



New South Wales

State Revenue Legislation Further Amendment Bill 2012

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are as follows:

- (a) to amend the *Duties Act 1997*:
 - (i) to clarify the liability to duty on a transfer of a partnership interest that occurs as a result of the retirement of a partner or the admission of a new partner, and
 - (ii) to provide a duty concession in respect of transfers relating to managed investment schemes, and
 - (iii) to exempt from duty an application to register a new heavy vehicle trailer, and
 - (iv) to make other minor miscellaneous amendments, including amendments of a statute law revision nature,
- (b) to amend the *Health Insurance Levies Act 1982* to reflect changes to reports published by the Australian Statistician,

- (c) to amend the *Regional Relocation (Home Buyers Grant) Act 2011*:
 - (i) to extend the scheme to a purchase of vacant land in a regional area that is planned to be the site of a new home, and
 - (ii) to extend the scheme to the purchase of a long term lease of land in a regional area, and
 - (iii) to make other minor changes to the scheme,
- (d) to amend the *Taxation Administration Act 1996*:
 - (i) to clarify the power of the Chief Commissioner of State Revenue (the *Chief Commissioner*) to make compromise assessments, and
 - (ii) for statute law revision purposes,
- (e) to make minor miscellaneous amendments to other Acts.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent.

Schedule 1 Amendment of Duties Act 1997 No 123

Partnership interests

Schedule 1 [1] and [2] clarify the arrangements for the charging of duty on a transfer of a partnership interest that occurs as a result of the retirement of a partner in an existing partnership or the admission of a new partner to an existing partnership. The changes are made following the decision of the High Court in *Commissioner of State Taxation v Cyril Henschke Pty Ltd* [2010] HCA 43. In that case, the Court made it clear that when a partner retires from an existing partnership, or a new partner is admitted to an existing partnership, the existing partnership is dissolved. Any partnership formed as a consequence of the retirement or admission is a new partnership.

The amendments provide that a transfer of a partnership interest is taken to occur if a new partnership is formed because of the retirement of a partner in an existing partnership or the admission of a new partner to an existing partnership. Generally, duty is chargeable as follows:

- (a) in the case of a new partnership formed on the retirement of a partner in an existing partnership, as if the retiring partner's partnership interest were transferred to the partners in the new partnership,
- (b) in the case of a new partnership formed on the admission to an existing partnership of a new partner, as if the new partner's partnership interest were transferred to the partners in the new partnership.

Accordingly, the partners in the new partnership are liable as transferees for the duty chargeable.

No duty is chargeable under the new provisions on the retirement of a partner from an existing partnership if the partnership is wound up on that retirement (sometimes referred to as a general dissolution of the partnership).

Schedule 1 [4] changes the method by which partners are given a credit on duty paid in respect of a transfer of a land-related asset that is made as result of a transfer of a partnership interest. Under the new method, the dutiable value of the partnership interest transferred is reduced by the dutiable value of the land-related asset transferred, but only if ad valorem duty has been paid on the transfer of the land-related asset. A minimum duty of \$50 is payable in respect of the transfer of the partnership interest. **Schedule 1 [10]** is a consequential amendment.

Managed investment schemes

Schedule 1 [5] provides for the charging of duty of \$50 in respect of:

- (a) a transfer of dutiable property from a trustee of a wholly owned sub-trust of a managed investment scheme to a custodian of the trustee of that wholly owned sub-trust, or
- (b) a transfer of dutiable property from a custodian of the trustee of a wholly owned sub-trust of a managed investment scheme to that trustee.

New heavy vehicle trailers

Schedule 1 [9] exempts new heavy vehicle trailers from vehicle registration duty. A heavy vehicle trailer is new if it has not been previously registered in the State or another Australian jurisdiction.

Other amendments

Schedule 1 [6] omits an unnecessary cross-reference, to ensure that a declaration of trust over marketable securities that are not dutiable property under any provision of the *Duties Act 1997* is not liable for duty under section 58 of the *Duties Act 1997*.

Schedule 1 [7] updates a provision as a consequence of the proposed abolition of duty on all transfers of marketable securities.

Schedule 1 [8] ensures that an interpretative provision of the *Personal Property Securities (Commonwealth Powers) Act 2009* does not affect the operation of the provisions of the *Duties Act 1997* relating to mortgage duty.

Schedule 1 [14] and [16] allow the New Zealand Exchange to be treated the same as an exchange of the World Federation of Exchanges for duties purposes. **Schedule 1 [15]** inserts a definition of *New Zealand Exchange*.

Schedule 1 [3], [12] and [14] update references to the Australian Securities Exchange (formerly the Australian Stock Exchange).

Schedule 1 [13] updates certain definitions to correct cross-references.

Schedule 1 [17] omits a redundant definition.

Schedule 1 [18] puts it beyond doubt that plant affixed to land under the authority of a mining lease or mineral claim is treated as a fixture for duties purposes (and, accordingly, included in the dutiable value of the land).

Schedule 1 [11] provides for transitional matters.

Schedule 2 Amendment of Health Insurance Levies Act 1982 No 159

Schedule 2 [1]–[10] make amendments that are consequential on changes to the publications of the Australian Statistician. The current provisions provide for the annual adjustment of the health insurance levy based in part on statistics published by the Australian Statistician. Some of those statistics are now published on a biannual basis, rather than on a quarterly basis. The amendments update the adjustment provisions accordingly.

The amendments change the annual adjustment date from 1 February to 1 April (as the relevant biannual report is published in February). Consequential changes are made to CPI adjustment provisions.

The amendments also permit the annual percentage change for a particular year to be prescribed by order of the Governor if the Minister certifies that it is necessary to prescribe the rate because the statistical information required to calculate the rate referred to in the *Health Insurance Levies Act 1982* is not available, or for any other reason.

Schedule 2 [11] provides for transitional matters, including a one-off adjustment to the method of calculating the annual adjustment, to reflect the changes in reporting periods.

Schedule 3 Amendment of Regional Relocation (Home Buyers Grant) Act 2011 No 26

Extension of grant scheme to purchases of vacant land

Schedule 3 [3], [6] and [11] allow an application for the regional relocation grant to be made in respect of a purchase of vacant land in a regional area, that is intended to be the site of a home. The laying of the foundations of the regional home must commence within 26 weeks (or such longer period as the Chief Commissioner may approve) after the purchase is completed. **Schedule 3 [7]** provides that the value of the land must not exceed \$450,000. **Schedule 3 [1], [4], [5], [8], [9] and [13]** are consequential amendments.

Extension of grant scheme to long term leases

Schedule 3 [12] allows the transfer of, or a grant of, a long term lease in respect of a regional home to be treated as a purchase of a regional home. Accordingly, the purchase of the lease can qualify as a regional relocation. A lease of land is a long

term lease if and only if the Chief Commissioner is satisfied that the lease gives the lease holder a degree of permanency and security of tenure that is equivalent to an estate in fee simple in the land.

Other amendments

Schedule 3 [10] provides that, if an application for a regional relocation grant is made by 2 or more persons as joint owners of a regional home, only one of them has to relocate from a metropolitan area. **Schedule 3 [2]** is a consequential amendment.

Schedule 3 [16] provides for transitional matters.

Schedule 3 [15] permits the making of savings and transitional regulations as a consequence of any amendments to the *Regional Relocation (Home Buyers Grant) Act 2011*.

Schedule 3 [14] is a consequential amendment.

Schedule 4 Amendment of Taxation Administration Act 1996 No 97

Schedule 4 [1] makes it clear that the Chief Commissioner can make a compromise assessment, with the agreement of a taxpayer, in relation to taxpayer's liability for tax for the purpose of settling a dispute about taxation. **Schedule 4 [8]** makes it clear that a decision not to make a compromise assessment cannot be the subject of an objection by the taxpayer. **Schedule 4 [10]** is a transitional provision.

Schedule 4 [2]–[7] update references to various government authorities and position holders, and remove redundant provisions.

Schedule 4 [9] permits the making of savings and transitional regulations as a consequence of any amendments to the *Taxation Administration Act 1996*.

Schedule 5 Amendment of other Acts

Land Tax Management Act 1956 No 26

Schedule 5.1 updates references to certain duty exemption and concession schemes.

State Owned Corporations Act 1989 No 134

Schedule 5.2 replaces a reference to the Treasury with a reference to the Department of Finance and Services, as a consequence of that Department being given responsibility for the administration of taxation legislation.