

Duties Amendment (Additional Duty for Foreign Persons) Bill 2018

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Western Australia

LEGISLATIVE ASSEMBLY

**Duties Amendment (Additional Duty for
Foreign Persons) Bill 2018**

A Bill for

An Act to amend the *Duties Act 2008*.

The Parliament of Western Australia enacts as follows:

s. 1

1 **1. Short title**

2 This is the *Duties Amendment (Additional Duty for Foreign*
3 *Persons) Act 2018*.

4 **2. Commencement**

5 This Act comes into operation as follows —

- 6 (a) sections 1 and 2 — on the day on which this Act
7 receives the Royal Assent;
8 (b) the rest of the Act — on 1 January 2019.

9 **3. Act amended**

10 This Act amends the *Duties Act 2008*.

11 **4. Section 3 amended**

12 In section 3 insert in alphabetical order:

13
14 *foreign dutiable transaction* has the meaning given in
15 section 205H;

16 *foreign landholder duty* means duty under Chapter 3A
17 Part 3;

18 *foreign transfer duty* means duty under Chapter 3A
19 Part 2;

20 *residential property* has the meaning given in
21 section 205E;

22
23 **5. Section 147A amended**

- 24 (1) In section 147A(1) delete the definition of *residential property*.

1 (2) In section 147A(1) insert in alphabetical order:
2

3 *residential land* has the meaning given in
4 section 147D;
5

6 **6. Section 147C amended**

7 In section 147C(1) delete “property.” and insert:
8

9 land.
10

11 **7. Section 147D amended**

12 In section 147D delete “*residential property*” and insert:
13

14 *residential land*
15

16 Note: The heading to amended section 147D is to read:

17 **Residential land**
18

19 **8. Chapter 3A inserted**

20 Before Chapter 4 insert:
21

22 **Chapter 3A — Additional duty for**
23 **foreign persons**

24 **Part 1 — Preliminary**

25 **205A. Terms used**

26 (1) In this Chapter, unless the contrary intention
27 appears —

28 *associate* has the meaning given in section 205B;

- 1 **dwelling** means a building, or part of a building, that is
2 or is intended to be used solely or dominantly as a
3 place of residence;
- 4 **foreign corporation** has the meaning given in
5 section 205C;
- 6 **foreign individual** means an individual who is not —
- 7 (a) an Australian citizen as defined in the
8 *Australian Citizenship Act 2007*
9 (Commonwealth) section 3; or
- 10 (b) the holder of a permanent visa as defined in the
11 *Migration Act 1958* (Commonwealth)
12 section 5(1); or
- 13 (c) the holder of a special category visa as defined
14 in the *Migration Act 1958* (Commonwealth)
15 section 5(1);
- 16 **foreign person** means —
- 17 (a) a foreign corporation; or
- 18 (b) a foreign individual; or
- 19 (c) a foreign trustee;
- 20 **foreign trust** has the meaning given in
21 section 205D(1);
- 22 **foreign trustee** means a person that is the trustee of a
23 foreign trust;
- 24 **parcel of land** means —
- 25 (a) a lot as defined in the *Land Tax Assessment*
26 *Act 2002* Glossary clause 2; or
- 27 (b) 2 or more such lots which have common
28 boundaries and which in the opinion of the
29 Commissioner should be treated as a single lot
30 for the purpose of this Chapter.

- 1 (2) If a term is given a meaning in section 9 it has the same
2 meaning in this Chapter unless the contrary intention
3 appears in this Chapter.
- 4 (3) If a term is given a meaning in section 148 or 161 (as
5 applied by section 205ZE(1)) it has the same meaning
6 in this Chapter unless the contrary intention appears in
7 this Chapter.

8 **205B. Associate**

- 9 (1) A person is an *associate* of another person if —
- 10 (a) the person is a family member (within the
11 meaning given in section 100) of the other
12 person; or
- 13 (b) the person and the other person are related
14 persons under section 162(1)(c) to (g); or
- 15 (c) the person and the other person are partners in
16 the same partnership.
- 17 (2) If a beneficiary of a trust, other than a unit trust scheme
18 or a discretionary trust, is an associate under
19 subsection (1) of a person, a trustee of the trust is also
20 an *associate* of that person.

21 **205C. Foreign corporation**

- 22 (1) In this section —
- 23 *potential voting power* has the meaning given in the
24 *Foreign Acquisitions and Takeovers Act 1975*
25 (Commonwealth) section 4;
- 26 *voting power* has the meaning given in the *Foreign*
27 *Acquisitions and Takeovers Act 1975* (Commonwealth)
28 section 4.
- 29 (2) A corporation is a *foreign corporation* if —
- 30 (a) the corporation is incorporated outside
31 Australia; or

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- 1 (b) the corporation is a corporation in which
2 foreign persons have a controlling interest.
- 3 (3) For the purposes of subsection (2)(b), foreign persons
4 have a controlling interest in a corporation if 1 or more
5 foreign persons or their associates —
- 6 (a) control at least 50% of the voting power in the
7 corporation; or
- 8 (b) control at least 50% of the potential voting
9 power in the corporation; or
- 10 (c) hold at least 50% of the issued shares in the
11 corporation.
- 12 (4) In subsection (3) references to control are to control
13 that is direct or indirect, including control that is
14 exercisable as a result or by means of arrangements or
15 practices, whether or not having legal or equitable
16 force, and whether or not based on legal or equitable
17 rights.
- 18 **205D. Foreign trust**
- 19 (1) A trust is a *foreign trust* if it is —
- 20 (a) a discretionary trust controlled by a foreign
21 person; or
- 22 (b) a discretionary trust and 1 or more foreign
23 persons that are takers in default, together with
24 their associates, hold at least a 50% interest in
25 the discretionary trust; or
- 26 (c) a trust other than a discretionary trust and 1 or
27 more foreign persons, together with their
28 associates, hold beneficial interests in at least
29 50% of the income or property of the trust.
- 30 (2) For the purposes of subsection (1)(a), a discretionary
31 trust is controlled by a foreign person if the person is in
32 a position to influence, either directly or indirectly, the

1 vesting of the whole or any part of the capital of the
2 trust property, or of the whole or any part of the
3 income from the trust property.

4 **205E. Residential property**

5 (1) Subject to subsection (3), any of the following is
6 ***residential property*** —

7 (a) land in Western Australia that is, is capable of
8 being, or is intended to be, used solely or
9 dominantly for residential purposes;

10 (b) land in Western Australia that is vacant or
11 substantially vacant and zoned solely for
12 residential purposes under a planning scheme
13 as defined in the *Planning and Development*
14 *Act 2005* section 4(1);

15 (c) in the case of land described in paragraph (a)
16 or (b) —

17 (i) any estate or interest in the land;

18 (ii) anything that is part of the land as a
19 fixture.

20 (2) For the purposes of Part 2, other than
21 sections 205S(2)(b) and (h) and 205X, ***residential***
22 ***property*** includes a chattel in Western Australia if —

23 (a) the chattel is the subject of a dutiable
24 transaction; and

25 (b) under section 37, the dutiable transaction in
26 respect of the chattel is aggregated with a
27 dutiable transaction in respect of residential
28 property as defined in subsections (1) and (3);
29 and

30 (c) the use of the chattel is directly linked to, or is
31 incidental to, the use of residential property for
32 residential purposes.

- 1 (3) The following are not *residential property* —
- 2 (a) land that is intended to be used solely or
- 3 dominantly for the purposes of an aged care
- 4 facility as defined in the *Land Tax Assessment*
- 5 *Act 2002* section 38A(1);
- 6 (b) land that is intended to be used solely or
- 7 dominantly for the purposes of commercial
- 8 residential premises as defined in the *A New*
- 9 *Tax System (Goods and Services Tax) Act 1999*
- 10 (Commonwealth) section 195-1;
- 11 (c) land that is intended to be used solely or
- 12 dominantly for the purposes of a retirement
- 13 village as defined in the *Retirement Villages*
- 14 *Act 1992* section 3(1);
- 15 (d) an easement;
- 16 (e) a security interest;
- 17 (f) a carbon right or a carbon covenant registered
- 18 under the *Carbon Rights Act 2003*;
- 19 (g) land prescribed for the purposes of this
- 20 subsection.

21 **Part 2 — Foreign transfer duty**

22 **Division 1 — Preliminary**

23 **205F. Terms used**

- 24 (1) In this Part, unless the contrary intention appears —
- 25 *dutiable value* has the meaning given in Chapter 2
- 26 Part 4 Division 5 as applied by section 205P(1);
- 27 *foreign transfer duty endorsed* has the meaning given
- 28 in subsections (2) and (3);
- 29 *new residential property* has the meaning given in
- 30 section 205I;

- 1 *residential partnership acquisition* has the meaning
2 given in section 205X;
- 3 *residential trust acquisition* has the meaning given in
4 section 205T;
- 5 *residential trust surrender* has the meaning given in
6 section 205U;
- 7 *special residential property* means any of the
8 following —
- 9 (a) a life interest in residential property;
- 10 (b) a remainder interest in residential property;
- 11 (c) a lease of residential property, if consideration
12 is paid, or agreed to be paid, by the lessor for
13 the surrender of the lease.
- 14 (2) A foreign dutiable transaction is *foreign transfer duty*
15 *endorsed* if a transaction record for it is foreign transfer
16 duty endorsed.
- 17 (3) A transaction record, or a duplicate of a transaction
18 record, for a foreign dutiable transaction is *foreign*
19 *transfer duty endorsed* if it is duty endorsed and the
20 duty endorsement indicates —
- 21 (a) the amount of foreign transfer duty paid on the
22 transaction; or
- 23 (b) that foreign transfer duty is not chargeable on
24 the transaction.

25 **Division 2 — Imposition of foreign transfer duty**

26 **205G. Foreign transfer duty imposed**

27 Foreign transfer duty is imposed on foreign dutiable
28 transactions.

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Division 3 — Foreign dutiable transactions

205H. Foreign dutiable transaction

- (1) Subject to subsection (2), any of the following is a *foreign dutiable transaction* —
 - (a) a transfer of residential property to a foreign person;
 - (b) an agreement, whether conditional or not, for the transfer of residential property to a foreign person;
 - (c) a declaration of trust over residential property if the trust is a foreign trust;
 - (d) a vesting of residential property in a foreign person —
 - (i) by, or expressly authorised by, statute law of this or another jurisdiction, whether inside or outside Australia; or
 - (ii) by, or as a consequence of, a court order of this or another jurisdiction, whether inside or outside Australia;
 - (e) a foreclosure of a mortgage over residential property by a mortgagee that is a foreign person;
 - (f) an acquisition by a foreign person of new residential property, on its creation, grant or issue;
 - (g) a surrender of special residential property to a foreign person;
 - (h) a residential trust acquisition or residential trust surrender;
 - (i) a residential partnership acquisition.

- 1 (2) The following transactions are not *foreign dutiable*
2 *transactions* —
- 3 (a) a transaction the subject of which is a right if
4 no consideration is paid, or agreed to be paid,
5 for the transaction;
- 6 (b) a transfer of, or an agreement for the transfer
7 of, a lease if no consideration is paid, or agreed
8 to be paid, for the transfer or agreement;
- 9 (c) a transaction prescribed as an excluded
10 transaction for the purposes of this section.
- 11 (3) Without limiting subsection (1)(d)(i), section 12
12 applies for the purposes of determining when
13 residential property is vested under statute law.

14 **205I. New residential property**

- 15 (1) Subject to subsection (2), any of the following is *new*
16 *residential property* —
- 17 (a) residential property;
- 18 (b) the following rights —
- 19 (i) an option to acquire residential property,
20 unless the option is part of a
21 simultaneous put and call option over
22 residential property;
- 23 (ii) a right to acquire residential property;
- 24 (iii) any other right prescribed for the
25 purposes of this subsection.
- 26 (2) The following are not *new residential property* —
- 27 (a) a lease if no consideration is paid, or agreed to
28 be paid, for the grant of the lease;
- 29 (b) any other residential property prescribed as
30 excluded property for the purposes of this
31 section.

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Division 4 — Collection of foreign transfer duty

205J. When liability for duty arises

Liability for foreign transfer duty chargeable on a foreign dutiable transaction arises when the liability for transfer duty chargeable on the transaction arises under section 19.

205K. Who is liable to pay duty

- (1) A person is liable to pay foreign transfer duty on a foreign dutiable transaction if the person is —
 - (a) liable to pay transfer duty on the transaction; and
 - (b) a foreign person.
- (2) A person is liable to pay foreign transfer duty, regardless of whether the person is a foreign person, if —
 - (a) the person is liable to pay transfer duty on a foreign dutiable transaction referred to in section 205H(1)(h); or
 - (b) the person is, under section 69 as applied by section 205S(1), the person liable to pay foreign transfer duty.
- (3) A foreign individual or foreign corporation is not liable to pay foreign transfer duty on a foreign dutiable transaction if —
 - (a) the individual or corporation is acting in their capacity as trustee; and
 - (b) the individual or corporation is not a foreign trustee.

1 **205L. Joint tenants to be treated as tenants in common in**
2 **equal shares**

3 For the purpose of charging foreign transfer duty, joint
4 tenants of residential property are taken to hold the
5 property as tenants in common in equal shares.

6 **205M. Foreign transfer duty declaration to be lodged**

7 (1) Subject to subsection (2), the person liable to pay
8 foreign transfer duty on a foreign dutiable transaction
9 must lodge a foreign transfer duty declaration in the
10 approved form within 2 months after the day on which
11 liability for foreign transfer duty on the transaction
12 arises.

13 Penalty for this subsection: a fine of \$5 000.

14 (2) A person is not required to lodge a foreign transfer
15 duty declaration in respect of a general conditional
16 agreement in respect of which liability for transfer duty
17 does not arise under section 19(2).

18 **205N. When duty must be paid**

19 (1) A person liable to pay foreign transfer duty on a
20 foreign dutiable transaction must pay the duty within
21 1 month after the date of the assessment notice issued
22 in relation to an assessment of the duty, unless a later
23 time is provided under subsection (2) or (3) in respect
24 of the transaction.

25 (2) Unless subsection (3) applies, foreign transfer duty
26 must be paid within 12 months after the day on which
27 liability for foreign transfer duty on the transaction
28 arises if the transaction is —

29 (a) a conditional agreement; or

30 (b) a foreign dutiable transaction referred to in
31 section 205H(1)(a), (b), (c) or (d) if a document

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- 1 relating to the transaction must be registered
2 under —
- 3 (i) the *Registration of Deeds Act 1856*; or
4 (ii) the *Transfer of Land Act 1893*.
- 5 (3) Foreign transfer duty must be paid within 3 years after
6 the day on which liability for foreign transfer duty on
7 the transaction arises if the transaction is —
- 8 (a) a subdivision conditional agreement; or
9 (b) an issue of title conditional agreement.
- 10 **205O. Rate of foreign transfer duty**
- 11 Foreign transfer duty is chargeable at the rate of 7% of
12 the dutiable value of the foreign dutiable transaction.
- 13 **205P. Dutiable value**
- 14 (1) The provisions of Chapter 2 Part 4 Division 5 other
15 than sections 31(5), 37, 39(3) and 40 apply, with all
16 appropriate modifications, in respect of foreign transfer
17 duty in the same way as they apply in respect of
18 transfer duty.
- 19 (2) Without limiting subsection (1), the provisions applied
20 by that subsection apply as if —
- 21 (a) a reference to dutiable property were a
22 reference to residential property; and
- 23 (b) a reference to a dutiable transaction were a
24 reference to a foreign dutiable transaction; and
- 25 (c) other than in sections 28(6) and 29(4), a
26 reference to duty were a reference to foreign
27 transfer duty; and
- 28 (d) a reference to duty endorsed were a reference to
29 foreign transfer duty endorsed; and

- 1 (e) the reference in section 28(1) to
2 section 11(1)(d)(ii) or (e) were a reference to
3 section 205H(1)(d)(ii) or (e); and
4 (f) the reference in section 29(4) to nominal duty
5 were a reference to no foreign transfer duty.
- 6 (3) If a foreign dutiable transaction is aggregated with
7 another dutiable transaction under section 37, then the
8 foreign dutiable transaction is treated as having taken
9 place at the time that the last of the aggregated
10 transactions took place.
- 11 (4) Foreign transfer duty is chargeable on any foreign
12 dutiable transaction effecting an exchange of
13 residential property to a foreign person for dutiable
14 property as if the exchange involved the transfer of the
15 residential property for consideration equal to the
16 unencumbered value of the residential property.

17 **205Q. No double foreign transfer duty**

- 18 (1) The provisions of Chapter 2 Part 4 Division 6 other
19 than section 42(15) apply, with all appropriate
20 modifications, in respect of foreign transfer duty in the
21 same way as they apply in respect of transfer duty.
- 22 (2) Without limiting subsection (1), the provisions applied
23 by that subsection apply as if —
- 24 (a) a reference to dutiable property were a
25 reference to residential property; and
26 (b) a reference to a dutiable transaction were a
27 reference to a foreign dutiable transaction; and
28 (c) a reference to duty were a reference to foreign
29 transfer duty; and
30 (d) a reference to duty endorsed were a reference to
31 foreign transfer duty endorsed; and

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- 1 (e) a reference to the general or a concessional rate
2 were a reference to the rate of foreign transfer
3 duty; and
4 (f) the reference in section 42(12) to
5 section 11(1)(d) were a reference to
6 section 205H(1)(d).

7 **205R. Interim assessment of foreign transfer duty**

- 8 (1) The Commissioner may make an assessment (an
9 *interim assessment*) of a portion of the foreign transfer
10 duty payable on a foreign dutiable transaction if, under
11 section 44A(1), the Commissioner makes an
12 assessment of a portion of the transfer duty payable on
13 the transaction.
14 (2) For the purposes of making an interim assessment, the
15 foreign transfer duty payable is to be determined as if
16 the portion of the dutiable value of the foreign dutiable
17 transaction were the full dutiable value of the
18 transaction.

19 **Division 5 — Application of Chapter 2 Part 5 to certain**
20 **transactions**

21 **205S. Application of Chapter 2 Part 5 to foreign dutiable**
22 **transactions**

- 23 (1) The provisions of Chapter 2 Part 5 other than
24 section 70 and Divisions 5 and 6 apply, with all
25 appropriate modifications, in respect of foreign transfer
26 duty in the same way as they apply in respect of
27 transfer duty.
28 (2) Without limiting subsection (1), the provisions applied
29 by that subsection apply as if —
30 (a) a reference to dutiable property (other than in
31 Chapter 2 Part 5 Division 4) were a reference to
32 residential property; and

- 1 (b) a reference to dutiable property in Chapter 2
2 Part 5 Division 4 were a reference to each of
3 the following —
4 (i) residential property;
5 (ii) a chattel in Western Australia, the use of
6 which is directly linked to, or is
7 incidental to, the use of residential
8 property for residential purposes;
9 and
10 (c) a reference to a dutiable transaction were a
11 reference to a foreign dutiable transaction; and
12 (d) a reference to duty were a reference to foreign
13 transfer duty; and
14 (e) a reference to duty endorsed were a reference to
15 foreign transfer duty endorsed; and
16 (f) a reference to a trust acquisition were a
17 reference to a residential trust acquisition; and
18 (g) a reference to a trust surrender were a reference
19 to a residential trust surrender; and
20 (h) a reference in section 73 to land in Western
21 Australia were a reference to residential
22 property; and
23 (i) a reference in section 76 or 77 to a partnership
24 acquisition were a reference to a residential
25 partnership acquisition; and
26 (j) each provision specified in Column 1 of the
27 Table were replaced by the provision specified
28 opposite it in Column 2 of the Table.

Table

Column 1	Column 2
s. 55	s. 205T

s. 8

Column 1	Column 2
s. 56	s. 205U
s. 59	s. 205V
s. 67	s. 205W
s. 72	s. 205X

1 **205T. References to residential trust acquisition**

2 A reference to a residential trust acquisition is to the
3 acquisition by a taker in default that is a foreign person
4 of an interest in a discretionary trust that holds —

- 5 (a) residential property; or
6 (b) an indirect interest in residential property.

7 **205U. References to residential trust surrender**

8 A reference to a residential trust surrender is to the
9 surrender by a taker in default of an interest in a
10 discretionary trust that holds residential property or an
11 indirect interest in residential property, if the surrender
12 results in a foreign person acquiring an interest in the
13 discretionary trust.

14 **205V. Dutiable value of residential trust acquisition or**
15 **residential trust surrender**

- 16 (1) The dutiable value of a residential trust acquisition
17 is —
18 (a) the consideration for the acquisition so far as
19 the consideration relates to residential
20 property —
21 (i) held by the discretionary trust; or

- 1 (ii) to which an entity linked to the trustee
2 of the discretionary trust is entitled;
- 3 or
- 4 (b) the value of the taker in default's interest in the
5 discretionary trust at the time when liability for
6 foreign transfer duty on the acquisition arises
7 if —
- 8 (i) there is no consideration for the
9 acquisition; or
- 10 (ii) the consideration cannot be ascertained
11 when liability for foreign transfer duty
12 on the acquisition arises; or
- 13 (iii) the value of the taker in default's
14 interest is greater than the consideration
15 for the acquisition.
- 16 (2) The dutiable value of a residential trust surrender is —
- 17 (a) the consideration for the surrender so far as the
18 consideration relates to —
- 19 (i) residential property held by the
20 discretionary trust or to which an entity
21 linked to the trustee of the discretionary
22 trust is entitled; and
- 23 (ii) the interests in the discretionary trust
24 acquired by a foreign person as a result
25 of the surrender;
- 26 or
- 27 (b) the value of a foreign person's interest in the
28 discretionary trust at the time immediately after
29 liability for foreign transfer duty on the
30 surrender arises less the value of the foreign
31 person's interest in the discretionary trust

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1 immediately before liability for foreign transfer
2 duty on the surrender arises if —
3 (i) there is no consideration for the
4 surrender; or
5 (ii) the consideration cannot be ascertained
6 when liability for foreign transfer duty
7 on the surrender arises; or
8 (iii) the value of the taker in default's
9 interest is greater than the consideration
10 for the surrender.

11 **205W. Share disposition taken to be agreement for transfer**
12 **of trust property**

13 (1) A disposition of a share in a corporate trustee is taken
14 to be an agreement for the transfer of residential
15 property and is liable to foreign transfer duty
16 accordingly if —
17 (a) it is a transaction, or part of a transaction, that
18 is a scheme or arrangement, or part of a scheme
19 or arrangement; and
20 (b) the transaction results in —
21 (i) a foreign person increasing its beneficial
22 interest in residential property held
23 directly or indirectly by the corporate
24 trustee of a discretionary trust; or
25 (ii) a foreign person acquiring a beneficial
26 interest in residential property held
27 directly or indirectly by the corporate
28 trustee of a discretionary trust.
29 (2) Subsection (1) does not apply to the disposition of a
30 share by which the personal representative of a
31 deceased person disposes of a share to a beneficiary in
32 the administration of the estate of the deceased person.

1 **205X. References to residential partnership acquisition**

2 A reference to a residential partnership acquisition is to
3 a foreign person acquiring a partnership interest in a
4 partnership that holds —

- 5 (a) residential property; or
6 (b) an indirect interest in residential property.

7 **Division 6 — Exemptions and reassessment**

8 **Subdivision 1 — Exempt transactions**

9 **205Y. Transactions on which minimum, nominal or no**
10 **transfer duty payable**

11 (1) Foreign transfer duty is not chargeable on a transaction
12 to which section 39 applies if the minimum amount of
13 transfer duty referred to in section 39(3) is payable on
14 the transaction.

15 (2) Except as provided in subsection (3), foreign transfer
16 duty is not chargeable on a foreign dutiable transaction
17 to the extent that —

18 (a) transfer duty is not chargeable on the
19 transaction under Chapter 2 Part 5 Division 6;
20 or

21 (b) transfer duty is not chargeable on the
22 transaction under Chapter 2 Part 6 Division 1;
23 or

24 (c) nominal duty is chargeable on the transaction
25 under Chapter 2 Part 6 Division 2.

26 (3) Foreign transfer duty is chargeable on a foreign
27 dutiable transaction if —

28 (a) section 97 applies to the transaction, the person
29 to whom the property is transferred or agreed to
30 be transferred is a foreign person, and foreign

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- 1 transfer duty was not chargeable on the
2 acquisition of the property by the person from
3 whom the property is transferred or agreed to
4 be transferred; or
- 5 (b) section 114 applies to the transaction, the taker
6 in default is a foreign person, and foreign
7 transfer duty was not chargeable on the
8 acquisition of the property by the trustee of the
9 trust or on any acquisition by which the taker in
10 default acquired its interest in the trust; or
- 11 (c) section 115 applies to the transaction, the
12 beneficiary is a foreign person, and foreign
13 transfer duty was not chargeable on the
14 acquisition of the property by the trustee of the
15 trust; or
- 16 (d) section 116 applies to the transaction, the
17 beneficiary is a foreign person, and the
18 declaration of trust has not been foreign transfer
19 duty endorsed; or
- 20 (e) section 117(1)(a) or (b) applies to the
21 transaction, the real purchaser is a foreign
22 person, and foreign transfer duty was not
23 chargeable on the acquisition of the property by
24 the apparent purchaser.

25 **205Z. Transactions relating to agreements for transfer of**
26 **residential property**

- 27 (1) Foreign transfer duty is not chargeable on an
28 agreement for the transfer of residential property if —
- 29 (a) the agreement is an agreement referred to in
30 section 42(2) or (4), the purchaser is a foreign
31 person, and the transferee is not a foreign
32 person; or

- 1 (b) the agreement is an agreement referred to in
2 section 42(4B), the purchaser is a foreign
3 person, and the trust is not a foreign trust; or
4 (c) the agreement is an agreement referred to in
5 section 42(5), the person named in the
6 agreement as the purchaser is a foreign person,
7 and the corporation is not a foreign corporation.
- 8 (2) Foreign transfer duty is not chargeable on an
9 agreement for the transfer of residential property to a
10 transferee if the property is transferred in conformity
11 with the agreement and the transferee is not a foreign
12 person when the property is transferred.

13 **Subdivision 2 — Exemptions relating to construction,
14 refurbishment and subdivision**

15 **205ZA. Exemption relating to construction or
16 refurbishment of 10 or more dwellings**

- 17 (1) Foreign transfer duty is not chargeable on a foreign
18 dutiable transaction to the extent that the transaction
19 relates to a parcel of land to which this section applies.
- 20 (2) This section applies to a parcel of land if —
21 (a) at the time when liability for foreign transfer
22 duty on the transaction arises, there is no
23 building, or part of a building, on the parcel of
24 land capable of being used solely or dominantly
25 as a place of residence; and
26 (b) the person liable to pay foreign transfer duty on
27 the transaction or an associate of the person
28 intends to construct, refurbish or complete the
29 construction or refurbishment of 10 or more
30 dwellings on the parcel of land; and
31 (c) within the period of 5 years beginning on the
32 day on which the transaction is completed, the
33 person or associate complies with

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- 1 subsection (3) in relation to 10 or more
2 dwellings on the parcel of land; and
- 3 (d) the parcel of land is, in the Commissioner's
4 opinion, suitable for 10 or more dwellings.
- 5 (3) A person or an associate of a person complies with this
6 subsection in relation to —
- 7 (a) a dwelling the person or associate intends to
8 construct, if the person or associate begins
9 construction of that dwelling or another
10 dwelling on the parcel of land; or
- 11 (b) a dwelling the person or associate intends to
12 refurbish, if all licences, approvals,
13 registrations, exemptions and other kinds of
14 authorisation necessary to refurbish that
15 dwelling or another dwelling on the parcel of
16 land are issued, granted or obtained; or
- 17 (c) a dwelling the person or associate intends to
18 complete the construction or refurbishment of,
19 if that dwelling or another dwelling on the
20 parcel of land, construction or refurbishment of
21 which is completed by the person or associate,
22 is ready for occupation as a place of residence.
- 23 (4) For the purposes of subsection (3)(a), construction of a
24 dwelling begins on —
- 25 (a) the day on which laying the foundations for the
26 dwelling begins; or
- 27 (b) another day the Commissioner considers
28 appropriate in the circumstances of the case.
- 29 (5) An application for reassessment under
30 section 205ZC(2) because of this section must be made
31 on or before the later of the following —
- 32 (a) the last day of the period of 1 year beginning on
33 the day on which the person or associate

- 1 complies with subsection (3) in relation to 10 or
2 more dwellings;
3 (b) the last day of the period of 5 years beginning
4 on the day on which the transaction is
5 completed.

6 **205ZB. Exemption relating to subdivision for purpose of**
7 **constructing 10 or more dwellings**

- 8 (1) Foreign transfer duty is not chargeable on a foreign
9 dutiabale transaction to the extent that the transaction
10 relates to a parcel of land to which this section applies.
11 (2) This section applies to a parcel of land if —
12 (a) at the time when liability for foreign transfer
13 duty on the transaction arises, the parcel of land
14 is vacant or substantially vacant; and
15 (b) the person liable to pay foreign transfer duty on
16 the transaction or an associate of the person
17 intends to subdivide or complete subdividing
18 the parcel of land for the purpose of a person
19 constructing 10 or more dwellings on the parcel
20 of land; and
21 (c) within the period of 5 years beginning on the
22 day on which the transaction is completed, the
23 person or associate —
24 (i) begins subdividing the parcel of land; or
25 (ii) if subdividing the parcel of land has
26 begun when the transaction is
27 completed, completes subdividing the
28 parcel of land;
29 and
30 (d) the parcel of land is, in the Commissioner's
31 opinion, suitable for 10 or more dwellings.

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- 1 (3) An application for reassessment under
2 section 205ZC(2) because of this section must be made
3 on or before the later of the following —
- 4 (a) the last day of the period of 1 year beginning on
5 the day on which the person or associate —
- 6 (i) begins subdividing the parcel of land; or
7 (ii) if subdividing the parcel of land has
8 begun when the transaction is
9 completed, completes subdividing the
10 parcel of land;
- 11 (b) the last day of the period of 5 years beginning
12 on the day on which the transaction is
13 completed.
- 14 (4) For the purposes of subsections (2)(c) and (3)(a) —
- 15 (a) a person begins subdividing land on the day on
16 which the land is subdivided under the *Land*
17 *Tax Assessment Act 2002* Glossary clause 3;
18 and
- 19 (b) a person completes subdividing land on the day
20 on which the new certificate of title is created
21 and registered for the subdivided land.

22 **Subdivision 3 — Reassessment**

23 **205ZC. Reassessment**

- 24 (1) If the Commissioner is required to reassess the liability
25 to transfer duty of a foreign dutiable transaction that is
26 not liable to foreign transfer duty because of
27 section 205Y —
- 28 (a) the Commissioner, on the application of a
29 taxpayer, must reassess the liability to foreign
30 transfer duty of the transaction; and
- 31 (b) the limitation as to time (if any) that applies in
32 respect of the reassessment of transfer duty

- 1 applies in respect of the reassessment of foreign
2 transfer duty; and
- 3 (c) if the reassessment of transfer duty is under
4 section 107 — the application for reassessment
5 under this subsection must be made in the
6 approved form.
- 7 (2) The Commissioner, on the application of a taxpayer,
8 must reassess the liability to foreign transfer duty of a
9 foreign dutiable transaction if the liability is affected
10 by section 205Z, 205ZA or 205ZB.
- 11 (3) The limitations as to time in the Taxation
12 Administration Act section 17 do not apply in respect
13 of a reassessment because of section 205ZA or 205ZB.
- 14 (4) An application for reassessment under subsection (2)
15 must be made in the approved form.

16 **Part 3 — Foreign landholder duty**

17 **Division 1 — Preliminary**

18 **205ZD. Terms used**

- 19 (1) In this Part, unless the contrary intention appears —
20 *foreign acquirer* means —
- 21 (a) a foreign person that acquires an interest in a
22 residential landholder by a foreign landholder
23 acquisition; or
- 24 (b) a foreign person that is a related person to a
25 person that acquires an interest in a residential
26 landholder by a foreign landholder acquisition;
27 or
- 28 (c) if there is more than 1 person referred to in
29 paragraph (a) or (b), each of them;

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1 *foreign landholder acquisition* has the meaning given
2 in sections 205ZH and 205ZI;

3 *residential landholder* means an entity that is a
4 residential landholder under section 205ZG.

5 (2) A reference in this Part to a provision of Chapter 3 that
6 is applied by section 205ZE(1) is a reference to that
7 provision as so applied.

8 **Division 2 — Application of Chapter 3**

9 **205ZE. Application of Chapter 3**

10 (1) The provisions of Chapter 3 other than the provisions
11 set out in the Table apply, with all appropriate
12 modifications, in respect of foreign landholder duty in
13 the same way as they apply in respect of landholder
14 duty.

15 **Table**

s. 149(2A) and (4)	Part 2
s. 155	Part 5 Division 2 Subdivision 2
s. 167	s. 168
s. 171	Part 5 Division 2 Subdivision 4
s. 175	Part 6 Division 4
s. 193	Part 6 Division 6A
Part 6 Division 7	

- 1 (2) Without limiting subsection (1), the provisions applied
2 by that subsection apply as if —
- 3 (a) a reference to duty or landholder duty were a
4 reference to foreign landholder duty; and
- 5 (b) a reference to an acquirer were a reference to a
6 foreign acquirer; and
- 7 (c) a reference to a landholder were a reference to a
8 residential landholder; and
- 9 (d) a reference to a relevant acquisition were a
10 reference to a foreign landholder acquisition;
11 and
- 12 (e) a reference to land, land in Western Australia or
13 dutiable property were a reference to residential
14 property; and
- 15 (f) a reference to a chattel were a reference to a
16 chattel, the use of which is directly linked to, or
17 is incidental to, the use of residential property
18 for residential purposes; and
- 19 (g) the reference in section 157(1) to section 155
20 were a reference to section 186; and
- 21 (h) the provisions of Division 8 Subdivisions 1
22 and 2 of this Chapter were provisions of
23 Chapter 3 Part 5 Division 2 Subdivision 3; and
- 24 (i) the reference in the definition of *call option*,
25 *put option* and *simultaneous put and call*
26 *option* in section 177(1) to section 44 were a
27 reference to section 44 as applied by
28 section 205S(1); and
- 29 (j) a reference in section 185 or 189 to a related
30 person were a reference to a related person that
31 is a foreign person; and
- 32 (k) a reference in section 188(1) or 189(1) to
33 applying the appropriate rate of duty under

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- 1 section 184(1) to the value were a reference to
2 working out 7% of the value; and
3 (l) the reference in section 189(6) to 1 July 2008
4 were a reference to 1 January 2019; and
5 (m) a reference to a provision specified in
6 Column 1 of the Table were a reference to the
7 provision specified opposite it in Column 2 of
8 the Table.

9 **Table**

Column 1	Column 2
s. 67	s. 205W
s. 151	s. 205ZF
s. 155	s. 205ZG
s. 163	s. 205ZH
s. 164	s. 205ZI
s. 167	s. 205ZM
s. 200	s. 205ZS

10 **Division 3 — Imposition of foreign landholder duty**

11 **205ZF. Foreign landholder duty imposed**

12 Foreign landholder duty is imposed in respect of any
13 foreign landholder acquisition of an interest in a
14 residential landholder.

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Division 4 — Residential landholders to which this Part applies

205ZG. Which entities are residential landholders

- (1) This section applies where it is necessary to determine in relation to an acquisition of an interest in an entity whether the entity is a residential landholder for the purposes of section 205ZH or 205ZI.
- (2) A corporation is a residential landholder if immediately before the acquisition —
 - (a) it is entitled to residential property or an entity linked to the corporation is so entitled; and
 - (b) it is a landholder.
- (3) A unit trust scheme is a residential landholder if immediately before the acquisition —
 - (a) the trustee of the scheme is entitled to residential property or an entity linked to the unit trust scheme is so entitled; and
 - (b) the scheme is a landholder.
- (4) For the purposes of subsections (2)(a) and (3)(a) —
 - (a) a partnership, as a linked entity, is entitled to residential property if the partnership property is or includes residential property; and
 - (b) a unit trust scheme, as a linked entity, is entitled to residential property if the trustee of the scheme is so entitled.

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Division 5 — Acquisitions to which this Part applies

205ZH. Acquisition of significant interest in residential landholder

- (1) An acquisition by a foreign person of an interest in an entity is a *foreign landholder acquisition* if —
 - (a) immediately before the acquisition the entity was a residential landholder in which the interest (if any) of the foreign person and the interest (if any) of any related person did not amount to a significant interest; and
 - (b) after the acquisition the entity is a residential landholder in which —
 - (i) the interest of the foreign person is a significant interest; or
 - (ii) the interest of the foreign person when aggregated with any interest of a related person amounts to a significant interest.

- (2) An acquisition by a person that is not a foreign person of an interest in an entity is a *foreign landholder acquisition* if —
 - (a) immediately before the acquisition the entity was a residential landholder in which the interest (if any) of the person and the interest (if any) of any related person did not amount to a significant interest; and
 - (b) after the acquisition the entity is a residential landholder in which the person and at least 1 related person that is a foreign person has an interest and in which —
 - (i) the interest of the person is a significant interest; or

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- (ii) the interest of the person when aggregated with any interest of a related person amounts to a significant interest.

205ZI. Acquisition of further interest by holder of significant interest

- (1) An acquisition by a foreign person of an interest in an entity is also a *foreign landholder acquisition* if —
 - (a) immediately before the acquisition the entity is a residential landholder in which —
 - (i) the interest of the foreign person is a significant interest; or
 - (ii) the interest of the foreign person when aggregated with any interest of a related person amounts to a significant interest; or
 - (iii) the interest of a related person is a significant interest;
 - and
 - (b) by the acquisition the foreign person or any related person acquires, or the foreign person and any related person acquire, a further interest in the landholder.
- (2) An acquisition by a person that is not a foreign person of an interest in an entity is also a *foreign landholder acquisition* if —
 - (a) immediately before the acquisition the entity is a residential landholder in which at least 1 related person that is a foreign person has an interest and in which —
 - (i) the interest of the person is a significant interest; or
 - (ii) the interest of the person when aggregated with any interest of a related

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- 1 person amounts to a significant interest;
2 or
3 (iii) the interest of a related person is a
4 significant interest;
5 and
6 (b) by the acquisition the person or a related person
7 acquires, or the person and a related person
8 acquire, a further interest in the landholder.

9 **Division 6 — Collection of foreign landholder duty**

10 **205ZJ. Rate of foreign landholder duty**

11 Foreign landholder duty is chargeable —

- 12 (a) by reference to the value referred to in
13 section 188(1) or 189(1), as the case requires;
14 and
15 (b) at the rate of 7% of that value.

16 **205ZK. Calculation of foreign landholder duty where**
17 **landholder duty calculated under s. 193**

- 18 (1) This section applies to the calculation of foreign
19 landholder duty in respect of a foreign landholder
20 acquisition if the Commissioner calculates landholder
21 duty in respect of the acquisition under section 193(3).
22 (2) If this section applies —
23 (a) the Commissioner may calculate the foreign
24 landholder duty in respect of the acquisition as
25 if the acquisition occurred at the end of the
26 relevant period (as defined in section 193(1));
27 and

- 1 (b) if the single relevant acquisition referred to in
2 section 193(3) (the *single acquisition*) includes
3 more than 1 foreign landholder acquisition —
4 (i) the Commissioner is not required to
5 make a separate calculation of foreign
6 landholder duty in respect of the
7 acquisition; and
8 (ii) the Commissioner may calculate foreign
9 landholder duty in respect of all foreign
10 landholder acquisitions forming part of
11 the single acquisition as if all of the
12 acquisitions had been made by a single
13 foreign landholder acquisition.

14 **Division 7 — Interim assessment of foreign landholder**
15 **duty**

16 **205ZL. Interim assessment of foreign landholder duty**

- 17 (1) The Commissioner may make an assessment (an
18 *interim assessment*) of a portion of the foreign
19 landholder duty payable in respect of a foreign
20 landholder acquisition if, under section 195A(1), the
21 Commissioner makes an assessment of a portion of the
22 landholder duty payable in respect of the acquisition.
23 (2) For the purposes of making an interim assessment, the
24 foreign landholder duty payable is to be determined as
25 if the portion of the value of the residential landholder
26 were the full value of the residential landholder.
27 (3) The Commissioner can make a determination of a
28 portion of the value of a residential landholder for the
29 purposes of making an interim assessment even though
30 the Commissioner has ascertained —
31 (a) the value of only some of the residential
32 property or chattels to which section 186(1)
33 applies; or

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- 1 (b) only a portion of the value of particular
2 residential property or chattels to which
3 section 186(1) applies.

4 **Division 8 — Exemptions and reassessment**

5 **Subdivision 1 — Exempt acquisitions**

6 **205ZM. Exemption if foreign transfer duty would not be**
7 **chargeable**

- 8 (1) In this section —
9 *acquiring person*, in relation to an acquisition, means
10 the person making the acquisition;
11 *relinquishing person*, in relation to an acquisition,
12 means the person from whom the interest in the
13 landholder was acquired.
- 14 (2) An acquisition is exempt if no foreign transfer duty
15 would be chargeable, other than under Chapter 6, on
16 the transfer, at the time of the acquisition, by the
17 relinquishing person to the acquiring person of
18 residential property of the landholder, or of a linked
19 entity in respect of the landholder, as if the property
20 were that of the relinquishing person.
- 21 (3) For the purposes of subsection (2), the acquiring person
22 in respect of an acquisition described in
23 section 205ZH(2) or 205ZI(2) is to be treated as if they
24 were a foreign person.
- 25 (4) If the acquiring person did not acquire the interest in
26 the residential landholder from another person, the
27 reference to the relinquishing person is to be read
28 (according to what is relevant) as a reference to the or a
29 person —
- 30 (a) whose interest in the landholder is decreased
31 because of the acquisition; or

- 1 (b) whose interest in the landholder decreased
2 resulting in the acquisition.

3 Note for this subsection:

4 An acquiring person may acquire an interest in a company
5 by the company issuing shares to the person, or buying
6 back shares of another person.

7 **205ZN. Exemption for certain acquisitions treated as made**
8 **under agreement referred to in s. 176(2)**

9 An acquisition is exempt if —

- 10 (a) for the purposes of an assessment, the
11 acquisition was treated as having been made
12 under an agreement of the kind referred to in
13 section 176(2); and
14 (b) when the agreement is completed the acquirer
15 is not a foreign person; and
16 (c) had the acquisition not been treated as
17 mentioned in paragraph (a) the liability for
18 foreign landholder duty in respect of the
19 acquisition would not have arisen.

20 **Subdivision 2 — Exemptions relating to construction,**
21 **refurbishment and subdivision**

22 **205ZO. Exemption relating to construction or**
23 **refurbishment of 10 or more dwellings**

- 24 (1) An acquisition is exempt if —
25 (a) at the time when the acquisition occurs, the
26 residential landholder or a linked entity in
27 respect of the landholder is entitled to a parcel
28 of land on which there is no building, or part of
29 a building, capable of being used solely or
30 dominantly as a place of residence; and
31 (b) the landholder, linked entity or an associate of
32 the landholder intends to construct, refurbish or

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- 1 complete the construction or refurbishment of
2 10 or more dwellings on the parcel of land; and
- 3 (c) within the period of 5 years beginning on the
4 day on which the acquisition occurs, the
5 landholder, linked entity or associate complies
6 with subsection (2) in relation to 10 or more
7 dwellings; and
- 8 (d) the interest the subject of the acquisition has
9 not been disposed of by the acquirer at the time
10 the landholder, linked entity or associate
11 complies with subsection (2) in relation to 10 or
12 more dwellings; and
- 13 (e) the parcel of land is, in the Commissioner's
14 opinion, suitable for 10 or more dwellings.
- 15 (2) A residential landholder, linked entity or associate of a
16 residential landholder complies with this subsection in
17 relation to —
- 18 (a) a dwelling the landholder, linked entity or
19 associate intends to construct, if the landholder,
20 linked entity or associate begins construction of
21 that dwelling or another dwelling on the parcel
22 of land; or
- 23 (b) a dwelling the landholder, linked entity or
24 associate intends to refurbish, if all licences,
25 approvals, registrations, exemptions and other
26 kinds of authorisation necessary to refurbish
27 that dwelling or another dwelling on the parcel
28 of land are issued, granted or obtained; or
- 29 (c) a dwelling the landholder, linked entity or
30 associate intends to complete construction or
31 refurbishment of, if that dwelling or another
32 dwelling on the parcel of land, construction or
33 refurbishment of which is completed by the
34 landholder, linked entity or associate, is ready
35 for occupation as a place of residence.

- 1 (3) For the purposes of subsection (2)(a), construction of a
2 dwelling begins on —
- 3 (a) the day on which laying the foundations for the
4 dwelling begins; or
- 5 (b) another day the Commissioner considers
6 appropriate in the circumstances of the case.
- 7 (4) An application for reassessment under section 205ZR
8 because of this section must be made on or before the
9 later of the following —
- 10 (a) the last day of the period of 1 year beginning on
11 the day on which the residential landholder,
12 linked entity or associate complies with
13 subsection (2) in relation to 10 or more
14 dwellings;
- 15 (b) the last day of the period of 5 years beginning
16 on the day on which the acquisition occurs.

17 **205ZP. Exemption relating to subdivision for purpose of**
18 **constructing 10 or more dwellings**

- 19 (1) An acquisition is exempt if —
- 20 (a) at the time when the acquisition occurs, the
21 residential landholder or a linked entity in
22 respect of the landholder is entitled to a parcel
23 of land that is vacant or substantially vacant;
24 and
- 25 (b) the landholder, linked entity or an associate of
26 the landholder intends to subdivide or complete
27 subdividing the parcel of land for the purpose
28 of a person constructing 10 or more dwellings
29 on the parcel of land; and
- 30 (c) within the period of 5 years beginning on the
31 day on which the acquisition occurs, the
32 landholder, linked entity or associate —
- 33 (i) begins subdividing the parcel of land; or

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- 1 (ii) if subdividing the parcel of land has
2 begun when the acquisition occurs,
3 completes subdividing the parcel of
4 land;
- 5 and
- 6 (d) the interest the subject of the acquisition has
7 not been disposed of by the acquirer when the
8 landholder, linked entity or associate —
- 9 (i) begins subdividing the parcel of land; or
10 (ii) if subdividing the parcel of land has
11 begun when the acquisition occurs,
12 completes subdividing the parcel of
13 land;
- 14 and
- 15 (e) the parcel of land is, in the Commissioner’s
16 opinion, suitable for 10 or more dwellings.
- 17 (2) An application for reassessment under section 205ZR
18 because of this section must be made on or before the
19 later of the following —
- 20 (a) the last day of the period of 1 year beginning on
21 the day on which the landholder, linked entity
22 or associate —
- 23 (i) begins subdividing the parcel of land; or
24 (ii) if subdividing the parcel of land has
25 begun when the acquisition occurs,
26 completes subdividing the parcel of
27 land;
- 28 (b) the last day of the period of 5 years beginning
29 on the day on which the acquisition occurs.
- 30 (3) For the purposes of subsections (1)(c) and (d)
31 and (2)(a) —
- 32 (a) a person begins subdividing land on the day on
33 which the land is subdivided under the *Land*

- 1 *Tax Assessment Act 2002* Glossary clause 3;
2 and
3 (b) a person completes subdividing land on the day
4 on which the new certificate of title is created
5 and registered for the subdivided land.

6 **205ZQ. Calculation of duty where some land of landholder**
7 **not part of parcel of land**

- 8 (1) This section applies to an acquisition referred to in
9 section 205ZO or 205ZP if immediately before the
10 acquisition the residential landholder, or a linked entity
11 in respect of the landholder, is entitled to —
12 (a) a parcel of land referred to in section 205ZO
13 or 205ZP; and
14 (b) other residential property in Western Australia.
15 (2) Section 166 is not applicable to or in relation to the
16 acquisition.
17 (3) For the purposes of calculating foreign landholder duty
18 in respect of the acquisition the residential property
19 referred to in subsection (1)(a) is to be disregarded
20 when determining the value of the landholder.

21 **Subdivision 3 — Reassessment**

22 **205ZR. Reassessment**

- 23 (1) The Commissioner, on the application of a person that
24 has paid or is liable to pay foreign landholder duty,
25 must reassess the liability to foreign landholder duty on
26 an acquisition if the liability is affected by
27 section 205ZN, 205ZO or 205ZP.
28 (2) An application for reassessment under this section must
29 be made in the approved form.

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- 1 (3) The limitations as to time in the Taxation
2 Administration Act section 17 do not apply in respect
3 of a reassessment because of section 205ZO or 205ZP.

4 **Division 9 — Lodgment of declaration**

5 **205ZS. Foreign landholder duty declaration to be lodged**

- 6 (1) A foreign landholder duty declaration must be lodged
7 in respect of a foreign landholder acquisition.
- 8 (2) The foreign landholder duty declaration must be lodged
9 on or before the day on which the acquisition statement
10 is required to be lodged under section 200(3), 201(6)
11 or 202(2) in respect of the acquisition.

12 **205ZT. Failure to lodge foreign landholder duty declaration**

13 If a foreign landholder duty declaration is not lodged in
14 accordance with section 205ZS(2), the following
15 persons commit an offence —

- 16 (a) in every case, the foreign acquirer;
- 17 (b) if the landholder concerned is a corporation, the
18 corporation;
- 19 (c) if the landholder concerned is a unit trust
20 scheme, the trustee of the scheme;
- 21 (d) any person taken into account under
22 section 205ZH or 205ZI as being related to the
23 foreign acquirer for the purposes of the
24 acquisition, other than a person whose interest
25 in the landholder is, for the purpose of
26 calculating the foreign landholder duty, an
27 excluded interest under section 189.

28 Penalty: a fine of \$5 000.

29

1 **9. Section 259 amended**

2 In section 259(2) after “landholder duty” insert:

3

4 or foreign landholder duty

5

6 **10. Section 260 amended**

7 (1) After section 260(1)(a) insert:

8

9 (aa) any of the following foreign dutiable
10 transactions, if foreign transfer duty is
11 chargeable —

12 (i) an agreement, whether conditional or
13 not, for the transfer of residential
14 property from one member of a family
15 to another member of the family;

16 (ii) a transfer of residential property from
17 one member of a family to another
18 member of the family;

19 (iii) a declaration of trust over residential
20 property under which one member of a
21 family holds the property on trust for
22 another member of the family;

23 (iv) a vesting of residential property held by
24 one member of a family in another
25 member of the family;

26 (v) a surrender of special residential
27 property, as defined in section 205F(1),
28 if the special residential property is
29 surrendered by one member of a family
30 to another member of the family;

31

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- 1 (2) In section 260(1)(d) after “landholder duty” insert:
2
3 or foreign landholder duty
4
5 (3) After section 260(2) insert:
6
7 (2A) A transaction referred to in subsection (1)(aa) is not a
8 *relevant reconstruction transaction* if, immediately
9 before the transaction, the residential property is held,
10 or the transaction results in the property being held,
11 subject to a discretionary trust.
12

13 **11. Section 272 amended**

- 14 Delete section 272(2)(a) and insert:
15
16 (a) endorsed by the Commissioner —
17 (i) under section 273(2), (3) or (4)
18 or 274(2); and
19 (ii) if the transaction is a foreign dutiable
20 transaction — under section 273(2A);
21 or
22

23 **12. Section 273 amended**

- 24 (1) In section 273(1) delete the definition of *duty*.
25 (2) In section 273(1) in the definition of *required duty*
26 paragraph (a) delete “duty” and insert:
27
28 transfer duty and foreign transfer duty (if any)
29

- 1 (3) Delete section 273(2) and insert:
2
- 3 (2) If a transaction record for a dutiable transaction is
4 lodged for duty endorsement and any required duty is
5 paid in full, the Commissioner must —
- 6 (a) if transfer duty is chargeable on the dutiable
7 transaction — endorse the transaction record to
8 indicate the amount of transfer duty paid; or
- 9 (b) if transfer duty is not chargeable on the dutiable
10 transaction because of an exemption under this
11 Act or another written law — endorse the
12 transaction record to indicate that transfer duty
13 is not chargeable because of the exemption; or
- 14 (c) if transfer duty is not chargeable on the dutiable
15 transaction other than because of an exemption
16 under this Act or another written law —
17 endorse the transaction record to indicate that
18 transfer duty is not chargeable.
- 19 (2A) If a transaction record for a foreign dutiable transaction
20 is lodged for duty endorsement and any required duty
21 is paid in full, the Commissioner must —
- 22 (a) if foreign transfer duty is chargeable on the
23 foreign dutiable transaction — endorse the
24 transaction record to indicate the amount of
25 foreign transfer duty paid; or
- 26 (b) if foreign transfer duty is not chargeable on the
27 foreign dutiable transaction because of an
28 exemption under this Act or another written
29 law — endorse the transaction record to
30 indicate that foreign transfer duty is not
31 chargeable because of the exemption; or
- 32 (c) if foreign transfer duty is not chargeable on the
33 foreign dutiable transaction other than because
34 of an exemption under this Act or another

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1 written law — endorse the transaction record to
2 indicate that foreign transfer duty is not
3 chargeable.
4

5 (4) In section 273(3A) delete “subsection (2),” and insert:
6
7 subsections (2) and (2A),
8

9 **13. Section 275 amended**

10 In section 275(a)(ii) after “transfer duty (if any)” insert:
11
12 and foreign transfer duty (if any)
13

14 **14. Schedule 2 amended**

15 In Schedule 2 Division 2 delete “Residential property” and insert:
16
17 Residential land
18

19 **15. Schedule 3 Division 8 inserted**

20 After Schedule 3 Division 7 insert:
21

22 **Division 8 — Provisions for *Duties Amendment***
23 ***(Additional Duty for Foreign Persons) Act 2018***

24 **39. Terms used**

25 When this Division uses a term that is used in Chapter 3A,
26 the term has the same meaning in this Division as it has in
27 Chapter 3A.

- 1 **40. When Ch. 3A Pt. 2 starts to apply**
- 2 Chapter 3A Part 2 applies in relation to the imposition of
- 3 foreign transfer duty on a foreign dutiable transaction only if
- 4 that transaction takes place on or after 1 January 2019.
- 5 **41. Agreements entered into before 1 January 2019**
- 6 (1) Foreign transfer duty is not chargeable on a transfer of
- 7 residential property to a transferee in conformity with an
- 8 agreement for the transfer of residential property if the
- 9 agreement is entered into before 1 January 2019.
- 10 (2) If an agreement for the transfer of residential property is
- 11 entered into before 1 January 2019, foreign transfer duty is
- 12 not chargeable on the subsequent transfer of the property if,
- 13 when liability for transfer duty on the agreement arose, the
- 14 person named in the instrument effecting, or evidencing, the
- 15 agreement as the purchaser was acting as the agent of the
- 16 transferee of the subsequent transfer.
- 17 **42. Declaration of trusts made before 1 January 2019**
- 18 (1) Foreign transfer duty is not chargeable on a transfer to a
- 19 trustee of residential property subject to a declaration of
- 20 trust in respect of the same residential property if the
- 21 declaration of trust was made before 1 January 2019.
- 22 (2) Foreign transfer duty is not chargeable on a declaration of
- 23 trust that declares the same trusts as those upon and subject
- 24 to which the same residential property was transferred, or
- 25 agreed to be transferred, to the person declaring the trust if
- 26 the transfer, or agreement, was made before 1 January 2019.
- 27 (3) Foreign transfer duty is not chargeable on a declaration of
- 28 trust if —
- 29 (a) the declaration of trust supersedes another
- 30 declaration of trust which was made before
- 31 1 January 2019 and declares the same trusts as were
- 32 declared under the superseded declaration of trust;
- 33 and

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- 1 (b) the beneficiary under the declaration of trust is the
2 same as under the superseded declaration of trust;
3 and
4 (c) the residential property subject to the declaration of
5 trust —
6 (i) is wholly or substantially the same as the
7 property that was the subject of the
8 superseded declaration of trust at the time
9 of the declaration of the superseded
10 declaration of trust; or
11 (ii) represents the proceeds of re-investment of
12 property that was the subject of the
13 superseded declaration of trust at the time
14 of the declaration of the superseded
15 declaration of trust; or
16 (iii) is property to which both subparagraphs (i)
17 and (ii) apply.

18 **43. Other transactions before 1 January 2019**

- 19 (1) Foreign transfer duty is not chargeable on a transfer of
20 residential property resulting from a foreign dutiable
21 transaction referred to in section 205H(1)(d) if the vesting of
22 the residential property was made before 1 January 2019.
23 (2) Foreign transfer duty is not chargeable on a transfer of
24 residential property in accordance with a foreclosure order if
25 the foreclosure order was made before 1 January 2019.
26 (3) Foreign transfer duty is not chargeable on a transfer of
27 residential property in accordance with a residential
28 partnership acquisition if the residential partnership
29 acquisition was made before 1 January 2019.
30 (4) Foreign transfer duty is not chargeable on a foreign dutiable
31 transaction if —
32 (a) section 97 applies to the transaction and the person
33 from whom the property is transferred or agreed to
34 be transferred acquired the property before
35 1 January 2019; or

- 1 (b) section 114, 115 or 116 applies to the transaction
2 and the trustee acquired the property before
3 1 January 2019; or
4 (c) section 117(1)(a) or (b) applies to the transaction
5 and the apparent purchaser acquired the property
6 before 1 January 2019.

7 **44. When Ch. 3A Pt. 3 starts to apply**

- 8 (1) Chapter 3A Part 3 applies in relation to the imposition of
9 foreign landholder duty on a foreign landholder acquisition
10 only if that acquisition occurs on or after 1 January 2019.
11 (2) For the purposes of subsection (1), when an acquisition of
12 an interest in a residential landholder occurs is to be
13 determined under section 176 as applied by
14 section 205ZE(1).

15 **45. Application of some Ch. 8 provisions**

- 16 (1) Sections 272(2) and 273 as in force before the
17 commencement of the *Duties Amendment (Additional Duty*
18 *for Foreign Persons) Act 2018* section 15 apply in relation
19 to a dutiable transaction that takes place before
20 1 January 2019.
21 (2) Section 273(2A) applies in relation to a foreign dutiable
22 transaction only if that transaction takes place on or after
23 1 January 2019.
24

25
