



New South Wales

# State Revenue Legislation Further Amendment Bill (No 2) 2009

## 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 make further provision for the valuation of land holdings of unit trust schemes, private companies and listed companies in connection with determining whether those unit trust schemes or companies are landholders for the purposes of landholder duty, and
  - (ii) to make further provision for liability for landholder duty in respect of an acquisition of an interest in a landholder that is made by a trustee or by a person acting in more than one capacity, and
  - (iii) to make persons who acquire or hold an interest in a landholder as a creditor liable for landholder duty in certain circumstances and to clarify the meaning of “interest” in a landholder, and
  - (iv) to prevent the use of terms contracts or other means to avoid liability for landholder duty, and
  - (v) to clarify the types of interests in land that are treated as dutiable property under that Act, and

- (vi) to make other changes to that Act as a consequence of the recent significant changes to landholder duty and mortgage duty provisions,
- (b) to amend the *Parking Space Levy Act 2009* to clarify the time within which the parking space levy must be paid in order to avoid penalty,
- (c) to amend the *Payroll Tax Act 2007* to establish a new test for determining whether wages are taxable in this jurisdiction, which is consistent with complementary legislation being adopted by other States and the Territories.

## 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.

## Schedule 1 Amendment of Duties Act 1997

### Valuation of land holdings for landholder duty

**Schedule 1 [2] and [3]** change the method by which the value of the land holdings of a unit trust scheme, private company or listed company is determined for the purposes of landholder duty. A unit trust scheme, private company or listed company is considered to be a landholder for the purposes of the landholder duty provisions if it has land holdings in New South Wales with an unencumbered value of \$2,000,000 or more.

Under the amendments, if a land holding consists of an estate in fee simple in land, the land value of the land (as determined under the *Valuation of Land Act 1916*), rather than the unencumbered value of the land, will be used for the purpose of determining the value of the land holdings of a unit trust scheme or company.

**Schedule 1 [17]** is a consequential amendment.

### Charging of landholder duty on acquisitions made by trustees and others

**Schedule 1 [7]** provides that if a person who acquires or holds an interest in a landholder is a trustee for 2 or more trusts, any interests in the landholder acquired or held by the person for different trusts are to be treated as if they were acquired or held independently by separate persons. This means that the trustee may not be required to aggregate together acquisitions that are made for different trusts.

The amendment includes a similar provision in relation to life companies. Life companies may acquire interests in landholders for different statutory funds or for purposes not related to the conduct of the business of a statutory fund. These acquisitions will be treated as if they were independent acquisitions by separate persons.

**Schedule 1 [10]** provides for liability for landholder duty where a person acquires or holds an interest in a landholder as bare trustee (including as custodian) for another

person. The amendments require the duty payable in respect of an acquisition of an interest in a landholder to be paid by the ultimate beneficial owner of that interest.

Under the amendments, if a person acquires or holds an interest in a landholder as bare trustee for another person, the other person is a beneficial owner of the interest in the landholder. If a person who is a beneficial owner of an interest in a landholder holds the interest as bare trustee for another person, that other person is also a beneficial owner of the interest. The ultimate beneficial owner of the interest is a beneficial owner of an interest in a landholder who does not hold the interest as bare trustee for another person (so that, if there is a chain of bare trustees, the ultimate beneficial owner is the last beneficial owner in that chain).

The amendment provides that if an interest in a landholder is acquired or held by a person (the *legal owner*) as bare trustee for another person, the interest is taken, for the purposes of landholder duty, to have been acquired by, or to be held by, the ultimate beneficial owner of the interest in the landholder, rather than the legal owner. As a result, the ultimate beneficial owner of an interest in a landholder, rather than the legal owner, will be required to lodge an acquisition statement and to pay duty chargeable in respect of an acquisition made in a landholder that is chargeable with landholder duty under the Act.

**Schedule 1 [26]** includes a transitional provision in relation to the new liability provisions. Generally speaking, the new liability provisions will apply to acquisitions made on or after the commencement of the amendments. Pre-commencement acquisitions may be aggregated with post-commencement acquisitions for the purpose of determining whether a relevant acquisition (an acquisition that is chargeable with duty) has been made by a beneficial owner. However, a beneficial owner will not, as a result of the amendments, become liable for duty in respect of those pre-commencement acquisitions.

### **Meaning of “interest” in a landholder**

At present, a person does not become liable for landholder duty in respect of an acquisition of an interest in a landholder if the person’s interest in the landholder arises merely because the person is a creditor or other person to whom the landholder is liable.

**Schedule 1 [8]** removes this exception to this rule. Instead, a person who has a debt interest (within the meaning of certain provisions of the *Income Tax Assessment Act 1997* of the Commonwealth) in a landholder (or an interest that would be a debt interest if the landholder were a company under the relevant provisions of that Act) will not be treated as having an interest in the landholder. Accordingly, an acquisition of a debt interest will not be chargeable with landholder duty.

**Schedule 1 [11], [12], [14] and [19]** are related amendments. The amendments ensure that the rules regarding the winding up of a company do not determine whether a person has an interest in a landholder. That is, the fact that a person who would otherwise be regarded as having an interest in a landholder is not entitled to participate in a winding up of a landholder will not prevent the acquisition of the interest being chargeable with landholder duty.

**Schedule 1 [20]** prevents the acquisition of an interest from being regarded as an exempt acquisition merely because it is acquired as a result of the making of a compromise or arrangement under Part 5.1 of the *Corporations Act 2001* of the Commonwealth. The exemption will be limited to the making of a compromise or arrangement with creditors. The amendment also removes an anti-avoidance function of the Chief Commissioner of State Revenue that has been made redundant by Chapter 11A of the *Duties Act 1997*. **Schedule 1 [26]** includes a transitional provision related to this amendment.

The amendment in **Schedule 1 [21]** is intended to prevent any argument that a person entitled to a payment of money from a landholder is not entitled to a distribution of property of a landholder. An entitlement to payment of money by a landholder can give rise to an interest in a landholder.

#### **Point in time at which an interest in a landholder is acquired**

**Schedule 1 [16]** is an anti-avoidance measure. At present the purchaser of a share or unit in a landholder or a person to whom a share or unit is to be issued is taken to have an interest in the landholder on completion of an agreement to purchase or issue the share or unit. Liability also arises in respect of the agreement if the necessary transfer or title documents are delivered or the consideration for the purchase or issue is paid. The amendment extends these provisions so that a purchaser or person to whom a share or unit in a landholder is to be issued under an agreement is taken to acquire an interest in the landholder 12 months after the date of first execution of the agreement. This prevents the use of a “terms contract”, or any other means by which completion of an agreement is deferred indefinitely, to avoid liability for landholder duty. The Chief Commissioner of State Revenue is given the discretion to extend the 12 month period. In addition, provision is made for reassessment of any duty payable if the agreement is terminated before it is actually completed.

**Schedule 1 [13] and [15]** are consequential amendments. **Schedule 1 [26]** includes a transitional provision related to the amendments.

#### **Interests in land**

Under the *Duties Act 1997* duty is chargeable on a transfer of land in New South Wales or of an interest in land in New South Wales. **Schedule 1 [27]** provides that mining leases and mining claims give the holder an interest in the land to which they relate. Accordingly, a transfer of a mining lease or mining claim will be chargeable with duty.

The amendment also clarifies that the following do not give rise to an interest in land:

- (a) an assessment lease, exploration licence or opal prospecting licence under the *Mining Act 1992*,
- (b) a carbon sequestration right within the meaning of Division 4 of Part 6 of the *Conveyancing Act 1919*,
- (c) a petroleum title within the meaning of the *Petroleum (Onshore) Act 1991*,

(d) a licence, permit, lease, access authority or special prospecting authority under the *Petroleum (Offshore) Act 1982*.

**Schedule 1 [1] and [5]** are consequential amendments. **Schedule 1 [26]** includes a transitional provision related to the amendments.

### Other changes

**Schedule 1 [6]** is a law revision amendment that is consequential on the amendments made by the *State Revenue Legislation Further Amendment Act 2009* which extended landholder duty to acquisitions of interests in public landholders, in addition to private landholders. The amendment clarifies that a reference to an arrangement under which a private landholder ceases to be a landholder is a reference to it ceasing to be a private landholder.

**Schedule 1 [9]** is also related to the extension of landholder duty to acquisitions of interests in public landholders. The amendment clarifies that if duty is chargeable on an acquisition by a person in a public landholder, no duty is chargeable in respect of any further acquisition in that landholder (whether the landholder is a public landholder or a private landholder at the time of the acquisition).

**Schedule 1 [18]** is a law revision amendment that is consequential on the amendments made by the *State Revenue Legislation Further Amendment Act 2009* which provided for the charging of landholder duty on acquisition of interests in goods of a landholder. The amendment inserts an omitted reference to the goods of a landholder.

The amendment in **Schedule 1 [22]** makes further provision for goods held on trust by a landholder. The amendment deals with the circumstances in which goods held on trust (including goods held by a custodian) are treated as goods of a company or unit trust scheme (and included in duty calculations). The amendments (which are made to section 163K of the *Duties Act 1997*) will be similar to existing section 147 (2) and (3) of the *Duties Act 1997* (which applies to land holdings of a landholder). **Schedule 1 [4]** substitutes section 147 (2) of the *Duties Act 1997* so that an interest in land that is held by the custodian to a trustee of a unit trust scheme is treated as a land holding of the unit trust scheme. Together these amendments ensure consistency between sections 163K and 147 of the *Duties Act 1997*.

**Schedule 1 [24]** also relates to the extension of landholder duty to the acquisition of interests in the goods of a landholder. The amendment makes it clear that an interest in goods is not to be counted for the purposes of charging duty payable in respect of an acquisition made before 1 July 2009 (the date on which the charging of landholder duty was extended to an acquisition of an interest in goods of a landholder).

**Schedule 1 [25]** relates to the changes to mortgage duty made by the *State Revenue Legislation Further Amendment Act 2009*. The amendment clarifies the application of a concessional arrangement for certain mortgages first executed before 1 July 2009 (the date on which the relevant changes to mortgage duty commenced).

**Schedule 1 [23]** enables regulations of a savings and transitional nature to be made as a consequence of the amendments.

**Schedule 1 [26]** provides for transitional matters. In general, the amendments apply to dutiable transactions occurring on or after the commencement of the amendments and to interests that are acquired in landholders on or after the commencement of the amendments.

## **Schedule 2      Amendment of Parking Space Levy Act 2009**

The *Parking Space Levy Act 2009* imposes a levy on certain parking spaces on 1 July in each year. **Schedule 2 [1]** amends that Act to make it clear that the levy does not have to be paid until 1 September in that year. A failure to pay the levy by that date means that a tax default occurs, and interest and penalty tax can be charged under the *Taxation Administration Act 1996*.

**Schedule 2 [2]** provides that the amendment described above applies from the year 2009 and onwards.

## **Schedule 3      Amendment of Payroll Tax Act 2007**

**Schedule 3** provides for a new method of determining the jurisdiction in which wages are liable for payroll tax. The amendments implement an agreement between the States and the Territories to adopt complementary nexus provisions in relation to the imposition of payroll tax.

At present, the question of whether wages paid or payable by an employer are taxable in New South Wales under the *Payroll Tax Act 2007* is determined chiefly by reference to the place in which the wages are paid or payable. Generally speaking, wages that are paid or payable in New South Wales are taxable in New South Wales (unless the wages are paid or payable for services performed wholly outside New South Wales). Wages are also taxable in New South Wales if they are paid or payable for services performed wholly or mainly in New South Wales (regardless of where they are paid or payable).

Under the new provisions, the question of whether wages are taxable in New South Wales will be determined chiefly by reference to the place where the services of the employee were performed. The jurisdiction in which an employee or employer is based is also relevant to determining whether wages are taxable in New South Wales.

The new provisions provide that wages are taxable in this jurisdiction (that is, liable for payroll tax in New South Wales) if:

- (a) the wages are paid or payable by an employer for or in relation to services performed by an employee wholly in this jurisdiction, or

- (b) the wages are paid or payable by an employer for or in relation to services performed by an employee in 2 or more Australian jurisdictions, or partly in one or more Australian jurisdictions and partly outside all Australian jurisdictions, and:
  - (i) the employee is based in this jurisdiction, or
  - (ii) the employer is based in this jurisdiction (in a case where the employee is not based in an Australian jurisdiction), or
  - (iii) the wages are paid or payable in this jurisdiction (in a case where both the employee and the employer are not based in an Australian jurisdiction), or
  - (iv) the wages are paid or payable for services performed mainly in this jurisdiction (in a case where both the employee and the employer are not based in an Australian jurisdiction and the wages are not paid or payable in an Australian jurisdiction), or
- (c) the wages are paid or payable by an employer for or in relation to services performed by an employee wholly outside all Australian jurisdictions and are paid or payable in this jurisdiction.

An employee is based in this jurisdiction if his or her principal place of residence is in this jurisdiction. In cases where the employee is a company, the test for whether the employee is based in this jurisdiction is the same as it is for an employer.

An employer is based in this jurisdiction if the employer's registered business address (for ABN purposes) is in this jurisdiction. If the employer does not have a registered business address, or has a registered business address in more than one Australian jurisdiction, the employer is based in this jurisdiction if the employer's principal place of business is in this jurisdiction.

The question of where services were provided is determined by reference to services provided by the employee in the month in which the wages are paid or payable or, if no services were provided in that month, in the most recent prior month in which services were provided. If wages are paid or payable to an employee before services are provided, the question of whether they are taxable in this jurisdiction is determined by reference to the place where it may be reasonably expected that services will be provided.

Provision is also made for the circumstances in which wages will be treated as being paid or payable in this jurisdiction.

The principal provisions, as described above, are set out in **Schedule 3 [2]**.

**Schedule 3 [1]** provides for definitions of expressions used in the new provisions.

**Schedule 3 [3]** is a related amendment to ensure that when the expression "employee" is used in the new provisions (and elsewhere in the *Payroll Tax Act 2007*) this includes any person to or in relation to whom amounts treated as wages

under the Act are paid or payable. For example, some payments to company directors are treated as wages under the Act. The new provisions will apply in relation to those payments in the same way as they apply to wages paid to employees.

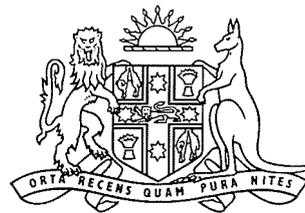
**Schedule 3 [4]–[6]** are consequential amendments which remove provisions made redundant by the new provisions.

**Schedule 3 [7]** relocates an existing exemption from payroll tax for wages paid or payable for or in relation to services performed in other countries to the part of the *Payroll Tax Act 2007* dealing with exemptions.

**Schedule 3 [8]** enables the making of savings and transitional regulations as a consequence of the amendments.

**Schedule 3 [9]** provides for the application of the amendments. The amendments apply in respect of wages paid or payable on or after 1 July 2009, so that the new provisions will apply to the financial year commencing on that date. An annual adjustment will be made in respect of each employer at the end of the payroll tax year to reflect any changes in liability arising as a result of the new provisions.

First print



New South Wales

# State Revenue Legislation Further Amendment Bill (No 2) 2009

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New South Wales

# **State Revenue Legislation Further Amendment Bill (No 2) 2009**

No , 2009

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**A Bill for**

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

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>State Revenue Legislation Further Amendment Act (No 2) 2009</i> .	3 4
<b>2 Commencement</b>	5
(1) This Act commences on the date of assent to this Act, except as provided by subsections (2) and (3).	6 7
(2) Schedule 1 commences, or is taken to have commenced, on 1 December 2009.	8 9
(3) Schedule 2 is taken to have commenced on 1 September 2009.	10

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<b>Schedule 1</b>	<b>Amendment of Duties Act 1997 No 123</b>	1
<b>[1]</b>	<b>Section 11 What is “dutiable property”?</b>	2
	Insert after section 11 (1) (l):	3
	<b>Note.</b> In relation to interests in land, see clause 4 of the Dictionary.	4
<b>[2]</b>	<b>Section 146 Meaning of “landholder”</b>	5
	Omit “an unencumbered value” from section 146 (1).	6
	Insert instead “a threshold value”.	7
<b>[3]</b>	<b>Section 146A</b>	8
	Insert after section 146:	9
<b>146A</b>	<b>Threshold value of land holdings</b>	10
(1)	For the purposes of this Chapter, the <i>threshold value</i> of the land holdings of a unit trust scheme, private company or listed company is the total value of all land holdings in New South Wales of the unit trust scheme or company.	11 12 13 14
(2)	For a land holding that consists of an estate in fee simple in land (other than a strata lot), the value of the land holding is the registered land value of the land as at 1 July in the previous year.	15 16 17
(3)	For a land holding that consists of a proportionate interest in an estate in fee simple in land (other than a strata lot), the value of the land holding is the amount determined by applying that proportion to the registered land value of the land as at 1 July in the previous year.	18 19 20 21 22
(4)	For a land holding that consists of an estate in fee simple in a strata lot, the value of the land holding is an amount that bears to the registered land value of the relevant parcel (as at 1 July in the previous year) the same proportion as the unit entitlement of the lot bears to the aggregate unit entitlement.	23 24 25 26 27
(5)	For a land holding that consists of a proportionate interest in an estate in fee simple in a strata lot, the value of the land holding is the amount determined by applying that proportion to the amount determined under subsection (4).	28 29 30 31
(6)	The proportionate interests of joint tenants in an estate in fee simple are to be determined as if they were tenants in common in equal shares.	32 33 34

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(7)	For any land holding for which a value cannot be obtained under the above provisions, the value of the land holding is the unencumbered value of the land holding, determined in the same way as it is for dutiable property under Chapter 2.	1 2 3 4
(8)	For the purposes of this section, the <i>registered land value</i> of land (including a parcel) is the land value of the land as entered in the Register of Land Values kept by the Valuer-General under section 14CC of the <i>Valuation of Land Act 1916</i> .	5 6 7 8
(9)	For the purposes of this section, a <i>strata lot</i> means a lot under the <i>Strata Schemes (Freehold Development) Act 1973</i> , and expressions used in this section in relation to such a lot have the same meanings as they do in that Act.	9 10 11 12
<b>[4]</b>	<b>Section 147 What are the “land holdings” of a landholder?</b>	13
	Omit section 147 (2). Insert instead:	14
(2)	An interest in land is a land holding of a unit trust scheme only to the extent that the interest is held by the trustee of the unit trust scheme in its capacity as trustee of the scheme or by a custodian of the trustee of the unit trust scheme in its capacity as custodian.	15 16 17 18
<b>[5]</b>	<b>Section 147, note</b>	19
	Insert at the end of the section:	20
	<b>Note.</b> In relation to interests in land, see also clause 4 of the Dictionary.	21
<b>[6]</b>	<b>Section 149 What is a “relevant acquisition”?</b>	22
	Insert “private” after “ceasing to be a” in section 149 (2).	23
<b>[7]</b>	<b>Section 149 (3)–(6)</b>	24
	Insert after section 149 (2):	25
(3)	If a person who acquires or holds an interest in a landholder is a trustee for 2 or more trusts, any interests in the landholder acquired or held by the person for different trusts are to be treated as if they were acquired or held independently by separate persons.	26 27 28 29 30
(4)	If a person who acquires or holds an interest in a landholder is a life company, any interests in the landholder acquired or held by the life company for different statutory funds are to be treated as if they were acquired or held independently by separate persons.	31 32 33 34

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(5)	If a life company acquires or holds an interest in a landholder otherwise than for a statutory fund, that interest is to be treated as if it were acquired or held independently of, and by a separate person to, any interest acquired or held by the life company for a statutory fund.	1 2 3 4 5
(6)	In this section: <i>statutory fund</i> has the meaning given by the <i>Life Insurance Act 1995</i> of the Commonwealth.	6 7 8
<b>[8]</b>	<b>Section 150 What are “interests” and “significant interests” in landholders?</b>	9 10
	Omit section 150 (1). Insert instead:	11
(1)	For the purposes of this Chapter, a person has an <i>interest</i> in a landholder if the person, in the event of a distribution of all the property of the landholder, would be entitled to any of the property distributed.	12 13 14 15
(1A)	However, an entitlement that arises merely because a person has a debt interest (within the meaning of Division 974 of the <i>Income Tax Assessment Act 1997</i> of the Commonwealth) in a landholder, or an interest that would be a debt interest if the landholder were a company for the purposes of that Division, is not an interest in a landholder.	16 17 18 19 20 21
<b>[9]</b>	<b>Section 156 How duty is charged on relevant acquisitions—public landholders</b>	22 23
	Omit “public” where secondly occurring in section 156 (5).	24
<b>[10]</b>	<b>Chapter 4, Part 2A</b>	25
	Insert after Part 2:	26
	<b>Part 2A Charging of duty on acquisitions made by trustees</b>	27 28
<b>157A</b>	<b>Application of Part</b>	29
(1)	This Part applies for the purposes of determining liability for duty under this Chapter where a person acquires or holds an interest in a landholder as bare trustee for another person.	30 31 32
(2)	In this Part, a <i>bare trustee</i> includes a custodian.	33

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<b>157B</b>	<b>Beneficial owner—meaning</b>	1
(1)	If a person who acquires or holds an interest in a landholder acquires or holds that interest as bare trustee for another person, the other person is a <i>beneficial owner</i> of that interest in the landholder.	2 3 4 5
(2)	If a person who is a beneficial owner of an interest in a landholder (whether as a result of subsection (1) or as a result of one or more applications of this subsection) holds that interest as bare trustee for another person, that other person is also a <i>beneficial owner</i> of that interest in the landholder.	6 7 8 9 10
(3)	For the purposes of this Part, the <i>ultimate beneficial owner</i> of an interest in a landholder is any beneficial owner of the interest in the landholder who does not hold that interest as bare trustee for another person.	11 12 13 14
<b>157C</b>	<b>Beneficial owners liable for duty on acquisitions in landholders</b>	15
(1)	Any interest in a landholder that is acquired or held by a person (the <i>legal owner</i> ) as bare trustee for another person is taken, for the purposes of this Chapter, to have been acquired by, or to be held by, the ultimate beneficial owner of the interest in the landholder, rather than the legal owner.	16 17 18 19 20
(2)	Accordingly, the ultimate beneficial owner of an interest acquired by the legal owner will be liable to lodge an acquisition statement, and to pay any duty chargeable under this Chapter, in respect of any relevant acquisition made as a result of that acquisition by the legal owner.	21 22 23 24 25
	<b>Note.</b> For example, A acquires an interest in a landholder as bare trustee for B. A is the legal owner and B is a beneficial owner of the interest in the landholder. B holds that interest as bare trustee for C. As a result, C is also a beneficial owner of the interest in the landholder acquired by A. If C does not hold the interest as bare trustee for another person, C is the ultimate beneficial owner of the interest and will be liable for any duty chargeable on the acquisition.	26 27 28 29 30 31 32
(3)	For the purpose of determining whether an acquisition is a relevant acquisition, section 149 applies as if a reference to a person who acquires or holds an interest in a landholder were a reference to the ultimate beneficial owner of the interest, rather than the legal owner.	33 34 35 36 37
(4)	That is, the acquisition is to be aggregated with other interests held by the ultimate beneficial owner of the interest or an associated person of the ultimate beneficial owner of the interest, rather than with other interests held by the legal owner or associated persons of the legal owner.	38 39 40 41 42

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<b>[11] Section 158 Constructive ownership of land holdings and other property: linked entities</b>	1
	2
Omit “if the other person were to be wound up” wherever occurring in section 158 (2) (a) (iii) and (3) (c).	3
	4
Insert instead “in the event of a distribution of all the property of the person”.	5
<b>[12] Section 158 (4)</b>	6
Omit “if each entity in the chain of entities were to be wound up”.	7
Insert instead “in the event of a distribution of all the property of each entity in the chain of entities”.	8
	9
<b>[13] Section 161 Agreements for sale or issue of shares or units in landholder</b>	10
Omit “completion of the agreement” from section 161 (1).	11
Insert instead “the agreement liability date”.	12
<b>[14] Section 161 (1) (a)</b>	13
Omit “from the landholder on a winding up of the landholder (as if the purchase or interest acquired by the person were registered on completion)”.	14
	15
Insert instead “of the landholder in the event of a distribution of all the property of the landholder (as if the purchase or interest acquired by the person were registered on the agreement liability date)”.	16
	17
	18
<b>[15] Section 161 (1), note</b>	19
Omit “when the agreement is completed”.	20
Insert instead “on the agreement liability date”.	21
<b>[16] Section 161 (2) and (2A)</b>	22
Omit section 161 (2). Insert instead:	23
(2) The <i>agreement liability date</i> is the date on which the following occurs (whichever occurs first):	24
	25
(a) the agreement is completed,	26
(b) the necessary transfer or title documents are delivered to the person acquiring the share or unit,	27
	28
(c) the consideration for the purchase or issue is paid,	29
(d) the period of 12 months beginning on the date of first execution of the agreement, or such longer period as the Chief Commissioner may approve, expires.	30
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(2A) If:	1
(a) at the time of acquisition of an interest by any person in a landholder that necessitates the lodgment of an acquisition statement under this Chapter, the person was the purchaser or person to whom a unit or share was to be issued under an uncompleted agreement for the purchase or issue of a share or unit in a landholder, and	2 3 4 5 6 7
(b) the agreement is subsequently rescinded, annulled or otherwise terminated without completion,	8 9
the Chief Commissioner is to assess or reassess the statement on the basis that the purchaser or person to whom the unit or share was to be issued did not have an interest in the landholder as a result of the agreement.	10 11 12 13
<b>[17] Section 162 Valuation of property</b>	14
Insert “unencumbered” before “value of land holdings” in section 162 (1).	15
<b>[18] Section 162 (2)</b>	16
Insert “or goods” after “the land holdings”.	17
<b>[19] Section 163 Maximisation of entitlements on distribution of property</b>	18
Omit “, whether on a winding up of the landholder or otherwise” from section 163 (1).	19 20
<b>[20] Section 163A General exemptions</b>	21
Omit section 163A (b). Insert instead:	22
(b) if the interest was acquired solely as the result of the making of a compromise or arrangement with creditors under Part 5.1 of the <i>Corporations Act 2001</i> of the Commonwealth that has been approved by a court, or	23 24 25 26
<b>[21] Section 163I Meaning of expressions used in this Chapter</b>	27
Insert at the end of the section:	28
(2) To avoid doubt, in this Chapter, <i>property</i> includes money, and a reference to a distribution of property includes a reference to the payment of money.	29 30 31

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<b>[22] Section 163K Goods of a landholder</b>	1
Omit section 163K (2). Insert instead:	2
(2) For the purposes of this Chapter, goods are goods of a landholder if the landholder has any interest in the goods, other than an interest as mortgagee, chargee or other secured creditor.	3 4 5
(3) Goods are goods of a unit trust scheme only to the extent that the interest in the goods is held by the trustee of the unit trust scheme in its capacity as trustee of the scheme or by a custodian of the trustee of the unit trust scheme in its capacity as custodian.	6 7 8 9
(4) Goods are not goods of a company if the interest the company has in the goods is held on trust and the company is not a beneficiary of the trust.	10 11 12
<b>[23] Schedule 1 Savings, transitional and other provisions</b>	13
Insert at the end of clause 1 (1):	14
<i>State Revenue Legislation Further Amendment Act (No 2) 2009</i>	15
<b>[24] Schedule 1, clause 75</b>	16
Insert after clause 75 (2):	17
(2A) However, in calculating the duty payable in respect of any acquisition made before 1 July 2009, the unencumbered value of the goods of the landholder in New South Wales is to be disregarded.	18 19 20 21
(2B) Similarly, in applying section 155 (5) to an acquisition made before 1 July 2009, the value of “A” is to be determined disregarding the unencumbered value of the goods in New South Wales of the landholder.	22 23 24 25
<b>[25] Schedule 1, clause 77</b>	26
Insert “made on or after 1 July 2009” after “advance or further advance” in clause 77 (1) (b).	27 28

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[26]	<b>Schedule 1, Part 32</b>	1
	Insert after Part 31:	2
	<b>Part 32 Provisions consequent on enactment of State Revenue Legislation Further Amendment Act (No 2) 2009</b>	3 4 5
	<b>80 Application of landholder duty amendments</b>	6
	(1) The amendments made to Chapter 4 by the <i>State Revenue Legislation Further Amendment Act (No 2) 2009</i> apply in respect of an interest in a landholder that is acquired on or after the commencement of Schedule 1 to that Act.	7 8 9 10
	(2) However, section 163A, as in force immediately before its amendment by the <i>State Revenue Legislation Further Amendment Act (No 2) 2009</i> , continues to apply in respect of an interest acquired by a person in a landholder if the person's intention to make the acquisition was announced to the market before the date on which the Bill for the <i>State Revenue Legislation Further Amendment Act (No 2) 2009</i> was introduced into the Legislative Assembly.	11 12 13 14 15 16 17 18
	(3) The amendments to section 161 made by the <i>State Revenue Legislation Further Amendment Act (No 2) 2009</i> apply to agreements first executed on or after the commencement of Schedule 1 to that Act.	19 20 21 22
	<b>81 Liability of beneficial owners for landholder duty</b>	23
	(1) The landholder liability amendments apply to an interest in a landholder that is acquired on or after the commencement of the amendments.	24 25 26
	(2) If the ultimate beneficial owner of an interest in a landholder acquires an interest in a landholder on or after the commencement of the amendments, an acquisition of an interest in a landholder made before that commencement (a <i>pre-commencement acquisition</i> ) that would have been treated as an acquisition made by the ultimate beneficial owner of the interest or an associated person if the landholder liability amendments had been in force at the time that the acquisition was made is to be counted for the purpose of determining whether a relevant acquisition has been made.	27 28 29 30 31 32 33 34 35 36
	(3) For that purpose, such a pre-commencement acquisition is treated as an acquisition made by the ultimate beneficial owner of the	37 38

	interest or an associated person (as the case requires) and must be disclosed in an acquisition statement by the ultimate beneficial owner of the interest.	1 2 3
(4)	However, a pre-commencement acquisition disclosed in an acquisition statement by the ultimate beneficial owner of an interest in a landholder is an exempt acquisition if, but for subclause (3), the acquisition would not have to be disclosed in that statement.	4 5 6 7 8
(5)	Expressions used in this clause have the same meanings as they have in the landholder liability amendments.	9 10
(6)	In this clause, the <i>landholder liability amendments</i> means the provisions of Part 2A of Chapter 4, as inserted by the <i>State Revenue Legislation Further Amendment Act (No 2) 2009</i> .	11 12 13
<b>82</b>	<b>Meaning of “interest in land”</b>	14
	Clause 4 of the Dictionary, as inserted by the <i>State Revenue Legislation Further Amendment Act (No 2) 2009</i> , applies in respect of:	15 16 17
(a)	a transfer of dutiable property that occurs on or after the commencement of Schedule 1 to that Act (except where made in conformity with an agreement for sale or transfer entered into before that commencement), and	18 19 20 21
(b)	an acquisition of an interest in a landholder under Chapter 4 that is made on or after the commencement of Schedule 1 to that Act.	22 23 24
<b>[27]</b>	<b>Dictionary</b>	25
	Insert after clause 3:	26
<b>4</b>	<b>Interests in land</b>	27
(1)	For the purposes of this Act, a mining lease or mineral claim granted under the <i>Mining Act 1992</i> is taken to give the holder an interest in the land to which it relates.	28 29 30
(2)	For the purposes of this Act, the following do not give rise to an interest in land:	31 32
(a)	an assessment lease, exploration licence or opal prospecting licence under the <i>Mining Act 1992</i> ,	33 34
(b)	a carbon sequestration right within the meaning of Division 4 of Part 6 of the <i>Conveyancing Act 1919</i> ,	35 36
(c)	a petroleum title within the meaning of the <i>Petroleum (Onshore) Act 1991</i> ,	37 38

State Revenue Legislation Further Amendment Bill (No 2) 2009

Schedule 1      Amendment of Duties Act 1997 No 123

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| (d) a licence, permit, lease, access authority or special prospecting authority under the <i>Petroleum (Offshore) Act 1982</i> . | 1 |
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<b>Schedule 2</b>	<b>Amendment of Parking Space Levy Act 2009 No 5</b>	1 2
<b>[1]</b>	<b>Section 8 Imposition of parking space levy</b>	3
	Insert after section 8 (6):	4
	(7) A tax default does not occur for the purposes of the <i>Taxation Administration Act 1996</i> if the levy is paid by 1 September in the year in which liability for payment of the levy arises.	5 6 7
	<b>Note.</b> If a tax default occurs, interest and penalty tax may be charged under the <i>Taxation Administration Act 1996</i> .	8 9
<b>[2]</b>	<b>Schedule 1 Savings, transitional and other provisions</b>	10
	Insert after Part 2:	11
<b>Part 3</b>	<b>Provisions consequent on enactment of State Revenue Legislation Further Amendment Act (No 2) 2009</b>	12 13 14
<b>7</b>	<b>Application of amendments</b>	15
	The amendment to this Act made by the <i>State Revenue Legislation Further Amendment Act (No 2) 2009</i> applies to the parking space levy imposed on 1 July 2009 and in subsequent years.	16 17 18 19

<b>Schedule 3</b>	<b>Amendment of Payroll Tax Act 2007</b>	1
	<b>No 21</b>	2
<b>[1] Section 3 Definitions</b>		3
Insert in alphabetical order in section 3 (1):		4
<i>ABN</i> means the ABN (Australian Business Number) for an entity within the meaning of the <i>A New Tax System (Australian Business Number) Act 1999</i> of the Commonwealth.		5
<i>Australian jurisdiction</i> means a State or a Territory.		8
<i>instrument</i> includes a cheque, bill of exchange, promissory note, money order or a postal order issued by a post office.		9
<i>registered business address</i> means an address for service of notices under the <i>A New Tax System (Australian Business Number) Act 1999</i> of the Commonwealth on an entity that has an ABN, as shown in the Australian Business Register kept under that Act.		10
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<b>[2] Sections 10–11C</b>		16
Omit sections 10 and 11. Insert instead:		17
<b>10 What are taxable wages</b>		18
(1) For the purposes of this Act, <i>taxable wages</i> are wages that are taxable in this jurisdiction.		19
(2) However, exempt wages are not taxable wages.		20
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<b>11 Wages that are taxable in this jurisdiction</b>		22
(1) For the purposes of this Act, wages are taxable in this jurisdiction if:		23
(a) the wages are paid or payable by an employer for or in relation to services performed by an employee wholly in this jurisdiction, or		24
(b) the wages are paid or payable by an employer for or in relation to services performed by an employee in 2 or more Australian jurisdictions, or partly in one or more Australian jurisdictions and partly outside all Australian jurisdictions, and:		25
(i) the employee is based in this jurisdiction, or		26
(ii) the employer is based in this jurisdiction (in a case where the employee is not based in an Australian jurisdiction), or		27
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- (iii) the wages are paid or payable in this jurisdiction (in a case where both the employee and the employer are not based in an Australian jurisdiction), or
  - (iv) the wages are paid or payable for services performed mainly in this jurisdiction (in a case where both the employee and the employer are not based in an Australian jurisdiction and the wages are not paid or payable in an Australian jurisdiction), or
  - (c) the wages are paid or payable by an employer for or in relation to services performed by an employee wholly outside all Australian jurisdictions and are paid or payable in this jurisdiction.
- Note.** Section 66A provides an exemption for wages paid or payable for services performed wholly in one or more other countries for a continuous period of more than 6 months.
- (2) The question of whether wages are taxable in this jurisdiction is to be determined by reference only to the services performed by the employee in respect of the employer during the month in which the wages are paid or payable, subject to this section.
  - (3) Any wages paid or payable by an employer in respect of an employee in a particular month are taken to be paid or payable for or in relation to the services performed by the employee in respect of the employer during that month.
- Note.** For example, if wages paid in a month are paid to an employee for services performed over several months, the question of whether the wages are taxable in this jurisdiction is to be determined by reference only to services performed by the employee in the month in which the wages are paid. The services performed in previous months are disregarded. (The services performed in previous months will be relevant to the question of whether wages paid in those previous months are taxable in this jurisdiction.)
- (4) If no services are performed by an employee in respect of an employer during the month in which wages are paid or payable to or in relation to the employee:
    - (a) the question of whether the wages are taxable in this jurisdiction is to be determined by reference only to the services performed by the employee in respect of the employer during the most recent prior month in which the employee performed services in respect of the employer, and
    - (b) the wages are taken to be paid or payable for or in relation to the services performed by the employee in respect of the employer during that most recent prior month.

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- (5) If no services were performed by an employee in respect of an employer during the month in which wages are paid or payable to or in relation to the employee or in any prior month: 1
- (a) the wages are taken to be paid or payable for or in relation to services performed by the employee in the month in which the wages are paid or payable, and 2
- (b) the services are taken to have been performed at a place or places where it may be reasonably expected that the services of the employee in respect of the employer will be performed. 3
- (6) All amounts of wages paid or payable in the same month by the same employer in respect of the same employee are to be aggregated for the purposes of determining whether they are taxable in this jurisdiction (as if they were paid or payable for all services performed by the employee in the month in which the wages are paid or payable, or the most recent prior month, as the case requires). 4
- Note.** For example, if one amount of wages is paid by an employer in a particular month for services performed in this jurisdiction, and another amount of wages is paid by the same employer in the same month for services performed by the same employee in another Australian jurisdiction, the wages paid are to be aggregated (as if they were paid for all services performed by the employee in that month). Accordingly, subsection (1) (b) would be applied for the purpose of determining whether the wages are taxable in this jurisdiction. 5
- (7) If wages are paid in a different month from the month in which they are payable, the question of whether the wages are taxable in this jurisdiction is to be determined by reference to the earlier of the relevant months. 6
- 11A Jurisdiction in which employee is based** 7
- (1) For the purposes of this Act, the jurisdiction in which an employee is based is the jurisdiction in which the employee's principal place of residence is located. 8
- (2) The jurisdiction in which an employee is based is to be determined by reference to the state of affairs existing during the month in which the relevant wages are paid or payable. 9
- (3) If more than one jurisdiction would qualify as the jurisdiction in which an employee is based during a month, the jurisdiction in which the employee is based is to be determined by reference to the state of affairs existing on the last day of that month. 10

(4)	An employee who does not have a principal place of residence is taken, for the purposes of this Act, to be an employee who is not based in an Australian jurisdiction.	1 2 3
(5)	In the case of wages paid or payable to a corporate employee, the jurisdiction in which the employee is based is to be determined in accordance with section 11B instead of this section (as if a reference in section 11B to an employer were a reference to an employee).	4 5 6 7 8
(6)	In this section, a <i>corporate employee</i> is a company that is taken to be an employee under section 34 or 39 or a company to whom a payment is made that is taken to be wages payable to an employee under section 42 or 47.	9 10 11 12
<b>11B</b>	<b>Jurisdiction in which employer is based</b>	13
(1)	For the purposes of this Act, the jurisdiction in which an employer is based is:	14 15
(a)	the jurisdiction in which the employer's registered business address is located (if the employer has an ABN), or	16 17 18
(b)	the jurisdiction in which the employer's principal place of business is located (in any other case).	19 20
(2)	If wages are paid or payable in connection with a business carried on by an employer under a trust, the employer's registered business address is the registered business address of the trust or, if the trust does not have an ABN, the registered business address of the trustee of the trust.	21 22 23 24 25
(3)	If an employer has registered business addresses located in different jurisdictions at the same point in time, the jurisdiction in which the employer is based at that point in time is the jurisdiction in which the employer's principal place of business is located.	26 27 28 29 30
(4)	The jurisdiction in which an employer is based is to be determined by reference to the state of affairs existing during the month in which the relevant wages are paid or payable.	31 32 33
(5)	If more than one jurisdiction would qualify as the jurisdiction in which an employer is based during a month, the jurisdiction in which the employer is based is to be determined by reference to the state of affairs existing on the last day of that month.	34 35 36 37
(6)	An employer who has neither a registered business address nor a principal place of business is taken, for the purposes of this Act, to be an employer who is not based in an Australian jurisdiction.	38 39 40

<b>11C Place and date of payment of wages</b>	1
(1) For the purposes of this Act, wages are taken to have been paid at a place if, for the purpose of the payment of those wages:	2
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(a) an instrument is sent or given or an amount is transferred by an employer to a person or a person's agent at that place, or	4
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(b) an instruction is given by an employer for the crediting of an amount to the account of a person or a person's agent at that place.	7
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(2) The wages are taken to have been paid on the date that the instrument was sent or given, the amount was transferred or the account credited in accordance with the instruction (as the case requires).	10
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(3) Wages are taken to be payable at the place at which they are paid, subject to this section.	14
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(4) Wages that are not paid by the end of the month in which they are payable are taken to be payable at:	16
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(a) the place where wages were last paid by the employer to the employee, or	18
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(b) if wages have not previously been paid by the employer to the employee—the place where the employee last performed services in respect of the employer before the wages became payable.	20
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(5) If wages paid or payable in the same month by the same employer in respect of the same employee are paid or payable in more than one Australian jurisdiction, the wages paid or payable in that month are taken to be paid or payable in the Australian jurisdiction in which the highest proportion of the wages are paid or payable.	24
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<b>Note.</b> Section 11 requires all wages paid or payable in the same month by the same employer in respect of the same employee to be aggregated for the purpose of determining whether the wages are taxable in this jurisdiction. The above provision ensures only one Australian jurisdiction can be considered to be the jurisdiction in which the wages are paid or payable.	30
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<b>[3] Section 13 What are wages?</b>	36
Insert after section 13 (2):	37
(3) This Act applies in respect of wages referred to in subsection (1) (a)–(e) that are paid or payable to or in relation to a person who is not an employee in the same way as it applies to	38
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	wages paid or payable to an employee (as if a reference in this Act to an employee included a reference to any such person).	1 2
<b>[4]</b>	<b>Section 24 Inclusion of shares and options granted to directors as wages</b>	3
	Omit section 24 (4). Insert at the end of the section:	4
	<b>Note.</b> Section 13 provides that a reference to an employee in this Act includes a reference to any person to whom any amount that is treated as wages under this Act is paid or payable. See also section 11, which deems the wages to be paid or payable for services performed.	5 6 7 8
<b>[5]</b>	<b>Section 25 When services considered to have been performed</b>	9
	Omit the section.	10
<b>[6]</b>	<b>Section 26 Place where wages are payable</b>	11
	Omit the note at the end of section 26 (2). Insert instead:	12
	<b>Note.</b> The place where wages are paid or payable is sometimes relevant to determining whether the wages are liable to payroll tax under this Act. See section 11.	13 14 15
<b>[7]</b>	<b>Part 4, Division 9</b>	16
	Insert after Division 8:	17
	<b>Division 9 Services outside Australia</b>	18
<b>66A</b>	<b>Wages paid or payable for or in relation to services performed in other countries</b>	19 20
	Wages are exempt wages if they are paid or payable for or in relation to services performed by an employee wholly in one or more other countries for a continuous period of more than 6 months beginning on the day on which wages were first paid or payable to that employee for the services so performed.	21 22 23 24 25
<b>[8]</b>	<b>Schedule 3 Savings, transitional and other provisions</b>	26
	Insert at the end of clause 1 (1):	27
	<i>State Revenue Legislation Further Amendment Act (No 2) 2009</i>	28

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<b>[9] Schedule 3, Part 5</b>	1
Insert after Part 4:	2
<b>Part 5 Provisions consequent on enactment of State Revenue Legislation Further Amendment Act (No 2) 2009</b>	3 4 5
<b>18 Application of amendments</b>	6
(1) The amendments made to this Act by the <i>State Revenue Legislation Further Amendment Act (No 2) 2009</i> apply in respect of taxable wages that are paid or payable on or after 1 July 2009.	7 8 9
(2) The amendments made to this Act by the <i>State Revenue Legislation Further Amendment Act (No 2) 2009</i> are to be applied for the purpose of determining the correct amount of payroll tax (within the meaning of section 82) payable by an employer in respect of the financial year commencing on 1 July 2009 (including in respect of expired months).	10 11 12 13 14 15
(3) However, section 9 continues to apply in respect of an expired month as if the amendments made to this Act by the <i>State Revenue Legislation Further Amendment Act (No 2) 2009</i> had not been made.	16 17 18 19
(4) In this clause, an <i>expired month</i> is a month occurring after June 2009 that ended before the date of assent to the <i>State Revenue Legislation Further Amendment Act (No 2) 2009</i> .	20 21 22