

Passed by both Houses



New South Wales

State Revenue Legislation Further Amendment Bill 2014

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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,*

, 2014



New South Wales

State Revenue Legislation Further Amendment Bill 2014

Act No , 2014

An Act to make miscellaneous changes to certain State revenue legislation.

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

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *State Revenue Legislation Further Amendment Act 2014*.

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 below:
 - (a) Schedule 3 (except item [4])—1 July 2014,
 - (b) Schedule 3 [4]—on a day (not earlier than 1 July 2014) to be appointed by proclamation.

Schedule 1 Amendment of Duties Act 1997 No 123

[1] Section 8 Imposition of duty on certain transactions concerning dutiable property

Omit “and” from section 8 (1) (b) (viii).

[2] Section 8 (1) (c) and notes

Omit the paragraph and the notes at the end of the paragraph. Insert instead:

Note. There are other provisions in this Act that deem certain transactions to be a transfer of dutiable property under this Chapter, for example:

- (a) section 9A, which provides for certain circumstances in which a transfer of a partnership interest is taken to occur, and
- (b) section 9B, which provides for certain circumstances in which a transfer of an option to purchase land is taken to occur, and
- (c) section 9C, which provides for circumstances in which a novation of an agreement for the lease of land in New South Wales is taken to be a transfer of dutiable property, and
- (d) Part 2 of Chapter 3, which treats a transfer or assignment of an option to purchase dutiable property as a transfer of the dutiable property in certain circumstances.

[3] Section 9A Transfer of partnership interest occurring on change in partnership arrangements

Insert after section 9A (7):

- (7A) To avoid doubt, a transfer of a partnership interest that is taken to occur under this section is a transfer of dutiable property and a reference in this Act to a transfer of dutiable property or a dutiable transaction includes a reference to such a transfer.

[4] Sections 9B and 9C

Insert after section 9A:

9B Transfer of option occurring on nomination or other change

- (1) A transfer of an option to purchase land in New South Wales is taken to occur if, for valuable consideration:
 - (a) another person is nominated to exercise the option, or
 - (b) another person is nominated as purchaser or transferee of the land the subject of the option on or before the exercise of the option, or
 - (c) the option holder agrees to a novation of the option, or otherwise relinquishes rights under the option, so that another person obtains a right to exercise the option or to purchase the land.
- (2) For the purposes of this Act, in a case referred to in subsection (1) (a) or (b):
 - (a) the option is taken to be transferred when the nomination is made (and a reference in this Act to the time at which a transfer occurs includes a reference to such a time), and
 - (b) the person nominated is taken to be the transferee of the option (and a reference in this Act to a transferee includes a reference to such a person).
- (3) For the purposes of this Act, in a case referred to in subsection (1) (c):
 - (a) the option is taken to be transferred when the option holder agrees to the novation or otherwise relinquishes rights under the option (and a

reference in this Act to the time at which a transfer occurs includes a reference to such a time), and

- (b) the person who obtains a right to exercise the option or to purchase the land is taken to be the transferee of the option (and a reference in this Act to a transferee includes a reference to such a person).
- (4) This section applies regardless of when the option is exercisable.
- (5) For the purposes of this section, anything done by a person under a power of appointment or other authority granted by an option holder is taken to have been done by the option holder.
- (6) To avoid doubt, a person who has a right to accept an offer to sell land has a right to purchase the land.
- (7) To avoid doubt, a transfer of an option to purchase land that is taken to occur under this section is a transfer of dutiable property and a reference in this Act to a transfer of dutiable property or a dutiable transaction includes a reference to such a transfer.
- (8) In this section:
option holder, in relation to an option to purchase land in New South Wales, means a person who has a right to purchase the land under the option (whether vested or contingent).

9C Novation of agreement for lease

- (1) A novation of an agreement for the lease of land in New South Wales is taken to be a transfer of dutiable property as if:
 - (a) the lessee's interest in the agreement were dutiable property, and
 - (b) the novation of the agreement were a transfer of that dutiable property.
- (2) For the purposes of this Act:
 - (a) the transfer is taken to occur when the agreement for lease is novated (and a reference in this Act to the time at which a transfer occurs includes a reference to such a time), and
 - (b) the new lessee is taken to be the transferee of the dutiable property (and a reference in this Act to a transferee includes a reference to such a person).
- (3) A reference in this Act to dutiable property includes, in relation to a transfer that is taken to occur under this section, a reference to a lessee's interest in an agreement for the lease of land in New South Wales.
- (4) To avoid doubt, a reference in this Act to a dutiable transaction includes a reference to a transfer of dutiable property that is taken to occur under this section.

[5] Section 22 What is the consideration for the transfer of dutiable property?

Insert after section 22 (3):

- (4) The consideration for a transfer of land in New South Wales that occurs as a consequence of the exercise of an option to purchase land is taken to include the amount or value of the consideration provided by or on behalf of the transferee for the option (whether for its grant, transfer, exercise or otherwise).
Note. This section extends to an agreement for sale or transfer of dutiable property. Under sections 8 and 9 such agreements are treated as transfers of dutiable property.

[6] Section 62A Transfers to self managed superannuation funds

Omit section 62A (1)–(3A). Insert instead:

- (1) Duty of \$500 is chargeable on a transfer of, or an agreement to transfer, dutiable property from a member or members of a self managed superannuation fund to the trustee or custodian of the trustee of the self managed superannuation fund but only if:
 - (a) there are no other members of the superannuation fund (besides the member or members transferring or agreeing to transfer the property) or the dutiable property is segregated from other fund property, and
 - (b) the property is to be used solely for the purpose of providing a retirement benefit to the member or members transferring or agreeing to transfer the property, and
 - (c) if there is more than one member transferring or agreeing to transfer the property, the property is to be used for the benefit of those members in the same proportions as it was held by them before the transfer or agreement to transfer.
- (2) Dutiable property is segregated from other fund property if:
 - (a) the property is held specifically for the benefit of the member or members transferring or agreeing to transfer the dutiable property, as fund members, and
 - (b) the property (or proceeds of sale of the property) cannot be pooled with property held for any other member of the superannuation fund (besides the member or members transferring or agreeing to transfer the property), and
 - (c) no other member of the superannuation fund (besides the member or members transferring or agreeing to transfer the property) can obtain an interest in the property (or the proceeds of sale of the property).
- (3) This section does not apply to a transfer of, or agreement to transfer, dutiable property held by a member of a self managed superannuation fund in a trustee capacity.

[7] Section 62B

Insert after section 62A:

62B Declaration of trust by custodian

- (1) Duty of \$500 is chargeable on a declaration of trust made by a custodian of the trustee of a self managed superannuation fund that dutiable property is or is to be held in trust for the trustee of the self managed superannuation fund if:
 - (a) the declaration of trust names the self managed superannuation fund, and
 - (b) ad valorem duty has been paid on the acquisition of the property by the custodian or the trustee of the fund or section 62A applied to that acquisition, and
 - (c) the Chief Commissioner is satisfied that the consideration for the acquisition of the dutiable property was or will be provided by the trustee of the self managed superannuation fund.

- (2) This section applies whether or not there has been a change in the legal description of the dutiable property between the acquisition of the property by the custodian or trustee and the declaration of trust.

Note. For example, if the dutiable property is land, this section continues to apply if there is a change in the legal description of the dutiable property as a consequence of the subdivision of the land.

- (3) This section applies despite sections 55 and 65 (10).

[8] Section 64D

Insert after section 64C:

64D Transfers made on exercise of option to purchase land

The duty chargeable in respect of a transfer of land in New South Wales that occurs as a consequence of the exercise of an option to purchase land is to be reduced by the amount of duty (if any) paid by the transferee on the transfer of the option to the transferee.

[9] Section 270C Exemption for heavy vehicle trailers

Omit section 270C (1). Insert instead:

- (1) Duty under this Chapter is not chargeable on an application to register a heavy vehicle trailer if:
- (a) the heavy vehicle trailer has not previously been registered under the *Road Transport Act 2013*, the *Interstate Road Transport Act 1985* of the Commonwealth or a law of another State or a Territory that provides for the registration of motor vehicles, or
 - (b) the heavy vehicle trailer is or has been registered in the name of the person making the application under the *Interstate Road Transport Act 1985* of the Commonwealth or a law of another State or a Territory that provides for the registration of motor vehicles.

[10] Schedule 1 Savings, transitional and other provisions

Insert at the end of the Schedule with appropriate Part and clause numbering:

Part Provisions consequent on enactment of State Revenue Legislation Further Amendment Act 2014

Definition

In this Part:

amending Act means the *State Revenue Legislation Further Amendment Act 2014*.

General application of amendments

- (1) An amendment made to Chapter 2 by the amending Act applies in respect of a dutiable transaction that occurs on or after the commencement of the amendment.
- (2) However, an amendment made to Chapter 2 by the amending Act does not apply to a transfer of dutiable property made in conformity with an agreement for sale or transfer of the dutiable property that was entered into before the commencement of the amendment.

Amendments relating to options

- (1) Sections 9B and 22 (4), as inserted by the amending Act, do not apply to options granted or otherwise created before the commencement of those provisions.
- (2) Section 64D, as inserted by the amending Act, extends to options granted or otherwise created before the commencement of that section.

Amendments relating to agreements for lease

Section 9C, as inserted by the amending Act, applies only to a novation of an agreement for lease that occurs on or after the commencement of that section.

Application of changes to registration duty

The amendment to section 270C made by the amending Act applies to applications for registration made on or after the commencement of the amendment.

Schedule 2 Amendment of Land Tax Management Act 1956 No 26

[1] Section 29 Related companies

Omit section 29 (1) (a) and (b). Insert instead:

- (a) if one of those companies holds a controlling interest in the other company, or
- (b) if the same person holds, or the same persons together hold, a controlling interest in both companies, or

[2] Section 29 (1A)

Insert after section 29 (1):

- (1A) A person holds, or persons together hold, a *controlling interest* in a company if:
 - (a) the person, or the persons acting together, can control the composition of the board of directors of the company, or
 - (b) the person is, or the persons acting together are, in a position to cast or control the casting of more than half of the maximum number of votes that might be cast at a general meeting of the company, or
 - (c) the person holds, or the persons acting together hold, more than half of the issued share capital of the company.

[3] Section 29 (2)

Omit “purposes of subsection (1)”.

Insert instead “purposes of determining whether companies are related, the following provisions apply”.

[4] Section 29 (2) (a1)

Omit “subsection (1) (b)”. Insert instead “subsections (1) (b) and (1A)”.

[5] Section 29 (2) (b)

Omit “in that subsection”.

[6] Section 29 (2) (c)

Omit the paragraph. Insert instead:

- (c) any shares held or power exercisable by a person or company as a trustee or a nominee for another person or company:
 - (i) are to be treated as held or exercisable by that other person or company, if the trust is a fixed trust, and
 - (ii) are to be treated as not held or exercisable by the trustee or nominee (whether or not the trust is a fixed trust),

[7] Section 29 (2) (e)

Omit “or” where lastly occurring.

[8] Schedule 2 Savings and transitional provisions

Insert at the end of the Schedule with appropriate Part and clause numbering:

**Part Provisions consequent on enactment of State
Revenue Legislation Further Amendment Act 2014**

General application of amendments

An amendment made to this Act by the *State Revenue Legislation Further Amendment Act 2014* applies to an assessment of land tax liability in respect of a land tax year that commences after the commencement of the amendment.

Schedule 3 Amendment of Payroll Tax Act 2007 No 21

[1] Section 32 What is a relevant contract?

Insert “or” after “contractor,” in section 32 (2) (c) (iii).

[2] Section 32 (2) (c)

Omit “unless the Chief Commissioner determines that the contract or arrangement under which the services are so supplied was entered into with an intention either directly or indirectly of avoiding or evading the payment of tax by any person, or”.

[3] Section 32 (2) (d) (i)

Omit the subparagraph. Insert instead:

- (i) services solely for or ancillary to the conveyance of goods by means of a vehicle provided by the person conveying them, or

[4] Section 32 (2) (d) (as amended by item [3])

Omit the paragraph. Insert instead:

- (d) is supplied with services solely for or ancillary to the conveyance of goods by means of a vehicle provided by the person conveying them.

[5] Section 32 (2) (d)

Omit “unless the Chief Commissioner determines that the contract or arrangement under which the services are so supplied was entered into with an intention either directly or indirectly of avoiding or evading the payment of tax by any person.”.

[6] Section 32 (2A) and (2B)

Insert after section 32 (2):

- (2A) Subsection (2) does not apply if the Chief Commissioner determines that the contract or arrangement under which the services are supplied was entered into with an intention either directly or indirectly of avoiding or evading the payment of tax by any person.
- (2B) Subsection (2) (a), (b), (c) or (d) does not apply to a contract under which any additional services or work (of a kind not covered by the relevant paragraph) are supplied or performed under the contract.

[7] Schedule 3 Savings, transitional and other provisions

Insert after Part 8:

Part 9 Provisions consequent on enactment of State Revenue Legislation Further Amendment Act 2014

23 Relevant contracts

- (1) An amendment made to this Act by the *State Revenue Legislation Further Amendment Act 2014* has effect in respect of any amount, benefit or payment referred to in section 40 that is paid, payable, provided or made on or after the date of commencement of the amendment, except as provided by subclause (2).
- (2) An amendment does not apply to any amount, benefit or payment paid, payable, provided or made for work performed before the date of commencement of the amendment.

Schedule 4 Amendment of Payroll Tax Rebate Scheme (Jobs Action Plan) Act 2011 No 19

[1] Section 12A

Insert after section 12:

12A Rebate for internally transferred employees

- (1) The employment of an internally transferred employee in a new job is not excluded from the rebate scheme, despite section 12 (1) (b) and (c).
- (2) A person is an internally transferred employee if the person's employment is transferred from one employer (the *former employer*) to another employer (the *new employer*) and either of the following applies:
 - (a) the former employer and the new employer are members of the same group (within the meaning of Part 5 of the *Payroll Tax Act 2007*),
 - (b) the transfer occurs because the business or undertaking of the former employer is merged with, or taken over or otherwise acquired by, the new employer.
- (3) Accordingly, the new employer may claim a rebate for the employment of the internally transferred employee.
- (4) A rebate is not payable to the new employer in respect of the employment of the internally transferred employee unless the Chief Commissioner is satisfied that the former employer would have been eligible for a rebate in respect of the employment of the employee if employment with the former employer had continued.
- (5) The Chief Commissioner may refuse to pay a rebate to the new employer, or require repayment of a rebate already paid to the new employer, if:
 - (a) the Chief Commissioner is of the opinion that the employee's employment was transferred for the sole or dominant purpose of enabling a claim to be made for the rebate, or
 - (b) the former employer had not applied for registration as a claimant in respect of the employment of the employee before the transfer of employment.

[2] Schedule 1 Savings, transitional and other provisions

Insert at the end of the Schedule with appropriate Part and clause numbering:

Part State Revenue Legislation Further Amendment Act 2014

Rebate for internally transferred employees

Section 12A, as inserted by the *State Revenue Legislation Further Amendment Act 2014*, applies to the employment of an internally transferred employee

whose employment with the new employer (within the meaning of that section) commenced on or after 1 July 2011.