

REVENUE AND OTHER LEGISLATION AMENDMENT BILL 1997

EXPLANATORY NOTES

GENERAL OUTLINE

Policy Objectives

The objectives of the Bill are—

- (a) To amend the *Stamp Act 1894*
 - to ensure that conveyance duty applies to certain transactions imposing, removing or changing trust restrictions on a property
 - to ensure that land under contract is taken into account in determining the land to which a vendor company or a purchaser company, as the case may be, is entitled for the purposes of the prescribed provisions and that any necessary reassessment and refund of duty may be made when the contract is rescinded or completed
 - to include in section 31BA options in respect of rights in respect of shares
 - to clarify that the circumstances in which the Commissioner may exercise his discretion under section 75 to make an allowance in respect of a stamp are those listed in section 75(5), to define *legal effect* and to clarify the operation of section 75(5)(f)
 - to exempt from conveyance duty transfers of mobile homes situated, or for situation, in mobile home parks and transfers of rights under relevant agreements under the *Mobile Homes Act 1989*
 - to rectify certain drafting anomalies in provisions relating to forms.
- (b) To amend the *Land Tax Act 1915* to provide that the unimproved value for land tax purposes of a subdivided lot is discounted by

40% for the first year following creation of the lot.

- (c) To amend the *Financial Intermediaries Act 1996* to clarify the operation of section 65 in relation to financial accommodation provided by co-operative housing societies and to remove inconsistencies to provide a level playing field to such societies and banks.

Reasons for the Bill

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

- remove opportunities for avoidance of duty on certain transactions involving trusts.
- remove uncertainty in the application of the prescribed provisions to land under contract
- amend section 31BA consistent with amendments to other provisions in 1996 which introduced a definition of *rights in respect of shares*
- remove anomalies in the stamp duty treatment of mobile homes
- remove uncertainty surrounding the circumstances in which the Commissioner may make an allowance under section 75
- clarify the operation of the 1996 amendments allowing the Commissioner to approve forms for the purposes of the Act in relation to certain provisions.

Amendments to the *Land Tax Act 1915* are required to preserve concessional taxation arrangements affected by changes to the methodology for valuation of subdivided land under the *Valuation of Land Act 1944*.

Amendments to the *Financial Intermediaries Bill 1996* are required to:

- remove the uncertainty which has arisen within the co-operative housing society industry with regard to the intention and interpretation of section 65(1)(a).
- overcome inconsistencies between sections 65(1)(b) and (c) of the Act, insofar as it is sought to have a level playing field for co-operative housing societies and banks within the context of those provisions.

- remove a superfluous word, “existing” from section 65(1)(b).

Achievement of Objectives

Stamp Act 1894

Section 54AB

Stamp duty under the head of charge “Declaration of Trust” or “Settlement, Deed of Gift or Voluntary Conveyance” in Schedule 1 of the *Stamp Act 1894* is usually payable when property is subjected to a trust by a declaration of trust or settlement. In addition, stamp duty under the “Conveyance or Transfer” head of charge is usually payable when property or an interest in property is transferred including transfers from one trust to another. Duty is assessed at progressive conveyance duty rates of up to 3.75% on the full unencumbered value of the property.

The amendments will remove opportunities for avoiding duty in these circumstances.

Prescribed Provisions

The prescribed provisions (sections 56FA to 56FO) of the *Stamp Act 1894* relating to land rich companies were enacted in 1988 to overcome minimisation of stamp duty by the acquisition of shares in land rich companies rather than the acquisition of the land itself.

There is some uncertainty in the operation of the provisions in relation to land under contract. In the case of contracts for sale of land by a company, section 56FL(5) provides that such contracts are disregarded in determining the value of land to which the company is entitled. In the case of contracts to purchase land, section 56FK(11) provides for a refund where a contract for purchase is rescinded and so contemplates that land being purchased may be taken into account.

The scheme enacted by sections 56FL(5) and 56FK(11) is to include land in the landholdings of both a vendor and purchaser company but to reassess duty where the sale does not proceed. However, uncertainty exists as to whether a purchaser is entitled to land and the legislation does not provide for reassessment of the vendor company landholdings where a sale does proceed.

The proposed amendment will clarify that regard is to be had to

contracts for the purchase of land for the purpose of determining the value of land to which a corporation is entitled regardless of whether or not the contract is subject to conditions. Further, the existing powers of the Commissioner will be extended to allow adjustment of assessments to reflect the ultimate ownership of the land under either a purchase or sale contract and to make refunds where necessary once the contract is completed or rescinded. Any refund will, however, be subject to the Commissioner being satisfied that the event giving rise to the right to a refund is not part of an arrangement or scheme for the avoidance of land rich duty.

Section 31BA

Revenue Laws Amendment Act (No.2) of 1996 amended the *Stamp Act 1894* to provide that certain beneficial interests in marketable securities, known as Instalment Receipts and Chess Units in Foreign Securities, and similar securities are liable for duty on transfer. A consequential amendment required the insertion of the phrase *or right in respect of shares* immediately after the term *marketable securities*, wherever it appeared in the Act.

Section 31BA was inserted into the *Stamp Act 1894* in 1995 and relates to the sale or purchase of marketable securities under the exercise of an option. Consistent with the 1996 amendments, the section will be amended to apply also to rights in respect of shares.

Stamp Duty Allowances (Refunds)

Section 75 of the *Stamp Act 1894* provides for the payment of an allowance in respect of stamp duty paid under the Act. The right to apply for an allowance is available only where the stamp is unused, useless or superfluous to the person's requirements, the stamp has been inadvertently physically spoiled, or the stamp has been attached to an instrument which never has been of legal effect. Section 75(5) specifies twelve circumstances in which a refund may be made. The Commissioner may make an allowance upon application to him.

The amendments will remove uncertainty in relation to certain aspects of the section. Specifically, the amendments will clarify that the

circumstances in which the Commissioner may make an allowance are those listed in section 75(5). The term *legaleffect* used in the section will be defined and section 75(5)(f) will be amended to clarify its operation and scope.

Mobile Homes Exemption

A mobile home in a mobile home park may be acquired in a number of ways including under an agreement for its construction, as a prefabricated mobile home for location on a mobile home site, from an existing resident of a mobile home park (either for occupation on site or for removal) or from a person who is not a resident of a mobile home park, for relocation to a mobile home park.

While duty is not generally payable under the *Stamp Act 1894* in respect of a contract or agreement for sale of any property which is comprised solely of goods, a liability will arise where the instrument (including a contract for sale) vests property in goods in a person immediately upon execution of the instrument.

Following a review of assessing practice in relation to transfers of mobile homes, stamp duty will no longer be assessed on an agreement for the sale of mobile homes where the mobile home is positioned on a site in a mobile home park. However, the transfer of a prefabricated mobile home or a mobile home sold for removal from a mobile home park remains dutiable if the instrument vests the property in the purchaser.

To overcome this anomaly, the *Stamp Act 1894* will be amended to provide exemption from conveyance duty in respect of all transfers of mobile homes situated, or for situation, in mobile home parks under relevant agreements under the *Mobile Homes Act 1989* and transfers of relevant agreements under that Act.

The exemption will not apply to transfers of mobile homes owned by the park owner in the context of a sale of the mobile home park as the homes will not be positioned on sites in the park under relevant agreements.

Approved Forms

To achieve administrative efficiencies, the *Stamp Act 1894* was amended in 1996 to enable the Commissioner of Stamp Duties to approve all relevant forms for use for the purposes of the Act. The Bill clarifies the operation of the 1996 amendments in respect of certain provisions of the Act.

Land Tax Act 1915

Discounted valuations for subdivided land

Land tax is levied for each financial year based on the unimproved value of land in Queensland owned by a person at midnight on 30 June immediately preceding the financial year. Land tax assessments are based on valuations of parcels of land made under the *Valuation of Land Act 1944*.

Prior to recent amendments to the *Valuation of Land Act 1944*, land which was subdivided was treated as a single parcel for which one valuation was issued. As each subdivided lot was sold by the developer, a separate valuation was issued for that lot and a new valuation issued for the remaining lots. This valuation method conferred a land tax concession on developers because the single value of the subdivided lots was less than the aggregate value of each of the lots in the subdivision and any enhancement in the value by reason of works carried out by that owner on the subdivided land was disregarded.

Amendments to the Act made by the *Natural Resources Legislation Amendment Act 1997* introduced a new system whereby a separate valuation will be issued to approved subdividers for each lot in a plan of subdivision from 1 July 1997 in the case of land subdivided after that date. As a result of the move to a separate valuation for each lot, the concession for subdividers will no longer be provided by way of the reduced valuation.

The amendment to the *Land Tax Act 1915* replaces this arrangement with a system whereby values are discounted for the first financial year following the subdivision of the lot by an approved subdivider. Land is regarded as being subdivided when a plan of subdivision is registered under the *Land Title Act 1994*.

An approved subdivider is a person who has been issued with an approved subdivider's certificate. Approved subdivider's certificates are issued by the Department of Natural Resources under section 96A of the *Valuation of Land Act 1944* where land is being subdivided for profit. Certificates are not issued where land is valued for "farming" or "single dwelling" purposes under section 17 of the *Valuation of Land Act 1944*, or in the case of creation of lots under the *Body Corporate and Community Management Act 1997* or other Acts which create an interest in a group development.

The discount provided by the *Land Tax Act 1915* applies in conjunction with the removal of the concession provided to developers by the *Valuation of Land Act 1944*. Under the *Natural Resources Legislation Amendment Act 1997*, land subdivided prior to 1 July 1997 will continue to be covered by one valuation for unsold lots in the subdivision until 1 July 1998. As the owners of these parcels continue to receive a concession by way of reduced valuation until that time, the discount in unimproved value provided under the amendment to *Land Tax Act 1915* will not apply. Consequently, the discount provided in the *Land Tax Act 1915* will apply initially at 30 June 1998 in respect of land subdivided after 1 July 1997.

The amount of the discount will be 40%.

Financial Intermediaries Act 1996

Section 65 of the Act states that the objects of a society are to apply its funds in providing specified types of financial accommodation to its members.

There is presently an apparent inconsistency between section 65(1)(a) and sections 65(1)(b) and (c) giving rise to a significant degree of confusion in the industry as to whether or not societies may provide financial accommodation for residential investment rather than owner occupied purposes. This issue has the potential to significantly impact on the services provided to members of a society. The amendment clarifies that a society may provide financial accommodation to members in relation to residential investment properties.

Section 65(1)(c) presently applies only in relation to the refinancing of a residential loan. The amendment extends this to consolidation of residential loans, consistent with section 65(1)(b), so that banks and

co-operative housing societies compete on a level playing field.

Alternatives to the Bill

The policy objectives can only be achieved by statutory amendment.

Estimated Cost for Government Implementation

Any additional administrative costs are not expected to be significant.

Consistency with Fundamental Legislative Principles

It is not considered that the *Revenue and Other Legislation Amendment Bill of 1997* raises any fundamental legislative principles issues.

Consultation

The amendments to the *Land Tax Act 1915* are in accordance with proposals discussed with and supported by the Urban Development Institute of Australia (UDIA). This was preceded by more extensive industry consultation undertaken by the Department of Natural Resources during development of the changes to the valuation system.

NOTES ON PROVISIONS

Clause 1 cites the short title of this Act.

Clause 2 sets out the date of commencement of Part 3 of the Act.

Clause 3 states that Part 2 amends the *Financial Intermediaries Act 1996*.

Clause 4 removes ‘for the member’s own use’ from section 65(1)(a) to clarify that the provision applies to the provision of financial accommodation in respect of investment properties acquired by members.

“Existing” has been removed as superfluous. The insertion of “or consolidation” removes inconsistencies within the provision, insofar as it is

sought to have a level playing field for co-operative housing societies and banks.

Clause 5 states that Part 3 comprising clauses 5 to 7 amends the *Land Tax Act 1915*.

Clause 6 amends section 3 to introduce the new section 3CA which qualifies section 3C in determining the unimproved value of land.

Clause 7 inserts a new section 3CA which provides that in certain cases, the unimproved value of a subdivided parcel is discounted by 40% for land tax assessment purposes for the first financial year following the subdivision of the parcel.

The discount applies where a person who owned and subdivided a vacant parcel has been issued with an approved subdivider's certificate for the parcel under the *Valuation of Land Act 1944*. For the discount to apply the subdivider must also be the owner of the vacant subdivided parcel at midnight on the 30 June immediately preceding the first financial year following the subdivision.

The discount is available only for the discount year, that is, the financial year following the subdivision; clause 3CA(3), (4) and the definition of "discount year" in clause 3CA(6). Because the clause commences on 29 June 1998, the discount will apply only to land subdivided after 1 July 1997.

Clause 8 states that Part 4 and the schedule amend the *Stamp Act 1894*.

Clause 9 inserts "right in respect of shares" and "or right" after "marketable securities" in section 31BA.

Clause 10 amends section 54AB to ensure that duty is payable on transactions whereby a trust restriction is imposed on, or removed from, a person in relation to property. The circumstances in which this may occur are described in new subsections (1AB) and (1AC). They are -

- (a) a person who is not a trustee of an estate or interest in property referred to in section 54AB(1)(a) becoming a trustee;
- (b) a trustee of an estate or interest in such property commencing to hold the estate or interest as trustee of another trust; or
- (c) a trustee of an estate or interest in such property ceasing to hold it as trustee.

The amendment to section 54AB(2) proposed by clause 10(3) will require the person who owns the estate or interest in these cases to prepare and lodge a statement with the Commissioner of Stamp Duties unless conveyance duty has been paid on the full unencumbered value of the estate or interest in respect of the transaction.

A new subclause (3A) imposes conveyance duty on the statement. However, allowance is made for any part of the estate or interest which is subject to duty as a result of the operation of section 54AB. This ensures that, where the trust restriction also results in a person, for example, obtaining an estate or interest in land and being required to pay duty under section 54AB(3), duty is not imposed on that part of the estate or interest also under section 54AB(3A).

Example: X holds, free from trusts, land in Queensland valued at \$100M. X establishes a unit trust, the "X and Y Unit Trust", under which it holds 9 units and Y holds 1 unit. X then subjects the land to the terms of the X and Y unit trust.

By application of subsection (1)(c), subsection (1AB)(a) and subsection (2), X would be obliged to prepare a statement in the approved form. Y would be obliged to prepare a statement in the approved form by application of subsections (1)(a) and (2) because Y has obtained an estate or interest in the land.

The approved form prepared by X would show that the estate or interest subjected to the trusts by X is valued at \$100 million.

The approved form prepared by Y would show that the estate or interest obtained by Y is a one-tenth interest in the land. By application of subsection (3), Y would be liable to conveyance duty calculated on \$10 million.

By application of subsection (3A)(a), X is liable to conveyance duty on \$90 million. The estate or interest to which the transaction relates is X's estate in fee simple in the land. Subsection (3) applies to the land to the extent of a one-tenth share. Therefore by application of subsection (3A) the statement prepared by X is taken to be a conveyance of nine tenths of the land.

Clause 11 inserts a new subsection (12) in section 56FK to enable the Commissioner to make reassessments and refunds of duty in circumstances where land under a contract or agreement for sale or transfer was taken into

account in determining a liability to duty under the prescribed provisions and the contract is subsequently completed.

A new subsection (13) of section 56FK will provide that a refund of duty under section 56FK(12) will only be available where the Commissioner is satisfied that the disposition of land is not part of a scheme or arrangement to avoid the operation of the prescribed provisions.

Clause 12 clarifies that the value of land being sold or purchased by a corporation is included in the value of land to which the corporation is entitled for the purpose of determining the application of the prescribed provisions and the amount of duty payable.

The provision also deems a corporation, or its subsidiary, to be entitled to land under a contract or agreement for sale or purchase so that such land is taken into account into determining the application of the prescribed provisions.

Clause 13 amends section 75 of the *Stamp Act*. Subsection (3A) lists the matters of which the Commissioner must be satisfied before exercising the power to make an allowance. The Commissioner has no power to consider an application for an allowance unless it is made within the prescribed time, is within subsection (2) and also within one of the circumstances composed by at least one of the paragraphs in subsection (5). If the circumstances are within subsection (2) but not within one of the specific circumstances composed by one of the paragraphs of subsection (5), the application must be refused.

Subsection (5)(f) which applies where there are mistakes or errors in the preparation of an instrument has been replaced by a new provision. The new provision requires that the mistake give rise to an unintended effect. Subsection (8) defines “unintended effect”. The following examples illustrate when an instrument will have an unintended effect.

Example 1. A taxpayer instructs their solicitor to add X as a discretionary object of the taxpayer’s discretionary trust. The solicitor, in error, adds X as a default beneficiary so that duty is chargeable on the instrument under the head of charge “Settlement, Deed of Gift or Voluntary Conveyance”.

Example 2. A taxpayer instructs their solicitor to add X as a discretionary object of the taxpayer’s discretionary trust and not to add X as a default beneficiary. The solicitor, in error, adds X as both a discretionary object and as a default beneficiary so that duty is chargeable on the instrument under

the head of charge “Settlement, Deed of Gift or Voluntary Conveyance”.

Subsection (9) provides that the signing of an instrument by the parties is evidence the instrument gives effect to the intention of the parties. Consequently, there is a presumption, which can be rebutted, that the instrument does not have an unintended effect. This is best illustrated by the following examples.

Example 3. A taxpayer instructs their solicitor to draw a contract to purchase building Z. The solicitor, in error, draws a contract whereby the taxpayer purchases building Z and the adjoining building Y. The specific intention was to buy building Z. The presumption raised by the contract being signed is able to be rebutted by evidence of the clear instructions given to the solicitor.

Example 4. A taxpayer’s solicitor drafts a deed which the taxpayer executes adding Z as a discretionary object and as a default beneficiary to the taxpayer’s discretionary trust, so that duty is chargeable on the instrument under the head of charge “Settlement, Deed of Gift or Voluntary Conveyance”. The instrument is evidence that the taxpayer’s intention has been given effect. To rebut that presumption the taxpayer would have to produce evidence that the solicitor was instructed to add Z only as a discretionary object.

Subsection (7) clarifies the meaning of “legal effect”.

Clause 14 exempts a transfer of a mobile home positioned on a site in a mobile home park under a relevant agreement. The exemption does not apply where, at the time the mobile home is acquired, there is no relevant agreement pursuant to which it is positioned on the site, and the transfer of the mobile home is part of a transaction which includes the transfer of ownership of the site. For example, the exemption will not apply where a developer transfers one or more mobile homes in the course of transferring the mobile home park to a new owner.

The clause also exempts a transfer of a mobile home which is not positioned on a site but which is acquired for relocation to a site. The exemption does not apply where, at the time it is acquired, the mobile home is positioned on land and the transfer is part of a transaction which includes a transfer of that land. For example, the exemption will apply to the transfer of a mobile home from a manufacturer, or where it has been or will be severed from land, where in either case the mobile home will be relocated to a mobile home park site. If the mobile home is transferred with land on which it is positioned at the time of acquisition, the exemption does not

apply.

A transfer of the rights and obligations of an occupier under a relevant agreement is also exempt. This would apply where, for example, the transferor of a mobile home assigned their right to occupy the relevant site in the mobile home park to the transferee with the mobile home.

The meanings of “mobile home”, “occupier”, “relevant agreement” and “site” are defined by reference to the definitions of those terms in the *Mobile Homes Act 1989*.

SCHEDULE (Section 8)

Particulars required pursuant to sections 31D(1)(a), 31D(1)(aa)(ii), 35B(1)(a)(iii), 35B(1)(a)(viiia), 35B(1)(a)(ix) are to be prescribed by regulation.

The requirement to prescribe the manner of verification and particulars to be included in respect of a statement lodged pursuant to any of sections 31J(4)(a), 35B(1)(a) is removed.

The requirement to prescribe the particulars to be included on a statement lodged pursuant to sections 35B(1)(a)(i), 35B(1)(a)(va), is removed.

The manner in which a person makes one of the elections or a declaration provided for in section 35B(1AC) are to be prescribed by regulation.

The operation of section 34(1) of the *Revenue Laws Amendment Act (No. 2) 1996* is clarified.