

STATE REVENUE LEGISLATION AMENDMENT BILL 2017

First Reading

Bill introduced on motion by Mr Victor Dominello, read a first time and printed.

Second Reading

Mr VICTOR DOMINELLO (Ryde—Minister for Finance, Services and Property)
(10:13): I move:

That this bill be now read a second time.

The State Revenue Legislation Amendment Bill 2017 amends the provisions of several Acts covering the functions of the Office of State Revenue relating to taxes and duties. The amendments are the latest instalment in the Government's ongoing revenue reforms to keep the tax legislation effective and up to date. This will improve equity by ensuring clients in similar circumstances have similar outcomes, combat tax avoidance practices by ensuring taxpayer liabilities are consistent with the policy intent of the legislation, reduce red tape by removing uncertainty, increase harmonisation with other States and Territories where possible, and improve administrative simplicity.

I will deal first with amendments to the Duties Act 1997. A number of the amendments improve the effectiveness of landholder duty provisions. Landholder duty is imposed on the acquisition of an interest in a company or unit trust that has land holdings in New South Wales with a value of \$2 million or more. It complements transfer duty by imposing the same duty on an indirect acquisition of land as applies to a direct transfer of land. In 2013 the Office of State Revenue conducted a review of landholder duty legislation which identified weaknesses that could result in uncertain interpretation of administration disputes with taxpayers or avoidance of duty. The bill implements a number of recommendations of the review to improve the integrity of the provisions, and in some cases increase the level of consistency with other jurisdictions.

Because land is often held in complex company and trust structures the legislation contains rules to trace the ownership of property through these structures. The bill amends these rules to link entities in the ownership chain where the target entity is entitled to ultimately receive a 50 per cent or more interest in land holdings. The bill also confirms the position that liabilities are not taken into account when determining the value of property of entities. To prevent avoidance of landholder duty special provisions deal with the land subject of an agreement for sale, and treat combined put and call options as an agreement for sale.

The bill contains two other measures to protect the review base for duties. The bill strengthens the duties general anti-avoidance provisions. The current provisions were modelled on the Commonwealth tax legislation and Federal Court decisions in recent years have reduced the effectiveness of those provisions. The amendment is based on the Commonwealth amendments and will prevent the taxpayer from escaping the anti-avoidance provisions by claiming that the transaction would not have happened if the duty were payable.

The second anti-avoidance measure relates to a duties concession for the transfer of property to the new trustee of an existing trust. A recent Supreme Court decision overturned 30 years of consistent interpretation of the concession to effectively allow a sale of property to avoid duty, which opened a significant loophole. The bill closes that loophole. The bill provides and extends a number of tax and duty exemptions. These include an exemption from duty on the vesting of land upon the merger of credit unions, building societies and mutual banks, an extension of the exemption for transfers of property as a consequence of the break-up of a marriage or a de facto relationship, and an extension of the exemption of transfers of primary production land allowing family members to include transfers from a self-managed super fund. Other duty concessions include the application of a nominal duty on transfers to custodians of self-managed superannuation funds where duty has been

paid on an agreement for sale to the trustee of the fund, and exemption for transfers of fund assets arising from members moving to a MySuper fund.

Stamp duty was historically a tax on paper documents and although the liability now is imposed on transactions the duty is still assessed and stamped on paper documents. Technological advances now see legal documents being prepared and signed digitally, including, for example, the New South Wales Law Society standard form of contract for sale of land, which can be completed, signed and exchanged digitally. The duties legislation is therefore being amended to clarify the administration arrangements for assessment of electronic documents.

The bill also includes a provision to better make lessees aware of their potential land tax liabilities. Currently some lessees of Crown land who are liable for land tax fail to lodge returns with the Office of State Revenue in the first instance because they are not aware of their potential liability. In order to minimise these situations the bill requires Crown bodies and councils to make lessees aware of a potential land tax liability. If the Crown does not fulfil this obligation, the Crown body or council will be jointly and severally liable for the land tax liability.

The amendment ensures lessees are able to take into account the cost of land tax in negotiating lease payments. The bill also updates a payroll tax exemption for motor vehicle allowances to reference the recently amended Commonwealth Income Tax Assessment Act. The amended Commonwealth provisions replace a three-tiered system with one single motor vehicle exempt rate. Adopting this one rate for payroll tax purposes simplifies administration for employers and reduces red tape.

Another payroll tax amendment in the bill is the exemption of wages paid to employees who participate in the Commonwealth Organ Donor Scheme to the extent that the wages are reimbursed by the Commonwealth. This amendment will remove a potential disincentive for employers to approve leave for employees participating in the scheme. The bill also includes an amendment to allow the Office of State Revenue to share relevant information with the Australian Charities and Not-for-Profits Commission. The amendment will promote the red tape reduction concept of collecting information once to use often.

Many of the individual amendments in this bill could be described as minor or housekeeping amendments, and they have the effect of clarifying and fine-tuning the State's revenue legislation. They are, nevertheless, an important part of the Government's commitment to maintaining and improving the administration of the State's revenue collection. The amendments in the bill will improve the level of service provided to taxpayers by facilitating digital transactions and processes, will improve the fairness of State taxes, will reduce the potential for costly litigation and will send a clear message from the Government that tax avoidance loopholes will be closed. I commend the bill to the House.

Debate adjourned.