

State Revenue Legislation Amendment Bill 2006

Explanatory note

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 include certain improvements made to land in the calculation of the unencumbered value of the land for duty purposes, and

(ii) to extend a concession relating to cancelled transfers, and

(iii) to extend a concession for transfers made between an apparent purchaser and a real purchaser, and

(iv) to change the eligibility criteria for the First Home Plus scheme, and

(v) to confirm that decisions made by the Chief Commissioner of State Revenue under the Act are reviewable, and

(vi) to change reporting requirements with respect to transactions relating to certain land rich entities, and

(vii) to clarify the method for charging mortgage duty on debenture issues that were previously the subject of a duty concession, and

(viii) to make further provision with respect to insurance duty, and

(b) to amend the *Land Tax Management Act 1956*:

(i) to extend various land tax exemptions and concessions, and

(ii) to clarify the application of the principal place of residence exemption in respect of land owned or partly owned by companies, and

(c) to amend the *Pay-roll Tax Act 1971* to make further provision with respect to the tax payable on grants of shares or options to employees, and

(d) to repeal the *Petroleum Products Subsidy Act 1965* and the regulations under that Act, and

(e) to amend the *Taxation Administration Act 1996* with respect to permitted disclosures of taxation information.

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 1–4.

Clause 4 repeals the *Petroleum Products Subsidy Act 1965* and *Petroleum Products Subsidy Regulation 1998* with effect on 30 June 2006.

Clause 5 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 Amendment of Duties Act 1997

Calculation of unencumbered value of dutiable property

Duty under the *Duties Act 1997* is charged on the unencumbered value of dutiable property. If the dutiable property is land and, before the land is transferred to the transferee, the transferee makes improvements to the land, the value of those improvements is disregarded for the purpose of charging duty. **Schedule 1 [1]** limits that concession, so that improvements that are made by the transferor for or on behalf of the transferee are included in the unencumbered value of the land for duty purposes.

Cancelled transfers

The *Duties Act 1997* provides that a transfer of dutiable property is not liable to duty

in certain circumstances if the transfer is cancelled. At present, the concession does not apply if the transferee has claimed an equitable interest in the dutiable property concerned (for example, by lodging a caveat). **Schedule 1 [2]** removes that limitation on the concession.

Transfers between apparent purchaser and real purchaser

The *Duties Act 1997* provides that duty of \$10 (rather than ad valorem duty) is payable on a transfer of dutiable property from an apparent purchaser to the real purchaser of the property if the dutiable property is vested in the apparent purchaser upon trust for the real purchaser, who provided the money for the purchase of the dutiable property. **Schedule 1 [3] and [4]** modify that concession so that the concession:

- (a) applies if only part of the property held upon trust for the real purchaser by the apparent purchaser is transferred to the real purchaser, and
- (b) extends to dutiable property that has been improved following the purchase by the apparent purchaser, if the real purchaser provided the money for the improvements, and
- (c) extends to cases where the purchase money was provided as a loan and is to be repaid by the real purchaser, and
- (d) applies whether or not there has been a change in the legal description of the dutiable property between the purchase by the apparent purchaser and the transfer to the real purchaser (for example, a change in the description of land resulting from the subdivision of the land).

Eligibility for First Home Plus

Schedule 1 [5] amends the provisions relating to duty concessions provided to first home buyers under the First Home Plus scheme to ensure that the ownership at any time of other property does not prevent a person from being eligible under the scheme, if the other property is or was previously held as trustee or executor under a will. The amendment also makes it clear that the relevant concession continues to apply even if the other property is still owned by the applicant at the time of making an application under the scheme.

Review of decisions of Chief Commissioner

Schedule 1 [6] and [9] repeal provisions of the *Duties Act 1997* that provide that decisions of the Chief Commissioner in relation to applications under the First Home Plus scheme, and in relation to another duty concession, are determined solely at his or her discretion and are final. This confirms that those decisions are reviewable by the Administrative Decisions Tribunal under the *Taxation Administration Act 1996*.

Schedule 1 [7] and [8] are consequential amendments.

Land rich duty

The *Duties Act 1997* imposes duty on an acquisition of a significant interest in a land rich landholder (a private company or unit trust scheme that has substantial land holdings) as if the acquisition were a transfer of land. When a relevant acquisition in a land rich landholder occurs, the person who made the acquisition is required to lodge with the Chief Commissioner of State Revenue a statement setting out certain information in relation to the acquisition. This requirement applies even if the acquisition is an exempt transaction (and not chargeable with duty). The information required to be provided includes a valuation of the land holdings of the landholder concerned and of all property of the landholder. **Schedule 1 [10] and [11]** remove the requirement that the valuation information be provided in all acquisition statements. Instead the information is to be provided only if the acquisition is not an exempt transaction (see **Schedule 1 [12]**).

The threshold at which duty under the land rich provisions of the *Duties Act 1997* is payable is lower for an acquisition in a private unit trust scheme than it is for an acquisition in any other landholder. Certain unit trust schemes (namely imminent public unit trust schemes, wholesale unit trust schemes and imminent wholesale unit

trust schemes) must be registered with the Chief Commissioner of State Revenue in order to obtain the benefit of the higher threshold (that is, in order to ensure that they are not treated as private unit trust schemes under the provisions). **Schedule 1 [13]** makes it a condition of registration of a wholesale unit trust scheme that the responsible entity of the scheme report to the Chief Commissioner about certain acquisitions in the unit trust scheme, whether or not the acquisition is chargeable with duty under the Act.

Mortgage duty on debenture issues

The *State Revenue Legislation Further Amendment Act 2005* provided for the closure of a mortgage duty concession that applied to advances made in respect of old debenture issues. **Schedule 1 [14] and [15]** clarify that the closure does not operate to impose duty (that would not otherwise be payable) on advances made before the closure date and prevent the use of collateral mortgages to avoid liability to duty.

Schedule 1 [16] makes it clear that the removal of the concession extends to advances made (after the closure date) in respect of debentures executed on or after 1 January 1975. **Schedule 1 [24]** is a consequential amendment. The amendments have effect as if they had commenced on 15 November 2005 (when the relevant provisions of the *State Revenue Legislation Further Amendment Act 2005* commenced) (see **clause 2 (2)**).

Insurance duty

Under the *Duties Act 1997* a person who takes out general insurance with a person who is not a registered insurer is required to pay any insurance duty charged on the insurance policy. **Schedule 1 [17]** corrects a reference to such unregistered persons as insurers. **Schedule 1 [18]** clarifies what is meant by the expression “premium”.

Schedule 1 [20] provides for the rate at which insurance duty is chargeable on a group term insurance policy (a term insurance policy that applies to a group of persons). Duty is charged at 5% of the first year’s premium and then 5% of the amount of the premium payable in each succeeding year in respect of each additional life covered by the policy (that was not covered in the previous year). **Schedule 1 [21]** defines group term insurance policy for the purposes of the new provisions.

Schedule 1 [19] is a consequential amendment. **Schedule 1 [22]** makes a consequential amendment to reporting provisions. **Schedule 1 [19]–[22]** will commence on 1 July 2006 (see **clause 2 (2)**).

Savings and transitional

Schedule 1 [23] provides for the making of savings and transitional regulations as a consequence of the amendments.

Schedule 2 Amendment of Land Tax Management

Act 1956

Land tax exemptions and concessions

Schedule 2 [2] amends section 10S of the *Land Tax Management Act 1956* to exempt from land tax certain land that is the subject of a rent-buy scheme. **Schedule 2 [1]** is a consequential amendment.

At present, the *Land Tax Management Act 1956* allows the principal place of residence exemption to continue to be claimed by a person in respect of his or her former principal place of residence for a period of absence from the residence of up to 6 years (subject to certain conditions). **Schedule 2 [4] and [5]** allow that concession to be extended indefinitely during any period in which the former resident is in full time care in a hospital, mental hospital or aged care establishment or living with a permanent carer. These amendments will have effect on 31 December 2006 (for the 2007 land tax year).

Schedule 2 [6] extends an existing concession that allows land that was the principal place of residence of a person who has died to continue to be treated as land tax exempt for a limited period after the death. The purpose of the extension is to allow a beneficiary of the deceased person’s estate to whom the land is transferred for up

to 12 months after the death while the beneficiary makes arrangements to sell the land. The 12 month period may be extended by the Chief Commissioner of State Revenue. The amendment will have effect on 31 December 2006 (for the 2007 land tax year).

Schedule 2 [7] allows the principal place of residence exemption to continue to be claimed in respect of land used as the principal place of residence of a deceased person before his or her death if the land is used and occupied by a person other than the owner who resided with the owner before his or her death and continues to do so after the death with the permission of a beneficiary of the estate to whom the land is transferred. The amendment will have effect on 31 December 2006 (for the 2007 land tax year).

Application of principal place of residence exemption to companies

Schedule 2 [3] and [8] make it clear that the principal place of residence exemption cannot be claimed in relation to land partly owned by a company (as well as land that is wholly owned by a company). The exemption can be claimed by natural persons only.

Schedule 2 [9] makes it clear that the restriction does not prevent the principal place of residence exemption applying in respect of land owned by a company if the *Land Tax Management Act 1956* deems a natural person to be the owner of the land for land tax purposes to the exclusion of the company owner (as it does, for example, in the case of company title units).

Transitional

Schedule 2 [10] allows savings and transitional regulations to be made as a consequence of the amendments.

Schedule 2 [11] contains transitional provisions in relation to the application of some of the amendments.

Schedule 3 Amendment of Pay-roll Tax Act 1971

The *Pay-roll Tax Act 1971* provides for the charging of pay-roll tax on grants of shares or options by employers to employees (or by companies to directors or members of the board). **Schedule 3 [1]** allows employers to elect to treat the wages constituted by the grant of a share as having been paid or payable (for pay-roll tax purposes) on the date the share is granted to the employee, or the date on which the share vests in the employee (that is, when any conditions applying to the grant of the share have been met and the employee's legal or beneficial interest in the share cannot be rescinded). This is similar to the treatment of options under the scheme. At present the pay-roll tax liability arises when the share is granted. The provisions adopt provisions of the *Income Tax Assessment Act 1936* of the Commonwealth for the purpose of determining when a share or option is granted.

Schedule 3 [2] provides that pay-roll tax is payable when an option vests in an employee only when the employee exercises his or her right under the option to have a share transferred to, allotted to or vested in him or her.

Schedule 3 [4] ensures that pay-roll tax will continue to be payable in respect of a grant of a share or option that is later withdrawn, cancelled or exchanged, if it is withdrawn, cancelled or exchanged for valuable consideration.

Schedule 3 [6] extends a refund provision to cases where the grant of a share or option to an employee is rescinded by someone other than the employer.

Schedule 3 [7] makes it clear that consideration paid by an employee for the vesting (or the grant) of a share is to be excluded from the value of the share or option for pay-roll tax purposes.

Schedule 3 [8] makes it clear that shares or options are to be valued in accordance with the specific provisions in the *Pay-roll Tax Act 1971* relating to their valuation, and not the general provisions relating to fringe benefits.

Schedule 3 [3] and [5] are consequential amendments.

Schedule 3 [9] and [10] provide for savings and transitional matters. The

amendments have effect as if they had commenced on 1 July 2005. Employers may also elect to apply the amendments in respect of their pay-roll tax liability for the years commencing 1 July 2003 and 1 July 2004.

Schedule 4 Amendment of Taxation Administration

Act 1996

Schedule 4 permits taxation information to be disclosed to the Director-General of the Department of State and Regional Development or a person authorised by the Director-General.