



New South Wales

State Revenue Legislation Further Amendment Bill 2014

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 prevent avoidance practices by imposing duty on certain transactions involving options to purchase land in New South Wales, and
 - (ii) to prevent avoidance practices by imposing duty on the novation of an agreement for the lease of land in New South Wales as if it were a transfer of dutiable property, and
 - (iii) to make further provision for the duty payable on transactions involving self managed superannuation funds, and
 - (iv) to exempt a same owner transfer of registration of a heavy vehicle trailer from registration duty,
- (b) to amend the *Land Tax Management Act 1956* to change the rules for the grouping of companies under that Act,
- (c) to amend the *Payroll Tax Act 2007* to clarify and restrict certain exceptions from the contractor provisions under that Act,
- (d) to amend the *Payroll Tax Rebate Scheme (Jobs Action Plan) Act 2011* to permit a rebate to be claimed for an internally transferred employee who is employed in a new job.

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.

Schedule 1 Amendment of Duties Act 1997 No 123

Options to purchase land

Schedule 1 [4] (proposed section 9B) ensures that certain transactions involving options to purchase land are dutiable in the same way as a transfer of an option to purchase land. The amendments provide that a transfer of an option to purchase land in New South Wales is taken to occur if, for valuable consideration:

- (a) another person is nominated to exercise the option, or
- (b) another person is nominated as purchaser or transferee of the land the subject of the option on or before the exercise of the option, or
- (c) the option holder agrees to a novation of the option, or otherwise relinquishes rights under the option, so that another person obtains a right to exercise the option or to purchase the land.

Schedule 1 [5] provides that the consideration for a transfer of land that occurs as a consequence of the exercise of an option to purchase land is taken to include the amount or value of the consideration provided by or on behalf of the transferee for the option. (The dutiable value of a transfer of land is calculated by reference to the consideration for the transfer.)

Schedule 1 [8] ensures that the duty chargeable in respect of a transfer of land that occurs as a consequence of the exercise of an option to purchase land is reduced by the amount of duty (if any) paid by the transferee on the transfer of the option to the transferee.

Novation of agreement for lease of land

Schedule 1 [4] (proposed section 9C) imposes duty on the novation of an agreement for the lease of land in New South Wales as if it were a transfer of dutiable property. The lessee's interest in the agreement for lease is taken to be dutiable property and the novation of the agreement is taken to be a transfer of that dutiable property. The amendment ensures that a novation of an agreement for the lease of land is not used as a way of avoiding duty on a transaction that has a similar effect to transferring a lease of land (a transfer of a lease of land in New South Wales is a dutiable transaction under the *Duties Act 1997*). Under the amendment, the new lessee will be liable for duty on the novation of the agreement for lease.

Self managed superannuation funds

Schedule 1 [6] changes a concession that applies when a member of a self managed superannuation fund transfers property to the trustee or a custodian of the trustee of the fund. At present, duty is chargeable on such a transfer at a flat rate (rather than an ad valorem rate) if the transfer meets certain criteria (for example, the property transferred must be used solely for the purpose of providing a retirement benefit to the member who transfers the property).

The amendment makes it clear that:

- (a) the concession can apply if the transfer is made by more than one member of a self managed superannuation fund, and
- (b) if more than one member is transferring the property, the property must be used for the benefit of the members in the same proportions as it was held by them before the transfer, and
- (c) the concession does not apply if the property transferred is held by the member of the self managed superannuation fund in a trustee capacity.

The amendment also increases the concessional rate of duty on such a transfer from \$50 to \$500.

Schedule 1 [7] provides for charging of duty at a flat rate of \$500 on a declaration of trust made by a custodian of the trustee of a self managed superannuation fund that dutiable property is or is to be held in trust for the trustee of a named self managed superannuation fund. This nominal rate

of duty will apply if ad valorem duty was paid on the acquisition of the property by the custodian or the trustee, or the acquisition was chargeable with nominal duty only under section 62A of the *Duties Act 1997*, and consideration for the acquisition was provided by the trustee.

Duty on registration of heavy vehicle trailers

Schedule 1 [9] exempts from motor vehicle registration duty an application to register a heavy vehicle trailer that is a same owner transfer of registration. That is, an application for registration will be exempt if the trailer is or has been registered in the name of the person under legislation of the Commonwealth or of another State or a Territory.

Schedule 1 [9] also clarifies an existing exemption for heavy vehicle trailers that have never been registered so that it does not apply if the heavy vehicle trailer has previously been registered under the *Interstate Road Transport Act 1985* of the Commonwealth. (However, the new exemption for same owner transfers will apply to heavy vehicle trailers registered under that Act.)

Other amendments

Schedule 1 [10] provides for transitional matters relating to the proposed amendments.

Schedule 1 [3] clarifies a provision of the *Duties Act 1997* that makes a change in partnership arrangements subject to duty as a transfer of a partnership interest, to make it clear that such a transfer is treated as a dutiable transaction.

Schedule 1 [2] inserts a note in the *Duties Act 1997*, next to a key provision in that Act that outlines the types of transactions that are subject to duty under Chapter 2 of that Act, to alert the reader to other provisions that are relevant to determining whether a transaction is a dutiable transaction. It also removes a provision that is made redundant by the amendment in Schedule 1 [3]. **Schedule 1 [1]** is a consequential amendment.

Schedule 2 Amendment of Land Tax Management Act 1956 No 26

The *Land Tax Management Act 1956* permits related companies to be grouped for land tax purposes. This ensures that the land tax free threshold is applied only once to the land holdings of related companies.

Schedule 2 [6] ensures that 2 companies are not grouped for land tax purposes merely because the same person (or company) acting in a trustee or nominee capacity has a controlling interest in both companies. The 2 companies will be treated as related in such a case only if the trusts concerned are both fixed trusts with the same beneficiaries.

Schedule 2 [1]–[5] and [7] are statute law revision amendments. The purpose of the proposed amendments is to simplify the way in which the grouping rules are expressed. They do not make any change in substance.

Schedule 2 [8] applies the proposed amendments from the 2015 land tax year.

Schedule 3 Amendment of Payroll Tax Act 2007 No 21

As a general rule, contractual arrangements for the supply of services are subject to payroll tax as if the person engaged to perform the work under the contract was an employee and amounts paid under the contract were wages. This rule is subject to certain exceptions. The effect of those exceptions is to exempt certain contractual arrangements from payroll tax. **Schedule 3** restricts and clarifies those exemptions.

Schedule 3 [3] makes it clear that a contract under which a person is supplied with services ancillary to the conveyance of goods by vehicle is also exempt from payroll tax if the services are provided solely for the conveyance of goods by vehicle.

Schedule 3 [4] repeals exemptions for:

- (a) contracts under which services are provided solely for or in relation to the procurement of persons desiring to be insured, and
- (b) contracts under which services are provided for or in relation to the door-to-door sale of goods solely for domestic purposes.

Schedule 3 [6] (proposed section 32 (2A)) makes it a general rule that an exemption does not apply if the Chief Commissioner of State Revenue determines that the contract or arrangement under which the services were supplied was entered into with an intention either directly or indirectly of avoiding or evading payment of tax. This rule already applies to some, but not all, of the exemptions. **Schedule 3 [1], [2] and [5]** are consequential amendments.

Schedule 3 [6] (proposed section 32 (2B)) makes it clear that an exemption for a contract under which a particular kind of services are supplied, or a particular kind of work is performed, does not apply if additional services or work are supplied or performed under the contract.

Schedule 3 [7] is a transitional provision.

Schedule 4 Amendment of Payroll Tax Rebate Scheme (Jobs Action Plan) Act 2011 No 19

Schedule 4 [1] permits the Jobs Action Plan rebate to be claimed in respect of the employment of an internally transferred employee in a new job. A person is an *internally transferred employee* if the person's employment is transferred from one employer (the *former employer*) to another employer (the *new employer*) and either of the following applies:

- (a) the former and new employers are members of the same group for payroll tax purposes,
- (b) the transfer occurs because the business or undertaking of the former employer is merged with, or taken over or otherwise acquired by, the new employer.

At present, internally transferred employees are excluded from the rebate scheme.

A rebate is not payable unless the Chief Commissioner is satisfied that the former employer would have been eligible for a rebate in respect of the employment of the employee if the employment with the former employer had continued.

Schedule 4 [2] applies the proposed amendment to transfers in employment occurring on or after 1 July 2011.