



Legislative Assembly State Revenue Legislation Amendment Bill Hansard Extract

13/11/2002

Second Reading

Debate resumed from 29 October.

Mr J. H. TURNER (Myall Lakes—Deputy Leader of the National Party) [8.56 p.m.]: The Opposition does not oppose the bill, indeed, we support the measures in it. However, there are a number of matters of concern to us, including some aspects of land tax, and particularly the general application of land tax on property. The revenue from land tax has increased from about \$200 million in 1995 to more than \$1 billion at present. Such increases fall into line with the general approach of this high-taxing Government. However, the bill does not apply to the specific area of land tax, it applies to special trusts. We understand and accept the provisions in this legislation in that regard.

The aim of the legislation is to make New South Wales legislation more consistent with legislation in other States, increase the efficiency of tax collection, and update outdated provisions in Acts. This taxation bill, although it is entitled the State Revenue Legislation Amendment Bill, does not raise taxes. That is a start for the Government, which is one of the highest taxing governments in our history. The New South Wales Government taxes each person \$2,373, compared with the Queensland Government, which taxes each person about \$1,500. The Government has a reputation for being a high-taxing government. It was criticised by Standard and Poor's in its review of the New South Wales triple-A credit rating. Standard and Poor's acknowledged that the Government had produced a balanced budget, but said:

The strong property market has delivered the government enough, though unexpected, extra stamp duty revenue to offset its difficulty of keeping costs within budget.

That difficulty, as Standard and Poor's puts it, has run to \$5.5 billion between 1996 and 2002. In the 2001-02 financial year, Labor's worst yet, its expenditure ran over budget by \$1.6 billion. The bill contains a number of amendments to the State revenue legislation that will both clarify certain types of various Acts and improve the ability and efficiency of the Government in collecting revenue. The Coalition does not have any problems with these parts of the legislation. Changes have been made to the Duties Act, which adopts a new model for the imposition of mortgage duty for multijurisdictional mortgages. Mortgage duty will now be apportioned between States according to the value of the property in that State. This makes New South Wales legislation consistent with other States, including Victoria and Queensland. The Crown in other States will become liable to pay stamp duty in New South Wales for transactions made in this State. The New South Wales Government and the Federal Government will remain exempt from stamp duty.

Special trusts are currently taxed differently from other landowners. This is to prevent these trusts being used to avoid land tax. The legislation simplifies the definition of a "special trust", which is now considered to be a special trust if it is not a fixed trust; that is, it is considered a special trust if the equitable owners of the land in question cannot be identified. The legislation makes it clear that special trusts are not able to claim an exemption from land tax for a principal place of residence. That provision of the legislation allows and institutes reciprocal arrangements between the Office of State Revenue and its equivalent in other States for the purposes of investigation and enforcement. The Office of State Revenue will become authorised to undertake compliance audits on behalf of other New South Wales Government organisations. An example of this would be WorkCover. A single audit could be conducted into payroll tax and WorkCover premiums.

The Coalition has significant concerns regarding the proposed changes to the Petroleum Products Subsidy Act. Specifically, the changes to the Act will place a significant additional burden on service stations in the areas in the north of the State that receive the subsidy. This legislation will move the responsibility for claiming the petrol price subsidy from the buyer of the fuel to the seller. Already-busy service stations throughout this region will be forced to fill in forms to claim their subsidy. This also raises the issue of who will get the benefit of the subsidy scheme. Many service stations are subsidised by petroleum companies, which may reduce their payments to service stations to take account of the State Government subsidy.

The purpose of the change to the Petroleum Products Subsidy Act is to remove the opportunity for fraud by consumers who may attempt to claim both the Federal rebate for off-road diesel and the State rebate for on-road diesel. As the increased administrative burden on service stations from this change is large and the opportunity for fraud is limited, the cost to businesses of this proposal certainly outweighs any benefit that would be gained by the Government in reducing fraud in the scheme. This is yet another example of the increasing burden, both in terms of red tape and in high levels of taxation, that the Carr Labor Government has forced onto business. Although the

Coalition opposes this increased burden on business, it will not oppose the legislation. However, I ask that the Minister examine ways in which the administrative burden may be reduced.

Turning to the Government's amendments to the State Revenue Legislation Amendment Bill, it concerns me that it took an article in the *Australian Financial Review* for the Government to realise that it was being defrauded to the tune of millions of dollars through loopholes in the Duties Act. That is the reason these amendments will be moved—because the media is more on the ball than the Treasurer. Why were these amendments not included in the original legislation? An article in the *Australian Financial Review* of 2 November 2002 states:

The New South Wales Government is investigating a series of clever property deals that has left it millions of dollars out of pocket.

In what could prove to be one of its worse tax nightmares, major institutions attempting to bolster returns to shareholders are buying big ticket properties on extravagantly long leasehold titles, saving millions of dollars in stamp duty.

According to the *Australian Financial Review*, on a \$350 million investment in New South Wales or Victoria, striking a leasehold deal could save about \$18 million. There are two loopholes that these amendments are designed to close. The first relates to majority land acquisitions. The Duties Act includes provisions to charge duty on land transactions that are masked as transfers of shares or units in a company or trust that are considered "land rich". A majority interest test is applied to ensure that duty is paid when an interest of more than 50 per cent is acquired. It has become the practice for two unrelated entities to each acquire 50 per cent of a land-rich company or trust and not pay any duty at the transfer or conveyancing rate. This amendment will ensure that the land-rich provisions will apply, and that duty will be levied in situations in which unrelated entities acquire a majority interest in one arrangement.

Secondly, these amendments seek to close a loophole with regard to the use of long-term leases rather than freehold ownership of a property. As the rate of stamp duty on a lease, which is 35¢ per \$100, is far lower than the rate of duty on the transfer of land—up to 5.5 per cent—there is significant incentive to structure a property deal in this way. The amendments will remove the 12-month time limit in the Act to trigger the anti-avoidance provisions. This will certainly help to stop this practice among related parties.

However, if the parties are not related, the anti-avoidance provisions will apply only if the Chief Commissioner of the Office of State Revenue is satisfied that a significant purpose of the arrangement was to reduce dutiable value. These loopholes certainly need to be closed. I congratulate the Government on cracking down on tax avoidance. However, it concerns me that these measures were not incorporated into the legislation when it was originally drafted. The Coalition will not oppose these amendments.

Mr WHELAN (Strathfield—Parliamentary Secretary) [9.06 p.m.], in reply: I thank the honourable member for Myall Lakes for his comments. I foreshadow amendments to the bill. Since the introduction of the bill the Government's attention has been drawn to the need to make further amendment to the Duties Act to counter an increase in duty avoidance practices. The Office of State Revenue monitors business practices to identify emerging trends that may result in revenue leakage. Recent evidence suggests an escalation in the use of certain practices to avoid duty. Any delay introducing these amendments has the potential to encourage more widespread use of the practices at significant risk to revenue. I commend the bill to the House.