

STATE REVENUE LEGISLATION AMENDMENT BILL 2012

PROOF
28 MARCH 2012

Bill introduced on motion by Mr Mike Baird.

Agreement in Principle

Mr MIKE BAIRD (Manly—Treasurer) [8.03 p.m.]: I move:

That this bill be now agreed to in principle.

The State Revenue Legislation Amendment Bill 2012 makes amendments to three State taxation Acts—the Duties Act 1997, the Land Tax Management Act 1956 and the Payroll Tax Act 2007. The primary purpose of this bill is to provide, extend and clarify various tax concessions and exemptions under those Acts. I will deal first with the amendments to the Duties Act. The main proposal is to extend and simplify the exemption from duty for the restructuring of corporate groups. Corporate groups may seek to change the structure of the group or change the holding of assets within the group for a variety of reasons, including to align business operations to the relevant legal entity, to improve the balance sheet of a subsidiary seeking finance, to respond to structural changes by a foreign parent, to remove expensive, antiquated structures in complex groups, and to merge business operations and legal entities following a takeover. In many cases the duty payable on these transactions would be prohibitive, requiring corporate groups to continue with a structure that is less than optimal. The exemption therefore removes an impediment to the efficient conduct of business operating in New South Wales.

The current exemption is limited by a number of requirements intended to act as revenue protection measures. The need for those measures has largely evaporated since the introduction of landholder duty in New South Wales, which ensures that interests in land acquired by the group, or sold out of the group, will be liable to duty. The abolition of duty on shares and other marketable securities, which is scheduled to take effect on 1 July 2012, further reduces the need for those limitations on the exemption. The new provisions accordingly do not contain requirements for the members of the groups to have been associated for a specified period before the transaction, or to remain associated after the transaction. The provisions also extend the definition of a corporate group to include stapled entities, which are companies and unit trusts whose securities are "stapled" and traded as a single security.

A new exemption from landholder duty is also provided for corporate consolidations, which is the interposing of a new parent company or unit trust between an existing company or unit trust and its shareholders. The current provisions rely on guidelines approved by the Treasurer. The new exemption will be detailed in full in the Act, providing more certainty for taxpayers. The new provisions have been developed following consultation by the Office of State Revenue over a considerable period. The end result is, to a large extent, consistent with a model proposed by the Property Council of Australia. Most elements of the scheme are substantially the same as schemes operating in other States. The new provisions will reduce

costs for businesses in complying with the requirements for exemption, but within a framework that protects the revenue from duty avoidance practices.

ACTING-SPEAKER (Mr Lee Evans): Order! I remind the Leader of the Opposition that he is on three calls to order. The Treasurer has the call.

Mr MIKE BAIRD: The bill contains a new duties concession for transfers that are partially in conformity with agreements. The Duties Act currently provides that double duty is not paid on the purchase of property comprising two dutiable transactions, being an agreement to transfer dutiable property and the subsequent transfer of that property. However, that provision effectively operates on an all-or-nothing basis, so that a transfer partially in conformity with the agreement will be liable to full double duty. The new provision allows a proportionate concession to the extent that the transfer is in conformity with the agreement.

The bill extends the duties exemption for a transfer of the family home between a husband and wife or de facto partners. Again, the provision currently operates on an all-or-nothing basis where the exemption might not apply if the land is used for purposes other than as the couple's principal place of residence. The extended concession will allow a proportionate exemption for the couple's home in cases where the property is also used for business purposes, such as a combined shop and dwelling or a farming property. The bill extends the duties exemption for property transfers as a consequence of the breakdown of a marriage or de facto relationship. Transfers of superannuation interests for the purpose of providing a retirement benefit to a party to the relationship will now be eligible for the exemption. The bill also extends the duties exemption for transfer of primary production land between family members to allow transfer to a broader group of family members of the owner and the owner's spouse and to extend the definition of "related person" for the purpose of other concessions to include various relationships that arise because of marriage or a de facto relationship.

The bill clarifies the duties concessions for transfers of property to self-managed superannuation funds to allow the concession to apply in respect of a fund that the Commonwealth has not yet confirmed is a complying superannuation fund. The amendment also allows the chief commissioner to reassess the liability to duty where the fund was not a complying superannuation fund as at the date of the transfer.

The bill includes two anti-avoidance measures for duties. The first is a clarification of the concession for transfers of property out of a deceased estate. The proposed amendment will ensure that the same duty is payable on similar transactions regardless of whether property is transferred to a beneficiary of the estate or the beneficiary makes a transmission application. The second is for landholder duty, which applies to the acquisition of a significant interest in a company or unit trust scheme that holds land valued at \$2 million or more. Duty is imposed at the same rate as applies to a direct transfer of land. No landholder duty is payable if the entity's total land value is below \$2 million. Cases have been identified where duty is avoidable by selling some of the land of a company or trust prior to the sale of the

landholding entity to the purchaser, which reduces the entity's land value below the \$2 million threshold. The bill addresses this avoidance by effectively aggregating the acquisition of the landholder and direct land transfers that have occurred in the previous 12 months. A credit is provided for duty paid on the direct transfer to prevent double duty.

The final duties provision in the bill gives the Minister for Finance and Services authority to grant exemptions from duty in respect of Government initiatives relating to the Sydney desalination plant. The Government announced last year that it is refinancing the desalination plant to free up essential funds for other much-needed infrastructure projects in New South Wales. It is common practice to exempt transactions relating to government-owned commercial entities from State taxes. The exemption has no net effect on the proceeds received by the State. If stamp duty applies to transactions, the price paid by the private sector would be reduced by the amount of duty.

~break/Chant

<49>

The provision avoids costs to bidders of having to seek advice on whether duty is or is not payable. It also simplifies the process, as it is possible that duty will be levied at multiple points throughout the process. This approach is being adopted for the refinancing of the desalination plant.

This form of exemption, which operates by order of the Minister with the concurrence of the Treasurer, is consistent with exemptions granted in special purpose legislation to facilitate previous transactions, including the sale of NSW Lotteries and the sale of WSN Environmental Solutions. Exemptions from State tax have also been granted in previous transactions, including the TAB privatisation, the Freight Rail Corporation sale, the transfer of the Australian Rail Track Corporation to the Commonwealth, the merger of the Australian Jockey Club and Sydney Turf Club, and the AGL corporate conversion. This form of exemption is necessary to provide flexibility in the design of the commercial transactions to maximise benefit to the New South Wales taxpayer.

The bill also contains two minor amendments relating to land tax. The first amendment confirms the land tax threshold entitlement for complying self-managed superannuation funds. The second amendment extends the concessional treatment to special disability trusts under the Commonwealth Veterans' Entitlements Act 1986 to bring it in line with those currently available to the special disability trusts under the Commonwealth Social Security Act 1991. The concession exempts land from land tax if it is used and occupied as the principal place of residence of the beneficiary of such a trust. The concessions are provided because these trusts are established for the care and accommodation needs of persons with disabilities, usually under the control of family members.

Finally, the bill makes amendments to the Payroll Tax Act. A payroll tax exemption applies to wages paid to an employee while on maternity leave for up to 14 weeks' pay. Full-time employees can choose to pro rata their maximum entitlement to maternity leave over more than 14 weeks. For example, the exemption will apply when an employee takes 28 weeks

maternity leave at half their full-time salary. It was intended that the same pro rata entitlement would apply to part-time employees, and this amendment will clarify the legislation. All other States and Territories have agreed to these amendments to ensure payroll tax harmonisation is maintained. In summary, the State Revenue Legislation Amendment Bill 2012 will ensure that State tax concessions and exemptions apply fairly and equitably to taxpayers in circumstances where anomalies in the legislation might otherwise impose an unintended liability to tax. I commend the bill to the House.

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