

Act 1994 No. 72

**STATE REVENUE LEGISLATION (FURTHER AMENDMENT)
BILL 1994***

NEW SOUTH WALES



EXPLANATORY NOTE

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

The object of this Bill is to make miscellaneous amendments to the following State revenue and other Acts:

- Debits Tax Act 1990
- Land Tax Management Act 1956
- Pay-roll Tax Act 1971
- Stamp Duties Act 1920
- Strata Titles Act 1973
- Strata Titles (Leasehold) Act 1986.

The amendments are explained below in detail in relation to each Act amended.

DEBITS TAX ACT 1990

This Act is amended to exempt from debits tax the debits of a company that establishes its regional headquarters in New South Wales after 1 July 1995 (**clause 3** and **Schedule 1**). The criteria for exemption is linked to that contained in section 83CE of the Income Tax Assessment Act 1936 of the Commonwealth. Other tax concessions are granted to these companies in relation to loan security duty and financial institutions duty in the amendments made to the Stamp Duties Act 1920 (**Schedule 4 (13)** and **(28) (b).**)

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

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LAND TAX MANAGEMENT ACT 1956

Non-residential strata schemes

At present, owners of non-residential strata title units are liable for a proportion of the tax levied on the land value of the whole of the land that is subject to a strata scheme. That is, a single threshold (currently \$160,000) is applied to the whole of the land. Each owner is also taxed on his or her individual interest in a strata scheme together with any other taxable interests in land, and a deduction is allowed in respect of the owner's proportion of the tax payable on the strata scheme to prevent double taxation.

In contrast, owners of residential strata units are taxed on the value of their individual units in a strata scheme (together with any other interests in land).

It is proposed to change the way in which non-residential strata units are taxed, to bring the approach into line with the method of taxing residential strata units, with effect for the 1995 land tax year and subsequent years.

The land tax provisions for land subject to strata schemes are currently in the Strata Titles Act 1973 and the Strata Titles (Leasehold) Act 1986. It is proposed that these provisions be transferred to the Land Tax Management Act 1956.

Schedule 2 (1) inserts the taxing provision into the Land Tax Management Act 1956 and **clauses 7** and **8** repeal the taxing provisions currently found in the Strata Titles Act 1973 and the Strata Titles (Leasehold) Act 1986. Schedule 2 (4) and (5) make consequential amendments.

Land used to maintain endangered animals

It is proposed to provide an exemption for land that is used primarily for the maintenance of endangered animals (including birds) that are native to Australia, for the purpose of assisting in the preservation of those species. Such land would qualify for the exemption applying to primary production land but for the fact that the animals produced are not sold, but are provided free of charge, either to zoos or for release into national parks. It is therefore proposed to exempt land used primarily for the maintenance of endangered species, if the Director-General of National Parks and Wildlife approves of the maintenance of the animals, and provided any conditions specified by the Director-General are met (**Schedule 2 (2)**).

Low cost accommodation

Under section 10Q of the Land Tax Management Act 1956, land used and occupied primarily as a boarding-house for persons with low incomes is exempt from land tax, subject to guidelines approved by the Treasurer being met. Section 10Q is substituted to extend the exemption to all forms of low cost accommodation, again, subject to the Treasurer's guidelines being met (**Schedule 2 (3)**).

PAY-ROLL TAX ACT 1971

Increase in tax-free threshold

The current pay-roll tax general exemption annual threshold of \$500,000 is to be increased to \$550,000 from 1 January 1995 (that is, \$525,000 for the 1994/95 tax year) which is an average of \$500,000 for 6 months, from 1 July to 31 December 1994, and \$550,000 for 6 months, from 1 January to 30 June 1995.

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The annual threshold is to be increased to \$600,000 from 1 January 1996 (that is, \$575,000 for the 1995/96 tax year) which is an average of \$550,000 for 6 months, from 1 July to 31 December 1995, and \$600,000 for 6 months, from 1 January to 30 June 1996. The annual threshold for 1996/97 will be \$600,000.

Schedules 2, 3, 4 and 5 of the Pay-roll Tax Act 1971 are omitted with effect from 1 January 1995, and are replaced with a new Schedule 1 relating to the 1994/95 tax year, and new Schedule 2 relating to the 1995/96 and subsequent tax years.

The amendments are contained in **Schedule 3**.

STAMP DUTIES ACT 1920

Intergenerational rural transfers

Following requests from the rural sector for relief from stamp duty on the transfer of family farms from parents to younger generations, the Treasurer announced in the 1994 Budget that relief would be provided from 14 September 1994. Certain eligibility criteria and controls will be introduced by way of guidelines by the Treasurer to ensure that the exemption benefits those persons who wish to remain in the rural sector (**Schedule 4 (3)—proposed** section 66H).

Threshold for hiring arrangement duty

It has been determined as inequitable that persons who receive less than \$6,000 per month income from hiring goods are not required to pay hiring arrangement duty if they are approved to pay duty by return by the Chief Commissioner, whereas a person who receives a small amount over \$6,000 pays duty on the total amount received.

Consequently, it is proposed to provide that, in respect of persons or groups approved to pay hiring arrangement duty by return, only amounts received in excess of \$6,000 per month will attract duty (**Schedule 4 (6)**).

Superannuation funds

As a result of the introduction of the Superannuation Industry (Supervision) Act 1993 of the Commonwealth (the SIS Act), much of which came into effect from 1 July 1994, the trusteeship and custodial arrangements of many superannuation funds, approved deposit funds and pooled superannuation funds are under review. The SIS Act no longer allows for the division of responsibilities between a manager and a trustee and places eligibility criteria on trustees and custodians that previously were not required. Furthermore, it is expected that, as a matter of prudence, most superannuation funds will want to document custody arrangements. The content of these documents is not standard and they may contain declaration of trust provisions that, unless a concession is given, may attract ad valorem duty.

In view of the current concessions available to superannuation funds in Division 19 of Part 3 of the Stamp Duties Act 1920, it is considered that concessional treatment should be given to the documents that are now required to be executed by funds to comply with the provisions of the SIS Act. This is done by the amendments made by **Schedule 4 (8), (9) and (10)**.

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Loan security duty—bill facilities

It has been argued that the current definitions for the purposes of Division 21 (Loan securities) of Part 3 of the Stamp Duties Act 1920 do not catch acceptance-only bill facilities although it has always been the intention that all bill facilities be caught. The definitions of “Advance”, “Bill facility” and “Financial accommodation” in section 83 are amended to make it clear that such bill facilities are caught by the definitions and do involve the making of advances in respect of which loan security duty must be paid (**Schedule 4 (11)**).

Home loan refinancing

Section 84CAC of the Stamp Duties Act 1920 contains an exemption for home loan refinancing that expired on 30 June 1994. A Variation to Statute was approved by the Acting Treasurer on 11 July 1994 extending that concession until 31 December 1994. **Schedule 4 (12)** gives effect to the Variation to Statute.

Regional headquarters

Proposed section 84EBA is to be inserted into the Stamp Duties Act 1920 and section 98A of that Act is to be amended to exempt from stamp duty the loan securities and receipts, respectively, of a company that establishes its regional headquarters in New South Wales after 1 July 1995 (**Schedule 4 (13)** and **(28) (b)**). The criteria for exemption is linked to that contained in section 83CE of the Income Tax Assessment Act 1936 of the Commonwealth. The debits of these companies are to be exempt from debits tax by an amendment made to the Debits Tax Act 1990 (clause 3 and **Schedule 1**).

Options

Generally with marketable securities, as with the acquisition of property, stamp duty is chargeable on the value or consideration, whichever is the greater. However, in the case of a marketable security transaction by a broker, the Stamp Duties Act 1920 (section 97AB (1)) only charges duty on the consideration paid. With the expansion of derivative products there are many share trades where options are exercised. With some options the premium was “deep in the money” to the extent that the premium for the option exceeded the purchase price. At present, stamp duty is only chargeable on the exercise price. This produces a result that is inequitable and inconsistent with the operation of stamp duty. Consequently, the Stamp Duties Act 1920 is amended by **Schedule 4 (17) (a)** to provide that marketable securities acquired through the exercise of an option will be charged with stamp duty on either the premium paid in respect of the option or the consideration, whichever is the greater. This amendment will ensure parity with normal option transactions which are weighted to the exercise price.

FID on brokers’ transactions

Currently the Stamp Duties Act 1920 provides an exemption for share brokers (being a non-bank financial institution) from financial institutions duty (FID) where marketable securities duty has been paid on receipts from the transaction. However, where there is an exemption from marketable securities duty, there is an exposure to FID.

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Currently there are 3 areas of exemption from marketable securities duty:

- (a) principal trading by brokers within 10 days (section 97AB (2));
- (b) hedging by options and futures traders who are making a market by trading in physical stock within 3 months (sections 97ADA and 97ADD, respectively);
- (c) hedging by warrant issuers who trade in physical stock during the term of a warrant or within 30 days of the date of the exercise of the warrant (section 97ADG).

Because of the accounting procedures of brokers and the complexities of FID, particularly in relation to “short term dealings”, a simpler system of taxing broker transactions is necessary. It is proposed to impose a duty of 0.0025% on brokers’ principal trading and market makers hedging against a futures or options contract or a warrant obligation in lieu of the current exemptions above. The time limit in paragraph (a) above is extended to 3 months.

The amendments are made by **Schedule 4 (17) (b)** and **(18)–(26)**.

Schedule 4 (27) (a)–(e) and **(g), (29)** and **(30) (a)** make consequential amendments to the broker provisions in Division 29 of Part 3 of the Stamp Duties Act 1920.

Farm Household Support Scheme

The Farm Household Support Scheme established under the Farm Household Support Act 1992 of the Commonwealth provides assistance for farmers who are unable to meet day to day living expenses and cannot obtain commercial loans. It also provides a financial incentive for farmers to leave the industry. As all social security and veteran’s affairs pensions are exempt from financial institutions duty, it has been decided that a similar exemption should apply to the payments made under the Farm Household Support Act 1992. The exemption is effected by the amendment made by **Schedule 4 (28) (b)**.

Newcastle Chamber of Fruit and Vegetables Industry Co-operative Limited

The Newcastle Chamber of Fruit and Vegetables Industry Co-operative Limited operates a bank account that receives funds from the sale of produce at the Newcastle Regional Markets. Those funds are then passed on to the growers or sellers of the produce. The Treasurer has been requested to approve an exemption from financial institutions duty for the funds passing through this account as a similar exemption has been granted in respect of the Flemington Produce Markets (clause 17D of the Stamp Duties (Financial Institutions Duty) Regulation 1982).

The exemption is effected by the amendment made by **Schedule 4 (30) (b)**.

MasterCard International Inc.

MasterCard has established the Australian Processing Centre (APC) to provide settlement services for the use of credit and debit cards issued by banks in Australia and New Zealand.

The current FID legislation exempts general customary accounts between banks in relation to the clearance of cheques. In relation to credit and debit card transactions, there is no “clearance” of paper between banks, merely the settlement of net balances. The legislation also exempts settlement accounts held on behalf of various non-bank financial institutions. The APC is merely another form of settlement between banks which should not be subject to FID.

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Schedule 4 (30) (b) makes an amendment to exempt from FID an account of MasterCard International Inc. which is a settlement account for credit and debit card transactions.

Taxline

The Taxline scheme (sections 38D–38F of the Stamp Duties Act 1920) has commenced. This will result in participants in the scheme collecting stamp duty from clients and placing it in a bank account from which the electronic debit will be made by the Office of State Revenue. It has been determined that the payment of FID on this money would be a disincentive for persons considering using Taxline and that consequently an exemption should be provided.

Schedule 4 (30) (b) makes an amendment to grant an exemption from FID for receipts of money paid to dedicated accounts of Taxline participants where that money was collected for the payment of stamp duty.

Electricity distributors

General exemptions (14) and (19) in the Second Schedule to the Stamp Duties Act 1920 currently contain exemptions from certain duties for county councils within the meaning of the Local Government Act 1993. Due to changes to a number of Acts, some county councils are no longer constituted under the Local Government Act 1993 but are constituted as statutory authorities under the Electricity Act 1945.

The Stamp Duties Act 1920 is amended by **Schedule 4 (32) (a)–(c)** and **(e)** to provide the exemptions from duty that these bodies previously enjoyed.

The Treasurer has approved a Variation to Statute to administer the Act on this basis from 1 July 1993.

Local government councils and aboriginal land councils—insurance duty

In 1989, the method of charging stamp duty on policies of insurance was changed from a charge on an instrument to a charge on the premium received by the insurance company.

While the main body of the Stamp Duties Act 1920 was amended to reflect this change, 2 exemptions from policies of insurance duty contained in the General Exemptions in the Second Schedule to the Act were not changed and, therefore, technically the exemption has not applied since that date.

General exemption (19) relating to local government councils and general exemption (29) relating to aboriginal land councils are amended by **Schedule 4 (32) (d), (f), (g)** and **(k)** to reinstate the exemption previously enjoyed by these bodies by bringing the exemption into line with the changed method of calculating duty.

It is proposed to reinstate these exemptions as from 1 November 1989.

Exemption for Unions following incorporation

The Industrial Relations Act 1991 repealed the Industrial Arbitration Act 1940 and the Trade Union Act 1881 and contained changes that result in a stamp duty liability for certain organisations. The essential change is that organisations are required to incorporate in order to be registered under the Industrial Relations Act 1991. The incorporation of existing organisations involves the conveyance of property from organisations classified either as a “continued unincorporated industrial organisation” or a “continued non-industrial organisation” to an “industrial organisation” or “non-

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industrial organisation” as defined in the Industrial Relations Act 1991. It is considered that duty should not be payable in connection with any such conveyance. This is achieved by the amendments made by **Schedule 4 (32) (h)** and **(i)**.

General Exemption 26 (b) in the Second Schedule to the Stamp Duties Act 1920 is amended by deleting the reference to the Industrial Arbitration Act 1940 and by replacing it with a reference to the Industrial Relations Act 1991 in order to extend the stamp duty exemption to cover amalgamations and mergers of unions and other organisations (**Schedule 4 (32) (i)**).

Section 84G (1) of the Stamp Duties Act 1920 is amended to include an exemption from stamp duty for a motor vehicle certificate of registration issued as a result of the transfer of a motor vehicle from a continued unincorporated industrial organisation or a continued non-industrial organisation to an industrial organisation or non-industrial organisation in compliance with the incorporation provisions of the Industrial Relations Act 1991 (**Schedule 4 (14)**).

Deeds of release—HomeFund

In an attempt to settle complaints against HomeFund, a monetary offer has been made to complainants. Should they accept the offer, it will be necessary for them to sign a deed of release agreeing to withdraw all actions against the HomeFund Commissioner. It is not considered appropriate to charge persons accepting the Government’s offer stamp duty on the deed of release. Consequently, an exemption is to be provided by the amendment made by **Schedule 4 (32) (l)**.

Transfer of a principal place of residence

Section 73AA of the Stamp Duties Act 1920, together with Schedule 2D to that Act, provide an exemption from stamp duty for the transfer of a principal place of residence, under certain circumstances. There are three categories of exemption in Schedule 2D:

- (a) conveyance from a corporation to principal shareholder or spouse (clause 4);
- (b) conveyance from special trust to a beneficiary (clause 5);
- (c) conveyance from a corporation to beneficiaries of a special trust (clause 6).

In all cases the land must have been owned by the transferor on 11 September 1990 and must be land that was used solely as the transferee’s principal place of residence in the year in which the conveyance occurred.

As from 14 September 1994, a reduction will be allowed in the value for stamp duty purposes of land that is subject to a reduction in land value for land tax purposes under section 9C of the Land Tax Management Act 1956 (that is, land that is not solely used as a principal place of residence).

Schedule 4 (33) (e) makes the main amendments and **Schedule 4 (5)** and **(33) (a)** make consequential amendments.

Minor amendments

The amendment made by **Schedule 4 (1) (a)** is an amendment by way of statute law revision. It omits duplicated words.

The amendment made by **Schedule 4 (1) (b)** makes it clear that the definition of “NSW company” includes, not only a company incorporated or taken to be incorporated under the Corporations Law of New South Wales, but also a company incorporated under any other New South Wales Act (provided that the company is not

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incorporated or taken to be incorporated under the Corporations Law of another State or a Territory of the Commonwealth).

The amendment made by **Schedule 4 (2)** is an amendment by way of statute law revision. It omits an unnecessary provision.

The amendment made by **Schedule 4 (4)** clarifies the circumstances in which the concessional duty of \$10 applies to a transfer of a marketable security by a trustee or manager of the security back to a person having a beneficial interest in the security.

The amendment made by **Schedule 4 (7)** is to clarify the meaning of section 78FA of the Stamp Duties Act 1920. Section 78FA provides an exemption from stamp duty for leases by a corporation, society or institution to aged and disabled persons provided that the lease has not been granted for profit. Many taxpayers interpret this exemption to mean that, provided that the lessee has not taken the lease with a view to making a profit, they should receive an exemption from stamp duty. The intention of the Act was to grant relief to the lessors or the corporations, societies and institutions, which usually are charitable bodies providing accommodation to those in need. The amendment makes this intention clear.

The amendments made by **Schedule 4 (15)** and **(31)** are amendments by way of statute law revision. When changes were made to the marketable securities provisions of the Stamp Duties Act 1920 by the State Revenue Legislation (Amendment) Act 1994, the stamp duty rate was changed from 6 cents per \$10 to 60 cents per \$100. The amendments complete these changes.

The amendment made by **Schedule 4 (16)** is an amendment by way of statute law revision that inserts missing words.

The amendment made by **Schedule 4 (27) (f)** relates to the definition of “rollover” for the purposes of financial institutions duty. The State Revenue Legislation (Amendment) Act 1994 contained a definition of rollover for the purposes of the FID provision in the Stamp Duties Act 1920. By way of intended clarification the definition contained words to the effect that a rollover included amounts “with or without interest”. These words have unintentionally caused confusion in the interpretation of the legislation. It was never intended that interest accrued during the last term of a term deposit should be excluded from the payment of FID at the normal rate of 0.06%. Consequently, to provide greater clarification and certainty to the provisions it is proposed to delete any reference to interest in the definition of rollover in section 98 (1).

The amendment made by **Schedule 4 (28) (a)** is an amendment by way of statute law revision that corrects a wrong cross-reference.

The amendments made by **Schedule 4 (33) (b), (c)** and **(d)** relate to the exemption granted by Schedule 2D to the Stamp Duties Act 1920 in respect of persons who wish to transfer property from corporations and trusts to shareholders or beneficiaries. The current provisions do not allow the transfer from a corporation limited by guarantee due to the reference to a shareholder in clause 3 (1) of that Schedule. The provisions of the Schedule are amended accordingly.

The amendment made by **Schedule 4 (34)** relates to the commencement of the provisions concerning the payment of FID on rollovers inserted into the Stamp Duties Act 1920 by the State Revenue Legislation (Amendment) Act 1994. All of the provisions, but one, were expressed to commence on 1 July 1994. The amendment is intended to ensure that all the provisions have the same commencement date.
