



New South Wales

State Revenue Legislation Amendment (Surcharge) Bill 2017

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to make amendments to the *Duties Act 1997*, the *Land Tax Act 1956* and the *Land Tax Management Act 1956* for the following purposes:

- (a) to provide for exemption from and refunds of surcharge purchaser duty and surcharge land tax payable in respect of residential land by a foreign person that is an Australian corporation when the land is used for the construction of new homes or is subdivided and sold for the purposes of the construction of new homes,
- (b) to provide that the small business declaration required for the purposes of the small business exemption from duty on an insurance policy is to be provided in a manner approved by the Chief Commissioner (replacing the current requirement that it be provided in writing),
- (c) to enact consequential savings and transitional provisions.

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 on a day or days to be appointed by proclamation except for the amendment referred to in paragraph (b) of the Overview, which is to commence on the date of assent.

Clause 3 repeals an amending Act. Amendments made by that Act have commenced except for amendments to the *Duties Act 1997* and the *Land Tax Act 1956* about new home development by Australian-based developers that are foreign persons, which will not be commenced and which are dealt with differently in the proposed Act.

Schedule 1 Amendment of Duties Act 1997 No 123

Australian-based developers that are foreign persons

Schedule 1 [1] (proposed section 104ZJA, which replaces an uncommenced section inserted by the *State Revenue and Other Legislation Amendment (Budget Measures) Act 2017*) provides for refunds and exemption from surcharge purchaser duty on transfers of residential land to a foreign transferee when the transferee is an Australian corporation and:

- (a) a new home is constructed on the land and sold without the home having been used or occupied before it is sold, or
- (b) the land is subdivided and sold for the purposes of new home construction.

Small business exemption

Schedule 1 [2] (amends section 259C (2)) provides that the small business declaration required for the purposes of the small business exemption from duty on an insurance policy is to be provided in a manner approved by the Chief Commissioner (replacing the current requirement that the declaration be provided in writing).

Savings and transitional

Schedule 1 [3] (amends Schedule 1) omits a transitional provision that will be redundant as a consequence of new section 104ZJA replacing an uncommenced section inserted by the *State Revenue and Other Legislation Amendment (Budget Measures) Act 2017*.

Schedule 1 [4] (proposed Part 48 in Schedule 1) extends the operation of new section 104ZJA to transfers that occur before the commencement of the section and provides a mechanism for the refund of surcharge purchaser duty already paid.

Schedule 2 Amendment of Land Tax Act 1956 No 27

Australian-based developers that are foreign persons

Schedule 2 [3] (proposed section 5C, which replaces an uncommenced section inserted by the *State Revenue and Other Legislation Amendment (Budget Measures) Act 2017*) provides for refunds and exemption from surcharge land tax payable on residential land owned by a foreign person that is an Australian corporation if:

- (a) a new home is constructed on the land and sold without the home having been used or occupied before it is sold, or
- (b) the land is subdivided and sold for the purposes of new home construction.

Miscellaneous amendments

Schedule 2 [1] (amends section 2A) includes definitions of terms used in new section 5C and an existing section.

Schedule 2 [2] (amends section 5A) makes a consequential amendment.

Schedule 3 Amendment of Land Tax Management Act 1956 No 26

Schedule 3 [1] (amends Schedule 2) omits a transitional provision that will be redundant as a consequence of new section 5C of the *Land Tax Act 1956* replacing an uncommenced section inserted by the *State Revenue and Other Legislation Amendment (Budget Measures) Act 2017*.

Schedule 3 [2] (proposed Part 32 in Schedule 2) provides that new section 5C of the *Land Tax Act 1956* is to apply in respect of the 2017 and subsequent land tax years.



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New South Wales

State Revenue Legislation Amendment (Surcharge) Bill 2017

No. , 2017

A Bill for

An Act to amend the *Duties Act 1997*, the *Land Tax Act 1956* and the *Land Tax Management Act 1956* to make further provision for surcharge purchaser duty, surcharge land tax and administrative arrangements.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>State Revenue Legislation Amendment (Surcharge) Act 2017</i> .	3
2 Commencement	4
(1) This Act commences on a day or days to be appointed by proclamation except as provided by subsection (2).	5 6
(2) Schedule 1 [2] commences on the date of assent.	7
3 Repeal of State Revenue and Other Legislation Amendment (Budget Measures) Act 2017 No 33	8 9
The <i>State Revenue and Other Legislation Amendment (Budget Measures) Act 2017</i> is repealed.	10 11

Schedule 1 Amendment of Duties Act 1997 No 123

[1] Section 104ZJA

Insert after section 104ZJ:

104ZJA New home development by Australian-based developers that are foreign persons

- (1) An Australian corporation that is the transferee under a transfer of residential-related property is entitled to a refund of surcharge purchaser duty paid by the transferee that is chargeable on the transfer if the Chief Commissioner is satisfied that:
 - (a) a new home has been constructed on the land concerned by the transferee or a related body corporate after completion of the transfer to the transferee and then sold by the transferee to a person who is not an associated person of the transferee without the home having been used or occupied for any purpose (other than as a display home) before the completion of that sale, or
 - (b) the land concerned has been subdivided by the transferee for the purpose of its use for new home construction and then sold by the transferee after the issue of a subdivision certificate (as referred to in section 109C of the *Environmental Planning and Assessment Act 1979*) for the subdivision.
- (2) The amount of the refund to which a transferee is entitled under this section is the amount that is determined in accordance with an order made by the Treasurer for the purposes of this section and published in the Gazette. The amount of the refund may be the full amount of duty paid or a lesser amount (as determined in accordance with the order).
- (3) The Chief Commissioner may approve a person as an exempt transferee for a particular transfer or class of transfers if the Chief Commissioner is of the opinion that the person is likely to become entitled under this section to a refund of the full amount of surcharge purchaser duty chargeable on a transfer to which the approval applies.
- (4) No surcharge purchaser duty is chargeable on a transfer of residential-related property if the transferee under the transfer is approved as an exempt transferee for the transfer at the time liability for duty would otherwise have arisen.
- (5) The approval of a person as an exempt transferee is subject to the following provisions:
 - (a) an approval may be given subject to conditions and the approval operates subject to any such conditions,
 - (b) the conditions of an approval may be varied by the Chief Commissioner at any time by notice to the person,
 - (c) an approval remains in force until it is revoked and can be revoked by the Chief Commissioner at any time by notice to the person,
 - (d) the revocation of an approval can be backdated to extend to a transfer in respect of which liability for surcharge purchaser duty would (but for the approval) have arisen before the revocation is notified (an *exempted transfer*),
 - (e) if the revocation of an approval is backdated to extend to an exempted transfer, surcharge purchaser duty is payable and is to be assessed or

	reassessed as if the approval had never applied to the transfer and as if liability for duty arose when revocation of the approval was notified.	1 2
(6)	Surcharge purchaser duty may be refunded under this section only if an application for the refund is made within 12 months after the completion of the sale of the new home or the issue of the subdivision certificate to which the application relates and no later than 10 years after completion of the transfer of the residential-related property to the Australian corporation.	3 4 5 6 7
(7)	This section does not apply to a transfer of residential-related property that is a surcharge duty transaction referred to in section 104L (1) (b) except an agreement for the sale or transfer of residential-related property.	8 9 10
(8)	In this section: <i>Australian corporation</i> means a corporation that is incorporated or taken to be incorporated under the <i>Corporations Act 2001</i> of the Commonwealth. <i>new home</i> has the same meaning as in the <i>First Home Owner Grant (New Homes) Act 2000</i> .	11 12 13 14 15
[2]	Section 259C Insurer to obtain small business declaration Omit “in writing” from section 259C (2). Insert instead “provided in a manner approved by the Chief Commissioner”.	16 17 18
[3]	Schedule 1 Savings, transitional and other provisions Omit clause 132.	19 20
[4]	Schedule 1, Part 48 Insert after Part 47:	21 22
	Part 48 Provision consequent on enactment of State Revenue Legislation Amendment (Surcharge) Act 2017	23 24 25
135	Surcharge purchaser duty—new home development by Australian-based developers	26 27
(1)	Section 104ZJA extends to a transfer that occurs before the commencement of that section.	28 29
(2)	The approval of a person as an exempt transferee under section 104ZJA can be given so as to apply to a transfer that occurred before the commencement of that section (a <i>completed transfer</i>) and if that is done the transferee is entitled to a refund of surcharge purchaser duty paid on the completed transfer before the approval was given.	30 31 32 33 34
(3)	If such an approval is revoked, the revocation can extend to a completed transfer with the result that surcharge purchaser duty becomes payable as if the approval had never applied to the transfer and as if liability for duty arose when revocation of the approval was notified.	35 36 37 38

Schedule 2 Amendment of Land Tax Act 1956 No 27

[1] Section 2A Definitions

Insert in alphabetical order:

foreign person has the same meaning as in Chapter 2A of the *Duties Act 1997*.

residential land has the same meaning as in Chapter 2A of the *Duties Act 1997*.

surcharge land tax—see section 5A.

[2] Section 5A Levy of surcharge land tax on residential land owned by foreign persons—2017 and subsequent land tax years

Omit section 5A (6).

[3] Section 5C

Insert after section 5B:

5C Surcharge land tax—new home development by Australian-based developers that are foreign persons

- (1) An Australian corporation is entitled to a refund of an amount of surcharge land tax paid by the corporation in respect of residential land owned by the corporation at midnight on 31 December in a year (the *taxing date*) if the Chief Commissioner is satisfied that:
 - (a) a new home has been constructed on the land by the corporation or a related body corporate (before or after the taxing date) and sold by the corporation after the taxing date to a person who is not an associated person of the corporation without the home having been used or occupied for any purpose (other than as a display home) before the completion of that sale, or
 - (b) the land has been subdivided by the corporation (before or after the taxing date) for the purpose of its use for new home construction and sold by the corporation after the taxing date and after the issue of a subdivision certificate (as referred to in section 109C of the *Environmental Planning and Assessment Act 1979*) for the subdivision.
- (2) The amount of the refund to which an Australian corporation is entitled under this section is the amount that is determined in accordance with an order made by the Treasurer for the purposes of this section and published in the *Gazette*. The amount of the refund may be the full amount of surcharge land tax paid or a lesser amount (as determined in accordance with the order).
- (3) The Chief Commissioner may approve a foreign person as an exempt person for particular land if the Chief Commissioner is of the opinion that the person is likely to become entitled under this section to a refund of the full amount of surcharge land tax payable by the person in respect of the land for a land tax year.
- (4) A foreign person is exempt from liability to pay surcharge land tax in respect of land for a land tax year if the person is approved as an exempt person for the land for that land tax year.
- (5) The approval of a foreign person as an exempt person under this section is subject to the following provisions:
 - (a) an approval may be given for one or more land tax years and can be given for a land tax year before or after the end of the land tax year,

- (b) an approval may be given subject to conditions and the approval operates subject to any such conditions, 1
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- (c) the conditions of an approval may be varied by the Chief Commissioner at any time by notice to the person, 3
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- (d) an approval can be revoked by the Chief Commissioner at any time by notice to the person, 5
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- (e) the revocation of an approval can be backdated to extend to a tax year in respect of which the exemption conferred by the approval has already been applied, in which case surcharge land tax is payable and is to be assessed or reassessed as if the approval had never applied in respect of that tax year. 7
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- (6) Surcharge land tax may be refunded under this section only if an application for the refund is made within 12 months after completion of the sale of the new home or the issue of the subdivision certificate to which the application relates and: 12
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 - (a) if completion of the transfer of the residential land to the Australian corporation concerned occurred before 21 June 2016—not later than 21 June 2021, or 16
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 - (b) in any other case—not later than 10 years after completion of the transfer of the residential land to the Australian corporation concerned. 19
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- (7) In this section: 21
 - associated person** has the same meaning as in the *Duties Act 1997*. 22
 - Australian corporation** means a corporation that is incorporated or taken to be incorporated under the *Corporations Act 2001* of the Commonwealth. 23
24
 - new home** has the same meaning as in the *First Home Owner Grant (New Homes) Act 2000*. 25
26
 - related body corporate** has the same meaning as in the *Corporations Act 2001* of the Commonwealth. 27
28
 - transfer** includes an assignment and an exchange. 29

Schedule 3	Amendment of Land Tax Management Act 1956	1
	No 26	2
[1]	Schedule 2 Savings and transitional provisions	3
	Omit clause 62 (2).	4
[2]	Schedule 2, Part 32	5
	Insert after Part 31:	6
Part 32	Provision consequent on enactment of State	7
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	liability in respect of the 2017 land tax year and subsequent tax years.	12