

STAMP DUTIES (FURTHER AMENDMENT) BILL 1989

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

This Bill is cognate with the Pay-roll Tax (Amendment) Bill 1989.

The object of this Bill is to amend the Stamp Duties Act 1920:

- (a) to make a minor amendment to the powers of the Chief Commissioner of Stamp Duties to assess and charge duty; and
- (b) to abolish stamp duty on a number of instruments where the duty has deteriorated to the status of a nuisance tax; and
- (c) to clarify, in 2 minor respects, the application of the provisions of Division 24 of Part 3 relating to insurance; and
- (d) with respect to the amount of financial institutions duty payable on receipts of a single amount of not less than \$1,000,000; and
- (e) to update the objection and appeal provisions of the Act to provide for appeals by summons along the lines of the Business Franchise Licences (Petroleum Products) Act 1987.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Clause 3 is a formal provision that gives effect to the Schedule of amendments to the Principal Act.

SCHEDULE 1 - AMENDMENTS

Assessing and charging duty

Under section 19, a dutiable instrument is to include, fully and truly within it, the facts and circumstances affecting its liability to duty. However, the Chief Commissioner is not prevented from assessing and charging a greater amount of duty

Stamp Duties (Further Amendment) 1989

than would appear to be chargeable and assessable by reference to the language and contents of the instrument.

Schedule 1 (1) amends section 19 to empower the Chief Commissioner to assess and charge a greater or a lesser amount.

Abolition of stamp duty on certain instruments

Schedule 1 (2) and (10) (a) - (f) provide for the abolition of stamp duty on the following instruments:

- * Bill of lading or receipt
- * Charter party
- * Letters of allotment and letters of renunciation
- * Companies - memorandum and articles of association
- * Award - whether under hand or seal
- * Duplicate or counterpart of an agreement for the hire of a motion picture film
- * Agreement for the hire of an electricity, gas or water meter

Instruments under the Real Property Act 1900, being:

- * Application by tenant in tail for entry of title in fee simple
- * Release or disclaimer of power
- * Application for discharge or modification of restrictive covenant
- * Application for entry of an estate in fee simple in enlargement of a long term under section 134 of the Conveyancing Act 1919
- * Application to cancel notifications of leases or underleases as upon merger

Insurance

Schedule 1 (3), (4) and (5) amend, in 2 minor respects, sections 88, 88C and 88D. The amendments effected by Schedule 1 (3), (4) (a) and (5) make amendments to cause the exemption granted in relation to insurance risks occurring outside New South Wales to be uniformly expressed in sections 88, 88C and 88D. The amendment effected by Schedule 1 (4) (b) extends the existing power of the Chief Commissioner of Stamp Duties to apportion an insurance premium where part of the property to which the insurance relates is outside New South Wales or where part of the insurance risk can only occur outside New South Wales so as to include insurance disclosed in a return to which section 88D applies.

Financial institutions duty

At the present time, financial institutions duty is payable on dutiable receipts at the rate of 0.03 per cent, but if the amount received is a single amount of not less than \$1,000,000, the total amount of duty payable is \$300.

As from 1 December 1989, the amendments effected by Schedule 1 (6) and (10) (g) and (h) will increase the single amount to an amount of not less than \$2,000,000 and provide that the total amount of duty payable will be \$600.

Stamp Duties (Further Amendment) 1989

These amendments give effect to an announcement made by the Premier and Treasurer when delivering the 1989 Budget.

Schedule 1 (6) amends sections 98J, 98K, 98L and 98LA to provide that various returns required to be lodged to enable the assessment of duty are to include the number of single amounts received of not less than \$2,000,000.

Schedule 1 (10) (g) and (h) amend the Second Schedule to increase the amount of the single receipt and the amount of duty payable in relation to such a receipt in the manner described above.

The amendments relating to financial institutions duty do not apply to dutiable receipts that are received before the date of commencement of the amendments, namely, 1 December 1989. (Schedule 1 (11) - proposed clause 10 of the Tenth Schedule).

Objections and appeals

Schedule 1 (7) - (9) update provisions dealing with objections and appeals against assessment of duty and calculation of refunds of duty under the Act. Currently, a dissatisfied objector has a right to require the Chief Commissioner to state a case for decision by the Supreme Court. Under the new provisions, a dissatisfied objector can appeal directly to the Supreme Court by filing a summons as provided in Part 51A of the Supreme Court Rules. The appeal cannot proceed unless the objector has given the Chief Commissioner the information requested in connection with the matter. If the objector is successful, the Chief Commissioner is required to pay interest on any duty that was overpaid or refund that was underpaid.

The onus of establishing that tax is incorrectly assessed or a refund incorrectly refused is placed on the objector.

Provision is also made to enable the Chief Commissioner to state a case on a question of law for decision by the Supreme Court.

Schedule 1 (7) amends section 124 (1) to make it clear that an objection with respect to the refunding of tax may be made only with respect to the amount of the refund calculated by the Chief Commissioner.

The new provisions will apply to an objection made before they commenced unless a case stated to the Supreme Court has already been stated or the time for stating a case has expired. (Schedule 1 (11) - proposed clause 11 of the Tenth Schedule).
