



CIRCULAR 10

DUTIES ACT 2008 STAMP ACT 1921 REVENUE LAWS AMENDMENT BILL 2011

The *Revenue Laws Amendment Bill 2011* ("the Bill") contains various amendments to the *Duties Act 2008* ("Duties Act") and *Stamp Act 1921* ("Stamp Act"). These changes are subject to the passing of the Bill by the Parliament and the granting of Royal Assent.

Part 2 Divisions 1 and 2 of the Bill are proposed to come into operation on 1 December 2011. Part 2 Division 3 and Part 7 are proposed to come into operation on the day after the day of Royal Assent.

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

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

FIRST HOME OWNER RATE OF DUTY

These amendments will extend the operation of the first home owner rate of duty provisions in the Duties Act to overcome an anomaly in substituted purchaser and agency transactions where the property is transferred to a transferee who is eligible for a first home owner grant (FHOG). The commencement date for these amendments is the day after the Act receives Royal Assent.

With effect from the commencement date, section 142 of the Duties Act will be amended to –

- extend the definition of "FHOG concessional transaction" in section 142(1) (a transaction charged with duty at the first home owner rate of duty) to include a transaction that is an agreement to transfer dutiable property where duty is not chargeable on the subsequent transfer because the named purchaser is substituted by a related first home owner or acting as the agent of the first home owner; and
- extend the definition of "further FHOG concessional transaction" in section 142(2) (the purchase of a further interest in a home, generally under a shared equity agreement with Homeswest) to include a transaction where duty is not chargeable on the transfer because the named purchaser is substituted by a related first home owner or is acting as agent for the first home owner.

CANCELLED TRANSACTIONS

These amendments will extend the length of time a taxpayer has to apply for a refund of duty on a cancelled transaction under the Duties Act or the Stamp Act. Corresponding amendments will also be made to section 17 of the

Taxation Administration Act 2003. The commencement date for the proposed amendments is the day after Royal Assent.

With effect from the commencement date, section 107 of the Duties Act will be amended so that a taxpayer is entitled to apply for a reassessment of an agreement for transfer as a cancelled transaction within the later of –

- (i) five years after the original assessment was made; or
- (ii) 12 months after the day on which the agreement becomes a cancelled transaction, i.e. the day on which the agreement has not been, and will not be carried into effect.

Section 20 of the Stamp Act will be amended so that, where a general conditional contract (as defined in section 8 of the Stamp Act) is not carried into effect on or after the commencement date, the taxpayer is entitled to apply for a reassessment and refund of duty within the later of –

- (i) five years after the original assessment was made; or
- (ii) 12 months after the cancellation day, which is broadly described in section 20(9B) of the Stamp Act as the day on which the contract is rescinded, annulled, abandoned or otherwise terminated without completion.

WINDING UP OF CORPORATIONS AND UNIT TRUST SCHEMES

These amendments to the Duties Act will enable duty to be assessed on the value of any liabilities assumed or discharged by a related person of a shareholder or unit holder as a consequence of the winding up of a corporation or unit trust scheme.

The amendments will close a legislative shortcoming that occurred in the transition from the Stamp Act to the Duties Act, and will commence operation on 1 December 2011, which is the date that the Bill was Second Read in the Legislative Assembly of the Parliament.

The amendments to section 29 of the Duties Act are as follows.

- Liabilities assumed or discharged by a person related to a shareholder or unit holder on behalf of the corporation or unit trust scheme are included in the calculation of the dutiable value of the transaction.
- A person related to a shareholder or unit holder means a person related within the meaning of section 162(1)(a) to (g) of the Duties Act, which sets out a list of relationships to determine when people are related.
- A newly inserted provision grants the Commissioner the discretion to determine whether an assumed or discharged liability should be excluded from the calculation of dutiable value after considering all relevant transfers in relation to the winding up of the corporation or unit trust scheme.

Section 194 of the Duties Act, which is in the Landholder Duty Chapter, will also be amended to mirror the amendments made to section 29 of the Duties Act.

USE OF UNENDORSED TRANSACTION RECORDS IN COURT PROCEEDINGS

These amendments will replace section 279 of the Duties Act to expand the availability of unendorsed transaction records in civil proceedings under the Duties Act and restore the policy position relating to criminal proceedings as contained in the Stamp Act. These amendments will take effect from the day after the day of Royal Assent.

The proposed amendments to section 279 of the Duties Act are as follows.

- Subsection (1) provides that an unendorsed transaction record is not available, except in criminal proceedings, for use before a court or tribunal.
- Subsection (2) provides relief from any exclusion imposed under subsection (1) where –
 - (i) the person who produces the transaction record is the liable party, if the transaction record has been transmitted to the Commissioner or the court or tribunal is satisfied that it will be transmitted to the Commissioner after it is used in the court or tribunal; or
 - (ii) the person who produces the transaction record is not the liable party, if the transaction record and name and address of the liable party been transmitted to the Commissioner or the court or tribunal is satisfied that it will be transmitted to the Commissioner after it is used in the court or tribunal.
- Subsection (3) provides a full exception to subsection (1) for a duty endorsed duplicate, or an unexecuted copy of an instrument that effects or evidences a dutiable transaction, if the court or tribunal is satisfied that a transaction record for the dutiable transaction has been duty endorsed.

For further information on the proposed changes, or other duty issues, please contact the Office of State Revenue on 9262 1100 or via our web enquiry system at www.osr.wa.gov.au/DutiesEnquiry.

It is recommended that interested persons take advantage of the Online Subscription Service to receive notification of publications as they are issued. Publications that are available include Revenue Rulings, Circulars, Commissioner's Practices, Fact Sheets and e-Newsletters.

For the latest tax information, links to legislation or to subscribe to the Online Subscription Service, please visit the website at www.osr.wa.gov.au.

March 2012