

Passed by both Houses



New South Wales

State Revenue Legislation Amendment (COVID-19 Housing Response) Bill 2020

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney,*

, 2020



New South Wales

State Revenue Legislation Amendment (COVID-19 Housing Response) Bill 2020

Act No _____, 2020

An Act to make miscellaneous amendments to certain State revenue legislation in connection with stamp duty concessions under the First Home Buyers Assistance scheme, concessional land tax treatment for certain build-to-rent properties and payroll tax exemptions for payments under the Commonwealth's Aged Care Workforce Retention Grant Opportunity program; and for related purposes.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts—

1 Name of Act

This Act is the *State Revenue Legislation Amendment (COVID-19 Housing Response) Act 2020*.

2 Commencement

This Act commences on the date of assent to this Act.

3 Explanatory notes

The matter appearing under the heading “Explanatory note” in any of the Schedules does not form part of this Act.

Schedule 1 Amendment of Duties Act 1997 No 123

[1] Section 64 Conversion of land use entitlement to different form of title

Omit “section 78A (which relates” from section 64(c)(iv).

Insert instead “section 78A or 78AA (which relate”.

[2] Section 74 Eligible agreements or transfers

Insert after section 74(3)—

- (4) Despite subsection (3), in relation to an agreement for sale or transfer or a transfer entered into during the period beginning on 1 August 2020 and ending on 31 July 2021 (other than a transfer made in conformity with an agreement for sale or transfer entered into before 1 August 2020), the dutiable value of the dutiable property that is the subject of the agreement or transfer must be less than—
 - (a) \$1,000,000 if the property has a private dwelling that is a new home built on it, or
 - (b) \$800,000 if the property has a private dwelling that is not a new home built on it, or
 - (c) \$500,000 if the property comprises a vacant block of residential land.
- (5) In this section, *new home* has the same meaning as in section 4A of the *First Home Owner Grant (New Homes) Act 2000*.

[3] Section 78AA

Insert after section 78A—

78AA Duty payable on certain agreements and transfers entered into during year commencing 1 August 2020

- (1) This section applies, and section 78A does not apply, to an agreement for sale or transfer or a transfer entered into during the period beginning on 1 August 2020 and ending on 31 July 2021 (other than a transfer made in conformity with an agreement for sale or transfer entered into before 1 August 2020).
- (2) If an application concerning an eligible agreement or transfer to which this section applies is approved and the dutiable value of the dutiable property that is the subject of the agreement or transfer is not more than the following amounts, no duty is chargeable on the agreement or transfer—
 - (a) \$800,000 if the property has a private dwelling that is a new home built on it,
 - (b) \$650,000 if the property has a private dwelling that is not a new home built on it,
 - (c) \$400,000 if the property comprises a vacant block of residential land.
- (3) If an application concerning an eligible agreement or transfer to which this section applies is approved in respect of property that has a private dwelling that is a new home built on it and subsection (2)(a) does not apply to the agreement or transfer, the rate of duty chargeable in respect of the agreement or transfer is to be calculated in accordance with the following formula—

$$N - \left(\frac{\$1,000,000 - V}{\$200,000} \times D \right)$$

where—

N is the amount of duty (calculated in accordance with section 32) that would otherwise be payable in respect of the agreement or transfer.

V is the dutiable value of the dutiable property that is the subject of the agreement or transfer.

D is the amount of duty (calculated in accordance with section 32) that would otherwise be payable in respect of an agreement or transfer relating to property that has a private dwelling built on it and has a dutiable value of \$800,000.

Note. An agreement or transfer in respect of property that has a private dwelling that is a new home built on it is not an eligible agreement or transfer if the dutiable value of the property is \$1,000,000 or more. See section 74(4)(a).

- (4) If an application concerning an eligible agreement or transfer to which this section applies is approved in respect of property that has a private dwelling that is not a new home built on it and subsection (2)(b) does not apply to the agreement or transfer, the rate of duty chargeable in respect of the agreement or transfer is to be calculated in accordance with the following formula—

$$N - \left(\frac{\$800,000 - V}{\$150,000} \times D \right)$$

where—

N is the amount of duty (calculated in accordance with section 32) that would otherwise be payable in respect of the agreement or transfer.

V is the dutiable value of the dutiable property that is the subject of the agreement or transfer.

D is the amount of duty (calculated in accordance with section 32) that would otherwise be payable in respect of an agreement or transfer relating to property that has a private dwelling built on it and has a dutiable value of \$650,000.

Note. An agreement or transfer in respect of property that has a private dwelling that is not a new home built on it is not an eligible agreement or transfer if the dutiable value of the property is \$800,000 or more. See section 74(4)(b).

- (5) If an application concerning an eligible agreement or transfer to which this section applies is approved in respect of property that comprises a vacant block of residential land and subsection (2)(c) does not apply to the agreement or transfer, the rate of duty chargeable in respect of the agreement or transfer is to be calculated in accordance with the following formula—

$$N - \left(\frac{\$500,000 - V}{\$100,000} \times D \right)$$

where—

N is the amount of duty (calculated in accordance with section 32) that would otherwise be payable in respect of the agreement or transfer.

V is the dutiable value of the dutiable property that is the subject of the agreement or transfer.

D is the amount of duty (calculated in accordance with section 32) that would otherwise be payable in respect of an agreement or transfer relating to property that comprises a vacant block of residential land and has a dutiable value of \$400,000.

Note. An agreement or transfer in respect of property that comprises a vacant block of residential land is not an eligible agreement or transfer if the dutiable value of the property is \$500,000 or more. See section 74(4)(c).

- (6) This section does not apply in respect of an agreement or transfer that is eligible under the scheme only for a shared equity concession.
- (7) In this section, *new home* has the same meaning as in section 4A of the *First Home Owner Grant (New Homes) Act 2000*.

[4] Section 78B Special concession for shared equity arrangements

Insert “or 78AA” after “section 78A” in the definition of *C* in section 78B(3).

[5] Section 78B(5)

Omit “section 78A”. Insert instead “sections 78A and 78AA”.

[6] Section 104ZJB

Insert after section 104ZJA—

104ZJB Exemption for certain build-to-rent properties transferred to foreign persons

- (1) An Australian corporation that is the transferee under a transfer of residential-related property is entitled to a refund of surcharge purchaser duty paid by the transferee that is chargeable on the transfer if the Chief Commissioner is satisfied that—
 - (a) the transfer was entered into on or after 1 July 2020 (other than a transfer made in conformity with an agreement for sale or transfer entered into before 1 July 2020), and
 - (b) a building that is taken to be build-to-rent property under section 9E of the *Land Tax Management Act 1956* has been constructed on the land concerned by the transferee or a related body corporate after completion of the transfer to the transferee, and
 - (c) the corporation has become entitled under that section to a reduction in the value of land.
- (2) The amount of the refund to which a transferee is entitled under this section is the amount that is determined in accordance with an order made by the Treasurer for the purposes of this section and published in the Gazette.
- (3) The amount of the refund may be the full amount of duty paid or a lesser amount (as determined in accordance with the order).
- (4) The Chief Commissioner may approve a person as an exempt transferee for a particular transfer or class of transfers if the Chief Commissioner is of the opinion that the person is likely to become entitled under this section to a refund of the full amount of surcharge purchaser duty chargeable on a transfer to which the approval applies.
- (5) No surcharge purchaser duty is chargeable on a transfer of residential-related property if the transferee under the transfer is approved as an exempt transferee for the transfer at the time liability for duty would otherwise have arisen.
- (6) The approval of a person as an exempt transferee is subject to the following provisions—
 - (a) an approval may be given subject to conditions and the approval operates subject to any such conditions,
 - (b) the conditions of an approval may be varied by the Chief Commissioner at any time by notice to the person,
 - (c) an approval remains in force until it is revoked and can be revoked by the Chief Commissioner at any time by notice to the person,
 - (d) the revocation of an approval can be backdated to extend to a transfer in respect of which liability for surcharge purchaser duty would (but for the approval) have arisen before the revocation is notified (an *exempted transfer*),

- (e) if the revocation of an approval is backdated to extend to an exempted transfer, surcharge purchaser duty is payable and is to be assessed or reassessed as if the approval had never applied to the transfer and as if liability for duty arose when revocation of the approval was notified.
- (7) Without limiting subsection (6), if, after an exemption under this section has been applied in relation to a transfer, the land concerned is subdivided or the ownership of the land is otherwise divided within 15 years of that application—
- (a) the approval of the relevant person as an exempt transferee is revoked, and
 - (b) that revocation of an approval is backdated to extend to the transfer in respect of which liability for surcharge purchaser duty would (but for the approval) have arisen, and
 - (c) surcharge purchaser duty is payable and is to be assessed or reassessed as if the approval had never applied to the transfer and as if liability for duty arose when the land was subdivided or the ownership of the land was otherwise divided.
- (8) Surcharge purchaser duty may be refunded under this section only if an application for the refund is made within 12 months after the owner of the land concerned first became entitled under section 9E of the *Land Tax Management Act 1956* to a reduction in the value of the land and no later than 10 years after completion of the transfer of the residential-related property to the Australian corporation.
- (9) If, after a refund under this section has been paid in relation to a transfer and the land concerned is subdivided or the ownership of the land is otherwise divided within 15 years of that payment—
- (a) the entitlement to the refund is terminated, and
 - (b) that termination is backdated to extend to the transfer in respect of which liability for surcharge purchaser duty would (but for this section) have arisen, and
 - (c) surcharge purchaser duty is payable and is to be assessed or reassessed as if the refund had never been paid to the transferee and as if liability for duty arose when the land was subdivided or the ownership of the land was otherwise divided.
- (10) For the purposes of section 9(3)(c) of the *Taxation Administration Act 1996*, any reassessment under this section is authorised to be made more than 5 years after the initial assessment.
- (11) This section does not apply to a transfer of residential-related property that is a surcharge duty transaction referred to in section 104L(1)(b) except an agreement for the sale or transfer of residential-related property.
- (12) In this section—
Australian corporation means a corporation that is incorporated or taken to be incorporated under the *Corporations Act 2001* of the Commonwealth.

[7] Schedule 1 Savings, transitional and other provisions

Insert at the end of the Schedule—

Part 52 Provisions consequent on enactment of State Revenue Legislation Amendment (COVID-19 Housing Response) Act 2020

144 Replacement agreements

- (1) An agreement for sale or transfer entered into on or after 1 August 2020 that replaces an agreement made before that date (an *earlier agreement*) is taken, for the purposes of sections 74(4) and 78AA of this Act, as inserted by the *State Revenue Legislation Amendment (COVID-19 Housing Response) Act 2020*—
 - (a) to have been made on the date the earlier agreement was made, and
 - (b) to have a commencement date that is the date the earlier agreement was made.
- (2) An agreement replaces another agreement if the Chief Commissioner is satisfied the agreement made at the earlier date was an agreement for the same land or substantially similar land.

Explanatory note

Items [1]–[5] of the proposed amendments provide for an increase in duty concessions available under the First Home Buyers Assistance scheme for certain agreements and transfers that are entered into during the period beginning on 1 August 2020 and ending on 31 July 2021.

Item [6] provides for refunds and exemptions from surcharge purchaser duty on transfers of residential land to a foreign transferee when the transferee is an Australian corporation and—

- (a) a building taken to be a build-to-rent property has been constructed on the land concerned by the corporation or a related body corporate, and
- (b) the corporation has become entitled under proposed section 9E of the *Land Tax Management Act 1956* to a reduction in the value of land (to be inserted into that Act by Schedule 3 to this Bill).

Item [7] is a savings and transitional provision.

Schedule 2 Amendment of Land Tax Act 1956 No 27

Section 5CA

Insert after section 5C—

5CA Surcharge land tax—build-to-rent properties owned by foreign persons

- (1) An Australian corporation is entitled to a refund of an amount of surcharge land tax paid by the corporation in respect of residential land owned by the corporation at midnight on 31 December in a year (the *taxing date*), commencing with midnight on 31 December 2020 and ending with midnight on 31 December 2039, if the Chief Commissioner is satisfied that—
 - (a) a building that is taken to be build-to-rent property under section 9E of the Principal Act has been constructed on the land concerned by the corporation or a related body corporate (whether before or after the taxing date), and
 - (b) the corporation is entitled under that section to a reduction in the value of land.
- (2) The amount of the refund to which an Australian corporation is entitled under this section is the amount that is determined in accordance with an order made by the Treasurer for the purposes of this section and published in the Gazette.
- (3) The amount of the refund may be the full amount of surcharge land tax paid or a lesser amount (as determined in accordance with the order).
- (4) The Chief Commissioner may approve a foreign person as an exempt person for particular land if the Chief Commissioner is of the opinion that the person is likely to become entitled under this section to a refund of the full amount of surcharge land tax payable by the person in respect of the land for a land tax year.
- (5) A foreign person is exempt from liability to pay surcharge land tax in respect of the particular land for a land tax year if the person is approved as an exempt person for the land for that land tax year.
- (6) The approval of a foreign person as an exempt person under this section is subject to the following provisions—
 - (a) an approval may be given for one or more land tax years and can be given for a land tax year before or after the end of the land tax year,
 - (b) an approval may be given subject to conditions and the approval operates subject to any such conditions,
 - (c) the conditions of an approval may be varied by the Chief Commissioner at any time by notice to the person,
 - (d) an approval can be revoked by the Chief Commissioner at any time by notice to the person,
 - (e) the revocation of an approval can be backdated to extend to a tax year in respect of which the exemption conferred by the approval has already been applied, in which case surcharge land tax is payable and is to be assessed or reassessed as if the approval had never applied in respect of that tax year.
- (7) Without limiting subsection (6), if, within the period of 15 years after this section first applied in relation to surcharge land tax, the land concerned is subdivided or the ownership of the land is otherwise divided—

- (a) the person whose surcharge land tax has been refunded or liability to pay the surcharge land tax has been exempted in accordance with this section must, within 1 month, inform the Chief Commissioner of the date on which the land was subdivided or the ownership of the land was otherwise divided, and
 - (b) liability for surcharge land tax in respect of the following years is to be reassessed as if this section had not applied to the person—
 - (i) the year in which the land is subdivided or the ownership of the land is otherwise divided,
 - (ii) each preceding year in which a person's liability to pay surcharge land tax was assessed in accordance with this section, but not more than 15 preceding years, and
 - (c) the subdivision or division is taken to be a tax default for the purposes of Part 5 of the *Taxation Administration Act 1996*.
- (8) Surcharge land tax for a land tax year may be refunded under this section only if an application for the refund is made—
- (a) within 12 months after the owner of the land concerned became entitled to the refund, and
 - (b) not later than 10 years after the land tax year concerned.
- (9) For the purposes of section 9(3)(c) of the *Taxation Administration Act 1996*, any reassessment under this section is authorised to be made more than 5 years after the initial assessment.
- (10) In this section—
- Australian corporation*** means a corporation that is incorporated or taken to be incorporated under the *Corporations Act 2001* of the Commonwealth.
- related body corporate*** has the same meaning as in the *Corporations Act 2001* of the Commonwealth.

Explanatory note

The proposed amendment provides for refunds and exemptions from surcharge land tax payable on residential land owned by a foreign person that is an Australian corporation if—

- (a) a building taken to be a build-to-rent property has been constructed on the land concerned by the corporation or a related body corporate, and
- (b) the corporation has become entitled under proposed section 9E of the *Land Tax Management Act 1956* to a reduction in the value of land (to be inserted into that Act by Schedule 3 to this Bill).

Schedule 3 **Amendment of Land Tax Management Act 1956 No 26**

[1] Section 9AA Average value of land

Insert “9E,” after “9D,” in the note to section 9AA(4).

[2] Section 9E

Insert after section 9D—

9E Reduction in land value for certain build-to-rent properties

- (1) This section applies in respect of land owned by a person at midnight on 31 December in any year (ending with midnight at the end of 31 December 2039).
- Note.** Under section 3AL of the *Land Tax Act 1956*, land tax is charged, levied, collected and paid for the period of 12 months commencing on 1 January in the next succeeding year for land owned at midnight on 31 December in any year. So this reduction provision applies until the end of the 2040 land tax year.
- (2) For the purpose of assessing land tax, the land value of a parcel of land is to be reduced by 50% if—
- (a) a building is situated on the land, and
 - (b) construction of the building commenced on or after 1 July 2020, and
 - (c) the Chief Commissioner is satisfied that a significant proportion of the labour force hours spent on the construction of the building involves or involved work performed by persons whom the Chief Commissioner considers belong to any one or more of the following classes of worker—
 - (i) apprentices or trainees,
 - (ii) long-term unemployed workers,
 - (iii) workers requiring upskilling,
 - (iv) workers with barriers to employment (such as persons with disability),
 - (v) Aboriginal jobseekers,
 - (vi) graduates, and
 - (d) the Chief Commissioner is satisfied that the building is being used and occupied for a build-to-rent property in accordance with guidelines approved by the Treasurer for the purposes of this section, and
 - (e) an application for the reduction is made in accordance with this section.
- (3) The guidelines may include provisions with respect to the following—
- (a) the circumstances in which a building is taken to be a build-to-rent property, including in relation to the following—
 - (i) the planning or development standards that must be complied with,
 - (ii) the minimum lease conditions that must be offered to tenants of the build-to-rent property,
 - (iii) the minimum scale of a building to qualify as a build-to-rent property,
 - (iv) the nature of the ownership and management of the building and the land on which the building is situated,

- (b) the circumstances in which the applicant is required to give an undertaking to not subdivide the land or otherwise divide the ownership of the land,
 - (c) other matters relating to build-to-rent properties and the land on which build-to-rent properties are situated as the Treasurer determines appropriate.
- (4) The guidelines must include policies to promote the development of new affordable housing and social housing in build-to-rent properties.
- (5) Without limiting the other ways in which this section may cease to apply to a person, it ceases to apply to a person if the person breaches an undertaking given as referred to in subsection (3)(b).
- (6) A guideline may—
 - (a) apply generally or be limited in its application by reference to specified exceptions or factors, or
 - (b) apply differently according to different factors of a specified kind, or both.
- (7) If the Chief Commissioner is satisfied that only part of a parcel of land is being used and occupied for a build-to-rent property, the reduction in land value under subsection (2) is to be proportionately decreased in accordance with guidelines approved by the Treasurer for the purposes of this section.
- (8) This section does not apply to an owner of land in respect of a tax year unless—
 - (a) the owner applies to the Chief Commissioner for the reduction, in the form approved by the Chief Commissioner, and
 - (b) the owner furnishes the Chief Commissioner with the evidence that the Chief Commissioner requests for the purpose of enabling the Chief Commissioner to determine whether there is an entitlement to the reduction.
- (9) However, if, within the period of 15 years after subsection (2) first applied to reduce the land value of a parcel of land, the land is subdivided or the ownership of the land is otherwise divided—
 - (a) a person whose liability to pay land tax in respect of the land has been assessed in accordance with this section must, within 1 month, inform the Chief Commissioner of the date on which the land was subdivided or the ownership of the land was otherwise divided, and
 - (b) liability for land tax in respect of the following years is to be reassessed as if subsection (2) had not applied to the person—
 - (i) the year in which the land is subdivided or the ownership of the land is otherwise divided,
 - (ii) each preceding year in which a person's liability to pay land tax was assessed in accordance with this section, but not more than 15 preceding years, and
 - (c) the subdivision or division is taken to be a tax default for the purposes of Part 5 of the *Taxation Administration Act 1996*.
- (10) For the purposes of section 9(3)(c) of the *Taxation Administration Act 1996*, any such reassessment is authorised to be made more than 5 years after the initial assessment.

- (11) Any reassessment is not a relevant land tax assessment for the purposes of section 35(1)(b) of the *Valuation of Land Act 1916* if it is based on the same land value or average value on which the original land tax assessment was based (before the reduction was made under subsection (2) of this section).
- (12) In this section—
affordable housing has the same meaning as in the *Environmental Planning and Assessment Act 1979*.
social housing means residential accommodation provided by a social housing provider within the meaning of the *Residential Tenancies Act 2010*.

Explanatory note

The proposed amendments provide that, for the purpose of assessing land tax, the land value of a parcel of land is to be reduced by 50% if a building is situated on the land that constructed after 1 July 2020 as a build-to-rent property as determined in accordance with guidelines approved by the Treasurer.

The proposed amendments also provide that if, within the period of 15 years after the first reduction of land value under the proposed section, the land is subdivided or the ownership of the land is otherwise divided, liability for land tax in respect of that year, and in each of the preceding 15 years in which a person's liability to pay land tax was reduced, is to be reassessed as if the reduction in land value had not applied to the land.

Schedule 4 Amendment of Payroll Tax Act 2007 No 21

Section 66E

Insert after section 66D—

66E Wages funded by Commonwealth Aged Care Workforce Retention Grant Opportunity

- (1) Wages paid or payable on or after 1 June 2020 (but before 1 January 2021) are exempt wages to the extent that they are funded by any payment (an *Aged Care Workforce payment*) made under the program established by the Commonwealth and known as the Aged Care Workforce Retention Grant Opportunity.
- (2) Any overpayment of Aged Care Workforce payments is to be disregarded in calculating the amount of Aged Care Workforce payments for the purposes of subsection (1).

Explanatory note

The proposed amendment provides for certain wages paid to employees that are funded by the Commonwealth Aged Care Workforce Retention Grant Opportunity to be exempt from payroll tax.