

32P. Application of Division

- (1) This Division applies to a transfer of dutiable property referred to in section 10(1)(a) or (d) if—
 - (a) the owner of the property ("**the vendor**") grants an option to, or is granted an option by, another person ("**the first purchaser**"); and
 - (b) a person other than the first purchaser ("**a subsequent purchaser**") obtains the right or assumes the obligation to enter into a contract of sale of the property or any part of it with the vendor or to have the property or any part of it transferred to the subsequent purchaser ("**transfer right**"); and
 - (c) after the option is granted, but before the property or any part of it is transferred, land development occurs in relation to the property or part; and
 - (d) the vendor transfers the property or any part of it to a subsequent purchaser.
 - (2) It is immaterial whether a subsequent purchaser obtains a transfer right—
 - (a) by way of an assignment, nomination, novation, option, contract of sale or otherwise; and
 - (b) from the first purchaser or from another subsequent purchaser.
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s. 32Q

- (3) Each assignment, nomination, novation, option, contract of sale or other arrangement by which a subsequent purchaser obtains a transfer right is called a "**subsequent transaction**".

32Q. How duty is charged on transfer

S. 32Q
inserted by
No. 36/2005
s. 10.

- (1) Duty on a transfer to which this Division applies is not charged in respect of the transfer from the vendor to the transferee, but is charged separately and distinctly on—
- (a) the dutiable value of the option; and
 - (b) the dutiable value of each subsequent transaction.
- (2) Duty is charged at the rate set out in Part 3 on the dutiable values referred to in sub-section (1).
- (3) Despite sub-section (1), duty is not charged under this Division on the dutiable value of an option if—
- (a) the consideration given or agreed to be given by the first purchaser for the option (or for the sale or transfer contemplated by the option) included consideration for the land development; or
 - (b) the land development did not occur until after a subsequent transaction occurred.
- (4) Sub-section (3)(a) does not apply if the first purchaser or an associate of the first purchaser undertook or participated in the land development at any time before a subsequent transaction occurred.

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s. 32R

- (5) Despite sub-section (1), duty is not charged under this Division on the dutiable value of a subsequent transaction if—
- (a) the consideration given or agreed to be given by the subsequent purchaser or an associate of the subsequent purchaser in order for the subsequent purchaser to obtain a transfer right under the transaction included consideration for the land development; or
 - (b) the land development did not occur at any time at which the subsequent purchaser held a transfer right.

S. 32R
inserted by
No. 36/2005
s. 10.

32R. Dutiable value of transactions

- (1) For the purposes of this Division, the dutiable value of the option referred to in section 32Q(1)(a) is the greater of—
- (a) the consideration that would need to be given to complete the sale or transfer contemplated by the option (including any consideration already given for the option); and
 - (b) the amount for which the property might reasonably have been sold if it had been sold, free from encumbrances, in the open market on the date on which the option was granted.
- (2) For the purposes of this Division, the dutiable value of a subsequent transaction referred to in section 32Q(1)(b) is the greater of—
- (a) the consideration given or agreed to be given by the subsequent purchaser or an associate of the subsequent purchaser in order for the subsequent purchaser to obtain the transfer right under the transaction, other than—
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s. 32S

- (i) legal costs or other fees or charges, including reasonable selling agents' fees and any statutory fees or charges;
- (ii) survey or valuation payments;
- (iii) GST other than in circumstances where an input tax credit or reduced input tax credit is available;
- (iv) any other costs that, in the Commissioner's opinion, were reasonably incurred—
 - (A) if the subsequent purchaser obtained the transfer right from the first purchaser—by the first purchaser as part of being granted or granting the option;
 - (B) if the subsequent purchaser obtained the transfer right from another subsequent purchaser—by that other subsequent purchaser or an associate of that other subsequent purchaser in order for that other subsequent purchaser to obtain a transfer right; and
- (b) the amount for which the property might reasonably have been sold if it had been sold, free from encumbrances, in the open market on the date on which the subsequent transaction was entered into.

32S. When does the liability to duty arise?

A liability for duty charged by this Division arises when the transfer occurs.

S. 32S
inserted by
No. 36/2005
s. 10.

Duties Act 2000
Act No. 79/2000

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Transactions Concerning Dutiable Property

s. 32T

S. 32T
inserted by
No. 36/2005
s. 10.

32T. Who is liable to pay the duty?

- (1) Duty charged by this Division is payable—
 - (a) in the case of duty referred to in section 32Q(1)(a)—by the first purchaser;
 - (b) in the case of duty referred to in section 32Q(1)(b)—by the subsequent purchaser who obtains a transfer right under the relevant subsequent transaction.
- (2) A transferee who pays duty payable under this Division by another person may recover the amount of that duty as a debt due to the transferee from the other person.

S. 32U
inserted by
No. 36/2005
s. 10.

32U. Exemptions and concessions

- (1) Duty is not chargeable under section 32Q(1)(a) if the option would be exempt from duty under this Chapter if it were a transfer of dutiable property to the first purchaser.
 - (2) If the first purchaser would be entitled to a concession under this Chapter if the option were a transfer to the first purchaser, the first purchaser is entitled to that concession in respect of duty charged under section 32Q(1)(a).
 - (3) Duty is not chargeable under section 32Q(1)(b) if the subsequent transaction would be exempt from duty under this Chapter if it were a transfer of dutiable property to the subsequent purchaser who obtains the transfer right under the subsequent transaction.
 - (4) If a subsequent purchaser would be entitled to a concession under this Chapter if the subsequent transaction were a transfer to the subsequent purchaser, the subsequent purchaser is entitled to that concession in respect of duty charged under section 32Q(1)(b).
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Division 5—Miscellaneous

32V. Provisions for determining consideration

S. 32V
inserted by
No. 36/2005
s. 10.

- (1) This section applies for the purpose of determining—
 - (a) in Division 2 or 3—
 - (i) the consideration given or agreed to be given under a sale contract;
 - (ii) the consideration given or agreed to be given to obtain a transfer right under a subsequent transaction;
 - (b) in Division 4—
 - (i) the consideration that would need to be given to complete the sale or transfer contemplated by an option;
 - (ii) the consideration given or agreed to be given to obtain a transfer right under a subsequent transaction.
- (2) The consideration is taken to include the amount or value of all encumbrances, whether certain or contingent, subject to which the property would be transferred in accordance with, or as contemplated by, the relevant transaction.
- (3) The consideration does not include any amount paid or payable in respect of the construction of a building to be constructed on land on or after the date of the relevant transaction.
- (4) The consideration in relation to land that is a lot on a plan of subdivision within the meaning of the **Subdivision Act 1988** is taken not to include an amount, attributable exclusively to that lot, in respect of refurbishment of that lot carried out on or after the date of the relevant transaction and before the date of the transfer of the land if—

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- (a) the transferor was a first registered proprietor within the meaning of the **Transfer of Land Act 1958** of that lot; and
- (b) the sale of that lot to the transferee is the first sale of the lot after registration of the plan of subdivision; and
- (c) the transferee has not entered into a contract for refurbishment of the lot, other than in respect of the refurbishment referred to above; and
- (d) the transfer, when presented to or lodged with the Commissioner, is accompanied by—
 - (i) a copy of the building permit, or building approval or permit; and
 - (ii) a copy of the contract with the transferee for the refurbishment; and
 - (iii) a statutory declaration in the approved form by the transferor as to the prescribed matters and as to whether or not the transferor has entered into any agreement with the transferee in respect of works (other than refurbishment) to be undertaken in relation to the lot before the transfer; and
 - (iv) if the Commissioner requires, a statutory declaration in the approved form by the transferee declaring that the transferee has not entered any contract, other than the contract referred to in sub-paragraph (ii), for the refurbishment of the lot; and

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- (v) if the Commissioner requires, a statutory declaration in the approved form by the person that issued the building permit, or building approval or permit.
- (5) For the purposes of this section, the date of a relevant transaction is—
- (a) for an option—the date on which the option was granted;
- (b) for a sale contract or subsequent transaction—the date on which the contract or transaction was entered into.

(6) In this section—

"refurbishment" means building work for which a building permit has been issued under the **Building Act 1993**, being work for the conversion of an existing building for which such a permit or approval is required;

"relevant transaction" means—

- (a) an option;
- (b) a sale contract;
- (c) a subsequent transaction.

32W. No duty for transactions between relatives

Duty is not chargeable under this Part in respect of a sale contract, an option or a subsequent transaction if—

- (a) in the case of a sale contract or option, the first purchaser is—
- (i) a relative of the vendor acting on the relative's own behalf; or
- (ii) a trustee of a fixed trust the only beneficiaries of which are relatives of the vendor;

S. 32W
inserted by
No. 36/2005
s. 10.

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- (b) in the case of a subsequent transaction, the subsequent purchaser is—
 - (i) a relative of the first purchaser acting on the relative's own behalf; or
 - (ii) a trustee of a fixed trust the only beneficiaries of which are relatives of the first purchaser.

S. 32X
inserted by
No. 36/2005
s. 10.

32X. Parties required to provide information to Commissioner

- (1) This section applies if—
 - (a) a person ("**the vendor**") enters into a contract to sell or transfer any dutiable property referred to in section 10(1)(a) or (d) to another person ("**the first purchaser**"), or an option is granted with respect to that property to or by the first purchaser; and
 - (b) the transfer executed by the vendor transfers the property or any part of it not to the first purchaser but to another person ("**the transferee**").
 - (2) The transferee must give the Commissioner a statutory declaration in the approved form, containing the details required by the Commissioner for the purposes of determining any liability of the transferee or any other person to duty under this Chapter.
 - (3) If the Commissioner considers it necessary for the purposes of determining liability to duty under this Chapter, the Commissioner may require any person he or she reasonably believes may be liable to duty to give the Commissioner a statutory declaration in the approved form, containing the details required by the Commissioner.
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PART 5—EXEMPTIONS AND CONCESSIONAL RATES OF DUTY

Division 1—Trusts

33. Change in trustees

(1) In this section—

"new trustee" means a trustee appointed in substitution for a trustee or trustees or a trustee appointed in addition to a trustee or trustees;

"special trustee" means—

- (a) a trustee company within the meaning of the **Trustee Companies Act 1984**;
- (b) a corporation constituted under the law of another State or a Territory that, in the Commissioner's opinion, corresponds to a trustee company referred to in paragraph (a);
- (c) the trustees of a fund that is a complying superannuation fund within the meaning of section 267 of the Income Tax Assessment Act 1936 of the Commonwealth or that, in the opinion of the trustees, will become a complying superannuation fund within 12 months after the execution of—
 - (i) an instrument appointing a new trustee; or
 - (ii) an instrument by which a trustee retires without a new trustee being appointed in place of the retiree.

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S. 33(2)
amended by
No. 30/2002
s. 7(1).

(2) No duty is chargeable under this Chapter in respect of a transfer of dutiable property to a special trustee solely because of the retirement of a trustee or the appointment of a new trustee.

S. 33(3)
substituted by
No. 46/2001
s. 7(1).

(3) No duty is chargeable under this Chapter in respect of a transfer of dutiable property to a person other than a special trustee if the Commissioner is satisfied that the transfer is made solely—

- (a) because of the retirement of a trustee or the appointment of a new trustee, or other change in trustees; and
- (b) in order to vest the property in the trustees for the time being entitled to hold it.

S. 33(4)
substituted by
No. 46/2001
s. 7(1).

(4) If the Commissioner is not satisfied as mentioned in sub-section (3), the transfer is chargeable with duty, unless sub-section (5) applies.

(5) No duty is chargeable under this Chapter in respect of a transfer of property as a consequence of—

- (a) the retirement of a responsible entity of a managed investment scheme; or
- (b) the appointment of a new responsible entity of a managed investment scheme—

if the Commissioner is satisfied that the only beneficial interest acquired by a person in relation to the property as a result of the transfer is a beneficial interest acquired by the replacement or new responsible entity solely because of its appointment as responsible entity for the scheme.

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34. Property vested in an apparent purchaser

(1) No duty is chargeable under this Chapter in respect of—

- (a) a declaration of trust made by an apparent purchaser in respect of identified dutiable property or marketable securities referred to in section 10(2)—
- (i) vested in the apparent purchaser upon trust for the real purchaser who provided the money for the purchase of the dutiable property or marketable securities; or
- (ii) to be vested in the apparent purchaser upon trust for the real purchaser, if the Commissioner is satisfied that the money for the purchase of the dutiable property or marketable securities has been or will be provided by the real purchaser; or
- (b) a transfer of dutiable property or marketable securities referred to in section 10(2) from an apparent purchaser to the real purchaser in a case where dutiable property or marketable securities are vested in an apparent purchaser upon trust for the real purchaser who provided the money for the purchase of the dutiable property or marketable securities.

S. 34(1)(a)
amended by
No. 30/2002
s. 7(2)(a)(i).

S. 34(1)(a)(i)
amended by
No. 30/2002
s. 7(2)(a)(ii).

S. 34(1)(a)(ii)
amended by
No. 30/2002
s. 7(2)(a)(ii).

S. 34(1)(b)
substituted by
No. 30/2002
s. 7(2)(b).

(2) In this section, "**purchase**" includes an allotment.

- (2A) In this section, a reference to a real purchaser who provided the money for the purchase of the dutiable property includes a person on whose behalf the money for the purchase of the dutiable property was provided.

S. 34(2A)
inserted by
No. 71/2004
s. 13.

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S. 34(3)
inserted by
No. 58/2003
s. 9(1).

- (3) This section applies whether or not there has been a change in the legal description of the dutiable property or marketable securities.

Example

An example of a change in the legal description of dutiable property is the issuing of new certificates of title of land following a subdivision of the land.

35. Transfers to and from a trustee or nominee

- (1) No duty is chargeable under this Chapter in respect of a transfer of dutiable property (other than marketable securities²) that is made by the transferor to a trustee or nominee to be held solely as trustee or nominee of the transferor without any change in the beneficial ownership of the dutiable property or made by way of re-transfer to the transferor.
- (2) A reference in sub-section (1) to a change in beneficial ownership of dutiable property does not include a reference to the creation of a trustee's right of indemnity from the property.
- (3) This section applies whether or not there has been a change in the legal description of the dutiable property or marketable securities.

S. 35(3)
inserted by
No. 58/2003
s. 9(2).

Example

An example of a change in the legal description of dutiable property is the issuing of new certificates of title of land following a subdivision of the land.

36. Property passing to beneficiaries

No duty is chargeable under this Chapter in respect of a transfer of dutiable property that is subject to a trust ("**the principal trust**") to a beneficiary of the principal trust if—

- (a) the beneficiary was a beneficiary when the property, or what was substantially the same property, was first vested in a trustee of the principal trust; and

S. 36
amended by
No. 46/2001
s. 7(2)(a)(b)(3),
substituted by
No. 79/2001
s. 9.

- (b) the transfer is—
- (i) to the beneficiary absolutely; or
 - (ii) to the beneficiary as trustee of another trust ("**the second trust**") of which all the beneficiaries are natural persons who were beneficiaries of the second trust when the property, or what was substantially the same property, was first vested in a trustee of the principal trust; and
- (c) the duty (if any) charged by this Act in respect of the first vesting of the property, or what was substantially the same property, in a trustee of the principal trust has been paid.

37. Establishment of a trust relating to unidentified property and non-dutiable property

- (1) Duty of \$200 is chargeable in respect of an instrument executed in Victoria that declares a trust over Victorian property none of which is dutiable property.
- (2) Duty of \$200 is chargeable in respect of an instrument executed in Victoria that declares that property, although not identified in the instrument, when vested in the person executing the instrument is to be held in trust for a person or persons or a purpose or purposes mentioned in the instrument.
- (3) It is immaterial whether or not the beneficial owner or person entitled to appoint the property has joined in or assented to the instrument.
- (4) A liability for duty charged by this section arises when the instrument is executed.
- (5) Duty charged by this section is payable by the person declaring the trust.

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38. Exemptions from duty under section 37

S. 38(1)
repealed by
No. 71/2004
s. 14.

* * * * *

(2) No duty is chargeable under section 37 in respect of a declaration of trust if—

S. 38(2)(a)
amended by
No. 58/2003
s. 10.

(a) the Commissioner is satisfied that the declaration of trust has been made because of the breakdown of a marriage or domestic relationship; and

S. 38(2)(b)
amended by
No. 58/2003
s. 10.

(b) the settlor is or was a party to the marriage or domestic relationship; and

S. 38(2)(c)
amended by
No. 58/2003
s. 10.

(c) no person other than a party to the marriage or domestic relationship or a child of a party to the marriage or domestic relationship is a beneficiary of the trust.

(3) No duty is chargeable under section 37 in respect of a declaration of trust over property to be held on trust solely for—

(a) a religious, charitable or educational purpose; or

(b) a corporation or body of persons established for a religious, charitable or educational purpose.

Division 2—Superannuation

39. Instruments relating to superannuation

The following instruments are exempt from duty—

- (a) an instrument that establishes, or that amends provisions governing, a fund or trust that—
- (i) at the time of the instrument is; or

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- (ii) within 12 months after the instrument takes effect, in the opinion of the trustees, will be—
- a complying superannuation fund, a complying approved deposit fund, a pooled superannuation trust or an eligible rollover fund;
- (b) an instrument under which an employer agrees to participate in or contribute to a fund that—
- (i) at the time the employer agrees to participate or contribute is; or
- (ii) within 12 months after that time, in the opinion of the trustees, will be—
- a complying superannuation fund;
- (c) an instrument that is executed in order to set out or vary the terms of custodial arrangements concerning a fund or trust that—
- (i) at the time of the instrument is; or
- (ii) within 12 months after the instrument takes effect, in the opinion of the trustees, will be—
- a complying superannuation fund, a complying approved deposit fund, a pooled superannuation trust or an eligible rollover fund (whether or not the instrument contains any other terms).

40. Transfer of property from one superannuation fund to another

- (1) No duty is chargeable under this Chapter in respect of a transfer of dutiable property from one superannuation fund to another if the Commissioner is satisfied that—
 - (a) the transfer is made from a complying superannuation fund or from a fund that was a complying superannuation fund within the period of 12 months before the transfer was made; and
 - (b) the transfer is made to a complying superannuation fund or to a superannuation fund that, in the opinion of the trustees, will be a complying superannuation fund within 12 months after the transfer is made; and
 - (c) the transfer occurs in connection with a person's ceasing to be a member of, or otherwise ceasing to be entitled to benefits in respect of, the fund from which the dutiable property is transferred and the person's becoming a member of, or otherwise becoming entitled to benefits in respect of, the fund to which the dutiable property is transferred.
 - (2) An application to the Commissioner for the purposes of this section is to be accompanied by the following—
 - (a) a brief explanation of the background to the transfer and the entitlements to be extinguished and created;
 - (b) copies of the governing rules of the complying superannuation funds concerned;
 - (c) a statement of the property to be transferred;
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- (d) a copy of each instrument relating to the transfer;
 - (e) a statutory declaration from a trustee (or a director of a corporate trustee) of each of the superannuation funds concerned stating that, in the opinion of the trustee (or director), the fund will be a complying superannuation fund within 12 months after the transfer occurs.
- (3) The Commissioner may require further information for the purposes of this section.
- (4) In this section, "**complying superannuation fund**" includes a complying approved deposit fund and an eligible rollover fund.

41. Transfers to trustees or custodians of superannuation funds or trusts

- (1) No duty is chargeable under this Chapter in respect of a transfer of dutiable property made without monetary consideration to a trustee or custodian of a complying superannuation fund, a complying approved deposit fund, a pooled superannuation trust or an eligible rollover fund, or a fund or trust that, in the opinion of the trustees, will be a complying superannuation fund, a complying approved deposit fund, a pooled superannuation trust or an eligible rollover fund within 12 months after the transfer takes effect, where there is no change in the beneficial ownership of the property.
- (2) A transfer of property to or from a trustee or custodian of a pooled superannuation trust in exchange for the issue or redemption of units in the trust does not, for the purposes of this section, effect a change in the beneficial ownership of the property.

S. 41(1)
amended by
No. 58/2003
s. 11.

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- (3) A transfer of property to a trustee or custodian of a complying superannuation fund, a complying approved deposit fund or an eligible rollover fund by a beneficiary of the fund does not, for the purposes of this section, effect a change in the beneficial ownership of the property.

Division 3—Other General Exemptions and Concessions

42. Deceased estates

- (1) No duty is chargeable under this Chapter in respect of a transfer of dutiable property not made for valuable consideration by the legal personal representative of a deceased person to a beneficiary, being—
- (a) a transfer made under and in conformity with the trusts contained in the will of the deceased person or arising on an intestacy; or
 - (b) a transfer of property the subject of a trust for sale contained in the will of the deceased person.
- (2) No duty is chargeable under this Chapter in respect of the vesting of any dutiable property by virtue of section 13 of the **Administration and Probate Act 1958**.

43. Marriage and domestic relationships

S. 43
(Heading)
inserted by
No. 27/2001
s. 3(Sch. 1
item 2.3).

S. 43(1)(2)
repealed by
No. 71/2004
s. 15.

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(3) No duty is chargeable under this Chapter in respect of a transfer of dutiable property from one person to another person, or from two people to one of them, or from one person to themselves and another person if—

S. 43(3)
substituted by
No. 27/2001
s. 3(Sch. 1
item 2.4).

(a) the people are spouses or domestic partners of each other; and

(b) no other person takes or is entitled to take an interest in the property under the transfer.

44. Breakdown of marriage and domestic relationships

S. 44
(Heading)
inserted by
No. 27/2001
s. 3(Sch. 1
item 2.5).

(1) No duty is chargeable under this Chapter in respect of a transfer of dutiable property from one person to another person, or from two people to one of them, or from one person to themselves and another person if—

(a) both people have been spouses or domestic partners of each other; and

S. 44(1)(a)
amended by
No. 27/2001
s. 3(Sch. 1
item 2.6(a)(i)).

(b) the Commissioner is satisfied that the transfer has been made because of the breakdown of the marriage or domestic relationship; and

S. 44(1)(b)
amended by
No. 27/2001
s. 3(Sch. 1
item 2.6(a)(ii)).

(c) no other person takes or is entitled to take an interest in the property under the transfer.

(2) No duty is chargeable under this Chapter in respect of a declaration of trust or a transfer of dutiable property to a trustee if—

(a) the Commissioner is satisfied that the declaration of trust or the transfer has been made because of the breakdown of a marriage or domestic relationship; and

S. 44(2)(a)
amended by
No. 27/2001
s. 3(Sch. 1
item 2.6(b)).

(b) the transferor is or was a party to the marriage or domestic relationship; and

S. 44(2)(b)
amended by
No. 27/2001
s. 3(Sch. 1
item 2.6(b)).

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S. 44(2)(c)
amended by
No. 27/2001
s. 3(Sch. 1
item 2.6(b)).

- (c) no person other than a party to the marriage or domestic relationship or a child of a party to the marriage or domestic relationship is a beneficiary of the trust.

45. Charities and friendly societies

No duty is chargeable under this Chapter in respect of a transfer of dutiable property to, or a declaration of trust over dutiable property to be held on trust for—

- (a) a religious, charitable or educational purpose; or
(b) a corporation or body of persons established for a religious, charitable or educational purpose; or
(c) a friendly society.

46. Co-operatives

- (1) No duty is chargeable under this Chapter in respect of a transfer of dutiable property to a co-operative that—
- (a) has as its primary activity the providing of any community service or benefit; and
(b) was, before it was incorporated under the **Co-operatives Act 1996**, an unincorporated club, association or body operating to provide sporting or recreational facilities for its members and not carried on for the pecuniary profit of its members—

being property that, immediately before the co-operative was incorporated, was held by or on behalf of the unincorporated club, association or body.

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- (2) No duty is chargeable under this Chapter in respect of a transfer of dutiable property—
- (a) because of, or to give effect to, section 335 of the **Co-operatives Act 1996** (mergers of co-operatives); or
 - (b) because of, or to give effect to, section 386 of the **Co-operatives Act 1996** in respect of a transfer of engagements; or
 - (c) because of, or to give effect to, section 386 of the **Co-operatives Act 1996** in respect of a merger if the co-operative formed by the merger is a non-trading co-operative within the meaning of that Act.

47. Government bodies and diplomats

- (1) No duty is chargeable under this Chapter in respect of a transfer of dutiable property to—
- (a) the Crown in right of Victoria; or
 - (b) a Council within the meaning of the **Local Government Act 1989**; or
 - (c) the Municipal Association of Victoria; or
 - (d) the Western Metropolitan Market Trust; or
 - (e) an authority within the meaning of the **Water Act 1989**; or
 - (f) any person on behalf of any of the above persons.
- (2) No duty is chargeable under this Chapter in respect of a transfer of dutiable property to—
- (a) the representative in Australia of the government of another country; or
 - (b) a foreign consul; or
 - (c) a trade commissioner of any part of the British Commonwealth.
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48. Bankruptcies and administrations

No duty is chargeable under this Chapter in respect of—

- (a) a transfer of dutiable property because of—
 - (i) the appointment of a receiver or trustee in bankruptcy; or
 - (ii) the appointment of a liquidator; or
- (b) the vesting of any dutiable property in a liquidator by an order under section 474(2) of the Corporations Act; or

S. 48(b)
amended by
No. 44/2001
s. 3(Sch.
item 32.2).

- (c) a transfer of dutiable property for no consideration to a former bankrupt from the estate of the former bankrupt; or

S. 48(ca)
inserted by
No. 71/2004
s. 16.

- (ca) a transfer for consideration of dutiable property previously held by a bankrupt from a trustee in bankruptcy to the spouse or domestic partner of the bankrupt if, after the transfer, the property is the principal place of residence of the bankrupt's spouse or domestic partner; or

- (d) the vesting of any dutiable property by a vesting order made under section 51 of the **Trustee Act 1958**.

48A. Amalgamation of industrial organisations

No duty is chargeable under this Chapter in respect of a transfer of dutiable property made under, or in accordance with, the rules of an industrial organisation, if the transfer is made to another industrial organisation as a consequence of the amalgamation of two or more industrial organisations.

S. 48A
inserted by
No. 46/2001
s. 8.

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S. 49
repealed by
No. 36/2005
s. 11.

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S. 50
amended by
No. 44/2001
s. 3(Sch.
item 32.3),
repealed by
No. 36/2005
s. 11.

50A. Conversion of land use entitlements to different form of title

S. 50A
inserted by
No. 46/2004
s. 7.

No duty is chargeable under this Chapter in respect of the transfer of an estate in fee simple in a lot on a registered plan of subdivision within the meaning of the **Subdivision Act 1988** if—

- (a) the transferee, immediately before registration of the plan, held a land use entitlement in respect of the land or part of the land the subject of the plan; and
- (b) the transfer is part of an arrangement under which the transferee will take an interest in the lot similar in effect to, and in substitution for, the interest the transferee held under the land use entitlement immediately before the registration of the plan; and
- (c) either of the following applies—
 - (i) ad valorem duty was paid at the time the land use entitlement was acquired by the transferee; or
 - (ii) no duty was chargeable on the acquisition of the land use entitlement because of section 34, 36, 42 or 44.

Division 4—Exemptions and Concessions in relation to Land

51. Crown grants and public rights of way

No duty is chargeable under this Chapter in respect of—

- (a) a grant by the Crown in right of Victoria of any Crown lands; or
- (b) the dedication of a free and perpetual right of way to the use of the public.

52. Government bodies

No duty is chargeable under this Chapter in respect of a transfer of dutiable property referred to in section 10(1)(a) to—

- (a) the Minister administering the **Crown Land (Reserves) Act 1978**; or
- (b) the Minister administering the **Planning and Environment Act 1987**; or
- (c) the Director of Housing; or
- (d) a Corporation within the meaning of the **Transport Act 1983**; or
- (e) a person on behalf of a public department of Victoria or the Commonwealth.

53. Defence service homes

No duty is chargeable under this Chapter in respect of a transfer of dutiable property referred to in section 10(1)(a) by the Director of Defence Service Homes—

- (a) to a purchaser within the meaning of section 4 of the Defence Service Homes Act 1918 of the Commonwealth; or
- (b) to the personal representative of such a purchaser.

54. Joint tenants and tenants in common

No duty is chargeable under this Chapter in respect of a transfer of dutiable property referred to in section 10(1)(a)—

- (a) by joint tenants to themselves as tenants in common in equal shares; or
- (b) by tenants in common in equal shares to themselves as joint tenants.

55. Equity release programs

- (1) No duty is chargeable under this Chapter in respect of a transaction if, on application, the Commissioner is satisfied that it is a transaction taking place on or after 15 June 2005 under an equity release program that results in a change in beneficial ownership of dutiable property, being—
 - (a) the acquisition of a beneficial interest in the property by the financial institution as a result of the execution of the sale contract and payment of the amount payable by the financial institution to the homeowner on the day the sale contract is executed or within 5 business days afterwards; or
 - (b) the extinction of the beneficial interest, or part of the beneficial interest, in the property referred to in paragraph (a).
- (2) An application for an exemption under this section—
 - (a) must be in the approved form; and
 - (b) must be accompanied by a copy of the sale contract.
- (3) The Commissioner may require further information for the purposes of this section.

S. 55
repealed by
No. 36/2005
s. 11,
new s. 55
inserted by
No. 85/2005
s. 4.

Duties Act 2000
Act No. 79/2000

s. 55

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(4) In this section—

"equity release program" means an arrangement between a financial institution and a homeowner in accordance with which the financial institution and the homeowner enter into a contract of sale of land occupied as the homeowner's principal place of residence (**"the sale contract"**), under which—

- (a) the financial institution purchases a part interest in the land; and
 - (b) the financial institution pays the homeowner an amount for that interest on the day that the sale contract is executed or within 5 business days afterwards; and
 - (c) subject to paragraph (d), the homeowner retains legal title to the whole of the land and the land is not mortgaged after the sale contract has come into existence; and
 - (d) the sale contract may be terminated only in one of the following ways—
 - (i) by the homeowner paying an amount to the financial institution; or
 - (ii) if the homeowner vacates the land, by the financial institution requiring the homeowner to pay an amount to the financial institution and the homeowner paying that amount; or
 - (iii) by the homeowner selling the property to a third party and paying an amount to the financial institution on the completion of that sale; or
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(iv) if the homeowner (or, if there is more than one, the surviving homeowner) dies, by the land being sold to a third party and an amount being paid to the financial institution on the completion of that sale; and

(e) the homeowner is not required to make any payments to the financial institution during the life of the sale contract in any form that in substance reflects interest;

"financial institution" means—

- (a) a financial institution within the meaning of section 3(1); or
- (b) a friendly society;

"homeowner" means a person of or over pension age who, immediately before entering into the sale contract, holds an estate in fee simple in the whole of the land that is occupied by the person as his or her principal place of residence and whose estate is not subject to any mortgage;

"pension age" has the same meaning as in paragraph (b) of the definition of "pension age" in section 23(1) of the Social Security Act 1991 of the Commonwealth.

(5) Two or more persons together are homeowners if each of them satisfies the definition of "homeowner" in sub-section (4).

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56. Transfers of farms to relatives or charities

- (1) No duty is chargeable under this Chapter in respect of a transfer of dutiable property if the Commissioner is satisfied that—
- (a) the dutiable property is an estate in fee simple, life estate or estate in remainder in land referred to in section 65, 66 or 67 of the **Land Tax Act 2005**; and
 - (b) the transferor is a person referred to in sub-section (2); and
 - (c) the transferee is a person referred to in sub-section (3); and
 - (d) the transfer does not arise from arrangements or a scheme devised for the principal purpose of taking advantage of the benefit of this section.
- (2) The transferor must be—
- (a) a natural person; or
 - (b) a trustee for a natural person; or
 - (c) a company all the shares in which are owned by natural persons who are relatives of each other.
- (3) The transferee must be—
- (a) a relative of a natural person referred to in sub-section (2); or
 - (b) a trustee under a fixed trust, the beneficiaries of which are limited to—
 - (i) a present or future relative of a natural person referred to in sub-section (2); or
 - (ii) a charitable institution; or

S. 56(1)(a)
amended by
Nos 58/2003
s. 12, 88/2005
s. 117(Sch. 2
item 1.1).

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- (iii) a present or future relative of a natural person referred to in sub-section (2) and a charitable institution; or
 - (iv) a present or future relative of a natural person referred to in sub-section (2) and a natural person referred to in sub-section (2); or
 - (v) a charitable institution and a natural person referred to in sub-section (2); or
 - (vi) a present or future relative of a natural person referred to in sub-section (2), a natural person referred to in sub-section (2) and a charitable institution; or
- (c) a trustee under a discretionary trust the terms of which do not allow the distribution of the whole or any part of the capital of the trust that comprises land referred to in section 65, 66 or 67 of the **Land Tax Act 2005** to any person or body other than a person or body referred to in paragraph (b); or
- (d) a natural person referred to in sub-section (2)(c).
- (4) In this section—

S. 56(3)(c)
amended by
No. 88/2005
s. 117(Sch. 2
item 1.1).

"charitable institution" means a corporation or body of persons associated for charitable purposes;

"fixed trust" means a trust under which the identity of the beneficiaries and the quantum of their interests are ascertained.

57. Subsequent transfer not dutiable if duty paid on lease

If duty is paid under this Chapter in respect of a dutiable transaction referred to in section 7(1)(b)(v) (lease with covenant for future transfer), no duty is chargeable under this Chapter in respect of the subsequent transfer of the land in accordance with the terms of the lease.

S. 57A
inserted by
No. 71/2004
s. 17.

57A. Land sold initially to financial institution and natural person and then leased to natural person

- (1) This section applies if a natural person and a financial institution enter into an arrangement under which—
 - (a) an estate in fee simple in land is transferred from a third party to the financial institution and the natural person as co-owners ("**the first transaction**"); and
 - (b) at the same time as the first transaction, the financial institution leases its interest in the land to the natural person for a fixed term; and
 - (c) at the end of the fixed term referred to in paragraph (b), or some other term agreed by the parties, the financial institution transfers its interest in the land to the natural person ("**the second transaction**").
- (2) No duty is chargeable under this Chapter in respect of the second transaction.

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57B. Land sold initially to financial institution and then re-sold to natural person

S. 57B
inserted by
No. 71/2004
s. 17.

- (1) This section applies if a natural person and a financial institution enter into an arrangement under which—
 - (a) a third party and the natural person acting as agent for the financial institution enter into a contract of sale for an estate in fee simple in land; and
 - (b) in accordance with the contract of sale referred to in paragraph (a), the estate in fee simple in land is transferred from the third party to the financial institution ("**the first transaction**"); and
 - (c) at the same time as the first transaction, the financial institution and the natural person enter into a contract of sale for the estate in fee simple in land; and
 - (d) in accordance with the contract of sale referred to in paragraph (c), the financial institution transfers the estate in fee simple to the natural person for a determined consideration ("**the second transaction**").
- (2) No duty is chargeable under this Chapter in respect of the second transaction.

57C. Land sold initially to financial institution and then leased to natural person

S. 57C
inserted by
No. 71/2004
s. 17.

- (1) This section applies if a natural person and a financial institution enter into an arrangement under which—
 - (a) a third party and the natural person acting as agent for the financial institution enter into a contract of sale for an estate in fee simple in land; and

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- (b) in accordance with the contract of sale referred to in paragraph (a), the estate in fee simple in land is transferred from the third party to the financial institution ("**the first transaction**"); and
- (c) at the same time as the first transaction, the financial institution leases its interest in the land to the natural person for a fixed term in accordance with a lease agreement entered into between the financial institution and the natural person that contains an option for the natural person to purchase the estate in fee simple in land ("**the second transaction**"); and
- (d) at the end of the fixed term referred to in paragraph (c), or some other term agreed by the parties, the natural person exercises his or her option to purchase the estate in fee simple in land and the financial institution transfers its estate in fee simple to the natural person for a determined consideration ("**the third transaction**").

- (2) No duty is chargeable under this Chapter in respect of the second or third transaction.

57D. Land sold initially to natural person, beneficial interest then transferred to financial institution

- (1) This section applies if a natural person and a financial institution enter into an arrangement under which—
 - (a) an estate in fee simple in land is transferred from a third party to the natural person ("**the first transaction**"); and

S. 57D
inserted by
No. 71/2004
s. 17.

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- (b) at the same time as the first transaction—
 - (i) the natural person declares a trust in favour of the financial institution in relation to the natural person's beneficial interest in the land ("**the second transaction**"); and
 - (ii) the financial institution leases its interest in the land to the natural person for a fixed term; and
 - (c) at the end of the fixed term referred to in paragraph (b)(ii), or some other time agreement by the parties, the trust is determined with the effect that the beneficial interest in the land reverts to the natural person ("**the third transaction**").
- (2) No duty is chargeable under this Chapter in respect of the second or third transaction.

57E. Change of financial institution

S. 57E
inserted by
No. 71/2004
s. 17.

- (1) This section applies if—
 - (a) a natural person and a financial institution enter into an arrangement described in section 57A, 57B, 57C or 57D; and
 - (b) the financial institution transfers its estate in fee simple in land to another financial institution ("**the first transaction**") on the condition that the other financial institution transfer its interest in the land to the natural person in compliance with the terms of the relevant arrangement; and
 - (c) the other financial institution transfers its interest in the land to the natural person in compliance with the terms of the relevant arrangement ("**the second transaction**").
- (2) No duty is chargeable under this Chapter in respect of the first or second transaction.

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S. 57F
inserted by
No. 71/2004
s. 17.

57F. If the natural person dies

If, before an arrangement described in section 57A, 57B, 57C or 57D has been completed, the natural person dies, no duty is chargeable under this Chapter in respect of—

- (a) the transfer of any interest held by the natural person under the arrangement to another natural person by virtue of—
 - (i) a testamentary gift; or
 - (ii) the right of survivorship; or
 - (iii) the **Administration and Probate Act 1958**; or
- (b) the transfer of any interest held by the financial institution under the arrangement to another natural person by virtue of—
 - (i) a testamentary gift; or
 - (ii) the right of survivorship; or
 - (iii) the **Administration and Probate Act 1958**.

Division 5—Pensioner and First Home Owner Exemptions and Concessions

58. Who is an eligible pensioner?

- (1) A person is an "**eligible pensioner**" for the purposes of this Division if the Commissioner is satisfied that the person—
 - (a) is an eligible beneficiary within the meaning of the **State Concessions Act 2004**; and
 - (b) is a bona fide purchaser of an estate in fee simple in land for adequate consideration; and

S. 58(1)(a)
amended by
No. 82/2004
s. 13(Sch.
item 2).

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- (c) intends to reside in a dwelling on the land as a principal place of residence; and
 - (d) has not received an exemption, refund or rebate of duty in respect of a transfer—
 - (i) under section 59 or 60; or
 - (ii) under section 71A of the **Stamps Act 1958**.
- (2) Two or more persons together are eligible beneficiaries in respect of a transfer if each of them satisfies the criteria set out in subsection (1).

59. Eligible pensioner exemption or concession where dwelling exists at the time of transfer

- (1) An eligible pensioner is entitled to an exemption from duty under this Chapter in respect of a transfer to him or her of dutiable property, being an estate in fee simple in land, if—
- (a) at the time of the transfer there is a dwelling on the land; and
 - (b) the dutiable value of the dutiable property does not exceed \$250 000.
- (2) An eligible pensioner is entitled to a concession from duty under this Chapter in respect of a transfer to the eligible pensioner of dutiable property being an estate in fee simple in land, if—
- (a) at the time of the transfer there is a dwelling on the land; and
 - (b) the dutiable value of the dutiable property exceeds \$250 000 but does not exceed \$350 000.

S. 59(1)
amended by
No. 29/2002
s. 4(1)(a)(i),
substituted by
No. 46/2004
s. 8(1).

S. 59(2)(b)
amended by
Nos 29/2002
s. 4(1)(a)(ii),
46/2004
s. 8(2)(a).

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S. 59(3)
amended by
Nos 29/2002
s. 4(1)(a)(iii),
46/2004
s. 8(2)(b).

- (3) The concession is an amount calculated in accordance with the formula—

$$\$37\,310 - \frac{533P}{5000}$$

where P is the dutiable value of the dutiable property.

60. Eligible pensioner exemption or concession where dwelling is constructed after transfer

S. 60(1)
amended by
No. 29/2002
s. 4(1)(b)(i),
substituted by
No. 46/2004
s. 8(3).

- (1) An eligible pensioner is entitled to an exemption from duty under this Chapter in respect of a transfer to him or her of dutiable property, being an estate in fee simple in land, if—
- (a) at the time of the transfer there is not a dwelling on the land; and
 - (b) a dwelling is constructed on the land within 3 years after that time; and
 - (c) the aggregate of the dutiable value of the dutiable property and the cost of the construction of the dwelling does not exceed \$250 000.
- (2) An eligible pensioner is entitled to a concession from or partial refund of duty under this Chapter in respect of a transfer to the eligible pensioner of dutiable property being an estate in fee simple in land, if—

S. 60(2)(c)
amended by
Nos 29/2002
s. 4(1)(b)(ii),
46/2004
s. 8(4)(a).

- (a) at the time of the transfer there is not a dwelling on the land; and
 - (b) a dwelling is constructed on the land within 3 years after that time; and
 - (c) the aggregate of the dutiable value of the dutiable property and the cost of the construction of the dwelling exceeds \$250 000 but does not exceed \$350 000.
-

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- (3) The concession or refund is an amount calculated in accordance with the formula—

$$D \times \frac{533(\$350\,000 - P)}{100(3P - \$217\,000)}$$

S. 60(3) substituted by No. 29/2002 s. 4(2), amended by No. 46/2004 s. 8(4)(b).

where—

D is the amount of duty paid or payable (but for this Division) on the transfer;

P is the aggregate amount referred to in subsection (2)(c).

* * * * *

S. 60(4) repealed by No. 29/2002 s. 4(2).

60A. Election to receive eligible pensioner exemption/concession or additional first home owner grant

S. 60A inserted by No. 46/2004 s. 9.

- (1) This section applies to an eligible pensioner who, but for this section or section 18(3) of the **First Home Owner Grant Act 2000**, would be entitled—
- (a) to an exemption or concession from duty under section 59 or 60 in respect of a transfer of an estate in fee simple in land; and
 - (b) to receive an amount under section 18(2) of the **First Home Owner Grant Act 2000** in respect of an eligible transaction (within the meaning of that Act) relating to that land.
- (2) The eligible pensioner, by notice in writing to the Commissioner, must elect to receive—
- (a) the exemption or concession under section 59 or 60 (as the case requires) in respect of the transfer; or

- (b) the amount under section 18(2) of the **First Home Owner Grant Act 2000** in respect of the eligible transaction.
- (3) If the eligible pensioner elects to receive the amount under section 18(2) of the **First Home Owner Grant Act 2000**, or does not make an election under this section, he or she is not entitled to the exemption or concession under section 59 or 60 (as the case requires) in respect of the transfer.
- (4) Despite sub-section (3), if an eligible pensioner would, but for that sub-section, be entitled to an exemption or concession under section 59 or 60, section 167 applies to the home owner as if he or she were so entitled.

61. Who is an eligible first home owner?

- (1) A person is an "**eligible first home owner**" for the purposes of this Division if the Commissioner is satisfied that—
 - (a) the person is a bona fide purchaser of an estate in fee simple in land for adequate consideration; and
 - (b) the person intends to reside in a dwelling on the land as a principal place of residence; and
 - (c) the person has a dependent child and had a dependent child at the time when, or within 11 months after—
 - (i) if there was a dwelling on the land when the contract of sale of the land was entered into—the date on which the contract of sale was entered into; or

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- (ii) if there was no dwelling on the land when the contract of sale of the land was entered into—the earlier of—
- (A) the date on which the contract for the construction of the dwelling was entered into; and
 - (B) the date on which the building of the dwelling commenced; and

* * * * *

S. 61(1)(d)
repealed by
No. 29/2002
s. 4(3)(a)(i).

- (e) the person has not previously held an estate in fee simple in land on which was erected a dwelling which was used as a principal place of residence by that person anywhere in Australia.

- (2) A person and his or her partner together are eligible first home owners if each of them satisfies the criteria set out in sub-section (1).

S. 61(2)
amended by
No. 27/2001
s. 3(Sch. 1
item 2.7).

* * * * *

S. 61(3)
amended by
No. 27/2001
s. 3(Sch. 1
item 2.7),
repealed by
No. 29/2002
s. 4(3)(a)(ii).

- (4) In this section—

"dependent child", in relation to a person, means a child under the age of 18 years in the custody, care and control of, and ordinarily resident with, the person.

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62. Eligible first home owner exemption or concession where dwelling exists at the time of transfer

(1) No duty is chargeable under this Chapter in respect of a transfer to an eligible first home owner of dutiable property being an estate in fee simple in land, if—

- (a) at the time of the transfer there is a dwelling on the land; and
- (b) the dutiable value of the dutiable property does not exceed \$150 000.

S. 62(1)(b)
amended by
No. 29/2002
s. 4(3)(b)(i).

(2) An eligible first home owner is entitled to a concession from duty under this Chapter in respect of a transfer to the eligible home owner of dutiable property being an estate in fee simple in land, if at the time of the transfer there is a dwelling on the land, and—

- (a) if there was a dwelling on the land at the time the contract of sale of the land was entered into—the dutiable value of the dutiable property exceeds \$150 000 but does not exceed \$200 000; or
- (b) if the dwelling was constructed after the time the contract of sale of the land was entered into—the aggregate of the dutiable value of the dutiable property and the cost of construction of the dwelling exceeds \$150 000 but does not exceed \$200 000.

S. 62(2)(a)
amended by
No. 29/2002
s. 4(3)(b)(ii).

S. 62(2)(b)
amended by
No. 29/2002
s. 4(3)(b)(ii).

(3) If sub-section (2)(a) applies, the concession is an amount calculated in accordance with the formula—

$$18\,640 - \frac{466P}{5000}$$

where P is the dutiable value of the property.

S. 62(3)
amended by
No. 29/2002
s. 4(3)(b)(iii).

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- (4) If sub-section (2)(b) applies, the concession is an amount calculated in accordance with the formula—

S. 62(4)
amended by
No. 29/2002
s. 4(3)(b)(iv).

$$D \times \frac{466(200\,000 - P)}{100(3P - 217\,000)}$$

where—

D is the amount of duty paid or payable (but for this Division) on the transfer.

P is the aggregate amount referred to in sub-section (2)(b).

63. Eligible first home owner exemption or concession where dwelling is constructed after transfer

- (1) No duty is chargeable under this Chapter in respect of a transfer to an eligible first home owner of dutiable property being an estate in fee simple in land, if—
- (a) at the time of the transfer there is not a dwelling on the land; and
 - (b) a dwelling is constructed on the land within 3 years after that time; and
 - (c) the aggregate of the dutiable value of the dutiable property and the cost of the construction of the dwelling does not exceed \$150 000.
- (2) An eligible first home owner is entitled to a concession from or partial refund of duty under this Chapter in respect of a transfer to the eligible first home owner of dutiable property being an estate in fee simple in land, if—
- (a) at the time of the transfer there is not a dwelling on the land; and
 - (b) a dwelling is constructed on the land within 3 years after that time; and

S. 63(1)(c)
amended by
No. 29/2002
s. 4(3)(c)(i).

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S. 63(2)(c)
amended by
No. 29/2002
s. 4(3)(c)(ii).

(c) the aggregate of the dutiable value of the dutiable property and the cost of the construction of the dwelling exceeds \$150 000 but does not exceed \$200 000.

S. 63(3)
amended by
No. 29/2002
s. 4(3)(c)(iii).

(3) The concession or refund is an amount calculated in accordance with the formula—

$$D \times \frac{466(200\,000 - P)}{100(3P - 217\,000)}$$

where—

D is the amount of duty paid or payable (but for this Division) on the transfer.

P is the aggregate amount referred to in sub-section (2)(c).

S. 63A
inserted by
No. 46/2004
s. 10.

63A. Temporary suspension of first home owner exemption or concession

S. 63A(1)
amended by
No. 36/2005
s. 12.

(1) Nothing in this Division applies to a transfer to an eligible first home owner of an estate in fee simple in land if the contract for the commencement date of the eligible transaction is made on or after 1 May 2004 and before 1 July 2007.

(2) Despite sub-section (1), if an eligible first home owner referred to in that sub-section would, but for that sub-section, be entitled to an exemption or concession under this Division, section 167 applies to the home owner as if he or she were so entitled.

64. Double duty for false or misleading statements

(1) If a person—

(a) represents to a tax officer that duty is not chargeable, or that the person is entitled to a concession or refund of duty, because of this Division; and

- (b) is convicted of an offence against section 57 of the **Taxation Administration Act 1997** as a consequence—

the person is liable, by way of further penalty, to pay an amount equal to double the amount of duty that, but for the offence, would have been payable, less any amount of duty that the person did pay.

- (2) The penalty in sub-section (1) is in addition to any penalty tax or interest that may be payable under the **Taxation Administration Act 1997**.

Division 6—Exemptions and Concessions in relation to Marketable Securities

65. Co-operatives and co-operative housing societies

No duty is chargeable under this Chapter in respect of a transfer of marketable securities—

- (a) in a co-operative, if the transfer is made for a consideration of not less than the unencumbered value of the marketable securities; or
- (b) in a co-operative housing society.

66. Loans and temporary transfers

- (1) No duty is chargeable under this Chapter in respect of—
- (a) a transfer of marketable securities that is made as a security, other than a transfer to secure the rights of a purchaser or intended purchaser of the marketable securities under a contemplated sale; or
- (b) a re-transfer of marketable securities referred to in paragraph (a) to the original transferee.

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- (2) No duty is chargeable under this Chapter in respect of a transfer of marketable securities that is made for the sole purpose of—
- (a) vesting the marketable securities in the transferee for sale and delivery; or
 - (b) qualifying the transferee as nominee director to act and vote on behalf of a holding company as it directs; or
 - (c) re-transferring marketable securities to a holding company referred to in paragraph (b).

67. Nominee transactions—unquoted marketable securities

No duty is chargeable under this Chapter in respect of a transfer of marketable securities between any of the following persons—

- (a) the beneficial owner;
- (b) a trustee or nominee of the beneficial owner;
- (c) a custodian of a trustee or nominee of the beneficial owner;
- (d) a sub-custodian of a custodian of a trustee or nominee of the beneficial owner—

but only if—

- (e) there is no change in the beneficial ownership of the marketable securities; and
- (f) if the transferee is a person referred to in paragraph (b), (c) or (d)—the transferee is to hold the marketable securities solely for another person referred to in paragraph (a), (b) or (c) and there is no contemplation of the marketable securities being held for any other person; and

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- (g) if the transferor is a person referred to in paragraph (b), (c) or (d)—the marketable securities were held by the person solely for another person referred to in paragraph (a), (b) or (c) and, since the time when the marketable securities were first transferred or issued to the transferor, no person has held the marketable securities other than solely for a person referred to in paragraph (a), (b) or (c).

68. Share buy-backs

No duty is chargeable under this Chapter in respect of a dutiable transaction arising because of a buy-back of shares in accordance with Division 2 of Part 2J.1 of the Corporations Act, unless the buy-back is effected by the purchaser under one or more agreements, understandings or arrangements that the purchaser will issue marketable securities.

S. 68
amended by
No. 44/2001
s. 3(Sch.
item 32.4).

69. Reduction of duty—payment in non-Australian jurisdiction

- (1) The amount of duty chargeable under this Chapter in respect of a transfer of marketable securities is to be reduced by the amount of duty of a similar kind paid in relation to the transfer in accordance with the law of a place outside Australia.
- (2) In this section, a reference to a transfer of marketable securities includes a reference to a dealing or arrangement affecting marketable securities by means of a dutiable transaction other than a transfer.

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s. 69A

Ch. 2 Pt 6
(Heading and
ss 69A–69D)
inserted by
No. 46/2004
s. 11.

PART 6—TAX AVOIDANCE SCHEMES

S. 69A
inserted by
No. 46/2004
s. 11.

69A. Imposition of duty

- (1) This Part imposes duty on a transaction in respect of which duty would have been chargeable under this Chapter but for a tax avoidance scheme.
- (2) Duty is payable at the time it would have been payable but for the tax avoidance scheme.

S. 69B
inserted by
No. 46/2004
s. 11.

69B. What is a tax avoidance scheme?

- (1) For the purposes of this Part, a "**tax avoidance scheme**" is a scheme that directly or indirectly—
 - (a) has tax avoidance as its purpose or effect; or
 - (b) has tax avoidance as one of its purposes or effects, if the purpose or effect of tax avoidance is not merely incidental to another purpose or effect of the scheme—

whether the scheme had that effect at the time that it was entered into, or only subsequently.

- (2) In this section—

"**scheme**" includes the whole or any part of—

- (a) a contract, agreement, arrangement, understanding, promise or undertaking (including all steps and transactions by which it is carried into effect)—
 - (i) whether made or entered into orally or in writing;
 - (ii) whether express or implied;
 - (iii) whether or not enforceable;

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- (b) a plan, proposal, action, course of action or course of conduct, whether or not unilateral;
- (c) a trust;

"tax avoidance" means—

- (a) an elimination or reduction in the liability of a person for duty under this Chapter;
- (b) a postponement in the liability of a person to pay duty under this Chapter.

69C. Anti-avoidance provision

S. 69C
inserted by
No. 46/2004
s. 11.

- (1) If the Commissioner considers that a person has participated in a tax avoidance scheme, the Commissioner may—
 - (a) disregard the scheme; and
 - (b) determine what duty would have been payable under this Chapter but for the scheme; and
 - (c) make an assessment or reassessment under the **Taxation Administration Act 1997** of the tax liability of the person or any other person to give effect to that determination.
- (2) A tax default occurs for the purposes of the **Taxation Administration Act 1997** if the whole of any duty assessed or reassessed in accordance with sub-section (1)(c) is not paid to the Commissioner within 3 months after liability for the duty arose.

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69D. Misleading information

S. 69D
inserted by
No. 46/2004
s. 11.

S. 69D(1)
amended by
No. 71/2004
s. 18(1)(a).

(1) This section applies to a person (other than the Registrar of Titles) who is employed or concerned in—

S. 69D(1)(ab)
inserted by
No. 71/2004
s. 18(1)(b).

(a) the preparation of an instrument that effects or evidences a dutiable transaction; or

(ab) the entry of data for the purposes of electronically effecting in accordance with the **Electronic Transactions (Victoria) Act 2000** a dutiable transaction; or

(b) the provision of any advice regarding the form of a dutiable transaction.

S. 69D(2)
amended by
No. 71/2004
s. 18(2).

(2) The person must not omit from, or fail to include in, the instrument or in any material or data presented to the Commissioner any fact or circumstance affecting the liability of any person for duty under this Chapter.

Penalty: 10 penalty units.

CHAPTER 3
CERTAIN TRANSACTIONS TREATED AS
TRANSFERS³

PART 1—INTRODUCTION AND OVERVIEW

Ch. 3 Pt 1
(Heading and
s. 70)
substituted by
No. 46/2004
s. 12.

70. Imposition of duty

S. 70
substituted by
No. 46/2004
s. 12.

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

Note: Duty is chargeable under Part 2 on the acquisition by a person of certain interests in—

Note to s. 70
amended by
No. 46/2004
s. 14.

- a private unit trust scheme; or
- a wholesale unit trust scheme; or
- a private company—

that has land holdings in Victoria with an unencumbered value of \$1 million or more and the land holdings in all places of which comprise 60% or more of the unencumbered value of all its property.

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

Duty was chargeable under Parts 3 and 4 on certain transactions occurring before 1 July 2002.

Duty is charged under Part 5 on the allotment of units or shares that confer a land use entitlement.

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s. 71

Ch. 3 Pt 2
(Headings
and ss 71–89)
amended by
Nos 44/2001
s. 3(Sch.
item 32.4),
46/2001 s. 9,
58/2003 s. 13,
substituted as
Ch. 3 Pt 2
(Headings
and ss 71–
89S) by No.
46/2004 s. 12.

**PART 2—ACQUISITION OF INTERESTS IN CERTAIN
LANDHOLDERS**

Division 1—Landholders

S. 71
substituted by
No. 46/2004
s. 12.

71. Meaning of "landholder"

S. 71(1)
amended by
No. 36/2005
s. 13(1).

- (1) For the purposes of this Part, a **"landholder"** is any of the following—
- (a) a private unit trust scheme;
 - (b) a wholesale unit trust scheme;
 - (c) a private company.
- (2) A landholder is **"land rich"** if—
- (a) it has land holdings in Victoria with an unencumbered value of \$1 000 000 or more; and
 - (b) its land holdings in all places, whether within or outside Australia, comprise 60% or more of the unencumbered value of all its property.

Note: As to what constitutes a land holding, see section 72.
As to ownership through linked entities or discretionary trusts, see sections 74 and 75.

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- (3) In calculating the unencumbered value of the property of a landholder for the purposes of subsection (2), property of any of the following kinds is not counted—
- (a) cash, whether in Australian or other currency;
 - (b) money in an account at call or money on deposit with any person, negotiable instruments or debt securities;
 - (c) loans that, according to their terms, are to be repaid on demand by the lender or within 12 months after the date of the loan;
 - (d) if the landholder is a unit trust scheme, loans to beneficiaries of the scheme or to persons who, in relation to any trustee or beneficiary of the scheme, are associated persons;
 - (e) if the landholder is a private company, loans to shareholders of the company or to persons who, in relation to the company or to a shareholder or director of the company, are associated persons;
 - (f) land use entitlements;
 - (g) property consisting of units, shares or any other interest in a linked entity (other than in a linked entity whose property is not counted because of section 74(5)), including any debt existing between the landholder and a linked entity to the extent of the percentage of the interest the landholder holds in the linked entity;
 - (h) the deposit and amount due under an agreement referred to in section 73;

S. 71(3)(g)
amended by
No. 85/2005
s. 5(1)(a).

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S. 71(3)(i)
amended by
No. 85/2005
s. 5(1)(b).

- (i) any property of a kind prescribed by the regulations, unless the Commissioner, being satisfied that the property concerned was not acquired solely or mainly for the purpose of avoiding duty under this Part, notifies the landholder that the property will be counted for the purposes of such a calculation.

Note: "Associated person" and "land use entitlement" are defined in section 3.

- (4) In addition to sub-section (3), property is not to be counted in calculating the unencumbered value of all the property of a landholder for the purposes of sub-section (2) if the landholder is unable to satisfy the Commissioner that the property was obtained otherwise than to reduce, for the purposes of this Part, the ratio of its land holdings in all places, whether within or outside Australia, to the unencumbered value of all its property.
- (5) In determining whether or not a landholder is land rich for the purposes of an acquisition of an interest in the landholder by a person from a lineal ancestor or lineal descendant, the land holdings of the landholder are taken, for the purposes of sub-section (2)(b) not to include land held by the landholder that is primarily used for primary production.

S. 72
substituted by
No. 46/2004
s. 12.

72. What are "land holdings"?

- (1) For the purposes of this Part, a **"land holding"** is an interest in land other than the estate or interest of a mortgagee, chargee or other secured creditor or a profit à prendre.
- (2) An interest in land, however—
 - (a) is not a land holding of a unit trust scheme unless the interest is held by a trustee of the scheme in the capacity of trustee; and

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- (b) is not a land holding of a private company unless the interest of the private company in the land is a beneficial interest.
- (3) This section is in aid of, but does not limit, the operation of any provision of this Part providing for constructive ownership of interests in land.

73. Effect of uncompleted agreements

S. 73
substituted by
No. 46/2004
s. 12.

- (1) For the purposes of this Part, the vendor and purchaser under an uncompleted agreement for the sale of land are taken to be separately entitled to the whole of the land.
- (2) For the purposes of this Part—
- (a) if there is an uncompleted agreement for the disposal of property other than land, the agreement is taken to have been completed; and
- (b) if there is an uncompleted agreement for the acquisition of property other than land, the agreement is to be disregarded.

S. 73(1)
substituted by
No. 85/2005
s. 5(2).

Note: A refund may be payable in relation to the completion or rescission of an agreement referred to in this section—see section 88.

- (3) For the purposes of this Part—
- (a) a reference to a vendor includes a reference to a person who, at the time of a relevant acquisition, was the grantee of a put option or grantor of a call option;
- (b) a reference to a purchaser includes a reference to a person who, at the time of a relevant acquisition—

S. 73(3)
inserted by
No. 85/2005
s. 5(3).

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- (i) held a transfer right (within the meaning of Part 4A of Chapter 2); or
- (ii) was the grantor of a put option or grantee of a call option;
- (c) a reference to an uncompleted agreement includes a reference to an arrangement that includes both a put option and a call option.

S. 74
substituted by
No. 46/2004
s. 12.

74. Constructive ownership of land holdings and other property: linked entities

- (1) For the purposes of this Part, a landholder holds land or other property if the landholder is entitled to it through a linked entity.
- (2) Land or other property held because of sub-section (1) is in addition to any land or other property that the landholder holds in its own right.
- (3) The interest the landholder holds in land or other property referred to in sub-section (1) is the proportion of the land or other property that the landholder would be entitled to receive if all linked entities were to be wound up as provided in sub-section (4).
- (4) A landholder is entitled to land or other property through linked entities, whether linked to the landholder or to other entities linked to the landholder or to each other, if, on the winding up of all linked entities and without having regard to any liabilities of the linked entities, the landholder would receive an interest in the land or other property held by any of the linked entities.
- (5) However, land or other property of linked entities is not counted for the purposes of this Part unless at least 20% of it is received by the landholder ultimately from linked entities as provided by sub-section (4).

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(6) The value, for duty purposes, of the interest in land or other property that a landholder holds through a linked entity because of sub-section (1) is that portion of the unencumbered value of the land or other property to which the landholder would be entitled (without regard to any liabilities of the linked entities) if each linked entity were to be wound up.

(7) In this section—

"linked entity" means any person or body, corporate or unincorporated, that may hold property in its own right or for the benefit of any person, and includes a trust but does not include—

- (a) a natural person; or
- (b) a public unit trust scheme or a company whose shares are listed on the Australian Stock Exchange or an exchange of the World Federation of Exchanges;

"winding up" of a linked entity includes any means by which the entity's property is divested in favour of the persons entitled to it and, in the case of a linked entity that is a trust, includes the vesting of the trust property in the beneficiaries.

75. Constructive ownership of land holdings and other property: discretionary trusts

S. 75
substituted by
No. 46/2004
s. 12.

- (1) A person or a member of a class of persons in whose favour, by the terms of a discretionary trust, capital the subject of the trust may be applied—
- (a) in the event of the exercise of a power or discretion in favour of the person or class; or

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

is, for the purposes of this section, a **"beneficiary"** of the trust.

(2) A beneficiary of a discretionary trust is taken to own or to be otherwise entitled to the property the subject of the trust, except to the extent (if any) determined by the Commissioner.

(3) For the purposes of this Part, any property that is the subject of a discretionary trust is taken to be the subject of any other discretionary trust—

(a) that is; or

(b) any trustee of which (in the capacity of trustee) is—

a beneficiary of it.

(4) Sub-section (3) extends to apply to property that is the subject of a discretionary trust only by the operation of that sub-section.

(5) Nothing in this section applies so that a person is taken to own or be entitled to more than 100% of the property the subject of a trust.

(6) In this section—

"person" includes a landholder and a linked entity;

"property" includes land.

Note: "Discretionary trust" is defined in section 3.

Division 2—Acquisitions of Interests in Landholders

76. What are "interests" and "significant interests" in landholders?

S. 76
substituted by
No. 46/2004
s. 12.

- (1) A person has an **"interest"** in a landholder if the person has a beneficial entitlement (otherwise than as a creditor or other person to whom the landholder is liable), whether directly or through another person, to a distribution of property from the landholder on a winding up of the landholder.
- (2) A person who, by virtue of sub-section (1), has an interest in a landholder has a **"significant interest"** in the landholder if the person, in the event of a distribution of all the property of the landholder immediately after the interest was acquired, would be entitled to—
- (a) in the case of a private unit trust scheme—
20% or more of the property distributed; or
- (b) in the case of a landholder other than a private unit trust scheme—50% or more of the property distributed.
- (3) In this section—
- "person"** includes a landholder;
- "winding up"** of a landholder that is a unit trust scheme means the vesting of the trust property in the beneficiaries.

S. 76(1)
amended by
No. 85/2005
s. 6(1).

Note: Section 86 is relevant to ascertaining a person's entitlements on a distribution of property.

77. How may an interest be "acquired"?

S. 77
substituted by
No. 46/2004
s. 12.

- (1) A person acquires an interest in a land rich landholder if the person obtains an interest beneficially, including if the person's interest increases, in the landholder regardless of how it is obtained or increased.

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- (2) Without limiting sub-section (1), a person may acquire an interest in a land rich landholder in the following ways—
- (a) the purchase, gift, allotment or issue of a unit or share;
 - (b) the cancellation, redemption or surrender of a unit or share;
 - (c) the abrogation or alteration of a right pertaining to a unit or share;
 - (d) the payment of an amount owing for a unit or share.
- (2A) In addition to sub-section (1), a person who holds an interest in a land rich landholder acquires an interest in the landholder if the capacity in which the person holds the interest changes.
- (2B) Without limiting sub-section (2A), a person who has a beneficial interest in a land rich landholder and who declares a trust over that interest is taken, by that declaration of trust, to have acquired an interest in the landholder.
- (2C) For the purposes of section 79, an acquisition of an interest referred to in sub-section (2A) or (2B) is to be treated as a separate acquisition from existing interests held by the acquirer or any other acquisition of an interest in a land rich landholder unless those acquisitions are made on behalf of the same person or associated persons.
- (3) To remove any doubt, it is declared that an acquisition by way of transfer of units or shares is not necessary to acquire an interest in a land rich landholder.

S. 77(2A)
inserted by
No. 85/2005
s. 6(2).

S. 77(2B)
inserted by
No. 85/2005
s. 6(2).

S. 77(2C)
inserted by
No. 85/2005
s. 6(2).

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Division 3—Charging of Duty

78. When does a liability for duty arise?

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

S. 78
substituted by
No. 46/2004
s. 12.

79. What is a "relevant acquisition"?

(1) For the purposes of this Part, a person makes a relevant acquisition if—

S. 79
substituted by
No. 46/2004
s. 12.

(a) the person acquires an interest in a land rich landholder—

- (i) that is of itself a significant interest in the landholder; or
- (ii) that, when aggregated with other interests in the landholder acquired by the person or an associated person of the person (or both) on the same day or within the 3 years preceding the acquisition of the interest, results in an aggregation that amounts to a significant interest in the landholder; or

(iii) that, when aggregated with other interests in the landholder acquired by the person as set out in sub-paragraph (ii) or interests acquired by any person in an associated transaction (or both) on the same day or within the 3 years preceding the acquisition of the interest, results in an aggregation that amounts to a significant interest in the landholder; or

S. 79(1)(a)(iii)
amended by
No. 85/2005
s. 6(3).

(b) after an interest referred to in paragraph (a) was acquired in respect of which duty was charged, the person or an associated person acquires a further interest in the landholder.

Note: "Associated person" is defined in section 3.
"Associated transaction" is defined in sub-section (9).

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- (2) For the purposes of sub-section (1)(a)(ii) or (b), a person is not an associated person of another person if the Commissioner is satisfied that the interests of the persons—
- (a) were acquired, and will be used, independently; and
 - (b) were not acquired, and will not be used, for a common purpose.

- (3) Sub-section (2) does not apply if the persons are associated persons because they are related bodies corporate.

S. 79(3A)
inserted by
No. 85/2005
s. 6(4).

- (3A) For the purposes of this Part, persons in their capacity as qualifying investors of a wholesale unit trust scheme are taken not to be associated persons of other qualifying investors in relation to the scheme.

- (4) For the purposes of sub-section (1), if—
- (a) a person acquires an interest in a land rich landholder that is not a significant interest (the "**first acquisition**"); and
 - (b) the person or an associated person (or both) acquire another interest in the landholder (the "**subsequent acquisition**") later than 3 years after the first acquisition but as a result of an arrangement entered into within those 3 years—

the first acquisition, and any further acquisitions by the person or an associated person (or both) after the first acquisition but before the subsequent acquisition, are taken to have been made on the same day as the subsequent acquisition.

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(5) Despite anything to the contrary in this Part, if a person within a 3 year period acquires, directly or indirectly, control over a land rich landholder, other than by a relevant acquisition dutiable under this Part, then on the acquiring of that control the person is taken, for the purposes of this Part to have made a relevant acquisition of an interest in the landholder of—

- (a) 100%; or
- (b) the lesser percentage determined by the Commissioner to be appropriate in the circumstances.

(6) For the purposes of sub-section (5), a person acquires control over a landholder if they acquire the capacity to determine or influence the outcome of decisions about the landholder's financial and operating policies, taking into account—

S. 79(6)
amended by
No. 85/2005
s. 6(5).

- (a) the practical influence the person can exert in addition to any rights the person can enforce; and
- (b) any practice or behaviour affecting the landholder's financial or operating policies (even if that practice or pattern of behaviour involves the breach of an agreement or a breach of trust).

(7) Sub-section (5) applies regardless of interests held by any other person in the landholder.

(8) An interest in a landholder is not counted for the purposes of this section if—

- (a) the interest was acquired before 15 November 1987; or
- (b) the interest was acquired at a time when the landholder did not hold land in Victoria.

S. 79(8)(b)
amended by
No. 36/2005
s. 13(2)(a).

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S. 79(8)(c)
repealed by
No. 36/2005
s. 13(2)(b).

* * * * *

(9) In this section—

"associated transaction" in relation to the acquisition of an interest in a landholder by a person, means an acquisition of an interest in the landholder by another person in circumstances in which—

- (a) those persons are acting in concert; or
- (b) the acquisitions form, evidence, give effect to or arise from substantially one arrangement, one transaction or one series of transactions.

S. 80
substituted by
No. 46/2004
s. 12.

80. Acquisition statements

- (1) If a relevant acquisition is made, either or both the person who made the acquisition and the landholder (or, if the landholder is a unit trust scheme, the trustee of the landholder) must prepare a statement (an **"acquisition statement"**) and lodge it with the Commissioner within 3 months after the date of the relevant acquisition.
- (2) The acquisition statement is to be prepared in an approved form and must contain the following information—
 - (a) the name and address of the person who has acquired the interest;
 - (b) in relation to each interest acquired, the date on which it was acquired and whether it is an exempt acquisition;

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- (c) if the relevant acquisition results from the aggregation of the interests of associated persons, particulars of the interests acquired by the person and any associated persons on the date of the relevant acquisition and within 3 years before that date;
 - (d) if the relevant acquisition results from the aggregation of the interests of persons who acquired interests because of section 79(1)(a)(iii), particulars of the interests acquired by the person and all other persons involved;
 - (e) particulars of the total interest of the person and any associated person in the landholder at that date;
 - (f) the unencumbered value of all land holdings in Victoria of the landholder as at the date of the relevant acquisition;
 - (g) the unencumbered value of the property of the landholder at the date of the relevant acquisition;
 - (h) any other information the Commissioner may require.

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

- acquisition generally (section 77); and
- acquisitions that are exempt from the operation of this Part (section 85).

There is joint and several liability for the duty as between the person lodging the acquisition statement and others—see section 82.

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S. 81
substituted by
No. 46/2004
s. 12.

81. When must duty be paid?

A tax default does not occur for the purposes of the **Taxation Administration Act 1997** if duty is paid within 3 months after the liability to pay the duty arises.

S. 82
substituted by
No. 46/2004
s. 12.

82. Who is liable to pay the duty?

- (1) The following are jointly and severally liable to pay duty chargeable under this Part—
 - (a) the person who makes the relevant acquisition; and
 - (b) the landholder or, if the landholder is a unit trust scheme, the trustee of the landholder; and
 - (c) if the relevant acquisition results from an aggregation of the interests of the person referred to in paragraph (a) and other persons—each of those other persons.
- (2) A person, other than a person referred to in sub-section (1)(c), may recover as a debt from the person who made the relevant acquisition or a person referred to in sub-section (1)(c) the amount of any duty chargeable under this Part and any penalty paid by the first person in respect of that duty.

S. 83
substituted by
No. 46/2004
s. 12.

83. How duty is charged on relevant acquisitions

- (1) Duty is chargeable, at the rate specified under this Act for a transfer of dutiable property, on the amount calculated by multiplying the unencumbered value of all land holdings of the landholder in Victoria (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.

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- (2) If the relevant acquisition is the acquisition of a further interest as described in section 79(1)(b), duty is chargeable as follows—
- (a) first, a calculation is to be made of the duty that would be chargeable under sub-section (1) if the further interest were to be added to all interests referred to in section 79(1)(a) and (b) ("**the prior interests**");
 - (b) secondly, a calculation is to be made of the duty chargeable under sub-section (1) in respect of the prior interests;
 - (c) the duty chargeable on the acquisition of the further interest is the amount calculated under paragraph (a) less the amount calculated under paragraph (b).
- (3) Duty payable under this section is to be reduced by an amount (if any) calculated in accordance with the following formula—

$$\frac{A}{B} \times C$$

where—

A is the unencumbered value of the land holdings in Victoria of the landholder at the time the relevant acquisition was made; and

B is the unencumbered value of all property of the landholder at that time; and

C is the sum of—

- (a) the duty under this Act paid or payable at the rate applicable to transactions involving marketable securities, in respect of—
 - (i) a dutiable transaction in relation to the units or shares; or

S. 83(2)(a)
amended by
No. 85/2005
s. 6(6).

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- (ii) a capital reduction or a rights alteration under Part 3 by which an interest in the landholder was acquired; or
 - (iii) an allotment under Part 4 by which an interest in the landholder was acquired; and
- (b) any duty of a like nature so paid or payable under a law of another Australian jurisdiction.
- (4) This section is subject to Division 4.

Note: In ascertaining the duty payable under this section, it is necessary to have regard to provisions of Division 4 of this Part that deal with—

- rescission of agreements for the sale or transfer of land and other property (section 88); and
- acquisitions for securing financial accommodation (section 89).

S. 84
substituted by
No. 46/2004
s. 12.

84. Phasing-in of duty

If the unencumbered value of land holdings in Victoria of a landholder exceeds \$1 000 000 but does not exceed \$1 500 000, the duty chargeable under this Part is to be calculated in accordance with the following formula—

$$\left(\frac{A - \$1\,000\,000}{\$500\,000} \right) \times B$$

where—

A is the unencumbered value of the land holdings in Victoria of the landholder at the time the relevant acquisition was made; and

B is the duty that, apart from this section, would be chargeable under this Part.

Division 4—Exemptions, Concessions and Supplemental Provisions

85. Exemptions

S. 85
substituted by
No. 46/2004
s. 12.

- (1) An acquisition by a person of an interest in a landholder is an exempt acquisition—
 - (a) if the means by which the person acquired the interest would have resulted in no ad valorem duty being payable under Chapter 2 had the subject of the acquisition been a transfer of the land of the landholder to the person; or
 - (b) if the interest was acquired in the person's capacity as—
 - (i) a receiver or trustee in bankruptcy; or
 - (ii) a liquidator; or
 - (iii) an executor or administrator of the estate of a deceased person; or
 - (c) if the interest was acquired solely as the result of the making of a compromise or arrangement with the landholder's creditors under Part 5.1 of the Corporations Act that has been approved by the court, not being a compromise or arrangement that the Commissioner is satisfied was made with the intention of defeating the operation of this Part; or
 - (d) if the interest concerned is acquired solely from a pro rata increase in the interests of all unit holders or shareholders.
 - (2) An acquisition by a person of an interest in a landholder is an exempt acquisition if the Commissioner so determines, being satisfied that the application of this Part to the acquisition in the particular case would not be just and reasonable.
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S. 86
substituted by
No. 46/2004
s. 12.

86. Maximisation of entitlements on distribution of property

- (1) This section applies to any calculation, for the purposes of this Part, of the entitlement of a person (the "**interested person**") to participate in a distribution of the property of a landholder, whether on a winding up, a vesting of trust property or otherwise.
- (2) A calculation is to be made based, firstly, on a distribution carried out in accordance with the constitution of the landholder, and with any law relevant to the distribution, as in force at the time of distribution, and the entitlement of the interested person is to be evaluated accordingly.
- (3) Next, a calculation is to be made based on a distribution carried out after the interested person, and any other person whom the interested person has power to direct with respect to such a distribution or who is, in relation to the interested person, an associated person, had exercised all powers and discretions exercisable by them—
 - (a) to effect or compel an alteration to the constitution of the landholder; and
 - (b) to vary the rights conferred by units or shares in the landholder; and
 - (c) to effect or compel the substitution or replacement of units or shares in the landholder with other units or shares in it—in such a manner as would maximise the value of the entitlement, and the entitlement of the interested person is to be evaluated accordingly.
- (4) The results obtained by an evaluation of the interested person's entitlement in accordance with sub-sections (2) and (3) are then to be compared, and whichever evaluation results in a greater entitlement is the correct evaluation, for the

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purposes of this Part, of the entitlement, unless the Commissioner, being satisfied that the application of this sub-section in the particular case would be inequitable, determines otherwise.

- (5) A reference in this section to the constitution of a landholder is a reference, if the landholder is a unit trust scheme, to the trust deed or other document that contains the rules of the trust.

87. Valuation of property

S. 87
substituted by
No. 46/2004
s. 12.

- (1) The provisions of this Act for ascertaining the value of transfers chargeable with ad valorem duty apply in the same way to an acquisition statement under this Part and the value of land holdings mentioned in it.
- (2) In determining the value of land holdings under this Part, any arrangement made in respect of the land holdings that has the effect of reducing the value is to be disregarded, subject to sub-section (3).
- (3) An arrangement is not to be disregarded if the Commissioner is satisfied that the arrangement was not made as part of an arrangement or scheme with a collateral purpose of reducing the duty otherwise payable in relation to the relevant acquisition.
- (4) In considering whether or not he or she is satisfied for the purposes of sub-section (3), the Commissioner may have regard to—
- (a) the duration of the arrangement before the relevant acquisition; and
 - (b) whether the arrangement has been made with an associated person; and

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- (c) whether there is any commercial efficacy to the making of the arrangement other than to reduce duty; and
- (d) any other matters the Commissioner considers relevant.

S. 88
substituted by
No. 46/2004
s. 12.

88. Agreements for sale, transfer or purchase of land and other property

(1) If—

- (a) at the time of acquisition of an interest by any person in a land rich landholder that necessitates the lodgement of an acquisition statement under Division 3, the landholder was the vendor under an uncompleted agreement for the sale or transfer of land; and

(b) the agreement is subsequently completed—
the Commissioner is to determine whether or not duty is payable, and must assess or reassess the statement accordingly, as though the land the subject of the agreement was not, at the time of the acquisition concerned, a land holding of the landholder.

(2) If—

- (a) at the time of acquisition of an interest by any person in a land rich landholder that necessitates the lodgement of an acquisition statement under Division 3, the landholder was the purchaser under an uncompleted agreement for the purchase of property other than land; and

(b) the agreement is subsequently completed—
the Commissioner is to determine whether or not duty is payable, and must assess or reassess the statement accordingly, as though the property the

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subject of the agreement was, at the time of the acquisition concerned, property of the landholder.

(3) If—

- (a) at the time of acquisition of an interest by any person in a land rich landholder that requires the lodgement by any person of an acquisition statement under Division 3, the landholder was the purchaser under an uncompleted agreement for the sale or transfer of land; and
- (b) the agreement is subsequently rescinded, annulled or otherwise terminated without completion—

the Commissioner is to determine whether or not duty is payable, and must assess or reassess the statement accordingly, as though the land the subject of the agreement was not, at the time of the acquisition concerned, a land holding of the landholder.

(4) If—

- (a) at the time of acquisition of an interest by any person in a land rich landholder that requires the lodgement by any person of an acquisition statement under Division 3, the landholder was the vendor under an uncompleted agreement for the sale of property other than land; and
- (b) the agreement is subsequently rescinded, annulled or otherwise terminated without completion—

the Commissioner is to determine whether or not duty is payable, and must assess or reassess the statement accordingly, as though the property the subject of the agreement was, at the time of the acquisition concerned, property of the landholder.

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- (5) In this section, a reference to a **"landholder"** includes a reference to a linked entity of the landholder and, in the case of a landholder that is a unit trust scheme, also includes a reference to a trustee of the landholder.
- (6) For the purposes of this section—
- (a) a reference to a vendor includes a reference to a person who, at the time of a relevant acquisition, was the grantee of a put option or grantor of a call option;
 - (b) a reference to a purchaser includes a reference to a person who, at the time of a relevant acquisition—
 - (i) held a transfer right (within the meaning of Part 4A of Chapter 2); or
 - (ii) was the grantor of a put option or grantee of a call option;
 - (c) a reference to an uncompleted agreement includes a reference to an arrangement that includes both a put option and a call option.

S. 88(6)
inserted by
No. 85/2005
s. 7.

89. Duty concession acquisitions securing financial accommodation

- (1) Except as provided by sub-section (2), an acquisition statement is not chargeable with duty insofar as it relates to an acquisition if—
- (a) the person lodging the statement informs the Commissioner at the time of lodgement that the acquisition is effected for the purpose of securing financial accommodation; and
 - (b) the Commissioner is satisfied that the acquisition is effected for that purpose.

S. 89
substituted by
No. 46/2004
s. 12.

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- (2) The statement is chargeable with duty at the expiration of the period of 5 years after the date of the acquisition (or such longer period as may be determined by the Commissioner in the particular case) if the interest concerned is not—
 - (a) re-acquired by the person from whom it was acquired; or
 - (b) in the case of an acquisition by way of mortgage, conveyed by the mortgagee to a third person in exercise of the mortgagee's power of sale, within that period (or that longer period).
- (3) The re-acquisition by a person of the interest concerned is not a relevant acquisition for the purposes of this Part.

89A. Re-purchase facilities—widely held trusts

S. 89A
inserted by
No. 46/2004
s. 12.

- (1) This section applies if—
 - (a) the trustee of a unit trust scheme that is a widely held trust redeems any units in the trust; and
 - (b) the redemption is done for the purpose of re-issuing or re-offering the units for sale; and
 - (c) as a result of the redemption, the scheme would, but for this section, cease to be a widely held trust because a unit holder, individually or together with any associated person, is beneficially entitled to more than 20% of the units in the trust.
- (2) For a period of 30 days beginning on and including the day on which the redemption occurs, the definition of "widely held trust" in section 3(1) applies to the unit trust scheme as if a reference in paragraph (c)(ii) of that definition to 20% were a reference to 25%.

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- (3) However, if at the end of the 30-day period beginning on and including the day on which the redemption occurs, a unit holder, individually or together with any associated person, is beneficially entitled to more than 20% of the units in the unit trust scheme—
- (a) the definition of "widely held trust" in section 3(1) is taken to have applied to the unit trust scheme during that period as if sub-section (2) had not been enacted; and
 - (b) the Commissioner must determine whether any duty is chargeable under this Act as a result of the operation of paragraph (a) and if so, must assess that duty; and
 - (c) a tax default occurs for the purposes of the **Taxation Administration Act 1997** if the whole of any duty assessed under paragraph (b) is not paid to the Commissioner within 3 months after liability for the duty arose.

S. 89B
inserted by
No. 46/2004
s. 12.

89B. Disqualifying circumstances for certain unit trust schemes

S. 89B(1)
substituted by
No. 85/2005
s. 8.

- (1) In this section, "disqualifying circumstance" means—
- (a) a circumstance that causes a unit trust scheme that is registered under Division 7 to cease to meet the relevant criteria for registration; or
 - (b) subject to sub-section (1A), the failure by a unit trust scheme that is registered under Division 7 to meet a condition of registration, or the contravention of a condition of registration by a unit trust scheme or the trustee of the scheme.

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- (1A) A failure or contravention referred to in sub-section (1)(b) is not a disqualifying circumstance if the Commissioner so determines, being satisfied that the application of this section to the unit trust scheme in the particular case would not be just or reasonable.
- (2) If a disqualifying circumstance occurs in respect of a unit trust scheme—
- (a) the trustee of the unit trust scheme must give the Commissioner notice of the disqualifying circumstance within 28 days after it occurs; and
 - (b) the unit trust scheme is taken to have been a private unit trust scheme from and including the relevant date; and
 - (c) if an acquisition of a significant interest was made on or after the relevant date it becomes a relevant acquisition; and
 - (d) the Commissioner must make an assessment of duty chargeable under this Act as a result of the operation of paragraphs (b) and (c); and
 - (e) a tax default occurs for the purposes of the **Taxation Administration Act 1997** if the whole of any duty assessed under paragraph (d) is not paid to the Commissioner within 3 months after liability for the duty arose.
- (3) The trustee of a unit trust scheme must not fail to comply with sub-section (2)(a).

S. 89B(1A)
inserted by
No. 85/2005
s. 8.

Penalty: 10 penalty units.

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- (4) If—
- (a) a disqualifying circumstance occurs in relation to a unit trust scheme; and
 - (b) the trustee of the unit trust scheme fails to comply with sub-section (2)(a); and
 - (c) duty is assessed under this Part as a result of the disqualifying circumstance—
- the trustee of the unit trust scheme is liable to pay to the Commissioner, by way of penalty, an amount equal to double the amount of duty assessed as a result of the disqualifying circumstance, less any amount of duty that the trustee or any other person did pay.
- (5) A penalty imposed by sub-section (4) is in addition to any penalty imposed for contravention of sub-section (3) by the trustee.
- (6) The Commissioner, in such circumstances as the Commissioner considers appropriate, may remit the penalty imposed by sub-section (4) by any amount.
- (7) In this section—
- "relevant date"** means—
- (a) if the disqualifying circumstance is a circumstance that causes a registered imminent public unit trust scheme to cease to meet the criteria set out in section 89M(2)(a)—the date on which the 12 month period referred to in that section began;
 - (b) if the disqualifying circumstance is a circumstance that causes a registered imminent wholesale unit trust scheme to cease to meet the criteria set out in section 89P(2)(a)—the date on which
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the 12 month period referred to in that section began;

- (c) in any other case—the date the disqualifying circumstance occurred.

89C. Sale of private unit trust scheme through conversion to public unit trust scheme

S. 89C
inserted by
No. 46/2004
s. 12.

(1) This section applies if—

- (a) a land rich landholder that is a private unit trust scheme becomes, through whatever means, a public unit trust scheme; and
- (b) under an agreement or arrangement made before the scheme becomes a public unit trust scheme—

- (i) a payment is made to or on behalf of a person who, or persons who together, held units representing an interest of at least 20% in the private unit trust scheme immediately before the agreement or arrangement was made; or

S. 89C(1)(b)(i)
substituted by
No. 85/2005
s. 9.

- (ii) a person referred to in sub-paragraph (i) ceases to hold an interest in the public unit trust scheme that is relevant to an interest of at least 20% in the private unit trust scheme immediately before the agreement or arrangement was made (whether as a consequence of a payment referred to in that sub-paragraph or otherwise).

(2) On a payment referred to in sub-section (1)(b)(i) being made or on a person ceasing to hold an interest referred to in sub-section (1)(b)(ii)—

- (a) the unit trust scheme is taken, for the purposes of this Part, to have always been a private unit trust scheme; and

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- (b) all acquisitions of the interests of persons referred to in sub-section (1)(b)(i) are taken to have been a single acquisition of an interest in the private unit trust scheme; and
 - (c) the Commissioner must make an assessment of duty chargeable under this Act (if any) as a result of the operation of paragraphs (a) and (b); and
 - (d) a tax default occurs for the purposes of the **Taxation Administration Act 1997** if the whole of any duty assessed under paragraph (c) is not paid to the Commissioner within 3 months after liability for the duty arose.
- (3) In determining whether a person has a significant interest in the unit trust scheme, the only interests to be taken into account are those that existed immediately before the agreement or arrangement referred to in sub-section (1)(b) was made.
 - (4) Despite anything to the contrary in Division 1 of Part 2 of Chapter 11, nothing to which this section applies is capable of being an eligible transaction for the purposes of that Division.

Division 5—Conversion of Public Unit Trust Schemes to Private Unit Trust Schemes

89D. Interpretation and application of Division

- (1) In this Division—

"aggregated acquisitions" means—

- (a) a transitional acquisition; and
- (b) an acquisition by an associated person of the person who made the transitional acquisition; and

S. 89D
inserted by
No. 46/2004
s. 12.

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- (c) an acquisition by any person made in response to or in accordance with the offer or agreement that resulted in the transitional acquisition; and
- (d) an acquisition by the person who made the transitional acquisition or by an associated person of that person, made within 6 months before the making of the offer or agreement that resulted in the transitional acquisition; and
- (e) an acquisition by the person who made the transitional acquisition or by an associated person of that person, made within 6 months after the expiry of the offer or agreement that resulted in the transitional acquisition;

"offer" includes invitation;

"relevant unitholder" in a unit trust scheme means a unitholder—

- (a) who is beneficially entitled to units and holds at least the minimum subscription under the prospectus or product disclosure statement; and
- (b) who, individually or together with any associated person, is beneficially entitled to not more than 20% of the units in the scheme;

"transitional acquisition" means an acquisition by a person of units in a unit trust scheme that, immediately before the acquisition was a public unit trust scheme—

- (a) made in response to or in accordance with an offer or arrangement; and

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- (b) that by itself, or when aggregated with acquisitions made by an associated person, results in the unit trust scheme becoming a private unit trust scheme.
- (2) Despite anything to the contrary in section 3, for the purposes of this Division (and for determining whether duty is payable under this Part on an acquisition referred to in this Division) a public unit trust scheme that is a listed trust is deemed to become a private unit trust scheme when the number of relevant unitholders falls below 300.
- (3) Nothing in this Division applies to a public unit trust scheme that is a listed trust all the units in which have been listed for quotation on the Australian Stock Exchange or an exchange of the World Federation of Exchanges for 3 years or more.

S. 89E
inserted by
No. 46/2004
s. 12.

89E. When public unit trust scheme becomes a private unit trust scheme

- (1) Subject to sub-section (2), if, as a result of the acquisition of one or more units in a unit trust scheme that, immediately before the acquisition, was a public unit trust scheme, the scheme becomes a private unit trust scheme, the scheme is taken to have become a private unit trust scheme immediately before that acquisition.
- (2) If a transitional acquisition in a public unit trust scheme is made, the scheme is taken to have become a private unit trust scheme immediately before the first of the aggregated acquisitions.
- (3) In determining for the purposes of this Part whether a person makes a relevant acquisition, the aggregated acquisitions are together taken to form one acquisition made by the person or an associated person at the time of the last of those acquisitions.
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- (4) If the Commissioner is satisfied that an acquisition that would otherwise form part of the aggregated acquisitions is not made for a common purpose, the Commissioner is to treat that acquisition as not forming part of the aggregated acquisitions.

89F. Interstate security duty

S. 89F
inserted by
No. 46/2004
s. 12.

- (1) If interstate security duty has been paid in respect of any acquisition forming part of the aggregated acquisitions, the amount of the aggregated duty that is attributable to the aggregated acquisitions is to be reduced by the same proportion of the interstate security duty as the value of the land holdings of the landholder in Victoria bears to the aggregate value of all land holdings of the landholder.

- (2) In sub-section (1)—

"aggregated duty" means duty that is chargeable under this Part because of section 89E in respect of the aggregated acquisitions;

"interstate security duty" means duty chargeable in another State or a Territory on a transfer of any marketable security or right in respect of shares.

Division 6—Tax Avoidance Schemes

89G. Imposition of duty

S. 89G
inserted by
No. 46/2004
s. 12.

- (1) This Division imposes duty on an acquisition in respect of which duty would have been chargeable under this Part but for a tax avoidance scheme.
- (2) Duty is payable at the time it would have been payable but for the tax avoidance scheme.

S. 89H
inserted by
No. 46/2004
s. 12.

89H. What is a tax avoidance scheme?

- (1) For the purposes of this Division, a **"tax avoidance scheme"** is a scheme that—
- (a) directly or indirectly has tax avoidance as its purpose or effect; or
 - (b) directly or indirectly has tax avoidance as one of its purposes or effects, if the purpose or effect of tax avoidance is not merely incidental to another purpose or effect of the scheme—

whether the scheme had that effect at the time that it was entered into, or only subsequently.

- (2) In this Division—
- "scheme"** includes the whole or any part of—
- (a) a contract, agreement, arrangement, understanding, promise or undertaking (including all steps and transactions by which it is carried into effect)—
 - (i) whether made or entered into orally or in writing;
 - (ii) whether express or implied;
 - (iii) whether or not enforceable;
 - (b) a plan, proposal, action, course of action or course of conduct, whether or not unilateral;
 - (c) a trust;

"tax avoidance" means—

- (a) an elimination or reduction in the liability of a person for duty under this Part;
- (b) a postponement in the liability of a person to pay duty under this Part.

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89I. Anti-avoidance provision

S. 89I
inserted by
No. 46/2004
s. 12.

- (1) If the Commissioner considers that a person has participated in a tax avoidance scheme, the Commissioner may—
 - (a) disregard the scheme; and
 - (b) determine what duty would have been payable under this Part but for the scheme; and
 - (c) make an assessment or reassessment under the **Taxation Administration Act 1997** of the tax liability of the person or any other person to give effect to that determination.
- (2) For the purposes of making a determination under sub-section (1), the Commissioner may—
 - (a) deem a company or a unit trust scheme to be a landholder of a particular class;
 - (b) deem a landholder (or, if the landholder is a unit trust scheme, the trustee of the scheme) to hold land, and determine the extent of that landholding;
 - (c) deem a landholder to be land-rich;
 - (d) deem a relevant acquisition to have been made by any person and determine the extent of that interest;
 - (e) determine the value of any land.
- (3) Nothing in sub-section (2) limits the powers of the Commissioner to make a determination under sub-section (1).
- (4) A tax default occurs for the purposes of the **Taxation Administration Act 1997** if the whole of any duty assessed or reassessed in accordance with sub-section (1)(c) is not paid to the Commissioner within 3 months after liability for the duty arose.

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S. 89J
inserted by
No. 46/2004
s. 12.

89J. Misleading information

- (1) This section applies to a person who is employed or concerned in—
 - (a) the preparation of an instrument in relation to the acquisition of an interest in a landholder; or
 - (b) the provision of advice in relation to the acquisition of an interest in a landholder; or
 - (c) the conduct of the acquisition of an interest in a landholder.
- (2) The person must not omit from, or fail to include in, the instrument or in any material presented to the Commissioner any fact or circumstance affecting the liability of any person for duty under this Part.

Penalty: 10 penalty units.

Division 7—Registration of Unit Trust Schemes

S. 89K
inserted by
No. 46/2004
s. 12.

89K. Definitions

- (1) In this Division—

S. 89K(1) def.
of "qualified
investor"
amended by
Nos 36/2005
s. 13(3)(a)(b),
85/2005
s. 10(1)(a)(b).

"qualified investor" in a unit trust scheme, means a person who holds units in the unit trust scheme in any of the following capacities—

- (a) as trustee of a complying superannuation fund that has no less than 300 members;
- (b) as trustee of a complying approved deposit fund that has no less than 300 members;
- (c) as trustee of a pooled superannuation trust;

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- (d) as trustee of a public unit trust scheme;
 - (e) as a life company, if its holding of the units in the unit trust scheme is an investment of a statutory fund maintained by it under the Life Insurance Act 1995 of the Commonwealth;
 - (ea) as the Crown in right of the Commonwealth, a State or a Territory (including any statutory body representing the Crown in right of the Commonwealth, a State or a Territory);
 - (f) as an agent for a trustee or life company or the Crown referred to in any of the preceding paragraphs in its capacity as such an agent;
 - (g) as the trustee of a wholesale unit trust scheme;
 - (ga) as custodian or trustee for an investor directed portfolio service, within the meaning of the relevant ASIC policy statement, if the custodian or trustee holds its interest in the unit trust scheme for not less than 300 clients as investors through the service, none of whom (individually or together with any associated person) is beneficially entitled to more than 20% of the units held by the custodian or trustee in the unit trust scheme;
 - (h) in a capacity approved by the Commissioner under sub-section (3);

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S. 89K(1) def.
of "relevant
ASIC policy
statement"
inserted by
No. 85/2005
s. 10(1)(c).

"relevant ASIC policy statement" means the policy statement "PS 148: Investor Directed Portfolio Services" published by the Australian Securities and Investments Commission, or any other policy statement published by that Commission that the Commissioner from time to time approves for the purposes of this Division.

- (2) For the purposes of paragraph (e) of the definition of "qualified investor" in sub-section (1), the holding of units by a life company by way of an investment of a statutory fund of the life company is taken to be a holding of units by the life company in a separate capacity from a holding of units by the life company by way of investment of another statutory fund of the life company.
- (3) The Commissioner may approve a capacity to be a capacity for the purposes of paragraph (h) of the definition of "qualified investor" in sub-section (1) if satisfied that—
- (a) the capacity corresponds to a capacity referred to in paragraph (a), (b), (c), (d), (e) or (f) of that definition under the law of an external Territory or of a country outside Australia; or
 - (b) the capacity is as a wholly owned subsidiary (within the meaning of the Corporations Act) of a person in a capacity referred to in paragraph (a).

S. 89K(3)
substituted by
No. 85/2005
s. 10(2).

S. 89L
inserted by
No. 46/2004
s. 12.

89L. Application for registration

- (1) The trustee of a unit trust scheme may apply to the Commissioner for registration of the scheme as—
- (a) an imminent public unit trust scheme; or
 - (b) a declared public unit trust scheme; or
 - (c) a wholesale unit trust scheme; or

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(d) an imminent wholesale unit trust scheme; or

S. 89L(1)(d)
amended by
No. 36/2005
s. 13(4)(a).

(e) a declared wholesale unit trust scheme.

S. 89L(1)(e)
inserted by
No. 36/2005
s. 13(4)(b).

(2) An application must be accompanied by a statement in an approved form made by the applicant.

(3) In considering an application for registration under this Division, the Commissioner may take into account any matter he or she considers relevant.

89M. Registration of imminent public unit trust schemes

S. 89M
inserted by
No. 46/2004
s. 12.

(1) On application by the trustee of a unit trust scheme, the Commissioner may register the unit trust scheme as an imminent public unit trust scheme if the Commissioner is satisfied that the scheme meets the criteria for registration as an imminent public unit trust scheme.

(2) The criteria for registration as an imminent public unit trust scheme are that—

(a) the unit trust scheme will become a listed trust or a widely held trust within 12 months after the later of—

(i) the day on which the first units in the scheme were issued; and

(ii) the date of the prospectus or product disclosure statement for the offer of units to the public; and

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- (b) units issued in the scheme before the scheme becomes a listed trust or widely held trust have been or will be issued only for the purpose of the scheme becoming a listed trust or a widely held trust; and
- (c) registration is not being sought for the purpose of, or as part of a scheme or arrangement with a collateral purpose of, avoiding or reducing duty otherwise chargeable under this Part.

S. 89N
inserted by
No. 46/2004
s. 12.

89N. Registration of declared public unit trust schemes

- (1) On application by the trustee of a unit trust scheme, the Commissioner may register the unit trust scheme as a declared public unit trust scheme if the Commissioner is satisfied that the scheme meets the criteria for registration as a declared public unit trust scheme.
- (2) The criteria for registration as a declared public unit trust scheme are—
 - (a) the scheme should be registered as a declared public unit trust scheme; and
 - (b) registration is not being sought for the purpose of, or as part of a scheme or arrangement with a collateral purpose of, avoiding or reducing duty otherwise chargeable under this Part.
- (3) The Commissioner may impose any conditions he or she considers appropriate on the registration of a unit trust scheme as a declared public unit trust scheme.

S. 89N(3)
inserted by
No. 85/2005
s. 10(3).

89O. Registration of wholesale unit trust schemes

S. 89O
inserted by
No. 46/2004
s. 12.

- (1) On application by the trustee of a unit trust scheme, the Commissioner may register the unit trust scheme as a wholesale unit trust scheme if the Commissioner is satisfied that the scheme meets the criteria for registration as a wholesale unit trust scheme.
- (2) The criteria for registration as a wholesale unit trust scheme are—
 - (a) the scheme was not established for a particular investor; and
 - (b) either—
 - (i) the trustee of the scheme, as trustee, holds directly or indirectly an interest in not less than 3 parcels of land (whether in or outside Victoria), and at least 2 of those interests each have an unencumbered value of \$10 000 000 or more; or
 - (ii) at least 6 of the unit holders in the scheme who are not associated persons each have a subscription under the scheme of not less than \$3 000 000; and
 - (c) not less than 80% of the units in the scheme are held by qualified investors; and
 - (d) no qualified investor, either alone or together with associated persons, holds 50% or more of the units in the scheme; and
 - (e) registration is not being sought for the purpose of, or as part of a scheme or arrangement with a collateral purpose of, avoiding or reducing duty otherwise chargeable under this Part.

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- (3) For the purposes of sub-section (2)(b)(i), the Commissioner may treat 2 or more parcels of land as a single parcel of land if he or she is satisfied that it is appropriate to do so, having regard to—
- (a) the ownership of the parcels of land; and
 - (b) the proximity of the parcels of land; and
 - (c) the use of the parcels of land; and
 - (d) any other matter the Commissioner considers to be relevant.

S. 89P
inserted by
No. 46/2004
s. 12.

89P. Registration of imminent wholesale unit trust schemes

- (1) On application by the trustee of a unit trust scheme, the Commissioner may register the unit trust scheme as an imminent wholesale unit trust scheme if the Commissioner is satisfied that the scheme meets the criteria for registration as an imminent wholesale unit trust scheme.
- (2) The criteria for registration as an imminent wholesale unit trust scheme are—
- (a) the unit trust scheme will meet the criteria for registration as a wholesale unit trust scheme within 12 months after the day on which the first units in the scheme were issued to a qualified investor; and
 - (b) units issued in the scheme before the scheme meets the criteria for registration as a wholesale unit trust scheme have been or will be issued only for the purpose of the scheme meeting those criteria; and
 - (c) registration is not being sought for the purpose of, or as part of a scheme or arrangement with a collateral purpose of, avoiding or reducing duty otherwise chargeable under this Part.
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89PA. Registration of declared wholesale unit trust schemes

S. 89PA
inserted by
No. 36/2005
s. 14.

- (1) On application by the trustee of a unit trust scheme, the Commissioner may register the unit trust scheme as a declared wholesale unit trust scheme if the Commissioner is satisfied that the scheme meets the criteria for registration as a declared wholesale unit trust scheme.
- (2) The criteria for registration as a declared wholesale unit trust scheme are—
 - (a) the scheme should be registered as a declared wholesale unit trust scheme; and
 - (b) registration is not being sought for the purpose of, or as part of a scheme or arrangement with a collateral purpose of, avoiding or reducing duty otherwise chargeable under this Part.
- (3) The Commissioner may impose any conditions he or she considers appropriate on the registration of a unit trust scheme as a declared wholesale unit trust scheme.

S. 89PA(3)
inserted by
No. 85/2005
s. 10(4).

89Q. Duration of registration

S. 89Q
inserted by
No. 46/2004
s. 12.

- (1) Registration of a unit trust scheme under this Division takes effect on the day specified by the Commissioner in respect of the scheme, which may be a day occurring before the day on which registration is granted.
- (2) Unless cancelled earlier, the duration of registration under this Division is—
 - (a) 3 years for a registered declared public unit trust scheme, wholesale unit trust scheme or declared wholesale unit trust scheme;
 - (b) 12 months for a registered imminent public unit trust scheme or imminent wholesale unit trust scheme.

S. 89Q(2)(a)
amended by
No. 36/2005
s. 15.

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- (3) Registration of a unit trust scheme under this Division may be renewed on application made under section 89L.

S. 89R
inserted by
No. 46/2004
s. 12.

89R. Reporting requirements

- (1) As a condition of registration under this Division, the Commissioner may impose requirements on the trustee of the registered scheme to give the Commissioner information specified by the Commissioner about the scheme at the times required by the Commissioner.
- (2) Requirements may be imposed under subsection (1) at the time of registration or at any subsequent time.

S. 89S
inserted by
No. 46/2004
s. 12.

89S. Cancellation of registration

- (1) The Commissioner may cancel the registration of a unit trust scheme at any time if the Commissioner is satisfied that a disqualifying circumstance within the meaning of section 89B has occurred in respect of that scheme.
- (2) The Commissioner cancels the registration of a unit trust scheme by giving written notice of cancellation to the trustee of the scheme including the reasons for the cancellation.
-

**PART 3—ENTITLEMENTS ARISING FROM CAPITAL
REDUCTIONS OR RIGHTS ALTERATIONS**

90. Definitions

(1) In this Part—

"capital reduction" means—

- (a) the redemption, surrender or cancellation of a share (including cancellation as part of a buy-back of shares in accordance with Division 2 of Part 2J.1 of the Corporations Act); or
- (b) a reduction in the paid up value of a share;

S. 90(1) def. of "capital reduction" amended by No. 44/2001 s. 3(Sch. item 32.5(a)).

"company" means a Victorian company that is—

- (a) a public company within the meaning of the Corporations Act; and
- (b) not listed on the Australian Stock Exchange or a recognised stock exchange;

S. 90(1) def. of "company" amended by No. 44/2001 s. 3(Sch. item 32.5(a)).

"dutiabale entitlement" means a voting share entitlement in respect of whose acquisition a statement is required, under section 94, to be lodged;

"person" includes persons who are associated persons;

"rights alteration", in relation to voting shares, means a variation, abrogation or alteration of rights relating to the shares;

"voting share" has the same meaning as in section 9 of the Corporations Act.

S. 90(1) def. of "voting shares" substituted as "voting share" by No. 44/2001 s. 3(Sch. item 32.5(b)).

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s. 91

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Certain Transactions Treated as Transfers

- (2) For the purposes of this Part, if voting shares acquired by associated persons severally do not, but taken in the aggregate would, confer an entitlement to which this Part applies, the voting shares acquired by the associated persons are taken to be aggregated and are taken to confer the entitlement on the associated person who last acquired any of those voting shares.
- (3) If, by sub-section (2), an entitlement to voting shares is taken to exist as the aggregate of voting shares of associated persons, the associated persons are jointly and severally liable for payment of the duty chargeable on the statement required to be lodged under this Part.
- (4) Voting shares are not to be aggregated in accordance with sub-section (2) if the Commissioner is satisfied that the associated persons concerned acquired their several shares independently and for no common purpose.

91. When does a liability for duty arise?

A liability for duty charged by this Part arises when a dutiable entitlement is acquired.

92. When must duty be paid?

A tax default does not occur for the purposes of the **Taxation Administration Act 1997** if duty is paid within 3 months after the liability to pay the duty arises.

93. Who is liable to pay the duty?

Duty chargeable under this Part is payable by the person who acquires a dutiable entitlement.

94. Entitlement to voting shares arising from capital reduction or rights alteration

(1) If—

- (a) a person becomes entitled to at least 50% of the voting shares of a company by means of capital reduction or rights alteration, or both; or
- (b) a person who is entitled to at least 50% of the voting shares of a company becomes entitled to at least 10% more of the voting shares over a period of not more than 12 months by means of capital reduction or rights alteration, or both—

the person must lodge a statement with the Commissioner in respect of the entitlement.

- (2) The statement must be lodged within 3 months after the entitlement arises.
- (3) A statement is not required to be lodged under this section in respect of an entitlement that arises on or after 1 July 2002.

S. 94(3)
inserted by
No. 48/2001
s. 6(2),
amended by
No. 29/2002
s. 5.

95. Content of statement

The statement required to be lodged under this Part by a person is to contain the following information—

- (a) the name and address of the person;
- (b) the name of the company;
- (c) the date on which each relevant capital reduction or rights alteration, or both, occurred;

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- (d) if the person's entitlement has arisen—
 - (i) from capital reduction—the total of the unencumbered value, immediately prior to each relevant capital reduction, of the shares the subject of the capital reduction; or
 - (ii) from rights alteration—the total of the unencumbered value, immediately prior to each relevant rights alteration, of the shares the subject of the rights alteration; or
 - (iii) from capital reduction and rights alteration—the aggregate of the totals under sub-paragraphs (i) and (ii);
- (e) the total consideration paid to the person in relation to all relevant capital reductions or rights alterations, or both;
- (f) any other information required by the Commissioner for the purposes of this Chapter.

96. Assessment of duty

A statement required to be lodged under this Part by a person is chargeable with duty at the rate of 60 cents for every \$100, or part, of the higher of—

- (a) the total or aggregate obtained under section 95(d); and
 - (b) the total amount under section 95(e).
-

PART 4—ALLOTMENT OF SHARES BY DIRECTION

97. Application of Part

- (1) This Part applies to an allotment of shares to any person by a Victorian company at another person's direction, in discharge of an obligation to that other person, whether that obligation arises as consideration for the purchase of property by the company or otherwise.
- (2) This Part does not apply to—
 - (a) an allotment of shares by a Victorian company that is listed on the Australian Stock Exchange or a recognised stock exchange;
 - (b) an allotment of shares at another person's direction if the direction is given by the underwriter in any contract for underwriting shares upon the first issue of the shares by the company;
 - (c) an allotment of shares that takes place on or after 1 July 2002.

S. 97(2)(b)
amended by
No. 48/2001
s. 6(3)(a).

S. 97(2)(c)
inserted by
No. 48/2001
s. 6(3)(b),
amended by
No. 29/2002
s. 5.

98. When does a liability for duty arise?

A liability for duty charged by this Part arises when the relevant shares are allotted.

99. When must duty be paid?

A tax default does not occur for the purposes of the **Taxation Administration Act 1997** if duty is paid within 3 months after the liability to pay the duty arises.

100. Who is liable to pay the duty?

Duty chargeable under this Part is payable by the person to whom the relevant shares are allotted.

101. Acquisition of shares by allotment

- (1) A person to whom any shares are allotted in an allotment to which this Part applies must lodge a statement with the Commissioner in respect of the allotment.
- (2) The statement must be lodged within 3 months after the shares are allotted.

102. Allotment statement

An allotment statement required to be lodged by a person is to contain the following information—

- (a) the name and address of the person;
- (b) the name of the relevant company;
- (c) the date on which the shares were allotted to the person;
- (d) any other information required by the Commissioner for the purposes of this Chapter.

103. Assessment of duty

An allotment to which this Part applies is chargeable with duty at the rate of duty set out in section 29 in respect of a transfer of marketable securities on the dutiable value of the shares.

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s. 103A

**PART 5—ACQUISITION OF LAND USE ENTITLEMENTS BY
ALLOTMENT OF SHARES OR ISSUE OF UNITS**

Ch. 3 Pt 5
(Heading and
ss 103A–
103F)
inserted by
No. 46/2004
s. 13.

103A. When does a liability for duty arise?

A liability for duty charged by this Part arises when a land use entitlement is acquired by an allotment of shares or an issue of units to any person.

S. 103A
inserted by
No. 46/2004
s. 13.

103B. When must duty be paid?

A tax default does not occur for the purposes of the **Taxation Administration Act 1997** if duty is paid within 3 months after the liability to pay the duty arises.

S. 103B
inserted by
No. 46/2004
s. 13.

103C. Who is liable to pay the duty?

Duty chargeable under this Part is payable by the person who acquires the land use entitlement.

S. 103C
inserted by
No. 46/2004
s. 13.

103D. Acquisition of land use entitlement

- (1) A person who acquires a land use entitlement by an allotment of shares or an issue of units must lodge a statement (an "**acquisition statement**") with the Commissioner in respect of the entitlement.
- (2) The statement must be lodged within 3 months after the entitlement is so acquired.

S. 103D
inserted by
No. 46/2004
s. 13.

103E. Form of statement

An acquisition statement required to be lodged by a person is to be in an approved form and is to contain the following information—

- (a) the name and address of the person; and
- (b) the name of the relevant company or unit trust scheme; and

S. 103E
inserted by
No. 46/2004
s. 13.

Duties Act 2000
Act No. 79/2000

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s. 103F

- (c) the date on which the land use entitlement was acquired; and
- (d) the consideration paid for the relevant shares or units; and
- (e) any other information required by the Commissioner for the purposes of this Chapter.

S. 103F
inserted by
No. 46/2004
s. 13.

103F. Assessment of duty

The share allotment or unit issue by which a person acquires a land use entitlement is chargeable with duty at the general rate of duty set out in section 28 on the dutiable value of the land use entitlement.

CHAPTER 4
FINANCIAL SECTOR (TRANSFERS OF BUSINESS)

104. Imposition of duty

This Chapter charges duty in respect of the transfer of dutiable property to a receiving body under Part 3 of the Financial Sector (Transfers of Business) Act 1999 of the Commonwealth.

105. When does a liability for duty arise?

A liability for duty charged by the Chapter arises when the dutiable property becomes the property of the receiving body⁴.

106. Who is liable to pay the duty?

Duty chargeable under this Chapter is payable by the receiving body.

107. Statement on transfer of property

- (1) A receiving body to whom dutiable property is transferred under Part 3 of the Financial Sector (Transfers of Business) Act 1999 of the Commonwealth must lodge a statement with the Commissioner.
- (2) The statement must specify the dutiable property transferred and the dutiable value of the dutiable property at the time it becomes the property of the receiving body.
- (3) The statement must be lodged within 3 months after the dutiable property becomes the property of the receiving body.

Duties Act 2000
Act No. 79/2000

Chapter 4

Financial Sector (Transfers of Business)

s. 108

S. 108
amended by
No. 48/2001
s. 6(4).

108. Assessment of duty

A statement required to be lodged under this Chapter by a receiving body is chargeable with duty at the rate of duty set out in section 28 on the dutiable value of the property as if the transfer of the dutiable property to the receiving body were a dutiable transaction.

109. Exemption

Duty is not chargeable under this Chapter in respect of a transfer of dutiable property if the transfer is of a class that, under guidelines approved for the time being by the Minister, is a class of transfer in respect of which duty is not chargeable.

Chapter 5
(Headings
and
ss 110–124)
repealed by
No. 48/2001
s. 5(b).

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CHAPTER 6

HIRE OF GOODS

PART 1—INTRODUCTION AND OVERVIEW

125. Imposition of duty

This Chapter charges duty on the hire of goods if the person hiring out the goods is a commercial hire business.

125A. Hire of goods duty abolished from January 2007

Despite anything to the contrary in this Chapter (except section 147(2)), duty is not chargeable on a hire of goods in respect of any hiring charges received on or after 1 January 2007.

S. 125A
inserted by
No. 36/2005
s. 16.

126. What is a commercial hire business?

- (1) A "**commercial hire business**" is a person who hires out goods as a business.
- (2) It is immaterial whether or not the hiring out of the goods is the principal business or is ancillary to some other form of business, and whether or not any such principal or ancillary business is carried on wholly or partly outside Victoria.

127. Hire of goods to which this Chapter applies— jurisdictional nexus

- (1) This Chapter applies to the hire of goods only if the goods are used solely or predominantly in Victoria during any return period in respect of which a liability to duty is required to be determined.

Duties Act 2000
Act No. 79/2000

Chapter 6
Hire of Goods

s. 128

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- (2) A motor vehicle, however—
- (a) if it is the subject of an equipment financing arrangement, is taken to be used, at all times in the course of that arrangement, in the State or Territory under whose law it is registered; and
 - (b) if it is not the subject of an equipment financing arrangement but is hired, is taken to be used at all times in the course of the hire (unless it becomes the subject of an equipment financing arrangement), in the State or Territory in which the motor vehicle is initially delivered under the hire.
- (3) If goods hired under a hire of goods are not used or to be used solely or predominantly in any particular State or Territory, the goods are taken to be predominantly used or to be used in Victoria if, under the hire of goods, the goods are initially delivered in Victoria.
- (4) For the purposes of this section, goods are predominantly used or to be used in Victoria if they are used or to be used more in Victoria than in any other single State or Territory.

128. What are "goods"?

For the purposes of this Chapter, "**goods**" includes all chattels personal and fixtures severable from realty, but does not include money, livestock or things in action.

129. What is a "hire of goods"?

- (1) A "**hire of goods**" is an arrangement under which goods are or may be used at any time by a person other than the person hiring out the goods, unless the arrangement is excluded under section 132.

- (2) There are 2 kinds of hire of goods, namely—
- (a) an equipment financing arrangement; and
 - (b) an ordinary (that is, any other) hire of goods.

130. What is an "equipment financing arrangement"?

- (1) An "**equipment financing arrangement**" is a hire of goods that consists of—
- (a) a hire purchase agreement; or
 - (b) some other agreement for a term of not less than 9 months.
- (2) A "**hire purchase agreement**" is a letting of goods with an option to purchase and an agreement for the purchase of goods by instalments (whether the agreement describes the instalments as rent or hire or otherwise), but does not include any agreement by which the property in the goods comprised in the agreement passes at the time of the agreement or on or at any time before the delivery of the goods.

131. What form may a hire of goods take?

A hire of goods may take any form. It is immaterial whether or not a hire of goods is effected or evidenced by an instrument in writing.

132. Exclusions from the definition of "hire of goods"

A hire of goods does not include any of the following—

- (a) an arrangement that gives a person a right to use goods that is conferred incidentally with a lease of, or a licence to occupy or use, land if there is no apportionment of consideration between the right to use the goods and the right to occupy or use the land;

S. 132(a)
substituted by
No. 79/2001
s. 10(1).

Duties Act 2000
Act No. 79/2000

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s. 132

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- (b) an arrangement for the hire of an aircraft, ship or vessel, or for the hire of an engine or other component part of an aircraft, ship or vessel;
 - (c) an arrangement for the provision of goods to a trader for the purpose of displaying or demonstrating the goods pending their sale or hire to a third party;
 - (d) an arrangement comprising a "wet hire" (that is, an arrangement under which an operator is provided by or at the direction of the person hiring out the goods to operate the goods for the hirer);
 - (e) an arrangement for the use of goods the provision of which is incidental and ancillary to the provision of a service if the provision of the goods is solely to enable the contractual provision of the service;
 - (f) an arrangement made between related bodies corporate;
 - (g) an arrangement under which a motor vehicle is subleased by an employee to an employer in connection with the employee's remuneration or other employment benefits;
 - (h) an arrangement for the use, by a person who is partially or totally incapacitated, of an invalid aid or prosthetic device or of any similar aid, device or appliance;
 - (i) a credit contract within the meaning of the Consumer Credit (Victoria) Code under which the amount of credit does not exceed \$35 000;
 - (j) a hire purchase agreement relating to the use of farm machinery or a commercial vehicle where the purchaser is a natural person;
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- (k) an arrangement relating to the use of—
- (i) a book; or
 - (ii) an electricity, gas or water meter; or
 - (iii) a caravan that is to remain on site.

133. Special hiring agreements

A "**special hiring agreement**" is a written agreement for the hire of goods—

- (a) that describes the goods in such a way (for example, by reference to the make and model of each item) as to enable the nature or character of the goods to be clearly and readily identified, including the number of items; and
- (b) that does not include—
 - (i) an agreement under which the goods may, at any time, be replaced in whole or in part by other goods, except to the extent that the agreement allows replacement if the goods—
 - (A) are lost, destroyed or stolen; or
 - (B) fail or malfunction in the normal course of operation or use; or
 - (C) are temporarily replaced during the servicing, maintenance or repair of the goods; or
 - (D) are otherwise not fit for the purpose for which they are hired; or
 - (ii) an agreement under which other goods, whether of the same or a different type, may be additionally provided.

134. What is the rate of duty?

- (1) The duty chargeable on a hire of goods is 0·75% of the total amount of the hiring charges.
- (2) The maximum amount of duty chargeable in respect of a special hiring agreement is \$10 000.

135. What are "hiring charges"?

- (1) "**Hiring charges**" are payments made to the person who hires out the goods by or on behalf of the hirer, for (or that arise as an incident of) the hire of the goods.
- (2) The following charges are included as hiring charges—
 - (a) payments for damage waiver or for damage excess;
 - (b) late return fees.

136. Payments exempted from "hiring charges"

- (1) The following charges are not included as hiring charges—
 - (a) payments for delivery, repositioning, erection, installation, maintenance or cleaning of the goods;
 - (b) refundable cash deposits or bonds (unless appropriated as hiring charges);
 - (c) insurance premiums payable by the hirer;
 - (d) duty paid or payable under this Act or a corresponding Act;
 - (e) payments for the sale of goods (such as fuel, replacement parts or theft replacement);
 - (f) any GST payable on the supply to which the hire of goods relates;
 - (g) any payment of a type prescribed by the regulations.

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- (2) No duty is chargeable under this Chapter on a payment by the hirer under a hire of goods if title to the goods passes to the hirer as a consequence of the payment.

137. Credit for duty paid in another Australian jurisdiction

- (1) The duty chargeable under this Chapter on a hire of goods is to be reduced by the amount of duty paid on the hire under a corresponding Act.
- (2) Despite sub-section (1), the duty on a special hiring agreement that is chargeable with the maximum amount of duty of \$10 000 cannot be reduced below \$6000.

S. 137(1)
amended by
No. 46/2001
s. 10.

138. Splitting or redirection of hiring charges (anti-avoidance provision)

The Commissioner may include, as part of the amount received as hiring charges, any of the following—

- (a) any payments under the arrangement that are not hiring charges, including charges referred to in section 136, that the Commissioner is satisfied have been increased for the purpose of minimising duty under this Chapter;
- (b) any payments that would be hiring charges except for the fact that they are paid to a person other than the person who hires out the goods.

139. Ascertainment and disclosure of place of use of goods

- (1) A person who hires out goods may, in determining the person's liability to duty, rely on a statement of the hirer as to where the goods will be solely or predominantly used in the course of the hire or, in the case of an unregistered motor vehicle, where the motor vehicle will be registered during the course of the hire, unless the person knows that the statement is false.
- (2) A person who hires out goods is not bound to inquire as to any change in the place of use of the goods or, in the case of a motor vehicle, the place of its registration.
- (3) If goods are solely or predominantly used or, in the case of a motor vehicle, are registered in a place other than the place advised by the hirer in a statement referred to in sub-section (1), the Commissioner may assess or reassess the duty payable according to the actual place of sole or predominant use of the goods or, in the case of a motor vehicle, the place of its registration.
- (4) A failure to pay duty on the hire of goods by a person who hires out the goods in due reliance on a statement referred to in sub-section (1), is not a tax default for the purposes of the **Taxation Administration Act 1997**, if the duty is paid within 3 months after the issue of a notice of assessment of the duty.
- (5) A hirer who knowingly falsely represents to the person who hires out goods (or to any person acting for that person) that the goods will be used solely or predominantly outside Victoria is guilty of an offence.

Penalty: 100 penalty units.

**PART 2—REGISTRATION OF COMMERCIAL HIRE
BUSINESSES AND PAYMENT OF DUTY**

140. Commercial hire businesses must be registered

- (1) A commercial hire business must be registered under this Part if, in any month, the total amount of the hiring charges received in the month exceeds \$6000.
- (2) An application for registration must be made within 21 days after the end of the month in which the \$6000 threshold is first exceeded.

Penalty: 100 penalty units.

- (3) Sub-section (1) does not apply to a commercial hire business in respect of hiring charges received in any month after December 2006.

S. 140(3)
inserted by
No. 36/2005
s. 17(1).

141. Registration of commercial hire businesses

- (1) The Commissioner must register a commercial hire business that applies in the approved form for registration under this Part.
- (2) The Commissioner may register a commercial hire business that has not applied for registration.
- (3) The Commissioner must give written notice to the commercial hire business of the registration.

142. Cancellation of registration of commercial hire business

- (1) A registered commercial hire business that ceases to hire out goods as a business must—
 - (a) give written notice of that fact to the Commissioner; and
 - (b) lodge the return required to be lodged under this Part; and

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- (c) pay the duty payable in connection with the return on or before the 21st day of the month after which the notice is given.

Penalty: 100 penalty units.

S. 142(1A)
inserted by
No. 36/2005
s. 17(2).

- (1A) A registered commercial hire business is not required—
- (a) to comply with sub-section (1)(a) if the business ceases to hire out goods as a business on or after 1 January 2007; or
 - (b) to comply with sub-section (1)(b) or (c) in respect of any hiring charges received on or after that day.
- (2) The Commissioner is to cancel the registration of a commercial hire business on receipt of a notice under sub-section (1).
- (3) The Commissioner may cancel a commercial hire business's registration under this Part if the Commissioner has reason to believe that registration is no longer required by the commercial hire business. The registration must not be cancelled until at least 30 days after written notice of intention to cancel the registration has been given by the Commissioner to the commercial hire business.
- (4) A cancellation of registration has effect from the day specified for the purpose by the Commissioner in a written notice of cancellation given to the commercial hire business.

143. Register of commercial hire businesses

- (1) The Commissioner must keep a register of the commercial hire businesses who are registered under this Part.
- (2) Anyone may inspect the register without charge at the Commissioner's principal office during the hours that the office is open to the public.

144. Duty base

- (1) Duty under this Chapter is to be assessed on the total amount of the hiring charges received in a month by the commercial hire business.
 - (2) The Commissioner may, however, by notice in writing approve a different basis of calculation of hiring charges if it appears to the Commissioner that duty payable on that basis will, over a period of time, approximate the duty payable in accordance with sub-section (1). An amount calculated under any method so approved is taken for duty purposes, while the approval remains in force, to be the amount of hiring charges received. Such an approval may be revoked by the Commissioner at any time by notice in writing to the commercial hire business concerned.
 - (3) A registered commercial hire business can, with the Commissioner's written consent, change the basis (as between a receipts basis and an approved basis) from month to month but it cannot change the basis within a month.
 - (4) If consent is given under sub-section (3), the Commissioner may assess or reassess the duty payable in any period prior to the change of basis to include any hiring charges that would not be accounted for, or to exclude any hiring charges that would be accounted for twice, because of the change of basis.
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145. Lodgement of returns and payment of duty

- (1) A commercial hire business must, on or before the 21st day of each month—
 - (a) lodge a return with the Commissioner; and
 - (b) pay to the Commissioner the appropriate amount of duty calculated in accordance with section 134 in respect of the previous month, subject to the duty-free threshold in sub-section (2).
- (2) A duty-free threshold of \$6000 per month applies in respect of hiring charges received from hires that are not special hiring agreements or equipment financing arrangements (that is, duty is payable only on such part of the total amount of those charges as exceeds \$6000).
- (3) The Commissioner may by notice in writing approve of the lodgement by a commercial hire business of returns in respect of a period of more than one month, and in such a case—
 - (a) the return must be lodged, and the duty paid, on or before the 21st day of the month following the last month to which the return relates; and
 - (b) the duty payable on the return is the sum of the duties payable on a monthly basis in accordance with this section for each month to which the return relates.
- (4) A commercial hire business may elect to pay the duty payable on a special hiring agreement by lodging a statement under section 147. In that event, returns under this section in respect of the agreement are not necessary.

S. 145(2)
amended by
No. 79/2001
s. 10(2).

Duties Act 2000
Act No. 79/2000

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- (5) If, in relation to a special hiring agreement—
- (a) a commercial hire business makes an election under sub-section (4); and
 - (b) the special hiring agreement is terminated before the expiry of the term expressed in the agreement—

the commercial hire business may request a reassessment of duty as if the duty had been paid on a return under this section.

- (6) Nothing in this section requires a commercial hire business to—
- (a) lodge a return in respect of a month occurring after December 2006; or
 - (b) pay duty in respect of any hiring charges received on or after 1 January 2007.

S. 145(6)
inserted by
No. 36/2005
s. 17(3).

146. Statement of special hiring agreement

- (1) A commercial hire business may make out a written statement in respect of a special hiring agreement if the total amount of hiring charges paid or payable for the hire of the goods is not less than \$1 333 333.
- (2) The statement must include the following—
- (a) the name and address of each party;
 - (b) a description of the goods;
 - (c) the commencement date and the term of the hire;
 - (d) the total of the hiring charges paid or payable over the term of the hire;
 - (e) the intervals at which the hiring charges are paid or payable.

S. 146(1)
amended by
No. 46/2001
s. 11.

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Act No. 79/2000

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- (3) The statement must be made out not later than—
- (a) the time when the commercial hire business receives the first (or only) payment of hiring charges; or
 - (b) the time when the hiring charges become payable—
- whichever first occurs.
- (4) A statement cannot be made under this section on or after 1 January 2007 in respect of any hiring charges that are paid or payable on or after that day.

S. 146(4)
inserted by
No. 36/2005
s. 17(4).

S. 147
amended by
No. 36/2005
s. 17(5) (ILA
s. 39B(1)).

147. Lodgement of statement and payment of duty

- (1) If a statement is made out in accordance with section 146, the commercial hire business must—
- (a) lodge the statement with the Commissioner; and
 - (b) pay to the Commissioner the appropriate rate of duty calculated under section 134 in respect of hiring charges for the whole period of the hire—
- within 3 months after the statement is made out.
- (2) Nothing in this Chapter entitles a commercial hire business that has paid duty under this section to a refund of the duty, or any part of it, in respect of any amount of hiring charges paid or payable on or after 1 January 2007.

S. 147(2)
inserted by
No. 36/2005
s. 17(5).

CHAPTER 7 MORTGAGES

PART 1—INTRODUCTION AND OVERVIEW

148. Imposition of duty

This Chapter charges duty on instruments that are mortgages. Duty chargeable under this Chapter is called "**mortgage duty**".

S. 148
amended by
No. 46/2001
s. 12(1)(a).

148A. Mortgage duty abolished from July 2004

Despite anything to the contrary in this Chapter, mortgage duty is not chargeable—

S. 148A
inserted by
No. 48/2001
s. 7.

- (a) on a mortgage first executed, or that first affects property in Victoria, on or after 1 July 2004; or
- (b) in respect of an advance or further advance on or after 1 July 2004 under a mortgage first executed, or that first affects property in Victoria, before that day.

149. What is a "mortgage"?

For the purposes of this Chapter, an instrument is a "**mortgage**" if it is—

- (a) a security by way of mortgage or charge over property wholly or partly in Victoria at the liability date; or
- (b) a security by way of a transfer of property wholly or partly in Victoria held in trust to be sold or otherwise converted into money and redeemable before the sale or conversion, except if the transfer is for the benefit of creditors who accept it in full satisfaction of debts owed to them; or

S. 149(a)
amended by
No. 46/2001
s. 12(1)(b)(i).

S. 149(b)
amended by
No. 46/2001
s. 12(1)(b)(ii).

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S. 149(c)
amended by
No. 46/2001
s. 12(1)(b)(iii).

(c) any transfer, assignment or disposition of any estate or interest in property wholly or partly in Victoria that is apparently absolute but intended only as a security; or

S. 149(d)
amended by
No. 46/2001
s. 12(1)(b)(iv).

(d) an instrument that, on the deposit of documents of title, authority to control title or a pledge to provide that control, to property wholly or partly in Victoria becomes a mortgage or evidences the terms of a mortgage.

150. What is an advance?

(1) For the purposes of this Chapter, an "**advance**" is the provision or obtaining of funds by way of financial accommodation by means of—

(a) a loan that is—

(i) an advance of money; or

(ii) the payment of money for or on account of, or on behalf of, or at the request of, any person; or

(iii) a forbearance to require the payment of money owing on any account; or

(iv) any transaction in any form that in substance effects a loan of money; or

(b) a bill facility that is one or more agreements, understandings or arrangements because of which a bill of exchange or promissory note—

(i) is drawn, accepted, endorsed or made; and

(ii) is held, negotiated or discounted to obtain funds—

whether or not the funds are obtained from the person who draws, accepts, endorses or makes the bill of exchange or promissory

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note or from a person who is a party to any such agreement, understanding or arrangement.

- (2) An advance includes a contingent liability referred to in section 158.

151. Who is liable to pay the duty?

The person liable to pay mortgage duty is the mortgagor or the person who gives the mortgage.

152. When does a liability arise?

- (1) A mortgage is liable to duty on the date of its first execution.
- (2) A mortgage is liable to duty on the making of an advance or further advance by which the amount secured by the mortgage exceeds the amount secured by it at the date a liability to duty last arose in respect of it under this or a corresponding Act.
- (3) An instrument of security that does not affect property in Victoria at the date of first execution but that affects land in Victoria at any time within 12 months after that date becomes liable to duty as a mortgage on the date on which it first affects the land, unless it is duly stamped under a corresponding Act.
- (4) An instrument that, on the deposit of documents of title, authority to control title or a pledge to provide that control, to property in Victoria, becomes a mortgage or evidences the terms of a mortgage is liable to duty as a mortgage on the deposit of the documents or instruments or the provision of authority to control title or a pledge to provide such control.
- (5) A reference in sub-section (3) to land does not include a reference to an interest in land that is held by way of security.

S. 152(2)
amended by
No. 46/2001
s. 12(1)(c).

S. 152(3)
substituted by
No. 46/2001
s. 12(2).

S. 152(4)
amended by
No. 46/2001
s. 12(3).

S. 152(5)
inserted by
No. 30/2002
s. 8(1).

153. When must duty be paid?

A tax default does not occur for the purposes of the **Taxation Administration Act 1997** if duty is paid within 3 months after the liability to pay the duty arises.

154. How is mortgage duty charged?

- (1) The amount of duty chargeable on a mortgage is determined by the amount secured by it as calculated under Part 2.
- (2) The amount of duty is—
 - (a) \$4 if no amount is secured by the mortgage or if the amount secured is not more than \$10 000; or
 - (b) if the amount secured by the mortgage exceeds \$10 000, \$4 for the first \$10 000 and \$0.80 for every \$200, or part, by which the amount secured exceeds \$10 000.
- (3) The amount of duty chargeable on a mortgage in respect of an advance or further advance is—
 - (a) determined on the amount secured by it as calculated under Part 2; and
 - (b) the amount of duty applicable as provided in sub-section (2).

155. Extent mortgage is enforceable

- (1) A mortgage or mortgage package on which duty is imposed under this Act or a corresponding Act is enforceable only to the extent of the amount secured by the mortgage or mortgage package in respect of which duty has been paid under this Act or a corresponding Act.

S. 155
substituted by
No. 46/2001
s. 13.

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- (2) Sub-section (1) does not apply if the property affected by a mortgage or mortgage package ("**secured property**") is partly in and partly outside Victoria if—
- (a) duty has been paid on the total advances under the mortgage or mortgage package when the mortgage duty paid is taken with the duty paid under a corresponding Act; and
 - (b) the proportion of secured property in Victoria used to determine mortgage duty liability is—
 - (i) based on a referable point for the dutiable proportion of the mortgage; and
 - (ii) not incorrect by more than 5%.

156. Where is property located?

For the purposes of this Chapter, property in the following forms is taken to be located in the place specified—

- (a) shares in or securities of a body corporate—
 - (i) in the case of a company within the meaning of the Corporations Act—in the place in which the company is taken to be registered;
 - (ii) in any other case—in the place of incorporation of the body corporate;
- (b) units in a unit trust scheme—
 - (i) in the place where the register on which the units are registered is kept; or
 - (ii) in the place of residence of the manager or responsible entity of the unit trust scheme, if the register on which the units are registered is not kept in Australia;

S. 156
amended by
No. 44/2001
s. 3(Sch.
item 32.6(a)).

S. 156(a)
substituted by
No. 44/2001
s. 3(Sch.
item 32.6(b)).

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(c) debt securities of a Government of a State or Territory, in the State or Territory concerned.

S. 156(2)
repealed by
No. 44/2001
s. 3(Sch.
item 32.6(c)).

* * * * *

PART 2—CALCULATING THE AMOUNT SECURED BY A MORTGAGE

157. Secured amount

- (1) A mortgage is chargeable with duty assessed on the amount of advances actually secured by it and recoverable under it. **S. 157(1) substituted by No. 46/2001 s. 14(1).**
- (2) If duty of \$4 is paid or taken to be paid in respect of a mortgage, the mortgage is taken to be stamped in respect of an amount of advances of \$10 000. **S. 157(2) amended by No. 46/2001 s. 14(2).**
- (3) For the purpose of sub-section (1), if— **S. 157(3) substituted by No. 46/2001 s. 14(3).**
- (a) a mortgage has been duly stamped for an amount of advances secured by the mortgage; and
 - (b) a further advance secured by the mortgage is made; and
 - (c) the total amount of advances secured by the mortgage exceeds the amount for which the mortgage has been duly stamped—
- the amount of advances secured by the mortgage is the amount by which the amount of advances secured by the mortgage exceeds the amount for which the mortgage has been duly stamped.
- (4) If several mortgages over the same property are executed to secure the same advance—
- (a) only one is chargeable with duty under this Chapter; and
 - (b) the Commissioner may denote the payment of the duty on the other mortgages.
- (5) If the duty chargeable on a mortgage depends on duty paid on another instrument, the Commissioner may denote the payment of the duty so paid on the mortgage.

S. 158(1)
amended by
No. 46/2001
s. 14(4)(a).

158. Contingent liabilities

- (1) A mortgage used or capable of being used, whether directly or indirectly, to recover the whole or any part of an amount contingently payable in connection with an advance—
- (a) by a guarantor or indemnifying party under a guarantee or indemnity; or
 - (b) by another party under another instrument of a different kind—

is chargeable with duty as if the whole or part of the amount of the contingent liability secured by the mortgage were a separate advance secured by the mortgage.

- (2) A reference in sub-section (1) to a contingent liability is a reference to a contingent liability limited to the amount of any advance by a party referred to in sub-section (1) and does not include a reference to any other kind of contingent liability.
- (3) This section—
- (a) does not apply if the Commissioner is satisfied that there is no connection between the mortgage and any advance by any party to the arrangements;
 - (b) does not require duty to be paid more than once in respect of an advance.

159. Mortgages over property not wholly within Victoria

- (1) Duty chargeable in respect of a mortgage over property that is partly within Victoria and partly outside Victoria is to be assessed as if the amount secured by it were only the dutiable proportion.

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- (2) The dutiable proportion is to be calculated in accordance with the following formula—

$$DP = AS \times \frac{V}{T}$$

where—

DP is the dutiable proportion;

AS is the amount secured by the mortgage on which duty is charged at the liability date;

V is the value of the property in Victoria affected by the mortgage;

T is the value of all property affected by the mortgage, excluding property within a Territory or outside Australia

- (3) The dutiable proportion is to be calculated by reference to the values of the properties according to any referable point specified in sub-section (4).

- (4) A referable point is any of the following prepared within 12 months preceding the liability date—

- (a) an independent valuation of the secured property;
- (b) a statement of the mortgagee based on information obtained by the mortgagee in determining to make the advance to the mortgagor;
- (c) property valuations used by the mortgagor in preparing an annual return to be lodged under the Corporations Act;
- (d) financial reports of the mortgagor certified by an independent auditor as presenting a true and fair view of the company's financial position;

S. 159(2)
amended by
No. 46/2001
s. 14(4)(b).

S. 159(4)
amended by
No. 46/2001
s. 14(4)(c).

S. 159(4)(c)
amended by
No. 44/2001
s. 3(Sch.
item 32.7).

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(e) agreed valuations for property that form the basis of policies of insurance of the mortgagor;

(f) any other approved method.

(5) If there are 2 or more referable points in relation to a mortgage, the referable point is the later or latest of those referable points.

(6) The referable point is the same referable point used or to be used to determine liability to duty at the liability date under a corresponding Act.

(7) Evidence of the location and percentage value of any property is to be made by either party to the mortgage by way of a statement in the approved form.

(8) A mortgage or a statement made under sub-section (7) may be endorsed with duty on the basis of evidence contained in the statement.

(9) If a statement is endorsed under sub-section (8), the mortgage may be endorsed at any time—

(a) as being stamped to the amount evidenced by the duty paid on the statement; and

(b) by showing—

(i) the percentage of the property in Victoria securing the advance; and

(ii) the total amount secured by the mortgage.

S. 159(6)
amended by
No. 46/2001
s. 14(4)(c).

S. 159(9)(b)(i)
amended by
No. 46/2001
s. 14(4)(d)(i).

S. 159(9)(b)(ii)
amended by
No. 46/2001
s. 14(4)(d)(ii).

160. Advances secured by mortgage package

(1) If—

- (a) at a liability date, 2 or more security instruments secure or partly secure the same money; and
- (b) at least one of the instruments is a security affecting property wholly or partly outside Victoria; and
- (c) at least one of the instruments is a mortgage—

the instruments are known as a "**mortgage package**".

(2) Also, a "**mortgage package**" may include—

- (a) a mortgage executed after the liability date if the Commissioner is satisfied that the mortgage was intended to be part of the package; and
- (b) a mortgage previously collateral to an earlier advance under some or all of the other mortgages in the package.

(3) Mortgage duty must be assessed in accordance with the Part on the mortgage package as if the instruments comprising the mortgage package were one mortgage first executed on the day the last instrument to be executed was executed.

(4) If 2 or more mortgages over property within Victoria form part of the security for a mortgage package, one of those mortgages must be stamped with the mortgage duty paid in Victoria for the mortgage package and the other mortgages must be stamped as collateral mortgages.

S. 160(1)
substituted by
No. 46/2001
s. 14(5).

S. 160(2)
substituted by
No. 46/2001
s. 14(5).

S. 160(3)
substituted by
No. 46/2001
s. 14(5).

S. 160(4)
substituted by
No. 46/2001
s. 14(5).

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Act No. 79/2000

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S. 160(5)
substituted by
No. 46/2001
s. 14(5).

- (5) Evidence of the location and percentage value of any property is to be made by either party to the mortgage by way of the statement referred to in section 159(7).
- (6) If a person makes an application for the stamping of a mortgage referred to in sub-section (1) and one or more of the other intended mortgages in the mortgage package has not yet been executed, the executed mortgage, until all the intended mortgages are executed, when stamped is security only for that amount of the advance to which the proportion of the property secured by all the executed mortgages bears to the total of the property expressed to secure the advance.
- (7) The Commissioner may endorse the executed mortgage to indicate the proportion of the advance secured by the mortgage pending the execution of the other intended mortgages.
- (8) If a mortgage secures the same advance as a mortgage package in respect of which duty has been paid under this Chapter and the mortgage is not part of a mortgage package, the mortgage is taken to be a collateral mortgage in respect of that advance.

161. Stamping before advance

S. 161(1)
amended by
No. 46/2001
s. 14(6)(a)(i).

- (1) A mortgage may be stamped before an advance whether or not an earlier advance has been made.
- (2) A mortgage referred to in section 159 or 160 may be stamped to secure any amount exceeding that to which it is already stamped based on the dutiable proportion at the time of stamping.

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- (3) A mortgage stamped under sub-section (2) is—
- (a) duly stamped; and
 - (b) not required to be stamped in accordance with section 159 again until an advance brings the total amount secured above the amount to which it is already stamped.
- (4) Section 160(6) applies to a mortgage package stamped before an advance.

S. 161(4)
amended by
No. 46/2001
s. 14(6)(a)(ii).

162. Security

- (1) A stamped mortgage or a collateral mortgage that was, but is no longer, part of the same mortgage package and no longer secures the same money secured by that package is not security for any other money unless duty in respect of the other money has been paid.
- (2) The withdrawal of a mortgage from a mortgage package will not affect the amount to which the remaining mortgage or mortgages are security for.

163. Exchange of information

The Commissioner may provide information relating to any statement in respect of any mortgage package or mortgage referred to in section 159(1) to any person the Commissioner considers is connected with the administration of this Chapter or the corresponding provisions of a corresponding Act.

164. Collection of duty and endorsement of instruments

The Commissioner, or a person authorised by the Commissioner, may—

- (a) collect any duty payable under this Chapter; and
- (b) endorse mortgages with a stamp showing—
 - (i) the percentage of property in Victoria securing the advance; and
 - (ii) the total amount secured by the mortgage.

S. 164(b)(i)
amended by
No. 46/2001
s. 14(6)(b).

165. Collateral securities

- (1) Mortgage duty is not chargeable in respect of that part of an amount secured by a collateral mortgage that is secured by—
 - (a) a mortgage or security instrument that has been duly stamped under this Act or a corresponding Act; or
 - (b) a mortgage package that has been duly stamped under section 160 or a corresponding Act.
- (2) A collateral mortgage that no longer secures an amount secured by a mortgage, instrument or mortgage package mentioned in sub-section (1) is not security for another advance unless mortgage duty for the amount of the other advance is paid.

S. 165
substituted by
No. 46/2001
s. 15,
amended by
No. 30/2002
s. 8(2) (ILA
s. 39B(1)).

S. 165(2)
inserted by
No. 30/2002
s. 8(2).

PART 3—DUTY CONCESSIONS

166. Refinancing of loans

(1) In this section—

"refinancing mortgage" means a mortgage that secures the amount of the balance outstanding immediately before the execution of that mortgage under an earlier mortgage to the same borrower duly stamped under this or a corresponding Act (whether over the same property or a property previously owned by the borrower) that is discharged or to be discharged as part of the arrangements for the new mortgage.

S. 166(1)
amended by
No. 30/2002
s. 8(3).

(2) For the purposes of sub-section (1), mortgages are created to secure an advance to the same borrower if, either directly by the mortgages themselves or indirectly through one or more collateral arrangements, the same person obtains the advances secured by them.

(3) A refinancing mortgage is taken to have been stamped with ad valorem duty as a mortgage in respect of the amount required to discharge the earlier mortgage (being an amount in relation to which the earlier mortgage was duly stamped), except as provided by sub-section (5).

S. 166(3)
amended by
No. 46/2001
s. 16.

(4) If an advance is refinanced by more than one lender, so that mortgages given to the lenders together secure the balance outstanding under an earlier mortgage, the definition of "refinancing mortgage" in sub-section (1) is to be construed as though—

(a) the reference to a mortgage securing the outstanding balance were a reference to the aggregate of such mortgages; and

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- (b) each lender were the holder of a refinancing mortgage.
- (5) If, as provided by sub-section (4), each of a number of lenders is the holder of a refinancing mortgage, a refinancing mortgage held by each lender is taken to have been duly stamped with ad valorem duty as a mortgage in respect of an amount equal to the same proportion of the amount required to discharge the earlier mortgage as the amount secured by that mortgage bears to the total amount secured by the refinancing mortgages held by all the lenders.
- (6) If each of 2 or more refinancing mortgages severally secures the same advance—
- (a) the provisions of sub-section (3) or (5), as the case may be, apply to such one of the mortgages as the Commissioner determines; and
 - (b) no duty is chargeable in respect of any of the others (insofar as it is a refinancing mortgage) but the Commissioner may denote any of them in the approved manner.
- (7) For the purposes of section 165—
- (a) a refinancing mortgage that is taken, by the operation of sub-section (3) or (5), to be duly stamped is in either case a stamped mortgage; and
 - (b) duty is taken to have been paid on it to the extent provided by whichever of those sub-sections applies.

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- (8) Duty at the rate of \$0.80 per \$200 or part of \$200 is payable on the amount by which the advance made under a refinancing mortgage (not being a mortgage on which, by virtue of sub-section (6)(b), no duty is chargeable) exceeds—
- (a) the amount required to discharge the earlier mortgage; or
 - (b) the proportion of that amount referred to in sub-section (5), in the case of a refinancing to which sub-section (4) applies.
- (9) If the number of original borrowers is reduced, the remaining borrower or borrowers is or are taken to be the same borrower or the same person for the purposes of sub-section (1) or (2).

167. Eligible mortgages under concession schemes

- (1) Subject to this section, no duty is chargeable under this Chapter on an eligible mortgage.
- (2) An "**eligible mortgage**" is—
 - (a) a mortgage given by an eligible pensioner or an eligible first home owner securing an advance used or proposed to be used—
 - (i) for the purchase of an estate in fee simple in land, if he or she is entitled under Division 5 of Part 5 of Chapter 2 to an exemption or concession from duty on the transfer of the land; or
 - (ii) for the construction of a dwelling on that land; or
 - (b) a re-financing mortgage (within the meaning of section 166) in respect of a mortgage referred to in paragraph (a).

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- (3) This section applies only to that part of the amount secured by an eligible mortgage that is used or proposed to be used for the purpose of purchasing the land or the construction of a dwelling on the land.
- (4) For the purposes of assessing duty in respect of any further advances secured by an eligible mortgage, duty is taken to have been paid on the part of the amount secured that is referred to in sub-section (3).
- (5) If a person—
- (a) represents to a tax officer that a mortgage is not chargeable with duty, or is chargeable with less duty, because of this section; and
 - (b) is convicted of an offence against section 57 of the **Taxation Administration Act 1997** as a consequence—
- the person is liable, by way of further penalty, to pay an amount equal to double the amount of duty that, but for the offence, would have been payable, less any amount of duty that the person did pay.
- (6) The penalty in sub-section (5) is in addition to any penalty tax or interest that may be payable under the **Taxation Administration Act 1997**.
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PART 4—EXEMPTIONS

Chapter 7 Pt 4
(Heading)
substituted by
No. 46/2001
s. 17.

168. Exempt mortgages and supporting instruments

- (1) This Chapter does not apply to—
- (a) a mortgage executed before 4 January 1965;
or
 - (b) a mortgage that is not chargeable with duty under this Act.
- (2) Other instruments that are exempt from payment of mortgage duty are—
- (a) a mortgage made or given by—
 - (i) a registered co-operative society or registered co-operative housing society;
or
 - (ii) a body that is permitted to use the expression "credit union" under section 66 of the Banking Act 1959 of the Commonwealth;
 - (b) a mortgage given by a corporation or body of persons incorporated or associated for a religious, charitable or educational purpose;
 - (c) a mortgage or foreign security made or given by—
 - (i) a Government of the Commonwealth or of another State or of a Territory; or
 - (ii) a public statutory authority constituted under the law of Victoria, other than a declared public statutory authority under sub-section (3); or
 - (iii) a public statutory authority constituted under the law of the Commonwealth or of another State or of a Territory; or
 - (iv) the Municipal Association of Victoria;

- (d) a lien on a crop registered under Part VII of the **Instruments Act 1958**;
 - (e) a lien on wool or mortgage of stock registered under Part VIII of the **Instruments Act 1958**;
 - (f) a mortgage given to the Victorian WorkCover Authority;
 - (g) a mortgage given to a recognised institution within the meaning of the **Trustee Act 1958**, being a mortgage of a mortgage or a mortgage by way of deposit of a mortgage.
- (3) For the purposes of sub-section (2)(c)(ii), the Governor in Council, by Order published in the Government Gazette, may declare a public statutory authority constituted under the law of Victoria to be a declared public statutory authority.

169. Mortgages associated with certain credit contracts

- (1) If—
- (a) a mortgage secures an amount advanced under a consumer credit contract and no other advances; and
 - (b) the total amount advanced under the consumer credit contract does not exceed \$35 000—
- the mortgage is exempt from mortgage duty.
- (2) If—
- (a) a mortgage secures an amount advanced under a consumer credit contract and another advance; and

- (b) the total amount advanced under the consumer credit contract does not exceed \$35 000—

mortgage duty is not chargeable on the mortgage in relation to the amount advanced under the consumer credit contract.

- (3) If—

- (a) a mortgage secures an amount advanced under a consumer credit contract (whether or not it also secures any other advance); and
(b) the total amount advanced under the consumer credit contract exceeds \$35 000—

the whole of the amount advanced under the consumer credit contract comprises or forms part of the advances secured by the mortgage.

- (4) An exemption provided by sub-section (1) or (2) is not available to the extent to which the consumer credit is provided for the purposes of—
- (a) the acquisition of a private dwelling house or land on which to erect a private dwelling house; or
(b) the erection of a private dwelling house or the addition of accommodation to a private dwelling house.

- (5) In this section—

"consumer credit" means credit regulated under the Consumer Credit Code;

"Consumer Credit Code" means—

- (a) the provisions of the Code by that name set out in the Appendix to the Consumer Credit (Queensland) Act 1994 of Queensland, as applied and in force in any State or Territory; or

-
- (b) the provisions of an Act of a State or Territory that are in the same, or substantially the same, terms as that Code;

"private dwelling house" means—

- (a) a building that is designed, or is designed principally, as a separate residence for one family or person; or
- (b) an apartment, flat or other part of a building that is so designated.

170. Farm machinery and commercial vehicles

Mortgage duty is not chargeable on so much of an advance to a natural person for the acquisition of farm machinery or a commercial vehicle as is secured by the mortgage.

171. Certain debentures and related instruments

- (1) Mortgage duty is not chargeable on a mortgage solely securing the repayment of advances arising from the issue by a financial corporation or a related corporation of a debenture.
- (2) Mortgage duty is not chargeable on a mortgage in respect of advances arising from the issue by a financial corporation or a related corporation of a debenture if the mortgage secures in part the repayment of those advances.
- (3) This section applies to a debenture issued, or a mortgage executed, by a related corporation only in so far as the debenture is issued, or the mortgage is executed, for the purposes of raising funds to be used for a financial corporation.

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(4) In this section—

"financial corporation" means a corporation whose sole or principal business is providing finance to the public, including making loans to the public;

"related corporation", in relation to a particular financial corporation means a corporation that is, with respect to the financial corporation, a related body corporate within the meaning of the Corporations Act.

S. 171(4) def. of "related corporation" amended by No. 44/2001 s. 3(Sch. item 32.7).

PART 5—MISCELLANEOUS

172. Payment of duty on mortgages associated with debenture issues

- (1) This section applies if—
- (a) a corporation is or will be under a liability to repay money received or to be received by it in respect of its debentures; and
 - (b) the repayment is secured by a mortgage first executed before 16 August 2003; and
 - (c) the corporation is a party to an instrument of trust relating to the debentures.
- (2) If the corporation and the trustee for the debenture holders give a written undertaking in the approved form to the Commissioner—
- (a) a mortgage first executed before 16 August 2003 solely securing the repayment of money received or to be received by the corporation in respect of its debentures is not liable to mortgage duty; and
 - (b) a mortgage first executed before 16 August 2003 securing in part the repayment of such money is not liable to mortgage duty in respect of advances arising from debentures subscribed for before 16 August 2003.
- (3) The undertaking binds the corporation and the trustee to lodge with the Commissioner, in July each year, a statutory declaration setting out, in the following categories, the total amount subscribed for in Victoria in respect of the corporation's debentures during the year ending on the previous 30 June (but not including amounts

S. 172(1)(b)
amended by
No. 113/2003
s. 3(1).

S. 172(2)(a)
amended by
No. 113/2003
s. 3(2)(a).

S. 172(2)(b)
substituted by
No. 113/2003
s. 3(2)(b).

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repayable at call or in less than 30 days) and to pay duty in the following amounts—

Money repayable at or after the expiration of not less than 30 days and not more than 3 months \$0.40 for every \$2000, or part

Money repayable at or after the expiration of not less than 3 months and not more than 6 months \$0.80 for every \$2000, or part

Money repayable at call after a specified period is taken to be money repayable at the expiration of that period.

(3A) The obligation to lodge a statutory declaration in accordance with sub-section (3) ceases after July 2003.

S. 172(3A)
inserted by
No. 113/2003
s. 3(3).

(3B) The corporation and the trustee must lodge with the Commissioner a statutory declaration on or before 1 July 2004 setting out, in the following categories, the total amount subscribed for in Victoria in respect of the corporation's debentures during the period commencing on and including 1 July 2003 and ending on 15 August 2003 (but not including amounts repayable at call or in less than 30 days) and to pay duty in the following amounts—

S. 172(3B)
inserted by
No. 113/2003
s. 3(3).

Money repayable at or after the expiration of not less than 30 days and not more than 3 months \$0.40 for every \$2000, or part

Money repayable at or after the expiration of not less than 3 months and not more than 6 months \$0.80 for every \$2000, or part

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Money repayable at call after a specified period is taken to be money repayable at the expiration of that period.

S. 172(3C)
inserted by
No. 113/2003
s. 3(3).

(3C) A mortgage referred to in sub-section (2)(b) is taken to be duly stamped for the amount disclosed in a statutory declaration referred to in sub-section (3) or (3B).

S. 172(3D)
inserted by
No. 113/2003
s. 3(3).

(3D) Any further advance in respect of subscriptions made on or after 16 August 2003 is subject to duty under section 154.

(4) If a person resident or domiciled in Victoria becomes the holder of a debenture referred to in this section that was subscribed for outside Victoria, the debenture is chargeable, on the date on which that person becomes the holder of the debenture, with an amount of duty under this Part equal to the amount of duty that would be chargeable under this Part (other than under this sub-section) if the debenture had been issued on that date unless ad valorem duty has been paid or is payable in another State or in a Territory in respect of the issue of, or subscription for, the debenture.

(5) In this section, a reference to an amount subscribed for in respect of debentures includes a reference to an amount represented by debentures issued on the conversion or renewal of an existing holding of debentures or other marketable securities.

173. Unregistered mortgages protected by caveats (anti-avoidance provision)

(1) A caveat under the **Transfer of Land Act 1958** in which an estate or interest is claimed under an unregistered mortgage is chargeable with duty if the mortgage is chargeable, but not stamped, with mortgage duty.

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- (2) The amount of duty is the same amount as is chargeable on the mortgage.
 - (3) The person liable to pay the duty is the mortgagor.
 - (4) Duty is not chargeable in respect of the caveat if the Commissioner is satisfied that a sum equal to the amount payable under sub-section (2) has been paid on the mortgage to which the caveat relates, or on some other instrument pursuant to the arrangement to which the mortgage relates.
 - (5) If the caveat has been stamped with ad valorem duty, a mortgage under which an estate or interest is claimed in the caveat may be stamped as a collateral security.
 - (6) This section does not apply to a caveat lodged in respect of a mortgage that is exempt from mortgage duty under Part 4.

174. Stamping counterpart or collateral instrument if mortgage is lost, destroyed or cannot be produced

- (1) A counterpart of a mortgage or a collateral security for an amount secured by a mortgage is taken to be the mortgage and may accordingly be stamped or upstamped for mortgage duty purposes if, on application by or on behalf of a person who is a party to the mortgage, the Commissioner is satisfied that—
 - (a) the mortgage has been lost or destroyed; or
 - (b) because of being deposited in the Office of Titles or from other reasonable cause, the mortgage cannot conveniently be produced.
 - (2) For the purposes of sub-section (1), a reproduction of a mortgage or a collateral security for an amount secured by a mortgage is taken to be a counterpart of that mortgage if it is purported to be signed by the Registrar of Titles.
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- (3) In this section, "**reproduction**" has the same meaning as in section 53 of the **Evidence Act 1958**.
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CHAPTER 8

INSURANCE

PART 1—INTRODUCTION AND OVERVIEW

175. Imposition of duty

- (1) This Chapter charges duty in respect of insurance in accordance with this section.
 - (2) Part 2 charges duty on the amount of the premium paid in relation to a contract of insurance that effects general insurance (whether or not it also effects other kinds of insurance).
 - (3) The amount of duty is required to be paid each time a premium is paid in relation to a contract of insurance that effects general insurance.
 - (4) Part 3 charges duty on policies of life insurance.
 - (5) Part 4 charges duty as set out in section 209.
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PART 2—GENERAL INSURANCE

Division 1—Duty in respect of General Insurance

176. What is general insurance?

- (1) "**General insurance**" is any kind of insurance that is applicable to—
 - (a) property in Victoria; or
 - (b) a risk, contingency or event concerning an act or omission that, in the normal course of events, may occur within, or partly within, Victoria—or both.
- (2) "**General insurance**" includes insurance effected in respect of trauma or a disabling or incapacitating injury, sickness, condition or disease.
- (3) "**General insurance**" does not include life insurance or insurance that is exempt from duty by Division 5.

177. What is a premium in relation to general insurance?

- (1) "**Premium**", in relation to general insurance, means the total consideration given to an insurer or an insurance intermediary by or on behalf of the insured person to effect insurance without deductions for any amounts paid or payable, or allowed or allowable, by way of commission to the insurance intermediary.
- (2) "**Premium**" includes a fire service levy paid or payable in connection with insurance by an insurer or any other person.
- (2A) "**Premium**" also includes any amount in respect of GST on the supply to which the insurance relates.

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- (3) **"Premium"** does not include—
- (a) an amount paid to an insurance intermediary by the insured person as a fee, provided that the amount can be clearly identified as a fee; or
 - (b) an amount of duty under this or a corresponding Act.
- (4) It is immaterial where the amount is paid or where the insurance is effected.

178. When is a premium paid?

- (1) A premium, or an instalment of a premium, is paid for the purposes of this Chapter when the first of the following events occurs—
 - (a) the premium or instalment is received by the insurer; or
 - (b) an account of the insurer is credited with the amount of the premium or instalment.
- (2) A premium or instalment of a premium (apart from the case where the premium or instalment is received directly by an insurer) is taken to have been received by an insurer if it is received by another person on the insurer's behalf.

179. What duty is payable?

The amount of duty chargeable on the premium paid in relation to a contract of insurance is 10% of the amount of the premium.

180. Who is liable to pay the duty?

The general insurer is liable to pay the duty, except as provided by section 181.

181. Circumstances in which duty is payable by the insured person

- (1) This section applies to a person who obtains, effects, or renews any general insurance as an insured person with a person who is not a registered insurer.
- (2) A person to whom this section applies must, within 21 days after the end of the month in which the premium relating to the insurance is paid to an insurer (not being a registered insurer) or insurance intermediary—
 - (a) lodge a return with the Commissioner containing the particulars and information as to the premium and the insurance that the Commissioner requires; and
 - (b) pay to the Commissioner as duty the amount calculated in accordance with section 179.
- (3) A person to whom this section applies is taken to have complied with this section if the person's duty under this section is discharged by another person acting on the person's behalf.

182. Records to be kept

A person to whom section 181 applies must keep records that contain information as to—

- (a) the nature and location of the property insured; and
- (b) the nature and location of each risk, contingency or event insured; and
- (c) the amount of the premiums paid in relation to each contract of insurance.

183. Refunds where premiums are returned

- (1) A general insurer or a person to whom section 181 applies is entitled to a refund of duty if the general insurer refunds, or there is refunded to the person, the whole or a part of a dutiable premium in respect of the contract of insurance for which duty has been paid.
- (2) The refund is the duty paid on the amount of the premium refunded.
- (3) A general insurer to whom duty is refunded may apply the amount of the refund to offset any other payment required to be made under this Act by the general insurer.
- (4) As an alternative to applying for a refund under Part 4 of the **Taxation Administration Act 1997**, a general insurer may offset an amount equivalent to the amount of refund to which the insurer is entitled under sub-section (1) against any other payment required to be made under this Act by the insurer.
- (5) Sub-section (4) only applies if the general insurer—
 - (a) has not charged to, or recovered from, any other person any amount in respect of the whole or any part of the duty to which the general insurer is entitled to a refund; or
 - (b) has refunded or reimbursed each person for the amount charged to or recovered from that person in respect of the duty to which the general insurer is entitled to a refund.
- (6) Sub-sections (4) and (5) apply despite anything to the contrary in section 18(2) of the **Taxation Administration Act 1997**.

S. 183(4)
inserted by
No. 58/2003
s. 15.

S. 183(5)
inserted by
No. 58/2003
s. 15.

S. 183(6)
inserted by
No. 58/2003
s. 15.

Division 2—How Duty is Paid by a General Insurer

184. Who is a general insurer?

A "general insurer" is a person—

- (a) who writes general insurance; and
- (b) who does so otherwise than as an insurance intermediary; and
- (c) who is authorized under the Insurance Act 1973 of the Commonwealth to carry on insurance business.

S. 184(c)
substituted by
No. 46/2001
s. 18(a).

185. General insurers must be registered

A general insurer must be registered under this Part.

Penalty: 100 penalty units.

186. Application for registration

The Commissioner must register a general insurer who applies in the approved form for registration under this Part.

187. Cancellation of registration by the Commissioner

(1) The Commissioner may, by written notice, cancel a general insurer's registration under this Part—

- (a) if the insurer's authorisation under the Insurance Act 1973 of the Commonwealth is revoked; or
- (b) if the insurer is made bankrupt or, being a company, is wound up; or
- (c) if the insurer is convicted of an offence under an Act imposing duty; or

S. 187(1)(a)
substituted by
No. 9/2002
s. 3(Sch.
item 4.3).

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- (d) if the insurer's registration was made in error or because of a false or misleading statement made in relation to the application for registration; or
 - (e) if the Commissioner is of the opinion that the insurer has ceased to write general insurance; or
 - (f) for any other reason the Commissioner thinks sufficient.
- (2) A cancellation of registration has effect from the date specified for the purpose by the Commissioner in the notice of cancellation.

188. Cessation of business and cancellation of registration by the general insurer

- (1) A registered insurer who ceases to write general insurance in Victoria—
 - (a) must, within 14 days after so ceasing—
 - (i) give written notice of that fact to the Commissioner; and
 - (ii) lodge the return required to be lodged under this Part; and
 - (b) must pay the duty payable in connection with the return on or before the 21st day of the month after which the notice is given.

Penalty: 100 penalty units.

- (2) The notice cancels the insurer's registration under this Part on the day on which it is received by the Commissioner.

189. Register of general insurers

- (1) The Commissioner must keep a register of the general insurers who are registered under this Part.

- (2) Anyone may inspect the register without charge at the Commissioner's principal office during the hours that the office is open to the public.

190. Monthly returns and payment of duty

A registered insurer must, on or before the 21st day of each month—

- (a) lodge a return with the Commissioner showing the total amount of all premiums for insurance paid to the registered insurer in the preceding month; and
- (b) pay to the Commissioner as duty the amounts determined in accordance with section 179.

191. Recovery of duty by registered insurer

- (1) A registered insurer may require a person by whom a premium is payable to the insurer to pay the insurer an amount equal to the duty chargeable.
- (2) The requirement is duly made if it is contained in a written request that is given to the person and that specifies the amount of the duty.
- (3) If the amount is not paid, the insurer may recover it as a debt.

Division 3—Apportionment of Premiums and Other Amounts between States and Territories

192. Application of Division

- (1) This Division applies to a contract of insurance that insures—
- (a) property in Victoria as well as property in another place; or

(b) a risk, contingency or event concerning an act or omission that, in the normal course of events, may occur within, or partly within, Victoria as well as within, or partly within, another place—

or both.

(2) It is the intention of this Division—

- (a) to provide the means for apportioning premiums paid and other amounts in relation to a contract of insurance having regard to the principle in section 176(1); and
- (b) to avoid multiple duty as between the States and Territories; and
- (c) to give each State and Territory its appropriate share of duty by means of the apportionment.

193. Schedule of Apportionment

- (1) The Commissioner may, from time to time, adopt a Schedule of Apportionment for the purpose of apportioning premiums and other amounts in relation to insurance in accordance with this Part.
- (2) The Schedule of Apportionment may be developed in consultation with any person the Commissioner considers suitable.

194. Apportionment in practice

- (1) A premium or an amount is to be apportioned in accordance with the Schedule of Apportionment adopted for the time being, except as provided by this section.

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- (2) A general insurer or an insured person may apply in writing to the Commissioner to apportion a premium or an amount on a basis other than that provided by the Schedule of Apportionment. The Commissioner may apportion the premium or amount on the other basis.
 - (3) In particular, if the Commissioner is not satisfied that a premium paid or another amount in relation to a contract of insurance has been properly apportioned for each risk insured, the Commissioner may determine the apportionment, reassess the liability to duty and charge duty accordingly.

Division 4—Apportionment of Premiums and Other Amounts as between Different Types of Insurance

195. Apportionment between different types of insurance

- (1) This Division applies to apportionment between different types of insurance that are relevant to determining liability for duty, such as general insurance, life insurance and insurance that is exempt from duty. It does not apply to the apportionment of a premium or another amount between Victoria and another place. Division 3 deals with that kind of apportionment.
- (2) If the Commissioner is not satisfied that a premium paid or another amount in relation to a contract of insurance that effects different types of insurance has been properly apportioned, the Commissioner may determine the apportionment, reassess the liability to duty and charge duty accordingly.

Division 5—Exempt Insurance

196. What insurance is exempt from duty?

The following insurances are exempt from duty under this Chapter—

- (a) medical benefits insurance, being insurance effected by a contract of insurance that is issued by an organisation registered under Part VI of the National Health Act 1953 of the Commonwealth and that provides hospital benefits or medical benefits (or both), whether or not other benefits are also provided;
- (b) accident compensation or workers compensation insurance, being insurance—
 - (i) effected by a contract of insurance that is issued by an authorised insurer for the purposes of the **Accident Compensation (WorkCover Insurance) Act 1993**; or
 - (ii) undertaken by the Victorian WorkCover Authority for the purpose of providing accident insurance within the meaning of section 20A of the **Accident Compensation Act 1985**; or
 - (iii) that indemnifies an employer against liability in relation to workers compensation under the **Workers Compensation Act 1958** or under any other Act or at common law or otherwise; or
 - (iv) that indemnifies the Victorian WorkCover Authority against liability under Part IV of the **Accident Compensation Act 1985**; or

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- (v) that indemnifies a self-insurer within the meaning of the **Accident Compensation Act 1985** against liability in relation to workers compensation under that or any other Act or at common law or otherwise;
 - (c) insurance of—
 - (i) the physical hull of a floating vessel used primarily for commercial purposes;
 - (ii) goods or merchandise, or the freight of goods or merchandise, carried by land, sea or air;
 - (d) reinsurance (being a contract or contracts between 2 parties by which one party indemnifies the other against liability or payment under a contract or contracts of insurance or reinsurance) in respect of which duty has been paid under this Act or a corresponding Act;
 - (e) insurance against damage by hail to cereal or fruit crops;
 - (f) a private fidelity guarantee insurance scheme promoted amongst and sustained solely for the benefit of the members, officers and employees, or a class of members, officers and employees, of a government department, public authority, body corporate, individual or firm and not extending beyond such members, officers and employees;
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- (g) insurance undertaken by—
- (i) a friendly society; or
 - (ii) any other person that, in the opinion of the Commissioner, undertakes only a class of insurance business that a friendly society undertakes and undertakes that business substantially in the same way and for the same purpose as does a friendly society.

Division 6—Miscellaneous

197. Effect on contract of insurance of failure to comply with this Chapter

A failure to comply with this Chapter does not render a contract of insurance illegal or invalid.

PART 3—LIFE INSURANCE

Division 1—Duty in respect of Life Insurance

198. What is life insurance?

(1) "**Life insurance**" is any insurance or assurance in respect of—

(a) a life or lives; or

(b) an event or contingency relating to or depending on a life or lives—

of a person who is, or persons who are, domiciled in Victoria at the time the insurance policy is issued, but does not include insurance against accident.

(2) "**Insurance against accident**" is any insurance under which payment is agreed to be made on the death of a person only from accident or violence or otherwise from a natural cause or as compensation for personal injury.

199. Obligation to make out and execute policies of life insurance

Within 3 months after a person receives or takes credit for a premium or consideration for a contract of life insurance, the person must—

(a) make out and execute a policy of life insurance in respect of that contract; and

(b) ensure that the policy is duly stamped.

Penalty: 2 penalty units and double the amount of duty that would have been payable on the policy.

200. What duty is payable?

- (1) The amount of duty chargeable on a policy of life insurance, other than a temporary or term insurance policy, is—
 - (a) if the sum insured does not exceed \$200—nil;
 - (b) if the sum insured exceeds \$200 but does not exceed \$2000—12 cents per \$200, or part, of the sum insured;
 - (c) if the sum insured exceeds \$2000—\$1.20 plus 24 cents per \$200, or part, of the sum insured that exceeds \$2000.
- (2) The amount of duty chargeable on a temporary or term insurance policy is 5% of the first year's premium on the policy.
- (3) In determining the sum insured by a policy of life insurance, any additional amount payable under the policy in the event of the insured dying as the result of an accident is to be disregarded.

201. Who is liable to pay the duty?

The person issuing the policy of life insurance is liable to pay the duty.

Division 2—Approved Life Insurers

202. Who is a life insurer?

A "life insurer" is a person—

- (a) who writes life insurance; and
- (b) who does so otherwise than as an insurance intermediary; and
- (c) who is registered under the Life Insurance Act 1995 of the Commonwealth.

S. 202(c)
amended by
No. 46/2001
s. 18(b).

203. Approval of life insurers

- (1) A life insurer may apply in the approved form for registration as an approved life insurer.
- (2) On an application under sub-section (1), the Commissioner may register a person as an approved life insurer.

204. Cancellation of registration by the Commissioner

- (1) The Commissioner may, by written notice, cancel an approved life insurer's registration under this Part—
 - (a) if the insurer's registration under the Life Insurance Act 1995 of the Commonwealth is cancelled; or
 - (b) if the insurer is made bankrupt or, being a company, is wound up; or
 - (c) if the insurer is convicted of an offence under an Act imposing duty; or
 - (d) if the insurer's registration was made in error or because of a false or misleading statement made in relation to the application for registration; or
 - (e) if the Commissioner is of the opinion that the insurer has ceased to write life insurance; or
 - (f) for any other reason the Commissioner thinks sufficient.
- (2) A cancellation of registration has effect from the date specified for the purpose by the Commissioner in the notice of cancellation.

S. 204(1)(a)
substituted by
No. 46/2001
s. 18(c).

205. Cessation of business and cancellation of registration by the insurer

- (1) An approved life insurer who ceases to write life insurance in Victoria—
 - (a) must, within 14 days after so ceasing—
 - (i) give written notice of that fact to the Commissioner; and
 - (ii) lodge the return required to be lodged under this Part; and
 - (b) must pay the duty payable in connection with the return on or before the 21st day of the month after which the notice is given.

Penalty: 100 penalty units.

- (2) The notice cancels the insurer's registration under this Part on the day on which it is received by the Commissioner.
- (3) Section 59 of the **Taxation Administration Act 1997** does not apply to an approved life insurer who fails or refuses to give notice or lodge a return under sub-section (1)(a).

206. Register of approved life insurers

- (1) The Commissioner must keep a register of approved life insurers.
- (2) Anyone may inspect the register without charge at the Commissioner's principal office during the hours that the office is open to the public.

207. How duty is paid by approved life insurers

- (1) An approved life insurer must, on or before the 14th day of each month—
 - (a) lodge a return with the Commissioner in respect of the policies of life insurance issued by the insurer in the preceding month; and

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- (b) pay to the Commissioner the duty payable by the life insurer on those policies.
 - (2) A policy in respect of which duty is paid in accordance with sub-section (1) is taken to be duly stamped.

Division 3—Exemptions

208. Exemptions from life insurance duty

No duty is chargeable under this Part on—

- (a) a cover note in respect of which a duly stamped policy is issued within 3 months after the issue of the cover note;
 - (b) a policy of reinsurance.
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PART 4—TRANSPORT ACCIDENT CHARGES

209. Imposition of duty

This Part charges duty on transport accident charges applicable to motor vehicles under Part 7 of the **Transport Accident Act 1986**.

210. Who is liable to pay the duty?

Duty under this Part is payable by the Transport Accident Commission.

211. Rate of duty

The rate of duty is 10%.

212. How is duty paid?

The Transport Accident Commission must, on or before Wednesday in each week—

- (a) lodge a return with the Commissioner showing the total amount of transport accident charges paid into the Transport Accident Fund during the week ending on the preceding Saturday; and
- (b) pay to the Commissioner the duty payable on those charges under this Part.

213. Refund of duty if transport accident charge is refunded

The Transport Accident Commission is entitled to a refund of duty if it refunds the whole or part of a transport accident charge in respect of which duty has been paid under this Part.

CHAPTER 9 MOTOR VEHICLE DUTY

PART 1—INTRODUCTION AND OVERVIEW

214. Imposition of duty

- (1) This Chapter charges duty on—
 - (a) an application for registration of a motor vehicle under the **Road Safety Act 1986** if—
 - (i) the vehicle has not previously been registered under that Act; or
 - (ii) the person in whose name the vehicle is to be registered differs from the person in whose name the vehicle was last registered under that Act; and
 - (b) an application for transfer of registration of a motor vehicle under the **Road Safety Act 1986**.
- (2) This Chapter also charges duty in the circumstances set out in Part 4.

215. Lodgement of statement of dutiable value

- (1) A person who is required by law to make or lodge an application for registration or transfer of registration of a motor vehicle under the **Road Safety Act 1986** must lodge with the application a statement of the dutiable value of the motor vehicle, unless the application is not chargeable with duty under this Chapter.
- (2) A person who knowingly states in a statement of dutiable value a value that is less than the dutiable value of the motor vehicle is liable to a penalty of an amount equal to double the difference between the amount of duty payable on the correct dutiable value and the amount of duty paid.

S. 215(2)
substituted by
No. 30/2002
s. 9(1).

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- (3) The penalty imposed by sub-section (2) is in addition to any penalty tax and interest payable under the **Taxation Administration Act 1997**. S. 215(3) inserted by No. 30/2002 s. 9(1).
- (4) Section 52 of the **Taxation Administration Act 1997** does not apply to the statement of dutiable value. S. 215(4) inserted by No. 30/2002 s. 9(1).
- (5) The Commissioner, in such circumstances as the Commissioner considers appropriate, may remit the penalty imposed by sub-section (2) by any amount. S. 215(5) inserted by No. 30/2002 s. 9(1).

216. Who is liable to pay the duty?

- (1) Duty on an application for registration of a motor vehicle is payable by the applicant for registration.
- (2) Duty on an application for transfer of registration of a motor vehicle is payable— S. 216(2) substituted by No. 30/2002 s. 9(2).
- (a) in the case of a vehicle acquired from a licensed motor car trader—by the acquirer and the licensed motor car trader, who are jointly and severally liable to pay the duty;
- (b) in any other case—by the acquirer of the vehicle.
- (3) A person who—
- (a) acquires a motor vehicle from a licensed motor car trader; and S. 216(3)(a) amended by No. 30/2002 s. 9(3)(a).
- (b) pays to the trader the amount of duty chargeable under this Chapter on the application for transfer of registration of the vehicle to the person— S. 216(3)(b) amended by No. 30/2002 s. 9(3)(b).

is relieved from any further liability for duty in respect of the application for transfer of registration.

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S. 216(4)
inserted by
No. 30/2002
s. 9(4).

- (4) A person referred to in sub-section (3) is entitled to a refund of any amount paid to the licensed motor car trader in respect of duty that is in excess of the amount of duty chargeable under this Chapter on the application for transfer of registration of the vehicle to the person.

S. 217
amended by
No. 30/2002
s. 9(5),
substituted by
No. 85/2005
s. 11.

217. When does duty become payable?

- (1) Duty becomes payable on the lodging of the application for registration or transfer of registration of the motor vehicle.

Note: Currently regulations 212 and 230 of the Road Safety (Vehicles) Regulations 1999 contain the requirements for lodgement of applications for registration or transfer of registration of a motor vehicle.

- (2) If an application for transfer of registration of a motor vehicle is not lodged within the time required by law, penalty tax and interest are payable under the **Taxation Administration Act 1997** on any duty payable on the application as if the duty had been payable at the time the application was required to be lodged.
- (3) In addition to sub-section (2), if an application for transfer of registration of a motor vehicle is not lodged within the time required by law, the person required to lodge the application is liable to a further penalty of—
- (a) an amount equal to the amount of duty payable on the application and interest on that amount at the rate of 20% per annum from the day on which the application was required to be lodged; or
 - (b) \$25—

whichever is the greater.

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s. 217A

- (4) If an application for transfer of registration of a motor vehicle is lodged within the time required by law but duty on the application is not paid on or before the lodging of the application, the person required to lodge the application is liable to a penalty of—
- (a) an amount equal to the amount of duty payable on the application and interest on that amount at the rate of 20% per annum from the day on which the application was lodged; or
 - (b) \$25—
- whichever is the greater.
- (5) The penalty imposed by sub-section (4) is in addition to any penalty tax and interest payable under the **Taxation Administration Act 1997**.
- (6) The Commissioner, in such circumstances as the Commissioner considers appropriate, may remit the penalty imposed by sub-section (3) or (4) by any amount.

217A. Assessment of duty

S. 217A
inserted by
No. 30/2002
s. 10.

- (1) On the lodging of an application for registration or transfer of registration of a motor vehicle—
- (a) the Commissioner is taken to have made an assessment of duty on the application; and
 - (b) the application is taken to be a notice of assessment of the duty; and
 - (c) the Commissioner is taken to have served the notice of assessment on the person who is liable to pay the duty.

S. 217A(1)
amended by
No. 85/2005
s. 12(a).

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- (2) The liability for duty on the application is the amount worked out by applying the rate of duty to the dutiable value of the vehicle as at the date of the application.

S. 218
amended by
No. 58/2003
s. 16 (ILA
s. 39B(1)).

218. What is the rate of duty?

- (1) The rate of duty is—
- (a) on an application for registration of a motor vehicle that has not previously been registered in Victoria or elsewhere—
 - (i) for a passenger car the dutiable value of which exceeds \$35 000 but does not exceed \$45 000—\$8 per \$200, or part, of the dutiable value of the motor vehicle;
 - (ii) for a passenger car the dutiable value of which exceeds \$45 000—\$10 per \$200, or part, of the dutiable value of the motor vehicle;
 - (iii) in any other case—\$5 per \$200, or part, of the dutiable value of the motor vehicle;
 - (ab) on an application for registration or transfer of registration of a motor vehicle—
 - (i) that is a passenger car whose dutiable value exceeds \$45 000; and
 - (ii) that was, within the previous 60 days, registered for the first time in Victoria in the name of a licensed motor car trader; and
 - (iii) in respect of which no duty was chargeable under this Act in relation to the registration referred to in subparagraph (ii) because of the use of the motor vehicle; and

S. 218(1)(ab)
inserted by
No. 71/2004
s. 19.

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- (iv) in respect of which no duty was paid (or if paid, the duty is refundable) under this Act in relation to an application for registration or transfer of registration or change of use of the motor vehicle after the registration referred to in subparagraph (ii)—

\$10 per \$200, or part, of the dutiable value of the motor vehicle;

- (b) in any other case—\$8 per \$200, or part, of the dutiable value of the motor vehicle.

- (2) If—

- (a) an application for registration or transfer of registration of a motor vehicle is made by a person who has a physical disability; and
(b) the motor vehicle is modified to enable the person to drive the vehicle—

the amount of duty is to be reduced by the reasonable cost of the modification of the vehicle.

- (3) If the reasonable cost of the modification of a motor vehicle referred to in sub-section (2) is greater than the amount of duty chargeable (but for that sub-section) on an application for registration or transfer of registration of the vehicle, no duty is chargeable on the application.

- (4) For the purposes of sub-sections (2) and (3), the reasonable cost of the modification of a motor vehicle is the lower of—

- (a) the actual cost of the modification;
(b) the price payable in the open market for the modification.

S. 218(2)
inserted by
No. 58/2003
s. 16.

S. 218(3)
inserted by
No. 58/2003
s. 16.

S. 218(4)
inserted by
No. 58/2003
s. 16.

219. What is the dutiable value of a motor vehicle?

- (1) Subject to sub-section (2), the "**dutiable value**" of a motor vehicle is—
- (a) the consideration in money or money's worth given for the acquisition of the vehicle; or
 - (b) the price at which the vehicle might reasonably be sold, free from encumbrances, in the open market—

whichever is the greater.

- (2) The dutiable value of a motor vehicle that—
- (a) is a taxi-cab within the meaning of the **Transport Act 1983**; and
 - (b) is specially converted to provide wheelchair access to and egress from the vehicle; and
 - (c) is capable of carrying at least one occupied wheelchair; and
 - (d) has not previously been registered in Victoria or elsewhere—

is the value determined in accordance with sub-section (1) less \$24 000 or such other amount as is prescribed.

- (3) In determining the dutiable value of a motor vehicle, there is to be no discount for the amount of GST (if any) payable on the supply of the vehicle.

220. Prohibition on registration of motor vehicles

- (1) The registration authority must not register a motor vehicle unless—
- (a) a statement of the dutiable value of the vehicle is lodged in accordance with section 215 and duty is duly paid on the application; or

S. 219(3)
inserted by
No. 58/2003
s. 17.

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(b) the application for registration of the vehicle is not chargeable with duty under this Chapter.

(2) In this section "**registration authority**" means the person who has the responsibility for the registration of motor vehicles in Victoria.

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Ch. 9 Pt 2
(Heading and
ss 221–228)
repealed by
No. 30/2002
s. 11(a).

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PART 3—EXEMPTIONS

229. Ownership by devolution of title and deceased estates

S. 229(1)
amended by
No. 85/2005
s. 12(b).

(1) No duty is chargeable under this Chapter on an application for transfer of registration of a motor vehicle lodged by a person who is beneficially entitled to the vehicle following the death of the person in whose name the vehicle was registered in Victoria.

S. 229(2)
amended by
Nos 27/2001
s. 3(Sch. 1
item 2.8),
85/2005
s. 12(b).

(2) No duty is chargeable under this Chapter on an application for registration or transfer of registration of a motor vehicle lodged by a surviving spouse or domestic partner who has acquired the vehicle through an entitlement to the whole or part of the estate of the deceased spouse or domestic partner.

S. 229(3)
amended by
No. 85/2005
s. 12(b).

(3) No duty is chargeable under this Chapter on an application for registration or transfer of registration of a motor vehicle lodged by the executor or administrator of a deceased estate for the purpose of—

- (a) subsequently transferring the vehicle to a person who is beneficially entitled to it; or
- (b) enabling the subsequent sale of the vehicle in the course of winding up the estate.

S. 230
(Heading)
inserted by
No. 30/2002
s. 11(b).

230. Special dealers—trading stock, demonstrator vehicles and driver education

S. 230(1)
amended by
No. 30/2002
s. 11(c).

(1) No duty is chargeable under this Chapter on an application by a special dealer who carries on a business of dealing in motor vehicles for transfer of registration of a motor vehicle—

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- (a) in the course of, and for the purpose of carrying on that business; and
 - (b) solely for the purpose of the sale of the motor vehicle.
- (2) No duty is chargeable under this Chapter on an application by a special dealer who carries on a business of dealing, for the purpose of sale by retail, in motor vehicles for transfer of registration of a motor vehicle—
- (a) in the course of, and for the purpose of carrying on that business and solely or primarily for the purpose of either or both of the following—
 - (i) the sale of the motor vehicle;
 - (ii) the use of the motor vehicle for the purpose of the sale of another motor vehicle of the same class; or
 - (b) solely or primarily for the purpose of the provision of the motor vehicle to a secondary educational institution for use for driver education purposes.

S. 230(2)
amended by
No. 30/2002
s. 11(c).

**231. Licensed motor car traders—trading stock,
demonstrator vehicles and driver education**

- (1) No duty is chargeable under this Chapter on an application by a licensed motor car trader who carries on a business of dealing in motor vehicles for registration or transfer of registration of a motor vehicle—
- (a) in the course of, and for the purpose of carrying on that business; and
 - (b) solely for the purpose of the sale of the motor vehicle.

S. 231(1)
amended by
No. 30/2002
s. 11(d).

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S. 231(2)
amended by
No. 30/2002
s. 11(d).

(2) No duty is chargeable under this Chapter on an application by a licensed motor car trader who carries on a business of dealing, for the purpose of sale by retail, in motor vehicles for registration or transfer of registration of a motor vehicle—

(a) in the course of, and for the purpose of carrying on that business and solely or primarily for the purpose of either or both of the following—

(i) the sale of the motor vehicle;

(ii) the use of the motor vehicle as a demonstrator vehicle; or

S. 231(2)(a)(ii)
substituted by
No. 71/2004
s. 20.

(b) solely or primarily for the purpose of the provision of the motor vehicle to a secondary educational institution for use for driver education purposes.

232. Applications by interstate licensed motor car traders

S. 232(1)
amended by
No. 85/2005
s. 12(b).

(1) No duty is chargeable under this Chapter on an application for registration or transfer of registration of a motor vehicle lodged by a person who holds a licence under a law of another State or a Territory that corresponds to the **Motor Car Traders Act 1986** but does not hold a licence under that Act.

S. 232(2)
amended by
No. 85/2005
s. 12(b).

(2) Sub-section (1) does not apply unless the application is lodged in the course of carrying out the business to which the licence relates.

233. Primary producer vehicles

S. 233
substituted by
No. 85/2005
s. 13.

- (1) No duty is chargeable under this Chapter on an application for registration or transfer of registration of a heavy trailer—
 - (a) registered or to be registered in the name of a primary producer; and
 - (b) used or to be used solely in the business of the registered operator as a primary producer.
- (2) No duty is chargeable under this Chapter on an application for registration or transfer of registration of a vehicle registered or to be registered in the name of a primary producer used or to be used solely in the business of the applicant for registration or the registered operator as a primary producer, being—
 - (a) a motor vehicle—
 - (i) so constructed that its engine is used to drive or operate an agricultural implement forming an integral part of the vehicle; and
 - (ii) the primary purpose of which is not to carry a load; or
 - (b) a tractor with an MRC of 4.5 tonnes or less; or
 - (c) a primary producer special vehicle.
- (3) No duty is chargeable under this Chapter on an application for registration or transfer of registration of a vehicle registered or to be registered in the name of a primary producer used or to be used for travelling within a radius of 25 kilometres from the registered operator's residence or residential address for the purpose of working the land of another primary producer, being—

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- (a) a motor vehicle—
- (i) so constructed that its engine is used to drive or operate an agricultural implement forming an integral part of the vehicle; and
 - (ii) the primary purpose of which is not to carry a load; or
- (b) a tractor with an MRC of 4.5 tonnes or less;
or
- (c) a primary producer special vehicle.
- (4) No duty is chargeable under this Chapter on an application for registration or transfer of registration of a Special Purpose Vehicle (type 2) as defined in Part 2 of the National Schedule that is—
- (a) conditionally registered or to be registered in the name of a primary producer to operate on a highway at any distance from the registered operator's residence or residential address; and
 - (b) used or to be used solely in the business of the registered operator as a primary producer.
- (5) In this section—
- "agricultural implement"** means a vehicle without its own motive power, built to perform agricultural tasks;
- "load"**, in relation to a vehicle, includes anything that is normally removed from the vehicle when not in use;

"primary producer" means a person—

- (a) engaged solely or substantially in agricultural, horticultural, viticultural, dairying, pastoral or other like pursuits; or
- (b) who is a commercial fisherman the holder of a licence to take fish for sale;

"primary producer special vehicle" means a vehicle that—

- (a) is steered by means of a handle bar; and
- (b) is designed for the carriage of not more than 1 person; and
- (c) has 3 or 4 wheels; and
- (d) has a width not exceeding 1.15 metres; and
- (e) has a tare mass not exceeding 210 kilograms;

"residential address", in relation to a company or other body corporate, means its registered office or any place recorded in the register as its residential address or business address.

233A. Transport for disabled, handicapped or injured

No duty is chargeable under this Chapter on an application for registration or transfer of registration of a vehicle that—

- (a) is registered or to be registered in the name of St John's Ambulance Australia (Victoria) Inc and is used for the transport of the disabled, handicapped or injured; or

S. 233A
inserted by
No. 85/2005
s. 13.

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s. 233B

- (b) is registered or to be registered in, and marked with, the name of a corporate or unincorporated body established for a public purpose and not for private gain and is only used for the conveyance of disabled or handicapped people for training, education or employment.

S. 233B
inserted by
No. 85/2005
s. 13.

233B. Incapacitated person's vehicle

No duty is chargeable under this Chapter on an application for registration or transfer of registration of a vehicle registered or to be registered in the name of an incapacitated person if—

- (a) the vehicle is designed solely for the conveyance of one incapacitated person; and
- (b) the person's mobility is seriously impaired; and
- (c) the vehicle will not be used to convey any other person.

S. 233C
inserted by
No. 85/2005
s. 13.

233C. Private vehicle used to convey incapacitated person

- (1) No duty is chargeable under this Chapter on an application for registration or transfer of registration of a vehicle referred to in sub-section (2) that is registered or to be registered in the name of—
 - (a) an incapacitated person; or
 - (b) the parent or legal guardian of an incapacitated person who is a minor.
- (2) Sub-section (1) applies to a vehicle that—
 - (a) is specially converted to provide wheelchair access to and egress from the vehicle; and
 - (b) is capable of carrying at least one occupied wheelchair; and

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s. 233D

- (c) is or is to be used for conveying an incapacitated person whose mobility is seriously impaired; and
- (d) is not a taxi-cab within the meaning of the **Transport Act 1983**.

233D. Government or charitable vehicle used to convey incapacitated person

S. 233D
inserted by
No. 85/2005
s. 13.

- (1) No duty is chargeable under this Chapter on an application for registration or transfer of registration of a vehicle referred to in sub-section (2) that is registered or to be registered in the name of—
 - (a) a charitable, benevolent or religious institution; or
 - (b) the Crown; or
 - (c) a public statutory authority; or
 - (d) a municipal council.
- (2) Sub-section (1) applies to a vehicle that—
 - (a) is specially converted to provide wheelchair access to and egress from the vehicle; and
 - (b) is capable of carrying at least one occupied wheelchair; and
 - (c) is or is to be used for conveying an incapacitated person whose mobility is seriously impaired; and
 - (d) is marked with the name of the registered operator or, in the case of the Crown, with the name of the relevant department or agency; and
 - (e) is not a taxi-cab within the meaning of the **Transport Act 1983**.

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s. 233E

S. 233E
inserted by
No. 85/2005
s. 13.

233E. Incapacitated war veteran's vehicle

No duty is chargeable under this Chapter on an application for registration or transfer of registration of a motor vehicle not used except for social, domestic or pleasure purposes registered or to be registered in the name of a person who—

- (a) is assessed pursuant to the Veterans' Entitlement Act 1986 of the Commonwealth—
 - (i) as a veteran to whom section 22 of that Act applies at the 100% or higher rate; or
 - (ii) as a veteran to whom section 23, 24, 25 or 104 of that Act applies; and
- (b) operates no other vehicle currently registered without fee as an incapacitated war veteran's vehicle in accordance with regulations made under the **Road Safety Act 1986**.

S. 233F
inserted by
No. 85/2005
s. 13.

233F. Fire fighting and emergency response vehicle

No duty is chargeable under this Chapter on an application for registration or transfer of registration of a vehicle that—

- (a) is owned by a State Emergency Service volunteer unit, a Country Fire Authority brigade or a municipal council; and
- (b) is registered or to be registered in the name of a nominee on behalf of the unit or brigade or in the name of a municipal council; and
- (c) is certified by the State Emergency Service or the Country Fire Authority as a vehicle that is specifically equipped for and exclusively used for combating outbreaks of fire or for emergency response.

233G. Consular vehicle

No duty is chargeable under this Chapter on an application for registration or transfer of registration of a vehicle that is registered or to be registered in the name of a person who—

- (a) holds a diplomatic post of the rank of Consul-General, Consul or Vice Consul; or
- (b) is an Honorary Head of Post or a person employed in the administrative or technical service of a consulate-general, consulate, vice-consulate or consular agency who—
 - (i) is not an Australian citizen; and
 - (ii) is not holding the post of Trade Commissioner.

S. 233G
inserted by
No. 85/2005
s. 13.

233H. Repossessions and restorations

(1) No duty is chargeable under this Chapter on an application for transfer of registration of a motor vehicle lodged by—

- (a) a person who has taken or is taking possession of a motor vehicle from the registered operator under a security interest held by the person; or
- (b) a person who was formerly the registered operator of a motor vehicle and who has taken or is taking possession of the vehicle from another person who holds or held a security interest in the vehicle.

(2) In this section—

"security interest", in relation to a motor vehicle, means an interest in, or a power over, the vehicle that secures payment of a debt or other pecuniary obligation or the performance of any other obligation but does not include a possessory lien or pledge.

S. 233H
inserted by
No. 85/2005
s. 13.

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s. 234A

S. 234
repealed by
No. 36/2005
s. 18.

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S. 234A
inserted by
No. 46/2001
s. 19.

234A. Amalgamation of industrial organisations

S. 234A(1)
amended by
No. 85/2005
s. 14(a).

- (1) No duty is chargeable under this Chapter on an application for transfer of registration of a motor vehicle to effect a transfer of the vehicle from an industrial organisation to another industrial organisation as a consequence of the amalgamation of two or more industrial organisations.
- (2) Sub-section (1) applies only if the transfer is made under, or in accordance with, the rules of the transferring industrial organisation.

S. 234B
inserted by
No. 46/2001
s. 19,
amended by
No. 85/2005
s. 14(a).

234B. Financial sector (transfers of business)

No duty is chargeable under this Chapter on an application for transfer of registration of a motor vehicle as a consequence of the vehicle becoming an asset of a receiving body under Part 3 of the Financial Sector (Transfers of Business) Act 1999 of the Commonwealth.

S. 235
(Heading)
inserted by
No. 27/2001
s. 3(Sch. 1
item 2.9).

235. Marriage and domestic relationships and their breakdown

S. 235(1)
amended by
No. 85/2005
s. 14(a).

- (1) No duty is chargeable under this Chapter on an application for registration or transfer of registration of a motor vehicle to effect a transfer of the vehicle from one person to another person if—

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- (a) either of the following applies—
- (i) both people are spouses or domestic partners of each other; or
 - (ii) both people were spouses or domestic partners of each other and the Commissioner is satisfied that the transfer was made because of the breakdown of the marriage or domestic relationship; and
- (b) no other person takes or is entitled to take an interest in the vehicle under the transfer.
- (2) No duty is chargeable under this Chapter on an application for registration or transfer of registration of a motor vehicle lodged by a person if the Commissioner is satisfied that—
- (a) the application is lodged solely to transfer the vehicle to a trustee; and
 - (b) the transfer has been made because of the breakdown of a marriage or domestic relationship; and
 - (c) the transferor is or was a party to the marriage or domestic relationship; and
 - (d) no person other than a party to the marriage or domestic relationship or a child of a party to the marriage or domestic relationship is a beneficiary of the trust.

S. 235(1)(a)
substituted by
No. 27/2001
s. 3(Sch. 1
item 2.10(a)).

S. 235(2)
amended by
No. 85/2005
s. 14(b).

S. 235(2)(a)
amended by
No. 85/2005
s. 14(b).

S. 235(2)(b)
amended by
No. 27/2001
s. 3(Sch. 1
item 2.10(b)).

S. 235(2)(c)
amended by
No. 27/2001
s. 3(Sch. 1
item 2.10(b)).

S. 235(2)(d)
amended by
No. 27/2001
s. 3(Sch. 1
item 2.10(b)).

236. Minors and trustees

S. 236(1)
amended by
No. 85/2005
s. 14(c).

- (1) No duty is chargeable under this Chapter on an application for transfer of registration of a motor vehicle lodged—
- (a) by a person for whom, when a minor, the vehicle was acquired by another person as nominee or trustee; and
 - (b) to give effect to the transfer of the vehicle from the nominee or trustee to the person after ceasing to be a minor.

S. 236(2)
amended by
No. 85/2005
s. 14(c).

- (2) No duty is chargeable under this Chapter on an application for transfer of registration of a motor vehicle lodged—
- (a) solely because of the appointment or retirement of a trustee or other change in trustees; and
 - (b) in order to vest the vehicle in the trustees for the time being entitled to hold the vehicle.

237. Vehicles previously registered in the same name interstate

No duty is chargeable under this Chapter on an application for registration of a motor vehicle by a person if—

- (a) the vehicle was last registered by the person outside Victoria but within Australia; and
- (b) the Commissioner is satisfied that the vehicle was not registered outside Victoria for the purpose of avoiding duty under this Chapter.

PART 4—DUTY ON CHANGE OF USE OR CHANGE OF OWNERSHIP

238. Duty on statement of change of use

- (1) This section imposes duty if—
- (a) there is a change in the predominant use of a motor vehicle the last application for registration or transfer of registration of which was not chargeable with duty under this Act because of the use of the vehicle; and
 - (b) an application for registration or transfer of registration of the vehicle in Victoria is not lodged in connection with the change of use; and
 - (c) duty would have been chargeable on an application referred to in paragraph (b) had that application been lodged.
- (2) Within 14 days after there is a change in the predominant use of a motor vehicle of the kind referred to in sub-section (1), the registered operator of the vehicle must—
- (a) lodge with the Commissioner a statement of the change in the use; and
 - (b) pay duty at the rate of \$8 per \$200, or part, of the dutiable value of the vehicle at the time the change occurred.
- (3) If a registered operator does not comply with sub-section (2), the registered operator is liable to a penalty of—
- (a) an amount equal to the amount of duty referred to in sub-section (2)(b) and interest on that amount at the rate of 20% per annum

S. 238(1)(b)
amended by
No. 85/2005
s. 14(c).

S. 238(1)(c)
amended by
No. 85/2005
s. 14(c).

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s. 238

from the day on which the payment of the
duty was required; or

(b) \$25—

whichever is the greater.

S. 238(4)
amended by
No. 46/2001
s. 31.

(4) The penalty imposed by sub-section (3) is in
addition to the registered operator's liability for
the duty under sub-section (2)(b) and any penalty
tax and interest payable under the **Taxation
Administration Act 1997**.

(5) The Commissioner, in such circumstances as the
Commissioner considers appropriate, may remit
the penalty imposed by sub-section (3) by any
amount.

S. 239
amended by
No. 71/2004
s. 21,
repealed by
No. 85/2005
s. 14(d).

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PART 5—REFUND OF DUTY

240. Entitlement to refund

- (1) A person is entitled to a refund of duty paid by the person on an application for registration or transfer of registration of a motor vehicle if—
- (a) no duty is chargeable on the application; or
 - (b) after the duty is paid the application is refused; or
 - (c) after the duty is paid—
 - (i) the proposed acquisition of the motor vehicle does not proceed; and
 - (ii) the motor vehicle has been returned to the person from whom it was proposed to be acquired; and
 - (iii) all money refundable as a result of the acquisition not proceeding has been refunded to the person who proposed to acquire the vehicle; or
 - (d) after the duty is paid the application is found—
 - (i) to be void in law from the beginning; or
 - (ii) to have been made in error.
- (2) A person is entitled to a refund of that part of the duty paid by the person on an application for registration or transfer of registration of a motor vehicle that is overpaid.

S. 240(1)(c)(iii)
amended by
Nos 11/2002
s. 3(Sch. 1
item 17),
30/2002 s. 12.

S. 240(1)(d)
inserted by
No. 30/2002
s. 12.

CHAPTER 10
MISCELLANEOUS DUTIES

PART 1—SALE OF CATTLE

241. Imposition of duty

This Part charges duty—

- (a) on a statement written out or caused to be written out under section 92(1)(a) of the **Livestock Disease Control Act 1994** by the owner or the owner's agent on the sale of cattle, calves or cattle carcasses; and
- (b) on a return furnished by an approved agent to the Commissioner under section 95(1)(a) of that Act.

242. What is the rate of duty?

- (1) The rate of duty is—
 - (a) in respect of the sale of cattle—5 cents per \$20, or part—
 - (i) of the amount of the purchase money for one head of cattle sold singly; or
 - (ii) of the total amount of the purchase money for any number of cattle sold in one lot;
 - (b) in respect of the sale of calves—15 cents for each calf sold;
 - (c) in respect of the sale of cattle carcasses, if the carcass is purchased on a weight sale basis after the animal has been slaughtered—
 - (i) 90 cents for each carcass that does not weigh more than 250 kilograms; and
 - (ii) \$1.30 for each carcass that weighs more than 250 kilograms.
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- (2) The maximum amount of duty chargeable in respect of any one head of cattle (whether sold singly or as part of a lot) is \$5.

243. What is the purchase money?

- (1) The purchase money for a sale is taken not to include an amount in respect of any GST payable on the supply to which the sale relates.
- (2) In calculating the purchase money for a sale, it is immaterial whether payment of the purchase money is made in full at the time of the sale or is to be made by instalments or is otherwise deferred.
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PART 2—SALE OF SHEEP AND GOATS

244. Imposition of duty

This Part charges duty—

- (a) on a statement written out or caused to be written out under section 92(1A)(a) of the **Livestock Disease Control Act 1994** by the owner or the owner's agent on the sale of sheep or goats or sheep or goat carcases; and
- (b) on a return furnished by an approved agent to the Commissioner under section 95(1A)(a) of that Act.

245. What is the rate of duty?

The rate of duty is 12 cents for each sheep, goat or carcase sold.

PART 3—SALE OF PIGS

246. Imposition of duty

This Part charges duty—

- (a) on a statement written out or caused to be written out under section 92(2)(a) of the **Livestock Disease Control Act 1994** by the owner or the owner's agent on the sale of pigs or pig carcasses; and
- (b) on a return furnished by an approved agent to the Commissioner under section 95(2)(a) of that Act.

247. What is the rate of duty?

- (1) Subject to sub-section (2), the rate of duty is 2 cents per \$5, or part—
 - (a) of the amount of the purchase money for one pig sold singly; or
 - (b) of the total amount of the purchase money for any number of pigs sold in one lot.
- (2) The maximum amount of duty in respect of the sale of any one pig (whether sold singly or as part of a lot) is 16 cents.

248. What is the purchase money?

- (1) The purchase money for a sale is taken not to include an amount in respect of any GST payable on the supply to which the sale relates.
 - (2) In calculating the purchase money for a sale, it is immaterial whether payment of the purchase money is made in full at the time of the sale or is to be made by instalments or is otherwise deferred.
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General Exemptions from Duty

s. 249

CHAPTER 11
GENERAL EXEMPTIONS FROM DUTY

Ch. 11 Pt 1
(Heading)
inserted by
No. 113/2003
s. 4.

PART 1—SECURITY FOR PAYMENT OF TAX

249. Security for payment of tax

(1) No duty is chargeable under this Act in respect of a mortgage given to or executed by the Commissioner to secure the payment of tax as a result of the Commissioner postponing or extending the time for the payment of tax.

S. 249(2)
substituted by
No. 88/2005
s. 117(Sch. 2
item 1.2).

(2) In this section—

"tax" means tax within the meaning of the
Taxation Administration Act 1997.

PART 2—CORPORATE RECONSTRUCTIONS

Division 1—Corporate Reconstruction Exemption

Ch. 11 Pt 2
(Heading and
ss 250–250M)
inserted by
No. 113/2003
s. 5.

250. What is a corporate group?

S. 250
substituted by
Nos 113/2003
s. 5, 71/2004
s. 22.

(1) In this Division—

"corporation" includes—

- (a) a unit trust scheme;
- (b) a public offer superannuation fund within the meaning of section 18 of the Superannuation Industry (Supervision) Act 1993 of the Commonwealth that has at least 300 public subscribers;

"corporate group" means a parent corporation and the subsidiaries of that parent corporation;

"parent corporation" means a corporation that directly or indirectly—

- (a) holds at least 90% of the beneficial ownership of another corporation ("**the subsidiary**"); and
- (b) has the ability to cast, or to control the casting of, at least 90% of the maximum number of votes that may be cast at a general meeting of the subsidiary;

"relevant corporate group" means the members of a corporate group that are parties to an eligible transaction and those members of the corporate group necessary to establish the connection between the parties as a parent corporation and subsidiary or as subsidiaries of the same parent corporation.

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S. 250(2)
amended by
No. 36/2005
s. 19(a).

- (2) In this Division, if—
- (a) the issued shares or units of a corporation are stapled to the issued shares or units of one or more other corporations; and
 - (b) the stapled securities are quoted on the Australian Stock Exchange or a recognised stock exchange—

those corporations and the subsidiaries of each of those corporations constitute a corporate group.

S. 250(3)
amended by
No. 36/2005
s. 19(a).

- (3) Nothing in this Division applies to a corporation to the extent that it is a trustee of a discretionary trust.

S. 250(4)
amended by
No. 36/2005
s. 19(a).

- (4) In this Division, a corporation that holds dutiable property on trust (other than as trustee of a unit trust scheme) for another corporation is taken not to be a member of any corporate group of which the second-mentioned corporation is a member.

S. 250A
inserted by
No. 113/2003
s. 5,
amended by
No. 36/2005
s. 19(b).

250A. What is an eligible transaction?

In this Division—

"eligible transaction" means any of the following that occurs on or after 1 January 2004—

- (a) a transfer of dutiable property from one member of a corporate group to another member of the group; or
- (b) a vesting of dutiable property by, or as a consequence of, a court order where the property was held by one member of a corporate group and is vested in another member of the group; or

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- (c) an application to register a motor vehicle as a result of a transfer of the vehicle from one member of a corporate group to another member of the group; or
- (d) a dutiable transaction to which section 14 applies between members of a corporate group; or
- (e) a relevant acquisition to which section 80 applies by a member of a corporate group from another member of the group; or
- (f) a declaration of trust relating to dutiable property the specification of which forms part of the declaration of trust or part of the transaction constituted by the declaration of trust by one member of a corporate group under which the dutiable property is held on trust for another member of the group; or
- (g) any other transaction that results in the beneficial ownership of dutiable property (other than an excluded transaction) moving from one member of a corporate group to another member of the group.

S. 250A(e)
amended by
No. 71/2004
s. 23(1).

S. 250A(f)
inserted by
No. 71/2004
s. 23(2).

S. 250A(g)
inserted by
No. 71/2004
s. 23(2).

250B. Exemption for certain transactions arising out of corporate reconstruction

S. 250B
inserted by
No. 113/2003
s. 5.

- (1) A member of a relevant corporate group may apply to the Commissioner for an exemption under this Division—
 - (a) any time before the eligible transaction occurs to which the application relates; or

S. 250B(1)
substituted by
No. 71/2004
s. 24(1),
amended by
No. 36/2005
s. 19(c).

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- (b) within 3 years after the eligible transaction occurs to which the application relates.
- (2) The Commissioner must grant an exemption from duty under this Act on an instrument or transfer of dutiable property if the Commissioner is satisfied that—
 - (a) the instrument or transfer is, or arises out of, an eligible transaction; and
 - (b) the eligible transaction does not arise from arrangements or a scheme devised for the principal purpose of taking advantage of the benefit of this section; and
 - (c) the conditions of the exemption, if any, will be met by the applicant.
- (3) If duty under this Act has been paid on an eligible transaction, the Commissioner must refund any duty paid that, by reason of the exemption, is not payable.
- (4) The Minister must, before 31 October in each year, cause to be laid before each House of the Parliament a report of exemptions granted and refunds made under this Division in the preceding financial year, including—
 - (a) the name of each member of a relevant corporate group that has had the benefit of an exemption or refund; and
 - (b) the amount of duty that would have been chargeable but for the exemption and the amount of any refund.

S. 250B(4)
amended by
No. 36/2005
s. 19(c).

S. 250B(4)(a)
amended by
No. 71/2004
s. 24(2).

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s. 250C

250C. Conditions of exemption

S. 250C
inserted by
No. 113/2003
s. 5.

- (1) An exemption granted under this Division is subject to any conditions specified by the Commissioner.
- (2) If an exemption is granted under this Division, the conditions of the exemption are binding on each member of the corporate group.

S. 250C(1)
amended by
No. 36/2005
s. 19(c).

S. 250C(2)
amended by
No. 36/2005
s. 19(c).

250D. Revocation of exemption

S. 250D
inserted by
No. 113/2003
s. 5.

- (1) The Commissioner may revoke an exemption granted under this Division if—
 - (a) the members of the relevant corporate group do not remain members of the group for a period of at least 3 years commencing immediately after the day on which the transaction occurred in respect of which the exemption was granted; or
 - (ab) in the case of a public offer superannuation fund that is a member of the relevant corporate group, the public offer superannuation fund has less than 300 public subscribers at any time during a period of 3 years commencing immediately after the day on which the transaction occurred in respect of which the exemption was granted; or
 - (b) the instrument or transfer of dutiable property is not, or does not arise out of, an eligible transaction; or

S. 250D(1)
amended by
No. 36/2005
s. 19(c).

S. 250D(1)(a)
amended by
No. 71/2004
s. 25(1).

S. 250D(1)(ab)
inserted by
No. 71/2004
s. 25(2).

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- (c) a change of circumstances results in the transaction in respect of which the exemption was granted no longer being an eligible transaction; or
- (d) the exemption was granted based on false or misleading information in a material particular provided by the corporate group to the Commissioner; or
- (e) the eligible transaction arises from arrangements or a scheme devised for the principal purpose of taking advantage of the benefit of section 250B.

S. 250D(2)
amended by
No. 71/2004
s. 25(3)(a)(b).

- (2) Sub-section (1)(a) does not apply if the Commissioner is satisfied that a corporation that was a member of the relevant corporate group on the day on which the transaction occurred in respect of which the exemption was granted ceases to be a member of the group by virtue of—

- (a) a public float that occurred within 12 months after the day on which the transaction occurred; or
- (ab) the shares or units of the member being unstapled to enable the member's liquidation, deregistration, dissolution or, in the case of a unit trust scheme, winding up; or
- (b) its liquidation, deregistration or, in the case of a unit trust scheme, winding up.

S. 250D(2)(ab)
inserted by
No. 71/2004
s. 25(3)(c).

- (3) In this section—

"public float" means a share float or an offer of units to create a public unit trust scheme—

- (a) the shares or units of which are quoted on the Australian Stock Exchange or a recognised stock exchange and are offered to the public generally; and

S. 250D(3)
def of
"public float"
amended by
No. 71/2004
s. 25(4)(a)(b).

Duties Act 2000
Act No. 79/2000

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- (b) of which the issue of the shares or units to the public does not give any person and their related persons (other than the corporate entity that floated the shares or units) a combined beneficial interest in the floated entity greater than 20%; and
- (c) that is not part of a scheme for the purpose of minimising duty otherwise payable under this Act.

Division 1A—Corporate Consolidation Exemption

Ch. 11 Pt 2
Div. 1A
(Heading and
ss 250DA–
250DG)
inserted by
No. 36/2005
s. 20.

250DA. Definitions

S. 250DA
inserted by
No. 36/2005
s. 20.

In this Division—

"consolidatable group" has the same meaning as in section 703-10 of the ITAA;

"consolidated group" has the same meaning as in section 703-5 of the ITAA;

"corporate group" has the same meaning as in section 250;

"corporation" has the same meaning as in section 250;

"head company" means a corporation that is a head company within the meaning of section 703-15(2)(a) of the ITAA;

"ITAA" means the Income Tax Assessment Act 1997 of the Commonwealth;

"parent corporation" has the same meaning as in section 250.

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S. 250DB
inserted by
No. 36/2005
s. 20.

250DB. What is a corporate consolidation?

For the purposes of this Division, a "**corporate consolidation**" is the formation of a consolidated group or consolidatable group by the interposition of a head company between a corporation that is a member of a corporate group and the shareholders or unitholders of that corporation.

S. 250DC
inserted by
No. 36/2005
s. 20.

250DC. What is an eligible transaction?

- (1) For the purposes of this Division, an "**eligible transaction**" is any of the following that occurs on or after 31 March 2005 solely for the purposes of a corporate consolidation—
 - (a) a transfer of dutiable property from a shareholder or unitholder of a corporation to the head company; or
 - (b) a vesting of dutiable property by, or as a consequence of, a court order where the property was held by a shareholder or unitholder of a corporation and is vested in the head company; or
 - (c) an application to register a motor vehicle as a result of a transfer of the vehicle from a shareholder or unitholder of a corporation to the head company; or
 - (d) a dutiable transaction to which section 14 applies between a shareholder or unitholder of a corporation and the head company; or
 - (e) a relevant acquisition to which section 80 applies—
 - (i) by the head company from a shareholder or unitholder of a corporation; or
 - (ii) by a shareholder or unitholder of a corporation from the head company; or

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- (f) a declaration of trust relating to dutiable property the specification of which forms part of the declaration of trust or part of the transaction constituted by the declaration of trust by the head company under which the dutiable property is held on trust for a shareholder or unitholder of a corporation; or
 - (g) any other transaction that results in the beneficial ownership of dutiable property (other than an excluded transaction) moving from a shareholder or unitholder of a corporation to the head company.
- (2) Despite sub-section (1), a transaction is not an eligible transaction unless—
- (a) the only consideration provided by the head company for the transaction consists of the issue of shares in the head company to the shareholders or unitholders of the corporation; and
 - (b) immediately after the issue of shares in the head company, all the shareholders in the head company are persons who were shareholders or unitholders in the corporation immediately before their shares or units were acquired by the head corporation.
- (3) Sub-section (2)(a) does not apply to a transaction referred to in sub-section (1)(e)(ii).

250DD. Exemption for certain transactions arising out of corporate consolidation

**S. 250DD
inserted by
No. 36/2005
s. 20.**

- (1) A member of a consolidated group or consolidatable group may apply to the Commissioner for an exemption under this Division—
- (a) any time before the eligible transaction occurs to which the application relates; or

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- (b) within 3 years after the eligible transaction occurs to which the application relates.
 - (2) An applicant for an exemption must give the Commissioner—
 - (a) a copy of the choice made to the Commissioner of Taxation of the Commonwealth in respect of the group under section 703-50 of the ITAA within 28 days after the later of—
 - (i) the day on which the choice is made;
 - (ii) the day on which the application for an exemption is made; and
 - (b) a copy of any confirmation by the Commissioner of Taxation of the status of the group within 28 days after the later of—
 - (i) the day on which the conformation is received;
 - (ii) the day on which the application for an exemption is made.
 - (3) The Commissioner must grant an exemption from duty under this Act on an instrument or transfer of dutiable property if the Commissioner is satisfied that—
 - (a) the instrument or transfer is, or arises out of, an eligible transaction; and
 - (b) the eligible transaction does not arise from arrangements or a scheme devised for the principal purpose of taking advantage of the benefit of this section; and
 - (c) the conditions of the exemption, if any, will be met by the applicant.
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- (4) If duty under this Act has been paid on an eligible transaction, the Commissioner must refund any duty paid that, by reason of the exemption, is not payable.
- (5) The Minister must, before 31 October in each year, cause to be laid before each House of the Parliament a report of exemptions granted and refunds made under this Division in the preceding financial year, including—
 - (a) the name of each member of a consolidated group or consolidatable group that has had the benefit of an exemption or refund; and
 - (b) the amount of duty that would have been chargeable but for the exemption and the amount of any refund.

250DE. Conditions of exemption

S. 250DE
inserted by
No. 36/2005
s. 20.

- (1) An exemption granted under this Division is subject to any conditions specified by the Commissioner.
- (2) If an exemption is granted under this Division, the conditions of the exemption are binding on the head company and the corporation that was the parent corporation immediately before the corporate consolidation.

250DF. Revocation of exemption

S. 250DF
inserted by
No. 36/2005
s. 20.

- (1) The Commissioner may revoke an exemption granted under this Division if—
 - (a) the head company and the corporation that was the parent corporation immediately before the corporate consolidation do not remain members of the corporate group for a period of at least 3 years commencing immediately after the day on which the transaction occurred in respect of which the exemption was granted; or

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- (b) the instrument or transfer of dutiable property is not, or does not arise out of, an eligible transaction; or
 - (c) a change of circumstances results in the transaction in respect of which the exemption was granted no longer being an eligible transaction; or
 - (d) the applicant for the exemption fails to comply with section 250DD(2); or
 - (e) the exemption was granted based on false or misleading information in a material particular provided by the consolidated group or consolidatable group to the Commissioner; or
 - (f) the eligible transaction arises from arrangements or a scheme devised for the principal purpose of taking advantage of the benefit of section 250DD.
- (2) Sub-section (1)(a) does not apply if the Commissioner is satisfied that the head company or the corporation that was the parent corporation immediately before the corporate consolidation ceases to be a member of the corporate group by virtue of—
- (a) a public float that occurred within 12 months after the day on which the transaction in respect of which the exemption was granted occurred; or
 - (b) the shares or units of the head company or parent corporation being unstapled to enable its liquidation, deregistration, dissolution or, in the case of a unit trust scheme, winding up; or
 - (c) its liquidation, deregistration or, in the case of a unit trust scheme, winding up.
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s. 250DG

(3) In this section—

"public float" has the same meaning as in section 250D.

250DG. Special provision in relation to land-rich duty for private unit trust scheme consolidations

S. 250DG
inserted by
No. 36/2005
s. 20.

- (1) This section applies to a corporate consolidation that consists of the interposition of a head company between a private unit trust scheme and the unitholders of the private unit trust scheme.
- (2) In determining, for the purposes of Part 2 of Chapter 3, whether a person makes a relevant acquisition in a landholder that is a head company—
 - (a) the head company must be taken to be a private unit trust scheme, being the same scheme as that existing immediately before the corporate consolidation;
 - (b) a shareholding in the head company must be taken to be a unitholding in that private unit trust scheme;
 - (c) if an interest in the private unit trust scheme held at any time before the corporate consolidation was or would be counted for the purposes of section 79, that interest is to continue to be counted for the purposes of that section after the corporate consolidation;
 - (d) if an interest in the private unit trust scheme held at any time before the corporate consolidation was not or would not be counted for the purposes of section 79, that interest is to continue not to be counted for the purposes of that section after the corporate consolidation;

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(e) without limiting paragraph (a), any acquisition of an interest in land by the private unit trust scheme before the corporate consolidation is taken to have been an interest acquired by the head company at the time it was acquired by the private unit trust scheme.

(3) This section applies for the period of 3 years commencing at the time of the corporate consolidation.

Division 2—Tax Assessment, Penalty and Interest

S. 250E
inserted by
No. 113/2003
s. 5.

250E. Part 5 of Taxation Administration Act 1997 not applicable

If an exemption under this Part is revoked, Part 5 of the **Taxation Administration Act 1997** does not apply to any tax default occurring as a result of the revocation.

S. 250F
inserted by
No. 113/2003
s. 5,
amended by
Nos 71/2004
s. 26(a)(b),
36/2005 s. 21.

250F. Joint and severable liability for duty, penalty and interest

If an exemption under this Part is revoked, each corporation that was a member of the corporate group, consolidated group or consolidatable group when the exemption was granted or is a member of the corporate group, consolidated group or consolidatable group when the exemption is revoked, is jointly and severally liable for payment of—

- (a) the duty payable; and
- (b) any penalty or interest under this Division.

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s. 250G

250G. Liability for duty

If an exemption under this Part is revoked—

- (a) liability for duty in relation to the instrument or transfer of dutiable property arises when the dutiable transaction occurred; and
- (b) the duty is payable on or before the day specified by the Commissioner in the notice of reassessment.

S. 250G
inserted by
No. 113/2003
s. 5.

250H. Reassessment of duty

- (1) A reassessment under section 9(3)(c) of the **Taxation Administration Act 1997** of duty following a revocation of an exemption under this Part is authorised if more than 3 years have passed since the initial assessment was made.
- (2) A notice of reassessment served following the revocation of an exemption under this Part must specify any interest or penalty payable in respect of the revocation.

S. 250H
inserted by
No. 113/2003
s. 5.

250I. Penalty for false or misleading application

- (1) If an exemption in relation to an instrument or transfer of dutiable property was granted based on false or misleading information in a material particular provided by the corporate group, consolidated group or consolidatable group to the Commissioner, the taxpayer is liable to pay a penalty in addition to the amount of duty unpaid.
- (2) The amount of penalty payable under subsection (1) is 75% of the amount of the duty.

S. 250I
inserted by
No. 113/2003
s. 5.

S. 250I(1)
amended by
No. 36/2005
s. 21.

Duties Act 2000
Act No. 79/2000

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s. 250J

S. 250J
inserted by
No. 113/2003
s. 5.

250J. Penalty for failure to notify

S. 250J(1)
amended by
No. 36/2005
s. 21.

- (1) If a corporate group, consolidated group or consolidatable group, within 28 days after a change of circumstance that results in the Commissioner revoking the exemption under this Part, fails to notify the Commissioner in the form of a statutory declaration of that change of circumstance, the taxpayer is liable to pay a penalty in addition to the amount of duty unpaid.
- (2) The amount of penalty payable under sub-section (1) is 25% of the amount of the duty.

S. 250K
inserted by
No. 113/2003
s. 5.

250K. Remission of penalty

The Commissioner, in such circumstances as the Commissioner considers appropriate, may remit a penalty under this Division by any amount.

S. 250L
inserted by
No. 113/2003
s. 5.

250L. Interest

- (1) If the Commissioner revokes an exemption granted under this Part, the taxpayer is liable to pay interest on the duty payable in relation to the instrument or transfer of dutiable property calculated on a daily basis from the end of the relevant day until the day the duty is paid.
- (2) The rate of interest for the purposes of sub-section (1) is the interest rate from time to time applying under Division 1 of Part 5 of the **Taxation Administration Act 1997**.
- (3) In this section—
"relevant day" means the day that is 3 months after the day on which the transaction occurred in respect of which the exemption was granted.

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s. 250M

250M. Remission of interest

The Commissioner, in such circumstances as the Commissioner considers appropriate, may remit interest payable under this Division by any amount.

S. 250M
inserted by
No. 113/2003
s. 5.

Ch. 11 Pt 3
(Heading)
inserted by
No. 113/2003
s. 6(a).

PART 3—MANAGED INVESTMENT SCHEMES

251. Managed investment schemes

The following are exempt from duty under this Act—

- (a) a transfer of property from—
 - (i) a responsible entity of a managed investment scheme; or
 - (ii) a person who held the property as a trustee of a prescribed interest scheme within the meaning of the Corporations Law⁵ as in force immediately before 1 July 1998 when the scheme became a registered scheme within the meaning of Division 11 of Part 11.2 of the Corporations Law (as continued in effect by section 1408 of the Corporations Act)—

to a custodian or agent of the responsible entity as custodian or agent of the scheme in which the transferor held the property;

- (b) a transfer of property from the custodian of the responsible entity of a managed investment scheme to the responsible entity;
- (c) an instrument that—
 - (i) amends, varies or replaces an instrument that establishes or governs a managed investment scheme; and

S. 251(a)(ii)
amended by
No. 71/2004
s. 27.

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Act No. 79/2000

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- (ii) does not transfer, or have the effect of transferring, any property to a person who does not hold units in the scheme; and
 - (iii) does not have the effect of reducing the number of persons who hold units in the scheme;
- (d) a declaration—
- (i) made by a trustee in respect of property that, immediately before the trust is declared, is held by the trustee as trustee of the prescribed interest scheme within the meaning of the Corporations Law⁶ as in force immediately before 1 July 1998; and
 - (ii) to hold the property on trust for the responsible entity of the managed investment scheme.
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Duties Act 2000
Act No. 79/2000

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s. 251A

Ch. 11 Pt 4
(Heading)
inserted by
No. 113/2003
s. 6(b).

S. 251A
inserted by
No. 46/2001
s. 20.

PART 4—MORTGAGE-BACKED SECURITIES

251A. Mortgage-backed securities

- (1) No duty is chargeable under this Act in respect of a mortgage over the interest of a person in a pool of mortgages relating to debt securities that are mortgage-backed securities issued by the person to secure the repayment of financial accommodation provided to the person.
- (2) No duty is chargeable under this Act in respect of a mortgage of a mortgage or pool of mortgages or part of a pool of mortgages in connection with creating, issuing, marketing or securing a mortgage-backed security.
- (3) No duty is chargeable under this Act in respect of—
 - (a) the issue or making of a mortgage-backed security; or
 - (b) the transfer or assignment of or other dealing with a mortgage-backed security; or
 - (c) the discharge, cancellation or termination of a mortgage-backed security.
- (4) No duty is chargeable under this Act in respect of a mortgage of a mortgage or pool of mortgages or part of a pool of mortgages for the purpose of creating, issuing, marketing or securing a mortgage-backed security—
 - (a) to a person entitled to a mortgage-backed security or a trustee or agent for such a person; or
 - (b) by or to a person who issues, makes or endorses a mortgage-backed security; or

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s. 251B

(c) to a person who provides security (whether as a guarantor, surety or otherwise) to a person entitled to a mortgage-backed security or a trustee or agent for such a person—

if the mortgage is executed on or after 1 July 2001.

251B. Instruments issued for the purpose of creating, issuing or marketing mortgage-backed securities

S. 251B
inserted by
No. 46/2001
s. 20.

No duty is chargeable under this Act in respect of an instrument that, in the Commissioner's opinion, was executed for the purpose of creating, issuing or marketing mortgage-backed securities.

CHAPTER 12
ADMINISTRATION AND ENFORCEMENT

PART 1—STAMPING INSTRUMENTS

252. Provision of stamps

The Commissioner may provide stamps or any other equipment that may be required for—

- (a) stamping instruments; or
- (b) otherwise denoting the payment of duty—

in accordance with the provisions of this Act.

253. Limitation on use of designated stamps

- (1) A person must not use a stamp that by its terms is limited to an instrument of a specified kind for an instrument of a different kind.

Penalty: 100 penalty units.

- (2) An instrument of a specified kind for which a particular stamp is specified is taken not to be duly stamped unless it is stamped with the stamp so specified.

254. Form of stamps to be used

- (1) An instrument that is required to be stamped by this Act is to be stamped by means of an impressed stamp.
- (2) However, another form of stamping may be used if its use is authorised by this Act or the Commissioner.

255. Stamping of instruments

The Commissioner must stamp an instrument in respect of which duty is chargeable under this Act or that effects or evidences a dutiable transaction and that has been lodged with the Commissioner if the duty, and any interest or penalty tax under Part 5 of the **Taxation Administration Act 1997**, is paid in full.

256. When is an instrument duly stamped?

An instrument is duly stamped if it is stamped in accordance with this Act.

257. Adhesive stamps

- (1) An adhesive stamp may be used to stamp the following instruments—
 - (a) a transfer of shares of a corporation or company that is not the legal or beneficial owner of land in Victoria, if the monetary consideration for the transfer is not less than the unencumbered value of the shares;
 - (b) a transfer of units in a unit trust scheme if the monetary consideration for the transfer is not less than the unencumbered value of the units;
 - (c) a lease or an assignment of a lease;
 - (d) a mortgage securing an amount not exceeding \$10 000.
- (2) An instrument that may be stamped by use of an adhesive stamp is not duly stamped unless—
 - (a) an adhesive stamp for the appropriate amount of duty is attached to the instrument; and

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(b) the adhesive stamp is cancelled by marking the date of its cancellation on its face in such a way as to render it incapable of being used for any other instrument.

(3) Subject to sub-section (4), a person must not remove an adhesive stamp that has been attached to an instrument and cancelled.

Penalty: 100 penalty units.

(4) The Commissioner may remove an adhesive stamp that has been attached to an instrument and cancelled after an application for a refund of the duty denoted by the stamp has been approved.

258. Licences to deal in stamps

(1) The Commissioner may, on any terms and conditions he or she determines, grant a licence to a person to sell stamps.

(2) The licence must include the name and address of the licensee.

(3) The Commissioner may sell stamps to a licensee at the commission discount determined by the Commissioner.

(4) The Commissioner may re-purchase any stamps sold to a licensee if the licensee no longer requires them.

(5) The Commissioner may cancel a licence granted under this section at any time by giving notice of the cancellation to the licensee.

(6) A person who is not licensed under this section must not sell or deal in stamps.

Penalty: 20 penalty units.

259. Refunds—spoiled and unused stamps

- (1) A person may apply to the Commissioner for a refund of the value of adhesive stamps that have become spoiled or useless.
- (2) The spoiled or useless stamps must be produced to the Commissioner.
- (3) If an adhesive stamp is erroneously placed on a document, an application for a refund may be made as if the stamp were spoiled.

260. Reassessments—failed instruments

- (1) An instrument that fails its intended operation and becomes useless is not chargeable with duty under this Act.
- (2) The Commissioner must make a reassessment of duty in respect of such an instrument if an application for a reassessment is made within—
 - (a) 3 years after the initial assessment; or
 - (b) 12 months after the instrument has failed—whichever is the later.
- (3) The instrument in respect of which the application is made must be produced to the Commissioner unless the Commissioner dispenses with its production.

261. Instruments to be separately charged with duty in certain cases

An instrument that contains, gives effect to, or relates to, two or more distinct matters or transactions is to be separately and distinctly charged with duty in respect of each such matter or transaction, as if each matter was expressed in a separate instrument.

S. 261
amended by
No. 46/2001
s. 21.

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s. 262

262. Execution of instruments

For the purposes of this Act, an instrument described in column 1 of the Table is taken to be executed when it is executed by the parties specified in column 2 opposite that instrument.

TABLE

<i>Column 1</i> <i>Instrument type</i>	<i>Column 2</i> <i>Executing parties</i>
Transfer of land under the Transfer of Land Act 1958	Transferor and transferee
Conveyance of land (general law)	Grantor
Transfer of marketable securities	Transferor and transferee
Mortgage	Mortgagor or person who gives the mortgage
Lease	Lessor and lessee (whether both execute the original lease or one executes the original and the other executes a counterpart)
Assignment of lease	Assignor
Declaration of trust	Settlor

263. Counterparts and replicas

- (1) The Commissioner may stamp a counterpart or replica of an instrument chargeable with duty under this Act if the Commissioner is satisfied that—
- (a) the instrument chargeable with duty has been duly stamped; or
 - (b) that the correct duty has been paid on the instrument chargeable with duty.

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(2) The stamp on a counterpart or replica must indicate that the correct duty has been paid on the instrument of which it is a counterpart or replica.

(3) In this section—

"replica" means an instrument that—

- (a) is executed to replace; and
- (b) contains the same terms as, but no other terms than, those contained in—

a previously executed instrument that has been lost, spoiled or destroyed.

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s. 264

PART 2—AUTHORISATION OF RETURNS SYSTEMS

264. Authorised persons

S. 264(1)
amended by
No. 46/2001
s. 22(1).

(1) The Commissioner may, by written notice, authorise specified persons, or persons of a specified class, to be authorised persons in relation to a specified class of instruments or transactions that are, or but for an exemption would be, chargeable with duty under this Act.

S. 264(2)
substituted by
No. 46/2001
s. 22(2).

(2) An authorisation may be given on the initiative of the Commissioner or on application.

S. 264(3)
inserted by
No. 46/2001
s. 22(2).

(3) The Commissioner may vary or cancel an authorisation by written notice.

S. 264A
inserted by
No. 46/2001
s. 23.

264A. Application for authorisation

(1) An application for an authorisation under this Part must be made to the Commissioner in the approved form.

(2) The Commissioner may grant or refuse an application for an authorisation under this Part.

S. 264B
inserted by
No. 46/2001
s. 23.

264B. Conditions of authorisation

(1) An authorisation under this Part is subject to any conditions specified by the Commissioner in the notice of authorisation or by subsequent written notice.

(2) The conditions of an authorisation may include—

(a) conditions as to the means by which returns are to be lodged or payments are to be made;

(b) conditions requiring the payment of interest, calculated at the interest rate determined in accordance with section 25 of the **Taxation Administration Act 1997**, on any amounts

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Administration and Enforcement

s. 264C

that are not paid at the times they are required to be paid in accordance with the authorisation.

- (3) If an authorisation is given under this Part to a specified person or persons of a specified class, the conditions of the authorisation are binding on that person or persons of that class and that person or a person of that class is guilty of an offence if any of the conditions is contravened.

Penalty: 100 penalty units in the case of a body corporate;

20 penalty units in any other case.

264C. Gazettal or service of notices

A written notice under this Part may be given by—

- (a) publishing it in the Government Gazette; or
(b) serving it on the person to whom it relates.

265. Endorsement of instruments by authorised persons

- (1) An authorised person may endorse in the approved manner—
- (a) an instrument in the class of instruments; or
(b) an instrument effecting or evidencing a transaction in the class of transactions—
- in relation to which the person is authorised.
- (2) If duty is chargeable on the instrument or transaction, the endorsement must specify the amount of duty chargeable.

S. 264C
inserted by
No. 46/2001
s. 23.

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Act No. 79/2000

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s. 266

S. 265(3)
substituted by
No. 46/2001
s. 24(1).

- (3) An instrument is taken—
- (a) to be duly stamped to the amount of duty shown on the endorsement; or
 - (b) to be duly stamped as exempt from duty if the endorsement states that the instrument or transaction is exempt—

but without affecting liability for the payment of duty in relation to the instrument or transaction under this Act.

- (4) An authorised person must keep a record in the approved form of endorsements made under this section.

S. 265(5)
amended by
No. 46/2001
s. 24(2).

- (5) An authorised person must not knowingly—
- (a) endorse an instrument with an amount of duty less than the amount with which it is chargeable under this Act; or
 - (b) otherwise endorse an instrument except in the approved manner.

S. 265(6)
inserted by
No. 46/2001
s. 24(3).

- (6) If an authorised person contravenes subsection (5), the Commissioner may recover in a court of competent jurisdiction as a debt due to the State an amount equal to double the amount that would have been payable by the authorised person under section 266 had the correct amount of duty been endorsed on the instrument.

266. Payment of duty by authorised persons

- (1) An authorised person must, in accordance with this section—
- (a) lodge a return with the Commissioner specifying the total of all amounts of duty endorsed on instruments by the authorised person under section 265; and

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s. 267

(b) pay to the Commissioner a sum equal to that total.

Penalty: 20 penalty units plus an amount equal to double the amount that would have been payable if the provision had been complied with.

(2) The return is to be lodged, and the sum paid, at the intervals, and in respect of the periods, determined by the Commissioner.

267. Offset of overpaid amounts

(1) This section applies if an authorised person pays a sum to the Commissioner in respect of a period that is greater than the total amount of duty chargeable on each instrument, or on the transactions effected or evidenced by each instrument, endorsed by the authorised person during that period because the authorised person—

(a) miscalculated the amount of duty with which an instrument or transaction is chargeable; or

(b) made a mistake adding up the total of all amounts endorsed on the instruments.

(2) The authorised person may reduce the sum payable in respect of the next or a subsequent period (being a period within 3 years after the date on which the overpayment was made) by the amount overpaid.

(3) An authorised person who reduces an amount under this section must lodge a statement with the Commissioner at the time of making the reduction giving details of the overpayment.

- (4) If the overpayment was caused by miscalculating the amount of duty chargeable on an instrument or transaction, the authorised person—
- (a) must re-endorse the instrument in the approved manner with the correct amount of duty; and
 - (b) if the authorised person has charged to, or recovered from, another person an amount in respect of the overpayment—must reimburse that person for the amount charged or recovered.

268. Unauthorised endorsement

- (1) An authorised person must not endorse an instrument in a class of instruments in relation to which the person is not authorised.
Penalty: 100 penalty units.
- (2) A person who is not an authorised person must not endorse an instrument in any manner that indicates that the person is an authorised person.
Penalty: 100 penalty units.
-

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s. 269

PART 3—ENFORCEMENT

269. Registration of instruments

A person must not register in a register of legal or beneficial interests in dutiable property an instrument that effects a dutiable transaction or an instrument chargeable with duty unless—

- (a) it is duly stamped; or
- (b) it is stamped by the Commissioner or in a manner approved by the Commissioner; or
- (c) it is marked "interim stamp only" in accordance with section 30.

S. 269(b)
amended by
No. 46/2001
s. 25.

S. 269(c)
inserted by
No. 46/2001
s. 25,
amended by
No. 71/2004
s. 28.

Penalty: 100 penalty units.

270. Registration of transfer of shares in private companies

- (1) A private company must not enter in its records a transfer of shares on which duty is charged under this Act unless—
 - (a) a transfer has been delivered to the private company; and
 - (b) the transfer is duly stamped.

Penalty: 100 penalty units.

- (2) For the purposes of this section, a private company is entitled to assume that an instrument is duly stamped if—
 - (a) it bears any of the following—
 - (i) an impressed stamp;

- (ii) an adhesive stamp, unless the company is the legal or beneficial owner of land in Victoria;
 - (iii) an endorsement under section 265;
 - (iv) an endorsement in accordance with an approval under section 39 of the **Taxation Administration Act 1997**;
 - (v) an exempt stamp; or
- (b) it is accompanied by a current exemption certificate.

271. Registration of transfer of units

- (1) The trustee or manager of a unit trust scheme must not enter in its records a transfer of units on which duty is charged under this Act unless—
- (a) a proper instrument of transfer has been delivered to the trustee or manager; and
 - (b) the instrument is duly stamped.

Penalty: 100 penalty units.

- (2) For the purposes of this section, the trustee or manager of a unit trust scheme is entitled to assume that an instrument is duly stamped if—
- (a) it bears any of the following—
 - (i) an impressed stamp;
 - (ii) an adhesive stamp;
 - (iii) an endorsement under section 265;
 - (iv) an endorsement in accordance with an approval under section 39 of the **Taxation Administration Act 1997**;
 - (v) an exempt stamp; or
 - (b) it is accompanied by a current exemption certificate.

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s. 272

- (3) A reference in this section to the trustee or manager of a unit trust scheme includes a reference to the responsible entity, or to a custodian or agent of the responsible entity, of a managed investment scheme that is not registered under Chapter 5C of the Corporations Act.

S. 271(3)
amended by
No. 44/2001
s. 3(Sch.
item 32.7).

272. Receipt of instruments in evidence

- (1) An instrument that effects a dutiable transaction or is chargeable with duty under this Act is not available for use in law or equity for any purpose and may not be presented in evidence in a court or tribunal exercising civil jurisdiction unless—
- (a) it is duly stamped; or
 - (b) it is stamped by the Commissioner or in a manner approved by the Commissioner.
- (2) A court or tribunal may admit in evidence an instrument that effects a dutiable transaction, or is chargeable with duty in accordance with the provisions of this Act, and that does not comply with sub-section (1)—
- (a) if the instrument is after its admission transmitted to the Commissioner in accordance with arrangements approved by the court or tribunal; or
 - (b) if (where the person who produces the instrument is not the person liable to pay the duty) the name and address of the person so liable is forwarded, together with the instrument, to the Commissioner in accordance with arrangements approved by the court or tribunal.

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s. 273

- (3) A court or tribunal may admit in evidence an unexecuted counterpart of an instrument that effects a dutiable transaction, or is chargeable with duty in accordance with the provisions of this Act, if the court or tribunal is satisfied that—
- (a) the instrument of which it is a counterpart is duly stamped, or is stamped in a manner approved by the Commissioner; or
 - (b) the counterpart is duly stamped under section 263.

S. 273
substituted by
No. 46/2004
s. 15.

273. Valuation of property

- (1) The Commissioner may require a person who is liable to duty determined by reference to the value of property to provide—
- (a) a declaration by a competent valuer as to the unencumbered value of the property; or
 - (b) any other evidence of that value that the Commissioner thinks fit.
- (2) If—
- (a) a taxpayer provides information to the Commissioner as to the value of any property that is relevant to an assessment of duty (whether in compliance with a requirement under sub-section (1) or otherwise); and
 - (b) the Commissioner considers that the value of the property is understated—
- the Commissioner may refer the matter to the Valuer-General or another competent valuer for valuation of the property.

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Act No. 79/2000

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s. 273

- (3) The taxpayer must pay the cost of a valuation under sub-section (2) if—
- (a) that valuation exceeds the valuation provided by the taxpayer by 15% or more; and
 - (b) the taxpayer does not object to the assessment of duty based on the valuation under sub-section (2) or, if the taxpayer does object, the valuation of the property as determined on objection, appeal or review exceeds the valuation provided by the taxpayer by 15% or more.
- (4) If a valuation of property covers more than one parcel of land, sub-section (3) applies in relation to the valuation of each single parcel of land.
- (5) Sub-section (4) does not apply if the valuation under sub-section (2) does not lead to an increase in the tax liability of the taxpayer.

S. 273(4)
inserted by
No. 85/2005
s. 15.

S. 273(5)
inserted by
No. 85/2005
s. 15.

Example

A taxpayer is liable to duty on the aggregate value of 3 parcels of land. The taxpayer provides a valuation of each parcel and a valuation is also obtained under sub-section (2). If the valuation of any one of those parcels under sub-section (2) exceeds the valuation of that parcel provided by the taxpayer by 15% or more and the taxpayer does not object, or the valuation of that parcel as determined on objection, appeal or review exceeds the taxpayer's valuation by 15% or more, the taxpayer must pay the cost of the valuation of that parcel, unless the valuation under sub-section (2) does not lead to an increase in the taxpayer's total liability for duty.

274. Ascertainment of value of certain items

If it is necessary for the purpose of assessing duty under this Act to ascertain the value of—

- (a) any estate or annuity or interest for the life of any person; or
- (b) any estate or annuity or interest determinable on or subject to any contingency or the happening of any event; or
- (c) any estate or annuity or interest in remainder expectant on the death of any person or expectant on or subject to any contingency or the happening of any event—

regard may be had in ascertaining the value of any such property to the death of the person having the life estate or annuity or interest or the happening of the contingency or event at any time before the assessment of duty is actually made.

275. Impounding of instruments

- (1) The Commissioner may impound any instrument that ought to be but is not stamped or is insufficiently stamped.
- (2) The Commissioner may retain any impounded instrument until the duty or any interest or penalty tax, or all such amounts, have been paid.

276. Injunction to prevent unregistered businesses trading

The Supreme Court, on application by the Commissioner, may grant an injunction restraining a person who is required to be registered under this Act in respect of a business carried on by the person from carrying on such a business unless the person is so registered.

Duties Act 2000
Act No. 79/2000

Chapter 12
Administration and Enforcement

s. 277

* * * * *

Chapter 12
Pt 4
(Heading and
ss 277–281)
repealed by
No. 46/2001
s. 26.

CHAPTER 13
GENERAL

282. Payments from Consolidated Fund

If the Commissioner is authorised or required to pay an amount under this Act, the amount is to be paid from the Consolidated Fund which is appropriated by this section to the necessary extent.

283. Regulations

- (1) The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or that is necessary to be prescribed to give effect to this Act.
 - (2) A regulation may create an offence punishable by a penalty not exceeding 20 penalty units.
-

Duties Act 2000
Act No. 79/2000

Chapter 14
Repeals, Consequential Amendments and Transitional Provisions

s. 284

CHAPTER 14
REPEALS, CONSEQUENTIAL AMENDMENTS AND
TRANSITIONAL PROVISIONS

284. Repeal of Stamps Act 1958

The **Stamps Act 1958** is repealed.

* * * * *

S. 285
repealed by
No. 85/2005
s. 17.

286. Transitional provisions

Schedule 2 has effect.

Duties Act 2000
Act No. 79/2000

Sch. 1

SCHEDULES

Sch. 1
amended by
No. 46/2001
ss 27, 28,
repealed by
No. 85/2005
s. 17.

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SCHEDULE 2

Section 286

TRANSITIONAL PROVISIONS

1. Definitions

In this Schedule—

"**commencement day**" means 1 July 2001;

"**former Act**" means the **Stamps Act 1958**.

2. Savings and transitional regulations

The regulations may contain provisions of a savings and transitional nature consequent on the enactment of this Act.

3. Application of Interpretation of Legislation Act 1984

Except where the contrary intention appears, this Schedule does not affect or take away from the **Interpretation of Legislation Act 1984**.

4. Instruments

This Act applies to instruments first executed on or after the commencement day.

Sch. 2 cl. 4
amended by
No. 46/2001
s. 29(1).

5. Provisions relating to Chapter 2 (Transactions concerning dutiable property)

- (1) The duty charged by Chapter 2 is charged on dutiable transactions that occur on or after the commencement day, except as provided by this clause.
- (2) Section 24 extends to dutiable transactions at least one of which occurred before the commencement day and at least one of which occurred on or after the commencement day if they occurred within 12 months and the other provisions of section 24 are satisfied.
- (3) However, sub-clause (2) does not apply so as to aggregate transactions that occurred before the commencement day and that would not have been aggregated under the law in force immediately before that day.

Duties Act 2000
Act No. 79/2000

Sch. 2

Sch. 2
cl. 5(3A)
inserted by
No. 46/2001
s. 29(2).

(3A) Despite sub-clause (2), section 68 of the former Act continues to apply to a dutiable transaction or series of dutiable transactions that take place on or after 1 July 2001 if the agreement giving rise to that transaction or series of transactions was entered into before 1 July 2001.

(4) Section 35 extends to—

- (a) a transfer of dutiable property to a trustee or nominee;
and
- (b) the payment of duty on that transfer—

before the commencement day if the transfer back to the transferor occurs on or after that day.

Sch. 2 cl. 5(5)
amended by
No. 79/2001
s. 11(1).

(5) Without limiting clause 12, the reference in section 36(c) to duty charged by this Act includes a reference to duty charged by the former Act.

Sch. 2 cl. 5(6)
inserted by
No. 46/2001
s. 29(3).

(6) Despite anything to the contrary in section 28, the rate of duty chargeable on a transfer of land that is made as a result of an agreement entered into before 21 April 1998 is chargeable to the nearest whole dollar of the amount determined as follows or, if that amount is an amount of dollars and fifty cents, to the nearest whole dollar below that amount—

Dutiable value of the land	Rate of duty
Not more than \$20 000	1.4% of the dutiable value
More than \$20 000 but not more than \$100 000	\$280 plus 2.4% of that part of the dutiable value that exceeds \$20 000
More than \$100 000 but not more than \$760 000	\$2200 plus 6% of that part of the dutiable value that exceeds \$100 000
More than \$760 000	\$41 800 plus 5.5% of the dutiable value that exceeds \$760 000

Duties Act 2000
Act No. 79/2000

Sch. 2

6. Provisions relating to Chapter 3 (Certain transactions treated as transfers)

- (1) The duty that is charged by Chapter 3 is charged on an acquisition that occurs on or after the commencement day except as provided by this clause.
- (2) For the purposes of sections 80(2)(e) and 83—
 - (a) if an acquisition of an interest in a private corporation occurs in a month specified in column 1 of the Table, the period of 3 years specified in sections 80(2)(e) and 83 is taken instead to be the period specified opposite that month in column 2;

TABLE

<i>Column 1</i>	<i>Column 2</i>
<i>Month of acquisition</i>	<i>Specified period</i>
July 2001	24 months
August 2001	25 months
September 2001	26 months
October 2001	27 months
November 2001	28 months
December 2001	29 months
January 2002	30 months
February 2002	31 months
March 2002	32 months
April 2002	33 months
May 2002	34 months
June 2002	35 months.

- (b) a reference to duty paid under this Act includes a reference to duty paid under the former Act; and
- (c) a reference to duty paid under those sections is a reference to duty paid under Subdivision (7) of Division 3 of Part II of the former Act.

Sch. 2
cl. 6(2)(c)
amended by
No. 46/2001
s. 29(4).

Duties Act 2000
Act No. 79/2000

Sch. 2

Sch. 2 cl. 6(3)
substituted by
No. 46/2001
s. 29(5).

- (3) However, sub-clause (2) and Chapter 3 do not apply so as to aggregate, for the purpose of determining whether a relevant acquisition has been made or whether duty is chargeable under this Act, interests that were acquired before the commencement day and that would not have been aggregated under the law as in force at the time the interests were acquired.

Sch. 2 cl. 7
substituted by
No. 48/2001
s. 8.

7. Provisions relating to the abolition of stamp duty on leases

- (1) If stamp duty under the former Act has been paid on any lease or agreement for a lease for any definite term of not less than 2 years and the lease is determined before the expiration of the full term in respect of which duty was paid, the Commissioner must, on application within 3 years after the determination, refund to the lessee or (where the lease has been transferred or assigned) to the transferee or assignee an amount equal to the difference between the stamp duty paid and the stamp duty that would have been payable if the lease had been expressed to expire at the date of determination.
- (2) Sub-clause (1) does not apply if the Commissioner is satisfied that, at any time after the determination of the lease, the lessee or an associate of the lessee has occupied the leased property, or substantially the same property, with the agreement (express or implied) of the lessor (other than as a result of the sale of the property to the lessee or associate).
- (3) An application for a refund under this clause must be accompanied by—
- (a) the lease or agreement for a lease on which stamp duty was paid; and
 - (b) a declaration by the applicant stating that neither the lessee nor any associate of the lessee has occupied or will occupy the leased property, or substantially the same property, after the determination of the lease (other than as a result of the sale of the property to the lessee or associate).
- (4) A person must not knowingly make a false declaration under sub-clause (3)(b).

Penalty: 300 penalty units in the case of a body corporate;
60 penalty units in any other case.

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Sch. 2

(5) In this section—

"determination" includes surrender and forfeiture.

8. Provisions relating to Chapter 6 (Hire of goods)

- (1) The duty chargeable by Chapter 6 is charged on a hire of goods that is entered into on or after the commencement day.
- (2) A person who, immediately before the commencement day, is registered under section 131AB of the former Act is taken to be registered under Part 2 of Chapter 6.

9. Provisions relating to Chapter 7 (Mortgages)

- (1) The duty charged by Chapter 7 is charged on—
 - (a) a mortgage that is first executed on or after the commencement day; and
 - (b) an advance or a further advance that is made on or after the commencement day on a mortgage first executed before the commencement day.

Sch. 2
cl. 9(1)(b)
amended by
No. 46/2001
s. 29(6)(a).
- (2) A mortgage duly stamped or not subject to duty under the former Act immediately before the commencement day is on that day taken to be duly stamped under this Act.

Sch. 2 cl. 9(2)
amended by
Nos 46/2001
s. 29(6)(b),
79/2001
s. 11(2)(a).
- (3) A mortgage that is not duly stamped under the former Act immediately before the commencement day is on that day taken to be chargeable with duty under Chapter 7.
- (4) Despite sub-clause (1)(b), a mortgage first executed before the commencement day that secures amounts liable or contingently liable under a bill facility referred to in section 150(1)(b) is chargeable with duty under Chapter 7 on or after that day on the amount by which the advances secured by it exceeds the amount secured or contingently secured by it on 30 June 2001.

Sch. 2 cl. 9(4)
inserted by
No. 46/2001
s. 29(7),
amended by
No. 79/2001
s. 11(2)(b).
- (5) Despite sub-clause (3), if—
 - (a) an advance was made under a mortgage before the commencement day, being a mortgage over property partly within and partly outside Victoria; and

Sch. 2 cl. 9(5)
inserted by
No. 46/2001
s. 29(7).

Duties Act 2000
Act No. 79/2000

Sch. 2

- (b) the mortgage is not stamped before the commencement day—

duty on the mortgage is to be determined in accordance with section 137DA of the former Act as in force immediately before the commencement day.

Sch. 2 cl. 9(6)
inserted by
No. 30/2002
s. 13.

- (6) Sub-clause (4) does not apply to the extent that duty has been paid under a corresponding Act on an amount to which that sub-clause would otherwise apply.

10. Provisions relating to Chapter 8 (Insurance)

- (1) The duty charged by Chapter 8 is charged on—
- (a) the amount of a premium paid in relation to a contract that effects general insurance; or
 - (b) a policy of life insurance—
- if the contract or policy is effected or renewed on or after the commencement day.
- (2) A person who, immediately before the commencement day, is registered under section 96 of the former Act is taken to be registered under Part 2 of Chapter 8.
- (3) A person who, immediately before the commencement day, is an approved insurer under section 111D of the former Act is taken to be registered under section 203.

Sch. 2 cl. 11
substituted by
No. 30/2002
s. 14.

11. Provisions relating to Chapter 9 (Motor vehicle duty)

The amendments made to Chapter 9 by sections 9 and 10 of the **State Taxation Legislation (Further Amendment) Act 2002** apply with respect to applications for registration or transfer of registration of motor vehicles made or lodged on or after 1 July 2002.

12. Duty paid under the former Act

If an assessment or reassessment of duty under this Act is required to take into consideration another amount of duty paid, a reference in this Act to duty includes a reference to duty within the meaning of the former Act that has been paid in accordance with that Act.

13. Stamping under the former Act

An instrument is duly stamped for the purposes of this Act if, immediately before the commencement day, it was duly stamped for the purposes of the former Act.

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Sch. 2

14. Exemptions from duty under the former Act

If, by a provision of an Act other than the former Act, a transaction or instrument was not chargeable with duty under the former Act immediately before the commencement day, the transaction or instrument is not chargeable with duty under this Act, unless the contrary intention appears.

15. Continuation of former Act and regulations

If a provision of the former Act continues to apply by force of this Schedule, the following provisions also continue to apply in relation to that provision—

- (a) any other provision of the former Act necessary to give effect to that continued provision; and
- (b) any regulation made under the former Act for the purposes of that continued provision.

16. Authorised persons

- (1) A person who, immediately before the commencement day, was an authorized person under section 40A of the former Act is taken to be an authorised person under section 264.
- (2) A condition to which the authorization of a person under section 40A was subject immediately before the commencement day is taken to be a condition specified on the person's authorisation by the Commissioner under section 264B.

Sch. 2 cl. 16
inserted by
No. 46/2001
s. 30.

17. State Taxation Legislation (Further Amendment) Act 2002

A person is entitled to a refund of any amount paid as duty before the commencement of section 15 of the **State Taxation Legislation (Further Amendment) Act 2002** that was not payable under this Act as amended by sections 3(1) and (3), 4, 5, 7(2), 8(3) and 13 of that Act.

Sch. 2 cl. 17
inserted by
No. 30/2002
s. 15.

18. State Taxation Acts (Further Tax Reform) Act 2002

Sections 59, 60, 61, 62 and 63, as in force immediately before the commencement of section 4 of the **State Taxation Acts (Further Tax Reform) Act 2002**, continue to apply to a transfer that takes place on or after that commencement if the contract of sale giving rise to the transfer was entered into before that commencement.

Sch. 2 cl. 18
inserted by
No. 29/2002
s. 6.

Duties Act 2000
Act No. 79/2000

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Sch. 2 cl. 19
inserted by
No. 58/2003
s. 18.

19. State Taxation Acts (Miscellaneous Amendments) Act 2003

- (1) In ascertaining, for the purposes of the provisions of the former Act specified in sub-clause (2), the value of anything or the consideration or premium paid for anything, there is to be no discount for the amount of GST (if any) payable on the supply of that thing.
- (2) The provisions of the former Act to which sub-clause (1) applies are—
 - (a) subdivision (6) of Division 3 of Part II and Heading VI in the Third Schedule (Conveyance of Real Property and Land Transfer);
 - (b) subdivision (8) of Division 3 of Part II and Heading VIII in the Third Schedule (Lease or Agreement for a Lease);
 - (c) subdivision (11) of Division 3 of Part II (Insurance and Assurance Business);
 - (d) subdivision (16) of Division 3 of Part II and Heading XXI in the Third Schedule (Motor Vehicle and Heavy Trailer Registration).
- (3) This clause applies, and must be taken always to have applied, from and including 1 July 2000.
- (4) Nothing in this clause affects the rights of the parties in the Supreme Court proceeding known as *Royal & Sun Alliance Insurance Australia Ltd (ACN 007 746 092) v Commissioner of State Revenue (Vic)* (No. 4415 of 2002).

Sch. 2 cl. 20
inserted by
No. 46/2004
s. 16.

20. State Taxation Acts (Tax Reform) Act 2004

- (1) Sections 59 and 60, as amended by section 8 of the **State Taxation Acts (Tax Reform) Act 2004**, apply to a transfer to an eligible pensioner of dutiable property being an estate in fee simple in land if the contract of sale of the land was made on or after 1 May 2004.
- (2) Sections 59 and 60, as in force immediately before the commencement of section 8 of the **State Taxation Acts (Tax Reform) Act 2004**, continue to apply to a transfer to an eligible pensioner of dutiable property being an estate in fee simple in land after that commencement if the contract of sale of the land was made before 1 May 2004.

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- (3) An acquisition by a person before the commencement day of an interest in a unit trust scheme that was a public unit trust scheme within the meaning of this Act as in force immediately before the commencement day is an exempt acquisition. **Sch. 2 cl. 20(3) inserted by No. 46/2004 s. 17.**
- (4) If—
- (a) a person who made an acquisition in a private unit trust scheme before the commencement day makes a relevant acquisition in the scheme on or after the commencement day; and
 - (b) the aggregation of the relevant interests would entitle the person, in the event of the distribution of all the property of the scheme immediately after the later or latest acquisition was made, to 20% or more of the property distributed but less than 50% of that property—
- duty is chargeable under section 83 only in respect of the relevant acquisition that occurred on or after the commencement day.
- (5) A reference in sub-clause (4) to a private unit trust scheme is a reference to a scheme that—
- (a) was a private unit trust scheme within the meaning of this Act as in force immediately before the commencement day; and
 - (b) continues to be a private unit trust scheme within the meaning of this Act as in force on and after the commencement day. **Sch. 2 cl. 20(5) inserted by No. 46/2004 s. 17.**
- (6) This Act, as in force immediately before the commencement day, continues to apply in respect of any transactions occurring on or after that day that resulted from a written agreement made before that day. **Sch. 2 cl. 20(6) inserted by No. 46/2004 s. 17.**
- (7) Without limiting sub-clause (6)—
- (a) section 89C does not apply if the agreement or arrangement referred to in section 89C(1)(b) was made before the commencement day;
 - (b) section 89E does not apply to or in relation to an acquisition referred to in that section—
 - (i) made before the commencement day; or
 - (ii) made in response to an offer or invitation made or arrangement entered into before that day. **Sch. 2 cl. 20(7) inserted by No. 46/2004 s. 17.**

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Sch. 2 cl. 20(8)
inserted by
No. 46/2004
s. 17.

(8) In this clause—

"commencement day" means the day on which section 12 of the **State Taxation Acts (Tax Reform) Act 2004** came into operation.

Sch. 2 cl. 21
inserted by
No. 36/2005
s. 22.

21. State Taxation Acts (General Amendment) Act 2005

(1) Subject to sub-clause (2)—

- (a) Part 4A of Chapter 2 applies to a transfer resulting from a sale contract that was entered into, or an option that was granted, on or after the commencement day;
- (b) section 31, as in force immediately before the commencement day, continues to apply on and after that day to a transfer resulting from an agreement (within the meaning of that section) that was entered into before that day.

(2) If each person who would be liable for duty under section 31 because of sub-clause (1)(b) in respect of a transfer of dutiable property notifies the Commissioner in writing, those persons may elect to have their liability for duty under this Act in respect of the transfer determined in accordance with Part 4A of Chapter 2 instead of section 31.

(3) The Commissioner and each person who notifies the Commissioner under sub-clause (2) is bound by an election under that sub-clause.

(4) Despite its repeal, section 49, as in force immediately before the commencement day, continues to apply on and after that day to a distribution of the assets of a company because of the reduction of the capital of the company if the resolution for the transactions affecting the capital (or a copy of it) was lodged with the Australian Securities and Investments Commission in compliance with Chapter 2J of the Corporations Act before the commencement day.

(5) Despite its repeal, section 50, as in force immediately before the commencement day, continues to apply on and after that day to a distribution of the assets of a company because of the winding up of the company if—

- (a) in the case of a voluntary winding up—the resolution for the winding up was passed in compliance with Chapter 5 of the Corporations Act before the commencement day;

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- (b) in the case of a winding up by the court—the order for the winding up was made before the commencement day.
- (6) Despite its repeal, section 234, as in force immediately before the commencement day, continues to apply on and after that day to a distribution of the assets of a company because of the winding up or the reduction of the capital of the company if—
- (a) in the case of a voluntary winding up—the resolution for the winding up was passed in compliance with Chapter 5 of the Corporations Act before the commencement day;
- (b) in the case of a winding up by the court—the order for the winding up was made before the commencement day;
- (c) in the case of a reduction of capital—the resolution for the transactions affecting the capital (or a copy of it) was lodged with the Australian Securities and Investments Commission in compliance with Chapter 2J of the Corporations Act before the commencement day.
- (7) In this clause—

"commencement day" means the day after the day on which the **State Taxation Acts (General Amendment) Act 2005** receives the Royal Assent.

22. Duties and Land Tax Acts (Amendment) Act 2005

- (1) This clause has effect for the purposes of the definition of "listed trust" in section 3(1) of this Act.
- (2) Despite the substitution of the definition by section 3(1)(b) of the **Duties and Land Tax Acts (Amendment) Act 2005**, a unit trust scheme that, immediately before the commencement of that section 3(1)(b), was a listed trust for the purposes of this Act continues, on and after that commencement, to be a listed trust for the purposes of this Act while all its units continue to be quoted on the Australian Stock Exchange or any exchange of the World Federation of Exchanges.

Sch. 2 cl. 22
inserted by
No. 85/2005
s. 16.

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ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 5 October 2000

Legislative Council: 1 November 2000

The long title for the Bill for this Act was "to create and charge a number of duties, to repeal the **Stamps Act 1958**, to make consequential amendments to other Acts and for other purposes."

The **Duties Act 2000** was assented to on 28 November 2000 and came into operation on 1 July 2001: section 2.

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2. Table of Amendments

This Version incorporates amendments made to the **Duties Act 2000** by Acts and subordinate instruments.

Statute Law Amendment (Relationships) Act 2001, No. 27/2001

Assent Date: 12.6.01
Commencement Date: S. 3(Sch. 1 item 2) on 23.8.01: Government Gazette 23.8.01 p. 1927
Current State: This information relates only to the provision/s amending the **Duties Act 2000**

Corporations (Consequential Amendments) Act 2001, No. 44/2001

Assent Date: 27.6.01
Commencement Date: S. 3(Sch. item 32) on 15.7.01: s. 2
Current State: This information relates only to the provision/s amending the **Duties Act 2000**

Duties (Amendment) Act 2001, No. 46/2001

Assent Date: 27.6.01
Commencement Date: Ss 3–31 on 1.7.01: s. 2(2)
Current State: This information relates only to the provision/s amending the **Duties Act 2000**

State Taxation Acts (Taxation Reform Implementation) Act 2001, No. 48/2001 (as amended by No. 29/2002)

Assent Date: 27.6.01
Commencement Date: Ss 5–6(3), 7, 8 on 1.7.01: s. 2(3); s. 6(4) on 1.7.02: s. 2(4)
Current State: This information relates only to the provision/s amending the **Duties Act 2000**

State Taxation Legislation (Amendment) Act 2001, No. 79/2001

Assent Date: 27.11.01
Commencement Date: Ss 3–11 on 28.11.01: s. 2
Current State: This information relates only to the provision/s amending the **Duties Act 2000**

Corporations (Financial Services Reform Amendments) Act 2002, No. 9/2002

Assent Date: 23.4.02
Commencement Date: S. 3(Sch. item 4) on 23.4.02: s. 2
Current State: This information relates only to the provision/s amending the **Duties Act 2000**

Statute Law (Further Revision) Act 2002, No. 11/2002

Assent Date: 23.4.02
Commencement Date: S. 3(Sch. 1 item 17) on 24.4.02: s. 2(1)
Current State: This information relates only to the provision/s amending the **Duties Act 2000**

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State Taxation Acts (Further Tax Reform) Act 2002, No. 29/2002

Assent Date: 12.6.02
Commencement Date: Ss 3, 5, 6 on 13.6.02: s. 2(1); s. 4 on 1.7.02: s. 2(2)
Current State: This information relates only to the provision/s amending the **Duties Act 2000**

State Taxation Legislation (Further Amendment) Act 2002, No. 30/2002

Assent Date: 12.6.02
Commencement Date: Ss 3(1)(3), 4, 5, 7(2), 8(3), 13 on 1.7.01: s. 2(2); ss 6, 7(1), 8(1)(2), 15 on 13.6.02: s. 2(1); ss 3(2), 9–12, 14 on 1.7.02: s. 2(4)
Current State: This information relates only to the provision/s amending the **Duties Act 2000**

State Taxation Acts (Miscellaneous Amendments) Act 2003, No. 58/2003

Assent Date: 16.6.03
Commencement Date: Ss 6, 13(2), 14, 17 on 1.7.01: s. 2(2); s. 4 on 8.2.03: s. 2(3); ss 3, 5, 7–12, 13(1), 15, 18 on 17.6.03: s. 2(1); s. 16 on 1.7.03: s. 2(5)
Current State: This information relates only to the provision/s amending the **Duties Act 2000**

State Taxation Acts (Further Miscellaneous Amendments) Act 2003, No. 113/2003

Assent Date: 9.12.03
Commencement Date: S. 3 on 16.8.03: s. 2(3); ss 4–6 on 1.1.04: s. 2(2)
Current State: This information relates only to the provision/s amending the **Duties Act 2000**

State Taxation Acts (Tax Reform) Act 2004, No. 46/2004

Assent Date: 16.6.04
Commencement Date: Ss 8–10, 16 on 1.5.04: s. 2(2); ss 3, 12, 17 on 13.5.04: s. 2(3); ss 4–7, 11, 13–15 on 17.6.04: s. 2(1)
Current State: This information relates only to the provision/s amending the **Duties Act 2000**

State Taxation Acts (Amendment) Act 2004, No. 71/2004

Assent Date: 19.10.04
Commencement Date: Ss 4–28 on 20.10.04: s. 2(1)
Current State: This information relates only to the provision/s amending the **Duties Act 2000**

State Concessions Act 2004, No. 82/2004

Assent Date: 16.11.04
Commencement Date: S. 13(Sch. item 2) on 1.3.05: s. 2(2)
Current State: This information relates only to the provision/s amending the **Duties Act 2000**

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State Taxation Acts (General Amendment) Act 2005, No. 36/2005

Assent Date: 28.6.05
Commencement Date: S. 13(1) on 13.5.04: s. 2(3); ss 19–21 on 31.3.05:
s. 2(6); ss 6–11, 13(2)–18, 22 on 29.6.05: s. 2(1); s. 12
on 1.7.05: s. 2(7)
Current State: This information relates only to the provision/s
amending the **Duties Act 2000**

Duties and Land Tax Acts (Amendment) Act 2005, No. 85/2005

Assent Date: 29.11.05
Commencement Date: S. 4 on 15.6.05: s. 2(2); ss 3, 5–17 on 30.11.05: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Duties Act 2000**

Land Tax Act 2005, No. 88/2005

Assent Date: 29.11.05
Commencement Date: S. 117(Sch. 2 item 1) on 1.1.06: s. 2
Current State: This information relates only to the provision/s
amending the **Duties Act 2000**

3. Explanatory Details

¹ S. 28(2): The rate of duty chargeable on dutiable transactions in respect of marketable securities is dealt with in section 29. Concessional rates of duty chargeable on certain dutiable transactions are dealt with in Part 5 of this Chapter.

² S. 35(1): Transfers of marketable securities to or from trustees or nominees are dealt with in section 67.

³ Chapter 3: This Chapter charges duty on certain transactions that are not "dutiable transactions" under Chapter 2. Duty is chargeable under Part 2 of this Chapter on the acquisition by a person of an interest consisting of certain shareholdings in a private company, or unitholdings in a private unit trust scheme, whose property in either case consists, to the prescribed extent, of land holdings.

The duty is chargeable at the general rate for a dutiable transaction under Chapter 2, rather than at the rate applicable to transfers of shares and units. An acquisition statement must be lodged when a majority interest is acquired or increased. Duty on an acquisition statement is chargeable only on interests acquired within a 3-year period. In certain cases the obligation to pay duty at the higher rate is phased-in (see section 87).

Duty is chargeable—

under Part 3 on transactions by which corporate capital is reduced by redemption, surrender or cancellation of shares or reduction of share value or alteration of share rights;

under Part 4 on the allotment of shares by direction.

⁴ S. 105: Section 10(4) of the **Financial Sector Reform (Victoria) Act 1999**, No. 37/1999 provides that property transferred under Part 3 of the Financial Sector (Transfers of Business) Act 1999 of the Commonwealth ("the Commonwealth Act") becomes the property of the receiving body when the certificate of transfer issued under section 18 of the Commonwealth Act comes into force under Division 3 of Part 3 of the Commonwealth Act.

⁵ S. 251(a)(ii): See regulation 4 of the Corporations (Ancillary Provisions) Regulations 2001, S.R. No. 63/2001.

⁶ S. 251(d)(i): See note 5.

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