



State Revenue Legislation Amendment Bill

Second Reading

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STATE REVENUE LEGISLATION AMENDMENT BILL

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Second Reading

The Hon. IAN MACDONALD (Parliamentary Secretary) [9.10 p.m.]: I move:

That this bill be now read a second time.

I seek leave to have my second reading speech incorporated in *Hansard*.

Leave granted.

The State Revenue Legislation Amendment Bill contains amendments to the *Duties Act 1997*, *Land Tax Management Act 1956*, *Petroleum Products Subsidy Act 1997*, *Stamp Duties Act 1920* and *Taxation Administration Act 1996*.

I will deal with the amendments to each Act in turn.

Duties Act 1997

The *Duties Act 1997* is the product of an inter-jurisdictional project to rewrite stamp duties legislation. This project resulted in substantial changes to most forms of stamp duty to provide improved levels of uniformity between the States. Although many provisions relating to mortgage duty are uniform, agreement was not reached in relation to the treatment of mortgages over property in more than one jurisdiction.

Revenue offices in other States have undertaken a review of mortgage duty, and have developed a model for apportioning duty between the States on the basis of the property used as security at the time advances are made. Adoption of the model in the Bill represents a change from the current New South Wales mortgage duty provisions which apportion duty on the basis of the property used as security at the time of execution of the mortgage, subject to credits for duty paid in other States.

The model is currently used in Victoria, Tasmania, and Queensland. A similar scheme is already in place in South Australia and Western Australia. The Territories do not impose mortgage duty.

The model includes provisions intended to keep compliance costs to a minimum. For example, the model adopts a list of common reference points at which time the value of the property used as security is determined. The same point is used in each State to determine the value of the property for the purpose of apportioning duty.

The model also simplifies the method of stamping mortgages, by providing for the optional stamping of a single written statement, covering all mortgages in the package. The same statement can be used in each State, resulting in a reduction in the cost of compliance. To further avoid delays, the model allows mortgages or statements to be stamped prior to an advance being made.

Liability to stamp duty has historically been determined by the law in place at the time of execution of the document. Under the new model, all advances and further advances under

mortgages that have been executed since mortgage duty was introduced in 1975 will be chargeable with duty under the new provisions. This approach will result in administrative savings and a reduction in compliance costs.

The Bill also extends a number of concessions and exemptions from mortgage duty.

Where a loan is refinanced, a duty concession applies to the new mortgage that is taken to secure the amount of the balance outstanding. The concession effectively puts the mortgagor in the same position as if the refinancing had not occurred by deeming the new mortgage to be stamped to the same extent as the earlier mortgage.

A "refinancing" is generally identified by reference to "the same property" and "the same borrower". The current provisions, however, identify circumstances where the borrower or borrowers under the new mortgage are not required to be identical to the original borrower, for the exemption to still apply. These only apply where the borrowers are natural persons and are usually where there has been a death or divorce.

However, loans to corporations can also involve changes to the borrowers over time.

It is consistent with the existing exemption to allow members of a corporate group to retain the benefit of stamp duty paid on an earlier mortgage after refinancing. The Bill provides that, where the borrower under the earlier mortgage is a corporation, related bodies corporate are taken to be "the same borrower" for the purposes of the refinancing exemption.

The Bill provides for another exemption in relation to mortgage duty. Employees who borrow from their employer to participate in an offer to acquire shares in their employer may be asked to enter into a mortgage to secure a loan to finance the share offer. These are usually small amounts where the mortgage duty involved is only \$5. In many instances the duty would not be paid, as neither party would be aware of the liability to duty.

The Bill will exempt these types of mortgage documents where the total advance does not exceed \$16,000.

To enhance Sydney's position as a global financial centre, an exemption from marketable securities duty has been provided for a range of public unit trust mergers. The exemption will allow trusts whose administrative costs are high to merge with larger or growing trusts without incurring a duty liability. Managers with unnecessary numbers of NSW trusts will be able to merge them to achieve better economies of scale and competitiveness without the additional cost of duty.

Chapter 2 of the Duties Act imposes duty on "dutable transactions", which are a specified list of transactions in the nature of transfers. If there is a contract for sale, duty is payable within three months of the execution of that contract. Where no contract is entered into, duty is payable within three months of the transfer.

Where an agreement for the sale or transfer of dutiable property is cancelled, the purchaser under the agreement is entitled to a refund of duty (subject to certain limitations to prevent abuse of the provision). However, in cases where there is no contract, the Act currently does not contain any such provision for reassessment and refund of duty where a transfer instrument has been cancelled and the dutiable property has not been transferred.

The Bill provides that, where duty has been paid on a transfer document and the transfer of dutiable property does not proceed, the Chief Commissioner of State Revenue must reassess and refund the duty upon surrender of the transfer document to the Chief Commissioner.

The Duties Act provides for nominal duty to be paid on transfers of land arising from conversion of company title to strata title. This concession recognises that, while there is a change in legal ownership of the land (from the company to the individual shareholders), there is no change in the ultimate beneficial ownership of the property.

The Bill clarifies and strengthens this provision to apply concessional duty to all forms of conversion of title, provided the appropriate duty was paid on the original acquisition.

The Duties Act contains "land-rich" provisions that treat certain transactions over units in a unit trust as if the transaction were a dealing in the land directly. The provisions exclude unit trusts that are essentially publicly owned and traded. The definition of "public unit trust scheme" is therefore vital in determining which unit trusts are excluded from the tax base. The present definition does not clearly recognise unit trust schemes that are only accessible to wholesale investors (being superannuation and managed funds).

The Bill will clarify the definition and therefore exclude from the tax base trusts that have, as majority unit holders, public trusts.

The Bill will also clarify the definition to remove references to the Commonwealth Corporations Act so that the definition more clearly and directly identifies the type of arrangements that fall within the concept of a public unit trust scheme.

In determining whether a company or unit trust is "land-rich", the Duties Act includes land owned by subsidiaries as land owned by the parent entity. This is achieved by a notional winding up of the subsidiary so that the land and other assets of the subsidiary are included in the parent's balance sheet in place of the shares in the subsidiary.

There is an argument that the current provisions effect a "double counting" of the value of the shares, which could be used as a mechanism to avoid the land-rich provisions.

The Bill will amend these provisions to confirm that, when calculating the value of land "owned" by an entity, the proportionate value of land owned by a subsidiary is substituted for the value of the shares or units held by the parent entity.

The Duties Act does not bind the Crown in any capacity. Purchases of dutiable property by Crown bodies of any jurisdiction are therefore not subject to duty. In the past, this was the consistent policy position of all Australian States. However, most jurisdictions now impose duty on purchases by Crown bodies of other States.

The Bill will align the New South Wales position by binding the Crown in any capacity (to the extent that this is within the legislative power of the Parliament). Exemption has been retained for the New South Wales Crown unless other legislation expressly provides for liability.

Duty is imposed on transfers of specific items of "dutiable property", including certain business assets. This includes "intellectual property", which comprises business names, trading names, trade marks, industrial designs, patents, registered designs and copyright.

It is becoming increasingly common for sales of businesses to include separate consideration for the value of web sites, databases and domain names (internet addresses). Copyright may subsist in the matters contained on web sites and databases, which are therefore dutiable property. However, the domain name does not fall within any of the specified categories of intellectual property.

It is anomalous that a web site can comprise dutiable property, whereas the right to maintain an address for that web site is not dutiable property. The non-dutiability of domain names causes difficulties in apportioning consideration between the different items of property that are being sold.

The Bill will add domain names to the list of matters comprising intellectual property for the purposes of determining dutiable property.

The Duties Act contains a provision to ensure that ad valorem duty is not paid more than once on what is essentially the same transaction. The Bill amends this provision to clarify that this extends to a declaration of trust where duty has been paid on an earlier declaration of trust of that

same trust.

Land Tax Management Act 1956

For land tax purposes, a special trust is defined as a trust in which none of the potential beneficiaries are regarded as owners, and includes a discretionary trust. The effect is that where the trustee of a trust is the only person who is liable for land tax on trust land, the trust is not entitled to the tax free threshold (currently \$220,000) and instead pays the flat rate of tax of 1.7% of the land value of trust land. None of the beneficiaries are liable to pay land tax on trust land. In contrast, beneficiaries of a fixed trust are assessed on their respective interests in the trust.

This method of taxing special trusts ensures that owners of land are not able to establish multiple trusts to hold various interests in land, and claim multiple tax free thresholds. It also simplifies the assessment process by avoiding the need to tax both the trust and the beneficiaries.

The Bill clarifies the definition of special trust by replacing the existing definitions of "special trust" and "discretionary trust" with a definition which would apply the special trust provisions to any trust in which no person other than the trustee is deemed to be an owner.

The Bill also includes a specific exemption for trusts that are created for the benefit a person with an intellectual or physical disability, or an under-age person, and retains exemption for charitable trusts and trusts created by a will.

A trustee of a fixed trust will be required to notify the Chief Commissioner of the beneficiaries of the trust, and to allow the Chief Commissioner to classify a trust as a special trust if the trustee does not do so.

The Bill closes a loophole in the current legislation which allows the exemption for a principal place of residence to be claimed where one of the joint owners of a home is a special trust, and the trustee is a natural person.

Under the current legislation, land used and occupied as the principal place of residence of an owner is exempt from land tax provided the owner, or all of the owners in the case of jointly owned land, is a natural person. The legislation does not allow an exemption where the owner-occupier is an owner simply in his/her capacity as a trustee.

Under the current provisions an owner/occupier could own one per cent of a home in his or her own right, and ninety nine per cent as trustee of a special trust and still be eligible for the exemption.

The Bill closes this loophole by removing eligibility for the exemption where a special trust has an interest in the land.

Petroleum Products Subsidy Act 1965

The Petroleum Products Subsidy Act regulates the payment of subsidies under the zoning scheme which applies along the New South Wales/Queensland border.

The subsidy scheme allows petroleum wholesalers and retailers located in northern New South Wales to compete on an equal footing with their Queensland counterparts, who receive a subsidy from the Queensland Government.

The Bill removes or modifies a number of provisions which have become redundant as a result of the transfer of responsibility for payment of off-road diesel subsidies from the States to the Commonwealth, in conjunction with the introduction of the GST in July 2000.

In addition, the Bill strengthens certain administrative and enforcement provisions.

For example, the Bill makes it an offence to sell or consume subsidised petroleum products in contravention of the legislation unless the relevant subsidy is repaid to the Chief Commissioner within a specified time frame.

Sellers of subsidised fuel other than service stations will be required to include details of the amount of the subsidy on their invoices.

The Bill makes it an offence for purchasers to falsely represent that they are entitled to purchase subsidised fuel.

The maximum penalties for these new offences is 100 penalty units, or \$11,000, which is the same as most of the penalties for existing offences.

The Bill replaces detailed and onerous record keeping requirements which are currently set out in the Regulation, with a general record-keeping requirement.

In addition, the Bill transfers from the Regulation to the Act, certain provisions relating to subsidy claims, the maximum subsidy payable and the Chief Commissioner's powers of investigation.

NSW currently pays an average of about \$3.3m per month in zone subsidies, of which about \$1.2m per month is for on-road diesel and \$2.1m is for motor spirit. The amendments contained in the Bill will minimise the risk of revenue loss due to fraud by sellers and consumers.

Taxation Administration Act 1996

The Revenue Laws (Reciprocal Powers) Act 1987 was part of legislation introduced in each State and Territory and the Commonwealth to enable the enforcement of the taxation laws of each jurisdiction by means of the exchange of information and the conduct of investigations.

At the time of its introduction, the reciprocal powers arrangements applied common provisions to all tax investigations by and on behalf of other jurisdictions. Since then, the Taxation Administration Act has adopted common provisions for each NSW taxation law in relation to investigations by NSW tax officers. However, the two Acts are not entirely consistent. In addition, there is some overlap between the information disclosure provisions in the two Acts.

Until now, the two Acts could not be merged as the reciprocal powers provisions also applied to some revenue laws that were not, at the time, under the administration of the Office of State Revenue. This problem has now been resolved by the transfer of the administration of betting tax and gaming machine tax to the Office of State Revenue.

Incorporating reciprocal powers for tax investigations in the Taxation Administration Act will eliminate the inconsistencies and overlap between the two Acts, and would be consistent with the arrangements in place or being adopted in other jurisdictions.

The Office of State Revenue currently undertakes compliance audits and investigations in relation to State taxation laws and other matters under the Office of State Revenue's administration, such as the First Home Owner Grant.

Undertaking compliance audits on behalf of other agencies would provide an opportunity for improved efficiency and effectiveness of the Office of State Revenue's operations, as it would involve joint audits for State taxation purposes as well as for compliance with other laws. It would also send a strong message about agencies working together to improve compliance levels.

There are potential benefits for efficiency and effectiveness in allowing different government agencies to cooperate in compliance audits. The Bill therefore authorises the Chief Commissioner of State Revenue to enter arrangements with other public authorities for the exercise of investigative and audit functions under non tax laws. The Bill will also authorise the Chief Commissioner to exercise such functions in conjunction with an investigation under a taxation law.

The exercise of this function would, of course, be subject to the other public authority being authorised to make such arrangements.

I commend the Bill to the House.

The Hon. JOHN RYAN [9.11 p.m.]: The Opposition does not oppose the State Revenue Legislation Amendment Bill. It is the product of an interjurisdictional project to rewrite the stamp duties legislation. It is incomprehensible but sensible legislation. Noting the Government's continuous appetite for taxation, the Opposition supports the bill.

Reverend the Hon. FRED NILE [9.11 p.m.]: The Christian Democratic Party supports the State Revenue Legislation Amendment Bill. This legislation re-emphasises the Government's—

The Hon. John Ryan: Commitment to taking money.

Reverend the Hon. FRED NILE: Yes, its anxiousness to take as much money as it can from as many people as possible. Many people are unhappy about the land tax measures and, even though amendments have been made to the payroll tax provisions, they are also causing concern. Stamp duty should be examined because of the building sales boom that is reaping the Government a huge increase in stamp duty income. That should be reviewed as a major priority to take pressure off young families trying to buy a first home.

The Hon. IAN MACDONALD (Parliamentary Secretary) [9.12 p.m.], in reply: I thank honourable members for their comments on this bill. As usual, they were very erudite. The Government will take due consideration of them. I commend the bill.

Motion agreed to.

Bill read a second time and passed through remaining stages.

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