First print

New South Wales

State Revenue Legislation Amendment Bill 2013

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 make further provision for duty on transfers of options to purchase land, including to prevent avoidance practices, and
- (ii) to make further provision for the duty on transfers of mining tenements or land subject to a mining tenement, and
- (iii) to refine the power of the Chief Commissioner of State Revenue (the ***Chief Commissioner***) to grant exemptions from landholder duty, and
- (iv) to specify a time limit for the lodging of landholder acquisition statements, and
- (v) to remove a landholder duty concession that applies to acquisitions in a landholder that holds land used for primary production, and
- (vi) to specify new exceptions to rules relating to the aggregation of interests of related persons and associated persons, and
- (vii) to make other minor miscellaneous amendments,

(b) to amend the *Land Tax Management Act 1956*:
  (i) to specify additional rules that a unit trust must comply with to be treated as a fixed trust for land tax purposes, and
  (ii) to update and clarify various land tax exemptions, and
  (iii) to change the land tax rules for life estates, to prevent avoidance practices, and
  (iv) to simplify the land tax concession that applies when a person acquires a new principal place of residence, and
  (v) to simplify the land tax concession that applies when a person is absent from his or her principal place of residence,

(c) to amend the *Tax Administration Act 1996* to make further provision for the liability of directors for unpaid corporate tax.

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

Transfers of options to purchase land

Schedule 1 [1] and [2] ensure that certain transactions involving options to purchase land are dutiable in the same way as transfers of options 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) the option holder nominates another person to exercise the option, or

(b) the option holder nominates another person 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 his or her rights under the option, so that another person obtains a right to purchase the land.

Schedule 1 [3] provides that the consideration for a transfer of dutiable property that occurs when an option to purchase land is exercised is taken to include the amount or value of the consideration provided by the transferee for the option.

Schedule 1 [6] ensures that the duty chargeable in respect of a transfer of dutiable property that occurs on 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.

Mining tenements

Schedule 1 [20] provides that a mining tenement in relation to land is taken to give the holder an interest in land. An interest in land is dutiable property and, accordingly, a transfer of an interest in land is subject to duty. An interest in land is also treated as land holding of a landholder for the purposes of landholder duty. At present, only mining leases and mineral claims are treated as interests in land. As a result of the amendment, assessment leases, exploration licences and opal prospecting licences will also be regarded as giving the holder an interest in land. **Schedule 1 [17]** is a consequential amendment.

Schedule 1 [4] requires the unencumbered value of an interest in land arising because of a mining tenement to be determined having regard to any information about the land.

Landholder duty

Schedule 1 [15] repeals a provision that gives the Chief Commissioner a general discretion to exempt or partially exempt an acquisition from landholder duty.

That general discretion is replaced by 2 new exemptions of a more targeted nature.

The first new exemption applies when property is held for the benefit of a beneficiary of a discretionary trust. Generally, a beneficiary of a discretionary trust is taken to own property the subject of the trust. The Chief Commissioner is given a discretion to waive that rule if the Chief Commissioner is satisfied it would be inequitable in the circumstances. See **Schedule 1 [10] and [11]**.

The second new exemption applies when an acquisition in a landholder is made as part of one arrangement involving several acquisitions of the same or part of the same land holding. The Chief Commissioner is given a discretion to exempt an acquisition if satisfied that to charge duty in the circumstances would result in double duty or multiple duty. See **Schedule 1 [13]**.

Schedule 1 [9] requires an acquisition statement for an acquisition that is subject to duty to be lodged with the Chief Commissioner within 3 months after it is made.

Schedule 1 [14] repeals a duty concession that applies when an acquisition is made in a landholder that holds land used for primary production. As a consequence, an acquisition of an interest in a landholder that is a primary producer will be subject to duty whether or not the landholder is land rich. The general rule (that the landholder must have land holdings in NSW with a threshold value of $2,000,000 or more) will still apply.

Aggregation of interests

The *Duties Act 1997* provides for the aggregation of the interests of related persons and associated persons in certain circumstances, as a means of preventing duty avoidance practices.

Schedule 1 [18] ensures that a natural person, or a private company, and a trustee of a discretionary trust are not automatically treated as related persons if the natural person or private company is a beneficiary of the trust.

Schedule 1 [19] ensures that the trustee of a complying superannuation fund and another trustee of a complying superannuation fund are considered to be associated persons by reason of having a common beneficiary, only if a member of the first fund (either alone or together with other members of the first fund who are related persons) has an interest in the other fund of more than 20%.

Other amendments

Schedule 1 [7] and [12] update definitions of ***matrimonial property*** and ***relationship property*** to reflect the power of the Family Court to order that property be treated as property of parties to a marriage or de facto relationship.

Schedule 1 [5] and [8] make minor amendments of a statute law revision nature.

Schedule 1 [16] provides for savings and transitional matters.

Schedule 2 Amendment of Land Tax Management Act 1956 No 26

Fixed trusts

Land that is subject to a fixed trust enjoys the benefit of a tax free threshold under land tax legislation. Land that is the subject of a special trust does not. **Schedule 2 [2]** provides for certain additional criteria that must be met before a unit trust is considered to be a fixed trust. The criteria require that:

(a) there must be only one class of units issued, and

(b) the proportion of trust capital to which a unit holder is entitled on a winding up or surrender of units must be fixed and must be the same as the proportion of income of the trust to which the unit holder is entitled.

Schedule 2 [1] and [10] are consequential amendments.

Land tax exemptions

Schedule 2 [3], [5] and [7] clarify existing land tax exemptions for charitable and educational institutions, to make it clear that they also apply to bodies corporate, societies, institutions or other bodies carried on solely for charitable or educational purposes.

Schedule 2 [6] updates a land tax exemption that applies in respect of land used for a child care service. The amendment is consequential on the commencement of the *Children (Education and Care Services) National Law (NSW)*. **Schedule 2 [4]** is a consequential amendment.

Schedule 2 [8] updates an exemption that applies to land zoned as rural land that is used for primary production. The amendment reflects changes in planning terminology brought about by the standard environmental planning instrument prescribed under the *Environmental Planning and Assessment Act 1979*.

Life estates

Schedule 2 [9] changes the way in which life estates are treated for land tax purposes, to prevent land tax avoidance practices. At present, the owner of a freehold estate that is less than the fee-simple is taken to be the owner of the land, to the exclusion of any person entitled in reversion or remainder.

Under the amendments, both the owner of a freehold estate that is less than the fee-simple (a ***limited estate***) and the person entitled in reversion or remainder will be treated as owners of the land. The owner of the limited estate is treated as primary taxpayer and the person entitled in reversion or remainder is treated as secondary taxpayer.

This means that, if either the person entitled in reversion or remainder, or the owner of the limited estate, is a company the principal place of residence exemption will not be available. The amendments in **Schedule 2 [11] and [17]** make this clear.

However, if the limited estate is a life estate created by the express terms of a will, and the duration of the life estate is based on the life of the tenant, the life tenant under the life estate will continue to be regarded as the owner of the land to the exclusion of the person entitled in reversion or remainder. The principal place of residence exemption may be available in such a case.

Schedule 2 [18] is a consequential amendment.

Concession for acquisition of new principal place of residence

Schedule 2 [13] and [14] modify a concession that allows a person, in certain circumstances, to treat 2 residences as his or her principal place of residence for land tax purposes. The concession applies when the person has recently acquired a new residence that he or she intends to use as a principal place of residence but has not yet disposed of the former residence.

As a result of the amendments, it will no longer be necessary for a person to dispose of his or her former residence in order to claim the benefit of the concession. However, the concession can only be claimed for one taxing date.

Schedule 2 [12] and [15] are consequential amendments.

Concession for absence from former residence

Schedule 2 [16] modifies a concession that allows a person, in certain circumstances, to be absent from his or her residence and to continue to treat the residence as his or her principal place of residence for land tax purposes. At present, the concession applies only if the person uses and occupies other land that is not owned by the person as a principal place of residence.

As a result of the amendments, it will no longer be necessary for a person to establish that he or she uses and occupies other land as a principal place of residence. It will be sufficient that the person does not own any other land used and occupied by the person as a principal place of residence.

Other amendments

Schedule 2 [19] provides for savings and transitional matters.

Schedule 3 Amendment of Taxation Administration Act 1996 No 97

Schedule 3 [4], [5], [6] and [9] clarify that a director or former director of a corporation who is required by the Chief Commissioner to rectify a failure by the corporation to pay tax must rectify that failure within a period specified by the Chief Commissioner in a notice in writing served on the director or former director. If the failure to pay the tax is not rectified by the end of that period, the director or former director is jointly and severally liable with the corporation to pay the unpaid tax.

Schedule 3 [1] ensures that, if the failure to pay the tax is not rectified, the liability of a director or former director for a corporate tax liability is not limited to the original assessment amount, but can include interest and penalty tax payable in respect of that assessment amount. **Schedule 3 [2], [3] and [8]** are consequential amendments.

Schedule 3 [7] requires the Chief Commissioner to issue to the director or former director a notice of assessment of the tax liability of the director or former director, in relation to corporate tax liability.

Schedule 3 [10] provides for savings and transitional matters.