



Speech by

Hon. D. HAMILL

MEMBER FOR IPSWICH

Hansard 4 October 2000

REVENUE LAWS AMENDMENT BILL

Hon. D. J. HAMILL (Ipswich—ALP) (Treasurer) (11.32 a.m.): I move—

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

The Revenue Laws Amendment Bill 2000 makes a number of important changes to the State's revenue legislation. The Bill addresses avoidance opportunities highlighted by court decisions, provides important new exemptions, simplifies administrative arrangements and clarifies the tax treatment of certain transactions.

The 1999-2000 State Budget announced changes to the calculation of the payroll tax rebate for apprentice and trainee wages from 1 July 1999 to ensure that employers did not pay tax on these wages. However, the administrative arrangements still require employers to pay the tax and then claim the rebate. The Government has therefore decided to remove this obligation by amending the Pay-roll Tax Act 1971 to provide an exemption from tax for wages paid to apprentices or trainees. The amendment will operate retrospectively from 1 July 2000, thereby ensuring that it is, in effect, available for the financial year 1999-2000 and meeting the budget commitment.

Amendments are also to be made to the Pay-roll Tax Act 1971 to clarify the application of the grouping provisions to trusts. Those provisions ensure that wages are not split between a number of entities to avoid payroll tax by exploiting the \$850,000 threshold. The amendments will make clear how those provisions apply to trusts.

I now turn to amendments proposed to the Stamp Act 1894. Under that Act, penalties may be imposed if documents are lodged late for assessment. Where there is complete failure to lodge a document, the commissioner may issue a default assessment. However, a penalty cannot currently be imposed in respect of a complete failure to lodge. Consequently, a taxpayer who completely fails to lodge is in a more advantageous position than one who lodges late. Amendments are therefore proposed to allow a penalty to be imposed for non-lodgment. This will ensure consistency and improve equity.

Conveyance stamp duty is often calculated on the value of property. The Stamp Act 1894 therefore provides that the commissioner may rely on a valuation tendered by a person. Amendments proposed by this Bill will ensure that the commissioner may also rely on valuations obtained in other ways. For example, a valuation may be discovered on an investigation.

The commissioner also has power to obtain a valuation. This usually requires the valuers to inspect property. The Bill will amend the Act to put beyond doubt that the commissioner's valuers may obtain access to properties for this purpose when accompanied by an investigating officer. In calculating rental business duty on the rental of goods, it is often necessary to apportion receipts of the business between those relating to the rental of goods and those for services. Amendments proposed by this Bill will allow the commissioner to estimate an apportionment of the amount received by a rental business where calculation of the exact taxable amount is not possible, and require the taxpayer to provide any information that will assist with this estimation.

Under the Water Act 2000, a new scheme has been established for the allocation of entitlements to water. A significant feature of the new arrangements is that water entitlements may now be dealt with separately from the land rather than being attached to land. This Bill proposes that stamp

duty apply to the acquisition of water entitlements under the new system, whether the acquisition is by transfer or grant or issue. In relation to transfers, stamp duty would usually have applied to the transfer of the land and the associated water licences under the previous system and duty should therefore continue to apply to transfer of the new entitlements.

In relation to grants, the Water Resources Act 1989 provided exemption from stamp duty for grants under the previous system. However, this exemption was not continued in the Water Act 2000 due to the tradeable nature of the entitlements under the new system. Given that transfers of entitlements will be dutiable, grants should also attract duty so that there is consistency of treatment. A transitional exemption applies where water entitlements issued under the new scheme replace and substantially represent entitlements to water under the old scheme.

Amendments were made to the land rich corporation provisions in 1997 to provide certainty in assessing duty where a corporation or a subsidiary contracted to purchase or sell land. The amendments ensured that the full unencumbered value of the land was taken into account to determine whether or not the corporation was a land-holder. However, if a purchase contract was subsequently rescinded or a sale contract was subsequently completed, reassessments and refunds of duty may be made.

The decision of the Court of Appeal in *Road Australia Pty Ltd v. Commissioner of Stamp Duties* has since established that a beneficial interest in land under an unconditional contract for the purchase of land is equal only to the deposit paid rather than the full value of the land. Although the case has been overcome for land rich duty assessments by the 1997 amendments, it is relevant when assessing stamp duty on dispositions in units in a unit trust scheme under section 56B of the Stamp Act 1894 and dispositions of shares in trustee companies under section 56C.

Consistent with the current assessing practice under those sections and with the approach taken by the 1997 amendments for land rich corporations, sections 56B and 56C will be amended to treat property under contract as being property of the trust. Consequently, duty under those sections will be assessed taking into account any property under contract. As for the 1997 amendments, provision exists for amendment of assessments and refunds of duty if a sale contract is subsequently completed or a purchase contract is rescinded.

The land rich corporation provisions are also being amended to adopt the same terminology as the amendments proposed by this Bill to sections 56B and 56C for land under contract. These amendments will also clarify the way in which duty is calculated under these provisions in these cases.

The land rich provisions of the Stamp Act 1894 impose duty at general rates on the acquisition of a majority interest, or further interest, in land rich corporations. The provisions were inserted to prevent avoidance of conveyance duty by acquiring shares representing a majority interest in a land rich corporation rather than acquiring the land owned by the corporation. Duty on share transfers is imposed at a lower rate than duty on land transfers.

Last year, the Stamp Act 1894 was amended to overcome an avoidance arrangement relating to land rich corporations which was found by the Court of Appeal in *Commissioner of Stamp Duties v. MIM Holdings Ltd* to be effective. The scheme involved the acquisition of partly paid shares and then paying up those shares. The court held that land rich duty did not apply either to the purchase or the payment up of the shares. This was despite the fact that the purchaser ultimately held a majority interest in the land rich company.

Amendments are proposed to ensure that the same technique may not be adopted in relation to the provisions of the Act imposing stamp duty on dispositions of units in a unit trust scheme and shares in a trustee company. Sections 56B and 56C are therefore being amended in a similar way to the land rich company amendments made to overcome this scheme.

A number of other amendments are also proposed to the land rich corporation provisions: the value of contractual rights relating to land not owned by the corporation or a subsidiary is to be included in the value of land of the corporation or subsidiary if they enhance the value of that land. This amendment will deal with a number of situations including overcoming another aspect of the MIM case that access rights held by a land rich corporation over other land had to be separately valued and could not be taken into account in determining the value of the corporation's land. This was despite the fact that the rights significantly enhanced the value of the corporation's own land. Amounts owing to a corporation or a subsidiary in respect of issued shares will be excluded in determining the corporation is a land-holder. This overcomes another aspect of the MIM case and prevents artificial inflation of the value of property to dilute the land component of the corporation's assets below the 80% threshold.

The Stamp Act 1894 will be also amended to allow Queensland Transport to pay stamp duty collected on motor vehicle registration applications and transfers directly to the Commissioner of Stamp Duties rather than to the Consolidated Fund. An amendment will also improve administrative efficiency and client service by allowing the commissioner to authorise Queensland Transport to refund duty if the commissioner could also make a refund.

It is also proposed to clarify by this Bill that lease duty is payable under section 64D of the Stamp Act 1894 on the acquisition of an occupation right over all or part of a building whether or not the right extends to the land on which the building is situated.

Finally, the Bill proposes new exemptions for certain transactions in relation to managed investment schemes involving custodians. These new exemptions will provide managed investment schemes and custodians with greater flexibility and options in the way that property acquisitions may be structured.

Duty will not apply to the transfer of assets of a registered managed investment scheme from a responsible entity to a custodian and vice versa. Also, it is proposed to provide an exemption from conveyance duty for transfers of property to a custodian by a vendor under a contract for sale of the property to a responsible entity for the scheme. Declarations of trust by a custodian in respect of property of a registered managed investment scheme will also be exempt from duty. Conditions will apply to the exemptions to prevent avoidance of duty using the exemptions.

This Bill will keep Queensland's revenue legislation up to date and ensure that it applies equitably to all taxpayers. It is also worth noting that this may well be the last time Parliament considers amendments to the Stamp Act 1894 before that Act is replaced with a duties Act next year. The new legislation will be a vast improvement on the current legislation, which is overdue for modernising and simplifying. That said, the Stamp Act 1894 has served Queensland well in providing successive State Governments with a reliable source of revenue to fund services for over 100 years. I commend the Bill to the House.
