



New South Wales

State Revenue Legislation Further Amendment Act 2012 No 76

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New South Wales

State Revenue Legislation Further Amendment Act 2012 No 76

Act No 76 , 2012

An Act to make miscellaneous amendments to certain State revenue legislation.
[Assented to 29 October 2012]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *State Revenue Legislation Further Amendment Act 2012*.

2 Commencement

This Act commences on the date of assent to this Act.

Schedule 1 Amendment of Duties Act 1997 No 123

[1] Section 8 Imposition of duty on certain transactions concerning dutiable property

Insert at the end of section 8 (1) (b) (before the note):

, and

- (c) a transfer of a partnership interest that is taken to occur under section 9A when a change in partnership arrangements occurs.

Note. Partnership interest is defined in section 11 (1) (i).

[2] Section 9A

Insert after section 9:

9A Transfer of partnership interest occurring on change in partnership arrangements

- (1) A transfer of a partnership interest is taken to occur when a change in partnership arrangements occurs.
- (2) A change in partnership arrangements occurs if:
 - (a) a partner in an existing partnership retires so that a new partnership is formed (with or without the admission of new partners), or
 - (b) a new partner is admitted to an existing partnership so that a new partnership is formed.
- (3) A new partnership is formed when a partner in an existing partnership retires, unless the partnership is wound up on that retirement (sometimes referred to as a general dissolution of the partnership).
- (4) A new partnership is formed whenever a new partner is admitted to an existing partnership.
- (5) For the purposes of this Act:
 - (a) if a change in partnership arrangements occurs because of the retirement of a partner in an existing partnership, the retiring partner's partnership interest is taken to be transferred to the partners in the new partnership (*a retirement transfer*), and
 - (b) if a change in partnership arrangements occurs because of the admission of a new partner to an existing partnership, the new partner's partnership interest is taken to be

transferred to the partners in the new partnership (*an admission transfer*).

- (6) If a change in partnership arrangements results in both one or more retirement transfers and one or more admission transfers, duty is chargeable only on:
- (a) the retirement transfer or retirement transfers, if the dutiable value of the retirement transfer or retirement transfers exceeds the dutiable value of the admission transfer or admission transfers, or
 - (b) the admission transfer or admission transfers, if the dutiable value of the admission transfer or admission transfers exceeds the dutiable value of the retirement transfer or retirement transfers.
- (7) This section does not affect liability for duty on a transfer of a partnership interest that occurs otherwise than because of a change in partnership arrangements.
- Note.** For example, a transfer of a partnership interest from one partner to another partner in an existing partnership will also be dutiable under this Chapter.
- (8) In this section, *retirement* of a partner includes retirement as a consequence of the death of a partner.

[3] Sections 11 (2), 33 (note), 66 (8A), (9A) and note, 125 (1) (paragraph (b) of the definition of “company”), 138 and 208 (6)

Omit “Australian Stock Exchange” wherever occurring.

Insert instead “Australian Securities Exchange”.

[4] Section 29 Partnership interests

Omit section 29 (3). Insert instead:

- (3) If the property of a partnership includes a land-related asset and an interest in the land-related asset is transferred as a result of the transfer of the partnership interest, the dutiable value of the partnership interest is to be reduced by the dutiable value of the interest in the land-related asset that is transferred, but only if ad valorem duty has been paid or is payable on the transfer of the interest in the land-related asset.

Note. For example, 3 partners jointly hold land valued at \$9 million and other non-dutiable property valued at \$3 million. The partnership has liabilities of \$6 million. One partner retires, and is paid \$2 million for his or her partnership interest. The retiring partner transfers a one-third interest in the land to the remaining partners. Duty is payable at an ad valorem rate on the transfer of the one-third interest in the land. The transfer of the interest in land has a dutiable value of \$3 million. Under

this section, the partnership interest has a dutiable value of \$1.5 million (DV = \$2M x \$9M/\$12M). As the dutiable value of the interest in land transferred exceeds the dutiable value of the partnership interest transferred, the minimum duty would be payable on the transfer of the partnership interest.

- (3A) The minimum duty chargeable in respect of a transfer of a partnership interest to which subsection (3) applies is \$50.

[5] Section 54A Transfers in relation to managed investment schemes

Insert after section 54A (4):

- (5) Duty of \$50 is chargeable in respect of a transfer of dutiable property from a trustee of a wholly owned sub-trust of a managed investment scheme to a custodian of the trustee of that wholly owned sub-trust.
- (6) Duty of \$50 is chargeable in respect of a transfer of dutiable property from a custodian of the trustee of a wholly owned sub-trust of a managed investment scheme to that trustee.
- (7) In this section, a reference to a wholly owned sub-trust of a managed investment scheme includes a sub-trust that is part of a chain of sub-trusts:
- (a) that starts with a wholly owned sub-trust of a managed investment scheme, and
- (b) in which a link in the chain is formed if the sub-trust wholly owns the next sub-trust in the chain.
- (8) A sub-trust is taken to be a *wholly owned* sub-trust of a managed investment scheme or sub-trust (the *controlling trust*) if the units in the sub-trust are wholly owned by the trustee of the controlling trust in the trustee's capacity as trustee of the controlling trust.

[6] Section 58 Establishment of a trust relating to unidentified property and non-dutiable property

Omit "because of section 11 (2)" from section 58 (6).

[7] Section 104

Omit the section. Insert instead:

104 Application of scheme to land use entitlements

This Division applies to the transfer of a land use entitlement in the same way as it applies to a transfer of land, with such modifications as may be necessary.

[8] Section 205 What is a mortgage?

Insert at the end of the section (before the note):

- (2) Clause 22A of Schedule 1 to the *Personal Property Securities (Commonwealth Powers) Act 2009* does not apply, and is taken to have never applied, in respect of this Chapter.

[9] Section 270C

Insert after section 270B:

270C Exemption for new heavy vehicle trailers

- (1) Duty under this Chapter is not chargeable on an application to register a heavy vehicle trailer, if the heavy vehicle trailer has not previously been registered under the *Road Transport (Vehicle Registration) Act 1997* or under a law of another State or a Territory that provides for the registration of motor vehicles.
- (2) In this section, a **heavy vehicle trailer** means a trailer within the meaning of the *Road Transport (General) Act 2005* that is a heavy vehicle within the meaning of the *Road Transport (Vehicle Registration) Act 1997*.

[10] Section 273 Minimum amount of duty

Omit “or Chapter 8 (Insurance)” from section 273 (2).

Insert instead “, to Chapter 8 (Insurance) or to any transaction or instrument for which a different minimum amount of duty is specified by this Act”.

[11] Schedule 1 Savings, transitional and other provisions

Insert after Part 38:

**Part 39 Provisions consequent on enactment of
State Revenue Legislation Further
Amendment Act 2012**

106 Application of amendments

- (1) An amendment made to Chapter 2 by the *State Revenue Legislation Further Amendment Act 2012* applies in respect of a dutiable transaction that occurs on or after the commencement of the amendment.
- (2) Section 270C, as inserted by the *State Revenue Legislation Further Amendment Act 2012*, applies in respect of the

registration of a trailer on or after the commencement of that section.

- (3) An amendment made to an expression in the Dictionary by the *State Revenue Legislation Further Amendment Act 2012* applies in relation to any liability for duty that arises on or after the commencement of the amendment.

[12] Dictionary

Omit the definition of *Australian Stock Exchange* from clause 1.

Insert instead:

Australian Securities Exchange means the Australian Securities Exchange Limited.

[13] Dictionary, clause 1, definitions of “business asset”, “partnership interest” and “transferable floor space”

Omit “section 11” wherever occurring. Insert instead “section 11 (1)”.

[14] Dictionary, clause 1, definitions of “listed company”, “listed trust” and “private company”

Omit “Australian Stock Exchange” wherever occurring.

Insert instead “Australian Securities Exchange, the New Zealand Exchange”.

[15] Dictionary, clause 1

Insert in alphabetical order:

New Zealand Exchange means NZX Limited.

[16] Dictionary, clause 1, definition of “recognised stock exchange”

Insert after paragraph (b):

(ba) the New Zealand Exchange, or

[17] Dictionary, clause 1, definition of “RIOT”

Omit the definition.

[18] Dictionary, clause 4 (1A)

Insert after clause 4 (1):

- (1A) To avoid doubt, the land includes anything that, under the authority of the mining lease or mineral claim (whether direct or indirect), is fixed to the land the subject of the lease or claim and that would be a part of the land (as a fixture) if the lease or claim were an estate in fee simple in the land.

Schedule 2 Amendment of Health Insurance Levies Act 1982 No 159

[1] Section 16G Annual adjustment

Omit the definition of *year* from section 16G (3). Insert instead:
year has the same meaning as it has in Schedule 2.

[2] Schedule 2 Adjustment of prescribed rate

Insert “of a year before 2012” after “1 February” in paragraph (b) of the definition of *year* in clause 1 (1).

[3] Schedule 2, clause 1 (1)

Insert at the end of paragraph (b) of the definition of *year*:

, or

- (c) the period commencing on and including 1 February 2012 and ending on and including 31 March 2013, or
- (d) a subsequent period commencing on and including 1 April and ending on and including the next following 31 March.

[4] Schedule 2, clause 1 (4)

Omit “1 February” wherever occurring. Insert instead “1 April”.

[5] Schedule 2, clause 2

Omit “September quarter” wherever occurring in clause 2 (1) (b).
Insert instead “November reference period”.

[6] Schedule 2, clause 2 (1) (b) (i)

Omit the subparagraph. Insert instead:

- (i) except as provided by subparagraph (ii)—in the group of amounts set out in relation to males, for New South Wales, in the series of Average Weekly Earnings (Original), issued biannually by the Australian Statistician, or

[7] Schedule 2, clause 2 (1) (c)

Omit “September quarter” wherever occurring.
Insert instead “December quarter.”

[8] Schedule 2, clause 2 (3)

Omit “September quarter” wherever occurring.

Insert instead “relevant quarter or reference period”.

[9] Schedule 2, clause 2 (4)

Omit “quarter”. Insert instead “quarter or reference period”.

[10] Schedule 2, clause 2 (7) and (8)

Omit the subclauses. Insert instead:

- (7) The Governor may, by order published in the Gazette before the operative date for a particular year, specify an annual percentage change for the purposes of the formula in subclause (1) for that year. That percentage is taken to be the annual percentage change ascertained in accordance with this Schedule.
- (8) An order may be made under subclause (7) only if the Minister certifies to the Governor that:
 - (a) the Minister considers the order to be necessary because information referred to in subclause (1) is not available or for any other reason, and
 - (b) the percentage to be specified in the order was calculated in accordance with estimates made having regard to, and by reference to, such relevant information as was reasonably available.

[11] Schedule 3 Transitional provisions

Insert after Part 6:

**Part 7 Provision consequent on enactment of
State Revenue Legislation Further
Amendment Act 2012**

8 Adjustment of prescribed rate

- (1) The amendments made by the *State Revenue Legislation Further Amendment Act 2012* apply in respect of the adjustment of the prescribed rate on any operative date occurring in or after 2013.
- (2) For the purpose of calculating the adjustment percentage under clause 2 of Schedule 2 for an operative date in 2013:
 - (a) the amount calculated as p(L) is to be adjusted to include the percentage change in average weekly earnings for employees for New South Wales from the September

quarter of 2011 to the December quarter of 2011, determined by reference to the group of amounts set out in relation to males, for New South Wales, in the series of Average Weekly Earnings (Original), issued by the Australian Statistician, and

- (b) the amount calculated as p(I) is to be adjusted to include the percentage change in the price of goods and services from the September quarter of 2011 to the December quarter of 2011, determined by reference to the group of numbers set out as index numbers for Sydney in the Consumer Price Index (All Groups Index) issued by the Australian Statistician.
- (3) Clause 2 (4) of Schedule 2 applies in respect of the amounts or numbers referred to in subclause (2) in the same way as it applies to the amounts or numbers referred to in that Schedule.
- (4) This clause does not affect clause 2 (7) or 3 of Schedule 2.

Schedule 3 Amendment of Regional Relocation (Home Buyers Grant) Act 2011 No 26

[1] Section 3 Definitions

Omit the definition of *owner* from section 3 (1). Insert instead:

owner has the same meaning as it has in the *Land Tax Management Act 1956*.

[2] Section 5 Entitlement to grant

Omit section 5 (3). Insert instead:

(3) Subsection (2) is subject to the following:

- (a) if this Act specifies that only one of the applicants has to comply with the relevant requirement, then only one of the applicants has to comply with that requirement,
- (b) an applicant need not comply with a requirement to the extent that the applicant is exempted from compliance by or under this Act.

[3] Section 9 Applicant must purchase a regional home

Insert “, or that is intended to be the site of,” after “land that is the site of” in section 9 (2) (a).

[4] Section 9 (2) (b) and (3)

Omit “the home” wherever occurring. Insert instead “the land”.

[5] Section 11 Purchase must be completed

Omit “the home” from section 11 (2). Insert instead “the land purchased”.

[6] Section 12 Home must be ready for occupation on completion

Omit the section.

[7] Section 13 Maximum value of purchase

Insert “or, in the case of a purchase of vacant land, \$450,000” after “\$600,000” in section 13 (1).

[8] Section 13 (5)

Insert after section 13 (4):

- (5) For the purposes of this section, land is *vacant land* if the land does not have a home on it ready for use and occupation as a place of residence when the purchase is completed.

[9] Section 15 Applicant must relocate from metropolitan area

Omit “the home” from section 15 (3) (b) and (4) wherever occurring.

Insert instead “the land”.

[10] Section 15 (8)

Insert after section 15 (7):

- (8) For an application made by 2 or more joint applicants, only one of the applicants has to comply with the requirement imposed by this section.

[11] Section 15A

Insert after section 15:

15A Deadline for construction of new home

For a purchase of vacant land, the laying of the foundations of the regional home must commence within 26 weeks (or such longer period as the Chief Commissioner may approve) after the purchase is completed.

[12] Section 17A

Insert after section 17:

17A Purchase of long term lease of regional home can qualify as eligible home relocation

- (1) The grant or transfer of a long term lease of land that is the site of, or intended to be the site of, a regional home can qualify as a purchase of a regional home for the purposes of this Act.
- (2) For that purpose:
 - (a) the grant or transfer of a long term lease of land to an applicant is taken to be a transfer of the land to that applicant, and
 - (b) the applicant is taken to become an owner of the land, as a result of the transfer, when the applicant acquires a right to occupy the land under the terms of the lease, and
 - (c) any person who has a right to occupy the land under the lease is taken to be an owner of the land (to the exclusion of the lessor).

- (3) The purchase is taken to commence:
 - (a) in the case of a grant or transfer of a lease of land made pursuant to an agreement to lease or transfer a lease—on the date the agreement is entered into, or
 - (b) in the case of a grant or transfer of a lease that is made otherwise than pursuant to such an agreement—on the date the grant or transfer is first executed.
- (4) For the purposes of this section, a lease of land is a *long term lease* if and only if the Chief Commissioner is satisfied that the lease gives the lease holder a degree of permanency and security of tenure that is equivalent to an estate in fee simple in the land.
- (5) This section does not affect any other requirements of this Part.

Note. In particular, the purchase must be for valuable consideration (section 9) and must not exceed the maximum values set by section 13.

[13] Section 24 All interested persons must join in application

Omit section 24 (2). Insert instead:

- (2) A person is an *interested person* if the person:
 - (a) is an owner of the land purchased that is the site of, or intended to be the site of, the regional home (at the completion of the purchase), and
 - (b) is or was an owner of the land that is the site of the metropolitan home that is disposed of to relocate from a metropolitan area (before the disposal of the home).

[14] Schedule 1 Savings, transitional and other provisions

Insert before clause 1:

Part 1 General

[15] Schedule 1, clause 1 (1)

Insert at the end of the clause:

any Act that amends this Act

[16] Schedule 1, Part 2

Insert after clause 1:

**Part 2 State Revenue Legislation Further
Amendment Act 2012**

2 Application of amendments

The amendments made to this Act by the *State Revenue Legislation Further Amendment Act 2012* apply in respect of purchases commenced on or after 1 July 2011.

3 Long term leases

The grant or transfer of a lease is not an eligible home relocation under this Act if:

- (a) the grant or transfer is made pursuant to an agreement that replaces an agreement made before 1 July 2011, and
- (b) the replaced agreement is an agreement to lease or transfer a lease of substantially the same land.

Schedule 4 Amendment of Taxation Administration Act 1996 No 97

[1] Section 12 Compromise assessment

Omit section 12 (1). Insert instead:

- (1) The Chief Commissioner may make an assessment in accordance with this section:
 - (a) if it is difficult or impracticable for the Chief Commissioner to determine a person's tax liability under a taxation law without undue delay or expense because of the complexity or uncertainty of the case or for any other reason, or
 - (b) for the purpose of settling a dispute between the Chief Commissioner and a person concerning the person's tax liability (whether or not a previous assessment has been made).

[2] Section 64 The Commissioner

Omit "Director, Revenue Advisory Services" from section 64 (2).

Insert instead "Director, Technical and Advisory Services".

[3] Section 82 Permitted disclosures—to particular persons

Omit ", the chief executive officer of a declared authority (within the meaning of Part 6.4 of the *Public Sector Employment and Management Act 2002*)" from section 82 (k) (ix).

[4] Section 82 (k) (xi)

Omit "Department of Gaming and Racing".

Insert instead "Department of Education and Communities".

[5] Section 82 (k) (xia)

Omit "Department of State and Regional Development".

Insert instead "Department of Trade and Investment, Regional Infrastructure and Services".

[6] Section 82 (k) (xii)

Omit the subparagraph.

[7] Section 82 (k) (xvii)

Omit "NSW Fire Brigades". Insert instead "Fire and Rescue NSW".

[8] Section 86 Objections

Insert after section 86 (2) (a):

(ab) a decision not to make an assessment under section 12,

[9] Schedule 1 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

any Act that amends this Act

[10] Schedule 1, Part 9

Insert after Part 8:

Part 9 Provisions arising from enactment of State Revenue Legislation Further Amendment Act 2012

38 Compromise assessment

The amendment made to section 12 by the *State Revenue Legislation Further Amendment Act 2012* extends, and is taken to have always extended, to disputes arising, or a tax liability arising, before the commencement of that amendment.

Schedule 5 Amendment of other Acts

5.1 Land Tax Management Act 1956 No 26

[1] Schedule 1A Principal place of residence exemption

Omit “the First Home Plus scheme” in clause 10A (1) (a) and (5) wherever occurring.

Insert instead “a first home owner’s duty concession scheme”.

[2] Schedule 1A, clause 10A (1) (b)

Omit “the First Home Plus scheme”. Insert instead “the relevant scheme”.

[3] Schedule 1A, clause 10A (7)

Omit the subclause. Insert instead:

(7) In this clause:

first home owner’s duty concession scheme means the First Home—New Home scheme, or the First Home Plus scheme (which was a predecessor to the First Home—New Home scheme), under the *Duties Act 1997* (see Division 1 of Part 8 of Chapter 2 of that Act).

5.2 State Owned Corporations Act 1989 No 134

Section 20T Tax-equivalents

Omit “Treasury” from the definition of *authorised person* in section 20T (10).

Insert instead “the Department of Finance and Services”.

[Second reading speech made in—

Legislative Assembly on 20 September 2012

Legislative Council on 23 October 2012]