

Substantive proposed changes to Western Australia's State Revenue Laws

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Key issues:

- The West Australian Parliament recently introduced into its Legislative Assembly the *Revenue Laws Amendment Bill 2018* (and its accompanying *Taxation Administration Amendment Bill 2018*).
- The Bill is an omnibus of various changes to duty, land tax and tax administration, in Western Australia.
- Some of the changes proposed are quite substantial and will have a significant impact on transactions and taxpayers once enacted.

The West Australian Parliament recently introduced into its Legislative Assembly the *Revenue Laws Amendment Bill 2018* (and its accompanying *Taxation Administration Amendment Bill 2018*). The Bill is an omnibus of various changes to duty, land tax and tax administration, in Western Australia. Some of the changes proposed in the Bill are substantive and will have a significant impact on transactions and taxpayers once enacted. The following is a summary of the most important proposed changes.

This is the first article in a series of articles that will each focus on a specific aspect of the proposed changes.

Duty in relation to land and landholder duty

- New grouping provisions will group entities that only hold chattels, together with entities that hold land, where the two acquisitions are made as part of the one transaction.
- Transactions will also be grouped where two or more transactions result in an effective, relevant acquisition of interests in land worth \$2 million or more.
- An acquisition of chattels will also be grouped together with an acquisition in a landholder.
- New “look through” rules mean that acquisitions in two or more entities that, together, result in a direct or indirect interest of 50% or more in a landholding entity will be subject to duty. In this regard, the rules have effectively been tightened up and largely bring them in line with other States.
- Duty will also apply to relevant acquisitions made between related persons, however, persons will not be treated as being related where the acquisitions result from a public float (as defined) or other similar prescribed circumstances.
- An exemption for transactions occurring between closely owned corporations and unit trust schemes that qualify as a “family” will be introduced. The exemption is subject to a three year clawback, such that if the transferee entity is removed from the family group within three years and still holds any of the dutiable property for which the exemption was obtained, then a clawback of duty will apply. The exception to this is where the exit from the family group is due to the transferee being floated.

Items fixed to land

- The amendments will introduce duty in relation to items that are fixed to land that are not necessarily fixtures at common law. For example, if a thing is fixed to land and that thing (but

not the land) is transferred, then duty may apply.

- Importantly, no duty applies where there is an agreement that, within 90 days after transfer of the item, the thing is to be permanently removed from the land (and provided it is so removed).
- No duty will apply where the item is only temporarily fixed to land for construction purposes. Nor will duty apply where the item is a fixture at law and is used in a primary production business.
- Rights in relation to the control, access or operation of fixed infrastructure will also be included in the duty base (e.g. a grant of such a right). Fixed infrastructure is defined as meaning, broadly, an item that is fixed to land but is not a fixture at common law.

Derivative mining rights

- Duty is proposed to apply to a transfer, grant or surrender of a derivative mining right. However, note that a surrender of a derivative mining right is only dutiable if there is consideration for the surrender.
- A derivative mining right is a new item of dutiable property and is defined as being an authorisation of a kind described in section 118A of the *Mining Act 1978* (WA), namely a prospecting licence, exploration licence or a mining lease. Therefore, other similar contractual rights may also be subject to duty even if not specifically created under or in accordance with section 118A.
- As a duty concession, where a transfer of a tenement results in a derivative mining right having to be cancelled and re-granted, no duty will apply to the re-grant, provided duty was paid when the derivative mining rights were initially granted.
- Derivative mining rights will also be included as “land” for the purposes of landholder duty. Accordingly, a transfer of shares in a company that owns derivative mining rights may be subject to duty.

Family farm duty exemption

- The proposed changes are designed to broaden the family farm duty exemption so that it better accords with modern farming structures and succession planning arrangements. For example, the exemption will apply where a farmer transfers farming property to a discretionary trust that is related to the farmer (e.g. where the farmer is a beneficiary of the trust and every other beneficiary is a family member of the farmer).

Nominal duty for transfer of property to facilitate a subdivision

- These changes are largely designed to legislate the Commissioner’s longstanding practice of providing concessions for these types of transactions. The changes appear designed to ensure that, where transfers of land are made in order to allow a subdivision of land to occur (e.g. to ensure the same owner owns all land the subject of the development application), and there is a transfer of land back after the subdivision of land has occurred, only nominal duty is payable on the initial and subsequent transfers.
- Note that there is a five year “clawback” if the land is not in fact transferred back as required. That is, the nominal duty paid on the initial transfer is cancelled and “full” duty becomes payable in relation to the original transfer.
- The same land effectively needs to be transferred back. To the extent that this does not occur, duty will be payable.
- Multi-level strata subdivisions are excluded from the duty concession.

Land tax amendments

- An important change to the primary production land tax exemption where a trust is undertaking the primary production activity is that all beneficiaries of the trust must now be individual family members of the nominated beneficiary in order to qualify for the exemption.
- Generally, trusts can have various classes of beneficiaries (such as trustees of other trusts, companies associated with the trust beneficiaries and/or other individuals and charities) such that the terms of such a trust would not now qualify for the exemption.
- Therefore as a transitional rule, taxpayers will have until 30 June 2020 (i.e. for the 2019/20 land tax year) to amend their trust deeds in order to comply with the new requirement. Particular attention should be given to any proposed changes to the trust deed, and in particular, any capital gains tax and/or duty consequences (also noting that this may involve more than one State or Territory's duty provisions, depending on the location of the trust's assets).

For more information or discussion, please contact HopgoodGanim Lawyers' [Taxation](#) team.

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