

## **State Revenue Legislation Amendment Bill 2005**

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

### Overview of Bill

The objects of this Bill are:

(a) to amend the *Duties Act 1997*:

- (i) to impose duty on the assignment or transfer of a right under a call option to purchase dutiable property as if it were a transfer of the dutiable property in certain circumstances, and
- (ii) to modify various duty exemptions and concessions, and
- (iii) to prevent the misuse of a vendor duty concession, and
- (iv) to make further provision with respect to mortgage duty, and
- (v) to confirm that fit-out costs are not subject to lease duty and clarify the basis upon which lease duty is calculated, and
- (vi) to extend the power of the Chief Commissioner of State Revenue to utilise property valuations, and
- (vii) to make other miscellaneous amendments, including amendments by way of statute law revision, and

(b) to amend the *Fines Act 1996*:

- (i) to prohibit the disclosure of personal information obtained in connection with the administration or execution of the Act and provide for the circumstances in which such information may be disclosed, and
  - (ii) to give the State Debt Recovery Office power to access information about employers or past employers of fine defaulters, and
  - (iii) to provide for an alternative manner of making statutory declarations under the Act, and
  - (iv) to update a cross-reference, and
- (c) to amend the *Health Insurance Levies Act 1982* to transfer a provision from the regulations to the Act and to make an amendment by way of statute law revision, and

(d) to amend the *Pay-roll Tax Act 1971*:

- (i) to change the scheme for taxation of benefits paid to employees in the form of shares and share options, and
- (ii) to introduce an exemption for wages paid to financial planners, and
- (iii) to extend provisions that ensure that amounts paid indirectly to employees or directors and others are treated as wages for the purposes of the Act, and
- (iv) to extend provisions that ensure that amounts distributed under a trust in lieu of wages are treated as wages for the purposes of the Act and to make further provision with respect to the valuation of trust distributions, and
- (v) to modify the exemptions for motor vehicle allowances and accommodation allowances, and transfer those exemptions from the regulations to the Act, and
- (vi) to make other miscellaneous amendments, including amendments by way of statute law revision, and

(e) to amend the *Public Finance and Audit Act 1983*, the *State Owned Corporations Act 1989* and the *Taxation Administration Act 1996* to make further provision for the charging and collection of tax-equivalents from State owned corporations and government trading enterprises, and

(f) to amend the *Taxation Administration Act 1996*:

- (i) to extend provisions relating to the grouping of corporations, so that a

corporation's interest in another corporation may be traced through a series of linked corporations (the *Pay-roll Tax Act 1971* is modified consequentially), and

(ii) to extend the reasons for which taxation information may be disclosed, and

(iii) to make other amendments by way of statute law revision, and

(g) to repeal the *Health Insurance Levies Regulation 2003* and the *Pay-roll Tax Regulation 1998*.

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 1–7.

**Clause 4** repeals the *Health Insurance Levies Regulation 2003* as a consequence of the amendments made in Schedule 3 and the *Pay-roll Tax Regulation 1998* as a consequence of the amendments made in Schedule 4. The amendments in those Schedules transfer the relevant provisions of those Regulations to the relevant Acts. As a consequence, the Regulations are no longer required.

#### **Schedule 1 Amendment of Duties Act 1997 No 123**

##### **Duty on assignment or transfer of rights under call option**

**Schedule 1 [14]** imposes transfer duty on the assignment or transfer of a right under a call option to purchase dutiable property from another person. Transfer duty will be payable only if the person from whom the dutiable property may be purchased also has a right, under a put option, to require the holder of the call option, or an associated person, to purchase the dutiable property.

Duty is payable as if the assignment or transfer were a transfer of the dutiable property concerned. The person liable to pay the duty is the option holder or transferor of the call option.

The provisions provide for a reduction in duty if the option holder or transferor paid duty on the purchase of the call option. There is also provision for exemptions from duty in certain circumstances.

Special provisions are made for the stamping of instruments that effect or evidence a call option assignment.

**Schedule 1 [1]** is a consequential amendment.

##### **Changes to duty concessions and exemptions**

**Schedule 1 [2]** limits the duty concession for transfers that are pursuant to, but not in conformity with, an agreement for sale or transfer of property in respect of which duty has been paid.

**Schedule 1 [3]** prevents double duty being charged on a transfer of an interest in a partnership where the assets of the partnership include land, and duty is paid separately on the transfer of the land.

**Schedule 1 [4]** limits the application of the duty concession for partitions of property to partitions of land in New South Wales. **Schedule 1 [5]** is a consequential amendment that simplifies the method for determining the dutiable value of a partition.

**Schedule 1 [6] and [7]** extend existing duty concessions to certain situations where land vests in a person by statute.

**Schedule 1 [8]** provides for an exemption from transfer duty for:

- (a) the vesting of common property by statute, and
- (b) transfers made to correct conveyancing errors.

**Schedule 1 [9]** extends the exemption relating to family law matters to include transfers to a trustee for a child or children to a marriage or relationship.

**Schedule 1 [10]–[12]** clarify the eligibility criteria for the first home plus scheme.

The amendments make it clear that the previous ownership of residential property by

a person as trustee in certain circumstances does not disqualify the person from being eligible under the scheme. In addition, property purchased by a person as trustee may qualify for the scheme in certain circumstances.

**Schedule 1 [26]** codifies the Treasurer's guidelines relating to the duty exemption for intergenerational transfers of rural and other property. **Schedule 1 [20]** is a consequential amendment.

#### **Concession for vendor duty**

At present, a vendor duty concession applies to a transfer of land-related property if the dutiable value of the land-related property at the time of transfer does not exceed the dutiable value of the land-related property at the time of its acquisition by the vendor by more than 15%. An exemption applies if the increase in dutiable value does not exceed 12%, and a discount applies if the increase in dutiable value exceeds 12% but not 15%.

The amendments make special provision for the application of the concession in cases where the land-related property is acquired by means of a transaction that is not chargeable with ad valorem duty because the land was acquired from another corporation who is a member of the same group as the entity that acquires the land. If the vendor acquired the land-related property concerned by means of a dutiable transaction that was not chargeable with duty under section 281, the amendments deem the vendor to have acquired the land-related property when the last dutiable transaction relating to that land-related property, being a dutiable transaction that was chargeable with ad valorem duty as a transfer of the land-related property, occurred. See **Schedule 1 [15]–[19]**.

The amendments will have effect as if they had commenced on the date on which the Bill for the proposed Act was introduced in the Legislative Assembly. See **Schedule 1 [29]**.

#### **Mortgage duty**

**Schedule 1 [22]** displaces the *Corporations Act 2001* of the Commonwealth for the purpose of ensuring that there is no inconsistency between that Act and a provision of the *Duties Act 1997* that declares, for the purpose of charging mortgage duty, that shares in a company are taken to be located in the place where the company is registered.

**Schedule 1 [23]** confirms that mortgage duty is not chargeable on a charge over land that is created if any part of the deposit or balance of the purchase price for the land is paid to the vendor (or as the vendor directs) before completion of the sale or transfer of the land.

#### **Lease duty**

**Schedule 1 [21]** clarifies the method of determining the cost component of a lease for the purpose of charging lease duty.

**Schedule 1 [30]** ensures that certain fit-out costs are not subject to lease duty.

#### **Valuation of property**

**Schedule 1 [27]** extends the powers of the Chief Commissioner of State Revenue to obtain, or require a person to obtain, a valuation of property for the purpose of determining whether a person is liable for duty or determining a person's liability for duty. Specifically, the provisions authorise the Chief Commissioner to utilise a valuation that has been prepared for any purpose (whether or not for the purpose of determining liability for duty) and authorise the Chief Commissioner to recover the cost of obtaining a valuation where duty is charged by reference to the value of property.

#### **Miscellaneous**

**Schedule 1 [13]** updates a cross-reference to the *Land Tax Management Act 1956*.

**Schedule 1 [29]** makes it clear that the change has effect as if it had commenced on 31 December 2004.

**Schedule 1 [24]** clarifies the meaning of "premium" for the purpose of insurance

duty provisions and **Schedule 1 [25]** corrects a reference to Commonwealth insurance legislation.

**Schedule 1 [31]** removes a redundant definition.

**Schedule 1 [28]** provides for the making of savings and transitional regulations.

#### **Schedule 2 Amendment of Fines Act 1996 No 99**

**Schedule 2 [1]** allows a statutory declaration under the Act to be made under Commonwealth legislation (as an alternative to making it under the *Oaths Act 1900*).

**Schedule 2 [2]** allows the State Debt Recovery Office to obtain information about a fine defaulter from a current or past employer of the fine defaulter for the purposes of the enforcement of a garnishee order.

**Schedule 2 [3]** makes it an offence for persons engaged in the administration of the Act to disclose personal information obtained in connection with the administration or execution of the Act and provides for the circumstances in which that information can be disclosed.

**Schedule 2 [4]** updates a cross-reference to the *Criminal Procedure Act 1986*.

**Schedule 2 [5]** provides for the making of savings and transitional regulations.

#### **Schedule 3 Amendment of Health Insurance Levies**

##### **Act 1982 No 159**

**Schedule 3** amends the *Health Insurance Levies Act 1982*:

- (a) to delete a definition that is no longer used in the Act (**Schedule 3 [1]**), and
- (b) to add to the list of authorised agents under the Act an entity that is currently prescribed by the regulations under the Act (**Schedule 3 [2] and [3]**).

#### **Schedule 4 Amendment of Pay-roll Tax Act 1971**

##### **No 22**

##### **Share scheme benefits**

**Schedule 4 [14]** amends the *Pay-roll Tax Act 1971* to modify the scheme relating to the taxation of benefits given to employees (including directors and others who are treated as employees under the Act) in the form of contributions to employee share schemes. The scheme, as modified, provides that the grant of a share or option to an employee by an employer in respect of services performed or rendered by the employee constitutes wages for the purposes of the Act. (At present, contributions to employee share schemes, including monetary contributions, are treated as wages for the purposes of the Act, regardless of whether or not the shares are granted). Under the new scheme, the wages will become liable to taxation when the share or option is granted. However, in the case of an option, the employer may elect to defer payment of pay-roll tax on the option until it is exercisable. Special provisions are included for cases in which an option is granted but is later rescinded because of a failure by the employee to comply with the conditions attaching to the grant of the option. The amendments also provide for the valuation of grants of shares or options in accordance with Commonwealth income tax assessment legislation.

**Schedule 4 [17]** requires shares, or options to acquire shares, in a New South Wales company, to be treated as wages paid or payable in New South Wales. Other shares or options will be treated as paid or payable outside New South Wales (but may still attract liability for pay-roll tax if paid or payable for services provided in New South Wales). It also allows remuneration for an appointment as a director of a company to be treated as remuneration for services performed.

**Schedule 4 [3]** makes a consequential amendment.

**Schedule 4 [25]** omits the current provisions relating to valuation of contributions to share benefit schemes, as a consequence of the amendments.

**Schedule 4 [27]**, proposed clause 19, provides for the changes to have effect as if they had commenced on 1 July 2003. However, employers may elect to apply the former provisions of the Act in respect of any grants of shares or options in the financial years commencing on 1 July 2003 and 1 July 2004.

##### **Financial planners**

**Schedule 4 [15]** grants an exemption from pay-roll tax in respect of amounts paid or payable by a financial services licensee in respect of services provided by a financial planner. The exemption is subject to several conditions, including that the amounts paid or payable by the licensee comprise personal services income under Commonwealth income tax legislation. The conditions are set out in **Schedule 4 [25]**, proposed Schedule 1B.

**Schedule 4 [27]**, proposed clause 20, provides for the changes to have effect as if they had commenced on 1 July 2003.

#### **Indirect payments to employees, directors and others**

At present, provisions in the *Pay-roll Tax Act 1971* make it clear that benefits paid by a person other than an employer, or to a person other than an employee, that would be regarded as wages if they had been paid directly by the employer or directly to the employee are considered to be wages for the purposes of the Act. **Schedule 4 [2] and [16]** replace and extend this provision to remuneration paid in respect of the services of a director or member of the governing body of a company. For example, remuneration payable by a parent company of the company of which a person is a director will be liable to taxation as if it had been paid by the company of which the person is a director.

#### **Trust distributions**

Provisions that treat trust distributions that are in lieu of wages as wages for the purposes of the *Pay-roll Tax Act 1971* are extended by **Schedule 4 [7]–[10] and [13]** so that:

- (a) if a distribution is made by a trust in lieu of work done for a related trust, that distribution is treated as wages under the Act, and
- (b) if a trust distribution is made in lieu of work done for the trust by a director or member of the governing body of the trustee (regardless of whether the director or member is the recipient of the distribution), that distribution is treated as wages under the Act.

**Schedule 4 [12] and [25]** (proposed new Schedule 1A) transfer from the *Pay-roll Tax Regulation 1998* to the Act provisions relating to the method to be used in determining the component of a trust distribution that is to be treated as wages.

#### **Exemption for motor vehicle and accommodation allowances**

At present, exemptions for motor vehicle and accommodation allowances are contained in the *Pay-roll Tax Regulation 1998*. The amendments transfer the provisions of that Regulation to the Act, with some modifications. In particular, the provisions increase the amount of the exempt rate for such allowances and allow the rate to be determined in accordance with specified rates that reflect cost increases. See **Schedule 4 [6] and [20]**.

**Schedule 4 [24]** makes provision for the keeping of records in respect of the payment of a motor vehicle allowance and for the method by which the exempt component of the allowance is to be calculated. The requirements, which are set out in **Schedule 4 [25]**, proposed Schedule 1C, are similar to the existing requirements under the *Pay-roll Tax Regulation 1998* but clarify the records that are to be kept by an employer who elects to use the averaging method to calculate the exempt component.

**Schedule 4 [27]**, proposed clause 18, makes it clear that any matter that had effect under the *Pay-roll Tax Regulation 1998* continues to have effect under the Act.

#### **Miscellaneous**

**Schedule 4 [4] and [5]** provide for termination payments paid or payable to contract workers to be treated as wages (in the same way as termination payments paid or payable to ordinary employees).

**Schedule 4 [1] and [11]** provide for a new definition of *award* (which replaces an existing reference to an industrial instrument).

**Schedule 4 [18] and [19]** make it clear that a reference to the Home Care Service is a reference to the Home Care Service of New South Wales established under the

*Home Care Service Act 1988.*

**Schedule 4 [21]–[23]** are related to the amendments made to the *Taxation Administration Act 1996* by **Schedule 7 [9] and [11]**. See the explanatory material relating to Schedule 7.

**Schedule 4 [26]** provides for the making of savings or transitional regulations.

#### **Schedule 5 Amendment of Public Finance and Audit**

##### **Act 1983 No 152**

##### **Payment of tax-equivalents**

At present, there are 2 schemes operating for the payment of tax-equivalents by State owned businesses:

(a) the National tax-equivalent regime, which operates under the arrangements agreed to between the Commonwealth, the States and the Territories and is referred to in the Intergovernmental Agreement on the Reform of Commonwealth–State Financial Relations, and

(b) the State tax-equivalent regime, which operates under arrangements approved by the Treasurer.

Both regimes require State owned businesses that are subject to the regime to pay to the Treasurer amounts that they would be required to pay if they were liable to pay taxes under the laws of the Commonwealth. Under the National regime, amounts payable are assessed by Commonwealth officers. Under the State regime, amounts payable are assessed by the Chief Commissioner of State Revenue.

At present, State owned corporations may be required to pay amounts to the Treasurer under the National tax-equivalent regime, and this is expressly recognised by the *State Owned Corporations Act 1989*.

The amendments to the *Public Finance and Audit Act 1983* provide a legislative framework for the application of the National and State schemes to other statutory bodies. Specifically, **Schedule 5 [1]** allows the Treasurer to direct any statutory body specified in Schedule 2 to the Act to make payments under either the National tax-equivalent regime or the State tax-equivalent regime. If a statutory body is directed to make payments under the National tax-equivalent regime, the arrangements for assessment and payment are similar to those applying to State owned corporations under the *State Owned Corporations Act 1989*. If a statutory body is directed to make payments under the State tax-equivalent regime, the Chief Commissioner of State Revenue is made responsible for assessment of the amounts payable.

Amounts payable under either regime are to be credited to the Consolidated Fund.

**Schedule 5 [3]** validates things already done in connection with the imposition of tax-equivalents.

**Schedule 5 [2]** provides for the making of savings and transitional regulations.

#### **Schedule 6 Amendment of State Owned**

##### **Corporations Act 1989 No 134**

##### **Payment of tax-equivalents**

**Schedule 6 [1]–[4]** amend the *State Owned Corporations Act 1989* to clarify that if a refund of any amount paid as a tax-equivalent is required (for example, because of an overpayment), the Treasurer may direct payment of the refund out of the Consolidated Fund. The amendments also allow the power to direct refunds to be exercised by the Chief Commissioner of State Revenue or an authorised delegate.

**Schedule 6 [6]** validates things already done which could have been done if the amendments had been in force.

**Schedule 6 [5]** provides for the making of savings and transitional regulations.

#### **Schedule 7 Amendment of Taxation Administration**

##### **Act 1996 No 97**

##### **Tracing of interests in corporations**

The *Taxation Administration Act 1996* contains provisions relating to the grouping

of entities for taxation purposes. At present, these grouping provisions are used for the purpose of determining the pay-roll tax liability of related entities. The provisions are intended to ensure that related entities can only claim the tax free threshold once under the pay-roll tax legislation. **Schedule 7 [9] and [11]** amend the *Taxation Administration Act 1996* to allow a corporation's interest in another corporation to be traced through a series of linked corporations. If a corporation has a controlling interest in another corporation, whether or not that interest is a direct interest, the corporations will be considered to be part of the same group. **Schedule 7 [8]** is a consequential amendment.

**Schedule 4 [21]–[23]** contain related and consequential amendments to the *Pay-roll Tax Act 1971*. The provisions will allow the Chief Commissioner of State Revenue to exclude a corporation from a group (if it would otherwise be grouped with another corporation because of an indirect interest held in that corporation) but only if the Chief Commissioner is satisfied that the business carried on by the corporation to be excluded has been continuously carried on, and will continue to be carried on, substantially independently of the other members of the group.

#### **State tax-equivalent regime**

**Schedule 7 [2]** provides a framework for the administration and enforcement of the State tax-equivalent regime. The *Taxation Administration Act 1996* will apply in respect of the provisions of the *Public Finance and Audit Act 1983* relating to that regime as if it were a taxation law. This will allow, for instance, provisions of the *Taxation Administration Act 1996* relating to assessments, refunds and penalty interest to apply in respect of liability for taxation under the State tax-equivalent regime. **Schedule 7 [1]** is a consequential amendment.

#### **Miscellaneous**

**Schedule 7 [3]–[5]** allow disclosure of taxation information to be made in connection with a law of another State or a Territory that corresponds to the *First Home Owner Grant Act 2000* and to the Independent Commission Against Corruption.

**Schedule 7 [6]** clarifies that, for the purposes of provisions relating to objections in the *Taxation Administration Act 1996*, **decision** has the same meaning as it does in section 6 of the *Administrative Decisions Tribunal Act 1997*. **Schedule 7 [7]** is a consequential amendment.

**Schedule 7 [10]** provides for the making of savings and transitional regulations.