

Revenue Legislation Amendment Bill 2024

Explanatory Notes

FOR

Amendments to be moved during consideration in detail by the Honourable David Janetzki MP, Treasurer, Minister for Energy and Minister for Home Ownership

Short title

The short title of the Bill is the Revenue Legislation Amendment Bill 2024 (the Bill).

Policy objectives and the reasons for them

Foreign surcharge amendments

In Queensland, foreign persons who acquire, or own, land in Queensland may be subject to certain foreign surcharges and differential rates and thresholds for land tax. The surcharges and differential rates and thresholds include:

- a duty surcharge (additional foreign acquirer duty (AFAD));
- a higher general rate of land tax and lower exemption threshold (compared to individuals other than absentees) and surcharge rate of land tax if a foreign individual is an absentee; and
- a land tax foreign surcharge (LTFS) if the foreign person is a foreign company or trustee of a foreign trust;
(collectively, foreign surcharges).

The policy objective of the foreign surcharge amendments to be moved during consideration in detail to the Bill is to amend the *Duties Act 2001* (Duties Act), *Land Tax Act 2010* (Land Tax Act) and *Taxation Administration Act 2001* (Taxation Administration Act) to ensure the provisions imposing the foreign surcharges (collectively, the foreign surcharge provisions) in Queensland's revenue legislation apply as intended.

There has been uncertainty about the interaction of non-discrimination clauses in certain international double taxation agreements (DTA), which are given the force of Commonwealth law under the *International Tax Agreements Act 1953 (Cth)* (ITA Act), with the imposition of State foreign surcharges.

In response to that uncertainty, on 8 April 2024, the Australian Government implemented amendments to the ITA Act to clarify that non-discrimination clauses in DTAs do not apply to taxes other than income tax and fringe benefits tax (Commonwealth amendment). The Commonwealth amendment clarifies and ensures that State laws imposing certain taxes, such as state and territory property taxes, are consistent with the DTAs.

The Commonwealth amendment applies retrospectively for taxes payable or in relation to tax periods ending on or after 1 January 2018.

The amendments to be moved during consideration in detail to the Bill aim to align with the Commonwealth amendment and ensure the intended operation and imposition of the foreign surcharges under Queensland's revenue legislation between 1 January 2018 and 8 April 2024.

Distributor-retailer amendments

The objective of the distributor-retailer amendments is to retrospectively declare infrastructure charges schedules under the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009* (the SEQ Water Act) as properly made. The amendments will also and to validate associated decisions and actions and charges notices and agreements. This is necessary to resolve irregularities in the process followed by the boards of distributor-retailers in adopting the infrastructure charges schedules and making decisions related to this. The amendments will put beyond doubt that the infrastructure charges schedules were properly adopted and will declare that they are valid, along with related decisions and actions, issued notices and agreements entered into.

Infrastructure charges schedules are part of a distributor-retailer's water netserv plan. A water netserv plan sets out water supply and sewerage trunk infrastructure networks. These networks are critical to communities. Infrastructure charges under the SEQ Water Act are levied by distributor-retailers on proposed developments, guided by the infrastructure charges schedule. Levied charges contribute to the provision of essential water and sewerage trunk infrastructure that services growing South-East Queensland (SEQ) communities.

Certainty about the adopted infrastructure charges schedules, and therefore the charges levied, is necessary for distributor-retailers, their owner councils, distributor-retailer customers and the broader community alike.

Despite the need to make declarations about the adoption and validity of the infrastructure charges schedules, the charges levied on developers were correct. Developers will not be worse off and will not be charged more than they were intended to under the SEQ Water Act under this proposal.

Water supply and sewerage networks are planned and delivered by Urban Utilities for Brisbane City, Ipswich City, Lockyer Valley Regional, Scenic Rim Regional and Somerset Regional council areas. Noosa Shire, Sunshine Coast Regional and Moreton Bay City council areas are serviced by Unitywater. Urban Utilities and Unitywater are distributor-retailers under the SEQ Water Act.

Achievement of policy objectives

Foreign surcharge amendments

The Duties Act imposes AFAD on relevant transactions that are liable for transfer duty, landholder duty or corporate trustee duty, where a foreign person acquires (directly or indirectly) certain residential land in Queensland (AFAD residential land). The AFAD imposed on a relevant transaction is added to the transfer duty, landholder duty or corporate trustee duty imposed.

The Land Tax Act imposes land tax on the taxable value of taxable land owned as at midnight 30 June each year. Land tax is calculated by applying the rates set out under the Land Tax Act to the total taxable value of an owner's taxable land. The general rates of land tax and exemption thresholds differ depending on whether the owner is an individual (other than an absentee), company, trustee or absentee. A higher general rate of land tax and lower exemption threshold applies to absentees (absentee general rate) than to individuals other than absentees. Absentees are also subject to a surcharge rate of land tax (absentee surcharge rate) (together, the absentee rate). Likewise for foreign companies and trustees of foreign trusts, the LTFS will apply in addition to the general rates of land tax applicable to companies and trustees.

The amendments to be moved during consideration in detail will validate the retrospective operation and imposition of the foreign surcharges arising on or after 1 January 2018 and before 8 April 2024.

AFAD commenced on 1 October 2016. The Duties Act will be amended to validate the imposition of AFAD liabilities arising on or after 1 January 2018 and before 8 April 2024.

The Land Tax Act will be amended to confirm the imposition of the LTFS in relation to liabilities arising on or after 30 June 2019 and before 8 April 2024 and the imposition of the absentee rate in respect of liabilities arising on or after 1 January 2018 and before 8 April 2024.

The Taxation Administration Act will also be amended for administration purposes and to ensure the validity of any assessment notices issued for foreign surcharge liabilities arising during the relevant prior periods.

Distributor-retailer amendments

The policy objectives for the distributor-retail charges will be achieved through amendments to the SEQ Water Act. Amendments will:

- declare that infrastructure charges schedules that were adopted by distributor-retailers are, and have always been, valid
- declare that a board decision for an adopted charge or automatic increase provision for an adopted charge is, and has always been, valid
- declare that the board decision is taken to have stated particular relevant matters
- declare that anything done, or to be done, in relation to an infrastructure charges schedule or an adopted charge or automatic increase provision for an adopted charge is, and has always been, valid, and
- declare that charges notices given by a distributor-retailer or an agreement with the recipient of the notice that was entered into is, and has always been, valid.

Alternative ways of achieving policy objectives

Foreign surcharge amendments

The policy objectives can only be achieved by legislative amendment.

Distributor-retailer amendments

While a non-legislative approach to achieving the policy objective has been considered, amendments to the SEQ Water Act are the only way to put beyond doubt that infrastructure charges schedules were properly adopted and are valid.

Estimated cost for government implementation

Foreign surcharge amendments

Implementation costs will be met from within Queensland Revenue Office's existing operating budget.

Distributor-retailer amendments

There is no cost associated with the proposed amendments. The amendments are declaratory in nature.

Consistency with fundamental legislative principles

Foreign surcharge amendments

The amendments are generally consistent with fundamental legislative principles (FLPs). Potential inconsistencies are discussed below.

Not adversely affecting rights and liberties, or imposing obligations, retrospectively (Legislative Standards Act 1992, section 4(3)(g))

These amendments may be considered to depart from the FLP under section 4(3)(g) of the *Legislative Standards Act 1992* in that provisions should not affect rights retrospectively. This is because the amendments will have the effect of removing the basis for any restitutionary claims seeking a refund of potentially invalid foreign surcharge liabilities which were imposed on or after 1 January 2018 and before 8 April 2024.

Where a court considers there is an inconsistency between State and Commonwealth laws, this may lead to a finding under section 109 of the Australian Constitution that the State laws imposing the foreign surcharge are invalid to the extent of the inconsistency. A finding of invalidity would in turn give rise to a restitutionary right for the refund of amounts of foreign surcharge paid to the State under the general law.

Where a taxpayer is dissatisfied with their assessment of liability, the Taxation Administration Act codifies the framework for them to seek review of their assessment and any potential refund. It is arguable that the amendments do not retrospectively remove the rights of review of a taxpayer who has been assessed with a foreign surcharge liability, but who has failed to exercise these rights under the Taxation Administration Act. However, to the extent that the amendments are considered to remove rights retrospectively, departure from this FLP is

necessary to clarify the intended operation of the foreign surcharge provisions and imposition of these liabilities. Further, the amendments are considered to be in the public interest to protect the foreign surcharge revenue already collected by the State and to ensure the certainty of the foreign surcharge revenue for the benefit of the State and all Queenslanders.

Distributor-retailer amendments

Under section 4(2) of the *Legislative Standards Act 1992* (LSA), fundamental legislative principles include requiring that legislation has sufficient regard to rights and liberties of individuals.

Section 4(3)(g) of the LSA provides that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation does not adversely affect rights and liberties, or impose obligations, retrospectively.

Although the proposed amendments will operate retrospectively, they are purely declaratory in nature. The amendments do not and will not impose any additional obligations that were not intended to already exist under relevant legislation and therefore the amendments do not adversely affect rights and liberties of, or impose obligations on, individuals. Developers are obliged to pay infrastructure charges as part of the connection to water and sewerage services for new developments.

Consultation

Foreign surcharge amendments

Community consultation was not undertaken in relation to the amendments as they are revenue protection amendments to ensure Queensland revenue legislation operates as intended.

Distributor-retailer amendments

This matter was brought forward by Urban Utilities. Consultation has occurred with both Urban Utilities and Unitywater and they are supportive of the proposed amendments.

Consistency with legislation of other jurisdictions

Foreign surcharge amendments

The amendments are specific to the State of Queensland and are not otherwise uniform with or complementary to legislation of the Commonwealth or another state or territory. While several other jurisdictions impose similar surcharges on foreign owners, Queensland's duty and land tax regimes, and their respective foreign surcharges, are not harmonised with any other jurisdiction.

The amendments being moved during consideration in detail are intended to align with the Commonwealth amendment, which clarified the interaction of State laws, including the foreign surcharge provisions, with the non-discrimination clauses in certain DTAs.

These amendments are generally consistent with Victorian amendments in the *State Taxation Further Amendment Act 2024 (Vic)*, enacted on 4 December 2024, to retrospectively impose Victoria's foreign surcharges, to ensure alignment with the Commonwealth amendment.

Distributor-retailer amendments

The SEQ Water Act is specific to Queensland and is not uniform with, or complementary to, the legislation of the Commonwealth or another state.

Notes on provisions

Amendment 1 amends clause 2 of the Revenue Legislation Amendment Bill 2024 (the Bill) which provides for the commencement of the amendments made by the Bill. This ensures the amendments to the *Duties Act 2001* (Duties Act) being introduced during consideration in detail commence on assent. This is consistent with the commencement of the amendments to the *Land Tax Act 2010* (Land Tax Act) and *Taxation Administration Act 2001* (Taxation Administration Act) being introduced during consideration in detail, which also commence on assent.

Amendment 2 inserts new division 2A into part 2 of the Bill which amends the Duties Act.

New clause 5A inserts new part 31 into chapter 17 and contains new section 688.

Section 688 provides for the imposition of additional foreign acquirer duty (AFAD) on relevant transactions in particular limited circumstances and during a particular limited period. A relevant transaction is a dutiable transaction on which transfer duty is imposed under chapter 2 of the Duties Act and relevant acquisitions on which landholder duty or corporate trustee duty is imposed under chapter 3 of the Duties Act.

Section 688(1) provides for when section 688 applies. It generally applies where a purported imposition of AFAD on a relevant transaction was invalid because the provisions of the Duties Act were invalid or inoperative under section 109 of the Commonwealth Constitution because of an inconsistency with an agreement given the force of law by section 5(1) of the *International Tax Agreements Act 1953* (Cwlth). Additionally, for section 688 to apply, the AFAD purportedly imposed must have been purportedly payable on or after 1 January 2018 and before 8 April 2024.

Section 688(2) provides that AFAD is imposed on the relevant transaction. Section 688(3) provides that the liability for AFAD imposed under section 688(2) is taken to have arisen at the same time as liability for the purported duty would have arisen if the purported duty had been validly imposed. ‘Purported duty’ is defined in section 688(8) as AFAD referred to in section 688(1) that was purportedly imposed on the relevant transaction.

Section 688(4) provides that AFAD imposed under section 688(2) is payable by the person who would have been liable for the purported duty if the purported duty had been validly imposed. Under section 688(5), the amount of AFAD payable under section 688(2) is the same amount as the amount of AFAD that would have been payable if the purported duty had been validly imposed. That is, section 688 does not change the amount payable by a person to whom it impacts.

Section 688(6) provides that the rights and liabilities of a person in relation to AFAD imposed under section 688(2) are taken to be the same as that person would have had in relation to the purported duty if it had been validly imposed. Under section 688(7), anything done or omitted

to be done by the person in relation to the purported duty has the same force and effect as if it were done or omitted to be done in relation to AFAD imposed under section 688(2).

Amendment 3 inserts new part 2A into the Bill.

New clause 26A provides that part 2A amends the Land Tax Act.

New clause 26B inserts new division 10 into part 10 and contains two new provisions.

New section 104 is the first of the new provisions and provides for the imposition of land tax on taxable land owned by foreign companies and trustees of foreign trusts in particular limited circumstances and during a particular limited period.

Section 104(1) provides for when section 104 applies. It generally applies where a purported imposition of land tax on taxable land for a financial year, at the relevant surcharge rate mentioned in section 32(1)(b)(ii) in force when the liability arose, was invalid because the provisions of the Land Tax Act that purportedly imposed the land tax at the surcharge rate were invalid or inoperative under section 109 of the Commonwealth Constitution because of an inconsistency with an agreement given the force of law by section 5(1) of the *International Tax Agreements Act 1953* (Cwlth). Additionally, for section 104 to apply, the land tax purportedly imposed must have been purportedly payable on or after 30 June 2019 and before 8 April 2024.

Section 104(2) provides that land tax at the surcharge rate is imposed on the taxable land. Section 104(3) provides that the liability for land tax at the surcharge rate imposed under section 104(2) is taken to have arisen at the same time as liability for the purported land tax would have arisen if the purported land tax had been validly imposed. ‘Purported land tax’ in relation to taxable land is defined in section 104(8) as land tax referred to in section 104(1) that was purportedly imposed on taxable land.

Section 104(4) provides that land tax at the surcharge rate imposed under section 104(2) is payable by the person who would have been liable for the purported land tax if the purported land tax had been validly imposed. Under section 104(5), the amount of land tax at the surcharge rate payable under section 104(2) is the same amount as the amount of land tax at the surcharge rate that would have been payable if the purported land tax had been validly imposed. That is, section 104 does not change the amount payable by a person to whom it impacts.

Section 104(6) provides that the rights and liabilities of a person in relation to the land tax at the surcharge rate imposed under section 104(2) are taken to be the same as that person would have had in relation to the purported land tax if it had been validly imposed. Under section 104(7), anything done or purported to be done by the person in relation to the purported land tax has the same force and effect as if it were done or omitted to be done in relation to land tax at the surcharge rate imposed under section 104(2).

New section 105 is the second of these new provisions and provides for the imposition of land tax on taxable land owned by absentees in particular limited circumstances and during a particular limited period.

Section 105(1) provides for when section 105 applies. It generally applies where a purported imposition of land tax on taxable land for a financial year, at the relevant absentee rate

mentioned in section 32(1)(c) in force when the liability arose, was invalid because the provisions of the Land Tax Act that purportedly imposed the land tax at the absentee rate were invalid or inoperative under section 109 of the Commonwealth Constitution because of an inconsistency with an agreement given the force of law by section 5(1) of the *International Tax Agreements Act 1953* (Cwlth). Additionally, for section 105 to apply, the land tax purportedly imposed must have been purportedly payable on or after 1 January 2018 and before 8 April 2024.

Section 105(2) provides that land tax at the absentee rate is imposed on the taxable land. Section 105(3) provides that the liability for land tax at the absentee rate imposed under section 105(2) is taken to have arisen at the same time as liability for the purported land tax would have arisen if the purported land tax had been validly imposed. ‘Purported land tax’ in relation to taxable land is defined in section 105(8) as land tax referred to in section 105(1) that was purportedly imposed on taxable land.

Section 105(4) provides that land tax at the absentee rate imposed under section 105(2) is payable by the person who would have been liable for the purported land tax if the purported land tax had been validly imposed. Under section 105(5), the amount of land tax at the absentee rate payable under section 105(2) is the same amount as the amount of land tax at the absentee rate that would have been payable if the purported land tax had been validly imposed. That is, section 105 does not change the amount payable by a person to whom it impacts.

Section 105(6) provides that the rights and liabilities of a person in relation to the land tax at the absentee rate imposed under section 105(2) are taken to be the same as that person would have had in relation to the purported land tax if it had been validly imposed. Under section 105(7) anything done or purported to be done by the person in relation to the purported land tax has the same force and effect as if it were done or omitted to be done in relation to land tax at the absentee rate imposed under section 105(2).

Amendment 4 inserts a new part 4 into the Bill

New clause 29 states this part amends the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009* (SEQ Water Act).

New clause 30 inserts a new part 15 into chapter 6 of the SEQ Water Act.

Chapter 6 states transitional and validation provisions for the SEQ Water Act.

New part 15 establishes validation provisions for the Amendment Act.

New section 157 applies to infrastructure charges purportedly adopted under the SEQ Water Act by a distributor-retailer and relates to a requirement of the stated sections of that Act that were not complied with. The requirements relate to the adoption of the infrastructure charges schedule by the distributor-retailers board, a board decision for an adopted charge to be included in the schedule and a board decision providing for an automatic increase provision for the charge.

The section makes declaratory statements about the infrastructure charges schedule, the board decision for the adopted charge or automatic increase provision, and what the board decision is taken to have stated. Further the section declares that anything done or to be done relating

to said is, and always has been, valid. Examples are provided and include the levying of adopted charges, including any automatic increase that applies to the adopted charges, and the adoption of a water netserv plan that includes the charges in the charges schedule.

New section 158 applies in relation to an infrastructure charges notice purportedly given by a distributor-retailer or an agreement purportedly entered into about a notice where the notice or agreement relates to an adopted charge under section 157.

This section makes declaratory statements about these notices and agreements that confirm that they are, and always have been, valid.

These validation provisions ensure there is no doubt about the validity of infrastructure charges schedules in water netserv plans and decisions that are associated with the boards' adoption of charges, including automatic increases, infrastructure charges notices given or agreements entered into about a notice.

Amendment 5 inserts new part 5 into the Bill.

New clause 31 provides that part 5 amends the Taxation Administration Act.

New clause 32 inserts new division 13 of part 13 and contains new section 189.

Section 189 provides for the effect of certain assessments related to section 688 of the Duties Act and sections 104 and 105 of the Land Tax Act.

Section 189(1) applies if section 688 of the Duties Act or sections 104 or 105 of the Land Tax Act apply and an assessment of a taxpayer's liability was made or purportedly made under the Taxation Administration Act in relation to purported duty under section 688 of the Duties Act or purported land tax under sections 104 or 105 of the Land Tax Act.

Section 189(2) provides that the assessment in respect of purported duty or purported land tax has the same force and effect as if it were made in relation to AFAD imposed under section 688(2) of the Duties Act or land tax imposed under sections 104(2) or 105(2) of the Land Tax Act.

Section 189(3) provides that the rights and liabilities of a person in relation to the assessment in respect of purported duty or purported land tax are taken to be the same as if the assessment were made in relation to AFAD imposed under section 688(2) of the Duties Act or land tax imposed under sections 104(2) or 105(2) of the Land Tax Act.

Section 189(4) provides that anything done or omitted to be done by a person in relation to the assessment in respect of purported duty or purported land tax has the same force and effect as if it were done or omitted to be done in relation to AFAD imposed under section 688(2) of the Duties Act or land tax imposed under sections 104(2) or 105(2) of the Land Tax Act.

Section 189(5) provides that any amount paid by a person in relation the assessment in respect of purported duty or purported land tax is taken to be paid to in relation to AFAD imposed under section 688(2) of the Duties Act or land tax imposed under sections 104(2) or 105(2) of the Land Tax Act as well as any associated interest, penalty tax or other payment payable.

Amendment 6 amends the long title of the *Revenue Legislation Amendment Act 2024* to reflect that it will also amend the Land Tax Act, SEQ Water Act and Taxation Administration Act.

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