

TAXATION AND RELATED LEGISLATION (MISCELLANEOUS AMENDMENTS) BILL 2010

SECOND READING SPEECH

Mr Speaker

The *Taxation and Related Legislation (Miscellaneous Amendments) Bill 2010* amends the *Duties Act 2001*, the *Land Tax Act 2000*, the *Taxation Administration Act 1997* and the *First Home Owner Grant Act 2000*.

Taxation legislation often requires amendments to address issues that evolve over time. The Government wants to maintain fairness and equity for tax payers and grant applicants by eliminating opportunities for tax avoidance and enhancing clarity and certainty of taxation law.

The amendments contained in this Bill aim to clarify existing provisions, deter tax avoidance practices, protect revenue and address potential inequities. This Bill enables the collection of taxes that should be paid, according to the original policy intent of the legislation, but where opportunities currently exist for avoidance. This Bill represents consistency with past practice of dealing with minor taxation amendments together at one time each year.

Duties Act

Mr Speaker, the *Duties Act 2001* will be amended to ensure that the collection of duty is fair for all taxpayers and minimises the opportunities to manipulate a transaction so as to the reduce duty to be paid.

The Duties Act currently allows the Commissioner of State Revenue to treat dutiable transactions relating to separate items of property as a single transaction if the transactions together form what is substantially the same transaction. This power exists to prevent taxpayers from avoiding duty by artificially splitting transactions across several different agreements or transfers.

The effectiveness of the Commissioner's aggregation powers in cases where transactions include the gift of dutiable property have been compromised, and the Bill amends the Duties Act to provide certainty 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.

The Bill also addresses a potential opportunity for taxpayers to avoid duty by taking advantage of the exemption available to couples who transfer vacant land held in the name of one of the parties into joint names, provided they intend to construct their principal place of residence on that land.

Mr Speaker, there is a risk that couples who do not build, or who do not genuinely intend to build, their principal place of residence on the land will take advantage of the current exemption and the Commissioner currently has no power to prevent exemptions being granted in these situations.

The Bill amends the Duties Act to, first of all, remove the exemption on the transfer of vacant land into joint names. However, couples will then be able to claim a refund of the duty paid, provided they build and occupy their principal place of residence on the land within two years of the transaction.

Mr Speaker, the Bill also amends the Duties Act to provide an exemption on the transfer of assets upon the breakdown of a de facto relationship.

The Duties Act already provides a duties exemption in the circumstances of the breakdown of such a relationship. This is available to those who choose to deal with property settlements under the *Tasmanian Relationships Act 2003*.

However, the Commonwealth *Family Law Act 1975* has recently been extended to cover breakdowns in de facto relationships and it is appropriate that those Tasmanians in de facto relationships have the option of dealing with relationship breakdowns under either the Relationships Act or the Family Law Act.

The amendment is to be operative from 8 October 2008, the date on which Tasmania formally referred its powers with respect to financial matters arising out of the breakdown of de facto relationships to the Commonwealth.

This amendment will give former parties to a de facto relationship greater flexibility in dealing with their property settlement at a very difficult time.

Mr Speaker, the Bill also amends the Duties Act to remove uncertainty about the liability to pay duty, which extends to persons acting on behalf of unregistered insurers, when a contract of insurance is purchased from an insurance intermediary, rather than directly from the insurer.

The Bill amends the provision regarding when a premium is taken to have been paid to include payments to an insurance intermediary. This provides certainty that insurance intermediaries must pay duty within three months of receipt of the premium, regardless of whether the premium is accepted on behalf of a registered or unregistered insurer.

Land Tax Act

Mr Speaker, the Bill amends the *Land Tax Act 2000* to address a potential inequity that arises when the owner of multiple properties sells a property for which no tax is payable, such as their principal place of residence or other exempt land.

Currently, when the owner of multiple properties sells otherwise exempt or non taxable land, they are required to pay the Commissioner the total amount of land tax on their entire property holdings, or a proportion of the total amount of land tax on their entire property holdings notwithstanding that no land tax is payable in respect of the land that was sold.

While this requirement assists the Commissioner in recovering unpaid land tax before the owner disposes of their property, the treatment of taxpayers who own multiple properties and sell otherwise exempt or non-taxable properties is inequitable, because owners of a single property on which no land tax is payable are not similarly required to pay land tax.

The Bill amends the Land Tax Act by removing the requirement for taxpayers who own multiple properties to pay land tax at the time of sale of properties that are not otherwise subject to land tax.

This amendment is one of the minor issues identified during the administration of taxation legislation from time to time, and has been dealt with separately from the land tax reform package announced by the Government in December 2009. The Land Tax Amendment Bill 2010 has been drafted to give Parliament the opportunity to approve that package separately.

Taxation Administration Act

Mr Speaker, in line with the Government's goal to provide fair and efficient administration of taxation law, the Bill amends arrangements for payment of interest by the Commissioner on overpayments that are to be refunded to a taxpayer.

When a taxpayer is late in paying their taxation liability, they are required to pay interest on the outstanding amount, calculated from the date at which the payment should have been paid, until the day that it is paid.

This is right and proper.

When the Government has the use of a taxpayer's money it is also right and proper that the Government should pay interest to the taxpayer if that money is refunded to the taxpayer as a consequence of an assessment that determines that there has been an overpayment of tax.

The Taxation Administration Act already provides for the payment of interest where a taxpayer overpays their taxation liability.

However, instead of interest being calculated from the later of the date of over payment or the date of the Commissioner's assessment of the taxation liability, under this amendment, the interest will simply be calculated from the date of overpayment until the date the Commissioner approves the refund.

This amendment will result in greater consistency between the calculation of interest payable to the Commissioner, and the calculation of interest payable by the Commissioner.

Mr Speaker, the Bill also strengthens the general anti-avoidance provisions of the *Taxation Administration Act 1997*.

The Taxation Administration Act contains a division designed to deter artificial, blatant or contrived schemes to reduce the liability to pay tax. However the tax avoidance division does not currently apply if the scheme (however artificial, blatant or contrived) results in the taxpayer being entitled to an exemption or concession. This is a major deficiency in the Taxation Administration Act.

The anti-avoidance provision will be extended so that it will apply to schemes entered into with the sole or dominant purpose of obtaining a tax benefit attributable to an exemption or concession under a taxation law.

First Home Owner Grant Act

Mr Speaker, the Bill amends the *First Home Owner Grant Act 2000* to clarify an applicant's eligibility in circumstances where an applicant or their spouse has owned a residential property after 1 July 2000. The amendments will allow certain applicants who have failed to meet the requirements of the First Home Owner Grant to apply for a future grant.

Currently, an applicant is required to reside at the property to which the application relates for six months. If the applicant fails to meet this requirement, the applicant may be required to repay the grant. Where this situation arises, the person may also be ineligible for a future grant because they have resided at a previous property they owned, even though they did not occupy that property for long enough to entitle them to the grant at the time.

The amendments will eliminate this inequity by rendering an applicant ineligible on the basis of prior ownership, but only if the applicant or the applicant's spouse has held an interest in another property used at anytime on or after 1 July 2000 as their residence for a continuous period of at least six months.

The First Home Owner Grant Act is also amended to align the definition of "residential property" with the definition of "home" to remove the current inequities created by the differences between the two definitions.

Mr Speaker, the above provisions of the *Taxation and Related Legislation (Miscellaneous Amendments) Bill 2010* aim to ensure equity and promote fairness for all taxpayers. They reduce the opportunity for tax avoidance, provide clarity and certainty for taxpayers and first home owner grant applicants and address inequities.

Mr Speaker, I commend the Bill to the House.