



New South Wales

State Revenue Legislation Amendment Bill 2017

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 clarify the application of that Act to instruments that are in a digital form, and
 - (ii) to provide for the charging of nominal duty (rather than ad valorem duty) on certain transfers of property to the custodian of a trustee of a self managed superannuation fund where duty on an agreement for the sale or transfer of the property has been paid and the purchaser is the trustee, and
 - (iii) to clarify the matters of which the Chief Commissioner must be satisfied for nominal duty (rather than ad valorem duty) to be charged on transfers of trust property that are a consequence of the retirement or appointment of a trustee, and
 - (iv) to provide for an exemption from duty for the vesting of land occurring as a consequence of the merger of credit unions or of authorised deposit-taking institutions with mutual structures, and
 - (v) to extend existing exemptions from duty on transfers following the break-up of marriages and de facto relationships to cover such transfers to trustees under the *Bankruptcy Act 1966* of the Commonwealth, and
 - (vi) to make further provision in relation to the aggregation of interests acquired by a person in a landholder for the purposes of liability for landholder duty, and
 - (vii) to ensure that the liabilities of a landholder are disregarded in determining whether a person has an interest in a landholder that makes the person liable for landholder duty, and

- (viii) to make further provision in relation to the tracing of interests through linked entities of a unit trust scheme or company for the purposes of determining whether the scheme or company is a landholder, and
 - (ix) to extend an existing anti-avoidance measure (which ensures that certain land holdings transferred from a unit trust scheme or company within 12 months of a person acquiring an interest in the scheme or company are counted when determining whether the scheme or company is a landholder) so that the measure covers agreements for the sale or transfer of land holdings, and
 - (x) to prevent the avoidance of liability for landholder duty by the use of arrangements that include combined put and call options (as an alternative to an agreement for sale or transfer), and
 - (xi) to make further provision to prevent a person who enters into an agreement to purchase shares or units in a landholder avoiding landholder duty by opting to defer registration of the purchase, and
 - (xii) to extend existing exemptions from duty connected with transfers between family members of land used for primary production to (among other things) cover transfers from a self managed superannuation fund where a member of the fund and the person to whom the land is transferred are family members, and
 - (xiii) to provide for an exemption from duty connected with transfers of property between superannuation funds that are required to be made under transitional arrangements relating to the Commonwealth's MySuper reforms, and
 - (xiv) to make further provision for the test to be applied in determining the amount of duty that a person is liable to pay as a result of a tax avoidance scheme that is of an artificial, blatant or contrived nature, and
 - (xv) to extend the circumstances in which a trustee and another trustee, a natural person and a trustee, and a private company and a trustee are treated as being "associated" for the purposes of liability for duty, by tracing through to sub-trusts, and
 - (xvi) to make other minor and consequential amendments,
- (b) to amend the *Land Tax Management Act 1956* to require a Government entity that leases land to make the lessee aware that the lessee can be liable for land tax on the land,
- (c) to amend the *Payroll Tax Act 2007*:
- (i) to provide that certain wages paid by employment agents who on-hire their common law employees to clients of the agents are exempt from payroll tax if wages paid by the clients to their own employees are "exempt wages", and
 - (ii) to exempt from payroll tax wages paid under the Supporting Leave for Living Organ Donors Programme, and
 - (iii) to update other provisions of that Act,
- (d) to amend various Acts to permit disclosures to the Australian Charities and Not-for-profits Commission.

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 on the date of assent to the proposed Act.

Schedule 1 Amendment of Duties Act 1997 No 123

Instruments in digital form

Schedule 1 [1]–[8], [10], [11], [21] and [40] make it clear that, for the purposes of the *Duties Act 1997*:

- (a) an instrument includes an instrument that is in digital form, and
- (b) the provisions of that Act that apply to written instruments also apply to instruments that are in digital form.

Schedule 1 [44] repeals a provision that is made redundant by those amendments.

No double duty on certain transfers to custodians of self managed superannuation funds

Schedule 1 [9] extends a provision under which nominal duty of \$10 is chargeable for certain transfers not in conformity with an agreement for sale or transfer of property on which duty has already been paid. The provision is extended to transfers in which the purchaser under the agreement is the trustee of a self managed superannuation fund and the transferee is the custodian of that trustee.

Transfers of trust property consequent on retirement or appointment of trustees

Schedule 1 [12], [14] and [15] ensure that it is clear that nominal duty of \$50 is chargeable on certain transfers of trust property that are a consequence of the retirement or appointment of trustees only if the Chief Commissioner is satisfied that (among other things) the transfers are not part of a scheme to avoid duty that involves conferring an interest, in relation to the trust property, on a new trustee or other person so as to cause any person to cease holding a beneficial interest in that property. Ad valorem duty may be chargeable on those transfers, instead of nominal duty, if the Chief Commissioner fails to be satisfied that they are not part of such a scheme. **Schedule 1 [13]** is a consequential amendment.

Duty exemption—merger of credit unions and mutual authorised deposit-taking institutions

Schedule 1 [16] provides for an exemption from duty for the vesting of land in one or more credit unions, or in one or more authorised deposit-taking institutions with mutual structures (*mutual ADIs*), that is a consequence of a merger of those credit unions or mutual ADIs. **Schedule 1 [39]** makes a related amendment that inserts a definition of *credit union* into the Dictionary.

Duty exemptions—break-up of marriages and other relationships

Schedule 1 [17] and [18] remake and extend provisions that exempt certain transfers from duty that are made as a consequence of the break-up of a marriage or de facto relationship. In particular, the provisions are extended to transfers to a trustee under the *Bankruptcy Act 1966* of the Commonwealth of the estate of either of the parties to the marriage or relationship. **Schedule 1 [19] and [20]** are consequential amendments.

Relevant acquisitions for purposes of landholder duty—aggregation of interests

Schedule 1 [22] remakes and modifies provisions that define when a person makes a *relevant acquisition* in respect of a landholder and is, therefore, liable to pay landholder duty. The provisions are modified by setting out circumstances to be taken into account in determining whether acquisitions form, evidence, give effect to or arise from substantially one arrangement between the acquirers.

Liabilities of landholder disregarded when determining interest held in landholder

A person has an interest in a landholder if the person would be entitled to any property of the landholder if all of the property were distributed, and a person has a significant interest in a landholder if the person would be entitled to a certain proportion of the property of the landholder if all of the property were distributed. **Schedule 1 [23]** ensures that the liabilities of the landholder are disregarded when determining whether the person has an interest or a significant interest in the landholder.

Linked entities and landholders

Schedule 1 [26] replaces provisions that enable the tracing of interests through linked entities of unit trust schemes and companies for the purposes of determining whether the scheme or company is a landholder. In particular, **Schedule 1 [26]** modifies the definitions of a *linked entity* to ensure that:

- (a) entities in a chain are regarded as linked to a private unit trust scheme or private company if the scheme or company would be entitled to receive at least 50% of the value of all of the property of persons in the chain if all of that property were distributed, and
- (b) liabilities of entities in a chain are disregarded when valuing the property of those persons for the purposes of determining whether they are linked entities of a unit trust scheme or company (similar to the amendment made by **Schedule 1 [23]**).

Schedule 1 [26] also makes amendments in the nature of statute law revision.

Land holdings agreed to be transferred from landholder counted

Schedule 1 [27] and [28] extend an anti-avoidance measure providing that, for the purpose of determining whether an acquisition is dutiable, the land holdings of a private unit trust scheme or private company are taken to include any land holdings transferred to the person acquiring the interest, or an associated person, within 12 months before the acquisition. This means that those land holdings count when calculating whether the scheme or company has land holdings in NSW with a sufficient threshold value (\$2,000,000 or more) for the scheme or company to be a landholder. In particular, **Schedule 1 [27] and [28]** ensure that land holdings agreed to be transferred to the person acquiring the interest, or an associated person, within 12 months before the acquisition also count towards the threshold. **Schedule 1 [29] and [30]** are consequential amendments.

Combined put and call options

Schedule 1 [31] amends a section that ensures that, for the purposes of assessing liability for landholder duty, the transferor and transferee under an uncompleted agreement for the sale or transfer of land are taken to be separately entitled to the whole of the land. The section is amended so that arrangements that include both a put option and a call option are treated in the same way as uncompleted agreements.

Point in time at which an interest in a landholder is acquired

Schedule 1 [33] amends a provision that prevents a person who enters into an agreement to purchase shares or units in a landholder avoiding landholder duty by opting to defer registration of the purchase indefinitely. Currently, the person is treated as having acquired an interest in a landholder on the “agreement liability date” (for example, when the consideration is first paid or 12 months after the agreement is first executed), rather than on the registration date. The proposed amendment ensures that landholder duty is also chargeable in cases in which the company or unit trust scheme concerned has ceased to be a landholder on the “agreement liability date”, so long as the company or scheme was a landholder when the agreement was made. **Schedule 1 [25]** is a consequential amendment.

Transfers of primary production land

Schedule 1 [34] and [35] make further provision for the exemption from duty on certain transfers and other transactions between family members relating to land used for primary production. **Schedule 1 [34]** extends the exemption to transfers and other transactions relating to land used for primary production and held before the transaction in a self managed superannuation fund where a member of the fund and the transferee, lessee or assignee concerned are family members.

Currently, the land must have been used for primary production in connection with a business carried on by the transferee, lessee or assignee, or by a family member of the transferee, lessee or assignee. **Schedule 1 [35]** ensures that, alternatively, the land must have been used for primary production in connection with a business carried on by a company, or under a trust, controlled by

the transferee, lessee or assignee (or controlled by a family member of the transferee, lessee or assignee).

MySuper transitional arrangements

Schedule 1 [36] provides for an exemption from duty in connection with transfers of property between superannuation funds that are required to be made under transitional arrangements (relating to the Commonwealth's MySuper reforms) that are provided for in the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.

General anti-avoidance provisions

Schedule 1 [37] amends a provision under which the amount of duty that a person is liable to pay as a result of a tax avoidance scheme that is of an artificial, blatant or contrived nature is the amount of duty avoided by the person. Currently, the *amount of duty avoided* by the person is the amount that would have been payable, or that it is reasonable to expect would have been payable, by the person if the tax avoidance scheme had not been entered into or made. The proposed amendment ensures that the amount that it is reasonable to expect would have been payable by the person is determined on the assumption that a reasonable alternative to enter into or making the scheme would have been adopted.

“Associated persons” and sub-trusts

Schedule 1 [42] amends the definition of *associated person* to extend the circumstances in which a trustee and another trustee, natural person or company are treated as being “associated” for the purposes of liability for duty, by tracing through to sub-trusts. Dutiable transactions made by or to associated persons, and interests acquired in a landholder by associated persons, may be aggregated for the purposes of duty under Chapters 2 and 4 of the *Duties Act 1997*.

Schedule 1 [43] inserts a definition of *sub-trust* that is related to the amendment proposed to be inserted by **Schedule 1 [42]**.

Statute law revision

Schedule 1 [24] omits superfluous words in section 150 (1A) of the *Duties Act 1997*. Section 150 (1A) contains a reference to an interest in a landholder that is a debt interest within the meaning of a Division of a Commonwealth Act or that would be such a debt interest if the landholder were a company for the purposes of that Division. Under the *Duties Act 1997*, landholders can be unit trust schemes or companies. As the relevant Division of the Commonwealth Act refers to debt interests in “entities”, which under that Act include trusts (in addition to companies and other bodies), the reference in section 150 (1A) to an interest that would be a debt interest within the meaning of the relevant Division if the landholder were a company is superfluous.

Schedule 1 [32] clarifies the meaning of references in a provision to a vendor or purchaser landholder or linked entity in cases where the landholder or linked entity is a unit trust scheme, a trust or an unincorporated body.

Schedule 1 [41] remakes the definition of *private company*, with a minor modification to that definition in the nature of statute law revision.

Savings and transitional provisions

Schedule 1 [38] provides for savings and transitional matters.

Schedule 2 Amendment of Land Tax Management Act 1956 No 26

Schedule 2 [3] requires a Government entity that leases land to disclose to the lessee, in writing, that the lessee will be liable for land tax in respect of the land under the *Land Tax Management Act 1956*, if land tax is payable by the lessee under section 21C of that Act. Under section 21C of the *Land Tax Management Act 1956*, a lessee is generally liable for land tax payable in respect of

land leased by a Government entity (which includes the Crown and councils), as if the lessee were the owner of the land. If the Government entity fails to make the required disclosure, and the lessee fails to pay the land tax payable, the Chief Commissioner of State Revenue can recover the unpaid tax from the Government entity, which is made jointly and severally liable for the unpaid tax. The Government entity is entitled to be indemnified by the lessee for any payment it makes to the Chief Commissioner to discharge that liability.

Schedule 2 [1] makes it clear that a lease includes an agreement to lease.

Schedule 2 [2] is a consequential amendment.

Schedule 2 [4] provides for transitional matters.

Schedule 3 Amendment of Payroll Tax Act 2007 No 21

Division 8 of Part 3 of the *Payroll Tax Act 2007* ensures that an employment agent who on-hires a worker for a client is required to pay payroll tax on amounts paid by the employment agent to the worker (the *service provider*) for services provided to the client. In particular, the employment agent is taken to be an employer, the service provider is taken to be an employee of the employment agent and the amounts paid to the service provider are taken to be wages. The amounts paid to the service provider are not taken to be wages if they would be exempt from payroll tax had the service provider been paid as an employee of the client. **Schedule 3 [5] and [7]** of the proposed amendments remove doubt that wages paid to a service provider who is a common law employee of the employment agent are exempt from payroll tax if they would be exempt from payroll tax had the service provider performed the services as an employee of the client. **Schedule 3 [1] and [3]** are consequential amendments.

Schedule 3 [5] also permits wages that are paid under the Supporting Leave for Living Organ Donors Programme to be treated as exempt wages for payroll tax purposes.

Schedule 3 [2] updates an exemption from payroll tax that applies to certain motor vehicle allowances, to reflect changes in Commonwealth legislation.

Schedule 3 [4] makes an amendment in the nature of statute law revision, including an amendment that is related to the fact that the wages of staff in local health districts, which may be clients of employment agents, are paid or payable by the Crown.

Schedule 3 [6] updates a reference to the title of a Public Service agency.

Schedule 3 [8] provides for transitional matters.

Schedule 4 Amendments relating to permitted disclosures

Schedule 4 amends the Acts listed in that Schedule to permit information to be disclosed to the Australian Charities and Not-for-profits Commission.