NSW Legislative Council Hansard

Duties Amendment (Land Rich) Bill

Extract from NSW Legislative Council Hansard and Papers Wednesday 8 December 2004.

Second Reading

The Hon. MICHAEL EGAN (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [8.04 p.m.]: 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 principal aim of this Bill is to implement the Government's intention, foreshadowed last May, to include indirect as well as direct disposals of land-related property in the tax base. This is necessary because the Government recognises that the transfer of shares in companies or units in trusts that are land rich is generally regarded by business as similar to a transfer of the land itself. The Treasurer said when introducing the State Revenue Legislation Amendment Bill 2004 in May this year:

"The disposal of interests in land through the disposal of shares in land rich companies or units in land rich trusts should be subject to vendor duty. However, the application of vendor duty to land rich entities involves complex drafting issues. The Government will extend vendor duty to the disposal of shares in land rich companies and units in land rich trusts following consultation with the industry."

The Bill achieves its objective by introducing "disposal duty" on the disposal of indirect interests in unlisted companies and trusts. As a result of the consultations with industry bodies and professional groups, the Bill also makes some improvements to "acquisition duty"—the current tax on the acquisition of significant indirect interests in land.

Just as acquisition duty is necessary to protect the transfer duty tax base, it is necessary to tax the indirect disposal of interests in land to protect the vendor duty tax base. Without this measure, there will be a clear tax incentive to acquire indirect interests in land rather than direct interests as their subsequent disposal would not be liable for vendor duty, whereas disposal of direct interests would be liable.

As a result the measure introduced by this Bill will not increase revenue from vendor duty. It will, however, reduce the incidence of erosion of the tax base.

The structure of disposal duty will be essentially the same as for acquisition duty. First, disposal duty will only apply to the disposal of interests in an unlisted company or in a unit trust other than a public unit trust if they are land rich.

That is, disposal duty will only apply if 60 per cent or more of the assets of the unlisted company or trust is land related property and the unlisted company or trust owns at least $2 million worth of land in New South Wales.

This will ensure that disposal duty does not apply to small investors with minor holdings in unlisted companies or trusts. Nor will it apply to disposal of investments by small investors in listed property trusts.

Secondly, just as acquisition duty only applies to acquisitions by investors who acquire a significant proportion of the entity, or who increase their significant interest, only those investors who own a significant proportion of a land rich entity will be liable for disposal duty on disposal of their interests. The definition of what constitutes a significant interest is the same as for acquisition duty—that is, 20 per cent or more for private trusts and 50 per cent or more for companies and wholesale trusts.

Any investor in these entities with such holdings will be liable for duty on any disposal within 3 years of the time at which they attained the significant interest. Without this approach, interests could be sold down to just below the threshold then a separate disposal could be made, thus avoiding duty on disposal of a sizeable holding.

Vendor duty only applies to disposals of land-related property if the sale price is at least 12 per cent higher than the acquisition price. This rule has been incorporated into disposal duty with some modifications, to recognise the indirect nature of the holdings in land.

As a result, the rule applies to a sale by a shareholder or unit holder to the extent that the land owned by the company or trust at the time the investor sells their shares or units is the same as the land held by the company or trust at the time the investor acquired their shares or units. If the land was acquired by the company or trust after the person acquired their interest in that company or trust, the rule applies to the increase in value from the time the company or trust acquired the land.

In addition to incorporating the existing elements of acquisition duty, this Bill applies the exemptions from vendor duty to disposal duty. As a result, disposal duty will not apply to disposals of indirect interests in land where disposal of the land would not attract vendor duty. For example, the disposal of indirect interests in land consisting of farms, new or substantially new buildings and improved vacant land will be exempt from disposal duty.

Indirect interests in companies and trusts can change as a result of the actions of others as well as those of the investor. For example, the issuing of units in a trust to a new investor will reduce the interests of existing investors in the trust. This reduction in interest is technically a disposal of an interest by the existing unit holders.

However, if the Chief Commissioner of State Revenue is satisfied that such a disposal was outside the control of the investor whose interest is reduced and does not form part of an arrangement to avoid payment of disposal duty, no duty will be payable.

The Government considers that such "passive" disposals by unit holders should not trigger a liability for disposal duty because the disposal does not provide any return to the investor, so there are no proceeds from which duty could be paid.

As well as introducing disposal duty provisions, this Bill makes a number of changes to premium property duty and vendor duty.

In relation to vendor duty the Bill clarifies a number of existing concessions. Firstly, consistent with the Government's undertakings earlier this year the Bill confines the vendor concession to conservation instruments in perpetuity, also known as permanent conservation orders.

Secondly, the Bill expands the concession for residential land used incidentally for business purposes to include an exemption for businesses conducted in the home, such as a person who takes in ironing or an accountant or software developer who uses one room of their home.

Thirdly, the Bill provides that where a religious organisation or charity disposes of land which is in part used for an exempt purpose, such as a school, vendor duty will not apply to that part of the land. The same concession will apply when religious bodies or charities buy land, part of which is to be used for an exempt purpose. Currently no concession applies.

The Bill also expands the compulsory acquisition concession to apply to the transfer of land required by a consent authority as part of a development approval. This concession also applies to the transfer of land for "affordable housing".

Finally, this Bill ensures that there is no circularity in calculating vendor duty where the purchaser has agreed to reimburse the vendor for either or both the vendor's liability for GST and vendor duty.

In relation to premium property duty, this Bill provides a concession for large parcels of land to be developed for residential purposes, regardless of whether the land is vacant. Under the concession premium property duty will apply to no more than 2 hectares of a large parcel of any residential land should the purchase price exceed $1.5 million per hectare.

I commend the Bill to the House.