STATE REVENUE LEGISLATION AMENDMENT BILL 2013

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Bill introduced on motion by Mr Troy Grant, on behalf of Mr Mike Baird, read a first time and printed.

Second Reading

Mr TROY GRANT (Dubbo—Parliamentary Secretary) [11.24 a.m.], on behalf of Mr Mike Baird: I move:

That this bill be now read a second time.

The State Revenue Legislation Amendment Bill 2013 is part of the Government's ongoing program of maintaining legislation governing taxes administered by the Office of State Revenue. The bill clarifies the liability to and exemption from duties and land tax, and includes measures to protect the State's tax revenue. The bill amends three taxation Acts. I will deal first with the amendments to the Duties Act 1997. The first amendment will clarify the duties liability of interests in mining tenements under the Mining Act 1992, being a mining lease, mineral claim, assessment lease, exploration licence and opal prospecting licence. For stamp duties purposes, mining tenements have historically been regarded as interests in the land over which they are granted. However, recent developments in the law have resolved that mining tenements are not interests in land but statutory licences. The bill, therefore, provides that the rights under all mining tenements are interests in land for duties purposes.

The bill further provides that the value of information obtained in relation to mining tenements, such as the results of investigations under an exploration licence, is included in the value of the interest in land. These proposals will ensure that transfers or acquisitions of interest in all mining tenements under the Mining Act will be subject to duty as if they were interests in land, will provide consistent duty treatment of direct and indirect acquisitions of mining tenements, and will increase harmonisation with the duties legislation of other States and Territories. The second duties amendment relates to options to purchase land, being the right, but not obligation, to acquire or sell something for a fixed price at some future date. A recent court decision suggests that certain transactions that result in the change of ownership of an option, including the nomination of a third party to exercise the option, would not attract duty on the value of the option even when substantial consideration is paid to acquire the option.

The acquisition of an option by a third party should be subject to transfer duty regardless of the form of the transaction. The bill therefore clarifies that the acquisition of an option by way of nomination or novation is taken to be a transfer of the option. This is consistent with the longstanding practice of the Chief Commissioner of State Revenue. The bill further provides that for the purpose of calculating duty the consideration paid for the transfer of the land includes the value of any consideration paid by the purchaser for the acquisition of the option. To prevent the possibility that the same taxpayer is, effectively, required to pay duty twice when the value of the option is included in the value of the land purchased, the bill also provides the ultimate purchaser with a credit for any duty paid on the acquisition of the option. Other changes to the Duties Act include two changes to landholder duty, being duty on the indirect acquisition of land through companies and trusts. The first change is to remove a provision that gives the Chief Commissioner a general discretion to exempt an acquisition from duty. The discretion is replaced by two new exemptions of a more targeted nature.

The second landholder duty change is in relation to a landholding company or trust that is a primary purchaser. At present, an acquisition of a primary producer landholder is exempted from duty in certain limited circumstances. This exemption is capable of being used by an investor who does not need to be directly engaged in primary production. The exemption is therefore removed by the bill to ensure that the same duty result applies to a direct or indirect acquisition of land used for primary production. The transfer of a primary producer company within a corporate group would still be eligible for exemption as a corporate reconstruction, and the transfer of a family farm between family members would still be eligible for exemption in most cases. The bill also includes other minor amendments to the Duties Act. These include changes to definitions and amendments in the nature of statute law revision.

The bill contains a number of amendments to the Land Tax Management Act 1956, being the principal Act. Under the principal Act land is exempt if it is owned by or in trust for a charitable institution or used solely as a site for a charitable institution. A recent Administrative Decisions Tribunal decision has highlighted an inconsistency in the legislation compared to the Duties Act and the Payroll Tax Act. The bill extends the land exemption to corporate bodies, societies and other charitable bodies that are carried on solely for charitable purposes and not for pecuniary profit of the members. The bill contains amendments to schedule 1A of the principal Act, which exempts an owner's principal place of residence [PPR].

The exemption currently applies if the owner or at least one of the joint owners uses and occupies the land as the person's principal residence. An owner may be absent from his or her exempt principal place of residence for a period of up to six years, but still retain the principal place of residence exemption provided the residence is not rented out for more than six months in the preceding calendar year. This bill removes an anomaly by omitting a requirement that an absent owner must live in another principal place of residence during absences from his or her normal residences. Under schedule 1A [7] of the principal Act a landowner may claim the principal place of residence exemption for two residences if a new residence is purchased during the six months prior to the commencement of the tax year.

The legislation currently exempts both the former principal place of residence and the new principal place of residence provided the former residence is sold before the end of the tax year. The bill removes the requirement to sell the former residence. Trustees who own land are liable for the land tax, but their tax liability is payable out of trust funds. For land tax purposes trusts are classified as either fixed or special trusts. Unit trusts are generally taxed as special trusts. This means the trust is ineligible to claim the tax-free threshold but unit holders do not pay a secondary tax liability. However, a unit trust can be classified as a fixed trust if its trust deed contains provisions called "relevant criteria", which have the effect of making the unit holders liable for land tax on a share of the trust land as secondary taxpayers.

ACTING-SPEAKER (Mr Gareth Ward): Order! Members who wish to have private conversations should do outside the Chamber.

I welcome to the visitors gallery student leaders from government schools in New South Wales from the Hunter-Central Coast region who are attending the Secondary Schools Leadership Program conducted by the Parliamentary Education Office. Also attending the program is Ms Anne Southwell from the Department of Education and Communities and Mrs Sumiranjeet Kaur, Principal of KV Masjid Moth, a government school in India. I welcome you to the Parliament. We are currently debating a bill that relates to amendment of the sales revenue legislation. The parliamentary secretary is giving a second reading speech on the bill. Speakers from both sides will have the opportunity to debate the legislation. On behalf of all members I welcome you to the Parliament of New South Wales.

Mr TROY GRANT: As a Novocastrian I extend my welcome as well to students in the visitors gallery. The bill includes clarifying changes to the relevant criteria applying to unit trusts to make it clear that a unit trust can only be classified as a fixed trust if only one class of units has been issued. The changes are consistent with the current interpretation of the Act applied by the Office of State Revenue. However, a transitional provision will allow a trust to qualify as a fixed trust for the 2014 tax year provided any necessary changes are made by 30 June 2014. Under section 20 of the principal Act a person who holds a life estate in land is deemed to be the owner for land tax purposes. Any person who holds the remainder or revisionary interest is excluded from liability for land tax. A life tenant's interest in the land continues for the life of a specified person who is usually the life tenant. On the death of that person the land reverts to someone else who is usually registered on the title.

Recently there has been a significant increase in the creation of life estates in land owned by companies and special trusts to obtain the benefit of the tax-free threshold or to avoid land tax altogether by qualifying for the principal place of residence exemption. The bill makes both the owner of the life estate and the owner of the revisionary or remainder interest liable for land tax. This ensures companies and special trusts cannot reduce their land tax liability by creating a life interest. However, an exception is allowed for life estates created under the express provisions of a will, which has been the traditional means by which life estates were created and which by its nature does not lend itself to tax planning.

As a result of amendments where a company holds the remainder interest in land, which is subject to a life estate, the land will not qualify for the principal place of residence exemption. In addition, if a company owns land as a trustee of a special trust, the special trust will not be entitled to the benefit of the tax-free threshold. The bill includes statutory law amendments for the purposes of the exemption for primary production land and land used for childcare services. These amendments reflect changes to the zoning of land under the Environmental Planning and Assessment Act and the application in New South Wales of the national law dealing with childcare services.

The bill includes amendments to the Taxation Administration Act 1996 to clarify and strengthen the chief commissioner's power to recover an unpaid corporate tax liability from directors and former directors. The amendments will require a notice of assessment to be issued to the directorate if the failure to pay the corporate tax liability is not rectified within the time specified in the compliance notice. In addition, the directors' joint and several liability will be extended to include any late payment, interest and penalty tax. The amendments contained in the State Revenue Legislation Amendments Bill 2013 were the subject of consultation with industry and professional bodies. The amendments will provide greater certainty for taxpayers in complying with State revenue legislation. including in relation to the application of various tax exemptions. I commend the bill to the House

Debate adjourned on motion by Mr Tony Grant and set down as an order of the day for a future day.