

Western Australia

Revenue Laws Amendment and Repeal Act 2010

As at 25 Jun 2010

No. 17 of 2010

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An Act to —

- amend the *Duties Act 2008*;
 - amend the *First Home Owner Grant Act 2000*;
 - amend the *State Trading Concerns Act 1916*;
 - amend the *Taxation Administration Act 2003*;
 - repeal the *Debits Tax Act 2002*;
 - repeal the *Debits Tax Assessment Act 2002*,
- and to provide for related and consequential matters.**

[Assented to 25 June 2010]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Revenue Laws Amendment and Repeal Act 2010*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1, Part 2 Division 1 and sections 13 and 16 — on the day on which this Act receives the Royal Assent (*assent day*);
- (b) Parts 3, 4, 5 and 6 — on the day after assent day;
- (c) section 12 — is deemed to have come into operation on 1 July 2008;
- (d) Part 2 Division 2 and sections 11, 14 and 15 — on a day fixed by proclamation, and different days may be fixed for different provisions.

Part 2 — *Duties Act 2008* amended

Division 1 — Preliminary

3. Act amended

This Part amends the *Duties Act 2008*.

Division 2 — Amendments about conditional agreements

4. Section 9 amended

- (1) In section 9 delete the definitions of:

off-the-plan conditional agreement
unconditional

- (2) In section 9 insert in alphabetical order:

issue of title conditional agreement has the meaning
given in section 90;

- (3) In section 9 in the definition of *general conditional agreement*
delete paragraph (c) and insert:

(c) an issue of title conditional agreement;

- (4) In section 9 in the definition of *terminated on relevant grounds*
delete “section 87(3)” and insert:

section 88A(2)

5. Section 19 amended

In section 19(2) delete “a transaction record for it is required to be lodged under section 23” and insert:

an instrument is required to be lodged under section 23
in respect of the agreement

6. Section 23 amended

- (1) In section 23(1) delete the passage that begins with “within —” and continues to the end of paragraph (d) and insert:

within 2 months after the day on which liability for
duty on the transaction arises.

- (2) Delete section 23(3).

7. Section 25 replaced

Delete section 25 and insert:

25. Payment of duty

- (1) A person liable to pay duty on a dutiable transaction is to pay the duty within one month after the date of the assessment notice issued in relation to the assessment of the duty, unless a later time is provided under subsection (2) or (3) in respect of the transaction.
- (2) Unless subsection (3) applies, duty is to be paid within 12 months after the day on which liability for duty on the transaction arises if the transaction is —
- (a) a conditional agreement; or

- (b) a dutiable transaction referred to in section 11(1)(a), (b), (c) or (d) if a document relating to the transaction must be registered under —
 - (i) the *Mining Act 1978*; or
 - (ii) the *Registration of Deeds Act 1856*; or
 - (iii) the *Transfer of Land Act 1893*.
- (3) Duty is to be paid within 3 years after the day on which liability for duty on the transaction arises if the transaction is —
 - (a) a subdivision conditional agreement; or
 - (b) an issue of title conditional agreement.

8. Section 87 amended

- (1) Delete section 87(3) and (4).
- (2) In section 87(5) delete “subsections (1)(c) and (3)(a),” and insert:

subsection (1)(c),

Note: The heading to amended section 87 is to read:

The term “conditional agreement”

9. Section 88A inserted

After section 87 insert:

88A. General conditional agreements terminated on relevant grounds

- (1) Duty is not chargeable on a general conditional agreement if, after an instrument effecting or

evidencing the agreement has been lodged under section 23 but before duty on the transaction is paid, or is due to be paid, under section 25 (whichever is the earlier in time) —

- (a) the agreement is terminated on relevant grounds; and
 - (b) the Commissioner is notified of the termination of the agreement in the approved form.
- (2) A general conditional agreement is terminated on relevant grounds if —
- (a) it is not carried into effect because the condition to which it is or was subject cannot be fulfilled for reasons that are not within the control of a party to the agreement, or a person that is related (within the meaning given in section 87(5)) to a party to the agreement; and
 - (b) duty is not chargeable on the agreement under section 107 because it is a cancelled transaction.

10. Section 90 replaced

Delete section 90 and insert:

90. The term “issue of title conditional agreement”

A reference to an issue of title conditional agreement is to a conditional agreement —

- (a) for the sale of land conditional on the happening of one or more of the events described in section 87(2)(j) or (m); or
- (b) for —
 - (i) the sale of a strata lot; and

- (ii) the construction on the strata lot, after liability for duty on the agreement arises, of a building for commercial, residential or mixed use purposes.

Division 3 — Other amendments to the *Duties Act 2008*

11. Section 3 amended

In section 3 in the definition of *lodge* delete “Commissioner;” and insert:

Commissioner, and if the Commissioner has established procedures for the electronic lodgment and recording of data on dutiable transactions, includes to lodge in accordance with those procedures;

12. Section 70 amended

In section 70 delete “Division —” and insert:

Division, other than section 78 —

13. Section 72 amended

In section 72 delete “that, immediately before the acquisition” and insert:

that

14. Section 147E amended

In section 147E delete “the application of the taxpayer,” and insert:

application being made in the approved form,

15. Section 147F amended

- (1) In section 147F(2) delete “the application of the taxpayer,” and insert:

application being made in the approved form,

- (2) In section 147F(4) delete “the application of the taxpayer,” and insert:

application being made in the approved form,

16. Section 262 amended

In section 262(3)(a) delete “within” and insert:

not later than

Part 3 — *First Home Owner Grant Act 2000* amended

17. Act amended

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

18. Section 3 amended

In section 3(1) insert in alphabetical order:

corresponding Commissioner, in relation to a corresponding law, means the person responsible for administering the corresponding law;

19. Section 65 amended

Delete section 65(2)(c) and insert:

- (c) for the purpose of proceedings, or a report of proceedings, arising out of this Act, a taxation Act as defined in the *Taxation Administration Act 2003* or a corresponding law, to which —
 - (i) the Commissioner is a party, or in respect of proceedings arising out of a corresponding law, the corresponding Commissioner is a party; and
 - (ii) the person to whom the information relates is a party.

Part 4 — State Trading Concerns Act 1916 amended

20. Act amended

This Part amends the *State Trading Concerns Act 1916*.

21. Section 5A inserted

After section 4B insert:

5A. Credit card and debit card administration fee

(1) In this section —

credit card means —

- (a) an article of a kind commonly known as a credit card; or
- (b) any similar article intended for use in obtaining cash, goods or services on credit;

credit or debit card administration fee means a fee, not exceeding the amount approved under this section, for the making of a payment by use of a credit card or debit card;

debit card means an article intended for use by a person in obtaining access to an account that is held by the person for the purpose of withdrawing or depositing cash or obtaining goods or services;

statutory corporation has the meaning given in section 4B(1).

- (2) The imposition of a credit or debit card administration fee is authorised for the purposes of section 4(2).
- (3) A credit or debit card administration fee can be imposed by a statutory corporation on a person making a payment to the statutory corporation by means of a credit card or debit card.

- (4) A credit or debit card administration fee must not exceed the amount approved by the Treasurer.
- (5) Different amounts can be approved in relation to different types of credit cards or debit cards.
- (6) The amount of a credit or debit card administration fee that is determined in a manner that has been approved by the Treasurer is to be regarded as having been approved by the Treasurer.

Part 5 — Taxation Administration Act 2003 amended

22. Act amended

This Part amends the *Taxation Administration Act 2003*.

23. Section 20A amended

After section 20A(2) insert:

- (3A) Without limiting subsection (1), a compromise agreement may include —
- (a) conditions agreed with the taxpayer providing for the payment (and allowing for the remission) of interest at the prescribed rate or at some other rate fixed by or under the arrangement with the agreement of the taxpayer; and
 - (b) any other conditions the Commissioner considers appropriate.

24. Section 39 amended

Delete section 39(2) and insert:

- (2) If, as a result of the reassessment, an amount is to be refunded or credited to the taxpayer, the following amounts are also to be refunded or credited to the taxpayer —
- (a) any amount paid by the taxpayer for the lodging of a memorial under section 76, 77 or 77A, if the Commissioner has lodged a withdrawal of the memorial as a result of the reassessment;

- (b) interest during the reassessment period, calculated at the prescribed rate, on the amount to be refunded or credited, including any amount referred to in paragraph (a).
- (3) In subsection (2)(b) —
reassessment period, in relation to the payment of interest on an amount, means the period —
 - (a) beginning on whichever is the later of —
 - (i) the date on which the amount to be refunded or credited to the taxpayer, as a result of the reassessment, was paid by the taxpayer; or
 - (ii) the date on which the assessment or decision objected to was made;
 - and
 - (b) ending on the date, on or after the date the Commissioner made the reassessment, on which the Commissioner approves the refunding or crediting of the amount.

25. Section 43 amended

- (1) Delete section 43(3) and insert:
- (3) If the final reassessment of the taxpayer's liability indicates that tax has been overpaid, the taxpayer is entitled to a refund or credit of the overpaid amount and the following amounts —
 - (a) any amount paid by the taxpayer for the lodging of a memorial under section 76, 77 or 77A, if the Commissioner has lodged a withdrawal of the memorial as a result of the final reassessment;

- (b) interest during the reassessment period, calculated at the prescribed rate, on the amount to be refunded or credited, including any amount referred to in paragraph (a).

(4A) In subsection (3)(b) —

reassessment period, in relation to the payment of interest on an amount, means the period —

(a) beginning on whichever is the later of —

(i) the date on which the overpaid amount was paid by the taxpayer; or

(ii) the date on which the assessment or decision the subject of the Commissioner’s decision to which the review proceedings relate, was made;

and

(b) ending on the date, on or after the date the Commissioner made the final reassessment, on which the Commissioner approves the refunding or crediting of the amount.

(2) In section 43(4)(b) delete “overpaid amount, and any payment of interest payable on the overpaid amount” and insert:

amount referred to in that subsection

26. Section 62 amended

In section 62:

(a) in paragraph (b) delete “section 76 or 77;” and insert:

section 76, 77 or 77A; and

(b) after paragraph (a) insert:

and

27. Section 77A amended

After section 77A(3) insert:

- (4A) If the Commissioner lodges a memorial under the *First Home Owner Grant Act 2000* section 55(2A) to create a charge on a relevant interest in land, then the Commissioner may also lodge a memorial under subsection (3) and for that purpose that subsection applies as if —
- (a) a reassessment to give effect to the *Duties Act 2008* section 145 had taken place; and
 - (b) the transfer duty payable as a result of that reassessment was not paid by the due date; and
 - (c) the amount of the unpaid transfer duty is the amount that would be payable as a result of such a reassessment.

28. Section 114 amended

Delete section 114(2)(d) and insert:

- (d) for the purpose of proceedings, or a report of proceedings, arising out of a taxation Act to which —
- (i) the Commissioner is a party; and
 - (ii) the person to whose affairs the information or material relates is a party.

Part 6 — Debits Tax legislation repealed

Division 1 — Repeals

29. Repeals

The following are repealed —

- (a) the *Debits Tax Act 2002*;
- (b) the *Debits Tax Assessment Act 2002*;
- (c) the *Debits Tax Assessment Regulations 2003*.

Division 2 — Consequential amendments

30. *Taxation Administration Act 2003* amended

- (1) This section amends the *Taxation Administration Act 2003*.
- (2) Delete section 3(1)(b) and (c).
- (3) In section 43(2) delete “the *Debits Tax Assessment Act 2002*,”.
- (4) In section 55(1):
 - (a) in paragraph (ba) delete “Chapter 4;” and insert:

Chapter 4.
 - (b) delete paragraph (c).
- (5) In section 116(1) delete “or debits tax”.

31. *Taxation Administration Regulations 2003* amended

- (1) This section amends the *Taxation Administration Regulations 2003*.
- (2) Delete regulation 9(1)(b) and “or” after it.

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