

[Act 2002 No 108]



New South Wales

## State Revenue Legislation Amendment Bill 2002

### 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* for the following purposes:
  - (i) to prevent double duty being charged on certain declarations of trust,
  - (ii) to make further provision with respect to conversions of land use entitlements, trust mergers, exempt transfers and mortgages, and land-rich corporations,
  - (iii) to make further provision with respect to mortgage duty, including the apportionment of mortgage duty between States (the *Stamp Duties Act 1920* is amended consequentially),
  - (iv) to provide that the Act binds the Crown in certain circumstances,

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\* Amended in committee—see table at end of volume.

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- (v) to include domain names in the list of dutiable property,
  - (vi) to simplify and extend the definition of *public unit trust scheme*,
  - (vii) to make other minor and consequential changes and changes for the purposes of statute law revision,
- (b) to amend the *Land Tax Management Act 1956* and the *Land Tax Act 1956* so as to make further provision with respect to the following:
- (i) tax arrangements for special trusts,
  - (ii) the principal place of residence exemption,
  - (iii) the functions of the Valuer-General,
  - (iv) assessment of land jointly owned or held in partnership,
- (c) to remove certain redundant provisions from pay-roll tax legislation for statute law revision purposes,
- (d) to amend the *Petroleum Products Subsidy Act 1997* to change the subsidy scheme under that Act, and to amend the *Petroleum Products Subsidy (1997 Act) Regulation 1999* consequentially,
- (e) to amend the *Premium Property Tax Act 1998* for statute law revision purposes,
- (f) to amend the *Taxation Administration Act 1996* for the following purposes:
- (i) to make provision for the conduct of investigations by other jurisdictions under a reciprocal power scheme,
  - (ii) to make it clear that the Chief Commissioner and authorised officers may conduct investigations on behalf of other public authorities,
  - (iii) to make further provision for the disclosure of information in connection with taxation investigations,
  - (iv) to make other minor and consequential changes and changes for the purpose of statute law revision.

The Bill also repeals the *Revenue Laws (Reciprocal Powers) Act 1987* and the regulation under that Act as a consequence of the changes to the *Taxation Administration Act 1996* referred to above and amends the *Search Warrants Act 1985* consequentially.

## 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.

**Clause 3** is a formal provision giving effect to the amendments to Acts and instruments set out in Schedules 1–8.

**Clause 4** repeals the *Revenue Laws (Reciprocal Powers) Act 1987* and the *Revenue Laws (Reciprocal Powers) Regulation 2000*.

## **Schedule 1 Amendment of Duties Act 1997**

### **Duty on declarations of trust**

The amendments provide that duty of \$10 is chargeable on a declaration of trust in certain circumstances if the Chief Commissioner is satisfied that the declaration supersedes another declaration in respect of which duty has been paid. The purpose of the provision is to avoid ad valorem duty being charged a second time on an instrument that essentially declares the same trusts, over substantially the same property, as a superseded instrument. See **Schedule 1 [1]**.

### **Exempt transfers and exempt mortgages**

The amendments provide that a transfer of dutiable property that is effected by a written instrument is not liable to duty in certain circumstances if the Chief Commissioner is satisfied that the transfer has been cancelled or abandoned and the dutiable property has not been transferred to the transferee. In such a case the Chief Commissioner is required to reassess and refund any duty paid in respect of the cancelled transfer. See **Schedule 1 [2]**. **Schedule 1 [26]** is a consequential amendment.

The amendments also exempt from mortgage duty any mortgage that secures an amount advanced by an employer (or a related body corporate of an employer) to an employee for the purpose of financing the purchase by the employee of shares in the employer or a member of the employer's corporate group if the total amount advanced does not exceed \$16,000. See **Schedule 1 [23]**.

The amendments also provide that certain consumer credit contracts that are exempt from mortgage duty are not chargeable with mortgage duty (removing any need to have them stamped as exempt). See **Schedule 1 [24]**.

### **Conversion of land use entitlement to different form of title**

At present, nominal duty is chargeable on the conversion of land from company title to strata title, if ad valorem duty was paid when the company title land was acquired, and there is no change in the beneficial ownership of the land as a result of the conversion to strata title.

The amendments allow the concession to apply also to cases where a concessional amount of duty was paid on the original acquisition or the original acquisition was exempt from duty.

The amendments also extend the concession to land held as company title that is converted to Torrens title.

See **Schedule 1 [3]**.

### **Trust mergers**

The amendments exempt from duty a transfer, or an agreement for the sale or transfer, of units in a unit trust scheme if the purpose of the transfer is to give effect to a merger of 2 unit trust schemes or a takeover of a unit trust scheme by another unit trust scheme, and certain other conditions are complied with. See **Schedule 1 [4]**.

### **Constructive ownership of land in land-rich corporations**

At present, the land-rich provisions of the *Duties Act 1997* apply to private corporations (that is, private companies and private unit trust schemes). A private corporation is considered land-rich if it has land holdings in New South Wales the unencumbered value of which is \$1,000,000 or more and its land holdings in all places, whether within or outside Australia, comprise 80% or more of the unencumbered value of all its property.

The amendments make it clear that, in calculating the unencumbered value of the property of a private corporation, property consisting of the following is not to be counted:

- (a) any shares or units in a subsidiary of a private corporation,
- (b) any property consisting of an interest as a beneficiary in a discretionary trust.

This is to ensure that the value of those shares or units, or of the interest, is not used as an avoidance measure to dilute the value of the private corporation's landholding.

See **Schedule 1 [5]**.

### **Mortgage duty changes**

The amendments make changes to the scheme for the imposition of mortgage duties on mortgages that secure property both within and outside New South Wales. The scheme provides for the apportionment of mortgage duty between New South Wales and other jurisdictions. The scheme largely follows the model for imposition

of mortgage duty used by other States, in particular Victoria, Tasmania and Queensland.

As a result of the new scheme, liability for duty in respect of further advances on a mortgage over property that is partly within and partly outside New South Wales is determined by reference to the property used as security at the date the mortgage becomes liable for duty in respect of the further advance, and not the date of first execution of the mortgage. The provisions allow one of several “referable points” to be used to determine the value of the property on the basis of which the amount of duty payable is to be calculated. Each of those referable points relates to documents that have been prepared within the previous 12 months.

The provisions also require a multi-jurisdictional statement to be filed with the Chief Commissioner whenever mortgage duty is imposed on the dutiable proportion of a mortgage (that is, whenever a mortgage relates to property within and outside New South Wales). The statement is treated as a mortgage and may be stamped as if it were the mortgage concerned. This avoids the necessity to have the actual mortgage documentation stamped in multiple jurisdictions.

In addition, the provisions allow a mortgage to be stamped before any advances are made.

The principal amendments are set out in **Schedule 1 [7], [8], [10], [11] and [14]–[16]**. Consequential changes are set out in **Schedule 1 [6], [12], [13], [21] and [31]**.

The savings and transitional provisions ensure that the changes to the mortgage duty scheme extend to mortgages executed before the commencement of the amendments. Accordingly, if a further advance is made in respect of a mortgage executed before the commencement of the amendments, duty is to be assessed in accordance with the new provisions. This arrangement is to extend to certain securities executed between 1 January 1975 and 1 July 1998 that are currently covered by the *Stamp Duties Act 1920*. The *Stamp Duties Act 1920* is amended consequentially. See **Schedule 1 [29] and [30]** and **Schedule 6**.

### **Refinancing of loans**

At present, a duty concession applies to refinancing mortgages. Refinancing mortgages are mortgages that secure the amount of the balance outstanding under an earlier mortgage, created to secure an advance to the same borrower over the same or substantially the same property or part of it. In some cases, such as if a borrower under an earlier mortgage dies or is divorced, the remaining borrowers under the mortgage may still claim the benefit of the refinancing concession. The amendments extend the concession to members of the same corporate group. For consistency, a similar amendment is made to the existing concession.

It is also made clear that the earlier mortgage must be discharged as part of the refinancing arrangements in order to receive the benefit of the concession.

See **Schedule 1 [17]–[20]**.

### **Act to bind the Crown**

The amendments provide that the *Duties Act 1997* binds the Crown in right of New South Wales and, in so far as the legislative power of the Legislature of New South Wales permits, the Crown in all its other capacities. However, the Crown in right of New South Wales will not be liable for duty unless the Act or any other Act expressly imposes a liability.

See **Schedule 1 [27]**. **Schedule 1 [22] and [25]** are consequential amendments.

### **Domain names**

The amendments make it clear that domain names are considered to be intellectual property and, accordingly, are dutiable property for the purposes of the Act.

See **Schedule 1 [33]**.

### **Definition of “public unit trust scheme”**

Public unit trust schemes are excluded from the operation of the land-rich provisions of the *Duties Act 1997*. Public unit trust schemes are unit trust schemes that are essentially public in nature, such as unit trust schemes the units of which are listed for quotation on the Australian Stock Exchange or a recognised stock exchange.

The amendments simplify the definition of *public unit trust scheme*, in particular by omitting references to the *Corporations Law* and *Corporations Act 2001* of the Commonwealth. The amendments also ensure that unit trust schemes in respect of which a majority of the units are acquired by, for or on account of other public unit trust schemes are also considered to be public unit trust schemes.

See **Schedule 1 [34]**.

### **Other amendments**

Amendments are made to the Dictionary of the Act, for statute law revision purposes, so as to omit redundant definitions and to correct a cross-reference.

See **Schedule 1 [32] and [35]**.

The amendment set out in **Schedule 1 [9]** is also made for statute law revision purposes.

**Schedule 1 [28] and [30]** provide for savings and transitional matters.

## **Schedule 2 Amendment of land tax legislation**

### **Tax arrangements for special trusts**

Land that is the subject of a special trust is taxed differently from other land. The owner of land that is the subject of a special trust is not entitled to the benefit of the tax free threshold and instead is liable to a flat rate of land tax. The purpose of the different approach is to prevent the use of trusts as a land tax avoidance measure.

The amendments replace the definition of *special trust* so that a trust that includes land will be considered to be a special trust if it is not a fixed trust. A trust is defined as a fixed trust if the equitable estates in all of the land are owned by persons who would be considered to be owners of the land for land tax purposes (which enables those equitable owners to be assessed for land tax under the secondary assessment provisions of the Act).

Certain trusts are excluded from the definition of special trust. These include charitable trusts, certain types of superannuation trusts and concessional trusts. *Concessional trusts* are defined as certain trusts where each person nominated as a potential or actual beneficiary under the trust is a person under the age of 18 years, a person who is the subject of a guardianship order or a person in the target group within the meaning of the *Disability Services Act 1993*.

The amendments require the trustee of a trust that includes land to provide to the Chief Commissioner, in the trustee's land tax return, information about the trust and the beneficiaries of the trust (for the purpose of assessing whether it is a special trust).

The Chief Commissioner will be able to classify the trust as a special trust for land tax purposes. The arrangements for classification of trusts as special trusts will replace arrangements, introduced by the *State Revenue Legislation Further Amendment (No 2) Act 2001*, for the classification of trusts as non-concessional trusts.

Land that is the subject of a special trust is also excluded from the principal place of residence exemption (see below).

The principal amendments are set in **Schedule 2.2 [5], [18] and [23]**. Consequential amendments are set out in **Schedule 2.1** and **Schedule 2.2 [1]–[3] and [22]**.

### **Principal place of residence exemption**

At present, land that is occupied as the principal place of residence of the owner of the land is exempt from land tax in certain circumstances.

The amendments make further provision with respect to the principal place of residence exemption for the purpose of grouping together the various exceptions to that exemption. The amendments also:

- (a) make it clear that land that is the subject of a concessional trust may fall within the principal place of residence exemption, even if the trustee that owns the land is a company, if the person, or any of the persons, who use and occupy the land as the person's principal place of residence is a beneficiary under the trust, and
- (b) provide that land that is the subject of a special trust (as referred to above) does not fall within that exemption.

The principal amendment is set out in **Schedule 2.2 [15]**. Consequential amendments are set out in **Schedule 2.2 [10]–[14]**.

### **Functions of Valuer-General in respect of land tax**

At present, section 9C of the *Land Tax Management Act 1956 (the Act)* provides that, for the purposes of assessing land tax, the land value of land on which a flat is situated is to be reduced by the “allowable proportion”. Section 9C (2) provides that the allowable proportion is to be:

- (a) determined by a formula set out in the subsection if there is an “apportionment factor” entered in the Register of Land Values (under the *Valuation of Land Act 1916*) in respect of the land, or
- (b) if there is no such apportionment factor—the proportion specified in an application for reduction under section 9C as the fair and reasonable proportion of the land value of the land to be attributed to the flat.

However, section 9C (2) (c) provides that, if the Chief Commissioner of State Revenue is not satisfied as to the fairness and reasonableness of the proportion specified in such an application, the “allowable proportion” is to be the proportion that the floor area of the flat bears to the total floor area (including the floor area of the flat) of all the buildings on the land on which the flat is situated.

The proposed amendments enable the Chief Commissioner to request the Valuer-General to determine the reduced land value to be attributed, for the purposes of assessing land tax, to the flat concerned. The Valuer-General is required to comply with any such request. Provision is made for objections and appeals in relation to the reduced value so determined.



Section 10R of the Act makes provision similar to section 9C in respect of land partially used and occupied as a retirement village or a retirement village and a nursing home. That section is amended in a similar manner.

Similar amendments are also made to section 21C of the Act, which provides for liability for land tax in respect of land leased from the Crown.

See **Schedule 2.2 [8], [9], [16], [17] and [21]** and the consequential amendments set out in **Schedule 2.2 [6], [7], [19] and [20]**.

### **Assessment of land jointly owned or held in partnership**

**Schedule 2.2 [25]** modifies the provisions of the *Land Tax Management Act 1956* relating to secondary assessment where jointly owned land is partly used for a residence for one of the joint owners and partly used for other purposes. The purpose of the change is to make it clear that joint owners are liable for tax, at the secondary level, on their separate interest in the value of the land, excluding the value of the flat. **Schedule 2.2 [24]** is a consequential amendment.

**Schedule 2.2 [26]** omits a provision of the *Land Tax Management Act 1956* that deems land separately owned by persons who are in partnership to be jointly owned by those partners for land tax assessment purposes.

### **Other amendments**

**Schedule 2.2 [27] and [28]** provide for savings and transitional matters.

**Schedule 2.2 [4]** also provides for the use of notes in the *Land Tax Management Act 1956*.

## **Schedule 3 Amendment of pay-roll tax legislation**

The amendments omit, for statute law revision purposes, redundant provisions of the *Pay-roll Tax Act 1971* and the *Pay-roll Tax Regulation 1998* relating to an account and fund that are no longer in operation.

## **Schedule 4   Amendment of petroleum products subsidy legislation**

### **Principal amendments to Act**

The *Petroleum Products Subsidy Act 1997* provides a scheme for the payment of subsidies to registered persons in respect of certain petroleum products that are sold or consumed by them. It is proposed to make a number of changes to that scheme.

The amendments remove the provision for consumers of petroleum products to be registered under the scheme. Subsidies will be payable only to persons who sell petroleum products by wholesale or retail. Those persons must be registered under the scheme.

The subsidy will be payable only in respect of the following sales of petroleum products:

- (a) a sale of petroleum products by retail by a zone retailer (a person who sells petroleum products by retail on premises within a zone in respect of which subsidies are payable), if the petroleum products are delivered into the running tank of a road vehicle at the premises of the zone retailer,
- (b) a sale of petroleum products by retail to a zone consumer (a person who consumes petroleum products in connection with a business or activity that is conducted on premises within a zone in respect of which subsidies are payable), if the petroleum products are delivered to the premises of the zone consumer and are consumed in the course of that business or activity.

The zones in respect of which subsidies are payable are currently defined in the regulations under the Act. They are located in the NSW-Queensland border area.

In general, a registered person who is a wholesaler of petroleum products will be able to claim a subsidy in respect of petroleum products sold by them, if the petroleum products are to be sold by retail by one of the methods referred to above. If the wholesaler is not entitled to claim the subsidy, it may be claimed by the retailer.

Sellers of subsidised petroleum products will be required in certain circumstances to give the purchaser a notice (in the form of an invoice) containing certain information about the sale, including that a subsidy has been claimed or is to be claimed in respect of the sale. If a subsidy has been claimed or is to be claimed by a registered person in respect of the petroleum products it will be an offence to sell or consume them otherwise than for the purposes in respect of which a subsidy is

payable. The offence will not apply if the subsidy payable in respect of the petroleum products is repaid to the Chief Commissioner after the petroleum products are sold or consumed.

In addition, in the case of subsidised diesel fuel, the diesel fuel:

- (a) must be delivered, at the time of retail sale, into the running tank of a road vehicle, or
- (b) must be consumed for on-road purposes.

It will also be an offence for a person to falsely represent, in connection with a purchase of petroleum products from a registered person, that the person is a zone retailer or a zone consumer.

The principal amendments are set out in **Schedule 4.1 [1], [3], [5], [9], [10] and [19]**.

#### **Other amendments to Act**

The amendments also:

- (a) transfer various provisions (relating to the maximum subsidy payable, the making of claims for subsidies and powers of investigation) from the *Petroleum Products Subsidy (1997 Act) Regulation 1999* to the Act, and
- (b) omit provisions that require the purchaser of subsidised petroleum products to refund a subsidy to the seller in certain circumstances, and
- (c) omit provisions that allow subsidy payments to be claimed and paid to another person on behalf of the registered person entitled to it, and
- (d) omit provisions that confer certain enforcement powers in connection with the transportation of petroleum products, and
- (e) allow the Chief Commissioner to require a person who has been registered under the Act on the Chief Commissioner's own motion to lodge an application for registration under the Act, and
- (f) require applications for registration to be made in a form approved by the Chief Commissioner, and
- (g) provide for the addition of notes to the Act, and
- (h) provide for savings and transitional matters, and
- (i) make other minor and consequential amendments.

See **Schedule 4.1 [2], [4], [6]–[8], [11]–[18], [20] and [21]**.

### **Amendment of Petroleum Products Subsidy (1997 Act) Regulation 1999**

Amendments are made to the *Petroleum Products Subsidy (1997 Act) Regulation 1999* as a consequence of the amendments described above. In addition, provision is made for the keeping of records in connection with petroleum products that are sold or consumed by registered persons, zone retailers or zone consumers.

See **Schedule 4.2**.

### **Schedule 5 Amendment of Premium Property Tax Act 1998**

The amendments update a reference to a local government area for statute law revision purposes.

### **Schedule 6 Amendment of Stamp Duties Act 1920**

The amendments are consequential on the changes to mortgage duty provisions of the *Duties Act 1997* set out in **Schedule 1**. The amendments provide that the *Stamp Duties Act 1920* no longer applies in respect of advances made after the commencement of the changes if they are secured by a loan security, and provides for the making of savings and transitional regulations.

### **Schedule 7 Amendment of Taxation Administration Act 1996**

#### **Investigations for the purposes of recognised revenue laws**

The amendments allow the Chief Commissioner to enter into agreements with the corresponding Commissioner of another jurisdiction under which:

- (a) the corresponding Commissioner is authorised to exercise the investigative and enforcement powers conferred on the Chief Commissioner and authorised officers by the *Taxation Administration Act 1996* for the purposes of a recognised revenue law in force in that jurisdiction, or
- (b) the Chief Commissioner is authorised to exercise those functions on behalf of the corresponding Commissioner for the purposes of such a recognised revenue law.

The amendments replace the arrangements currently in place under the *Revenue Laws (Reciprocal Powers) Act 1987*, which is repealed by clause 4 of the Bill.

See **Schedule 7 [5]** and the consequential amendments set out in **Schedule 7 [1]–[3], [6], [7] and [9]**. A further consequential amendment is set out in **Schedule 4.1 [17]**.

### **Investigations for the purposes of non-taxation laws**

The amendments make it clear that the Chief Commissioner or an authorised officer may exercise investigative functions conferred or imposed on them by or under a non-taxation law. The functions may be exercised in conjunction with investigative functions conferred by the *Taxation Administration Act 1996*. The Chief Commissioner may enter into arrangements with public authorities in connection with the exercise of those functions (for the payment of a fee or otherwise).

See **Schedule 7 [5]** and the related amendment set out in **Schedule 7 [11]**.

### **Disclosure of taxation information**

The amendments update and re-enact the provisions of the Act relating to authorised disclosures of taxation information. They also make it clear that the disclosure of information obtained in connection with investigative functions exercised under non-taxation laws is governed by the law under which the information was obtained.

See **Schedule 7 [8] and [11]** and the consequential amendment set out in **Schedule 7 [10]**.

### **Other amendments**

The amendments correct a reference to the person from whom material is obtained under the Act in the exercise of a power of entry, for statute law revision purposes. See **Schedule 7 [4]**.

A transitional provision is included in relation to amendments made to the Act by the *State Revenue Legislation Amendment Act 2001*. See **Schedule 7 [13]**.

Provision is also made for the making of savings and transitional regulations as a consequence of the amendments set out in the Bill. See **Schedule 7 [12]**.

## **Schedule 8 Consequential amendment**

**Schedule 8** amends the *Search Warrants Act 1985* as a consequence of the repeal of the *Revenue Laws (Reciprocal Powers) Act 1987* by clause 4.