



## NSW Legislative Council Hansard

### State Revenue Legislation Further Amendment Bill

Extract from NSW Legislative Council Hansard and Papers Tuesday 29 November 2005.

#### Second Reading

**The Hon. MICHAEL COSTA** (Minister for Finance, Minister for Infrastructure, and Minister for the Hunter) [5.22 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 purpose of this bill is to make amendments to the *Duties Act 1997*, *First Home Owner Grant Act 2000*, *Insurance Protection Tax Act 2001*, *Land Tax Management Act 1956*, *Pay-roll Tax Act 1971*, *Petroleum Products Subsidy Act 1997* and the *Taxation Administration Act 1996*.

The bill makes a number of amendments to these revenue, grant and subsidy Acts to ensure that the legislation remains consistent with current commercial practices, and is more equitable and certain in its application. The proposed amendments are the result of monitoring of business practices by the Office of State Revenue [OSR], ongoing liaison with industry and professional bodies, and consultation with revenue offices in other States.

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

#### Amendment of the Duties Act

The major amendments to the Duties Act are to close off 2 mortgage duty avoidance practices.

Where a loan is secured by mortgages of property in New South Wales and another State, New South Wales duty is payable only on the New South Wales proportion of the property used as security. A duty avoidance practice has been uncovered whereby the proportion of New South Wales property is artificially reduced by omitting New South Wales property from the security until after the date at which the liability to duty is calculated.

The avoidance practice takes advantage of an administrative provision in the legislation to bring forward the liability to a date before any loan amounts have been advanced, and therefore before most of the New South Wales property has been included as security. The amount of duty avoided amounts to several million dollars each year.

The bill limits the use of the administrative provision to genuine cases where the property included at the liability date is sufficient to secure the loan advances.

The second avoidance practice relates to an exemption that formerly applied to mortgages securing advances under debentures issued by a corporation. In 1999, this exemption was changed to a more limited concession to prevent avoidance practices. As a result of further identified abuses of these provisions, the concession was terminated in 2003 so that any new debenture arrangements could not be created to avoid payment of mortgage duty. Those amendments also ensured that mortgages previously eligible for the concession would be liable to duty on any further advances, but retained the exemption for mortgages executed prior to 1999.

Recent reviews by OSR have noted an increasing re-use of old debenture structures to facilitate new loans, which has the potential to cost the revenue several million dollars per annum. OSR records indicate that there are more than 700 of these old structures which may still be utilised to avoid duty on new advances.

The bill amends the provisions to close this avoidance avenue by providing that mortgage duty is payable on all new advances made under debenture structures regardless of the date of establishment of the original structure.

The remaining amendments to the Duties Act contained in the bill primarily extend various duty concessions.

The first is an extension to concessions relating to superannuation funds. The Australian Prudential Regulatory Authority, APRA, is introducing new registration requirements for superannuation funds, which are expected to result in the merger of a significant number of funds. The Duties Act contains existing concessions intended to ensure that where members move from one fund to another, the transfer of assets representing the value of the

members' benefits is not subject to duty. However, the Association of Superannuation Funds of Australia has advised that the concessions will not be adequate in all cases to allow assets and members to be transferred without the imposition of duty.

The bill therefore provides further duty concessions for the transfer of property from the custodian of one superannuation scheme to the custodian of another scheme where members are transferring to another fund. Relief is also provided for the transfer of property held by a Pooled Superannuation Trust to another scheme as a result of a fund merger or transfer of members.

Land rich duty is payable on the acquisition of an interest in certain land holding unit trusts as if it were a transfer of land. A concession applies to wholesale unit trust schemes, which are defined by reference to a list of persons who are qualified investors. The bill extends this list, and limits the instances in which responsible entities of managed investment schemes can be treated as associated persons. These changes will increase the number of schemes that are eligible for the concession, and reduce the number of transactions that are subject to duty.

The bill extends the period for a concessional rate of insurance duty to apply to insurance effected under the Debtors Insurance Scheme operated by the Stock and Station Agents Association. This concession was originally limited to insurance effected up to 1 February 2005, but the Association subsequently requested an extension due to continuing financial difficulties caused by the drought. The bill extends the concession until 31 January 2010.

The bill implements 3 new exemptions from duty. The first is for transactions entered into for the purposes of an approved home equity release scheme for aged home owners. Many older people have valuable homes, but have little cash on which to live. An equity release scheme allows the home owner to access part of the value of their home without affecting their right to reside in, lease or sell the property.

Such schemes provide home owners with cash in exchange for the right to a specified percentage of the future sale proceeds when the home is eventually sold. The owner's liability under an equity release scheme is capped to a share of the sale proceeds. These schemes are essentially financing transactions, but will in some cases require an agreement to transfer the agreed share in the property, which would be liable to transfer duty. The Government announced an exemption from duty for these transactions with effect from 1 October 2004. The bill gives effect to that announcement.

To allow flexibility in the design of these schemes, the exemption will be subject to approval by the Chief Commissioner of State Revenue, in accordance with guidelines approved by the Treasurer.

The bill also introduces new exemptions from two anti-avoidance provisions. Consultation between OSR and industry groups has identified unintended consequences of these provisions. The bill therefore provides an exemption from call option assignment duty where a person who acquires options over property that is to be held in a trust or syndicate assigns those options to a special purpose vehicle for the purpose of raising funds. An exemption from mortgage duty is also added in relation to transferred mortgages, including for mortgages transferred between members of a group of corporations, or in connection with mortgage backed securities, or to a new security trustee.

### **Amendment of the First Home Owner Grant Act**

The First Home Owner Grant scheme is a national scheme administered by the States and Territories under 8 separate Acts. State revenue offices have identified some minor inconsistencies in the eligibility criteria for the grant and in the administration of the scheme, and have agreed to recommend amendments to the legislation to address those issues. The amendments in the bill arose from that process.

The first amendment is to increase the minimum age limit for applicants from 16 years to 18 years, consistent with the limit in all other States and Territories. Applicants aged under 18 will still be eligible for the grant in certain circumstances. A similar amendment is made to the First Home Plus scheme.

The second is to allow an applicant to be eligible on a second application if the original grant was paid back and any penalty in relation to the earlier application was paid. This situation arises most commonly where the applicant fails to occupy the home as his or her principal place of residence, and is therefore required to repay the grant. Most other States have already amended their legislation to allow payment of the grant in these circumstances.

To complement this provision, the bill also limits the prior ownership restriction, which provides that the grant is only payable on the applicant's first home. To ensure that a small period of occupation does not render the applicant ineligible, prior ownership of residential property will only render the applicant ineligible if he or she occupied the home for a continuous period of at least six months.

The bill also clarifies the circumstances in which the Chief Commissioner may exercise certain discretionary powers. Eligibility for the grant includes a residence requirement, which states that the applicant must occupy the home as his or her principal place of residence for at least six months commencing within 12 months of purchase. The Chief Commissioner is given the power to extend the period of 12 months, to reduce the period of 6 months, or to waive the residence requirement completely. The discretions are intended to allow the grant to be retained in circumstances where the applicant genuinely intended to occupy the home as his or her principal place of residence, but failed to do so due to a change in circumstances after the purchase of the home.

The legislation limits the time at which the Chief Commissioner can exercise this discretion. This could have unfair consequences, particularly where a failure to comply with the residence requirement arose from changes to the health, employment or financial situation of the applicant or the applicant's family. The bill confirms that the Chief Commissioner can exercise the discretions at any time.

Finally, the bill provides a right to object to decisions of the Chief Commissioner to require repayment of the grant or to impose a penalty, in addition to the existing right to object to the Chief Commissioner's decision on an application for the grant. This will formalise the existing practice of the Office of State Revenue.

As a result of these amendments, a small number of applicants who would currently be required to repay the \$7,000 grant will be eligible to retain the grant in future, and a small number of additional applicants will be eligible for the grant.

#### **Amendment of the Insurance Protection Tax Act**

The insurance protection tax raises funds for the Policyholders Protection Fund to cover certain claims under insurance entered into by insurers who become insolvent. In some circumstances, a policyholder will already be liable to cover those claims before any claim can be made against the Policyholders Protection Fund. In these cases, the policyholder is effectively paying twice for the same risk. The bill therefore allows the Treasurer to approve such insurance or class of insurance as exempt insurance for the purposes of the insurance protection tax.

#### **Amendment of the Land Tax Management Act**

The bill makes amendments to various exemptions from land tax.

Land currently qualifies for a land tax exemption if it is within a rural or non-urban zone and is used primarily for primary production; or if it is within an urban zone and is used in the course of carrying on a business of primary production.

The Local Government Act definition of "farmland" contains a more precise business test. The bill amends the land tax provisions to be consistent with that definition. These amendments will ensure consistency as between land tax and council rates, in relation to the classification of primary production land in urban zones.

The bill provides further concessions for an owner's principal residence. The land tax legislation allows a person who temporarily vacates his or her principal place of residence to retain the exemption for up to six years, provided the property is not rented for more than six months in a particular year and the owner resumes occupation or sells the land within six years.

However, if the owner fails to resume occupation within six years, the land becomes liable retrospectively for the entire six year period. The bill removes this retrospective liability.

The bill also contains minor amendments to remove an anomaly and simplify administration of the exemption for vacant or unutilised land intended to be the owner's principal residence.

When the State Revenue Legislation Further Amendment Bill 2004 was being debated, the Government agreed to introduce amendments to the exemption from land tax for land subject to conservation agreements, to restrict it to agreements made for an indefinite period.

This will provide an incentive for owners to sign indefinite conservation orders. The bill incorporates this amendment, in accordance with the Government's commitment.

The bill also makes a number of statute law amendments to remove redundant provisions, and to update certain section references and exempt organisations due to changes in other legislation.

#### **Amendment of the Pay-roll Tax Act**

The bill makes amendments relating to the liability to pay-roll tax on share schemes benefits and long service leave contributions to industry funds.

The Pay-roll Tax Act taxes shares and options provided to employees and company directors. A number of simplifying amendments were made earlier this year after extensive consultations with employer representatives.

The bill reinserts a provision that was inadvertently omitted by these earlier amendments. The provision which is being inserted retrospectively will enable employers to deduct any consideration for the acquisition of the shares when calculating the taxable value of shares and options.

The Pay-roll Tax Act currently taxes employers' long service leave and lump sum payments on termination of employment.

Central Industry Funds have been established in industries which have a mobile work force due to the project nature of the work, such as in the building industry. These funds allow employees who regularly move from one employer to another to qualify for long service leave and redundancy benefits based on their length of service in the industry rather than with a particular employer.

The bill provides for an employer's contribution to a Central Industry Fund to be taxed, but exempts amounts paid by the employer to an employee to the extent that the employer is reimbursed by the Central Fund.

This ensures that an employer is only liable to pay tax on contributions relating to the period during which an employee worked for the particular employer.

#### **Amendment of the Petroleum Products Subsidy Act**

The petroleum products subsidy scheme ensures that New South Wales sellers of eligible petroleum products near the Queensland border are able to compete fairly with Queensland sellers of on-road fuel, who receive subsidies from the Queensland Government.

The New South Wales scheme provides for payment of subsidies to service station operators and distributors selling bulk fuel to end users located in 5 zones extending south from the New South Wales—Queensland border. The subsidy is payable when diesel intended for on-road use, or petrol, is purchased from a service station. A subsidy is also payable to a distributor who sells on-road diesel or petrol to a consumer for the purpose of operating a business within one of the five zones.

If a distributor or a consumer purchase subsidised fuel when they are not entitled to do so, the legislation requires them to repay the subsidy to the Chief Commissioner of State Revenue. However, the legislation does not provide a mechanism for the Chief Commissioner to recover such overpayments.

The bill includes provisions to allow the Chief Commissioner to issue a notice of assessment where a subsidy recipient is required to repay the subsidy. In cases of dishonesty, the Chief Commissioner will be able to impose a penalty up to the amount of the subsidy that must be repaid.

The bill also authorises the Chief Commissioner to charge interest if the person enters into an arrangement for repayment by instalments.

In determining the amount of any penalty, the Chief Commissioner will be required to apply the principles relating to penalty tax and interest under the Taxation Administration Act.

The bill extends the rights of subsidy recipients to object or appeal to the Administrative Decisions Tribunal and the Supreme Court in relation to a requirement to refund a subsidy or to pay a penalty or interest.

These proposals are consistent with current provisions for repayment of a grant under the First Home Owner Grant Act.

#### **Amendment of the Taxation Administration Act**

The bill makes it clear that the Chief Commissioner of State Revenue may enter into arrangements with corresponding Commissioners in other Australian jurisdictions for the purpose of carrying out investigations under New South Wales taxation laws in those other jurisdictions.

The bill also makes it clear that statutory State Owned Corporations are not grouped for pay-roll tax purposes merely because they have the same two Government Ministers as their notional shareholders. This recognises that State Owned Corporations operate independently of each other despite the fact that they may be responsible to the same Minister.

Matters to be considered by the Legislation Review Committee: Under section 8A of the Legislation Review Act 1987, the Legislation Review Committee is required to consider each bill and report to both Houses of

Parliament on the impact of the bill on certain matters affecting personal rights, liberty and obligations, and parliamentary scrutiny of delegated legislation.

The amendments dealing with stamping of mortgages secured on interstate property and the closure of the concession for mortgages associated with debenture issues are taken to have commenced on the date this bill was introduced in the Legislative Assembly. The committee has previously noted that allowing a period of time between introduction of a taxation bill and the commencement of that law can, in some circumstances, undermine the intent of that law. As these provisions are targeted as specific duty avoidance practices, it is appropriate that they commence from the time the intention to amend is made public.

I am pleased to say that in other respects, this bill not only contains provisions that are reasonable and necessary to protect the revenue without unduly trespassing on personal rights or liberties, but also clarify taxpayers' rights and obligations, including extension of the categories of reviewable decisions.

I commend the bill to the House.