

REVENUE LAWS AMENDMENT BILL 2010

Consideration in Detail

Resumed from an earlier stage of the sitting.

Clause 1: Short title —

Debate was interrupted after the clause had been partly considered.

Clause put and passed.

Clause 2: Commencement —

Mr B.S. WYATT: Clause 2(d) provides that clauses 5 and 6 of this bill will be deemed to have come into effect on 10 March 2010. I know the matter was briefly addressed in the explanatory memorandum, but can the Treasurer give the house a better understanding as to why clauses 5 and 6 of this bill will come into effect retrospectively?

Mr T.R. BUSWELL: Apparently, a loophole was identified that will be closed by this legislation—that is, a potential loophole in the restructuring provisions of the Duties Act, if I recall correctly. Of course, we are always keen to close loopholes when they may potentially lead to taxation revenue deserting the coffers of the state to ensure that people follow the proper process and all the fairness that goes with that. The issue was that once I made the second reading speech and this information was published, the loophole became known to perhaps more people than it had previously been known to; therefore, this provision effectively gives us a mechanism to protect against an abuse of that loophole between the date I made that information available to the general public and the bill's assent.

Mr B.S. WYATT: I note the Treasurer said “potential loophole” so the question that flows from that is: has the loophole been taken advantage of in the past? Has the Treasurer seen revenue leave the coffers of the state, as the Treasurer put it; and, if so, what will be the financial impact of closing this loophole if it has indeed been utilised by taxpayers in the past?

Mr T.R. BUSWELL: My advice is that there is only one application that this applies to and it is not that application that led to the closing of this loophole. There is one application that is still subject to determination, so the impact will not be a lot. Like a lot of what we deal with in these revenue and taxation bills, often things that are very technical in nature become evident down the track. There is only one application yet to be determined and it is of a value unknown to me.

Clause put and passed.

Clause 3 put and passed.

Clause 4: Section 127 amended —

Mr B.S. WYATT: This clause amends section 127 of the Duties Act 2008. Section 127 is entitled “Transfer of, or agreement for the transfer of, dutiable property from superannuation fund to member”. My understanding is that section 127(b) deals with the scenario in which there is no consideration for a transfer within a related fund. I hope the Treasurer can give the house a practical example of how this change may have an impact and the differences between the current section 127 and section 127 after it has been amended by this bill.

Mr T.R. BUSWELL: Let us use as an example a superannuation fund that has some real property that would be subject to duty. If that superannuation fund distributes that for no consideration to the member, it is not subject to duty because the member has an entitlement to that asset. However, if a consideration is made for the transfer of the asset and that money flows back into the fund, duty will be payable because it will basically be a transfer of an asset out of the fund for which the fund receives money. It is a sale of an asset by the fund rather than a distribution to a member. An example might be a self-managed superannuation fund that owns a property. A lot of small business people have self-managed superannuation funds. At an appropriate time, the property would be sold to a member and the money would effectively go back into the superannuation fund. Duty would be paid. If the property were distributed for no consideration—I am assuming according to the rules of the superannuation fund—no duty would be paid.

Ms J.M. FREEMAN: I seek clarification of that. A self-managed super fund cannot own property that will then become the property of a member of that fund. That comes under the federal legislation. These funds can own properties as investments that provide a return. A self-managed fund may perhaps involve a family group. Someone may own a property and then one of the other members may gain that property; for example, a son or daughter who is part of the self-managed super fund. Is the Treasurer saying that that person would not have to pay transfer duty on gaining that property? Would that not be an advantage to which people should not be entitled? I also do not understand what the Treasurer means by “consideration”.

Mr Ben Wyatt; Mr Troy Buswell; Ms Janine Freeman; Mr Bill Johnston; Mr John Kobelke; Mr Chris Tallentire

Mr T.R. BUSWELL: A payment. My advice is that some superannuation funds have a mechanism by which there can be no change of beneficial ownership with the transfer of an asset if this fulfils the rules that govern the entitlements of members of that fund. We are simply saying here that when that happens and no consideration is paid, no duty will be paid. When that happens and consideration is paid, duty should be paid. The consideration would be paid to the fund. It is effectively the sale of an asset controlled by the superannuation fund. I am sorry; I am no expert in superannuation. I maybe should not have used the example of a self-managed superannuation fund. I have no knowledge of those. I am a member of the Government Employees Superannuation Board.

Ms J.M. Freeman: One would assume that this would occur only with self-managed funds.

Mr T.R. BUSWELL: Yes, small funds.

Ms J.M. Freeman: This would never occur with GESB or an industry fund.

Mr T.R. BUSWELL: It nearly did.

Ms J.M. Freeman: No. This is particularly for self-managed super funds.

Mr T.R. BUSWELL: The member is right. They would own a discrete asset and there is a chance that the asset would be transferred as part of the entitlement of that fund to a member of the fund. To my simple mind, all this is saying is that if that happens and no consideration is paid —

Ms J.M. Freeman: Can you just explain what you mean by “no consideration is paid”?

Mr T.R. BUSWELL: I mean no money is paid. The asset is transferred as part of the entitlements of a member of that fund.

Ms J.M. Freeman: So they become an owner of that property, or does the super fund —

Mr T.R. BUSWELL: My understanding is that there might be occasions when a super fund distributes property to a member as part of the entitlements of that member. It might be as part of the winding-up of the fund or a range of different things. Where that is transferred and no consideration is paid, no duty will be payable. Where that happens and payment is made, duty will be payable.

Ms J.M. FREEMAN: I am completely confused now. For example, I have a self-managed super fund that buys a property as part of the investments of that fund. Self-managed super funds own shares and property and have various parts, usually set up by accountants. If that property is bought in Mandurah —

Mr T.R. Buswell: Is that one the super fund bought?

Ms J.M. FREEMAN: Yes, which I tend to buy. I also buy paintings and stuff like that. If the super fund buys a property in Mandurah and I then retire to that property, is the Treasurer saying that the property will then become part of the entitlements that I will receive from my super fund?

Mr T.R. Buswell: That is right.

Ms J.M. FREEMAN: So I will not have to pay duty if I want to retire to that property, as anyone else would have to do if he or she bought a property in Mandurah for their retirement?

Mr T.R. BUSWELL: The member would not be buying that property; the property would be transferred to the member as part of her entitlements from the super fund. The super fund would have paid duty when it acquired the asset on the member’s behalf. The super fund would then be distributing the assets it owns to its members in accordance with the rules that govern the way in which entitlements are to be paid out of that super fund. A fund could conceivably sell all its assets and distribute them as cash, but I do not think we should force anyone to do that. Whatever decision-making mechanism governs how the fund distributes its assets would transfer the house to the member as part of her entitlements. This often happens at the winding-up of a super fund. That is part of the entitlement. This has been a longstanding provision of the act. It says that where that happens and no consideration is paid, no stamp duty is payable. It is entirely consistent with what has been going on for a long time in Western Australia with the distribution of assets. There are some requirements. Section 127 of the Duties Act states —

Nominal duty is chargeable in respect of a transfer of, or an agreement for the transfer of, dutiable property from the trustee of a superannuation fund to a member of the fund if —

- (a) the member was a member when the property first became part of the fund; and
- (b) the unencumbered value of the property transferred does not exceed the value of the member’s interest in the fund.

Ms J.M. FREEMAN: Just to get it in my mind, is the Treasurer saying that this is something that has always occurred, or is this an amendment? In the example the Treasurer gave, he said that duty would not have to be

Mr Ben Wyatt; Mr Troy Buswell; Ms Janine Freeman; Mr Bill Johnston; Mr John Kobelke; Mr Chris Tallentire

paid. Is the Treasurer saying that this is because duty was paid when the superannuation fund purchased the property, and therefore it would not pay double duty?

Mr T.R. Buswell: That is right.

Ms J.M. FREEMAN: Did they previously have to pay double duty?

Mr T.R. Buswell: No.

Ms J.M. FREEMAN: What is the purpose of the amendment if they have not had to pay duty twice?

Mr T.R. BUSWELL: The amendment has nothing to do with that. The amendment states —

(b) after paragraph (b) insert:

(c) there is, or will be, no consideration for the transfer ...

It is just making sure that there is no consideration. If consideration is paid, duty is payable. As I understand it, we used to have the Stamp Act and we now have the Duties Act. When the Stamp Act became the Duties Act, this provision was not included for some reason. It is now being included.

Mr W.J. JOHNSTON: I have two questions that are unrelated to each other but are related to this clause. I may as well deal with them together. The first is that I assume there are similar provisions in the stamp acts of the other states. I understand that the point the Treasurer is making is that, previously, when a nominal payment was made, the transaction could be exempt from stamp duty, but now he is saying that it has to be transferred free to be exempt from stamp duty. I understand that to be the point. I am not sure that that is the point the Treasurer made, but that seems to be the point made in the explanatory memorandum. Will Western Australia now be in line with everywhere else in the country, or will we be different from everywhere else in the country?

Mr T.R. Buswell: We do not have that information. My advice is that they are all different.

Mr W.J. JOHNSTON: That is okay. My second question on this clause is unrelated to the issue I just raised. What organisations did the Treasurer consult with —

Mr T.R. Buswell: None. It was an oversight that was picked up internally.

Mr W.J. JOHNSTON: I thank the Treasurer.

Mr B.S. WYATT: Clause 4 effectively adds another condition on not attracting duty. Will this have an impact on revenue, and has this been taking place since the Duties Act replaced the Stamp Act?

Mr T.R. Buswell: We are aware of one transaction.

Mr B.S. WYATT: Okay. Is that different from the transaction we talked about regarding the deeming provisions?

Mr T.R. Buswell: Yes.

Mr B.S. WYATT: Will this deal with the one transaction?

Mr T.R. BUSWELL: No. That transaction is done and dusted. I am assuming that the duty was not paid. The person got the benefit of the nominal duty when the consideration was paid. That was done in the past. That is what drew everyone's attention to this issue. Someone took advantage of the loophole.

Clause put and passed.

Clause 5: Section 260 amended —

Mr B.S. WYATT: This clause amends section 260 of the Duties Act 2008. Section 260 is titled "The term "relevant reconstruction transaction"", and the clause proposes to delete section 260(1)(c). My question on this clause is similar to my question on the previous clause. What is the purpose behind the deletion of section 260(1)(c)? Clause 5(2) seems to be a clean-up as a result of clause 5(1). Why does section 260(1)(c) need to be deleted?

Mr T.R. BUSWELL: I will refer briefly to the introductory comments at the beginning of the explanatory memorandum.

Mr B.S. Wyatt: Is there a new explanatory memorandum for this bill?

Mr T.R. BUSWELL: Yes.

Mr B.S. Wyatt: Was this bit impacted upon by the new explanatory memorandum?

Mr T.R. BUSWELL: At the end of the explanatory memorandum for this clause, we move on to clause 6. The original explanatory memorandum had a clause (2)(c) and the new one has clause (2)(d). It does not affect the substantive part of the clause. We are talking about the duty exemption for transactions involving the restructure of certain connected entities. The proposal to delete section 260(1)(c) ensures that the exemption will not be

Mr Ben Wyatt; Mr Troy Buswell; Ms Janine Freeman; Mr Bill Johnston; Mr John Kobelke; Mr Chris Tallentire

applied more broadly than was intended. The connected entity exemption applies to certain transactions between members of a family. A family consists of entities that are related as a parent entity and a subsidiary. A parent entity holds at least 90 per cent of the shares or units in another entity and controls at least 90 per cent of the votes that may be cast at a general meeting of that entity. Section 260(1)(c) of the Duties Act provides that a transaction is a relevant reconstruction transaction and therefore is exempt from duty if the transaction is an acquisition by one member of a family or families, as I defined them earlier, of an interest in another member of the family if the acquisition would be subject to landholder duty. It has become apparent that section 260(1)(c) inadvertently has a wider application than was intended because it does not require the party from whom the interest was acquired to be a family member and therefore could provide a duty exemption for arms-length acquisitions.

Mr B.S. Wyatt: While you are on your feet, has this arisen because Department of Treasury and Finance staff picked it up, or did a transaction result in lost revenue, and, therefore, are there any revenue implications?

Mr T.R. BUSWELL: That is a good point. It was identified by the Office of State Revenue. Subsequent to it being identified, one transaction predated 10 March that would have benefited—if I can use that term—from this wider than anticipated application.

Mr B.S. Wyatt: Overall, will clause 5, as with clause 4, have a negligible impact on revenue?

Mr T.R. BUSWELL: Yes; it is just a tidy up.

Mr J.C. KOBELKE: The Treasurer has just indicated that there was either a typographical error in, or a different version of, the explanatory memorandum. He pointed out that the explanatory memorandum, just before clause 6, refers to clause (2)(c). Now that the Treasurer has drawn it to my attention, I can see that it should be clause (2)(d). How did that come about? Was it just a typographical error or were there different versions and I happen to have a copy of the old version?

Mr T.R. BUSWELL: The Acting Speaker drew this to the attention of the house the other day and it was canvassed during debate on another bill. An issue was identified with the document management system in Treasury which has meant that a series of explanatory memoranda that were provided to the house had errors in them. The issue with the document management system is that changes were not necessarily saved. Three sets of explanatory memoranda contained errors.

Mr J.C. Kobelke: For this bill or for different bills?

Mr T.R. BUSWELL: For three different bills. We provided Parliament with the corrected explanatory memorandum. That was tabled on Tuesday and that is why the member for Victoria Park raised the issue. That is unfortunate and I apologised to the house then, as I again do now.

Mr J.C. KOBELKE: I thank the Treasurer. To make sure that it is absolutely clear, is it correct to say that there was no issue with the Legislative Assembly Office or the Parliament, but that there was an issue with the software Treasury uses and the copies that it provided?

Mr T.R. Buswell: That is correct.

Mr W.J. JOHNSTON: I have a very simple question for the Treasurer. Did the Treasurer consult outside organisations on this?

Mr T.R. Buswell: No.

Clause put and passed.

Clause 6: Schedule 3 Division 4 inserted —

Mr B.S. WYATT: I may be incorrect, but this clause appears to deal with reconstruction transactions. Can the Treasurer briefly outline the purpose of proposed sections 31 and 32?

Mr T.R. BUSWELL: Effectively, the member is right. This clause deals with documents that are lodged between 10 March and when this bill receives assent. It provides a series of transitional provisions whereby predeterminations can be made about the duty that will be payable, or whereby reassessments can be applied if the determination was made during that period. It is really just dealing with those assessments that are required to be made between 10 March, when this was made public, and when the bill receives royal assent. The fact is that State Revenue can apply the laws only as they stand at the time. Therefore, it can either make a predetermination, or it can do a revision when the laws have been passed.

Mr W.J. JOHNSTON: Is the commissioner aware of any transactions that may be affected by the transitional period?

Mr T.R. BUSWELL: We are not aware of any subsequent to 10 March.

Mr Ben Wyatt; Mr Troy Buswell; Ms Janine Freeman; Mr Bill Johnston; Mr John Kobelke; Mr Chris Tallentire

Clause put and passed.

Clause 7: Act amended —

Mr B.S. WYATT: We are now getting to the pointy end of this tax slug bill. This clause of the bill seeks to amend the Duties Legislation Amendment Act 2008. The opposition intends to continue its opposition to the tax slug that is primarily found in clause 8 of the bill. It is not the Duties Act itself that is being amended to put into effect the government's tax increase; it is the Duties Legislation Amendment Act 2008. When the Treasurer was on this side of the chamber, he spoke very strongly in support of that bill when it went through Parliament. I want to put that on the record in respect of clause 7.

Clause put and passed.

Clause 8: Section 2 amended —

Mr B.S. WYATT: Earlier today the opposition made an attempt to have the short title of this legislation changed to the "Small Business Tax Slug Amendment Act 2010". I think that is a very accurate reflection of what the government is doing in this legislation. I note that the Treasurer briefly entertained the idea of supporting that change to the short title, on the basis that when he did eventually get around to making some tax cuts, he could then bring in an anti tax slug bill.

Mr T.R. Buswell: That sounds to me like an election campaign!

Mr B.S. WYATT: That sounds to me as though it would not be a bad idea, because it would give the people of Western Australia some honesty about what this legislation is actually about. However, I dare say, judging from the two Treasurer's advance bills that we have seen from this government, that not too many pieces of anti tax slug legislation will be coming through the house.

Clause 8 seeks to amend section 2 of the Duties Legislation Amendment Act 2008. The amendment that is proposed in this clause is very small indeed. It simply seeks to change the date in section 2(c) of the Duties Legislation Amendment Act 2008 from 2010 to 2013. If the business sector were to cast a discerning eye over this ambiguously-named piece of legislation, this amendment would not appear to be very hostile. However, what this very small amendment will do is slug the Western Australian business sector with an extra \$355 million in taxes. That is what the impact of this amendment will be. That is at a time when the Treasurer has said that the strong economic growth that Western Australian is experiencing is not yet being felt by the business sector. In particular, it is not yet flowing through to small and medium-size enterprises. This is the reason that the opposition is opposing this change. We agree with the Treasurer. Now is not the time to be threatening the growth of small businesses. Although some of the confidence surveys that have been done by the Chamber of Commerce and Industry and Commonwealth Securities indicate that business confidence is very strong, it is not flowing through to all businesses. Many small businesses are still very nervous about the economic conditions in this country.

Indeed, I dare say that the tax slug that will be implemented by this legislation will completely contradict the payroll tax rebate that we dealt with earlier this week in the Pay-roll Tax Rebate Bill. A \$100 million rebate will be given to mainly small businesses—the 53 per cent of registered businesses that pay payroll tax. The amendment that is proposed in this legislation will come into effect in 2010–11. That is at the same time that the payroll tax rebate will be paid. It is, therefore, the intention of the opposition to oppose this ambiguously-named piece of legislation in the interests of the business sector of Western Australia and in the interests of the economy of Western Australia.

Mr W.J. JOHNSTON: I join the member for Victoria Park in saying that the Labor Party opposes this provision. As I understand from the midyear review, this provision will generate \$96 million in the 2010–11 financial year. I would like the Treasurer to confirm that that \$96 million will actually exceed the amount that will be rebated to business from the payroll tax rebate.

Mr T.R. Buswell: I understand the point you are making. I think I advised the house the other day that we estimate that the payroll tax rebate will be worth about \$100 million. I am not in a position to confirm or deny that.

Mr W.J. JOHNSTON: The rebate is worth around \$100 million, and this provision is also worth around \$100 million.

Mr T.R. Buswell: It is \$96 million.

Mr W.J. JOHNSTON: That is the point. If there is \$4 million left over, that is very generous of the Treasurer; it is very magnanimous of the Treasurer.

Mr T.R. Buswell: That is the nicest thing you have said about me in the past six weeks!

Mr W.J. JOHNSTON: I think it is even longer than that, Treasurer.

Mr Ben Wyatt; Mr Troy Buswell; Ms Janine Freeman; Mr Bill Johnston; Mr John Kobelke; Mr Chris Tallentire

I am sure that the thousands and thousands of registered businesses in Western Australia will be very glad about that. The other point that I would like to have confirmed by the Treasurer is that this is, in fact, a tax on intellectual property. This is about taxing intellectual property and goodwill—that is, the non-real property of a business. This exemption was designed by the previous Labor government to reward the intellectual efforts of Western Australian businesses. The Treasurer is now seeking to tax the successful businesses that are creating something that is additional to the basic input–output matrix in those particular businesses.

Mr T.R. BUSWELL: I think the member would know what my answer will be. The member has raised an interesting point. If a company sells only intellectual property, in the absence of the sale of any other dutiable asset, it is not subject to duty.

Mr W.J. Johnston: I did not know that.

Mr T.R. BUSWELL: I just wanted to share that with the house. It is very interesting. It is not a big issue, but if a business sells intellectual property in and of itself—I am not sure how that can be done without selling any other dutiable asset—it is not subject to duty. Under the Duties Act 2008, a “business asset” may include goodwill, a restraint of trade arrangement for a business, a business identity, a business licence, intellectual property, et cetera. “Intellectual property” is defined by the act as patents, trademarks, industrial designs, copyrights et cetera. It goes on. It is all defined in the act. The member is right—part of that is the thought processes. It is not the creation of property; it is when it is sold. It is definitionally accurate.

Mr J.C. KOBELKE: I want to take up a matter the Treasurer just mentioned about intellectual property. In the instance of a neighbour—whom I will not name—who developed new products, part of the way he approached things was to set them up in a company and then he would sell the company, including the intellectual property. In a case such as that, would it be caught?

Mr T.R. BUSWELL: Only if the company owns over \$2 million in land.

Mr J.C. KOBELKE: It has to be land rich?

Mr T.R. Buswell: A landholder.

Mr J.C. KOBELKE: So the company does not have to be land rich by the definition of “land-rich”, but has to be a landholder?

Mr T.R. Buswell: Yes.

Mr J.C. KOBELKE: Thank you, Treasurer. This clause contains the integral part of the bill to which we object; that is, shifting from 2010 to 2013 the introduction of these reductions in duty. We have a situation here in which clearly the Treasurer is increasing tax. I go back to the *Government Mid-year Financial Projections Statement*, where the Treasurer announces this. In chapter 1, page 1—I am not going to read it all—he indicated that it was the downturn in the state’s economy that was affecting revenue. Also, in the dot point at the bottom of the page, the Treasurer says that it is because of continued expense pressures. That is a nice way of saying that he has blown expenses in a major way—13.5 per cent in the last financial year. As is stated on the bottom of the page I am reading from, expense growth was revised up from 6.6 per cent at budget time to 9 per cent. The Treasurer is increasing taxes by shifting this measure from 2010 to 2013—across three years. Those figures are on page 2 of the *Government Mid-year Financial Projections Statement*. I will quickly go to them. Deferring the abolition of duty on non-real property will bring to the budget bottom line \$96 million in the next financial year, 2010–11; \$124 million in 2011–12; and, \$135 million in 2012–13. That is a total, across those three years, of \$355 million. Those figures have already been used in debate.

If the situation really is driven by those two factors, we should consider why we need to move it three years. In the past couple of days the Treasurer has stated that there are indications, from various sources, of stronger growth in the state’s economy than predicted. On that side, while there is a lag between economic growth and the revenues coming in, the Treasurer can anticipate that the downturn is not going to be as long or as severe as thought at the time of the budget, or about a year ago. On that side, there is a good argument to ask why we need to defer it for three years. If we go to the Treasurer’s total lack of control over expenditure, the Treasurer has said many times he is getting expense growth under control. If we are to believe that he is getting expense growth under control, why do we need to defer, for three years, the abolition of these duties? I put to the Treasurer that I think we should be deferring it for only one year. I do not think there is a basis for deferring it at all, but, given the numbers, I suggest we should not be deferring it three years; we should be deferring it for only one year. Then we will see whether the Treasurer’s words mean anything and whether he is actually able to control expenditure. The general prognostications from Treasury and a range of other sources are that the economy is recovering quite quickly. On that basis, we should get through the next year and, hopefully, not have to shift back even further the abolition of duty on non-real property. I would like to move an amendment to clause 8, page 5, line 10. I move —

Page 5, line 10 — To delete “2013;” and substitute —
2011;

That means the Treasurer will defer for one year the abolition of duty, rather than defer it for three years. I do not think the Treasurer should be deferring it at all. It is clearly a breach of an undertaking not to increase taxes—that is what he is doing. If he is to increase taxes, let us do it for only one year rather than the three years proposed.

Mr B.S. WYATT: The member for Balcatta makes a very strong argument about why this amendment —

Mr T.R. Buswell: When? What did he say!

Mr B.S. WYATT: Perhaps the Treasurer should pay a bit more attention in the chamber! The member for Balcatta proposes a very good amendment.

The Treasurer has made the point to the media that economic growth for 2009–10 will be significantly stronger. He has also made the point to the media that economic growth for 2010–11 will be significantly stronger than 2.75 per cent; in fact, a lot stronger than the 2.75 per cent that was forecast at the time of the midyear review. That obviously means there will be an impact on revenue returned to the state. The latest financial projections from the midyear review suggest that for 2010–11, revenue to the state will be slightly over \$21 billion. One can assume that if the real gross domestic product growth for the state is two per cent higher than expected at the time of the last forecast, there will be a significant rise in revenue.

The Treasurer has stated to this place that it was a very tough decision to impose this tax slug on the business sector; therefore, the business sector should be given every opportunity to avoid this tax slug over three years. The opposition has voted outright against the tax slug in its entirety. We do not have the numbers; we know the government will push this through. However, as the member for Balcatta has pointed out, why not do it over one year and then reassess the impact on the state’s finances? One can only assume that the expenditure growth of the state will decline—it can go only one way, one can hope—and therefore the business sector will not need to have this extra tax burden imposed on it over the subsequent two years. The Treasurer can reassess whether the government needs to hit the business sector with another two years of tax slugs and save it from \$260 million in extra tax, twice. That extra tax is 160 per cent higher than the payroll tax rebate that the Treasurer has said goes a long way to supporting jobs in Western Australia. It is a very good amendment moved by the member for Balcatta. He has clearly spoken with businesses in his electorate about the impact this will have on the business sector.

Mr T.R. Buswell: Has he?

Mr B.S. WYATT: I think he has. By acknowledging that the opposition does not have the numbers to block this legislation and save the business sector from a tax hit of \$355 million, he is giving the state the opportunity to recoup \$96 million in 2010–11—I daresay a lot more than \$96 million. That then requires him to come back to this place next year to explain exactly why a further two years in tax slugs needs to go onto the business sector. I think the business sector would hate the passage of this act in any form; however, it would be a lot more appreciative of the fact that perhaps it will have to pay extra tax in only one year and the Treasurer can, if necessary, then come back here and explain why he needs another \$260 million. The member for Balcatta’s amendment is sensible. It treats the business sector with the due respect that it deserves. It is an amendment that the government should consider very strongly because it will have absolutely no impact on the 2010–11 budget. It will allow \$96 million projected in the midyear review to be recouped and therefore will not have an impact on the budget now that the cut-off date has been and gone.

Mr W.J. JOHNSTON: I understand that the Treasurer is saying that next year growth will be two per cent higher than he envisaged at the time of the midyear review. In round figures, that means that because of the usual effect of the economy, tax receipts would deliver about \$200 million extra taxation revenue. I assume it would be higher than that because I imagine as the economy accelerates, it would catch more of the additional income of the state because more businesses are employing more people moving into higher tax brackets for payroll tax and more transactions are done because when we were in a downturn, a particular transaction might not have been done. Suddenly, because of the upturn in the economy, that transaction becomes interesting for the business so there are more transactions being done so we actually get a higher revenue creep. If there is a two per cent increase in economic activity, there is more than a two per cent increase in taxation revenue. In round figures, the government will get about \$200 million extra because of the growth in the private sector acting with the federal government stimulus to boost the economy. That will deliver more than the additional out year revenue that the government is getting from these revenue claims.

We are talking about six-tenths or seven-tenths of a per cent of the budget. We are not talking about large amounts for the state government, although we are talking about large amounts of money for individual taxpayers. It seems to me to be a sensible suggestion to get the Treasurer over the crisis that he has created

Mr Ben Wyatt; Mr Troy Buswell; Ms Janine Freeman; Mr Bill Johnston; Mr John Kobelke; Mr Chris Tallentire

because of his inability to manage the expenditure side of the budget. As the member for Balcatta pointed out, he is here because he is breaking the election promise. If he was to deal with only one year rather than three years of the tax increase, because of the things that he told us about and the quality of his management, he will not need to increase taxes in small business in Western Australia and those small businesses will be exempted from his tax grab. I know that the Treasurer will be keen to reply to the proposed amendment from the member for Balcatta. I invite him to let us know what organisations he consulted before he made this tax decision. When he made the announcement at the time of the midyear review, what organisations did he consult before he made the tax announcement?

Mr C.J. TALLENTIRE: On behalf of people in my electorate who have small businesses, I would like to ask the Treasurer if he has given consideration to the impact that this delay will have on people whose business interests will be jeopardised because they will be tempted to try to wait until 2013. They may not make it to that year. This will hurt their ability to on-sell the goodwill or intellectual property that they have in their businesses. As the member for Cannington said, we would like to know what consultation has occurred and how much of an impact this will have on the sorts of small business that will be so essential to our economic recovery.

Mr T.R. BUSWELL: I thank the member for Balcatta for the amendment he has put on the table and for the arguments raised. They are fair points.

Mr B.S. Wyatt: Fallen on deaf ears, have they?

Mr T.R. BUSWELL: I am always listening for good ideas. I once adopted an opposition amendment that I think was moved by the member for Rockingham in relation to first home owner grants in the Pilbara or somewhere like that.

Mr B.S. Wyatt: North of the twenty-sixth parallel.

Mr T.R. BUSWELL: Yes; north of the twenty-sixth parallel. I am always open to good ideas.

Mr M. McGowan: It was the best legislation you've ever passed!

Mr T.R. BUSWELL: We did have to amend it in the Council. I thought it was a good idea. I looked at the issue that the member for Victoria Park raised the other day on credit card fees. I am not deaf to good ideas. I will explain why we will not support it when we get to it.

In relation to this matter, the government's decision is to defer it until 2013. I am respectful of the arguments raised by the opposition and the points that have been put.

Mr J.C. Kobelke: What are the reasons you cannot accept a one-year deferment?

Mr T.R. BUSWELL: We decided on a three-year deferment. The decision we took at the time was that it was appropriate. I still think it is appropriate. If there is a capacity to deliver tax relief as we scope the budget next year, we will. This will be considered as part of that process.

Mr W.J. Johnston: What about consultation?

Mr T.R. BUSWELL: There was no consultation. This was a leadership decision.

Mr B.S. WYATT: I thank the Treasurer for that answer. The opposition is still very committed to this amendment because we think it is a very good amendment. Despite the leadership decision taken, it is for the benefit of the government, not for the benefit of the business sector. It is important to note that the Northern Territory, the ACT, Tasmania and Victoria do not levy this tax. In fact, Victoria has never levied this tax, which means that New South Wales will get rid of this tax before we will, as will South Australia. That leaves us and Queensland with this tax hanging around until 1 July 2013. We discussed this on Tuesday with respect to some other legislation. Surely that places Western Australian businesses at a competitive disadvantage, vis-à-vis other states, which lends further weight to the member for Balcatta's amendment. If we are going to do that as a Parliament, surely we should do it for as short a time as possible. Adopting the amendment has no impact on what the Treasurer has already put into his budget for the 2010–11 financial year; it preserves the integrity of that document. Hopefully it will enhance the integrity of businesses' balance sheets, knowing that in the past two years, the vast majority of the revenue raised by this tax slug was received—\$260 million of the \$355 million. The final two years gives them hope that that tax will not be imposed.

My question is twofold: firstly, is the Treasurer able to provide any commentary on the impact of business lost to other states?

Mr T.R. Buswell: No further than I provided the other day.

Mr B.S. WYATT: My second question is one that I flagged in the second reading debate two days ago. When the government announced this decision in the midyear review, it was to generate revenue of \$96 million in 2010–11, \$124 million in 2011–12 and \$135 million in 2012–13, and economic growth for 2010–11 was

Mr Ben Wyatt; Mr Troy Buswell; Ms Janine Freeman; Mr Bill Johnston; Mr John Kobelke; Mr Chris Tallentire

projected to be 2.75 per cent. We now know that that will be at least two per cent higher and, one would assume, increase over the out years. Therefore, there must be an impact on the amount of revenue this tax rise would generate over the forward estimates. The member for Cannington has already raised this in terms of the level of activity that will likely increase in the business sector as the economy strengthens. I assume, therefore, that more than \$355 million will be generated by this tax rise.

In light of the fact that this was raised by the opposition two days ago, no doubt the Treasurer has had the ability to seek advice from Treasury officers. Can he advise the house what that extra revenue is that he expects this tax rise to generate?

Mr T.R. BUSWELL: I will not provide speculation on revenue numbers that will be handed down in the budget in a month's time. The answer to the question is no, I will not provide any advice along those lines. I reiterate that the government will not be supporting the amendment.

Mr B.S. WYATT: If the Treasurer is not going to provide specific figures, will he accept the fact that with stronger economic activity, the government's tax slug will bring in more revenue than the \$355 million estimated in the midyear review?

Mr T.R. BUSWELL: It may well lead to an increase in the number that appears in the midyear review; that is, the amount of money that would have been foregone had the tax changes occurred. In other words, the amount that would have been foregone will probably be larger because of changing economic circumstances. I have no further information on how much that will be.

Mr B.S. WYATT: What that means is extra revenue to the state. If that tax deferral had not occurred, it would mean more revenue for the state government. The tax slug of \$355 million is clearly likely to be higher than the \$355 million already anticipated, which lends further weight to the member for Balcatta's argument.

Mr T.R. Buswell: I am not sure about the impact of the changing economic circumstances on the value of these non-real assets. There may be some —

Mr B.S. WYATT: The fact is that the Treasurer does not know what the impact will be, but it is likely to be higher, which lends weight to the member for Balcatta's argument.

Mr T.R. Buswell: I said I am not telling the member. I said I will not speculate on it.

Mr B.S. WYATT: The Treasurer said that initially, but it lends further weight to the member for Balcatta's argument in support of his amendment to delete "2013" and insert "2011", because it then gives Treasury the chance to update its forecast after the actual result for the current financial year is known, and we have a much better understanding of revenue flows for 2010–11. Then, hopefully, the forward estimates will show a much stronger revenue return, which will provide the state the opportunity to simply allow the abolition to take place. If spending is still continuing at the current unsustainable rates, then the Treasurer will have to come back into this place with another tax slug bill and make the argument again as to why the business sector needs to wear that. I think it a reasonable amendment that should be supported.

Mr J.C. KOBELKE: I am surprised that the Treasurer cannot give any reason for rejecting the amendment, other than "we've made a decision", being the decision to slug business with this extra tax in the *Government Mid-year Financial Projections Statement*. The Treasurer likes to use the spin that it is simply deferring a benefit, but the fact is that it is an extra tax. If things had been left as they were, people would not be paying what was anticipated to be \$355 million. The Treasurer has just acknowledged that that is likely to be a somewhat higher figure. I appreciate that he does not want to speculate and it may be difficult to determine with any accuracy what the total extra take will be from this change, but clearly it will be greater than \$355 million over those three years.

I seek to understand the basis for the Treasurer's answer. To simply say "we're not going to shift" could be taken as just arrogance; I hope it is not the case that the Treasurer cannot take on board any sort of arguments of substance and he is going to stick to something because that is where he has made his stand. The argument that there will be increased revenue flow through this extra tax on non-real property duty and through a whole range of other areas of the budget was really about trying to keep the budget in balance. That is why this was done in the midyear review, because the budget was going to slide very quickly into deficit.

Mr T.R. Buswell: It still is.

Mr J.C. KOBELKE: Is?

Mr T.R. Buswell: It still is about trying to keep the budget in balance.

Mr B.S. Wyatt: For year 2010.

Mr J.C. KOBELKE: I will come to that.

Mr Ben Wyatt; Mr Troy Buswell; Ms Janine Freeman; Mr Bill Johnston; Mr John Kobelke; Mr Chris Tallentire

Mr T.R. Buswell: One of the reasons we will be maintaining the three-year position in the bill is that it was about keeping the budget in balance at the midyear review, and it still is about keeping the budget in balance as we head into the budget for this year.

Mr J.C. KOBELKE: What I am trying to get behind that is that the amendment before us does not affect the 2010–11 budget, because the government will still get the \$96 million indicative figure and something more than that in reality because we are simply shifting the extra tax back one year. The tax would be collected for one year, not three years. The point I am trying to get at is that this extra tax was put in because of two reasons given by the Treasurer. The first reason was the lack of revenue because of the economic downturn; the Treasurer admitted just a few minutes ago that that revenue will be stronger than anticipated. It may not be as strong as the Treasurer would like, but it will be stronger than he anticipated, which means deferring this abolition for one year. Only copping the extra tax for one year gives the Treasurer time to judge just how much that revenue goes up. That is not an argument as to why the amendment cannot be accepted.

The second reason for the imposition of this extra tax is that the Treasurer has lost control of expenditure. From the answer given by interjection a moment ago, it seems that that is still the case, despite what the Treasurer has said in this place. The Treasurer has said he is getting control of expenditure, but just a few minutes ago he said he still wants to keep the budget in balance in the out years. I took what the Treasurer said to indicate that that is still a real struggle, which means that the Treasurer has not got control of expenditure. The Treasurer cannot have it both ways. Either expenditure is coming under control, in which case the Treasurer does not need to defer for three years—he can judge it next year and see how it is going—or he still has no control over expenditure, or there is some other reason that we cannot guess at as to why the Treasurer needs to keep that in for the three years.

I am a bit nonplussed by the Treasurer’s answer, because he is a person of some ability when he wishes to apply it. Simply saying, “We’ve made the decision and that’s it”, is not going to really wash with the many businesses—particularly small businesses—that will be hit with this extra tax. We do not know whether that extra tax across the three years will be \$355 million, \$455 million or \$555 million. We do not know how strong the growth in the economy will be; we do not know how much of that will flow through to people who are buying and selling properties, which encompasses non-real property and will therefore be caught by this. We might have huge takeovers because of the prospects for even stronger growth in the Western Australian economy, which will drive those sorts of takeovers, which could actually mean this duty would be captured for non-real property. We should only be doing it, at the most, for one year, so that we can assess that strength in the economy.

Mr M. McGOWAN: I have been absent from the debate today, so it has taken me a little while of listening to the debate —

Mr C.J. Barnett interjected.

Mr M. McGOWAN: I have been absent because I went to Kalgoorlie, which is perhaps where the Premier should have been. I have been visiting the site of the earthquake, which was what I think could be called a “natural disaster”, and I think the Premier should declare it as such. I will make a prediction: I am sure the Premier will go out there in the next few days, and once he sees it he will declare it a natural disaster. But can the Premier take it from me that it is a disaster? It was a pretty significant event out there, and it has affected a lot of people’s lives. I put that on the record now, so that when the Premier declares it a natural disaster—which I assume he will—he will be able to look back on this moment and say that he got advice from the opposition once again. A bit like the gas inquiry, a bit like ruling out the gold royalty for the next year, the opposition is the giving the Premier the lead on these things.

Mr B.S. Wyatt: They’re good ideas!

Mr M. McGOWAN: We are full of good ideas!

Mr W.J. Johnston interjected.

Mr M. McGOWAN: That is the point I was about to get to about the member for Balcatta. The debate was not on the radio while I was out there, but I understand that the member for Balcatta has moved an amendment. The Premier has not been in this place, so I will explain it to him from my listening to the debate. This legislation contains a tax slug. It has been described as a slug.

Mr T.R. Buswell: We’re now calling it the “Tony Abbott Clause”.

Mr M. McGOWAN: I have heard there is a nasty slug in this legislation, and when I look at the Treasurer I understand why it has been described as the “Tax Slug Legislation”.

Mr T.R. Buswell: We’ve already had that one!

Mr Ben Wyatt; Mr Troy Buswell; Ms Janine Freeman; Mr Bill Johnston; Mr John Kobelke; Mr Chris Tallentire

Mr M. McGOWAN: In any event, I have heard that there is a major tax rise in this legislation.

Mr T.R. Buswell: I've got a couple of lines, but I am keeping them!

Mr M. McGOWAN: And that tax rise will happen over three years, from what I have deduced from reading the legislation. The member for Balcatta has suggested taking one-third of the tax rise and applying it, and then next year the Treasurer can come back and see if he needs the other two-thirds of tax rise. That is a pretty reasonable proposition.

I have heard the Treasurer say that he does not want to do that. Why would that be? Why would a Liberal Party Treasurer not want to say, "Okay; we won't take all of the tax because we might not need it in future years?" Why would a Liberal Party Treasurer do that? I think the reason is that he knows that he will have to come back into this place next year and have to ask for it again, and he does not want to go through this debate again. I think that is the reason. I am no Sherlock Holmes, but I think I have worked it out. The Treasurer does not want to come back next year and deal with justifying his tax rise once again. That is the real reason; there can be no other possible reason. The Treasurer knows that with the forceful oratory of the shadow Treasurer and the member for Balcatta, he would be put on the spot once again having to justify a significant tax rise, which is what this legislation is. I put on record that the member for Balcatta has moved an excellent amendment; it is very clear, actually. It would mean that small business could have some confidence that in future years there could be some alleviation of this pernicious tax growth by this Treasurer.

Mr B.S. WYATT: I want to conclude debate on this particular point and it follows on nicely from the comments of the member for Rockingham referring to the Liberal Party's pre-election document "Securing the economic future of Western Australia". The section called "Tax Reform and Reduction Strategy" makes the point that the Liberal Party proudly stands for lower taxes and is committed to reducing the tax burden on Western Australian families and small businesses. It goes on to say that windfall state budget surplus revenues will also be directed at tax cuts. The point made by the member for Rockingham, and that the member for Balcatta is attempting to deal with by this amendment, is that there is clearly going to be a windfall tax gain from this legislation. The Treasurer said it is likely to bring in more revenue than \$96 million in the 2010–11 financial year. That is a windfall. The pre-election documents from the Liberal Party suggest that windfalls would be returned to families and small businesses. This amendment gives the government the opportunity to honour its pre-election commitments of returning windfall taxes to the people from whom they take them—in this case, the business sector. The member for Rockingham is right that it is somewhat unusual theoretically that a Liberal Treasurer is refusing to adopt a very sensible amendment that will have no impact on his budget in the next financial year—it has already passed the close-off date—and will give the business sector at least the hope that \$260 million-plus, now that we have stronger economic growth, will not be imposed on it by way of this tax slug legislation.

I know that the Liberal Party backbench is very keen on this, and by agreeing to this amendment they will give the opportunity for the Treasurer to reassess how much windfall tax he gains from a stronger economy of 2010–11 and therefore hopefully will not need to impose another \$260 million-plus on the business sector in the final two years of the forward estimates in 2011–12 and 2012–13. It is a good amendment that will give the business sector some hope that it will not be hit time and again by Liberal–National governments to plug their own financial holes and it needs to be supported.

Amendment put and a division taken with the following result —

Ayes (24)

Ms L.L. Baker	Mr J.C. Kobelke	Mr P. Papalia	Mr C.J. Tallentire
Ms A.S. Carles	Mr F.M. Logan	Mr J.R. Quigley	Mr P.C. Tinley
Mr R.H. Cook	Ms A.J.G. MacTiernan	Ms M.M. Quirk	Mr A.J. Waddell
Ms J.M. Freeman	Mr M. McGowan	Mr E.S. Ripper	Mr M.P. Whitely
Mr J.N. Hyde	Mr M.P. Murray	Mrs M.H. Roberts	Mr B.S. Wyatt
Mr W.J. Johnston	Mr A.P. O'Gorman	Mr T.G. Stephens	Mr D.A. Templeman (<i>Teller</i>)

Extract from *Hansard*
[ASSEMBLY - Thursday, 22 April 2010]
p2131d-2144a

Mr Ben Wyatt; Mr Troy Buswell; Ms Janine Freeman; Mr Bill Johnston; Mr John Kobelke; Mr Chris Tallentire

Noes (28)

Mr P. Abetz
Mr F.A. Alban
Mr C.J. Barnett
Mr I.C. Blayney
Mr J.J.M. Bowler
Mr T.R. Buswell
Mr G.M. Castrilli

Dr E. Constable
Mr M.J. Cowper
Mr J.H.D. Day
Mr J.M. Francis
Mr B.J. Grylls
Mrs L.M. Harvey
Mr A.P. Jacob

Dr G.G. Jacobs
Mr R.F. Johnson
Mr A. Krsticevic
Mr W.R. Marmion
Mr P.T. Miles
Ms A.R. Mitchell
Dr M.D. Nahan

Mr C.C. Porter
Mr D.T. Redman
Mr A.J. Simpson
Mr M.W. Sutherland
Mr T.K. Waldron
Dr J.M. Woollard
Mr J.E. McGrath (*Teller*)

Pairs

Mrs C.A. Martin
Ms R. Saffioti
Mr P.B. Watson

Mr I.M. Britza
Dr K.D. Hames
Mr V.A. Catania

Amendment thus negated.

Mr B.S. WYATT: It is unfortunate that the government did not accept the member for Balcatta's very sensible amendment because it would have made the legislation better and given the business sector some hope that it would not be hit with tax rises for another two years. Clause 8 is the crux of the legislation that the opposition opposes and we will continue to oppose it.

Mr W.J. JOHNSTON: Very briefly, I want some assurance from the Treasurer that we will be able to track the value of these taxes in future, because I am afraid that the budget papers will be presented in a way that will hide the decision.

Mr T.R. Buswell: There will be no change to the presentation of the data in the budget papers.

Mr W.J. JOHNSTON: But the point I am getting to is that because the midyear review shows the expected out year effect of the decision, in the budget papers there will simply be a line item for the tax itself, the overall stamp duty that the government is collecting; the amount collected for these non-real assets will not be shown as a separate line item. My point is that it would be important to have that information if not in the budget papers, then at least at some point in the estimates process so that when we ask how much the government is raising, it will be able to tell us.

Mr T.R. BUSWELL: I am trying to look at what is presented in the budget papers now. I will not change the presentation of the budget papers but if it is an issue, and if the member asks me the question, I will give him the answer. I do not mind; I am not trying to hide from the fact that the actual value may be different from what was anticipated at the time of the midyear review, and we have canvassed that. The commitment I give is that I will not change the presentation form of the budget papers, but if the member asks the question, I will provide the information.

Clause put and a division taken with the following result —

Extract from *Hansard*
[ASSEMBLY - Thursday, 22 April 2010]
p2131d-2144a

Mr Ben Wyatt; Mr Troy Buswell; Ms Janine Freeman; Mr Bill Johnston; Mr John Kobelke; Mr Chris Tallentire

Ayes (26)

Mr P. Abetz
Mr F.A. Alban
Mr I.C. Blayney
Mr J.J.M. Bowler
Mr T.R. Buswell
Mr G.M. Castrilli
Dr E. Constable

Mr J.H.D. Day
Mr J.M. Francis
Mr B.J. Grylls
Mrs L.M. Harvey
Mr A.P. Jacob
Dr G.G. Jacobs
Mr R.F. Johnson

Mr A. Krsticevic
Mr W.R. Marmion
Mr P.T. Miles
Ms A.R. Mitchell
Dr M.D. Nahan
Mr C.C. Porter
Mr D.T. Redman

Mr A.J. Simpson
Mr M.W. Sutherland
Mr T.K. Waldron
Dr J.M. Woollard
Mr J.E. McGrath (*Teller*)

Noes (22)

Ms L.L. Baker
Ms A.S. Carles
Mr R.H. Cook
Mr J.N. Hyde
Mr W.J. Johnston
Mr J.C. Kobelke

Mr F.M. Logan
Ms A.J.G. MacTiernan
Mr M. McGowan
Mr M.P. Murray
Mr A.P. O’Gorman
Mr P. Papalia

Mr J.R. Quigley
Mr E.S. Ripper
Mrs M.H. Roberts
Mr T.G. Stephens
Mr C.J. Tallentire
Mr P.C. Tinley

Mr A.J. Waddell
Mr M.P. Whitely
Mr B.S. Wyatt
Mr D.A. Templeman (*Teller*)

Pairs

Mr I.M. Britza
Dr K.D. Hames
Mr V.A. Catania
Mr C.J. Barnett
Mr M.J. Cowper

Mrs C.A. Martin
Ms R. Saffioti
Mr P.B. Watson
Ms M.M. Quirk
Ms J.M. Freeman

Clause thus passed.

Clause 9: Part 2 Division 2 Subdivision 3 heading amended —

Mr B.S. WYATT: This clause seeks to make another amendment to the Duties Legislation Amendment Act 2008 by amending the date in the heading to 2013. In light of the fact that the opposition has strenuously opposed this change, can the Treasurer explain why this amendment is also required? The part 2 division 2 subdivision 3 heading obviously has an impact on the operation of the original legislation, so can the Treasurer explain that to the house?

Mr T.R. BUSWELL: My advice is that under the Interpretation Act we are not compelled to change the heading; however, Parliamentary Counsel inserts it into bills as a matter of course. Therefore, all this amendment does, as the member pointed out, is change the date in the heading from 2010 to 2013 because that effectively and accurately describes the application of clause 8, which changes the date at which that tax change will come into effect.

Mr B.S. WYATT: I do not intend to divide on this clause; however, I want to make the point that it again highlights what is going on—that is, deferral of a tax cut and therefore a tax rise on the business sector through to 2013. Although we do not intend to divide on this clause, there will be another division shortly.

Clause put and passed.

Clause 10 put and passed.

Clause 11: Schedule 3 clause 30 amended —

Mr B.S. WYATT: This clause amends the date in schedule 3 clause 30 of the Duties Act 2008, thus pushing the Labor Party’s tax cut out for another three years and therefore is another tax rise on the business sector for another three years. Although we have now moved from the Duties Legislation Amendment Act 2008 back to the primary act, I ask the Treasurer to explain the purpose and impact of this amendment.

Mr T.R. BUSWELL: The purpose is to make this entirely consistent with the amendments made to the Duties Legislation Amendment Act. I could go into detail but I do not think the member wishes me to do that, so I will leave it at that.

Mr B.S. WYATT: I thank the Treasurer. He is right; I do not need him to go into detail. I wanted it clarified whenever there is a change in today’s tax slug bill that increases the tax slug on the business sector for the next three years. It is certainly the Treasurer’s obligation to make that crystal clear to the house, to the people of Western Australia and, in particular, to the business community of Western Australia, which will be paying for this tax slug.

Mr C.J. TALLENTIRE: This clause amends schedule 3 of the Duties Legislation Amendment Act, and there is reference to a need to determine whether the sole or principal purpose of the arrangement was to defer the transaction until after a certain date. How will the purpose of the delay be determined?

Mr Ben Wyatt; Mr Troy Buswell; Ms Janine Freeman; Mr Bill Johnston; Mr John Kobelke; Mr Chris Tallentire

Mr T.R. BUSWELL: This is an anti-avoidance provision. It will depend on the facts and circumstances surrounding each individual transaction, which will be considered on a case-by-case basis.

Mr C.J. TALLENTIRE: The Treasurer is saying that this will be dealt with on a case-by-case basis, but we need to know the guidelines that will help officers to make that assessment.

Mr T.R. BUSWELL: The Office of State Revenue will assess them on a case-by-case basis. I am not aware of the guidelines that are used. The Office of State Revenue applies the relevant legislation. I do not have the capacity to influence the way that is done. The Office of State Revenue deals with matters that are brought to its attention on a case-by-case basis. The guidelines are the legislation. The legislation would be applied as appropriate. This is damn complicated legislation, and there would be instances when the Office of State Revenue would use its discretion and would apply it on a case-by-case basis. I cannot give the member any more detail than that.

Mr C.J. TALLENTIRE: I thank the Treasurer for his response but we still need an example of when it would be the principal purpose and an example of when it would perhaps not be considered the principal purpose. Otherwise, we have a situation in which the legislation will be interpreted at an officer level and not at the ministerial level. That could lead to all kinds of ambiguities.

Mr T.R. BUSWELL: The advice from the officers is as follows. It really depends on the intent that leads a person to delay a transaction. If a person delays a transaction and can show that there were good, sound business reasons and principles or other factors for doing so, my understanding is that the Office of State Revenue would take that on board. When there is clear intent—that is, the person is unable to show any sound reason for deferral—the Office of State Revenue will take action. The existence of this sort of clause will ensure that people will think twice before doing something obvious and stupid. That is the advice I have received. Members can imagine that, no matter the date, there would be an obvious incentive to push a transaction out. The commissioner is saying that if a raft of transactions occurs the next day or the next week, they would probably be looked at. It is pretty clear. The explanatory memorandum states —

It should be noted that where a transaction has been entered into prior to the abolition of duty on non-real business assets and is subsequently cancelled so that a replacement transaction can be entered into on or after 1 July 2013, ...

That is the sort of thing that will be looked at. There is nothing sinister about it. It is really just a tool to give the commissioner the capacity to take action in cases of obvious avoidance. I suspect that people will recognise that this is a bit obvious and, one would hope, will not take the action.

Mr C.J. Tallentire: The Treasurer said that if it is good, sound business practice, it will be acceptable. Would it not be good, sound business practice to want to avoid paying?

Mr T.R. BUSWELL: That is not counted as good, sound business practice; it is counted as an attempt to avoid the lawful duty. The member is right; it is probably logical. Good, sound business practice is one factor the commissioner will consider.

Clause put and passed.

Clause 12: Expiry of Part 3 —

Mr J.C. KOBELKE: I read clause 12 as being an all-or-nothing clause. Basically, if the legislation is not in operation by 1 July, part 3 simply will not apply. Part 3, of course, is the increased tax—the \$355 million.

Mr T.R. Buswell: Correct.

Mr J.C. KOBELKE: So it is an all-or-nothing clause.

Mr T.R. Buswell: Correct.

Mr J.C. KOBELKE: What are the technical reasons for not using a provision that would have allowed it to be brought in later so that it would be payable for part of the year?

Mr T.R. BUSWELL: We are amending an amending act. The amending act effectively removes this tax from the Duties Act after 1 July. If we do not amend the amending act before 1 July, that action will happen.

Mr E.S. Ripper: That would be terrible.

Mr T.R. BUSWELL: I will be reminding my upper house colleagues of that!

Mr W.J. JOHNSTON: If the bill does not get out of the other chamber by 1 July, the tax increase will not apply. Of course, it could be made a budget measure and done through that process.

Mr Ben Wyatt; Mr Troy Buswell; Ms Janine Freeman; Mr Bill Johnston; Mr John Kobelke; Mr Chris Tallentire

Mr B.S. Wyatt: Not any more.

Mr W.J. JOHNSTON: It could. Whilst this provision is in the bill, it really does not matter, because even if the other chamber does not pass the bill, it could still be done as a budget measure and have operation anyway.

Mr E.S. Ripper: If we slow it down in the upper house, my tax cut will live!

Mr T.R. BUSWELL: Not for long.

Mr W.J. Johnston: Is what I said correct?

Mr T.R. BUSWELL: We would have to make it retrospective, and I am not sure that we are going to do that. We would probably have to start again with a different date for what would effectively be its reintroduction. On top of that, we would have to go through our spending and find the things that we would have to trim out to make up for the amount we do not get through this tax.

Mr E.S. Ripper: Roe Highway stage 8.

Mr T.R. BUSWELL: No, not Roe Highway stage 8. There would be a number of measures. We would go through electorate by electorate.

Clause put and passed.

Title put and passed.

Leave denied to proceed forthwith to third reading.