

WESTERN AUSTRALIAN SEPTEMBER 2009 SUBMISSION

STAMP DUTY ON CONVEYANCES

Key Points

- Large refunds of duty can occur many years after the original assessment was issued. Under the Commission's current approach there is a risk that the adjustment falls outside the relevant assessment period - which becomes more acute if the assessment period moves from five years to three years.
 - Accordingly, we advocate an approach where refunds are recognised in the year they occur rather than in the year the relevant conveyance duty assessment was first issued.
- The Commission should confirm if (like Western Australia) all States and Territories treat acquisitions of mining tenements (both directly and through 'land holder' or 'land rich' provisions) as dutiable transactions, and if not, adjust its assessment methodology to ensure policy neutrality.

REFUNDS OF CONVEYANCE DUTY

The draft report is silent on the treatment of refunds. However, it appears that the Commission intends to retain its existing policy of subtracting refunds from the base in the year that the revenue was first raised. This creates the potential for refunds arising from protracted appeals to be subject to less equalisation than the original assessment. We have previously advocated an approach where refunds are recognised as a 'negative transaction' in the year they occur.

In this regard, it should be noted that when an assessment is issued, the duty has to be paid up-front unless the taxpayer successfully seeks an extension of time to pay or an instalment payment arrangement. This applies even when an objection or appeal is lodged. If the objection or appeal is successful, the duty (including any penalties or interest) is refunded. If the objection or appeal is unsuccessful, interest is payable.

In the case of all duty assessments, revenue is recognised at the time the assessment is raised. The data supplied to the Commission each year will include amounts that subsequently come under dispute in that year through the objection or appeal process. These amounts tend to regularly cross financial years, especially on appeals, and any refund made in a financial year after the assessment was raised becomes an expenditure item against the 'refunds of past revenue' item in the budget.

Western Australia has previously forwarded to Commission staff (on a confidential basis) a table containing a sample of unlisted 'land rich' transactions for which significant refunds were paid after the initial assessment was issued.

MINING TENEMENTS

In a presentation to the Commission during its visit to Western Australia in June 2008, uncertainty was expressed as to whether mining tenements were treated as dutiable property in all other jurisdictions. In this regard it appeared that either the duties legislation (in one or more other jurisdictions) did not include mining tenements as an interest in land, or non-revenue legislation (e.g. mining legislation) specifically excluded mining tenements as an interest in land.

Subject to the outcome of an email survey by Commission staff of all jurisdictions' practices in August 2009, a material policy adjustment could be required to the Commission's assessments in this regard.