

COMMENT ON STAMP DUTY: DEVELOPMENTS AFFECTING THE RESOURCES INDUSTRIES

By B. P. Walrut*

As I have indicated in my commentary Peter Allen has provided us with a substantial review of many of the more recent and difficult enactments of the various states in this area.

Both Peter Allen and Barry Johnston have particularly sought to address their comments to legislation and practices in their own state. I have in my comments also adopted a like approach. The need to do this is yet another one of those annoying features for the business community mentioned by Johnston. The lack of any degree of uniformity in the stamp duty legislation of all of the states and territories must continue to frustrate all who deal with it. The land ownership company provisions are but another example of the inability to achieve any degree of uniformity. Whilst there are many common features there are also many differences in the legislation of each jurisdiction other than Victoria and the Northern Territory (the latter appearing to have adopted the legislation of Victoria). Whilst most people commend interstate tax competition it is to be hoped that some of the recommendations in the area of harmonisation put forward by the New South Wales Tax Task Force in its report entitled 'Review of the State Tax System' are adopted as a first step.

I intend to briefly now examine a number of matters discussed by Allen and a couple of others. I will adopt a South Australian emphasis.

RECONSTRUCTIONS

Exemptions and *Ex Gratia* Relief

The position in South Australia is not simply limited to *ex gratia* relief as suggested by Allen's paper. As Johnston has noted in his commentary other exemptions may be used to reduce the impact of the duty in a reconstruction.

Whilst in South Australia there are no specific legislative exemptions from stamp duty for corporate reconstructions there are at least two exemptions which can be used in many cases.

Section 71d allows for concessional duty of \$50.00 where the Treasurer is satisfied after consultation with the Minister of Mines and Energy of two matters. The first is that the property conveyed is an exploration tenement or an interest in an exploration tenement. The second is that commercially exploitable minerals or petroleum deposits have not been found to exist in the area the subject of the tenement, or if they have

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been found to exist, further substantial exploratory or investigatory operations are required in order to determine the nature or extent of those deposits or whether they are commercially exploitable or whether other deposits exist in the area.

An exploration tenement means an exploration licence granted under the Mining Act 1971; a petroleum exploration licence granted under the Petroleum Act 1940; or an exploration permit for petroleum granted under the Petroleum (Submerged Lands) Act 1967.

The procedure is to lodge the conveyance with the Department of Mines which may forward it to the Crown Law Department for its advice. Conditional consent to the transfer is then given and the conveyance is returned to the applicant for stamping. The conveyance is then submitted with an application for concessional stamping of \$50.00 addressed to the Treasury. Following stamping it is relogged with the Department of Mines for registration.

The second exemption is the exemption for transfers in specie of property of a company in liquidation made by the liquidator to a shareholder of the company.

In practice most distributions in specie are actually made by the company in liquidation to its shareholders rather than the liquidator. The Commissioner as a matter of practice does not require that the property is first vested in the liquidator pursuant to section 374 (2) of the Companies (South Australia) Code.

Initially the Commissioner did not accept that there could be non-pro rata distributions to shareholders, however he now accepts that. The exemption may not be available in every situation. Section 71(6) limits the availability of all of the exemptions in section 71(5) where the transfer of property or a beneficial interest in property is to a person who prior to the transfer has the beneficial interest in the property, but takes the property or interest transferred to him as a trustee under a further trust. The impact of this particular provision remains quite uncertain.

If *ex gratia* relief is to be sought in South Australia then there is a necessity to show a public benefit element. Matters such as the number of employment opportunities created, the amount to be expended in the future and the advantages to the State must be indicated. Such applications can take some months to process. In the financial year ended 30 June 1988 *ex gratia* relief amounting to approximately \$5.6M was granted.¹

In the financial year 1988/1989 allowances have been made for *ex gratia* relief of approximately \$12.65M.²

As Allen mentions in his paper, if advantage is taken of some exemptions in some states then duty consequences may arise in other states where either credit is granted for duty paid in one state or the instrument is exempt in another state if duty is paid in the first state. This difficulty does not generally arise if *ex gratia* relief is obtained.

1 Report of the Auditor General for South Australia, year ended 30 June 1988.

2 South Australia *Parliamentary Debates* House of Assembly, 13 Sep. 1988, Estimates Committee A.

DEALINGS WITH INTEREST IN JOINT VENTURES AND TENEMENTS

Clayton's Contracts

As Allen notes the provisions in New South Wales,³ Western Australia,⁴ and South Australia⁵ imposing conveyance duty on Clayton's contracts have many similarities. Similar provisions are also now found in the Northern Territory.⁶ Queensland has two possible provisions, the first relates to dealings with a business or interests in partnerships⁷ and secondly with acquisitions of interests in land or tenancies.⁸

In the context of Clayton's contracts, insofar as they affect dealings with an interest in joint ventures and mining and petroleum tenements, there are threshold questions.

In each case the provisions apply to an interest in land but in the case of Western Australia it is specifically extended to mining tenements as defined in the Mining Act 1978. In each of the other jurisdictions (and if the interest is not a mining tenement as defined in the Western Australian Act) the threshold question in respect of a mining and petroleum tenement is to determine whether in each case the interest constitutes an interest in land. It is beyond the scope of this commentary to attempt to do so. In the paper given at an earlier AMPLA Conference by Bill Wallace,⁹ there is a most comprehensive analysis of whether a particular tenement constitutes an interest in land. It should be referred to in respect of this question.

The question as to whether an interest in a joint venture is either an interest in a business or an interest in a partnership is also relevant. Again at the 1981 AMPLA Conference there was a paper discussing the nature of an interest in a joint venture.¹⁰ A further discussion can also be found in *Australian and Mining Petroleum Laws*.¹¹ I commend them to you.

If the particular mining tenement constitutes an interest in land or the joint venture interest does constitute an interest in a partnership then the provisions in New South Wales,¹² Queensland,¹³ South Australia¹⁴ and the Northern Territory¹⁵ must be considered on any change in interest. In Queensland a statement must be lodged whether an instrument is brought into existence or not in the case of a change of an interest in a

3 Stamp Duties Act 1920 (N.S.W.), s. 44.

4 Stamp Act 1921 (W. A.) s. 31B.

5 Stamp Duties Act 1923-1982 (S.A.), s. 71e.

6 Stamp Duty Act 1978 (N.T.), s. 83A.

7 Stamp Act 1894-1987 (Qld.), s. 54A.

8 *Ibid.* s. 54AB.

9 E.W. Wallace 'Stamp Duty Aspects of Mining Interests and Transactions' (1980) 2(2) *AMPLJ* 274.

10 J.D. Merralls Q.C. 'Mining and Petroleum Joint Ventures in Australia: Some Basic Legal Concepts' (1981) 3 *AMPLJ* 1.

11 J.R.S. Forbes & A.G. Lavy, *Australian Mining and Petroleum Laws* (Butterworths 1987 2nd ed.)

12 S. 44.

13 Ss. 54AB & 54A respectively.

14 S. 71e.

15 S. 83A.

partnership.¹⁶ In each of the other jurisdictions, the obligation to lodge a statement only arises if there is no other dutiable instrument.

In New South Wales and the Northern Territory the duty is assessed on the assets (enumerated in the other paragraphs of the subsection) owned by the partnership. The South Australian and Queensland provisions have no such limitations.

Even if the interest in the joint venture does not constitute an interest in a partnership a change of interest in the joint venture may still constitute a change of an interest in a business.

In New South Wales if there is a change in the beneficial ownership of an estate or interest in the goodwill of a business situate in New South Wales without a dutiable instrument then a statement is to be lodged.¹⁷ In Queensland the acquisition of a part interest of a business (other than a part interest of a partnership interest or a sufficient part of the assets) is not so clearly within the provisions of section 54A. South Australia requires the lodgement of a statement where there is a change in the ownership of a legal or equitable interest in a business or the goodwill of a business situate in South Australia without a dutiable instrument.¹⁸ It therefore appears to address the part interest situation. The Northern Territory provisions do not apply to businesses.

The operative expression in each of the Acts of those jurisdictions with Clayton's contract provisions apart from Queensland is that the transaction causes or results in a change in the beneficial ownership of an estate or interest in the prescribed property. That is, there is no need for there to be a transaction in the nature of a conveyance or transfer or sale (e.g. any of the usual dutiable transactions, if evidenced by an instrument).

In Queensland section 54A requires there to be an acquisition or an agreement to acquire a business. Section 54AB requires there to be a transaction or acquisition which results in a person obtaining an estate or interest in any real property or lease from the Crown. Allen's paper examines 54AB in detail.

For those jurisdictions using the expression 'change in the ownership' or like expressions *Lloyd v. Brassey*¹⁹ is of some concern. In that case the Court of Appeal had to consider what constituted a change in the ownership of a business on the sale of a farm for the purpose of determining the entitlement of an employee to a redundancy payment. The land was sold by auction and the stock and plant was sold separately by auction after the auction of the land. Some of the stock and plant was bought by the purchaser of the land.

Their Lordships made the following relevant comments.

Lord Denning M.R. made the following comments:

The land itself is the essence of the business; and when the land, together with the buildings, is sold, the business is necessarily sold with it. It remains the same business but it changes hands. When the land is occupied by a tenant farmer who goes out, and a new tenant farmer comes in, there is again a change in ownership of the business, namely, the

16 S. 54A.

17 S. 44(1)(c).

18 S. 71e(1)(b).

19 [1969] 2 QB 98.

business of farming that particular land. . . . The essence is the land, together with the buildings. When that changes hands from an outgoing farmer to an incoming farmer, the business of farming that land is transferred from one to the other, and there is a change in the ownership of the business. It is the same business but in different hands.²⁰

Russell L. J. made the following comments:

I think, with respect, the Divisional Court erred in thinking that there could not be a change of ownership of a business unless there was some transfer of the goodwill or pending contracts. But if the business is such that it can and does exist without goodwill or pending contracts, the absence of such a transfer is of no relevance in considering whether there has been a change of ownership of the business.²¹

Salmon L. J. made the following comments:

. . . that the essential constituents of a business are, among other things, fixed assets and liabilities, debtors, creditors, goodwill, running contracts, a set of books, and so on, and that unless you can find a transfer of all those constituents or the major part of them, then there is no transfer of the business. Reliance was also placed on the contention that, when there is a transfer of a business or a change of ownership, restrictive covenants are usually imposed upon the vendor. I have no doubt that the elements to which I have referred are often present when a change occurs in the ownership of a business. I have, however, equally little doubt that their absence does not necessarily mean that there is no change in the ownership of a business within the meaning of those words in the Act. I think 'business' is an imprecise word and may have a very wide meaning. . . . I do not wish to be understood as saying that in every case where a mixed farm changes hands, that is necessarily for the purposes of this Act a change in the ownership of a business. I can imagine a mixed farm being acquired for development as a pig farm or for the purpose of using it to raise broilers, or turning it into a fruit farm. In circumstances such as those one could not say that the new owner was carrying on the same business as the old.²²

As will be seen from those comments there can be a *change* in the ownership of goodwill of a business or an interest in a business or land without a sale transfer or conveyance of the property.

At its broadest, the decision indicates that if one person loses occupation and another gains occupation of land or a business dependent on the occupation of the land then there will be a dutiable transaction. It is possible to distinguish the case on a number of grounds. One is to limit it to farms and some support for this can be found in the comments of Russell L. J. where his Lordship said that he found no help in considering cases of ordinary trading or industrial business. Query whether the analysis holds good for mining activities.

It is possible that a surrender or termination of a lease or mining tenement (one that constitutes an interest in land) constitutes (in most of the jurisdictions mentioned) a dutiable transaction. The New South Wales Act specifically excludes a surrender of lease.²³ The South Australian department refused a request to adopt a similar exemption for it was suggested that surrenders and re-grants of leases were being used to avoid duty.

The comments of Lord Denning M. R. in *Lloyd v. Brassey* quoted above about tenant farmers must be a real concern in the resource industry (in those jurisdictions where the provisions are wide enough) on

20 *Ibid.* 104.

21 *Ibid.* 105.

22 *Ibid.* 106.

23 S. 44(2)(e).

the change of an interest in a joint venture. The analysis appears equally applicable to mining and quarrying land.

I share the concern of Allen that farm-out and farm-in agreements could give rise to a liability to lodge a statement and pay duty under section 54AB. I do not agree that the situation is different in any of the other jurisdictions.

As has been seen in *Amoco Mineral Australia Company v. Commissioner of State Taxation (W.A.)*²⁴ farm-ins may not give rise to either duty as a contract for sale and purchase of an interest in a tenement or duty as a conveyance. It is only when the party making the various contributions has decided to make his last payment that an interest is acquired. If the farm-in transaction is one that requires no further conveyance to vest the interest, but if there is such a conveyance and *ad valorem* duty is payable on it, then there may be an obligation to lodge a statement. That statement will then attract duty.

The problem in all jurisdictions other than possibly Queensland (the section in Queensland being wider as it uses the expression 'transaction' or 'acquisition' in section 54AB) with Clayton's contract provisions depends very much on what is the transaction and secondly whether *ad valorem* duty has been paid.

If the transaction is considered to be the acquisition of the interest in the tenement (which constitutes an interest in land) and no instrument is required to vest that interest and none is used on the completion of the payments or contributions then the relevant Clayton's contract provisions are likely to apply.

If however, the relevant transaction is the whole arrangement that is from the entering into the farm-in agreement to the acquisition of the relevant interest in the tenement then the hazards are reduced. If this latter view is correct then it will be important to ensure that some *ad valorem* duty has been paid on the farm-in agreement.

Even in those cases where the parties contemplate that there is to be a further conveyance, if this analysis is correct a statement may still need to be lodged.²⁵ If such a statement is required then the time limit for doing so must be observed. Penalties are imposed if it is not lodged within that time. In most jurisdictions if the duty is paid on the statement then any subsequent conveyance is not chargeable when brought into existence.²⁶

Land Owning Corporations

South Australia remains the only mainland state or territory without such provisions. My comments, therefore, are made without day to day contact with such provisions.

I have attached as appendices a number of diagrammatic representations of the steps that lead to the lodgement of a dutiable statement. They are based on the Victorian provisions.

24 (1978) 8 ATR 719.

25 Other than N.S.W. (s. 44C(3)) and N.T. (s. 83D(2)) if an instrument chargeable with *ad valorem* duty is executed in respect of the transaction within the time prescribed.

26 N.S.W. s. 44C; S.A. s. 71e(5); N.T. s. 83D; Qld. ss. 54A(6) & 54AB(6).

The first appendix shows the four basic steps leading to the obligation to lodge the statement. Each of the subsequent five diagrams is an explanation of the terms used in that first diagram whilst the last diagram is an explanation of the term 'Associated Person' used in the sixth of those representations. Sometimes the Commissioner has a discretion to exclude the operation of some aspects or operations of those provisions; that is not represented. I have not attempted to explain those diagrams in the comments that follow, but simply deal with a number of issues arising out of those provisions.

Whilst each of the other mainland States and Territories have introduced extensive provisions to implement such a scheme the A. C. T. introduction has been very much simpler. In that Territory *ad valorem* duty at the rates applicable to conveyances of land on an acquisition of shares in a corporation which is a landholder was introduced by a determination made pursuant to section 99 of the Taxation (Administration) Ordinance.²⁷ It appears that unlike all other jurisdictions the duty is paid on the share transfer.

The definition of 'acquire' or 'acquisiton' of an interest in a company is similar in all jurisdictions (other than the A. C. T.). In New South Wales and Queensland an acquisition includes an acquisition of an interest by means of a purchase²⁸ or gift.²⁹ In the case of New South Wales and most other jurisdictions the scheme of the legislation is that the person acquiring the interest is to lodge a statement and pay the duty.

In the case of Queensland, however, not only is the party acquiring the relevant interest obliged to lodge a statement but also the corporation and each subsidiary of the corporation. The difficulty is that in the case of an agreement for sale and purchase or a gift which has not come to the attention of the corporation neither the holding corporation nor the subsidiaries may know of the transaction. Yet they are obliged to lodge statements and commit offences for failing to do so. There are defences which would appear to provide the corporation with an answer to the offence but not to the adverse duty consequence. Fortunately Western Australia, Victoria and the Northern Territory have not included those words within their definition of 'acquire'.

The converse situation can arise in all jurisdictions where the interest of a shareholder in a company is redeemed or otherwise varied without

27 The provision is not limited to shares but any dealing in a marketable security. An interest in land in terms of the determination has been expressed by the A. C. T. revenue office to include:

1. A Crown Lease or an estate in fee simple of land in the A.C.T.;
 2. A Lease, sub-lease or an interest in a lease, sub-lease over land in the A.C.T.;
 3. A beneficial interest in land in the A.C.T. such as a contract for sale or a successful bid at an auction;
 4. An interest as a beneficiary of a trust which owns land in the A.C.T.;
 5. Ownerships of shares/units in unlisted companies/unit trusts which own land or an interest in land in the A.C.T.
- 28 This raises the question of when is there a purchase *e.g.* when the contract is entered into. What is the position in respect of a conditional contract?
- 29 This raises the question of when is a gift effected? When the transfer and certificate delivered to the beneficiary (see *Case V156 88 ATC 1005*) or when lodged for registration?

the knowledge of another shareholder. If as a consequence of that, a person acquires a majority interest or acquires a further interest, then he is obliged to lodge a statement and again in each jurisdiction commits an offence for failing to do so. In addition the late lodgement will incur penalties.

The actions of related persons is relevant in all jurisdictions. A definition of related persons is to be found in all jurisdictions other than the A. C. T. It includes persons who acquire 'interests in a corporation by virtue of acquisitions that together form substantially one transaction or one series of transactions'. The expression has become quite common in the attempts in various Stamp Duty Acts to prevent contract splitting. A similar expression was considered by Jacobs J. in *Jeffrey v. Commissioner of Stamps (S. A.)*.³⁰ In that case he said:

... Nevertheless, the concept of separate conveyances that 'together form or arise from substantially one transaction' is itself not free from difficulty. It is the conveyance that is the relevant transaction *Attorney-General v. Cohen* (supra), and if there is more than one conveyance, there is prima facie more than one transaction, but the word 'substantially' must be given some meaning. It can only mean, in my judgment, that the Commissioner is required to look at 'the substance' of the several transactions, and determine whether they are, 'in substance', one transaction, although masquerading as several . . . it appears to me that the use that is made in the Statute of the word 'one' – one contract, substantially one transaction, one series – gives a critical clue to the application of the section. It points to some essential unity, some 'oneness', some unifying factor that brings the several transactions within the section.

Property

In each jurisdiction (other than the A. C. T.) there is a threshold for the operation of the provisions. The corporation must be entitled to land of a value of not less than \$1M in the jurisdiction. Further 80 percent or more of the property/assets that the corporation is entitled to must consist of land wherever it is situate.

In New South Wales, the requirement is that the land constitutes more than 80 percent of the assets of the corporation. In all other jurisdictions it is 80 percent of the property of the corporation.

As Allen has observed the concept of assets appears to be wider than property. In *Pan Continental Mining v. Commissioner of Stamps (Queensland)*³¹ it was again held that confidential information does not constitute property. In other words in the computation under the land ownership provisions to determine whether land is more than 80 per cent of the property of the corporation the confidential information is to be excluded. In the case of a mining corporation which has a tenement and has expended considerable sums in gaining information about that tenement it may not be able to bring the value of that information to account in determining whether it satisfies the 80 percent requirement.

Another issue arising out of the interpretation of land in these provisions is before the Western Australian Supreme Court, and is yet to be decided. In that case the Commissioner appears to have included the value of mining information as part of the land in determining the assets

30 (1980) 80 ATC 4126.

31 (1988) 88 ATC 4190.

owned by the company. He alleges that the mining information cannot be separated from the land to which it relates. This problem, which does appear to have been raised in the other jurisdictions is more fully discussed in Johnston's commentary.³²

Land

Allen has noted that the North Shore Gas Co. has been a party to two High Court decisions involving the nature of an interest in a pipeline forming part of a gas reticulation system.

The situation he discusses as to whether in the expanded definitions of land in section 56FA(1) a pipeline is encompassed also applies in Western Australia.³³ The legislation for some projects specifically provide that pipelines are to be personalty and to remain personalty notwithstanding their affixation to land.³⁴

If Allen's analysis of this provision is not adopted then even where there is legislation declaring a pipeline to be personalty, it may still constitute land for the purposes of the land ownership provisions of Queensland and Western Australia.

Offshore Petroleum Tenement

Johnston has in an earlier paper³⁵ drawn attention to the impact of the land ownership provisions on a corporation holding an offshore petroleum tenement. If that tenement constitutes an interest in land then notwithstanding that a transfer of that interest itself will be exempt from stamp duty in most jurisdictions the acquisition of an interest in a corporation holding such a tenement will in some jurisdictions attract full conveyance duty. Whilst this may seem harsh in many respects such a transfer, of course, may not attract the substantial *ad valorem* registration fees payable on the transfer of the tenement. Whilst, if the amounts were similar it could be argued that there is no undue burden imposed as the quantum of the *ad valorem* fees is significantly less than the stamp duty, the situation requires attention.

SHARE DEALINGS

Allen has noted that the South Australian Act imposes conveyance duty on a transfer of a marketable security without territorial limitations. He suggests that as there is no territorial limit in the head of charge the general territorial provisions in section 5b apply.

The practice of the South Australian Commissioner was until recently contrary to that analysis. The South Australian Commissioner did seek to assess any share transfer found in South Australia or for that matter most other instruments found in that State no matter where the property is situate. As a matter of practice he does not currently seek to

32 See *Australian Stamp Duty Bulletin* January 1989, Item 12, Butterworths.

33 s. 76(1).

34 Stony Point (Liquids Project) Ratification Act 1981; s. 5(o).

35 B. Johnston 'Stamp Duty amendments Part III BA - Duty on Change of Control of Certain Land-Owning Corporations' *Taxation in Australia* Vo. 22 no. 10, 601.

assess such share transfers at this time. I suggest any reliance on section 5b, if the instrument is in South Australia, is not well founded for the opening words of section 5b are, 'that subject to this Act duty shall be charged in respect of an instrument that is outside South Australia . . .'. It does not attempt to alter the situation where the instrument is to be found in the State.³⁶

FINANCE TRANSACTIONS

The impact of *Handevel Pty. Ltd. v. Comptroller of Stamps*³⁷ has been lessened in New South Wales by specific amendments to the mortgage definition.³⁸

The position however in South Australia has not been altered and accordingly the principles established in that decision are still applicable and available.

Allen has indicated that the Commissioner in Queensland accepts that an instrument executed out of Queensland and securing property out of Queensland which is only brought into Queensland for the purposes of registration at the Corporate Affairs Office is not liable for duty. That does not appear to be the situation in all cases in other jurisdictions and regard should be had to the decision in *A.C.I. Resources Limited v. CSD (NSW)*.³⁹

The collateral stamping provisions in the South Australian Act are to be found as an exemption to the Head of Charge 'Mortgage, Bond . . .' in the second Schedule to the Act. That exemption extends not only to collateral securities but also to auxiliary or additional or substituted securities. It only applies where the principal or primary security is charged with duty as a 'Mortgage, Bond . . .' Little reliance is usually placed on section 77.

36 *CSD (Qld.) v. Wienholt* [1915] 20 CLR 531:

Unless, therefore, either by express words or necessary implication, the Stamp Acts are shown to violate the principle of territoriality, they must be construed as limited in their operation to the State of Queensland, and, consequently, not to select as the subject of taxation any person, thing or circumstance not within the territory . . . Taking these guides to construction, we have to see what the Acts declare. Section 3 enacts that 'there shall be levied collected and paid . . . for and in respect of the several matters described or mentioned in this Act and in the . . . schedules of duties hereto annexed or for or in respect of the parchment or paper upon which the same respectively shall be written the several duties' etcetera. It is a corollary from the constitutional limits referred to, that, prima facie, the subject of taxation, namely, the 'matters described or mentioned in this Act', and the 'parchment or paper' on which they are written, are to be limited to such as are in Queensland.

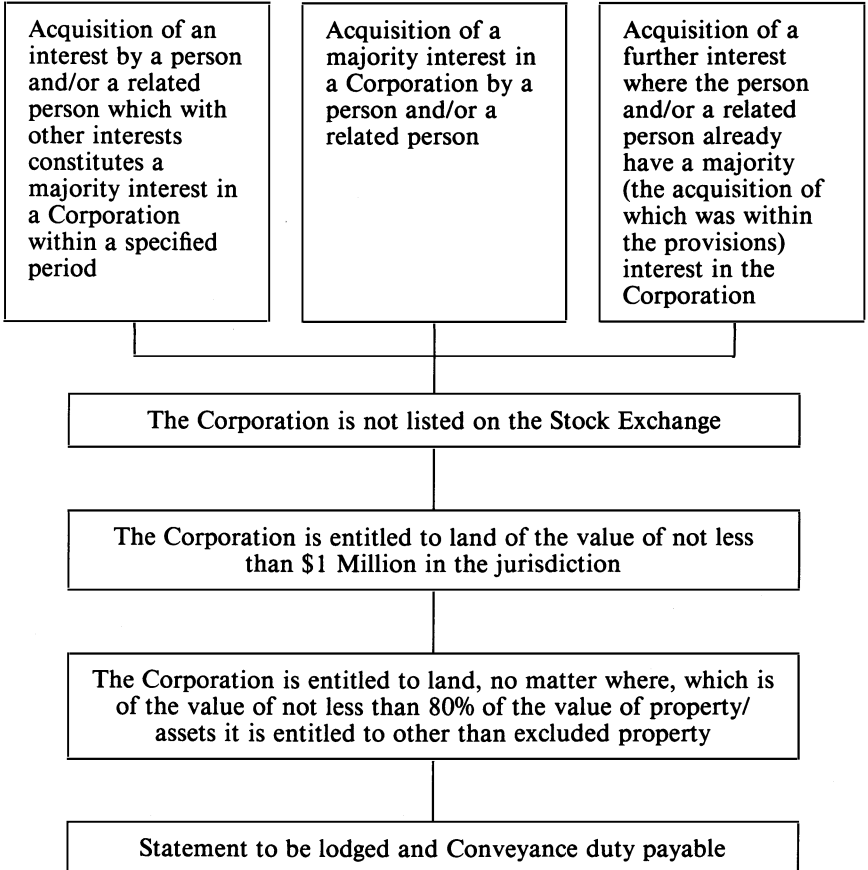
37 (1985) 85 ATC 4706.

38 N.S.W. s. 83(1).

39 (1986) 86 ATC 4810.

APPENDIX 1

LAND OWNERSHIP PROVISIONS (Other than ACT)



APPENDIX 2

INTEREST, MAJORITY INTEREST & FURTHER INTEREST

Interest
An interest is acquired if a person and/or a related person would be entitled to participate in a distribution of property¹ of the corporation

Majority Interest
A majority interest is acquired if a person and/or a related person would be entitled to participate in a distribution of property of the corporation⁽¹⁾ to an extent greater than 50%

Further Interest
A person and a related person satisfies the following:

AND

Has a majority interest in the corporation

Acquires a further shareholding that entitles a person to participate further in the distribution of property of the corporation

The acquisition of the majority interest required the lodgement of the statement

⁽¹⁾ Other than as a creditor of the Corporation

APPENDIX 3***RELATED PERSONS***

Spouses

Parent/children

Related Corporations

Trustees of Trusts with common beneficiaries¹

A natural person and a trustee if the natural person is a beneficiary⁽¹⁾ under the trust of which the trustee is a trustee

A corporation and a trustee if the corporation a majority shareholder,⁽²⁾ director or secretary of the corporation is a beneficiary of the trust¹

A corporation and a trustee if a related corporation to the corporation is a beneficiary of the trust¹

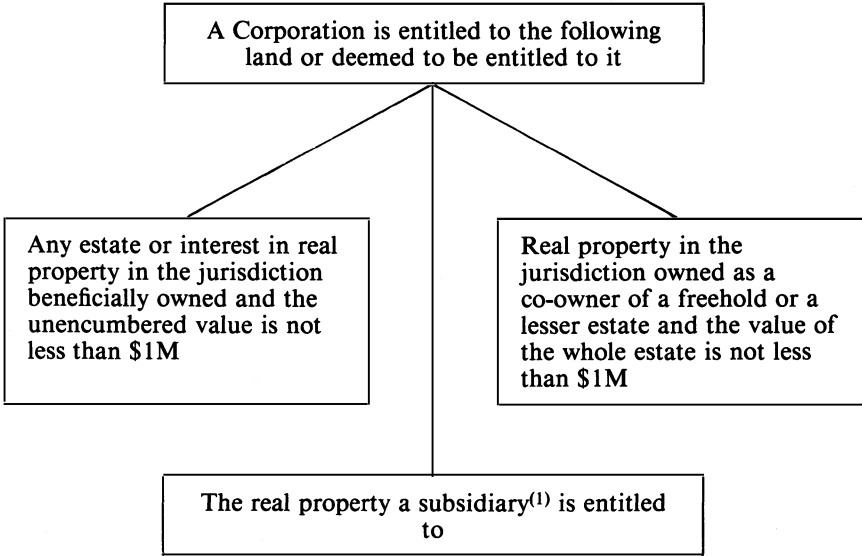
Persons who acquire interests that form or arise from substantially one transaction or one series of transactions

⁽¹⁾ Whether the beneficiary has a vested share or is contingently entitled or may benefit from a discretionary trust.

⁽²⁾ A 50% shareholding determined in accordance with section 136 of the Companies Code.

APPENDIX 4

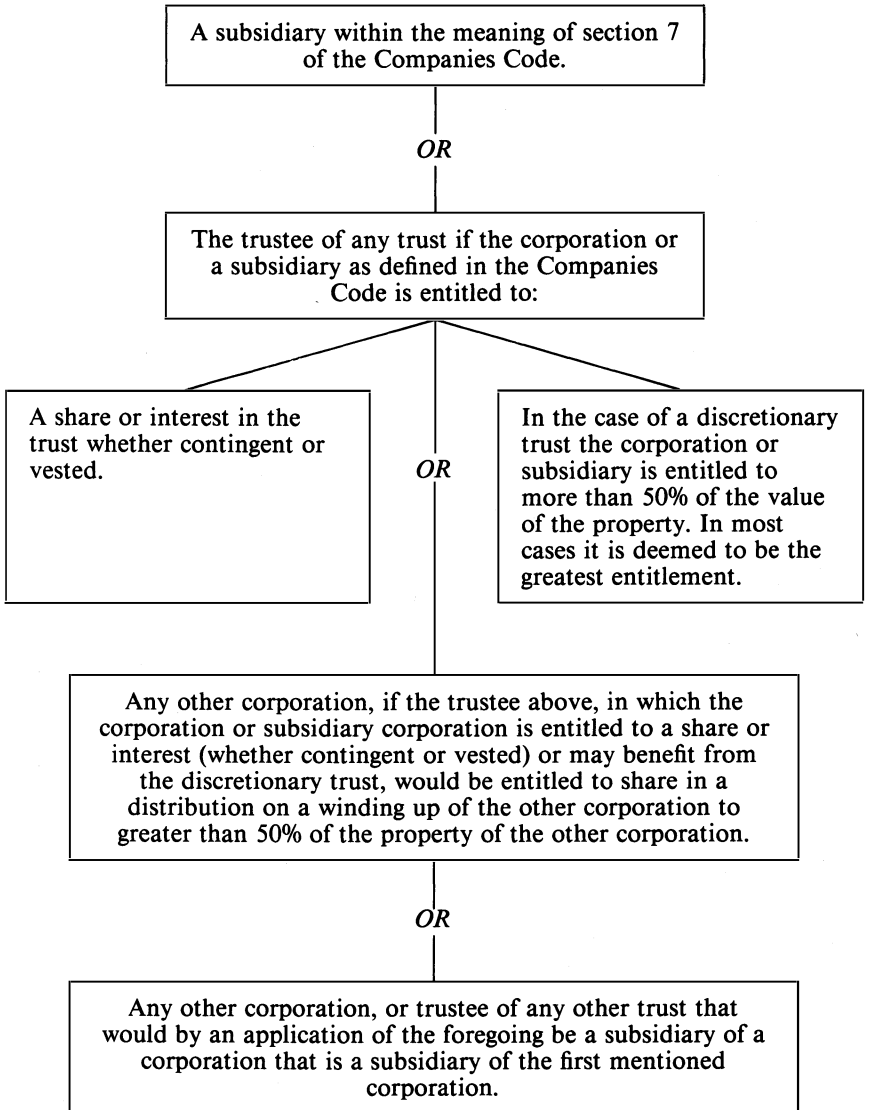
ENTITLED TO LAND



⁽¹⁾ As defined in section 75I(5) Stamps Act 1958 (Vic.).

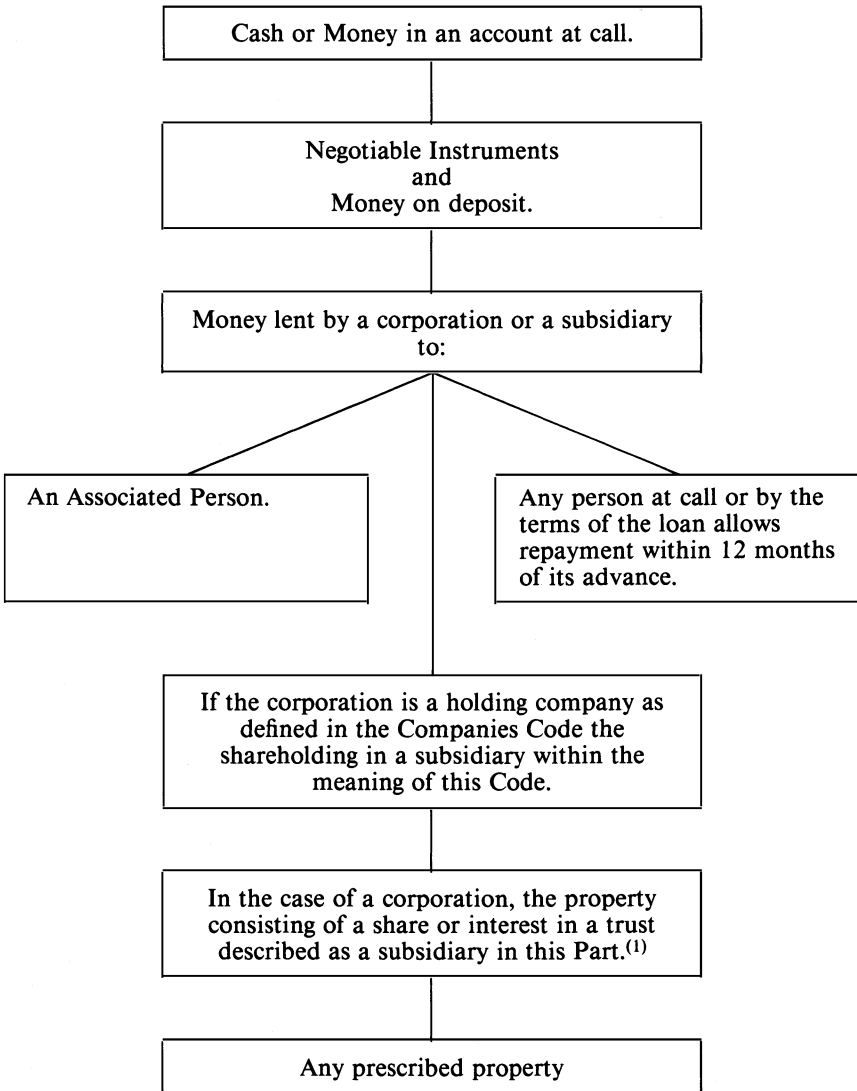
APPENDIX 5

SUBSIDIARY



APPENDIX 6

EXCLUDED PROPERTY



⁽¹⁾ See Appendix 5.

APPENDIX 7

ASSOCIATED PERSONS

