FACT SHEET

Duties Amendment (Landholder and Corporate Reconstruction and Consolidation) Bill 2016

Landholder amendments

- The Bill amends Chapter 3 of the Duties Act, which deals with the duty liability for indirect transfers of land, by changing the assessment of liability from one that relies on an outdated land-rich model (that has been in place since 1990) to one that relies on a more contemporary landholder model.
- These amendments bring Tasmania into line with similar provisions applied by all other jurisdictions.
- The landholder model:
    - aligns the treatment of indirect transfers more closely with direct transfers under Chapter 2 of the Duties Act and is broadly consistent with the landholder framework used in New South Wales;

      Duty is charged on the transfer of land whether it be by direct transfer of a property title under Chapter 2 of the Act, or indirectly by the transfer of land through the purchase of shares (or units) of an entity that holds land under Chapter 3. For reasons of equity, both arrangements incur a duty liability, which discourages the structuring of assets in such a way as to avoid duty;
    - removes the land ratio test, reducing complexity and the requirement for time intensive calculations;
    - retains the landholding threshold of $500 000, which is now the sole test to determine whether an entity is a landholder;
    - makes listed companies and public unit trust schemes subject to these provisions. This is a common feature in all other jurisdictions (except ACT);
    - amends the concept of a 'relevant acquisition', to one which is an acquisition of an interest of 50 per cent or more in a private company or private unit trust scheme and 90 per cent or more in a listed company or public unit trust scheme;
    - charges duty on relevant acquisitions. There is no change to the duty rate for private companies and private unit trusts, but a person making a relevant acquisition in a public landholder will pay 10 per cent of the general rate of duty on 100 per cent of the unencumbered value of land and goods of the landholder;
    - more closely aligns the treatment of direct and indirect transfers of land by making goods (with some exceptions) dutiable where a relevant acquisition is made in a landholder. However, the value of goods is not counted towards the $500 000 threshold which determines whether an entity is a landholder;

- more closely aligns the treatment of direct and indirect transfers of land by excluding the current provision that enables a "phasing-in" of duty for private corporations, as there is no discount for direct transfers of land under Chapter 2 of the Act.
- includes that, for private landholders, an acquisition made at any time before the date of commencement of the amendments is counted in determining whether the person has made a relevant acquisition in a landholder and the duty that may be chargeable. This aligns the treatment of indirect transfers of land under Chapter 3 with direct transfers of land under Chapter 2; and
- includes that, for public landholders, acquisitions made before the commencement date (of the landholder amendments) are counted for the purpose of determining whether a person has made a relevant acquisition in a public landholder. However, acquisitions made in a listed company or a public unit trust scheme before the commencement date are exempt from duty.

Corporate reconstruction amendments

- The corporate reconstruction and consolidation exemption provisions:
  - introduce new statutory provisions that allow a full exemption from duty for internal reorganisation of a corporate structure through either a corporate reconstruction or a corporate consolidation, and enable the Commissioner of State Revenue to grant a full exemption from duty if satisfied that specified criteria are met;
  - replace an existing administrative process, where the Treasurer is currently able to consider individual requests for assistance to refund duty for genuine internal corporate restructures, which should provide taxpayers and administrators with greater transparency, certainty and a more streamlined process;
  - provide eligibility criteria for an exemption. That is, the transfer must be between members of a 'corporate group'. A 'corporate group' is formed between a parent company and a subsidiary in which the parent owns 90 per cent or more of the shares. The transfer can occur between two such subsidiaries or between a parent and a subsidiary; and
  - provide for pre-association and post-association tests. These tests are intended to prevent a corporate group acquiring a company and then selling down its assets through a corporate reconstruction exemption.