

Agreement in Principle

Dr ANDREW McDONALD (Macquarie Fields—Parliamentary Secretary) [10.22 a.m.]: I move:

That this bill be now agreed to in principle.

The New South Wales Government is committed to having best practice revenue laws. This bill is the latest in a series of legislative proposals that improve these laws. The State Revenue Legislation Further Amendment Bill (No 2) 2009 makes important amendments to State tax Acts both to protect the revenue and improve compliance and administration. The bill amends the Payroll Tax Act 2007 and the Duties Act 1997.

I will deal firstly with the amendments to payroll tax. The bill amends the jurisdictional nexus provisions of the Payroll Tax Act for payments of tax where an employee performs services partly in New South Wales and partly outside New South Wales. These amendments were agreed to by all State and Territory Commissioners of State Revenue and announced on 16 June 2009. The new provisions commence from 1 July 2009 for the 2009-10 financial year.

The payroll tax legislation has always contained nexus provisions designed to avoid double taxation on the same wages. Until now, liability has been based on where the services are performed and where the wages are paid. However, with the growth in electronic funds transfer, it is now common for employees to have their wages paid to more than one account and in jurisdictions other than where they performed services. These banking processes have made the administration of payroll tax more complex. The new nexus provisions that I will outline here will apply new principles and tests to counteract this complexity. The primary nexus test will continue to apply the principles currently used to determine initial liability. That is, if employees provide services wholly in one State or Territory, then payroll tax is payable in that jurisdiction. This test applies to approximately 90 per cent of the workforce in New South Wales.

The new tests apply where employees provide services in more than one jurisdiction, such as interstate truck drivers. In such cases, a secondary nexus test will apply so that tax will be payable in the jurisdiction where the employee has his or her principal place of residence. Where an employee does not have an Australian principal place of residence, a tertiary nexus test will apply determined by the ABN registered address of the business. If this does not apply, then further tests relating to the place of payment of the wages will be used. In order to allow employers to adjust to the new arrangements it will be permissible for anyone facing such transitional issues to make any necessary adjustments without penalty as part of the annual reconciliation process for the 2009-10 assessment year. These changes will be adopted by all States and Territories in the spirit of payroll tax harmonisation.

The bill also includes amendments to the Duties Act to continue the implementation of landholder duty. The new landholder duty replaced land rich duty on 1 July 2009 and imposes transfer duty on acquisitions of significant interests in companies and unit trusts which own land in New South Wales with a value of \$2 million or more. The current landholder provisions in New South Wales impose duty only on the acquisition of the legal entitlement to an interest in a landholding entity. The widespread use of trustees and custodians to hold interests in companies and unit trusts could result in an unintended liability to landholder duty. The bill addresses this by providing that the interests of certain trustees will be ignored so that landholder duty is only imposed on changes of beneficial ownership in landholding companies and trusts. The bill also amends the land value threshold test for landholder duty.

The current provisions apply to companies or trusts owning land in New South Wales with an unencumbered or improved value of \$2 million or more. To enable taxpayers to easily determine whether the landholder provisions apply, the bill provides that where the land holdings have a land value for land tax purposes, the unimproved value will be used for the purposes of the \$2 million threshold test. This change will have the effect of significantly raising the threshold at which interests in companies that hold land will have a potential liability to landholder duty.

The bill includes two new revenue protection measures for landholder duty. The first relates to debt interests. The interest of a creditor such as a mortgagee is not treated as a dutiable interest for the purposes of landholder duty. This exclusion is being exploited by the creation of interests which give the holder the right to most of the income and distributions from the company or trust, but no entitlement on winding up. Holders of these interests have an entitlement which is economically equivalent to an equity interest in the landholder. The bill clarifies the creditor exclusion by applying tests used in the Commonwealth Income Tax Assessment Act 1997 to distinguish between debt and equity interests to determine which interests are dutiable interests for landholder duty purposes.

The second revenue protection measure relates to the timing rules used to determine when an interest is acquired. These rules have been abused in some cases by delaying the full payment of the purchase price,

sometimes indefinitely, thereby avoiding duty on the acquisition. The bill clarifies that an agreement for sale of an interest in a landholder is taken to be completed 12 months from the date of the agreement unless it is otherwise completed before that date.

Finally, the bill includes two amendments to the Duties Act which affect the duty on changes of ownership of land regardless of whether by direct or indirect means. The bill clarifies the types of mining interests that are included as interests in land for duties purposes. In addition, consistent with the Intergovernmental Agreement on Federal Financial Relations, it provides that carbon sequestration rights are not interests in land for the purposes of the Duties Act.

Amendments contained in this bill have been the subject of consultation with professional and industry bodies, including the Institute of Chartered Accountants and CPA Australia, the Law Society of New South Wales, the Property Council of Australia and the Taxation Institute of Australia. I wish to thank those organisations for their assistance in preparing this legislation.

The amendments introduced by this bill will improve State tax Acts by increasing consistency with other States and Territories, while protecting the revenue bases for both payroll tax and landholder duty. I commend the bill to the House.