REVENUE LAWS AMENDMENT BILL 2018

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Stephen Dawson (Minister for Environment)**, read a first time.

Second Reading

HON STEPHEN DAWSON (Mining and Pastoral — Minister for Environment) [5.37 pm]: I move —

> That the bill be now read a second time.

The Revenue Laws Amendment Bill 2018 contains a package of amendments to address significant duty leakage, ensure certain taxpayer exemptions and concessions apply correctly, and improve the efficiency of the state's taxation legislation. The bill is complemented by the Taxation Administration Amendment Bill 2018, which contains amendments to improve the administrative and enforcement arrangements for the state's taxes, together with consequential amendments from this bill. The measures in this bill to address duty leakage are the most comprehensive changes to the Duties Act 2008 since it replaced the Stamp Act 1921 on 1 July 2008. These amendments close loopholes and clarify the law for complex, high-value transfer duty and landholder duty transactions. They do not represent an increased tax burden on the community, but are aimed at making sure the correct amount of duty is paid on these transactions in the same way that most Western Australian families and business owners pay duty when purchasing their homes or businesses. Tackling these issues is another demonstration of this government's strong commitment to budget repair and responsible management of the state's finances.

Landholder duty applies to the indirect acquisition of land through the purchase of a majority interest in a company or unit trust scheme that is entitled to land, including mining tenements, of $2 million or more. An entity may be entitled to land through a linked entity. However, even with the transition to the Duties Act in 2008, the linked entity provisions have not been significantly modified since they were introduced in 1987. As a result, the provisions do not properly reflect modern corporate structures, which are becoming substantially more complex. Unfortunately, this has allowed some taxpayers to reduce duty on a landholder acquisition by using a combination of subsidiary entities to dilute the interest a landholder has in other entities that hold land. As a result, these entities cannot be linked to the landholder. This has the effect of reducing the value of land to which the landholder is entitled. In one case, a purchaser ultimately acquired 100 per cent of a landholding company. However, after a contrived series of acquisitions to transfer interests in the landholding company to subsidiaries that could not be linked to the target entity, the purchaser did not pay duty on the full value of the land. This resulted in revenue loss for the state of nearly $10 million.

Duty applies to the value of land and chattels held by a landholder. However, if land is acquired indirectly through a landholder and the chattels are acquired directly, duty does not apply to the chattels. Some taxpayers have deliberately structured their transactions to achieve this outcome. In one case, a purchaser acquired mining tenements indirectly through a landholder but purchased the related equipment directly. Revenue of $4 million was forgone on the value of the equipment.

To address these issues, the bill broadens the linked entity provisions to ensure landholder duty applies to modern corporate structures involving an entity that is entitled to land through a combination of direct and indirect interests in another entity. The bill also introduces new grouping provisions that will apply to certain acquisitions and transactions that form substantially part of one arrangement. Duty will apply to acquisitions in two or more entities with a combined majority interest in the same landholding company, as well as acquisitions in a landholder and another entity that only holds chattels. The provisions also mean that landholder duty will apply correctly to acquisitions that are deliberately structured as separate direct and indirect transactions to defeat the landholder threshold or to reduce duty.

Under the Stamp Act 1921, duty applied to landholder acquisitions regardless of whether the seller and purchaser were related or unrelated. An unintended outcome of the transition from the Stamp Act to the Duties Act is that acquisitions between related persons are not always subject to duty. The bill restores the correct duty treatment for these acquisitions and ensures landholder duty applies fairly, regardless of whether or not the acquirer is related to the seller. The duties exemption for tightly controlled corporate groups is intended to promote more efficient group structures. The basic concept is that duty applies when assets are transferred into and out of a corporate group, but an exemption is available for transfers between members of the group. Unfortunately, there have been multiple occasions where the exemption has been blatantly used to package business assets in an entity for sale to a third party without duty applying. Over the past five years, this has resulted in revenue loss for the state of approximately $10 million.

When the Duties Act was introduced, duty on business assets was due to be abolished. This would have meant there was no duty payable on either a direct or an indirect acquisition of business assets. As such, the post-association requirement in the Stamp Act for property to remain in the group for five years after an exemption was removed.

However, with business assets remaining in the base, it is unfair to allow some taxpayers to acquire these assets without paying duty while other purchasers must. The bill addresses this issue by introducing an automatic revocation of exemption when the transferee entity is sold to a third party within three years after the exemption was granted and it still holds some or all of the property that received an exemption. This preserves the policy intent of the exemption to allow a corporate group to streamline its structure, and is consistent with the post-association requirements in most other jurisdictions.

There are a range of other minor amendments to the landholder duty and connected entities exemption chapters that improve how the provisions work and provide certainty for taxpayers. Things on land that are common law fixtures, such as buildings and infrastructure, are part of the underlying land, and duty applies to the value of the fixtures when the land is transferred. If things on land are not fixtures, duty applies only if they are acquired with the land. Currently, major infrastructure assets can be transferred without duty applying because of a statutory severance that specifies the item is not a common law fixture. These clauses are commonly included in enabling legislation for the construction or sale of major infrastructure, such as gas pipelines, and allow the assets to be dealt with separately from the land. The result of a statutory severance is that the item is a chattel rather than part of the land as a fixture, and transfer duty will not apply if the infrastructure is acquired without the underlying interest in freehold land. For landholder duty, the value of the infrastructure cannot be included when determining whether the landholder threshold is met.

Although transactions involving this sort of infrastructure are infrequent, the value of the assets means significant revenue is forgone. For example, the state lost approximately $70 million as a result of the WestNet case in 2013, which involved the indirect acquisition of the state's rail freight network. To overcome this problem, the bill introduces a fixed-to-land model into the Duties Act. This applies duty to direct and indirect acquisitions of things fixed to land, regardless of whether they are common law fixtures or whether the thing is acquired separately from the land to which it is fixed. In cases in which infrastructure is fixed to land but is not a fixture, duty will apply if a person acquires the infrastructure without also buying the underlying land. However, if a person acquires the underlying land but does not acquire the infrastructure, duty will only apply to the land.

Rights that allow people to control or access fixed infrastructure are also included for duty purposes, together with statutory licences authorising the ownership, operation or control of infrastructure. These assets are included to ensure that duty applies when a person effectively acquires ownership, operation or control of fixed infrastructure through a licence or contractual arrangement rather than through an outright purchase. This also prevents the value of fixed infrastructure being allocated to these rights or licences in an attempt to reduce duty. The fixed-to-land model will also reduce complex, protracted legal arguments about whether other items of substantial infrastructure, such as large fixed items of mining equipment, are fixtures or chattels and ensure duty applies when these assets are purchased. The changes are not intended to impact the purchase of residential homes or investment properties, as these transactions do not usually involve items of fixed infrastructure. In addition, the longstanding exemption for chattels used in a farming business will apply to things fixed to farming land that are not common law fixtures.

Another matter in the bill deals with circumstances in which the holder of a mining tenement grants another person rights to explore for and mine specific minerals on the holder's tenement. Until a Court of Appeal decision in 2014, these rights were considered to be dutiable as interests in a mining tenement, and were also included as land for landholder duty purposes. The bill restores the intended duty treatment of these rights. Duty will apply to transactions involving these rights in the same way that duty applies to transactions involving an interest in a mining tenement. These rights are also included as land assets for landholder duty to ensure they are taken into consideration when determining whether the landholder threshold is reached and for the purposes of calculating duty.

The other amendments in the bill are largely of a housekeeping nature, with most of these changes benefiting taxpayers. The most significant amendments involve the duties family farm exemption. When the exemption was introduced in 1994, its purpose was to remove the financial barrier created by stamp duty to transfer the family farm to a family member without having to wait for it to be transferred upon the farmer's death. The exemption means farm ownership can be more easily passed to the family members undertaking most of the work. It also provides ownership certainty so that children are more likely to improve the property and introduce new and efficient farming techniques. However, the legislation has not kept pace with modern farming practices. In particular, a number of farmers and farming industry advisers have expressed concern over the last few years that the exemption does not allow the progressive transition of a farm to a family member. The amendments in the bill address these concerns and enable the exemption to better accommodate modern farming business structures and succession planning arrangements in which a farmer gradually retires from the business.

The bill also retrospectively restores the exemption for vehicle licence transfers between spouses or de facto partners, which was inadvertently removed by amendments to the Road Traffic Act 1974 in 2014.

As part of the 2015–16 budget, the former government announced it would introduce a duty exemption for certain transfers of property under the Associations Incorporation Act 2015. I am pleased to advise that this exemption is included in the bill, and will allow not-for-profit associations to restructure through amalgamation, winding-up or transfer of incorporation without incurring duty.

The bill ensures that a number of duties concessions operate correctly. This includes prescribing the requirements for transfers to and from a bare trustee, and transfers to facilitate a subdivision, to prevent a duty concession being available in broader circumstances than intended.

Other amendments make sure that land tax residential exemptions apply to land that is subdivided during an assessment year, and allow an exemption when a person with a disability lives in a home owned by their child. The remainder of the housekeeping amendments improve how a number of provisions operate and address minor technical issues. The associated explanatory memorandum contains further details of these amendments.

Pursuant to standing order 126(1), I advise that this bill is not a uniform legislation bill. It does not ratify or give effect to a bilateral or multilateral intergovernmental 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 throughout the commonwealth.

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

[See paper 2571.]

Debate adjourned, pursuant to standing orders.

House adjourned at 5.48 pm

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