

South Australia

# Stamp Duties (Land Rich Entities) Amendment Act 2006

An Act to amend the *Stamp Duties Act 1923*.

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## Contents

### Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Amendment provisions

### Part 2—Amendment of *Stamp Duties Act 1923*

- 4 Amendment of section 91—Interpretation
- 5 Insertion of section 91A
  - 91A Land assets
- 6 Amendment of section 93—Notional interest in assets of related entity
- 7 Amendment of section 94—Land rich entity
- 8 Amendment of section 95—General principle of liability to duty
- 9 Insertion of sections 95A and 95B
  - 95A Aggregation of interests
  - 95B Primary production entities
- 10 Amendment of section 96—Value of notional interest acquired as a result of dutiable transaction
- 11 Amendment of section 97—Calculation of duty
- 12 Amendment of section 98—Acquisition statement
- 13 Amendment of section 102—Multiple incidences of duty

### Schedule 1—Transitional provision

- 1 Transitional provision
- 

**The Parliament of South Australia enacts as follows:**

## Part 1—Preliminary

### 1—Short title

This Act may be cited as the *Stamp Duties (Land Rich Entities) Amendment Act 2006*.

### 2—Commencement

This Act will be taken to have come into operation on 22 September 2006.

### 3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

## Part 2—Amendment of *Stamp Duties Act 1923*

### 4—Amendment of section 91—Interpretation

- (1) Section 91(1), definitions of *land asset* and *local land asset*—delete the definitions and substitute:

*land asset* and *local land asset*—see section 91A;

*local primary production land asset* means a local land asset consisting of an interest in land that is used for the business of primary production;

- (2) Section 91(1), definition of *majority interest*—delete the definition
- (3) Section 91(1)—after the definition of *notional interest* insert:

*primary production entity*—a private entity is a primary production entity if the unencumbered value of the entity's underlying local primary production land assets exceeds 50 per cent of the unencumbered value of its total underlying local land assets;

- (4) Section 91(1)—after the definition of *relative* insert:

*significant interest* in a private entity means a proportionate interest in the entity of 50 per cent or more;

### 5—Insertion of section 91A

After section 91 insert:

#### 91A—Land assets

- (1) A *land asset* is an interest in land (including a right to explore for minerals, petroleum or other substances on land or to recover minerals, petroleum or any other substance from land), other than—
- (a) a mortgage, lien or charge; or
  - (b) an interest under a warrant or writ.
- (2) A *local land asset* is a land asset consisting of an interest in land in South Australia.
- (3) A private entity's interest in land will be taken to include an interest in anything fixed to the land, including anything separately owned from the land.
- (4) However, if the Commissioner is satisfied that, at a relevant time, it was not part of an arrangement to avoid duty under this Part that property was separately owned from the land, the Commissioner may determine that a private entity's interest in the land did not include an interest in the property.

**6—Amendment of section 93—Notional interest in assets of related entity**

- (1) Section 93(1)(a)—delete "majority" and substitute:  
    significant
- (2) Section 93(1)(b)—delete "majority" and substitute:  
    significant

**7—Amendment of section 94—Land rich entity**

- (1) Section 94(1)(b)—delete paragraph (b) and substitute:
  - (b) the unencumbered value of the entity's underlying land assets comprises—
    - (i) in the case of a primary production entity—80 per cent or more; and
    - (ii) in any other case—60 per cent or more,of the unencumbered value of the entity's total underlying assets.
- (2) Section 94(2)(d)—after subparagraph (ii) insert:
  - or
  - (iii) a right or interest that is to be taken into account under subsection (5);
- (3) Section 94—after subsection (4) insert:
  - (5) A right or interest is to be taken into account for the purposes of subsection (2)(d)(iii) if the Commissioner is satisfied that it was acquired in the course of the normal business of the entity and not as part of an arrangement to avoid duty under this Part.

**8—Amendment of section 95—General principle of liability to duty**

Section 95—delete "majority" wherever occurring and substitute in each case:  
    significant

**9—Insertion of sections 95A and 95B**

After section 95 insert:

**95A—Aggregation of interests**

- (1) If a person or group acquires an interest in a land rich entity that, when aggregated with an interest in the entity acquired by another person as a result of an associated transaction on the same day or within the preceding 3 years, amounts to a significant interest in the entity, then for the purposes of this Part—
  - (a) the person or group acquires that significant interest in the entity; and

- (b) the person or group and any other person acquiring an interest in the entity as a result of the associated transaction are jointly and severally liable for the payment of duty in respect of the acquisition.
- (2) In this section—
- associated transaction***, in relation to the acquisition of an interest in a land rich entity by a person or group, means an acquisition of an interest in the entity by another person in circumstances in which—
- (a) those persons are acting in concert; or
  - (b) the acquisitions form, evidence, give effect to or arise from substantially 1 arrangement, 1 transaction or 1 series of transactions.

### **95B—Primary production entities**

- (1) This section applies to a transaction whereby a person or group acquires a significant interest, or increases its significant interest, in a relevant primary production entity if the entity ceases within the period of 3 years following the acquisition or increase to be a primary production entity.
- (2) Duty is payable under this Part in respect of a transaction to which this section applies as if the entity had not been a primary production entity at the time at which the person or group acquired or increased the interest in the entity.
- (3) In this section—  
***relevant primary production entity*** means a primary production entity that is not a land rich entity under section 94(1) only because the unencumbered value of the entity's underlying land assets comprises less than 80 per cent of the unencumbered value of the entity's total underlying assets.

### **10—Amendment of section 96—Value of notional interest acquired as a result of dutiable transaction**

Section 96—delete "majority" wherever occurring and substitute in each case:  
significant

### **11—Amendment of section 97—Calculation of duty**

- (1) Section 97—delete "majority" wherever occurring and substitute in each case:  
significant
- (2) Section 97(5)—after "acquisition of financial products" insert:  
or units in a private unit trust scheme
- (3) Section 97(5)—after "the financial products" insert:  
or units

## 12—Amendment of section 98—Acquisition statement

- (1) Section 98—delete "majority" wherever occurring and substitute in each case:  
significant
- (2) Section 98(1)—delete "If a dutiable transaction" and substitute:  
Subject to subsection (1a), if a dutiable transaction
- (3) Section 98—after subsection (1) insert:
  - (1a) A person or group that acquires or increases an interest in an entity by virtue of a transaction to which section 95B applies must, within 2 months after the date on which the entity ceases to be a primary production entity—
    - (a) lodge a return with the Commissioner that specifies, in addition to the information required by subsection (2)—
      - (i) that the entity has ceased to be a primary production entity; and
      - (ii) the date on which the cessation occurred; and
    - (b) pay the relevant amount of duty.Maximum penalty: \$10 000.

## 13—Amendment of section 102—Multiple incidences of duty

Section 102—delete "majority" wherever occurring and substitute in each case:  
significant

## Schedule 1—Transitional provision

### 1—Transitional provision

- (1) The amendments made by this Act to the *Stamp Duties Act 1923* apply only in relation to transactions entered into after the commencement of this clause.
- (2) Section 98(1) of the *Stamp Duties Act 1923*, as amended by this Act, applies to a transaction entered into after the commencement of this clause but before the day on which this Act is assented to by the Governor (the *day of assent*) as if the period of 2 months referred to in that provision ends 2 months after the day of assent.