

[Act 2001 No 96]



New South Wales

## State Revenue Legislation Further Amendment (No 2) Bill 2001

### 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* as follows:
    - (i) to make it clear that quoted interests in unquoted marketable securities are not dutiable property,
    - (ii) to provide for the charging of duty on transfers of shares in share management fisheries at a concessional rate,
    - (iii) to make further provision with respect to exemptions and concessions that apply when marriages and domestic and de facto relationships break-up,
    - (iv) to provide for the stamping of instruments by means of an endorsement on the instrument of a number or other information issued by the Chief Commissioner,
    - (v) to abolish the use of adhesive stamps,
-

Explanatory note

---

- (vi) to exempt from payment of duty certain transfers of marketable securities to specified index trusts,
  - (vii) to make other amendments by way of law revision,
  - (viii) to make ancillary and consequential amendments,
- (b) to amend the *Land Tax Management Act 1956* as follows:
- (i) to simplify the method of assessing liability for land tax on land that is the subject of an unutilised value allowance,
  - (ii) to extend the exemption for land used as an owner's principal place of residence to land used and occupied by a beneficiary under a will,
  - (iii) to clarify a concession that applies on the death of the owner of land,
  - (iv) to make further provision with respect to the concession that applies when land is intended to be used and occupied as the owner's principal place of residence,
  - (v) to make further provision for the liability of trustees and trust beneficiaries for land tax on land that is the subject of a fixed trust, and to amend the *Land Tax Act 1956* consequentially,
  - (vi) to simplify the arrangements relating to liability for land tax when land is the subject of an agreement for sale,
  - (vii) to make other amendments by way of law revision,
  - (viii) to make ancillary and consequential amendments,
- (c) to amend the *Taxation Administration Act 1996* as follows:
- (i) to permit the disclosure of taxation information to the Director-General of the Department of Transport, for the purposes of the administration of the *Parking Space Levy Act 1992*,
  - (ii) to give the Chief Commissioner power to refund tax in order to give effect to a decision of the Hardship Review Board,
  - (iii) to make ancillary and consequential amendments,
- (d) to amend the *Unclaimed Money Act 1995* as follows:
- (i) to require an enterprise that holds any unclaimed money to make reasonable efforts to identify and locate the owner of the money, and to ensure the money is paid to the owner, before the money is paid to the Chief Commissioner,
  - (ii) to exempt amounts not exceeding \$20 from the unclaimed money provisions,
  - (iii) to authorise the Chief Commissioner to recover money wrongfully paid to a person,
  - (iv) to make ancillary and consequential amendments,

- (e) to repeal the *Petroleum Products Subsidy Act 1965* and the *Petroleum Products Subsidy Regulation 1998*.

## 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 legislation set out in Schedules 1 to 4.

**Clause 4** repeals the *Petroleum Products Subsidy Act 1965* and the *Petroleum Products Subsidy Regulation 1998*. The legislation relates to a Commonwealth subsidy scheme that has been discontinued.

## Schedule 1 Amendment of Duties Act 1997

### Quoted interests in marketable securities

Shares, or units in a unit trust scheme, that are quoted on the Australian Stock Exchange or a recognised stock exchange are not considered to be dutiable property under the *Duties Act 1997*. Interests in such shares or units are also not considered to be dutiable property. This means that transfers of such shares, units or interests are not dutiable under the Act.

The amendments extend that exemption to interests in shares or units, if the interest (rather than the share or unit) is quoted on the Australian Stock Exchange or a recognised stock exchange. Accordingly, transfers of such interests will not be dutiable. See Schedule 1 [1].

### Duty on transfers of shares in share management fisheries

The amendments provide that duty on dutiable transactions in shares in a share management fishery (established under the *Fisheries Management Act 1994*) is to be charged at a rate of 60 cents per \$100, or part, of the dutiable value of the shares. This is the same rate as the rate that applies to dutiable transactions in marketable securities. See Schedule 1 [2].

### **Exemptions and concessions—break-up of marriage or domestic or de facto relationship**

At present, the *Duties Act 1997* exempts from duty a transfer or an agreement for sale or transfer of matrimonial property or relationship property in certain circumstances if it is made as a consequence of the annulment or dissolution of a marriage, or the termination of a domestic relationship. A similar exemption applies to acquisitions in private corporations and to applications for motor vehicle registration.

The amendments extend the exemption to cases where the Chief Commissioner is of the opinion that a marriage has broken down irretrievably. It will no longer be necessary to establish that the marriage has been, or will be, annulled or dissolved. See Schedule 1 [4], [6], [8], [9] and [15].

The Chief Commissioner will be required to have regard to evidence of the dissolution, annulment or break down of a marriage, or termination of a domestic relationship, that is provided to the Chief Commissioner in support of an exemption claim. See Schedule 1 [8], [12] and [16].

Similar amendments are made to the provisions of the Act that provide for the charging of duty at a concessional rate on refinancing mortgages. See Schedule 1 [14].

Amendments are also made for the purpose of recognising financial agreements that are made between parties to a marriage under new provisions of the *Family Law Act 1975* of the Commonwealth, and for the purpose of ensuring that they are exempt from duty. See Schedule 1 [3], [5], [9] and [15].

Schedule 1 [7], [10], [11] and [13] are ancillary and consequential amendments. Schedule 1 [23] includes a transitional provision.

### **Stamping of instrument by means of endorsement**

At present, the *Duties Act 1997* provides for the stamping of a dutiable instrument by means of an impressed stamp or by some other method authorised by the Chief Commissioner or the Act.

The amendments allow the Chief Commissioner to make arrangements for the assessment of instruments for duty purposes without the instruments actually being lodged with the Chief Commissioner. Instead, information about the instrument will be given to the Chief Commissioner and an assessment made on the basis of that information. The Chief Commissioner will then issue a number, or other

information, as evidence of the assessment for endorsement on the instrument concerned. The amendments will allow an instrument to be stamped by means of the endorsement on the instrument of that number or other information, in accordance with the arrangements approved by the Chief Commissioner.

The amendments also allow the Chief Commissioner to issue a notice of assessment or statement of confirmation in respect of the assessment that includes the information provided to the Chief Commissioner on the basis of which the assessment was made.

See Schedule 1 [17] and [18].

#### **Abolition of use of adhesive stamps**

The amendments abolish the use of adhesive stamps to stamp instruments from 1 January 2002. Adhesive stamps may still be used in respect of instruments executed before that date. Applications for a refund in respect of unused adhesive stamps may be made up to 1 January 2003. See Schedule 1 [19], [20] and [21]. Schedule 1 [23] includes a transitional provision.

#### **Exemption for transfers to index trusts**

Before 1 July 2001, when transfers of quoted marketable securities were dutiable under the *Duties Act 1997*, certain transfers of marketable securities made to named index trusts were exempt from duty.

The amendments validate arrangements for the extension of that exemption to the following index trusts, on and from the date specified below in relation to the trust:

- (a) Index Shares Fund—2 March 2001,
- (b) streetTRACKS50 exchange traded fund—1 April 2001,
- (c) Barclays Australian Listed Property Index Fund—3 May 2001.

See Schedule 1 [23].

#### **Other amendments**

Other amendments are made for the purpose of updating and revising the definitions of *complying superannuation fund* and *related body corporate*. The amendments are made for law revision purposes, as a result of changes to Commonwealth legislation. See Schedule 1 [24] and [25].

The amendments also allow the making of savings and transitional regulations. See Schedule 1 [22].

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

### **Amendments relating to land subject to an unutilised value allowance**

Amendments to the *Land Tax Management Act 1956* change the method of assessing liability for land tax in respect of land that has an unutilised value allowance.

At present, if an unutilised value allowance is entered in the Register of Land Values in respect of land, the Act allows the land owner to postpone part of his or her liability for land tax. This is because the land has a higher value than its use reflects (for example, it may be zoned for multi-level development but used only for a single storey dwelling). The postponed amounts become payable if the land is sold or disposed of. Amounts postponed for more than 5 years are written off.

The amendments remove the provisions about postponement and writing off of tax, in order to simplify accounting arrangements. The amendments provide that liability for land tax on the land that is the subject of an unutilised value allowance is to be assessed as if the land value of the land were reduced by the unutilised value allowance. However, if the land is sold or disposed of, liability for land tax for the year in which the land is sold or disposed of, and for up to 4 preceding land tax years, is to be re-assessed as if there were no unutilised value allowance. The amendments should not result in any change to the net amount of tax payable by a land owner.

See Schedule 2.2 [1] and [13]. Schedule 2.2 [15] includes a transitional provision.

### **Exemption for owner's principal place of residence**

At present, section 10 (1) (r) of the *Land Tax Management Act 1956* exempts from liability for land tax certain land that is used and occupied as the owner's principal place of residence.

The amendments extend this exemption to land that is used and occupied as the principal place of residence of a person other than the owner of the land, after the owner dies, under the terms of the will of the owner of the land. See Schedule 2.2 [2].

### **Concession on death of owner**

Section 10A of the *Land Tax Management Act 1956* makes provision for the determination of liability for land tax when the owner of the land dies. It provides that liability is to be assessed as if the owner were still alive, until the land vests in another person.

The amendments make it clear that land under the provisions of the *Real Property Act 1900* is taken to vest in another person when the other person is registered as proprietor of that land under that Act. See Schedule 2.2 [3].

### **Concession for unoccupied land intended to be owner's principal place of residence**

At present, the *Land Tax Management Act 1956* allows the Chief Commissioner to treat land that is intended to be used and occupied as the owner's principal place of residence as land that is actually used and occupied as the owner's principal place of residence for the purposes of assessment of land tax.

However, the Act provides that the Chief Commissioner cannot exercise that power unless the land is within a residential zone under a planning instrument or, if not within a zone under a planning instrument, unless the Chief Commissioner is satisfied that the land is to be used for residential purposes.

The amendments remove that restriction. However, it will remain a requirement that the Chief Commissioner be satisfied that the intended use and occupation of the land is not unlawful. See Schedule 2.2 [9].

### **Liability for land tax in respect of land that is subject to a trust**

At present, the *Land Tax Management Act 1956* provides that the owner of any equitable estate or interest in land is liable for land tax in respect of the land as if he or she were the owner of that land. The owner of the legal estate is taken to be the primary taxpayer and the owner of the equitable estate is taken to be the secondary taxpayer in respect of the land.

The amendments make special provision in respect of land that is the subject of a fixed trust (that is, a trust that is not a special trust (as defined in the Act)). Under the new provisions, the trustee will be able to apply for the trust to be classified as a non-concessional trust for land tax purposes. Under amendments to the *Land Tax Act 1956*, trusts that are classified as non-concessional trusts will be taxed in the same way as special trusts—that is, the tax-free threshold will not apply. However, if a trust is classified as a non-concessional trust, the beneficiaries of the trust will not be liable to pay land tax in respect of the land that is the subject of the trust.

Land that is the subject of a trust that is not classified as a non-concessional trust will continue to be taxed under the current arrangements.

See Schedule 2.1 and 2.2 [10].

### **Liability for land tax when land is subject to an agreement for sale**

At present, liability for land tax on land that is the subject of an agreement for sale is determined on the basis of who has possession of the land and the percentage of the purchase price that has been paid.

Under the new arrangements, if land that is subject to the provisions of the *Real Property Act 1900* is subject to an agreement for sale that has not been completed, the registered proprietor of the land will be taken to be the owner of the land for land tax purposes, and will be liable for land tax in respect of the land, to the exclusion of the liability of the purchaser. However, the purchaser will be taken to be the owner of the land, and liable for land tax, if the purchaser obtains the right to exclusive possession of the land and takes possession of the land. Similar arrangements will apply to land that is not subject to the provisions of the *Real Property Act 1900*. See Schedule 2.2 [11].

### **Other amendments**

The amendments also:

- (a) remove redundant provisions in the *Land Tax Management Act 1956* relating to a rental-purchase scheme and other provisions that have fallen into disuse (certain provisions that deem persons to be owners of land for land tax purposes), and
- (b) make further provision for the exemption from land tax of land that is used and occupied as a retirement village or an aged care establishment, following the commencement of the *Retirement Villages Act 1999*, and
- (c) provide for the making of savings and transitional regulations and other transitional matters.

See Schedule 2.2 [4]–[8], [12], [14] and [15].



### **Schedule 3 Amendment of Taxation Administration Act 1996**

The amendments to the *Taxation Administration Act 1996*:

- (a) permit the disclosure of information obtained under or in relation to the administration of a taxation law to the Director-General of the Department of Transport, for the purposes of administration of the *Parking Space Levy Act 1992* (see Schedule 3 [1]), and
- (b) allow the Chief Commissioner to make refunds of tax already paid in order to give effect to a decision of the Hardship Review Board under that Act (see Schedule 3 [2]), and
- (c) provide for the making of savings and transitional regulations (see Schedule 3 [3]).

### **Schedule 4 Amendment of Unclaimed Money Act 1995**

#### **Enterprise required to make reasonable efforts to identify owner of money**

The amendments will require an enterprise that holds any money in an account that has not been operated on for at least 6 years to make reasonable efforts to identify and locate the owner of the money and to pay the money to the owner. Similar requirements apply in relation to unclaimed superannuation benefits under the *Superannuation (Unclaimed Money and Lost Members) Act 1999* of the Commonwealth. See Schedule 4 [1].

The amendments also allow an enterprise to pay unclaimed money to the owner of the money, rather than to the Chief Commissioner, if inquiries in relation to the owner of the money are successful. See Schedule 4 [3] and [4].

#### **Exemption of amounts not exceeding \$20**

The amendments provide that if the amount of money held in an account does not exceed \$20, it is not unclaimed money and does not have to be paid to the Chief Commissioner. See Schedule 4 [2].

#### **Authority to recover money wrongfully paid**

At present, if the Chief Commissioner pays unclaimed money to a person who is determined to be the owner of the money, the Chief Commissioner is relieved from further liability with respect to the unclaimed money. However, if the person to whom it was paid is not the owner of the money, the owner is entitled to recover it from the person to whom it was paid.

Explanatory note

---

The amendments will change those provisions so as to allow the Chief Commissioner to recover any money wrongfully paid from the person to whom it was paid. See Schedule 4 [5] and [6].

**Savings and transitional**

The amendments also provide for the making of savings and transitional regulations. See Schedule 4 [7].