

State Revenue Legislation Amendment Bill 2004

Explanatory note

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

Overview of Bill

The object of this Bill is to amend certain State revenue legislation for the following purposes:

- (a) to increase the duty concessions available to first home buyers under the First Home Plus scheme and to align the eligibility criteria for that scheme more closely with the First Home Owner Grant scheme,
- (b) to remove the tax free threshold for land tax and to introduce new rates of land tax in respect of all land that is subject to land tax,
- (c) to repeal the premium property tax and replace it with a premium rate of duty on purchases of residential land where the dutiable value of the land exceeds \$3,000,000,
- (d) to introduce a vendor duty on land-related transactions that are dutiable under the *Duties Act 1997*,
- (e) to make other miscellaneous changes to State revenue legislation.

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.

Clause 3 is a formal provision that gives effect to the amendments to the Acts specified in Schedules 1–5.

Clause 4 repeals the *Premium Property Tax Act 1998*. The repeal of that Act is related to the amendments set out in Schedule 3.

Schedule 1 Amendments to Duties Act 1997 No 123 relating to First Home Plus

Increased concessions for first home buyers

Schedule 1 amends the *Duties Act 1997* so as to increase the duty concessions available to first home buyers under the First Home Plus scheme.

At present, no duty is chargeable on the purchase of a first home under the scheme if the dutiable value of the property does not exceed \$200,000 (in the case of a purchase of property located in the Metropolitan area) or \$175,000 (in the case of a purchase of a property located elsewhere). Concessions also apply to purchases up to \$300,000 (in the Metropolitan area) and up to \$250,000 (in other areas). If vacant land is purchased for the purpose of building a first home, no duty is chargeable for a purchase of up to \$95,000 (in the Metropolitan area) or \$80,000 (in other areas). Concessions also apply for purchases of vacant land of up to \$140,000 (in the Metropolitan area) and \$110,000 (in other areas).

The amendments remove the distinction between purchases in the Metropolitan area and other areas.

Under the amendments, duty is not chargeable on the purchase of a first home with a dutiable value of up to \$500,000, with concessions applying for purchases exceeding \$500,000 but less than \$600,000. In the case of a purchase of vacant land, duty is not chargeable on a purchase of up to \$300,000, with concessions applying for purchases exceeding \$300,000 but less than \$450,000.

The provisions will apply in respect of agreements for sale or transfer entered into on or after 4 April 2004.

Eligibility criteria

At present, joint purchasers are eligible for the concessions available under First Home Plus if at least one of them has not at any time owned residential property in Australia (either solely or with someone else) that he or she has occupied as

his or her place of residence.

Under the amendments, joint purchasers will be eligible only if all of them have not at any time owned residential property in Australia (either solely or with someone else). In addition, a purchaser's spouse must not have previously owned residential property in Australia. There is an exception for a purchaser who acquires an interest in a property for the purpose of assisting an eligible person to finance an acquisition of a first home.

These changes are to apply to agreements for sale or transfer entered into on or after 1 July 2004.

Other changes to First Home Plus

The amendments also introduce a residence requirement in relation to homes purchased under the First Home Plus scheme that is similar to the residence requirement that applies to grants obtained under the *First Home Owner Grant Act 2000*. The changes make the grant of the concession conditional on the purchaser occupying the home for a continuous period of at least 6 months, with that occupation starting within 12 months after completion of the agreement or transfer concerned. The Chief Commissioner of State Revenue may modify the residence requirement.

These changes are to apply to agreements for sale or transfer entered into on or after 1 July 2004.

Schedule 2 Amendments relating to land tax

Schedule 2 amends the following Acts, for the purpose of giving effect to changes to the land tax scheme:

- (a) the *Land Tax Act 1956*,
- (b) the *Land Tax Management Act 1956*.

The amendments remove the tax free threshold that currently applies in respect of land that is subject to land tax. The new rates of land tax are as follows:

- (a) for land with a taxable value of not more than \$400,000—0.4 cents for each \$1,
- (b) for land with a taxable value of more than \$400,000 but not more than \$500,000—\$1,600 plus 0.6 cents for each \$1 by which the taxable value exceeds \$400,000,
- (c) for land with a taxable value of more than \$500,000—\$2,200 plus 1.4 cents for each \$1 by which the taxable value exceeds \$500,000.

Land that is owned by a non-concessional company or is subject to a special trust will be taxed at the top rate (1.4 cents for each \$1 of taxable value).

The amendments will also allow a concession to be applied to mixed use land (that is, land used partly for residential purposes and partly for other purposes), in the same way as it is applied to mixed development land. The purpose of the concession is to allow land that is used as the principal place of residence of a person but that is also used for other purposes (such as commercial purposes) to be taxed only to the extent that the land tax value reflects the non-residential use.

The changes will apply to the land tax year that commences in 2005 (that is, for land owned as at midnight on 31 December 2004).

Schedule 3 Amendments relating to premium property duty

The amendments set out in Schedule 3 are related to the proposal to repeal the *Premium Property Tax Act 1998* (see clause 4). At present, that Act imposes land tax on land that has a substantial taxable value, even if the land might otherwise be exempt from land tax under the principal place of residence exemption in the *Land Tax Management Act 1956*. The repeal of the *Premium Property Tax Act 1998* and the amendments to the *Land Tax Management Act 1956* will allow the principal place of residence exemption to be claimed in respect of such land.

Those changes will apply in respect of a land tax year commencing on or after 1

January 2005.

The amendments to the *Duties Act 1997* impose duty at a higher rate on the purchase of residential land if the dutiable value of the land exceeds \$3,000,000. The duty chargeable is \$150,490 plus duty at a premium rate of \$7 for every \$100, or part, by which the dutiable value exceeds \$3,000,000. The new duty will apply from 1 June 2004, or the date of assent to the Bill, whichever is the later.

If residential land is used for non-residential purposes, the premium duty rate will apply only to that component of the dutiable value of the land that is attributable to the residential use of the land and that exceeds \$3,000,000. This will involve an apportionment of the dutiable value of the land.

The *Valuation of Land Act 1916* already allows apportionment factors to be determined in respect of mixed development land. Mixed development land is land on which there is a building that is used partly as a dwelling and partly as an office. The amendments to that Act will also allow apportionment factors to be determined in respect of land used for both residential and non-residential purposes that is not mixed development land. For instance, a farm (where a building is used as a dwelling but the land is also used for non-residential purposes). This type of land is referred to as mixed use land. The purpose of the apportionment is to ensure that the premium rate of duty applies only to the dutiable value of the land to the extent that it reflects its residential use.

The amendment to the *Taxation Administration Act 1996* is a consequential amendment.

Schedule 4 Amendments to Duties Act 1997 No 123 relating to vendor duty

Schedule 4 amends the *Duties Act 1997* to impose an additional duty on certain transactions that are already dutiable under Chapter 2 of that Act. The additional duty is payable by the vendor or transferor.

The duty (referred to as **vendor duty**) is chargeable on certain dutiable transactions that involve land-related property. Land-related property is defined as:

- (a) land in New South Wales, or
- (b) a land use entitlement, or
- (c) an interest in any land-related property referred to in paragraph (a) or (b).

Vendor duty is to be charged at a rate of 2.25% of the dutiable value of the land-related property. Dutiable value is determined in accordance with the principles already set out in Chapter 2 of the *Duties Act 1997*.

Various exemptions apply in respect of vendor duty. The principal exemptions are as follows:

- (a) an exemption for land used as a principal place of residence by the vendor,
- (b) an exemption for farms (land used for primary production),
- (c) an exemption for land-related property in respect of which the dutiable value has not significantly increased since it was acquired by the vendor,
- (d) an exemption for land on which there is a new building,
- (e) an exemption for land on which there is a substantially new building,
- (f) an exemption for vacant land that has been substantially improved by the vendor,
- (g) an exemption for land sold in connection with a sale of business, if the dutiable value of the land is not a significant component of the consideration for the sale.

General exemptions under Chapter 2 of the *Duties Act 1997* will also apply in respect of vendor duty. Generally speaking a transaction that is not chargeable with ad valorem duty under Chapter 2 is not chargeable with vendor duty.

Exemptions will continue to apply in respect of charities and other bodies that

are not liable to pay duty under Chapter 11 of the *Duties Act 1997*.
An instrument that effects a dutiable transaction that is also a vendor duty transaction will need to be stamped to indicate that the vendor duty has been paid, or that no vendor duty is payable in respect of the transaction.
Vendor duty is to apply in respect of relevant transactions occurring on or after 1 June 2004, or the date of assent to the Bill, whichever happens later.

Schedule 5 Miscellaneous amendments

Miscellaneous amendments to Duties Act 1997

Schedule 5 makes miscellaneous amendments to the *Duties Act 1997*. Those amendments:

- (a) make an exemption granted to certain public housing tenants who purchase a home conditional on the fulfilment of a residential requirement (similar to the First Home Plus scheme) and certain other requirements,
- (b) ensure that duty is payable on leases with a substantial premium component,
- (c) clarify that duty is not payable on a premium payable for a residential lease,
- (d) make it easier to establish that entities are linked entities for the purpose of provisions relating to acquisitions in land rich entities,
- (e) make provision for the re-assessment of land rich acquisition statements if an uncompleted agreement affecting a landholder's land rich status is completed or rescinded after the acquisition of an interest in a landholder is made,
- (f) provide for the making of savings and transitional regulations as a consequence of the amendments made by the proposed Act,
- (g) remove redundant definitions and make other changes in the nature of statute law revision.

Miscellaneous amendment to Land Tax Management Act 1956

The amendment to the *Land Tax Management Act 1956* provides for the making of savings and transitional regulations as a consequence of the amendments made by the proposed Act.

Miscellaneous amendments to Valuation of Land Act 1916

The amendments to the *Valuation of Land Act 1916*:

- (a) provide for the making of savings and transitional regulations as a consequence of the amendments made by the proposed Act, and
- (b) make an amendment by way of statute law revision that extends a provision allowing the apportionment of the land value of land that is subject to separate rates to land that is subject to separate taxes.