

## DRAFT SECOND READING SPEECH

HON. PETER GUTWEIN MP

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

*\*check Hansard for delivery\**

Madam Speaker

As members would be aware, ownership of land can be held in a variety of entities and structures, including through individuals, private companies, private unit trusts, listed companies and listed unit trusts.

Tasmania's Duties Act, like other states, charges duty on a change of ownership in companies and unit trusts, where those entities own land. This includes duty payable on the direct acquisition of land, where for example individuals or companies buy a property.

For reasons of equity, the Act also charges duty on an indirect acquisition of an interest in land, where for example someone buys shares in a private company that holds land. These provisions are known as 'land-rich' provisions. These provisions currently exclude listed companies and public unit trusts.

Madam Speaker, this Bill replaces land-rich provisions in the Tasmanian Duties Act with more contemporary provisions known as landholder provisions, which have been adopted by all other jurisdictions.

The proposed landholder changes will more closely align the treatment of indirect acquisitions of land with the existing provisions relating to direct acquisitions of land, and is designed to be more equitable and fair.

The key reasons for the amendments are to make it easier for taxpayers to comply with the relevant duty provisions, and easier to administer, and to provide greater certainty to taxpayers and their representatives. Other benefits to taxpayers include greater clarity and increased consistency across jurisdictions, which should make it easier for companies that are considering investing in Tasmania. These changes may also produce a small increase in the number of transactions captured and hence duty payable, however, this is clearly not the key driver for change. While the potential revenue increase is difficult to estimate it is not likely to be material.

Madam Speaker, this Bill also provides for a statutory duty exemption where a corporate group undertakes an internal reorganisation to improve efficiency. Unlike duty frameworks in other jurisdictions, the existing Tasmanian Duties Act does not contain mechanisms to exempt transactions that are genuine corporate restructures. The practice since 2013 has been to deliver the policy outcome of duty relief from these transactions by way of the Treasurer of the day providing discretionary ex gratia payments, reimbursing the duty that is paid under the Act.

Where a genuine corporate restructure is confined to a member of the same corporate group, the Government considers that there should be a statutory exemption from duty. This exemption reflects a commitment by the Tasmanian Government to reduce red tape and make Tasmania an attractive place to do business.

This statutory exemption will replace the current administrative arrangement. It will provide greater certainty and transparency; and it will reduce red tape through a more streamlined

process for entities looking to undertake a corporate reconstruction. While the exact impact on duty revenue is difficult to estimate, the impact to the Budget is likely to be negligible. Historical data suggests that on average around two businesses per year have received a corporate restructure duty 'exemption', or in other words ex gratia payment.

Madam Speaker, I now turn to the specifics of the landholder amendments.

The proposed Tasmanian landholder model is similar in intent to that of other jurisdictions.

Some elements of the landholder model are similar to those in the current land-rich model while others are different.

A key element that remains unchanged between the models is the duty liability threshold of \$500 000. Once the value of an entity's total land holdings meets the \$500 000 threshold, the acquisition of a significant interest in an entity will be subject to the landholder provisions.

Many of the exemptions and concessions available for direct transfers of land will also apply under the landholder provisions. In addition, where a rural property transfers between particular family members, a duty exemption continues to be available under the Act.

A key difference is that the landholder model does not contain a land ratio test. This test requires that a company's land assets make up 60 per cent or more of the total assets of the company in order for the company to be considered land-rich. Removing this test removes some of the difficulty for taxpayers in determining whether an entity is a landholding entity. This reduces complexity while providing greater certainty to taxpayers and their representatives.

Under the landholder model, public landholders (that is, listed companies and public unit trust schemes) will be subject to the duty provisions. This is a common feature of the landholder models in most jurisdictions. Further, it more closely aligns with the treatment of direct transfers of land under the Duties Act, promoting greater equity in the treatment of dutiable property.

While an acquisition of 50 per cent or more interest will trigger a significant interest in private landholders, and hence a requirement to pay duty; duty will be payable when a 90 per cent or more interest is acquired in a public landholder. This recognises that shareholders of listed companies have less ability to influence the use, disposal and distribution of company-held land upon a company's wind-up. It is also the point at which a bidder may compulsorily acquire all shares in a listed company.

Madam Speaker, for relevant acquisitions in private landholders, duty is and will continue to be charged at the full general conveyance rates, which also apply to direct land transfers. However, a person making a relevant acquisition in a public landholder will pay 10 per cent of the amount that would be chargeable at the general rate.

The application of the reduced amount of duty for public landholders recognises that applying the full rate of duty would make completing a public landholder takeover prohibitively expensive. This treatment is also in line with all other states that apply duty to public landholders.

Madam Speaker, as I have already mentioned, one of the aims of the amendments is to align as closely as possible the treatment of indirect acquisitions of land with direct acquisitions of land. Consequently, in addition to the value of land, goods, with some exceptions, will now be dutiable.

Madam Speaker, to ensure that the amendments can be implemented as smoothly as possible, transitional provisions have been included with the landholder provisions. Among other things,

the transitional provisions provide that acquisitions made at any time before the date of commencement of the amendments are counted in determining:

- whether the person has made a relevant acquisition in a landholder after commencement; and
- the duty that may be chargeable.

While acquisitions made before the date of commencement of the amendments are counted under the landholder provisions, generally those acquisitions are not dutiable.

Madam Speaker, I now turn to provisions in the Bill that create a statutory duty exemption for genuine corporate reconstructions. Currently, a corporate reconstruction or consolidation in Tasmania attracts a duty liability under the Act where a direct or indirect acquisition of land occurs.

A corporate reconstruction refers to the internal reorganisation of a company structure through either a corporate reconstruction or a corporate consolidation. A reorganisation is typically undertaken to improve efficiency and can be achieved through either the transfer of shares, units or land amongst commonly controlled or related entities.

The new statutory provisions allow a full exemption from duty for internal reorganisation of a corporate structure, and enable the Commissioner of State Revenue to grant a full exemption from duty if satisfied that specified criteria are met

All other states in Australia provide for this type of statutory duty exemption.

Replacing existing administrative process, where the Treasurer is currently able to consider individual requests for assistance to refund duty for genuine internal corporate restructures, should provide taxpayers and administrators with greater transparency, certainty and a more streamlined process for accessing an exemption from duty.

Madam Speaker, consultation has occurred with key stakeholders on both the proposed policy changes and during drafting of the Bill. This feedback has been considered in the proposed amendments. All were generally supportive of the changes, particularly where it improved clarity, transparency and alignment with other jurisdictions.

Consistent with this Government's commitment to improve the environment in which to do business in Tasmania, these amendments will help to reduce red tape, streamline taxpayer compliance with the Duties Act, and provide clarity.

Madam Speaker I commend the Bill to the House.