AUSTRALIAN CAPITAL TERRITORY

SUBMISSION TO THE
COMMONWEALTH GRANTS COMMISSION'S
COMMISSION POSITION PAPER 2008/07:
Stamp Duty on Conveyances

January 2009

Introduction

The 2010 Review has been run as an iterative process between the Commonwealth Grants Commission (the Commission) and the States and Territories (the States) over the course of the past four years. As part of this process the ACT has provided a number of submissions in response to the Staff and Commission Discussion Papers, incorporating subsequent multilateral and bilateral discussions with Commission staff and other States. These submissions outlined the ACT's position as to the validity of the conceptual case behind a number of assessments and the proposed assessment methodologies.

It is noted that in some instances the position adopted by the Commissioners, as detailed in the latest Commission Position Papers, is at odds to those of the ACT. In the interests of brevity the ACT has not sought to reiterate the entirety of its previously stated position unless new data or new thinking has been applied. In this light, a lack of objection does not imply support where such support has not been previously stated.

2004 Review Method

The ACT had provided support to the Commission's proposal to use *secured finance commitments* as a proxy for revenue capacity of Stamp Duty on Conveyances given that it could overcome a number of deficiencies in the current methodology, such as differences in State policies. However, it is noted that other States have not supported the proposal, and as such, the Commission intends to retain the 2004 Review Methodology. Given the work undertaken by the consulting firm Blake Dawson, the retention of the 2004 Review method is acceptable to the ACT.

Value Distribution Adjustment

The ACT had argued that Value Distribution Adjustments (VDA) should not be applied as a single broad disability to all revenue categories. Given different taxes have different policy objectives/considerations, and are not uniformly of a progressive nature, a case-by-case approach is needed to determine whether a VDA reflects the average State policy and whether to make such an adjustment is material.

It is noted that the Commission has shown that stamp duties are progressive in nature and as such the ACT believes that to apply a VDA is valid (where material). However, the chosen value ranges appear arbitrary. Given that only two States (NSW and ACT) have a progression in the tax rate on properties valued above $1 million and only NSW has a further rate progression above $1 million the average State policy for the upward bound should be closer to the average of the States (around $700,000). Furthermore, there appears to be a reasonably consistent progression of the tax rate across all States for property values above $500,000.

Further analysis needs to determine what value bands are appropriate. The value ranges used in the assessment should be based on reflecting the average State policy rather than solely driven by efforts to achieve materiality. That is, the average policy value ranges should initially be determined then subsequently tested for materiality rather than selecting a value range based solely on materiality considerations.

Adjustment for Differences in the Type of Properties Subject to Duty

The ACT notes the findings of the Blake Dawson report and notwithstanding the below comments finds it to be a fair representation of State stamp duty policies.

The following comments on the accuracy of the December 2008 Draft Commonwealth Grants Commission Interstate Comparison of Duties are as follows. The contact officer for these comments is: David Read, Manager, Policy & Legislation, ACT Revenue Office (02 6207 0293).

3.8 Time for payment of duty (on page 17)

The conclusion that the proposed change to the time for payment of duty in VIC, if implemented, "would create a highly significant difference between Victoria and the other States" is incorrect. The writer of the report has failed to take into account that duty in Victoria is payable on transfer of the property and, therefore, even under the new rules would not be payable until 14 days after transfer at the earliest.

In the ACT while the purchaser has a period of 90 days to pay duty, the liability is triggered from the date of an agreement for the sale or transfer or transfer, whichever occurs first. However, regardless of the 90 days to pay duty, duty must be paid prior to the transfer of the property. In practice this means that duty is paid prior to settlement and transfer of the property. Therefore, it is difficult to see how there can be a significant difference between Vic and ACT even after the proposed Vic changes are implemented.

Annexure A: Duty on real property dealings (on page 21)

In reference to the ACT cell under the heading *'Property sold off the plan'*:

- The entry fails to account for the fact that duty is payable within 14 days after the events that are listed in the entry (i.e. within 14 days of 1st completion of assignment, etc).

Annexure E: Land rich duty / Landholder duty (on page 30 – 36)

As a general comment, it would appear that the portion of the paper related to landholder duty is somewhat lacking in analytical rigour. Accordingly, the ACT would like to express its concern with this apparent deficiency, as some of the conclusions the paper reaches seem to be based on questionable assertions that are lacking in evidentiary support.

Annexure E: Land rich duty / Landholder duty (on page 33)

In reference to the ACT cell under the heading *'Level of interest that must be acquired in the land-rich/ landholder entity'* :

- the phrase "50% or more for other entities" is misleading. It should read "50% or more for private companies or wholesale unit trust schemes"; and

- the inaccuracy above seems to be reflected in the conclusion reached by the paper at paragraph 3.6(a)(iv), in that the conclusion does not seem to consider (or to note) that

there is a difference between the 20% threshold applicable to private unit trust schemes, and the 50% threshold applicable to private companies and wholesale unit trust schemes. Hence the basis on which the conclusion has been made is not entirely balanced.

Annexure E: Land rich duty / Landholder duty (on page 34):

In reference to the ACT cell under the heading *'Method of aggregation where there is more than one acquirer'*:

- The phrase "Acquisitions are aggregated where acquirers are associated or related persons" is incorrect. It fails to recognise that section 86(3) of the Duties Act 1999 explains that acquisitions are aggregated when:

    - People are acting in concert;

    - The acquisitions form, are evidence of, give effect to or arise from substantially 1 arrangement, 1 transaction or 1 series of transactions.

- In effect, these provisions are the same as the NSW provisions (which were the provisions that they were modelled on).

- This inaccuracy leads to the incorrect conclusion reached by paragraph 3.6(a)(v) of the paper. It claims that the "ACT has the narrowest rules for the aggregation of interests". However, as explained above, the aggregation provisions have the same effect as those in other jurisdictions (such as NSW).

Annexure F: Summary of corporate reconstruction requirements

(on pages 41 - 42) The table duplicates the entry "exceptions to post transaction association requirements" – this should be removed (probably just a formatting error).

(on page 37) The bottom row should also be removed (another formatting error).

Federal Financial Relations Unit
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