



New South Wales

State Revenue Legislation Amendment Bill 2012

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 limit a duty concession relating to transfers to self managed superannuation funds, and
 - (ii) to limit a duty concession relating to deceased estates, and
 - (iii) to establish a duty concession for transfers that are made in partial conformity with agreements that have already been charged with duty, and
 - (iv) to extend existing duty concessions relating to transfers between married couples and de facto partners and transfers following the break-up of marriages and de facto relationships, and
 - (v) to provide for further circumstances in which the acquisition of an interest in a private unit trust scheme or private company will be chargeable with duty, and
 - (vi) to establish a new exemption for corporate reconstruction and corporate consolidation transactions, and

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- (vii) to provide for further circumstances in which a transfer of business property between family members is exempt from duty, and
 - (viii) to provide for a duty exemption in respect of any Government initiative relating to the Sydney Desalination Plant, and
 - (ix) to make other minor and consequential amendments,
- (b) to amend the *Land Tax Management Act 1956*:
- (i) to ensure that the tax free threshold can be claimed in respect of land held by self managed superannuation funds that are complying superannuation funds under Commonwealth legislation, and
 - (ii) to enable a special disability trust under the *Veterans' Entitlements Act 1986* of the Commonwealth to be treated as a concessional trust for land tax purposes,
- (c) to amend the *Payroll Tax Act 2007* to clarify an exemption from payroll tax for wages paid or payable in respect of maternity leave, paternity leave or adoption leave.

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 to self managed superannuation funds

Schedule 1 [5] limits the application of a duty concession that applies to transfers to self managed superannuation funds. The amendment allows the concession to be applied in respect of a self managed superannuation fund that has not yet been confirmed as a complying superannuation fund under Commonwealth legislation only if the trustee of the fund is satisfied that the fund will be confirmed as a complying superannuation fund. A fund is confirmed as a complying superannuation fund when notice is given under the relevant Commonwealth superannuation legislation that the fund is a complying superannuation fund. The amendment also allows the Chief Commissioner of State Revenue to assess or reassess the liability to duty in respect of a transfer if satisfied that the fund was not a complying superannuation fund when a liability for duty arose.

Schedule 1 [3] and [4] clarify that the rules for obtaining a duty concession in relation to a transfer to a custodian of the trustee of a self managed superannuation fund are the same as the rules for obtaining a duty concession in relation to a transfer to the trustee. That is, the property transferred must be held solely for the benefit of the transferor. **Schedule 1 [2]** provides for a consequential re-numbering of provisions.

Deceased estates

Schedule 1 [6] and [8] change a duty concession that applies to transmission applications by beneficiaries of deceased estates to prevent an avoidance practice. The amendments require a transmission application made by a beneficiary under a will (with the consent of the legal personal representative of a deceased person) to be treated as a transfer of dutiable property by the legal personal representative. This ensures that duty can be charged at an ad valorem rate if the transfer involves a variation to the trusts contained in the will. **Schedule 1 [9]** is a consequential amendment.

Transfers made in partial conformity with agreements

Schedule 1 [10] establishes a duty concession that applies to certain transfers of dutiable property that are made in partial conformity with an agreement for the sale or transfer of dutiable property. The concession applies to a transfer if the transfer conforms with an agreement (in respect of which duty has been paid) apart from the fact that the share in the dutiable property transferred to one or more of the transferees under the transfer exceeds the share agreed to be transferred to the relevant transferee or transferees. Duty is chargeable only on the excess proportion of the dutiable value of the dutiable property, calculated by reference to the proportion by which the share transferred exceeds the share agreed to be transferred. **Schedule 1 [1]** is a consequential amendment.

Concessions for married couples and de facto partners

Schedule 1 [13] extends to superannuation interests a provision that exempts from duty certain transfers of dutiable property that are made to a party to a marriage or de facto relationship as a consequence of the break-up of the marriage or relationship. The amendment extends the provision to transfers of superannuation interests from the trustee or custodian of the trustee of a superannuation fund to the trustee or custodian of the trustee of another superannuation fund for the purpose of providing a retirement benefit to a party to the marriage or relationship.

Schedule 1 [15] remakes and extends an existing duty exemption that applies to certain transfers of dutiable property used or intended to be used as the principal place of residence of a married couple or de facto partners. The existing exemption applies to a transfer of property between a married couple or de facto partners of property used or intended to be used solely as their principal place of residence. The new provision will also allow a partial exemption to be claimed where the land is used partially as a principal place of residence, and partially for other purposes. The provisions are similar to the rules that apply to the charging of land tax in respect of a principal place of residence. **Schedule 1 [12] and [14]** are consequential amendments.

Acquisitions of interests in landholders

Schedule 1 [16] makes further provision for the circumstances in which an acquisition of an interest in a private unit trust scheme or private company will be subject to duty, so as to prevent an avoidance practice. The amendment provides that, for the purpose of determining whether an acquisition is dutiable, the land holdings of the private unit trust scheme or private company are taken to include any land holdings recently transferred to the person acquiring the interest, or an associated person. A land holding is recently transferred if it is transferred within 12 months before the acquisition. This means that those land holdings count toward the duty free threshold of \$2,000,000.

Corporate reconstructions

Schedule 1 [18] establishes a new duty exemption for transactions that are corporate reconstruction transactions or corporate consolidation transactions. The new provisions replace the existing exemptions for “top hatting” arrangements (repealed by **Schedule 1 [17]**) and for corporate reconstructions (repealed by **Schedule 1 [22]**). Currently, in order to be exempt under the corporate reconstruction provision a transaction is required to be approved by the Chief Commissioner in accordance with guidelines approved by the Treasurer. The amendments remove the requirement for the approval of guidelines and incorporate into the new provisions the matters addressed by the guidelines. The amendments also extend the provision to an acquisition of an interest in a landholder that is made as part of a corporate consolidation.

Transfer of business property between family members

Schedule 1 [19]–[21] extend a provision that exempts from duty certain transfers, leases and assignments of primary production land, and certain transfers of shares in a share management fishery, between certain family members. Currently, the exemption applies only if the transferor, lessor or assignor is an *ancestor* of the transferee, lessee or assignee. An *ancestor* of a person includes an individual who is the person’s (or the person’s spouse’s) parent, step-parent, grand-parent, sibling, uncle or aunt (or the spouse of any such person). The amendment extends the exemption to transfers, leases and assignments where the transferor, lessor or assignor is the spouse, child, grandchild, niece or nephew of the transferee, lessee or assignee (or is the child, niece or nephew of the spouse of the transferee, lessee or assignee). A *spouse* includes a former spouse, a de facto partner and a former de facto partner.

Sydney Desalination Plant

Schedule 1 [26] gives the Minister (with the concurrence of the Treasurer) power to grant exemptions from duty in respect of any Government initiative relating to the Sydney Desalination Plant. The exemption can be granted before or after a liability for duty arises and has effect according to its terms.

Other amendments

Schedule 1 [7] corrects a grammatical error.

Schedule 1 [11] repeals a redundant exemption relating to the vesting of property under the Financial Institutions (NSW) Code (*the Code*). The Code previously applied as a law of New South Wales by operation of the *Financial Institutions (New South Wales) Act 1992*. However, that Act was repealed in 1999 by the *Financial Sector Reform (New South Wales) Act 1999* and, accordingly, the Code and the exemption no longer have any operation.

Schedule 1 [23] and [25] clarify that a reference to a mortgage, in an exemption that applies in relation to mortgage and asset-backed securities, extends to a charge. **Schedule 1 [24]** is a consequential amendment.

Schedule 1 [29] extends the definition of *related person* that applies for the purpose of various duty concessions. The definition is extended beyond close family members to various relationships that arise because of marriage or a de facto relationship.

Schedule 1 [27] enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.

Schedule 1 [28] provides for transitional matters.

Schedule 2 Amendment of Land Tax Management Act 1956 No 26

Schedule 2 [1] ensures that self managed superannuation funds that are complying superannuation funds under section 42A of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth are not treated as special trusts for land tax purposes. Beneficial owners of land held by such funds are generally not liable for land tax for the portion of the taxable value of the land that does not exceed the tax-free threshold set out in the *Land Tax Management Act 1956*. The amendment ensures such funds are entitled to the tax-free threshold.

Schedule 2 [2] and [3] enable special disability trusts within the meaning of the *Veterans' Entitlements Act 1986* of the Commonwealth to be treated as concessional trusts for land tax purposes. The effect of the amendments is that a land tax exemption can be claimed in respect of land used as a principal place of residence by the principal beneficiary of a special disability trust.

Schedule 2 [4] enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.

Schedule 2 [5] provides for transitional matters.

Schedule 3 Amendment of Payroll Tax Act 2007 No 21

Schedule 3 [1] clarifies a provision that exempts from payroll tax wages paid or payable in respect of 14 weeks maternity leave. The amendment provides that wages are exempt from payroll tax if they are paid or payable in respect of a period of maternity leave equivalent to 14 weeks part-time leave at a reduced rate of pay. For example, the exemption may apply to wages paid or payable for maternity leave that extends to 28 weeks at half of the part-time rate of pay that would normally apply to the employee.

Schedule 3 [2] provides for a similar clarification in respect of paternity leave.

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 for transitional matters.