



Speech by

Hon. D. HAMILL

MEMBER FOR IPSWICH

Hansard 21 July 1999

REVENUE AND OTHER LEGISLATION AMENDMENT BILL (No. 2)

Hon. D. J. HAMILL (Ipswich—ALP) (Treasurer) (11.36 a.m.): I move—

"That the Bill be now read a second time."

The Revenue and Other Legislation Amendment Bill (No. 2) 1999 makes a number of important amendments to Queensland's revenue legislation to ensure its proper operation, including addressing avoidance opportunities, making transitional arrangements for changes to Commonwealth regulation of managed investments and ensuring the appropriate framework for the Allders arrangements. Also, the Government is committed to ensuring that the scheme established under the Fuel Subsidy Act 1997 operates as effectively and efficiently as possible. To achieve these objectives, the Fuel Subsidy Act 1997 is being amended to ensure that interstate off-road diesel consumers cannot qualify as Queensland bulk end users, specify the time for keeping records, prevent double benefits by requiring the repayment of a subsidy where a fuel seller has received reimbursement in relation to the excise surcharge, and allow the disclosure of information to the Australian Customs Service.

The Land Tax Act 1915 provides an exemption from land tax for land owned by or in trust for a person or society where the land is used or occupied by that person or society solely for certain qualifying purposes. Last year, the Queensland Court of Appeal in *Tattersall's Club v Commissioner for Land Tax* interpreted the exemption so that it extended to vacant land on which a building was to be constructed for a non-profit association. Previously, the exemption had been allowed only where a building existed and was being used for the relevant purpose. The Land Tax Act 1915 is being amended to restore the previous practice, including where land is held by a person or society for the other purposes mentioned in section 13 of the Act. These arrangements will have effect for assessments made for the financial year commencing after the amendments are made. Also, to improve the administration of the Land Tax Act 1915, the objection and appeal provisions are being amended to clarify certain administrative requirements that taxpayers must satisfy to exercise their rights to challenge assessments.

Currently, Queenslanders enjoy very generous principal place of residence concessions under the Stamp Act 1894. However, an anomaly was previously identified in that the concessions did not extend to a co-owner acquiring a further interest in a principal place of residence. While an administrative arrangement was approved as an interim measure, the Stamp Act 1894 is to be amended to give the arrangement legislative effect.

Under the Stamp Act 1894, dispositions of units in unit trusts, other than public unit trusts, attract full ad valorem conveyance duty. For public unit trusts, transfers of units attract stamp duty at the lower marketable security rate. Where a unit trust is not listed, it must satisfy certain spread of ownership criteria to qualify as a public unit trust. As it is not possible for a newly created trust to satisfy these spread of ownership requirements from the outset, it will be regarded as a public unit trust where the commissioner is satisfied that units will be issued to the public to the extent required by the spread of ownership test within one year of the establishment of the trust. However, the taxpayer's liability is currently unclear where the commissioner has expressed satisfaction in these terms but the spread of ownership test is not subsequently met or units are issued other than to the public.

To provide certainty, prevent avoidance and align these circumstances with the approach adopted for similar stamp duty concessions, the Stamp Act 1894 is to be amended to provide that,

where the units are not issued to the public to the required extent by the end of the one year period or are issued other than to the public, duty will be payable on all dispositions of units up until that date. Obligations are imposed on the trustee to notify the commissioner in such cases.

From 1 July 1998, the Commonwealth's Managed Investments Act 1998 amended the Corporations Law to introduce a new regulatory regime for managed investment schemes, which replaced the provisions relating to prescribed interests. These changes impact on the operation of the Stamp Act 1894 in a number of ways.

The Managed Investments Act 1998 amended the Corporations Law to provide that trust schemes will no longer have approved deeds. Unit trust schemes offering investments to the public will now generally have to be registered with the Australian Securities and Investments Commission as managed investment schemes. The qualifying criteria for public unit trust schemes with approved deeds in section 56B of the Stamp Act 1894 are therefore to be updated to conform with the new Commonwealth requirements.

Under the Corporations Law, existing prescribed interest schemes have until 30 June 2000 or such further time as the Australian Securities and Investments Commission allows to convert their structures and documentation from the old regime to the new managed investments regime. Conversion from prescribed interest schemes to managed investment schemes may involve transfers of property to new trustees or custodians, and amendments to trust deeds. Such transactions may be liable to stamp duty under the Stamp Act 1894.

To facilitate the conversion process, the Stamp Act 1894 is being amended to provide stamp duty concessions for those transactions which are effected to convert to the Commonwealth's Managed Investments Act 1998 regime. The concessions are subject to conditions that limit the scope for abuse by parties attempting to use the concessions for transactions other than those necessary to convert to a managed investment scheme. For conversions being effected before the amendments are enacted, an administrative arrangement is in place to give these concessions effect.

Section 80 of the Stamp Act 1894 provides for the amendment of assessments in specified circumstances. However, two court decisions have created uncertainty regarding the circumstances in which this power to increase the amount of duty previously assessed may be exercised. To remove this uncertainty, the Stamp Act 1894 is being amended to clarify that the commissioner's power to reassess duty to increase liability applies, within a two year period, whenever the Commissioner ascertains that the prior assessment was incorrect. The time at which the two year period commences will depend on the circumstances giving rise to the reassessment.

Stamp duty is payable each month on credit card transactions at the rate of 10c per transaction. However, an anomaly has been identified where a person who applies for a credit card facility may also potentially be liable for mortgage duty. The Stamp Act 1894 is therefore being amended to ensure that mortgage duty will not usually be payable on a credit card facility. However, the new exemption is not intended to allow mortgage duty to be avoided by artificially structuring significant borrowing arrangements around credit card facilities. Therefore, the exemption will not apply where the application relates to a loan or advance exceeding \$100,000 for any one transaction within one year of establishing the facility and the use of the credit card facility in that way was contemplated by the applicant and the bank at the time of the application.

Equity requires that all taxpayers pay the same amount of tax where their situations are the same and that any opportunities for avoidance of tax be eliminated. If it were otherwise, complying taxpayers would be at a clear disadvantage compared to their non-compliant counterparts. For this reason, the early closure of avoidance opportunities is essential. This Bill addresses two such stamp duty avoidance opportunities.

Last year, the Queensland Supreme Court in *MIM Holdings Limited v. The Commissioner of Stamp Duties* held that an arrangement involving the acquisition of shares subject to certain conditions avoided the operation of the land rich provisions of the Stamp Act 1894. A critical aspect of the arrangements was that MIM did not, at the time of acquiring the shares, become entitled to any distribution on winding up. The land rich provisions are therefore to be amended to overcome the court's decision by ensuring that the provisions apply whenever and however the relevant winding up entitlement is acquired.

In addition to the MIM situation, another avoidance opportunity has been identified in circumstances where a person contracts to acquire a company which is not land rich at the date of the contract but becomes land rich by the date of completion. The Stamp Act 1894 is therefore to be amended so that the date of acquisition in these cases is taken to be the date of completion of the contract. The date of contract will apply to other cases.

This Bill will also overcome an anomaly in the land rich provisions by ensuring that the commissioner can obtain appropriate evidence of value to determine the application of the provisions.

Finally, the Stamp Act 1894 and the Pay-roll Tax Act 1971 are to be amended to ensure that a person's tax liability remains unchanged under the arrangements agreed to by the Commonwealth and the States following the High Court's Allders decision. These amendments form part of a package of legislative measures which include the Commonwealth Places (Mirror Taxes Administration) Act 1999 and the Commonwealth's Commonwealth Places (Mirror Taxes) Act 1998. On the making of an arrangement by the Governor with the Governor-General under section 4 of the Commonwealth Places (Mirror Taxes Administration) Act 1999, these amendments will come into effect on 6 October 1997, being the date that the Commonwealth publicly announced the Allders arrangements.

The amendment to the Pay-roll Tax Act 1971 ensures that wages of staff at Commonwealth places and non-Commonwealth places in the State are taken into account in determining the employer's deduction under the Pay-roll Tax Act 1971 and as it is applied as Commonwealth law under the Commonwealth Places (Mirror Taxes) Act 1998 (Cwlth).

The amendments to the Stamp Act 1894 ensure that, in determining whether a person is obliged to lodge returns for a rental and credit business, activities in both a Commonwealth place and a non-Commonwealth place are taken into account. The amendments also ensure that, in determining a person's liability under the Stamp Act 1894, proper recognition is given to duty paid under the Commonwealth applied stamp duty law where appropriate. These amendments place taxpayers in the same position as would have been the case had the Allders arrangements been unnecessary.

Modifications of the Commonwealth applied debits tax and stamp duty laws are also to be made by a notice published in the Commonwealth Gazette in accordance with section 8 of the Commonwealth Places (Mirror Taxes) Act 1998 (Cwlth).

The changes made by this Bill will ensure that Queensland's revenue legislation continues to keep pace with the ever-changing commercial and legal environment and operates efficiently and effectively for the community's benefit. I commend the Bill to the House.
