

[Act 1999 No 60]



New South Wales

State Revenue Legislation Further Amendment Bill 1999

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are:

- (a) to amend the *Accommodation Levy Act 1997* to abolish the levy on accommodation provided on or after 1 July 2000, and
 - (b) to amend the *Duties Act 1997*:
 - (i) to enable the payment of duty on “off the plan” purchases to be deferred for up to 12 months, and
 - (ii) to limit the duty payable on certain transactions where a person acquires property in which the person already has a beneficial interest, and
 - (iii) to increase the discount for early payment of instalments of duty paid under the first home purchase scheme, and
 - (iv) to clarify certain exemptions from marketable securities duty relating to “nomineeing” transactions, and
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- (v) to clarify the liability to duty of instalment warrants, and
 - (vi) to make it clear that a trustee is not liable to pay mortgage duty under certain provisions relating to debenture issues, and
 - (vii) to change the exemption scheme for registration of demonstrator motor vehicles, and
 - (viii) to make further provision with respect to transactions entered into for the purpose of enabling an undertaking to become a managed investment scheme, and
- (c) to amend the *Health Insurance Levies Act 1982*:
- (i) to clarify the procedure for the remittance of contributions to the State Ambulance Insurance Plan by authorised agents, and
 - (ii) for the purposes of statute law revision, and
- (d) to amend the *Pay-roll Tax Act 1971*:
- (i) to enable the Chief Commissioner of State Revenue to recover pay-roll tax debts owed by corporations from the directors and former directors of those corporations in certain circumstances, and
 - (ii) to make changes to the provisions relating to employment agents, and
- (e) to amend the *Taxation Administration Act 1996* to make it clear that a refusal to refund tax does not give rise to a right of objection.

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 1 January 2000, except as otherwise indicated in the notes below.

Clause 3 is a formal provision giving effect to the amendments to the *Accommodation Levy Act 1997* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the *Duties Act 1997* set out in Schedule 2.

Clause 5 is a formal provision giving effect to the amendments to the *Health Insurance Levies Act 1982* set out in Schedule 3.

Clause 6 is a formal provision giving effect to the amendments to the *Pay-roll Tax Act 1971* set out in Schedule 4.

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Clause 7 is a formal provision giving effect to the amendments to the *Taxation Administration Act 1996* set out in Schedule 5.

Schedule 1 Amendment of Accommodation Levy Act 1997

The amendments abolish the accommodation levy from 1 July 2000.

Schedule 1 [1] inserts Part 1A in the Act. It provides that the Act does not apply in respect of residential accommodation provided for use or occupation on or after 1 July 2000. Accordingly, no levy is charged on such accommodation.

The new part will not affect any liability to pay a levy charged on residential accommodation provided for use or occupation before 1 July 2000.

The manager of a place of accommodation will be required to submit to the Chief Commissioner of State Revenue a final return, in respect of the return period of June 2000, on or before 15 July 2000, together with the accommodation levy required to be paid in respect of that return period.

A transitional provision is included that ensures that any amount payable after 30 June 2000 for accommodation provided before 1 July 2000 is included in the calculations for June 2000.

Schedule 1 [2] removes a provision that would have provided for a review of the Act after it had been in operation for 5 years. Instead, the Act will cease to have effect on 1 September 2003.

Schedule 2 Amendment of Duties Act 1997

Liability for duty on “off the plan” purchases

At present, the payment of duty on an “off the plan” purchase agreement (being an agreement for the sale or transfer of land on which a residence is to be erected or developed before the completion of the sale or transfer) may be partially deferred. Five percent of the duty is to be paid on stamping of the agreement, and the remainder at a later stage. **Schedule 2 [2]** allows payment of the duty to be completely deferred to a later stage. Liability to pay duty on the agreement will not arise until one of the following occurs:

- (a) completion of the agreement,

- (b) the assignment of the whole or any part of the purchaser's interest under the agreement,
- (c) the expiration of 12 months after the date of the agreement.

Schedule 2 [13] is a transitional provision.

Transfer of property by trustee to beneficial owner

Schedule 2 [3] provides for the calculation of duty if dutiable property that is vested in a person as trustee of a statutory trust, as a consequence of the making of an order under section 66G of the *Conveyancing Act 1919*, is transferred or agreed to be transferred by the trustee to a person who already has a beneficial interest in the property. In such a case, the duty is to be calculated by deducting from the unencumbered value of the dutiable property or the consideration for the transfer or agreement, whichever is the greater, the proportion of that amount that is the same as the proportion of the purchaser's beneficial interest in the dutiable property immediately before the transfer or agreement.

Marketable securities duty on "nominee transactions"

Section 66 of the *Duties Act 1997* sets out exemptions from duty on certain transactions involving marketable securities.

Certain exemptions apply to "nominee transactions" (ie transfers of marketable securities to or from nominees where there is no change in the beneficial ownership of the marketable securities).

At present, section 66 exempts certain transfers to or from a trustee or nominee of the beneficial owner, or a custodian of the trustee. **Schedule 2 [4]** adds to this list transfers to or from a sub-custodian of a custodian of a trustee or nominee of a beneficial owner. It also makes other changes for the purpose of making it clear that the exemption applies only if the trustee, nominee, custodian or sub-custodian at all stages holds the marketable securities solely for the beneficial owner, a trustee or nominee of the beneficial owner or a custodian of a trustee or nominee of the beneficial owner.

Duty of \$10 will be chargeable if the marketable securities are not quoted on the Australian Stock Exchange (see **Schedule 2 [1]**).

A separate exemption also applies to transfers of marketable securities to or from certain named broker nominee companies or to or from a nominee company that holds marketable securities solely for the purpose of facilitating marketable security transaction settlements by a broker. **Schedule 2 [5]** provides that in such a case the exemption will apply only if the transfer is made solely for the purpose of facilitating a marketable security transaction settlement and there is no change in

the beneficial ownership of the marketable securities (other than as a result of an on-market transaction settlement).

Discount for first home purchasers

At present, a person who has the benefit of the first home purchase scheme may choose to pay out, at a discount, the total of all instalments of duty that are due to be paid under the Act in connection with the purchase. The discount ranges from 10 to 25 percent, depending on the number of instalments remaining.

Schedule 2 [6] provides for a 50 percent discount on early payment of instalments. It allows a person who has the benefit of the first home purchase scheme to choose to pay out, at a discount of 50 percent, all instalments of duty remaining at the time.

The provision will be taken to have commenced on 23 June 1999.

Mortgage duty associated with debenture issues

Section 226 of the Act contains special provisions relating to the payment of duty on mortgages associated with the issue of debentures by a corporation. The provisions operate if the corporation and the trustee for the debenture holders give a written undertaking in an approved form to the Chief Commissioner of State Revenue. **Schedule 2 [7]** makes it clear that it is the corporation, and not the trustee, that is liable to pay the duty in accordance with that undertaking.

Exemption for demonstrator motor vehicles

At present, the Chief Commissioner of State Revenue may issue exemption authorities to motor dealers for use in the registration of demonstrator motor vehicles. An application by a motor dealer to register a motor vehicle is not chargeable with duty if, at the time the application is made, the dealer produces an exemption authority to the Roads and Traffic Authority.

Schedule 2 [8] replaces those provisions. Duty will not be chargeable on an application for registration of a motor vehicle only if the motor vehicle is a demonstrator motor vehicle and the motor dealer produces an exemption authority that has been completed by the dealer. The Chief Commissioner will be able to enter into arrangements for the issue of exemption authorities. If a motor dealer produces an exemption authority in connection with the registration of a motor vehicle that is not a demonstrator motor vehicle the motor dealer will be guilty of an offence, and the Chief Commissioner will be able to recover the duty that should have been paid.

Schedule 2 [9] is a consequential amendment.

Managed investment schemes

Under transitional arrangements provided for by the Act, certain transactions entered into by a responsible entity for the purpose of enabling an undertaking to become a managed investment scheme under the *Corporations Law* are charged duty at a special rate.

Schedule 2 [11] corrects a cross-reference in that transitional provision. It will be taken to have commenced on 1 July 1998 (when the transitional provision commenced).

A further provision is added in order to extend similar transitional arrangements to instruments executed by a custodian of a responsible entity for the same purpose (see **Schedule 2 [12]**). That provision will be taken to have commenced on 1 July 1999.

Instalment warrants

An “instalment warrant” is defined as a warrant that, among other things, is an option contract within the meaning of section 9 of the *Corporations Law*. **Schedule 2 [14]** omits this element of the definition.

Savings and transitional

Schedule 2 [10] provides for the making of savings and transitional regulations.

Schedule 3 Amendment of Health Insurance Levies Act 1982

Remittance of contributions to the State Ambulance Insurance Plan

At present, contributions to the State Ambulance Insurance Plan are collected by authorised agents and remitted to the Chief Commissioner of State Revenue, after the authorised agent has deducted any commission that the authorised agent is entitled to retain under the Act.

Schedule 3 [3] clarifies this procedure by requiring authorised agents to submit a monthly return to the Chief Commissioner, together with a payment calculated in accordance with a formula set out in that provision. The formula is based on the number of contributors to the State Ambulance Insurance Plan at the beginning of the month, the type of contributions made and the prescribed rate at which contributions are made.

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Schedule 3 [4] provides for an annual adjustment to those payments, in order to take account of any discrepancies between the total amount paid by the authorised agent over the year and the total amount that is actually required to be remitted to the Chief Commissioner. (A discrepancy may occur, for example, because a contributor dies or becomes a pensioner.)

Schedule 3 [2] allows the maximum commission to be specified on any basis. (At present, commission is calculated by reference to weekly contributions.)

Schedule 3 [5] is a transitional provision.

Statute law revision (definition of “basic health benefits”)

Schedule 3 [1] makes an amendment for the purpose of updating the definition of “basic health benefits” in the Act. As a result of Commonwealth legislation, which came into effect on 1 July 1997, the expressions “basic private table” and “basic table” have been replaced with “applicable benefits arrangement”. Those expressions, which are used in the definition of “basic health benefits”, are updated accordingly.

The amendment will be taken to have commenced on 1 July 1997.

Schedule 4 Amendment of Pay-roll Tax Act 1971

Liability of directors of corporation to pay tax

Schedule 4 [6] introduces provisions that allow the Chief Commissioner of State Revenue to recover pay-roll tax debts of corporations from the directors, or former directors, of those corporations in certain circumstances.

The provisions apply if a corporation fails to pay an assessment amount in accordance with a notice of assessment issued by the Chief Commissioner. The Chief Commissioner may then serve a notice (called a compliance notice) on any person who:

- (a) is a director of the corporation, or
- (b) was a director of the corporation at the time when the corporation first became liable to pay the pay-roll tax included in the assessment amount or at any time afterwards (a *former director*).

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The compliance notice advises the director or former director that if the failure to pay the assessment amount is not rectified within a time specified in the notice, the director will become liable to pay the assessment amount.

The failure by the corporation to pay the assessment amount is taken to be rectified if:

- (a) the assessment amount is paid, or
- (b) the Chief Commissioner makes a special arrangement with the corporation for the payment of the assessment amount, or
- (c) the Board of Review waives or defers payment of any of the assessment amount, or
- (d) an administrator of the corporation is appointed under Part 5.3A of the *Corporations Law*, or
- (e) the corporation begins to be wound up within the meaning of the *Corporations Law*.

If the failure to pay the assessment amount is not rectified within the period specified in the compliance notice, the director or directors on whom it is served become jointly and severally liable with the corporation to pay the assessment amount.

If the failure to pay the assessment amount is rectified because of a special arrangement or the deferral of payment of the assessment amount, and the corporation fails to pay the assessment amount in accordance with the arrangement or deferral, a further compliance notice may be issued by the Chief Commissioner.

A director or former director from whom the debt is recovered will have a right to be indemnified by the corporation and to recover a contribution from any other director or former director of the corporation who is liable to pay the assessment amount.

It will be a defence to the recovery of an assessment amount from a director or former director if the director or former director establishes that he or she:

- (a) took all reasonable steps to ensure that the corporation rectified the failure to pay the assessment amount, or
- (b) was unable, because of illness or for some other similar good reason, to take steps to ensure the corporation rectified that failure.

Schedule 4 [1] is a consequential amendment.

Schedule 4 [7] provides for the making of savings and transitional regulations.

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Schedule 4 [8] makes it clear that the new provisions extend to pay-roll debts incurred by a corporation before the commencement of the provisions. However, the provisions will not allow the Chief Commissioner to recover a tax debt owed by a corporation from a former director of the corporation if the former director ceased to be a director of the corporation before the commencement of the provisions.

The provisions will commence on the date of assent.

Employment agents

Section 3C of the *Pay-roll Tax Act 1971* provides for the application of the Act to employment agency contracts. An employment agent is a person who procures the services of another person (a contract worker) for a client and receives remuneration from the client for the services provided by the contract worker to the client. An employment agent is deemed to be an employer under the Act.

The Act provides that an employment agent is not liable to pay-roll tax in relation to an employment agency contract if:

- (a) the contract worker is liable to pay pay-roll tax in respect of the wages paid for those services, or
- (b) the wages paid or payable under the contract would have been exempt from pay-roll tax had the contract worker been paid those wages by the client instead of by the employment agent, or
- (c) the client is not registered or required to be registered as an employer under the Act.

Schedule 4 [2]–[5] add a requirement that, in order to come within any of the exceptions referred to in paragraphs (a)–(c) above, a declaration, in a form approved by the Chief Commissioner, must be lodged with the employment agent by the contract worker or the client.

If a declaration is lodged and in fact the exception does not apply, or ceases to apply, the amendments provide that either the employment agent (in the case referred to in paragraph (a)) or the client (in the cases referred to in paragraph (b) and (c)) will be liable to pay pay-roll tax in relation to the wages paid under the employment agency contract (see **Schedule 4 [5]**).

The exception referred to in paragraph (c) is also changed to make it clear that pay-roll tax must be paid on the employment agency contract if the client would be required to be registered under the Act if the client had been the employer in relation to all employment agency contracts to which the client is a party (see **Schedule 4 [4]**).

Schedule 5 Amendment of Taxation Administration Act 1996

Schedule 5 [1] makes it clear that the procedure for objecting to decisions of the Chief Commissioner of State Revenue does not apply in respect of a refusal by the Chief Commissioner to refund any tax paid.

Schedule 5 [3] is a transitional provision and **Schedule 5 [2]** allows further savings and transitional provisions to be made by the regulations.