

THIS PUBLIC BILL has this day been read a Third time and passed

The Clerk of the Parliament.

*Legislative Assembly Chamber,
Brisbane, June 2017*



Queensland

**No.
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



Queensland

Revenue Legislation Amendment Bill 2017

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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—

Part 1 Preliminary

1 Short title

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

2 Commencement

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

Part 2 Amendment of Duties Act 2001

3 Act amended

This part amends the *Duties Act 2001*.

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

Section 116(4)—

insert—

Note—

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

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

Section 232—

insert—

- (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—
 - (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
 - (b) the use of the chattel can be directly linked to, or is incidental to, the use and occupation of the land.

6 **Amendment of s 237 (What is a *foreign trust*)**

Section 237(2), definition *foreign interest*, paragraph (c), 'foreign trustee'—

omit, insert—

trustee of a foreign trust

7 **Amendment of s 240 (Conditions for imposing AFAD)**

Section 240—

insert—

- (2) Also, AFAD is imposed on a relevant transaction that is an agreement for the transfer of dutiable property if—
 - (a) the commissioner is satisfied—
 - (i) a person (the ***agent***) is appointed in writing as an agent for another person (the ***principal***); and
 - (ii) under the appointment, the agent enters into the agreement for the transfer of the dutiable property from a person to

[s 8]

- the agent on behalf of the principal (the ***agreement***); and
- (iii) the principal provided all the consideration, including any deposit paid; and
- (b) at the time the liability for transfer duty on the agreement arises—
 - (i) the property condition under section 241 applies; and
 - (ii) AFAD is not imposed on the agreement under subsection (1); and
 - (iii) the principal is a foreign person.
- (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.

8 Amendment of s 241 (Property condition for imposing AFAD)

- (1) Section 241(1), ‘section 240(a)’—
omit, insert—
section 240
- (2) Section 241(2)(a), after ‘or (h)’—
insert—
for dutiable property other than an existing right
- (3) Section 241(2)(b) to (d)—
renumber as section 241(2)(c) to (e).
- (4) Section 241(2)—
insert—
(b) for a dutiable transaction mentioned in section 9(1)(a) to (e) or (h) for dutiable

property that is an existing right—the existing right is—

- (i) AFAD residential land; or
- (ii) an existing right mentioned in schedule 6, definition *existing right*, paragraph (g) or (i) to (m) for which the dutiable property is AFAD residential land; or

9 Insertion of new s 241A

Chapter 4, part 3—

insert—

241A Imposition of AFAD—pre-incorporation contracts

- (1) This section applies if—
 - (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
 - (b) the company is named in the agreement; and
 - (c) the company, or a company that is reasonably identifiable with it, is registered under the Corporations Act; and
 - (d) under the Corporations Act, section 131, the company ratifies the agreement after it is registered; and
 - (e) the dutiable property is AFAD residential land; and
 - (f) the company is a foreign corporation when the dutiable property is transferred to it.
- (2) AFAD is imposed on the dutiable transaction that is the agreement.

[s 10]

Note—

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).

10 Amendment of s 242 (Definitions for pt 4)

Section 242, definition *foreign acquirer's interest*—
insert—

Example—

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 Amendment of s 244 (AFAD for transfer duty)

(1) Section 244(2)(a), after 'or (h)'—

insert—

for dutiable property other than an existing right

(2) Section 244(2)(b), 'section 241(2)(b)'—

omit, insert—

section 241(2)(c)

(3) Section 244(2)(b) and (c)—

renumber as section 244(2)(c) and (d).

(4) Section 244(2)—

insert—

(b) for a dutiable transaction under section 9(1)(a) to (e) or (h) for dutiable property that

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;

(5) Section 244—

insert—

- (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—
 - (a) the AFAD residential land that is the subject of the transaction; or
 - (b) the existing right mentioned in section 241(2)(b) that is the subject of the transaction.

12 Insertion of new ch 4, pt 5, div 1, hdg

Chapter 4, part 5, before section 246A—

insert—

Division 1 Reassessments—general

13 Amendment of s 246A (Reassessment if corporation or trust becomes foreign)

Section 246A—

insert—

- (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.

[s 14]

14 Insertion of new ch 4, pt 5, divs 2–3

Chapter 4, part 5—

insert—

**Division 2 Reassessments relating to
agency-related
agreements**

246AA Application of division

- (1) This division applies if the commissioner is satisfied—
 - (a) a person (the ***agent***) is appointed in writing as an agent for another person (the ***principal***); and
 - (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 ***original transferor***) to the agent on behalf of the principal (the ***agreement***); and
 - (c) the principal provided all the consideration, including any deposit paid.
- (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.

**246AB Reassessment if principal not foreign
person at time of transfer**

- (1) This section applies if—
 - (a) the commissioner is satisfied transfer duty imposed on the agreement is paid; and

- (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;
- (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;
 - (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;
 - (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.
- (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—
- (a) for a reassessment because an event mentioned in subsection (2)(a) or (b) happens—the acquirer was a foreign person; or
 - (b) otherwise—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) to (d) happens, the corporation or trustee of the trust must—
- (a) give notice in the approved form to the commissioner; and
 - (b) ensure the instruments required for the assessment of duty on the agreement are lodged for a reassessment of duty on the agreement.

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—

- (a) give notice in the approved form to the commissioner; and
- (b) ensure the instruments required for the assessment of duty on the agreement are lodged for a reassessment of duty on the agreement.

Note—

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

Division 3 Reassessments relating to pre-incorporation contracts

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

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

Note—

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

246AF Reassessment of pre-incorporation contract—company becomes foreign corporation within 3 years

- (1) This section applies if—
 - (a) transfer duty is not imposed on a dutiable transaction because of section 116(4); and
 - (b) AFAD is not imposed on the agreement for the transfer of the dutiable property; and
 - (c) the dutiable property is AFAD residential land; and
 - (d) the company is not a foreign corporation when the dutiable property is transferred to the company.
- (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.
- (3) The commissioner must make a reassessment to impose AFAD on the agreement as if the company were a foreign corporation.
- (4) Within 28 days after the event mentioned in subsection (2) happens, the company must—
 - (a) give notice in the approved form to the commissioner; and
 - (b) ensure the instruments required for the assessment of duty on the agreement are lodged for a reassessment of duty on the agreement.

Note—

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

[s 15]

15 Amendment of s 246B (Charge over interest in land for unpaid transfer duty)

Section 246B(2)(a)—

omit, insert—

- (a) for a dutiable transaction mentioned in section 9(1)(a) to (f)—
 - (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
 - (ii) if AFAD is imposed on the transaction under section 240(2) and the land has been transferred to the principal—the principal; or
 - (iii) if AFAD is imposed on the transaction under section 241A—the company; or
 - (iv) otherwise—the foreign acquirer under the transaction;

16 Replacement of s 246I (Recovery of transfer duty payment from foreign persons)

Section 246I—

omit, insert—

246I Recovery of transfer duty payment from foreign persons

- (1) This section applies if—
 - (a) AFAD relating to transfer duty is imposed on a dutiable transaction; and
 - (b) a person who is liable under this Act to pay the transfer duty pays an amount to the commissioner as payment for—
 - (i) all or part of the transfer duty; or

- (ii) interest or penalty tax relating to the transfer duty; and
- (c) the person—
 - (i) is not a foreign acquirer under the transaction; and
 - (ii) is not an agent for a principal who is a foreign person as mentioned in section 240(2); and
 - (iii) is not a transferee mentioned in section 241A if the dutiable property has been transferred to the company.
- (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—
 - (a) the foreign acquirer;
 - (b) the agent for the principal who is a foreign person as mentioned in section 240(2);
 - (c) the transferee mentioned in section 241A if the dutiable property has been transferred to the company.

17 Insertion of new ch 17, pt 23

Chapter 17—

insert—

Part 23

Transitional provision for Revenue Legislation Amendment Act 2017

[s 18]

667 Application of amendments applying AFAD to particular agreements

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.

18 Amendment of sch 6 (Dictionary)

Schedule 6—

insert—

agent, for chapter 4, part 5, division 2, see section 246AA.

agreement, for chapter 4, part 5, division 2, see section 246AA.

original transferor, for chapter 4, part 5, division 2, see section 246AA.

principal, for chapter 4, part 5, division 2, see section 246AA.

Part 3 Amendment of First Home Owner Grant Act 2000

19 Act amended

This part amends the *First Home Owner Grant Act 2000*.

20 Amendment of pt 3, div 6, hdg (Particular eligible transactions—2016–2017 financial year)

Part 3, division 6, heading, ‘2016–2017 financial year’—

omit, insert—

1 July 2016 to 31 December 2017

21 Amendment of s 25D (Meaning of *particular eligible transaction* for div 6)

Section 25D(1), ‘30 June 2017’—

omit, insert—

31 December 2017

Part 4 Amendment of Land Tax Act 2010

22 Act amended

This part amends the *Land Tax Act 2010*.

23 Insertion of new s 22A

Part 4, division 3—

insert—

22A Assessment of trustees

- (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.
- (2) This section applies despite section 22.
- (3) Also, this section does not limit section 23.

24 Amendment of s 32 (Rate of land tax generally)

Section 32(1)(b)—

omit, insert—

- (b) for a company or trustee—the rate provided for under schedule 2;
- (c) for an absentee—

[s 25]

- (i) the general rate provided for under schedule 3, part 1; and
- (ii) the surcharge rate provided for under schedule 3, part 2.

25 Amendment of s 78 (Notice of change of ownership of land)

(1) Section 78(3)—

insert—

- (c) a properly completed revenue form is given to the commissioner within 1 month after ownership of the land changed.

(2) Section 78(4)—

insert—

revenue form means a form that—

- (a) gives information required by this section and another revenue law under the *Taxation Administration Act 2001* about the change of ownership; and
- (b) may be given to the commissioner.

26 Insertion of new s 83A

After section 83—

insert—

83A Provision to pay land tax etc. on particular leases unenforceable

(1) This section applies to the following leases—

- (a) a pre-existing lease;
- (b) a lease that arises from a renewal under an option to renew contained in a pre-existing lease;

- (c) a lease that arises from an assignment or transfer of a pre-existing lease.
- (2) A provision in the lease requiring a lessee to pay land tax, or reimburse the lessor for land tax, is unenforceable.
- (3) In this section—
pre-existing lease—
 - (a) means a lease entered into after 1 January 1992 and before 30 June 2009; and
 - (b) does not include a lease that arises from—
 - (i) a renewal under an option to renew contained in a lease entered into on or before 1 January 1992; or
 - (ii) an assignment or transfer of a lease entered into on or before 1 January 1992.

27 Insertion of new pt 10, div 7

Part 10—

insert—

Division 7 Transitional provision for Revenue Legislation Amendment Act 2017

100 Application of s 83A

- (1) Section 83A is taken to have had effect on and from 30 June 2010.
- (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

[s 28]

recover the amount.

- (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.
- (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—
 - (a) despite subsection (1), the lessor may enforce the order; and
 - (b) section 83A does not affect the enforceability of the order.
- (5) In this section—
land tax includes land tax levied under the repealed *Land Tax Act 1915*.

28 Amendment of sch 2 (Rate of land tax—companies, absentees and trustees)

Schedule 2, heading, ‘, absentees’—

omit.

29 Insertion of new sch 3

After schedule 2—

insert—

**Schedule 3 Rate of land
tax—absentees**

section 32(1)(c)

Part 1 Rate generally

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

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

30 Act amended

This part amends the *Taxation Administration Act 2001*.

31 Replacement of pt 8, hdg (Confidentiality)

Part 8, heading—

omit, insert—

[s 32]

Part 8 Confidentiality and collection of information

Division 1 Confidentiality

32 Insertion of new pt 8, div 2

Part 8, after section 113—

insert—

Division 2 Collection of information for disclosure to Commonwealth

113A Definitions for division

In this division—

commissioner of taxation means the commissioner of taxation under the *Taxation Administration Act 1953* (Cwlth), section 4.

reportable information means information about the transfer of a freehold or leasehold interest in real property situated in Queensland that is reportable by the State to the commissioner of taxation under the *Taxation Administration Act 1953* (Cwlth), schedule 1, chapter 5, part 5-25, division 396, subdivision 396-B.

113B Relationship with other laws

- (1) This division applies despite any other provision of this Act or another Act or law.
- (2) This division does not limit the extent to which reportable information may be collected or

disclosed under another provision of this Act or another Act or law.

- (3) Information may be collected and disclosed under this division even if—
- (a) the information is collected only for the purpose of disclosure to the commissioner of taxation and not collected under or in relation to the administration of any law of the State (other than this division); and
 - (b) the information is not disclosed in connection with the administration or execution of any law of the State (other than this division).

113C Commissioner may collect and disclose reportable information

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

113D How reportable information may be collected

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

Note—

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

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

[s 33]

information.

33 Amendment of sch 2 (Dictionary)

Schedule 2—

insert—

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

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

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