

6 September 2018

Assistant Director Legislation Services
Commissioner of State Revenue
Office of State Revenue
Department of Finance
Level 4, 200 St Georges Terrace
PERTH WA 6000

Attention: Ms Michelle Owens

Dear Commissioner

**IN CONFIDENCE: CONSULTATION ON PROPOSED AMENDMENTS TO THE
TAXATION ADMINISTRATION ACT 2003**

Thank you for your letter of dated 31 July 2018 inviting the Law Society to make a submission as regards the above.

The Law Society welcomes the opportunity to do so.

Current practice

As your letter notes, with the exception of interim assessments, the Commissioner does not release duty endorsed documents until all assessed duty is paid. In the case of interim assessments, the Commissioner has the discretion to release duty endorsed documents but the threshold for release is high.

The need for duty endorsed documents

Duty endorsed documents are needed to enable registration so that:

- a) taxpayers can perfect their title to assets acquired; and
- b) financiers can perfect their security over assets financed.

The Society considers these needs are commercial imperatives.

The introduction of interim assessments in 2013-14 had the potential to assist in meeting the commercial need for duty endorsed documents. However, as your letter notes, interim assessment has been used sparingly, with just 27 interim assessments issued since their introduction. Moreover, duty endorsed documents have been released following just three interim assessments (while acknowledging there have been only five requests for release).

Proposed amendments

We understand the proposed amendments will allow the Commissioner to release duty endorsed transfers in broader circumstances, following payment of an interim assessment. Release would be on the condition that a memorial is registered against the property until the complete assessment is finalised and any additional

duty is paid. The Commissioner will be required to seek the taxpayer's agreement to this condition before the transfers are released.

Submissions

We acknowledge the interim assessment provisions are only applied to high value, complex transactions with protracted assessment timeframes, due to the need to resolve complex legal and valuation disputes. The provisions are not applied to routine property or business acquisitions.

The protracted assessment timeframes that apply to high value, complex transactions are of concern to the Law Society. In the Society's submission, there is a need for the assessments area of the Commissioner's Office to be properly resourced with a sufficient number of officers possessing the skills necessary to deal with high value, complex transactions in order to keep assessment timeframes to a minimum, as far as possible. In this regard, our members report that revenue authorities in other States and Territories seem able to assess such transactions in shorter timeframes.

Like the interim assessment provisions, the proposed amendments have the potential to assist in meeting the commercial need for duty endorsed documents. However, the proposed amendments may also have the unintended consequence of making assessment timeframes even more protracted given that officers will be able to issue an interim assessment, release duty endorsed transfers and register a memorial against the property, thereby creating a first charge on the property.

Assuming the proposed amendments proceed, we accept the Commissioner would aim to ensure this potential unintended consequence does not materialise. Further, whether or not the proposed amendments proceed, we request the Commissioner take all steps possible to properly resource the assessments area of the Commissioner's office to ensure assessment timeframes are not unnecessarily protracted, even in high value, complex transactions.

The proposed requirement for the Commissioner to seek the agreement of the taxpayer to the registration of a memorial against the property is also essential and must be retained. In the absence of the taxpayer's agreement, the memorial has the potential to put the taxpayer in default of its financing arrangements.

We thank you again for the opportunity to make this submission.

Please contact us if you wish to discuss our submission further.

Yours sincerely



Hayley Cormann
President