



CIRCULAR 13

DUTIES ACT 2008 TAXATION ADMINISTRATION ACT 2003 TAXATION LEGISLATION AMENDMENT ACT (NO. 2) 2015

The *Taxation Legislation Amendment Act (No. 2) 2015* ('the Act') introduced amendments to the charitable exemptions available under the *Duties Act 2008*, the *Land Tax Assessment Act 2002* and the *Pay-roll Tax Assessment Act 2002*.

Part 2 of the Act contains amendments to the duties exemption available under the *Duties Act 2008* ('Duties Act') for transactions that have been entered into or occurred for charitable or similar public purposes. Part 5 of the Act amends certain related objection rights contained within the *Taxation Administration Act 2003* ('TAA').

The Act was passed by the Parliament on 26 February 2015 and received the Royal Assent on 9 March 2015. The amendments came into effect on 10 March 2015.

The information contained in this circular is not an exhaustive explanation of the amendments, and reference should be made to the Act and to the Explanatory Memorandum.

For information regarding the amendments to the charitable exemptions for land tax and payroll tax, please refer to Land Tax Circular 4 and Payroll Tax Circular 9, which are available on the Office of State Revenue website at www.osr.wa.gov.au.

A general summary of the amendments to the Duties Act and the TAA follows.

TRANSACTIONS FOR CHARITABLE OR SIMILAR PUBLIC PURPOSES

Section 95 of the Duties Act provides an exemption from transfer duty for a dutiable transaction that has been entered into or occurred for charitable or similar public purposes.

The Act has limited the scope of this exemption by amending section 95 of the Duties Act to provide that the exemption will not apply where the person liable to pay duty on the transaction is a *relevant body*, or is related to a relevant body, unless a *beneficial body determination* is in force in respect of the relevant body.

New section 95(3) of the Duties Act provides that a person liable to pay duty on a dutiable transaction is related to a relevant body if:

- the person holds the dutiable property as trustee of a trust; and
- the relevant body is a beneficiary under the trust, whether it has a vested share, is contingently entitled or is a potential beneficiary under a discretionary trust, unless:
 - the trust is a discretionary trust; and

- the Commissioner decides in a particular case that it is inequitable for the person to be related to the relevant body.

RELEVANT BODY

New section 96A of the Duties Act defines a *relevant body* as any of the following:

- (a) a political party;
- (b) an industrial association;
- (c) a professional association;
- (d) a body, other than a body referred to in (a), (b), (c) or (e), that promotes trade, industry or commerce, unless the main purposes of the body are charitable purposes that fall within the first three categories (being relief of poverty, advancement of education and advancement of religion) identified by Lord Macnaghten in *Commissioners for Special Purposes of Income Tax v Pemsel* [1891] AC 531 as developed by the common law of Australia from time to time;
- (e) a body that is a member of a class of bodies prescribed for the purposes of this paragraph;
- (f) a body that:
 - (i) is a member of a group as defined in the *Pay-roll Tax Assessment Act 2002* Glossary of which a body referred to in another paragraph is also a member; or
 - (ii) is a related body corporate as defined in section 9 of the *Corporations Act 2001* (Cth) of a body referred to in another paragraph; or
 - (iii) has as its sole or dominant purpose or object the conferral of a benefit, whether financial or non-financial, on a body referred to in another paragraph.

Section 3 of the Duties Act has been amended to include definitions for the terms:

- *industrial association* – an association of employees or a trade union, including organisations registered under section 53 or 54 of the *Industrial Relations Act 1979* and the *Fair Work (Registered Organisations) Act 2009* (Cth);
- *political party* – a body or organisation that has as one of its objects the promotion of the election to the Parliament (Commonwealth, State or Territory) of a candidate endorsed by it or by a body or organisation of which it forms part;
- *professional association* – a body that has as one of its objects or activities the promotion of the interests of its members in any profession; and
- *promote trade, industry or commerce* – includes to carry out an undertaking a purpose of which includes the promotion of, or the advocacy for, trade, industry or commerce, whether generally or in respect of any particular kind of trade, industry or commerce.

APPLICATION FOR A BENEFICIAL BODY DETERMINATION

The amendments provide for an application for a beneficial body determination to be made to the Minister for Finance where the Commissioner has refused to give a charitable exemption on the sole ground that the taxpayer is a relevant body or is related to a relevant body. The effect of a beneficial body determination is to reinstate the entitlement to the charitable exemptions. A relevant body that is a political party or industrial association is not entitled to make an application for a beneficial body determination.

New section 96B of the Duties Act allows an application to be made to the Minister for a beneficial body determination where:

- the Commissioner has decided that a dutiable transaction is not exempt (or a landholder acquisition is not exempt because the transfer referred to in that section would not be exempt) on the sole ground that the taxpayer is a relevant body pursuant to section 96A(c), (d), (e) or (f), or is related to a relevant body; and
- all objection and review proceedings have been exhausted, discontinued, or fully determined, or all rights to objection and review proceedings have been surrendered by the taxpayer; and
- the application is made within 60 days after the objection and review rights have been finalised or surrendered.

An application for a beneficial body determination cannot be made if the Commissioner's decision resulted from a reassessment made on an application made by the taxpayer under section 16(2)(b) of the TAA after the right to object to the original assessment has expired.

BENEFICIAL BODY DETERMINATION

Under new section 96C of the Duties Act, the Minister may determine that a relevant body is a beneficial body for the purposes of the taxation Acts where the Minister is of the opinion it is in the public interest to do so.

Section 96C of the Duties Act provides the following:

- On an application under section 96B the Minister, with the Treasurer's concurrence, may determine that a relevant body is a beneficial body for the purposes of the taxation Acts.
- The Minister, with the Treasurer's concurrence, may make, amend or revoke a beneficial body determination if the Minister is of the opinion that it is in the public interest to do so after considering any information that the Minister considers relevant.
- The Minister must provide written reasons to the applicant for a decision regarding an application under section 96B and to the body for a decision to amend or revoke that body's beneficial body determination
- A notice of the making, amendment or revocation of a beneficial body determination is to be published in the *Gazette*.

- A beneficial body determination made under this section comes into force:
 - for the purposes of the Duties Act, on the day on which the determination is made; and
 - for the purposes of the *Land Tax Assessment Act 2002* and the *Pay-roll Tax Assessment Act 2002*, on the day specified in the notice for each Act.
- A beneficial body determination made under this section applies for the relevant body in relation to:
 - the dutiable transaction or acquisition that was the subject of the application for a beneficial body determination (the *original transaction*); and
 - any other transaction that was entered into or occurred after the original transaction but before the determination was made, and on which duty would not have been chargeable (including for the purposes of landholder duty) had the beneficial body determination been in force for the relevant body.
- The Commissioner must reassess the liability of each dutiable transaction for which a beneficial body determination applies. The reassessment time limits set out in section 17 of the TAA do not apply in such circumstances.
- A beneficial body determination continues until the day on which notice of the revocation is published in the *Gazette*.

RIGHTS OF OBJECTION AND REVIEW

The Act also amended Part 4 of the TAA, which relates to a taxpayer's rights of objection and review.

New section 34A of the TAA provides that:

- a decision to make, not make, revoke, or amend, a beneficial body determination is not subject to the objection or review process under the TAA; and
- no action can be brought in any Court or Tribunal to compel the Minister to make a beneficial body determination.

New section 34B of the TAA defines what is required for a taxpayer to surrender their objection and review rights. It applies to a decision for which an application for a beneficial body determination may be made ('the decision') and provides the following:

- The taxpayer must give written notice to the Commissioner that:
 - they surrender all objection and review rights relating to the decision; or
 - they have received an objection determination from the Commissioner in relation to the decision, and they surrender all subsequent rights of review in relation to that decision.
- The taxpayer must give the written notice to the Commissioner before the right to object to the decision, or the right to commence review proceedings for an objection to the decision, has expired (as applicable).

- The effect of a written notice being given under section 34B is that the decision is not subject to objection or review under the TAA or any other form of appeal or review (thus allowing the taxpayer to proceed directly to making an application for a determination to the Minister).

FURTHER INFORMATION

For additional information on these changes, or other duty issues, please contact the Office of State Revenue by telephone on 9262 1100 or by making a web enquiry at www.osr.wa.gov.au/DutiesEnquiry.

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