

TAXATION AND RELATED LEGISLATION (MISCELLANEOUS AMENDMENTS) BILL (NO.2) 2011

SECOND READING SPEECH

Mr Speaker

The *Taxation and Related Legislation (Miscellaneous Amendments) Bill (No. 2) 2011* amends the *Duties Act 2001*, the *First Home Owner Grant Act 2000*, the *Land Tax Act 2000*, the *Payroll Tax Act 2008* and the *Taxation Administration Act 1997*.

Taxation legislation often requires amendments to address issues that emerge over time. The Government wishes to maintain fairness for all taxpayers and grant applicants by removing opportunities for tax avoidance and by enhancing the clarity of State taxation law.

The amendments contained in this Bill clarify existing provisions, improve equity of application, ensure the maintenance of inter-jurisdictional consistency and provide certainty for taxpayers and grant applicants.

Duties Act

Leases and goods

Mr Speaker, duty on the sale of non-real business assets was abolished in July 2008. Where the sale of a business does not involve other dutiable property, an associated transfer of goods does not attract duty. However, in cases where there is also a lease involved, goods may be dutiable.

It is proposed that the Duties Act be amended to allow the Commissioner of State Revenue to disregard the value of goods in determining the dutiable value of property in a transaction that involves a grant, surrender or transfer of a lease of commercial property.

Special disability trusts

A special disability trust enables the immediate family members of a person with a severe disability to contribute to their current and future care without those contributions impacting on the beneficiary's eligibility for income support payments. Funds held in special disability trusts are able to be used to purchase or lease property that is to be occupied as the beneficiary's residence.

The Senate Standing Committee on Community Affairs recommended that the tax arrangements applying to special disability trusts be changed so that the transfer of property to such a trust is exempt from duty. The Commonwealth Government has requested that states and territories consider amending duties and land tax legislation to provide exemptions for residential properties held in special disability trusts.

It is proposed that the Duties Act be amended to provide an exemption from duty for a declaration of a trust over property or a transfer to the trustee of a special disability trust, if the property is to be used as the principal place of residence of the beneficiary.

It is also proposed that the Land Tax Act be amended to allow land held in a special disability trust and occupied as the beneficiary's principal place of residence to be classified as principal place of residence land, thus gaining a land tax exemption.

These amendments will be of significant benefit to members of our community with a severe disability.

Land-rich corporations

Mr Speaker, the land-rich chapter of the Duties Act contains anti-avoidance provisions that capture duty on the transfer of shares in private companies that have significant land holdings where those holdings make up a significant proportion of the assets of the private company.

A land holding includes any interest in land, with some exclusions. It is proposed that the Duties Act be amended to clarify that, for the purposes of the land-rich provisions, a land holding of a private corporation includes an estate or interest in a mineral tenement and a gas pipeline. Anything that is a fixture to the land is to be taken into account in determining the extent of the company's entitlement or interest in land.

These amendments will minimise opportunities for tax avoidance and improve consistency in the duty treatment of land, fixtures and interests transferred by way of shares or directly.

Family farms

Mr Speaker, the Duties Act provides an exemption on the transfer of family farms from one generation to the next. This exemption was put into place in 1995 and the way that family farms are held has developed over time, particularly with regard to trusts and company structures.

The exemption is to be amended to ensure that it continues to operate in accordance with the original policy intent.

Most notably, the exemption will now allow for the transfer of farming land from one company to another company, provided all of the shareholders of the second company are relatives of all the shareholders of the first company.

Payroll Tax Act

Mr Speaker,

The Payroll Tax Act is to be amended to maintain inter-jurisdictional harmonisation with respect to the payroll tax treatment of shares and options granted to employees and directors.

These amendments are necessary because the Commonwealth Government has repealed various provisions of the *Income Tax Assessment Act 1936*, on which the Payroll Tax Act relies to establish when the grant of a share or option occurs and to determine their value for payroll tax purposes.

The proposed amendments have been developed in consultation with other jurisdictions and will commence on 1 July 2012.

Taxation Administration Act

Mr Speaker, the Taxation Administration Act is to be amended to clarify the refund provisions that apply to the State's taxation Acts. These amendments will:

- make it simpler for the Commissioner to issue a refund of overpaid tax when the overpayment has been identified as part of an investigation or audit;

- prevent a taxpayer from objecting multiple times on the same matter instead of proceeding to the Administrative Appeals Tribunal or the Supreme Court as intended; and
- clarify that if an assessment is made or tax paid based on an interpretation that applied at the time, a taxpayer cannot later request a refund or reassessment, nor the Commissioner issue a reassessment for additional tax, based on a new interpretation or practice that applied after the original assessment or payment. This amendment is to apply from 25 October 2008 to protect the revenue base during the full three year statutory refund period.

Conclusion

Mr Speaker, the amendments contained in this Bill clarify existing provisions, improve equity of application, ensure the maintenance of inter-jurisdictional consistency and provide certainty for taxpayers and grant applicants.

Mr Speaker, I commend this Bill to the House.