

Western Australia

Revenue Laws Amendment Act (No. 2) 2008

As at 27 Jun 2008

No. 31 of 2008

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Revenue Laws Amendment Act (No. 2) 2008

No. 31 of 2008

An Act to amend the following Acts —

- *Taxation Administration Act 2003*;
- *Mining Act 1978*;
- *Duties Act 2008*;
- *First Home Owner Grant Act 2000*;
- *Petroleum and Geothermal Energy Resources Act 1967*;
- *Rates and Charges (Rebates and Deferments) Act 1992*.

[Assented to 27 June 2008]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Revenue Laws Amendment Act (No. 2) 2008*.

2. Commencement

This Act comes into operation, or is deemed to have come into operation, as follows:

- (a) Part 1 — come into operation on the day on which this Act receives the Royal Assent (“**assent day**”);
- (b) Part 2 Divisions 1 and 2, Part 3 Divisions 1 and 2, and Part 4 — come into operation on the day after assent day;
- (c) Part 2 Division 3 comes into operation —
 - (i) on the day after assent day; or
 - (ii) if the day on which the *Duties Legislation Amendment Act 2008* Part 2 Division 1 comes into operation is later than the day after assent day, when that Division comes into operation;
- (d) Part 3 Division 3 — comes into operation on a day fixed by proclamation.

“**TLA land**” means land that is under the operation of the *Transfer of Land Act 1893*.

- (2) In this Division a reference to tax of a particular kind is to be read as including —
- (a) penalty tax that is payable in relation to tax of that kind; and
 - (b) interest payable under a tax payment arrangement in relation to tax of that kind; and
 - (c) costs of the kinds referred to in section 62(a), (b) and (d) that are payable in relation to tax of that kind.

”.

5. Section 76 amended

- (1) Section 76(1)(b) is amended by deleting “under section 83”.
- (2) Section 76(2) is amended by deleting “of the charge with the Registrar of Titles.” and inserting instead —
“ for registration against the land. ”.

6. Section 77 amended

- (1) Section 77(1) is amended by deleting “as defined in section 76 of that Act” and “with the Registrar of Titles”.
- (2) Section 77(1a) is amended by deleting “with the Registrar of Titles”.
- (3) Section 77(2) is amended by deleting “as defined in section 76 of that Act” and “with the Registrar of Titles”.
- (4) Section 77(3) is amended by deleting “as defined in section 76 of that Act,” and “with the Registrar of Titles”.

- (5) Section 77(4) is amended as follows:
- (a) after “subsection (1),” by inserting —
“ (1a), ”;
 - (b) by deleting “under section 83”.
- (6) Section 77(5) is amended after “subsections (1)” by inserting —
“ , (1a) ”.
- (7) Section 77(6) is amended as follows:
- (a) by deleting “under subsection (1) creating” and inserting instead —
“ to create ”;
 - (b) after “be lodged” by inserting —
“ under subsection (1) or (1a) ”.

7. Section 78 replaced

Section 78 is repealed and the following section is inserted instead —

“

78. Charge on subsequent mining tenement

If —

- (a) a charge arises on a mining tenement as a result of the registration of a memorial against that tenement; and
- (b) under the *Mining Act 1978* section 103EA(3) a memorial is registered against a later tenement within the meaning given in that section,

the registration of the memorial against the later tenement creates a charge on that later tenement for the unpaid tax secured by the charge referred to in paragraph (a).

”.

8. Section 79 amended

Section 79(1) is amended by deleting “When a memorial of a charge on land is registered under this Act, the charge” and inserting instead —

“ A charge arising under this Division ”.

9. Sections 81, 82 and 83 replaced

Sections 81, 82 and 83 are repealed and the following sections are inserted instead —

“

81. Withdrawal of memorial to be given when tax paid

- (1) If a memorial is lodged under section 76, the Commissioner must give a withdrawal of memorial to the taxpayer on payment of —
 - (a) the land tax that was unpaid at the time the memorial was lodged; and
 - (b) any land tax (including any amounts of the kinds referred to in section 76A(2)) that has subsequently become payable in relation to the land (whether or not the due date for payment of that tax has arrived).
- (2) However, if land tax is assessed in relation to land comprising a number of separate lots or parcels, the Commissioner is not obliged to give a withdrawal of memorial for any lot or parcel unless the whole of the land tax is paid.
- (3) If a memorial is lodged under section 77, the Commissioner must give a withdrawal of memorial to the taxpayer on payment of —
 - (a) the tax secured by the charge created by the registration of the memorial; and

- (b) any amounts of the kinds referred to in section 76A(2) that have subsequently become payable in relation to that tax.
- (4) A taxpayer given a withdrawal of memorial may lodge it for registration against the land.
- (5) If a memorial is lodged under this Division, the Commissioner —
 - (a) may lodge a withdrawal of memorial at any time whether or not the relevant tax has been paid; and
 - (b) must lodge a withdrawal of memorial when the land is sold in accordance with an order made under section 85.

82. Memorials affecting TLA land or real property

- (1) In this section —
 - “instrument”** —
 - (a) in relation to TLA land, has the meaning given in the *Transfer of Land Act 1893* section 4; and
 - (b) in relation to real property, means a judgment, deed, conveyance or instrument in writing;
 - “Registrar”** means —
 - (a) in relation to TLA land, the Registrar of Titles; and
 - (b) in relation to real property, the Registrar of Deeds and Transfers.
- (2) A memorial or withdrawal of memorial affecting TLA land or real property is to be lodged in a form approved by the Registrar.

- (3) When a memorial or withdrawal of memorial affecting TLA land or real property is lodged the Registrar must register it against the land.
- (4) A memorial affecting TLA land or real property takes effect when it is registered and ceases to have effect when a withdrawal of the memorial is registered.
- (5) While a memorial registered against TLA land or real property is in effect the Registrar must not register any instrument affecting the land without the consent of the Commissioner.
- (6) Subsection (5) does not prevent a person lodging, or the Registrar accepting, an instrument for registration.
- (7) If an instrument is accepted for registration but not registered because a memorial is in effect, when the memorial ceases to have effect the instrument has effect as if the memorial had not been registered.

83. Memorials affecting mining tenements

A memorial or withdrawal of memorial affecting a mining tenement is to be lodged and registered, and has effect, in accordance with the *Mining Act 1978* Part IVA.

”.

10. Section 84 amended

Section 84 is amended by deleting “in relation to land” and inserting instead —

“ lodged under this Division ”.

11. Section 85 amended

- (1) Section 85(1) is repealed and the following subsections are inserted instead —

“

- (1) If all or part of the land tax for an assessment year remains unpaid at the expiry of 18 months after the due date for payment of that tax the Commissioner may apply to the Supreme Court for an order for the sale of all or part of the land.
- (2A) If a charge has arisen under section 77 and any of the tax secured by the charge remains unpaid at the expiry of 18 months after the charge arose the Commissioner may apply to the Supreme Court for an order for the sale of all or part of the land.

”.

- (2) Section 85(4) is amended as follows:

- (a) by deleting paragraph (c) and inserting instead —

“

- (c) directing a person who is responsible under a relevant land Act for registering documents to register any documents and to do anything else necessary to give effect to the sale; and

”;

- (b) after each of paragraphs (a) and (b) by inserting —

“ and ”.

- (3) Section 85(6) is amended as follows:

- (a) by deleting paragraph (c) and inserting instead —

“

- (c) thirdly, in discharge of —
- (i) if the application was made under subsection (1) — all land tax payable

for the land (whether or not the due date for payment of that tax has arrived); or

- (ii) if the application was made under subsection (2A) — all unpaid tax secured by the charge;

and

”;

- (b) after each of paragraphs (a) and (b) by inserting —
“ and ”.

12. Section 86 amended

Section 86 is amended by deleting “or registration of a charge” and inserting instead —

“ of a charge or registration of a memorial ”.

Division 2 — Mining Act 1978 amended

13. The Act amended

The amendments in this Division are to the *Mining Act 1978*.

14. Section 103A amended

Section 103A is amended by deleting the full stop after the definition of “authorised officer” and inserting instead —

“

;

“**tax memorial**” means a memorial affecting a mining tenement lodged under the *Taxation Administration Act 2003* Part 6 Division 2 for registration under this Act;

“**withdrawal of memorial**” means a withdrawal of a tax memorial lodged under the *Taxation Administration Act 2003* section 81 for registration under this Act.

”.

15. Section 103C amended

- (1) Section 103C(1) is amended as follows:
- (a) after paragraph (c) by deleting “and”;
 - (b) by deleting the full stop after paragraph (d) and inserting instead —
“
;
(e) a tax memorial;
 - (f) a withdrawal of memorial.
”.
- (2) After section 103C(5) the following subsection is inserted —

- “
- (6A) If a tax memorial is registered a notice stating that the memorial has been registered is to be sent by certified mail to the holder of the mining tenement against which the memorial is registered.
- ”.

16. Section 103EA inserted

After section 103D the following section is inserted —

“

103EA. Memorial for unpaid tax

- (1) A tax memorial takes effect when it is registered and ceases to have effect when a withdrawal of the memorial is registered.
- (2) While a tax memorial registered against a mining tenement is in effect no dealing affecting the mining tenement is to be lodged or registered without the consent of the Commissioner of State Revenue.

- (3) If a tax memorial is registered and in effect against —
- (a) a mining tenement and the holder of that tenement is granted a mining lease or general purpose lease (the “**later tenement**”) under section 49, 67 or 70L in respect of the land or a part of the land the subject of the tenement; or
 - (b) a mining tenement and the holder of that tenement is granted a retention licence (the “**later tenement**”) under section 70B in respect of the land or a part of the land the subject of the tenement; or
 - (c) a special prospecting licence granted under section 56A, 70 or 85B and the holder of that licence is granted a mining lease for gold (the “**later tenement**”) under section 56A(8), 70(8) or 85B(7) in respect of the land or a part of the land the subject of the licence,

the tax memorial is to be taken to have been also lodged against the later tenement and is to be registered accordingly.

- (4) A tax memorial registered in accordance with subsection (3) is taken to have been registered immediately after the later tenement was granted.

”.

**Division 3 — Taxation Administration Act 2003
further amended**

17. The Act amended

The amendments in this Division are to the *Taxation Administration Act 2003* after that Act is amended by the *Duties Legislation Amendment Act 2008* section 45.

18. Section 76A amended

Section 76A is amended by inserting in the appropriate alphabetical position —

“

“land”, in relation to unpaid landholder duty or transfer duty (within the meanings given in section 77A), has the meaning given in the *Duties Act 2008* section 3;

”.

19. Section 77A amended

- (1) Section 77A(1) is amended by deleting the definition of “lodge”.
- (2) Section 77A(2) is amended by deleting “as defined in the *Duties Act 2008* section 3”.
- (3) Section 77A(5) is amended by deleting “under section 83”.

20. Section 81 amended

Section 81(3) is amended after “section 77” by inserting —

“ or 77A ”.

21. Section 85 amended

Section 85(2A) is amended after “section 77” by inserting —

“ or 77A ”.

Part 3 — Other amendments to *Taxation Administration Act 2003*

Division 1 — Preliminary

22. The Act amended

The amendments in this Part are to the *Taxation Administration Act 2003*.

Division 2 — Amendments to commence on day after assent day

23. Section 7 replaced

Section 7 is repealed and the following section is inserted instead —

“

7. Administration of taxation Acts

- (1) The Commissioner has the general administration of the taxation Acts and may do anything necessary or convenient to be done for that purpose.
- (2) Without limiting subsection (1) the Commissioner may —
 - (a) deal with a taxation matter in any manner; and
 - (b) exercise in relation to a taxation matter any discretion,

that the Commissioner considers appropriate in the interests of good management.

- (3) In subsection (2) —
“**taxation matter**” means any matter or thing arising under or in relation to a taxation Act.

”.

24. Section 34 amended

Section 34(4) is amended by deleting “in writing”.

25. Section 55A inserted

After section 54 the following section is inserted —

“

55A. Unused credit

- (1) If an amount credited against a taxpayer’s future tax liabilities under section 54(2) is not debited against those liabilities within 2 years after the credit arose the Commissioner may —
 - (a) if the amount is less than the prescribed amount, write off the credit; or
 - (b) otherwise, pay the amount to the Treasurer to be dealt with as prescribed retained money in accordance with the *Unclaimed Money Act 1990* section 9(1)(r)(ii).
- (2) If a credit is written off under subsection (1)(a) —
 - (a) the amount written off is to be credited to the Consolidated Account; and
 - (b) the *Unclaimed Money Act 1990* does not apply to or in relation to that amount.
- (3) If a credit is written off under subsection (1)(a) and within 5 years after the credit arose the taxpayer requests payment of the written off amount, the Commissioner must pay that amount to the taxpayer.

”.

26. Section 76 amended

Section 76(6) is amended by deleting “liable” and inserting instead —

“ jointly liable with the taxpayer ”.

27. Section 114 amended

After section 114(3)(e) the following paragraph is inserted —

“

- (f) the disclosure in accordance with the *Unclaimed Money Act 1990* of information or material relating to amounts paid under section 55A(1)(b);

”.

28. Part 10 Division 6 inserted

After section 128 the following Division is inserted in Part 10 —

“

Division 6 — Early operation of certain amendments to taxation Acts

129. Meaning of terms in this Division

- (1) In this Division —

“**amending Bill**”, in relation to a determination notice, means a Bill provisions of which are determined by the notice to be pre-enactment provisions;

“**determination notice**” means a notice made under section 130;

“**tax threshold**” means an amount, value or level above, from, up to or below which —

- (a) tax is or is not payable; or
(b) a particular rate of tax applies; or
(c) a concession or exemption does or does not apply;

“**taxation Act**” includes the *First Home Owner Grant Act 2000*.

- (2) For the purposes of this Division a Bill is “before” a House of Parliament if the second reading of the Bill in that House has been moved but the Bill has not been passed by the House.

130. Determination of pre-enactment provisions

- (1) If a Bill that would amend a taxation Act is before the Legislative Assembly or Legislative Council the Minister may, by notice published in the *Gazette*, determine specified provisions of the Bill, as introduced into that House, to be pre-enactment provisions for the purposes of section 133.
- (2) The Minister may determine provisions of a Bill to be pre-enactment provisions if, and only if, they would —
- (a) amend a taxation Act to do one or more of the following —
 - (i) reduce an amount or rate of tax (including by reducing it to zero);
 - (ii) change or remove a tax threshold;
 - (iii) expand the class of persons, acts, matters or things in respect of whom or which a concession or exemption applies;
 - (iv) introduce a concession or exemption;
 - (v) effect a change that will have the same effect as making an amendment of a kind described in subparagraphs (i) to (iv);
 - or
 - (b) amend a taxation Act to make amendments necessary or convenient to be made for the purpose of giving effect to an amendment of a kind described in paragraph (a); or

- (c) make provision for the commencement or application of amendments of the kind described in paragraphs (a) and (b) or for transitional matters relating to them.

131. Duration of determination notice

- (1) A determination notice comes into force on the day on which it is published in the *Gazette*.
- (2) A determination notice ceases to be in force at the end of the day on which the first of the following occurs —
 - (a) the amending Bill (whether or not it has been amended in Parliament) receives the Royal Assent;
 - (b) the notice is revoked by the Minister by notice published in the *Gazette*;
 - (c) the period of 6 months from the day on which the notice came into force expires;
 - (d) the amending Bill is defeated in either House of Parliament;
 - (e) the Legislative Assembly expires or is dissolved before the amending Bill has been passed by both Houses of Parliament;
 - (f) the determination notice ceases to have effect under the *Interpretation Act 1984* section 42(2) as applied by subsection (4).
- (3) When a determination notice ceases to be in force, the *Interpretation Act 1984* section 37 applies as if the cessation were the repeal of a written law.
- (4) The *Interpretation Act 1984* section 42(1), (2), (3) and (5) apply to a determination notice as if the notice were regulations.

132. Amendment and replacement of determination notice

- (1) The Minister may, by notice published in the *Gazette*, amend a determination notice but only for the purpose of correcting —
 - (a) a clerical mistake; or
 - (b) an accidental slip or omission; or
 - (c) an error in the way in which the amending Bill or a provision of the Bill is referred to.
- (2) The Minister cannot determine a provision of a Bill to be a pre-enactment provision more than once.
- (3) If —
 - (a) a determination notice (“**original notice**”) was made in respect of provisions of a Bill while it was before the Legislative Assembly; and
 - (b) the Bill was amended by the Legislative Assembly; and
 - (c) the Bill is before the Legislative Council,then despite subsection (2) the Minister may make a replacement determination notice revoking the original notice and determining specified provisions of the Bill, as introduced into the Legislative Council, to be pre-enactment provisions for the purposes of section 133.
- (4) In relation to a replacement determination notice the reference in section 131(2)(c) to the day on which the notice came into force is taken to be a reference to the day on which the original notice came into force.

133. Effect of pre-enactment provisions

- (1) While a determination notice is in force an Act that would be amended by the pre-enactment provisions

specified in the notice has effect as if those provisions had been passed without amendment and had come into operation.

- (2) However, if the amount of tax payable by a taxpayer under an Act as affected by subsection (1) is greater than the amount of tax that would be payable if the determination notice was not in force (the “**unaffected amount**”), the amount of tax payable is reduced to the unaffected amount.

134. Review of Division

- (1) The Minister is to carry out a review of the operation and effectiveness of this Division as soon as is practicable after —
 - (a) the fifth anniversary of the commencement of the *Revenue Laws Amendment Act (No. 2) 2008* section 28; and
 - (b) the expiry of each 5 yearly interval after that anniversary.
- (2) The Minister is to prepare a report based on the review and, as soon as is practicable after the report is prepared (and in any event not more than 12 months after the relevant anniversary), cause it to be laid before each House of Parliament.

”.

Division 3 — Amendments to commence on proclamation

29. Section 20A inserted

After section 19 the following section is inserted —

“

20A. Compromise assessments

- (1) If the Commissioner considers it appropriate to do so to avoid undue delay or expense, to settle a dispute or for any other reason, the Commissioner may —
 - (a) make a written agreement (a “**compromise agreement**”) with a taxpayer in relation to the assessment of the taxpayer’s tax liability; and
 - (b) make an assessment in accordance with the compromise agreement.
- (2) Despite section 16 the Commissioner must not make a reassessment of a compromise assessment unless —
 - (a) the taxpayer has agreed; or
 - (b) the Commissioner is satisfied that the compromise assessment —
 - (i) was procured by fraud; or
 - (ii) was made in consequence of the taxpayer knowingly failing to disclose material information or providing information knowing that it was incorrect, incomplete or misleading.
- (3) Each of the following are final and not subject to objection or review under Part 4 or to any other form of appeal or review —
 - (a) a decision of the Commissioner under this section to make, or not make, a compromise agreement;

- (b) a decision of the Commissioner under this section as to the terms of a compromise agreement;
- (c) a compromise assessment.
- (4) No action can be brought in any court or tribunal to compel the Commissioner to make a compromise agreement.
- (5) This section does not limit the Commissioner's powers under section 19.

”.

30. Section 34 amended

- (1) Section 34(1)(a) is amended by inserting after “assessment” —
“ , other than a compromise assessment ”.
- (2) Section 34(2) is amended by deleting the full stop after paragraph (d) and inserting instead —
“
;
(e) a decision which, under section 20A(3), is not subject to objection under this Part.

”.

31. Glossary amended

The Glossary is amended as follows:

- (a) in the definition of “assessment” by deleting “or a reassessment;” and inserting instead —
“ , a reassessment or a compromise assessment; ”;
- (b) by inserting in the appropriate alphabetical position —
“
“**compromise assessment**” means an assessment made in accordance with section 20A;

”.

Part 4 — Amendments to other Acts

32. *Duties Act 2008* amended

- (1) The amendments in this section are to the *Duties Act 2008*.
- (2) Section 110 is amended by deleting “*Financial Sector (Transfers of Business) Act 1999*” and inserting instead —

“

Financial Sector (Business Transfer and Group Restructure) Act 1999

”.

Note: The heading to section 110 is to be altered by deleting “*Financial Sector (Transfers of Business) Act 1999*” and inserting instead “*Financial Sector (Business Transfer and Group Restructure) Act 1999*”.

33. *First Home Owner Grant Act 2000* amended

- (1) The amendments in this section are to the *First Home Owner Grant Act 2000*.
- (2) Section 34 is repealed and the following section is inserted instead —

“

34. **Administration of Act**

The *Taxation Administration Act 2003* section 7 applies in relation to this Act as if this Act were a taxation Act as defined in the Glossary to that Act.

”.

s. 34

**34. *Petroleum and Geothermal Energy Resources Act 1967*
amended**

- (1) The amendments in this section are to the *Petroleum and Geothermal Energy Resources Act 1967*.
- (2) Section 86 is amended by deleting “*Stamp Act 1921*” and inserting instead —
“ *Duties Act 2008* ”.

Note: The heading to section 86 is to be altered by deleting “stamp”.

**35. *Rates and Charges (Rebates and Deferments) Act 1992*
amended**

- (1) The amendments in this section are to the *Rates and Charges (Rebates and Deferments) Act 1992*.
- (2) Section 15(1) is amended as follows:
 - (a) by deleting paragraph (c) and “or” after it;
 - (b) by deleting the comma at the end of paragraph (d) and inserting instead —
“
; or
(e) otherwise, may,
”.