STAMP AMENDMENT BILL (NO. 3) 2000

Introduction and First Reading

Bill introduced, on motion by Mr Kierath (Minister assisting the Treasurer), and read a first time.

Second Reading

MR KIERATH (Riverton - Minister assisting the Treasurer) [12.38 pm]: I move -

That the Bill be now read a second time.

A ministerial statement was made to this House on 10 August 2000 announcing the Government's intention to legislate to address stamp duty avoidance practices that have emerged in this State. This Bill proposes amendments to the Stamp Act 1921 to address weaknesses in the legislation that were the subject of that announcement, and that are resulting in significant ongoing revenue loss to the State in the order of $30m to $40m a year.

The avoidance at which these amendments are aimed involves the purchase of property through company structures in a way that largely circumvents the operation of the conveyance duty provisions of the Act. Such practices are clearly inequitable when one considers that, as a rule, Western Australian families and businesses face up to their obligations to the community and pay conveyance duty when purchasing their homes or business operations. Therefore, one would have to question why certain large companies that have significantly more resources available to them than others in the community should not likewise meet their tax obligations to the community when purchasing property in this State. To leave these practices unchallenged will further encourage the placement of property into companies purely to increase the future saleability of the property due to the stamp duty avoidance opportunities available to the purchaser. This discriminates against those vendors who do not have their property packaged in a company structure, as direct sales of those properties will result in conveyance duty being required to be paid by the purchaser.

Part IIIBA was originally inserted into the Stamp Act in 1987 to address an avoidance practice that had then only recently emerged. It involved placing high value property into a company structure, and selling the property by transferring the shares in the company rather than transferring the property itself. This resulted in the transaction attracting substantially less stamp duty than if the land were transferred directly, as the lower marketable security rate of duty applied, with the duty calculated on the net value of the shares rather than on the gross value of the land.

The provisions of Part IIIBA operate such that where shares in a non-listed company are acquired, the land and chattels of the company are subject to duty at conveyance rates, rather than the lower marketable securities rate, if three tests are met. Those three tests are, first, the company must own land in Western Australia valued at $1m or more; secondly, 80 per cent of the property of the company must comprise land; and, thirdly, the transaction must involve the acquisition of a "majority interest" or "further interest" of the company, which is generally more than 50 per cent. The avoidance practices in question target the three tests and threaten the integrity of the land-rich provisions.

This Bill proposes a number of measures to address these avoidance practices and to increase the Commissioner of State Revenue's ability to detect transactions that may fall within the ambit of the land-rich provisions. In particular, it is proposed that the period over which acquisitions may be taken into account for the purpose of meeting the majority interest test will progressively be increased from 12 months to three years; the land-rich provisions will apply where a majority or further interest entitling a shareholder to participate in the distribution of property on the winding-up of a company is obtained, regardless of whether that entitlement arises upon the acquisition of a shareholding or at some other time; certain additional types of property are to be disregarded in determining whether a company meets the 80 per cent land-rich test; when determining whether a statement is required to be lodged with the commissioner, the value of chattels is now to be initially disregarded when determining if a company has non-land property greater than 20 per cent of total property value; the value of mining tenements or similar rights located outside Western Australia will be considered land for the purposes of the 80 per cent land-rich test, consistent with the treatment of tenements located within Western Australia; in the case of corporations incorporated outside of Western Australia, only the property of the corporation in which the majority or further interest is acquired and its subsidiaries will be relevant in determining whether the company is land rich, consistent with the treatment of Western Australian incorporated companies; clarification is to be legislatively provided on the treatment of uncompleted contracts to which the company in which the interest is being purchased is a party; where the land-rich test is defeated through acquisitions in holding and subsidiary companies that arise from substantially one transaction or arrangement designed to defeat the provisions, the underlying interest in land acquired through all acquisitions will be aggregated and brought to duty; and references to Corporations Law terms and sections will be updated. More comprehensive detail of these

proposed measures and a number of less significant changes is provided in the explanatory memorandum associated with this Bill.

Reflecting the anti-avoidance nature of these amendments, they are proposed to operate from 10 August 2000, the date of the Government's announcement. To ensure that the transition to the new arrangements is equitable, the Bill provides that any acquisition which preceded the ministerial statement of 10 August 2000 will not be brought to duty by these changes. Furthermore, any acquisition on or after 10 August 2000 will be subject to the new rules, with the exception of an acquisition that is pursuant to a legally enforceable agreement executed in writing by both the purchaser and the vendor prior to 10 August 2000, providing the subsequent acquisition is completed by 31 December 2000. The 31 December 2000 sunset date for transitional relief is considered necessary to prevent abuse of this concession in the future. I commend the Bill to the House.

Debate adjourned, on motion by Mr McGowan.