



THE TAX INSTITUTE

31 January 2020

Stamp Duty Rewrite Consultation
GPO Box 1353
ADELAIDE SA 5001

By email: sdrconsultation@sa.gov.au

Dear Sir/Madam,

Draft Duties Bill 2020 – South Australia

The Tax Institute welcomes the opportunity to make a submission to the South Australian Government in relation to the draft *Duties Bill 2020 (Bill)*.

About the Tax Institute

The Tax Institute is the leading forum for the tax community in Australia. We are committed to representing our members. Shaping the future of the tax profession and continuous improvement of the tax system for the benefit of all, through the advancement of knowledge, member support and advocacy.

The Tax Institute was established in 1943 with the aim of improving the position of tax agents, tax law and tax administration.

As a professional association dedicated to supporting the tax profession, we are uniquely positioned to provide input into this Review and look forward to contributing to this Review.

For further information, please refer to Appendix A.

Comments

Our detailed comments on the Bill are set out in Appendix B.

Should you wish to further discuss any of our comments, please contact our representative, Mr Paul Ingram of Minter Ellison on 8233 5601 or paul.ingram@minterellison.com in the first instance.

Yours faithfully,

George Hodson

Chair – The Tax Institute's South Australian Technical Committee

Appendix A

About the Tax Institute

The Tax Institute is the leading forum for the tax community in Australia. We are committed to representing our members, shaping the future of the tax profession and continuous improvement of the tax system for the benefit of all, through the advancement of knowledge, member support and advocacy.

Our membership of almost 12,000 includes tax professionals from commerce and industry, academia, government and public practice throughout Australia. Our tax community reach extends to over 30,000 Australian business leaders, tax professionals, government employees and students through the provision of specialist, practical and accurate knowledge and learning.

We are committed to propelling members onto the global stage, with over 7,000 of our members holding the Chartered Tax Adviser designation which represents the international recognised mark of expertise.

The Tax Institute was established in 1943 with the aim of improving the position of tax agents, tax law and administration. More than seven decades later, our values, friendships and members' unselfish desire to learn from each other are central to our success.

Australia's tax system has evolved and the Tax Institute has become increasingly respected, dynamic and responsive, having contributed to shaping the changes that benefit our members and taxpayers today. We are known for our committed volunteers and the altruistic sharing of knowledge. Members are actively involved, ensuring that the technical products and services on offer meet the varied needs of Australia's tax professionals.

Appendix B

Comments on the Draft Bill

APPENDIX B
Comments from The Tax Institute on the draft Duties Bill 2020 (SA)
31 January 2020

1. ITEMS TO BE CONSIDERED

SECTIONS	TOPIC	COMMENT
4(1)	Definitions	<ul style="list-style-type: none"> We would query why defined terms are not capitalised, or marked with an asterisk? Is the definition of 'transfer' necessary, given section 10(3)?
5(1)(c)	Land	<ul style="list-style-type: none"> Mining tenements (and interests in them) should be expressly excluded from the duty base. It is hard to see how they could ever be 'dutable land', so there is little point in requiring taxpayers to submit transfer documents for opinion.
5(4) to (8)	Fixed items	<ul style="list-style-type: none"> Fixed items should only be included in the duty base where they have a value over a certain monetary threshold. This would produce a significant saving in compliance costs, without a material loss to the revenue.
6(1)		<ul style="list-style-type: none"> The legislation should put a practical limit on the extent to which the Commissioner can 'trace' through interposed entities when considering whether a corporation is a foreign person, or a unit trust is a foreign trust. Conveyancers and solicitors handling small/medium conveyancing matters cannot reasonably be expected to conduct exhaustive searches/interrogation of their clients on this issue.
10(6)	Transfer	<ul style="list-style-type: none"> Section 10(6) should be re-worded along the lines of 'in relation to an interest in dutiable land that arises by virtue of holding a unit in a unit trust scheme'.
10(9)	Conveyance by direction	<ul style="list-style-type: none"> Section 10(9)(b)(i) should refer to an 'assignment of the agreement for the sale of dutiable land, rather than an 'assignment of the land'. Presumably the ruling process will describe when the Commissioner will be satisfied that a conveyance by direction does not constitute such an assignment?
10(10)	Agreements	<ul style="list-style-type: none"> Is an agreement to transfer a 'transfer'? If not, is section 10(10) necessary, or has it only been included to avoid uncertainty?
23(6)	Uncertain Consideration	<ul style="list-style-type: none"> What is the position if the total amount <u>cannot</u> be previously ascertained?
28	Foreign Ownership Surcharge	<ul style="list-style-type: none"> Are the clawbacks in sections 28(5) and (6) excluded where only <u>part</u> of the relevant land has been conveyed before the change of status?

SECTIONS	TOPIC	COMMENT
30	Trustee changes	<ul style="list-style-type: none"> In the case of unit trusts, it is common for the trustee to change when all (or a majority) of the units are being transferred. It is understood that the Commissioner has never viewed this as negating the ability to claim the exemption in existing section 71(5)(d). Will the same approach be taken to section 30?
32	Unit Trusts	<ul style="list-style-type: none"> Insisting that 'no consideration is provided for the transfer' will be unworkable in the case of unit trusts, at least where units are redeemed, or extinguished on a vesting of the unit trust. A ruling may be required to deal with situations where debts are assumed by the transferee.
33	Discretionary Trusts	<ul style="list-style-type: none"> A ruling may be required to deal with situations where debts are assumed by the transferee.
39	Subdivision	<ul style="list-style-type: none"> It is assumed that this section replaces existing section 71(13), which is relied on by taxpayers in subdivision arrangements.
41	Liquidation	<ul style="list-style-type: none"> Insisting that 'no consideration is provided for the transfer' will be unworkable, at least where the liquidator's distribution involves an extinguishment/cancellation of the recipient's shares.
49	Charities	<ul style="list-style-type: none"> We understand that the Government accepts that existing exemption item 33 does not work as was intended, and that some new drafting will be required to remedy this. In that regard, it is submitted that any new draft should: <ul style="list-style-type: none"> require RevenueSA to accept the determination of ACNC as to charitable status; and remove any exclusion of use (wholly or predominantly) for commercial or business purposes, as such exclusion is based on a flawed dichotomy between charitable and commercial activities and is unworkable in practice. Assuming that some exclusion for commercial or business use is to be maintained, then it is submitted that: <ul style="list-style-type: none"> such exclusion needs to recognise that some uses are 'inherently charitable' even though they may have a commercial character, and should not disqualify the taxpayer from claiming the exemption; section 49(2) distorts the meaning of the current proviso which is merely intended to overcome a <i>FCT v Word Investments Ltd [2008] HCA 55</i> type of argument and needs to be redrafted.
56	Landholder	<ul style="list-style-type: none"> There are many uncertainties when it comes to the definition of 'associate' in section 4(5), and when it will be applied in the landholder context. Section 56(9) is too widely expressed and needs to be rewritten.

2. OTHER ISSUES

- It is imperative that stamping on RevenueSA Online produces an 'assessment' for the purpose of the *Taxation Administration Act 1996* (SA).
- The *ad valorem* registration fees charged by the Lands Titles Office should not apply in any circumstance where the relevant document is exempt from stamp duty (including by virtue of being Qualifying Land).