



New South Wales

State Revenue Legislation Amendment (Budget Measures) Bill 2005

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.
This Bill is cognate with the *Appropriation Bill 2005*.

Overview of Bill

The objects of this Bill are as follows:

- (a) to amend the *Duties Act 1997* so as:
 - (i) to impose a limit on the concession on mortgage duty that currently applies when a mortgage is entered into for refinancing purposes, and
 - (ii) to increase the duty payable on certain types of insurance policies, and
 - (iii) to prevent the misuse of a concession that applies to vendor duty and duty on the disposal of interests in land-rich entities, and
- (b) to amend the *Land Tax Act 1956* and the *Land Tax Management Act 1956* to re-introduce a tax-free threshold in respect of land tax and to provide for a new rate of tax on land that has a value that exceeds that tax-free threshold.

The Bill also provides for savings, transitional and consequential matters.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent, with some exceptions (explained below).

Clause 3 is a formal provision that gives effect to the amendments to the Acts set out in Schedules 1–3.

Schedule 1 Amendment of Duties Act 1997 No 123

Refinancing concession

At present, mortgage duty is not payable on a mortgage where the mortgage is created for refinancing purposes, that is, if the mortgage secures an amount borrowed under an earlier mortgage in respect of which mortgage duty has already been paid.

The amendments impose a limit on this concession, so that mortgage duty is not payable on the first \$1,000,000 of the amount secured by the earlier mortgage. Mortgage duty will be payable at the rate of \$4 per \$1,000 above that maximum. See **Schedule 1 [5]–[7]**.

The changes will not apply to refinancing mortgages where the property secured is land used for primary production or aquaculture. See **Schedule 1 [4] and [5]**.

A provision is also introduced to prevent persons from transferring mortgages in order to avoid liability for mortgage duty. See **Schedule 1 [8]**.

The amendments have effect from 1 August 2005.

Insurance duty

At present, for the purpose of charging insurance duty, general insurance is divided into 2 types. Duty is chargeable at the rate of 5% of the premium on type A insurance, and at 2.5% of the premium on type B insurance. Type B insurance includes crop insurance and livestock insurance. Type A insurance is all general insurance other than type B insurance.

The amendments divide general insurance into 3 types, and provide for a levy of 9% on type A insurance, 5% on type B insurance and 2.5% on type C insurance. Type C insurance includes crop insurance and livestock insurance. Type B insurance includes motor vehicle insurance, aviation insurance, disability income insurance, occupational indemnity insurance and hospital and ancillary health benefits insurance. Type A insurance is all general insurance other than type B or C insurance. See **Schedule 1 [9]–[12]**.

The amendments have effect from 1 September 2005. See **Schedule 1 [14]**.

Concessions for vendor duty and land-rich disposal duty

At present, a vendor duty concession applies to a transfer of land-related property if the dutiable value of the land-related property at the time of transfer does not exceed the dutiable value of the land-related property at the time of its acquisition by the vendor by more than 15%. An exemption applies if the increase in dutiable value does not exceed 12%, and a discount applies if the increase in dutiable value exceeds 12% but not 15%. A similar concession applies to the duty payable on disposals of interests in land-rich entities.

The amendments make special provision for the application of the concession in cases where the land or interest disposed of is held subject to a trust. The object of the amendments is to make it clear that a mere change in the legal ownership of land-related property or an interest that is held in trust does not necessarily result in a new acquisition being made for the purpose of the concession.

In the case of a vendor duty transaction, if the vendor acquired the land-related property concerned by means of a dutiable transaction that was not chargeable with ad valorem duty, the amendments deem the vendor to have acquired the land-related property when the last dutiable transaction relating to that land-related property, being a dutiable transaction that was chargeable with ad valorem duty as a transfer of the land-related property, occurred. This is to prevent a situation where a new trustee is appointed to a trust, resulting in a change to the legal ownership of land-related property, and the acquisition by the trustee of that legal interest is treated as a new acquisition of the land-related property for the purposes of the vendor duty concession, even though ad valorem duty may not have been paid on that transfer of legal ownership. Under the amendments, an ad valorem duty transaction is required in order to obtain the benefit of the concession. See **Schedule 1 [1] and [2]**.

A similar amendment is made to the corresponding provisions relating to the duty payable on the disposal of an interest in a land-rich entity. If an interest in a land-rich entity is acquired on trust, it is the date on which the beneficial owner of the interest acquired the interest, rather than the date on which the person disposing of the interest acquired the interest, that is treated as the date on which the person making the disposal first acquired an interest in the land-rich entity. See **Schedule 1 [3]**.

The amendments also make it clear that, for the purposes of the concession, an acquisition of land by a linked entity of a land-rich entity is treated as an acquisition by that land-rich entity. See **Schedule 1 [3]**.

The amendments will have effect as if they had commenced on the date on which the Bill for the proposed Act was introduced in the Legislative Assembly. See **Schedule 1 [14]**.

Savings and transitional

Schedule 1 [13] and [14] contain savings and transitional matters.

Schedule 2 Amendment of Land Tax Act 1956 No 27

Schedule 2 re-introduces a tax-free threshold for land tax. The new threshold will be \$330,000 for the 2006 land tax year and will be indexed thereafter. If a land owner's aggregate taxable land value is more than \$330,000, the land will be taxed at a rate of \$100 plus 1.7 cents for each \$1 in excess of the threshold.

Schedule 3 Amendment of Land Tax Management Act 1956 No 26

Schedule 3 provides for the determination of the tax threshold for land tax in connection with the amendments made by Schedule 2. It provides for the indexation of that threshold by the Valuer-General to account for movements in land values, and for other consequential (including savings and transitional) matters.

First print



New South Wales

State Revenue Legislation Amendment (Budget Measures) Bill 2005

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Acts	2
Schedule 1 Amendment of Duties Act 1997 No 123	3
Schedule 2 Amendment of Land Tax Act 1956 No 27	10
Schedule 3 Amendment of Land Tax Management Act 1956 No 26	12

State Revenue Legislation Amendment (Budget Measures) Bill 2005

Contents

Page



New South Wales

State Revenue Legislation Amendment (Budget Measures) Bill 2005

No. , 2005

A Bill for

An Act to make miscellaneous amendments to certain State revenue legislation; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>State Revenue Legislation Amendment (Budget Measures) Act 2005</i> .	3 4
2 Commencement	5
(1) This Act commences on the date of assent, except as provided by subsection (2).	6 7
(2) Schedule 1 [4]–[8] commence, or are taken to have commenced, on 1 August 2005.	8 9
3 Amendment of Acts	10
The Acts specified in the Schedules are amended as set out in those Schedules.	11 12

Schedule 1	Amendment of Duties Act 1997 No 123	1
	(Section 3)	2
[1]	Section 162M What is the vendor acquisition date?	3
	Insert “, subject to this section” after “under Chapter 2” in section 162M (3).	4
[2]	Section 162M (6) and (7)	5
	Insert after section 162M (5):	6
	(6) If the land-related property the subject of a vendor duty transaction is held by the vendor subject to a trust and the vendor acquired the property by means of a dutiable transaction that was not chargeable with ad valorem duty:	7
	(a) the vendor acquisition date is taken to be the most recent date (before that dutiable transaction occurred) on which another dutiable transaction occurred, being a dutiable transaction that was chargeable with ad valorem duty under Chapter 2 as a transfer of the land-related property (an <i>ad valorem duty transaction</i>), and	8
	(b) the vendor is taken, for the purposes of this Division, to have acquired the land-related property on that date.	9
	(7) In a case referred to in subsection (6), if no ad valorem duty transaction has occurred, sections 162I–162K do not apply to the vendor duty transaction.	10
	Note. If land-related property is the subject of a trust and a new trustee is appointed, the acquisition of the legal interest by the trustee is generally not chargeable with ad valorem duty under Chapter 2. Under subsection (6), the vendor acquisition date is taken to be the most recent date on which another dutiable transaction occurred that was chargeable with ad valorem duty under Chapter 2, not the date on which any new trustee acquired the legal interest to the property. Note that a declaration of trust over land-related property is chargeable with duty as if it were a transfer of the property under Chapter 2.	11
		12
		13
		14
		15
		16
		17
		18
		19
		20
		21
		22
		23
		24
		25
		26
		27
		28
		29
		30
[3]	Section 163ZL What is the disposer acquisition date?	31
	Insert after section 163ZL (2):	32
	(3) For the purposes of subsection (1) (a), if the interest being disposed of by the person was acquired by the person subject to a trust, a reference to the person making the relevant disposal is taken to be a reference to the beneficial owner or owners of that interest.	33
		34
		35
		36
		37

(4)	For the purposes of subsection (1) (b), if a linked entity (within the meaning of section 163T) of a landholder acquires a land holding, the landholder is taken to have acquired the land holding.	1 2 3 4
[4]	Section 220 Refinancing of loans	5
	Insert in alphabetical order in section 220 (1):	6
	<i>land used for aquaculture</i> means land subject to an aquaculture permit (within the meaning of the <i>Fisheries Management Act 1994</i>).	7 8 9
[5]	Section 220 (3)–(3B)	10
	Omit section 220 (3). Insert instead:	11
(3)	A refinancing mortgage is taken to have been stamped with ad valorem duty as a mortgage in respect of the duty-free refinancing amount, except as provided by subsection (5).	12 13 14
(3A)	For the purposes of this section, the <i>duty-free refinancing amount</i> is the lesser of the following amounts:	15 16
(a)	the maximum amount payable under or secured by the earlier mortgage (being an amount in relation to which mortgage duty has been paid or in relation to which an exemption from duty has been obtained),	17 18 19 20
(b)	\$1,000,000.	21
(3B)	However, if the refinancing mortgage is over land used for primary production or land used for aquaculture, the <i>duty-free refinancing amount</i> is the maximum amount payable under or secured by the earlier mortgage (being an amount in relation to which mortgage duty has been paid or in relation to which an exemption from duty has been obtained).	22 23 24 25 26 27
	Note. “Land used for primary production” is defined in the Dictionary.	28
[6]	Section 220 (5)	29
	Omit “maximum amount secured by the earlier mortgage”.	30
	Insert instead “duty-free refinancing amount”.	31
[7]	Section 220 (8) (a)	32
	Omit “maximum amount secured by the earlier mortgage”.	33
	Insert instead “duty-free refinancing amount”.	34

[8] Section 227A	1
Insert after section 227:	2
227A Transfer of mortgages	3
(1) If a mortgage is transferred (whether or not at the request or direction of any party) to:	4
(a) a person who, either in connection with the transfer or at a later time, makes an advance or further advance under or secured by the mortgage, or	5
(b) a person who is a party to arrangements (referred to in section 215) relating to such an advance or further advance,	6
the transferred mortgage is taken, for the purpose of determining its liability to duty under this Act, to be a new mortgage on which no duty has been paid and is liable to duty in respect of the advance or further advance accordingly.	7
(2) The date of first execution of the transferred mortgage is taken to be:	8
(a) in the case of a mortgage where the advance or further advance was made in connection with the transfer—the date of first execution of the transfer, and	9
(b) in the case of a mortgage where the advance or further advance was made at a later time—the date of the first such advance or further advance.	10
(3) If an insufficient amount of duty has been paid on a mortgage to which this section applies before it is taken by this section to be a new mortgage, the Chief Commissioner is not prevented from recovering at any time the amount of duty with which, in the Chief Commissioner’s opinion, the mortgage was properly chargeable from the mortgagor or person bound.	11
(4) This section does not apply to a mortgage referred to in section 220 (3B).	12
(5) This Chapter applies to a mortgage referred to in subsection (1) in the same way as it applies to any other mortgage, except as provided by subsection (6).	13
(6) For the purposes of section 218B (1), a transferred mortgage is not considered to have been duly stamped in respect of any duty paid before the transfer on advances made before the transfer.	14

[9] Section 233 Types of general insurance	1
Omit section 233 (1) and (2). Insert instead:	2
(1) For the purpose of charging duty, general insurance is divided into 3 types, Type A insurance, Type B insurance and Type C insurance.	3 4 5
(2) Type A insurance is general insurance other than Type B insurance or Type C insurance.	6 7
(2A) Type B insurance is:	8
(a) motor vehicle insurance, being insurance covering any one or more of the following:	9 10
(i) the loss (including the loss by theft) of a motor vehicle,	11 12
(ii) damage to a motor vehicle,	13
(iii) loss of or damage to property by a motor vehicle, being a motor vehicle within the meaning of the <i>Motor Accidents Compensation Act 1999</i> , or	14 15 16
(b) aviation insurance, being insurance covering any one or more of the following:	17 18
(i) the loss (including the loss by theft) of an aircraft,	19
(ii) damage to aircraft,	20
(iii) the death of or injury to a person by an aircraft or a thing falling from an aircraft,	21 22
(iv) the loss of or damage to property by an aircraft or a thing falling from an aircraft, or	23 24
(c) disability income insurance, being insurance effected by a contract of insurance under which an amount is payable in the event of disablement of the insured by accident or sickness, or	25 26 27 28
(d) occupational indemnity insurance, being insurance covering liability arising out of the provision by a person of professional services or other services, or	29 30 31
(e) hospital and ancillary health benefits insurance, being insurance covering liability incurred in respect of fees or charges for hospital treatment, or for health care ancillary to hospital treatment, if the liability is not covered by an organisation registered under Part VI of the <i>National Health Act 1953</i> of the Commonwealth.	32 33 34 35 36 37

[10] Section 233 (3)	1
Omit “ <i>Type B insurance</i> ”. Insert instead “ <i>Type C insurance</i> ”.	2
[11] Section 234	3
Omit the section. Insert instead:	4
234 What duty is payable?	5
(1) The amount of duty chargeable on the premium paid in relation to a contract of insurance is 9% of the amount of the premium to the extent to which the premium is paid to effect Type A insurance.	6 7 8 9
(2) The amount of duty chargeable on the premium paid in relation to a contract of insurance is 5% of the amount of the premium to the extent to which the premium is paid to effect Type B insurance.	10 11 12 13
(3) The amount of duty chargeable on the premium paid in relation to a contract of insurance is 2.5% of the amount of the premium to the extent to which the premium is paid to effect Type C insurance.	14 15 16 17
[12] Section 253 Monthly returns and payment of duty	18
Insert after section 253 (a) (ii):	19
(iii) the total amount of all premiums for Type C insurance paid to the registered insurer in the preceding month, and	20 21
[13] Schedule 1 Savings, transitional and other provisions	22
Insert at the end of clause 1 (1):	23
<i>State Revenue Legislation Amendment (Budget Measures) Act 2005</i>	24 25
[14] Schedule 1	26
Insert at the end of the Schedule (with appropriate Part and clause numbers):	27
Part Provisions consequent on enactment of State Revenue Legislation Amendment (Budget Measures) Act 2005	28 29 30
Changes to vendor duty and land rich disposal concessions	31
(1) The amendments made by the <i>State Revenue Legislation Amendment (Budget Measures) Act 2005</i> to sections 162M and	32 33

163ZL are taken to have effect as if they had commenced on the date on which the Bill for the <i>State Revenue Legislation Amendment (Budget Measures) Act 2005</i> was introduced in the Legislative Assembly (the effective date).	1 2 3 4
(2) Accordingly, section 162M (6) applies in respect of any vendor duty transaction that occurs on or after the effective date and section 163ZL (3) and (4) apply in respect of any relevant disposal that is made on or after the effective date.	5 6 7 8
(3) If a vendor duty transaction or relevant disposal that occurred or was made before the date of assent to the <i>State Revenue Legislation Amendment (Budget Measures) Act 2005</i> becomes chargeable with duty or additional duty as a result of the amendments made by that Act to sections 162M and 163ZL, the vendor duty transaction or relevant disposal is taken (if the duty or additional duty has not already been paid) to become chargeable with that duty or additional duty on the date of assent to that Act.	9 10 11 12 13 14 15 16 17
(4) In section 162M, as amended by the <i>State Revenue Legislation Amendment (Budget Measures) Act 2005</i> :	18 19
(a) a reference to an ad valorem duty transaction includes an ad valorem duty transaction that occurred before the effective date, and	20 21 22
(b) a reference to Chapter 2 of this Act includes a reference to any corresponding provisions of the <i>Stamp Duties Act 1920</i> that have been repealed.	23 24 25
Mortgage duty—refinancing	26
(1) The amendments made to section 220 by the <i>State Revenue Legislation Amendment (Budget Measures) Act 2005</i> apply to any refinancing mortgage (within the meaning of section 220) that is first executed on or after 1 August 2005, regardless of when the earlier mortgage that is discharged or to be discharged as part of the arrangements relating to the refinancing mortgage was first executed.	27 28 29 30 31 32 33
(2) Section 227A, as inserted by the <i>State Revenue Legislation Amendment (Budget Measures) Act 2005</i> , applies to any mortgage transferred on or after 1 August 2005, regardless of when it was first executed.	34 35 36 37
Insurance duty	38
(1) The amendments made to Chapter 8 by the <i>State Revenue Legislation Amendment (Budget Measures) Act 2005</i> have effect	39 40

-
- only in relation to premiums paid on or after the date of assent to that Act for contracts of insurance and renewals of contracts of insurance that take effect on or after 1 September 2005. 1
2
3
- (2) Despite section 253, the Chief Commissioner may, having regard to the amendments made to Chapter 8 by the *State Revenue Legislation Amendment (Budget Measures) Act 2005*, determine the categories of premiums to be shown in a form of a return required to be lodged under that section on or before 21 August 2005 or a subsequent month. 4
5
6
7
8
9

Schedule 2	Amendment of Land Tax Act 1956 No 27	1
	(Section 3)	2
[1] Section 2A		3
	Omit the section. Insert instead:	4
2A Definition		5
	In this Act:	6
	<i>tax threshold</i> means:	7
	(a) in relation to a land tax year before the 2005 land tax year—the tax threshold determined in accordance with section 62TB of the Principal Act, and	8 9 10
	(b) in relation to the 2006 land tax year or any subsequent land tax year—the tax threshold determined in accordance with section 62TBA of the Principal Act.	11 12 13
[2] Section 3AI Levy of land tax after 31 December 2004 and before 31 December 2005		14 15
	Omit “on 31 December in any year (commencing with 2004)” wherever occurring in section 3AI (1) and (2).	16 17
	Insert instead “on 31 December 2004”.	18
[3] Section 3AJ		19
	Insert after section 3AI:	20
3AJ Levy of land tax after 31 December 2005		21
	(1) Except as provided by subsection (2), in respect of the taxable value of all the land owned by any person at midnight on 31 December in any year (commencing with 2005) there is to be charged, levied, collected and paid under the provisions of the Principal Act and in the manner prescribed under that Act, land tax for the period of 12 months commencing on 1 January in the next succeeding year and at the rates set out in Schedule 11.	22 23 24 25 26 27 28
	(2) In respect of the taxable value of all the land owned by a person at midnight on 31 December in any year (commencing with 2005) where:	29 30 31
	(a) the owner is a company classified under section 29 of the Principal Act as a non-concessional company, or	32 33
	(b) the land is subject to a special trust,	34

land tax for the period of 12 months commencing on 1 January in	1
the next succeeding year is, except as provided by section 27	2
(2A) of the Principal Act, to be charged, levied, collected and	3
paid as referred to in subsection (1) at the rate of 1.7 cents for	4
each \$1 of the taxable value.	5
(3) If the total amount of land tax payable pursuant to this section by	6
any person in any year would, but for this subsection, be less than	7
\$100, no land tax is payable.	8
[4] Schedule 11	9
Insert after Schedule 10:	10
Schedule 11	11
(Section 3AJ)	12

Where the taxable value assessed under the Principal Act	Rates of land tax payable
is not more than the tax threshold	nil
is more than the tax threshold	\$100 plus 1.7c for each \$1 in excess of the tax threshold

Schedule 3	Amendment of Land Tax Management Act 1956 No 26	1
		2
	(Section 3)	3
[1] Part 7, Division 4A, note		4
Insert after the heading to Division 4A of Part 7:		5
Note. Sections 62TA and 62TB provide for the determination of the tax threshold for the land tax years from 1998 to 2004. In 2004, the tax threshold was abolished, with effect from the 2005 land tax year. Accordingly, there is no tax threshold for the 2005 land tax year. The tax threshold was then re-introduced, with effect from the 2006 land tax year. Sections 62TBA and 62TBB provide for the determination of the tax threshold for the 2006 land tax year and subsequent land tax years.		6 7 8 9 10 11 12
[2] Section 62T Abolition of tax threshold from 2005 land tax year		13
Omit the section.		14
[3] Section 62TA Determination of change in NSW property values—pre-2004		15
Insert “before 2004” after “in each year” wherever occurring in section 62TA (1) and (3).		16 17 18
[4] Section 62TA (2)		19
Omit the subsection.		20
[5] Section 62TB Tax threshold—pre-2005 land tax year		21
Insert “and before the 2005 land tax year” after “subsequent to the 1998 land tax year” in section 62TB (2).		22 23
[6] Section 62TB (5)		24
Insert “before 2004” after “in each year”.		25
[7] Sections 62TBA and 62TBB		26
Insert after section 62TB:		27
62TBA Tax threshold—2006 land tax year and subsequent years		28
(1) The tax threshold for the 2006 land tax year is \$330,000.		29

(2)	The tax threshold for a land tax year subsequent to the 2006 land tax year is to be determined in accordance with the following formula:	1 2 3
	$T \times (100\% + I)$	
	where:	4
	<i>T</i> is the tax threshold for the previous land tax year.	5
	<i>I</i> is the indexation factor for the land tax year, determined in accordance with section 62TBB.	6 7
(3)	A tax threshold determined in accordance with this section is to be rounded off to the nearest \$1,000.	8 9
(4)	On or before 15 October in each year (commencing with 2006), the Valuer-General is to publish in the Gazette the tax threshold applicable to the following land tax year, as determined in accordance with this section.	10 11 12 13
62TBB	Determination of indexation factor	14
(1)	During the month of September in each year (commencing with 2006), the Valuer-General is to determine:	15 16
	(a) the average land values of land within residential, commercial, business and industrial zones in New South Wales at 1 July in that year, and	17 18 19
	(b) the percentage by which those average land values have changed between 1 July in the year preceding the determination and 1 July in the year in which the determination is made (<i>the percentage change in land values</i>).	20 21 22 23 24
(2)	For the purpose of determining the tax threshold for a land tax year subsequent to the 2006 land tax year, the <i>indexation factor</i> is:	25 26 27
	(a) the percentage change in land values determined by the Valuer-General in the year preceding the land tax year, or	28 29
	(b) if the Valuer-General determines in the year preceding the land tax year that the average land values of land within residential, commercial, business and industrial zones in New South Wales at 1 July in that year are less than the average land values of land within residential, commercial, business and industrial zones in New South Wales at 1 July in any previous year (excluding any year before 2005)—zero.	30 31 32 33 34 35 36 37

(3)	On or before 15 October in each year (commencing with 2006), the Valuer-General is to publish in the Gazette the percentage change in land values, and the indexation factor applicable to the following land tax year, as determined in accordance with this section.	1 2 3 4 5
[8]	Section 62TC Definitions	6
	Insert at the end of the section:	7
(2)	For the purposes of this Division, land is within a <i>residential, commercial, business or industrial zone</i> if it is zoned or otherwise designated for use under an environmental planning instrument (within the meaning of the <i>Environmental Planning and Assessment Act 1979</i>) for, or principally for, residential, commercial, business or industrial purposes, or for some or all of those purposes.	8 9 10 11 12 13 14
[9]	Schedule 2 Savings and transitional provisions	15
	Insert at the end of clause 1A (1):	16
	<i>State Revenue Legislation Amendment (Budget Measures) Act 2005</i>	17 18