

Revenue Laws Amendment (Assessment) Bill 2000

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Western Australia

LEGISLATIVE ASSEMBLY

**Revenue Laws Amendment (Assessment)
Bill 2000**

A Bill for

An Act to amend the —

- *Stamp Act 1921*; and
- *Land Tax Assessment Act 1976*,

and for related purposes.

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Revenue Laws Amendment (Assessment) Act 2000*.

5 **2. Commencement**

- (1) Subject to subsection (2) this Act comes into operation on the day on which it receives the Royal Assent.
- (2) Part 3, other than section 19(2) is deemed to have come into operation on 30 June 1995.

Part 2 — Stamp Act 1921 amended

Division 1 — Preliminary and miscellaneous

3. The Act amended

The amendments in this Part are to the *Stamp Act 1921**.

5 [* Reprinted as at 22 October 1999 .
For subsequent amendments see 1999 Index to Legislation of
Western Australia, Table 1, pp. 236-7.]

4. Third Schedule amended

10 Item 2(7c) of the Third Schedule is amended by deleting
“section” and inserting instead —
“ and ”.

Division 2 — Corporate reconstructions

5. Section 75J amended

15 Section 75J(2)(a)(ii) is amended by deleting “company” and
inserting instead —
“ body corporate ”.

6. Section 75JB amended and transitional provision

- (1) Section 75JB(5) is repealed and the following subsections are
20 inserted instead —
“
- (5) If within 5 years after the execution of the instrument
or the date of the relevant acquisition A and B cease to
be associated then the claw-back applies.
- (5a) The claw-back under subsection (5) does not apply if A
25 and B cease to be associated in circumstances where A
has no assets or no assets other than cash or money in
an account at call or on deposit with any person or a
negotiable instrument.

(5b) If A is liquidated a reference in subsection (5a) to its assets is a reference to them at the time of the appointment of the liquidator and at all subsequent times until they are distributed to the shareholders.

5 (5c) In subsections (5c) to (5j) —

“controlling body” means —

10 (a) in a case to which subsection (5e)(a) applies, a body corporate which, at the time of the execution of the instrument or the date of the relevant acquisition, owned and controlled the parent body;

15 (b) in a case to which subsection (5e)(b) applies, a body corporate which, at the time the association referred to in subsection (5e)(b) arose, owned and controlled the parent body;

20 **“own and control”** a body corporate means to beneficially own (directly or indirectly) at least 90% of the issued share capital of, and have control (within the meaning of section 75J(2)(b)) over, the body corporate;

25 **“parent body”** means the other body corporate referred to in subsection (5d) or, if there is more than one of them, whichever of them did not, at the relevant time or date mentioned in the definition of **“controlling body”**, own and control any of the others;

“qualifying period” has the same meaning as it has in subsection (1)(d).

30 (5d) An association is a **“prescribed relationship”** for the purposes of subsection (5e) if A and B are associated because another body corporate owns and controls each of them.

(5e) For the purposes of subsection (5f), the “**relevant circumstances**” have occurred if —

- (a) the association between A and B which satisfied the requirement of subsection (1)(c) was a prescribed relationship for the whole or a part of the qualifying period; or
- (b) the association between A and B which prevents the claw-back under subsection (5) from applying is a prescribed relationship.

(5f) If the relevant circumstances have occurred and, on or after 25 May 2000 and within 5 years after the execution of the instrument or the date of the relevant acquisition, the parent body —

- (a) ceases to beneficially own (directly or indirectly) at least 90% of the issued share capital of B; or
- (b) ceases to have control (within the meaning of section 75J(2)(b)) over B,

then —

- (c) the parent body and B shall notify the Commissioner in writing in a form approved by the Commissioner within one month after the relevant event; and
- (d) the claw-back applies.

(5g) Despite subsection (5f)(d), the Commissioner may, on an application under this subsection, waive the claw-back if —

- (a) a body corporate approved by the Commissioner (being a controlling body) continues to own and control B; and
- (b) the Commissioner is satisfied that waiving the claw-back would not be inconsistent with the objects of this section.

(5h) The application shall be in writing in a form approved by the Commissioner.

(5i) The Commissioner may require the person making the application to provide any information and evidence that the Commissioner needs for the purposes of subsection (5g).

(5j) If the claw-back is waived under subsection (5g) —

(a) subsection (5f) then applies as if references in it to the parent body were references to the body corporate approved under subsection (5g); and

(b) a reference in this Part to subsection (5f)(c) is to be read as a reference to that provision as applied by paragraph (a).

”.

(2) In the event of a cessation of ownership or control referred to in section 75JB(5f)(a) or (b) of the *Stamp Act 1921* as inserted by subsection (1) taking place on or after 25 May 2000 and before this Act receives the Royal Assent, the notification required by section 75JB(5f)(c) of that Act is to be given within one month after this Act receives the Royal Assent.

7. Section 75JBA inserted

After section 75JB the following section is inserted —

“

75JBA. Operation of claw-back — application for pre-determination in certain cases

(1) Terms used in this section have the same meanings as they have in section 75JB.

(2) If a cessation of ownership or control referred to in section 75JB(5f)(a) or (b) is proposed or contemplated in circumstances where a controlling body will continue to own and control B, a person acting on behalf of B, the parent body or the controlling body,

may request the Commissioner to determine whether in those circumstances the Commissioner would, under section 75JB(5g), approve the controlling body and waive the claw-back.

- 5 (3) The request shall be in writing in a form approved by
the Commissioner.
- (4) The Commissioner may require the person making the
request to provide any information and evidence that
the Commissioner needs to make the determination.
- 10 (5) If the Commissioner is given sufficient information to
do so the Commissioner shall make the requested
determination.
- (6) If the Commissioner determines that the controlling
body would be approved and the claw-back waived
15 then, on an application under section 75JB(5g), the
Commissioner shall approve the controlling body and
waive the claw-back unless the Commissioner is of the
opinion that in relation to the request for a
determination there was not a full and true disclosure
20 of relevant information and evidence.

”

8. Section 75JDA inserted and transitional provision

- (1) After section 75JD the following section is inserted —

“

25 **75JDA. Exemption may be withheld in certain cases**

- (1) In this section —
- “**duty avoidance arrangement**” means an arrangement —
- (a) avoiding or circumventing the operation of the provisions of this Part so far as they make the availability and continued effect of an exemption under section 75JB dependent

on bodies corporate having been associated
for a particular period or remaining
associated for a particular period; or

5 (b) having as its purpose, or one of its purposes,
the reduction of duty that might otherwise
become payable.

10 (2) Without limiting section 75JC, the Commissioner may
determine under that section that an exemption under
section 75JB would not be granted in respect of an
instrument or a Part III BA statement if the
Commissioner considers that the instrument or
statement would, if executed or lodged, relate or be
likely to relate to a duty avoidance arrangement.

15 (3) Even if on an application under section 75JD it is
shown to the satisfaction of the Commissioner that
section 75JB applies, the Commissioner may refuse to
grant an exemption under section 75JB(3) in respect of
an instrument or a Part III BA statement if the
Commissioner considers that the instrument or
20 statement relates or is likely to relate to a duty
avoidance arrangement.

25 (4) Despite subsection (3), if the Commissioner is required
under section 75JC(5) to grant an exemption in respect
of an instrument or a Part III BA statement, the
exemption is to be granted even if the Commissioner
considers that the instrument or statement relates or is
likely to relate to a duty avoidance arrangement.

”.

30 (2) In subsections (3) and (4) —
“**transitional period**” means the period beginning on
25 October 1999 and ending when subsection (1) comes
into operation.

(3) If an exemption under section 75JB of the *Stamp Act 1921* has been granted during the transitional period and the Commissioner is of the opinion that it would not have been granted if subsection (1) had come into operation on 25 October 1999, the claw-back under Part IIIBAAA of that Act applies.

(4) Section 75JDA(4) of the *Stamp Act 1921* does not apply to a requirement under section 75JC(5) of that Act if the determination under section 75JC was made during the transitional period.

9. Sections 75JE and 75JF amended

Sections 75JE(1)(b) and 75JF(1)(b) are amended by inserting after “75JB(4)” —

“ or (5f)(c) ”.

10. Section 75JG amended

(1) Section 75JG(1) and (2) are amended by inserting after “75JB(4)” —

“ or (5f)(c) ”.

(2) Section 75JG(3) is amended as follows:

(a) by deleting “75JC or an application under section” and inserting instead —

“

75JBA or 75JC or an application under section 75JB(5g) or

”;

- (b) in paragraph (b), by deleting “an application for an exemption has been made under section” and inserting instead —

“

5 a request has been made under section 75JBA
or an application has been made under
section 75JB(5g) or

”.

Division 3 — Power to reassess

10 **11. Section 31 amended**

Section 31(4) is amended by deleting “An” and inserting instead —

“ Subject to section 31AA, an ”.

12. Sections 31AA, 31AB and 31AC inserted

15 After section 31 the following sections are inserted —

“

31AA. Reassessment of duty

- (1) If, on or after the day on which the *Revenue Laws Amendment (Assessment) Act 2000* receives the Royal
20 Assent, the Commissioner has expressed an opinion
under section 31(1) in relation to an instrument, the
Commissioner —

(a) must if directed to do so by a court determining
an appeal under section 33 or giving an opinion
25 under section 34; and

- (b) subject to subsection (2), may of the
Commissioner’s own volition,

reconsider whether or not the instrument is chargeable
with duty and, if so, the amount of duty with which it is
30 chargeable.

(2) However if the Commissioner's previous opinion in relation to the instrument was based on —

- (a) an interpretation of the applicable law; or
- (b) the Commissioner's practice,

5 that was generally applied to instruments of that kind when that opinion was expressed, then the Commissioner cannot reconsider the instrument under subsection (1)(b) on the ground that the interpretation or practice is or was erroneous.

10 (3) The Commissioner —

- (a) must reconsider an instrument under subsection (1)(a); and
- (b) may reconsider an instrument under subsection (1)(b),

15 even if it has already been reconsidered under subsection (1).

(4) If the Commissioner reconsiders an instrument under subsection (1) and is of the opinion —

- 20 (a) if the Commissioner was previously of the opinion that the instrument was not chargeable with duty, that the instrument is chargeable with duty; or
- (b) that the amount of duty with which the instrument is chargeable is more than the
25 amount that was previously assessed as being chargeable,

the Commissioner is to —

- (c) issue a reassessment of duty in respect of the instrument; and
- 30 (d) endorse on the instrument the amount of duty with which it is chargeable.

- (5) Subject to subsection (6), the Commissioner may only issue a reassessment within 5 years of the date of the original assessment issued in relation to the instrument.
- (6) Even if more than 5 years have elapsed since the original assessment was issued the Commissioner —
- (a) must issue a reassessment if directed to do so by a court; and
- (b) may issue a reassessment if the Commissioner is of the opinion that —
- (i) there has been an evasion of tax; or
- (ii) any previous assessment was issued on the basis of false or misleading information.
- (7) An instrument on which the duty has been reassessed by the Commissioner under this section shall not, if it is unstamped or insufficiently stamped, be stamped otherwise than in accordance with the reassessment of duty issued under this section in respect of that instrument.
- 31AB. Effect of reassessment**
- (1) A reassessment supersedes the previous assessment issued in relation to the instrument.
- (2) A reassessment does not invalidate proceedings for the recovery of duty but an appropriate adjustment may be made to the amount to be recovered in the proceedings to accord with the reassessment.
- (3) If an objection to an assessment is lodged and, before determination of the proceedings on the objection, a reassessment is issued, the proceedings may be continued against the reassessment to the extent that it is liable to the same objection or to an objection that is the same or similar in substance.

31AC. Payment of reassessed duty

(1) In this section —

“**payment period**” means the period, or the extended period, referred to in section 20(3).

5 (2) If a reassessment is issued after the full amount of the duty chargeable under the original assessment has been paid in relation to the instrument, then the difference between that amount and the reassessed amount of duty must be paid within —

10 (a) the payment period; or

(b) the period of one month after the day on which the reassessment is issued,

whichever ends later.

15 (3) If the full amount required to be paid under subsection (2) is not paid within the period required under that subsection, or within any period allowed under section 34C(2), the instrument shall, in addition to being charged with that amount, be charged with a fine equal to 20% of that amount or a fine of \$2, whichever is greater.

20 (4) Any fine chargeable under subsection (3) shall be in addition to, and not in substitution for, any fine chargeable under section 20.

25 (5) Any fine charged under subsection (3) shall be denoted on the instrument concerned by a stamp.

(6) The Commissioner may remit wholly or in part any fine chargeable under subsection (3).

(7) If —

30 (a) no duty, or less than the full amount of duty, has been paid in relation to the instrument; and

- (b) the reassessment is issued not less than one month before the expiry of the payment period,

then the references in section 20(3) to the amount of duty payable are to be read as references to the reassessed amount of duty less any amount of duty already paid.

- (8) If —

- (a) no duty, or less than the full amount of duty, has been paid in relation to the instrument; and

- (b) the reassessment is issued after, or within one month before, the expiry of the payment period —

then, in section 20(3) —

- (c) the references to the amount of duty payable are to be read as references to the reassessed amount of duty less any amount of duty already paid; and

- (d) the reference to the payment period is to be read as a reference to the period ending one month after the day on which the reassessment is issued.

”.

13. Section 32 amended

- (1) Section 32(5) is amended by inserting after “20” —

“ or 31AC ”.

- (2) Section 32(6) is amended by inserting after “shall include” —

“ a reassessment issued under section 31AA and ”.

14. Section 33 amended

Section 33(4) is amended by deleting “, and order the Commissioner to refund the amount of any excess of duty which may have been paid and the amount of any excess of any fine charged under section 20.” and inserting instead —

“

or 31AC, and order the Commissioner —

- (a) if the Court determines that the instrument has been charged with excess duty, to refund the amount of any of that excess of duty which may have been paid and the amount of any excess of any fine charged under section 20 or 31AC; or
- (b) if the Court determines that the instrument has been charged with insufficient duty, to reassess the instrument under section 31AA.

”.

15. Section 39 amended

- (1) Section 39(1a)(b) is amended by inserting after “20(3)” —

“

or the full amount required to be paid under section 31AC(2) is not paid within the period required under section 31AC(2), or the extended period referred to in section 31AC(3)

”.

- (2) Section 39(1a)(d) is amended by deleting “section 20(2) or (3) or 20(2) and (3)” and inserting instead —

“

one or more of section 20(2), section 20(3) and section 31AC(3)

”.

Division 4 — Exemption from duty on licensing of modified motor vehicles

16. Third Schedule amended

After item 9(4) of the Third Schedule the following subitems are inserted —

“

(5) A licence issued to a person for a motor vehicle —

(a) that was modified and that was, before the issue of the licence, last licensed in that person's name under —

(i) the RTA;

(ii) a law of any other country corresponding to the RTA; or

(iii) a corresponding State law;

or

(b) that was part of a motor vehicle that was modified and that was, before the issue of the licence, last licensed in that person's name under —

(i) the RTA;

(ii) a law of any other country corresponding to the RTA; or

(iii) a corresponding State law.

(6) The exemption in subitem (5) applies whether or not a motor vehicle that results from the modification needs to meet a standard or requirement before it can be licensed that is different to the one that the original vehicle had to meet.

”.

Part 3 — *Land Tax Assessment Act 1976* amended

17. The Act amended

The amendments in this Part are to the *Land Tax Assessment Act 1976**.

5 [* *Reprinted as at 30 July 1996.*
 For subsequent amendments see 1999 Index to Legislation of
 Western Australia, Table 1, p. 135.]

18. Section 18A inserted

After section 18 the following section is inserted —

10 “

18A. Certain public authorities to be treated as owners

If —

(a) a body that —

- 15 (i) is established by an Act; and
 (ii) is liable to assessment and taxation
 under this Act in relation to any land
 that it owns, or would be so liable if it
 owned land;

or

- 20 (b) a body that is excluded from the definition of
 “public statutory authority” by regulations
 made for the purposes of that definition,

25 has land vested in it, other than as owner, by or under
 an Act, that body is to be treated as if it were the owner
 of that land for the purposes of this Act.

”.

s. 19

19. Schedule amended

- (1) After clause 1(b) of Part I of the Schedule the following paragraphs are inserted —

“

- 5 (c) *Qualification for certain public authorities*

If the owner of any land referred to in paragraph (a) includes a body referred to in section 18A, that land is not exempt land. However, no-one referred to in paragraph (a) (other than the body, where relevant) is liable for assessment and taxation under this Act in respect of that land.

10

- (d) *Paragraph (c) prevails over paragraph (b)*

If paragraphs (b) and (c) would otherwise make different persons liable for assessment and taxation in relation to particular land, only the person liable under paragraph (c) is so liable.

15

”.

- (2) After clause 9 of Part I of the Schedule the following clause is inserted —

“

- 20 9A. (a) *Class of land*

If, in relation to land and to a year of assessment —

25

- (i) the owner is not, or none of the owners are, using the land solely or principally as his or her or their sole or principal place of residence at midnight on 30 June immediately preceding that year because of a requirement that the land be vacant pursuant to a mortgagee’s right to sell the land; and

30

- (ii) an exemption under clause 9, 10 or 11 of this Part would have applied to that year of assessment in respect of the land but for that requirement,

an exemption applies to that year of assessment in respect of the land to the extent one would have if the owner, or an owner, were using the land solely or principally as his or her

sole or principal place of residence at midnight on 30 June immediately preceding that year.

(b) *Qualifications*

The exemption in paragraph (a) does not apply if —

- 5 (i) the owner, or an owner, is entitled in that year of assessment to an exemption under clause 9, 10 or 11 of this Part in respect of any other land; or
- 10 (ii) any person derives rent or other income from the land during the period when the land was required to be vacant.

The exemption in paragraph (a) applies for one year of assessment only, in relation to the owner or owners and the land.

(c) *Application*

- 15 This clause applies to the year of assessment commencing on 1 July 2000 and for each subsequent year of assessment.

”.

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