

# Revenue Legislation Amendment Bill 2017

## Explanatory Notes

### Short title

The short title of the Bill is the Revenue Legislation Amendment Bill 2017 (the Bill).

### Policy objectives and the reasons for them

The Bill amends the *First Home Owner Grant Act 2000* (FHOG Act) and the *Land Tax Act 2010* (Land Tax Act) to implement 2017-18 State Budget measures.

The FHOG Act is amended to implement a 2017-18 State Budget measure to extend a temporary increase to the amount of the Queensland First Home Owners' Grant (the grant) from \$15,000 to \$20,000 for a further six months so it is also available for eligible transactions entered into between 1 July 2017 to 31 December 2017, both dates inclusive.

The Land Tax Act is amended to implement a 2017-18 State Budget measure to impose, from 2017-18 onwards, a 1.5 per cent surcharge on individuals not ordinarily residing in Australia (absentees) who are liable for land tax in Queensland (absentee surcharge).

The Bill also amends Queensland's revenue legislation to protect the State's revenue, maintain the currency of the legislation and ensure its continued proper operation and administration.

The *Duties Act 2001* (Duties Act) is amended to ensure the additional foreign acquirer duty provisions operate as intended.

The Land Tax Act is amended to include a new requirement for a person to lodge an approved form within one month of a change of ownership of land.

The Land Tax Act is also amended to restore a prohibition on lessors directly passing on the cost of land tax to lessees under commercial leases entered into after 1 January 1992 and before 30 June 2009, following a Queensland Supreme Court of Appeal decision which held that this prohibition was repealed upon enactment of the Land Tax Act.

The Land Tax Act is further amended to clarify that where land is owned by joint trustees for a trust, land tax is to be assessed as if the land were owned by one person.

The *Taxation Administration Act 2001* (Taxation Administration Act) is amended to introduce new legislative powers to facilitate the collection and disclosure of real property transfer information in accordance with the State's obligations under the *Taxation Administration Act 1953* (Cwlth).

## **Achievement of policy objectives**

### ***Duties Act 2001***

The Duties Act imposes an additional duty surcharge on transactions that are liable for transfer duty, landholder duty or corporate trustee duty where the acquirer is a foreign person and the transaction involves certain residential land in Queensland (AFAD residential land). The additional duty is 'additional foreign acquirer duty' (AFAD). AFAD is imposed at a rate of 3 per cent on the dutiable value of a relevant transaction to the extent of the foreign acquirer's interest, and to the extent the dutiable value relates to AFAD residential land. To ensure the provisions operate as intended and to protect revenue, a number of amendments are being made to the provisions.

The Duties Act will be amended to ensure that AFAD applies to certain agency transactions for AFAD residential land. Under an agency transaction, the transaction that is imposed with transfer duty is the agreement for the transfer of dutiable property entered into by the agent. Where the applicable duty is paid on the agreement, the transfer of the property to the principal is exempt from duty. Therefore, AFAD will not apply to duty assessed on the agreement unless the agent is a foreign person. The current operation of the agency provisions therefore allow a foreign principal to avoid AFAD by using a non-foreign agent to enter into the agreement for transfer.

For agency transactions, where the principal is a foreign person when the relevant transfer to the principal occurs, and the dutiable property is AFAD residential land, the amendments will require the agreement to be reassessed as if AFAD applied to the agreement. AFAD will continue to apply to agreements for transfer where the agent is a foreign person. However, if the principal is not a foreign person when the relevant transfer to the principal occurs, the agreement will be reassessed as if AFAD did not apply. Consequential amendments will be made to the provisions for reassessing transactions with AFAD where a corporation or trust becomes foreign within 3 years and providing the Commissioner of State Revenue (Commissioner) with a statutory charge over AFAD residential land for unpaid transfer duty. A further consequential amendment will be made to ensure the right of recovery provisions operate as intended for agency transactions.

The Duties Act provides an exemption from transfer duty for certain dutiable transactions where agreements are entered into on behalf of a company yet to be registered (pre-incorporation contracts). One type of transaction to which the exemption applies is a where a company ratifies a pre-incorporation contract after it is registered and the property is transferred to the company directly. It is therefore possible for a foreign corporation (pre-incorporation) to structure their affairs to acquire AFAD residential land without incurring an AFAD liability by using a

non-foreign transferee to enter into the initial agreement prior to the company's registration. This is because transfer duty is imposed on the agreement for the transfer, which would not have incurred AFAD, and the dutiable transaction transferring the dutiable property to the foreign corporation would be exempt.

Amendments to the Duties Act will require an agreement to be reassessed with duty as if AFAD applied where a company is a foreign corporation when the agreement is entered into, and the property relates to AFAD residential land. The transfer of the property to the company will not be exempt unless the duty, including the applicable AFAD, has been paid. Where a company was not a foreign corporation at the time the agreement was entered into, consequential amendments will be made to the provisions for reassessing transactions with AFAD where a corporation or trust becomes foreign within 3 years. Further consequential amendments will be made to ensure the statutory charge provisions operate for unpaid transfer duty and the right of recover provisions operate as intended for pre-incorporation contracts.

The Duties Act will also be amended to ensure that where certain chattels are acquired in conjunction with an acquisition of AFAD residential land, the dutiable value for the transaction will include the value of the chattels. Under the Duties Act, although a chattel in Queensland is a form of dutiable property, for transfer duty purposes, a chattel the subject of a transaction is not a dutiable transaction unless it can be aggregated with another dutiable transaction or another type of dutiable property. This treatment of chattels addresses potential value-shifting issues by ensuring that duty applies to the combined value of the transaction, inclusive of chattels.

Under the AFAD provisions, the value of chattels that may form part of the acquisition of residential land that is acquired by a foreign person would not be included in the calculation of AFAD given that a chattel is not AFAD residential land. It is identified that this may present a risk to revenue in value-shifting between the value of the residential land and chattels that form part of the acquisition. However, the amendment will apply only to those chattels the use of which can be directly linked to, or are incidental to, the use and occupation of the AFAD residential land.

The Duties Act will be further amended to confirm that AFAD applies to dutiable transactions for existing rights where the related dutiable property is AFAD residential land (for example, an existing option to acquire AFAD residential land). Finally, a minor wording amendment will be made and an example of a foreign acquirer's interest included to clarify the intended operation of the provisions.

### ***First Home Owner Grant Act 2000***

The FHOG Act provides a grant of \$15,000 for first home buyers who have entered into an eligible transaction which has been completed and who satisfy certain eligibility criteria. However, the amount of the grant was temporarily increased from \$15,000 to \$20,000 for eligible transactions entered into between 1 July 2016 and 30 June 2017, both dates inclusive (the 2016-17 FHOG boost). An eligible transaction is a contract to purchase or build a new home, or the building of a new home by an owner-builder.

The FHOG Act will be amended to extend the 2016-17 FHOG boost for a further six months so eligible transactions entered into between 1 July 2017 and 31 December 2017 (both dates inclusive) qualify for a \$20,000 grant.

When an eligible transaction is entered into is determined by reference to the 'commencement date' for the eligible transaction, as defined in the FHOG Act. The commencement date for a contract to purchase or build a new home is the date when the contract is made, while the commencement date for the building of a new home by an owner-builder is generally the date when the laying of the foundations for the home starts.

### ***Land Tax Act 2010***

The Land Tax Act imposes land tax for each financial year on the taxable value of all taxable land owned by a person at midnight on 30 June of the preceding financial year. Taxable land is freehold land in Queensland which is not exempt land. The taxable value of taxable land is based on the statutory valuation of the land determined by the State Valuer-General under the *Land Valuation Act 2010*.

#### Absentee Surcharge

Under the Land Tax Act, the owner of land is liable to pay land tax at the rates set out in the Land Tax Act which differ depending on type of owner and the taxable value of the land. Two separate rate scales exist under the Land Tax Act; one for resident individuals and one for companies, absentees and trustees. The owner of land is only liable for land tax once the total value of their taxable land exceeds the tax-free threshold, which is \$600,000 for resident individuals and \$350,000 for companies, absentees and trustees.

The Land Tax Act will be amended to impose a 1.5 per cent surcharge on absentees who are liable for land tax. An absentee is an individual who does not ordinarily reside in Australia, including a person who is absent from Australia at 30 June or has been absent from Australia for more than 6 months ending on 30 June (for example, non-resident individuals). The absentee surcharge will apply to the portion of the taxable value of an absentee's taxable land that is equal to or greater than \$350,000. It will be imposed from the 2017-18 year onwards and will therefore apply to absentees who are liable for land tax as at midnight 30 June 2017.

The amendments ensure the absentee surcharge is administered as land tax within the existing legislative framework. Therefore, there will be no additional administrative burden for absentees or for Government. All land owners liable for land tax, including absentees, have objection, review and appeal rights in relation to assessments of land tax.

#### Assessments for joint trustees

Historically, the *Land Tax Act 1915* (1915 LTA) assessed trustees as if the trust land was owned by one person. If there was more than one trustee of a trust, the 1915 LTA operated to ensure the issue of a single assessment for land tax, irrespective of the proportion of the value of the land held by each trustee.

The repeal of the 1915 LTA and replacement with the Land Tax Act was not intended to alter the basis for assessing trust land. However, in redrafting the provision on assessments of trustees, there has been an unintentional change which creates uncertainty about the assessment of trust land where there is more than one trustee. The amendment clarifies the intended operation of the Land Tax Act and confirms the Office of State Revenue's long-standing practice that trust land is to be assessed as if it is owned by one person. In particular, the amendment clarifies that the provisions relating to assessment of co-owned land do not apply.

#### Recovery of land tax by lessors

The 1915 LTA provided that, for leases entered into after 1 January 1992, a provision in a lease requiring a lessee to pay land tax or reimburse the lessor for land tax was unenforceable (the prohibition). The prohibition was repealed on 30 June 2009. However, in order to maintain equity and fairness for lessees under existing leases entered into while the prohibition was in force (pre-existing leases), a transitional provision was inserted into the 1915 LTA to ensure the prohibition continued to apply to pre-existing leases. This is because lessees who entered into pre-existing leases would have likely negotiated rental on the basis that the lessor would be prohibited from directly passing on the cost of land tax to the lessee.

When the Land Tax Act replaced the 1915 LTA on 30 June 2010, it was the intended policy of Government to preserve the prohibition for pre-existing leases, and it was assumed that a transitional provision in the Land Tax Act and savings provisions in the *Acts Interpretation Act 1954* achieved this. However, on 6 September 2016, the Queensland Supreme Court of Appeal in *Vikpro Pty Ltd v Wyuna Court Pty Ltd* [2016] QCA 225 (*Vikpro*) held that these provisions did not have the effect of continuing the prohibition under the Land Tax Act, and that the Land Tax Act had repealed the prohibition.

This has an unintended impact upon pre-existing leases, as, from 30 June 2010, lessors can enforce lease provisions that require lessees to pay the cost of land tax imposed. Many individual businesses would have negotiated base rentals and rental reviews in pre-existing leases on the understanding that they would not have to directly pay the lessor any land tax as a result of the prohibition. The cost of land tax therefore would generally have been factored into the rental. The *Vikpro* decision effectively allows lessors to recoup land tax twice by retrospectively recovering the cost of land tax imposed since 30 June 2010, resulting in a windfall gain to lessors at the detriment of lessees.

The *Vikpro* decision does not affect residential leases under the *Residential Tenancies and Rooming Accommodation Act 2008* and retail shop leases under the *Retail Shop Leases Act 1994*, where lessors continue to be prohibited from directly passing on the cost of land tax to lessees.

In order to reinstate the intended position, it is proposed to amend the Land Tax Act to restore the prohibition retrospectively from 30 June 2010, the date the Land Tax Act commenced and the date the Court of Appeal held the prohibition was repealed. Despite retrospective application, it is proposed to maintain the rights of any lessor

who has already recovered the cost of land tax in reliance of the *Vikpro* decision (including the lessor in *Vikpro*). Accordingly, in such cases, the lessee will be barred from seeking restitution of the amount paid, solely on the basis the prohibition has been retrospectively restored by the amendments. However, the lessee's rights to challenge the recovery of the cost of land tax on other grounds, such as the amount of land tax collected, will be maintained.

#### Notification requirement for change of ownership

The Land Tax Act is also amended to include a new approved form requirement for persons who are required to notify the Commissioner when they acquire and dispose of land. Persons will be required to provide additional identity information under this approved form as part the relevant transfer transaction. The additional information will improve land tax administration and compliance.

#### ***Taxation Administration Act 2001***

As part of reforms to strengthen the integrity of Australia's foreign investment framework, the Commonwealth Government introduced reporting requirements in 2015 for the States and Territories to provide information about real property transfers. The reporting requirements were introduced into the *Taxation Administration Act 1953* (Cwlth) and require the States and Territories to report third party data, which includes personal identity information, for all transfers of real property to the Australian Taxation Office (ATO). This data will be used by the ATO for the purpose of establishing and maintaining the National Register for Foreign Ownership of Land Titles, data-matching and ensuring compliance with Commonwealth taxation laws.

Subject to certain conditions, information which is currently collected under Queensland's tax laws may be disclosed to the Commonwealth to satisfy the reporting requirements. However, further information about purchasers and vendors of real property must be reported which is not currently collected for the administration and enforcement of Queensland's tax laws.

The amendment to the Taxation Administration Act will introduce new legislative powers for the Commissioner to collect real property transfer information which is not collected under Queensland's existing tax laws for the purpose of reporting this information to the Commonwealth.

The amendment will provide the Commissioner with legislative authority to collect and disclose the relevant real property transfer information to the Commonwealth and will facilitate the collection of the information by any reasonable means, including through the lodgement of documents or instruments required under revenue laws.

Existing offences under part 10 of the Taxation Administration Act extend to the collected information.

## **Alternative ways of achieving policy objectives**

The policy objectives of the Bill can only be achieved by legislative amendment.

## **Estimated cost for government implementation**

The implementation costs are expected to be met from existing budget allocations.

## **Consistency with fundamental legislative principles**

The Bill is generally consistent with fundamental legislative principles. Potential inconsistencies are discussed below.

### ***Legislation should have sufficient regard to the rights and liberties of individuals – Legislative Standards Act 1992, section 4(2)(a)***

#### Collection and disclosure of information to the Commonwealth

The amendment to the Taxation Administration Act will extend the operation of existing offences under Queensland's tax laws to include reportable information. Reportable information will be collected by the Office of State Revenue (OSR) as part of its administration of revenue laws. To streamline administrative requirements for taxpayers, reportable information will be collected by OSR under the approved forms, instruments or other documents which are otherwise necessary for proper administration of Queensland's revenue. Extending the existing offence provisions to include reportable information may be seen to raise a fundamental legislative principle issue of having sufficient regard to the rights and liberties of taxpayers. However, given that reportable information will be collected as part of information that is necessary to administer and enforce existing laws, it is considered both appropriate and necessary that the offences under Queensland's tax laws should be extended to include reportable information. If offences are not extended to include reportable information, this may lead to a lack of clarity and inconsistency in the application and the enforcement of Queensland's tax laws.

The collection and disclosure of reportable information may further be seen to raise a fundamental legislative principle issue affecting the rights and liberties of taxpayers to the extent reportable information includes personal identity information. The proposed amendment will only displace the *Information Privacy Act 2009* to the extent necessary to collect and disclose real property transfer information which must be reported by the State in accordance with its obligations under the *Taxation Administration Act 1953* (Cwlth). Other than this limited requirement, all other principles relating to information privacy will remain protected. The collection, use, retention and disclosure of all reportable information will be subject to the same stringent confidentiality requirements under part 8 of the Taxation Administration Act as all other information collected for the administration and enforcement of Queensland's existing tax laws. The offences which exist in the Taxation Administration Act for the unauthorised use or disclosure of confidential information will also extend to reportable information.

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**Legislation should not adversely affect rights and liberties, or impose obligations, retrospectively – Legislative Standards Act 1992, section 4(3)(g)****Recovery of land tax by lessors**

Retrospective amendment is considered necessary and appropriate to fully restore the Government's intention that the prohibition on lessors directly passing on the cost of land tax to lessees under commercial leases entered into after 1 January 1992 and before 30 June 2009, continue under the Land Tax Act, in order to maintain the protection for lessees under pre-existing leases. It is considered that this position was commonly accepted by lessors and lessees of pre-existing leases, who continued to act on that basis, until the *Vikpro* decision.

It is not proposed to undo any circumstance in which a lessor has successfully recovered the cost of land tax in reliance of the *Vikpro* decision, regardless of the method of recovery (e.g. whether under the provisions of the lease or through court proceedings). For example, if a court has made an order requiring a lessee to pay land tax in relation to a lease, the proposed amendment will not affect the enforceability of the order or the lessor's right to enforce the order. Allowing existing court orders to continue to be enforced ameliorates the retrospective operation of the amendment and ensures that the interests of these lessors will not be adversely affected by the proposed amendment. The proposed amendment will, however, apply to existing court proceedings.

Where lessors have recovered the cost of land tax from lessees, it is proposed to prevent lessees in such cases from seeking restitution of the amount paid solely as a result of the retrospective restoration of the prohibition. Although this raises a fundamental legislative principle issue of limiting a right of action, it is the retrospective restoration of the prohibition itself that creates the right of action, so any lessee's right of action in this regard currently does not exist. However, a lessee's right to challenge recovery of the cost of land tax on other grounds will be maintained.

It is considered that this is a more desirable outcome when compared to an alternative method of amendment in which lessors who have not already sought to recover the cost of land tax in reliance of the *Vikpro* decision will be barred from doing so. This alternative raises a number of practical issues in determining whether recovery proceedings have already commenced (e.g. letter of demand or commencement of court proceedings). This alternative also arbitrarily favours lessees who are subject to recovery action and have not, at the date of the amendment, paid the cost of land tax versus those who have paid.

## **Consultation**

Community consultation was not undertaken as the amendments implement, or are being implemented as part of, Budget measures.

To minimise any impact to the conveyancing and assessment of duty processes which may be necessary to collect and share reportable information to the

Commonwealth, community consultation with the legal profession and related key stakeholders will be undertaken on implementation of the Bill.

## **Consistency with legislation of other jurisdictions**

The amendments are specific to the State of Queensland and are not uniform with or complementary to legislation of the Commonwealth or another state or territory.

## Notes on provisions

### Part 1 Preliminary

*Clause 1* provides that the Bill, when enacted, may be cited as the *Revenue Legislation Amendment Act 2017*.

*Clause 2* provides for the commencement of amendments made by the Bill. In particular, the amendments relating to the land tax absentee surcharge commence on 30 June 2017 to ensure the surcharge will be imposed from the 2017-18 year onwards and therefore apply to absentees who are liable for land tax as at midnight 30 June 2017.

### Part 2 Amendment of the Duties Act 2001

*Clause 3* provides that part 2 amends the *Duties Act 2001*.

*Clause 4* inserts a new note in section 116(4) referring to new section 241A as inserted by Clause 9 of the Bill.

*Clause 5* inserts new subsection (2) into section 232 providing that AFAD residential land includes a chattel in Queensland, where the chattel and the land are included in the same dutiable transaction and the chattel's use is directly linked to, or is incidental to, the use and occupation of the land. For example, chattels such as household furniture, fittings, appliances, recreational equipment, barbecue settings swimming pool cleaning equipment and mobile air conditioners would be included. However, it would not include cars, boats, caravans, trucks, farming equipment and chattels used for commercial purposes.

*Clause 6* amends section 237(2) to align the language of the provision with the definition of *foreign person*.

*Clause 7* inserts new subsection (2) into section 240. Subsection (2) extends the application of section 240 to ensure AFAD applies to agency transactions as defined in the section, where a non-foreign agent enters into an agreement for the transfer of AFAD residential land on behalf of a principal and where the principal is a foreign person. The conditions of the provision ensure that it operates in relation to the same type of agency arrangements to which section 22(3) of the Duties Act applies. Where an acquirer under a relevant transaction is a foreign person, whether they are an agent or not, AFAD continues to apply under section 240(1).

*Example for section 240(2) –*

A is appointed in writing as an agent for B, a foreign corporation. Under the appointment, A enters into an agreement to purchase AFAD residential land on behalf of B. As B is a foreign person at the time the liability for transfer duty arises on the agreement, AFAD is imposed on the agreement.

*Clause 8* amends section 241. Subsection (1) is amended to extend the application of section 241 to new section 240. Subsection (2)(a) is amended to specify it applies to dutiable property other than an existing right. Existing subsections (2)(b) to (d) are renumbered as subsections (2)(c) to (e) to enable a new subsection (2)(b) to be inserted. New subsection (2)(b) specifies the property condition for dutiable property that is an existing right.

*Clause 9* inserts new section 241A applying to certain agreements (pre-incorporation contracts) for the transfer of AFAD residential land. Section 241 ensures that where the company is a foreign corporation when the property is transferred to it, AFAD applies to agreement. The conditions in subsection (1) ensure that it operates in relation to the same pre-incorporation contracts to which section 116(4) of the Duties Act applies. The note in subsection (2) confirms that the transfer of the dutiable property to the company is not exempt from transfer duty under section 116(4) unless transfer duty, including AFAD, is paid.

*Clause 10* inserts a new example in section 242. The example illustrates a foreign acquirer's interest for a relevant transaction that is a relevant acquisition on which landholder duty is imposed.

*Clause 11* amends section 244. Subsection (2)(a) is amended to specify it applies to dutiable property other than an existing right. Subsection (2)(b) is amended to update the property condition cross-reference to renumbered section 241(2)(c). Existing subsections (2)(b) and (c) are renumbered as subsections (2)(c) and (d) to enable a new subsection (2)(b) to be inserted. New subsection (2)(b) specifies how AFAD is to be calculated for a dutiable transaction under section 9(1)(a) to (e) or (h) for dutiable property that is an existing right. New subsection (3) provides for the calculation of AFAD on dutiable transactions under new sections 240(2) (agency transactions) and 241A (pre-incorporation contracts).

*Clause 12* inserts new division 1 heading into chapter 4, part 5.

*Clause 13* inserts new subsection (5) into section 246A. The subsection confirms that the Commissioner is not required to make a reassessment under subsection (3) if the Commissioner is required to make a reassessment under section 246AC, to clarify the respective operations of the sections.

*Clause 14* inserts new divisions 2 and 3 into chapter 4, part 5.

New division 2 sets out the reassessment provisions applying to specified agency-related agreements.

New section 246AA specifies the agency-related agreements to which the division applies. The conditions of the provision ensure that it operates in relation to the same type of agency arrangements to which section 22(3) of the Duties Act applies.

New section 246AB applies to agency-related agreements involving foreign agents and non-foreign principals. Currently, where a foreign person enters into an agreement for the transfer of dutiable property as agent on behalf of a non-foreign principal, transfer duty (including AFAD) applies to the agreement. New

section 246AB provides that, if the principal is not a foreign person when the dutiable property is transferred to the principal (by the original transferor or by the agent), the principal may, within 6 months after the transfer, apply for a reassessment by lodging an application in the approved form together with the agreement. Subsection (4) provides that 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.

New section 246AC provides for reassessment of duty to impose AFAD in certain circumstances relating to agency-related agreements where the agent or principal (being a corporation or trustee) becomes foreign. Subsection (1) provides for when the section applies. Subsection (2) specifies the events requiring the Commissioner to make a reassessment. Where one of the events in subsection (2) occurs, subsection (3) requires the Commissioner to make a reassessment to impose AFAD on the agreement. Where the reassessment occurs because the principal has become foreign, the reassessment must be made on the basis that the agent was not a foreign person but the principal was a foreign person. AFAD will then be imposed on the agreement because of the operation of new section 240(2). Subsection (4) specifies the notice and lodgement requirements where one of the events in subsection (2) occurs.

*Example for section 246AC –*

A, a corporation, is appointed in writing as an agent for B. Under the appointment, A enters into an agreement to purchase AFAD residential land from C. When liability for duty on the agreement arises, A and B are not foreign persons. AFAD is not imposed on the agreement. C transfers the land to A. Three months after the transfer of the land from C, and before A transfers the land to B, A becomes a foreign corporation.

Within 28 days after becoming a foreign corporation, A must give notice to the Commissioner in the approved form and lodge the agreement for reassessment of duty. The Commissioner must reassess the agreement to impose AFAD as if A was a foreign person at the time liability arose on the agreement.

New section 246AD provides for reassessment of duty to impose AFAD in certain circumstances relating to agency-related agreements where the principal (being a corporation or trustee) becomes foreign. Subsection (1) provides for when the section applies. Subsection (2) specifies when the Commissioner must make a reassessment. Where subsection (2) applies, subsection (3) requires the Commissioner to make a reassessment to impose AFAD on the agreement on the basis that the agent was not a foreign person but the principal was a foreign person. AFAD will then be imposed on the agreement because of the operation of new section 240(2). Subsection (4) specifies the notice and lodgement requirements where one of the events in subsection (2) occurs.

*Example for section 246AD –*

A is appointed in writing as an agent for B, a trustee of a trust. Under the appointment, A enters into an agreement to purchase AFAD residential land from C. When liability for duty on the agreement arises, A and B are not foreign persons. AFAD is not imposed on the agreement. C transfers the land to B. Five months after the transfer of the land from C, B becomes the trustee of a foreign trust.

Within 28 days after becoming a trustee of a foreign trust, B must give notice to the Commissioner in the approved form and lodge the agreement for reassessment of duty. The Commissioner must reassess the agreement to impose AFAD as if B was a foreign person at the time liability arose on the agreement.

New division 3 sets out the reassessment provisions applying to pre-incorporation contracts.

New section 246AE requires the Commissioner to make a reassessment to impose AFAD on the dutiable transaction that is the agreement where new section 241A applies. That is, where the company under a pre-incorporation contract is a foreign corporation at the time the property is transferred to it. Subsection (2) requires the company to give notice to the Commissioner and lodge the instruments required for assessment of duty on the agreement within 28 days after the property is transferred to the company.

New section 246AF provides for a reassessment of duty to impose AFAD in certain circumstances relating to pre-incorporation contracts where the company becomes a foreign corporation. Section 246AF applies where a transfer of dutiable property to a company is exempt under section 116(4), AFAD is not imposed on the agreement for the transfer of dutiable property, the dutiable property is AFAD residential land, and the company was not a foreign corporation when the dutiable property was transferred to it. If the company becomes a foreign corporation within 3 years after the dutiable property is transferred to it, subsection (3) requires the Commissioner to reassess the agreement to impose AFAD. Subsection (4) specifies that within 28 days after the company becomes a foreign corporation, the company must give notice to the Commissioner and lodge the instruments required for the assessment of duty.

*Clause 15* amends subsection 246B(2)(a) to extend the application of the provision to the relevant entities under transactions imposed with AFAD under new section 240(2) and new section 241A. Where AFAD is imposed on a transaction under new section 240(2) and the transfer duty imposed is not paid by the date the amount is payable, subsection 246B(2)(a)(i) imposes a charge on the interest of the acquirer under the transaction where the land has not been transferred to the principal. The acquirer need not be a foreign person (for example, a non-foreign agent acting on behalf of a principal who is a foreign person). Where the land has been transferred to the principal, section 246B(2)(a)(ii) imposes a charge on the interest of the principal. Where AFAD is imposed on a transaction under new section 241A and the transfer duty imposed is not paid by the date the amount is

payable, subsection 246B(2)(a)(iii) imposes a charge on the interest of the company. For other dutiable transactions under section 9(1)(a) to (f), subsection 246B(2)(a)(iv) continues to impose a charge on the interest of the foreign acquirer under the transaction for the outstanding liability.

*Clause 16* replaces section 246I with a new section extending the application of the section to ensure the proper operation of the statutory right of recovery of non-foreign liable parties in relation to agency-related agreements imposed with AFAD under section 240(2) and pre-incorporation contracts imposed with AFAD under section 241A.

*Clause 17* inserts new part 23 into chapter 17 to provide transitional provisions.

New section 667 provides that new sections 240(2), 241A and new chapter 4, part 5, divisions 2 and 3 apply in relation to an agreement for the transfer of dutiable property if the liability for transfer duty arises on or after the commencement of the Bill.

*Clause 18* inserts new definitions of *agent*, *agreement*, *original transferor* and *principal* into the Dictionary in schedule 6 for the purposes of chapter 4, part 5, division 2.

### **Part 3      Amendment of the First Home Owner Grant Act 2000**

*Clause 19* provides that part 3 amends the *First Home Owner Grant Act 2000*.

*Clause 20* amends the heading of part 3, division 6. Part 3, division 6 currently provides for a temporary increase to the amount grant from \$15,000 to \$20,000 for particular eligible transactions entered into between 1 July 2016 and 30 June 2017. Clause 20 amends the heading of part 3, division 6 to reflect the extension of the temporary increase for a further six months, expiring on 31 December 2017.

*Clause 21* amends section 25D to extend the meaning of 'particular eligible transaction' which is relevant for determining eligibility for the temporary increase to the amount of the grant. To ensure the increased \$20,000 grant is available for eligible transactions entered into between 1 July 2017 and 31 December 2017, Clause 21 amends section 25D(1) to provide that a 'particular eligible transaction' is a an eligible transaction mentioned in section 5(1), the commencement date for which is between 1 July 2016 and 31 December 2017.

### **Part 4      Amendment of the Land Tax Act 2010**

*Clause 22* provides that part 4 amends the *Land Tax Act 2010*.

*Clause 23* inserts a new section 22A into division 3 to clarify that where land is owned by two or more trustees of the same trust, they are assessed for land tax as if the land were owned by one person. New section 22A(2) also clarifies that section 22, which relates to assessment of co-owned land, does not apply in these

circumstances. New subsection (3) provides that section 23, which relates to the assessments of beneficiaries of deceased estates, is not limited by new section 22A.

*Clause 24* amends section 32 to impose a 1.5 per cent surcharge on absentees from the 2017-18 financial year onwards. Section 32 currently states that land tax is imposed on the total taxable value of land owned by a taxpayer at the rates provided for under schedule 1 and schedule 2. Currently, schedule 1 provides the rate for an individual other than an absentee or trustee and schedule 2 provides the rate for companies, trustees and absentees.

Subsection (1)(b) is amended to clarify that, for a company or trustee, the rate of land tax is the rate provided for under schedule 2. New subsection (1)(c) is inserted to provide that, for absentees, the rate of land tax is the general rate under new schedule 3, part 1 and the surcharge rate under new schedule 3, part 2.

*Clause 25* inserts new subsections (3)(c) and (4) into section 78. New subsection (3)(c) specifies an additional requirement to give a properly completed revenue form to the Commissioner within 1 month after there is a change to ownership of land. The conditions in subsection (3) are an alternative to persons giving notice under sections 78(1) and (2) to the Commissioner within 1 month of respectively ceasing to be and becoming the owner of land. New subsection (4) defines *revenue form* for the purposes of this new requirement and provides that it may be a combined form for information also provided under another revenue law under the Taxation Administration Act.

*Clause 26* inserts new section 83A. Subsection (1) specifies the leases to which the section applies. Under subsection (2) a provision in a lease mentioned in subsection (1) requiring a lessee to pay land tax, or reimburse the lessor for land tax, is unenforceable. Subsection (3) defines *pre-existing lease*.

*Clause 27* inserts new division 7 into part 10 to provide a transitional provision.

New section 100 provides for retrospective operation of new section 83A. Under subsection (1), new section 83A is taken to have had effect on and from 30 June 2010. Subsection (2) provides that 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 commencement of the Bill, the lessee is not entitled, only because of section 83A, to recover the amount. Subsection (3) specifies that subsection (2) does not limit the grounds on which a lessee may otherwise recover an amount from a lessor for land tax paid. Where 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, subsection (4) provides that the lessor may enforce the order and section 83A does not affect the enforceability of the order. Subsection (5) provides that land tax includes land tax under the repealed *Land Tax Act 1915*.

*Clause 28* omits the reference to 'absentees' in the heading of schedule 2 to ensure the rate of land tax provided for under schedule 2 applies to companies and trustees only.

*Clause 29* inserts new schedule 3 which provides the rate of land tax for absentees. Under new section 32(1)(c), absentees are required to pay land tax at the general rate under new schedule 3, part 1 and at the surcharge rate under schedule 3, part 2. The general rate is identical to the rate in schedule 2 which applies to companies and trustees. The surcharge rate is 1.5 per cent of the portion of the taxable value of an absentee's taxable land that is equal to or greater than \$350,000.

## **Part 5      Amendment of the Taxation Administration Act 2001**

*Clause 30* provides that part 5 amends the *Taxation Administration Act 2001*.

*Clause 31* amends the heading to part 8 – Confidentiality – to include a reference to the collection of information and inserts a heading for new division 1.

*Clause 32* inserts new division 2 into part 8 which contains provisions for the collection and disclosure of information about transfers of freehold or leasehold interests in real property situated in Queensland that is reportable by the State to the Commonwealth.

New section 113A defines *commissioner of taxation* and *reportable information* for the purposes of division 2.

New section 113B specifies the relationship of division 2 with other laws. The provisions in division 2 will apply despite any other laws, and are not limited by any other laws, to the extent necessary to collect and disclose information about transfers of interests in real property to the commissioner of taxation. Information may be collected and disclosed even if the only purpose is for disclosure to the commissioner of taxation and where it is not collected in connection with the administration or execution of any other Queensland laws.

New section 113C provides that the Commissioner may collect and disclose reportable information to the commissioner of taxation.

New section 113D provides how reportable information may be collected. Reportable information may be collected as part of functions carried out under tax laws including, but not limited to, the lodgement of an application, instrument or an Electronic Lodgement Network transfer document. New note in subsection (1) confirms that if the Commissioner requires a person who is providing information under a tax law to give the Commissioner reportable information, failure to comply with the requirement is an offence under section 121.

*Clause 33* inserts new definitions of *commissioner of taxation* and *reportable information* into the Dictionary in schedule 2.