



New South Wales

# Property Tax (First Home Buyer Choice) Bill 2022

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to give first home buyers a choice when buying a first home as to whether to pay duty on the transfer of the land or to instead make the land subject to property tax.

## Outline of provisions

### Part 1 Preliminary

**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.

**Clause 3** provides that terms used in the proposed Act are defined in the Dictionary to the proposed Act.

**Clause 4** provides that the proposed Act is to be read with the *Taxation Administration Act 1996*, which makes provision for the administration and enforcement of the proposed Act and other taxation laws.

### Part 2 Key terms

**Part 2** defines certain key terms used in the proposed Act. These are *first home buyer*, *land*, *exclusive land use entitlement*, *owner of land*, *residential land*, *approved trust* and *transferee*.

## Part 3 Eligibility

**Part 3** provides that a transferee may make an application to the Chief Commissioner of State Revenue (the **Chief Commissioner**) to subject transferred land to property tax if the transferee is an eligible transferee and the transfer is an eligible transfer.

A transferee is an eligible transferee if the transferee is a first home buyer and an Australian citizen or permanent resident. The Part also provides for other persons

A transfer is an eligible transfer if it is for the acquisition of residential land or vacant land to be used as residential land.

If an application is approved by the Chief Commissioner, a first home buyer who is an eligible transferee must occupy the land as the person's principal place of residence for at least 6 months.

## Part 4 Opting in

**Part 4** sets out the procedure for land becoming subject to property tax. An eligible transferee may make an application to the Chief Commissioner. The Chief Commissioner must approve an application if satisfied—

- (a) the application is made in accordance with the proposed Act, and
- (b) if the application relates to an agreement for sale or transfer—the transfer will conform with the agreement, and
- (c) a first home buyer who is an eligible transferee must occupy the transferred land as the person's principal place of residence for at least 6 months.

If the application is successful—

- (a) each eligible transferee, or for an approved trust, the trustee transferee, becomes an included owner, and
- (b) the proportion of the transferred land owned by included owners becomes subject to property tax, and
- (c) the duty payable on the transfer is reduced by that proportion.

The proposed Part also provides for what is to occur if land is wrongly opted in.

## Part 5 Liability for property tax

**Part 5** makes each included owner of land subject to property tax jointly and severally liable to pay property tax on the land at the start of each financial year. The amount of property tax depends on whether the land is owner-occupied or not (the **class of land use**).

The proposed Part allows the Chief Commissioner to approve parts of land being treated as if they were separate lots that fall into different classes of land use in certain circumstances.

The proposed Part also sets out the amount of property tax payable, including by addressing circumstances in which land is subject to property tax for only part of a financial year or the class of land use of the land changes during the financial year.

## Part 6 Assessment and payment of property tax

**Part 6** requires the Chief Commissioner to give each included owner of land subject to property tax a notice of assessment of the property tax payable on land for a financial year. The Chief Commissioner must also give a notice of reassessment following certain changes that affect the property tax payable.

The proposed Part sets out the times at which an included owner must pay property tax. Failure to pay property tax when required is a tax default under the *Taxation Administration Act 1996* and the unpaid property tax and interest are a charge on the land.

## **Part 7 Deferral and recovery of unpaid property tax**

**Part 7** provides that a person may apply to the Chief Commissioner for a deferral of payment of property tax if the payment of the property tax would cause an individual who is the owner of the land to be unable to meet basic living expenses. The unpaid property tax and interest on that unpaid property tax are a charge on the land and must be paid before the land is transferred. The Chief Commissioner must not require a person who is liable to pay property tax to sell land that is owner-occupied.

## **Part 8 Transactions involving land subject to property tax**

**Part 8** sets out what happens when land subject to property tax is transferred, including—

- (a) whether duty is chargeable on the transfer, and
- (b) whether the land continues to be subject to property tax, and
- (c) whether the person to whom the land is transferred becomes an included owner or not.

## **Part 9 Miscellaneous**

**Part 9** provides for a number of miscellaneous matters including the following—

- (a) a requirement that the Chief Commissioner issue a property tax certificate for land,
- (b) permitting the Chief Commissioner to release a charge for unpaid property tax on land before the property tax is paid if satisfied it will be paid,
- (c) requiring included owners of land to give the notice of certain changes to the Chief Commissioner,
- (d) the consequences of failing to give information as required under the proposed Act,
- (e) requiring certain steps to be taken before a Bill is introduced into a House of Parliament that increases property tax above the indexed amounts set out in the proposed Act when the Act is first made.

## **Schedule 1 Special treatment of certain land**

**Schedule 1** provides for circumstances in which land—

- (a) subject to property tax is—
  - (i) treated as owner-occupied even though it is not owner-occupied, or
  - (ii) treated as if were not subject to property tax, or
- (b) is treated as being subject to property during a period when it was held by a nominee who is not an included owner.

## **Schedule 2 Calculating property tax**

**Schedule 2** sets out how property tax is to be calculated.

## **Schedule 3 Meaning of owner-occupied**

**Schedule 3** provides for the meaning of *owner-occupied* for the proposed Act.

## **Schedule 4 Savings, transitional and other provisions**

**Schedule 4** provides for savings, transitional and other provisions consequent on the enactment of the proposed Act.

## **Schedule 5      Amendment of Acts**

**Schedule 5.1** amends the *Duties Act 1997* to provide that Chapter 2 of that Act is subject to the proposed Act in relation to transactions involving land subject to property tax.

**Schedule 5.2** amends the *Land Tax Act 1956* to provide for circumstances where the land tax payable by a person who is an included owner must be reduced because of the land subject to property tax.

**Schedule 5.3** amends the *Land Tax Management Act 1956* to provide how land subject to property tax will affect provisions of the *Land Tax Management Act 1956*.

**Schedule 5.4** amends the *Taxation Administration Act 1996* to provide that the proposed Act is taxation law for the purpose of the *Taxation Administration Act 1996*.

## **Schedule 6      Dictionary**

**Schedule 6** defines certain words and expressions used in the proposed Act.