NSW Legislative Assembly Hansard

State Revenue Legislation Amendment Bill

Extract from NSW Legislative Assembly Hansard and Papers Tuesday 23 May 2006.

Second Reading

Mr PAUL McLEAY (Heathcote—Parliamentary Secretary) [10.53 p.m.], on behalf of Mr Morris Iemma: I move:

That this bill be now read a second time.

The State Revenue Legislation Amendment bill 2006 is part of the Government's ongoing program of maintaining State legislation to ensure its provisions are clear and effective. The bill amends the Duties Act 1997, the Land Tax Management Act 1956, the Pay-roll Tax Act 1971, and the Taxation Administration Act 1996. I will deal with the amendments to each Act in turn. The bill extends a concession for transfers of property from the trustee under a resulting trust. The concession applies when a trustee who has purchased property transfers it to the real purchaser; that is, the person who provided the money to the trustee for the purchase. Judicial interpretation of these provisions in recent years has limited the scope of the concession and resulted in some inconsistencies.

The bill extends the concession to include some instances where the nature or description of the property changes before the transfer and where there are partial transfers of property. This will allow property that has been improved or had a change in legal title to remain eligible for the concession. For example, the transfer of strata lots following the construction of a strata development will be eligible for the concession if the real purchaser provided the money for the purchase of the land and subsequent development. A consequential amendment is made to a separate concession relating to improvements made by the transferee prior to transfer. Another amendment extends the circumstances in which a refund is payable on a transfer of property where the transaction does not proceed and the transfer document is cancelled.

The bill improves two administrative provisions for land rich duty. First, it reduces the amount of information the Chief Commissioner of State Revenue requires from persons who have made exempt acquisitions. This will reduce red tape and compliance costs for taxpayers. Second, registered wholesale unit trust schemes will be required to report on certain transactions. This will enable the Office of State Revenue to monitor the use of the concession for wholesale trusts. The bill also contains provisions clarifying the legislation that covers two current administrative practices. One amendment clarifies the liability to duty on certain group life insurance policies, confirming the existing practice of life insurance companies. This amendment has been developed in consultation with the Investment and Financial Services Association.

The second clarification relates to amendments made to the Duties Act in 2005 to prevent abuse of a mortgage duty concession for debenture issues. The provisions apply to loan advances made on or after 15 November 2005 regardless of the date of the mortgage. At the time of the amendments some tax practitioners expressed concern that the provisions may be open to an interpretation that mortgage duty could be retrospectively imposed on past borrowings by the mortgagor. The bill makes amendments that will make the provisions clearer and allay any concerns about interpretation. The bill also extends eligibility for the First Home Plus Scheme to ensure that persons who have previously owned a property as a trustee or executor are not disqualified when they purchase their own first home. The scheme's provisions are being amended to remove any doubt that decisions by the chief commissioner under the scheme are reviewable, including by the Administrative Decisions Tribunal.

I will now deal with the amendments to the Land Tax Management Act. Honourable members may be aware that the Department of Housing operates a Rent-Buy Scheme, which assists low-income earners to purchase a share of their home. A private company financier owns the remaining share and receives rent from the low-income earner. Home buyers can progressively increase their interest in the home to 100 per cent ownership. About 40 participants remain in the scheme. The properties are not exempt from land tax because a joint owner of each property is a non-exempt company. Most of the homeowners concerned are not liable to land tax because of the land value threshold. However, a very small number of homeowners under the scheme could become liable for land tax as they approach 100 per cent ownership. Because the participants' homes are their principal places of residence the Government is moving to ensure that all land subject to the scheme is exempt from land tax.

The bill also extends the exemption for a principal place of residence for aged persons who move into a nursing home or other care arrangements where the carer is eligible for the Commonwealth carer's allowance. Currently these people are entitled to retain the land tax exemption during an absence from the residence of up to six years provided the property is not leased for more than six months in any year. The bill will remove the six-year limit to accommodate cases where an aged owner is unable to resume permanent occupation of the home. The land tax legislation currently provides a concession for a deceased owner's exempt residence by extending the exemption for up to 12 months after death. This allows sufficient time for the estate to be administered. Once the property is transferred to a beneficiary the exemption ceases to apply, but the land still qualifies for exemption if the person who acquires the land following administration of the estate uses and occupies the land as his or her principal place of residence.

In cases where the beneficiary who is entitled to the land decides to sell rather than occupy it, no land tax applies prior to the sale if the executor remains as the registered owner until the land is sold. However, if the land is transferred to the beneficiary before being sold it becomes liable to land tax even if the sale is completed within 12 months after death. In order to remove this anomaly the bill will allow the exemption to apply until the completion of a sale, even if the land is transferred to a beneficiary prior to sale.

The bill also includes an amendment that extends the exemption for a deceased owner's former residence beyond 12 months after death when a person who resided with the deceased owner continues to reside there with the approval of a beneficiary of the estate. The land tax legislation currently excludes companies from eligibility for the principal residence exemption. The bill contains amendments to make it clear that this restriction applies in any case where a company is an owner unless otherwise specified in the Act. The bill makes minor amendments relating to liability for pay-roll tax on share scheme benefits. This will align the grant of a share or option with the meaning of "acquiring" in the Commonwealth income tax legislation. The amendments also specify two alternative dates on which an employer may choose to pay tax in relation to shares—either the date on which a share is acquired or the date on which the share vests in the employee.

The bill makes an amendment to facilitate the Government's new, $95 million payroll tax incentive scheme designed to boost employment in areas of high unemployment. The amendment will permit the disclosure of necessary information to the Director General of the Department of State and Regional Development, who will administer the scheme. All of these amendments have been the subject of consultation between the Office of State Revenue and relevant industry and professional bodies. The bill repeals the Petroleum Products Subsidy Act 1965, which provides the administrative mechanism for the Commonwealth Government's Petroleum Products Freight Subsidy Scheme. Repeal of the Act is necessary as a result of the Commonwealth Government's decision to abolish this scheme. I commend the bill to the House.