

## STAMP DUTIES (AMENDMENT) BILL 1990

NEW SOUTH WALES



### EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to make miscellaneous amendments to the Stamp Duties Act 1920.

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**Clause 1** specifies the short title of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on various days. The amendments made by the proposed Act are to commence on 1 June 1990, unless otherwise provided.

**Clause 3** is a formal provision that gives effect to the Schedule of amendments to the Principal Act.

### SCHEDULE 1 - AMENDMENTS

#### Approved forms

Schedule 1 (1), (2), (9), (12) and (13) will enable forms used for the purposes of the Principal Act and the regulations made under it to be as approved from time to time by the Chief Commissioner rather than to be as prescribed by the regulations, unless the Principal Act or the regulations otherwise provide.

#### Conveyance of deposit under a contract which is cancelled or rescinded

Schedule 1 (3) provides that an agreement for sale which, because it is cancelled or rescinded, operates to convey the deposit to the vendor does not thereby become liable to payment of duty.

## *Stamp Duties (Amendment) 1990*

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### **Special trusts - exemption from stamp duty**

Schedule 1 (4) amends section 73AA. This section was inserted into the Principal Act by the Stamp Duties (Amendment) Act 1989 to exempt from stamp duty certain transfers of land subject to special trusts created prior to 1 January 1987. The amendment provides that the exemption will not apply unless the Chief Commissioner is satisfied that all land tax payable in respect of the land (including any additional land tax payable by way of penalty or otherwise) has been paid.

### **Replacement of certain minor heads of stamp duty**

#### **(a) Agreements for hire of motion picture films:**

Schedule 1 (5) and (16) (c) remove the specific liability to stamp duty of agreements for the hire of motion picture films.

#### **(b) Leases of Crown lands**

Schedule 1 (16) (b) and (d) remove the specific liability to duty of leases of Crown lands under which the rent does not exceed \$3,000 per annum. These amendments will apply to leases entered into on or after 1 July 1990.

After the amendments referred to in paragraphs (a) and (b) have taken effect, these instruments will be liable to stamp duty in accordance with the appropriate general head of duty.

### **Reappraisal of duty payable in respect of leases subject to rental variations**

Schedule 1 (6) replaces section 78D. This section applies to leases under which the rent may be varied during the term so that the total rent payable for the term cannot be calculated at the commencement of the lease. Under the proposed section, the amount of duty may be reassessed every 3 years or, if the Chief Commissioner and the lessee agree, the total rent payable under the lease may be taken to be the rent for the first year compounded over the remainder of the term by the amount of the annual percentage increase in the Consumer Price Index most recently available before the commencement of the lease. The amendment is to take effect on 1 July 1990.

### **Loan securities**

#### **(a) Use of guarantees and indemnities**

Subsections (3B), (3C) and (3D) were inserted into section 84 of the Principal Act by the Stamp Duties (Amendment) Act 1988 to counter a means of avoiding loan security duty by the use of guarantees and indemnities. Schedule 1 (7) substitutes subsection (3C) to apply its provisions not only to guarantees and indemnities but also to other instruments which may provide security for the advance. To further widen the application of subsection (3C), references to "the borrower" have been omitted.

#### **(b) Collateral securities**

Schedule 1 (8) substitutes section 84B. The section in its substituted form removes the distinction between a primary loan security and a collateral loan

security and leaves to the lodging party the choice of nominating which loan security out of a group of loan securities which are security for the same money is to be duly stamped as a loan security. A credit is allowed for duty payable on the other related instruments to the extent to which duty (including inter-State duty) has been paid on the duly stamped instrument, subject to a minimum duty of \$10. It also seeks to strengthen the anti-avoidance provisions inserted in 1988 by removing an exemption from ad valorem duty for certain loan securities which secure, in whole or part, the same money as a loan security executed before 31 December 1988.

**(c) Effect of location property**

Schedule 1 (10) substitutes section 84F. The substituted section provides that if money payable under a loan security is secured partly on property in the State and partly on property out of the state, ad valorem duty is payable on that portion of the money as bears to the total amount of the money the same proportion secured by the loan security as the value of the property in the State bears to the total value of all property to which the loan security relates. If the property is wholly out of the State, the duty payable is \$10.

**Share transfers on registers outside the State**

Schedule 1 (11) amends section 96B. Under that section, a company incorporated in New South Wales that registers a transfer of shares which are on a branch register outside the State must, unless the branch register is in a place prescribed by the regulations under the Principal Act or the transfer is effected by a member of a stock exchange so prescribed, furnish a return and pay duty at the normal share transfer rate. A credit is allowed for duty paid in another State or Territory but not for any New South Wales duty paid on the share transfer or in relation to an oral transfer. The amendment will allow a credit in the latter two cases.

**Acquisitions of company and unit trust interests dutiable as conveyances of land**

**(a) Designated landholder**

Schedule 1 (14) amends section 99A to make it clear that for the purposes of the definition of "designated landholder" in Division 30 of Part 3, all the assets of a subsidiary, and not simply those assets comprising land, are to be taken to be assets of the parent company.

**(b) Credit for duty paid on agreement to purchase share or units**

Schedule 1 (15) (a) amends section 99F to allow a credit to be given for the duty payable on a statement lodged under section 99E (relating to a relevant acquisition of an interest in a designated landholder for the purposes of Division 30 of Part 3) to the extent to which inter-State duty is paid on the statement.

Schedule 1 (15) (b) amends section 99F to make it clear that the liability to duty under Division 30 of Part 3 is to be reduced by the amount of any duty paid on any relevant agreement to purchase shares or units by which a relevant acquisition of an interest was obtained. The amendment is to

## *Stamp Duties (Amendment) 1990*

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apply from 23 November 1989 in accordance with the Variation of Statute approved by the Premier and Treasurer.

### **Company title dwellings**

**(a) Definition**

Schedule 1 (1) inserts a definition into the Principal Act of company title dwelling.

**(b) Rate of duty applicable to sale**

Schedule 1 (16) (a) amends the Second Schedule to provide that the purchase of shares in a company title dwelling is to be liable to ad valorem duty at the same rates as are applicable to conveyances of land rather than at the share transfer rates.

**(c) First Home Purchase Scheme**

Schedule 1 (18) makes it clear that a purchaser of a company title dwelling used for the purpose of a private dwelling may be eligible to obtain a deferral of stamp duty under the First Home Purchase Scheme.

### **Sale or purchase of corporate debt securities and options to acquire corporate debt securities**

Schedule 1 (17) amends the General Exemptions from Stamp Duty in the Second Schedule to grant an exemption from duty in respect of a sale or purchase of a corporate debt security, an interest in a corporate debt security or an option to acquire a corporate debt security. Pursuant to Schedule 1 (19), the exemption is to apply from 5 January 1990 in accordance with the Variation of Statute approved by the Premier and Treasures.

Schedule 1 (16) (e) makes a consequential amendment.

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