

[Act 2001 No 22]



New South Wales

State Revenue Legislation Amendment Bill 2001

Explanatory note

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

Overview of Bill

The objects of this Bill are as follows:

- (a) to amend the *Duties Act 1997*:
 - (i) to clarify the method of determining the dutiable value of business assets that have a connection with jurisdictions outside New South Wales, and
 - (ii) to limit the application of a provision that allows concessional rates of duty to be charged on certain transactions related to superannuation funds or trusts, and
 - (iii) to exempt from payment of duty certain transactions that are made following changes to the structure of legal practices under the *Legal Profession Act 1987*, and

* Amended in committee—see table at end of volume.

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- (iv) to exempt from payment of duty administration agreements under the *First Home Owner Grant Act 2000*, and
 - (v) to make various changes to the eligibility criteria for the First Home Plus scheme, and
 - (vi) to exempt from payment of duty an application for registration of a motor vehicle where the registration is to be granted conditionally, and
 - (vii) to prohibit the registration of any dutiable transaction unless the transaction has been stamped or there is other evidence that duty has been paid,
- (b) to amend the *Health Insurance Levies Act 1982* to clarify the statistics that are to be used to adjust the levy,
- (c) to amend the *Pay-roll Tax Act 1971*:
- (i) to clarify the liability of employers who are clients of employment agents for pay-roll tax, and
 - (ii) to make further provision for the calculation of an employer's pay-roll tax liability for the 2000-2001 financial year and subsequent financial years,
- (d) to amend the *Taxation Administration Act 1996*:
- (i) to change the basis for determining interest on late payments of tax, and
 - (ii) to allow information obtained in the administration of taxation laws to be disclosed for the purposes of the administration of the *First Home Owner Grant Act 2000* and the *Unclaimed Money Act 1995*, and to be disclosed to the Valuer-General, and
 - (iii) to clarify that reviews by the Supreme Court under the Act are to be regarded as appeals for the purposes of the *Supreme Court Act 1970* and the regulations and rules made under that Act,
- (e) to amend the *Unclaimed Money Act 1995*:
- (i) to authorise the Chief Commissioner to determine the method by which unclaimed money or superannuation benefits paid to the Chief Commissioner are to be published, and
 - (ii) to require notice of an amount paid to the Chief Commissioner to be published if it exceeds \$20, and
 - (iii) to prohibit disclosure of information obtained in connection with claims for unclaimed money or superannuation benefits, except in specified circumstances,
- (f) to make other minor and consequential amendments, and to enact provisions of a savings or transitional nature.

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.

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

Clause 4 is a formal provision giving effect to the amendment to the *Health Insurance Levies Act 1982* set out in Schedule 2.

Clause 5 is a formal provision giving effect to the amendments to the *Pay-roll Tax Act 1971* set out in Schedule 3.

Clause 6 is a formal provision giving effect to the amendments to the *Taxation Administration Act 1996* set out in Schedule 4.

Clause 7 is a formal provision giving effect to the amendments to the *Unclaimed Money Act 1995* set out in Schedule 5.

Clause 8 is a formal provision giving effect to the amendments to the Regulations specified in Schedule 6.

Schedule 1 Amendment of Duties Act 1997

Apportionment—business assets in other jurisdictions

At present, section 28 of the principal Act provides for the apportionment of the value of a business asset where part of its value is attributable to sales outside of New South Wales. The aim is to charge duty only on that part of the value of the asset that is attributable to sales to New South Wales customers. Section 21 of the principal Act provides that section 28 applies where a business asset has a relevant connection with the Commonwealth or another Australian jurisdiction. However, section 28 should also apply where a business asset has a relevant connection with a non-Australian jurisdiction. The amendment to section 21 makes this clear, so that duty is not payable on that part of the value of the business asset that is attributable to sales outside Australia. (See Schedule 1 [1])

Concessional rate of duty—superannuation

Section 62 of the principal Act applies a concessional rate of duty to a transfer or an agreement to transfer dutiable property to a trustee or custodian of certain types of superannuation funds or trusts, where there is no change in the beneficial

ownership of the property. Schedule 1 [2] and [3] limit the availability of this concessional rate of duty to a transfer of, or an agreement to transfer, dutiable property:

- (a) from the trustee of such a fund or trust to the custodian of the trustee of the fund or trust, or
- (b) from the custodian of the trustee of such a fund or trust to the trustee of the fund or trust, or
- (c) from the custodian of the trustee of such a fund or trust to another custodian of the trustee of the fund or trust,

where there is no change in beneficial ownership of the property.

Incorporated legal practices—exemption

The *Legal Profession Amendment (Incorporated Legal Practices) Act 2000* amended the *Legal Profession Act 1987* so as to allow legal practices to be incorporated under the *Corporations Law*, and to require solicitor corporations (corporations formed under the *Legal Profession Act 1987*) to be dissolved.

It is proposed to exempt from duty certain transactions that are made in connection with those changes. The exemption will extend to a transfer of dutiable property that is made by a solicitor corporation, a partnership of solicitors or a solicitor for the purpose of incorporating under the new provisions. (See Schedule 1 [4])

Administration agreements under first home owner grant scheme—exemption

The *First Home Owner Grant Act 2000* allows the Chief Commissioner to enter into agreements with financial institutions and other persons for exercising functions related to the administration of the first home owner grant scheme.

The amendment exempts those agreements from payment of duty. (See Schedule 1 [5])

Changes to First Home Plus scheme

The First Home Plus scheme is a scheme that is intended to help people who are buying their first home by providing them with a concession or exemption from duty payable on the agreement or transfer, and any mortgage given to assist the financing. A number of changes to the scheme are proposed.

The scheme will no longer apply only to the purchase of a first home. That is, the scheme will be available even if the home is gifted to the recipients. Accordingly, the eligibility criteria is changed so that eligibility is calculated on the basis of the

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dutiable value of the dutiable property that is the subject of the agreement or transfer, rather than the consideration payable under the agreement or transfer. (See Schedule 1 [6], [9], [10], [11], [15], [16], [17] and [19])

At present, only singles and couples are eligible under the scheme. The changes will allow any number of joint purchasers or transferees to be eligible under the scheme, regardless of their domestic arrangements. (See Schedule 1 [12])

Changes are also made to prevent “double dipping” under the scheme. A person will be eligible once only under the scheme, whether as a single or joint purchaser or transferee. At present, a person may be eligible once as a single person, and again as a member of a couple (provided that the other member of the couple has not previously owned land or a company title dwelling in Australia). As a result of the changes, joint purchasers or transferees will not be eligible under the scheme if any one of them owns or has previously owned residential land. This will not apply if the Chief Commissioner is satisfied that the land owner is acquiring an interest in the property that is the subject of the transfer or agreement solely for the purpose of assisting the other purchaser or purchasers with finance. (See Schedule 1 [7], [8], [13] and [14])

The eligibility criteria are also changed so that a person who owns or has previously owned vacant land in Australia is not excluded from being eligible under the scheme. Only ownership of residential land is relevant to the criteria. (See Schedule 1 [7], [8] and [18])

The requirement that the eligible persons occupy the home as their principal place of residence within a reasonable time after settlement is replaced with a requirement that the home be occupied within 12 months after settlement. (See Schedule 1 [13])

Schedule 1 [24] contains a transitional provision relating to the changes.

Conditional registration of motor vehicles—exemption

The amendments exempt from payment of duty an application to register a motor vehicle if the motor vehicle is registered conditionally under the regulations under the *Road Transport (Vehicle Registration) Act 1997*. (See Schedule 1 [20])

Registration of dutiable transactions

At present, the principal Act prohibits the registration of an instrument that effects a dutiable transaction or an instrument chargeable with duty unless the instrument has been duly stamped or stamped by the Chief Commissioner or in a manner approved by the Chief Commissioner. The amendment extends the prohibition to the registration of any dutiable transaction, whether or not the transaction is effected by means of a written instrument. For example, the offence will apply to

transactions that are effected by electronic means. The offence will not apply if the dutiable transaction is endorsed or otherwise effected in accordance with an approval of the Chief Commissioner under section 37 of the *Taxation Administration Act 1996*. (See Schedule 1 [21] and [22])

Savings and transitional regulations

Schedule 1 [23] allows regulations of a savings or transitional nature to be made.

Schedule 2 Amendment of Health Insurance Levies Act 1982

Schedule 2 clarifies a reference to the series of Average Weekly Earnings issued by the Australian Statistician. The reference is contained in a provision that relates to the adjustment of levies payable under the principal Act.

Schedule 3 Amendment of Pay-roll Tax Act 1971

Employment agents

Section 3C of the principal Act provides for the liability of employment agents to pay pay-roll tax on wages paid to workers who are employed by clients of the employment agent under contract. The employment agent is not liable to pay-roll tax in relation to such a contract if the client of the employment agent is not registered or required to be registered as an employer under the Act and would not be required to be registered if the client were the employer in respect of all wages paid or payable under the contract. A declaration to that effect must be lodged with the employment agent. If this exemption ceases to apply, the client, and not the employment agent, is liable to pay pay-roll tax in respect of the wages paid to the worker. Schedule 3 [1] makes it clear that the liability extends to wages paid under the contract since the beginning of the financial year in which the exemption ceases to apply (as pay-roll tax liability is calculated on a financial year basis).

Calculation of pay-roll tax liability for 2000–2001 financial year and subsequent financial years

The *State Revenue Legislation Amendment Act 2000* reduced the rate at which pay-roll tax is payable from 6.4 percent to 6.2 percent, with effect from 1 January 2001 (half-way through the 2000–2001 financial year). However, under the principal Act liability for pay-roll tax is calculated on the basis of the total of wages paid or

payable for the whole of the financial year. The amendments clarify how the reduction in the pay-roll tax rate is to be factored into those calculations. The amendments require the rate of 6.4 percent to be applied to wages paid or payable in the first 2 quarters of the 2000–2001 financial year and the rate of 6.2 percent to be applied to wages paid or payable in the last 2 quarters of that financial year. For that purpose, the tax free threshold is apportioned between the first 2 quarters and the last 2 quarters of the financial year. (See Schedule 3 [15])

As a consequential amendment, a new Schedule is inserted in the principal Act to provide for calculations of pay-roll tax liability in the financial year commencing 1 July 2001 and subsequent financial years. The Schedule does not change existing obligations under the principal Act. (See Schedule 3 [15]) Other consequential amendments are also made. (See Schedule 3 [2]–[14])

Schedule 3 [2] also makes an amendment by way of law revision to correct a reference to a particular month, and Schedule 3 [17] contains a savings and transitional provision that is related to that correction.

Savings and transitional

Schedule 3 [16] enables savings and transitional regulations to be made.

Schedule 4 Amendment of Taxation Administration Act 1996

Calculation of interest on tax defaults

The principal Act provides for the calculation of the interest rate payable on a tax default. Schedule 4 [1] and [2] provide for the use of a 90-day bank accepted bill rate, instead of the 13-week treasury note yield rate, in determining the market rate component of the interest payable because 13-week treasury notes no longer exist.

Disclosure of information

The principal Act prohibits the disclosure of information obtained under or in relation to the administration of a taxation law, except in specified circumstances. One of those exceptions is for disclosures that are made in connection with the administration or execution of a taxation law. Schedule 4 [3] extends this exception to disclosures made in connection with the administration of the *First Home Owner Grant Act 2000* and the *Unclaimed Money Act 1995*.

An additional exception is provided for disclosures made to the Valuer-General. (See Schedule 4 [4])

Reviews by Supreme Court

The principal Act, as amended by the *Administrative Decisions Tribunal Legislation Amendment (Revenue) Act 2000*, provides for a right to obtain a review of a decision of the Chief Commissioner that has been the subject of an objection. The amendment makes it clear that such reviews are to be considered to be appeals for the purposes of the *Supreme Court Act 1970* and the regulations and rules made under that Act, except to the extent otherwise provided in that Act or the regulations or rules. (See Schedule 4 [5])

Savings and transitional regulations

Schedule 4 [6] allows savings and transitional regulations to be made.

Schedule 5 Amendment of Unclaimed Money Act 1995

Publication of unclaimed money information

The amendments allow the Chief Commissioner to determine the method of publication of information about amounts of unclaimed money or superannuation benefits paid to the Chief Commissioner. At present the amounts are required to be published in the Gazette. The amendments will allow the information to be published in other ways, for example, on the Internet. (See Schedule 5 [1] and [3])

The amendments will also require amounts received that exceed \$20 to be published, rather than amounts exceeding \$50 as at present. (See Schedule 5 [2])

Schedule 5 [6] contains a transitional provision.

Prohibited disclosures of information

The amendments will prohibit the disclosure by a person engaged in the administration of the principal Act of information obtained in connection with an application for payment of unclaimed money or an unclaimed superannuation benefit, including information obtained for the purpose of determining the claim. The offence will carry a maximum penalty of 100 penalty units (\$11,000 at present). The prohibition will not apply to disclosures that are made with the consent of the person concerned, in connection with the administration of a taxation law or to the Commonwealth Commissioner of Taxation. (See Schedule 5 [4])

Savings and transitional regulations

Schedule 5 [5] allows savings and transitional regulations to be made.

Schedule 6 Consequential amendment of Regulations

Schedule 6 contains amendments to the *Crown Lands Regulation 2000* and the *Crown Lands (Continued Tenures) Regulation 2000* that are consequential on the amendments made to the *Taxation Administration Act 1996* by Schedule 4 [1] and [2]. The Regulations provide for the use of the 13-week treasury note yield rate in the calculation of interest payable on certain late payments. The amendments will provide for the use of the 90-day bank accepted bill rate instead.