

[Act 1997 No 123]



New South Wales

Duties Bill 1997

Explanatory note

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

Overview of Bill

The object of this Bill is to replace a number of existing stamp duties currently charged under the *Stamp Duties Act 1920* with the following duties:

- a transfer duty on the transfer of, or on specified transactions that deal with, property that is specifically identified in the Bill as dutiable property (this duty being supported by special anti-avoidance provisions)
- marketable securities duty
- lease duty
- hire of goods duty
- mortgage duty
- insurance duty
- motor vehicle registration duty
- duty on duplicates or counterparts, and replicas.

The proposed Act will be a “taxation law” for the purposes of the *Taxation Administration Act 1996* and is to be read together with that Act.

Outline of provisions

Chapter 1 Preliminary

Chapter 1 contains clauses 1–7. It sets out the name of the proposed Act, provides for its commencement on 1 July 1998, explains its purpose, provides for the definition of certain words and expressions used in the proposed Act and contains other provisions of a general introductory nature.

Chapter 2 Transactions concerning dutiable property

Chapter 2 contains clauses 8–104. It charges duty on transfers of dutiable property and on the following transactions:

- an agreement for the sale or transfer of dutiable property
- a declaration of trust over dutiable property
- a surrender of an interest in land in New South Wales
- a foreclosure of a mortgage over dutiable property
- a vesting of dutiable property by or as a consequence of a statute or court order.

Such transfers and transactions are called dutiable transactions for the purposes of the proposed Act. They do not have to be effected by a written instrument. The Chapter specifies the property that is dutiable property.

A liability for duty arises when a transfer of dutiable property occurs. The duty will generally be payable by the transferee and is required to be paid within 3 months after the liability to pay the duty arises.

The rate of duty is required to be paid on the dutiable value of the dutiable property the subject of the dutiable transaction and the Chapter makes provision for determining the dutiable value.

An object of the Chapter is to provide 3 schemes for the payment of duty on the transfer of marketable securities, one relating to transfers made via SCH-regulated transfers (CHES), one relating to transfers made through the London Stock Exchange and the other relating to transfers made by a person who is approved by the Chief Commissioner to pay duty by periodic return. These schemes provide alternative means for effecting the payment of duty from those provided elsewhere in the proposed Act.

Concessional rates of duty are provided for certain transfers of trust property, certain transactions relating to superannuation and certain transactions relating to deceased estates and the conversion of lots to strata title.

The Chapter identifies a number of transactions that are exempt from duty and also provides for discounts of duty and payment of duty by instalments for certain housing schemes, such as the first home purchase scheme and the flood-prone housing scheme.

Chapter 3 Certain transactions treated as transfers

Chapter 3 contains clauses 105-144. It contains provisions that are designed to prevent avoidance of the duty charged by Chapter 2.

Duty is charged by Part 2 of Chapter 3 on the acquisition by a person of an interest consisting of certain shareholdings in a private company, or unitholdings in a private unit trust scheme, whose property in either case consists, to the prescribed extent, of land holdings. The duty is chargeable at the general rate for a dutiable transaction under Chapter 2, rather than at the rate applicable to transfers of shares and units. An acquisition statement must be lodged when a majority interest is acquired or increased. Duty on an acquisition statement is chargeable only on interests acquired within a 3-year period. In certain cases the obligation to pay duty at the higher rate is phased in (see proposed section 122).

Duty is chargeable:

- under Part 3 of Chapter 3 on transactions by which corporate capital is reduced by redemption, surrender or cancellation of shares or reduction of share value or alteration of share rights
- under Part 4 of Chapter 3 on the allotment of shares or units that confer a land use entitlement
- under Part 5 of Chapter 3 on the allotment of shares by direction.

Chapter 4 Marketable securities—on-market transfers (Broker provisions)

Chapter 4 contains clauses 145–162. It imposes a liability for duty on on-market sales and purchases, made through the agency of a broker, of marketable securities, where the sale or purchase is sufficiently connected with New South Wales. “Marketable securities” is defined to mean shares (including rights to shares), units (including rights to units), CUFS and IRs. The Chapter identifies a number of exempt transactions. The Chapter specifies three different rates of duty and the various circumstances in which those rates are applicable.

The Chapter imposes obligations on brokers with respect to the making of records of sales and purchases of marketable securities, the lodgment of periodic returns and the payment of duty.

Chapter 5 Lease instruments

Chapter 5 contains clauses 163–179. It charges duty on lease instruments, being instruments that evidence or give effect to leases. “Lease” is defined to include agreements for lease, agreements for rights to use land and franchise arrangements. Duty is generally charged on the cost of the lease which is to be ascertained in accordance with the provisions of the Chapter. Principles are given for the determination and payment of duty where there are, at the relevant times, unascertainable lease costs. The lessee is liable to pay the duty. The Chapter sets out the rates of duty. It also charges duty on certain variations of leases. It identifies leases that are exempt from duty.

Chapter 6 Hire of goods

Chapter 6 contains clauses 180–203. It charges duty on the hire of goods. “Goods” is defined to include all chattels personal and fixtures severable from realty, but not to include money, livestock or things in action. “Hire of goods” is defined to be an arrangement under which goods are or may be used at any time by a person other than the person hiring out the goods, unless the arrangement is excluded under the Chapter. Different provisions apply to the imposition and payment of the duty according to whether the hiring out of the goods is done by a person who is in the business of hiring out goods (a “commercial hire business”) or by another person. The rate of duty is applied to the amount of hiring charges. Different rates of duty are applied, depending on the kind of hire. There are two kinds of hire, namely, an equipment financing arrangement and an ordinary hire of goods.

Chapter 7 Mortgages

Chapter 7 contains clauses 204–228. It charges duty on instruments that fall within the definition of “mortgage” as set out in the Chapter. The duty chargeable under the Chapter is called “mortgage duty”. Mortgage duty is calculated, in most cases, according to “the amount of advances secured by the mortgage” which is to be determined in accordance with the provisions of the Chapter. Contingent liabilities may also be included.

A liability for duty arises on the date of first execution of a mortgage and a liability for additional duty arises on the making of advances under the

mortgage by which the amount secured by the mortgage exceeds the amount secured by it at the time duty was last paid on it. The person liable to pay mortgage duty is the mortgagor.

Ad valorem duty is only chargeable on one of a package of mortgages securing the same advance. Provision is also made for the apportionment, for duty purposes, of the amount secured by any mortgage over property in different Australian jurisdictions.

The Chapter makes provision for certain duty concessions and specifies the instruments that are exempt from mortgage duty.

Chapter 8 Insurance

Chapter 8 contains clauses 229–260. It makes provision with respect to both general insurance and life insurance.

As to general insurance, the Chapter charges duty on the amount of the premium paid in relation to a contract of general insurance and requires duty to be paid each time a premium is paid. The Chapter defines “premium” and specifies the time at which a premium is “paid”. Generally, the insurer to whom the premium is paid is the person liable to pay the duty, but there are circumstances in which the person insured is liable to pay the duty. To facilitate payment of duty, insurers are required to register themselves with the Chief Commissioner, submit a monthly return showing the total amount of premiums paid to them for general insurance during the preceding month and pay the appropriate amount of duty when submitting the return.

As to life insurance, the Chapter charges duty as follows:

- on a policy of life insurance, other than a temporary or term insurance policy—according to the sum insured
- on a temporary or term insurance policy—according to the first year’s premium on the policy
- on a life insurance rider—according to the first year’s premium on the life insurance rider
- on a policy of disability income insurance—according to the premium paid to effect the insurance.

Generally, the insurer with whom the policy is effected is the person liable to pay the duty, but there are circumstances in which the person insured is liable to pay the duty.

The Chapter makes provision with respect to the registration of insurers and the payment of duty by registered insurers by monthly return.

The Chapter also provides for the apportionment of premiums and other amounts between Australian jurisdictions and between different types of insurance and identifies insurance that is exempt from duty for the purposes of the Chapter.

Chapter 9 Motor vehicle registration

Chapter 9 contains clauses 261–270. It charges duty on applications to register motor vehicles under the *Traffic Act 1909*. The Chapter specifies the rate of duty which is payable according to the dutiable value of the motor vehicle. The duty becomes payable when the motor vehicle is registered. It is payable by the applicant for registration.

The Chapter also identifies circumstances in which duty is not chargeable.

Chapter 10 Miscellaneous duties

Chapter 10 contains clauses 271–273. It charges duty on duplicates or counterparts, and replicas. It also provides for the charging of a minimum amount of duty.

Chapter 11 General exemptions from duty

Chapter 11 contains clauses 274–284. It grants general exemptions from duty for:

- intergenerational rural transfers
- a charitable or benevolent societies or institutions
- public hospitals
- councils and electricity distributors
- Department of Housing tenants
- specialised agencies
- Aboriginal land councils
- members of a group of corporations
- mortgage-backed securities

- instruments issued for the purpose of creating, issuing or marketing mortgage-backed securities
- loan-backed securities.

Chapter 12 Miscellaneous

Chapter 12 contains clauses 285–317. It provides for the stamping of instruments, makes provisions for the enforcement of the proposed Act, continues the Public Equity Partnership and the Rent/Buy Scheme and continues the Board of Review with its functions of enabling the waiver of duty and the giving of directions to the Chief Commissioner concerning the deferral and the writing off of duty. It repeals the *Educational Institutions (Stamp Duties Exemption) Act 1961*. It also contains a number of other miscellaneous provisions.

Schedule 1 Savings, transitional and other provisions

Schedule 1 contains provisions of a savings and transitional nature consequent on the enactment of the proposed Act.

Schedule 2 Amendment of Acts

Schedule 2 contains consequential amendments to the following Acts:

- *Revenue Laws (Reciprocal Powers) Act 1987*
- *Stamp Duties Act 1920*
- *Taxation Administration Act 1996*.