STATE REVENUE LEGISLATION AMENDMENT BILL 2008

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Second Reading

The Hon. HENRY TSANG (Parliamentary Secretary) [5.44 p.m.], on behalf of the Hon. Michael Costa: I move:

That this bill be now read a second time.

I seek leave to incorporate the second reading speech in *Hansard*.

Leave granted.

The State Revenue Legislation Amendment Bill 2008 provides tax concessions and first home benefits for people who have legitimate claims while also addressing tax avoidance practices by others attempting to avoid their legal responsibilities. The bill makes amendments to the Duties Act 1997, the First Home Owner Grant Act 2000, the Health Insurance Levies Act 1982, the Land Tax Management Act 1956, the Payroll Tax Act 2007, the Taxation Administration Act 1996 and the Unclaimed Money Act 1995. The bill also repeals the Debits Tax Act 1990, the Stamp Duty Act 1920 and the Taxation Administration Regulation 2003.

I will deal first with the amendments relating to duties. Land rich duty is payable when a person acquires a significant interest in a company or trust that holds land worth $2 million or more. The land rich provisions of the Duties Act ensure the same duty is payable on an indirect acquisition of an interest in land as would be payable on a direct purchase of a similar interest. A practice has been identified where land rich duty is avoided by declaring a trust instead of transferring shares in the company or units in the trust. This effectively gives the purchaser ownership and control of an interest in land without incurring a liability to duty.

The Office of State Revenue has identified 17 transactions where this practice was used in the last year involving duty in excess of $50 million. To address this avoidance practice the bill imposes land rich duty on an acquisition where the capacity in which a person holds an interest in a land rich company or trust changes including by way of declaration of trust. These transactions are already dutiable in most other States and Territories.

To ensure this loophole is closed immediately, this anti-avoidance measure will take effect from the date on which the bill was introduced.

The bill also makes an amendment to prevent the use of contrived arrangements to obtain a duties concession for partitions of land.

A "partition" occurs when jointly owned land is split up between the owners. The duties concession recognises each party's existing interest in the land.

A duty avoidance practice has been identified in which people who wish to exchange land each acquire a small interest in the other party's land and subsequently partition the "jointly-owned" land paying minimal duty.

The amendment will prevent this abuse but will ensure genuine partitions remain eligible for the concession.

The bill makes a number of amendments relating to concessions and exemptions from duties.

One such amendment clarifies the duties concession under First Home Plus.

In some cases an applicant will not be eligible for the concession when buying a home on multiple occupancy land such as a duplex where both houses are on a single title.

The Government believes that eligibility for the concession should be determined by whether or not the applicant is a genuine first home buyer rather than by the form of land title under which the home is held.

The proposed amendment will allow the duties concession to be approved for the purchase of a separate home on multiple occupancy land.

The bill makes two significant extensions to the duties concession for transfers out of a deceased estate.

The first is where the executor, administrator or trustee of the estate "appropriates" property to a beneficiary in satisfaction of the beneficiary's entitlement under the will.

For example the trustee might transfer a house to a beneficiary instead of paying a cash legacy.

At present the duty payable varies depending on the wording of the will. The bill provides that an appropriation of estate property in satisfaction or partial satisfaction of a beneficiary's entitlement is liable to duty of $10 in all circumstances.

The second is where the beneficiaries agree to vary their entitlements under the will.

For example a beneficiary who is entitled to a one half interest in a house might agree to buy the house from the estate for a purchase price of one half its value.

The amendment will only impose duty on the transfer of the one half interest in the house that is in excess of the beneficiary's entitlement.

The bill also clarifies the types of charitable and benevolent bodies that are eligible for exemption from duties to include charitable trusts and trustees, consistent with current practice.

A new duties concession is provided for an application to register a motor vehicle that has been modified for a person with a disability.

Duty will only be calculated on the value of the vehicle after deducting the value of the modifications made either to enable the person with a disability to drive the vehicle or to enable someone else to transport the person with a disability.

The bill also makes a number of minor statute law amendments to the Duties Act including to repeal obsolete provisions such as those relating to vendor duty.

The bill implements two proposals relating to eligibility for the First Home Owner Grant.

The first relates to the list of interests in land that are eligible for the grant.

While most of these interests are detailed in the Act other interests are currently recognised as legitimate interests in a public ruling issued by the Chief Commissioner of State Revenue.

Incorporating these interests in the Act will provide greater certainty for taxpayers and their professional advisors.

The interests to be included in the Act are when a person builds a home, or builds a self-contained dwelling annex such as a granny flat or purchases a movable home in each case on land owned by another person.

The second is to adopt a provision from the First Home Plus scheme to allow a first home buyer to remain eligible for the grant if an additional purchaser is added as a purchaser for finance purposes only.

This addresses the common practice of some lenders especially for loans to young first home buyers of requiring a guarantor to be on title.

I turn now to amendments to the Land Tax Management Act.

A land tax exemption currently applies to land used and occupied as the principal place of residence of one or more owners provided all of the owners are natural persons.

The exemption can apply to two or more parcels of land or two or more strata units provided the land is not physically separated and is owned by the same person or the same joint owners.

If these criteria are satisfied eligibility for the exemption should be determined by the owner's use of the property as a single residence regardless of the number of lots.

This "sole use and occupation" test was confirmed in the Supreme Court by what is known as Ryan's case. However several recent decisions of the Administrative Decisions Tribunal and the Supreme Court have—highlighted the possibility of inconsistent interpretation of these tests.

To remove any ambiguity the amendments spell out and define the principles adopted in Ryan's case.

The amendments provide that where there are separate buildings located on separate lots and the buildings are separately occupied or are capable of separate occupation the exemption will only apply to one of the lots.

This is consistent with the principles under the Valuation of land Act which identify when two or more parcels of land can be valued as one parcel.

In the case of two or more strata lots the exemption will only apply to all of the lots if there is internal access between the lots allowing use as one residence except for lots used for an ancillary purpose such as a garage or storage area.

Where only part of a lot satisfies the amended requirements for exemption a partial exemption will apply based on the proportion of the lot or the buildings that satisfies the criteria for exemption.

The bill also makes statute law amendments to confirm that exemptions from land tax for non-profit organisations can apply to part of a building in a strata scheme.

The bill makes a number of statute law amendments to the Payroll Tax Act as part of the ongoing project to harmonise payroll tax administration across Australia including clarifying an exemption for charitable bodies and modifying the provisions for grouping of employers.

The bill makes a number of minor amendments to other Acts administered by the Office of State Revenue. These include an amendment to the Health Insurance Levies Act, to clarify eligibility for family membership of the State Ambulance Insurance Plan; amendments to the Taxation Administration Act to authorise disclosure of taxation information to specified government agencies; and amendments to the Unclaimed Money Act as a consequence of the Commonwealth Government's take-over of the administration of unclaimed superannuation from 1 July 2007.

Finally, the bill repeals the Debits Tax Act 1990, which ceased to impose tax in 2002; the Stamp Duties Act 1920, which has now been fully replaced by the Duties Act 1997; and the Taxation Administration Regulation 2003, the provisions of which have been incorporated in the principal Act.

I commend the bill to the House.