

Revenue Laws Amendment and Repeal Bill 2010

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Western Australia

LEGISLATIVE ASSEMBLY

(As amended in Committee)

Revenue Laws Amendment and Repeal Bill 2010

A Bill for

An Act to —

- **amend the *Duties Act 2008*;**
 - **amend the *First Home Owner Grant Act 2000*;**
 - **amend the *State Trading Concerns Act 1916*;**
 - **amend the *Taxation Administration Act 2003*;**
 - **repeal the *Debits Tax Act 2002*;**
 - **repeal the *Debits Tax Assessment Act 2002*,**
- and to provide for related and consequential matters.**

The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary

1. Short title

This is the *Revenue Laws Amendment and Repeal Act 2010*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1, Part 2 Division 1 and sections 13 and 16 — on the day on which this Act receives the Royal Assent (*assent day*);
- (b) Parts 3, 4, 5 and 6 — on the day after assent day;
- (c) section 12 — is deemed to have come into operation on 1 July 2008;
- (d) Part 2 Division 2 and sections 11, 14 and 15 — on a day fixed by proclamation, and different days may be fixed for different provisions.

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Part 2 — Duties Act 2008 amended

Division 1 — Preliminary

3. Act amended

This Part amends the *Duties Act 2008*.

Division 2 — Amendments about conditional agreements

4. Section 9 amended

(1) In section 9 delete the definitions of:

off-the-plan conditional agreement
unconditional

(2) In section 9 insert in alphabetical order:

issue of title conditional agreement has the meaning
given in section 90;

(3) In section 9 in the definition of *general conditional agreement*
delete paragraph (c) and insert:

(c) an issue of title conditional agreement;

(4) In section 9 in the definition of *terminated on relevant grounds*
delete “section 87(3)” and insert:

section 88A(2)

1 **5. Section 19 amended**

2 In section 19(2) delete “a transaction record for it is required to
3 be lodged under section 23” and insert:

4
5 an instrument is required to be lodged under section 23
6 in respect of the agreement
7

8 **6. Section 23 amended**

9 (1) In section 23(1) delete the passage that begins with “within —”
10 and continues to the end of paragraph (d) and insert:

11
12 within 2 months after the day on which liability for
13 duty on the transaction arises.
14

15 (2) Delete section 23(3).

16 **7. Section 25 replaced**

17 Delete section 25 and insert:

18
19 **25. Payment of duty**

20 (1) A person liable to pay duty on a dutiable transaction is
21 to pay the duty within one month after the date of the
22 assessment notice issued in relation to the assessment
23 of the duty, unless a later time is provided under
24 subsection (2) or (3) in respect of the transaction.

25 (2) Unless subsection (3) applies, duty is to be paid within
26 12 months after the day on which liability for duty on
27 the transaction arises if the transaction is —

28 (a) a conditional agreement; or

- 1 (b) a dutiable transaction referred to in
2 section 11(1)(a), (b), (c) or (d) if a document
3 relating to the transaction must be registered
4 under —
5 (i) the *Mining Act 1978*; or
6 (ii) the *Registration of Deeds Act 1856*; or
7 (iii) the *Transfer of Land Act 1893*.
- 8 (3) Duty is to be paid within 3 years after the day on which
9 liability for duty on the transaction arises if the
10 transaction is —
11 (a) a subdivision conditional agreement; or
12 (b) an issue of title conditional agreement.
- 13

14 **8. Section 87 amended**

- 15 (1) Delete section 87(3) and (4).
- 16 (2) In section 87(5) delete “subsections (1)(c) and (3)(a),” and
17 insert:
18
19 subsection (1)(c),
20

21 Note: The heading to amended section 87 is to read:

22 **The term “conditional agreement”**

23 **9. Section 88A inserted**

24 After section 87 insert:
25

26 **88A. General conditional agreements terminated on**
27 **relevant grounds**

- 28 (1) Duty is not chargeable on a general conditional
29 agreement if, after an instrument effecting or

- 1 evidencing the agreement has been lodged under
2 section 23 but before duty on the transaction is paid, or
3 is due to be paid, under section 25 (whichever is the
4 earlier in time) —
- 5 (a) the agreement is terminated on relevant
6 grounds; and
- 7 (b) the Commissioner is notified of the termination
8 of the agreement in the approved form.
- 9 (2) A general conditional agreement is terminated on
10 relevant grounds if —
- 11 (a) it is not carried into effect because the
12 condition to which it is or was subject cannot
13 be fulfilled for reasons that are not within the
14 control of a party to the agreement, or a person
15 that is related (within the meaning given in
16 section 87(5)) to a party to the agreement; and
- 17 (b) duty is not chargeable on the agreement under
18 section 107 because it is a cancelled
19 transaction.
20

21 **10. Section 90 replaced**

22 Delete section 90 and insert:
23

24 **90. The term “issue of title conditional agreement”**

25 A reference to an issue of title conditional agreement is
26 to a conditional agreement —

- 27 (a) for the sale of land conditional on the
28 happening of one or more of the events
29 described in section 87(2)(j) or (m); or
- 30 (b) for —
- 31 (i) the sale of a strata lot; and

- 1 (ii) the construction on the strata lot, after
2 liability for duty on the agreement
3 arises, of a building for commercial,
4 residential or mixed use purposes.
5

6 **Division 3 — Other amendments to the *Duties Act 2008***

7 **11. Section 3 amended**

8 In section 3 in the definition of *lodge* delete “Commissioner;”
9 and insert:

10
11 Commissioner, and if the Commissioner has
12 established procedures for the electronic lodgment and
13 recording of data on dutiable transactions, includes to
14 lodge in accordance with those procedures;
15

16 **12. Section 70 amended**

17 In section 70 delete “Division —” and insert:

18
19 Division, other than section 78 —
20

21 **13. Section 72 amended**

22 In section 72 delete “that, immediately before the acquisition”
23 and insert:

24
25 that
26

1 **14. Section 147E amended**

2 In section 147E delete “the application of the taxpayer,” and
3 insert:

4
5 application being made in the approved form,
6

7 **15. Section 147F amended**

8 (1) In section 147F(2) delete “the application of the taxpayer,” and
9 insert:

10
11 application being made in the approved form,
12

13 (2) In section 147F(4) delete “the application of the taxpayer,” and
14 insert:

15
16 application being made in the approved form,
17

18 **16. Section 262 amended**

19 In section 262(3)(a) delete “within” and insert:

20
21 not later than
22

1 **Part 3 — *First Home Owner Grant Act 2000* amended**

2 **17. Act amended**

3 This Part amends the *First Home Owner Grant Act 2000*.

4 **18. Section 3 amended**

5 In section 3(1) insert in alphabetical order:

6

7 *corresponding Commissioner*, in relation to a
8 corresponding law, means the person responsible for
9 administering the corresponding law;

10

11 **19. Section 65 amended**

12 Delete section 65(2)(c) and insert:

13

14 (c) for the purpose of proceedings, or a report of
15 proceedings, arising out of this Act, a taxation
16 Act as defined in the *Taxation Administration*
17 *Act 2003* or a corresponding law, to which —

18 (i) the Commissioner is a party, or in
19 respect of proceedings arising out of a
20 corresponding law, the corresponding
21 Commissioner is a party; and

22 (ii) the person to whom the information
23 relates is a party.

24

1 **Part 4 — State Trading Concerns Act 1916 amended**

2 **20. Act amended**

3 This Part amends the *State Trading Concerns Act 1916*.

4 **21. Section 5A inserted**

5 After section 4B insert:

6

7 **5A. Credit card and debit card administration fee**

8 (1) In this section —

9 *credit card* means —

10 (a) an article of a kind commonly known as a
11 credit card; or

12 (b) any similar article intended for use in obtaining
13 cash, goods or services on credit;

14 *credit or debit card administration fee* means a fee,
15 not exceeding the amount approved under this section,
16 for the making of a payment by use of a credit card or
17 debit card;

18 *debit card* means an article intended for use by a
19 person in obtaining access to an account that is held by
20 the person for the purpose of withdrawing or
21 depositing cash or obtaining goods or services;

22 *statutory corporation* has the meaning given in
23 section 4B(1).

24 (2) The imposition of a credit or debit card administration
25 fee is authorised for the purposes of section 4(2).

26 (3) A credit or debit card administration fee can be
27 imposed by a statutory corporation on a person making
28 a payment to the statutory corporation by means of a
29 credit card or debit card.

- 1 (4) A credit or debit card administration fee must not
2 exceed the amount approved by the Treasurer.

- 3 (5) Different amounts can be approved in relation to
4 different types of credit cards or debit cards.

- 5 (6) The amount of a credit or debit card administration fee
6 that is determined in a manner that has been approved
7 by the Treasurer is to be regarded as having been
8 approved by the Treasurer.
9

1 **Part 5 — Taxation Administration Act 2003 amended**

2 **22. Act amended**

3 This Part amends the *Taxation Administration Act 2003*.

4 **23. Section 20A amended**

5 After section 20A(2) insert:

6

7 (3A) Without limiting subsection (1), a compromise
8 agreement may include —

9 (a) conditions agreed with the taxpayer providing
10 for the payment (and allowing for the
11 remission) of interest at the prescribed rate or at
12 some other rate fixed by or under the
13 arrangement with the agreement of the
14 taxpayer; and

15 (b) any other conditions the Commissioner
16 considers appropriate.

17

18 **24. Section 39 amended**

19 Delete section 39(2) and insert:

20

21 (2) If, as a result of the reassessment, an amount is to be
22 refunded or credited to the taxpayer, the following
23 amounts are also to be refunded or credited to the
24 taxpayer —

25 (a) any amount paid by the taxpayer for the
26 lodging of a memorial under section 76, 77 or
27 77A, if the Commissioner has lodged a
28 withdrawal of the memorial as a result of the
29 reassessment;

- 1 (b) interest during the reassessment period,
2 calculated at the prescribed rate, on the amount
3 to be refunded or credited, including any
4 amount referred to in paragraph (a).
- 5 (3) In subsection (2)(b) —
- 6 *reassessment period*, in relation to the payment of
7 interest on an amount, means the period —
- 8 (a) beginning on whichever is the later of —
- 9 (i) the date on which the amount to be
10 refunded or credited to the taxpayer, as
11 a result of the reassessment, was paid by
12 the taxpayer; or
- 13 (ii) the date on which the assessment or
14 decision objected to was made;
- 15 and
- 16 (b) ending on the date, on or after the date the
17 Commissioner made the reassessment, on
18 which the Commissioner approves the
19 refunding or crediting of the amount.
20

21 **25. Section 43 amended**

- 22 (1) Delete section 43(3) and insert:
23
- 24 (3) If the final reassessment of the taxpayer's liability
25 indicates that tax has been overpaid, the taxpayer is
26 entitled to a refund or credit of the overpaid amount
27 and the following amounts —
- 28 (a) any amount paid by the taxpayer for the
29 lodging of a memorial under section 76, 77 or
30 77A, if the Commissioner has lodged a
31 withdrawal of the memorial as a result of the
32 final reassessment;

s. 26

- 1 (b) interest during the reassessment period,
2 calculated at the prescribed rate, on the amount
3 to be refunded or credited, including any
4 amount referred to in paragraph (a).
- 5 (4A) In subsection (3)(b) —
6 *reassessment period*, in relation to the payment of
7 interest on an amount, means the period —
8 (a) beginning on whichever is the later of —
9 (i) the date on which the overpaid amount
10 was paid by the taxpayer; or
11 (ii) the date on which the assessment or
12 decision the subject of the
13 Commissioner’s decision to which the
14 review proceedings relate, was made;
15 and
16 (b) ending on the date, on or after the date the
17 Commissioner made the final reassessment, on
18 which the Commissioner approves the
19 refunding or crediting of the amount.
20
- 21 (2) In section 43(4)(b) delete “overpaid amount, and any payment
22 of interest payable on the overpaid amount” and insert:
23
24 amount referred to in that subsection
25
- 26 **26. Section 62 amended**
27 In section 62:
28 (a) in paragraph (b) delete “section 76 or 77;” and insert:
29
30 section 76, 77 or 77A; and
31

1 (b) after paragraph (a) insert:

2

3 and

4

5 **27. Section 77A amended**

6 After section 77A(3) insert:

7

8 (4A) If the Commissioner lodges a memorial under the *First*
9 *Home Owner Grant Act 2000* section 55(2A) to create
10 a charge on a relevant interest in land, then the
11 Commissioner may also lodge a memorial under
12 subsection (3) and for that purpose that subsection
13 applies as if —

- 14 (a) a reassessment to give effect to the *Duties*
15 *Act 2008* section 145 had taken place; and
- 16 (b) the transfer duty payable as a result of that
17 reassessment was not paid by the due date; and
- 18 (c) the amount of the unpaid transfer duty is the
19 amount that would be payable as a result of
20 such a reassessment.

21

22 **28. Section 114 amended**

23 Delete section 114(2)(d) and insert:

24

25 (d) for the purpose of proceedings, or a report of
26 proceedings, arising out of a taxation Act to
27 which —

- 28 (i) the Commissioner is a party; and
- 29 (ii) the person to whose affairs the
30 information or material relates is a
31 party.

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Part 6 — Debits Tax legislation repealed

Division 1 — Repeals

29. Repeals

The following are repealed —

- (a) the *Debits Tax Act 2002*;
- (b) the *Debits Tax Assessment Act 2002*;
- (c) the *Debits Tax Assessment Regulations 2003*.

Division 2 — Consequential amendments

30. Taxation Administration Act 2003 amended

- (1) This section amends the *Taxation Administration Act 2003*.
- (2) Delete section 3(1)(b) and (c).
- (3) In section 43(2) delete “the *Debits Tax Assessment Act 2002*,”.
- (4) In section 55(1):
 - (a) in paragraph (ba) delete “Chapter 4;” and insert:

Chapter 4.
 - (b) delete paragraph (c).
- (5) In section 116(1) delete “or debits tax”.

31. Taxation Administration Regulations 2003 amended

- (1) This section amends the *Taxation Administration Regulations 2003*.
 - (2) Delete regulation 9(1)(b) and “or” after it.
-