

Pages 1 through 3 redacted for the following reasons:

Parliamentary Privilege - Sch.3(6)(c)(i)

RTI RELEASE

Katherine Iddles

From: Jonathan Scott Contrary to Public Interest
Sent: Monday, 12 June 2017 9:50 AM
To: Katherine Iddles
Subject: Fwd: Draft versions of RLAB and ENs
Attachments: image001.jpg; ATT00001.htm; TO submission copy - Draft Explanatory Notes for Revenue Legislation Ame....docx; ATT00002.htm; B17_0040_v06.pdf; ATT00003.htm

Oops sorry! Should be attached here

Sent from my iPhone

Begin forwarded message:

From: Melinda Kross Contrary to Public Interest
Date: 11 June 2017 at 4:46:33 pm AEST
To: Rosemary Holley Contrary to Public Interest
Cc: Jason Mew Contrary to Public Interest, Kristine Gould Contrary to Public Interest, Geoff Waite Contrary to Public Interest, Jonathan Scott Contrary to Public Interest
Subject: Draft versions of RLAB and ENs

Hi Rosemary,

As requested, attached are clean copies of the latest version of the Bill and the ENs.

We will continue to work on the version of the ENs in the document set library in Nexus – let me know if that is an issue.

Thanks,

Melinda Kross
Director Policy & Legislation
Office of State Revenue
Queensland Treasury

Contrary to Public Interest

Web: www.qld.gov.au/osr

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Revenue Legislation Amendment Bill 2017

Explanatory Notes

Short title

The short title of the Bill is the Revenue Legislation Amendment Bill 2017 (the Bill).

Policy objectives and the reasons for them

The Bill amends the *First Home Owner Grant Act 2000* (FHOG Act) and the *Land Tax Act 2010* (Land Tax Act) to implement 2017-18 State Budget measures.

The FHOG Act is amended to implement a 2017-18 State Budget measure to extend a temporary increase to the amount of the Queensland First Home Owners' Grant (the grant) from \$15,000 to \$20,000 for a further six months so it is also available for eligible transactions entered into between 1 July 2017 to 31 December 2017, both dates inclusive.

The Land Tax Act is amended to implement a 2017-18 State Budget measure to impose, from 2017-18 onwards, a 1.5% surcharge on individuals not ordinarily residing in Australia (absentees) who are liable for land tax in Queensland (absentee surcharge).

The Bill also amends Queensland's revenue legislation to protect the State's revenue, maintain the currency of the legislation and ensure its continued proper operation and administration.

The *Duties Act 2001* (Duties Act) is amended to ensure the additional foreign acquirer duty provisions operate as intended.

The Land Tax Act is amended to include a new requirement for a person to lodge an approved form within one month of a change of ownership of land.

The Land Tax Act is also amended to restore a prohibition on lessors directly passing on the cost of land tax to lessees under commercial leases entered into after 1 January 1992 and before 30 June 2009, following a Court of Appeal decision which held that this prohibition was repealed upon enactment of the Land Tax Act.

The Land Tax Act is further amended to clarify that where land is owned by joint trustees for a trust, land tax is to be assessed as if the land were owned by one person.

The *Taxation Administration Act 2001* is amended to introduce new legislative powers to facilitate the collection and disclosure of real property transfer information

in accordance with the State's obligations under the *Taxation Administration Act 1953* (Cth).

Achievement of policy objectives

Duties Act 2001

The Duties Act imposes an additional duty surcharge on transactions that are liable for transfer duty, landholder duty or corporate trustee duty where the acquirer is a foreign person and the transaction involves certain residential land in Queensland (AFAD residential land). The additional duty is 'additional foreign acquirer duty' (AFAD). AFAD is imposed at a rate of 3% on the dutiable value of a relevant transaction to the extent of the foreign acquirer's interest, and to the extent the dutiable value relates to AFAD residential land. To ensure the provisions operate as intended and to protect revenue, a number of amendments are being made to the provisions.

The Duties Act will be amended to ensure that AFAD applies to certain agency transactions for AFAD residential land. Under an agency transaction, the transaction that is imposed with transfer duty is the agreement for the transfer of dutiable property entered into by the agent. Where the applicable duty is paid on the agreement, the transfer of the property to the principal is exempt from duty. Therefore, AFAD will not apply to duty assessed on the agreement unless the agent is a foreign person. The current operation of the agency provisions therefore allow a foreign principal to avoid AFAD by using a non-foreign agent to enter into the agreement for transfer.

For agency transactions, where the principal is a foreign person when the relevant transfer to the principal occurs, and the dutiable property is AFAD residential land, the amendments will require the agreement to be reassessed as if AFAD applied to the agreement. AFAD will continue to apply to agreements for transfer where the agent is a foreign person. However, if the principal is not a foreign person when the relevant transfer to the principal occurs, the agreement will be reassessed as if AFAD did not apply. Consequential amendments will be made to the provisions for reassessing transactions with AFAD where a corporation or trust becomes foreign within 3 years and providing the Commissioner of State Revenue with a statutory charge over AFAD residential land for unpaid transfer duty.

The Duties Act provides an exemption from transfer duty for certain dutiable transactions where agreements are entered into on behalf of a company yet to be registered (pre-incorporation contracts). One type of transaction to which the exemption applies is a where a company ratifies a pre-incorporation contract after it is registered and the property is transferred to the company directly. It is therefore possible for a foreign corporation (pre-incorporation) to structure their affairs to acquire AFAD residential land without incurring an AFAD liability by using a non-foreign transferee to enter into the initial agreement prior to the company's registration. This is because transfer duty is imposed on the agreement for the transfer, which would not have incurred AFAD, and the dutiable transaction transferring the dutiable property to the foreign corporation would be exempt.

Amendments to the Duties Act will require, where a company is a foreign corporation when the agreement is entered into, and the property relates to AFAD residential land, the agreement is to be reassessed with duty as if AFAD applied. The transfer of the property to the company will not be exempt unless the duty, including the applicable AFAD, has been paid. Where a company was not a foreign corporation at the time the agreement was entered into, consequential amendments will be made to the provisions for reassessing transactions with AFAD where a corporation or trust becomes foreign within 3 years.

The Duties Act will also be amended to ensure that where certain chattels are acquired in conjunction with an acquisition of AFAD residential land, the dutiable value for the transaction will include the value of the chattels. Under the Duties Act, although a chattel in Queensland is a form of dutiable property, for transfer duty purposes, a chattel the subject of a transaction is not a dutiable transaction unless it can be aggregated with another dutiable transaction or another type of dutiable property. This treatment of chattels addresses potential value-shifting issues by ensuring that duty applies to the combined value of the transaction, inclusive of chattels.

Under the AFAD provisions, the value of chattels that may form part of the acquisition of residential land that is acquired by a foreign person would not be included in the calculation of AFAD given that a chattel is not AFAD residential land. It is identified that this may present a risk to revenue in value-shifting between the value of the residential land and chattels that form part of the acquisition. However, the amendment will apply only to those chattels the use of which can be directly linked to, or are incidental to, the use and occupation of the AFAD residential land.

The Duties Act will be further amended to confirm that AFAD applies to dutiable transactions for existing rights where the related dutiable property is AFAD residential land (for example, an existing option to acquire AFAD residential land). Finally, a minor wording amendment will be made and an example of a foreign acquirer's interest included to clarify the intended operation of the provisions.

First Home Owner Grant Act 2000

The FHOG Act provides a grant of \$15,000 for first home buyers who have entered into an eligible transaction which has been completed and who satisfy certain eligibility criteria. However, the amount of the grant was temporarily increased from \$15,000 to \$20,000 for eligible transactions entered into between 1 July 2016 and 30 June 2017, both dates inclusive (the 2016-17 FHOG boost). An eligible transaction is a contract to purchase or build a new home, or the building of a new home by an owner-builder.

The FHOG Act will be amended to extend the 2016-17 FHOG boost for a further six months so eligible transactions entered into between 1 July 2017 and 31 December 2017 (both dates inclusive) qualify for a \$20,000 grant.

When an eligible transaction is entered into is determined by reference to the 'commencement date' for the eligible transaction, as defined in the FHOG Act. The commencement date for a contract to purchase or build a new home is the date when the contract is made, while the commencement date for the building of a new home by an owner-builder is generally the date when the laying of the foundations for the home starts.

Land Tax Act 2010

The Land Tax Act imposes land tax for each financial year on the taxable value of all taxable land owned by a person at midnight on 30 June of the preceding financial year. Taxable land is freehold land in Queensland which is not exempt land. The taxable value of taxable land is based on the statutory valuation of the land determined by the State Valuer-General under the *Land Valuation Act 2010*.

Absentee Surcharge

Under the Land Tax Act, the owner of land is liable to pay land tax at the rates set out in the Land Tax Act which differ depending on type of owner and the taxable value of the land. Two separate rate scales exist under the Land Tax Act; one for resident individuals and one for companies, absentees and trustees. The owner of land is only liable for land tax once the total value of their taxable land exceeds the tax-free threshold, which is \$600,000 for resident individuals and \$350,000 for companies, absentees and trustees.

The Land Tax Act will be amended to impose a 1.5% surcharge on absentees who are liable for land tax. The absentee surcharge will apply to the portion of the taxable value of an absentee's taxable land that is equal to or greater than \$350,000. It will be imposed from the 2017-18 year onwards and will therefore apply to absentees who are liable for land tax as at midnight 30 June 2017.

The amendments ensure the absentee surcharge is administered as land tax within the existing legislative framework. Therefore, there will be no additional administrative burden for absentees or for Government. All land owners liable for land tax, including absentees, have objection, review and appeal rights in relation to assessments of land tax.

Assessments for joint trustees

Historically, the *Land Tax Act 1915* (1915 LTA) assessed trustees as if the trust land was owned by one person. If there was more than one trustee of a trust, the 1915 LTA operated to ensure the issue of a single assessment for land tax, irrespective of the proportion of the value of the land held by each trustee.

The repeal of the 1915 LTA and replacement with the Land Tax Act was not intended to alter the basis for assessing trust land. However, in redrafting the provision on assessments of trustees, there has been an unintentional change which creates uncertainty about the assessment of trust land where there is more than one trustee. The amendment clarifies the intended operation of the Land Tax Act and confirms the Office of State Revenue's long-standing practice that trust land is to be

assessed as if it is owned by one person. In particular, the amendment clarifies that the provisions relating to assessment of co-owned land do not apply.

Recovery of land tax by lessors

The 1915 LTA provided that, for leases entered into after 1 January 1992, a provision in a lease requiring a lessee to pay land tax or reimburse the lessor for land tax was unenforceable (the prohibition). The prohibition was repealed on 30 June 2009. However, in order to maintain equity and fairness for lessees under existing leases entered into while the prohibition was in force (pre-existing leases), a transitional provision was inserted into the 1915 LTA to ensure the prohibition continued to apply to pre-existing leases. This is because lessees who entered into pre-existing leases would have likely negotiated rental on the basis that the lessor would be prohibited from directly passing on the cost of land tax to the lessee.

When the Land Tax Act replaced the 1915 LTA on 30 June 2010, it was the intended policy of Government to preserve the prohibition for pre-existing leases, and it was assumed that a transitional provision in the Land Tax Act and savings provisions in the *Acts Interpretation Act 1954* achieved this. However, on 6 September 2016, the Court of Appeal in *Vikpro Pty Ltd v Wyuna Court Pty Ltd* [2016] QCA 225 (*Vikpro*) held that these provisions did not have the effect of continuing the prohibition under the Land Tax Act, and that the Land Tax Act had repealed the prohibition.

This has an unintended impact upon pre-existing leases, as, from 30 June 2010, lessors can enforce lease provisions that require lessees to pay the cost of land tax imposed. Many individual businesses would have negotiated base rentals and rental reviews in pre-existing leases on the understanding that they would not have to directly pay the lessor any land tax as a result of the prohibition. The cost of land tax therefore would generally have been factored into the rental. The *Vikpro* decision effectively allows lessors to recoup land tax twice by retrospectively recovering the cost of land tax imposed since 30 June 2010, resulting in a windfall gain to lessors at the detriment of lessees.

The *Vikpro* decision does not affect residential leases under the *Residential Tenancies and Rooming Accommodation Act 2008* and retail shop leases under the *Retail Shop Leases Act 1994*, where lessors continue to be prohibited from directly passing on the cost of land tax to lessees.

In order to reinstate the intended position, it is proposed to amend the Land Tax Act to restore the prohibition retrospectively from 30 June 2010, the date the Land Tax Act commenced and the date the Court of Appeal held the prohibition was repealed. Despite retrospective application, it is proposed to maintain the rights of any lessor who has already recovered the cost of land tax in reliance of the *Vikpro* decision (including the lessor in *Vikpro*). Accordingly, in such cases, the lessee will be barred from seeking restitution of the amount paid, solely on the basis the prohibition has been retrospectively restored by the amendments. However, the lessee's rights to challenge the recovery of the cost of land tax on other grounds, such as the amount of land tax collected, will be maintained.

Notification requirement for change of ownership

The Land Tax Act is also amended to include a new requirement for persons to notify the Commissioner or State Revenue (Commissioner) when they respectively acquire and dispose of land. Persons will be required to provide additional identity information as part the relevant transfer transaction. The additional information will improve land tax administration and compliance.

Taxation Administration Act 2001

As part of reforms to strengthen the integrity of Australia's foreign investment framework, the Commonwealth Government introduced reporting requirements in 2015 for the States and Territories to provide information about real property transfers. The reporting requirements were introduced into the *Taxation Administration Act 1953* (Cth) and require the States and Territories to report third party data, which includes personal identity information, for all transfers of real property to the Australian Taxation Office (ATO). This data will be used by the ATO for the purpose of establishing and maintaining the National Register for Foreign Ownership of Land Titles, data-matching and ensuring compliance with Commonwealth taxation laws.

Subject to certain conditions, information which is currently collected under Queensland's tax laws may be disclosed to the Commonwealth to satisfy the reporting requirements. However, further information about purchasers and vendors of real property must be reported which is not currently collected for the administration and enforcement of Queensland's tax laws.

The amendment to the Taxation Administration Act will introduce new legislative powers for the Commissioner to collect real property transfer information which is not collected under Queensland's existing tax laws for the purpose of reporting this information to the Commonwealth.

The amendment will provide the Commissioner with legislative authority to collect and disclose the relevant real property transfer information to the Commonwealth and will facilitate the collection of the information by any reasonable means, including through the lodgement of documents or instruments required under revenue laws.

The amendment also confirms that offences under Part 10 of the *Taxation Administration Act 2001* extend to the collected information and clarifies the operation of certain offences as these apply to the information.

Alternative ways of achieving policy objectives

The policy objectives of the Bill can only be achieved by legislative amendment.

Estimated cost for government implementation

The implementation costs are expected to be met from existing budget allocations.

Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles. Potential inconsistencies are discussed below.

Legislation should have sufficient regard to the rights and liberties of individuals – Legislative Standards Act 1992, section 4(2)(a)

Collection and disclosure of information to the Commonwealth

The amendment to the Taxation Administration Act will extend the operation of existing offences under Queensland's tax laws to include reportable information. Reportable information will be collected by the Office of State Revenue (OSR) as part of its administration of revenue laws. To streamline administrative requirements for taxpayers, reportable information will be collected by OSR under the approved forms, instruments or other documents which are otherwise necessary for proper administration of Queensland's revenue. Extending the existing offence provisions to include reportable information may be seen to raise a fundamental legislative principle issue of having sufficient regard to the rights and liberties of taxpayers. However, given that reportable information will be collected as part of information that is necessary to administer and enforce existing laws, it is considered both appropriate and necessary that the offences under Queensland's tax laws should be extended to include reportable information. If offences are not extended to include reportable information, this may lead to a lack of clarity and inconsistency in the application and the enforcement of Queensland's tax laws.

The collection and disclosure of reportable information may further be seen to raise a fundamental legislative principle issue affecting the rights and liberties of taxpayers to the extent reportable information includes personal identity information. The proposed amendment will only displace the *Information Privacy Act 2009* to the extent necessary to collect and disclose real property transfer information which must be reported by the State in accordance with its obligations under the *Taxation Administration Act 1953* (Cth). Other than this limited requirement, all other principles relating to information privacy will remain protected. The collection, use, retention and disclosure of all reportable information will be subject to the same stringent confidentiality requirements under Part 8 of the Taxation Administration Act as all other information collected for the administration and enforcement of Queensland's existing tax laws. The offences which exist in the Taxation Administration Act for the unauthorised use or disclosure of confidential information will also extend to reportable information.

Legislation should not adversely affect rights and liberties, or impose obligations, retrospectively – Legislative Standards Act 1992, section 4(3)(g)

Recovery of land tax by lessors

Retrospective amendment is considered necessary and appropriate to fully restore the Government's intention that the prohibition on lessors directly passing on the cost of land tax to lessees under commercial leases entered into after 1 January 1992 and before 30 June 2009, continue under the Land Tax Act, in order to maintain the protection for lessees under pre-existing leases. It is considered that this position was commonly accepted by lessors and lessees of pre-existing leases, who continued to act on that basis, until the *Vikpro* decision.

It is not proposed to undo any circumstance in which a lessor has successfully recovered the cost of land tax in reliance of the *Vikpro* decision, regardless of the method of recovery (e.g. whether under the provisions of the lease or through court proceedings). For example, if a court has made an order requiring a lessee to pay land tax in relation to a lease, the proposed amendment will not affect the enforceability of the order or the lessor's right to enforce the order. Allowing existing court orders to continue to be enforced ameliorates the retrospective operation of the amendment and ensures that the interests of these lessors will not be adversely affected by the proposed amendment. The proposed amendment will, however, apply to existing court proceedings.

Where lessors have recovered the cost of land tax from lessees, it is proposed to prevent lessees in such cases from seeking restitution of the amount paid solely as a result of the retrospective restoration of the prohibition. Although this raises a fundamental legislative principle issue of limiting a right of action, it is the retrospective restoration of the prohibition itself that creates the right of action, so any lessee's right of action in this regard currently does not exist. However, a lessee's right to challenge recover of the cost of land tax on other grounds will be maintained.

It is considered that this is a more desirable outcome when compared to an alternative method of amendment in which lessors who have not already sought to recover the cost of land tax in reliance of the *Vikpro* decision will be barred from doing so. This alternative raises a number of practical issues in determining whether recovery proceedings have already commenced (e.g. letter of demand or commencement of court proceedings). This alternative also arbitrarily favours lessees who are subject to recovery action and have not, at the date of the amendment, paid the cost of land tax versus those who have paid.

Consultation

Community consultation was not undertaken as the amendments implement, or are being implemented as part of, Budget measures.

To minimise any impact to the conveyancing and assessment of duty processes which may be necessary to collect and share reportable information to the Commonwealth, community consultation with the legal profession and related key stakeholders will be undertaken on implementation of the Bill.

Consistency with legislation of other jurisdictions

The amendments are specific to the State of Queensland and are not uniform with or complementary to legislation of the Commonwealth or another state or territory.

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Notes on provisions

Part 1 Preliminary

Clause 1 provides that the Bill, when enacted, may be cited as the *Revenue Legislation Amendment Act 2017*.

Clause 2 provides for the commencement of amendments made by the Bill. In particular, the amendments relating to the land tax absentee surcharge commence on 30 June 2017 to ensure the surcharge will be imposed from the 2017-18 year onwards and therefore apply to absentees who are liable for land tax as at midnight 30 June 2017.

Part 2 Amendment of the Duties Act 2001

Clause 3 provides that part 2 amends the *Duties Act 2001*.

Clause 4 inserts a new note in s.116(4) referring to new section 241A as inserted by Clause 9 of the Bill.

Clause 5 inserts new subsection (2) into section 232 providing that AFAD residential land includes a chattel in Queensland, where the chattel and the land are included in the same dutiable transaction and the chattel's use is directly linked to, or is incidental to, the use and occupation of the land. For example, chattels such as household furniture, fittings, appliances, recreational equipment, barbecue settings swimming pool cleaning equipment and mobile air conditioners would be included. However, it would not include cars, boats, caravans, trucks, farming equipment and chattels used for commercial purposes.

Clause 6 amends section 237(2) to align the language of the provision with the definition of *foreign person*.

Clause 7 inserts new subsection (2) into section 240. Subsection (2) extends the application of section 240 to ensure AFAD applies to agency transactions as defined in the section, where a non-foreign agent enters into an agreement for the transfer of AFAD residential land on behalf of a principal, where the principal is a foreign person. The conditions of the provision ensure that it operates in relation to the same type of agency arrangements to which section 22(3) of the Duties Act applies. Where an acquirer under a relevant transaction is a foreign person, whether they are an agent or not, AFAD continues to apply under section 240(1).

Example for section 240(2) –

A is appointed in writing as an agent for B, a foreign corporation. Under the appointment, A enters into an agreement to purchase AFAD residential land on behalf of B. As B is a foreign person at the time the liability for transfer duty arises on the agreement, AFAD is imposed on the agreement.

Clause 8 amends section 241. Subsection (1) is amended to extend the application of section 241 to new section 240(2)(b)(i). Subsection (2)(a) is amended to specify it applies to dutiable property other than an existing right. Existing subsections (2)(b) to (d) are renumbered as subsections (2)(c) to (e) to enable a new subsection (2)(b) to be inserted. New subsection (2)(b) specifies the property condition for dutiable property that is an existing right.

Clause 9 inserts new section 241A applying to certain agreements (pre-incorporation contracts) for the transfer of AFAD residential land. Section 241 ensures that where the company is a foreign corporation when the property is transferred to it, AFAD applies to agreement. The conditions in subsection (1) ensure that it operates in relation to the same pre-incorporation contracts to which section 116(4) of the Duties Act applies. The note in subsection (2) confirms that the transfer of the dutiable property to the company is not exempt from transfer duty under s.116(4) unless transfer duty, including AFAD, is paid.

Clause 10 inserts a new example in section 242. The example illustrates a foreign acquirer's interest for a relevant transaction that is a relevant acquisition on which landholder duty is imposed.

Clause 11 amends section 244. Subsection (2)(b) is amended to update the property condition cross-reference to renumbered section 241(2)(c). New subsection (3) provides for the imposition of AFAD on dutiable transactions under new section 240(2) relating to agency transactions.

Clause 12 amends subsection 246B(2)(a) to extend the application of the provision to acquirers under transactions imposed with AFAD under new section 240(2). Where AFAD is imposed on a transaction under new section 240(2) and the transfer duty imposed is not paid by the date the amount is payable, subsection 246B(2)(a)(i) imposes a charge on the interest of the acquirer under the transaction. The acquirer need not be a foreign person (for example, a non-foreign agent acting on behalf of a principal who is a foreign person). For other dutiable transactions under section 9(1)(a) to (f), subsection 246B(2)(a)(ii) continues to impose a charge on the interest of the foreign acquirer under the transaction for the outstanding liability.

Clause 13 amends section 246I to renumber the current section 246I(2) as section 246I(3). New subsection (2) specifies that section 246I does not apply if AFAD is imposed under section 240(2).

Clause 14 inserts new division 1 heading into chapter 4, part 5.

Clause 15 inserts new divisions 2 and 3 into chapter 4, part 5.

New division 2 sets out the reassessment provisions applying to particular agreements that relate to specified agency transactions.

New section 246AA applies to agency transactions as defined in the section involving foreign agents and non-foreign principals. The conditions of the provision ensure that it operates in relation to the same type of agency arrangements to which section 22(3) of the Duties Act applies. Currently, where a foreign person enters into

an agreement for the transfer of dutiable property as agent on behalf of a non-foreign principal, transfer duty (including AFAD) applies to the agreement. New section 246AA provides that, if the principal is not a foreign person when the dutiable property is transferred to the principal (by the original transferor or by the agent), the principal may, within 6 months after the transfer, apply for a reassessment by lodging an application in the approved form together with the agreement. Subsection (4) provides that the Commissioner must make a reassessment of transfer duty on the agreement as if, at the time the liability for transfer duty arose, the acquirer was not a foreign person.

New section 246AB provides for reassessment of duty to impose AFAD in certain circumstances relating to agency transactions as defined in the section where the agent or principal (being a corporation or trustee) becomes foreign. Subsections (1) and (5) provide for when the section applies and ensures that it operates in relation to the same type of agency arrangements to which section 22(3) of the Duties Act applies. Subsection (2) specifies the events requiring the Commissioner to make a reassessment. Where one of the events in subsection (2) occurs, subsection (3) requires the Commissioner to make a reassessment to impose AFAD on the agreement. Where the reassessment occurs because the principal has become foreign, the reassessment must be made on the basis that the agent was not a foreign person but the principal was a foreign person. AFAD will then be imposed on the agreement because of the operation of new s.240(2). Subsection (4) specifies the notice and lodgement requirements where one of the events in subsection (2) occurs.

Example for section 246AB –

A, a corporation, is appointed in writing as an agent for B. Under the appointment, A enters into an agreement to purchase AFAD residential land from C. When liability for duty on the agreement arises, A and B are not foreign persons. AFAD is not imposed on the agreement. C transfers the land to A. Three months after the transfer of the land from C, and before A transfers the land to B, A becomes a foreign corporation.

Within 28 days after becoming a foreign corporation, A must give notice to the Commissioner in the approved form and lodge the agreement for reassessment of duty. The Commissioner must reassess the agreement to impose AFAD as if A was a foreign person at the time liability arose on the agreement.

New section 246AC provides for reassessment of duty to impose AFAD in certain circumstances relating to agency transactions as defined in the section where the principal (being a corporation or trustee) becomes foreign. Subsections (1) and (5) provide for when the section applies and ensures that it operates in relation to the same type of agency arrangements to which section 22(3) of the Duties Act applies. Subsection (2) specifies when the Commissioner must make a reassessment. Where subsection (2) applies, subsection (3) requires the Commissioner to make a reassessment to impose AFAD on the agreement on the basis that the agent was not a foreign person but the principal was a foreign person. AFAD will then be imposed on the agreement because of the operation of new s.240(2). Subsection (4)

specifies the notice and lodgement requirements where one of the events in subsection (2) occurs.

Example for section 246AC –

A is appointed in writing as an agent for B, a trustee of a trust. Under the appointment, A enters into an agreement to purchase AFAD residential land from C. When liability for duty on the agreement arises, A and B are not foreign persons. AFAD is not imposed on the agreement. C transfers the land to B. Five months after the transfer of the land from C, B becomes the trustee of a foreign trust.

Within 28 days after becoming a trustee of a foreign trust, B must give notice to the Commissioner in the approved form and lodge the agreement for reassessment of duty. The Commissioner must reassess the agreement to impose AFAD as if B was a foreign person at the time liability arose on the agreement.

New division 3 sets out the reassessment provisions applying to pre-incorporation contracts.

New section 246AD requires the Commissioner to make a reassessment to impose AFAD on the dutiable transaction that is the agreement where new section 241A applies. That is, where the company under a pre-incorporation contract is a foreign corporation at the time the property is transferred to it. Subsection (2) requires the company to give notice to the Commissioner and lodge the instruments required for assessment within 28 days after the property is transferred to the company.

New section 246AE provides for a reassessment of duty to impose AFAD in certain circumstances relating to pre-incorporation contracts where the company becomes a foreign corporation. Section 246AE applies where a transfer of dutiable property to a company is exempt under s.116(4), the dutiable property is AFAD residential land, and the company was not a foreign corporation when the dutiable property was transferred to the company. If the company becomes a foreign corporation within 3 years after liability for duty arose on the agreement, subsection (3) requires the Commissioner to reassess the agreement to impose AFAD. Subsection (4) specifies that within 28 days after the company becomes a foreign corporation, the company must give notice to the Commissioner and lodge the instruments required for the assessment of duty.

Clause 16 inserts new part 23 into chapter 17 to provide transitional provisions.

New section 667 provides that new section 241A and new chapter 4, part 5, division 3 apply in relation to an agreement for the transfer of dutiable property if the liability for transfer duty arises on or after the commencement of the Bill.

New section 668 provides that section 240(2) and chapter 4, part 5 division 2 as inserted by the Bill, apply in relation to an agreement for the transfer of dutiable

property if the liability for transfer duty arises on or after the commencement of the Bill.

Part 3 Amendment of the First Home Owner Grant Act 2000

Clause 17 provides that part 3 amends the *First Home Owner Grant Act 2000*.

Clause 18 amends the heading of part 3, division 6. Part 3, division 6 currently provides for a temporary increase to the amount grant from \$15,000 to \$20,000 for particular eligible transactions entered into between 1 July 2016 and 30 June 2017. *Clause 18* amends the heading of part 3, division 6 to reflect the extension of the temporary increase for a further six months, expiring on 31 December 2017.

Clause 19 amends section 25D to extend the meaning of 'particular eligible transaction' which is relevant for determining eligibility for the temporary increase to the amount of the grant. To ensure the increased \$20,000 grant is available for eligible transactions entered into between 1 July 2017 and 31 December 2017, *Clause 19* amends section 25D(1) to provide that a 'particular eligible transaction' is a an eligible transaction mentioned in section 5(1), the commencement date for which is between 1 July 2016 and 31 December 2017.

Part 3 Amendment of the Land Tax Act 2010

Clause 20 provides that part 4 amends the *Land Tax Act 2010*.

Clause 21 inserts a new section 22A into division 3 to clarify that where land is owned by two or more trustees of the same trust, they are assessed for land tax as if the land were owned by one person. New section 22A(2) also clarifies that section 22 which relates to assessment of co-owned land does not apply in these circumstances.

Clause 22 amends section 32 to impose a 1.5% surcharge on absentees from the 2017-18 financial year onwards. Section 32 currently states that land tax is imposed on the total taxable value of land owned by a taxpayer at the rates provided for under schedule 1 and schedule 2. Currently, schedule 1 provides the rate for an individual other than an absentee or trustee and schedule 2 provides the rate for companies, trustees and absentees.

Subsection (1)(b) is amended to clarify that, for a company or trustee, the rate of land tax is the rate provided for under schedule 2. New subsection (1)(c) is inserted to provide that, for absentees, the rate of land tax is the general rate under new schedule 3, part 1 and the surcharge rate under new schedule 3, part 2.

Clause 23 inserts new section 83A. Subsection (1) specifies the leases to which the section applies. Under subsection (2) a provision in a lease mentioned in subsection (1) requiring a lessee to pay land tax, or reimburse the lessor for land tax, is unenforceable. Subsection (3) defines *pre-existing lease*.

Clause 24 inserts new division 7 into part 10 to provide a transitional provision.

New section 100 provides for retrospective operation of new section 83A. Under subsection (1), new section 83A is taken to have had effect on and from 30 June 2010. Subsection (2) provides that if a lessee of a lease to which section 83A applies has paid an amount of land tax, or paid an amount to the lessor for land tax, before commencement of the Bill, the lessee is not entitled, only because of section 83A, to recover the amount. Subsection (3) specifies that subsection (2) does not limit the grounds on which a lessee may otherwise recover an amount from a lessor for land tax paid. Where a court has made an order requiring a lessee of a lease to which section 83A applies to pay land tax in relation to the lease, subsection (4) provides that the lessor may enforce the order and section 83A does not affect the enforceability of the order. Subsection (5) provides that land tax includes land tax under the repealed *Land Tax Act 1915*.

Clause 25 omits the reference to 'absentees' in the heading of schedule 2 to ensure the rate of land tax provided for under schedule 2 applies to companies and trustees only.

Clause 26 inserts new schedule 3 which provides the rate of land tax for absentees. Under new section 32(1)(c), absentees are required to pay land tax at the general rate under new schedule 3, part 1 and at the surcharge rate under schedule 3, part 2. The general rate is identical to the rate in schedule 2 which applies to companies and trustees. The surcharge rate is 1.5% of the portion of the taxable value of an absentee's taxable land that is equal to or greater than \$350,000.

Clause XX amends section 78 to include a new requirement that a person must lodge an approved form within one month of a change of ownership of land.

Part 5 Amendment of the Taxation Administration Act 2001

Clause 27 provides that part 5 amends the *Taxation Administration Act 2001*.

Clause 28 amends the heading to part 8 – Confidentiality – to include a reference to the collection of information and inserts a heading for new division 1.

Clause 29 inserts new division 2 into part 8 which contains provisions for the collection and disclosure of information about transfers of freehold or leasehold interests in real property situated in Queensland that is reportable by the State to the Commonwealth.

New section 113A defines *commissioner of taxation* and *reportable information* for the purposes of division 2.

New section 113B specifies the relationship of division 2 with other laws. The provisions in division 2 will apply despite any other laws, and are not limited by any other laws, to the extent necessary to collect and disclose information about transfers of interests in real property to the commissioner of taxation. Information may be collected and disclosed even if the only purpose is for disclosure to the commissioner of taxation and where it is not collected in connection with the administration or execution of any other Queensland laws.

New section 113C provides that the Commissioner of State Revenue may collect and disclose reportable information to the commissioner of taxation.

New section 113D provides how reportable information may be collected. Reportable information may be collected as part of functions carried out under tax laws including, but not limited to, the lodgement of an application, instrument or an Electronic Lodgement Network transfer document.

Clause 30 inserts new definitions of *commissioner of taxation* and *reportable information* into the Dictionary in schedule 2.

RTI RELEASE

Katherine Iddles

From: Rosemary Holley Contrary to Public Interest
Sent: Tuesday, 13 June 2017 8:01 AM
To: Jason Humphreys
Cc: Adam Pennicott; George Hasanakos; Katherine Iddles; RI-CLLO & Ministerial Services
Subject: Final Intro Speeches - Appropriation (Parliament) Bill and Revenue Amendment Bill
Attachments: Intro speech - Appropriation Parliament Bill 2017.docx; Minister's Explanatory Speech (Bill introduction).docx

Importance: High

Good morning,

Please find attached final approved versions of the explanatory speeches for the following:

- Appropriation (Parliament) Bill 2017
- Revenue Legislation Amendment Bill 2017

I will forward copies of the speeches to Hansard to be held under embargo until Treasurer introduces the bills.

Should you need hard copies of the speeches delivered to the House, please let me know.

Regards
Rosemary

Rosemary Holley
Manager – Cabinet Legislation Liaison Office
CLLO and Ministerial Services
Queensland Treasury
Level 38, 1 William Street

Contrary to Public Interest

Web: www.treasury.qld.gov.au



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2017

THE PARLIAMENT OF QUEENSLAND

REVENUE LEGISLATION AMENDMENT BILL 2017

EXPLANATORY SPEECH

**(Circulated by Authority of the Treasurer, Minister for
Trade and Investment the Honourable Curtis Pitt, MP)**

EXPLANATORY SPEECH

REVENUE LEGISLATION AMENDMENT BILL 2017

The Bill introduces revenue measures that I announced in the 2017-18 State Budget, to extend a temporary increase to the First Home Owners' Grant from \$15,000 to \$20,000 for a further six months and to introduce a 1.5% surcharge on individuals not ordinarily residing in Australia (absentees) who are liable for land tax in Queensland, which will apply from 2017-18 onwards.

The Bill achieves these objectives by amending the *First Home Owner Grant Act 2000* and the *Land Tax Act 2010*.

The *First Home Owner Grant Act 2000* currently provides that the amount of the First Home Owners' Grant is temporarily increased from \$15,000 to \$20,000 for eligible transactions entered into between 1 July 2016 and 30 June 2017, both dates inclusive.

An eligible transaction is a contract to purchase or build a new home or the building of a new home by an owner-builder.

The Bill amends the *First Home Owner Grant Act 2000* to extend the temporary increase to the amount of the grant for a further six months, so that eligible transactions entered into between 1 July 2017 and 31 December 2017, both dates inclusive, qualify for a \$20,000 grant.

Under the *Land Tax Act 2010*, absentees are individuals not ordinarily residing in Australia.

They currently pay land tax at the same rates that apply to companies and trustees and are therefore subject to a lower tax-free threshold of \$350,000 and higher land tax rates compared to resident individuals.

The Bill amends the *Land Tax Act 2010* to impose a 1.5% surcharge on absentees who are liable for land tax.

The surcharge will apply to the portion of the taxable value of an absentee's taxable land that is equal to or greater than \$350,000.

It will be imposed from the 2017-18 year onwards and will therefore apply to absentees who are liable for land tax as at 30 June 2017.

Unlike resident owners, absentees are not necessarily subject to the range of taxes used to deliver and maintain the high quality services and infrastructure that ultimately contribute to growth in Queensland property values.

Therefore, it is important to ensure that absentees make a fair contribution.

The Bill also makes a number of amendments to the revenue legislation to ensure their continued effective operation and administration and to protect the revenue.

The Bill amends the additional foreign acquirer duty (AFAD) provisions in the *Duties Act 2001*.

The need for these amendments arises from revenue protection. The amendments will ensure:

- AFAD is properly payable where a foreign principal uses a non-foreign agent to acquire property under an agency arrangement;

- AFAD is payable where a person enters into a pre-incorporation contract on behalf of a foreign corporation where AFAD was not paid in full on the agreement; and
- the calculation of AFAD includes the value of certain chattels that are acquired with AFAD residential land under a dutiable transaction to prevent possible value-shifting.

The amendments will also clarify that AFAD applies to an acquisition of an existing right relating to AFAD residential land (for example, an existing option to acquire the land).

Finally, a minor wording amendment will be made to the provisions and an example inserted to clarify the intended operation.

The *Land Tax Act 2010* is also amended to retrospectively restore the prohibition on lessors directly passing on the cost of land tax to lessees under commercial leases entered into after 1 January 1992 and before 30 June 2009, following a Court of Appeal decision which held that this prohibition was repealed with the repeal of the former *Land Tax Act 1915*.

Retrospective amendment ensures that lessors under these pre-existing leases will be unable to recoup the cost of land tax twice, given that the lease rentals would have been negotiated on the basis the prohibition existed.

Protections are provided where lessors have already recovered the cost of land tax in reliance of the Court of Appeal decision.

The *Land Tax Act 2010* is also amended to clarify that joint trustees of a trust are to be assessed for land tax as if the land were owned by one person.

Historically, the *Land Tax Act 1915* operated to ensure that where there was more than one trustee of a trust, a single assessment of land tax issued, irrespective of the proportion of the value of the land held by each trustee.

The amendment confirms that this long-standing practice is intended to continue under the *Land Tax Act 2010*. It also clarifies that the provisions relating to assessment of co-owned land do not apply.

The *Taxation Administration Act 2001* will be amended to introduce new legislative powers to facilitate the collection and disclosure of information about real property transfers to the Commonwealth government.

The need for this amendment arises from Commonwealth government reforms to strengthen the integrity of the foreign investment framework.

These reforms include establishing a National Register of Foreign Ownership of Land Titles and introducing a legislative requirement for States and Territories to report real property transfer information to the Australian Taxation Office (ATO).

The information required by the ATO, which includes personal identity information, will be collected as part of transactions conducted under Queensland's existing revenue laws.

A complementary amendment to the *Land Tax Act 2010* to include a new requirement for a person to lodge an approved form within one month of a change of ownership of land is being made.

This additional information will improve land tax administration and compliance.

Katherine Iddles

From: Treasurer's Office
Sent: Wednesday, 14 June 2017 1:53 PM
To: @Treasurers Office
Subject: FW: Policy Alert: Budget highlights, breakdown and more....

Reading - FYI

Penny McGregor
Office of the Hon. Curtis Pitt MP
Treasurer



**Queensland
Government**

Minister for Trade and Investment

P 07 3719 7200 | Email: Contra to Public Interest
1 William Street, Brisbane
GPO Box 611 Brisbane QLD 4001

From: UDIA Qld [mailto:udia@udiaqld.com.au]

Sent: Tuesday, 13 June 2017 4:21 PM

To: Treasurer's Office <treasurer@ministerial.qld.gov.au>

Subject: Policy Alert: Budget highlights, breakdown and more....

The third and final budget has been released this afternoon.



Budget highlights, breakdown, and more....

Queensland Treasurer, the Honourable Curtis Pitt MP, handed down the third and final Palaszczuk Government budget of this term today.

In good news, the budget includes a six month extension to the First Home Owners Grant Boost, however the budget also includes the introduction of a 1.5% land tax surcharge for absentee land tax payers to accompany the Foreign Acquirers Transfer Duty Surcharge, introduced by the Government in the 2016-17 Budget.

The budget also included a \$2 billion commitment for Cross River Rail and significant infrastructure spending across regional areas, including Cairns and Townsville.

Look out for our region-specific budget breakdown in your inbox tomorrow.

Budget highlights

New budget highlights relevant to the development industry include:

- Increased funding of \$30 million in 2017-18 to **extend the temporary increase in the Queensland First Home Owners' Grant** from \$15,000 to \$20,000 to 31 December 2017 (inclusive). The arrangements of the boost remain the same, with the boost available for purchases of new houses, units or townhouses valued at less than \$750,000. UDIA Qld has advocated strongly for an extension of the boost
- Release of a **Queensland Housing Strategy**, a \$1.8 billion investment to deliver more than 5,000 new social and affordable new homes and support 450 full-time construction jobs a year for 10 years
- Introduction of a **1.5% land tax surcharge** on absentee land tax payers if the value of the taxable land is \$350,000 or higher. This surcharge for non-residents accompanies the Foreign Acquirers Transfer Duty Surcharge which was introduced in the 2016/17 budget
- \$1.95 billion to fund **Cross River Rail** in addition to \$850 million already allocated
- \$10 million over two years to support a **strategic environmental assessment** and provide for a **land monitoring program** across South East Queensland (SEQ)
- \$8 million per annum from 2019-20 to support the continued work of the **State Assessment Referral Agency**
- Additional funding of \$12.8 million over six year from 2016-17 for ongoing work of the **Cities Transformation Taskforce** in leading the State's negotiations with the Commonwealth and local governments on the Smart Cities Plan and City Deals
- \$130 million for a **Jobs and Regional Growth Fund** over three years from 2016-17. The fund will provide one-off financial assistance ranging from \$100,000 to \$10 million in the form of direct grants or relief of State charges for private sector projects
- \$15 million over three years to develop and assist in the implementation of strategies to reduce and **manage the risks of climate change** across Queensland.

Budget breakdown

How does the budget fair against our recommendations? Prior to the budget's release, we provided a **pre-budget submission** to the Treasurer that outlined critical areas and actions we believe had the potential to unlock significantly more economic activity and improve the quality of life of Queensland communities.

We welcome the following budget items that are **consistent with our recommendations**:

- Extension of the Great Start Grant Boost
- Funding to support a land monitoring system to support the SEQ Regional Plan
- Funding to improve public transport services, particularly within SEQ
- Retention of the concessions contained in section 45 to 51 of the *Land Valuation Act 2010*.

Significant infrastructure commitments outlined in the budget include:

- A total infrastructure investment of \$42.75 billion over four years
- \$70 million in 2017-18 for the construction of the **Mackay Ring Road** – in partnership with the Australian Government
- \$120 million for the **Cairns Shipping Development Project**
- \$176 million to expand the **Cairns Convention Centre**
- \$225 million over four years to address long-term **water security in the Townsville region**
- \$75 million for channel widening at the **Port of Townsville**
- \$3,885 million for transport and roads including 252.5 million for the **Toowoomba second range crossing** and \$236 million for the widening of the Gateway Motorway to 6 lanes south of Nudgee
- \$604.6 million for **school and education facilities** construction and improvements
- \$916.1 million for health infrastructure development including works to the **Caboolture, Logan and Ipswich hospitals**
- \$2.063 billion to **energy and water infrastructure** including Swanbank and hydroelectric initiatives.

Key economic highlights

- Gross state product: 2.75 per cent in 2016-17, forecast to remain 2.75 per cent in 2017-18 as a consequence of natural disasters
- Unemployment rate: 6.25 per cent in 2016-17, forecast to remain steady in 2017-18
- Inflation: 1.75 per cent in 2016-17, rising to 2 per cent in 2017-18

- Population growth: 1.5 per cent in 2016-17, forecast to remain steady at 1.5 per cent in 2017-18.

Want to know more?

If you have any questions relating to the content of the budget, please contact our Director of Policy, Research and Sustainability, Kirsty Chessher-Brown or Manager of Policy, Martin Zaltron on (07) 3229 1589.



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This email was sent by UDIA Qld, Urban Development Institute of Australia (Queensland), Level 12 120 Edward Street, Brisbane, QLD 4000, Australia to treasurer@ministerial.qld.gov.au



Katherine Iddles

From: Jonathan Scott Contrary to Public Interest
Sent: Wednesday, 14 June 2017 3:48 PM
To: Katherine Iddles
Subject: Fwd: Q&As - Revenue and Other Legislation Amendment Bill
Attachments: image003.jpg; ATT00001.htm; Q and As - RLAB 2017.docx; ATT00002.htm

Here are the Q and As!

Sent from my iPhone

Begin forwarded message:

From: Rosemary Holley Contrary to Public Interest
Date: 14 June 2017 at 2:02:55 pm AEST
To: "Jason.humphreys" Contrary to Public Interest
Cc: "adam.pennicott" Contrary to Public Interest Contrary to Public Interest RI-CLLO
"George.Hasanakos" Contrary to Public Interest
& Ministerial Services <RI-CLLO@treasury.qld.gov.au>
Subject: Q&As - Revenue and Other Legislation Amendment Bill

Hi Jason,

Please find an electronic copy of the Questions and Answers document prepared by OSR for the Revenue Legislation Amendment Bill 2017. I will arrange for the hard copy to be delivered down to the House soon.

If you are OK with this version, will include in the bill books currently being pulled together.

Regards
Rosemary

Rosemary Holley
Manager – Cabinet Legislation Liaison Office
CLLO and Ministerial Services
Queensland Treasury
Level 38, 1 William Street

Contrary to Public Interest

Web: www.treasury.qld.gov.au

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REVENUE LEGISLATION AMENDMENT BILL 2017

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RTI RELEASED

QUESTIONS & ANSWERS

REVENUE LEGISLATION AMENDMENT BILL 2017

Duties Act 2001 – Additional foreign acquirer duty

Why are we doing this?

- 'Additional foreign acquirer duty' or 'AFAD' was announced in the 2016-17 Budget to ensure that foreign purchasers acquiring residential land in Queensland, who benefit from Government services and infrastructure, make a contribution to their delivery.
- The amendments are for revenue protection and to clarify the operation of the AFAD provisions.
- The revenue protection measures include ensuring that foreign persons cannot structure their transactions to avoid AFAD. The clarifying amendments ensure AFAD applies to existing rights relating to AFAD residential land (for example, an existing option to acquire AFAD residential land), make a minor wording amendment and provide an example of a foreign acquirer's interest to clarify the intended operation of the provisions.

What are the revenue protection amendments?

- Under an agency transaction, the transaction that is imposed with transfer duty is the agreement for the transfer of dutiable property entered into by the agent. Where the applicable duty is paid on the agreement, the transfer of the property to the principal is exempt from duty. Therefore, AFAD will not apply to duty assessed on the agreement unless the agent is a foreign person. The current operation of the agency provisions therefore allow a foreign principal to avoid AFAD by using a non-foreign agent to enter into the agreement for transfer.
- The amendments will ensure that, for agency transactions, where the principal is a foreign person when the relevant transfer to the principal occurs, and the dutiable property is AFAD residential land, the agreement is to be assessed with AFAD. AFAD will continue to apply to agreements for transfer where the agent is a foreign person. However, if the principal is not a foreign person when the relevant transfer to the principal occurs, the agreement will be reassessed as if AFAD did not apply.
- The amendments will also address potential structuring to avoid AFAD where a non-foreign person acquires residential land for, or on behalf of, a company to be registered, where the company is a foreign corporation.
- Where certain chattels are acquired in conjunction with an acquisition of AFAD residential land, the amendments will ensure that the value of the chattels is included in the dutiable value of the transaction. The amendment addresses potential value-shifting between the value of the residential land and chattels that form part of the acquisition. The amendment will apply only to those chattels the use of which can be directly linked to, or are incidental to, the use and occupation of the AFAD residential land. For example, chattels such as household furniture, fittings, appliances, recreational equipment, barbecue settings, swimming pool

cleaning equipment and mobile air conditioners would be included. However, it would not include cars, boats, caravans, trucks, farming equipment and chattels used for commercial purposes.

Who is affected?

- Only foreign acquirers of residential land in Queensland are affected by the amendments. The revenue protection amendments will ensure that the AFAD provisions operate as intended and that foreign acquirers of residential land in Queensland will not be able to structure their transactions to avoid AFAD, for example, by using non-foreign persons to acquire land as their agent.

Are foreign acquirers currently exploiting these provisions?

- Transactions involving agency transfers and pre-incorporation contracts are required to be assessed by the Office of State Revenue (OSR) and are not self-assessed. OSR has been monitoring agency transactions and has not identified any transfers of residential land to foreign persons where a non-foreign agent has been used. Pre-incorporation contracts are rare and no contracts of this nature have been lodged for assessment of duty since the commencement of AFAD.
- OSR has no evidence of value-shifting currently occurring with domestic chattels included as part of the transaction.

How much revenue will this raise?

- The revenue protection and clarifying amendments ensure the AFAD provisions operate as intended and are not expected to raise additional revenue.
- AFAD is forecast to raise approximately \$25 million additional revenue in 2017-18.

What happens in other jurisdictions?

- Victoria introduced Foreign Purchaser Additional Duty (FPAD) on 1 July 2015 at a rate of 3%. On 1 July 2016, the rate of FPAD was increased to 7% (current rate). Similar to Queensland, FPAD applies to acquisitions of residential property by foreign purchasers.
- In New South Wales, a 4% Surcharge Purchaser Duty applies to acquisitions of residential land by foreign persons. Surcharge Purchaser Duty was introduced on 21 June 2016. However, the New South Wales Government has announced that the rate of Surcharge Purchaser Duty will double to 8% on 1 July 2017, with foreign developers to also be exempt from 1 July 2017.
- Western Australia does not currently have foreign purchaser surcharge duty. However, the Western Australian Government announced an election commitment to introduce a 4% foreign purchaser surcharge duty in 2019.
- Of the States that have foreign purchaser surcharge duty, Queensland has the lowest rate at 3% and remains the most competitive.

First Home Owner Grant Act 2000 – Extension of temporary increase to the grant

Why are we doing this?

- The First Home Owners' Grant was temporarily increased from \$15,000 to \$20,000 as part of the 2016-17 State Budget because it was the Government's priority to make sure young Queenslanders have the boost they need to buy their first home. The extension will continue to assist Queenslanders entering the property market by ensuring they have additional time to take advantage of the increased \$20,000 grant.

Who is eligible?

- Currently, eligible transactions entered into between 1 July 2016 and 30 June 2017 qualify for the increased \$20,000 grant. Availability of the increased \$20,000 grant will be extended to eligible transactions entered into between 1 July 2017 and 31 December 2017 (both dates inclusive).
- There are no changes to the eligibility requirements. An eligible transaction is a contract to purchase or build a new home, or the building of a new home by an owner builder. Applicants will still need to satisfy the current eligibility criteria set out in the *First Home Owner Grant Act 2000*.

What will it cost?

- The initiative is expected to cost \$30 million in 2017-18.

Interstate comparison

First Home Owner Grant - current and post-1 July 2017									
		QLD ¹	NSW ²	Vic ³	WA	SA	Tas	ACT	NT
Current	Grant	\$20,000	\$10,000	\$10,000	\$15,000	\$15,000	\$20,000	\$7,000	\$26,000
	Cap	<\$750,000	\$750,000	\$750,000	\$750,000 (south of the 26 th parallel) \$1 million (north of the 26 th parallel)	\$575,000	Nil	\$750,000	Nil
1 July 2017	Grant	\$20,000	\$10,000	\$20,000 (regional) \$10,000 (other)	\$10,000	15,000	\$20,000	\$7,000	\$26,000
	Cap	<\$750,000	\$600,000 (purchase) \$750,000 (build)	\$750,000	\$750,000 (south of the 26 th parallel) \$1 million (north of the 26 th parallel)	\$575,000	Nil	\$750,000	Nil

¹ Post- 1 July 2017 position based on 2017-18 Budget measure to continue temporary increase to the amount of the FHOG. Subject to legislation being passed.

² Post-1 July 2017 position based on NSW Government's housing affordability package announced 1 June 2017.

³ Post-1 July 2017 position based on 2017-18 Budget announcement. Subject to legislation being passed.

Land Tax Act 2010 – Absentee surcharge

Why are we doing this?

- The 2017-18 Budget introduces 1.5% surcharge on absentees who are liable for land tax. Currently, absentees are subject to the same tax-free threshold and land tax rates that apply to companies and trustees. Therefore, they are required to pay land tax once the total taxable value of land they own is \$350,000 or more.
- The absentee surcharge will be imposed from the 2017-18 financial year onwards. It will apply to the portion of the taxable value of an absentee's taxable land that is equal to or greater than \$350,000.
- The surcharge ensures absentee owners of land are making a fair contribution towards taxes that are used to deliver and maintain a high standard of services and infrastructure in Queensland. Absentee owners benefit, such as through the capital appreciation of their land holdings, from the high standard of services and infrastructure delivered and maintained by a broad range of taxes in Queensland generally borne by resident taxpayers.

Who are absentees?

- An absentee is an individual who does not ordinarily reside in Australia, including a person who is absent from Australia at 30 June or has been absent from Australia for more than 6 months ending on 30 June (see example 1 – page 11).

Will this directly affect some Queenslanders and Australian citizens?

- Resident Queensland persons who are liable for land tax are not affected by the surcharge and continue to benefit from the higher tax-free threshold (\$600,000) and lower land tax rates applying to individuals (see example 2 – page 11).
- Non-resident Queenslanders who are liable for land tax and who are already subject to a lower tax-free threshold and higher land tax rates compared to resident Queenslanders will be subject to the surcharge.
- As absentee status depends on where a person ordinarily resides, Australian citizens may be liable for the surcharge. Similarly foreigners may not necessarily be subject to the surcharge (see example 3 – page 11).

Will Queenslanders working overseas be subject to the surcharge?

- Certain persons who are working overseas are not considered to be absentees and therefore, they continue to be subject to the higher tax-free threshold and lower land tax rates that apply to resident individuals while they are overseas.
- For example, a public officer of the Commonwealth or State who is absent in the performance of the officer's duty is not an absentee. Also, a person is not an absentee if they are employed by an employer in Australia for a continuous period of 1 year immediately before the employee's absence and the Commissioner of State Revenue is satisfied that the employee's absence will not be longer than 5 years (see example 4 – page 11).

- However, if the overseas residence is longer than 5 years, the person will be taken to be an absentee for the whole period they are overseas.

When will people start paying the surcharge?

- If a person is liable for the surcharge, it will be clearly stated in the land tax assessment notice issued to them by the Commissioner of State Revenue. Land tax assessment notices generally begin issuing from August in the relevant financial year to which they relate.

How much revenue will this raise?

- It is estimated that the absentee surcharge will result in approximately \$20 million additional revenue in 2017-18.

RTI RELEASE

What rate of land tax are absentees currently subject to?

- Absentees pay land tax at the same rates that apply to companies and trustees.

Total taxable value	Tax payable
\$0–\$349,999	\$0
\$350,000–\$2,249,999	\$1,450 plus 1.7 cents for each \$1 more than \$350,000
\$2,250,000–\$4,999,999	\$33,750 plus 1.5 cents for each \$1 more than \$2,250,000
\$5,000,000 and over	\$75,000 plus 2.0 cents for each \$1 more than \$5,000,000

Indicative summary of absentee land tax liability following the introduction of the surcharge

Taxable Value (\$)	Annual land tax (\$)	Annual 1.5% Surcharge (\$)	Total payable (\$)
375,000	1,875	375	2,250
400,000	2,300	750	3,050
1,000,000	12,500	9,750	22,250
2,000,000	29,500	24,750	54,520
2,250,000	33,750	28,500	62,250
3,500,000	52,500	47,250	99,750
5,000,000	75,000	69,750	144,750
6,000,000	95,000	84,750	179,750

Who are absentees? Examples

Example 1

As at 30 June, person A owns land in Queensland which for land tax purposes has a total taxable value of \$500,000. 'A' is an Australian citizen but has been living in France for the past 10 months. During this time, A's Queensland home has been leased to tenants. Given A does not ordinarily reside in Australia as at 30 June, A is an absentee for land tax purposes. A will be required to pay the 1.5% surcharge in addition to land tax at the current rates for companies, absentees and trustees.

Example 2

As at 30 June, person B owns a home in Queensland which, for land tax purposes has a total taxable value of \$375,000. Since April, B has been travelling through Europe on a 3 month holiday. At the end of the holiday, B intends to return to the Queensland home. Although B is overseas as at 30 June, B still ordinarily resides in Australia and is therefore not an absentee for land tax purposes. The usual land tax thresholds and rates will apply.

Example 3

As at 30 June, person C owns a home in Queensland which for land tax purposes has a total taxable value of \$450,000. Person C is a citizen of Sweden who has been living and working in Queensland for the past 2 years. Given C ordinarily resides in Australia, C is not an absentee for land tax purposes. Therefore, the usual land tax thresholds and rates will apply.

Example 4

As at 30 June, person D owns land in Queensland which for land tax purposes has a total taxable value of \$550,000. D has been working in London for 18 months for an Australian-based employer who has employed D for the past 4 years. D

relocated to London after D accepted a posting to the employer's London office for 2 years. Although D does not reside in Australia as at 30 June, due to the specific employment situation, D would not be considered an absentee for land tax purposes. Therefore, the usual land tax thresholds and rates will apply.

Could an absentee restructure ownership of their land to avoid paying the surcharge?

- To avoid paying the absentee surcharge, an absentee could transfer ownership of their land to an existing entity which they control such as a company or trust. Alternatively, an absentee could create a trust to hold the land. In both cases, the absentee would generally incur transfer duty as the *Duties Act 2001* imposes transfer duty on the transfer of land in Queensland and also on the creation of a trust of dutiable property. Generally, no exemptions or concessions would be available to an absentee in these circumstances.
- A person is free to structure their land ownership in the manner best suiting the purpose for which the land is owned. Absentees would need to consider their own individual circumstances and weigh the benefits of minimising their exposure to the absentee surcharge against the associated costs, including transfer duty.
- In particular, absentees would need to take into account that, while land tax is assessed on the unimproved value of the land, transfer duty is assessed on the greater of the consideration or unencumbered value which takes into account improvements on the land. Therefore, for the same property, the value on which duty is assessed may be higher than the value on which land tax is assessed and this would ultimately increase the amount of duty payable.

Interstate comparison

- In Victoria a 1.5% absentee owner surcharge applies to Victorian land owned by foreign individuals, corporations and trusts.
- In New South Wales a 0.75% surcharge currently applies to foreign entities, including individuals, corporations and trusts that own residential land in New South Wales. However, the New South Wales Government has announced that the rate of the surcharge will increase to 2% from 1 July 2017.

RTI RELEASE

Land Tax Act 2010 – Joint trustees

Why are we doing this?

- This amendment clarifies how joint trustees of a trust are assessed for land tax. The amendment reinstates the longstanding practice which was in place under the former *Land Tax Act 1915* and which may have inadvertently been changed by the drafting of the *Land Tax Act 2010*.
- The Office of State Revenue has continued to assess joint trustees on the basis of this practice and this amendment will bring clarity and consistency for trustees about how land tax will be assessed.

Who does this amendment apply to?

- This amendment only seeks to clarify the assessment of joint trustees of a single trust. Guidance on the assessment of other circumstances involving trustees or trust land can be found in the *Land Tax Act 2010* and in public rulings issued by the Commissioner of State Revenue.

What is the practical effect of this amendment?

- Trustees of trust land will be issued with one land tax assessment irrespective of how many trustees are appointed. This will ensure that trustees are not burdened by government red tape and that the land tax liability for trust land is clear and consistently applied.

What will this cost?

- There is no cost associated with this amendment; however, it will protect Queensland's revenue base by ensuring the correct assessment of trust land in circumstances where there are two or more trustees of the same trust.

Land Tax Act 2010 – New ‘revenue form’

Why are we doing this?

- The Office of State Revenue (OSR) has identified a need for better identity information for improving the administration and compliance of land tax.
- This amendment will provide OSR with the ability to obtain accurate and up-to-date identity information from existing business processes and use this information for land tax purposes.

Will this increase government red tape for landowners?

- This amendment will not increase red tape for land owners. The new required form is already completed by purchasers and vendors of land as part of a property transaction for transfer duty assessing purposes.

What type of information will be collected on the form?

- The revenue form is already lodged by the parties to a property transaction under the *Duties Act 2001*. The type of information which will be collected includes personal identity information, such as name, address, date of birth and other contact details.
- All personal identity information collected on the revenue form will be subject to the same strict confidentiality and privacy requirements for its collection, storage, use and disclosure as other personal information collected by OSR.

Land Tax Act 2010 – Recovery of land tax by lessors

Why are we doing this?

- The previous *Land Tax Act 1915* contained a prohibition on lessors directly passing on the cost of land tax to lessees under commercial leases entered into after 1 January 1992 and before 30 June 2009.
- When the *Land Tax Act 2010* replaced the *Land Tax Act 1915* on 30 June 2010, it was intended that the prohibition continue. It was assumed that a transitional provision in the *Land Tax Act 2010* and savings provisions in the *Acts Interpretation Act 1954* achieved this.
- However, on 6 September 2016, the Court of Appeal handed down a decision which held that the prohibition was repealed upon enactment of the *Land Tax Act 2010*.
- As a result of this decision, lessors under pre-existing leases entered into while the prohibition was in force can retrospectively recover from lessees the cost of land tax imposed from 30 June 2010. This is unfair to those lessees as the cost of land tax would have likely been factored into the rental and any rental increase, on the basis the prohibition existed.
- The amendments therefore restore the intended position and restore fairness by reinstating the prohibition retrospectively from 30 June 2010, the date the *Land Tax Act 2010* commenced.

How many leases are affected and what is the potential financial impact?

- The number of commercial leases in Queensland that would be affected by the Court of Appeal decision, and the value of land tax in regards to those agreements cannot be ascertained. It is assumed that the number of pre-existing leases has been decreasing as time passes.
- However, to give some indication of the financial impact to lessees, in the Court of Appeal case, the amount of land tax the lessor claimed from the lessee was \$18,310.93.

Are other leases affected?

- The Court of Appeal decision and the amendments only relate to commercial leases entered into after 1 January 1992 and before 30 June 2009.
- For other commercial leases, the payment of the cost of land tax by the lessee is a matter for negotiation between the parties.
- Lessors continue to be prohibited from directly passing on the cost of land tax to lessees for residential leases under the *Residential Tenancies and Rooming Accommodation Act 2008* and retail shop leases under the *Retail Shop Leases Act 1994*.

What will happen if a lessor has already recovered the cost of land tax in reliance of the Court of Appeal decision?

- Despite retrospective restoration of the prohibition, it is not proposed to undo any instance where a lessor has successfully recovered the cost of land tax in reliance of the Court of Appeal decision, regardless of the method recovery. For instance, whether under the provisions of the lease or through court proceedings, including existing court orders. Therefore, the interests of these lessors will not be adversely affected.
- In these circumstances, the amendments restrict the lessee's right of action to recover the amount paid solely on the grounds the prohibition has been retrospectively restored by the amendments.
- While this raises a fundamental legislative principle issue of limiting a right of action, it is the retrospective restoration of the prohibition itself that creates the right of action, so any lessee's right of action in this regard currently does not exist. However, a lessee's right to challenge recovery of the cost of land tax on other grounds, such as the actual amount recovered, will be maintained.
- The amendments will however, apply to existing court proceedings which have not been finalised. This is due to the retrospective restoration of the prohibition.

Taxation Administration Act 2001 – Collection and disclosure of information to the Commonwealth

Why are we doing this?

- As part of its reforms to strengthen the integrity of Australia's foreign investment framework, the Commonwealth government introduced legislative requirements for the States and Territories to report information about transfers of real property to the Australian Taxation Office (ATO).
- The majority of the information required by the ATO is already collected by the Office of State Revenue (OSR). However, there is a small proportion of personal identity information which is not collected by OSR under existing revenue laws.
- Therefore, this amendment provides new legislative powers for the Commissioner of State Revenue to collect the remaining information which must be reported to the ATO. This amendment will ensure that Queensland meets its obligations under the Commonwealth taxation laws.

How much will this cost?

- Queensland will receive \$3 million of Commonwealth funding to assist with developing the systems necessary to report information to the ATO.

What information must be reported to the Commonwealth?

- The Commonwealth requires all States and Territories to report information about transfers of real property. The information being reported includes personal identity information about purchasers and vendors of property.
- The majority of personal information required by the Commonwealth is already provided to OSR by the parties to property transactions. Additional identity information, which is primarily information about the nationality of purchasers and vendors, will also now be captured by this amendment.

How will information be collected? Will this increase government red tape for property transactions?

- OSR already collects the majority of property transfer information which must be reported to the Commonwealth.
- Any further information which must be reported will be collected through OSR's existing processes wherever possible to try to minimise the impact on taxpayers; for example, on forms which are already lodged by the parties as part of the conveyancing and duty assessment process.

Will the privacy of taxpayers be affected?

- The Queensland Government understands concerns about protecting information privacy. All existing protections for privacy and confidentiality will extend to any information which is collected on behalf of the Commonwealth.
- Offences and penalties also apply for the unauthorised use or disclosure of personal information.

Will there be consultation with key stakeholders?

- OSR will consult with key stakeholders, including the legal profession and peak industry bodies, on implementation of the Bill.

How will Queensland benefit under this initiative?

- This initiative increases and enriches data sharing capabilities between the State and the Commonwealth. Access to better data will improve the administration of Queensland's revenue laws and help to protect Queensland's revenue base.
- Queensland will receive \$3 million of Commonwealth funding to assist with developing the necessary systems to report the additional information to the ATO.

RTI RELEASED

Pages 55 through 154 redacted for the following reasons:

Cabinet Matter - Sch.3(2)(1)(b)
Parliamentary Privilege - Sch.3(6)(c)(i)

RTI RELEASE

Information for the Premier – Land tax absentee surcharge

Why the surcharge was introduced

- The Queensland Budget 2017–18 included a measure to require absentees who are liable for land tax to pay a 1.5% surcharge in addition to paying land tax at the current rates under the *Land Tax Act 2010* (the Land Tax Act).
- Following is the reason for this measure and revenue impacts, as stated in Budget Paper No. 4, p126

Absentee owners benefit from a high standard of services and infrastructure delivered and maintained by a broad range of taxes. The surcharge will ensure absentee owners of land make a further contribution.

	2016-17	2017-18	2018-19	2019-20	2020-21
	\$'000	\$'000	\$'000	\$'000	\$'000
Absentee Land Tax	..	20,000	21,400	22,800	24,200

How the surcharge operates

- The Land Tax Act imposes land tax on the taxable value of all taxable land owned by a person at midnight on 30 June of the preceding financial year. Taxable land is freehold land in Queensland which is not exempt land. The taxable value of taxable land is based on the statutory valuation of the land determined by the State Valuer-General under the *Land Valuation Act 2010*.
- Two separate rate scales apply under the Land Tax Act—one for resident individuals and one for companies, absentees and trustees. The owner of land is only liable for land tax once the total value of their taxable land exceeds the tax-free threshold, which is \$600,000 for resident individuals and \$350,000 for companies, absentees and trustees.
- An absentee is an individual who does not ordinarily reside in Australia, including a person who is absent from Australia at 30 June or has been absent from Australia for more than 6 months ending on 30 June.
- The land tax absentee surcharge is imposed from the 2017–18 financial year and therefore will apply to absentees who are liable for land tax as at midnight 30 June 2017.
- The land tax absentee surcharge will apply to the portion of the taxable value of an absentee's taxable land that is equal to or greater than the tax-free threshold of \$350,000.

Katherine Iddles

From: Jason Humphreys
Sent: Friday, 18 August 2017 12:56 PM
To: Jonathan Scott
Cc: George Hasanakos; Katherine Iddles
Subject: Re: Information for the Premier - land tax absentee surcharge.docx

Ok to proceed

On 18 Aug 2017, at 12:50 pm, Jonathan Scott Contrary to Public Interest wrote:

Hi Jason

Apparently the Premier is meeting with McCullough Robertson to discuss several issues one of which is the AFAD surcharge.

DPC have sought urgent dot points and the attached is prepared for DPC.

There is nothing new in there and the figures are all publicly available.

Let me know if you have any concerns with DPC having access to this.

Cheers

Jon

Jonathan Scott
Departmental Liaison Officer
Queensland Treasury
Contrary to Public Interest

From: Simon McKee
Sent: Friday, 18 August 2017 12:08 PM
To: Jonathan Scott
Cc: Geoff Waite; Rebecca Lieschke; Narelle A Houston; Anthony Lim
Subject: POL6120 Information for the Premier - land tax absentee surcharge.docx

Hi Jon,

I refer to your discussion with Geoff a short time ago and attached the suggested response, noting the information is factual and publicly available.

As we understand it, the information was requested by Tim Prado, A/Policy Officer, Economic Policy, Premiers, for a meeting on Monday 21 August, between the Premier and representatives from McCullough Robertson. Tim is aware that the information is to be provided through the Treasurer's office.

Regards,

Simon McKee
A/Deputy Commissioner
Office of State Revenue
Queensland Treasury
1 William Street Brisbane

<image003.jpg>

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<POL6120 Information for the Premier - land tax absentee surcharge.docx>

RTI RELEASE

Katherine Iddles

From: Geraldine Cavallo
Sent: Wednesday, 23 August 2017 4:31 PM
To: Katherine Iddles
Subject: For election - Treasurer Programs.docx 230817.docx
Attachments: For election - Treasurer Programs.docx 230817.docx

Hi – I have saved this document in Achievements folder (In general). I will let George & Jason know it is at this stage but am handing the baton over to you. Shane is working on TIQ component. Happy to contribute on Monday again. GOOD LUCK!!!

g

RTI RELEASE

**Treasurer
Programs & Policies
Current
As at 23 August 2017**

This Part Out of Scope of Application

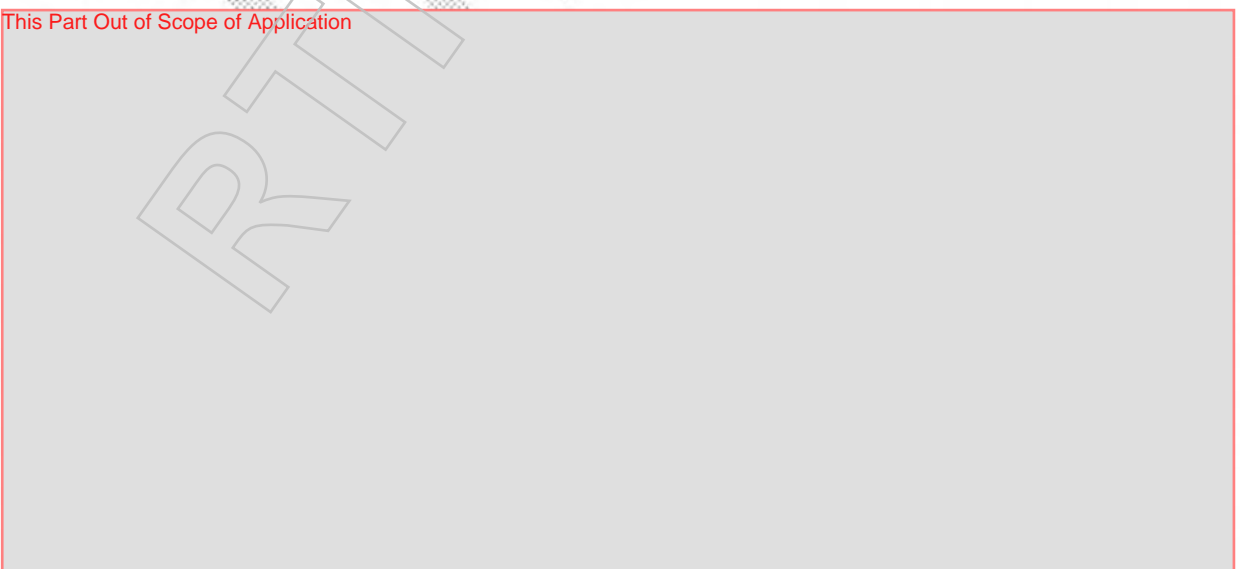
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PROGRAMS & INITIATIVES:

This Part Out of Scope of Application



This Part Out of Scope of Application

Land Tax absentee surcharge

The Government's 1.5% land tax surcharge applies to absentees who are liable for land tax (i.e. if the value of their taxable land holdings is \$350,000 or higher).

This Part Out of Scope of Application

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RTI RELEASE

Katherine Iddles

From: Geraldine Cavallo
Sent: Wednesday, 23 August 2017 4:36 PM
To: Jason Humphreys
Cc: George Hasanakos; Katherine Iddles
Subject: Treasurer Programs.docx 230817.docx
Attachments: Treasurer Programs.docx 230817.docx

Hi Jason, as per your request earlier today. I have started putting together document of programs & policies. So this is very much a first cut. It is saved in the Achievements folder.

I will hand over to Katherine in my absence to fine tune etc. Shane is working on TIQ component. Your feedback about direction and content would be much appreciated – to make sure we are on the right track. I am more than happy to contribute again on Monday on my return.

Ta,
g

RTI RELEASE

**Treasurer
Programs & Policies
Current
As at 23 August 2017**

This Part Out of Scope of Application

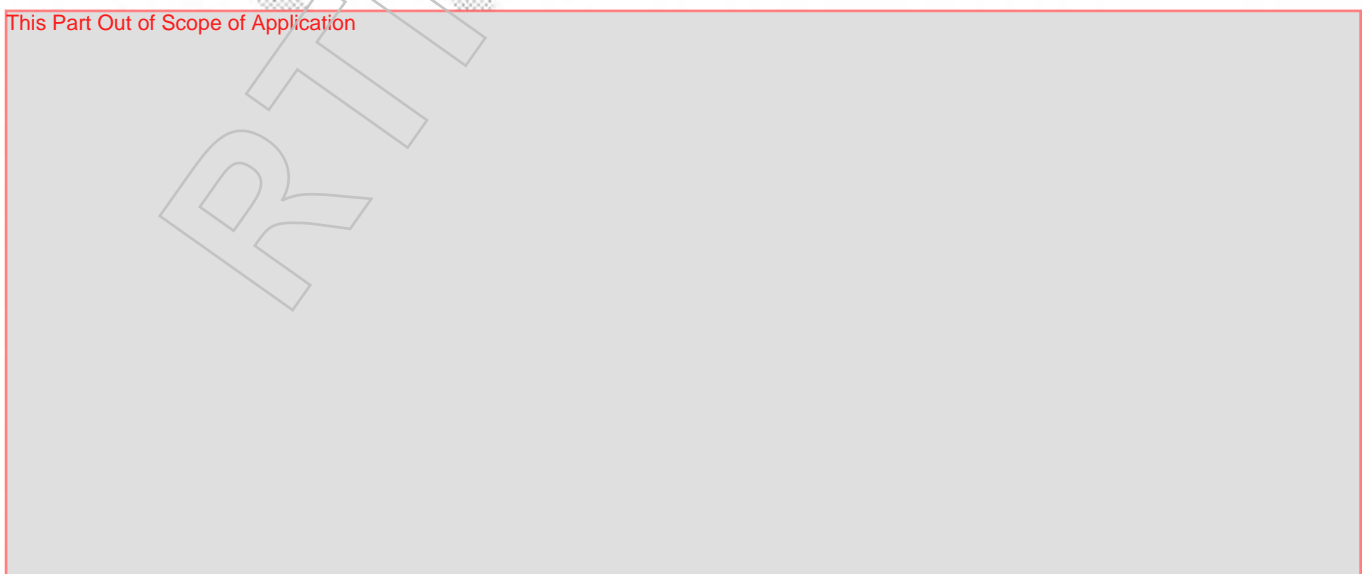
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PROGRAMS & INITIATIVES:

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Land Tax absentee surcharge

The Government's 1.5% land tax surcharge applies to absentees who are liable for land tax (i.e. if the value of their taxable land holdings is \$350,000 or higher).

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RTI RELEASE

Katherine Iddles

From: Lynda Koci Contrary to Public Interest
Sent: Thursday, 14 September 2017 4:57 PM
To: Jason Humphreys
Cc: George Hasanakos; Katherine Iddles; RI-CLLO & Ministerial Services
Subject: Response to QON 1355 (Walker) - due for tabling Thursday 5 October
Attachments: QON 1355 - Walker.docx

Importance: High

Jason

Please find attached an electronic copy of draft response to **QON 1355 (Walker)** for the Treasurer's approval. The hard copy of this response will be provided to George shortly.

The final response is due for tabling by close of business on Thursday, 5 October 2017.

Lynda Koci
Assistant Policy Officer
CLLO and Ministerial Services
Queensland Treasury
Level 38, 1 William Street, Brisbane

Contrary to Public Interest

Web: www.treasury.qld.gov.au



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Question on Notice

No. 1355

Asked on 5 September 2017

MR I WALKER ASKED THE TREASURER AND MINISTER FOR TRADE AND INVESTMENT (HON C PITT)—

QUESTION:

With reference to land tax—

Will the Treasurer advise whether the government is considering any changes to the threshold or the rates of tax for both individuals and companies, trustees and absentees in the future?

ANSWER:

The Queensland Government's land tax policies are set out in the 2017-18 Budget, the Office of State Revenue website and the relevant legislation.

In the 2017-18 Budget, a 1.5% surcharge was introduced for absentee payers of land tax, as defined under the *Land Tax Act 2010*. The surcharge has no direct impact on Queensland residents, consistent with the Government's commitment to not introduce new or increased taxes, fees or charges on Queenslanders.

Pages 174 through 192 redacted for the following reasons:

Contrary to public interest

RTI RELEASE