

DUTIES BILL 2007

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Kate Doust (Parliamentary Secretary)**, read a first time.

Second Reading

HON KATE DOUST (South Metropolitan — Parliamentary Secretary) [5.04 pm]: I move —

That the bill be now read a second time.

This bill and the associated Duties Legislation Amendment Bill 2007 seek to put in place a new duties regime to replace the outdated stamp duty arrangements that are currently imposed by the Stamp Act 1921. The Stamp Act is the last major taxation statute to be rewritten in the period since this government took office in 2001. This work, in conjunction with the introduction of the Taxation Administration Act 2003, the 2002 business tax review, and the recently completed state tax review, represents the most comprehensive state taxation reform undertaking ever conducted in Western Australia.

The bill proposes fundamental reforms to the Western Australian duty regime to put in place a fairer and more efficient system of taxation for the Western Australian community. While I have no doubt that there will be some aspects of this legislation that will not please every person in the taxpaying and tax advisory community, I believe what is being proposed strikes a good balance between the need to protect the revenue base of the state, and the need to have a fairer and more efficient system of imposing duty.

The Stamp Act is widely acknowledged as difficult and complex law and has become even more so as changes in commercial practices over time have outgrown the instrument-based framework underlying the Stamp Act. As a result, the compliance cost of taxpayers in meeting their stamp duty obligations have increased and the efficient administration of the legislation has been adversely impacted. Situations often arise where a liability is imposed inadvertently or inequitably as the legislation applies in circumstances that were unlikely to have been contemplated by the Parliament. In other cases, revenue is being forgone as a result of the Stamp Act failing to keep pace.

The language of the Stamp Act, in many cases, reflects drafting standards of the past and is difficult to understand. This lack of clarity and the ambiguity associated with many provisions creates uncertainty for taxpayers in determining their duty obligations. It has also become common for businesses to operate on a national basis, and differences across jurisdictions in terminology, structure and liability rules have increased compliance costs for these businesses. The Duties Bill, and the accompanying Duties Legislation Amendment Bill, seek to address these matters, as well as to incorporate a number of policy changes aimed at improving the overall equity and efficiency of the duties regime.

I would like to highlight three key taxation reform measures that were examined through the state tax review process that have been included in the Duties Bill. A new landholder regime is proposed to replace the existing regimes relating to acquisitions of indirect interests in land through dealings in companies and unit trusts that have disparate and inconsistent policy settings. The proposed regime has come about because of growing concerns that the differences in treatment between unit trusts and companies, and to a lesser extent partnerships, have no consistent underlying policy basis. The landholder regime starts from the proposition that land, and all the derivatives of it, is part of the duty base in Western Australia. It is a simpler, more broadly based regime and ensures more consistent outcomes for different entities.

I do not intend to go through all the specifics of the landholder regime, as the bill and the accompanying explanatory memorandum set out how the provisions operate. However, the following are the key concepts on which the landholder model is based: it applies to relevant acquisitions of interests in unit trust or company structures where the entity owns land in Western Australia valued at \$2 million or more; there is no percentage of “land over other property” test, which is a feature of the current land-rich regime that applies to companies, and which creates excessive compliance and administration costs; a relevant acquisition is an acquisition of 50 per cent or more of an entity, in the case of unlisted entities; in the case of entities that are listed, a relevant acquisition is an acquisition of 90 per cent or more of the entity; and duty is charged on the value of the interest in the Western Australian land and chattels being acquired.

It is acknowledged that the landholder regime will bring about a broadening of the stamp duty base and a shift in the incidence of duty. While the expected incidence shifts are detailed more fully in the explanatory memorandum, at a high level it is expected that more company transactions will be brought into the base, while there will be a narrowing of the duty base for unit trusts. It is estimated that in the absence of any offsetting rate relief, this would result in a net increase in annual duty collections of approximately \$100 million. Not surprisingly, support for this model was expressed during the state tax review process, and subsequent

consultation on the exposure draft of the bill was conditional on offsetting rate relief being provided to ensure that this reform measure was undertaken in a revenue neutral manner.

The Duties Bill, therefore, proposes to put in place a transfer duty rate scale, which has rates that have been reduced by around five per cent across the board. This rate relief will be beneficial to the entire taxpaying community, including those purchasing homes. This will mean a saving of \$935 on the purchase of a median-priced home valued at \$460 000 when compared with the current rate scale.

To ensure that the accuracy of the revenue estimate is monitored, the bill includes a requirement that the Treasurer report to the Parliament the amount of revenue raised as a consequence of the landholder model after it has been operating for three years. The period of three years has been chosen to allow for any significant one-off transactions that occur, albeit infrequently. Examining the revenue raised over a three-year period will give a more accurate picture of revenue raised, while ensuring that the commercial confidentiality in respect of any abnormally large transactions is maintained.

I also highlight that in the initial stages of the development of the landholder model, it was intended that it would also apply to partnerships. However, for a number of reasons, the inclusion of partnerships in the landholder model proved to be problematic. The inclusion of partnerships in the model would have been possible. However, the revenue protection provisions need to ensure that duty cannot be avoided by forming and dissolving a partnership, which would have had widespread impact on the community, in some cases without deliberate action by taxpayers. As a result, partnerships are not covered by the landholder regime, except to the extent that ownership of indirectly held land is traced through them. Rather, an interest in a partnership that owns land is subject to duty under the transfer duty provisions of the Duties Bill. However, only the land and chattels that are held by the partnership will be subject to duty. This means that non-real business assets held by a partnership, such as goodwill and intellectual property, will not be taken into account when determining the value of a partnership interest. This is a narrowing of the current duty base in relation to partnerships, as all the assets of a partnership are currently taken into account when determining the value on which duty is charged. In this regard, I highlight that the Duties Legislation Amendment Bill will deliver on the government's previous commitment to abolish duty on non-real business assets in all cases, with effect from 1 July 2010.

The broader land base as a result of the landholder regime has also provided a unique opportunity for reconsideration of the strong revenue protection parameters that currently govern the corporate reconstruction exemption. This exemption provides stamp duty relief for certain transfers of assets between companies where the companies have been 90 per cent commonly owned for generally three years, and will remain commonly owned for a further five years. The pre and post-association periods restrict the ability of corporate groups to achieve more efficient corporate structures without paying significant amounts of stamp duty. The new entity restructuring exemption contained in the Duties Bill has refreshed the existing exemption in a manner designed to deliver benefits to business in this state that are not available anywhere else in Australia.

The combined operation of the landholder regime and the entity restructuring exemption establishes a system that requires duty to be paid as an acquisition cost, but once that is done, otherwise dutiable property can be shifted without pre and post-association obligations to any other 90 per cent owned member of the group and not be subject to duty. When the property is sold, it is expected that the acquirer will be liable for the duty payable on the acquisition of the property. The new regime is also broader than the relief currently provided, as it extends beyond companies to also allow restructures where unit trusts are involved.

The proposed regime will deal with a number of the concerns of business in this state, most notably in the mining, property and rural sectors, which upon acquiring land are unable to shift the assets into more efficient structures without incurring significant stamp duty costs. In many cases, such costs are prohibitive. Opening up the entity restructuring exemption in this manner is not without risk, as it could create the potential for duty to be avoided. For this reason, and to better protect the revenue more generally, the Duties Bill includes a general anti-avoidance provision. Similar provisions operate at the commonwealth level and in Queensland, Victoria and the Australian Capital Territory. The provision can be invoked only when the commissioner forms the view that the sole or dominant purpose of a scheme is the avoidance of duty, and the scheme is of an artificial, blatant or contrived nature.

While it is probable that those who may benefit from such schemes may be vocal in their opposition to this new provision, the government believes that such a provision is essential to ensure that others in the community who meet their obligations do not shoulder the burden of those who seek to avoid them.

The Duties Bill has been the subject of unprecedented consultation with industry groups and the broader community, initially through the state tax review process, and then through the release of an exposure draft of the Duties Bill. As a result of that consultation, a number of other changes were made to the draft to deal with a range of policy and technical issues.

A number of proposals that were considered and supported through the state tax review process have been included in the Duties Bill. These are: the introduction of stamp duty relief for property gifted to the trustee of a special disability trust, as defined by the commonwealth's Social Security Act; extending the availability of the family farm exemption to situations where a related family entity uses the farming property in the business of primary production; extending the availability of the personal relationship concession for transfers of superannuation property upon the dissolution of a marriage; abolishing nominal duty on deeds, except for those that need to be lodged with the commissioner for revenue protection purposes; allowing stamp duty to be assessed or reassessed on a lower amount where the consideration for the property has been reduced prior to the property being transferred; reducing the period for determining a demonstrator motor vehicle to be "new", from three to two months; and introducing an anti-avoidance provision to address concerns about the registration of vehicles in other states for use in Western Australia. In addition, two other matters that were not raised through the state tax review process have been included in the Duties Bill.

The first deals with the situation where parties to a marriage or de facto relationship that has broken down transfer property as part of the splitting of assets and pay stamp duty. They subsequently realise that if they had obtained certain Family Law or Family Court instruments, they would not have had to pay duty on the transfer. To deal with this situation, the Duties Bill proposes an ability for a transfer to be reassessed if the relevant family law or Family Court instrument is obtained within 12 months of the transfer. The transitional arrangements will allow this to occur if the transfer occurs from today. Once the Duties Bill is enacted, a reassessment of duty on the transfer will be available.

The second matter relates to carbon rights and carbon covenants. Under the Stamp Act, these are interests in land and are subject to duty when they are transferred. The Duties Bill, however, includes provisions to ensure that direct or indirect transfers of these rights and covenants are not subject to duty by excluding them from the definition of "land".

As a result of the extensive consultation, changes were made to the exposure draft of the Duties Bill to address some concerns that were raised. One of the main areas of concern was the perceived uncertainty that the general anti-avoidance provision, and the commissioner's ability to grant or revoke an entity restructuring exemption, could create. To address this uncertainty, the Duties Bill includes the ability for a taxpayer to apply to the commissioner to seek a binding determination as to whether the commissioner will apply the general anti-avoidance provision, and whether he will grant or revoke an entity restructuring exemption.

There were also issues raised in the later stages of consultation that the Department of Treasury and Finance has not yet had time to fully consider. These relate to the time period for lodging and paying transfer duty and an extension of the scope of the farm-in concession to mining tenement applications. Although these matters could not be dealt with in the time available, the Treasurer has asked the Department of Treasury and Finance to continue to examine these issues and to recommend any appropriate future changes to accommodate the issues raised.

When members have had the opportunity to examine the Duties Bill in detail, two things will be immediately apparent. The first is that the bill is about one-half the size of the existing Stamp Act. The second is that the bill is more structured, and as a consequence, more easily read and understood.

The bill is divided into eight distinct chapters. Chapter 1 sets out a range of preliminary matters, including commencement arrangements and definitions of terms used in the bill. Chapter 2 contains the transfer duty provisions, which replace the majority of the conveyance duty provisions of the Stamp Act. The chapter imposes transfer duty on dutiable transactions relating to dutiable property. A range of provisions are included in the chapter to support the imposition of transfer duty.

Chapter 3 relates to landholder duty, which is the new duty regime applying to acquisitions of indirect interests in land that I have already mentioned. Chapter 4 contains the insurance duty provisions and is largely consistent with the provisions of the Stamp Act that impose insurance duty. Chapter 5 imposes vehicle licence duty on the grant or transfer of vehicle licences. This chapter is also largely consistent with the vehicle licence duty provisions of the Stamp Act, although it does incorporate the two state tax review recommendations that I have already mentioned.

Chapter 6 sets out the broadened entity restructuring exemption that will operate in conjunction with the landholder model. Chapter 7 contains the general anti-avoidance provision that will allow schemes that have been entered into for the sole or dominant purpose of tax avoidance, and that are of a blatant, artificial or contrived nature, to be disregarded. Finally, chapter 8 contains a range of general provisions to support the imposition of duty.

As mentioned earlier, an extensive explanatory memorandum accompanies the bill and provides a detailed guide to the operation of the new provisions.

The Duties Bill 2007, and the accompanying Duties Legislation Amendment Bill 2007, represent the most significant reform to the stamp duty legislation of this state and present a unique opportunity to put in place legislation that will ensure that we have an equitable and efficient duties regime into the future.

I urge members to support this fundamental state taxation reform initiative and in doing so, I commend the bill to the house. I seek leave to table the explanatory memorandum.

Leave granted. [See paper 3774.]

Debate adjourned, pursuant to standing orders.