

Pages 1 through 38 redacted for the following reasons:

Cabinet Matter - Sch.3(2)(1)(a)&(b)
Parliamentary Privilege - Sch.3(6)(c)(i)
State Budgetary Processes - Sch.3(2)(1)(c)

RTI RELEASE

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.

REVENUE LEGISLATION AMENDMENT BILL 2017

INDEX - QUESTIONS AND ANSWERS

Duties Act 2001 – Additional foreign acquirer duty

Why are we doing this?	1
What are the revenue protection amendments?	2
Who is affected?	3
Are foreign acquirers currently exploiting these provisions?	3
How much revenue will this raise?	4
What happens in other jurisdictions?	4

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

Why are we doing this?	5
Who is eligible?	5
What will it cost?	5
Interstate comparison	6

Land Tax Act 2010 – Absentee surcharge

Why are we doing this?	7
Who are absentees?	7
Will this directly affect some Queenslanders and Australian citizens?	8
Will Queenslanders working overseas be subject to the surcharge?	8
When will people start paying the surcharge?	9
How much revenue will this raise?	9
What rate of land tax are absentees currently subject to?	10
Indicative summary of absentee land tax liability following the introduction of the surcharge	10
Who are absentees? Examples	11
Could an absentee restructure ownership of their land to avoid paying the surcharge? ..	12
Interstate comparison	13

Land Tax Act 2010 – Joint trustees

Why are we doing this?	14
What does this amendment apply to?	14
What is the practical effect of this amendment?	14
What will it cost?	14

Land Tax Act 2010 – New ‘revenue form’

Why are we doing this?	15
Will this increase government red tape for landowners?	15
What type of information will be collected on the form?	15

Land Tax Act 2010 – Recovery of land tax by lessors

Why are we doing this? 16

How many leases are affected and what is the potential financial impact? 17

Are other leases affected? 17

What will happen if a lessor has already recovered the cost of land tax in reliance of the Court of Appeal decision? 18

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

Why are we doing this? 19

How much will this cost? 19

What information must be reported to the Commonwealth? 20

How will information be collected? Will this increase government red tape for property transactions? 20

Will the privacy of taxpayers be affected? 20

Will there be consultation with key stakeholders? 21

How will Queensland benefit under this initiative? 21

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) \$1million (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) \$1million (north of the 26 th parallel)	\$575,000	Nil	\$750,000	Nil
<p>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.</p> <p>² Post-1 July 2017 position based on NSW Government's housing affordability package announced 1 June 2017.</p> <p>³ Post-1 July 2017 position based on 2017-18 Budget announcement. Subject to legislation being passed.</p>									

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).

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).
- 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).

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).

- 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 \$20million additional revenue in 2017-18.

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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 \$3M 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 \$3M of Commonwealth funding to assist with developing the necessary systems to report the additional information to the ATO.

RTI REQUEST

The Hon Curtis Pitt MP, Treasurer, Minister for Trade and Investment

Clause 1

Clause 1 sets out the short title of the Bill, when enacted.

Speaking Points

This clause provides the Bill, when enacted, may be cited as the *Revenue Legislation Amendment Act 2017*.

The Hon Curtis Pitt MP, Treasurer, Minister for Trade and Investment

Clause 2

Clause 2 states that sections 24, 28 and 29 commence on 30 June 2017.

Speaking Points

This clause 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.

The remaining provisions will commence on assent.

The Hon Curtis Pitt MP, Treasurer, Minister for Trade and Investment

Clause 3

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

Speaking Points

This clause provides that part 2 amends the *Duties Act 2001*.

RTI RELEASES

The Hon Curtis Pitt MP, Treasurer, Minister for Trade and Investment

Clause 4

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

Speaking Points

Section 116 of the *Duties Act 2001* provides a transfer duty exemption for certain dutiable transactions where agreements are entered into on behalf of a company yet to be registered.

Subsection (4) applies where a transferee enters into an agreement for, or for the benefit of, a company proposed to be registered under the *Corporations Act 2001* (Cwlth), and the company subsequently ratifies the agreement after it is registered. Where the requirements of the subsection are satisfied, transfer duty is not imposed on the dutiable transaction that is the transfer of the dutiable property to the company if transfer duty imposed on the agreement is paid.

The purpose of the note is to reference new section 241A. New section 241A will ensure that where the company is a foreign corporation when the property is transferred to it, AFAD applies to the agreement. The existing exemption in section 116(4) of the *Duties Act 2001* will not apply to the transfer of the property to the company unless all transfer duty (including any applicable AFAD) has been paid on the agreement.

The Hon Curtis Pitt MP, Treasurer, Minister for Trade and Investment

Clause 5

Clause 5 inserts a 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.

Speaking Points

The purpose of this amendment is to ensure that where certain chattels are acquired in conjunction with AFAD residential land, the dutiable value for the transaction to which AFAD will apply, will include the value of those chattels. The amendment addresses possible value-shifting between the value of the AFAD residential land and chattels that form part of the acquisition. Currently, the value of the chattels would not be included in the calculation of AFAD given that a chattel is not residential land.

However, the amendment only applies to chattels, the use of which can be directly linked to, or are incidental to, the use and occupation of the AFAD residential land.

The Hon Curtis Pitt MP, Treasurer, Minister for Trade and Investment

Clause 6

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

Speaking Points

For the purposes of the AFAD provisions, *foreign person* is defined as a foreign individual, a foreign corporation and the trustee of a foreign trust.

Currently, section 237(2) refers to 'foreign trustee'. This will be changed to 'trustee of a foreign trust' to align with the definition of foreign person.

The Hon Curtis Pitt MP, Treasurer, Minister for Trade and Investment

Clause 7

Clause 7 inserts a 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 2001* 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.

Speaking Points

The transfer duty provisions in the *Duties Act 2001* recognise that a transaction for property may constitute more than one dutiable transaction for the property, and the *Duties Act 2001* contains provisions ensuring that transfer duty is only paid once on the transaction. An example is where a principal appoints an agent to enter into an agreement for transfer of dutiable property, and duty on the agreement is paid. In this case,

transfer duty will not apply to the transfer of the property to the principal.

Under the current provisions, where a foreign principal appoints a non-foreign agent to enter into the agreement for transfer, AFAD will not apply to the agreement.

This amendment protects the revenue by ensuring that AFAD applies to agency arrangements where a foreign principal appoints a non-foreign agent to enter into an agreement for the transfer.

RTI RELEASE

The Hon Curtis Pitt MP, Treasurer, Minister for Trade and Investment

Clause 8

Clause 8 amends section 241. Subsection (1) is amended to extend the application of section 241 to new section 240. 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.

Speaking Points

Section 241 specifies property conditions for imposing AFAD on transactions that are subject to duty. For example, for a dutiable transaction that is an agreement for transfer of dutiable property, the dutiable property must be AFAD residential land.

Clause 8 amends the property condition provision to include a reference to section 240 to ensure the property condition operates for the extension of AFAD to certain agency-related agreements.

Clause 8 also amends section 241 to extend the property conditions to existing rights relating to AFAD residential land.

An *existing right* is itself dutiable property. Under the definition of *existing right*, some items also relate to dutiable property. For example, an existing option to acquire dutiable property if the acquisition of the property would be a dutiable transaction. In these instances, there may be uncertainty whether the property condition would be satisfied where the

dutiable property is an existing right which relates to AFAD residential land, for example, an existing option to acquire AFAD residential land.

RTI RELEASE

The Hon Curtis Pitt MP, Treasurer, Minister for Trade and Investment

Clause 9

Clause 9 inserts a new section 241A applying to certain agreements (pre-incorporation contracts) for the transfer of AFAD residential land. Section 241A ensures that where the company is a foreign corporation when the property is transferred to it, AFAD applies to the 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 2001* applies. The note in subsection (2) confirms that the transfer of the dutiable property to the company is not exempt from transfer duty under section 116(4) unless transfer duty, including AFAD, is paid.

Speaking Points

Section 116 of the *Duties Act 2001* 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).

Using the exemption in section 116, a foreign corporation could acquire AFAD residential land without incurring an AFAD liability by using a non-foreign transferee to enter into the initial agreement entered into before the company's registration.

New section 241A will ensure that where the company is a foreign corporation when the property is transferred to it, AFAD applies to the agreement. The existing exemption in section 116(4) of the *Duties Act 2001* will not apply to the transfer of

the property to the company unless all transfer duty (including any applicable AFAD) has been paid on the agreement.

This provision is inserted as a revenue protection measure.

RTI RELEASE

The Hon Curtis Pitt MP, Treasurer, Minister for Trade and Investment

Clause 10

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.

Speaking Points

Section 242 is amended to insert an example to clarify the definition of a *foreign acquirer's interest* for landholder duty.

The example confirms that where a foreign acquirer and a non-foreign acquirer each acquire a 45 per cent interest in a public landholder (constituting a relevant acquisition of a 90 per cent interest), the foreign acquirer's interest in the relevant acquisition is 50 per cent, being 45 per cent of 90 per cent rather than the actual interest acquired.

The Hon Curtis Pitt MP, Treasurer, Minister for Trade and Investment

Clause 11

Clause 11 amends section 244. Subsection (2)(a) is amended to specify it applies to dutiable property other than an existing right. Subsection (2)(b) is amended to update the property condition cross-reference to renumbered section 241(2)(c). Existing subsections (2)(b) and (c) are renumbered as subsections (2)(c) and (d) to enable a new subsection (2)(b) to be inserted. New subsection (2)(b) specifies how AFAD is to be calculated for a dutiable transaction under section 9(1)(a) to (e) or (h) for dutiable property that is an existing right. New subsection (3) provides for the calculation of AFAD on dutiable transactions under new sections 240(2) (agency transactions) and 241A (pre-incorporation contracts).

Speaking Points

The main amendment to section 244 of the *Duties Act 2001* is the insertion of subsection (3) to ensure that AFAD for transfer duty is imposed on agency transactions and pre-incorporation contracts as a consequence of amendments in the Bill to extend AFAD to these transactions.

Section 244 is also amended to ensure that the correct amount of AFAD is calculated on transactions involving existing rights.

The other amendments to section 244 update cross-references and renumber relevant paragraphs in the section.

The Hon Curtis Pitt MP, Treasurer, Minister for Trade and Investment

Clause 12

Clause 12 inserts new division 1 heading into chapter 4, part 5.

Speaking Points

Clause 12 inserts a new division 1 under chapter 4, part 5 – *Reassessments-general*, necessary for inserting new subsequent divisions for reassessments for AFAD.

The Hon Curtis Pitt MP, Treasurer, Minister for Trade and Investment

Clause 13

Clause 13 inserts new subsection (5) into section 246A. The subsection confirms that the Commissioner of State Revenue (Commissioner) is not required to make a reassessment under subsection (3) if the Commissioner is required to make a reassessment under section 246AC, to clarify the respective operations of the sections.

Speaking Points

Where AFAD is not imposed on a transaction because an acquirer is not a foreign person, a reassessment is required if the acquirer becomes a foreign corporation or the trustee of a foreign trust within 3 years after the time the liability for duty on the transaction arose. As the reassessment provisions in both section 246A and new section 246AC may potentially apply, new subsection (5) confirms that a reassessment under section 246A is not required if the Commissioner is required to make a reassessment under new section 246AC.

The Hon Curtis Pitt MP, Treasurer, Minister for Trade and Investment

Clause 14

Clause 14 inserts new divisions 2 and 3 into chapter 4, part 5.

Division 2

New division 2 sets out the reassessment provisions applying to specified agency-related agreements.

New section 246AA specifies the agency-related agreements to which the division applies. 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 2001* applies.

New section 246AB applies to agency-related agreements involving foreign agents and non-foreign principals. 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 246AB 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 of State Revenue (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 246AC provides for reassessment of duty to impose AFAD in certain circumstances relating to agency-related agreements where the agent or principal (being a corporation or trustee) becomes foreign. Subsection (1) provides for when the section 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 section 240(2). Subsection (4) specifies the notice and lodgement requirements where one of the events in subsection (2) occurs.

New section 246AD provides for reassessment of duty to impose AFAD in certain circumstances relating to agency-related agreements where the principal (being a corporation or trustee) becomes foreign. Subsection (1) provides for when the section 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 section 240(2). Subsection (4) specifies the notice and lodgement requirements where one of the events in subsection (2) occurs.

Division 3

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

New section 246AE 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 of duty on the agreement within 28 days after the property is transferred to the company.

New section 246AF 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 246AF applies where a transfer of dutiable property to a company is exempt under section 116(4), AFAD is not imposed on the agreement for the transfer of dutiable property, the dutiable property is AFAD residential land, and the company was not a foreign corporation when the dutiable property was transferred to it. If the company becomes a foreign corporation within 3 years after the dutiable property is transferred to it, 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.

Speaking Points

Division 2

Division 2 provides for a number of reassessment provisions that support the extension of section 240 to ensure AFAD applies to particular agency transactions, 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.

These reassessment provisions ensure that where a foreign person acquires AFAD residential land under an agency arrangement, the intended policy outcome is that AFAD is payable based on the status of the principal. However, to prevent structuring for avoidance, the status of the agent will be relevant until such time as the transfer to the principal occurs.

New section 246AA specifies the agency-related agreements to which the division applies. 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 2001* applies.

New section 246AB provides for a reassessment of transactions where AFAD has been imposed on the agreement for transfer of the property but the principal is not a foreign person at the time of transfer of the property.

This provision is required due to AFAD being imposed on an agreement for transfer where the agent is foreign. In these cases, it is not intended for AFAD to apply to the agreement and the principal may apply for a reassessment of transfer duty on the basis that the acquiring agent was not a foreign person.

Section 246AC provides for a reassessment of transactions when the agent or principal becomes a foreign person before the transfer of the dutiable property to the principal occurs. New section 246AD applies after the transfer of the property to the principal occurs.

This provision is required to protect the revenue to prevent structuring for avoidance and is consistent with the existing reassessment provision in section 246A. Where both the agent and principal are non-foreign and either subsequently becomes

foreign within 3 years after the time the liability for transfer duty on the agreement arose, the Commissioner is required to make a reassessment to impose AFAD on the agreement as if the acquirer was a foreign person.

Example for section 246AC –

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 246AD provides for a reassessment of transactions when the principal becomes a foreign person after the transfer of the dutiable property occurs.

Similar to new section 246AC, this provision is required to protect the revenue to prevent structuring for avoidance and is consistent with the existing reassessment provision in section 246A. Where the dutiable property has been transferred to the principal and AFAD has not been imposed (nor reassessed) on the agreement because the agent or the principal is non-foreign, if the principal becomes foreign within 3 years after the time the liability for transfer duty on the agreement arose, the Commissioner is required to make a reassessment to impose AFAD on the agreement as if the acquirer was a foreign person.

Example for section 246AD –

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.

Division 3

Division 3 provides for reassessment provisions that support the insertion of new section 241A which ensures that, for pre-incorporation contracts where the company is a foreign corporation when the property is transferred to it, AFAD applies to the agreement.

New section 246AE requires the Commissioner to make a reassessment to impose AFAD on the agreement for transfer of dutiable property if section 241A applies.

In order for the company to claim the exemption under section 116(4) of the *Duties Act 2001* on the transfer to it, transfer duty including any reassessed AFAD on the agreement is required to be paid.

Section 246AF provides for a reassessment for pre-incorporation contracts when the company becomes a

foreign corporation within 3 years after the dutiable property is transferred to it.

Similar to new sections 246AC and 246AD, this provision is required to protect the revenue to prevent structuring for avoidance and is consistent with the existing reassessment provision in section 246A. Where the company was not a foreign corporation when the property was transferred to it and AFAD was not imposed on the agreement for the transfer of the dutiable property, if the company becomes a foreign corporation within 3 years after the dutiable property is transferred to the company, the Commissioner is required to make a reassessment to impose transfer duty on the agreement as if the company was a foreign corporation.

The Hon Curtis Pitt MP, Treasurer, Minister for Trade and Investment

Clause 15

Clause 15 amends subsection 246B(2)(a) to extend the application of the provision to the relevant entities under transactions imposed with AFAD under new section 240(2) and new section 241A.

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 where the land has not been transferred to the principal. 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). Where the land has been transferred to the principal, section 246B(2)(a)(ii) imposes a charge on the interest of the principal.

Where AFAD is imposed on a transaction under new section 241A and the transfer duty imposed is not paid by the date the amount is payable, subsection 246B(2)(a)(iii) imposes a charge on the interest of the company.

For other dutiable transactions under section 9(1)(a) to (f), subsection 246B(2)(a)(iv) continues to impose a charge on the interest of the foreign acquirer under the transaction for the outstanding liability.

Speaking Points

Section 246B of the *Duties Act 2001* creates a first charge on the interest of specified acquirers in AFAD residential land

where AFAD is imposed on the transaction and the transfer duty imposed is not paid by the due date.

The amendments to section 246B are required to ensure that for agency transactions and pre-incorporation contracts, the statutory charge provisions are capable of applying to either the agent's or principal's interest, or the company's or foreign acquirer's interest, respectively, in the AFAD residential depending on who holds the interest in the land at the relevant time.

The statutory charge provisions will not apply to the agent after the AFAD residential land has been transferred to the principal. As is currently the case, the charge provisions will continue to not apply to the interests of third parties in the AFAD residential land.

The Hon Curtis Pitt MP, Treasurer, Minister for Trade and Investment

Clause 16

Clause 16 replaces section 246I with a new section extending the application of the section to ensure the proper operation of the statutory right of recovery of non-foreign liable parties in relation to agency-related agreements imposed with AFAD under section 240(2) and pre-incorporation contracts imposed with AFAD under section 241A.

Speaking Points

Where transfer duty is imposed on a dutiable transaction under the *Duties Act 2001*, all parties to the transaction are generally liable to pay the duty.

Where a person who is liable to pay transfer duty pays an amount to the Commissioner of State Revenue as payment for all or part of the transfer duty payable including AFAD, and that person is not a relevant foreign acquirer under the transaction, the person is entitled to recover the amount (to the extent that amount exceeds the amount that would have been payable if AFAD had not been imposed) from the appropriate foreign person.

The amendments made to section 246I ensure that the statutory right of recovery provisions operate as intended in light of amendments made in relation to agency-related agreements imposed with AFAD under section 240(2) and pre-incorporation contracts imposed with AFAD under section 241A. That is, an agent for a foreign principal and a person entering into a pre-incorporation contract (once the transfer to

the company has occurred), will be treated as if they are a foreign acquirer for the purposes of recovery between parties.

RTI RELEASE

The Hon Curtis Pitt MP, Treasurer, Minister for Trade and Investment

Clause 17

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

New section 667 provides that new sections 240(2), 241A and new chapter 4, part 5, divisions 2 and 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.

Speaking Points

A new part 23 is inserted in chapter 17 for transitional provisions for the AFAD related provisions in the Bill.

Section 677 is inserted to ensure that the new agency-related agreement provisions, the new pre-incorporation contract provisions and the associated new reassessment provisions for AFAD apply only to transactions where liability for transfer duty arises on or after commencement.

The Hon Curtis Pitt MP, Treasurer, Minister for Trade and Investment

Clause 18

Clause 18 inserts new definitions of *agent*, *agreement*, *original transferor* and *principal* into the Dictionary in schedule 6 for the purposes of chapter 4, part 5, division 2.

Speaking Points

New definitions are inserted into the *Duties Act 2001* for the purposes of the reassessment provisions relating to agency-related agreements inserted in chapter 4, part 5, division 2.

The new defined terms are defined in section 246AA.

The Hon Curtis Pitt MP, Treasurer, Minister for Trade and Investment

Clause 19

Clause 19 provides that part 3 amends the *First Home Owner Grant Act 2000*.

Speaking Points

This clause provides that part 3 amends the *First Home Owner Grant Act 2000*.

RTI RELEASED

The Hon Curtis Pitt MP, Treasurer, Minister for Trade and Investment

Clause 20

Clause 20 amends the heading of part 3, division 6. Part 3, division 6 currently provides for a temporary increase to the grant amount from \$15,000 to \$20,000 for particular eligible transactions entered into between 1 July 2016 and 30 June 2017. Clause 20 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.

Speaking Points

As part of the 2016-17 State Budget, the First Home Owners' Grant was temporarily increased from \$15,000 to \$20,000 for eligible transactions entered into between 1 July 2016 and 30 June 2017. It was the Government's priority to make sure young Queenslanders have the boost they need to buy their first home. It was intended that the increased grant would provide an incentive for young Queenslanders to own their first home and contribute to the Queensland property market.

Clause 20 makes an amendment necessary to give effect to a 2017-18 State Budget measure to extend the temporary increase to the amount of the grant for a further 6 months, expiring on 31 December 2017.

By this extension, the Government will continue to assist Queenslanders entering the property market by ensuring they have additional time to take advantage of the increased \$20,000 grant.

The Hon Curtis Pitt MP, Treasurer, Minister for Trade and Investment

Clause 21

Clause 21 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 21 amends section 25D(1) to provide that a 'particular eligible transaction' is an eligible transaction mentioned in section 5(1), the commencement date for which is between 1 July 2016 and 31 December 2017.

Speaking Points

To give effect to the 2017-18 State Budget measure to extend the temporary increase to the amount of the grant, clause 21 ensures eligible transactions entered into between 1 July 2017 and 31 December 2017 (both dates inclusive) qualify for a \$20,000 grant.

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*.

The Hon Curtis Pitt MP, Treasurer, Minister for Trade and Investment

Clause 22

Clause 22 provides that part 4 amends the *Land Tax Act 2010*.

Speaking Points

This clause provides that part 4 amends the *Land Tax Act 2010*.

RTI RELEASES

The Hon Curtis Pitt MP, Treasurer, Minister for Trade and Investment

Clause 23

Clause 23 inserts a new section 22A to clarify that where land is owned by two or more trustees of the same trust, the trustees are assessed for land tax as if the land were owned by one person.

Clause 23 clarifies that the co-owner provisions in section 22 do not apply to the assessment of joint trustees and, further, that the assessment of beneficiaries for deceased estates in section 23 is not limited by this new provision.

Speaking Points

This amendment clarifies how joint trustees—which are 2 or more trustees—of the same trust are assessed for land tax.

This amendment confirms the longstanding practice of assessing joint trustees as a single person and will ensure a clear and consistent approach to assessing trustees for land tax purposes.

The 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.

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.

The Hon Curtis Pitt MP, Treasurer, Minister for Trade and Investment

Clause 24

Clause 24 amends section 32 to impose a 1.5 per cent 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.

Speaking Points

Land tax is imposed on the taxable value of all taxable land in Queensland at the rates set out in the *Land Tax Act 2010* which differ depending on the type of owner. Currently, individuals not ordinarily residing in Australia (absentees) are taxed at the same rate as companies and trustees. Therefore, they are subject to a lower tax-free threshold of \$350,000 and higher land tax rates compared to resident individuals.

To give effect to a 2017-18 State Budget measure, clause 24 amends section 32 of the *Land Tax Act 2010* to impose a 1.5 per cent surcharge on absentees. The surcharge applies in

addition to land tax at the current rate for absentees. 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.

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.

Resident Queensland persons who are liable for land tax will not be affected by the surcharge and will continue to benefit from the higher tax-free threshold (\$600,000) and lower land tax rates applying to resident individuals.

The surcharge will ensure absentee owners of land make 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.

As the surcharge will be administered as land tax within the existing legislative framework, there will be no increased administrative burden for absentees or for Government.

The Hon Curtis Pitt MP, Treasurer, Minister for Trade and Investment

Clause 25

Clause 25 inserts a requirement for a person to lodge a completed revenue form with the Commissioner of State Revenue (Commissioner) within one month of a change of ownership of land.

A revenue form is defined as a form required under the *Land Tax Act 2010* and under Queensland's revenue laws about the change of ownership of land which may be given to the Commissioner.

Speaking Points

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 using existing business processes and utilise this information for land tax purposes.

The revenue form proposed for inclusion in section 78 is already lodged by the parties to a property transaction in accordance with their respective requirements under the *Duties Act 2001*. Therefore, this amendment will not increase the administrative burden on land owners.

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.

The Hon Curtis Pitt MP, Treasurer, Minister for Trade and Investment

Clause 26

Clause 26 inserts a new section 83A into the *Land Tax Act 2010*. 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*.

Speaking Points

Clause 26 reinstates the prohibition on lessors under pre-existing leases directly recovering the cost of land tax from lessees. The prohibition operates by making a provision in such a lease that requires a lessee to pay land tax, or reimburse the lessor for land tax, unenforceable.

A pre-existing lease is a lease entered into after 1 January 2009 and before 30 June 2009. The prohibition also applies to a lease that arises from a renewal under an option to renew contained in a pre-existing lease; and a lease that arises from an assignment or transfer of a pre-existing lease.

However, a pre-existing lease does not include a lease that arises from a renewal under an option to renew contained in a lease entered into on or before 1 January 1992; or an assignment or transfer of a lease entered into on or before 1 January 1992.

This amendment restores equity and fairness for lessees under pre-existing leases following a Court of Appeal decision in

which the Court held that the prohibition was repealed when the *Land Tax Act 2010* replaced the *Land Tax Act 1915*.

RTI RELEASE

The Hon Curtis Pitt MP, Treasurer, Minister for Trade and Investment

Clause 27

Clause 27 inserts a new division 7 into part 10 of the *Land Tax Act 2010* to provide a transitional provision.

New section 100 provides for retrospective operation of the 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 in relation to the lease.

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*.

Speaking Points

Clause 27 inserts a transitional provision into the *Land Tax Act 2010* which provides for the retrospective reinstatement of the

prohibition on lessors under pre-existing leases directly recovering the cost of land tax from lessees.

The prohibition is reinstated on and from 30 June 2010, which is the date the *Land Tax Act 2010* commenced, and the date the Court of Appeal held the prohibition was repealed. Retrospective operation is appropriate and necessary to fully restore the policy that the prohibition continue under the *Land Tax Act 2010*, and to restore fairness and equity for lessees under pre-existing leases.

Despite retrospective operation, the rights of any lessor under a pre-existing lease who has already successfully recovered the cost of land tax from a lessee will be protected. This is achieved by preventing the lessee from seeking to recover the amount paid, only because the prohibition has been reinstated. However, the lessee will still be entitled to recover the amount on other grounds, such as where the amount of land tax recovered is incorrect.

The effect of retrospective reinstatement of the prohibition will be to extinguish any existing court proceedings to recover land tax under a pre-existing lease.

However, existing court orders requiring a lessee of a pre-existing lease to pay land tax in relation to the lease will continue to be enforceable despite reinstatement of the prohibition.

It is considered that retrospective operation, coupled with the various protections, strikes an appropriate balance between restoring the prohibition and preserving the rights of lessors who have already recovered land tax in reliance of the Court of Appeal decision.

The Hon Curtis Pitt MP, Treasurer, Minister for Trade and Investment

Clause 28

Clause 28 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.

Speaking Points

Currently, companies, trustees and absentees are treated the same for land tax purposes and are subject to the same tax-free threshold and land tax rates. Clause 28 makes an amendment to reflect the fact that, in addition to the current rates applying to absentees, they will also be subject to a 1.5 per cent surcharge. However, companies and trustees will not be subject to the surcharge.

The Hon Curtis Pitt MP, Treasurer, Minister for Trade and Investment

Clause 29

Clause 29 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 per cent of the portion of the taxable value of an absentee's taxable land that is equal to or greater than \$350,000.

Speaking Points

The 1.5 per cent surcharge will be imposed on absentees in addition to the current land tax rate for absentees under the *Land Tax Act 2010*. Therefore, absentees will pay land tax at a general rate which is identical to the rate for companies and trustees. Additionally, absentees will also pay land tax at a surcharge rate of 1.5 per cent of the portion of the taxable value of their taxable land that is equal to or greater than \$350,000.

Clause 29 inserts a new schedule into the *Land Tax Act 2010* which provides the general rate and surcharge rate that will apply to absentees from the 2017-18 year onwards.

The Hon Curtis Pitt MP, Treasurer, Minister for Trade and Investment

Clause 30

Clause 30 provides that part 5 amends the *Taxation Administration Act 2001*.

Speaking Points

This clause provides that part 5 amends the *Taxation Administration Act 2001*.

RTI RELEASE

The Hon Curtis Pitt MP, Treasurer, Minister for Trade and Investment

Clause 31

Clause 31 amends the heading of part 8 – Confidentiality – to include a reference to the collection of information and inserts a new division 1.

Speaking Points

Amending the heading and including a new division number are consequential amendments necessary for inserting new provisions for the collection and disclosure of information to the Commonwealth.

The Hon Curtis Pitt MP, Treasurer, Minister for Trade and Investment

Clause 32

Clause 32 inserts a new division into part 8 of the *Taxation Administration Act 2001*.

This new division contains provisions for the collection and disclosure of information about transfers of interests in real property in Queensland that must be reported by the State to the Commonwealth Government.

New section 113A defines *commissioner of taxation* and *reportable information* for the purposes of new 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 (Commissioner) may collect and disclose reportable information to the commissioner of taxation.

New section 113D provides that the Commissioner may require reportable information to be given under functions of Queensland's revenue.

The note included in new section 113D also confirms that offences will apply for failing to provide information under this section.

Speaking Points

Reportable information is information about transfers of interests in real property in Queensland, and includes personal identity information about purchasers and vendors of property transfers.

Reportable information is required by the Commonwealth Government as part of its reforms to strengthen the integrity of Australia's foreign investment framework.

It is now a requirement under Commonwealth taxation laws for all States and Territories to disclose reportable information to the Australian Tax Office (ATO) each quarter. This information will be used by the ATO to establish the National Register of Foreign Ownership of Land Titles, data-matching and to assist with compliance of Commonwealth taxation laws.

The majority of the information required by the Commonwealth is already collected by the Office of State Revenue (OSR) as part of its administration of Queensland's revenue laws. The remaining information will be collected by OSR through its existing business processes wherever possible to try to minimise the impact on taxpayers.

Queensland will receive \$3M of Commonwealth funding to assist with developing the systems necessary for reporting this information to the ATO.

All personal identity information collected by OSR, including reportable information, is subject to strict confidentiality and privacy requirements for its collection, storage, use and disclosure.

The offences and penalties for failing to provide information, or providing false and misleading information, under Queensland's tax laws will also extend to reportable information.

The Hon Curtis Pitt MP, Treasurer, Minister for Trade and Investment

Clause 33

Clause 33 inserts new definitions of *commissioner of taxation* and *reportable information* into the Dictionary in schedule 2.

Speaking Points

The definitions for *commissioner of taxation* and *reportable information* are set out in new section 113A of part 8, division 2 of the *Taxation Administration Act 2001*.

Commissioner of taxation refers to the Commonwealth commissioner of taxation.

Reportable information is information about the transfer of a freehold or leasehold interest in real property situated in Queensland that is reportable by the State under the *Taxation Administration Act 1953* (Cwlth).

Page 115 redacted for the following reason:

State Budgetary Processes - Sch.3(2)(1)(c)

RTI RELEASE



Revenue Legislation Amendment Bill 2017

RTI RELEASE



Queensland

Revenue Legislation Amendment Bill 2017

Contents

		Page
Part 1	Preliminary	
1	Short title	6
2	Commencement	6
Part 2	Amendment of Duties Act 2001	
3	Act amended	6
4	Amendment of s 116 (Exemption—particular agreements entered into before registration of company)	6
5	Amendment of s 232 (What is AFAD residential land)	6
6	Amendment of s 237 (What is a foreign trust)	7
7	Amendment of s 240 (Conditions for imposing AFAD)	7
8	Amendment of s 241 (Property condition for imposing AFAD) ..	8
9	Insertion of new s 241A	9
	241A Imposition of AFAD—pre-incorporation contracts ...	9
10	Amendment of s 242 (Definitions for pt 4)	10
11	Amendment of s 244 (AFAD for transfer duty)	10
12	Insertion of new ch 4, pt 5, div 1, hdg	11
13	Amendment of s 246A (Reassessment if corporation or trust becomes foreign)	11
14	Insertion of new ch 4, pt 5, divs 2–3	12
	Division 2 Reassessments relating to agency-related agreements	
	246AA Application of division	12
	246AB Reassessment if principal not foreign person at time of transfer	12
	246AC Reassessment if agent or principal becomes foreign person before transfer	13
	246AD Reassessment if principal becomes foreign person after transfer	15
	Division 3 Reassessments relating to pre-incorporation contracts	

Revenue Legislation Amendment Bill 2017

Contents

	246AE	Reassessment of pre-incorporation contract—company is foreign corporation when property is transferred	16
	246AF	Reassessment of pre-incorporation contract—company becomes foreign corporation within 3 years	17
15		Amendment of s 246B (Charge over interest in land for unpaid transfer duty)	18
16		Replacement of s 246I (Recovery of transfer duty payment from foreign persons)	18
	246I	Recovery of transfer duty payment from foreign persons	18
17		Insertion of new ch 17, pt 23	19
	Part 23	Transitional provision for Revenue Legislation Amendment Act 2017	
	667	Application of amendments applying AFAD to particular agreements	20
18		Amendment of sch 6 (Dictionary)	20
	Part 3	Amendment of First Home Owner Grant Act 2000	
19		Act amended	20
20		Amendment of pt 3, div 6, hdg (Particular eligible transactions—2016–2017 financial year)	20
21		Amendment of s 25D (Meaning of particular eligible transaction for div 6)	21
	Part 4	Amendment of Land Tax Act 2010	
22		Act amended	21
23		Insertion of new s 22A	21
	22A	Assessment of trustees	21
24		Amendment of s 32 (Rate of land tax generally)	21
25		Amendment of s 78 (Notice of change of ownership of land)	22
26		Insertion of new s 83A	22
	83A	Provision to pay land tax etc. on particular leases unenforceable	22
27		Insertion of new pt 10, div 7	23
	Division 7	Transitional provision for Revenue Legislation Amendment Act 2017	
	100	Application of s 83A	23
28		Amendment of sch 2 (Rate of land tax—companies, absentees and trustees)	24
29		Insertion of new sch 3	24
	Schedule 3	Rate of land tax—absentees	24
	Part 5	Amendment of Taxation Administration Act 2001	

		Contents
30	Act amended	25
31	Replacement of pt 8, hdg (Confidentiality)	25
32	Insertion of new pt 8, div 2	26
	Division 2 Collection of information for disclosure to Commonwealth	
	113A Definitions for division	26
	113B Relationship with other laws	26
	113C Commissioner may collect and disclose reportable information	27
	113D How reportable information may be collected	27
33	Amendment of sch 2 (Dictionary)	28

2017

A Bill

for

An Act to amend the *Duties Act 2001*, the *First Home Owner Grant Act 2000*, the *Land Tax Act 2010* and the *Taxation Administration Act 2001* for particular purposes

[s 1]

The Parliament of Queensland enacts— 1

Part 1 Preliminary 2

Clause 1 Short title 3

This Act may be cited as the *Revenue Legislation Amendment Act 2017*. 4
5

Clause 2 Commencement 6

Sections 24, 28 and 29 commence on 30 June 2017. 7

Part 2 Amendment of Duties Act 2001 8

Clause 3 Act amended 9

This part amends the *Duties Act 2001*. 10

Clause 4 Amendment of s 116 (Exemption—particular agreements entered into before registration of company) 11
12

Section 116(4)— 13

insert— 14

Note— 15

See also section 241A in relation to the imposition of AFAD on the agreement in particular circumstances. 16
17

Clause 5 Amendment of s 232 (What is AFAD residential land) 18

Section 232— 19

insert— 20

[s.6]

	(2) For the purpose of imposing AFAD relating to transfer duty, a reference to AFAD residential land includes a reference to a chattel in Queensland if—	1 2 3 4
	(a) the chattel and the land are included in the same dutiable transaction under section 29 or 30, whether or not the chattel is the subject of a separate agreement for transfer; and	5 6 7 8 9
	(b) the use of the chattel can be directly linked to, or is incidental to, the use and occupation of the land.	10 11 12
Clause 6	Amendment of s 237 (What is a <i>foreign trust</i>)	13
	Section 237(2), definition <i>foreign interest</i> , paragraph (c), 'foreign trustee'—	14 15
	<i>omit, insert</i> —	16
	trustee of a foreign trust	17
Clause 7	Amendment of s 240 (Conditions for imposing AFAD)	18
	Section 240—	19
	<i>insert</i> —	20
	(2) Also, AFAD is imposed on a relevant transaction that is an agreement for the transfer of dutiable property if—	21 22 23
	(a) the commissioner is satisfied—	24
	(i) a person (the <i>agent</i>) is appointed in writing as an agent for another person (the <i>principal</i>); and	25 26 27
	(ii) under the appointment, the agent enters into the agreement for the transfer of the dutiable property from a person to	28 29 30

[s 8]

	the agent on behalf of the principal (the <i>agreement</i>); and	1 2
	(iii) the principal provided all the consideration, including any deposit paid; and	3 4 5
	(b) at the time the liability for transfer duty on the agreement arises—	6 7
	(i) the property condition under section 241 applies; and	8 9
	(ii) AFAD is not imposed on the agreement under subsection (1); and	10 11
	(iii) the principal is a foreign person.	12
	(3) For subsection (2)(a)(i), the commissioner must not be satisfied the person was properly appointed as agent unless the original instrument of appointment, or a copy of it, is lodged.	13 14 15 16
Clause 8	Amendment of s 241 (Property condition for imposing AFAD)	17 18
	(1) Section 241(1), 'section 240(a)'—	19
	<i>omit, insert—</i>	20
	section 240	21
	(2) Section 241(2)(a), after 'or (h)'—	22
	<i>insert—</i>	23
	for dutiable property other than an existing right	24
	(3) Section 241(2)(b) to (d)—	25
	<i>renumber</i> as section 241(2)(c) to (e).	26
	(4) Section 241(2)—	27
	<i>insert—</i>	28
	(b) for a dutiable transaction mentioned in section 9(1)(a) to (e) or (h) for dutiable	29 30

[s.9]

	property that is an existing right—the existing right is—	1 2
	(i) AFAD residential land; or	3
	(ii) an existing right mentioned in schedule 6, definition <i>existing right</i> , paragraph (g) or (i) to (m) for which the dutiable property is AFAD residential land; or	4 5 6 7
Clause 9	Insertion of new s 241A	8
	Chapter 4, part 3—	9
	<i>insert—</i>	10
	241A Imposition of AFAD—pre-incorporation contracts	11 12
	(1) This section applies if—	13
	(a) a transferee enters into an agreement for the transfer of dutiable property for, or for the benefit of, a company proposed to be registered under the Corporations Act; and	14 15 16 17
	(b) the company is named in the agreement; and	18
	(c) the company, or a company that is reasonably identifiable with it, is registered under the Corporations Act; and	19 20 21
	(d) under the Corporations Act, section 131, the company ratifies the agreement after it is registered; and	22 23 24
	(e) the dutiable property is AFAD residential land; and	25 26
	(f) the company is a foreign corporation when the dutiable property is transferred to it.	27 28
	(2) AFAD is imposed on the dutiable transaction that is the agreement.	29 30

[s 10]

	<i>Note—</i>	1
	Under section 116(4), transfer duty is not imposed on the transfer of the dutiable property to the company if transfer duty imposed on the agreement (including AFAD imposed under subsection (2)) is paid. See also section 231(6).	2 3 4 5 6
Clause 10	Amendment of s 242 (Definitions for pt 4)	7
	Section 242, definition <i>foreign acquirer's interest—</i>	8
	<i>insert—</i>	9
	<i>Example—</i>	10
	Under a relevant transaction that is a relevant acquisition on which landholder duty is imposed, person A (a foreign acquirer) and person B (not a foreign acquirer) each acquire a 45% interest in a public landholder. The proportion of person A's share under the transaction is 50% (a 45% interest of a total interest of 90% acquired under the transaction). Person A's foreign acquirer's interest is therefore 50%.	11 12 13 14 15 16 17 18
Clause 11	Amendment of s 244 (AFAD for transfer duty)	19
	(1) Section 244(2)(a), after 'or (h)'—	20
	<i>insert—</i>	21
	for dutiable property other than an existing right	22
	(2) Section 244(2)(b), 'section 241(2)(b)'—	23
	<i>omit, insert—</i>	24
	section 241(2)(c)	25
	(3) Section 244(2)(b) and (c)—	26
	<i>renumber</i> as section 244(2)(c) and (d).	27
	(4) Section 244(2)—	28
	<i>insert—</i>	29
	(b) for a dutiable transaction under section 9(1)(a) to (e) or (h) for dutiable property that	30 31

[s 12]

	is an existing right—the dutiable value of the transaction to the extent of the foreign acquirer’s interest in the existing right mentioned in section 241(2)(b) that is the subject of the transaction;	1 2 3 4 5
(5)	Section 244— <i>insert—</i>	6 7
	(3) However, if AFAD is imposed on a dutiable transaction under section 240(2), or 241A, AFAD is imposed at the rate of 3% on the dutiable value of the transaction to the extent of the acquirer’s interest in—	8 9 10 11 12
	(a) the AFAD residential land that is the subject of the transaction; or	13 14
	(b) the existing right mentioned in section 241(2)(b) that is the subject of the transaction.	15 16 17
Clause 12	Insertion of new ch 4, pt 5, div 1, hdg Chapter 4, part 5, before section 246A— <i>insert—</i>	18 19 20
	Division 1 Reassessments—general	21
Clause 13	Amendment of s 246A (Reassessment if corporation or trust becomes foreign) Section 246A— <i>insert—</i>	22 23 24 25
	(5) The commissioner is not required to make a reassessment under subsection (3) if the commissioner is required to make a reassessment under section 246AC.	26 27 28 29

[s 14]

Clause 14	Insertion of new ch 4, pt 5, divs 2–3	1
	Chapter 4, part 5—	2
	<i>insert—</i>	3
	Division 2	
	Reassessments relating to agency-related agreements	4
		5
		6
	246AA Application of division	7
	(1) This division applies if the commissioner is satisfied—	8
		9
	(a) a person (the <i>agent</i>) is appointed in writing as an agent for another person (the <i>principal</i>); and	10
		11
		12
	(b) under the appointment, the agent enters into a dutiable transaction that is an agreement for the transfer of dutiable property from a person (the <i>original transferor</i>) to the agent on behalf of the principal (the <i>agreement</i>); and	13
		14
		15
		16
		17
		18
	(c) the principal provided all the consideration, including any deposit paid.	19
		20
	(2) For subsection (1)(a), the commissioner must not be satisfied the person was properly appointed as agent unless the original instrument of appointment, or a copy of it, is lodged.	21
		22
		23
		24
	246AB Reassessment if principal not foreign person at time of transfer	25
		26
	(1) This section applies if—	27
	(a) the commissioner is satisfied transfer duty imposed on the agreement is paid; and	28
		29

- (b) AFAD is imposed on the agreement, including on a reassessment under section 246AC, because the agent is a foreign person; and
- (c) the dutiable property is later transferred to the principal by the original transferor or the agent; and
- (d) at the time of the later transfer of the dutiable property, the principal is not a foreign person.
- (2) The principal may lodge an application for a reassessment in the approved form within 6 months after the dutiable property is later transferred to the principal.
- (3) The principal must lodge the agreement with the application.
- (4) 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.

246AC Reassessment if agent or principal becomes foreign person before transfer

- (1) This section applies if—
- (a) AFAD is not imposed on the agreement only because the agent is not a foreign person and the principal is not a foreign person; and
- (b) the dutiable property has not been transferred to the principal by the original transferor or the agent.
- (2) The commissioner must make a reassessment under subsection (3) if any of the following events happen—
- (a) the agent was a corporation and within 3 years after the time the liability for transfer

[s 14]

- duty on the agreement arose the agent becomes a foreign corporation; 1
2
- (b) the agent acted in the agent's capacity as trustee and within 3 years after the time the liability for transfer duty on the agreement arose the trust becomes a foreign trust; 3
4
5
6
- (c) the principal was a corporation and within 3 years after the time the liability for transfer duty on the agreement arose the principal becomes a foreign corporation; 7
8
9
10
- (d) the principal acted in the principal's capacity as trustee and within 3 years after the time the liability for transfer duty on the agreement arose the trust becomes a foreign trust. 11
12
13
14
15
- (3) The commissioner must make a reassessment to impose AFAD on the agreement as if, at the time the liability for transfer duty on the agreement arose— 16
17
18
19
- (a) for a reassessment because an event mentioned in subsection (2)(a) or (b) happens—the acquirer was a foreign person; 20
21
22
or 23
- (b) otherwise—the agent was not a foreign person but the principal was a foreign person. 24
25
26
- (4) Within 28 days after an event mentioned in subsection (2)(a) to (d) happens, the corporation or trustee of the trust must— 27
28
29
- (a) give notice in the approved form to the commissioner; and 30
31
- (b) ensure the instruments required for the assessment of duty on the agreement are lodged for a reassessment of duty on the agreement. 32
33
34
35

Note—

Failure to give the notice is an offence under the
Administration Act, section 120.

**246AD Reassessment if principal becomes foreign
person after transfer**

- (1) This section applies if—
 - (a) the dutiable property has been transferred to the principal by the original transferor or the agent; and
 - (b) AFAD is not imposed on the agreement, including on a reassessment under section 246AB, only because the agent is not a foreign person and the principal is not a foreign person.
- (2) The commissioner must make a reassessment under subsection (3) if—
 - (a) the principal was a corporation and within 3 years after the time the liability for transfer duty on the agreement arose the principal becomes a foreign corporation; or
 - (b) both of the following apply—
 - (i) the principal acted in the principal's capacity as trustee;
 - (ii) within 3 years after the time the liability for transfer duty on the agreement arose the trust becomes a foreign trust.
- (3) The commissioner must make a reassessment to impose AFAD on the agreement as if, at the time the liability for transfer duty on the agreement arose, the agent was not a foreign person but the principal was a foreign person.
- (4) Within 28 days after an event mentioned in subsection (2)(a) or (b)(ii) happens, the

[s 14]

- corporation or trustee of the trust must— 1
- (a) give notice in the approved form to the 2
commissioner; and 3
- (b) ensure the instruments required for the 4
assessment of duty on the agreement are 5
lodged for a reassessment of duty on the 6
agreement. 7
- Note—* 8
- Failure to give the notice is an offence under the 9
Administration Act, section 120. 10

Division 3 Reassessments relating to 11
pre-incorporation 12
contracts 13

246AE Reassessment of pre-incorporation 14
contract—company is foreign corporation 15
when property is transferred 16

- (1) If section 241A applies, the commissioner must 17
make a reassessment to impose AFAD on the 18
dutiable transaction that is the agreement for the 19
transfer of the dutiable property. 20
- (2) Within 28 days after the dutiable property is 21
transferred to the company, the company must— 22
- (a) give notice in the approved form to the 23
commissioner; and 24
- (b) ensure the instruments required for the 25
assessment of duty on the agreement are 26
lodged for a reassessment of duty on the 27
agreement. 28

Note— 29

Failure to give the notice is an offence under the 30
Administration Act, section 120. 31

246AF Reassessment of pre-incorporation contract—company becomes foreign corporation within 3 years	1
	2
	3
(1) This section applies if—	4
(a) transfer duty is not imposed on a dutiable transaction because of section 116(4); and	5
	6
(b) AFAD is not imposed on the agreement for the transfer of the dutiable property; and	7
	8
(c) the dutiable property is AFAD residential land; and	9
	10
(d) the company is not a foreign corporation when the dutiable property is transferred to the company.	11
	12
	13
(2) The commissioner must make a reassessment under subsection (3) if, within 3 years after the dutiable property is transferred to the company, the company becomes a foreign corporation.	14
	15
	16
	17
(3) The commissioner must make a reassessment to impose AFAD on the agreement as if the company were a foreign corporation.	18
	19
	20
(4) Within 28 days after the event mentioned in subsection (2) happens, the company must—	21
	22
(a) give notice in the approved form to the commissioner; and	23
	24
(b) ensure the instruments required for the assessment of duty on the agreement are lodged for a reassessment of duty on the agreement.	25
	26
	27
	28
<i>Note—</i>	29
Failure to give the notice is an offence under the Administration Act, section 120.	30
	31

[s 15]

Clause 15	Amendment of s 246B (Charge over interest in land for unpaid transfer duty)	1
	Section 246B(2)(a)—	2
	<i>omit, insert—</i>	3
	(a) for a dutiable transaction mentioned in section 9(1)(a) to (f)—	4
	(i) if AFAD is imposed on the transaction under section 240(2) and the land has not been transferred to the principal—the acquirer under the transaction; or	5
	(ii) if AFAD is imposed on the transaction under section 240(2) and the land has been transferred to the principal—the principal; or	6
	(iii) if AFAD is imposed on the transaction under section 241A—the company; or	7
	(iv) otherwise—the foreign acquirer under the transaction;	8
Clause 16	Replacement of s 246I (Recovery of transfer duty payment from foreign persons)	9
	Section 246I—	10
	<i>omit, insert—</i>	11
	246I Recovery of transfer duty payment from foreign persons	12
	(1) This section applies if—	13
	(a) AFAD relating to transfer duty is imposed on a dutiable transaction; and	14
	(b) a person who is liable under this Act to pay the transfer duty pays an amount to the commissioner as payment for—	15
	(i) all or part of the transfer duty; or	16

[§ 17]

(ii) interest or penalty tax relating to the transfer duty; and	1
	2
(c) the person—	3
(i) is not a foreign acquirer under the transaction; and	4
	5
(ii) is not an agent for a principal who is a foreign person as mentioned in section 240(2); and	6
	7
	8
(iii) is not a transferee mentioned in section 241A if the dutiable property has been transferred to the company.	9
	10
	11
(2) The person is entitled to recover the amount from a following person as a debt, to the extent the amount exceeds the amount that would have been payable if AFAD had not been imposed on the transaction—	12
	13
	14
	15
	16
(a) the foreign acquirer;	17
(b) the agent for the principal who is a foreign person as mentioned in section 240(2);	18
	19
(c) the transferee mentioned in section 241A if the dutiable property has been transferred to the company.	20
	21
	22
Clause 17 Insertion of new ch 17, pt 23	23
Chapter 17—	24
insert—	25
Part 23 Transitional provision for Revenue Legislation Amendment Act 2017	26
	27
	28

[s 18]

	667 Application of amendments applying AFAD to particular agreements	1 2
	Sections 240(2), 241A, and chapter 4, part 5, divisions 2 and 3, apply in relation to an agreement for the transfer of dutiable property if liability for transfer duty arises on or after the commencement.	3 4 5 6 7
Clause 18	Amendment of sch 6 (Dictionary)	8
	Schedule 6—	9
	<i>insert—</i>	10
	<i>agent</i> , for chapter 4, part 5, division 2, see section 246AA.	11 12
	<i>agreement</i> , for chapter 4, part 5, division 2, see section 246AA.	13 14
	<i>original transferor</i> , for chapter 4, part 5, division 2, see section 246AA.	15 16
	<i>principal</i> , for chapter 4, part 5, division 2, see section 246AA.	17 18
	Part 3 Amendment of First Home Owner Grant Act 2000	19 20
Clause 19	Act amended	21
	This part amends the <i>First Home Owner Grant Act 2000</i> .	22
Clause 20	Amendment of pt 3, div 6, hdg (Particular eligible transactions—2016–2017 financial year)	23 24
	Part 3, division 6, heading, ‘2016–2017 financial year’—	25
	<i>omit, insert—</i>	26
	1 July 2016 to 31 December 2017	27

Clause 21	Amendment of s 25D (Meaning of <i>particular eligible transaction</i> for div 6)	1
	Section 25D(1), '30 June 2017'—	2
	<i>omit, insert</i> —	3
	31 December 2017	4
		5
Part 4	Amendment of Land Tax Act 2010	6
		7
Clause 22	Act amended	8
	This part amends the <i>Land Tax Act 2010</i> .	9
Clause 23	Insertion of new s 22A	10
	Part 4, division 3—	11
	<i>insert</i> —	12
	22A Assessment of trustees	13
	(1) If land is owned by 2 or more trustees of the same trust, the commissioner must make 1 assessment as if the land were owned by 1 person.	14
		15
		16
	(2) This section applies despite section 22.	17
	(3) Also, this section does not limit section 23.	18
Clause 24	Amendment of s 32 (Rate of land tax generally)	19
	Section 32(1)(b)—	20
	<i>omit, insert</i> —	21
	(b) for a company or trustee—the rate provided for under schedule 2;	22
		23
	(c) for an absentee—	24

[s 25]

	(i) the general rate provided for under schedule 3, part 1; and	1 2
	(ii) the surcharge rate provided for under schedule 3, part 2.	3 4
Clause 25	Amendment of s 78 (Notice of change of ownership of land)	5 6
	(1) Section 78(3)—	7
	<i>insert—</i>	8
	(c) a properly completed revenue form is given to the commissioner within 1 month after ownership of the land changed.	9 10 11
	(2) Section 78(4)—	12
	<i>insert—</i>	13
	revenue form means a form that—	14
	(a) gives information required by this section and another revenue law under the <i>Taxation Administration Act 2001</i> about the change of ownership; and	15 16 17 18
	(b) may be given to the commissioner.	19
Clause 26	Insertion of new s 83A	20
	After section 83—	21
	<i>insert—</i>	22
	83A Provision to pay land tax etc. on particular leases unenforceable	23 24
	(1) This section applies to the following leases—	25
	(a) a pre-existing lease;	26
	(b) a lease that arises from a renewal under an option to renew contained in a pre-existing lease;	27 28 29

[s 27]

	(c) a lease that arises from an assignment or transfer of a pre-existing lease.	1 2
	(2) A provision in the lease requiring a lessee to pay land tax, or reimburse the lessor for land tax, is unenforceable.	3 4 5
	(3) In this section—	6
	<i>pre-existing lease</i> —	7
	(a) means a lease entered into after 1 January 1992 and before 30 June 2009; and	8 9
	(b) does not include a lease that arises from—	10
	(i) a renewal under an option to renew contained in a lease entered into on or before 1 January 1992; or	11 12 13
	(ii) an assignment or transfer of a lease entered into on or before 1 January 1992.	14 15 16
Clause 27	Insertion of new pt 10, div 7	17
	Part 10—	18
	<i>insert</i> —	19
	Division 7	
	Transitional provision for Revenue Legislation Amendment Act 2017	20 21 22
	100 Application of s 83A	23
	(1) Section 83A is taken to have had effect on and from 30 June 2010.	24 25
	(2) However, 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 the commencement, the lessee is not entitled, only because of the operation of section 83A, to	26 27 28 29 30

[s 28]

	recover the amount.	1
	(3) Subsection (2) does not limit the grounds on which the lessee may otherwise recover an amount from the lessor for land tax paid in relation to the lease.	2 3 4 5
	(4) Also, if 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—	6 7 8
	(a) despite subsection (1), the lessor may enforce the order; and	9 10
	(b) section 83A does not affect the enforceability of the order.	11 12
	(5) In this section—	13
	<i>land tax</i> includes land tax levied under the repealed <i>Land Tax Act 1915</i> .	14 15
Clause 28	Amendment of sch 2 (Rate of land tax—companies, absentees and trustees)	16 17
	Schedule 2, heading, ‘absentees’—	18
	<i>omit</i> .	19
Clause 29	Insertion of new sch 3	20
	After schedule 2—	21
	<i>insert</i> —	22
	Schedule 3 Rate of land tax—absentees	23 24
	section 32(1)(c)	25
Part 1	Rate generally	26

[s 30]

Column 1 Total taxable value	Column 2 Tax payable
less than \$350,000	nil
\$350,000 or more but less than \$2,250,000	\$1,450 plus 1.7c for each \$1 more than \$350,000
\$2,250,000 or more but less than \$5,000,000	\$33,750 plus 1.5c for each \$1 more than \$2,250,000
\$5,000,000 or more	\$75,000 plus 2.0c for each \$1 more than \$5,000,000

Part 2 Surcharge rate

1

Column 1 Total taxable value	Column 2 Tax payable
less than \$350,000	nil
\$350,000 or more	1.5c for each \$1 more than \$349,999

Part 5 Amendment of Taxation Administration Act 2001

2

3

Clause 30 Act amended

4

This part amends the *Taxation Administration Act 2001*.

5

Clause 31 Replacement of pt 8, hdg (Confidentiality)

6

Part 8, heading—

7

omit, insert—

8

[s 32]

	Part 8	Confidentiality and collection of information	1
			2
			3
	Division 1	Confidentiality	4
Clause 32	Insertion of new pt 8, div 2		5
	Part 8, after section 113—		6
	<i>insert—</i>		7
	Division 2	Collection of information for disclosure to Commonwealth	8
			9
			10
	113A Definitions for division		11
	In this division—		12
	<i>commissioner of taxation</i> means the		13
	commissioner of taxation under the <i>Taxation Administration Act 1953</i> (Cwlth), section 4.		14
			15
	<i>reportable information</i> means information about		16
	the transfer of a freehold or leasehold interest in		17
	real property situated in Queensland that is		18
	reportable by the State to the commissioner of		19
	taxation under the <i>Taxation Administration Act 1953</i> (Cwlth), schedule 1, chapter 5, part 5-25,		20
	division 396, subdivision 396-B.		21
			22
	113B Relationship with other laws		23
	(1) This division applies despite any other provision		24
	of this Act or another Act or law.		25
	(2) This division does not limit the extent to which		26
	reportable information may be collected or		27

- disclosed under another provision of this Act or
another Act or law. 1
2
- (3) Information may be collected and disclosed under 3
this division even if— 4
- (a) the information is collected only for the 5
purpose of disclosure to the commissioner 6
of taxation and not collected under or in 7
relation to the administration of any law of 8
the State (other than this division); and 9
- (b) the information is not disclosed in 10
connection with the administration or 11
execution of any law of the State (other than 12
this division). 13

**113C Commissioner may collect and disclose 14
reportable information 15**

The commissioner may collect reportable 16
information and disclose it to the commissioner of 17
taxation. 18

113D How reportable information may be collected 19

- (1) The commissioner may require a person who is 20
providing information under a tax law to give the 21
commissioner reportable information. 22

Note— 23

The requirement under this section is an information 24
requirement for which a failure to comply is an offence 25
under section 121. 26

- (2) Without limiting subsection (1), the 27
commissioner may require reportable information 28
to be given with an instrument or ELN transfer 29
document lodged, or an application made, under a 30
tax law. 31
- (3) This section does not limit the circumstances in 32
which the commissioner may collect reportable 33

[s 33]

information.

1

Clause 33 Amendment of sch 2 (Dictionary)

2

Schedule 2—

3

insert—

4

commissioner of taxation, for part 8, division 2,
see section 113A.

5

6

reportable information, for part 8, division 2, see
section 113A.

7

8

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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 per cent 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 Queensland Supreme 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* (Taxation Administration Act) 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* (Cwlth).

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 per cent 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 (Commissioner) with a statutory charge over AFAD residential land for unpaid transfer duty. A further consequential amendment will be made to ensure the right of recovery provisions operate as intended for agency transactions.

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 an agreement to be reassessed with duty as if AFAD applied where a company is a foreign corporation when the agreement is entered into, and the property relates to AFAD residential land. 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. Further consequential amendments will be made to ensure the statutory charge provisions operate for unpaid transfer duty and the right of recover provisions operate as intended for pre-incorporation contracts.

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 per cent surcharge on absentees who are liable for land tax. 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 (for example, non-resident individuals). 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 Queensland Supreme 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 approved form requirement for persons who are required to notify the Commissioner when they acquire and dispose of land. Persons will be required to provide additional identity information under this approved form 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* (Cwlth) 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.

Existing offences under part 10 of the Taxation Administration Act extend to the collected 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* (Cwlth). 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 recovery 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.

RTI RELEASED

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 section 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 and 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. 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 section 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)(a) is amended to specify it applies to dutiable property other than an existing right. Subsection (2)(b) is amended to update the property condition cross-reference to renumbered section 241(2)(c). Existing subsections (2)(b) and (c) are renumbered as subsections (2)(c) and (d) to enable a new subsection (2)(b) to be inserted. New subsection (2)(b) specifies how AFAD is to be calculated for a dutiable transaction under section 9(1)(a) to (e) or (h) for dutiable property that is an existing right. New subsection (3) provides for the calculation of AFAD on dutiable transactions under new sections 240(2) (agency transactions) and 241A (pre-incorporation contracts).

Clause 12 inserts new division 1 heading into chapter 4, part 5.

Clause 13 inserts new subsection (5) into section 246A. The subsection confirms that the Commissioner is not required to make a reassessment under subsection (3) if the Commissioner is required to make a reassessment under section 246AC, to clarify the respective operations of the sections.

Clause 14 inserts new divisions 2 and 3 into chapter 4, part 5.

New division 2 sets out the reassessment provisions applying to specified agency-related agreements.

New section 246AA specifies the agency-related agreements to which the division applies. 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.

New section 246AB applies to agency-related agreements involving foreign agents and non-foreign principals. 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 246AB 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 246AC provides for reassessment of duty to impose AFAD in certain circumstances relating to agency-related agreements where the agent or principal (being a corporation or trustee) becomes foreign. Subsection (1) provides for when the section 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 section 240(2). Subsection (4) specifies the notice and lodgement requirements where one of the events in subsection (2) occurs.

Example for section 246AC –

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 246AD provides for reassessment of duty to impose AFAD in certain circumstances relating to agency-related agreements where the principal (being a corporation or trustee) becomes foreign. Subsection (1) provides for when the section 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 section 240(2). Subsection (4) specifies the notice and lodgement requirements where one of the events in subsection (2) occurs.

Example for section 246AD –

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 246AE 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 of duty on the agreement within 28 days after the property is transferred to the company.

New section 246AF 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 246AF applies where a transfer of dutiable property to a company is exempt under section 116(4), AFAD is not imposed on the agreement for the transfer of dutiable property, the dutiable property is AFAD residential land, and the company was not a foreign corporation when the dutiable property was transferred to it. If the company becomes a foreign corporation within 3 years after the dutiable property is transferred to it, 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 15 amends subsection 246B(2)(a) to extend the application of the provision to the relevant entities under transactions imposed with AFAD under new section 240(2) and new section 241A. 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 where the land has not been transferred to the principal. 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). Where the land has been transferred to the principal, section 246B(2)(a)(ii) imposes a charge on the interest of the principal. Where AFAD is imposed on a transaction under new section 241A and the transfer duty imposed is not paid by the date the amount is

payable, subsection 246B(2)(a)(iii) imposes a charge on the interest of the company. For other dutiable transactions under section 9(1)(a) to (f), subsection 246B(2)(a)(iv) continues to impose a charge on the interest of the foreign acquirer under the transaction for the outstanding liability.

Clause 16 replaces section 246I with a new section extending the application of the section to ensure the proper operation of the statutory right of recovery of non-foreign liable parties in relation to agency-related agreements imposed with AFAD under section 240(2) and pre-incorporation contracts imposed with AFAD under section 241A.

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

New section 667 provides that new sections 240(2), 241A and new chapter 4, part 5, divisions 2 and 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.

Clause 18 inserts new definitions of *agent*, *agreement*, *original transferor* and *principal* into the Dictionary in schedule 6 for the purposes of chapter 4, part 5, division 2.

Part 3 Amendment of the First Home Owner Grant Act 2000

Clause 19 provides that part 3 amends the *First Home Owner Grant Act 2000*.

Clause 20 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 20 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 21 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 21 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 4 Amendment of the Land Tax Act 2010

Clause 22 provides that part 4 amends the *Land Tax Act 2010*.

Clause 23 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. New subsection (3) provides that section 23, which relates to the assessments of beneficiaries of deceased estates, is not limited by new section 22A.

Clause 24 amends section 32 to impose a 1.5 per cent 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 25 inserts new subsections (3)(c) and (4) into section 78. New subsection (3)(c) specifies an additional requirement to give a properly completed revenue form to the Commissioner within 1 month after there is a change to ownership of land. The conditions in subsection (3) are an alternative to persons giving notice under sections 78(1) and (2) to the Commissioner within 1 month of respectively ceasing to be and becoming the owner of land. New subsection (4) defines *revenue form* for the purposes of this new requirement and provides that it may be a combined form for information also provided under another revenue law under the Taxation Administration Act.

Clause 26 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 27 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 28 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 29 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 per cent of the portion of the taxable value of an absentee's taxable land that is equal to or greater than \$350,000.

Part 5 Amendment of the Taxation Administration Act 2001

Clause 30 provides that part 5 amends the *Taxation Administration Act 2001*.

Clause 31 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 32 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 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. New note in subsection (1) confirms that if the Commissioner requires a person who is providing information under a tax law to give the Commissioner reportable information, failure to comply with the requirement is an offence under section 121.

Clause 33 inserts new definitions of *commissioner of taxation* and *reportable information* into the Dictionary in schedule 2.