

[Act 1996 No 125]



State Revenue Legislation (Miscellaneous Amendments) Bill 1996

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 *Stamp Duties Act 1920* to make further provision with respect to exemptions and concessions applying to duty payable under that Act, the duty payable in respect of hiring arrangements and loan refinancing securities and other matters, and
 - (b) to amend the *Debts Tax Act 1990* to provide for certain exemptions from tax payable under that Act, and
 - (c) to amend the *Pay-roll Tax Act 1971*:
 - (i) in relation to the tax payable under that Act in respect of wages earned in coastal waters, and
 - (ii) with respect to the prevention of double taxation, and
 - (iii) in relation to the tax payable in respect of superannuation benefits, and
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- (d) to amend the *Land Tax Act 1956* to extend the operation of certain provisions relating to flood liable land to land that the Chief Commissioner of Land Tax considers unsuitable for building, and to amend the *Land Tax Management Act 1956* in relation to the exemption available in respect of a principal place of residence, and
- (e) to amend the *Revenue Laws (Reciprocal Powers) Act 1987* by way of statute law revision, and
- (f) to amend the *State Revenue Legislation Further Amendment Act 1995* in relation to the date on which an amendment made by that Act is to have taken effect, and
- (g) to amend the *State Revenue Legislation Further Amendment Act 1996* as a consequence of amendments made to the *Pay-roll Tax Act 1971*.

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 *Stamp Duties Act 1920* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the *Debits Tax Act 1990* 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 *Land Tax Act 1956* and the *Land Tax Management Act 1956* set out in Schedule 4.

Clause 7 is a formal provision giving effect to the amendments to the *Revenue Laws (Reciprocal Powers) Act 1987* set out in Schedule 5.

Clause 8 is a formal provision giving effect to the amendment to the *State Revenue Legislation Further Amendment Act 1995* set out in Schedule 6.

Clause 9 is a formal provision giving effect to the amendment to the *State Revenue Legislation Further Amendment Act 1996* set out in Schedule 7. The amendment is made as a consequence of the amendments made by Schedule 3.

Schedule 1 Amendment of Stamp Duties Act 1920

Payment of duty by return

Section 38C currently permits duty to be paid under the Act periodically according to a system of returns furnished by approved duty-payers who are themselves responsible for stamping dutiable instruments. **Schedule 1 [1]** amends the section to provide for an alternative method of implementing the scheme using computer-stored record systems.

Share transfers not evidenced by a dutiable instrument

Section 44A of the Act levies duty on certain transactions not evidenced by a dutiable instrument. In the case of a transfer of shares or share rights, duty is payable when the shares or rights are transferred for full value. **Schedule 1 [2]** amends the section so that duty is payable even when the shares or rights are transferred for no consideration or less than full consideration.

Exemptions from stamp duty

Share transfers to third parties following dissolution of marriage or other relationship

Section 74CB of the Act exempts from duty instruments that are executed in pursuance of an order under the *Family Law Act 1975* of the Commonwealth or the *De Facto Relationships Act 1984* settling property on the parties to the marriage or relationship. **Schedule 1 [3]** amends the section so that the exemption extends to apply to a share transfer to a third party in order to comply with a requirement of the *Corporations Law* (for example, a requirement that there be at least two shareholders in a company) and to a declaration of trust in favour of the transferor or the other party to the marriage or relationship.

Conveyances of property to trustees or custodians of superannuation funds or trusts

Schedule 1 [13] and **[14]** amend sections 82AA and 82AB of the Act to provide that certain conveyances effected for the better management of superannuation funds are exempt from stamp duty. Duty would ordinarily be payable when the property of a superannuation fund is transferred to a managed trust in exchange for trust units, resulting in a transfer of beneficial ownership of the property concerned. The amendment provides that in these circumstances the ownership of the property is to be treated as unchanged.

Duty on hiring arrangements

Section 74D defines *Equipment financing arrangement* for the purposes of a duty reduction afforded by section 74F. **Schedule 1 [4]-[8]** amend section 74D to make it clear that:

- (a) the expression includes an arrangement under a hire-purchase agreement for any term, and
- (b) floor plan bailments are not dutiable as hiring arrangements, and
- (c) in so far as the expression includes an arrangement under an agreement that is not a hire-purchase agreement but is a hiring agreement for a term of at least 9 months, an agreement is taken to be for a term of less than 9 months unless it is so worded that it cannot be terminated by the hirer sooner than 9 months after its commencement (otherwise than by a full payout of the contracted price or by a refinancing) without substantial penalty, and
- (d) *refinancing* of a hiring arrangement does not include a refinancing only of the residual payment due under the arrangement.

Schedule 1 [9]-[12] amend section 74F to make it clear that the provisions of section 74F (7A) apply only to amounts received and duty payable, and require returns to be lodged, in relation to hiring arrangements other than equipment financing arrangements.

Refinancing loan securities

Schedule 1 [15] repeals and substitutes section 84CAA, which affords concessions with respect to stamp duty on loan securities in the case of a loan security that is for refinancing only. The purpose of the re-enactment is to make it clear that:

- (a) to obtain the concession, it is not necessary for the borrower to be named in the loan security, and
- (b) only one loan security document (or one per lender, in a case where refinancing involves more than one lender) is capable of exemption from duty under the section in respect of any particular transaction, any collateral instruments being liable to duty at the usual nominal rate, and
- (c) the benefit of the concession is available even where a loan is refinanced by several lenders, in which case that benefit is apportioned between them.

Exemptions from financial institutions duty

Charitable trusts

Schedule 1 [21] amends the definition of *charitable organisation* in section 98 (1) so as to provide for the exemption from financial institutions duty of trusts established for charitable purposes.

Transfer of engagements of credit unions

A “transfer of engagement” is said to occur when, as a result of amalgamation of credit unions, members of a defunct credit union automatically become members of another credit union, resulting in a transfer of accounts. **Schedule 1 [22]** and **[23]** amend section 98A to provide for the exemption of credit union receipts from financial institutions duty on the account transfer. The exemption is similar to existing exemptions in relation to transfers of accounts as a result of amalgamation of other financial institutions.

IATA accounts

Schedule 1 [25] amends section 98U to provide for the exemption from financial institutions duty of the account held by International Air Transport Association for the clearing and settlement of funds between agents and airline principals.

Stock exchange clearing and settlement accounts

Schedule 1 [26] amends section 98U to provide for the exemption from financial institutions duty of the account held by ASX Settlement and Transfer Corporation Pty Limited (a company controlled by the Australian Stock Exchange) for clearing and settlement.

Fund operated by electricity authority

Schedule 1 [27] amends section 98U to provide for the exemption from financial institutions duty of the Market Settlements Fund operated by the New South Wales Electricity Transmission Authority for the purposes of the *Electricity Supply Act 1995*.

Exemptions from marketable securities duty

Off-market trading of instalment receipts

Schedule 1 [16], [18]-[20], [28] and **[29]** amend various provisions of the Act in order that stamp duty on instalment receipts (such as those issued by the Commonwealth Bank) will be payable in the Australian jurisdiction in which the issuing company was incorporated.

Benchmark All Ordinaries Trust

Schedule 1 [30] amends the Second Schedule to the Act to provide for exemption from marketable securities duty in respect of a transfer of shares in exchange for units in Benchmark All Ordinaries Trust. **Schedule 1 [17]** makes a consequential amendment.

Loan securities duty on advances made to retirement villages

Schedule 1 [31] amends the Second Schedule to the Act to provide a general exemption from loan securities duty in respect of a debenture granted, in conjunction with a lease, by a non-profit organisation operating a retirement village to a resident of the village.

Caveat over land subject to unpaid stamp duty

Schedule 1 [32] amends Schedule 2A to the Act to enable the Chief Commissioner of Stamp Duties to lodge a caveat with respect to a property purchased under the First Home Purchase Scheme where instalments of duty are more than 3 months in arrears. This will enable the Chief Commissioner to collect the duty owing out of the proceeds of a sale of the property.

Minor amendments

Schedule 1 [24] makes a minor amendment by way of statute law revision.

Schedule 1 [33] and **[34]** amend the Tenth Schedule to the Act to provide for savings and transitional provisions as a consequence of amendments made by the proposed Act.

Schedule 2 Amendment of Debits Tax Act 1990

Exemption from debits tax

Schedule 2 [2] provides for an exemption from debits tax for the Australian Olympic Committee Incorporated and the New South Wales Olympic Council Incorporated.

Schedule 2 [3] provides for an exemption from debits tax for the Market Settlements Fund operated by the New South Wales Electricity Transmission Authority for the purposes of the *Electricity Supply Act 1995*.

Minor amendment

Schedule 2 [1] makes a minor amendment by way of statute law revision.

Schedule 3 Amendment of Pay-roll Tax Act 1971

Superannuation benefits

Schedule 3 [1] and **[3]** amend the definition section of the Act to simplify the definition of *superannuation benefit*, at the same time making it clear that no such benefit constitutes wages within the meaning of the Act unless it is paid or payable in respect of services rendered by an employee on or before 30 June 1996.

Section 3AA (2) provides that the wages of persons contracted to serve the Crown or employed on certain other contracts or as company directors, insurance agents or in certain other occupations are taxable. **Schedule 3 [2]** amends the definition section of the Act to provide that a superannuation benefit provided to a person whose wages are subject to pay-roll tax under section 3AA (2) of the Act is also subject to pay-roll tax.

Schedule 3 [10] inserts transitional provisions dealing with payments made to a defined benefit superannuation scheme or an unfunded scheme that, although made after 30 June 1996, are alleged to be made to make up a deficiency in the relevant scheme in respect of services rendered by an employee on or before that date. The provisions indicate the evidence the Chief Commissioner will require an employer to keep in relation to such payments, and enable provision to be made by regulation for determining the manner of attribution of certain superannuation payments to employees and for the apportionment of any such payment (as partly taxable and partly not) in cases where the payment relates to an employee who rendered services both before and after 30 June 1996. **Schedule 3 [4]** makes a consequential amendment.

Double taxation

Schedule 3 [5] amends section 3AA of the Act (the section that defines *wages*) to provide, for the avoidance of any doubt, that an amount paid or payable by an employer that is characterised as wages by more than one provision of the Act is nevertheless taxable once only.

Wages paid for off-shore work

Section 6 of the Act provides that, in general, wages paid in New South Wales are taxable wages. An exception is made in the case of wages paid to an employee who works “outside Australia” for a period of 6 months or more. **Schedule 3 [6]** amends the section to vary the exception, which will now apply only where the employee is working in another country.

Minor amendments

Schedule 3 [7] and **[8]** make minor amendments by way of statute law revision.

Schedule 3 [9] amends Schedule 6 to the Act to provide for savings or transitional provisions as a consequence of amendments made by the proposed Act.

Schedule 4 Amendments relating to land tax

Flood liable land in the Land Tax Act 1956

Schedule 4.1 amends the definition of *flood liable land* (cast in terms of unsuitability for building as determined by a local council) to include also land that the Chief Commissioner determines is unsuitable for building.

Amendments to Land Tax Management Act 1956

Schedule 4.2 [1] inserts a definition of *principal place of residence* of a person to make it clear that this concept, which is already used in the Act, requires comparison of all the residences of the person worldwide rather than just those in New South Wales.

Schedule 4.2 [2] and **[3]** amend section 10T under which land that is intended to be a person’s principal place of residence may qualify for exemption as if it were already the person’s principal place of residence. Item **[2]** makes it clear that the relevant intention must be to occupy the land *solely* for that purpose.

Item **[3]** adds to the disqualifications set out in section 10T, so that a person will be disqualified if

- (a) the person has, in previous years, obtained an exemption in respect of another parcel of land, or

- (b) the person, or another owner of the same land, is entitled to an exemption in respect of other land that he or she actually uses as his or her principal place of residence.

**Schedule 5 Amendment of Revenue Laws
Powers) Act 1987**

Schedule 5 amends the *Revenue Laws (Reciprocal Powers) Act 1987* by way of statute law revision, replacing references to repealed Acts.

**Schedule 6 Amendment of State Revenue Legislation
Further Amendment Act 1995**

Schedule 6 amends the *State Revenue Legislation Further Amendment Act 1995* to vary the commencement date of an amendment made to the *Stamp Duties Act 1920* by that Act.

**Schedule 7 Amendment of State Revenue Legislation
Further Amendment Act 1996**

Schedule 7 amends the Act as a consequence of amendments made to the *Pay-roll Tax Act 1971* by Schedule 3.