

TAXATION AND RELATED LEGISLATION (MISCELLANEOUS AMENDMENTS) BILL 2010

NOTES ON CLAUSES

Part 1 – Preliminary

Part 1 of the Act contains the short title and commencement provisions.

Clause 1 Short title.

Clause 2 Part three of the Act is taken to have commenced on 8 October 2008. The rest of the Act commences on the day on which the Act receives Royal Assent.

Part 2 – *Duties Act 2001* Amended

Clause 3 In this Part, the *Duties Act 2001* is referred to as the Principal Act.

Clause 4 The Commissioner's powers of aggregation are amended to clarify that it is just and reasonable for the Commissioner to aggregate a gift that is interdependent with, or forms substantially part of one arrangement with, a transaction of value.

Clause 5 The current up-front exemption relating to the transfer of vacant land that the parties to a marriage, significant relationship or caring partnership intend to use as the site of a their principal place of residence is removed and replaced by an anti-avoidance provision that requires the Commissioner to reassess and refund duty in circumstances where the parties have built a dwelling house on the land and occupied it as their principal place of residence within two years of the transfer.

Clause 6 Amends the provision governing when an insurance premium is taken to be paid to include payments to insurance intermediaries.

Part 3 *Duties Act 2001* Amended

Amendments in this Part are taken to have commenced on 8 October 2008.

Clause 7 In this Part, the *Duties Act 2001* is referred to as the Principal Act.

Clause 8 Definitions of "de facto relationship", "de facto relationship property" and "party to a de facto relationship" are inserted in section 3 (Interpretation) of the Duties Act.

Clause 9 Provides an exemption on the transfer of, or agreement to transfer, de facto relationship property if the property is transferred to one or both of the partners in a de facto relationship that is terminated, or to a child of the relationship who is under the age of 18; and the transfer is effected by in accordance with a document registered or approved under the *Family Law Act 1975* of the Commonwealth; or a financial agreement made under section 90UB, 90UC or 90UD of that Act; or an order of a court under that Act; or a purchase at a public auction of de facto relationship property by one of the parties above where the auction was held to comply with any such document or order.

If *ad valorem* duty was paid on the transfer of de facto relationship property in accordance with the above conditions, and the Commissioner is satisfied that the relationship has been terminated, the Commissioner must reassess the transfer or agreement and refund the duty paid.

Clause 10 Provides an exemption on the acquisition of an interest in a private corporation if the interest was acquired by the parties to a de facto relationship that is terminated, or by a child of the relationship, in accordance with a document registered or approved under the *Family Law Act 1975* of the Commonwealth; or a financial agreement made under sections 90UB, 90UC or 90UD of that Act; or an order of a court under that Act.

Clause 11 Provides an exemption on the transfer of a motor vehicle registered in the names of one or both of the parties to a de facto relationship, provided the Commissioner is satisfied that the relationship is terminated and the transfer was made in accordance with an instrument registered or approved under the *Family Law Act 1975* of the Commonwealth; a financial agreement made under section 90UB, 90UC or 90UD of that Act; or an order of a court under that Act.

Part 4 – First Home Owner Grant Act 2000 Amended

Clause 12 In this Part, the *First Home Owner Grant Act 2000* is referred to as the Principal Act.

Clause 13 Replaces “or” with “and” in the definition of residential property so that a grant applicant is not disentitled from receiving the grant by holding an interest in residential property unless there was a building on the land that may be lawfully occupied as a place of residence and which was also suitable for occupation as a place of residence.

Clause 14 Criterion 4 of the First Home Owner Grant eligibility criteria provides that the applicant or applicant's spouse must not have had a relevant interest in residential property.

Under this amendment, a relevant interest in residential property held by an applicant or their spouse after 1 July 2000 will only disentitle the applicant/s from receiving the grant if the property was occupied for a continuous period of at least six months. Currently, the Act does not specify any minimum period of disentitling occupation in these situations.

Part 5 – Land Tax Act 2000 Amended

Clause 15 In this Part, the *Land Tax Act 2000* is referred to as the Principal Act.

Clause 16 Removes the requirement for the owner of land, on the sale or transfer of that land, to pay all or a proportion of the land tax owing with regards to any other property that they own in circumstances where the land sold or transferred is not subject to land tax (for example, principal place of residence land or exempt land).

Part 6 – Taxation Administration Act 1997 Amended

Clause 17 In this Part, the *Taxation Administration Act 1997* is referred to as the Principal Act.

Clause 18 Amends the provision that governs the payment of interest to a taxpayer who is entitled to a refund of overpaid tax. The Commissioner is required to calculate interest on a daily basis on the amount of the overpayment, from the date of the overpayment until the date the refund is approved by the Commissioner.

Clause 19 Removes a restriction on the general anti-avoidance provisions of the Taxation Administration Act from applying to a scheme entered into for the sole or dominant purpose of enabling a person to obtain a tax benefit that is attributable to an exemption or a concession under a taxation law.

Part 7 – Repeal

Clause 20 Provides that this Act is repealed on the 90th day from the day on which all of the provisions of this Act commence.