Revenue Legislation Amendment Regulation (No. 1) 2015

Explanatory notes for SL 2015 No. 45

made under the

Duties Act 2001
Land Tax Act 2010
Mineral Resources Act 1989
Petroleum and Gas (Production and Safety) Act 2004
State Penalties Enforcement Act 1999
Taxation Administration Act 2001

General Outline

Short title

Revenue Legislation Amendment Regulation (No. 1) 2015

Authorising law

Sections 495(3), 508(1) and (2)(a) and Schedule 6 definition of 'recognised stock exchange', of the *Duties Act 2001*
Sections 63(2)(a), 85(1) and (2)(a) of the *Land Tax Act 2010*
Sections 320(4), (6) and (7), 417(1) and (2)(a) of the *Mineral Resources Act 1989*
Sections 595(3), 859(1) and (2)(a) of the *Petroleum and Gas (Production and Safety) Act 2004*
Sections 75(3), 119(5), 136(1)(h)(ii), 165(1) and (6) and Schedule 2 of the *State Penalties Enforcement Act 1999*
Section 61A(3) and 154 of the *Taxation Administration Act 2001*

Policy objectives and the reasons for them

The policy objective of the Regulation is to amend various laws administered by the Office of State Revenue (OSR). The amendments are generally administrative in nature and are matters that are required to be prescribed by regulation. The amendments make changes to the list of recognised stock exchanges prescribed under the *Duties Regulation 2013,* prescribe an interest rate under the *Taxation Administration Regulation 2012*, and increase fees, charges and related amounts in accordance with Government policy.

Amendments to the *Duties Regulation 2013 - recognised stock exchanges*

Under the *Duties Act 2001*, transfer duty applies to the acquisition or surrender of an interest in a trust which directly or indirectly holds dutiable property in Queensland. However, transactions involving units in a "listed unit trust" are generally not dutiable. A listed unit trust has its units quoted on the market operated by a "recognised stock exchange".

Landholder duty may also be payable on certain acquisitions of shares in a corporation or units in a listed unit trust, where the corporation or unit trust holds land in Queensland valued at $2,000,000 or more. For unlisted corporations, landholder duty applies where an interest of 50 per cent or more is acquired. Standard duty rates apply. However, for corporations and unit trusts listed on a recognised stock exchange, landholder duty only applies where an interest of 90 per cent or more is acquired in the landholder. Further, a concessional rate of duty applies.

For the purposes of the *Duties Act 2001*, "recognised stock exchange" is defined to mean the Australian Securities Exchange (ASX) or another stock exchange prescribed under a regulation. The following stock exchanges are currently prescribed under section 9 of the *Duties Regulation 2013* as recognised stock exchanges:

- the Australia Pacific Exchange Limited, ACN 080 399 220
- the National Stock Exchange of Australia Ltd, ACN 000 902 063
- the New Zealand Exchange Limited
- a stock exchange that is a member of the World Federation of Exchanges.

The London Stock Exchange plc was formerly a member of the World Federation of Exchanges. However, it resigned its membership on or about 1 January 2014. As a consequence, it ceased to be a recognised stock exchange for the purposes of the *Duties Act 2001*.

Prescription of the London Stock Exchange plc as a recognised stock exchange with effect from 1 January 2014 will ensure that transactions involving entities listed on the London Stock Exchange remain eligible for the same transfer duty relief and concessional landholder duty treatment that was available when the London Stock Exchange plc was a member of the World Federation of Exchanges.

In addition, an amendment to the *Duties Regulation 2013* will reflect a change of name by Australia Pacific Exchange Limited to the Asia Pacific Stock Exchange Limited.

Amendment to the *Taxation Administration Regulation 2012 – prescribed interest rate*

Under the *Taxation Administration Act 2001*, a taxpayer who is dissatisfied with an original assessment or a reassessment increasing their liability for tax may object to the Commissioner of State Revenue (Commissioner). The Commissioner must allow the objection completely or partly, or disallow it.

A taxpayer who is subsequently dissatisfied with an objection decision may apply to the Queensland Civil and Administrative Tribunal for a review of the decision or appeal to the Supreme Court. Where an objection decision is successfully challenged and a refund of tax or late payment interest arises as a result of the court or tribunal's decision in this regard, the

Commissioner is required to pay interest on the refund at the rate prescribed under regulation. Section 9 of the *Taxation Administration Regulation 2012* prescribes the rate to be the bank bill yield rate, rounded to the nearest second decimal point.

Previously there has been no obligation for the Commissioner to pay interest on a refund arising from a decision made by the Commissioner on objection. However, this has been changed by the introduction of new section 61A of the *Taxation Administration Act 2001* by the *Payroll Tax Rebate, Revenue and Other Legislation Amendment Act 2015.* New section 61A of the *Taxation Administration Act 2001* also requires the Commissioner to pay interest, at the rate prescribed under regulation, on refunds of tax and late payment interest arising from successful objections.

An amendment to the *Taxation Administration Regulation 2012* will prescribe the rate of interest for the purposes of new section 61A. This is the same rate that applies for the payment of interest on refunds arising from court or tribunal decisions under section 61 of the *Taxation Administration Act 2001*.

Fees under the *Duties Regulation 2013*, *Land Tax Regulation 2010*, *Mineral Resources Regulation 2013*, *Petroleum and Gas (Production and Safety) Regulation 2004* and *State Penalties Enforcement Regulation 2014*

In accordance with Government Policy, from 1 July 2015, all fees and charges are to be indexed at a rate of 3.5% for the financial year starting 1 July 2015.

Amendments are made to the fees and charges in regulations administered by the OSR to give effect to Government policy.

Achievement of policy objectives

Amendments to the *Duties Regulation 2013 – recognised stock exchanges*

The objectives will be achieved by amending the *Duties Regulation 2013* to:

- prescribe the London Stock Exchange plc as a recognised stock exchange for the purposes of the *Duties Act 2001* with effect from 1 January 2014*;*
- update the reference to Australia Pacific Exchange Limited ACN 080 399 220 in the list of recognised stock exchanges, to reflect its current name, Asia Pacific Stock Exchange Limited ACN 080 399 220.

The policy objectives can only be achieved through legislative amendment.

Amendment to the Taxation Administration Regulation 2012 – prescribed interest rate

The objective will be achieved by amending the *Taxation Administration Regulation 2012* to prescribe the bank bill yield rate as the rate of interest applicable for refunds of tax and late payment interest arising from successful objections. This is consistent with the rate that applies for the payment of interest arising from a successful review or appeal.

The policy objective can only be achieved through legislative amendment.

Fees under *Duties Regulation 2013, Land Tax Regulation 2010, Mineral Resources Regulation 2013, Petroleum and Gas (Production and Safety) Regulation 2004 and State Penalties Enforcement Regulation 2014*

The Regulation will achieve its objective of increasing fees administered by OSR in accordance with Government policy, by amending the *Duties Regulation 2013, Land Tax Regulation 2010, Mineral Resources Regulation 2013, Petroleum and Gas (Production and Safety) Regulation 2004* and *State Penalties Enforcement Regulation 2014* to increase particular fees for the 2015-16 financial year by 3.5%. The amendment is consistent with increases applied in the 2012-13, 2013-14 and 2014-15 financial years. Any change to the fees administered by OSR must be effected through legislative amendment.

Consistency with policy objectives of authorising law

Amendments to the *Duties Regulation 2013 – recognised stock exchanges*

The amendments to the *Duties Regulation 2013* are consistent with the policy objective of the *Duties Act 2001* which provides for recognised stock exchanges to be prescribed by regulation.

Amendment to the *Taxation Administration Regulation 2012 – prescribed interest rate*

The amendment to the *Taxation Administration Regulation 2012* is consistent with the policy objective of the *Taxation Administration Act 2001* which provides for applicable interest rates to be prescribed by regulation.

Fees under *Duties Regulation 2013, Land Tax Regulation 2010, Mineral Resources Regulation 2013, Petroleum and Gas (Production and Safety) Regulation 2004* and *State Penalties Enforcement Regulation 2014*

The amendments increasing the fees in the *Duties Regulation 2013, Land Tax Regulation 2010, Mineral Resources Regulation 2013, Petroleum and Gas (Production and Safety) Regulation 2004* and *State Penalties Enforcement Regulation 2014* are consistent with the policy objectives under each of the respective enabling Acts, all of which contemplate prescription of the relevant fees as part of administration provided for under each Act.

Inconsistency with policy objectives of other legislation

Not applicable for all amendments.

Benefits and costs of implementation

Amendments to the *Duties Regulation 2013 – recognised stock exchanges*

Prescription of the London Stock Exchange plc as a recognised stock exchange from 1 January 2014 will maintain consistency of treatment of transactions in entities listed on the exchange for duty purposes, with the treatment which applied when London Stock Exchange plc was a member of the World Federation of Exchanges.

The amendment to replace the reference to Australia Pacific Exchange Limited with Asia Pacific Stock Exchange Limited will ensure the *Duties Regulation 2013* remains current.

Both amendments are taxpayer beneficial as they ensure that transactions in entities listed on both exchanges will continue to be entitled to access the concessional treatment available for transactions in entities which are listed on a recognised stock exchange.

The implementation costs for these amendments are not expected to be significant as the amendments fall within existing frameworks of administration, and the amendments seek to maintain the status quo.

Amendment to the *Taxation Administration Regulation 2012 – prescribed interest rate*

The amendment to the *Taxation Administration Regulation 2012* supports a taxpayer beneficial amendment to the *Taxation Administration Act 2001* to provide for the payment of interest on refunds to taxpayers by the Commissioner resulting from a reassessment giving effect to the Commissioner's decision on an objection to an assessment of liability. This will bring Queensland in line with all other states and territories and provide fairer treatment of taxpayers by compensating them for the loss of use of their funds while their objection is being determined. It will also ensure consistency with existing provisions for the payment of interest on refunds arising from court or tribunal decisions and orders.

The implementation costs for these amendments are not expected to be significant as the amendments fall within existing frameworks of administration.

Fees under *Duties Regulation 2013*, *Land Tax Regulation 2010*, *Mineral Resources Regulation 2013*, *Petroleum and Gas (Production and Safety) Regulation 2004* and *State Penalties Enforcement Regulation 2014*

Implementation of the Regulation will ensure the fees administered by OSR give effect to Government policy.

Implementation of the amendments increasing the fees administered by OSR and contained in the *Duties Regulation 2013, Land Tax Regulation 2010, Mineral Resources Regulation 2013, Petroleum and Gas (Production and Safety) Regulation 2004* and *State Penalties Enforcement Regulation 2014* will not result in any additional costs to Government as the administration of the fees will continue to be subject to existing processes, systems and staffing.

Consistency with fundamental legislative principles

The Regulation is generally consistent with fundamental legislative principles.

Each of the relevant enabling Acts contemplates the use of subordinate legislation for these particular amendments.

The amendment to prescribe the London Stock Exchange plc as a recognised stock exchange under the *Duties Regulation 2013*, and the amendment to the *Taxation Administration Regulation 2012* to prescribe a rate of interest payable to taxpayers under new section 61A of the *Taxation Administration Act 2001* both commence retrospectively.

The prescription of the London Stock Exchange plc as a recognised stock exchange from 1 January 2014 is required to ensure the continuity of its status as a recognised stock exchange, despite its resignation from membership of the World Federation. The prescription affords concessional duty treatment for certain transactions in entities listed on the London Stock Exchange plc, and is therefore taxpayer beneficial.

The prescription of a rate of interest payable to taxpayers under new section 61A of the *Taxation Administration Act 2001* is also taxpayer beneficial. It compensates taxpayers who successfully object to assessments of liability under Queensland's revenue laws, for the loss of use of their funds while their objection is being determined. It will also ensure consistency with existing provisions for the payment of interest on refunds arising from court or tribunal decisions and orders. The retrospective operation of the prescription of rate is only to match the date from which new section 61A comes into operation, as introduced by the *Payroll Tax Rebate, Revenue and Other Legislation Amendment Act 2015*, from when that Act received Royal Assent on 11 June 2015.

On this basis the retrospective operation of these amendments are not considered to adversely affect rights and liberties or impose obligations such as to offend fundamental legislative principles.

Consultation

Amendments to the *Duties Regulation 2013 – recognised stock exchanges*

The Office of Best Practice Regulation (OBPR), Queensland Competition Authority was consulted regarding the need to prepare a Regulatory Impact Statement (RIS). As the amendments affect the imposition of taxation, by listing entities which are entitled to taxation relief, OBPR advised that it was satisfied the amendments were excluded from the RIS System.

As these are taxpayer beneficial amendments intended to retain the status quo, community consultation was not considered necessary.

Amendment to the *Taxation Administration Regulation 2012 – prescribed interest rate*

A Preliminary Impact Assessment was prepared in relation to the amendment to the *Taxation Administration Act 2001* to allow for the payment on interest on successful objections and OBPR concluded that a RIS was not required. As the amendment to the *Taxation Administration Regulation 2012* supports the amendment to the *Taxation Administration Act 2001*, which would lead to a fairer treatment of taxpayers who have a reduced taxation liability as a result of an objection decision, OBPR advised that no further analysis or assessment was required.

As a taxpayer beneficial amendment, consistent with the existing framework for payment of interest on court and tribunal decisions resulting in a refund to the taxpayer, community consultation was not considered necessary.

Fees under *Duties Regulation 2013, Land Tax Regulation 2010, Mineral Resources Regulation 2013, Petroleum and Gas (Production and Safety) Regulation 2004* and *State Penalties Enforcement Regulation 2014*

OBPR was consulted regarding the need to prepare a RIS. As the Regulation proposes standard annual fee variations in line with a Government endorsed indexation factor, OBPR confirmed the amendments are excluded from the RIS system.

All fees administered by OSR under the *Duties Regulation 2013, Land Tax Regulation 2010, Mineral Resources Regulation 2013, Petroleum and Gas (Production and Safety) Regulation 2004* and *State Penalties Enforcement Regulation 2014* are increased by a rate of 3.5% per annum in accordance with current Government policy. Therefore, community consultation was not undertaken.