

DUTIES AMENDMENT BILL (No. 2) 2004

EXPLANATORY NOTES

GENERAL OUTLINE

Policy Objectives

To implement, with effect from 1 August 2004, measures announced in the 2004-05 State Budget by amending the *Duties Act 2001* to

- extend the ceiling for the concessional transfer duty rate of 1% for all home buyers from \$250,000 to \$300,000;
- include a general anti-avoidance provision to support the announced home duty concession change;
- reduce the insurance duty rate for contracts of class 1 general insurance from 8.5% to 7.5% of the premium; and
- abolish credit card duty with effect from 1 August 2004.

Reasons for the Bill

The 2004-05 State Budget proposed that the *Duties Act 2001* be amended, with effect from 1 August 2004, to:

- extend the ceiling for the concessional transfer duty rate of 1% for all home buyers from \$250,000 to \$300,000;
- include a general anti-avoidance provision to support the announced home duty concession change;
- reduce the insurance duty rate for contracts of class 1 general insurance from 8.5% to 7.5% of the premium; and
- abolish credit card duty with effect from 1 August 2004.

The *Duties Amendment Bill (No. 2) 2004* will implement these measures.

Due to the delay between the Budget announcement and commencement of the changes to the home transfer duty concession, there is scope for taxpayers to structure transactions to gain the benefit of the amendment

through schemes to defer transactions to a date after 31 July 2004. An anti-avoidance provision is required to address these schemes.

Achievement of the Objectives

Home transfer duty concession

Currently, all Queensland home buyers are entitled to a concessional transfer duty rate of 1% for the first \$250,000 of the consideration for, or value of, a home that is, a person's principal place of residence. The general rates of duty apply to the excess price or value over \$250,000. A further duty rebate is available for buyers purchasing their first home valued up to \$500,000.

As an initiative of the 2004-05 State Budget, the ceiling for the concessional transfer duty rate is to be increased from \$250,000 to \$300,000.

Anti-avoidance provision

Due to the delay between the Budget announcement and commencement of the changes to the home transfer duty concession on 1 August 2004, taxpayers may seek to structure their transactions to gain the benefit of these amendments by schemes to defer home transactions to a date after 31 July 2004. The *Duties Act 2001* is to be amended to include an anti-avoidance provision to address these schemes. A similar provision was included in the *Duties Amendment Act 2004* to prevent schemes in relation to the increased transfer duty concessions for first home buyers which commenced on 1 May 2004.

The anti-avoidance provision will operate so that the \$300,000 ceiling for the concessional transfer duty rate of 1% will not apply to certain dutiable transactions made on or after 1 August 2004, where a prior transaction or arrangement is made before that date. A prior transaction or arrangement includes a pre-existing transfer or agreement which is replaced by another transfer or agreement for the same land after 1 August 2004, an option to purchase land or an option to require a transferee to purchase land granted before 1 August 2004 and exercised on or after 1 August 2004.

The provision will ensure that the new ceiling for the concessional transfer duty rate will not apply for arrangements made before 1 August 2004 to defer a dutiable transaction until 1 August 2004 or later to gain the benefit of the new first home transfer duty concession.

If any of these situations arise, the parties will be able to claim the concessional transfer duty rate to the current \$250,000 ceiling.

Abolition of credit card duty

Credit card duty is imposed on credit card transactions at the rate of 10 cents for each transaction in a billing period, less 10 cents for the billing period. Credit card duty is payable by credit card providers but is generally passed on to credit card holders.

As an initiative of the 2004-05 State Budget, credit card duty will be abolished, with the abolition taking effect for any credit card transactions effected on or after 1 August 2004. However, credit card providers registered under the *Duties Act 2001* will still be required to lodge a credit card duty return, and pay credit card duty, on or after 1 August 2004 in respect of any credit card transactions entered into prior to that date.

Rate reduction for class 1 general insurance

Insurance duty is imposed on insurance policies relating to Queensland, with different duty rates applying for different insurance policies. For example, a flat rate of 10 cents is imposed on compulsory third party motor vehicle policies, a rate of 5% of the net premium applies for WorkCover insurance and various rates apply to life insurance policies. Duty is imposed at the rate of 5% of the premium for class 2 general insurance, which is insurance for professional indemnity, comprehensive motor vehicle cover, a home mortgage that is a first mortgage and travel personal accident cover. All other policies (such as building and contents cover) constitute class 1 general insurance and currently attract duty at the rate of 8.5% of the premium.

As an initiative of the 2004-05 State Budget, the duty rate for class 1 general insurance is to be reduced from 8.5% to 7.5%. This change is also to take effect on 1 August 2004 for insurance policy premiums paid on or after that date.

Alternatives to the Bill

The policy objectives require statutory amendment to give them ongoing effect.

Estimated Cost for Government Implementation

Any additional administrative costs are not expected to be significant.

Consistency with Fundamental Legislative Principles

There are no fundamental legislative principles raised in respect of the amendments proposed in the *Duties Amendment Bill (No. 2) 2004*.

Consultation

The transfer, credit card and insurance duty amendments were announced by the Government as measures of the 2004-05 State Budget.

Consultation on the anti-avoidance amendment was not appropriate as the amendment is designed to minimise any potential abuse in claiming the home transfer duty concession.

NOTES ON PROVISIONS

Clause 1 cites the short title of the Bill.

Clause 2 states the Bill is to commence on 1 August 2004.

Clause 3 states that the Bill amends the *Duties Act 2001*.

Clause 4 makes a number of amendments to section 91 so that the 1% concessional rate of transfer duty will apply to the transfer, or agreement for transfer, of a home for the first \$300,000 of the consideration for, or value of, the home.

Clause 5 makes a number of amendments to section 93 so that the 1% concessional rate of transfer duty will apply to the transfer, or agreement for transfer, of a home for the first \$300,000 of the consideration for, or value, of the home.

Clause 6 omits chapter 6, part 2 of the Act.

Clause 7 amends section 362 to reduce the rate of insurance duty for contracts of class 1 general insurance from 8.5% to 7.5% of the premium paid for the insurance, where the premium is paid on or after 1 August 2004. "Class 1 general insurance" is defined in Schedule 6 of the Act.

Where part of the premium for a contract of class 1 general insurance is paid before 1 August 2004 and the remainder is paid on or after that date, insurance duty is payable on the date that the first part payment is made, based on the full premium amount at the rate of 8.5%. This is because, under section 358, insurance duty is payable when the premium is paid.

Section 359 states that the premium is paid when paid in full or when part of the premium is first paid.

Clause 8 inserts Chapter 17, Part 4 in the Act which contains new sections 552 and 553.

- New section 552(1) contains transitional provisions for the Bill. This subsection clarifies that the home transfer duty concessions as amended by the Bill apply to dutiable transactions for which a duty liability arises on or after 1 August 2004. New section 552(2) provides that Chapter 2, Part 9, Division 3 of the Act, as in force immediately before 1 August 2004, will apply to certain transfers or agreements for transfer of residential land made on or after 1 August 2004, in certain circumstances.
- New section 553 ensures that Chapter 6, Part 2 of the Act, as in force immediately prior to its omission on 1 August 2004, continues to apply for transactions effected prior to the omission, regardless of whether or not the billing period in which the transactions are made ends on or after 1 August 2004. For example, a self assessor registered as a credit card provider under Chapter 12, Part 1 of the Act for credit card duty will still be required to lodge a return and remit credit card duty on or after 1 August 2004 in respect of credit card transactions effected prior to that date.

The Schedule makes a number of minor amendments to the Act, which are consequential to the omission of Chapter 6, Part 2 of the Act.