



New South Wales

State Revenue Legislation Further Amendment Act 1997 No 41

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Stamp Duties Act 1920 No 47	2
4 Amendment of Land Tax Management Act 1956 No 26	2
5 Repeal of Land Tax Management Regulation 1992	2

Schedules

1 Amendment of Stamp Duties Act 1920	3
2 Amendment of Land Tax Management Act 1956	12



New South Wales

State Revenue Legislation Further Amendment Act 1997 No 41

Act No 41, 1997

An Act to amend the *Stamp Duties Act 1920* with respect to company takeovers and certain loan securities relating to consumer credit; to amend the *Land Tax Management Act 1956*; and for other purposes. [Assented to 30 June 1997]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *State Revenue Legislation Further Amendment Act 1997*.

2 Commencement

- (1) This Act commences on the date of assent, except as provided by this section.
- (2) Schedule 1 [1] commences or is taken to have commenced on 1 July 1997.
- (3) Schedule 1 [5] is taken to have commenced on 1 November 1996.

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 Land Tax Management Act 1956 No 26

The *Land Tax Management Act 1956* is amended as set out in Schedule 2.

5 Repeal of Land Tax Management Regulation 1992

The *Land Tax Management Regulation 1992* is repealed.

Schedule 1 Amendment of Stamp Duties Act 1920

(Section 3)

[1] Sections 84EB and 84EBAA

Omit section 84EB. Insert instead:

84EB Loan securities associated with certain consumer credit contracts

- (1) If:
- (a) a loan security is security for an amount advanced under a consumer credit contract and no other advance, and
 - (b) the total amount advanced under the consumer credit contract does not exceed \$35,000,

the loan security is exempt from duty.

- (2) If:
- (a) a loan security is security for an amount advanced under a consumer credit contract and another advance, and
 - (b) the total amount advanced under the consumer credit contract does not exceed \$35,000,

duty is not chargeable on the loan security in relation to the amount advanced under the consumer credit contract.

- (3) If:
- (a) a loan security is security for an amount advanced under a consumer credit contract (whether or not it is also security for any other advance), and
 - (b) the total amount advanced under the consumer credit contract exceeds \$35,000,

the whole of the amount advanced under the consumer credit contract comprises or forms part of the amount or the maximum amount that is or may become payable or repayable under or that is secured by the loan security.

- (4) An exemption provided by subsection (1) or (2) is not available to the extent to which the consumer credit is provided for the purposes of:
- (a) the acquisition of a private dwelling house or land on which to erect a private dwelling house, or
 - (b) the erection of a private dwelling house or the addition of accommodation to a private dwelling house.
- (5) In this section:

consumer credit means credit regulated under the *Consumer Credit Code*.

Consumer Credit Code means:

- (a) the provisions of the Code by that name set out in the Appendix to the *Consumer Credit (Queensland) Act 1994* of Queensland, as applied and in force in any Australian jurisdiction, or
- (b) the provisions of an Act of an Australian jurisdiction that are in the same, or substantially the same, terms as that Code.

private dwelling house includes a lot within the meaning of the *Strata Titles Act 1973* used as a place of residence.

84EBAA Farm machinery and commercial vehicles

- (1) Duty on a loan security is not chargeable on so much of an advance to a natural person for the acquisition of farm machinery or a commercial vehicle as is secured by the loan security.

(2) In this section:

commercial vehicle means:

- (a) a motor vehicle within the meaning of the *Traffic Act 1909* constructed or adapted principally for the carriage of goods but does not include a motor vehicle of the kind known as a utility, a station wagon or a panel van, or
- (b) a vehicle without motive power of its own and constructed or adapted principally for the carriage of goods and for being drawn by a motor vehicle within the meaning of that Act.

farm machinery means:

- (a) a harvester, binder, tractor, plough or other agricultural implement, or
- (b) a boat within the meaning of the *Fisheries Management Act 1994* or fishing gear within the meaning of that Act, or
- (c) any other goods of a class commonly used for the purposes of a farming undertaking that are determined by the Chief Commissioner to be farm machinery for the purposes of this section,

where the goods are acquired for the purposes of a farming undertaking.

farming undertaking includes:

- (a) any agricultural, apicultural, dairy farming, horticultural, orcharding, pastoral, poultry keeping, viticultural or other business involving the cultivation of the soil, the gathering of crops or the rearing of livestock, and
- (b) the business of taking fish, crustacea, oysters or any other marine, estuarine or fresh-water animal life, and

- (c) the cutting of timber for sale, and
- (d) any class of business determined by the Chief Commissioner to be a farming undertaking.

[2] Part 3, Division 27A

Insert after Division 27 of Part 3:

Division 27A Takeovers of New South Wales public companies

97ADJ Definitions

- (1) In this Division:

capital reduction means:

- (a) the redemption, surrender or cancellation of a share (including cancellation as part of a buy-back of shares in accordance with Division 4B of Part 24 of the *Corporations Law*), or
- (b) a reduction in the paid up value of a share.

company means a NSW company that is a public company within the meaning of the *Corporations Law*.

person includes persons who are related persons for the purposes of Division 30 of Part 3.

rights alteration, in relation to voting shares, means a variation, abrogation or alteration of rights relating to the shares.

voting shares has the same meaning as in section 9 of the *Corporations Law*.

- (2) For the purposes of this Division, if voting shares acquired by related persons severally do not, but taken in the aggregate would, confer an entitlement to which this Division applies, the voting shares acquired by the related persons are taken to be aggregated and are taken to confer the entitlement on the related person who last acquired any of those voting shares.

- (3) If, by subsection (2), an entitlement to voting shares is taken to exist as the aggregate of voting shares of related persons, the related persons are jointly and severally liable for payment of the duty chargeable on the statement required to be lodged under this Division.

97ADK Entitlement to voting shares arising from capital reduction or rights alteration

- (1) If:
- (a) a person becomes entitled to at least 50% of the voting shares of a company by means of capital reduction or rights alteration, or both, or
 - (b) a person who is entitled to at least 50% of the voting shares of a company becomes entitled to at least 10% more of the voting shares over a period of not more than 12 months by means of capital reduction or rights alteration, or both,

the person must lodge a statement with the Chief Commissioner in respect of the entitlement.

- (2) The statement must be lodged within 2 months after the entitlement arises or within such longer period as the Chief Commissioner may approve in writing.

97ADL Form of statement

The statement required to be lodged under this Division by a person is to be in a form approved by the Chief Commissioner and is to contain the following information:

- (a) the name and address of the person,
- (b) the name of the company,
- (c) the date on which each relevant capital reduction or rights alteration, or both, occurred,

- (d) if the person's entitlement has arisen:
 - (i) from capital reduction—the total of the unencumbered value, immediately prior to each relevant capital reduction, of the shares that increased the person's entitlement, or
 - (ii) from rights alteration—the total of the unencumbered value, immediately prior to each relevant rights alteration, of the shares that increased the person's entitlement, or
 - (iii) from capital reduction and rights alteration—the aggregate of the totals under subparagraphs (i) and (ii),
- (e) the total consideration paid to the person in relation to all relevant capital reductions or rights alterations, or both,
- (f) such other information as may be required by the Chief Commissioner.

97ADM Assessment and payment of duty

- (1) A statement required to be lodged under this Division by a person is chargeable with duty:
 - (a) in the case of a company whose shares are quoted on the market operated by the Australian Stock Exchange Limited—at the rate of 30 cents for every \$100, or part, of the higher of:
 - (i) the total or aggregate obtained under section 97ADL (d), and
 - (ii) the total obtained under section 97ADL (e), or
 - (b) in the case of a company whose shares are not quoted on the market operated by the Australian Stock Exchange Limited—at the rate of 60 cents for every \$100, or part, of the higher of:
 - (i) the total or aggregate obtained under section 97ADL (d), and
 - (ii) the total obtained under section 97ADL (e).

- (2) The duty with which the statement is chargeable is to be paid at the time of lodgment of the statement with the Chief Commissioner by the person required to lodge the statement.

97ADN Offences relating to statements

A person:

- (a) who fails to lodge a statement under this Division within the period specified in, or approved under, this Division, or
- (b) who lodges a statement that is false or misleading in a material particular,

is guilty of an offence and liable to a fine not exceeding 50 penalty units.

[3] Second Schedule—Stamp duties and exemptions

Omit paragraph (h) of the Exemptions under the heading “Transfer of shares”.

Insert instead:

- (h) A transfer of shares comprising a buy-back of shares in accordance with Division 4B of Part 2.4 of the *Corporations Law* by a NSW company, unless the buy-back is effected by the purchaser pursuant to an arrangement or understanding that the purchaser is to issue a number of shares:
 - (i) calculated by reference to the number of shares bought back, and
 - (ii) at an issue price calculated by reference to the buy-back price of the shares bought back, and
 - (iii) to, or at the direction of, the seller of the shares bought back.

[4] Tenth Schedule Savings, transitional and other provisions

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

State Revenue Legislation Further Amendment Act 1997

[5] Tenth Schedule

Insert after Part 15:

**Part 16 State Revenue Legislation Further
Amendment Act 1997**

48 Stamp duty on certain regulated contracts

- (1) This clause applies:
 - (a) to a loan security the date of first execution of which occurs on or after 1 November 1996 and before 1 July 1997, and
 - (b) as if the *Consumer Credit (New South Wales) Code* had not commenced, and
 - (c) despite section 84EB as in force before 1 July 1997.
- (2) In this clause, **regulated contract** means:
 - (a) a regulated contract within the meaning of the *Credit Act 1984* other than a contract deemed by section 73 of that Act to be a regulated contract that would not otherwise be a regulated contract, or
 - (b) a contract that would be a regulated contract referred to in paragraph (a):
 - (i) if section 18 (1) of that Act had not been enacted, and
 - (ii) if the amount of \$35,000 were prescribed for the purposes of section 5 (4) of that Act.

- (3) Notwithstanding any other provision of this Act, duty is not chargeable in respect of a loan security in so far as it secures the payment or repayment of an amount payable or repayable under a regulated contract.

Schedule 2 Amendment of Land Tax Management Act 1956

(Section 4)

[1] Section 3 Definitions

Omit the definition of *Discretionary trust* in section 3 (1).
Insert instead:

discretionary trust means a trust under which the vesting of the whole or any part of the capital of the trust estate, or the whole or any part of the income from that capital, or both:

- (a) is required to be determined by a person either in respect of the identity of the beneficiaries, or the quantum of interest to be taken, or both, or
- (b) will occur if a discretion conferred under the trust is not exercised, or
- (c) has occurred but under which the whole or any part of that capital or the whole or any part of that income, or both, will be divested from the person or persons in whom it is vested if a discretion conferred under the trust is exercised,

but does not include a trust that is solely a charitable trust or a trust that is declared not to be a discretionary trust by section 3A.

[2] Section 3 (1)

Omit the definition of *Special trust*. Insert instead:

special trust means:

- (a) a discretionary trust, or
- (b) a trust in respect of which:
 - (i) the trustee has active management duties, and

-
- (ii) the whole or any part of the trust property comprises land, and
 - (iii) the interests of the beneficiaries in the trust property that comprises land are not such as to constitute those beneficiaries owners of that land for the purposes of this Act,

but does not include:

- (c) a trust that is solely a charitable trust, or
- (d) a trust established by a will, but only during the period ending on the expiration of 12 months after the date of death of the testator, or
- (e) a trust that is declared not to be a special trust by section 3A.

[3] Section 3A

Insert after section 3:

3A Trusts that are not discretionary trusts or special trusts

- (1) A trust is not a discretionary trust or a special trust for the purposes of this Act in relation to a land tax year (after the 1997 land tax year) that next follows a year of income in relation to which the trust is:
 - (a) a complying superannuation fund (within the meaning of section 42 of the Commonwealth Act), or
 - (b) a complying approved deposit fund (within the meaning of section 43 of the Commonwealth Act), or
 - (c) a pooled superannuation trust (within the meaning of section 44 of the Commonwealth Act).
- (2) A trust is not a discretionary trust or a special trust for the purposes of this Act in relation to a land tax year (after the 1997 land tax year) that next follows the year in which the trust was established if the trust was established after 30 June in that year and:

- (a) is a regulated superannuation fund (within the meaning of the Commonwealth Act), or is taken under the Commonwealth Act to have been a regulated superannuation fund, at midnight on 31 December in the year in which it was established, or
 - (b) is an approved deposit fund (within the meaning of the Commonwealth Act) at midnight on 31 December in the year in which it was established, or
 - (c) is a pooled superannuation trust (within the meaning of the Commonwealth Act) at midnight on 31 December in the year in which it was established.
- (3) In this section:

Commonwealth Act means the Commonwealth *Superannuation Industry (Supervision) Act 1993*.

year of income has the same meaning as in the Commonwealth Act.

[4] Section 47 Land tax to be first charge on land

Omit “the prescribed fee” from section 47 (1A).
Insert instead “a fee of \$15”.

[5] Section 47 (1AA)

Insert after section 47 (1A):

(1AA) In relation to an application for a certificate:

- (a) the application is to be in a form approved by the Chief Commissioner, and

- (b) a separate application must be made for each parcel of land that is separately valued under the *Valuation of Land Act 1916* or otherwise separately valued for the purposes of land tax assessment, and
- (c) the Chief Commissioner may require further information or evidence with respect to the land concerned, or to any other land owned by the owner of that land, before issuing the certificate.

[6] Section 47 (1B)

Omit the subsection. Insert instead:

(1B) The application fee for a certificate is to be paid:

- (a) by affixing a New South Wales duty stamp to the value of the application fee to the application form and by cancelling the stamp by writing in ink across it the name or initials of the person cancelling it and the date, or
- (b) in such manner as may be approved by the Chief Commissioner.

[7] Schedule 2 Savings and transitional provisions

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

State Revenue Legislation Further Amendment Act 1997

[8] Schedule 2

Insert at the end of the Schedule:

State Revenue Legislation Further Amendment Act 1997

24 Discretionary trusts and special trusts

A declaration made in relation to a land tax year by the *Land Tax Management Regulation 1992*, as in force immediately before its repeal by the *State Revenue Legislation Further Amendment Act 1997*, that a trust was not a discretionary trust or a special trust for the purposes of this Act continues to have effect in relation to the 1995, 1996 and 1997 land tax years despite the repeal of that regulation.

[Minister's second reading speech made in—
Legislative Assembly on 28 May 1997
Legislative Council on 20 June 1997]