

STAMP DUTIES (AMENDMENT) BILL 1988

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The objects of this Bill are to amend the Stamp Duties Act 1920 so as—

- (a) to constitute a Board of Review which is empowered to waive the payment of duty in cases of hardship and to defer the payment of duty;
- (b) to provide that the acquisition of certain interests in land will not result in a liability to pay duty under Division 30 (Acquisitions of company and unit trust interests dutiable as conveyances of land) of Part 3 of the Principal Act;
- (c) to exempt from duty contracts for the purchase of land to be used for the purpose of a rental-purchase scheme approved by the Chief Commissioner of Stamp Duties and rental-purchase agreements entered into under such a scheme;
- (d) to enable the payment of duty by instalments over a 5-year period (instead of at the time of purchase) on a contract for the purchase of land by a person who has sold his or her home to a local government council because the home was built on flood-prone land; and
- (e) to make miscellaneous amendments, including amendments which—
 - (i) clarify the liability to duty of marketable securities;
 - (ii) provide that the definition of “cheque” for the purposes of the Principal Act includes a banker’s draft;
 - (iii) clarify the provisions relating to family home transfers;
 - (iv) provide that lessee payments for improvements are not to be dutiable if the term of the lease is greater than 40 years;
 - (v) provide a credit in respect of the duty paid on a lease executed to replace an earlier lease and which is in substantially the same terms as the earlier lease;
 - (vi) enact anti-avoidance measures to provide that an instrument which evidences or becomes a mortgage on the deposit of a document of title or an instrument creating a charge on property is a loan security for the purposes of the Principal Act;

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- (vii) enact anti-avoidance measures to counter the loss of loan security duty caused by the use of certain guarantees and indemnities;
 - (viii) provide an exemption from loan security duty in respect of the refinancing of rural property loans;
 - (ix) provide an exemption from duty in respect of certain loan-backed securities;
 - (x) provide an exemption from duty on certain motor vehicle certificates of registration of new demonstrator motor vehicles;
 - (xi) provide a concessional rate of duty for instruments amending the terms of superannuation schemes for the purpose of complying with certain requirements under the Occupational Superannuation Standards Act 1987 of the Commonwealth;
 - (xii) remove the duty payable on guarantees and letters and powers of attorney;
 - (xiii) provide an exemption from duty for conveyances between licensed workers compensation insurers which are made in compliance with a requirement of the State Compensation Board;
 - (xiv) provide an exemption from duty for contracts for the purchase of land for use for private dwellings by tenants of the Department of Housing;
 - (xv) provide an exemption from duty for conveyances made at the direction of the State Compensation Board to a custodian nominated by the Board;
 - (xvi) provide an exemption from duty for a custodian agreement executed by the State Compensation Board and a licensed workers compensation insurer; and
 - (xvii) increase from \$105,000 to \$125,000 the maximum value of a home which is eligible for consideration under the First Home Purchase Scheme,
- and to make other provisions of a minor, consequential or ancillary nature.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on 1 January 1989, subject to several exceptions. Those exceptions are summarised elsewhere in this Explanatory Note in relation to the provisions to which they apply.

Clause 3 is a formal provision which gives effect to the Schedules of amendments.

SCHEDULE 1—AMENDMENTS RELATING TO THE BOARD OF REVIEW

Schedule 1 constitutes the existing provisions of Part 2 as Division 1 of that Part and inserts after those provisions a new Division 2 containing sections 15A–15F.

Proposed section 15A establishes a Board of Review consisting of the Chief Commissioner, the Auditor-General and the Secretary of the Treasury.

Proposed section 15B enables the Board of Review to waive payment of duty if payment would expose a person or a person's dependants to serious hardship.

Proposed section 15C enables the Board of Review to defer payment of duty in such circumstances, and for such periods, as it thinks fit.

Proposed section 15D enables the Chief Commissioner to make notations on instruments in respect of which duty has been waived or deferred in order that the instrument may be taken to have been duly stamped.

Proposed section 15E enables the Board of Review to write off uncollectable duty. The writing off of duty will not affect either the liability of the person concerned to pay the duty or the power of the Chief Commissioner to take further steps to recover the duty.

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Proposed section 15F enables the Chief Commissioner to exercise the powers of the Board of Review to waive and defer duty in the case of amounts not exceeding \$1,000 in any particular case for any financial year.

**SCHEDULE 2—AMENDMENTS RELATING TO ACQUISITIONS OF
COMPANY AND UNIT TRUST INTERESTS DUTIABLE AS CONVEYANCES
OF LAND**

Schedule 2 (1) substitutes the definition of “land” for the purposes of Division 30 of Part 3 to exclude the interest of a mortgagee, chargee or other encumbrance in land but otherwise to make it clear that land means any estate or interest in land.

Schedule 2 (2) inserts proposed sections 99J and 99K.

Proposed section 99J provides that there is to be excluded from an assessment of liability to duty under Division 30 an entitlement to land created by an agreement for the sale or conveyance of land which is subsequently rescinded.

Proposed section 99K excludes from liability to duty under Division 30 temporary transfers of shares in a private company or units in a private unit trust scheme made for the purpose of securing financial accommodation.

Schedule 2 (3) amends the Tenth Schedule (Savings, Transitional and Other Provisions) to provide that the amended definition of “land” effected by Schedule 2 (1) applies so as to exclude from liability to duty interests acquired as a mortgagee, chargee or encumbrance before 1 September 1988.

Schedules 2 (1) and (3) are to be taken to have commenced on 1 September 1988.

**SCHEDULE 3—AMENDMENTS RELATING TO RENTAL-PURCHASE
SCHEMES**

Schedule 3 (1) exempts from liability to duty as an option an approved rental-purchase agreement under proposed Schedule 2B.

Schedule 3 (2) inserts a new Division 3C into Part 3. The new Division contains proposed section 45AA, a formal provision which gives effect to proposed Schedule 2B.

Schedule 3 (3) inserts a new Schedule 2B containing clauses 1–7.

Proposed clause 1 specifies the nature of a rental-purchase scheme. It is a scheme under which the operator of the scheme purchases land on which there is a house or on which the operator builds a house, leases the house to a prospective purchaser and grants the prospective purchaser an option to purchase the property within a specified period.

Proposed clause 2 enables the Chief Commissioner to approve a person to be an operator of a rental-purchase scheme.

Proposed clause 3 enables the Chief Commissioner to approve rental-purchase agreements entered into by an approved person.

Proposed clause 4 enables the Chief Commissioner to revoke approvals given under proposed clauses 2 and 3.

Proposed clause 5 exempts from duty purchases of land made by an approved person for the purpose of entering into approved rental-purchase agreements.

Proposed clause 6 exempts from duty approved rental-purchase agreements.

Proposed clause 7 makes it clear that a contract to purchase land in exercise of an option under an approved rental-purchase agreement is not exempt from duty.

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Schedule 3 was the subject of Revenue Ruling SD 101 of the Chief Commissioner and is to be taken to have commenced on 26 April 1988.

SCHEDULE 4—AMENDMENTS RELATING TO FLOOD-PRONE HOUSING SCHEME

Schedule 4 (1) inserts a new Division 3D into Part 3. The new Division contains proposed section 45AB which provides that the Chief Commissioner is to administer the scheme set out in proposed Schedule 2C.

Schedule 4 (2) inserts a new Schedule 2C containing clauses 1–6.

Proposed clause 1 specifies the nature of the flood-prone housing scheme. It is a scheme which is intended to assist a person who has sold a home on flood-prone land to the local council and who then purchases another home. The scheme enables the person to choose to pay the duty on the contract for the purchase of the new home by instalments over a period of 5 years (instead of at the time of purchase).

Proposed clause 2 provides that contracts executed on or after 1 January 1989 are eligible for consideration under the scheme.

Proposed clause 3 specifies the requirements for eligibility of a person under the scheme.

Proposed clause 4 specifies the requirements for eligibility of a contract under the scheme.

Proposed clause 5 applies the provisions of clauses 7 and 9–15 of the First Home Purchase Scheme set out in Schedule 2A. Those clauses relate to other requirements for eligibility, the making and determination of applications, the stamping of documents, the payment of instalments of duty, the circumstances in which interest may become payable, the recovery of overdue instalments and the consequences of a sale or leasing of the home before all the instalments are paid.

Proposed clause 6 contains definitions of “contract” and “home”.

SCHEDULE 5—MISCELLANEOUS AMENDMENTS

Marketable securities

Schedule 5 (1), (13) and (16) (e) amend section 3 (Interpretation), insert a new definition section into Division 27 (Shares or stock—transfer) of Part 3 and amend the Second Schedule in order to clarify the liability to duty of a transfer of units in a unit trust scheme. The amendments create a separate basis for liability for a transfer of any such units so as to make it clear that such a transfer is liable to duty at the same rate as for a transfer of shares rather than at the higher rate applicable to a conveyance of property.

These amendments are to commence on a day to be appointed by proclamation.

Conveyance involving goods, wares and merchandise

Schedule 5 (3) amends section 44A (Payment of duty on statements in absence of dutiable instruments) to exempt from the value of property conveyed pursuant to an oral agreement the value of goods, wares and merchandise that would be so exempt if the conveyance were made by instrument in writing.

Definition of “cheque”

Schedule 5 (4) amends section 46A (Cheque defined) to remove any doubt that a cheque includes a banker’s draft.

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Conveyance between married couple

Schedule 5 (5) amends section 66E (Conveyance between married couple) to clarify the circumstances in which conveyances between spouses (including de facto spouses) are exempt from duty.

Liability to duty of lessee payments for improvements

Schedule 5 (6) amends section 77 (Leases, how to be charged in respect of produce etc.) to make it clear that lessee payments for improvements will not be dutiable where the term of the lease is greater than 40 years.

Lease in replacement of an earlier lease

Schedule 5 (7) inserts a new section 78G which provides that a lease which the Chief Commissioner is satisfied is executed in order to replace an earlier lease and which is in substantially the same terms as the earlier lease is to be allowed a credit of the amount of duty paid on the earlier lease (subject to a minimum duty of \$10 on the later lease).

Loan securities

Schedule 5 (8) amends the definition of "loan security" in section 83 (1) to include, as a loan security for the purposes of Division 21, an instrument which, on the deposit of documents of title over property in New South Wales or instruments creating a charge on any such property, evidences the terms of a mortgage or becomes a mortgage in respect of the property.

Schedule 5 (9) (b) consequentially amends section 84 to provide that the date of first execution of such an instrument (for the purpose of calculating the time within which duty is required to be paid) is to be taken to be the date on which the instrument becomes a mortgage.

Schedule 5 (9) (a) provides that if the security for an advance to a borrower is or includes a guarantee capable of being used (whether directly or through a chain of arrangements) to recover the whole or any part of an amount payable by the guarantor or indemnifying party as a result of any default by the borrower or any party to the arrangements, the contingent liability under the guarantee or indemnity is to be taken to be an advance under the loan security for the purpose of assessing the liability to duty of the loan security.

Refinancing of loans to primary producers

Schedule 5 (10) inserts a new section 84^{CAA}. The new section provides that duty is not chargeable on so much of an advance under a loan security as secures the balance outstanding under an earlier loan security where each loan security applies to the same, or substantially the same, land and that land is used for primary production.

This amendment is to be taken to have commenced on 22 September 1988.

Loan-backed securities

Schedule 5 (11) inserts a new Division 21B (Loan-backed securities) into Part 3 containing proposed section 84^{FB}. The proposed section exempts from duty (other than financial institutions duty) dealings relating to loan-backed securities.

This amendment is to be taken to have commenced on 1 June 1988.

Certificates of registration for new demonstrator motor vehicles

Schedule 5 (12) amends section 84G (Duty on motor vehicle certificates of registration) to exempt from duty a certificate of registration for a new demonstrator motor vehicle of a motor dealer where the dealer holds and complies with the conditions of an exemption authority issued by or with the approval of the Chief Commissioner in relation to that certificate.

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Duty on share transfers

Schedule 5 (14) amends section 96A (Duty on certain transfers of shares) to overcome an avoidance practice relating to the execution of share transfers and the registration of those transfers.

Amendments to superannuation trusts

Schedule 5 (16) (a) amends the matter in the Second Schedule relating to conveyances of any property to provide a concessional rate of duty for instruments executed for the sole purpose of amending a superannuation trust deed to comply with certain requirements under the Occupational Superannuation Standards Act 1987 of the Commonwealth.

The amendment was the subject of Revenue Ruling SD 91 of the Chief Commissioner and is to be taken to have commenced on 7 March 1988.

Guarantees and letters and powers of attorney

Schedule 5 (16) (c) omits the matter in the Second Schedule relating to guarantees and Schedule 5 (16) (d) omits the matter in the Second Schedule relating to letters and powers of attorney, thereby removing the liability to duty of those instruments.

General exemptions from stamp duty

Schedule 5 (16) (f), (g) and (h) amend that part of the Second Schedule which contains the general exemptions from stamp duty under Part 3 so as to add several new categories of exemption.

Schedule 5 (16) (f) exempts conveyances involving licensed workers compensation insurers that are made in compliance with a requirement of the State Compensation Board. This amendment is to be taken to have commenced on 30 November 1987.

Schedule 5 (16) (g) exempts contracts for the purchase by tenants of the Department of Housing of properties intended for use as their principal place of residence. This amendment was the subject of Revenue Ruling SD 100 of the Chief Commissioner and is to be taken to have commenced on 1 May 1988.

Schedule 5 (16) (h) provides an exemption for conveyances made at the direction of the State Compensation Board to a custodian trustee nominated by the Board, an exemption for a custodian agreement executed by the State Compensation Board and a licensed workers compensation insurer and an exemption for an agreement executed at the direction of the State Compensation Board between a custodian nominated by the Board and a licensed workers compensation insurer. These amendments are to be taken to have commenced on 24 June 1988.

Schedule 5 (16) (i) exempts guarantees executed on or after 1 January 1989 and letters or powers of attorney executed on or after that date.

First Home Purchase Scheme

Schedule 5 (17) amends Schedule 2A to increase from \$105,000 to \$125,000 the maximum value of a home which is eligible for consideration under the First Home Purchase Scheme. This amendment is to be taken to have commenced on 2 June 1988.

Statute law revision

Schedule 5 (2), (15) and (16) (b) make amendments by way of statute law revision. The amendment made by Schedule 5 (2) to section 44 (Transactions to which this Division applies) is to be taken to have commenced on 21 November 1986, being the date of commencement of Division 3A of Part 3.

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Savings and transitional provisions

Schedule 5 (18) amends the Tenth Schedule to the Principal Act to enact savings and transitional provisions consequent on the enactment of the proposed Act.
