

2017

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

Revenue Legislation Amendment Bill 2017 (No 2)

EXPLANATORY STATEMENT

**Presented By
Andrew Barr MLA
Treasurer**

REVENUE LEGISLATION AMENDMENT BILL 2017 (No 2)

Summary

The Revenue Legislation Amendment Bill 2017 (No 2) amends the following:

- *Civil Law (Property) Act 2006* (Civil Law Act)
- *Duties Act 1999* (Duties Act);
- *First Home Owner Grant Regulation 2008* (FHOG Regulation);
- *Land Rent Act 2008* (Land Rent Act);
- *Land Tax Act 2004* (Land Tax Act);
- *Land Titles Act 1925* (Land Titles Act);
- *Payroll Tax Act 2011* (Payroll Tax Act);
- *Rates Act 2004* (Rates Act); and
- *Taxation Administration Act 1999* (TAA).

Overview

The Revenue Legislation Amendment Bill 2017 (No 2) amends various Acts to improve administration and operation of the ACT tax system for the benefit of both taxpayers and administrators. The amendments in the Bill:

- smooth administration of the Barrier Free Conveyance model;
- improve the clarity and quality of tax legislation;
- ensure a sound and fair tax system; and
- harmonise legislation with other jurisdictions.

Civil Law Act, Land Rent Act and Land Tax Act

Sale of land provisions

The sale of land provisions were previously contained in the Rates Act and Land Tax Act to allow the Commissioner for ACT Revenue (the Commissioner) to recover rates or land tax debt by selling property through a court application. These provisions have been consolidated into the TAA by The *Revenue Legislation Amendment Act 2015*.

This Bill updates references to the sale of land provisions in the Civil Law Act, Land Rent Act and Land Tax Act to refer to the correct sections under the TAA.

Duties Act

Assessment before duty becomes payable

Under the Barrier Free model, duty only becomes payable after a property transfer is registered with the Registrar-General. To ensure that all transfers are presented for tax assessment, section 47C (3) of the Land Titles Act requires all transferees to lodge transfers within 14 days after the day of settlement.

If lodgement for registration is postponed or avoided indefinitely, in breach of section 47C (3), duty does not become payable. However, the transferee will continue to have a liability for duty.

Under this circumstance, the Commissioner would be able to use his or her general power of assessment under the TAA to assess the duty liability of the transferee based on all information available at hand. However, the Duties Act does not explicitly state that the Commissioner has this function.

This Bill amends the Duties Act to clarify that if a dutiable transaction is not registered, the Commissioner has the power to make an assessment of duty liability under section 7 of the TAA.

This will reduce the risk of dispute about duty payment on a dutiable transaction that fails to be lodged for registration.

Non-Barrier Free transactions

This Bill provides clarification on dutiable transactions that will not be processed under the Barrier Free model.

The *Revenue Legislation Amendment Act 2017* (2017 Act) provided declarations of trust and grants of a commercial lease with premium would be processed following the Barrier Free administrative procedures, where liability of duty becomes payable at title registration and must be paid within the following 14 days.

However, the ACT Revenue Office has determined that the Barrier Free rules will not be applicable to declarations of trust and grants of a commercial lease with premium due to the nature of these transactions.

Declarations of trust are not registrable under the Land Titles Act and duty becomes payable when the declaration is made, while grants of a commercial lease with premium are not always registrable.

This Bill aligns the processes of payment of duty for declarations of trust and grants of a commercial lease with premium with non-Barrier Free transactions where the 90 day period for lodgement and payment applies. This Bill also clarifies that, for grants of a commercial lease with premium, duty becomes payable when the lease is granted, not when it is registered.

Duties fees

This Bill provides the Minister the power to determine a fee for a Certificate of Duty and Other Charges. The certificate was introduced by the 2017 Act to ensure transferees do not become liable for the duty payment owed by transferors in a property transfer.

Landholder duty rate

This Bill amends the Duties Act to clarify that the duty rate for relevant acquisitions in landholders are determined independently of the rate for transfer of dutiable property. This Bill reinforces the determination of the *Taxation Administration (Amounts Payable—Duty) Determination 2017 (No 1)* in which the commercial rate of duty applies to landholder transactions.

Repeal motor vehicle dealer authorisation scheme

This Bill repeals section 214A of the Duties Act, which allows a motor vehicle dealer to continue receiving a duty exemption for demonstrator or trading stock retained for more than 12 months. This scheme has not been actively used in recent years.

Veteran, vintage and historic vehicles

The Duties Act refers to the *Road Transport (Vehicle Registration) Regulation 2000* (Road Transport Regulation) for the definitions of ‘historic vehicle’, ‘veteran vehicle’ and ‘vintage vehicle’.

This Bill reinserts these definitions in the Duties Act as they have been repealed from the Road Transport Regulation.

FHOG Regulation

FHOG disclosure

This Bill repeals section 4 of the FHOG Regulation which requires the Commissioner to disclose taxpayer information to the Australian Taxation Office under the First Home Saver Accounts scheme, as the scheme ceased on 1 July 2015.

Land Rent Act

Definition of ‘unimproved value’

This Bill corrects the reference in the definition of ‘unimproved value’ to refer to section 10 of the Rates Act, instead of section 10 (1). The correction follows the amendment to section 10 of the Rates Act by the *Revenue Legislation Amendment Act 2016*.

Land Titles Act

Information collection by the Registrar-General

As part of the identity verification process for a dutiable transaction, the Registrar-General uses the Buyer Verification Declaration form and the instrument that effects the transaction to collect identity information.

Both documents need to be submitted to the Registrar-General to enable registration of the transaction. Nevertheless, unlike the instrument that is lodged for registration which has to be completed at the time of lodgement, the Buyer Verification Declaration may be completed and submitted at any time between exchange of contracts and lodging for registration.

Currently, section 178B (1) of the Land Titles Act states that the Registrar-General will collect information about a dutiable transaction at the time of lodgement of the transaction for registration.

The Bill amends section 178 (1) to extend the timeframe such that information can be collected at any time leading up to instrument lodgement for registration.

Payroll Tax Act

Motor vehicle allowances

This Bill amended the definition of 'exempt rate' to be the same as NSW legislation. The amendments reflect the Commonwealth's decisions in 2015 to provide a single rate of deduction for calculating work-related car expenses, regardless of the engine capacity, and to set the exempt rate by legislative instrument rather than by regulation.

Rates Act

Reassessment regarding non-completion of a development

This Bill amends the Rates Act to allow the Commissioner to retrospectively reassess a mixed-use development under division 5.2 and issue a reassessment of commercial rates in the event of a non-completion of the development within 2 years after the development application is made.

Notice of transfer

This Bill repeals section 75 of the Rates Act which requires the buyer and seller of a property to provide written notice of the property transfer to the Commissioner. Under the Barrier Free model, an automatic notice of transfer will be generated and sent to the Commissioner when the buyer registers the property transfer with the Registrar-General. This amendment removes confusion and reduces red tape for taxpayers.

TAA

Multiple blocks or sections

Some Crown leases cover multiple blocks or sections. However, due to IT system constraints, such leases are sometimes recorded using a single block or section number. This

can cause disputes over the notice of assessment issued in relation to the land contained in the leases.

This Bill rectifies the issue by clarifying that if one block or section number is named on the notice of assessment, it represents all blocks and sections under the same Crown lease.

Repealed tax laws

This Bill removes references to the several Acts from section 4 of the TAA as the Acts have been repealed.

References to offences

The *Revenue Legislation Amendment Bill 2016* inserted two offences associated with power of authorised valuers in the TAA. This Bill updates note 1, section 5A of the TAA to ensure the offences are subject to regulation of the *Criminal Code 2002*.

Human rights

This Bill does not have human rights implications.

Commencement

The amendments will commence on the day after the notification day.

Details of the Revenue Legislation Amendment Bill 2017 (No 2)

Clause 1 Name of Act

This clause provides the name of the Act is the *Revenue Legislation Amendment Act 2017 (No 2)*.

Clause 2 Commencement

This clause provides the Act commences after the day of notification.

Clause 3 Legislation amended

This clause provides the Act amends the *Civil Law (Property) Act 2006* (Civil Law Act), *Duties Act 1999* (Duties Act), *First Home Owner Grant Regulation 2008* (FHOG Regulation), *Land Rent Act 2008* (Land Rent Act), *the Land Tax Act 2004* (Land Tax Act), *Land Titles Act 1925* (Land Titles Act), *Payroll Tax Act 2011* (Payroll Tax Act), *Rates Act 2004* (Rates Act) and *Taxation Administration Act 1999* (TAA).

Schedule 1 Legislation amended

Part 1.1 Civil Law Act

Clause 1.1 Section 305 (2)

This clause updates the reference to the sale of land provisions for the non-payment of tax as these provisions have been consolidated into the TAA. The current references to section 20 of the Land Tax Act and section 22 of the Rates Act are corrected to refer to section 56H of the TAA.

Part 1.2 Duties Act

Clause 1.2 New section 11 (3)

This clause clarifies the Commissioner can assess duty liability before it becomes payable, in the event that duty does not become payable because of non-registration of a property transfer.

Clause 1.3 Table 16

This clause clarifies, for a grant of a commercial lease with premium, duty becomes payable when the lease is granted, not when the lease is registered with Registrar-General.

This clause also inserts a new column to table 16 outlining the period within which duty must be paid for each dutiable transaction in column 2 of the table.

Declarations of trust and grants of a commercial lease with premium follow the 90-day rule as they are not processed under the Barrier Free model. For all other dutiable transactions, duty must be paid within 14 days after it becomes payable.

Clause 1.4 Section 16 (2)

This clause refers the period after which a tax default occurs for each dutiable transaction to column 4 of table 16. This is a consequential amendment of the updates to table 16.

Clause 1.5 Section 90 (1) and (2)

This clause allows the duty rate of a relevant acquisition in landholders to be determined under section 139 of the TAA, independent of the rate for a transfer of dutiable property. This removes confusion as duty rates have been separated for the transfer of residential and commercial properties.

Clause 1.6 Section 214 (2)

This clause omits a reference to section 214A as it has been repealed by another amendment.

Clause 1.7 Section 214A

This clause omits the motor vehicle dealer authorisation scheme as the scheme has not been actively used.

Clause 1.8 Section 217 (3)

This is a technical amendment reinserting the definitions of *historic vehicle*, *veteran vehicle* and *vintage vehicle* in the Duties Act, as the definitions were removed from the *Road Transport (Vehicle Registration) Regulation 2000* in 2015.

Clause 1.9 Section 252 (k), (l) and (m)

This clause omits references to section 214A as it has been repealed by another amendment.

Clause 1.10 New section 252AB

This clause inserts a new section in the Duties Act to allow fees to be determined.

Part 1.3 First Home Owner Grant Regulation

Clause 1.11 Section 4

This clause omits the requirement for the Commissioner to disclose information for the First Home Saver Accounts scheme as the scheme ceased in 2015.

Part 1.4 Land Rent Act

Clause 1.12 Section 18, definition of *related*, paragraph (c)

This clause updates the reference to the sale of land provisions for the non-payment of tax as these provisions have been consolidated into the TAA. The current references to section 21 of the Land Tax Act and section 23 of the Rates Act are corrected to refer to section 56I of the TAA.

Clause 1.13 Further amendments, mentions of *section 10 (1)*

This clause updates the reference in the definition of *unimproved value* in various sections of the Land Rent Act to refer to section 10 of the Rates Act for annual redeterminations.

Part 1.5 Land Tax Act

Clause 1.14 Section 17 (3)

This clause updates the reference to the sale of land provisions for the non-payment of tax as these provisions have been consolidated into the TAA. The current reference to section 20 (3) of the Land Tax Act is corrected to refer to section 56H (3) of the TAA.

Part 1.6 Land Titles Act

Clause 1.15 Section 178B (1)

As part of the conveyancing and title registration process, the Registrar-General needs to verify the property buyer's identity before registering the title.

This clause clarifies that the Registrar-General is able to collect information on the dutiable transactions listed under this section at, or before, lodgement of the transaction for registration.

Clause 1.16 Section 178B (1) (d)

This clause removes grants of a commercial lease with premium from the transactions regarding which the Registrar-General must provide information to the Commissioner.

Part 1.7 Payroll Tax Act

Clause 1.17 Section 29 (11) (a)

This clause updates the definition of *exempt rate* for motor vehicle allowance as a consequence of the Commonwealth's changes. The definition is harmonised with NSW

legislation providing a single rate of deduction for calculating work-related car expenses for all engine capacities and that the exempt rate needs to be set by legislative instrument rather than by regulation.

Part 1.8 Rates Act

Clause 1.18 Section 28 (2) (b) (ii)

Clause 1.19 Section 38

Clause 1.21 Section 67 (6)

The above sections are omitted as a consequence of the repeal of section 75.

Clause 1.20 Section 40 (1) (b) (ii)

This clause provides the Commissioner the power to reassess rates for a qualifying parcel of land under division 5.2 of the Rates Act if material development has yet to start 2 years after the development application is made for the parcel. The Commissioner can currently reassess rates only if there is a variation of the lease to not permit mixed-use development or if unit title subdivision is abandoned. The amendment will allow the appropriate level of rates to apply to developers who cease to qualify for division 5.2.

Clause 1.22 Section 75

This clause omits the requirement for property buyers and sellers to notify the Commissioner about the property transfer within 30 days after the transfer. This requirement is no longer necessary as the current system under the Barrier Free model sends an automatic notice to the Commissioner upon registration of the transfer.

Part 1.9 TAA

Clause 1.23 Section 4 (b), (e), (f), (m) and (n)

This clause omits references to repealed Acts from the TAA. These include:

- the *Debits Tax Act 1997*;
- the *Financial Institutions Duty Act 1987*;
- the *Insurance Levy Act 1998*;
- the *Stamp Duties and Taxes Act 1987*; and
- the *Taxation (Administration) Act 1987*.

Clause 1.24 Section 5A, note 1

This is a technical amendment including two additional references to offences included in the TAA in 2016. This clause ensures all offences against the TAA are regulated by the *Criminal Code 2002*. The two offences are as follows:

- An authorised valuer failed to return the identity card to the Commissioner after the role has ceased.
- A property occupier failed to cooperate with the authorised valuer to provide requested documents.

Clause 1.25 New section 14A

This clause introduces a new section under the TAA allowing a lease that covers multiple blocks or sections to be identified by referring to any one or more of the block or section numbers comprising the lease on the notice of assessment. This prevents potential disputes over the notice of assessment on which such leases are currently represented by one block and section number.

Clause 1.26 Section 18G (2) (a)

This clause allows an excluded organisation to apply for a beneficial organisation determination for duty exemption at any time leading up to lodgement for title registration, rather than prior to exchange of contracts. This is in line with the administration of the Barrier Free model and provides excluded organisations with greater flexibility to claim duty exemption.