Duties Amendment (Abolition of State Taxes) Bill 2006

Explanatory note

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

This Bill is cognate with the *Appropriation Bill 2006*.

Overview of Bill

The object of this Bill is to amend the *Duties Act 1997* as follows:

(a) to abolish duty on the hire of goods with effect on 1 July 2007,

(b) to abolish duty on leases with effect on 1 January 2008,

(c) to abolish duty on marketable securities that are currently dutiable with effect on 1 January 2009,

(d) to reduce by 50% the duty payable on mortgages with effect on 1 January 2010,

(e) to abolish duty on mortgages with effect on 1 January 2011,

(f) to abolish duty on the transfer of business assets (other than real property), statutory licences or permissions, and poker machine entitlements with effect on 1 July 2012.

Duty on lease premiums is retained. The payment of a premium in respect of a lease will continue to be treated in a similar manner to a transfer of land.

The Bill also provides for a number of transitional matters regarding the application of the duties referred to above prior to their abolition, particularly with respect to mortgage duty, and provides for anti-avoidance measures.

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 *Duties Act 1997* set out in Schedule 1.

Clause 4 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendments

Hire of goods

Schedule 1 [23] abolishes duty on a hire of goods, with effect on 1 July 2007.

Schedule 1 [44] includes savings and transitional provisions (proposed clauses 61 and 62) in relation to the abolition of the duty. These provisions ensure that the abolition of the duty does not affect an obligation to pay the hiring duty in respect of hiring charges received, or a hire of goods entered into, before the abolition date.

Schedule 1 [24] is a consequential amendment.

Duty on leases

Schedule 1 [17] abolishes duty on leases, with effect on 1 January 2008. The abolition will apply in respect of leases entered into on or after that date.

Schedule 1 [20] and [21] are an anti-avoidance measure. The amendments prevent a refund of lease duty being given if a lease is terminated before the abolition date, unless the Chief Commissioner of State Revenue is satisfied the leased premises are not being occupied by the lessee or an associated person and that the lessee or an associated person does not propose to resume occupation of the leased premises.

Schedule 1 [44] includes provision for transitional matters in relation to the abolition of lease duty (proposed clause 58). These include provision for the making of a final estimate by the Chief Commissioner of State Revenue of the cost of a lease entered into before the abolition date, so as to enable a final assessment of the duty payable.

Schedule 1 [1]–[3] ensure that duty continues to be payable, under Chapter 2 of the

Duties Act 1997, on any premium paid or payable in respect of a lease. This duty applies to a narrower class of leases than the general duty on leases. It is proposed that the duty on lease premiums will also be payable if a lease is entered into pursuant to an option and an amount is paid or payable for the grant of the option.

Schedule 1 [5] provides for the charging of duty on the amount of the premium (or the amount paid for the option).

Schedule 1 [10] and [13] preserve existing concessions and exemptions relating to the duty payable on lease premiums.

Schedule 1 [18], [19], [22] and [45] are consequential amendments.

Schedule 1 [44] includes a transitional provision (proposed clause 59) to ensure that the amendments relating to lease premiums apply only to leases entered into on or after 1 July 2006.

Duty on marketable securities

At present, the *Duties Act 1997* charges duty on a transfer of marketable securities only if the marketable security is not quoted on the Australian Stock Exchange or a recognised stock exchange. **Schedule 1 [9]** (proposed section 34) abolishes duty on all marketable security transfers, with effect on 1 January 2009. The abolition will apply only in respect of transfers occurring on or after that date.

Schedule 1 [15] abolishes the duty on entitlements arising from capital reductions or rights alterations, with effect on 1 January 2009.

Schedule 1 [16] abolishes the duty on an allotment of shares with effect on 1 January 2009.

Schedule 1 [4] and [14] are consequential amendments.

Mortgage duty

Schedule 1 [25] abolishes mortgage duty, with effect on 1 January 2011. Mortgage duty will continue to apply in respect of mortgages and other instruments of security executed before that date, but not in respect of any further advances made on or after that date.

Schedule 1 [30] reduces the mortgage duty rate by 50%, with effect on 1 January 2010. **Schedule 1 [28] and [29]** are consequential amendments.

Schedule 1 [26], [27] and [31]–[41] make miscellaneous amendments relating to the transitional application of mortgage duty. These changes do not affect the abolition of mortgage duty on 1 January 2011. **Schedule 1 [44]** (proposed clause 60) provides for the transitional application of the changes.

Schedule 1 [26] and [27] extend mortgage duty to instruments of security where certain property in New South Wales is affected by the instrument after the date the instrument is first executed. The amendment extends an existing provision relating to instruments of security that affect land in New South Wales after first execution. The extension will not apply to instruments of security that affect certain marketable securities and other interests.

Schedule 1 [32] changes the way duty is charged on certain mortgages, so as to make a distinction between all moneys mortgages and mortgages for a limited amount. The main effect of the change is that, if the amount of advances secured by a mortgage is a definite and limited sum, mortgage duty is charged on that definite and limited sum and any advances that exceed that sum (rather than the amount of the advances).

Schedule 1 [38] prevents the stamping of a mortgage for a limited sum before an advance is made. **Schedule 1 [31] and [41]** are consequential amendments.

Schedule 1 [33] provides for a concession in the calculation of mortgage duty on mortgages that affect property both within and outside Australia. At present, the value of the property affected outside Australia is removed from the calculation of the dutiable proportion of such a mortgage. This would operate to the disadvantage of a mortgagor under any international financing arrangement where advances were primarily secured on offshore property. The amendment allows the value of the offshore property to be taken into account in determining the proportion of the

advances under the mortgage that is dutiable in New South Wales.
Schedule 1 [35] deems instruments of security that secure, or partly secure, the same money to be part of a mortgage package (and assessed as if they were one mortgage) if they are first executed within any period of 28 days. A collateral mortgage that secures or partly secures the same money will also be considered part of a mortgage package (**Schedule 1 [36]**).
Schedule 1 [37] makes further provision for the assessment of mortgage packages if the amount secured by the mortgage package over property in Australia is a definite and limited sum, or the amount secured by the mortgage package over property in New South Wales is a definite and limited sum. **Schedule 1 [34]** is a consequential amendment. The provisions ensure that the dutiable proportion of any advances made in respect of the mortgage is calculated by reference to the following:
(a) in the case of a mortgage package with an Australian limit, the dutiable proportion of that limit,
(b) in the case of a mortgage package with a NSW limit, the dutiable proportion of all advances made under the mortgage, or the NSW limit, whichever is lower.
Schedule 1 [40] makes provision for the stamping of collateral mortgages. Collateral mortgages are mortgages that secure the same money as is secured by another mortgage. If the other mortgage has already been stamped in this jurisdiction or another jurisdiction, no duty is chargeable. This prevents double duty. In New South Wales, mortgage duty is to be reduced by half on 1 January 2010 and abolished on 1 January 2011. Other States are reducing and abolishing mortgage duty on different dates. The purpose of the amendment is to prevent the use of a mortgage that is collateral to a mortgage that has been stamped in another jurisdiction where mortgage duty has already been reduced to avoid mortgage duty in New South Wales. The amendment allows a mortgage that is collateral to a mortgage that has been stamped in a jurisdiction with reduced mortgage duty to be assessed as if it were part of a mortgage package, with a cap on duty applying to prevent double duty.
Schedule 1 [31] and [39] are consequential amendments.

Duty on transfers of business assets, statutory licences and permissions and poker machine entitlements

Schedule 1 [9] (proposed sections 35 and 36) abolishes, with effect on 1 July 2012, duty on transfers of the following types of dutiable property:
(a) business assets, which includes the goodwill of a business and intellectual property (but not real property),
(b) a statutory licence or permission under New South Wales law,
(c) a poker machine entitlement within the meaning of the *Gaming Machines Act 2001*.
The abolition will apply in respect of transfers made on or after the abolition date.
Schedule 1 [9] (proposed section 37) is an anti-avoidance measure to ensure that abolition does not extend to certain transfers or transactions that are entered into on or after the abolition date pursuant to arrangements made before that date.
Schedule 1 [7] provides for a new rule for the assessment of dutiable transactions involving goods and other dutiable property, on the basis that business assets will no longer be dutiable property after the abolition date.
Schedule 1 [4], [6], [8], [11], [12] and [42] are consequential amendments.

Regulations

Schedule 1 [43] enables savings and transitional regulations to be made as a consequence of the proposed Act.