

Revenue Laws Amendment (Assessment) Bill (No. 2) 2001

CONTENTS

Part 1 — Preliminary

- | | | |
|----|--------------|---|
| 1. | Short title | 2 |
| 2. | Commencement | 2 |

Part 2 — *Land Tax Assessment*

Act 1976 — Principal place of residence exemptions

- | | | |
|----|---------------------------|---|
| 3. | The Act amended | 3 |
| 4. | Application of amendments | 3 |
| 5. | Section 22 amended | 3 |
| 6. | Schedule amended | 3 |

Part 3 — *Pay-roll Tax Assessment*

Act 1971 — Gross-up of fringe benefit value

- | | | |
|----|--|---|
| 7. | The Act amended | 8 |
| 8. | Section 3C amended | 8 |
| 9. | Fringe benefits provided before 1 January 2002 | 9 |

Part 4 — *Pay-roll Tax Assessment*

Act 1971 — Grouping provisions

- | | | |
|-----|---------------------|----|
| 10. | The Act amended | 10 |
| 11. | Section 16E amended | 10 |

Contents

**Part 5 — *Stamp Act 1921* — Voluntary
transfers under the *Financial
Sector (Transfers of Business)
Act 1999***

12.	The Act amended	11
13.	Section 20 amended	11
14.	Section 27 amended	12
15.	Section 28 amended	12
16.	Section 29 amended	13
17.	Section 30 amended	13
18.	Section 31C inserted	13
19.	Section 75J amended	14
20.	Section 75JC amended	15
21.	Section 75JE amended	15
22.	Sections 76AH and 76AO amended	15

**Part 6 — *Stamp Act 1921* — Private
unit trusts**

23.	The Act amended	16
24.	Section 4 amended	16
25.	Section 20 amended	16
26.	Section 63 amended	16
27.	Sections 63AA to 63AE inserted	17
28.	Section 73D amended	28

Western Australia

LEGISLATIVE ASSEMBLY

**Revenue Laws Amendment (Assessment) Bill
(No. 2) 2001**

A Bill for

An Act to amend the —

- *Land Tax Assessment Act 1976*;
 - *Pay-roll Tax Assessment Act 1971*; and
 - *Stamp Act 1921*,
- and for related purposes.**

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Revenue Laws Amendment (Assessment) Act (No. 2) 2001*.

5 **2. Commencement**

- (1) Subject to subsection (2), this Act comes into operation on the day on which it receives the Royal Assent.
- (2) Part 3 comes into operation, or is taken to have come into operation, on 1 January 2002.

Part 2 — *Land Tax Assessment Act 1976* — Principal place of residence exemptions

3. The Act amended

5 The amendments in this Part are to the *Land Tax Assessment Act 1976**.

[* *Reprinted as at 23 February 2001.*
For subsequent amendments see Act No. 10 of 2001.]

4. Application of amendments

10 The amendments effected by this Part have effect in relation to each year of assessment commencing on or after 1 July 2002.

5. Section 22 amended

Section 22(1) is amended by inserting after “(iii),” —
“ (iiia), ”.

6. Schedule amended

15 The Schedule Part 1 clause 9 is amended as follows:

- (a) by deleting paragraph (aa)(i) and (ii) and inserting instead the following subparagraph —

“

- (i) In this clause —

20 “**corporation**” has the same meaning as in section 57A of the *Corporations Act 2001* of the Commonwealth;

25 “**disabled beneficiary**”, in relation to land held in trust, means a person who has a beneficial interest in the trust, whether the interest is contingent or otherwise, and who —

- (a) has a disability as defined in section 3 of the *Disability Services Act 1993*

s. 6

and has been independently assessed
by an appropriate assessor as
requiring full-time care;

(b) is mentally incapacitated; or

(c) is a minor who is an orphan;

“trustee”, in relation to land and a disabled
beneficiary, means a corporation or other
person who owns the land as trustee for the
disabled beneficiary.

”;

(b) by deleting paragraph (a)(vi), (vii), (viii) and (ix) and
inserting the following subparagraphs instead —

“

(vi) the owners of which are —

(I) a natural person or natural persons;

(II) a corporation that owns the land otherwise
than as a trustee for a disabled beneficiary
who uses the land solely or principally as
his or her sole or principal place of
residence;

(vii) the owner of which is a trustee who holds the
land in trust for at least one disabled beneficiary
who uses it solely or principally as his or her sole
or principal place of residence;

(viii) the owners of which are —

(I) a trustee who holds the land in trust for at
least one disabled beneficiary who uses it
solely or principally as his or her sole or
principal place of residence; and

(II) a corporation that holds the land otherwise
than as a trustee for a disabled beneficiary
who uses the land solely or principally as
his or her sole or principal place of
residence;

(ix) the owners of which are —

(I) a trustee who holds the land in trust for at least one disabled beneficiary who uses it solely or principally as his or her sole or principal place of residence; and

(II) a natural person or natural persons;

(ixa) the owners of which are —

(I) a trustee who holds the land in trust for at least one disabled beneficiary who uses it solely or principally as his or her sole or principal place of residence;

(II) a natural person or natural persons; and

(III) a corporation that owns the land otherwise than as a trustee for a disabled beneficiary who uses the land solely or principally as his or her sole or principal place of residence;

”;

(c) by inserting after paragraph (b)(i) the following subparagraphs —

“

(ia) Except as provided in paragraph (a)(vii), (viii), (ix) or (ixa), an exemption under paragraph (a) does not apply to any proportion of the land that is held in trust.

(ib) An exemption under paragraph (a) does not apply to any proportion of the land that is owned by a corporation unless the corporation —

(I) owns the land by reason of a requirement of a financial institution as mentioned in paragraph (a)(iv);

s. 6

- (II) owns the land as the trustee of a disabled beneficiary who uses the land solely or principally as his or her sole or principal place of residence; or
- 5 (III) is an executor that owns the land as executor as provided in paragraph (a)(x), (xi), (xii) or (xiii).
- ”;
- (d) by deleting paragraph (b)(iii) and (iv) and inserting instead the following subparagraphs —
- 10 “
- (iii) The exemption provided by paragraph (a)(vi) applies to the unimproved value of the land only to the extent of the total proportion of the interest in the land that is owned, jointly or severally, by
- 15 the natural persons who own the land otherwise than as trustees and use the land solely or principally as their sole or principal place of residence.
- (iiia) The exemption provided by paragraph (a)(viii) applies to the unimproved value of the land only to the extent of the proportion of the interest in the land that is owned by the trustee of the
- 20 disabled beneficiary who uses the land solely or principally as his or her sole or principal place of residence.
- 25 (iv) The exemption provided by paragraph (a)(ix) or (ixa) applies to the unimproved value of the land only to the extent of the total proportion of the interest in the land that is owned, jointly or
- 30 severally, by the following —
- (I) the trustee of the disabled beneficiary who uses the land solely or principally as his or her sole or principal place of residence;

- 15

Part 3 — Pay-roll Tax Assessment Act 1971 — Gross-up of fringe benefit value

7. The Act amended

5 The amendments in this Part are to the *Pay-roll Tax Assessment Act 1971**.

[* *Reprinted as at 12 November 1996.*

For subsequent amendments see 2000 Index to Legislation of Western Australia, Table 1, p. 329, and Acts Nos. 3 and 10 of 2001.]

10 **8. Section 3C amended**

- (1) Section 3C(1) is repealed and the following subsections are inserted instead —

“

- 15 (1) The value of a fringe benefit provided on or after 1 January 2002 is —
- (a) the grossed-up value of the fringe benefit worked out in accordance with subsection (1a) (unless paragraph (b) applies to the fringe benefit); or
- 20 (b) if regulations made under this Act prescribe how the value of a particular kind of fringe benefit is to be determined — the value so determined.

- 25 (1a) The grossed-up value of a fringe benefit is the amount worked out using the formula —

$$\begin{array}{ccc} \text{taxable value of the} & & \text{appropriate gross-up} \\ \text{fringe benefit} & \times & \text{factor} \end{array}$$

where —

“appropriate gross-up factor” equals —

- (a) for a fringe benefit that is a GST-creditable benefit (within the meaning of the FBTA

Act) — the factor by which the “Type 1 aggregate fringe benefits amount” is multiplied in section 5B(1B) of the FBT Act; or

- 5 (b) for a fringe benefit that is not a GST-creditable benefit — the factor by which the “Type 2 aggregate fringe benefits amount” is multiplied in section 5B(1C) of the FBT Act;

10 **“taxable value of the fringe benefit”** equals —

- (a) if the benefit is a work-related benefit — the employee’s share of the taxable value of the fringe benefit under the FBT Act; or
- 15 (b) if the benefit is not a work-related benefit — the employee’s share of the taxable value of the fringe benefit under the FBT Act worked out without regard to any reduction of that taxable value under that Act because of the “otherwise deductible” rule.

20 ”.

- (2) Section 3C(3) and (4) are amended by deleting “subsection (1)” and inserting instead —

“ subsection (1a) ”.

9. Fringe benefits provided before 1 January 2002

25 Without limiting the operation of the *Interpretation Act 1984*, section 3C of the *Pay-roll Tax Assessment Act 1971* as in force immediately before 1 January 2002 continues to have effect in relation to fringe benefits provided (within the meaning given by that Act) before 1 January 2002.

Part 4 — Pay-roll Tax Assessment Act 1971 — Grouping provisions

10. The Act amended

5 The amendments in this Part are to the *Pay-roll Tax Assessment Act 1971**.

[* Reprinted as at 12 November 1996.

For subsequent amendments see 2000 Index to Legislation of Western Australia, Table 1, p. 329, and Acts Nos. 3 and 10 of 2001.]

10 **11. Section 16E amended**

(1) After section 16E(1) the following subsection is inserted —

“

15 (1a) Where the members of a group (referred to as a smaller group in subsection (2)) have together a controlling interest in a business, the members of the group and the person or persons who carry on the business constitute one group for the purposes this Act.

”.

20 (2) Section 16E(2) is amended by inserting after “subsection (1)” in both places where it occurs —

“ or (1a) ”.

(3) After section 16E(2) the following section is inserted —

“

25 (3) In this section —

“**controlling interest**” has the same meaning as it has in section 16D.

”.

**Part 5 — Stamp Act 1921 — Voluntary transfers under
the Financial Sector (Transfers of Business) Act 1999**

12. The Act amended

The amendments in this Part are to the *Stamp Act 1921**.

5 [* Reprinted as at 3 August 2001.]

13. Section 20 amended

(1) Section 20(1) is amended as follows:

(a) after paragraph (a) by inserting —

“

10 (aa) an instrument which is a statement prepared
under section 31C(1) may be stamped without
fine after that preparation if it is lodged under
that section within a period of 3 months after
the day of transfer referred to in that section;

15 ”;

(b) after paragraph (c) by inserting —

“ and ”;

(c) after paragraph (d) by deleting “; and” and inserting a
full stop;

20 (d) by deleting paragraph (e).

(2) Section 20(5a) is amended as follows:

(a) by inserting after “31B,” —

“ 31C, ”;

25 (b) by deleting “, 112HA(4) or 112HB(2)” and inserting
instead —

“ or 112HA(4) ”.

s. 14

14. Section 27 amended

(1) Section 27(2) is amended as follows:

- (a) in paragraph (a) by inserting after “applies” —
“ or a transfer to which section 31C applies ”;
- 5 (b) in paragraph (b)(i) by inserting after “transaction” —
“ or transfer ”;
- (c) in paragraph (b)(i) by inserting after “31B” —
“ or 31C ”;
- 10 (d) by deleting “section 31B(1) in respect of the
transaction” and inserting instead —
“
section 31B(1) or 31C(1) in respect of the transaction
or transfer
”.

15 (2) Section 27(3) is amended as follows:

- (a) by inserting after “transaction” —
“ or transfer ”;
- (b) by inserting after “31B” —
“ or 31C ”.

20 **15. Section 28 amended**

(1) Section 28(1)(b) is amended as follows:

- (a) by inserting after “31B(1)” —
“ or 31C(1) ”;
- 25 (b) by inserting after “transaction” —
“ or transfer ”.

(2) Section 28(4) is amended by inserting after “31B(1)” —
“ or 31C(1) ”.

16. Section 29 amended

- (1) Section 29(1) is amended as follows:
- (a) by inserting after “31B(1)” in both places where it occurs —
“ or 31C(1) ”;
- (b) by inserting after “transaction” in both places where it occurs —
“ or transfer ”.
- (2) Section 29(2a) is amended as follows:
- (a) by inserting after “transaction” —
“ or transfer ”;
- (b) by inserting after “31B(1)” —
“ or 31C(1) ”.

17. Section 30 amended

- 15 Section 30(b) is amended by inserting after “31B(1)” —
 “ or 31C(1) ”.

18. Section 31C inserted

After section 31B the following section is inserted —

“

20 **31C. Statement about voluntary transfers under the**
 Financial Sector (Transfers of Business) Act 1999 of
 the Commonwealth

- 25 (1) If assets of a body (the “**transferring body**”) are transferred to another body (the “**receiving body**”) under Part 3 of the *Financial Sector (Transfers of Business) Act 1999* of the Commonwealth, the receiving body must prepare and lodge a statement with the Commissioner about the transfer.

s. 19

- (2) The statement must be in a form approved by the
Commissioner and be lodged within 3 months of the
day of the transfer.
- 5 (3) Section 31B does not apply to, or in relation to, the
transfer.
- (4) A person who —
- (a) contravenes subsection (1); or
- (b) lodges or makes a statement under
subsection (1) which is false in a material
10 particular,
- commits an offence against this Act.
- ”.

19. Section 75J amended

- (1) Section 75J(1) is amended as follows:
- 15 (a) by deleting the definition of “section 31B statement”;
- (b) by inserting the following definition in the appropriate
alphabetical position —
- “
- 20 “**section 31B or 31C statement**” means a statement
lodged under section 31B or 31C;
- ”.
- (2) Section 75J(4) is amended as follows:
- (a) by inserting after “31B” —
- “ or sections 31C and 31D ”;
- 25 (b) by inserting after “transaction” —
- “ or transfer ”.

20. Section 75JC amended

- (1) Section 75JC(1) is amended as follows:
- (a) by inserting after “transaction” —
“ or transfer ”;
- (b) by deleting “section 31B statement” and inserting instead —
“ section 31B or 31C statement ”.
- (2) Section 75JC(5)(a) and (b) are amended by deleting “section 31B statement” and inserting instead —
“ section 31B or 31C statement ”.

21. Section 75JE amended

Section 75JE(1)(d) is amended as follows:

- 15 (a) by deleting “section 31B statement” and inserting
“ section 31B or 31C statement ”;
- (b) by inserting after “transaction” —
“ or transfer ”.

22. Sections 76AH and 76AO amended

Sections 76AH(4)(a) and 76AO(4)(a) are amended by inserting after “31B” —

“ , 31D ”.

Part 6 — *Stamp Act 1921* — Private unit trusts

23. The Act amended

The amendments in this Part are to the *Stamp Act 1921**.

[* Reprinted as at 3 August 2001.]

5 24. Section 4 amended

Section 4(1) is amended in paragraph (c)(ii) of the definition of “marketable security” by inserting after “section 63(2)” —

“

10 or that is a unit trust scheme registered
under section 63AA(2) or granted
interim registration under
section 63AC(2)

”.

25. Section 20 amended

15 (1) Before section 20(1)(b) the following paragraph is inserted —

“

(ab) an instrument which is a statement prepared
under section 63AE may be stamped without
fine after that preparation if it is lodged within
20 the time allowed under section 63AE(1);

”.

(2) Section 20(5a) is amended by inserting before “75HA” —

“ 63AE, ”.

26. Section 63 amended

25 After section 63(1) the following subsections are inserted —

“

(1a) In sections 63AE and 63AF —

“disposition” has the same meaning as it has in
section 73D.

- (1b) In sections 63AB, 63AC, 63AD, 63AE and 63AF —
“unit” has the same meaning as it has in section 73D.

”.

27. Sections 63AA to 63AE inserted

5 After section 63 the following sections are inserted —

“

63AA. Registered unit trust schemes

- 10 (1) A unit trustee may apply to the Commissioner in a form approved by the Commissioner for registration of a unit trust scheme.
- (2) The Commissioner may register the unit trust scheme as a pooled investment trust or an equity trust with effect from the date of the application if the Commissioner is satisfied that —
- 15 (a) the unit trust scheme is eligible for registration under section 63AB(2) as a pooled investment trust or section 63AB(3) as an equity trust; and
- (b) registration is not being used and is not likely to be used as part of a scheme or arrangement with the collateral purpose of avoiding or
- 20 reducing the duty that otherwise would be or might become payable.
- (3) For the purpose of being satisfied as to a matter referred to in subsection (2)(b), the Commissioner may
- 25 take into account any matter that the Commissioner considers to be relevant.
- (4) The Commissioner shall advise the unit trustee in writing whether or not he has registered the unit trust scheme as a pooled investment trust or an equity trust.
- 30 (5) If the Commissioner decides not to register a unit trust scheme as a pooled investment trust or an equity trust

he must give the unit trustee written reasons for his decision.

63AB. Criteria for registration of a unit trust scheme

(1) In this section —

5

“**land**” has the same definition as in section 76.

(2) For the purposes of section 63AA(2), a unit trust scheme is eligible for registration as a pooled investment trust if it meets all of the following criteria —

10

(a) not less than 5 persons are holders of units under the scheme;

(b) no person beneficially entitled to units under the scheme is entitled to more than 40% of the total issued units under the scheme;

15

(c) no combination of 3 or fewer persons beneficially entitled to units under the scheme is entitled to 75% or more of the total issued units under the scheme;

20

(d) the unit trustee, as trustee of the scheme, holds directly or indirectly an interest in not less than 2 parcels of land, and at least 2 of those interests each have an unencumbered value of \$10 000 000 or more;

(e) each unit holder in the scheme —

25

(i) holds the unit in its capacity as a trustee of a complying superannuation fund within the meaning of the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth;

30

(ii) holds the unit in its capacity as a trustee of a complying approved deposit fund

- within the meaning of the
Superannuation Guarantee
(Administration) Act 1992 of the
Commonwealth;
- 5 (iii) holds the unit in its capacity as a trustee
or manager of a fund that is part of a
public sector superannuation scheme
within the meaning given to that term
by the *Superannuation Industry*
10 *(Supervision) Act 1993* of the
Commonwealth;
- (iv) is a life company that holds the unit
solely for the purpose of investing assets
of its statutory fund;
- 15 (v) holds the unit in its capacity as a trustee
of a unit trust that is not a unit trust
scheme; or
- (vi) holds not more than 5% of the total
issued units under the scheme;
- 20 (f) the fund or scheme referred to in
paragraph (e)(i), (ii) or (iii) has not less than
100 members;
- (g) if more than one unit holder in the scheme is a
unit holder referred to in paragraph (e)(vi),
25 those unit holders do not hold more than 10%
of the total issued units under the scheme;
- (h) if the unit trustee is a corporation, no 2 persons
either directly or indirectly have appointed or
have power or hold sufficient shares in the
30 trustee to enable them to pass a resolution to
appoint a majority of directors of the
corporation;
- (i) the scheme is open to further subscription from
new members;

s. 27

- (j) the initial subscription of each of the unit holders under the scheme is not less than \$1 000 000.
- (3) For the purposes of section 63AA(2), a unit trust scheme is eligible for registration as an equity trust if it meets all of the following criteria —
 - (a) the unit trustee, as trustee of the scheme, does not hold, and is not empowered or able to hold, any thing other than —
 - (i) shares in a company or corporation that is not a company to which section 76AI or a corporation to which section 76AP applies;
 - (ii) units in a unit trust that are marketable securities;
 - (iii) property that the Commissioner is satisfied is necessary for the administration of the scheme but which is not and cannot be used for the purpose of investment;
 - (iv) cash or money in an account at call;
 - (v) negotiable instruments, and money on deposit with any person;
 - (b) not less than 5 persons are holders of units under the scheme;
 - (c) no person beneficially entitled to units under the scheme, other than the Government of the Commonwealth, a State or a Territory or a corporation of which such a Government is a majority shareholder, is entitled to more than 40% of the total issued units under the scheme.
- (4) For the purpose of determining whether the criteria referred to in subsection (2)(b) and (c) and (3)(c) have

been satisfied, one person shall be treated as being
beneficially entitled to all units held by the person and
any other person namely —

- 5 (a) a related person within the meaning of
 subsection (5);
- (b) if the person is a corporation —
- (i) a director or secretary of the corporation
 or a related corporation; and
- 10 (ii) a person who is entitled to any
 shareholding in the corporation or a
 related corporation;
- (c) a relative of any natural person referred to in
 paragraph (a) or (b); and
- 15 (d) a corporation in which the first-mentioned
 person or any person referred to in
 paragraph (b) or (c) is entitled to any
 shareholding.
- (5) For the purposes of this section the following persons
 are related —
- 20 (a) natural persons who are spouses of each other
 or between whom the relationship is that of
 parent and child;
- (b) related corporations;
- 25 (c) a natural person and a trustee if the natural
 person is a beneficiary under the trust of which
 the trustee is a trustee, whether the person has a
 vested share or is contingently entitled or may
 benefit from a discretionary trust;
- 30 (d) a natural person and a corporation if the natural
 person is a majority shareholder, director or
 secretary of the corporation or a related
 corporation;

s. 27

- 5
- (e) a corporation and a trustee if —
- (i) the corporation, a majority shareholder, director or secretary of the corporation is a beneficiary of the trust of which the trustee is a trustee; or
- (ii) a related corporation to the corporation is a beneficiary of the trust of which the trustee is a trustee,
- 10 whether any such beneficiary has a vested share or is contingently entitled or may benefit from a discretionary trust.
- (6) For the purpose of subsection (4)(c) the following persons are relatives —
- 15 (a) a child or remoter lineal descendant of the person or his spouse;
- (b) a parent or remoter lineal ancestor of the person or his spouse;
- (c) a brother or a sister of the person or his spouse;
- 20 (d) his spouse and a spouse of any person referred to in paragraph (a), (b) or (c).
- (7) For the purposes of subsections (5) and (6) —
- (a) an illegitimate person shall be treated as the legitimate child of his mother and reputed father;
- 25 (b) a spouse includes a *de facto* spouse; and
- (c) a majority shareholder in relation to a corporation is a person who would have a substantial holding in the corporation under the definition of “substantial holding” in section 9 of the Corporations Act even if the reference in
- 30 that definition to 5% were a reference to 50%.

- 5 (8) An application for registration of a unit trust scheme as a pooled investment trust shall be accompanied by a statement in a form approved by the Commissioner concerning the unencumbered value of the interest in the parcels of land referred to in subsection (2)(d).
- 10 (9) Section 76AA(1) to (2a) apply for the purpose of determining the unencumbered value of the interest in the parcels of land referred to in subsection (2)(d) as if a reference in section 76AA to a statement required to be lodged under section 76AG or 76AN were a reference to a statement required to be lodged under subsection (8) and a reference to the unencumbered value of land were a reference to the unencumbered value of the interest in the parcel of land.

15 **63AC. Interim registration**

- 20 (1) A unit trustee may apply to the Commissioner in a form approved by the Commissioner for interim registration of a unit trust scheme not later than one year after the day on which the first units under the scheme are issued.
- 25 (2) The Commissioner may grant the unit trust scheme interim registration as a pooled investment trust or an equity trust, as the case may be, for a period of one year beginning on the day on which the first units under the scheme are issued (the “**start up period**”) if —
- 30 (a) the Commissioner is satisfied that the scheme satisfies the criteria for registration set out in section 63AB(2)(e), (f), (g), (h), (i) and (j) or (3)(a), as the case requires; and
- (b) the trustee gives the Commissioner an undertaking that units in the scheme will be issued so that at the end of the start up period

s. 27

the scheme will also comply with the criteria referred to in section 63AB(2)(a), (b), (c) and (d) or (3)(b) and (c), as the case requires, and the Commissioner is satisfied that those criteria will be fulfilled by the end of the start up period.

(3) The Commissioner shall advise the unit trustee in writing whether or not he has granted the unit trust scheme interim registration as a pooled investment trust or an equity trust.

(4) If the Commissioner decides not to grant the unit trust scheme interim registration as a pooled investment trust or an equity trust he must give the unit trustee written reasons for his decision.

63AD. Cancellation of registration or interim registration

(1) In this section and section 63AE a disqualifying event occurs if —

(a) a unit trust scheme that has been registered under section 63AA(2) ceases to comply with a criterion that is applicable to it referred to in section 63AB(2) or (3);

(b) during the start up period, a unit trust scheme that has been granted interim registration ceases to comply with a criterion that is applicable to it referred to in section 63AB(2)(e), (f), (g), (h), (i) and (j) or (3)(a); or

(c) on the day on which the start up period ends, a unit trust scheme that has been granted interim registration does not comply with a criterion that is applicable to it referred to in section 63AB(2)(a), (b), (c) and (d) or (3)(b) and (c).

- (2) If a disqualifying event occurs, the unit trustee shall, within 14 days after the day on which the disqualifying event occurs, give the Commissioner notice about the disqualifying event.
- 5 (3) When the Commissioner receives a notice under subsection (2) —
- 10 (a) in the case of a unit trust scheme registered under section 63AA(2), the registration is cancelled and the cancellation is taken to have had effect on and from immediately before the occurrence of the event; and
- 15 (b) in the case of a unit trust scheme granted interim registration under section 63AC(2), the interim registration is cancelled and the cancellation is taken to have had effect on and from immediately before the first units under the scheme were issued.
- 20 (4) If the Commissioner has not been notified of the occurrence of a disqualifying event but he is satisfied that a disqualifying event has occurred, the Commissioner shall —
- 25 (a) in the case of a unit trust scheme registered under section 63AA(2), cancel the registration;
- (b) in the case of a unit trust scheme granted interim registration under section 63AC(2), cancel the interim registration; and
- (c) notify the unit trustee in writing of the cancellation and the date on which the cancellation takes effect.
- 30 (5) Cancellation under subsection (4) is taken to have had effect —
- (a) in the case of a unit trust scheme registered under section 63AA(2), on and from

s. 27

immediately before the occurrence of the
disqualifying event; or

- (b) in the case of a unit trust scheme granted
interim registration under section 63AC(2), on
and from immediately before the first units
under the scheme were issued.

- (6) If the Commissioner is satisfied that a unit trust scheme
registered under section 63AA(2) or granted interim
registration under section 63AC(2) is being used as
part of a scheme or arrangement with the collateral
purpose of avoiding or reducing the duty that otherwise
would be or might become payable the Commissioner
shall —

- (a) cancel the registration or interim registration;
and
(b) notify the unit trustee in writing of the
cancellation and the date on which the
cancellation takes effect.

- (7) For the purpose of being satisfied as to a matter
referred to in subsection (6), the Commissioner may
take into account any matter that the Commissioner
considers to be relevant.

**63AE. Statement about disqualifying event and subsequent
transfers or dispositions**

- (1) If a disqualifying event occurs in relation to a unit trust
scheme, the unit trustee of the scheme shall prepare
and lodge a statement with the Commissioner within
14 days after the day on which the disqualifying event
occurred.

- (2) The statement shall —

- (a) be in a form approved by the Commissioner;

- 5
- 10
- 15
- 20
- 25
- 30
- (b) in relation to the occurrence of a disqualifying event, contain details of the disqualifying event;
 - (c) in the case of the cancellation of the registration of a unit trust scheme, contain details of transfers and dispositions in relation to the scheme that occurred in the period commencing immediately before the occurrence of the disqualifying event and ending on the day on which the Commissioner is given notice of the event or the day on which the Commissioner is satisfied that the event occurred and which would have been chargeable with duty under section 73D had the scheme not been registered; and
 - (d) in the case of the cancellation of the interim registration of a unit trust scheme, contain details of transfers and dispositions in relation to the scheme that occurred in the period commencing immediately before the first units under the scheme were issued and ending on the day on which the Commissioner is given notice of the event or the day on which the Commissioner is satisfied that the event occurred and which would have been chargeable with duty under section 73D had the scheme not been granted interim registration.
- (3) A person who —
- (a) contravenes subsection (1) or (2); or
 - (b) lodges or makes a statement under subsection (1) which is false in a material particular,
- commits an offence against this Act.

”.

s. 28

28. Section 73D amended

After section 73D(10) the following subsections are inserted —

“

- 5 (11) Subject to subsection (12), this section does not apply
to a disposition of a unit in a unit trust scheme during
any period that the unit trust scheme is —
- (a) registered under section 63AA(2); or
- (b) granted interim registration under
section 63AC(2).
- 10 (12) If the registration or interim registration of a unit trust
scheme is cancelled, this section is taken to have
applied to the unit trust scheme from the time the
cancellation was taken to have effect unless duty is
chargeable under section 63AF.

15

”.

=====