

State Revenue Legislation Further Amendment Bill 2000

Explanatory note

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

Overview of Bill

The object of this Bill is to make miscellaneous amendments to the following Acts:

Duties Act 1997

First Home Owner Grant Act 2000

Land Tax Management Act 1956

Pay-roll Tax Act 1971

Stamp Duties Act 1920

Taxation Administration Act 1996

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.

Clause 3 is a formal provision giving effect to the amendments to the *Duties Act 1997* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the *First Home Owner Grant Act 2000* set out in Schedule 2.

Clause 5 is a formal provision giving effect to the amendments to the *Land Tax Management Act 1956* set out in Schedule 3.

Clause 6 is a formal provision giving effect to the amendments to the *Pay-roll Tax Act 1971* set out in Schedule 4.

Clause 7 is a formal provision giving effect to the amendments to the *Stamp Duties Act 1920* set out in Schedule 5.

Clause 8 is a formal provision giving effect to the amendments to the *Taxation Administration Act 1996* set out in Schedule 6.

Schedule 1 Amendment of Duties Act 1997

Concession for transfer of property to a related person

A purchaser under an agreement for sale can elect to have the property transferred from the vendor to a person who is "related" (as defined in the Act) to the purchaser without paying ad valorem duty on the transfer. This concession is capable of being abused by a person who stamps the transfer after settlement of the contract but before registration of the transfer at the Land Titles Office. **Schedule 1 [1]** limits the concession in two ways. First, it provides that the transfer must occur contemporaneously with the completion or settlement of the agreement. Secondly, if a purchaser buys on trust for the "real" purchaser who has provided the money for the purchase, the concession for a transfer to a related person can only apply to a transfer from the vendor to a person who is related to the "real" purchaser (and not a person who is related to the "apparent" purchaser).

Dutiable value of partnership interests and partitions

A transfer of an interest in a partnership or a partition of property may involve dutiable property as well as non-dutiable property (including property outside New South Wales). In calculating duty, the dutiable value is determined on the value of the dutiable property as a proportion of all the property. Some types of business assets, such as the goodwill of a business, may also be apportioned between New South Wales and other jurisdictions. However, apportionment does not presently apply if the business assets are partnership property, or are subject to a partition. The Act is to be amended to remove this anomaly. **Schedule 1 [2]** makes the amendment in relation to partnership interests and **Schedule 1 [3]** in relation to partitions.

Transfer of interests in land-rich companies that are limited by guarantee

The land-rich provisions in Chapter 3 of the Act impose duty on certain share and unit acquisitions in private companies or private unit trust schemes that would entitle the holder to more than 50% of the property of the company or trust in the event of a distribution of all its property. A person who acquires a controlling interest in a company limited by guarantee is not currently subject to the land-rich provisions as, under the *Corporations Law*, these companies cannot issue shares. **Schedule 1 [4]** provides that an interest in a company limited by guarantee can be acquired by becoming a member of the company, removing a person from membership of the company, or altering members' rights.

Hardship cases

Schedule 1 [6] repeals Part 4 of Chapter 12 of the Act (which constituted a Board of Review to consider the waiver of duty in hardship cases) as a consequence of the constitution of the Hardship Review Board under the *Taxation Administration Act 1996* by **Schedule 6 [3]** and replaces the Part with provisions that complement those to be inserted into the *Taxation Administration Act 1996* by **Schedule 6 [3]**.

Commercial plant nurseries

Schedule 1 [8] makes an amendment to the definition of *land used for primary production* in the Dictionary to the Act relating to commercial plant nurseries as a consequence of the amendment made by **Schedule 3 [1]** to the *Land Tax Management Act 1956*.

First Home Plus

First Home Plus provides a duty exemption or concession for first home buyers. It is subject to limits on the value of the property, and different limits apply to the metropolitan area and other areas. As from 1 July 2000, *First Home Plus* has been administered on the basis that it applies to the local government areas of Newcastle and Lake Macquarie in the same way as it applies to the metropolitan area of Sydney. This increases the property limit for exemption in these areas from \$175,000 to \$200,000, with a phased concession up to \$300,000. **Schedule 1 [9]** amends the definition of *Metropolitan Area* in the Dictionary to the Act to this effect.

Savings, transitional and other provisions

Schedule 1 [7] enables the making of regulations of a savings or transitional nature as a consequence of the enactment of the proposed Act.

Schedule 2 Amendment of First Home Owner Grant Act 2000

Schedule 2 [1] amends the definition of *permanent resident* in the Act to make it clear that New Zealand citizens who reside in Australia are eligible for a First Home Owner Grant.

Schedule 2 [2] removes a potential anomaly that could inadvertently prevent an applicant from receiving a grant. Under the Act at present, an applicant for a grant must be the owner of the land on which the home is, or is being, built or must become the owner of the land when the building of the home is completed. In some instances this may not be the case. For example, a person may build a home on a rural property owned by his or her parents. The amendment gives the Chief Commissioner a discretion to recognise such persons to be eligible applicants.

Schedule 3 Amendment of Land Tax Management Act 1956

Commercial plant nurseries

Land used for primary production is exempt from land tax. The definition of *land used for primary production* in the Act includes a "nursery" which, in turn, is defined by reference to the *Horticultural Stock and Nurseries Act 1969*. The *Horticultural Stock and Nurseries Act 1969* is proposed to be repealed in the near future. In anticipation of the repeal, **Schedule 3 [1]** amends the definition of *land used for primary production* to preserve its effect.

Land owned by Sydney Harbour Foreshore Authority

The functions of the Sydney Cove Redevelopment Authority and the land owned by it passed to the Sydney Harbour Foreshore Authority on 1 February 1999. Some changes in land tax liability occurred in relation to certain leasehold land as a consequence. **Schedule 3 [2]** seeks to reinstate, in relation to a lessee of land owned by the Sydney Harbour Foreshore Authority and irrespective of when the lease was entered into, the test as to liability that existed prior to 1

February 1999.

Limit of exemption for public garden, public recreation ground or public reserve

An owner of land is entitled to an exemption from land tax if the owner uses the land solely as a site for a public garden, public recreation ground or public reserve. A recent Supreme Court decision (*Evatt v Chief Commissioner of Land Tax* [1999] NSWSC 1317) indicates that a private owner of land may qualify for the exemption in respect of the garden of a dwelling by opening it to the public, even if a fee is charged for operating and maintenance costs. It is proposed to provide that the exemption will not apply if the land is owned by a natural person, or is held in trust by a natural person for either another natural person or a body that, if dissolved, would result in some or all of the land vesting in one or more of the members, or former members, of the body. **Schedule 3 [4]** makes the principal amendment and **Schedule 3 [3]** makes a consequential amendment.

Related companies

Schedule 3 [5] amends the provisions of the Act concerning the land tax liability of related companies to provide that if two or more related companies are liable to land tax (whether assessed separately or jointly), each company is liable jointly and severally to pay the tax.

Schedule 3 [6] applies section 45 of the *Taxation Administration Act 1996* to an amount of land tax payable by a related company. Section 45 of the *Taxation Administration Act 1996* is to be amended by **Schedule 6 [1]** to the proposed Act. Section 45, as amended, will provide that the liability of a person (which includes a corporation) to pay an amount of tax also includes a liability to pay any interest, penalty tax and costs and expenses associated with the recovery of the tax. Section 45, as amended, will also give a corporation that pays an amount in accordance with the section such rights of contribution or indemnity from related corporations as are just.

Hardship cases

Schedule 3 [7] repeals sections 50–53 of the Act (which constituted a Board to consider the waiver of land tax in hardship cases) as a consequence of the constitution of the Hardship Review Board under the *Taxation Administration Act 1996* by **Schedule 6 [3]** and replaces those sections with provisions that complement those to be inserted into the *Taxation Administration Act 1996* by **Schedule 6 [3]**.

Savings, transitional and other provisions

Schedule 3 [8] enables the making of regulations of a savings or transitional nature as a consequence of the enactment of the proposed Act.

Schedule 4 Amendment of Pay-roll Tax Act 1971

Members of a group

Schedule 4 [3] inserts proposed section 16LA into the Act. The section will enable the recovery of pay-roll tax, in the case of a group, from any member of the group and not just from a member that pays wages. The section also applies section 45 of the *Taxation Administration Act 1996* to an amount of pay-roll tax payable by a group member. Section 45 of the *Taxation Administration Act 1996* is to be amended by **Schedule 6 [1]** to the proposed Act. Section 45, as amended, will provide that the liability of a group member to pay an amount of tax also includes a liability to pay any interest, penalty tax and costs and expenses associated with the recovery of the tax. Section 45, as amended, will also give a group member who pays an amount in accordance with the section such rights of contribution or indemnity from other group members as are just.

Schedule 4 [1] and **[2]** make consequential amendments.

Hardship cases

Schedule 4 [4] repeals Part 6 of the Act (which constituted a Board of Review to consider the waiver, deferral and writing off of pay-roll tax in hardship cases) as a consequence of the constitution of the Hardship Review Board under the *Taxation Administration Act 1996* by **Schedule 6 [3]** and replaces those sections with provisions that complement those to be inserted into the *Taxation Administration Act 1996* by **Schedule 6 [3]**.

Savings, transitional and other provisions

Schedule 4 [5] enables the making of regulations of a savings or transitional nature as a consequence of the enactment of the proposed Act.

Schedule 5 Amendment of Stamp Duties Act 1920

Hardship cases

Schedule 5 [1] repeals Division 2 of Part 2 of the Act (which enabled the Board of Review constituted under Part 4 of Chapter 12 of the *Duties Act 1997* to exercise its functions in relation to stamp duty) as a consequence of the constitution of the Hardship Review Board under the *Taxation Administration Act 1996* by **Schedule 6 [3]** and replaces those sections with provisions that complement those to be inserted into the *Taxation Administration Act 1996* by **Schedule 6 [3]**.

Exemption from financial institutions duty

Schedule 5 [2] provides an exemption from payment of financial institutions duty, with effect from 1 July 2000, on the receipt of certain Commonwealth Government social security benefits, namely, a benefit or allowance under the *A New Tax System (Family Assistance) Act 1999* and a bonus payment under the *A New Tax System (Bonuses for Older Australians) Act 1999*.

Savings, transitional and other provisions

Schedule 5 [3] enables the making of regulations of a savings or transitional nature as a consequence of the enactment of the proposed Act.

Schedule 6 Amendment of Taxation Administration Act 1996

Liability of and between persons (including corporations)

Schedule 6 [1] amends section 45 of the Act. Section 45, as amended, will provide that the liability of a person (which includes a corporation) to pay an amount of tax also includes a liability to pay any interest, penalty tax and costs and expenses associated with the recovery of the tax. Section 45, as amended, will also give a person who pays an amount in accordance with the section such rights of contribution or indemnity from related persons as are just. The section is intended to consolidate similar provisions in other taxation laws and to strengthen them.

Hardship cases

Schedule 6 [3] inserts proposed Division 5 (containing sections 106A–106D) into Part 10 of the Act. The Division constitutes the Hardship Review Board and specifies its functions. Section 106A provides that the Board is to consist of the Chief Commissioner of State Revenue, the Auditor-General and the Secretary of the Treasury. Section 106B enables the Board to waive the payment of tax payable under a taxation law in cases of serious hardship. **Tax** is given an extended meaning by the section so as to include interest and penalty tax and costs and expenses of the Chief Commissioner. Section 106C enables the deferral and writing off of tax. Section 106D enables the Board, a member of the Board, or a person otherwise engaged in the administration of Division 5 to disclose information obtained in the course of the administration of that Division to a taxation officer.

Schedule 6 [2] makes a consequential amendment that allows a taxation officer to disclose information obtained in the administration of a taxation law to the Hardship Review Board.

Savings, transitional and other provisions

Schedule 6 [4] enables the making of regulations of a savings or transitional nature as a consequence of the enactment of the proposed Act.