

REVENUE LAWS AMENDMENT BILL 2013

EXPLANATORY MEMORANDUM

This Bill seeks to amend the *First Home Owner Grant Act 2000* to implement the changes to the First Home Owner Grant scheme that were announced in the 2013-14 State Budget.

It also seeks to amend the *Duties Act 2008* and the *Taxation Administration Act 2003* to introduce interim assessment and related provisions. These will allow the Commissioner of State Revenue to assess and collect duty on large, high complexity transactions in a more timely and efficient manner. This measure formed part of the Taxation Administration Package that was also announced in the Budget.

Under the First Home Owner Grant scheme, eligible first home buyers are currently entitled to the payment of a grant of \$7,000 when they purchase or build a home valued at no more than \$750,000, or \$1 million if north of the 26th parallel.

As part of the Housing Supply Package announced in the Budget, the Government will increase the grant to \$10,000 for first home buyers who purchase or build a new home, and will provide a grant of \$3,000 for the purchase of an established home.

The First Home Owner Grant was introduced by the State on 1 July 2000 to compensate first home buyers for house price increases resulting from the introduction of the goods and services tax. However, the reason for its introduction has diminished in relevance over time.

Providing an increased grant for new homes is expected to help boost housing supply, as first home buyers will have a greater incentive to build a new dwelling rather than purchase an established home. This is expected to improve housing affordability.

The \$10,000 grant will be available to eligible first home buyers who enter into a contract to purchase a new home, enter into a contract to build a new home, or who build a new home as an owner-builder.

A contract to purchase a substantially renovated home will also be eligible for the higher grant if the sale is subject to GST on the basis that it is a sale of 'new residential premises' and, since the renovations, the home has not been previously sold or occupied as a residence.

All other States and Territories have already announced or implemented changes to their first home buyer assistance. For every jurisdiction except the Northern Territory, these measures included the eventual abolition of the grant for established homes.

Around three quarters of grant recipients in Western Australia currently purchase an established home. In contrast to most other jurisdictions, Western Australia will continue to provide these home buyers with a grant.

In addition, first home buyers will continue to be exempt from paying transfer duty on the purchase of established and new homes valued at up to \$500,000, phasing out at \$600,000, and on vacant land purchases up to \$300,000, phasing out at \$400,000.

For a house valued at \$500,000, first home buyers of an established home in Western Australia will continue to receive assistance totalling \$20,765. This is significantly more than in any other State or Territory on the purchase of a metropolitan home.

The changes to the grant are intended to commence from 15 September 2013, or the day after this Bill is granted Royal Assent, whichever is later.

Also as part of the 2013-14 Budget, a Taxation Administration Package was announced aimed at the more timely collection of duties and pay-roll tax revenues.

As part of this package, new interim assessment powers applicable to transfer and landholder duty are proposed, along with a number of complementary powers to encourage greater taxpayer compliance.

Currently under the Duties Act, an assessment notice is not issued until the Commissioner has determined the total dutiable amount or value of a transaction. For high value complex transactions, this process can take up to five years, even where the bulk of what is to be assessed can be determined at an early stage. No interest applies while the assessment is being progressed.

There is also evidence that in some cases, particularly for transactions where registration with an authority is not required to complete a transaction, tactics have been used to delay the Commissioner from issuing an assessment to potentially gain the benefit of interest on the duty otherwise payable.

This has included instances of the provision of inappropriate or understated valuations that have required the Commissioner to engage an external consultant to conduct a valuation, incurring costly fees in the process.

Such practices are clearly inequitable as most Western Australian families and businesses pay their duty in a timely manner when purchasing their homes or businesses.

The interim assessment measures contained in this Bill seek to address these issues by giving the Commissioner the power to issue an interim assessment for a portion of the duty payable in defined circumstances.

Such powers will only be able to be exercised if more than six months has elapsed since the transaction documents were required to be lodged with the Commissioner, or he believes that it will not be possible to obtain all of the information necessary to determine the value of the dutiable property within that period.

To complement the interim assessment amendments, the Bill also seeks to amend the Taxation Administration Act to allow the Commissioner to recover costs from a taxpayer for a valuation undertaken by the Commissioner in certain circumstances, namely:

- where the taxpayer has not provided a valuation required by the Commissioner; or
- where the Commissioner is not satisfied with the taxpayer's valuation, and the valuation upon which the final assessment is based exceeds the taxpayer's valuation by 15 per cent or more.

All other jurisdictions have provisions in various forms that enable the recovery of these valuation costs.

To further ensure the integrity of property valuations, a specific penalty tax provision has also been included in the Bill to discourage significantly understated values being presented to the Commissioner.

The interim assessment measure is expected to raise an estimated \$200 million in 2013-14 and a total of \$260 million over the forward estimates period.

These amendments are aimed at high value, more complex transactions and not at every day property or business purchases. Furthermore, they do not represent an increase in the tax burden on the community, but rather are aimed at ensuring the more timely collection of duty liabilities.

These are new powers and it is appropriate that their operation be subject to review after an appropriate period. Accordingly, the Bill contains a requirement that the effectiveness of the interim assessment provisions be reviewed three years after the commencement of the amendments and for a report to be tabled before both Houses of Parliament.

Part 1 – Preliminary matters

Clause 1: Short title

This clause provides that the short title of this Act is the *Revenue Laws Amendment Act 2013*.

Clause 2: Commencement

This clause provides the commencement dates for the Act.

Paragraph (a) provides that Part 1 of this Act comes into operation on the day it receives the Royal Assent.

Paragraph (b) provides that Parts 2 and 3 of this Act come into operation on the day after the Royal Assent is received.

Paragraph (c) provides that Part 4 of this Act comes into operation:

- (i) if assent day is before 15 September 2013 – on 15 September 2013;
- (ii) if assent day is on or after 15 September 2013 – on the day after assent day.

Part 2 – Interim assessment of transfer duty and landholder duty

Division 1 – *Duties Act 2008* amended

Clause 3: Act amended

This clause provides that the amendments in this Division are to the *Duties Act 2008*.

Clause 4: Section 25 amended

Section 25 of the Duties Act provides for the time period in which an assessment of transfer duty must be paid.

This clause makes a minor amendment that accommodates that there may be more than one assessment of transfer duty made in respect of a dutiable transaction.

Clause 5: Chapter 2 Part 4 Division 7 inserted

Clause 5 inserts a new Division 7 into Part 4 of Chapter 2 of the Duties Act. The new division describes the circumstances in which the Commissioner may make an interim assessment of transfer duty and matters related to the portion of dutiable value of a dutiable transaction on which the interim assessment can be made.

Division 7 – Interim assessment of transfer duty

44A. Interim assessment of transfer duty

Subsection (1) provides the circumstances that must apply for the Commissioner to be able to make an interim assessment of transfer duty. Paragraphs (a), (b) and (c) must all be satisfied for the Commissioner to make an interim assessment.

Paragraph (a) provides that the Commissioner must be satisfied that there is a dutiable transaction on which transfer duty is payable. Dutiable transactions are defined in section 11 of the Duties Act and include among other transactions, a transfer of dutiable property and an agreement for the transfer of dutiable property. For example, a transfer of land and an agreement for the transfer of land.

Paragraph (b) ensures that the Commissioner cannot issue an interim assessment of transfer duty unless certain periods of time have elapsed relating to the dutiable transaction.

Section 23 of the Duties Act sets out the timeframe in which an instrument or transaction record evidencing a dutiable transaction must be lodged with the Commissioner. Generally, the time in which a dutiable transaction must be lodged is within two months of the date that the transaction is entered into.

Specifically, the circumstances in relation to time that must be satisfied for an interim assessment to be made are:

- (i) more than six months has passed since the date that a transaction record was lodged in respect of the dutiable transaction; or
- (ii) more than six months has passed since the transaction record should have been lodged under section 23 of the Duties Act; or
- (iii) the Commissioner is satisfied that it will not be possible to obtain all the information necessary to determine the dutiable value (that is, the full dutiable value) of the dutiable transaction within six months from the date the transaction record ought to have been lodged under section 23 of the Duties Act.

For example, if a dutiable transaction was entered into on 1 February 2014 and a transaction record lodged with the Commissioner on 1 March 2014, the earliest date contemplated by subparagraph (i) above would be the day after 1 September 2014.

Furthermore, again using the transaction date of 1 February 2014, a transaction record would be required to be lodged by 1 April 2014. If a transaction record is not lodged by that date, the earliest date contemplated by subparagraph (ii) above would be the day after 1 October 2014.

In relation to subparagraph (iii), the Commissioner does not need to wait six months to issue an interim assessment, if he forms the view that all the necessary information would not be available by 1 October 2014 in the same example. An interim assessment could be made any time between 1 April 2014 and 1 October 2014.

Paragraph (c) provides that the Commissioner must be satisfied that a portion of the dutiable value of the dutiable transaction can be determined.

For example, if an agreement to transfer property for consideration allocated the purchase price as follows:

Dutiable property – mining tenements – 40% of the purchase price

Dutiable property – plant and equipment – 5% of the purchase price

Non dutiable property – 55% of the purchase price

The Commissioner could be satisfied that a portion of the dutiable value of the dutiable transaction could be determined based on 45% of the purchase price allocated to dutiable property. The Commissioner may issue an interim assessment while having a valuation made of the dutiable property to ascertain whether the value attributed to dutiable property by the taxpayer is correct.

Subsection (2) provides that for the purposes of subparagraph (1)(b)(ii) the day on which a transaction record ought to have been lodged is calculated by reference to section 23(1) of the Duties Act and is the last day of the two month period after the day on which liability for duty arises on the transaction.

For example, if the dutiable transaction is an agreement for the transfer of a mining tenement and the written agreement is executed on 15 January 2014, the date that the instrument or written agreement ought to have been lodged is 15 March 2014.

Subsection (3) outlines some of the matters that the Commissioner may have regard to in being satisfied that a portion of the dutiable value of a dutiable transaction can be determined, including, but not limited to, an agreement on the value of anything between the Commissioner and the taxpayer and consideration given for the dutiable transaction.

Subsection (4) provides that the duty payable in respect of an interim assessment is to be determined as if the portion of the dutiable value of the dutiable transaction were the full dutiable value of the dutiable transaction.

Section 26(1) of the Duties Act provides that duty is chargeable by reference to the dutiable value of a dutiable transaction. Subsection (4) relates to section 26(1) and allows the portion of the dutiable value of the dutiable transaction to be used in lieu of the full dutiable value of the transaction for the purpose of charging duty.

Subsection (5) provides that the aggregation provisions in section 37 of the Duties Act may apply for the purpose of making an interim assessment. It further provides that a reference in section 37(6), which relates to how duty is chargeable on the dutiable value of a transaction aggregated under section 37, includes a reference to a portion of the dutiable value for a transaction.

For example, if a dutiable transaction for land and a dutiable transaction for other dutiable property were aggregated under section 37 and treated as a single dutiable transaction, the Commissioner could, for the purposes of an interim assessment, determine either the dutiable value of the land and not the other dutiable property or only a portion of the value of the land.

Further, if the dutiable transaction was an agreement to transfer two separate items of land and other dutiable property and an interim assessment was being made in respect of only the land, section 37 of the Duties Act would operate to charge duty on the total of the dutiable values of the two items of land for the purpose of calculating the dutiable value for the interim assessment.

Clause 6: Chapter 3 Part 6 Division 6A inserted

Clause 6 inserts a new Division 6A into Part 6 of Chapter 3 of the Duties Act. The new division describes the circumstances in which the Commissioner may make an interim assessment of landholder duty payable on a relevant acquisition and matters related to the portion of the value of the landholder on which the interim assessment can be made.

A landholder is any corporation or unit trust scheme that has an entitlement to land in Western Australia, either directly or through a linked entity, with an unencumbered value of \$2 million or more.

An acquisition of an interest of 50% or greater in a landholder that is not on the official list of a prescribed financial market, or 90% or greater in a landholder that is on the official list of a prescribed financial market, is subject to landholder duty.

The landholder provisions are intended, as far as possible, to align the duty treatment of land purchased indirectly via a corporation or unit trust scheme with the duty that would be payable had the land been directly acquired.

For the purposes of calculating duty, the value of a landholder is taken to be the unencumbered value of land and chattels in Western Australia to which the landholder is entitled plus the same percentage of the unencumbered value of land and chattels held by any linked entity as the percentage of the landholder's interest in that entity.

Duty is calculated at the general rate of transfer duty.

Division 6A – Interim assessment of landholder duty

195A. Interim assessment of landholder duty

Subsection (1) provides the circumstances that must apply for the Commissioner to make an interim assessment of landholder duty. Paragraphs (a), (b) and (c) must all be satisfied for the Commissioner to make an interim assessment.

Paragraph (a) provides that the Commissioner must be satisfied that there is a relevant acquisition on which landholder duty is payable.

A relevant acquisition is defined in sections 163 and 164 of the Duties Act.

Paragraph (b) ensures that the Commissioner cannot issue an interim assessment of landholder duty unless certain periods of time have elapsed relating to the relevant acquisition.

Sections 200, 201 and 202 of the Duties Act set out the timeframe in which an acquisition statement containing information relating to a relevant acquisition must be lodged with the Commissioner. Generally, the time in which an acquisition statement must be lodged is within two months of the date that the relevant acquisition occurred.

Section 180 of the Duties Act provides for a person to apply to the Commissioner to determine if an acquisition of an interest in a corporation or unit trust scheme is a relevant acquisition and liable to landholder duty.

Specifically, the circumstances in relation to time that must be satisfied for an interim assessment to be made are:

- (i) more than six months has passed since the date that an acquisition statement for the relevant acquisition was lodged or more than six months has passed since an application for a determination of liability to landholder duty was made;
- (ii) more than six months has passed since the acquisition statement for the relevant acquisition should have been lodged; and
- (iii) the Commissioner is satisfied that it will be not possible to obtain all the information necessary to determine the value (that is the full value) of the landholder within six months from the date the acquisition statement ought to have been lodged.

For example, if a relevant acquisition occurred on 1 February 2014 and the acquisition statement was lodged with the Commissioner on 1 March 2014 the earliest date contemplated by subparagraph (i) above would be the day after 1 September 2014.

Furthermore, again using the date of 1 February 2014, an acquisition statement would be required to be lodged by 1 April 2014. If the acquisition statement was not lodged, the earliest date contemplated by subparagraph (ii) above would be the day after 1 October 2014.

In relation to subparagraph (iii), the Commissioner does not need to wait six months to issue an interim assessment, if he forms the view that all the necessary information would not be available by 1 October 2014 in the same example. An interim assessment could be made any time between 1 April 2014 and 1 October 2014.

Paragraph (c) provides that the Commissioner must be satisfied that a portion of the value of the landholder can be determined.

For example, if there is a relevant acquisition in a landholder that is entitled to land and chattels in Western Australia, the Commissioner may be satisfied that a portion of the value of the landholder could be determined if the value of the land was known but the value of the chattels was still to be determined.

Subsection (2) provides that for the purposes of subparagraph (1)(b)(ii) the day on which an acquisition statement ought to have been lodged is calculated by reference to either section 200, 201 or 202 of the Duties Act.

For example, if a relevant acquisition occurred on 15 January 2014, the date that the acquisition statement ought to have been lodged is 15 March 2014.

This subsection also accommodates an extension of time to lodge an acquisition statement that has been approved by the Commissioner.

Subsection (3) outlines some of the matters that the Commissioner may have regard to in being satisfied that a portion of the value of a landholder can be determined, including, but not limited to, an agreement on the value of anything between the Commissioner and the taxpayer and consideration given for the relevant acquisition.

Subsection (4) provides that the duty payable in respect of an interim assessment is calculated as if the portion of the value of the landholder is the full value of the landholder. This subsection is relevant to sections 186, 188 and 189 which relate to how duty payable is calculated.

Subsection (5) provides that for the purposes of making an interim assessment in respect of a relevant acquisition, the Commissioner can determine only a portion of the value of the relevant acquisition.

For example, if there is a relevant acquisition in a landholder that is entitled to land and chattels, the Commissioner could determine either the value of the land and not the chattels or only a portion of the value of the land or the chattels.

Clause 7: Section 270 amended

Section 270 of the Duties Act forms part of the anti-avoidance provisions. This clause inserts a new subsection (4) into section 270.

Subsection (4) provides that the Commissioner cannot make an interim assessment using the powers contained in the anti-avoidance provisions.

However, new subsection (4) does provide that the Commissioner can use the anti-avoidance provisions in making an assessment that follows an interim assessment.

Clause 8: Section 273 amended

Section 273 of the Duties Act deals with the duty endorsing of transaction records after the payment of transfer duty. This clause inserts a new subsection (3A) into section 273.

Subsection (3A) provides that the Commissioner is not obliged to endorse a transaction record after the payment of an interim assessment of transfer duty.

For example, if an interim assessment of transfer duty was made in respect of an item of land in Western Australia that formed only part of a dutiable transaction, the Commissioner would not, even if the interim assessment was paid, be required to endorse a transfer of land to which that assessment related.

Clause 9: Schedule 3 Division 6 inserted

This clause provides the transitional arrangements for the Duties Act for the interim assessments regime.

**Division 6 – Provisions for *Revenue Laws Amendment Act 2013*
Part 2**

36. Interim assessments

Clause 36 provides that the Commissioner may apply the interim assessment powers in respect of dutiable transactions under Chapter 2 or relevant acquisitions under Chapter 3 of the Duties Act that occur prior to the *Revenue Laws Amendment Act 2013* receiving the Royal Assent.

For example, if this Act received the Royal Assent on 23 September 2013, Part 2 of the Act comes into operation on 24 September 2013, the Commissioner could issue an interim assessment of transfer duty or landholder duty in respect of a dutiable transaction or relevant acquisition that occurred prior to that date.

Division 2 – *Taxation Administration Act 2003* amended

Clause 10: Act amended

This clause provides that the amendments in this Division are to the *Taxation Administration Act 2003*.

Clause 11: Section 13 amended

Section 13 of the *Taxation Administration Act* provides the meaning of the term 'assessment'. An assessment is defined in the Glossary to mean 'a determination of a kind referred to in section 13(1), whether the determination is made by way of self-assessment or an official assessment'. An interim assessment falls into the category of an 'official assessment'.

Subclause (1) amends subsection (1)(a) such that an assessment is now, not only the amount of tax payable under a taxation Act, but also a portion of an amount of tax payable under a taxation Act.

This amendment is necessary to accommodate interim assessments that will represent only a portion of the tax payable in respect of a dutiable transaction or relevant acquisition.

Subclause (2) makes a minor grammatical amendment to subsection (2).

Clause 12: Section 16A inserted

Clause 12 inserts a new section 16A that provides the meaning of the term interim assessment. 'Interim assessment' is defined in the Glossary to the *Taxation Administration Act* as having the meaning given in section 16A(1).

16A. Interim assessments

Subsection (1) provides that the Commissioner can make an assessment of a portion of the tax payable when a taxation Act specifically permits him to do so.

The Duties Act is the only taxation Act which will authorise the making of an interim assessment.

Accordingly, the Commissioner cannot make an interim assessment of land tax or pay-roll tax.

Subsection (2) provides that the Commissioner can only make one interim assessment of the tax payable.

For example, where there is a relevant acquisition in a landholder that was entitled to three lots of land and an interim assessment issued on a portion of the value of the landholder based on the value of only one of those land items, the Commissioner could not issue a second interim assessment upon being satisfied as to the value of a second land item.

Subsection (3) provides that the Commissioner must make a complete assessment following an interim assessment.

A new definition of 'complete assessment' is inserted in the Glossary to the Taxation Administration Act by the amendment in clause 27 of this Bill.

The definition of 'complete assessment' relates to the meaning of an assessment, as described in section 13(1) of the Taxation Administration Act. It includes an assessment of the amount of tax payable under a taxation Act and that a person, instrument, event or transaction is exempt from tax, but does not include an assessment that is a determination that a person is liable to pay tax or that an instrument, event or transaction is liable to tax.

The subsection also provides that although the Commissioner must make a complete assessment following an interim assessment, there is only a requirement to do so when the Commissioner has sufficient information or makes a compromise agreement with the taxpayer pursuant to section 20A of the Taxation Administration Act.

Subsection (4) provides that the Commissioner is not bound by an interim assessment when making a further assessment of that matter.

For example, if the Commissioner made an interim assessment in respect of a dutiable transaction relating to land, he is not bound by the portion of dutiable value of the land used to calculate the tax payable on that interim assessment when making the next assessment of that dutiable transaction.

Subsection (5) provides that despite a complete assessment superseding an interim assessment any penalty tax or interest payable under a tax payment arrangement imposed in respect of the interim assessment remains payable.

For example, if a taxpayer failed to pay an interim assessment within the time permitted, penalty tax under section 27 of the Taxation Administration Act may be imposed and would remain payable despite the issue of a complete assessment.

Subsection (6) clarifies that a complete assessment issued following an interim assessment is not a reassessment of an interim assessment.

A reassessment of an interim assessment can only be made in the limited circumstances described in clause 13 of this Bill.

Subsection (7) relates to section 13(1) of the Taxation Administration Act, which gives the meaning of an assessment. An assessment also includes a determination by the Commissioner that a person is liable to pay tax or that an instrument, event or transaction is liable to tax. This subsection provides that despite the Commissioner having already made a determination of that nature, or a person objecting or taking review proceedings on such a determination, the Commissioner is not prevented from making or enforcing an interim assessment.

For example, section 180 of the Duties Act allows a person to make an application to the Commissioner to determine whether an acquisition of an interest in an entity is liable to landholder duty. Such a determination by the Commissioner gives rise to a right of objection despite an assessment of the amount of landholder duty payable not having been made. In these circumstances the Commissioner has the power to issue an interim assessment.

Subsection (8) provides that the Commissioner cannot be compelled by a court or tribunal to issue an interim assessment.

Clause 13: Section 16 amended

Section 16 of the Taxation Administration Act deals with reassessments. This clause inserts two new subsections that relate to interim assessments.

Subsection (3A) provides that the only circumstance in which the Commissioner can make a reassessment of an interim assessment is where an objection against the interim assessment is allowed wholly or in part or as a result of a direction given in review proceedings, which includes a review of the decision by the State Administrative Tribunal or an appeal to the Supreme Court.

The circumstance in which an objection to an interim assessment can be made is described in clause 19 of this Bill.

Subsection (3B) clarifies that references in the Taxation Administration Act to an assessment following an interim assessment does not include a reassessment of the interim assessment. 'An assessment following an interim assessment' may include a complete assessment or any number of reassessments of a complete assessment, but does not include a reassessment of an interim assessment.

Clause 14: Section 18 amended

Section 18 of the Taxation Administration Act deals with the effect of a reassessment.

This clause amends subsection (1) to provide that a reassessment of an interim assessment supersedes the interim assessment.

As described in clause 13 of this Bill, the only circumstance where the Commissioner can make a reassessment of an interim assessment is as a consequence of a successful objection or resulting from a direction in review proceedings.

Clause 15: **Section 19 amended**

Section 19 of the Taxation Administration Act provides that if the Commissioner suspects that a tax liability exists, the Commissioner is able to make an assessment or reassessment of tax on the basis of the suspicion and the Commissioner's estimate of the tax liability. Alternatively, the section provides for where the Commissioner is in no doubt about the existence of a liability but is not satisfied with the adequacy of the information available to enable a proper assessment to be made.

Clause 15 inserts new subsection (3) into section 19.

Subsection (3) provides that the Commissioner cannot make an interim assessment under section 19 but can make an assessment following an interim assessment relying on this section.

The amendments in Division 1 of this Part of the Bill set out the circumstances in which an interim assessment of transfer and landholder duty may be made. The requirements for the Commissioner to be satisfied that an interim assessment can be made are more onerous than the circumstances set out in subsections 19(1) and (2).

Clause 16: **Section 20A amended**

Section 20A of the Taxation Administration Act provides the power for the Commissioner to make a compromise agreement and subsequently a compromise assessment of a taxpayer's liability. This clause inserts a new subsection (2A) into section 20A.

Subsection (2A) provides that the Commissioner cannot make an interim assessment in accordance with a compromise agreement but can do for an assessment that follows an interim assessment.

Clause 17: **Section 24 amended**

Section 24 of the Taxation Administration Act deals with the form of an assessment notice.

Subclause (1) amends section 24(2). This is a minor amendment to ensure that the information outlined in this subsection which is to be included in an assessment notice also applies to an assessment notice for a reassessment. In practical terms this information is already included by the Commissioner in assessment notices for reassessments.

Subclause (2) inserts a new subsection (3A).

Subsection (3A) provides a self-explanatory list of matters that must be included in an assessment notice that relates to an interim assessment.

Subclause (3) amends section 24(3) as a consequence of the amendment to subsection (2). The information outlined in this subsection to be included in an assessment notice for a reassessment is in addition to the information detailed in subsection (2).

Subclause (4) amends section 24(5) to ensure the provision applies to an interim assessment. The amendment deletes the words 'original assessment'. A new definition of 'original assessment' is contained in the Glossary to the Taxation Administration Act. That definition excludes both an interim assessment and a reassessment. The word 'assessment' which includes an interim assessment now replaces the term 'original assessment' and a reassessment is specifically excluded which maintains the status quo.

Clause 18: **Section 25 amended**

Section 25 of the Taxation Administration Act deals with the statement of grounds on which an assessment is made.

Subclause (1) amends section 25(2) such that it does not apply to an interim assessment. The provision of a statement of grounds for an interim assessment is provided for in subclause (2).

Subclause (2) amends section 25(3) to provide that if an assessment notice relating to an interim assessment does not include a statement of grounds, the Commissioner must serve on the taxpayer a separate statement of the grounds on which the interim assessment is made.

Subclause (3) inserts a new subsection (4) into section 25.

Subsection (4) provides that a statement of grounds in respect of an interim assessment does not bind the Commissioner in respect of a further assessment of that matter, other than for a reassessment of an interim assessment.

Clause 19: **Section 34 amended**

Section 34 of the Taxation Administration Act provides for a taxpayer's right to lodge an objection to an assessment or decision of the Commissioner. Section 34(2) lists the decisions, assessments and determinations against which an objection cannot be made.

Subclause (1) inserts a new paragraph (ca) into section 34(2) that provides that an objection cannot be lodged against an interim assessment within three years after the date on which the assessment notice for the interim assessment is issued.

This is considered necessary so that the assessment process is not delayed or diverted while work is proceeding to issue the assessment on the full value of a transaction and to minimise the objection and review processes being undertaken in relation to the same matter.

An objection may occur against an interim assessment when the complete assessment has not issued within three years of the date of issue of the interim assessment and this may be followed by an objection against the complete assessment when it issues. However, in the majority of cases it is anticipated there will only be one opportunity to object and that will be when the complete assessment issues.

Subclause (2) inserts new subsections (3A) and (3B).

Subsection (3A) provides that an objection against an interim assessment can only be made against the validity or correctness of the interim assessment based on the information that was available at the time that the interim assessment was made. Information that was acquired after that date will not be taken into consideration in determining the objection.

Subsection (3B) provides that a right to lodge an objection against an interim assessment ceases upon the issue of an assessment following the interim assessment. The taxpayer will however, have the right to object to the assessment that follows the interim assessment.

Clause 20: Section 36 amended

Section 36 of the Taxation Administration Act provides the time limits for lodging an objection.

Clause 20 amends section 36 to provide the time limit in which to lodge an objection to an interim assessment. In relation to an interim assessment, a taxpayer's right to object commences on the third anniversary of the issue of the interim assessment and ends 60 days thereafter.

Clause 21: Section 37 amended

Section 37 of the Taxation Administration Act sets out matters that the Commissioner must consider in determining an objection.

Subclause (1) amends section 37(1) such that the Commissioner, in relation to an objection to an interim assessment, must consider in addition to the grounds set out in the objection and other relevant written material submitted by the taxpayer as described in section 37(1)(a), only relevant information that was obtained by the Commissioner prior to the issuing of the interim assessment.

Any information that is obtained after the issuing of the interim assessment would form part of the Commissioner's deliberations to any objection lodged against the assessment that follows the interim assessment.

Subclause (2) inserts new subsections (4A) and (4B) into section 37.

Subsection (4A) provides that if an assessment against an interim assessment is lodged and an assessment following the interim assessment is made, the Commissioner is not required to consider or continue considering, (if that process has commenced) the objection against the interim assessment.

This does not preclude a taxpayer from objecting to the assessment that follows the interim assessment.

Subsection (4B) provides that a decision in respect of an objection to an interim assessment does not bind the Commissioner in the determination of an objection against an assessment which follows the interim assessment, whether for example, that be a complete assessment or a reassessment of a complete assessment.

Clause 22: **Section 40 amended**

Section 40 of the Taxation Administration Act deals with a taxpayer's right to have a decision by the Commissioner on an objection or on an application for an extension of time to lodge an objection reviewed by the State Administrative Tribunal. This clause inserts a new subsection (2) into section 40.

Subsection (2) provides that if the assessment following an interim assessment is made after the Commissioner has made a decision on an objection to the interim assessment, but before an application for review is made to the State Administrative Tribunal for a review of that decision, any right to apply to the Tribunal for a review of that decision is extinguished. The usual rights of objection and to a review by the State Administrative Tribunal will apply to the assessment following an interim assessment.

Clause 23: **Section 43 amended**

Section 43 of the Taxation Administration Act deals with the State Administrative Tribunal's proceedings in relation to reviews of taxation matters. This clause inserts a new subsection (5).

Subsection (5) provides that the State Administrative Tribunal may dismiss a proceeding concerning an objection to an interim assessment once the assessment following the interim assessment is made.

Clause 24: **Section 54 amended**

Section 54 of the Taxation Administration Act deals with refunds of taxation. This clause inserts a new subsection (2A) that relates to the refund of tax paid in respect of an interim assessment.

Subsection (2A) provides that in recognition of the extended period before gaining a right to lodge an objection, if the tax payable on the assessment that follows the interim assessment is less than the tax paid on the interim assessment, the Commissioner must refund the difference in tax payable to the taxpayer plus interest.

The interest is calculated from the date that payment of the tax on the interim assessment was made until the date that the Commissioner approves the refunding or crediting of that amount.

Clause 25: Section 96 amended

Section 96 of the Taxation Administration Act provides the power for the Commissioner to retain documents. This clause inserts a new subsection (2A) into section 96.

Subsection (2A) ensures that despite the payment of the tax assessed on an interim assessment the Commissioner can retain any instrument, documents or other records associated with the interim assessment until the assessment following the interim assessment is made and any tax payable on that assessment is paid.

This power is necessary as the instrument, documents or other records may be required to make the following assessment. This power is also necessary so that the Commissioner does not have to hand back a transaction record until the full amount of duty has been paid on the transaction.

Clause 26: Part 10 Division 7 inserted

This clause provides for a Ministerial review of the interim assessment provisions.

Division 7 – Review of operation and effectiveness of interim assessments

135. Review of operation and effectiveness

Subsection (1) provides that the Minister must after the third anniversary of the commencement of the provisions relating to interim assessments carry out a review of the operation and effectiveness of those provisions in both the Duties Act and the Taxation Administration Act.

Subsection (2) requires the Minister to prepare a report based on the review and, within 12 months of the anniversary of the commencement of the provisions, cause the report to be laid before both Houses of the Parliament.

Clause 27: Glossary amended

Subclause (1) deletes the definition of 'original assessment'. A new definition of 'original assessment' is inserted by subclause (2).

Subclause (2) inserts new definitions of 'complete assessment', 'interim assessment' and 'original assessment'.

‘complete assessment’ – this definition is necessary as a result of the new interim assessment provisions. An interim assessment must be followed by a complete assessment as required by section 16A. A complete assessment is a subset of the defined term ‘assessment’ which relates to section 13(1), but excludes certain categories of assessments within the meaning of section 13(1) that are not relevant to an assessment that will issue following an interim assessment.

A complete assessment is limited to assessments that are of the amount of tax payable or that a person, instrument, event or transaction is exempt from tax. A complete assessment does not include determinations that a person, is liable to pay tax or that an instrument, event or transaction is liable to tax. Such determinations are inevitably made by the Commissioner before an assessment for an amount of tax payable.

‘interim assessment’ – an interim assessment is a new category of assessment, the meaning of which is described in section 16A(1).

‘original assessment’ – a new definition of original assessment is required to take into consideration an interim assessment and the new definition of a complete assessment. An interim assessment is excluded from the definition of an original assessment because of the meaning of original assessment in relation to a reassessment of tax. Different circumstances apply to a reassessment of an interim assessment which are dealt with separately in the reassessment provisions, which necessitates the exclusion of an interim assessment from this definition.

Subclause (3) amends the definition of ‘assessment’. The definition has been amended to remove a reassessment and a compromise assessment from the definition. The new definition of assessment relies on the definition of ‘official assessment’ which includes reassessments and compromise assessments. An interim assessment is similarly an ‘official assessment’.

Subclause (4) amends the definition of ‘previous assessment’. This is as a consequence of the change in definition of an original assessment which excludes an interim assessment. It ensures that the term previous assessment has relevance to a reassessment of an interim assessment as a result of an objection or review proceedings.

Subclause (5) amends the definition of ‘reassessment’ to exclude the term ‘interim assessment’.

Part 3 – Valuation of property, consideration or benefit

Clause 28: Act amended

This clause provides that the amendments in this Part are to the *Taxation Administration Act 2003*.

Clause 29: Section 21 amended

Section 21 of the Taxation Administration Act provides the Commissioner with the power to require a taxpayer to provide evidence of the value of any property, consideration or benefit. Clause 29 amends section 21 by replacing subsection (1) and inserting new subsections (2A) and (2B).

Subclause (1) replaces existing subsection (1) to provide that if it is necessary to ascertain the value of any property, consideration or benefit for the purposes of a taxation Act, the Commissioner can require a taxpayer to provide a written valuation of any property consideration or benefit by a qualified valuer and any document or record relevant to the determination of value that the taxpayer has in their possession or control.

This provision differs from the current subsection (1) by requiring that the valuation be in writing and be made by a qualified valuer. The provision also differs in that the current provision does not enable the Commissioner to require the taxpayer to have a valuation made. It only enables the Commissioner to compel the production of a valuation if it is already in existence.

A definition of a qualified valuer is provided for in clause 39 of this Bill.

Subsection 2(A) provides that the Commissioner may require a valuation and any document or other record relevant to determining the valuation, including methods, models and assumptions used in arriving at the valuation to be provided in an electronic format. If the Commissioner requires that the methods, models and assumptions must be provided electronically then they are required to be in a form that will allow the Commissioner to fully test the valuation.

Currently some valuations, particularly with regard to the mining industry, are based on valuation models with assumptions and methods which are not provided to the Commissioner in a format that allows for a complete interrogation of the data provided. This can lead to lengthy and costly delays in the issuing of assessments and the incurring of unnecessary additional valuation costs by the Commissioner.

Subsection (2B) provides that the Commissioner may be satisfied of a requirement to provide a written valuation by a qualified valuer by the production of other evidence as to value of the property, consideration or benefit. The Commissioner may consider that it is not appropriate in a particular situation depending upon factors such as the nature of the transaction or the type of property to require a taxpayer to provide a valuation from a qualified valuer. A valuation under this subsection is still subject to proposed section 23A(1).

Clause 30: Section 23A inserted

Section 22 of the Taxation Administration Act provides the Commissioner with the power to have a valuation made of any property, consideration or benefit, regardless of whether a taxpayer has provided a valuation of that property, consideration or benefit.

New section 23A provides the Commissioner with the power in certain circumstances, to recover the costs of having a valuation made.

23A. Recovery of valuation costs

Subsection (1) provides that the Commissioner may recover the cost of obtaining a valuation made where either:

- a) a taxpayer does not comply with a requirement under section 21(1)(a) to provide a written valuation by a qualified valuer; or
- b) the Commissioner is not satisfied with a valuation provided by the taxpayer, whether the taxpayer provided the valuation of their own volition, or whether the taxpayer provided the valuation in compliance with a requirement of the Commissioner under section 21(1)(a) and the value upon which the taxpayer's liability is assessed exceeds the designated valuation provided by the taxpayer by 15 per cent or more.

For example, assuming a taxpayer provided a valuation of property of \$10 million and nominated \$10 million as the designated valuation for the purposes of this section, the Commissioner may only recover the costs of obtaining valuation if his value of the same property was \$11.5 million or more. Subsection (3) provides a meaning for the term 'the designated valuation'. It is not mandatory for the Commissioner to recover the costs of obtaining a valuation as it is a discretionary power. A Commissioner's Practice outlining how the discretion will be exercised will be published after the commencement of these provisions.

Subsection (2) takes into consideration that an assessment based on a value that exceeds the designated valuation provided by the taxpayer for which the Commissioner is seeking to recover valuation costs may be the subject of an objection or review proceedings.

In those circumstances, the Commissioner can only recover the costs of obtaining a valuation if two criteria are satisfied.

Firstly, the value on which the final assessment is based after the finalisation of objection and review proceedings must exceed the designated valuation provided by the taxpayer by 15 per cent or more and secondly, the value upon which the Commissioner based the assessment (the subject of the objection) does not vary from the value on which the final assessment is based by more than 15 per cent.

Subsection (3) explains the meaning of the designated valuation provided by the taxpayer for the purposes of section 23A and section 27A. A designated valuation can be:

- a) a valuation nominated for the relevant property, consideration or benefit for the purposes of this section. For example, for the purposes of the Duties Act in relation to a liability for transfer duty, the relevant property will be dutiable property and for landholder duty on a relevant acquisition the relevant property will be land and chattels; or
- b) in the absence of a nomination by a taxpayer, the last valuation provided by the taxpayer prior to the Commissioner seeking a valuation; or
- c) a valuation accepted by the Commissioner as a designated valuation under subsection (7) of this section.

Subsection (4) provides that the Commissioner may ask a taxpayer, whether the taxpayer has provided a valuation of their own volition or whether the Commissioner has required the taxpayer to provide a valuation, whether they wish to nominate that valuation for the purposes of this cost recovery provision.

Subsection (5) provides that a nomination of valuation by a taxpayer must be in writing.

Subsection (6) provides that section 23A(1)(b) has no application if the Commissioner has not sought a nomination from the taxpayer.

Subsection (7) provides that the Commissioner may accept a valuation provided by the taxpayer after the taxpayer has already nominated a value, or after the Commissioner has sought a valuation.

The Commissioner will only accept a valuation in these circumstances if satisfied that it is reasonable to do so. A Commissioner's Practice will be published outlining the circumstances in which the Commissioner may accept a valuation pursuant to this subsection.

Subsection (8) clarifies the meaning of a final assessment of the taxpayer's liability for the purposes of subsection (2) which relates to the circumstance where a taxpayer has challenged the validity or correctness of an assessment where the Commissioner has sought to recover valuation costs.

Subsection (9) clarifies that a reference in this section to a valuation does not include a reference to a valuation obtained in the course of objection or review proceedings, whether that is a further valuation obtained by the Commissioner or the taxpayer. Costs will not be sought to be recovered by the Commissioner for a valuation obtained by the Commissioner during an objection or review process.

Subsection (10) provides that a median point in a range of values will be used for the purposes of this section where a preferred valuation is not provided.

Clause 31: **Section 24 amended**

Section 24 of the Taxation Administration Act provides for the form of an assessment notice.

Subclause (1) inserts a new paragraph (ca) into subsection (2) that provides that an assessment notice must include the amount of any costs of a valuation that are being recovered.

Subclause (2) amends subsection (6). Currently, subsection (6) provides that an assessment notice can contain more than one assessment of primary or penalty tax. This amendment will allow for an assessment notice to contain more than one assessment of primary tax, penalty tax or costs of valuation.

Subclause (3) inserts a new subsection (7) that provides a definition of 'costs of valuation'.

Clause 32: **Section 25 amended**

Section 25 of the Taxation Administration Act deals with a statement of grounds of an assessment.

This clause amends section 25 such that if the Commissioner seeks to recover the costs of having a valuation made, the taxpayer must be served with a statement of grounds.

Clause 33: **Section 27A inserted**

New section 27A provides the power for the Commissioner, in certain circumstances, to impose a penalty tax in relation to an undervaluation of property. Penalty tax will only be imposed if the Commissioner exercises the discretion to recover valuation costs under proposed section 23A. Section 29 of the Taxation Administration Act which relates to the remission of penalty tax has application to this proposed section. Subject to the passage of this Bill, a Commissioner's Practice will be issued setting out how the discretion to remit penalty tax will be exercised.

27A. Penalty tax for undervaluation

Subsection (1) provides that this section does not apply in cases where a taxpayer does not satisfy a requirement of the Commissioner to provide a written valuation of property, consideration or benefit pursuant to proposed section 21(1)(a).

If a taxpayer fails to provide information required under a taxation Act section 26(1)(e) of the Taxation Administration Act provides that a taxpayer is liable to penalty tax.

Subsection (2) provides that if under proposed section 23A the Commissioner exercises a discretion to recover the costs of a valuation, the taxpayer is also liable to pay penalty tax.

Subsection (3) provides for how the amount of penalty tax imposed under subsection (2) is to be calculated.

The amount of penalty tax payable is calculated by subtracting the amount of the taxpayer's primary liability that would have been payable using the designated valuation provided by the taxpayer from:

- a) in the circumstance where the taxpayer does not lodge an objection to the assessment, the taxpayer's primary liability using the Commissioner's value referred to in section 23A(1)(b); or
- b) in the circumstance where the taxpayer challenges the validity or correctness of the assessment based on the Commissioner's value referred to in section 23A(1)(b), the amount of the taxpayer's primary liability as assessed in the final assessment resulting from that process.

For the purpose of these calculations primary liability is defined to mean 'a liability for tax exclusive of any liability for penalty tax or costs of obtaining a valuation that are recoverable under section 23A.'

For example, if the Commissioner's valuation of property was \$12 million and the transfer duty payable in respect of the transaction was \$611,915 and the taxpayer had provided a designated valuation of \$10 million on which the transfer duty payable would have been \$508,915, the penalty tax payable would be \$103,000.

Section 29 of the Taxation Administration Act provides that the Commissioner may remit penalty tax in whole or in part.

In respect of a range of matters, the power to impose a penalty tax equal to a taxpayer's primary liability is already provided for in the Taxation Administration Act. A penalty tax of one hundred per cent of a taxpayer's liability is used only where there is evidence that there is a wilful attempt to evade tax or mislead the Commissioner.

Subsection (4) clarifies that for the purposes of subsection (3)(b)(ii), the final assessment of the taxpayer's liability is the assessment applicable after any objection and review proceedings are finalised.

Subsection (5) provides that a median point in a range of values will be used for the purposes of this section where a preferred valuation is not provided.

Clause 34: Section 34 amended

Section 34 of the Taxation Administration Act provides for a taxpayer's right to lodge an objection. Section 34(1) lists the matters that a taxpayer may object to.

This clause inserts new paragraph (ca) into subsection (1) that provides that a taxpayer can object to a decision to recover valuation costs under proposed section 23A or the amount of costs sought to be recovered.

Clause 35: Section 76A amended

Section 76A defines the terms used in Division 2, Part 6 of the Taxation Administration Act which relates to charges on land for unpaid tax under certain taxing Acts.

The amendments to section 76A(2) ensure that references to tax of a particular kind in this Division is to be read as including costs of obtaining a valuation, in relation to making an assessment of tax of that kind, that are recoverable under proposed section 23A.

Paragraph (d) is inserted into section 76(A)(2) to include valuation recovery costs.

Clause 36: Section 96 amended

Section 96 of the Taxation Administration Act provides the power for the Commissioner to retain documents. The amendments in subclauses (1) and (2) amend subsections (1) and (2) to include the defined term 'record'.

Clause 37: Section 99 amended

Section 99 of the Taxation Administration Act deals with powers of an investigator while on premises.

This clause amends section 99 to extend an investigator's powers to matters concerning 'records'.

The term 'record' is already defined in the Taxation Administration Act.

Clause 38: Part 11 inserted

This clause provides the transitional arrangements for Part 3 of this Bill.

Part 11 – Transitional matters

136. Provisions for *Revenue Laws Amendment Act 2013* Part 3

Subclause (1) provides a self-explanatory definition of 'commencement day'.

Subclause (2) provides that Part 3 of the *Revenue Laws Amendment Act 2013* applies in relation to the value of any property, consideration or benefit relevant to a taxpayer's primary liability that arose prior to commencement day.

Subclause (3) provides however, that the Commissioner cannot recover the costs of obtaining a valuation or impose penalty tax under section 27A in respect of either:

- (a) a valuation that was provided to the Commissioner by the taxpayer prior to commencement day; or
- (b) a valuation that the Commissioner sought or adopted prior to commencement day.

Subclause (4) provides that a reference in this clause to a valuation does not include an estimate.

For example, if prior to commencement day a taxpayer had provided the Commissioner with an estimate of a value, and after commencement day the Commissioner requested a valuation, the recovery of valuation costs and associated penalty tax provisions could be imposed in respect of the valuation provided sought by the Commissioner.

Clause 39: Glossary amended

This clause makes self-explanatory amendments to the Glossary.

Part 4 – *First Home Owner Grant Act 2000* amended

Clause 40: Act amended

This clause provides that the amendments in this Part are to the *First Home Owner Grant Act 2000*.

Clause 41: Section 3 amended

Section 14A of the Act currently contains definitions of the terms 'established home', 'new home' and 'substantially renovated home'. However, to date these have only been relevant in the context of special eligible transactions, pursuant to which the first home owner boost payment was made.

Consequently, these definitions are currently found in Part 2, Division 3, Subdivision 2 of the Act, which deals exclusively with those special eligible transactions.

As these terms will now have general application in respect of a first home owner grant, it is considered preferable that the definitions should be located in Part 1 – Preliminary of the Act, where all other terms having general application are defined.

This clause amends section 3(1) by inserting definitions for 'established home', 'new home' and 'substantially renovated home'.

Clause 42: Section 14A amended

Subclause (1) of this clause amends section 14A by the deletion of the definitions of the terms 'established home', 'new home' and 'substantially renovated home'. The definitions have been inserted into section 3(1) pursuant to clause 41.

Subclause (2) contains a minor amendment related to punctuation, made necessary by the deletion of the abovementioned definitions.

Clause 43: Section 19 amended

Section 19(1) of the Act currently provides that the amount of a first home owner grant is the lesser of the consideration for the transaction or \$7,000.

In order to accommodate the differential grant that is now to be paid in respect of new and established homes, subclause (1) of this clause deletes section 19(1) and inserts the following provisions.

Subsection (1) defines ‘amendment day’ to mean the day on which the *Revenue Laws Amendment Act 2013* section 43 comes into operation. This day will be determined as set out in paragraph (c) of clause 2.

Subsection (2A) provides that where the commencement date of an eligible transaction is before amendment day, the amount of a first home owner grant will continue to be the lesser of \$7,000 or the consideration for the transaction.

Subsection (2B) provides that where the commencement date of an eligible transaction is on or after amendment day, the amount of a first home owner grant is –

- (a) where the transaction is a contract for the purchase of an established home, the lesser of \$3,000 or the consideration for the transaction; or
- (b) for any other transaction, the lesser of \$10,000 or the consideration for the transaction.

It is to be noted that the term ‘transaction’ is defined in section 3(1) of the Act to mean a contract for the purchase of a home, or a comprehensive home building contract made by an owner of land, or the building of a home by an owner builder.

As an established home is defined as being a home that is not a new home or a substantially renovated home, the reference to ‘any other transaction’ in paragraph (b) above is a reference to a contract for the purchase of a new home or a substantially renovated home, a comprehensive home building contract and the building of a home by an owner builder.

Provisions are needed to prevent applicants taking advantage of the increased grant that is to be paid in respect of homes other than established homes, by means of replacing an earlier contract that was made before these provisions come into effect with another contract in respect of the same home.

Subsection (2C) provides that despite subsection (2B), subsection (2A) applies to an eligible transaction with a commencement date on or after amendment day, if the Commissioner is satisfied that the transaction replaces another contract to purchase the same new home, or a comprehensive home building contract to build the same or a substantially similar home, and the replaced contract was made before amendment day.

Subclause (2) of this clause makes a consequential amendment to section 19(2), by deleting the reference to 'subsection (1)' therein and inserting 'subsections (2A), (2B) and (2C)'.