



New South Wales

State Revenue Legislation (Miscellaneous Amendments) Act 1996 No 125

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New South Wales

State Revenue Legislation (Miscellaneous Amendments) Act 1996 No 125

Act No 125, 1996

An Act to make miscellaneous amendments to certain of the State's revenue Acts. [Assented to 3 December 1996]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *State Revenue Legislation (Miscellaneous Amendments) Act 1996*.

2 Commencement

- (1) This Act commences or is taken to have commenced on 1 January 1997, except as provided by this section.
- (2) The following provisions commence, or are taken to have commenced, on the dates indicated:
 - (a) Schedule 1 [3] on 6 December 1995
 - (b) Schedule 1 [4]–[12] on 1 October 1996
 - (c) Schedule 1 [13] and [14] on 2 February 1996
 - (d) Schedule 1 [15] on 1 June 1996
 - (e) Schedule 1 [16]–[20], [28] and [29] on 15 July 1996
 - (f) Schedule 1 [21] on 29 March 1996
 - (g) Schedule 1 [22] and [23] on 20 November 1995
 - (h) Schedule 1 [25] on 22 January 1996
 - (i) Schedule 1 [26] on 18 March 1996
 - (i) Schedule 1 [27] on 29 March 1996
 - (k) Schedule 1 [30] on 21 November 1995
 - (l) Schedule 1 [31] on 9 February 1996
 - (m) Schedule 2 [2] on 1 January 1996
 - (n) Schedule 2 [3] on 29 March 1996
 - (o) Schedule 4 on 31 December 1996
 - (p) Schedule 6 on 1 January 1995

3 Amendment of Stamp Duties Act 1920 No 47

The *Stamp Duties Act 1920* is amended as set out in Schedule 1.

4 Amendment of Debits Tax Act 1990 No 112

The *Debits Tax Act 1990* is amended as set out in Schedule 2.

5 Amendment of Pay-roll Tax Act 1971 No 22

The *Pay-roll Tax Act 1971* is amended as set out in Schedule 3.

6 Amendments relating to land tax

The *Land Tax Act 1956* and the *Land Tax Management Act 1956* are amended as set out in Schedule 4.

7 Amendment of Revenue Laws (Reciprocal Powers) Act 1987 No 86

The *Revenue Laws (Reciprocal Powers) Act 1987* is amended as set out in Schedule 5.

8 Amendment of State Revenue Legislation Further Amendment Act 1995 No 98

The *State Revenue Legislation Further Amendment Act 1995* is amended as set out in Schedule 6.

9 Amendment of State Revenue Legislation Further Amendment Act 1996 No 55

- (1) The *State Revenue Legislation Further Amendment Act 1996* is amended as set out in Schedule 7.
- (2) The amendment does not affect the commencement of Schedule 2 and Part 1 of Schedule 3 to that Act on 1 July 1996.

Schedule 1 Amendment of Stamp Duties Act 1920

(Section 3)

[1] Section 38C Payment of duty by return in certain cases

Omit section 38C (8) and (9). Insert instead:

- (8) In the case of an approval relating to loan securities and related instruments, an approved person must:
 - (a) stamp the instruments with the stamp or stamps issued to the person by the Chief Commissioner for the purposes of this section and complete the particulars specified in the stamp or stamps, or
 - (b) endorse the instruments in the manner approved by the Chief Commissioner and comply with such directions as may be given by the Chief Commissioner from time to time with respect to the electronic or other recording of specified particulars of or relating to advances secured by or under the instruments.

In any other case, the approved person must endorse on an instrument of a class to which the approval relates the words “Stamp Duty” followed by the distinguishing number of the approval allocated to the person by the Chief Commissioner for the purposes of this section.

- (9) Instruments stamped or endorsed in accordance with subsection (8) are taken to be stamped.

[2] Section 44A Payment of duty on statements in absence of dutiable instruments

Insert “, (2) or (3)” after “paragraph (1)” in section 44A (1) (a).

[3] Section 74CB Certain instruments exempt from duty

Insert after section 74CB (4):

- (5) An instrument is exempt from duty to the extent that:
- (a) for purposes of or ancillary to an instrument referred to in subsection (1) or (2), it transfers a share that is matrimonial or relationship property to a person not a party to the relevant marriage or relationship, in order to comply with a requirement of or prescribed under the *Corporations Law*, or
 - (b) it is a declaration of trust, by the transferee of a share transferred as referred to in paragraph (a), for the benefit of a party to the marriage or relationship.

[4] Section 74D Definitions

Omit the definition of *Equipment financing arrangement*.

Insert instead:

Equipment financing arrangement means a hiring arrangement consisting of

- (a) a hire purchase agreement, or
- (b) some other agreement for a term of not less than 9 months,

entered into on or after 1 October 1996, but does not include an arrangement referred to in paragraph (b) that was entered into on or after 1 October 1996 for the purpose of refinancing a hiring arrangement entered into before that date.

[5] Section 74D (1), definition of “Hiring arrangement”

Omit “any arrangement made under” from paragraphs (i) and (iii) wherever occurring.

[6] Section 74D (1), definition of “Hiring arrangement”

Omit “an arrangement under” from paragraph (vii).

[7] Section 74D (1) ,definition of “Hiring arrangement”

Omit paragraph (viii). Insert instead:

(viii) an arrangement made with a trader concerning the provision to and display by the trader of goods pending their sale or lease to a third party, or

(ix) an arrangement prescribed by the regulations.

[8) Section 74D (2)–(4)

Omit section 74D (2). Insert instead:

(2) For the purposes of this section, a hire purchase agreement entered into before 1 October 1996 under which none of the goods were supplied or delivered before that date is taken to be entered into on the date on which the goods, or the first of them, were supplied or delivered.

(3) For the purposes of the definition of *Equipment financing arrangement* in subsection (1), an agreement is taken to be for a term of less than 9 months if the final payment payable under the agreement is payable less than 8 months after the commencement of the agreement.

(4) In this section, *refinancing a hiring arrangement* means making a new arrangement by an agreement:

(a) providing for the hiring by the same hirer of the same goods, and

(b) replacing the existing hiring arrangement, and

(c) entered into before payment of the penultimate instalment under the existing hiring arrangement.

[9] Section 74F Payment of duty on hiring arrangements by return

Omit “as stamp duty on a hiring arrangement” from section 74F (7A) (a) and (c) wherever occurring.

Insert instead “(as stamp duty on a hiring arrangement other than an equipment financing arrangement)”.

[10] Section 74F (7A) (b)

Insert “in respect of stamp duty on a hiring arrangement other than an equipment financing arrangement” after “person”.

[11] Section 74F (7A) (d)

Insert “(as stamp duty on a hiring arrangement other than an equipment financing arrangement)” after “duty”.

[12] Section 74F (7D)

Insert after section 74F (7C):

(7D) A reference in subsection (7) (b) to a total amount received in respect of a hiring arrangement during a calendar month does not include a reference to an amount so received that results in the passing to the hirer of title to the goods.

[13] Section 82AA Duty on certain conveyances of property to trustees or custodians of superannuation funds or trusts

Insert after section 82AA (4):

(5) A conveyance of or agreement to convey property to a trustee or custodian of a pooled superannuation trust in exchange for the issue of units in the trust does not, effect for the purposes of this section, a change in the beneficial ownership of the property.

[14] Section 82AB Duty on certain conveyances of securities to trustees or custodians of superannuation schemes or trusts

Insert after section 82AB (2):

- (3) A conveyance of or agreement to convey a marketable security or unit, or the right to acquire either of them, to a trustee or custodian of a pooled superannuation trust in exchange for the issue of units in the trust does not, result for the purposes of this section, in a change in the persons who have a beneficial interest in the marketable security or unit.

[15] Section 84CAA

Omit the section. Insert instead:

84CAA Refinancing of loans

- (1) In this section, *refinancing loan security* means a loan security that secures the amount of the balance outstanding under an earlier loan security granted for the benefit of the same borrower over the same or substantially the same property or part of it.
- (2) For the purposes of subsection (1), loan securities are granted for the benefit of the same borrower if, either directly in terms of the securities themselves or indirectly through one or more collateral arrangements, the same person obtains the advances secured by them.
- (3) A refinancing loan security is taken to have been stamped with ad valorem duty as a loan security in respect of the maximum amount secured by the previous loan security, except as provided by subsection (5).
- (4) If a loan is refinanced by more than one lender, so that loan securities given to the lenders together secure the balance outstanding under an earlier loan security, the definition of *refinancing loan security* in subsection (1) is to be construed as though:
 - (a) the reference to a loan security securing the outstanding balance were a reference to the aggregate of such loan securities, and

- (b) the reference in that definition to property were a reference to the property securing the aggregate of refinancing advances made by the lenders under their combined securities,

to the intent that, if the requirements of the definition, as so construed, are satisfied, each lender is taken, for the purposes of this section, to be the holder of a refinancing loan security.

- (5) If, as provided by subsection (4), each of a number of lenders is the holder of a refinancing loan security, a refinancing loan security held by each lender is taken to have been duly stamped with ad valorem duty as a loan security in respect of an amount equal to the same proportion of the maximum amount secured by the earlier loan security as the amount secured by that security bears to the total amount secured by the refinancing loan securities held by all the lenders.
- (6) If each of two or more refinancing loan securities severally secures the same advance:
 - (a) the provisions of subsection (3) or (5), as the case may be, apply to such one of the securities as the Chief Commissioner determines, and
 - (b) no duty is chargeable in respect of any of the others.
- (7) For the purposes of section 84B:
 - (a) a refinancing loan security that is taken, by the operation of subsection (3) or (5), to be duly stamped is in either case the stamped instrument, and
 - (b) duty is taken to have been paid on it to the extent provided by whichever of those subsections applies.
- (8) Duty at the rate of \$4 per \$1,000 or remaining part of \$1,000 is payable on the amount by which the advance

made under a refinancing loan security (not being a security on which, by virtue of subsection (6) (b), no duty is chargeable) exceeds:

- (a) the maximum amount secured by the earlier loan security, or
- (b) the proportion of that amount referred to in subsection (5), in the case of a refinancing to which subsection (4) applies.

[16] Section 94C Application of Division (Duty on certain SCH-regulated transfers)

Insert “or IR” after “CUFS” in section 94C (1) (c) (i).

[17] Section 94C (2) (b)

Insert “or in paragraph (52) under the heading ‘GENERAL EXEMPTIONS FROM STAMP DUTY UNDER PART 3’ in that Schedule” after “Second Schedule”.

[18] Section 96A Duty on certain transfers of shares

Insert “or IR” after “CUFS” in section 96A (1).

[19] Section 96B Duty on transfers of listed shares

Omit “or CUFS”. Insert instead “, CUFS or IRs”.

[20] Section 96B

Insert “or IRs” after “CUFS” where secondly occurring.

[21] Section 98 (1) Definitions

Insert after paragraph (g) of the definition of *charitable organisation*:

- (h) a trust, the funds of which are applied solely for charitable purposes,

[22] Section 98A Receipts to which this Division does not apply

Insert after section 98A (1) (w):

- (wa) a receipt by a credit union that is a consequence of:
 - (i) a redesignation in connection with or as a consequence of a transfer of engagements between, or the merger of, 2 or more credit unions, or
 - (ii) the transfer between accounts of a credit union in connection with or as a consequence of any such transfer or merger, or

[23] Section 98A (4), definition of “redesignation”

Omit the definition. Insert instead:

redesignation means the process by which an account kept by a building society or a credit union (a *recognised financial institution*) on behalf of a person ceases to be kept by that recognised financial institution and is instead kept by another recognised financial institution on behalf of the same person and on the same terms and conditions as the account that ceased to be so kept.

[24] Section 98LA Liability to lodge or deposit money

Omit section 98LA (10).

[25] Section 98U Exempt accounts

Insert after section 98U (1) (g6):

- (g7) an account kept with a bank that is a registered person by the International Air Transport Association, being a clearing or a settlement account between agents and airline principals.

[26] Section 98U (1) (l)

Omit the section. Insert instead:

- (l) a clearing or settlement account kept with a bank that is a registered person by an SCH participant (as defined in section 9 of the *Corporations Law*) who is not a registered person or by ASX Settlement and Transfer Corporation Pty Limited, being an account:
 - (i) that is used solely for the purpose of depositing receipts from SCH-regulated transfers (as defined in section 9 of the *Corporations Law*) or depositing funds or transferring funds from another account for the purpose of meeting the SCH participant's settlement obligations, and
 - (ii) from which all funds are transferred on a daily basis to other accounts, or

[27] Section 98U (1) (o) and (p)

Omit section 98U (1) (o) Insert instead:

- (o) an account with a bank that is a registered person, being an account kept by the New South Wales Electricity Transmission Authority and used solely for the purposes of the administration of the Market Settlements Fund, or
- (p) an account prescribed for the purposes of this paragraph,

[28] Second Schedule Stamp duties and exemptions

Insert “, CUFS or IRs” after “rights to shares” wherever occurring in paragraphs (1)–(3A) under the heading “CONVEYANCES OF ANY PROPERTY”.

[29] Second Schedule

Insert “and IRs” after “CUFS” wherever occurring in paragraph (9) under the heading “TRANSFER OF SHARES”.

[30] Second Schedule

Insert after paragraph (50) under the heading “GENERAL EXEMPTIONS FROM STAMP DUTY UNDER PART 3”:

- (51) Any debenture granted by a non-profit organisation in conjunction with a lease in respect of which, by virtue of section 78FA (1) (a), no duty is chargeable.

[31] Second Schedule

Insert after paragraph (51) under the heading “GENERAL EXEMPTIONS FROM STAMP DUTY UNDER PART 3”:

- (52) A transfer or transfers, on any one day, of shares or units:
- (i) to the trustee of the Benchmark Australian All Ordinaries Trust in exchange for the issue of units in the Trust, or
 - (ii) from the trustee of that Trust in exchange for the redemption of units in the Trust,

where the total amount of securities so transferred between the transferor and transferee represents a portfolio of securities in such volumes as are contained in the All Ordinaries Index on that day.

[32] Schedule 2A, Part 2, paragraph 31

Insert “and may, in addition, lodge and maintain a caveat over the subject property until all duty has been paid” after “interest” where lastly occurring.

[33] Tenth Schedule Savings, transitional and other provisions

Insert at the end of clause 1A(1):

*State Revenue Legislation (Miscellaneous Amendments)
Act 1996*

[34] Tenth Schedule

Insert after Part 13:

**Part 14 State Revenue Legislation (Miscellaneous
Amendments) Act 1996**

46 Application of amendments

- (1) A provision of this Act as in force before the amendment of the provision by the *State Revenue Legislation (Miscellaneous Amendments) Act 1996* continues to apply to an instrument referred to in the provision that was executed, or a transaction referred to in the provision that was entered into, before the amendment took effect, except as provided by regulations made under Part 1A.
- (2) An amendment made to this Act by the *State Revenue Legislation (Miscellaneous Amendments) Act 1996* does not apply to an instrument that was executed, or a transaction that was entered into, before the amendment took effect, except as provided by regulations made under Part 1A.

Schedule 2 Amendment of Debits Tax Act 1990

(Section 4)

[1] Section 3 Definitions

Omit “made to an account kept with a financial institution in the name of” from paragraph (a) (viiia) of the definition of *excluded debit* in section 3 (1).

[2] Section 3 (1), definition of “excluded debit”

Insert after paragraph (a) (viiia):

(viiib) the Australian Olympic Committee Incorporated, or of the New South Wales Olympic Council Incorporated, and if the account is used solely for the purposes of the Olympic Games to be held in the year 2000, or

[3] Section 3 (1), definition of “excluded debit”

Insert after paragraph (a) (viiib):

(viic) the New South Wales Electricity Transmission Authority and if the account is used solely for the purposes of the administration of the Market Settlements Fund.

Schedule 3 Amendment of Pay-roll Tax Act 1971

(Section 5)

[1] Section 3 Definitions

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

superannuation benefit means money paid or payable by an employer in respect of an employee:

- (a) to or as a superannuation fund within the meaning of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth, or
- (b) as a superannuation guarantee charge within the meaning of the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth, or
- (c) to or as any other form of superannuation, provident or retirement fund or scheme, including a wholly or partly unfunded fund or scheme.

[2] Section 3 (2)

Insert after section 3 (1):

- (2) A reference, in the definition of *superannuation benefit* in subsection (1), to an employee includes a reference to any person to whom, by virtue of section 3AA (2), an amount paid or payable in the circumstances referred to in section 3AA (2) constitutes wages.

[3] Section 3 (5)

Insert after section 3 (4):

- (5) For the purposes of this Act, a superannuation, provident or retirement fund or scheme is *unfunded* to the extent that money paid or payable by an employer in respect of an employee covered by the fund or scheme is not paid or payable during the employee's period of service with the employer.

[4] Section 3AA Wages

Insert “, other than one paid or payable in respect of services rendered by an employee before 30 June 1996” after “benefit” in section 3AA (6A).

[5] Section 3AA (10)

Insert after section 3AA (9):

- (10) Money paid or payable that constitutes or is taken to be wages by virtue of more than one provision of this Act is taxable once only.

[6] Section 6 Wages liable to pay-roll tax

Omit “outside Australia” from section 6 (1) (a) (ii).
Insert instead “in another country”.

[7] Section 10 Exemption from pay-roll tax

Omit “*Companies (New South Wales) Code*” from section 10 (3).
Insert instead “*Corporations Law*”.

[8] Section 16H Exclusion of persons from groups

Omit “section 7 (5) of the *Companies (New South Wales) Code* is to be deemed, for the purposes of that Code, to be related” from section 16H (2).
Insert instead “section 50 of the *Corporations Law*, is related”.

[9] Schedule 6 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

*State Revenue Legislation (Miscellaneous Amendments)
Act 1996*

[10] Schedule 6, Part 3

Insert after Part 2 of Schedule 6:

**Part 3 Provisions consequent on the enactment of
the State Revenue Legislation
(Miscellaneous Amendments) Act 1996**

3 Definitions

In this Part, *defined benefit superannuation scheme* has the same meaning as in the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth.

**4 Manner of determining liability of certain superannuation
benefits to taxation**

- (1) Money paid by an employer, after 30 June 1996, in respect of a defined benefit superannuation scheme or an unfunded scheme, that is alleged by the employer to be paid in order to make up a deficiency in the scheme, as at 30 June 1996, relating to a benefit payable in respect of services rendered by an employee or employees on or before that date, must be evidenced to the satisfaction of the Chief Commissioner in the employer's records for pay-roll tax purposes.
- (2) In particular, the employer's records must show the manner of calculation of the deficiency and any actuarial basis for it.
- (3) For the purposes of subclause (2) and of any assessment under section 18 to which that subclause is material, the certificate of a fellow or accredited member of the Institute of Actuaries of Australia to the effect that the actuarial basis on which an amount is calculated as a deficiency is justified is prima facie evidence of that fact.
- (4) Without limiting the generality of any of the provisions of section 18, the Chief Commissioner, on an assessment under that section, is entitled to assume that an appropriation of money after 30 June 1996 as a

superannuation benefit is an amount paid or payable in respect of the services of an employee or employees after that date, if records are not kept as this clause requires.

- (5) Nothing in this clause limits or affects any power of the Chief Commissioner under section 16.

5 Superannuation payments not readily related to particular employees or their periods of service

Regulations under clause 1 may make provision for or with respect to:

- (a) determining whether, and the extent to which, any money paid or payable by an employer to a superannuation, provident or retirement fund or scheme that is not identified by the employer as paid or payable in respect of a particular employee (and whether or not purporting to be so paid or payable on any actuarial basis) is to be regarded for the purposes of this Act as money paid or payable in respect of a particular employee, and
- (b) determining what portion of an amount paid on or after 1 July 1996 by an employer to a fund or scheme that is wholly or partly unfunded, being an amount paid in respect of an employee (or that is taken, by virtue of regulations made for the purposes of paragraph (a), to have been so paid) who rendered services to the employer on or after, as well as before, 1 July 1996 is to be regarded, for the purposes of this Act, as having been paid in respect of services rendered by the employee before that date.

Schedule 4 Amendments relating to land tax

(Section 6)

4.1 Land Tax Act 1956 No 27

Section 6 Land tax liability in respect of flood liable land

Insert “(or which is, in the opinion of the Chief Commissioner)” before “unsuitable” in the definition of *flood liable land* in section 6 (1).

4.2 Land Tax Management Act 1956 No 26

[1] Section 3 Definitions

Insert after the definition of *prescribed* in section 3 (1):

principal place of residence of a person means the one place of residence that is, among the one or more places of residence of the person within and outside Australia, the principal place of residence of the person.

[2] Section 10T Concession for unoccupied land intended to be owner’s principal place of residence

Insert “solely” after “occupy the land” in section 10T (1).

[3] Section 10T (3)

Omit the subsection. Insert instead:

- (3) A person is not entitled to have his or her intended use and occupation of land taken into account for land tax purposes if
- (a) the person or any joint owner of the land is entitled to have his or her actual use and occupation of other land taken into account under section 9C or 10 (1) (r) or (4), or
 - (b) the person has already received the exemption in respect of any other land in respect of a previous tax year.

Schedule 5 Amendment of Revenue Laws (Reciprocal Powers) Act 1987

(Section 7)

[1] Section 3 Definitions

Omit paragraphs (f) and (h) from the definition of *New South Wales revenue law*.

Insert instead:

- (f) the *Business Franchise Licences (Tobacco) Act 1987*,
- (h) the *Business Franchise Licences (Petroleum Products) Act 1987*,

[2] Section 7A Certificates authorising powers of investigation and search

Omit “sections 6 and 7” wherever occurring.

Insert instead “sections 6, 7, 9 and 10”.

**Schedule 6 Amendment of State Revenue
Legislation Further Amendment Act
1995**

(Section 8)

Section 2 Commencement

Insert after section 2 (3):

- (4) Schedule 7 [18] is taken to have commenced on 1 January 1995.

State Revenue Legislation (Miscellaneous Amendments) Act 1996 No 125

Amendment of State Revenue Legislation Further Amendment Act 1996 Schedule 7

Schedule 7 Amendment of State Revenue Legislation Further Amendment Act 1996

(Section 9)

Section 2 Commencement

Omit section 2 (2).

[Minister's second reading speech made in—
Legislative Assembly on 20 November 1996
Legislative Council on 27 November 1996]