

**MINUTES OF THE
SA STATE TAXES LIAISON GROUP MEETING
HELD ON WEDNESDAY 6 DECEMBER 2017 AT 4:00 PM
TRAINING ROOM, LEVEL 1, STATE ADMINISTRATION CENTRE,
VICTORIA SQUARE, ADELAIDE**

1 ATTENDANCE / APOLOGIES

1.1 PRESENT FOR REVENUESA

Graeme Jackson (Chair), Mark Christmas, Tom Colmer, Shaun Davies, Kristy Ferguson, Matthew Fraser, Ian Grimshaw, Paul Maxwell, Ian Morris and Lisa Smith.

1.2 PRESENT FOR INDUSTRY GROUPS

Sandy Donaldson (The Law Society of South Australia), Rebecca Hayes (Australian Institute of Conveyancers (SA Division) Inc), Marc Romaldi (Property Council of Australia), Kate Southcott (Real Estate Institute of South Australia), Jeff Stevens (Australian Institute of Conveyancers (SA Division) Inc), Paul Tanti (Chartered Accountants Australia and New Zealand), Julie Van der Velde (CPA Australia) and Bernie Walrut (Law Council of Australia).

1.3 APOLOGIES

Phil Dorman (Institute of Public Accountants), Paul Ingram (The Tax Institute), Peter Slegers (Business SA) and Alan Yates (CPA Australia).

Graeme Jackson welcomed Shaun Davies to the meeting. Graeme advised that Shaun will be replacing Matthew Fraser as the Group's Executive Assistant and thanked Matthew for his work in this role over the years.

2 BUSINESS ARISING

2.1 UPDATE ON REVIEW OF REVENUESA PUBLICATIONS AND RULINGS SUB-COMMITTEE (SEE ATTACHMENT A)

Paul Maxwell advised with respect to the RevenueSA Publications set out in Attachment A of the Agenda as follows:

- Item 1 – RevenueSA is awaiting feedback from the Rulings Sub-Committee on the publications. Bernie Walrut asked that the landholder duty calculation issue in the publication “Stamp Duty – Transfer of units in a unit trust scheme which holds land” (1.2) be discussed at the next Rulings Sub-Committee meeting; and
- Item 2.1 – a draft Revenue Ruling, “Stamp Duty – Residential land used for long term accommodation and discretionary trusts that are foreign trusts”, was circulated to the Group yesterday for comment. Bernie Walrut suggested that the publication should be considered by the Rulings Sub-Committee. A general discussion followed regarding the applicable operative date for foreign ownership surcharge. Graeme Jackson advised that the Ruling is a starting point that can be developed further and that the date of

the execution and stamping of the Transfer is the relevant date for the purposes of the surcharge.

Bernie Walrut asked with respect to 2.4 (item 1 in Attachment B of the Agenda) that the Early Engagement and Alternative Dispute Resolution publication be progressed as a matter of priority. Graeme Jackson advised that RevenueSA would use its best endeavours to progress the publication.

2.2 UPDATE ON STATE TAX APPEALS

Paul Maxwell advised that:

- a hearing date is yet to be set for Business SA's payroll tax charitable purposes exemption appeal to the Full Court;
- a judgment is still pending in a land tax minor interest appeal;
- work is continuing on a land tax primary production appeal to be heard in March 2018;
- there have been six appeals since the *First Home and Housing Construction Grants Act 2000* was transferred to the SACAT. One has been heard and decided in favour of RevenueSA, with the others having been settled, withdrawn or yet to be heard;
- a stamp duty appeal has been lodged.

2.3 STATE BUDGET

Graeme Jackson advised that:

- The *Budget Measures Bill 2017*, which included the bank levy, was withdrawn and the *Stamp Duties (Foreign Ownership Surcharge) Amendment Bill 2017*, which relates only to the foreign ownership surcharge, was introduced and passed through Parliament. As a result, the other taxation measures in the Budget Bill will not be legislated at this time.
- The Treasurer has given an undertaking that the payroll tax relief for employers will be provided by administrative means equivalent to that proposed as part of the 2017-18 Budget and RevenueSA is making changes to its systems to accommodate this. At this stage, when the 2017-18 payroll tax annual reconciliations are lodged, taxpayers will be able to see the tax payable, the *ex gratia* paid and the total tax that would have been payable if the existing higher payroll tax rate applied.
- In regard to the other taxation measures included in the Budget Bill, the stamp duty concessions will be provided by way of *ex gratia* relief until further notice and RevenueSA is awaiting advice from the Treasurer's office regarding the five year off-the-plan land tax exemption. The amendment to provide the right to object to penalties imposed under the *First Home and Housing Construction Grants Act 2000* was also not legislated, though the RevenueSA will continue to consider such objections.

Bernie Walrut suggested that the objection rights under the *First Home and Housing Construction Grants Act 2000* should go further, in line with those under the *Taxation Administration Act 1996*, to allow the right to object to any decision, noting that a previous decision to require the repayment of a grant was not objectionable and instead would need to be subject to judicial review. Graeme Jackson advised that further consideration will be given to this issue.

2.4 SIMPLIFY DAY

Paul Maxwell advised that the *Statutes Amendment and Repeal (Simplify No 2) Bill 2017*, which included amendments to remove stamp duty on the transfer of family farms held in a company structure, did not pass through Parliament before the end of Parliamentary sitting for the year. As such, any legislative amendments will be held over until April or May 2018 at the earliest, though it is not certain that any amendments will be made.

Bernie Walrut suggested that further discussions should be had regarding the proposed amendments. Graeme Jackson advised that any amendments would be revisited following the March 2018 State Government election.

2.5 DUTY CALCULATIONS UNDER PART 4 OF THE STAMP DUTIES ACT 1923

Graeme Jackson noted that this issue was discussed earlier under Item 2.1.

2.6 THIRD PARTY REPORTING

Tom Colmer advised that:

- it is currently mandatory for purchasers' agents to self-determine via RevNet;
- approximately 12,000 workspaces have been created to date;
- a reasonable number of vendors are choosing to enter data into the Portal voluntarily off the back of the invitation system;
- RevenueSA is currently reviewing the mandatory data required to facilitate the calculation of the foreign ownership surcharge to be introduced from 1 January 2018; and
- additional fields will be required to allow agents to self-determine the amount of the surcharge in RevNet as data will be prefilled.

Graeme Jackson advised that a *de minimis* approach is being taken in view of the amending legislation regarding third party reporting not being passed as part of the *Budget Measures Bill 2017*.

3 NEW BUSINESS

3.1 SA STATE TAXES LIAISON GROUP MEETING DATES IN 2018

Matthew Fraser advised that the proposed dates for the SA State Taxes Liaison Group meetings are Wednesday 7 March 2018, Wednesday 6 June 2018, Wednesday 5 September 2018 and Wednesday 5 December 2018. As there is a State Government election in 2018, depending on when the State Budget is handed down, either the June or September meeting will be deferred until after the State Budget is handed down.

3.2 BINDING OPINIONS (JULIE VAN DER VELDE)

Julie Van der Velde enquired as to whether RevenueSA could provide formal binding opinions on proposed transactions, noting that certain transactions would only take place if the outcome was certain and the provision of private binding taxation rulings at the Federal level.

Graeme Jackson advised that RevenueSA's ability to provide binding rulings is a resourcing issue and that further thought will be given to the issue, noting that if RevenueSA were to provide binding opinions, it may need to be limited to particular transactions and would require legislative amendments to allow for them.

3.3 ATTACHMENT B (BERNIE WALRUT)

With respect to the matters set out in Attachment B:

- Item 1 – Graeme Jackson that this issue was discussed earlier under Item 2.1.
- Items 2 and 3 – Bernie Walrut suggested that the changes sought would require legislative amendments to the *Taxation Administration Act 1996*. Graeme Jackson advised that RevenueSA had no issue with either of the amendments sought and is happy to progress them, subject to Government approval.
- Item 4 – Bernie Walrut informed RevenueSA that the ATO is expected to issue a ruling on trust splitting in the near future and it is anticipated that the ATO ruling will be inconsistent with the approach being adopted by RevenueSA in respect of land tax in similar situations. If this does eventuate it has the potential to raise some issues about different approaches of Commissioners where the concepts involved are not significantly different. Graeme Jackson advised that RevenueSA's position is based on advice from the Crown Solicitor and RevenueSA will await the ATO ruling, following which further discussions on the issues arising from it will be had.
- Item 5 – Graeme Jackson advised that the Valuer-General reports to the Minister for Transport and that a submission could be made directly to the Minister on providing formal rights to object to land use codes, whilst he will continue having discussions with the Valuer-General. Ian Morris advised that under the *Emergency Services Funding Act 1998*, an owner of land may object to the attribution of a particular use to the land by the Valuer-General.

Paul Maxwell advised that *Emergency Services Funding Act 1998* reviews are being transferred to the SACAT next week.

- Item 6 – Graeme Jackson advised that other than 6.4, RevenueSA would consider the issues raised in the context of the draft Revenue Ruling that was circulated to the Group yesterday. With regards to 6.4, Graeme Jackson advised that a publication concerning significant developments is a matter for the Treasurer’s office and that consultation would occur prior to its publication.
- Item 7 – Graeme Jackson advised that the timing of the emailing of the Agenda for this meeting was exceptional and that RevenueSA would take the feedback on board.

3.4 REVENUESA’S COUNTER OPENING HOURS

Graeme Jackson confirmed with the regards to RevenueSA’s counter opening hours, which will now be 10am until 2pm, that RevenueSA will have a box for documents to be dropped off outside of the opening hours and that RevenueSA staff will continue to receive documents, such as appeal notices and alike, outside of the opening hours.

Graeme Jackson closed the meeting and thanked the Group participants for their attendance and contributions throughout the year.

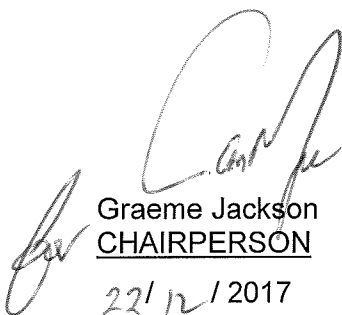
4 NEXT MEETING

Wednesday 7 March 2018, 9:30 am

Training Room, Level 1, State Administration Centre.

The meeting closed at 4:47 pm.

Signed as a true and correct record of proceedings.


Graeme Jackson
CHAIRPERSON
22/12/2017

ATTACHMENT A – REVENUESA PUBLICATIONS

1. Draft publications for the Rulings Sub-Committee
 - 1.1. Section 13(4) of the *Land Tax Act 1936*
 - 1.2. Stamp Duty – Transfer of units in a unit trust scheme which holds land
 - 1.3. Stamp Duty – Conveyance by Direction
2. New potential publications for consideration
 - 2.1. Stamp Duty – Residential land used for long term accommodation and discretionary trusts that are foreign trusts
 - 2.2. Section 71(6) of the *Stamp Duties Act 1923*
 - 2.3. Stamp Duty – Unit Trust: Issues And Redemptions
 - 2.4. Early Engagement and Alternative Dispute Resolution
3. Draft publications on hold
 - 3.1. Stamp Duty – Duty arising from changes in partnership interests
4. Other existing publications requiring review
 - 4.1. Circular 61 – Section 71E of the *Stamp Duties Act 1923*. Obligation of a person to lodge a statement with the Commissioner
 - 4.2. Circular 109 – Stamp Duties (Concessions) Amendment Act 1994 – Family Farm Transfers
 - 4.3. Circular 156 – Access to documents held by solicitors and legal professional privilege – Guidelines
 - 4.4. Circular 265 – Stamp Duty – Sale of Retirement Villages
 - 4.5. Circular 282 – Domestic Partners

ATTACHMENT B (BERNIE WALRUT)

1. Advancing the "Early Engagements and Alternative Dispute Resolution" circular and process
2. Advancing RevNet/Portal determinations as an assessment (this was to be considered as part of third party reporting)
3. Advancing amending section 94 of the *Taxation Administration Act 1996* to permit appeals to be brought within twelve months
4. A process for reviewing the RevenueSA view of trust splitting in the land tax context in light of the expected ATO Ruling on the issue in an endeavour to have some consistency for taxpayers
5. Advancing the right to object to Land Use Codes
6. Early publication of circulars on:
 - 6.1. The scope of the meaning of "power to appoint" in section 2(14) of the *Stamp Duties Act 1923* on the *Stamp Duties (Foreign Ownership Surcharge) Amendment Bill 2017* coming into force
 - 6.2. The scope of the operation of "an identified object under the trust" in section 2(14) of the *Stamp Duties Act 1923* on the *Stamp Duties (Foreign Ownership Surcharge) Amendment Bill 2017* coming into force
 - 6.3. The scope of the meaning of "a person who takes capital of the trust property in default" in section 2(14) of the *Stamp Duties Act 1923* on the *Stamp Duties (Foreign Ownership Surcharge) Amendment Bill 2017* coming into force
 - 6.4. The proposed *ex gratia* relief for foreign developers acquiring residential land for development
 - 6.5. The scope of the meaning of "controls the exercise of rights attached to the property" in section 2(15) of the *Stamp Duties Act 1923* on the *Stamp Duties (Foreign Ownership Surcharge) Amendment Bill 2017* coming into force
 - 6.6. The operation of the proposed section 72(7) of the *Stamp Duties Act 1923* on the *Stamp Duties (Foreign Ownership Surcharge) Amendment Bill 2017* coming into force

Ensuring that calls for agenda items are circulated at least one week prior to the Liaison Committee meeting.