

## **Explanatory note**

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

Overview of Bill

The objects of this Bill are as follows:

(a) to amend the *Duties Act 1997*:

(i) to extend certain duty concessions under that Act and to provide for new concessions, and

(ii) for law revision purposes,

(b) to amend the *First Home Owner Grant Act 2000* to increase the first home owner grant cap,

(c) to amend the *Land Tax Management Act 1956* to extend certain land tax concessions under that Act,

(d) to amend the *Payroll Tax Act 2007* to make further provision with respect to liability for payroll tax in respect of shares or options granted to employees by employers.

Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

Explanatory note page 2

State Revenue Legislation Further Amendment Bill 2010

Explanatory note

**Clause 2** provides for the commencement of the proposed Act.

**Schedule 1 Amendment of Duties Act 1997 No 123**

**Duties concessions**

**Schedule 1 [1]** extends an existing duty concession that applies to certain transfers of dutiable property that are made as a consequence of the retirement of a trustee or the appointment of a new trustee. Duty of \$50 will be charged on such a transfer that is made to a trustee of a self managed superannuation fund if the Chief Commissioner is satisfied that the transfer is not part of a scheme for conferring an interest on a new trustee or other person to the detriment of the beneficial interest or potential beneficial interest of any person. An existing duty concession does not apply to such a transfer because generally in self managed superannuation funds the trustees will be beneficiaries under the trust. **Schedule 1 [15]** inserts a definition of ***self managed superannuation fund*** in the Dictionary.

**Schedule 1 [4]** extends an existing duty concession that applies to certain transfers of dutiable property that are made in connection with a person changing superannuation funds. The amendment provides for payment of duty at the concessional rate of \$500 on a transfer of marketable securities from the trustee of a superannuation fund, or a custodian of the trustee of a superannuation fund, made in exchange for the issue of units in a pooled superannuation trust to a trustee of the pooled superannuation trust where the transfer is made in connection with changing superannuation funds.

**Schedule 1 [3]** makes it clear that the same concessions that apply to a transfer made in connection with a person changing superannuation funds also apply in respect of an agreement to transfer that is made in that regard. **Schedule 1 [6]** makes it clear that duty will be charged on both the agreement and the transfer at the concessional rate of \$500 (or the ad valorem rate, if lower). **Schedule 1 [5]** is a consequential amendment.

**Schedule 1 [7]** provides for a concession in respect of a transfer of, or an agreement to transfer, dutiable property that is made to the custodian of the trustee of a self managed superannuation fund by the sole member of that superannuation fund. Duty is charged at the concessional rate of \$500.

**Schedule 1 [7]** also provides that the concessional rate for transfers to a self managed superannuation fund does not apply if, as a result of the transfer, the fund ceases to be a complying superannuation fund.

**Schedule 1 [11]** updates a provision that exempts from duty an application to register a motor vehicle that is made by a war veteran entitled to a pension under the *Veterans' Entitlements Act 1986* of the Commonwealth, so that the provision extends to other defence force officers entitled to similar benefits under the *Military Rehabilitation and Compensation Act 2004* of the Commonwealth.

Explanatory note page 3

State Revenue Legislation Further Amendment Bill 2010

Explanatory note

#### **Other amendments**

**Schedule 1 [10]** clarifies that debt interests are to be disregarded in determining whether a person has a significant interest in a landholder, in the same way as they are disregarding in determining whether a person has an interest in a landholder.

**Schedule 1 [9]** is a consequential amendment.

**Schedule 1 [14]** removes the definition of *mortgage* from the Dictionary to the *Duties Act 1997* because it is inconsistent with changes made to the concessional provisions applying to mortgage-backed securities and asset-backed securities by the *State Revenue Legislation Amendment Act 2010*.

**Schedule 1 [8]** updates a reference to the *Pharmacy Practice Act 2006*, which has been replaced by the *Health Practitioner Regulation National Law (NSW)*.

**Schedule 1 [2]** ensures that a duty concession that applies when there is a change in custodians of a trust applies even if the trustee of the trust has changed since the retiring custodian was appointed.

**Schedule 1 [12]** enables savings and transitional regulations to be made as a consequence of the proposed amendments.

**Schedule 1 [13]** provides for transitional matters.

#### **Schedule 2 Amendment of First Home Owner Grant**

##### **Act 2000 No 21**

**Schedule 2 [1]** increases the eligibility cap for the first home owner grant from \$750,000 to \$835,000. The increase applies in respect of eligible transactions occurring on or after 1 January 2011 (see **Schedule 2 [3]**). **Schedule 2 [2]** enables savings and transitional regulations to be made as a consequence of the amendment.

#### **Schedule 3 Amendment of Land Tax Management**

##### **Act 1956 No 26**

Currently, a trust established by will is not a special trust for land tax purposes for the period of 12 months after the death of the testator. **Schedule 3 [1]** extends that period to 2 years and removes the Chief Commissioner's discretion to approve longer periods in particular cases.

**Schedule 3 [2]** extends the period during which land used as a principal place of residence by the owner of the land continues, after the death of the owner, to be exempt from land tax from 12 months to 2 years.

**Schedule 3 [3]** enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.

**Schedule 3 [4]** provides that the amendments apply only in respect of a death occurring on or after 1 January 2010 and to the assessment of land tax liability in respect of the 2011 land tax year and subsequent land tax years.

Explanatory note page 4

State Revenue Legislation Further Amendment Bill 2010

Explanatory note

#### **Schedule 4 Amendment of Payroll Tax Act 2007**

##### **No 21**

**Schedule 4 [2]** provides that a grant of a share or an option to an employee by an employer, in respect of services performed by the employee, constitutes wages for the purposes of Division 4 of Part 3 of the *Payroll Tax Act 2007* (the *principal Act*) only if the share or option is an ESS interest and is granted to the employee under an

employee share scheme (within the meaning of section 83A–10 of the *Income Tax Assessment Act 1997* of the Commonwealth). A grant of a share or an option to an employee by an employer that is not an ESS interest under an employee share scheme will be taxable as a fringe benefit under Division 2 of Part 3 of the principal Act.

**Schedule 4 [7] and [8]** make consequential amendments to make it clear that the grant of a share or option by a company to one of its directors (who is not an employee of the company) is to be taxed under Division 4 of Part 3 of the principal Act, or as a fringe benefit, even if it is not an ESS interest granted under an employee share scheme.

An employer can elect to treat either the date on which a share or an option is granted to an employee or the vesting date for the share or option as the date on which the wages are taken to be paid for the purposes of payroll tax. **Schedule 4 [3]** sets out the circumstances in which a share or option is taken to be **granted** to a person for the purpose of determining when payroll tax is payable. The provision replaces a reference to a repealed provision of the *Income Tax Assessment Act 1936* of the Commonwealth which set out those circumstances. **Schedule 4 [4]** provides that the vesting date of a share or option is taken to be the date at the end of 7 years after the grant of the share or option, if it has not occurred before that date.

The principal Act currently provides that the value of shares or options is to be determined in accordance with provisions of the *Income Tax Assessment Act 1936* of the Commonwealth that have been repealed. **Schedule 4 [6]** provides that the value of shares or options is either the market value or the amount determined in accordance with new provisions in the *Income Tax Assessment Act 1997* of the Commonwealth. The employer may elect the method by which the value of the share or option is determined in any return lodged by the employer. **Schedule 4 [5]** is a consequential amendment.

**Schedule 4 [1]** removes a reference in the definition of **share** in the principal Act to a provision of the *Income Tax Assessment Act 1936* of the Commonwealth that has been repealed. As a result, a “stapled security” will have its ordinary meaning for the purposes of the definition, as it does in other legislation.

**Schedule 4 [9]** enables savings and transitional provisions to be made as a consequence of the proposed amendments.

**Schedule 4 [10]** inserts savings and transitional provisions that:

(a) validate any decision made by an employer before the commencement of the proposed amendments to treat the grant of a share or an option as a fringe benefit for the purposes of payroll tax (rather than as a share or option under Explanatory note page 5

State Revenue Legislation Further Amendment Bill 2010

Explanatory note

Division 4 of Part 3 of the principal Act) if that decision would have been validly made had the proposed amendments been in force, and

(b) allow for certain shares or options to continue to be treated as shares or options to which Division 4 of Part 3 (as amended by the proposed Act) applies, even if, as a result of the amendments, the shares or options should be treated as fringe benefits under Division 2 of that Part, if the shares or options were granted before 1 July 2011 (the commencement date for the proposed amendments).