

Passed by both Houses



New South Wales

State Revenue Legislation Amendment (Tax Concessions) Bill 2006

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2006*



New South Wales

State Revenue Legislation Amendment (Tax Concessions) Bill 2006

Act No , 2006

An Act to make miscellaneous amendments to various Acts in connection with State revenue matters.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:**1 Name of Act**

This Act is the *State Revenue Legislation Amendment (Tax Concessions) Act 2006*.

2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by subsection (2).
- (2) The following provisions commence, or are taken to have commenced, on the dates indicated:
 - Schedule 1 [5]—29 June 2006
 - Schedule 1 [20]—6 June 2006
 - Schedule 2 [4]–[8] and Schedule 3.2 and 3.3—31 December 2006
 - Schedule 3.1—1 September 2006

3 Amendment of Duties Act 1997 No 123

The *Duties Act 1997* is amended as set out in Schedule 1.

4 Amendment of Land Tax Management Act 1956 No 26

The *Land Tax Management Act 1956* is amended as set out in Schedule 2.

5 Miscellaneous amendments

The Acts specified in Schedule 3 are amended as set out in that Schedule.

6 Repeal of Act

- (1) This Act is repealed on the day following the day on which all the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendment of Duties Act 1997

(Section 3)

[1] Section 25 Aggregation of dutiable transactions

Insert after section 25 (1) (a):

- (ab) the transferor is the same or the transferors are associated persons, and

[2] Section 25 (2)

Omit the subsection. Insert instead:

- (2) Dutiable transactions are not to be aggregated under this section if the Chief Commissioner is satisfied that:
 - (a) the dutiable property to which the transactions relate are comprised of separate allotments of vacant land, and
 - (b) the transferee is a person authorised to contract to do residential building work under the *Home Building Act 1989*, and
 - (c) the transferee intends to construct residential premises on the allotments for the purposes of sale to the public.

[3] Section 25 (8)

Insert after section 25 (7):

- (8) In this section:
vacant land includes land that the Chief Commissioner considers is substantially vacant apart from there being on that land the remnant of any building, or any other object or structure, that the Chief Commissioner is satisfied has been preserved because of its heritage significance.

[4] Section 59 Instrument relating to managed investment scheme

Insert “effects or evidences a dutiable transaction and which” after “an instrument that” in section 59 (1) (a).

[5] Section 65 Exemptions from duty

Omit “aged 65 years” from section 65 (15) (b). Insert instead “aged 60 years”.

[6] Section 106 Definitions

Omit the definition of *call option*. Insert instead:

call option means a right to require a person to sell dutiable property that is conferred by an agreement or arrangement (being an agreement or arrangement that is not a dutiable transaction).

[7] Section 106, definition of “put option”

Insert “(being an agreement or arrangement that is not a dutiable transaction)” after “arrangement”.

[8] Section 107 Assignment of rights under call option dutiable as transfer

Omit “to purchase dutiable property from another person (*B*)” from section 107 (1).

Insert instead “to require another person (*B*) to sell dutiable property”.

[9] Section 107 (2)

Omit “right under a call option to purchase dutiable property from B and a call option to purchase the dutiable property from B is granted to C”.

Insert instead “right under a call option to require B to sell dutiable property and a call option to require B to sell the dutiable property is granted to C”.

[10] Section 108 Person liable to pay duty

Omit “to purchase dutiable property” from section 108 (1).

Insert instead “to require another person to sell dutiable property”.

[11] Section 108, note

Omit “to purchase land from B”. Insert instead “to require B to sell land”.

[12] Section 111 Exemptions

Insert at the end of section 111 (1) (b) (ii):

, or

(c) the dutiable property the subject of the call option is land and the call option is assigned by a person authorised to contract to do residential building work under the *Home Building Act 1989* who:

- (i) has built or is building residential premises on the land for the purposes of sale, or
- (ii) has an agreement with the person to whom the call option is assigned to build residential premises on the land, or

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- (d) the call option is assigned by a corporation that is a member of a group of corporations to another corporation that is a member of the same group.

[13] Section 111 (2A) and (2B)

Insert after section 111 (2):

- (2A) For the purposes of this section, corporations are members of the same *group of corporations* if:
 - (a) one corporation is a wholly owned subsidiary of the other corporation (that is, the other corporation holds, otherwise than as trustee, not less than 90% of the issued share capital of the first corporation and is in a position to control not less than 50% of the maximum number of votes that might be cast at a general meeting of the first corporation), or
 - (b) the corporations are wholly owned subsidiaries (within the meaning of paragraph (a)) of the same corporation.
- (2B) If a corporation that is a wholly owned subsidiary (within the meaning of subsection (2A) (a)) of another corporation (the *parent corporation*) holds shares, otherwise than as trustee, in a third corporation, then, for the purposes of determining whether the parent corporation and the third corporation are members of the same group of corporations, the shares held by the wholly owned subsidiary in the third corporation are taken also to be shares held by the parent corporation in the third corporation.

Note. The effect of subsection (2B) is that the third corporation will be considered to be a wholly owned subsidiary of the parent corporation if the shareholdings of the parent corporation in the third corporation (if any) together with the shareholdings of any wholly owned subsidiary in the third corporation are sufficient to satisfy subsection (2A) (a).

[14] Section 163G How may an interest be “acquired”?

Insert after section 163G (2):

- (2A) If the acquisition arises from an agreement to purchase, allot or issue a unit or share, the acquisition is made, for the purposes of this Part, when the agreement is completed. It does not matter whether or not the acquisition or interest acquired is registered.
- (2B) For the purposes of subsection (2A), an agreement is taken to be completed when the necessary transfer or title documents are delivered to the person acquiring the interest and the purchase price is paid in full.

[15] Section 163L Primary producers—special provisions

Omit “(within the meaning of section 274)” from section 163L (4).

Insert instead “or land that would be considered to be land used for primary production if it were land in New South Wales”.

[16] Section 163ZB Exempt transactions

Omit the definition of *land used for primary production* from section 163ZB (7).

[17] Section 274 Transfer of certain business property between family members

Omit “or aquaculture” wherever occurring in section 274 (1).

[18] Section 274 (6), definition of “ancestor”

Omit paragraph (b). Insert instead:

- (b) a spouse, former spouse, de facto partner or former de facto partner of a person referred to in paragraph (a).

[19] Section 274 (6), definition of “land used for aquaculture”

Omit the definition.

[20] Section 284B

Insert after section 284A:

284B Restructuring of unit trust for land tax purposes

- (1) Duty under this Act is not chargeable in respect of an instrument executed on or after 6 June 2006 and before 1 January 2008 that effects a variation to a trust deed for a unit trust (within the meaning of Schedule 1AA to the *Land Tax Management Act 1956*) if:
 - (a) before the instrument is executed, unit holders in the unit trust have fixed entitlements under the trust, and
 - (b) the purpose of the variation is to enable the unit trust to satisfy the relevant criteria (within the meaning of section 3A of the *Land Tax Management Act 1956*) and, accordingly, to be treated as a fixed trust under that section, and
 - (c) the variation does not directly or indirectly result in a change in the proportion of any income or capital to which a unit holder is entitled under the trust.

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- (2) Unit holders in a unit trust have *fixed entitlements* under the trust if:
- (a) the unit holders are entitled to a fixed proportion of the income or capital distributions of the trust (if any are made) based on the number or class of units owned by them, and
 - (b) the entitlements referred to in paragraph (a) cannot be removed, restricted or otherwise affected by the exercise of a discretion, or by a failure to exercise a discretion, conferred on any person under the trust.

[21] Schedule 1 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

State Revenue Legislation Amendment (Tax Concessions) Act 2006

[22] Schedule 1, Part 25

Insert after Part 24:

Part 25 Provisions consequent on enactment of State Revenue Legislation Amendment (Tax Concessions) Act 2006

63 Transactions involving put and call options

The amendments made to Part 2 of Chapter 3 by the *State Revenue Legislation Amendment (Tax Concessions) Act 2006* do not operate to impose duty on a call option assignment (within the meaning of that Part) that would not, immediately before the commencement of those amendments, have been chargeable with duty if the call option or put option to which the assignment relates was granted before the commencement of those amendments.

[23] Dictionary

Omit the definition of *land used for primary production*. Insert instead:

land used for primary production means land that is exempt from land tax under section 10AA (Exemption for land used for primary production) of the *Land Tax Management Act 1956*.

Schedule 2 Amendment of Land Tax Management Act 1956

(Section 4)

[1] Section 3A Special trust—meaning

Omit section 3A (2). Insert instead:

- (2) For the purposes of this section, a trust is a *fixed trust* if the equitable estate in all of the land that is the subject of the trust is owned by a person or persons who are owners of the land for land tax purposes (disregarding section 25 (3)).

[2] Section 3A (3A) and (3B)

Insert after section 3A (3):

- (3A) If a trust satisfies the relevant criteria, the persons who are beneficiaries of the trust under the trust deed are taken to be owners of an equitable estate in the land that is the subject of the trust and, accordingly, the trust is taken to be a fixed trust.

Note. Under section 25, owners of an equitable estate or interest in land are liable in respect of land tax as if they were legal owners of the land. Owners of an equitable estate in land are treated as secondary taxpayers.

- (3B) For the purposes of this section, the *relevant criteria* are as follows:
- (a) the trust deed specifically provides that the beneficiaries of the trust:
- (i) are presently entitled to the income of the trust, subject only to payment of proper expenses by and of the trustee relating to the administration of the trust, and
- (ii) are presently entitled to the capital of the trust, and may require the trustee to wind up the trust and distribute the trust property or the net proceeds of the trust property,
- (b) the entitlements referred to in paragraph (a) cannot be removed, restricted or otherwise affected by the exercise of any discretion, or by a failure to exercise any discretion, conferred on a person by the trust deed.

[3] Section 3A (4) (f)

Insert at the end of section 3A (4) (e):

, or

- (f) in relation to any land tax year in which it is a family unit trust, as provided by Schedule 1AA.

[4] Section 9AA Average value of land (as inserted by the State Revenue and Other Legislation Amendment (Budget Measures) Act 2006)

Omit section 9AA (3) (b).

[5] Section 9AA (5)

Omit the subsection.

[6] Section 9AA (9)

Omit the subsection. Insert instead:

- (9) The average value of a parcel of land that is heritage-protected, and that was not heritage-protected on 31 December immediately before either or both of the preceding land tax years, is to be determined as provided for by subsection (7) (as if the parcel did not exist on the date or dates of 31 December on which it was not heritage-protected).

[7] Section 9AA (12)

Insert after section 9AA (11):

- (12) For the purposes of this section, land is *heritage-protected* if it is either heritage restricted (within the meaning of section 14G of the *Valuation of Land Act 1916*) or the subject of a heritage valuation under Division 6 of Part 6 of the *Heritage Act 1977*, or both.

[8] Section 21C Liability of lessees of land owned by Crown or council

Omit section 21C (4)–(4BA), as inserted by the *State Revenue and Other Legislation Amendment (Budget Measures) Act 2006*.

Insert instead:

- (4) For the purposes of determining the lessee's land tax liability when the notional parcel consists of a part of land, the land value of the notional parcel is the land value of the entire parcel multiplied by the apportionment factor.

- (4A) For the purposes of this section, the *apportionment factor* is the proportion that the rental value of the notional parcel bears to the rental value of the entire parcel.
- (4B) The Chief Commissioner may request the Valuer-General to determine the land value of the notional parcel.
- (4BA) If a request is made under subsection (4B):
 - (a) the Valuer-General must determine the land value of the notional parcel, and
 - (b) the land value so determined is, subject to subsection (4C), the value of the notional parcel for land tax purposes, and is to be entered in the Register accordingly.
- (4BB) For the purpose of determining the average value of the notional parcel under section 9AA, if the notional parcel was not leased on 31 December immediately before either or both of the preceding land tax years (within the meaning of section 9AA (1)), the average value of the notional parcel is to be determined as provided for by section 9AA (7) (as if the notional parcel did not exist on the date or dates of 31 December on which it was not leased).

[9] Section 27 Joint owners

Insert after section 27 (4):

Note. See also Schedule 1AA in relation to family unit trusts.

[10] Schedule 1AA

Insert after section 83:

Schedule 1AA Family unit trusts—special provisions

(Section 3A (4) (f))

1 Unit trust—meaning

In this Schedule:

unit trust means a trust in respect of which the beneficiaries of the trust are owners of units in the trust and each unit holder, or each unit holder of a particular class:

- (a) is entitled, as a beneficiary of the trust, to participate in any income or capital distributions (or both) of the trust, and

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- (b) the amount or proportion of any income or capital distribution to which the unit holder is entitled is based on the number or class of units owned by the person (or both).

2 Family unit trust—special concession

- (1) A unit trust is a *family unit trust* in relation to the land tax year commencing on 1 January 2006 if, at midnight on 31 December 2005:
 - (a) the trust property includes land (other than land that is exempt from taxation under this Act), and
 - (b) the taxable value of that land does not exceed \$1,000,000, and
 - (c) the unit holders in the unit trust have fixed entitlements under the trust, and
 - (d) the units in the unit trust are family-owned.
- (2) The unit trust continues to be a family unit trust in relation to each subsequent land tax year unless, before the commencement of that land tax year:
 - (a) the trust acquires additional land and, as a result of that acquisition, the taxable value of the land that is the subject of the trust (and that is not exempt from taxation) exceeds \$1,000,000 (with the taxable value of the land being the taxable value for the land tax year during which the acquisition was made), or
 - (b) the unit holders cease to have fixed entitlements under the trust, or
 - (c) the units in the unit trust cease to be family-owned.
- (3) If the unit trust ceases to be a family unit trust in relation to a subsequent land tax year, it cannot then become a family unit trust again (despite any changes in the land holdings or any other circumstances of the trust).
- (4) Unit holders in a unit trust have *fixed entitlements* under the trust if:
 - (a) the unit holders are entitled to a fixed proportion of the income or capital distributions of the trust (if any are made) based on the number or class of units owned by them, and
 - (b) the entitlements referred to in paragraph (a) cannot be removed, restricted or otherwise affected by the exercise of a discretion, or by a failure to exercise a discretion, conferred on any person under the trust.

- (5) Units in a unit trust are *family-owned* if:
- (a) in the case of a unit trust where the units are owned by one person:
 - (i) the person is a non-trustee, or
 - (ii) the person is a family trustee, or
 - (b) in the case of a unit trust where the units are owned by 2 or more persons, not less than 95% of the units in the unit trust are owned by non-trustees or family trustees (or a combination of both) who are members of the same family.
- (6) A person is a member of the same family as another person if:
- (a) the person is married to the other person or in a de facto relationship (within the meaning of the *Property (Relationships) Act 1984*) with the other person, or
 - (b) the person is the child of the other person (whether by birth, adoption or marriage), or
 - (c) the Chief Commissioner is satisfied, on the basis of any other relationship between the persons, that they can be considered to be members of the same family.
- (7) If a person owns a unit in a unit trust as a family trustee, the person is treated as a member of the same family as another person only if the beneficiaries of the trust of which the person is family trustee:
- (a) are members of the same family as the other person, or
 - (b) if the other person is also a family trustee, are members of the same family as the beneficiaries of the trust of which the other person is family trustee.
- (8) In this clause:
family trustee means a person who owns a unit in a unit trust as trustee of another trust which:
- (a) has only one beneficiary, who is a natural person, or
 - (b) has 2 or more beneficiaries, who are all natural persons and members of the same family.
- non-trustee*** means a natural person who owns a unit in a unit trust otherwise than as trustee of another trust.
- (9) For the purposes of this clause, if a person owns a unit in a unit trust as trustee of a trust that is a superannuation trust in relation to the land tax year (within the meaning of section 3A), the members of that superannuation trust are taken to be beneficiaries of the trust.

3 Unit holders taken to be joint owners of land

- (1) If a unit trust is a family unit trust in relation to a land tax year, the unit holders in that unit trust are taken, for the purposes of section 27, to be joint owners of the land that is the property of the trust:
 - (a) in the same proportion as the number of units held by them, or
 - (b) if there are different classes of units in the unit trust, in the same proportion as the number of units held by them of a class that entitle the holders to participate in capital distributions of the trust.
- (2) This clause does not apply to unit holders in a unit trust which is a superannuation trust in relation to the land tax year (within the meaning of section 3A).

[11] Schedule 2 Savings and transitional provisions

Insert at the end of clause 1A (1):

State Revenue Legislation Amendment (Tax Concessions) Act 2006

[12] Schedule 2, Part 20

Insert as Part 20:

Part 20 Provisions consequent on enactment of State Revenue Legislation Amendment (Tax Concessions) Act 2006

41 Amendments relating to trusts

- (1) The trust amendments apply as if those amendments had commenced on 31 December 2005.
- (2) Liability for land tax in respect of the land tax year commencing on 1 January 2006 and subsequent land tax years is to be assessed or reassessed accordingly.
- (3) Anything done or omitted to be done before the date of assent to the *State Revenue Legislation Amendment (Tax Concessions) Act 2006* that would have been validly done or omitted to be done if the trust amendments had been in force at the time that it was done or omitted to be done is taken to have been validly done or omitted to be done.

- (4) In this clause, the *trust amendments* means the amendments made to section 3A by the *State Revenue Legislation Amendment (Tax Concessions) Act 2006*, and the provisions of Schedule 1AA, as inserted by that Act.

42 Restructuring of unit trust for land tax purposes—concession

- (1) This clause applies in respect of a unit trust (within the meaning of Schedule 1AA) if:
- (a) an instrument is executed on or after 6 June 2006 and before 1 January 2008 that effects a variation to a trust deed for a unit trust, and
 - (b) before the instrument is executed, unit holders in the unit trust have fixed entitlements under the trust, and
 - (c) the purpose of the variation is to enable the unit trust to satisfy the relevant criteria (within the meaning of section 3A) and, accordingly, to be treated as a fixed trust under that section, and
 - (d) the variation does not directly or indirectly result in a change in the proportion of any income or capital to which a unit holder is entitled under the trust.
- (2) Any land tax payable in respect of the land the subject of the unit trust is to be assessed or reassessed as if the variation to the trust deed took effect on 31 December 2005.
- (3) Unit holders in a unit trust have *fixed entitlements* under the trust if:
- (a) the unit holders are entitled to a fixed proportion of the income or capital distributions of the trust (if any are made) based on the number or class of units owned by them, and
 - (b) the entitlements referred to in paragraph (a) cannot be removed, restricted or otherwise affected by the exercise of a discretion, or by a failure to exercise a discretion, conferred on any person under the trust.
- (4) Anything done or omitted to be done on or after 6 June 2006 and before the date of assent to the *State Revenue Legislation Amendment (Tax Concessions) Act 2006* that would have been validly done or omitted to be done if this clause had been in force at the time that it was done or omitted to be done is taken to have been validly done or omitted to be done.

43 Determinations made by Valuer-General before commencement of budget measures

- (1) Anything done by the Valuer-General before the commencement of Schedule 3 to the *State Revenue and Other Legislation Amendment (Budget Measures) Act 2006* that would have been validly done under section 62TBA of this Act (as substituted by that Act) if Schedule 3 to that Act had commenced and it had been done before 15 October 2006, is taken to have been validly done under that section and has effect as if that Schedule had been in force at the time that it was done.
- (2) Anything omitted to be done by the Valuer-General before the commencement of Schedule 3 to the *State Revenue and Other Legislation Amendment (Budget Measures) Act 2006* that would have been validly omitted to be done if Schedule 3 to that Act had commenced at the time that it was omitted is taken to have been validly omitted to be done.

Schedule 3 Miscellaneous amendments

(Section 5)

3.1 Gaming Machine Tax Act 2001 No 72

Section 14 Annual rate for registered clubs

Omit “on \$800,000 of those profits” from section 14 (2) (a).

Insert instead “on so much of those profits as exceeds \$200,000”.

3.2 Taxation Administration Act 1996 No 97

Section 16A

Insert after section 16:

16A Land tax assessments—special provisions

The validity of a land tax assessment for a land tax year (within the meaning of the *Land Tax Management Act 1956*) is not affected by an objection or appeal under the *Valuation of Land Act 1916* in relation to a land tax assessment for a subsequent land tax year, even if the objection or appeal results in a change to a land valuation on which the earlier land tax assessment was partly based.

Note. Under the *Land Tax Management Act 1956* land tax assessments are based on an average value of land, being an average of the land value of the land in respect of the most recent 3 land tax years. This section prevents an objection to a land tax assessment from affecting the validity of previous land tax assessments that were based on one or 2 of the same land values.

3.3 Valuation of Land Act 1916 No 2

[1] Section 35AA

Insert after section 35A:

35AA Restrictions on objections to land tax valuations

- (1) In the case of a valuation for the purposes of the *Land Tax Management Act 1956*, a person is not entitled to object to any valuation used as the basis of a land tax assessment if the valuation has previously been the subject of an objection, except with the permission of the Valuer-General.

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- (2) The Valuer-General is to permit the objection only if satisfied that there are special reasons for allowing the objection to be made.
 - (3) The fact that the person seeking to make the objection was not an owner, occupier or lessee of the land at the time that the earlier objection was made does not of itself constitute a special reason for allowing the person to make an objection.
 - (4) This section applies whether or not the person seeking to make the objection lodges the objection within 60 days after service of the relevant land tax assessment.
 - (5) If the Valuer-General refuses permission to make an objection under this section, the Valuer-General must give the person seeking to make the objection notice of the Valuer-General's decision.
 - (6) A refusal to grant permission to make the objection does not give rise to a right of appeal under section 37.

[2] Section 35B Determination of objection

Insert "that has been duly made" after "consider an objection" in section 35B (1).