TAXATION LEGISLATION AMENDMENT BILL (NO. 2) 2014

Receipt

Bill received from the Assembly; and, on motion by **Hon Peter Collier (Leader of the House)**, read a first time.

Second Reading

HON PETER COLLIER (North Metropolitan — Leader of the House) [5.07 pm]: I move —

That the bill be now read a second time.

This Taxation Legislation Amendment Bill (No. 2) seeks to amend the Land Tax Assessment Act 2002 and the Duties Act 2008. Included in the amendments to the Land Tax Assessment Act is a long overdue modernisation and simplification of the exemption for land used for primary production. The proposed amendments in the bill are based on recommendations from an informal review of the operation of the exemption by the Department of Treasury and the Department of Finance's Office of State Revenue. It is the most comprehensive review of this exemption in over 35 years. The review was initiated in 2012, following a determination that primary producers who sold produce in a processed or converted state rather than a natural state, were ineligible for the exemption. To illustrate this problem, if a primary producer used the land to grow grapes and then produced and sold wine rather than the grapes, the exemption would be denied. This is because the current exemption in the legislation does not extend to secondary production. The review also considered the overall operation of the exemption, particularly in relation to the one-third income test and the owner–user rule that landowners in non-rural zones must currently satisfy to be eligible for the exemption.

In addition, the review considered the need for the multiple appeal options currently available to landowners. Under the proposed amendments, the exemption will apply even when primary produce is sold in a processed or converted state. However, when the processing or conversion of produce takes place on the same property used for primary production, a partial exemption will apply to that portion of the land used to grow the produce, but will not apply to the portion of land used to process or convert the produce. This will ensure competitive neutrality with secondary processors that do not conduct a primary production activity. As a result, when land is being used for both primary production and secondary processing as part of an integrated business, only a partial exemption will apply. The amendments seek also to abolish the one-third income test and the 50 per cent concession for those who fail the one-third income test. This test currently requires landowners in non-rural zones to earn at least one-third of their total net income from primary production business in Western Australia. The one-third income test will be replaced with a more modern and flexible genuine business test.

The proposed business test is based on common law, and considers a range of factors in determining whether a genuine primary production business is being conducted on the land. The business test will consider factors such as the size, scale and permanency of the activity and whether the activity has a prospect of profit and is carried on in a businesslike manner, rather than as a hobby. Although rural land is not currently subject to the one-third income test, the primary production business test that currently applies to rural land will be adjusted so that the same genuine business test is applied to both rural and non-rural land. In practice, this change is expected to have no or minimal impact on the treatment of rural land.

The amendments also seek to expand the owner–user rule, which requires a landowner in a non-rural zone to also be the user of the land. This rule was introduced in 1976 in response to substantial tax avoidance whereby owners of valuable land, often held on a speculative basis for future development purposes, avoided land tax via the primary production exemption. The Commissioner of State Revenue currently has discretionary power to allow an exemption in certain circumstances, and this has been exercised when the user of the land is closely related by blood or marriage to the owner. However, when the owner of the land is a natural person, the commissioner will not apply the discretion to grant an exemption to a business carried out by a related company or trust.

The proposed amendments seek to broaden the legislation to allow the user of the land to include certain related family members based on the definition of "family member" in the Duties Act 2008. This will enable taxpayers to adopt modern business structures and still access the primary production exemption. Consideration was given to removing the owner–user rule entirely for land located in non-rural zones. Based on past history, it was deemed necessary to retain this rule in its expanded form to prevent tax avoidance and land banking in the metropolitan area. As the proposed amendments replace the commissioner's discretion in relation to the one-third income test and owner–user rule, the appeal options relating to these criteria are no longer required.

This bill also streamlines the appeal rights associated with the primary production exemption, bringing taxpayers into line with usual rights of objection and subsequent appeal to the State Administrative Tribunal. The final primary production amendment seeks to clarify the definition of a "rural business". Under the current arrangements, there is potential for confusion when the term is used in the context of a non-rural zone. It is

therefore proposed to replace the definition of "rural business" with the term "primary production business". The new definition would align with the corresponding definition in the Duties Act 2008 and is expected to have no or minimal impact on the number of exemption recipients.

The proposals resulting from the review were the subject of a public consultation process. Feedback on the specific amendments has been generally supportive, although some suggested the exemption should be further broadened. The amendments that allow an exemption to apply even when primary produce is sold in a processed or converted state are to apply from the 2012–13 land tax assessment year. This will ensure equitable tax treatment for taxpayers affected by the change in the interpretation of the law by the Commissioner of State Revenue. The balance of the amendments to the primary production exemption will commence operation from 1 July 2014, allowing the updated exemption to apply to land tax assessments for 2014–15. Although the Department of Finance has commenced issuing 2014–15 land tax assessment notices, assessment notices relating to land likely to be affected by the amendments will be suspended pending the passage of this bill.

Other amendments to the Land Tax Assessment Act included in the bill relate to the granting of partial exemptions. The then Minister for Finance foreshadowed these amendments in Parliament last November, following a decision of the State Administrative Tribunal that overturned the longstanding practice of allowing only a partial exemption when land is not being fully used for an exempt purpose. If left unaddressed, the tribunal decision would have set a precedent, putting at risk millions of dollars of land tax revenue, because a landowner could enjoy an exemption for an entire piece of land by using just a small portion of it for an exempt purpose. The relevant amendments restore the longstanding policy position that exemptions are applied only to the part of the land that is actually used for an exempt purpose.

As was flagged last November, these amendments will have effect from 1 July 2003, the date on which the Land Tax Assessment Act commenced operation. They will not impact retrospectively on the matter decided by the State Administrative Tribunal or other matters that were in dispute at the time of the announcement.

The bill also contains two amendments to improve the efficacy of the Duties Act. The landholder duty provisions seek to impose duty on certain indirect acquisitions of land made through the purchase of interests in corporations and unit trust schemes, including land owned by subsidiaries of the entity in which the acquisition was made. There is an anomalous difference in the treatment of an agreement for the sale or purchase of a subsidiary that owns land and an agreement for the sale or purchase of a direct interest in land by an entity or its subsidiary. This results in an inequitable duty outcome upon the sale of a subsidiary and a potential avoidance opportunity for the purchase of a subsidiary. The amendments seek to address this anomaly by aligning the treatment of the two forms of agreements. In the case of the amendments that work in favour of taxpayers, the amendments will apply retrospectively from 1 July 2008—the commencement date of the Duties Act.

Finally, taxpayers continue to attempt to shift value away from dutiable property, such as land and chattels, to other assets that do not attract duty. These situations most commonly occur in transfers of interests in mining companies, when attempts to minimise the value of dutiable mining tenements are made by arguing that significant portions of a transaction's value should be attributed to items such as mining information. Although the Duties Act already contains provisions that address how information should be treated, it continues to be necessary to counter such arguments from taxpayers and their representatives. The bill seeks to improve the operation of the valuation provisions of the Duties Act by clarifying that, when valuing dutiable property, information relating to the property is to be regarded as an attribute of the property and not a separate item to which an independent value can be ascribed.

These amendments do not change the current policy surrounding the treatment of information. The amendments in this bill are not expected to have a significant budget impact.

Pursuant to standing order 126(1), I advise that the bill is not a uniform legislation bill. It does not ratify or give effect to an intergovernmental or multilateral agreement to which the government of the state is a party, nor does this bill, by reason of its subject matter, introduce a uniform scheme or uniform laws through the commonwealth.

I commend the bill to the house and table the explanatory memorandum.

[See paper 2286.]

Debate adjourned, pursuant to standing orders.