



New South Wales

State Revenue Legislation Amendment Act 2017 No 11

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The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *State Revenue Legislation Amendment Act 2017*.

2 Commencement

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

Schedule 1 Amendment of Duties Act 1997 No 123

[1] Section 10

Omit the section. Insert instead:

10 Form of dutiable transaction is immaterial

The duty charged by this Chapter is payable whether or not a dutiable transaction is effected by an instrument or by any other means.

[2] Section 12 When does a liability for duty arise?

Omit “a written” from section 12 (2). Insert instead “an”.

[3] Section 15 Necessity for instrument or written statement

Omit “a written instrument” wherever occurring in section 15 (1) and (4).

Insert instead “an instrument”.

[4] Section 15 (4)

Omit “the written instrument”. Insert instead “the instrument”.

[5] Section 16 Lodging instrument or written statement with Chief Commissioner

Omit “written instrument” wherever occurring. Insert instead “instrument”.

[6] Section 16 (2)

Insert after section 16 (1):

- (2) If the instrument is in a digital form, the instrument must be lodged with the Chief Commissioner in a form and manner approved by the Chief Commissioner.

[7] Section 16A Lodging purchaser’s declaration with Chief Commissioner

Omit “written instrument”. Insert instead “instrument”.

[8] Section 16A

Omit “section 16 (1)”. Insert instead “section 16”.

[9] Section 18 No double duty

Omit section 18 (3) (d). Insert instead:

- (d) at the time the agreement was entered into, and at the completion or settlement of the agreement:
- (i) the purchaser under the agreement (other than a purchaser who purchased as a trustee) and the transferee under the transfer were related persons, or
 - (ii) if the purchaser purchased as a trustee (other than as a trustee of a self managed superannuation fund)—the transferee and the beneficiary were related persons, or
 - (iii) if the purchaser purchased as a trustee of a self managed superannuation fund—the transferee under the transfer was the custodian of that trustee.

[10] Section 49 Interim payment of duty

Omit “A written instrument” from section 49 (2). Insert instead “An instrument”.

[11] Section 50A Cancelled transfers of dutiable property

Omit “a written” from section 50A (1). Insert instead “an”.

[12] Section 54 Change in trustees

Insert in alphabetical order in section 54 (1):

dutiable trust property means dutiable property that is trust property.

[13] Section 54 (2), (3A) and (4)

Omit “dutiable property” wherever occurring. Insert instead “dutiable trust property”.

[14] Section 54 (2A)

Omit the subsection. Insert instead:

- (2A) Duty of \$50 is chargeable in respect of a transfer of dutiable trust property to any of the following as a consequence of the retirement of a trustee or the appointment of a new trustee if the Chief Commissioner is satisfied that the transfer is not part of a scheme to avoid duty that involves conferring an interest, in relation to the dutiable trust property, on a new trustee or any other person (whether or not as a beneficiary) so as to cause any person to cease holding the whole or any part of a beneficial interest (or potential beneficial interest) in that property:
- (a) a licensed trustee company that is not a special trustee,
 - (b) a trustee of a self managed superannuation fund,
 - (c) a trustee of a special disability trust.

[15] Section 54 (3)

Omit the subsection. Insert instead:

- (3) Duty of \$50 is chargeable in respect of a transfer of dutiable trust property to a person (other than to a licensed trustee company, a special trustee, a trustee of a self managed superannuation fund or a trustee of a special disability trust) as a consequence of the retirement of a trustee or the appointment of a new trustee if the Chief Commissioner is satisfied that, as the case may be:
- (a) none of the continuing trustees remaining after the retirement of a trustee is or can become a beneficiary under the trust, and
 - (b) none of the trustees of the trust after the appointment of a new trustee is or can become a beneficiary under the trust, and
 - (c) the transfer is not part of a scheme to avoid duty that involves conferring an interest, in relation to the dutiable trust property, on a new trustee or any other person (whether or not as a beneficiary) so as to cause any person to cease holding the whole or any part of a beneficial interest (or potential beneficial interest) in that property.

If the Chief Commissioner is not so satisfied, the transfer is chargeable with the same duty as a transfer to a beneficiary under and in conformity with the trusts subject to which the property is held, unless subsection (3A) applies.

[16] Section 65 Exemptions from duty

Insert after section 65 (13A):

(13B) Vesting by statute law—merger of credit unions or mutual ADIs

No duty is chargeable under this Chapter on the vesting of land in New South Wales in one or more credit unions or mutual ADIs by, or expressly authorised

by, statute law of this or another jurisdiction in Australia if the vesting is a consequence of a merger of any of the following:

- (a) 2 or more credit unions that on merger is a credit union,
 - (b) 2 or more authorised deposit-taking institutions that are mutual ADIs and on merger is a mutual ADI,
 - (c) 1 or more credit unions with 1 or more mutual ADIs that on merger is a credit union or mutual ADI.
- (13C) A reference in subsection (13B) to a *mutual ADI* is a reference to an authorised deposit-taking institution that the Chief Commissioner is satisfied has a mutual structure.
- (13D) In determining whether an authorised deposit-taking institution has a mutual structure, the Chief Commissioner may take into account any of the following:
- (a) the structure, circumstances and history of the institution,
 - (b) whether each customer of the company (for example an account holder, mortgagor or policy holder) is required to be a member of the company or each member (or joint membership) has only 1 vote,
 - (c) any other matter in relation to the institution or its members.

[17] Section 68 Exemptions—break-up of marriages and other relationships

Omit section 68 (1) (a). Insert instead:

- (a) the property is transferred, or agreed to be sold or transferred, to:
 - (i) the parties to a marriage that is dissolved or annulled, or that, in the opinion of the Chief Commissioner, has broken down irretrievably, or
 - (ii) either of the parties to such a marriage, or
 - (iii) a child or children of either of the parties to such a marriage, or
 - (iv) a trustee of a child or children of either of the parties to such a marriage, or
 - (v) a trustee under the *Bankruptcy Act 1966* of the Commonwealth of the estate of either of the parties to such a marriage, and

[18] Section 68 (1A) (a)

Omit the paragraph. Insert instead:

- (a) the property is transferred, or agreed to be sold or transferred, to:
 - (i) the parties to a de facto relationship that, in the opinion of the Chief Commissioner, has broken down irretrievably, or
 - (ii) either of the parties to such a de facto relationship, or
 - (iii) a child or children of either of the parties to such a de facto relationship, or
 - (iv) a trustee of a child or children of either of the parties to such a de facto relationship, or
 - (v) a trustee under the *Bankruptcy Act 1966* of the Commonwealth of the estate of either of the parties to such a de facto relationship, and

[19] Section 68 (4) (a)

Omit the paragraph. Insert instead:

- (a) ad valorem duty under this Chapter was paid on a transfer, or an agreement for the sale or transfer, of matrimonial property to:
 - (i) the parties to a marriage, or
 - (ii) either of the parties to a marriage, or
 - (iii) a child or children of either of the parties to a marriage, or
 - (iv) a trustee of a child or children of either of the parties to a marriage, or
 - (v) a trustee under the *Bankruptcy Act 1966* of the Commonwealth of the estate of either of the parties to a marriage, and

[20] Section 68 (4AA) (a)

Omit the paragraph. Insert instead:

- (a) ad valorem duty under this Chapter was paid on a transfer, or an agreement for the sale or transfer, of relationship property to:
 - (i) the parties to a de facto relationship, or
 - (ii) either of the parties to a de facto relationship, or
 - (iii) a child or children of either of the parties to a de facto relationship, or
 - (iv) a trustee of a child or children of either of the parties to a de facto relationship, or
 - (v) a trustee under the *Bankruptcy Act 1966* of the Commonwealth of the estate of either of the parties to a de facto relationship, and

[21] Section 104ZE Cancelled agreements and transfers

Omit “a written” from section 104ZE (1) (b). Insert instead “an”.

[22] Section 149 What is a “relevant acquisition”?

Omit section 149 (1) and (2). Insert instead:

- (1) For the purposes of this Chapter, a person makes a ***relevant acquisition*** if the person:
 - (a) acquires an interest in a landholder that is of itself a significant interest in the landholder, or
 - (b) acquires an interest in a landholder that (when aggregated with other interests in the landholder held by the person or an associated person) results in an aggregation that amounts to a significant interest in the landholder, or
 - (c) already having a significant interest, or an interest described in paragraph (b), in a landholder, acquires a further interest in the landholder.
- (1A) For the purposes of this Chapter, a person also makes a ***relevant acquisition*** if the person acquires an interest in a landholder that (when aggregated with other interests in the landholder acquired by the person or other persons under acquisitions that form, evidence, give effect to or arise from what is substantially one arrangement between the acquirers) results in an aggregation that amounts to a significant interest in the landholder.

- (1B) In determining whether acquisitions form, evidence, give effect to or arise from what is substantially one arrangement between the acquirers, the following circumstances are to be taken into account:
- (a) whether any of the acquisitions are conditional on entry into, or completion of, any of the other acquisitions,
 - (b) whether the parties to any of the acquisitions are the same,
 - (c) whether any party to an acquisition is an associated person of another party to any of the other acquisitions,
 - (d) the period of time over which the acquisitions take place,
 - (e) whether, before or after the acquisitions take place, the interests were, are or will be used together or dependently with one another,
 - (f) any other relevant circumstances.
- (2) An acquisition of an interest in a private landholder under an arrangement that results in the private landholder ceasing to be a private landholder is not a relevant acquisition because of subsection (1A).

[23] Section 150 What are “interests” and “significant interests” in landholders?

Insert “(without regard to any liabilities of the landholder)” after “entitled” wherever occurring in section 150 (1) and (2).

[24] Section 150 (1A)

Omit “, or an interest that would be a debt interest if the landholder were a company for the purposes of that Division,”.

[25] Section 153 When must duty be paid?

Insert at the end of the section:

- (2) However, in the case of a relevant acquisition resulting from the application of section 161 (1) and (2AA) to an agreement to purchase or issue a share in a landholder, a tax default does not occur for the purposes of the *Taxation Administration Act 1996* if duty is paid within 3 months after the agreement is completed.

[26] Sections 158 and 158A

Omit section 158. Insert instead:

158 Meaning of “linked entity”

- (1) A *linked entity* of a private unit trust scheme or private company (a *principal entity*) means an entity (other than a public unit trust scheme or a listed company) that is part of a chain of entities:
- (a) that starts with the principal entity and is comprised of one or more links, and
 - (b) in which one or both of the following apply:
 - (i) at each link between 2 entities in the chain—one of the entities would be entitled, in the event of a distribution of all the property of the other entity (and without regard to any liabilities of any entity in the chain), to receive not less than 50% of the value of the property of the other entity,
 - (ii) in the event of the distribution of all of the property of entities in the chain (except for the principal entity)—the principal entity would be entitled (without regard to any liabilities of any entity

in the chain) to receive not less than 50% of the value of that property.

- (2) A **linked entity** of a public unit trust scheme or listed company (a **principal entity**) means an entity that is part of a chain of entities:
- (a) that starts with the principal entity and is comprised of one or more links, and
 - (b) in which, at each link between 2 entities in the chain—one of the entities would be entitled, in the event of a distribution of all the property of the other entity (and without regard to any liabilities of any entity in the chain), to receive not less than 50% of the value of the property of the other entity.
- (3) For the purposes of this section:
- (a) a trust is to be regarded as entitled to receive property (whether as a principal entity or as a linked entity of a principal entity) if a trustee of the trust is entitled to receive the property in its capacity as a trustee, and
 - (b) a partnership or other unincorporated body is to be regarded as entitled to receive property, as a linked entity of a principal entity, if a member of the partnership or other unincorporated body is entitled to receive the property as a member of the partnership or the other unincorporated body.
- (4) In this section and in section 158A:
entity means any of the following:
- (a) a corporation,
 - (b) a unit trust scheme,
 - (c) a trust,
 - (d) a partnership or other unincorporated body.
- (5) In this section and in section 158A:
- (a) a reference to a **trust** includes a reference to a unit trust scheme, and
 - (b) a reference to a **trustee** of a trust includes a reference to a custodian of the trustee of the trust in its capacity as custodian or a sub-custodian of the custodian of the trustee of the trust in its capacity as sub-custodian.

158A Constructive ownership of land holdings and other property through linked entities

- (1) In addition to any interest in land or other property that it may hold in its own right, a unit trust scheme, private company or listed company is taken, for the purposes of this Chapter, to hold an interest in land or other property held by a linked entity of the unit trust scheme or company.
- (2) The value, for duty purposes, of the interest in property that the unit trust scheme or company is taken, by this section, to hold because of a holding by a linked entity of the unit trust scheme or company is that portion of the interest's unencumbered value to which the unit trust scheme or company would be entitled (without regard to any liabilities of the linked entity or any other entity in the chain) in the event of a distribution of all the property of each entity in the chain.
- (3) For the purposes of this section:

- (a) a trust is taken to hold an interest in property, as a linked entity of a principal entity, if a trustee of the trust holds the property in its capacity as a trustee, and
 - (b) a partnership or other unincorporated body is taken to hold property, as a linked entity of a principal entity, if a member of the partnership or other unincorporated body holds the property as a member of the partnership or the other unincorporated body.
- (4) If a person holds property as a trustee, custodian or sub-custodian in relation to 2 or more trusts the person is to be treated as a separate person in relation to each of those trusts and the property held under each trust is to be treated as a separate property holding.

[27] Section 159A Inclusion of land holdings recently transferred or agreed to be transferred

Insert “(or agreed to be transferred)” after “recently transferred” in section 159A (1).

[28] Section 159A (2)

Omit the subsection. Insert instead:

- (2) A land holding is *recently transferred (or agreed to be transferred)* if, within 12 months before the acquisition is made:
- (a) the land holding is transferred to the person, or
 - (b) an agreement for the sale or transfer of the land holding to the person is entered into and the agreement is or is to be completed after the acquisition is made.

[29] Section 159A (3)

Insert “, or agreement for sale or transfer,” after “transfer”.

[30] Section 160 Agreements for sale or transfer of land

Insert after section 160 (2):

- (2A) Subsection (2) does not apply if section 159A applies in respect of the acquisition.

[31] Section 160 (3A)

Insert after section 160 (3):

- (3A) In this section:
- call option* and *put option* have the same meanings as in Part 2 of Chapter 3.
- transferee* includes a person who, at the time of a relevant acquisition, was the grantor of a put option or grantee of a call option.
- transferor* includes a person who, at the time of a relevant acquisition, was the grantee of a put option or grantor of a call option.
- uncompleted agreement* includes an arrangement that includes both a put option and a call option.

[32] Section 160 (4)

Omit the subsection. Insert instead:

- (4) In this section:
- (a) a reference to a landholder includes a reference to a linked entity of the landholder, and

- (b) a reference to a landholder, or linked entity of a landholder, that is a vendor or a purchaser is, in the case of a landholder or linked entity that is a unit trust scheme, a reference to a vendor or purchaser, as the case may be, acting in the capacity of a trustee of the unit trust scheme, and
- (c) a reference to a linked entity of a landholder that is a vendor or a purchaser is:
 - (i) in the case of a linked entity that is a trust—a reference to a vendor or purchaser, as the case may be, acting in the capacity of a trustee of the trust, or
 - (ii) in the case of a linked entity that is a partnership or other unincorporated body—a reference to a vendor or purchaser, as the case may be, acting as a member of the partnership or the other unincorporated body.

[33] Section 161 Agreements for sale or issue of shares or units in landholder

Insert after section 161 (2):

- (2AA) Despite subsection (2), the *agreement liability date* is the date on which the agreement is made if the company or unit trust scheme concerned is a landholder on that date and is not a landholder on the agreement liability date as determined under that subsection.

[34] Section 274 Transfer of certain business property between family members

Insert at the end of section 274 (3) (e):

- , or
- (f) in the case of a transferor, lessor or assignor acting in the capacity of trustee of a self managed superannuation fund—a person who is a member of the fund.

[35] Section 274 (5AA)

Insert after section 274 (5):

- (5AA) A reference in this section to a business carried on by a person includes a reference to a business carried on by a company, or under a trust, that is controlled by the person.

[36] Section 284BA

Insert after section 284B:

284BA MySuper transitional arrangements

- (1) Duty under this Act is not chargeable on a relevant transfer to which section 61 applies or a relevant acquisition to which section 163FA applies if the relevant transfer or relevant acquisition is in accordance with:
 - (a) an election that is taken by section 387 of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth to have been made, or
 - (b) section 388 of that Act.
- (2) This section applies only in relation to a relevant transfer or a relevant acquisition occurring before 1 July 2018.

[37] Section 284D Payment of duty avoided as a result of tax avoidance scheme

Omit section 284D (2). Insert instead:

- (2) For the purposes of this Chapter, the *amount of duty avoided* by a person as a result of the tax avoidance scheme is the amount of duty, or the amount of additional duty, that, if the tax avoidance scheme had not been entered into or made:
 - (a) would have been payable by the person, or
 - (b) it is reasonable to expect would have been payable by the person, assuming that a reasonable alternative to entering into or making the scheme had been adopted (being an alternative that would have achieved the same economic or commercial result as the scheme, other than the result of avoiding or reducing duty).

[38] Schedule 1 Savings, transitional and other provisions

Insert after Part 45:

Part 46 Provisions consequent on enactment of State Revenue Legislation Amendment Act 2017

124 Definition

In this Part:

amending Act means the *State Revenue Legislation Amendment Act 2017*.

125 General application of amendments

- (1) An amendment made to Chapter 2 by the amending Act applies in respect of a dutiable transaction that occurs on or after the commencement of the amendment.
- (2) However, an amendment made to Chapter 2 by the amending Act does not apply to a transfer of dutiable property made in conformity with an agreement for sale or transfer of the dutiable property that was entered into before the commencement of the amendment.
- (3) Any other amendment made to this Act by the amending Act applies in relation to any liability for duty that arises on or after the commencement of the amendment.

126 Application of amendments to landholder duty generally

- (1) A landholder duty amendment does not apply to an acquisition in a landholder that is made on or after the commencement of the landholder duty amendment, if the acquisition is made in conformity with an agreement for sale first executed, or with an option granted or otherwise created, before that commencement.
- (2) This Act applies in respect of such an acquisition as if the landholder duty amendment had not been made.
- (3) In this clause, a *landholder duty amendment* means an amendment made by the amending Act to Chapter 4.

127 Application of amendment to section 160

- (1) Without limiting clause 126, an arrangement that includes both a put option and a call option is not to be regarded as an uncompleted agreement for the

purposes of section 160 if the put option and call option were conferred by an agreement or arrangement entered into before the commencement of section 160 (3A) (as inserted by the amending Act).

- (2) In this clause:
call option and *put option* have the same meanings as in Part 2 of Chapter 3.

[39] Dictionary

Insert in alphabetical order in clause 1:

credit union means an authorised deposit-taking institution that is authorised under section 66 of the *Banking Act 1959* of the Commonwealth to use or assume the expression “credit union” in relation to its financial business, including in its name.

[40] Dictionary, clause 1, definition of “instrument”

Omit the definition. Insert instead:

instrument includes a document, written statement or any record of information that exists in a digital form and is capable of being reproduced, transmitted, stored and duplicated by electronic means.

Note. *Document* is defined in the *Interpretation Act 1987*.

[41] Dictionary, clause 1, definition of “private company”

Omit the definition. Insert instead:

private company means:

- (a) a company that is not limited by shares, or
- (b) a company that is limited by shares and whose shares are not quoted on the Australian Securities Exchange, the New Zealand Exchange, the London Exchange, the New York Exchange or any exchange of the World Federation of Exchanges.

[42] Dictionary, clause 2 (1)

Omit clause 2 (1) (d) and (e). Insert instead:

- (d) the trustee of a trust and the trustee of another trust are associated persons if any person is a beneficiary common to:
 - (i) both of the trusts, or
 - (ii) one of the trusts and a sub-trust of the other trust, or
 - (iii) any sub-trusts of the trusts,
- (d1) a natural person and a trustee are associated persons if the natural person is a beneficiary of:
 - (i) the trust (not being a public unit trust scheme) of which the trustee is a trustee, or
 - (ii) a sub-trust (not being a public unit trust scheme) of that trust,
- (e) a company and a trustee are associated persons if any related body corporate of the company is a beneficiary of:
 - (i) the trust (not being a public unit trust scheme) of which the trustee is a trustee, or
 - (ii) any sub-trust (not being a public unit trust scheme) of that trust,
- (e1) a private company and a trustee are associated persons if the company, or a majority shareholder or director of the company, is a beneficiary of:

- (i) the trust (not being a public unit trust scheme) of which the trustee is a trustee, or
- (ii) any sub-trust (not being a public unit trust scheme) of that trust,

[43] Dictionary, clause 2 (6) and (7)

Insert after clause 2 (5):

- (6) A reference in this clause to a *sub-trust* of a trust includes a reference to any sub-trust (whether or not a direct sub-trust of that trust) that establishes an interest in the trust.
- (7) A person is considered under this clause to be a beneficiary of a sub-trust of a trust only if the interest in the trust that is held for the benefit of the beneficiary is an interest of 50% or more.

[44] Dictionary, clause 5

Omit the clause.

Schedule 2 Amendment of Land Tax Management Act 1956 No 26

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

lease includes an agreement to lease.

[2] Section 21C Liability of lessees of land owned by Crown or council

Insert “(otherwise than under section 21CB)” after “land tax” in section 21C (6) (e).

[3] Sections 21CA and 21CB

Insert after section 21C:

21CA Government lessor to notify lessee of land tax liability

- (1) A Government entity that enters into a lease of land owned by the Government entity must give the lessee a land tax disclosure statement, in writing, before the lessee enters into the lease.
- (2) A **land tax disclosure statement** is a statement that advises the lessee that the lessee will be liable for land tax in respect of the land during the term of the lease if land tax is payable on the land.
- (3) Without limiting subsection (2), a land tax disclosure statement may be made:
 - (a) in the terms of the lease, or
 - (b) as part of a disclosure statement for the lease that is given to the lessee before the lease is entered into.
- (4) A lessee enters into a lease when any of the following occurs (whichever happens first):
 - (a) the lessee executes the lease,
 - (b) the lessee enters into possession of the land under the lease,
 - (c) the lessee begins to pay rent under the lease.
- (5) The renewal of a lease is considered to be entry into a new lease for the term of the renewal.
- (6) The onus is on a Government entity to establish that it gave a land tax disclosure statement to a lessee before the lessee entered into the lease.
- (7) A Government entity that enters into a lease of land owned by the Government entity and that fails to comply with this section is a **non-complying lessor** for any land tax on the land that becomes payable during the term of the lease.
Note. See section 21CB, which enables the Chief Commissioner to recover the land tax from the non-complying lessor if the lessee fails to pay the land tax.
- (8) This section applies to a lease only if the lessee under the lease is considered to be the owner of the land for land tax purposes because of section 21C.
- (9) In this section:
Government entity means the Crown, a local council or any other entity not liable for land tax in respect of land it owns under section 21C.

21CB Recovery of land tax from non-complying lessor

- (1) If a lessee of land fails to pay a land tax amount in accordance with a notice of assessment issued by the Chief Commissioner, and there is a non-complying

lessor for the land tax to which the assessment relates, the Chief Commissioner may serve a notice on the non-complying lessor notifying the lessor that:

- (a) the lessee has failed to pay the land tax amount, and
 - (b) if the land tax amount is not paid by the date specified in the notice, the lessor will be liable for the land tax amount.
- (2) The date specified must be at least 21 days after service of the notice.
 - (3) If the land tax amount is not paid by the date specified in the notice, the non-complying lessor is jointly and severally liable with the lessee to pay the land tax amount.
 - (4) A non-complying lessor that is liable to pay a land tax amount under this section is entitled to be indemnified by the lessee for any payments made by the non-complying lessor to the Chief Commissioner to discharge liability for the land tax amount.
 - (5) This section applies to a non-complying lessor that is a council despite section 741 of the *Local Government Act 1993*.
 - (6) In this section:
land tax amount means:
 - (a) the amount of land tax that a lessee has been assessed as being liable to pay, as set out in a notice of assessment issued to the lessee, and
 - (b) any interest or penalty tax payable in respect of that amount of tax.*lessee* includes a former lessee.
non-complying lessor has the meaning given by section 21CA.

[4] Schedule 2 Savings and transitional provisions

Insert after Part 29:

Part 30 Provisions consequent on enactment of State Revenue Legislation Amendment Act 2017

60 Amendment applies to new leases only

- (1) Section 21CA, as inserted by the *State Revenue Legislation Amendment Act 2017*, applies only to leases entered into or renewed on or after 1 January 2018.
- (2) Accordingly, section 21CB, as inserted by that Act, does not apply to any land tax amount that is payable for the land tax year commencing on 1 January 2018 or a previous land tax year.

Note: Land tax liability arises at midnight on 31 December.

Schedule 3 Amendment of Payroll Tax Act 2007 No 21

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

service provider, in relation to an employment agency contract—see section 37.

[2] Section 29 Motor vehicle allowances

Omit section 29 (7) (a) and (b). Insert instead:

- (a) the rate determined by legislative instrument under section 28-25 of the ITAA for calculating a deduction for car expenses using the cents per kilometre method in the financial year immediately preceding the financial year in which the allowance is paid or payable, or
- (b) if there is more than one rate under the determination referred to in paragraph (a), the highest of those rates, or
- (c) if no rate is determined as referred to in paragraph (a), the rate prescribed by the regulations under this Act.

[3] Section 36A

Insert before section 37:

36A Division not applicable to wages paid to common law employees

This Division does not apply in relation to wages that are exempt wages under section 66B and clause 13B of Schedule 2.

[4] Section 40 Amounts taken to be wages

Omit “Division 4 or 5 of that Part, section 50 or clause 5 of Schedule 2) had the service provider been paid by the client as an employee” from section 40 (2).

Insert instead “section 50 or Division 4 or 5 of that Part), or Part 3 of Schedule 2 (other than clause 5 or 13A), had the service provider performed the services as an employee of the client”.

[5] Part 4, Division 10

Insert after Division 9:

Division 10 Miscellaneous

66B Employment agents supplying their common law employees

Wages are exempt wages as provided for in clause 13B of Schedule 2.

66C Wages paid to living organ donors

Wages are exempt wages to the extent that they are reimbursed by the Commonwealth under the Supporting Leave for Living Organ Donors Programme.

[6] Schedule 2 NSW specific provisions

Omit “Department of Education” wherever occurring in clauses 5 (5) (c) and 6 (1).

Insert instead “Department of Industry, Skills and Regional Development”.

[7] Schedule 2, clause 13B

Insert after clause 13A:

13B Employment agents supplying their common law employees

- (1) Wages are exempt wages if:
 - (a) they are paid or payable for services that were performed under an employment agency contract by a service provider for a client of an employment agent, and
 - (b) the service provider performed the services as an employee of the employment agent, and
 - (c) the wages would be exempt wages under Part 4 (other than section 50 or Division 4 or 5 of that Part), or Part 3 of Schedule 2 (other than clause 5 or 13A), had the service provider performed the services as an employee of the client, and
 - (d) the client has given a declaration to the effect of paragraph (c), in the form approved by the Chief Commissioner, to the employment agent.
- (2) A reference in this clause to an *employee* does not include a reference to a person who is an employee only because the person is taken to be an employee by Division 8 of Part 3 or any other provision of this Act.

[8] Schedule 3 Savings, transitional and other provisions

Insert after Part 10:

Part 11 Provisions consequent on enactment of State Revenue Legislation Amendment Act 2017

25 Motor vehicle allowances

The amendment to section 29 made by the *State Revenue Legislation Amendment Act 2017* is taken to have effect in respect of wages paid or payable on or after 1 July 2016.

26 Exempt wages paid to living organ donors

Section 66C, as inserted by the *State Revenue Legislation Amendment Act 2017*, is taken to have effect in respect of wages paid or payable on or after 1 July 2013.

Schedule 4 Amendments relating to permitted disclosures

4.1 First Home Owner Grant (New Homes) Act 2000 No 21

Section 47 Protection of confidential information

Insert after section 47 (3) (b):

- (c) to the Australian Charities and Not-for-profits Commission or a person authorised by the Australian Charities and Not-for-profits Commissioner, or

4.2 Regional Relocation Grants (Skills Incentive) Act 2011 No 26

Section 60 Protection of confidential information

Insert after section 60 (4) (b):

- (b1) to the Australian Charities and Not-for-profits Commission or a person authorised by the Australian Charities and Not-for-profits Commissioner, or

4.3 Small Business Grants (Employment Incentive) Act 2015 No 14

Section 59 Protection of confidential information

Insert after section 59 (4) (b):

- (b1) to the Australian Charities and Not-for-profits Commission or a person authorised by the Australian Charities and Not-for-profits Commissioner, or

4.4 Taxation Administration Act 1996 No 97

Section 82 Permitted disclosures—to particular persons

Insert after section 82 (j):

- (j1) to the Australian Charities and Not-for-profits Commission or a person authorised by the Australian Charities and Not-for-profits Commissioner, or

[Second reading speech made in—
Legislative Assembly on 23 February 2017
Legislative Council on 4 April 2017]