REPORT TO PARLIAMENT IN ACCORDANCE WITH SECTION 134 OF THE *TAXATION ADMINISTRATION ACT 2003*

Division 6 of Part 10 of the *Taxation Administration Act 2003* (the Act) came into operation on 28 June 2008 and provides a framework for the early operation of certain amendments to taxation Acts *the pre-enactment framework*. When activated, the sections of an Act being amended are referred to as *pre-enactment provisions*.

Section 134 of the Act requires that the responsible Minister carry out a review of the effectiveness of Division 6 of Part 10 following the fifth anniversary of commencement of the provisions, and each successive five yearly interval after that anniversary, and cause a report based on the review to be laid before each House of Parliament.

Background

The pre-enactment framework was introduced by the *Revenue Laws Amendment Act (No. 2) 2008* to improve the efficiency of government processes when seeking to provide tax relief to taxpayers.

The amendments were introduced following representations made by a number of taxpayers in circumstances where passage of legislative amendments to provide tax relief did not coincide with an earlier announced commencement date, resulting in them having to seek short-term finance to pay their taxes, only to have the amount refunded once legislation had been passed by the Parliament.

These taxpayers did not realise that despite the relief being backdated to the announced commencement date, the Commissioner of State Revenue was not empowered to administer the State's taxation laws on the basis of a government announcement and, as a result, had to charge tax at a higher rate of duty until the amending legislation was passed.

It is common for changes to taxation legislation to have a commencement date prior to the passage of the legislation as several taxes, such as payroll tax and land tax, are annualised requiring a commencement date from the beginning of a financial year. Furthermore, transfer duty concessions generally apply from an announced date to minimise the distortion of the market.

The pre-enactment framework provides a mechanism to address these issues.

Pre-enactment framework

The pre-enactment framework provides the responsible Minister with the power to determine by notice published in the *Government Gazette* for specified provisions in a Bill that are advantageous to taxpayers and which are intended to commence prior to passage of the Bill to become operational from the date of publication of the notice.

Such a determination permits the Commissioner to administer the amendments from the date of publication of the notice as if the amendments had been enacted.

To ensure that the powers are appropriately exercised, the determination by the Minister is limited to the following circumstances:

- a reduction in an amount or rate of tax (including by reducing it to zero);
- a change or a removal of a tax threshold;
- an expansion of the class of persons, acts, matters or things in respect of whom or which a concession or exemption applies;
- an introduction of a concession or exemption; or
- a change that will have the same effect as amendments of a kind described above.

The pre-enactment framework provides that a pre-enactment notice ceases to have effect from the earlier of when:

- the amending Bill receives the Royal Assent;
- the notice is revoked by the Minister by notice published in the *Government Gazette*;
- six months expires from the date the notice came into force;
- the amending Bill is defeated in either House of Parliament;
- the Legislative Assembly expires or is dissolved before the amending Bill has been passed by both Houses of Parliament; or
- a resolution by either House of Parliament is passed disallowing the notice.

Having regard to the nature and characteristics of the pre-enactment framework, section 134 was introduced to review the operation and effectiveness of the provisions.

Pre-enactment determination notices issued

The Minister has made two determinations under the pre-enactment framework since the provisions were enacted. These determinations (attached) relate to specific clauses of the following Bills:

- Revenue Laws Amendment Bill (No. 3) 2008; and
- Revenue Laws Amendment Bill 2012.

1. Revenue Laws Amendment Bill (No. 3) 2008

The Revenue Laws Amendment Bill (No. 3) 2008 was introduced into the Parliament on 12 November 2008 to amend the land tax and metropolitan region improvement tax scales for the land tax year 2008-09 by reducing the tax rates by an average of seven per cent.

The then Treasurer, the Hon Troy Buswell MLA, published the Taxation Administration (Pre-enactment Provisions Determination) Notice 2008 in *Government Gazette* No. 193 on 14 November 2008, determining the provisions relating to the rate reductions to be pre-enactment provisions for the purposes of section 133 of the Act.

The Bill received the Royal Assent on 14 May 2009 as the *Revenue Laws Amendment Act 2009*. The determination notice ceased to be in force on 14 May 2009 after being in operation for nearly six months.

Reason for the determination

The determination was made in accordance with the pre-enactment framework, as the amendment reduced the rate of tax payable.

The land tax and metropolitan region improvement tax scales for the land tax year 2008-09 were originally announced in the 2008-09 Budget and passed by the Parliament on 19 June 2008.

The Valuer General subsequently revised the 2008-09 unimproved land values relative to those provided at the time the 2008-09 Budget estimate for land tax revenue was formulated. The revised figures showed a five per cent higher rise than originally estimated. As a consequence, land owners were expected to receive higher than anticipated tax bills.

The Bill was introduced to reduce the land tax and metropolitan region improvement tax rates by an average of seven per cent from 1 July 2008. In the absence of this reduction, total land tax and metropolitan region improvement tax revenue was expected to exceed the 2008-09 Budget estimates by $41 million, or seven per cent.

The early operation of these provisions allowed assessment notices to be issued without having to wait for the legislation to be passed. This eliminated the need for notices to be issued using the higher existing rates and for refunds of the excess tax paid to be subsequently made, which would have been adverse to taxpayers, as well being administratively inefficient for the Commissioner. The alternative of delaying the issue of assessments until such time as the amendments had passed would have also had an adverse impact on government cash flows.

2. Revenue Laws Amendment Bill 2012

The Revenue Laws Amendment Bill 2012 was introduced into the Parliament on 14 June 2012 and included amendments to introduce a new payroll tax exemption announced in the 2012-13 Budget for wages paid in the first two years of employment to new employees with a disability. The amendments were announced to take effect from 1 July 2012.

The then Minister for Finance, the Hon Simon O'Brien MLC, published the Taxation Administration (Pre-enactment Provisions Determination) Notice 2012 in the *Government Gazette* No. 102 on 19 June 2012 determining that the clause relating to the exemption was a pre-enactment provision for the purposes of the Pre-enactment Framework.

The effect of the determination notice was that the exemption came into operation from 1 July 2012.

The Bill received the Royal Assent on 8 October 2012 as the *Revenue Laws Amendment Act (No. 2) 2012*. The determination notice ceased to be in force on 8 October 2012 after being in operation for less than four months.

Reason for the determination

The determination was made in accordance with the pre-enactment framework as the amendment introduced an exemption from payroll tax.

The exemption was to apply to an employer that, on or after 1 July 2012, hired a new employee with a disability for whom they received a wages subsidy under the Commonwealth Government's Disability Employment Services program, or who was eligible for any form of support from the Western Australian Disability Services Commission.

Had these provisions not been pre-enacted, employers would have had to remit payroll tax on a monthly basis for these wages and seek a refund of the tax overpaid from the Commissioner after the passage of the Bill. This would have been burdensome for taxpayers and administratively inefficient for the Commissioner.

The incentive effect of the new exemption would have been delayed until passage of the legislation had occurred.

Effectiveness of the pre-enactment framework

The results of the review show that the pre-enactment framework has been used on two occasions in circumstances that the Parliament intended. On both occasions, it allowed the Commissioner to administer the amendments before the relevant Bills had been passed by the Parliament, resulting in benefits to taxpayers and increased efficiency in government processes.