

# REVENUE LAWS AMENDMENT BILL (No. 2) 1996

## EXPLANATORY NOTES

### GENERAL OUTLINE

#### Policy Objectives

The objectives of the Bill are—

- (a) to amend the *Land Tax Act 1915* to:
  - introduce three year averaging of unimproved land values for assessments for the 1997/98 and subsequent financial years;
  - establish qualifying conditions for the exempt proprietary company deduction following amendment of the *Corporations Law* to remove reference to such companies.
- (b) to amend the *Stamp Act 1894* to:
  - give legislative effect from 15 July 1996 to an administrative scheme previously publicly announced which ensures national consistency in the stamp duty treatment of transfers of beneficial interests in certain securities;
  - ensure that rights in respect of shares are treated consistently with marketable securities;
  - remove a stamp duty exemption for certain government owned corporations on motor vehicle registration applications and transfers;
  - provide an exemption for leases of mobile home sites under the *Mobile Homes Act 1989*;
  - allow the Commissioner to approve forms for the purposes of the Act.

- (c) to amend the *Debits Tax Act 1990* to clarify the circumstances in which debits tax will apply to an account to which debits may be made in respect of transfers to a taxable account to satisfy cheques and payment orders debited to the taxable account;
- (d) to amend the *Pay-roll Tax Act 1971* to overcome certain arrangements which reduce or avoid liability for pay-roll tax.

### **Reasons for the Bill**

Amendments to the *Land Tax Act 1915* are required to—

- reduce the impact on land tax assessments of fluctuations in land values;
- establish new qualifying conditions for the deduction available under the Act for exempt proprietary companies following amendment of the *Corporations Law* to remove reference to “exempt proprietary companies”.

Amendments to the *Stamp Act 1894* are required to—

- give effect to an administrative scheme which allows stamp duty on transfers of certain securities representing beneficial interests in other securities to be paid by return;
- clarify the treatment of rights in respect of shares in certain cases to maintain consistency of treatment with marketable securities;
- extend the existing exemption from duty on leases of private dwelling houses to leases of mobile home sites under the *Mobile Homes Act 1989*;
- remove a stamp duty exemption for government owned corporations on applications for registration and transfer of registration of motor vehicles;
- simplify administration by enabling the Commissioner of Stamp Duties to approve forms under the Act.

Following a recent decision of the Court of Appeal, amendments to the *Debits Tax Act 1990* are required to—

- clarify the types of accounts to which the tax applies;

- facilitate exemption of certain classes of account which the Commissioner considers have an insufficient connection with taxable accounts;
- ensure that the tax does not apply to debits in respect of transfers between taxable accounts to avoid the potential for double taxation.

Amendment to the *Pay-roll Tax Act 1971* is necessary to address certain arrangements which may enable liability for tax to be reduced or avoided.

### **Achievement of Objectives**

The 1996/97 Budget provided for introduction of a scheme to alleviate the effect of fluctuating land values on land tax liability. The scheme will apply to land tax levied for the financial year starting on 1 July 1997 and subsequent financial years. Land tax will be determined with reference to the relevant unimproved value of land, which is the lesser of the unimproved value of that land and the averaged unimproved value of the land for the relevant financial year.

Where unimproved values for particular land are available for the current and two previous financial years, the averaged unimproved value will be the average of those values. In other cases, the averaged unimproved value for particular land will be determined by adjusting the unimproved value of the land by an averaging factor which is determined having regard to the total unimproved value of all Queensland land for which a valuation under the *Valuation of Land Act 1944* has issued as at midnight on the 30 June immediately preceding the current and two previous financial years.

As is currently the case for assessments made on the basis of unimproved values determined under the *Valuation of Land Act 1944*, there will be no right of objection or appeal in relation to the averaged unimproved values used in making a land tax assessment where those values rely on valuations made under the *Valuation of Land Act 1944*.

The *Land Tax Act 1915* provides that an exempt proprietary company, as defined in section 9 of the *Corporations Law*, is, in certain circumstances, entitled to a deduction under the Act in respect of land used solely for agriculture, pasturage or dairy farming. However, following removal of “exempt proprietary company” from the *Corporations Law* by the *First*

*Corporate Law Simplification Act 1995*, the qualifying conditions will be established under the *Land Tax Act 1915*.

The deduction will be allowed to a “proprietary company” as defined in the *Corporations Law*, subject to certain additional requirements required as a result of the wider *Corporations Law* definition. Eligibility for the deduction depends upon there being no share or interest in the proprietary company being held by a body corporate (other than a proprietary company), whether directly or through one or more interposed companies or trusts. The new conditions will also exclude from eligibility proprietary companies in which an exempt foreign company holds an interest. This change improves the consistency of the deduction with the corresponding deduction for resident individuals.

Under the *Stamp Act 1894*, transfers of rights in respect of shares are liable for stamp duty in the same way as marketable securities. The method of accounting for duty differs depending on whether or not the transfers are effected with an instrument, on or off-market or via the Australian Stock Exchange’s Clearing House Electronic Sub Register System (CHES). Where such transfers are effected on-market or through CHES, stamp duty may be accounted for by return, which is more efficient for the taxpayers concerned.

Section 54AC of the *Stamp Act 1894* applies where there is a change in beneficial interest in marketable securities or rights in respect of shares. The section deems that an instrument effecting or evidencing a change in beneficial interest in a marketable security or right in respect of shares chargeable with duty as if it were a transfer of the security or right. Where a change in beneficial interest in a marketable security or right in respect of shares is effected without an instrument, a written statement is required and duty is charged on the statement as if it were a transfer of the security or right.

On 15 July 1996, the Australian Stock Exchange (ASX) introduced a new form a security called an Instalment Receipt and has announced an intention to introduce CHES Units of Foreign Securities (CUFS). Instalment Receipts were issued as part of the instalment arrangements for the Commonwealth’s sell-off of its Commonwealth Bank shares. Under the arrangement, the Commonwealth Bank shares were sold on the basis that, on payment of an initial instalment, investors were issued with one Instalment Receipt for each share purchased. The Instalment Receipts are listed on the ASX.

CUFS has been developed by the ASX to extend the benefits of CHESS to foreign companies whose place of incorporation does not recognise electronic transfer and registration of securities. Under the system, legal ownership of the security will be transferred to a depositary nominee company, with transfer of beneficial ownership to the purchaser being effected by a transfer of CUFS. It is possible that CUFS may be extended to other foreign securities, including units in foreign unit trusts.

CUFS and Instalment Receipts represent beneficial interests in marketable securities liable to stamp duty under section 54AC or the broker provisions upon their transfer. To facilitate the payment of duty under the broker and CHESS provisions in sections 31A-I and sections 31K-X of the *Stamp Act 1894* respectively rather than requiring individual statements for each transfer, the *Stamp Act 1894* will be amended with effect from 15 July 1996 to clarify that such securities are rights in respect of shares. The proposal to amend the legislation in respect of these securities was previously announced publicly.

Because these types of securities are likely to become increasingly popular, the proposed additions to the definition of right in respect of shares are not limited to Instalment Receipts and CUFS, but will extend to any future similar securities to allow duty on transfer of such securities to also be accounted for by return. However, the legislation will initially apply only to Commonwealth Bank Instalment Receipts since these are the only securities of this kind presently being traded.

While the proposed amendment in relation to CUFS does not limit CUFS to units in foreign unit trusts and shares in foreign companies, the object of CUFS is to facilitate access to CHESS for foreign securities. It is therefore unlikely that CUFS will be issued in respect of Australian unit trusts. Any securities which are identified as liable for stamp duty under these arrangements but for which duty is not to be sought may be excluded by regulation.

Exemption 5(b) of the Application for Registration or Application for Transfer of Registration of a Motor Vehicle Head of Charge in the *Stamp Act 1894* exempts certain government owned corporations from the payment of stamp duty on applications for registration or transfers of registration of motor vehicles. In accordance with the principles guiding the corporatisation process, the exemption for government owned corporations in exemption 5(b) will be removed.

Exemption 1 to the Lease Head of Charge in the *Stamp Act 1894* provides that duty is not payable in respect of the lease of premises used as a private dwelling house where the premises are used for the purpose of residence and not for the conduct of a profession, trade, business or commercial venture. Following introduction of the *Mobile Homes Act 1989*, the documents required under that Act to give effect to leases of mobile home sites are subject to stamp duty. The existing exemption for leases of residences will be extended to a relevant agreement, as that term is defined and applied in the *Mobile Homes Act 1989*, with the exemption being subject to the same conditions as those for other premises.

Forms used for the purposes of the *Stamp Act 1894* are currently prescribed in the *Stamp Duties Regulation 1926*. For administrative efficiency, the *Stamp Act 1894* will be amended to enable the Commissioner of Stamp Duties to approve all relevant forms.

Under the *Debits Tax Act 1990*, debits tax applies to taxable debits to accounts with a bank or financial institutions on which cheques or payment orders may be drawn. Arrangements have been identified which are designed to provide the account holder with a savings account with cheque book access but attract debits tax on cheque withdrawals only. The effect of one of these arrangements was recently considered by the Court of Appeal in *The Commissioner of Stamp Duties v Bank of Queensland Limited*, which held that the savings account is one to which the *Debits Tax Act 1990* applies.

To clarify for financial institutions the circumstances in which debits to accounts are subject to tax following the Court of Appeal decision, the Act will be amended to clarify the types of accounts to which the tax applies. Specifically, the new definition of “account” will ensure that debits tax is imposed on accounts from which transfers are made to satisfy cheques or payment orders drawn on a bank or financial institution.

Application of the Court’s decision may be inappropriate where the arrangements involve transfers between accounts to offset overdrawn account balances arising inadvertently. Accounts of this type have an insufficient connection with the taxable account. The Commissioner will be empowered to issue an account certificate in respect of these classes of account where considered appropriate in all the circumstances, with the result that all debits to those accounts will be exempt from tax.

A new exemption will ensure that double duty is not imposed on what is essentially the same debit by providing that the tax will not apply to debits in respect of transfers between taxable accounts.

Pay-roll tax is levied on wages paid by an employer after deducting the statutory deduction allowable under the *Pay-roll Tax Act 1971*. While the tax generally applies to employer-employee relationships, payments by an employment agent to contract workers are taxed if the worker performs for the agent's clients duties of a similar nature to those of an employee. Two arrangements have been identified to minimise pay-roll tax otherwise payable in these circumstances.

The first arrangement involves workers establishing companies or trusts which contract with the employment agent for the provision of services to the employment agent's clients. The services performed by the workers are similar to those of an employee. Interposing these entities between the agent and the worker renders the employment agent provisions ineffective and results in no pay-roll tax being payable on payments to the interposed entity for services provided by the worker.

The *Pay-roll Tax Act 1971* will be amended to ensure that the employment agent provisions apply where the agent directly or indirectly through one or more interposed persons, companies or trusts, procures the services of a worker for a client where the worker does not become the employee of either the agent or the client but does perform functions similar to those of an employee. The remuneration may be paid directly or indirectly by the agent to the worker or to another person, company or trust for the services supplied by the worker and the agent may receive directly or indirectly a payment during or for the period in which the worker supplies the services for the client.

The second arrangement involves an artificial and contrived avoidance scheme under which an employment agent establishes a trust for each client of the agency. The agent is trustee of each trust and each client is beneficiary of the trust established for that client. The trustee then contracts with the client to obtain the services of the worker and then contracts with the worker for the provision of those services to the client. The client pays the trustee the employment agent's fee and the trustee then pays the worker.

Although the amounts paid by the employment agent/trustee in respect of the worker's services fall within the definition of "wages", it is argued that section 42(1)(b) of the *Pay-roll Tax Act 1971* requires that the trustee be

assessed in its representative capacity only so that separate returns are required in respect of each trust. It is then argued that section 16D of the Act has the result that the business to which the trust relates must be grouped with other businesses in which the client has a controlling interest. This result is contrary to the intention of paragraph (f) in the definition of “wages” in section 3 of the Act that an employment agent, and other employment agents related in some way to that agent, pay pay-roll tax as employer on the remuneration paid or payable in respect of services provided by workers through the agency.

The amendment will ensure that where these and similar arrangements would result in less pay-roll tax being payable in respect of the agency, the employment agent will be liable for the tax without regard to the provisions of section 42(1)(a), (b) and (f) and disregarding any clients’ controlling interests. It will also ensure that, where an employment agency involves more than one employment agent, the agents will be grouped. The effect is that pay-roll tax will be payable on all remuneration paid to workers by the agency regardless of the avoidance arrangements between employment agents and their clients.

An example of a type of scheme contemplated by the amendment and the effect of the amendment is:

*An employment agent wishes to provide workers to various clients for a fee. For a client (client 1) a trust (trust 1) is established of which the agent is trustee and client 1 is beneficiary. The business of trust 1 is supplying workers to client 1. The agent establishes similar trusts for each client. For example, the agent is also trustee of trust 2 of which the beneficiary is client 2. The business of that trust is supplying workers to client 2.*

*As trustee of trust 1, the agent procures the services of worker 1 for client 1. The services of worker 2 are procured by the agent as trustee of trust 2 and for client 2.*

*Remuneration paid to workers engaged by the agent for the clients constitute “wages” for pay-roll tax purposes. However, under section 42(1)(b) of the Pay-roll Tax Act 1971, it is argued that the agent, as trustee for trust 1, is required to lodge a return only in respect of wages paid in relation to that trust. Separate returns are required for each of the other trusts such as trust 2. Further, it is argued that the effect of section 16D(3)(d) is that the business of trust 1 is grouped*



*with other businesses in which client 1 has a controlling interest. Similarly, the business of trust 2 is grouped with other businesses in which client 2 has a controlling interest and so on. If the total wages paid in respect of the client's grouped businesses does not exceed the tax free threshold, no pay-roll tax is payable.*

*The proposed section 11E will apply to these arrangements and require that one return be lodged in respect of the agency. Further, the clients of the agency are taken not to have a controlling interest in the agency. (Where there is more than one agent involved in the agency, the agents constitute a group.) Consequently, the pay-roll tax liability is determined in respect of the total wages payable in respect of the agency. Because that amount will exceed the tax which would be payable if the section did not apply, the proposed section will apply. Where the tax would be the same or less, the proposed section will not apply.*

### **Alternatives to the Bill**

The policy objectives can only be achieved by statutory amendment.

### **Estimated Cost for Government Implementation**

Any additional administrative costs are expected to be minimal. Revenue costs for introduction of land tax averaging were outlined in the 1996/97 Budget.

### **Consistency with Fundamental Legislative Principles**

With the exception of the amendment to the *Stamp Act 1894* in relation to beneficial interests in securities, the *Revenue Laws Amendment Bill (No. 2) 1996* will apply prospectively and is consistent with fundamental legislative principles.

The legislation to ensure clarity of treatment for Instalment Receipts will have retrospective effect to 15 July 1996, being the day of their first trade. The legislation may also have retrospective effect in relation to CUFS if CUFS are introduced before enactment of the legislation.

Retrospective legislation is necessary in this case because of late advice regarding introduction of Instalment Receipts. As some jurisdictions'

legislation already clearly addressed the stamp duty liability of Instalment Receipts and because any inconsistency between jurisdictions would jeopardise national uniformity, it was essential that an announcement was made regarding the basis on which duty should be paid pending legislative amendment. Such an approach accorded with that sought by the ASX to ensure that duty could be paid by return, and was the basis on which the ASX advised brokers to account for duty.

The amendment does not impose obligations or adversely affect rights and liberties retrospectively. Such beneficial interests in securities are liable for stamp duty pursuant to section 54AC of the *Stamp Act 1894* or as rights in respect of shares. Consequently, liability for stamp duty is not being imposed retrospectively. The effect of the amendment is to provide clarity in the law and to allow duty to be accounted for by return rather than by individual statement or instrument for each transfer. Further, the intention to amend the *Stamp Act 1894* was publicly announced in July 1996 and is the basis on which brokers have been accounting for stamp duty since that time.

### **Consultation**

The Australian Stock Exchange has been consulted regarding the proposal to give legislative effect to the scheme to allow stamp duty to be paid by return on Instalment Receipts and CUFS.

Consultation on anti-avoidance measures would prejudice the revenue. Consultation is not considered to be necessary in relation to the other matters.

## **NOTES ON PROVISIONS**

*Clause 1* cites the short title of this Act.

*Clause 2* sets out the date for commencement of certain provisions of the Bill.

*Clause 3* states that Part 2 amends the *Debits Tax Act 1990*.

*Clause 4* replaces the existing definition of “account” adopted from

section 3(1) of the *Debits Tax Administration Act 1982 (Cth)* and inserts new definitions of “account”, “account certificate”, “certificate account”, “exempt debit”, “primary account”, “source of funds account” and “transfer debit”. Accounts subject to debits tax will be either primary accounts or source of funds accounts. The definition of “primary account” is adopted from section 3(1) of the Commonwealth Act. A “source of funds account” is an account to which a transfer debit may be made. “Transfer debit” is defined as a debit in respect of a debit to a primary account where the debit to the primary account is in respect of a cheque or payment order. Transfer debits are exempted from debits tax by being included in the definition of “exempt debit”.

Where the Commissioner considers that the connection between a source of funds account and a primary account is insubstantial, he may issue, on the application of the financial institution concerned, an “account certificate”. “Certificate accounts” are accounts of a class for which an account certificate is in force. Debits to certificate accounts are exempt from debits tax. The matters to which the Commissioner must have regard are set out in proposed section 11B(4). Where certificate accounts no longer satisfy the conditions in an account certificate, debits to them cease to be exempt from debits tax.

Exempt debit is defined to also include debits to a loan account in certain circumstances. Exempt debits are not subject to debits tax.

Certain technical errors in cross-references in Schedule 2 of the *Debits Tax Act 1990* are also rectified by clause 21.

*Clause 5* states that Part 3 amends the *Land Tax Act 1915*.

*Clause 6* amends the long title of the *Land Tax Act 1915*.

*Clause 7* omits the definition of “exempt proprietary company” and inserts definitions of “averaged unimproved value”, “proprietary company”, “relevant proprietary company” and “relevant unimproved value”.

*Clause 8* defines the method for determining “averaged unimproved value” and the “averaging factor”. Where land has an unimproved value which applies for the current financial year and unimproved values which applied for the previous two financial years, the averaged unimproved value is the average of those three values. In other cases, the averaged unimproved value is determined by multiplying the unimproved value of the land for the current financial year by the averaging factor.

The averaging factor is determined having regard to the unimproved values of all Queensland land for the current financial year for which valuations were issued and available under the *Valuation of Land Act 1944* as at midnight on the 30 June immediately preceding the current financial year and for the two preceding financial years.

*Clause 9* replaces “unimproved value” with “relevant unimproved value” in section 8.

*Clause 10* provides for use of “relevant unimproved value” in place of “unimproved value” and replaces “exempt proprietary company” with “relevant proprietary company” in section 11.

*Clause 11* provides for use of “relevant unimproved value” in place of “unimproved value” in section 11B.

*Clause 12* provides for use of “relevant unimproved value” in place of “unimproved value” in section 11C.

*Clause 13* provides for use of “relevant unimproved value” in place of “unimproved value” in section 13(1)(j).

*Clause 14* provides for use of “relevant unimproved value” in place of “unimproved value” in section 16(1).

*Clause 15* provides for use of “a relevant unimproved value” in place of “an unimproved value” in section 25(2A).

*Clause 16* provides for use of “relevant unimproved value” in place of “unimproved value” in section 26C(3).

*Clause 17* replaces section 27(1A) with a new provision which will ensure that no right of appeal against an assessment exists on the grounds that an unimproved value or an averaged value is excessive where those values are, or are derived from, values issued under the *Valuation of Land Act 1944*.

*Clause 18* provides that the amendments to the *Land Tax Act 1915* effected by Part 3 apply to land tax levied for the financial year beginning on 1 July 1997 and subsequent financial years.

*Clause 19* states that part 4 amends the *Pay-roll Tax Act 1971*.

*Clause 20* inserts a definition of “employment agent”. An employment agent is a person who directly or indirectly through one or more interposed persons, companies or trusts, procures the services of a worker for a client

where the worker does not become the employee of either the agent or the client but does perform functions of a similar nature to those of an employee.

The definition also requires that remuneration is paid or payable directly or indirectly by the agent to the worker or to another person for the services supplied by the worker and the employment agent receives directly or indirectly a payment during or for the period in which the worker supplies the services for the client. The new definition will apply where, for example, the employment agent contracts with a company controlled by the worker which, in turn, engages the worker to perform the services. However, it is not limited to these cases.

*Clause 21* provides a basis for determining the pay-roll tax payable where the conduct of an employment agency involves certain “avoidance arrangements” as defined. Where there is an avoidance arrangement, the provision ensures that, if the application of section 42(1)(b) and section 16D of the *Pay-roll Tax Act 1971* were to result in an employment agent paying less pay-roll tax than would be payable if the provision was not applied, the employment agent’s pay-roll tax liability is to be determined under the Act as if section 42(1)(b) did not apply to that agent, the clients of the agent did not have controlling interests in the agent and, where there is more than one agent, the agents comprise a group.

*Clause 22* states that Part 5 amends the *Stamp Act 1894*.

*Clause 23* inserts definitions of “approved forms”, “CUFS” and “rights in respect of shares”. The definition of CUFS and rights in respect of shares commences on 15 July 1996.

*Clauses 24 to 31* have the effect that “right in respect of shares” is inserted after “marketable security” in sections 2A(3) and (9), 17(1), 31A(1A), 31H(1) and (3)(a), 31K, 31N(3)(e) and (f), 31X(1)(b) and 50(1) and (2). The amendments will ensure that the stamp duty treatment of share rights is consistent with that relating to marketable securities.

*Clause 32* provides that the commissioner may approve forms for use under the *Stamp Act 1894*.

*Clause 33* provides transitional arrangements for forms.

*Clause 34* makes consequential amendments to provisions regarding forms as a result of clause 32.

*Clause 35* in subclause (1) removes an exemption for certain government owned corporations on applications for registration and applications for transfer of registration of motor vehicles.

Subclause (2) includes in paragraph 2A(c) of the “Conveyance or Transfer” head of charge in Schedule 1 certain rights in respect of shares relating to unit trust schemes so that paragraph (3) of that head of charge will apply to conveyances or transfers of those securities.

Subclause (3) provides an exemption on the transfer of a marketable security or a right in respect of shares where the transfer is to CHESSE Depository Nominees Pty Ltd, is in connection with the issue or redemption of a CUFS in the marketable security or in the right, and the transfer is entered into in the ordinary course of business. This clause commences on 15 July 1996.

Subclause (4) extends an exemption in respect of a lease, agreement or document made for the lease of premises as a private dwelling house to a lease of a site for a mobile home, as defined in the *Mobile Homes Act 1989*. This exemption is subject to the same conditions regarding use of the premises.