

## CLAUSE NOTES

### *Taxation and Related Legislation (Miscellaneous Amendments) Bill 2016*

#### *Part 1 – Preliminary*

- Clause 1 This Act may be cited as the *Taxation and Related Legislation (Miscellaneous Amendments) Act 2016*
- Clause 2 The Bill is to commence upon Royal Assent, but for Part 3 which will commence retrospectively from 1 July 2001.

#### *Part 2 – Duties Act 2001 Amended*

- Clause 3 In this Part, the *Duties Act 2001* is referred to as the Principal Act.
- Clause 4 Amends section 7 of the Principal Act to include vesting of dutiable property transactions in the list of dutiable transactions to be treated as transfers, in accordance with the intentions of the Act.
- Clause 5 Amends section 56 of the Principal Act to allow a refund of duty previously paid on a transfer of matrimonial property consequent upon a marriage break-down where a financial agreement made under various sections of the *Family Law Act 1975* (Commonwealth) subsequently approves the transfer.
- Clause 6 Amends section 56A of the Principal Act to allow a refund of duty previously paid on a transfer of de facto property consequent upon a de facto relationship break-down where a financial agreement made under various sections of the *Family Law Act* subsequently approves the transfer.
- Clause 7 Amends section 248 of the Principal Act which deals with situations where the Commissioner considers that the consideration in an agreement for the sale, transfer or exchange of property is inadequate
- The amendment allows the Commissioner, upon provision of a valuation from a taxpayer upon objection, to treat the value of the property identified in that valuation as the unencumbered value of the property (rather than requiring the Commissioner to assess duty in accordance with that valuation) or, if not satisfied with the valuation provided, to obtain a new valuation and treat that valuation as the unencumbered value of the property.
- Section 248 is also amended in a number of places to remedy a drafting oversight in order to clarify that the provision, which relates to determining the unencumbered value of land, applies in respect of all dutiable transactions and not just agreements and other instruments.

### ***Part 3 – Duties Act 2001 Further Amended***

- Clause 8 In this Part, the *Duties Act 2001* is referred to as the Principal Act.
- Clause 9 Inserts section 57AA into the Principal Act to exempt a number of statutory vesting transactions where a duty liability was never intended. The amendment exempts: the vesting of dutiable property in a legal personal representative of a deceased person or under an intestacy under section 12 of the *Administration and Probate Act 1935*; the vesting, under the *Associations Incorporation Act 1964*, of dutiable property in an incorporated association; the vesting, under the *Strata Titles Act 1998*, of common property in a body corporate on the registration of a strata title plan; and the vesting of dutiable property under section 28 of the *Strata Titles Act 1998* by virtue of the cancellation of a strata plan.

### ***Part 4 – First Home Owner Grant Act 2000 Amended***

- Clause 10 In this Part, the *First Home Owner Grant Act 2000* is referred to as the Principal Act.
- Clause 11 Amends section 13 of the Principal Act to provide that, in the case of a movable building, the building must be a new moveable building, for example a building that has not previously used as a place of residence, rather than a used moveable building, in order to be eligible for a first home owner grant.
- Clause 12 Amends section 18 of the Principal Act to provide for an increased grant of \$20 000 for eligible transactions that are entered into between 1 July 2016 and 30 June 2017.
- Clause 13 Inserts section 18D of the Principal Act to provide for the conditions of the \$20 000 grant.
- The amendment also clarifies that, where a payment of \$20 000 is made to an eligible recipient in anticipation of the Bill receiving Royal Assent, that payment is taken to be a first home owner grant payment for the purposes of the Principal Act.

### ***Part 5 – Land Tax Act 2000 Amended***

- Clause 14 In this Part, the *Land Tax Act 2000* is referred to as the Principal Act.
- Clause 15 Amends section 38 of the Principal Act to ensure that the special rate of land tax for land owned by a club or body of persons (where the land is used for certain sporting activities) is also able to obtain the benefit of the tax-free threshold available to other land tax payers.

## *Part 6 – Payroll Tax Act 2008 Amended*

Clause 16 In this Part, the *Payroll Tax Act 2008* is referred to as the Principal Act.

Clause 17 In this section the structure of the relevant contractor provisions in section 32 of the Principal Act are amended to be consistent with the approach taken in harmonised jurisdictions.

The amendments include a new section 32(2A) which provides that an exemption does not apply if the Commissioner determines that the contract or arrangement under which the services were supplied was entered into with an intention either directly or indirectly of avoiding or evading payment of tax. This rule already applies to some, but not all, of the exemptions.

The amendment also inserts section 32(2B) which denies several of the relevant contractor exclusions where additional services or work (of a kind not covered by the relevant exemption) are supplied or performed under the contract. Further, in response to case law, the relevant contractor exclusion as it relates to owner-drivers has been tightened to make clear that a contract under which a person is supplied with services ancillary to the conveyance of goods by an owner-driver contractor is not an exempt contract if services not solely for or ancillary to the conveyance of goods are also provided by the contractor.

These amendments ensure harmonisation with Victoria and New South Wales in relation to the payroll-tax treatment of owner-driver contracts and anti-avoidance provisions,

The amendments also repeal the following exemptions from section 32(2)(d):

- i. contracts under which services are provided solely for or in relation to the procurement of persons desiring to be insured, and
- ii. contracts under which services are provided for or in relation to the door-to-door sale of goods solely for domestic purposes.

This amendment replicates that made in New South Wales.

Clause 18 Amends section 80 of the Principal Act to replace references to the previous payroll tax threshold (\$1.1 million per annum) with the current payroll tax threshold (\$1.25 million) for designated group employers.

Clause 19 Amends section 86, which requires employers to register for payroll tax, to replace redundant references to the previous payroll tax threshold (\$19 423 per week) with the current payroll tax threshold (\$24 038 per week).

Clause 20 Amends Schedule 2 of the Principal Act (Tasmania-Specific Provisions) to introduce a five year time limit for refunds of payroll tax which will require an application for a refund in relation to a financial year to be made within five years after the most recent payment to which the refund applies was made.

The amendment also enables the Commissioner to offset a refund of payroll tax under section 83 against any liability of the employer under a taxation law or other Act of which the Commissioner has general administration.

Clause 21 Amends Schedule 3 of the Principal Act by introducing a transitional provision to ensure that the amendments made to section 32 as part of the *Taxation and Related Legislation (Miscellaneous Amendments) Act 2016* only apply from the commencement date.

The transitional provisions also provide for the new refund provision to be inserted in Schedule 2 of the Principal Act to apply to payments whether made before or after the commencement date.

### ***Part 7 –Taxation Administration Act 1997 Amended***

Clause 22 In this Part, the *Taxation Administration Act 1997* is referred to as the Principal Act.

Clause 23 Amends section 19 of the Principal Act to extend the standard reassessment timeframe from three to five years. The amendment will enable the Commissioner to ordinarily make a reassessment of a tax liability of a taxpayer up to five years after the initial assessment of the liability.

Clause 24 Amends section 28 of the Principal Act to extend the period in which an application for a refund of tax can be made, from three to five years, except for land tax that was paid in instalments under section 13 of the Land Tax Act.

For refunds of land tax paid in instalments under section 13 of the Land Tax Act, the amendment requires that an application for a refund must be lodged with the Commissioner within 4 years after the most recent payment in relation to the refund being sought was made. This will effectively allow refunds for up to 5 financial years.

The amendment preserves the current requirement that an application for a refund must be made to the Commissioner in an approved form.

Under the current provisions, an application for a refund must be lodged within 3 years after the relevant payment was made.

Clause 25 Amends section 29 of the Principal Act to extend a taxpayer's entitlement to a refund from 3 years to 5 years except for refunds of land tax paid under section 13 of the Land Tax Act, whereby the amendment reinforces that an entitlement to a refund relies on an application being lodged within 4 years after the most recent payment in relation to the refund being sought was made.

Clause 26 Amends section 29A of the Principal Act to insert a provision that enables the Commissioner to offset interest payments that accompany refunds against other taxation liabilities of the taxpayer. Section 29A currently requires the Commissioner to pay interest on an overpayment of tax. The amendment is consistent with the current approach at section 29 which enables the Commissioner to offset an overpaid amount against other taxation liabilities of the taxpayer.

- Clause 27 Amends section 59A of the Principal Act to enable the Commissioner to pay unfair preference payments (and other payments that constitute voidable transactions for the purposes of the Corporations Act) to a liquidator. Currently, when the Commissioner receives a liquidator demand requesting that the Commissioner remit taxes (previously paid to the Commissioner) to the liquidator, there is no statutory provision to enable the Commissioner to do so as the amounts were not “overpaid”.
- Clause 28 Amends section 94 of the Principal Act to enable the Commissioner to offset a refund of an amount overpaid by a taxpayer against other taxation liabilities of the taxpayer where a taxpayer’s objection to an assessment is upheld, or where a taxpayer’s objection to a decision other than an assessment is allowed.
- The amendment introduces consistency with the approach for refunds under section 29 where the Commissioner, if satisfied that a person has overpaid an amount, must refund the overpaid amount or apply the overpaid amount against other taxation liabilities of the taxpayer.
- Clause 29 Amends section 95 of the Principal Act to insert a provision that enables the Commissioner to offset interest payments that accompany refunds of tax where a taxpayer’s objection to an assessment is upheld, or where a taxpayer’s objection to a decision other than an assessment is allowed, against other taxation liabilities of the taxpayer.
- Section 95 currently requires the Commissioner to pay interest on an amount refunded. The amendment is consistent with the amendment to section 29A at clause 29.
- Clause 30 Amends Schedule 1 of the Principal Act by introducing a transitional provision to ensure that the amendments made to section 28 (clause 27) and section 29 (clause 29) of the Principal Act as part of the *Taxation and Related Legislation (Miscellaneous Amendments) Act 2016* do not apply to refunds of payments where an application for refund has already been made before the Act receives Royal Assent.
- Clause 31 This Act will be repealed 365 days after it commences.