



State Revenue Legislation Amendment Bill.

Second Reading

Mr GRAHAM WEST (Campbelltown—Parliamentary Secretary) [10.17 a.m.], on behalf of Mr Craig Knowles: I move:

That this bill be now read a second time.

This bill implements the revenue measures announced by the Government on 6 April 2004. I remind the House that these revenue measures are part of a broader package of measures that will enable New South Wales to deal responsibly with the financial pressures imposed upon us. These pressures arise from the reduction of \$376 million a year in Commonwealth grants beginning in 2004-05, flowing from the Commonwealth Grants Commission's 2004 review of the formula for allocating grants to States and Territories; the need to fund almost \$400 million a year in recently awarded pay rises for nurses and teachers; and the need to provide extra funding for front-line services in hospitals, transport and education.

The package includes measures to ensure the Government provides more value for money in its spending, with greater efficiency, less duplication and with a focus firmly fixed on the fundamentals. The revenue side of the package has been shaped to raise additional revenue without taking back any of the \$1.4 billion in tax cuts the Government has delivered in the past five years with reductions in payroll tax, insurance stamp duty, motor vehicle registration and other taxes. The bill also provides for major tax cuts for young people and families by eliminating transfer duty for nine out of 10 first home buyers.

The package of measures contained in the bill represent the most fundamental reform of property taxation in this State for decades. In the past few years, property investors have plunged into the property market to take advantage of cuts to Federal capital gains tax. That has driven up the price of real estate, providing investors with big profits, but putting housing beyond the reach of many first-time home buyers. This bill will tilt the balance back in favour of first-time home buyers and away from investors. The Government is looking to property investors to help fund the loss of Federal funding and to assist young people get into their first home. This bill implements the changes to the First Home Plus Scheme; the abolition of the premium property tax; the introduction of premium property duty; the changes to land tax; and the introduction of vendor duty announced by the Government on 6 April this year. The bill also implements a number of other minor changes to the Duties Act 1997 to deal with issues identified earlier by the Government.

I turn first to the changes to First Home Plus—the program that assists first-time home buyers. The bill increases the threshold below which first home buyers pay no transfer duty or mortgage duty. It also removes the distinction in benefits that previously applied to the metropolitan area and other parts of the State. First home buyers across the State will pay no transfer duty or mortgage duty when they purchase a home worth up to \$500,000 or vacant residential land worth up to \$300,000. The benefits for first home buyers will be phased out between \$500,000 and \$600,000. The benefits for purchasers of vacant land will be phased out between \$300,000 and \$450,000. These increases in thresholds will remove stamp duty completely for about 90 per cent of all first home buyers in New South Wales. As indicated at the time these measures were announced, these enhanced concessions apply to all contracts entered into after midnight on 3 April. The change means a saving of up to \$18,000 on stamp duty and a further saving on mortgage duty.

The bill also more closely aligns the eligibility for First Home Plus with the requirements for the Commonwealth-State First Home Owner Grant Scheme. Currently, the First Home Plus concession is available where a buyer, or at least one of them in the case of joint purchasers, has not previously owned property. In future, where there are joint buyers, the First Home Plus concession will only be available where none of the joint buyers have previously held equity in a home. The requirement to occupy the property that has been purchased also mirrors the requirement of the First Home Owners Grant Scheme. The second measure implemented by this bill is the repeal of the Premium Property Tax Act. No further premium property tax liabilities will accrue on high-value principal places of residence. However, liabilities that have accrued up to and including the 2004 land tax year but remain unpaid, or which have been deferred, will still have to be met.

The third measure implemented by the bill is the introduction of premium property duty to replace premium property tax. Premium property duty of 7 per cent will apply to that part of the purchase price or value of residential property, or a parcel of residential land, for a single dwelling that exceeds \$3 million. This new marginal rate will only apply to premium residential property. It will not apply to any other transactions where the purchaser is liable to pay transfer duty such as the purchase of commercial buildings. In the case of the purchase of very large parcels of land, premium property duty will apply to two hectares where the pro rata value of that land exceeds \$3 million. Where a residence is located on land that is also used for another purpose, the premium property duty rate will apply only if the proportion of the purchase price or value relating to the residence exceeds \$3 million.

The bill also revamps land tax. The current system will be replaced with a fairer system with lower rates. As announced by the Government in April, from the 2005 land tax year the land tax threshold will be abolished. The current flat rate of 1.7 per cent will be replaced by three lower rates. For owners of properties with an aggregate land value of less than \$400,000, the new rate will be 0.4 per cent. For properties valued between \$400,000 and \$500,000 the tax payable will be \$1,600 plus 0.6 per cent on the amount above \$400,000. For owners of properties above \$500,000 the tax payable will be \$2,200 plus 1.4 per cent on the land value above \$500,000. Special trusts and non-concessional companies will continue to pay a flat rate of land tax, but this will be reduced from 1.7 per cent to 1.4 per cent. These changes will provide most businesses and property owners currently paying land tax with a significant reduction in their land tax bills. Those taxpayers with landholdings of between \$500,000 and \$1 million will see their land tax cut by between 21 per cent and 31 per cent.

At the same time as it introduces the new land tax rates, the Government will introduce an important concession for landowners with low incomes. Under the new arrangements low income landowners who own taxable land with a land value of less than \$400,000 that generates no income will be able to defer the payment of land tax on that property until they dispose of the land. This option will be available to landowners who, regardless of age, are in receipt of an income that is of a level that meets the income test requirements of the Commonwealth for receipt of a part age pension. The deferred amount will be adjusted annually by the change in the Sydney consumer price index. Landowners will have to apply each year for this concession. If a landowner has received this concession for any period and their land value or income rises above the thresholds, any land tax outstanding will remain deferred until disposal of the property.

According to an analysis produced by Macquarie Bank, "few investors are likely to feel more than minor cash-flow stress as a direct result of NSW's proposed land tax changes." Property investors paying land tax for the first time next year will pay it at a very low rate—0.4 per cent of the value of the land under their property. The maximum extra payment from the land tax changes is about \$25 a week. But as Mr Rory Robertson, Macquarie Bank's interest rate strategist, has pointed out:

For investors on annual taxable income over \$52,500, that \$25 a week is reduced to about \$13 a week once Federal income tax deductibility is taken into account.

Mum and Dad investors owning a single two-bedroom apartment in a high rise block will pay some fraction of that \$13 a week as the unimproved land value will be modest.

In fact, most smaller investors will face very small land tax bills. Someone who owns an average investment unit in Sydney would face a land tax bill of \$7.70 a week—before any Federal tax deduction—based on the average land value for strata units in Sydney of \$101,000. The final measure implemented by this bill is the introduction of vendor duty. From 1 June vendor duty will apply to the sellers of property, other than farms, principal places of residence, new or substantially new buildings, or substantially improved vacant land. Vendor duty will apply at the rate of 2.25 per cent of the consideration received for, or the value of, the property. However, it will only begin to apply if the sale price is at least 12 per cent higher than the property's acquisition price or value. Furthermore, where the sale price is between 12 per cent and 15 per cent higher than the acquisition price or value the duty will be phased in, so that vendor duty will only apply in full if the sale price is at least 15 per cent higher than the acquisition price. Where there is an agreement for sale or transfer of the land, vendor duty will be payable on settlement. In other cases, vendors will have three months in which to pay.

A home will be exempt from vendor duty if it has been the vendor's principal place of residence for the two years prior to the sale. Alternatively, if that two-year test is not satisfied, a home will be exempt if it has been occupied as a principal place of residence by the vendor for a total of at least three out of the five years prior to sale. In addition, a person who is required to move away from their nominated principal place of residence without establishing another principal place of residence will be able to maintain exempt status for the property for vendor duty purposes for up to six years. This concession is similar to the concession provided in the Commonwealth's capital gains tax legislation.

With the Government's announcement in April of its intention to impose vendor duty it indicated that new construction would be exempt. This bill provides that the first sale of newly constructed buildings, both residential and non-residential, will not be liable for vendor duty. Following discussions with the property industry on the development of vendor duty and its scope, the Government has decided that the exemption for the sale of newly constructed buildings will also apply to the sale of substantially new buildings. Furthermore, for the same reasons as it is exempting new construction from vendor duty, the Government will exempt the sale of vacant land where there has been a substantial improvement made to the land in preparation for the construction of new buildings. That is, vendor duty will not apply where the vendor adds significant value to vacant land by enhancements such as installing power and water or undertaking remediation works or road construction. Sales of land where no significant value is added will be subject to vendor duty.

The Government recognises that in some cases it may be necessary to put tenants into a newly constructed or substantially reconstructed building before it is sold. However, for the subsequent sale of the property to benefit from the concession for new construction, the bill provides that the sale must occur in a reasonably short time frame after construction otherwise the concession will lapse. The bill provides that the exemption will be available for the first sale of a newly constructed building that is rented after completion only if the sale is within 12 months of completion. Where a newly constructed building remains unoccupied prior to its first sale there is no time limit on the availability of the exemption from vendor duty.

The Government recognises that there are a number of other circumstances in which vendor duty should not apply. One clear anomaly is adverse possession, where land is lost through someone else's occupation of the land. If a landowner loses title to land as a result of a possessory application under the Real Property Act 1900, no duty will be imposed. The person taking possession of the land is liable to transfer duty on the acquisition. This will not change. In a number of circumstances transfer duty is not imposed by the Duties Act 1997 on an acquirer. Generally speaking, the bill provides that where no transfer duty is imposed on the acquirer vendor, duty is not imposed on that person as a seller. This means, for example, that a charity, which is not liable for transfer duty on the acquisition of land, is also not liable for vendor duty on the disposal of land. It does not mean, however, that a person selling land to a charity is exempt from vendor duty. Similarly, if the Government acquires land under the Land Acquisition (Just Terms Compensation) Act 1991, no vendor duty will be imposed. Gifts of land to acquirers exempt from transfer duty, such as charities, will generally be exempt from vendor duty.

The only situations where this will not apply are gifts to first home buyers, Department of Housing tenants and Aboriginal Housing Office tenants. There is also a range of transactions where transfer duty does not apply because of the nature of the transaction rather than the identity of the acquirer. For example, transfer duty is not imposed on a spouse or partner where they acquire property from their spouse or partner as a result of the break-up of a marriage or de facto relationship. Vendor duty will not apply irrespective of whether or not the property being disposed of is the vendor's principal place of residence. Again, the general rule applied by this bill is that where a transaction is exempt from vendor duty the person disposing of the property will not be liable for vendor duty. However, in relation to the break-up of a marriage or de facto relationship the bill will provide an additional concession to recognise the circumstances of those who come to arrangements outside the formal processes.

The Government recognises that a partner in a marriage or de facto relationship who is the sole owner of the couple's home may elect to move out of the home and establish another home elsewhere while the other partner resides in the property for an extended period. This informal arrangement could make that person liable for vendor duty on the subsequent sale of the home. It is not the Government's policy intention to impose vendor duty in that situation. The bill therefore provides that in such circumstances the partner who has moved out of their home and acquires another home may have both dwellings treated as their principal place of residence for the purposes of vendor duty. The former home will continue to be deemed a principal place of residence of the owner for as long as the other partner resides in the property. This will be an exception to the general rule that requires that each household may only claim one dwelling as their principal place of residence.

Another important class of transactions is the various types of disposal of property that can occur on the death of a property owner pursuant to a will or the laws of intestacy. If an executor of an estate is required to sell the property which was the deceased's principal place of residence, no vendor duty is payable, nor is vendor duty payable if the home passes to a beneficiary. The sale by an executor of property that was not the deceased's principal place of residence will attract vendor duty. However, if the property passes to a beneficiary no vendor duty is payable. In other words, vendor duty is not payable by the estate if a beneficiary inherits any property. A beneficiary who inherits the deceased's former principal place of residence and disposes of it within six months will not pay vendor duty.

If the beneficiary chooses to live in the property as their principal place of residence and subsequently sells it, the normal rules for vendor duty apply. Likewise, if the beneficiary chooses to rent out the property the normal vendor duty rules will apply. The acquisition value for the purposes of determining whether the property has increased in value by at least 12 per cent will be the value of the home at the time it was acquired by the beneficiary. Where a beneficiary inherits property that was not the deceased's principal place of residence and chooses to use the property as their principal place of residence the normal vendor duty rules will apply. If, instead, the beneficiary chooses to sell the property or use it as an investment property then vendor duty will apply to its disposal.

The base for determining whether or not the dutiable value on disposal is at least 12 per cent higher than its value at acquisition will be the value of the property at the time it was acquired by the deceased, not its value at the time it was acquired by the beneficiary. This earlier date is applied because the character of the property has not changed: it was and remains an investment property. This is a similar rule to that used by the Commonwealth to calculate capital gains tax on the inheritance and subsequent disposal of investment properties. Vendor duty will apply to the sale of land owned by businesses as well as residential investment property. Whereas transfer duty applies to the value of land and other assets acquired by the purchaser, vendor duty will apply only to the land component of the sale of the assets of a business. The other assets subject to transfer duty will be excluded.

Furthermore, the disposal of the land assets of a business will be subject to vendor duty only if the business is a land rich enterprise. That is, the business must own land in New South Wales that constitutes 60 per cent or more of the assets of the business. The Government recognises that the transfer of shares in companies or units in trusts that are land rich is generally regarded by business as similar to a transfer of the land itself. Accordingly, for almost 20 years transfer duty has applied to the acquisition of shares or units in land rich companies and trusts. As recently as November last year the Government amended the land rich provisions of the Duties Act to take account of modern business practices and to protect the transfer duty revenue base. Those amendments were developed following consultation with the relevant industry participants. The disposal of interests in land through the disposal of shares in land rich companies or units in land rich trusts should be subject to vendor duty. However, the application of vendor duty to land rich entities involves complex drafting issues. The Government will extend vendor duty to the disposal of shares in land rich companies and units in land rich trusts following consultation with the industry.

The bill also contains a number of minor miscellaneous amendments that deal with issues that have previously been identified by the Government. The first is to make an exemption from transfer and mortgage duty granted to certain public housing tenants who purchase a home conditional on the fulfilment of a residential requirement. This aligns the concession currently available for public housing tenants who are first home buyers purchasing an interest in the property they are renting with the residential requirements on other first home buyers. The second is to ensure that transfer duty is payable on commercial leases with a substantial premium component. This amendment, previously foreshadowed by the Government, deals with the practice that had been occurring whereby businesses structured their occupation of a building as a lease with a premium rather than an acquisition of a dutiable interest in the property to enable them to pay the much lower lease duty instead of transfer duty.

The third clarifies the situations in which entities are linked entities for the purpose of determining liability for transfer duty on acquisitions in land rich entities. The fourth and final miscellaneous amendment makes provision for the reassessment of a land rich acquisition statement in cases where an uncomplicated agreement affecting a landholder's liability for transfer duty is completed or rescinded after the acquisition in a company or trust is made. I commend the bill to the House.

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