

# SUPREME COURT OF QUEENSLAND

CITATION: *Ward & Anor v Commissioner of State Revenue* [2020] QSC 59

PARTIES: **MATTHEW WARD AND JACLYN WARD**  
(Appellants)  
v  
**COMMISSIONER OF STATE REVENUE**  
(Respondent)

FILE NO/S: BS 825 of 2020

DIVISION: Trial Division

PROCEEDING: Notice of Appeal filed 8 January 2020

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 1 May 2020

DELIVERED AT: Brisbane

HEARING DATE: 6 April 2020

JUDGE: Jackson J

ORDER: **The order of the Court is that:**

- 1. The appeal is allowed.**
- 2. There is no order as to costs.**

CATCHWORDS: TAXES AND DUTIES – STAMP DUTIES – APPEAL, CASE STARTED ETC – QUEENSLAND – where the appellants held a joint interest in residential land in Queensland with two others – where the other two joint interest holders sold their interests to the appellants who purchased those interests jointly – where a half interest in the land was transferred to the appellants – where the appellants occupied the land as their home both before and after the transfer - where the respondent Commissioner assessed the dutiable transaction on the basis that section 93 of the *Duties Act* 2001 (Qld) applied – where the appellants objected to the respondent Commissioners assessment on the basis that section 93 did not apply– where the respondent Commissioner dismissed the appellants objection– whether

section 93 applied to the transaction— where the Court found that ss 93(1) and 93(6) of the Act applied to calculate the concessional amount – where the Court held that the appeal be allowed.

*Acts Interpretation Act 1954 (Qld), s 32A.*

*Duties Act 2001 (Qld), s 8(1), s 8(2), s 9(1)(a), s 10(1)(a), s 10(2), s 11(7)(a), s 16, s 24(2), s 85(a), s 86(1), s 86(2), s 87, s 88, s 89(a), s 91(1), s 91(5), s 93(1)(a)(i) and (b), s 93(1)(c)(i), s 93(3), s 93(6), s 93(7), s 93(8)(b)(i), s 93(8)(b)(ii), 93(8)(c), s 93(8)(d), sch 3, sch 6,*

*Land Title Act 1994 (Qld)*

*Taxation Administration Act 2001 (Qld) s 69.*

*Alcan (NT) Alumina Pty Ltd v Commissioner for Territory Revenue (2009) 239 CLR 27*

*Commissioner of Taxation v Consolidated Media Holdings Ltd (2012) 250 CLR 503*

*Commissioner of Taxation v Unit Trend Services Pty Ltd (2013) 250 CLR 523*

*Cooper Brooks (Wollongong) Pty Ltd v Federal Commissioner of Taxation (1981) 147 CLR 297*

COUNSEL: Appellants in person  
H Lakis for the Respondent

SOLICITORS: Appellants in person  
HWL Ebsworth for the Respondent

[1] **Jackson J:** This is the hearing of an appeal brought under s 69 of the *Taxation Administration Act 2001 (Qld)* from the respondent Commissioner’s decision to disallow the appellant tax payer’s objections to the assessment of the transfer duty payable on a dutiable transaction under Chapter 2 of the *Duties Act 2001 (Qld)* (“the Act”). The amount in dispute is \$4,375. It is unfortunate that it is the subject of a proceeding in this court, but that was the appellants’ choice, or that the respondent Commissioner thought it necessary to request an oral hearing in the civil list in addition to the detailed written submissions made by the parties.

[2] On 11 October 2019, the appellants acquired a half interest in fee simple in land described as Lot 135 on RP 87551, located at 150 Kloske Road, Burbank in the State of Queensland from Kieran and Kym Dibb upon the registration of a transfer

of that interest executed under the *Land Title Act* 1994 (Qld). The consideration for the transfer was \$500,000.

- [3] The value of the whole interest in fee simple of the land was \$1,000,000. The appellants were already the owners of the other half interest in the land.
- [4] Assessment of the duty payable involves a two-step process. The first step is to identify the dutiable transaction.
- [5] A transfer of dutiable property is a dutiable transaction.<sup>1</sup> Land in Queensland is dutiable property.<sup>2</sup> A reference to property includes a reference to an interest in the property, subject to exceptions not relevant to this case.<sup>3</sup> A half interest in Lot 135 is an interest in dutiable property.
- [6] Accordingly, Chapter 2 of the Act imposed transfer duty on the dutiable transaction of the transfer of Lot 135.<sup>4</sup> The transfer duty was imposed on the dutiable value.<sup>5</sup> In this case, the dutiable value was the consideration for the dutiable transaction, because the unencumbered value of the dutiable property was not greater than the consideration for the transaction.<sup>6</sup>
- [7] The second step is to determine the amount of duty payable. The starting point is that the rate of transfer duty imposed on a dutiable transaction of the transfer of an interest in land is that stated in Schedule 3, column 2, opposite the dutiable value of the transaction in Schedule 3, column 1.<sup>7</sup>
- [8] In some circumstances, Part 9 of Chapter 2 of the Act (“Part 9”) qualifies the operation of Schedule 3 as to the amount of duty payable upon a dutiable transaction of a transfer of an interest in land as property. Part 9 provides for concessions in the amount of transfer duty payable for a dutiable transaction that is the transfer of a home.<sup>8</sup> The most relevant sections in this case are ss 91 and 93.
- [9] However, before embarking on an analysis of the relevant provisions it is relevant to observe that their meaning and inter-operations are far from clear. They are not well-drafted or well synchronised. The respondent submitted that their proper construction does present challenges that may be due to the introduction of and alterations, from time to time, of a regime for concessional rates of duty for a

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<sup>1</sup> *Duties Act* 2001 (Qld), s 9(1)(a).

<sup>2</sup> *Duties Act* 2001 (Qld), s10(1)(a).

<sup>3</sup> *Duties Act* 2001 (Qld), s10(2).

<sup>4</sup> *Duties Act* 2001 (Qld), ss 8(1) and 16.

<sup>5</sup> *Duties Act* 2001 (Qld), s 8(2).

<sup>6</sup> *Duties Act* 2001 (Qld), s 11(7)(a).

<sup>7</sup> *Duties Act* 2001 (Qld), s 24(2).

<sup>8</sup> *Duties Act* 2001 (Qld), s 85(a).

principal place of residence, first home and home. It is not to be expected, therefore, that entirely satisfactory answers emerge as to the proper construction of the relevant provisions. I observe, as well, that the respondent did not submit that the proper construction is better explicated by the history of the legislation.

- [10] A residence<sup>9</sup> is a person's home, for the purposes of Part 9, if the person's occupation date for the residence is within one year after the person's transfer date for the residential land.<sup>10</sup> A person's occupation date for the residence is the date the person, as owner of the residence, starts occupying it as the person's principal place of residence.<sup>11</sup> A person's transfer date for residential land is the date the person is entitled to possession of the land under the dutiable transaction that, relevantly, is the transfer of the interest in the land.<sup>12</sup>
- [11] The respondent dismissed the appellants' objection to the assessment on the basis that s 93 of the Act applies to the dutiable transaction. That can only be correct, in this case, if either s 93(1) or s 93(3) applies s 93.
- [12] Section 93(1) of the Act provides:

“(1) This section applies if:

- (a) a dutiable transaction is 1 of the following (each a *relevant transaction*)—
  - (i) the transfer, or agreement for the transfer, of residential land;
  - (ii) the acquisition, mentioned in section 85(b), of a lease of residential land;
  - (iii) the vesting, mentioned in section 85(c), of residential land; and
- (b) there is more than 1 transferee or lessee of, or vested person for, the residential land to which the transaction relates; and
- (c) the residence is—

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<sup>9</sup> A residence is a building that is fixed to land and designed or approved by a local government for human habitation by a single family unit and used for residential purposes: *Duties Act* 2001 (Qld), s 87.

<sup>10</sup> *Duties Act* 2001 (Qld), s 86(1).

<sup>11</sup> *Duties Act* 2001 (Qld), s 88.

<sup>12</sup> *Duties Act* 2001 (Qld), s 89(a).

- (i) the home or first home of all the transferees, all the lessees or all the vested persons (each *relevant persons*); or
  - (ii) the home or first home of 1 or more of the transferees, 1 or more of the lessees or 1 or more of the vested persons (each also *relevant persons*) but not all the transferees, all the lessees or all the vested persons; and
- (d) the relevant persons are individuals.”

[13] Section 93(3) of the Act provides:

“(3) In addition, this section applies if a dutiable transaction is a relevant transaction in relation to a part interest in residential land that, if it were in relation to the whole interest in the land, would be a dutiable transaction to which this section applies under subsection (1) or (2), other than the requirement for more than 1 transferee, lessee or vested person for the land.”

[14] Section 93(3) applies s 93 “[i]n addition” to s 93(1). It does so if a dutiable transaction is the transfer of a “part interest” in residential land that, if it were a transfer of the “whole interest” in the land, would be a dutiable transaction to which section 93 applies under s 93(1), other than the requirement for more than 1 transferee.

[15] Accordingly, there are three express conditions of the additional operation of s 93(3). First, the transfer must be of a part interest. Second, the transfer is to be treated as if it were a transfer of the whole interest to the transferee to consider whether that would be a dutiable transaction under s 93(1). Third, in that consideration, the requirement that would apply under s 93(1)(b) that the transfer be to more than one transferee is disapplied.

[16] The expression “part interest” in 93(3) is not defined. It appears only in s 93 and 93A of the Act. In the context of s 93(3), its meaning is an interest in the residential land that is not the “whole interest” in the land.

[17] A possible construction of s 93(1) is that it too applies to a transfer of a part interest in residential land, but only where there is more than one transferee. The defined meaning of “residential land” in Schedule 6 of the Act focusses on what is constructed on the land, but it does not expressly exclude an interest which is not the whole interest in the land in a way that would affect the operation of s 93(1).

[18] It must not be overlooked that the text of s 93(1) applies s 93 to a “dutiable transaction” if certain conditions are met. At the risk of repetition, under the definition in s 9(1)(a) a transfer of dutiable property is a “dutiable transaction”. Under the definitions in s 10, “dutiable property” includes both “land in Queensland” and an “interest” in such land. Hence, a transfer of a half interest in land in Queensland is a “dutiable transaction”, as defined.

- [19] Accordingly, on the ordinary meaning of the text that picks up those defined meanings, s 93(1) of the Act will apply s 93 to a transfer of a half interest in land in Queensland, provided the other requisite conditions under that subsection are met. There are four paragraphs of s 93(1), being paragraphs (a) to (d). In paragraphs (a), (b) and (c) there are internal alternatives. But the requirements of each of paragraphs (a) to (d) must be met before s 93(1) applies s 93 to a dutiable transaction.
- [20] An alternative condition under paragraph (a)(i), is that the dutiable transaction is the transfer of residential land. There is no dispute that the land in the present case is residential land. Accordingly, paragraph (a) is satisfied, unless “residential land” is confined to the whole interest in such land.
- [21] An alternative condition under paragraph (b) is that there is more than one transferee of the residential land to which the transaction relates. The appellants appeared to contend that they are a single transferee in one part of their submissions, but I reject that submission. In my view, the appellants are more than one transferee. Accordingly, paragraph (b) is satisfied.
- [22] An alternative condition under paragraph (c)(i), is that the residence is the home of all the transferees. I will return to that question, but assume it is satisfied for the present analysis. Accordingly, paragraph (c) would be satisfied.
- [23] The condition under paragraph (d) is that all the transferees are individuals. There is no question in this case that the appellants are individuals.
- [24] From those steps of analysis, it follows that s 93(1) could apply to the transfer of Lot 135 in the present case, if it applies to a transfer of a half interest.
- [25] Returning to s 93(3), as previously analysed, that subsection operates where the reason that s 93(1) would not apply s 93 to a transfer (if it had been a transfer of the whole interest) is that the transfer is not to more than one transferee. On the ordinary meaning of the text of s 93(3), it applies s 93 to a dutiable transaction that is a transfer of a part interest to a single transferee.
- [26] The respondent submits that s 93(1) does not apply s 93 to a transfer of a part interest at all. There is no text in s 93(1) that supports that conclusion. The respondent’s argument must be that s 93(3) contextually supports it, because if s 93(1) is construed as not applying to a transfer of a part interest in residential land, that will make better sense of the requirement in s 93(3) that a transfer of a part interest is to be considered as if it were a transfer of a whole interest under s 93(1).
- [27] However, if s 93(1) only applies to a transfer of the whole interest in residential land, and s 93(3) only applies to a transfer of a part interest in residential land that is to not more than one transferee, the further conclusion would follow from the respondent’s argument that neither s 93(1) nor s 93(3) would apply s 93 to a transfer of a part interest in residential land to more than one transferee, such as in the present case. The respondent did not contend for that conclusion. On the other hand, if s 93(3) applies to a transfer of a part interest in residential where there is one or more transferees, that conclusion would be avoided.

- [28] To construe s 93(1) as applying only to a transfer of the whole interest in residential land would raise some incongruities. In particular, if a transfer is of the whole interest in residential land, by definition, the transferees will have had no interest before the transfer is made and will have the whole interest in the land upon the transfer being made. Yet s 91(1) would also appear to apply to such a dutiable transaction.
- [29] I note also that s 93 is headed “mixed and multiple claims for individuals”, which is not necessarily apt to describe a transfer of the whole interest in the land to multiple individuals.
- [30] In those circumstances, what is the intended operation of s 93(1), if confined to a transfer of the whole interest? For example, to what dutiable transactions would it apply? The respondent’s counsel suggested that it might be a transaction where more than one tenant purchases the freehold reversion. But the definition of occupation date requires that the occupation be as owner, not as a tenant, so that would be a transaction to which s 91(1) would also appear to apply.
- [31] Of course, the basis of the constructional argument that s 93(1) applies to a transfer of a part interest in residential land relies on the application of the definitions previously mentioned. The principles as to the application of a definition when a contrary intention appears, in the context of the operation of duties legislation, were considered by the High Court in *Alcan (NT) Alumina Pty Ltd v Commissioner for Territory Revenue*.<sup>13</sup> French CJ said:

“In the present case the displacement of the definitions in s 4(1) of the Act is expressly conditioned upon the appearance of a ‘contrary intention’. This kind of provision, like that in the present s 18 of the *Interpretation Act* (NT), has been described as ‘a standard device to spare the drafter the embarrassment of having overlooked a differential usage somewhere in his [or her] text’. The ninth edition of *Craies on Legislation* calls it [https://www-westlaw-com-au.ezproxy.sclqld.org.au/maf/wlau/app/document?snippets=true&ao=&src=docnav&docguid=19fedd4049d6b11e0a619d462427863b2&srguid=&epos=2&startChunk=1&endChunk=1&nstid=std-anz-highlight&nlds=AUNZ\\_SEARCHALL&isTocNav=true&tocDs=AUNZ\\_CASES\\_TOC - FTN.47](https://www-westlaw-com-au.ezproxy.sclqld.org.au/maf/wlau/app/document?snippets=true&ao=&src=docnav&docguid=19fedd4049d6b11e0a619d462427863b2&srguid=&epos=2&startChunk=1&endChunk=1&nstid=std-anz-highlight&nlds=AUNZ_SEARCHALL&isTocNav=true&tocDs=AUNZ_CASES_TOC - FTN.47): ‘a general gloss of a kind that would have to be inferred in any event, where a provision elsewhere in the legislation to which the definition purported to apply showed by express provision or necessary implication that the definition was not intended to apply there.’ The exclusion of a particular definition where a ‘contrary intention’ appears would be implied in any event. A contrary intention may appear from context or legislative purpose. But, as

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<sup>13</sup> (2009) 239 CLR 27.

Pearce and Geddes observed: ‘A good drafter will indicate ‘the contrary intention’ clearly.’<sup>14</sup> (footnotes omitted)

- [32] In my view, although the contrary view is reasonably arguable, the better construction of s 93(1) and s 93(3) is that s 93(3) applies only to a transfer to a single transferee and s 93(1) applies to a transfer of a part interest to more than one transferee.
- [33] Accordingly, the dutiable transaction in the present case is not one to which s 93(3) applies s 93, because it is not a transfer to a single transferee but to two transferees, being both of the appellants. It follows that the only basis for the application of s 93 to the dutiable transaction in the present case is if s 93(1) applies it.
- [34] Whether s 93(1) applies, in any event, also depends on the previously assumed satisfaction of the condition under paragraph (c)(i) that “the residence is... the home of all the transferees”, that is, the appellants.
- [35] Section 86(1) of the Act provides that:
- “(1) A residence is a person’s *home* if the person’s occupation date for the residence is **within 1 year after** the person’s transfer date for the residential land. (emphasis added)
- Note—*
- For transfer duty to be imposed for residential land, it must be in Queensland, see section 10(1)(a).”*
- [36] Prima facie, Lot 135 “is [the appellants] home”, as defined in s 86 of the Act, in relation to the dutiable transaction, only if their occupation date was after their transfer date.
- [37] The appellants occupied Lot 135 as their principal place of residence years before the dutiable transaction in the present case, in circumstances where they were already the joint proprietors of the other half interest in the land. The appellants’ entitlement to possession of the land under the dutiable transaction of the transfer of the half interest in Lot 135 in the present case came no later than the registration of their interests as proprietors of that interest, so that the transfer date was no later than 11 October 2019.
- [38] Because the appellants’ occupation date of the land was not **after** the appellants’ transfer date for the residential land under the transfer in the present case, on the ordinary meaning of the definition of “home” in s 86 of the Act, it would follow that Lot 135 was not the appellants’ “home” for the purposes of the application of Part 9 to the dutiable transaction. If that meaning and operation is carried through into s 93(1), that subsection would not apply s 93 to the transfer of Lot 135 in question as the dutiable transaction.

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<sup>14</sup> (2009) 239 CLR 27, 32 [6].

- [39] To arrive at the result that s 93(1) applies s 93 in a case like the present, requires acceptance of one of two possible constructional choices in relation to the operation of ss 86 and 93(1). One possibility is that the expression “is... the home” in s 93(1)(c)(i) is to be construed as having its ordinary meaning, rather than the meaning defined by s 86, on the footing that a contrary intention appears as to the meaning of “is... the home” in s 93(1). The second possibility is that the expression in s 86(1) that a person’s occupation date is “within one year after” the transfer date is to be construed to mean “*before or within one year after*” the occupation date.
- [40] Given the purpose, text and context of Part 9, including the structure of its provisions, it seems unlikely that it was intended that the expression “is... the home” in s 93(1) is to be construed on the basis that the definition of “home” in s 86 does not apply.<sup>15</sup>
- [41] As to the second possibility, although the ordinary meaning of “within 1 year after” a date (in the present provision the transfer date) is not to be equated to “*before or within 1 year after*” that date, the purpose of s 86(2) appears to be, in substance, that the concessional rates of duty provided for in Part 9 will only apply if the relevant persons occupy the residential land as a home before one year from the transfer date expires.
- [42] The relevant principles that inform whether the constructional question whether “within 1 year after” in s 86(1) can or should be read as if it provided “before or within 1 year after” are best captured in the sentinel decision of the High Court, as to the modern approach to statutory construction in *Cooper Brooks (Wollongong) Pty Ltd v Federal Commissioner of Taxation*,<sup>16</sup> particularly in the reasons of Gibbs CJ,<sup>17</sup> and Mason and Wilson JJ.<sup>18</sup> I also note that *Cooper Brooks* was a revenue law case.
- [43] Since that case, in a number of revenue law cases, including *Alcan* and more recent cases, the High Court has emphasised and re-emphasised the importance of beginning and ending the constructional task with the statutory text considered in its context.<sup>19</sup>
- [44] There does not seem to be any discernible mischief or purpose in view under Part 9 for s 86(1) to exclude a transfer of residential land from the concessional rates applied under Part 9 where the transferees are already in occupation of the residential property at the transfer date. Accordingly, I accept that, in s 86(1), “within 1 year after” should be construed to mean “before or within 1 year after”

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<sup>15</sup> *Acts Interpretation Act 1954* (Qld), s 32A.

<sup>16</sup> (1981) 147 CLR 297.

<sup>17</sup> (1981) 147 CLR 297, 304-305

<sup>18</sup> (1981) 147 CLR 297, 319-321.

<sup>19</sup> *Alcan (NT) Alumina Pty Ltd v Commissioner for Territory Revenue* (2009) 239 CLR 27, 46 [47]; *Commissioner of Taxation v Consolidated Media Holdings Ltd* (2012) 250 CLR 503, 519 [39]; *Commissioner of Taxation v Unit Trend Services Pty Ltd* (2013) 250 CLR 523, 539 [47].

and conclude that Lot 135 was the home of the appellants as all the transferees under the dutiable transaction at the relevant time.

[45] The next question in the appeal is the one principally relied upon by the appellants. It is that s 91(1) of the Act applies to the transfer of Lot 135, not s 93.

[46] The text of s 91(1) is as follows:

- “(1) This section applies if—
- (a) a dutiable transaction is 1 of the following—
    - (i) the transfer, or agreement for the transfer, of residential land;
    - (ii) the acquisition, mentioned in section 85 (b) , of a lease of residential land;
    - (iii) the vesting, mentioned in section 85 (c) , of residential land; and
  - (b) either of the following applies—
    - (i) the transferees, lessees or vested persons are individuals and are not trustees and the residence will be their home;
    - (ii) the transferees, lessees or vested persons are trustees of a trust, other than a discretionary or unit trust, the beneficiaries are individuals all of whom are under a legal disability and the residence would be the home of all the beneficiaries if they were the transferees or lessees of, or vested persons for, the land.”

[47] As is apparent, s 91(1)(b)(i) applies to a dutiable transaction where the residential land “**will be** [the] home” of the relevant individuals, whereas s 93(1) applies where the residential land “**is** the home” of the relevant individuals. Both as a matter of ordinary meaning, and in the context of each other, in my view, it should be accepted that s 91(1) applies where the occupation date is in the future as at the date when liability to duty under the dutiable transaction arises and is assessed and s 93(1) applies where the occupation date is before that date.

[48] It follows that s 93(1) does apply to the transfer of Lot 135.

[49] The remaining point concerns the amount of the duty payable. If the dutiable transaction was one to which s 93(3) applied, the relevant provision for the assessment of the amount of the duty would be s 93(7), which provides, relevantly:

- “(7) The transfer duty imposed on a dutiable transaction to which this section applies under subsection... (3) is the total of—

- (a) for each relevant person, the amount worked out by applying the person's interest to the concessional duty; and
- (b) the amount worked out by deducting, from transfer duty on the dutiable value of the transaction, the amount (also the *deduction amount*) worked out by applying the relevant rate to the lesser of the following—
  - (i) the total of the value of each relevant person's interest;
  - (ii) the total of the relevant persons' interests multiplied by \$350,000.”

[50] However, I have found that the dutiable transaction is one to which s 93(1) applies. It follows that the relevant provision for the assessment of the amount of the duty is s 93(6), which provides, relevantly:

- “(6) The transfer duty imposed on a dutiable transaction to which this section applies under subsection (1)(c)(i)... is the total of—
- (a) for each relevant person, the amount worked out by applying the transferee's... interest to the concessional duty; and
  - (b) the amount worked out by deducting, from transfer duty on the dutiable value of the transaction, the amount (the *deduction amount*) worked out by applying the relevant rate to the lesser of the following—
    - (i) the total of the value of each relevant person's interest;
    - (ii) \$350,000.”

[51] Under both subsections, in this case:

- (a) “the concessional duty” is \$3,500, because the dutiable value of the whole of Lot 135 as residential land exceeds \$500,000;<sup>20</sup>
- (b) “transfer duty on the dutiable value” is \$15,925, being the transfer duty that would have been payable on the dutiable transaction on the amount of \$500,000 if no concession applied;<sup>21</sup>

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<sup>20</sup> *Duties Act 2001 (Qld)*, s 91(5).

<sup>21</sup> *Duties Act 2001 (Qld)*, s 24 and Schedule 3.

- (c) “the relevant rate” is the rate as stated in Schedule 3;<sup>22</sup>
- (d) “the value of each relevant person’s interest” is \$250,000, being 25 percent of \$1 million.<sup>23</sup>

[52] The respondent dismissed the appellants objection to the assessment on the ground that s 93(3) and (7) applied. The calculation under s 93(7) is as follows:

- (a) first, under s 93(7)(a):
  - (i) “for each relevant person”, the “person’s interest” is 25 percent;<sup>24</sup>
  - (ii) applying that interest of 25 percent to the concessional duty of \$3,500 produces \$875;
  - (iii) “the total of... for each relevant person, the amount worked out” is \$1,750 being the total of the amount worked out for each of the appellants of \$875;
- (b) second, under s 93(7)(b):
  - (i) the ‘**deduction amount**’ must be deducted from the transfer duty on the dutiable value of \$15,925;
  - (ii) the ‘**deduction amount**’ is calculated as the relevant rate applied to the “total of each relevant persons’ interests” multiplied by the lesser of the amount of the total of the value of each relevant person’s interest or the total of the relevant persons’ interests multiplied by \$350,000, where:
    - (A) the relevant rate is the rate stated in Schedule 3;
    - (B) the total of the value of each person’s relevant interest is \$500,000, being the addition of the value of each of the appellants’ interests of \$250,000;
    - (C) the total of the relevant persons’ interests is 50 percent, being the addition of each of the appellant’s interests of 25 percent;
    - (D) the multiplication of the total of the relevant persons’ interests (50 percent) and \$350,000 is \$175,000, which is less than the total of the value of each person’s relevant interest of \$500,000;
    - (E) accordingly, the calculation for the “**deduction amount**” by applying the relevant rate to \$175,000 is \$4,550;
- (c) third, the final calculation is:
 
$$\$1,750 + (\$15,925 - \$4,550) = \$13,125.$$

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<sup>22</sup> *Duties Act 2001 (Qld)*, s93(8)(d).

<sup>23</sup> *Duties Act 2001 (Qld)*, s 93(8)(c).

<sup>24</sup> *Duties Act 2001 (Qld)*, s 93(8)(b)(i).

[53] The respondent submits that the calculation under s 93(6) is as follows:

- (a) first, under s 93(6)(a):
  - (i) “for each relevant person”, the “transferee’s interest” is 50 percent;<sup>25</sup>
  - (ii) applying that interest of 50 percent to to the concessional duty of \$3,500 produces \$1,750;
  - (iii) “the total of... for each relevant person, the amount worked out” is \$3,500 being the total of the amount worked out for each of the appellants of \$1,750;
- (b) second, under s 93(6)(b):
  - (i) the ‘*deduction amount*’ must be deducted from the transfer duty on the dutiable value of \$15,925;
  - (ii) the ‘*deduction amount*’ is calculated as the relevant rate applied to the lesser of the total of the value of each relevant person’s interest or \$350,000, where:
    - (A) the value of each person’s relevant interest is \$250,000, being the value of each appellant’s interest;
    - (B) the total of the value of those interests is \$500,000; and
    - (C) \$350,000 is less than that total;
    - (D) accordingly, the calculation for the “*deduction amount*” by applying the relevant rate to \$350,000 is \$10,675;
  - (iii) third, the final calculation is:
 
$$\$3,500 + (\$15,925 - \$10,675) = \$8,750.$$

[54] It follows that the appeal must be allowed, and the appellants’ assessment on the dutiable transaction should be reduced by \$4,375.

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<sup>25</sup> *Duties Act 2001 (Qld)*, s 93(8)(b)(ii).