



State Revenue Legislation Amendment Bill.

Second Reading

The Hon. MICHAEL EGAN (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [8.01 p.m.]: 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. These revenue measures are part of a larger package of measures that will enable New South Wales to deal responsibly with the financial pressures that have been imposed on us. These pressures arise from the reduction of \$376 million per year in Commonwealth grants beginning in 2004-05 and flowing from the Commonwealth Grants Commission's 2004 review of the formula for allocating grants to the States and Territories; the need to fund almost \$400 million per year in pay rises recently awarded to 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 that the Government provides more value for money in its spending with greater efficiency, less duplication and the 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 of tax cuts the Government has provided in the past five years through reductions to payroll tax, insurance, stamp duty, motor vehicle registration and other tax rates. The bill also provides a major tax cut for young people and families, eliminating transfer duty for nine out of ten first home buyers. The package of measures contained in the bill represents the most fundamental reform of property taxation for decades.

A reduction in Federal capital gains tax in 1999 saw investors plunge into the property market in preference to other kinds of investment. That has driven up the price of real estate, providing investors with big gains, but pushing housing beyond the reach of many first-time buyers. The latest housing finance figures show that investors accounted for 44 per cent of all credit, while first-time buyers took up only 8.5 per cent of approvals. The bill will tilt the balance back in favour of first-time 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 to get into their first home.

The bill implements the changes to the First Home Plus scheme, abolishes the premium property tax, introduces the premium property duty, reforms land tax and introduces the vendor duty announced by the Government in my mini-budget on 6 April. The bill also implements a number of other minor changes to the Duties Act 1997 to deal with issues identified earlier by the Government. The bill makes major changes to First Home Plus, the State Government program to assist first-time home buyers. The Government proposes to lift the threshold below which first home buyers pay no transfer duty or mortgage duty and make the resulting benefits available to all eligible buyers, regardless of where in the State they purchase property.

First home buyers 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. Honourable members may ask why the Government settled on a value of \$500,000 for the full exemption. The reason is that 90 per cent of first home buyers purchase a home for a value of less than \$500,000. But there is another important consideration: a quick back-of-the-envelope valuation of my own home showed that it was worth approximately \$500,000. I believe that every first home buyer is entitled to live in a house worth at least as much as the Treasurer's. If it is more than that, then they should have to wait a while.

The Hon. Rick Colless: What about your unit?

The Hon. MICHAEL EGAN: The unit is worth a great deal more, but I do not have any equity in it. I am sorry, I do have equity in it because since I purchased the unit it has risen quite appreciably in value, and whilst it has risen appreciably in value I have also had the benefit of negative gearing and depreciation allowances. Out of my own pocket it has not cost me a lot of money, but I have benefited from capital appreciation.

The increases in thresholds will remove stamp duty completely for about 90 per cent of all first home buyers in New South Wales. As I indicated when the measures were announced, these new concessions apply to all contracts entered into after midnight on 3 April 2004. The change means a saving of up to \$18,000 on stamp duty and a further saving on mortgage duty. The bill more closely aligns the eligibility for First Home Plus with the requirements of the Commonwealth-State First Home Owners Grant Scheme. From 1 July 2004, to be eligible for the new concessions neither the buyer nor his or her spouse or partner can have owned residential property in Australia, either solely or with another person.

There is one important exception to these changes. A person—for example, a parent—who has previously owned residential property and who acquires an interest in the property in order to help first home buyers to finance the acquisition will not disqualify the first home buyers from getting the concession. A residence test, similar to the requirement applying to recipients of the First Home Owner Grant Scheme, will be introduced from 1 July. The requirement to occupy a newly purchased property also mirrors the requirement of the First Home Owners Grant Scheme. The Government amended the bill in the lower House to ensure that buyers must be at least 16 years of age to be eligible for the new concessions.

The second measure implemented by the 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 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 a single residential property or a parcel of residential land that exceeds \$3 million. This new marginal rate will apply only 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 my April mini-budget, 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. I point out that in the case of investors these land tax payments will be an income tax deduction. 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 land holdings 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 that 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, have 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 his or her land value or income rises above the thresholds, any land tax outstanding will remain deferred until disposal of the property. Most small 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 current average land value for strata units in Sydney of \$101,000.

The Hon. Rick Colless: What is that, two hamburgers? You were critical of the Federal Government last year for providing similar tax cuts.

The Hon. MICHAEL EGAN: As the honourable member who is interjecting points out, that will pay for two hamburgers before the income tax deduction. After the deduction it will probably be enough to buy a couple of hamburgers and a sausage roll.

The Hon. Rick Colless: You are a hypocrite!

The Hon. MICHAEL EGAN: It was the honourable member's suggestion and I embraced it because it was accurate. 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 or value. 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.

The Hon. Rick Colless: I have been in my unit for one year.

The Hon. MICHAEL EGAN: The honourable member has another principal place of residence. He can have only one.

The Hon. Rick Colless: I have one principal place of residence, but I live in my unit in Sydney when I am in town. Is that exempt?

The Hon. MICHAEL EGAN: No. With the announcement in April of its intention to impose vendor duty, the Government 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 about 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 that 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 if the vendor adds significant value to vacant land by enhancements such as installing power and water, 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 new, 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. As a transitional measure for new, or substantially new, buildings constructed in the year prior to the commencement of this measure that are currently let, the bill provides that the concession will lapse one year after the commencement of the bill, not one year after completion of the building.

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. There are a number of circumstances in which 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 if he or she is a seller. That 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 situation in which this will not apply is a gift of investment properties to a first home buyer.

There is also a range of transactions to which 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 he or she acquires property from a 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 his or her home and acquires another home may have both dwellings treated as a 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 claim only one dwelling as a 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 his or her 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.

The Government amended the bill in the lower House to provide a concession from vendor duty for vendors who are selling a property that is wholly or partly the subject of a conservation agreement entered into under the National Parks and Wildlife Act 1974. The primary purpose of the agreement is the maintenance of threatened species, populations or ecological communities within the meaning of the Act to assist their preservation. The concession reduces the dutiable value on a pro rata basis to reflect the proportion of the property covered by the agreement. 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 only apply to the land component of the sale of a business's assets.

The other assets subject to transfer duty will be excluded. Furthermore, the disposal of land assets of a business will only be subject to vendor duty 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 and the Parliament amended the land rich provisions of the Duties Act to take account of modern business practices and 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 miscellaneous amendment 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 miscellaneous amendment 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 re-assessment of a land rich acquisition statement in cases where an uncompleted agreement affecting a land-holder's liability for transfer duty is completed or rescinded after the acquisition in a company or trust is made. I proudly commend the bill to the House.

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