

[Act 1998 No 104]



New South Wales

State Revenue Legislation (Miscellaneous Amendments) Bill 1998

Explanatory note

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

Overview of Bill

The object of this Bill is to make miscellaneous amendments to the following Acts:

- *Accommodation Levy Act 1997*
 - *Duties Act 1997*
 - *Land Tax Act 1956*
 - *Land Tax Management Act 1956*
 - *Legal Profession Act 1987*
 - *Pay-roll Tax Act 1971*
 - *Stamp Duties Act 1920*
 - *Taxation Administration Act 1996.*
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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 the date of assent or otherwise in accordance with the provisions of the clause.

Clause 3 is a formal provision giving effect to the amendments to the *Accommodation Levy Act 1997* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the *Duties Act 1997* set out in Schedule 2.

Clause 5 is a formal provision giving effect to the amendments to the *Land Tax Act 1956* set out in Schedule 3.

Clause 6 is a formal provision giving effect to the amendments to the *Land Tax Management Act 1956* set out in Schedule 4.

Clause 7 is a formal provision giving effect to the amendments to the *Legal Profession Act 1987* set out in Schedule 5.

Clause 8 is a formal provision giving effect to the amendments to the *Pay-roll Tax Act 1971* set out in Schedule 6.

Clause 9 is a formal provision giving effect to the amendments to the *Stamp Duties Act 1920* set out in Schedule 7.

Clause 10 is a formal provision giving effect to the amendments to the *Taxation Accommodation Act 1996* set out in Schedule 8.

Schedule 1 Amendment of Accommodation Levy Act 1997

Schedule 1 [1] and **[2]** extend the accommodation levy imposed under the *Accommodation Levy Act 1997* to accommodation provided at the club premises of registered clubs. **Schedule 1 [7]** (proposed section 11B) exempts from this liability residential accommodation provided by a club to persons who are full members of the club.

Schedule 1 [2] also excludes from the levy residential accommodation provided on vessels.

Schedule 1 [3] by changing references to the "Treasurer" to references to the "Minister", will, if it is desired to do so, facilitate any future transfer of the administration of the Act.

Schedule 1 [4] and [5] reduce the amount of the levy in respect of a place of accommodation that has, on or before 31 December 1997, signed a contract with SOCOG committing accommodation to the Olympic Games, or that was not presented with such a contract before that date. The reduced amounts are:

- 5% (instead of 10%) for the period from 1 September 1997 to 31 March 1998, and
- 7% (instead of 10%) for the period from 1 April 1998 to 31 August 1998.

Schedule 1 [6] excludes certain charges from the determination of the amount paid or payable for residential accommodation for the purposes of the Act. The charges excluded are:

- booking fees or commissions
- amounts for residential accommodation provided in a dormitory that has communal or self-catering facilities
- amounts for residential accommodation provided under the Homestay or Homehost programs for the Olympic Games
- amounts for residential accommodation provided as overflow accommodation at the request of a welfare organisation.

Schedule 1 [7] (proposed section 11A) exempts from the levy amounts paid by the same person for accommodation that exceeds 28 consecutive days.

Schedule 1 [8] replaces the requirement for the lodgment of monthly returns by the managers of places of residential accommodation with a requirement that returns be lodged quarterly.

Schedule 2 Amendment of Duties Act 1997

Transactions concerning dutiable property

Schedule 2 [1] and [3] exempt from the payment of transfer duty the vesting of dutiable property *by* or as a consequence of a statute.

Schedule 2 [2] and [24] seek to make it clear that a buy-back of shares is, for the purposes of the *Duties Act 1997*, a transfer of property.

Schedule 2 [4] and [5] relate to the liability to transfer duty of:

- a transfer of intellectual property that relates to the goodwill of a business that is transferred, and
- m a transfer of goods that relates to other dutiable property that is transferred.

They provide that any common arrangement relating to intellectual property and goodwill, or to goods and other dutiable property, is to be subject to transfer duty even if effected by separate transactions.

Schedule 2 [6] seeks to ensure that the duty payable on a partition that includes property that is not dutiable property does not exceed the duty payable on a simple transfer of the dutiable property.

Schedule 2 [7] substitutes section 31. The substituted section deals with the effect, for the purposes of adjusting liability to transfer duty, of an extended range of circumstances that can result in the change in the purchase price of dutiable property after an agreement for the transfer of the property is entered into and before the property is transferred.

Schedule 2 [8] provides a concession in relation to the payment of transfer duty for dutiable transactions involving marketable securities quoted on the market operated by the Stock Exchange of Newcastle.

Schedule 2 [9], [12]-[14] and [39] (the definitions of *managed investment scheme* and *responsible entity*) provide for the payment of concessional duty of \$10 on certain transfers of dutiable property in the administration of a managed investment scheme (being a managed investment scheme within the meaning of the *Corporations Law* that complies with Chapter 5C of that Law, and including a public unit trust scheme).

Schedule 2 [10] inserts proposed section 49A which contains the provisions that are to apply to the payment of transfer duty for purchases "off the plan."

Schedule 2 [15] clarifies the circumstances in which there is no change in the beneficial ownership of dutiable property in certain superannuation funds and trusts.

Schedule 2 [16] extends the exemption from transfer duty for the transfer of a mortgage so as to include a transaction arising from a transfer of an interest in a mortgage and a transfer of a charge over property.

Schedule 2 [17] exempts from transfer duty the vesting of dutiable property in a statutory trust as the consequence of the making of an order under section 66G of the *Conveyancing Act 1919*.

Schedule 2 [18] exempts from the payment of transfer duty the transfer or vesting of a liquor licence in certain circumstances under section 41, 42 or 61 of the *Liquor Act 1982*.

Schedule 2 [20] and [21] extend the exemption from duty on transfers between married couples or de facto partners of their principal place of residence.

Marketable securities—on-market transfers (Broker provisions)

Schedule 2 [23] imposes duty on an on-market sale or purchase of marketable securities when it is put into SEATS in New South Wales if the order for the sale or purchase was not previously received in another Australian jurisdiction.

Schedule 2 [26] seeks to clarify the liability to payment of the concessional duty on sales or purchases of marketable securities by a broker on behalf of another broker who is engaged in principal trading.

Hire of goods

Schedule 2 [27] clarifies the meaning of duty-free threshold in relation to the hire of goods.

Mortgages

Schedule 2 [28] and **[29]** seek to clarify the time at which liability for mortgage duty arises in respect of certain mortgages.

Schedule 2 [30] clarifies an exemption from the payment of mortgage duty and provides an exemption for mortgages taken by the clearing houses of the Sydney Futures Exchange and the Australian Options Market that do not secure an advance.

Schedule 2 [31] and **[32]** make it clear that certain debentures and related instruments are only exempt from mortgage duty to the extent to which they secure particular debenture issues.

General exemptions from duty

Schedule 2 [33]–[35] and **[39]** (the definition of *public hospital*) clarify the circumstances in which charitable institutions, public hospitals and corporate reconstructions are exempt from payment of duty.

Miscellaneous amendments

Schedule 2 [11], [19], [22], [25] and **[40]** update references to various provisions of the *Corporations Law*.

Schedule 2 [36] replaces references to the marking of instruments by the Chief Commissioner with references to the stamping of the instruments.

Schedule 2 [37] enables the making of regulations of a savings and transitional nature as a consequence of the enactment of the proposed Act.

Schedule 2 [38] and **[41]** make minor amendments to the definitions of *associated person* and *related person* in the Dictionary with respect to public unit trust schemes.

Schedule 2 [42] makes it clear that the transfer of a convertible note is exempt from duty.

Schedule 3 Amendment of band Tax Act 1956

Land tax liability of certain corporations

Schedule 3 omits section 5 of the *Land Tax Act 1956*. That section currently gives a land tax concession to certain corporations by allowing land tax to be calculated in relation to each parcel of land owned by them that is subject to taxation as if it were the only land owned.

Schedule 4 Amendment of Land Tax Management Act 1956

Certain land tax concessions to continue for limited period on death of owner of land

Section 9C of the *Land Tax Management Act 1956* allows a reduction in land tax where land that is used for more than one purpose has the owner's principal place of residence situated on it. **Schedule 4** amends section 10A of that Act to ensure that the concession continues to apply for a limited period on the death of the owner.

Schedule 5 Amendment of Legal Profession Act 1987

Disclosure of information to Chief Commissioner of State Revenue

Schedule 5 enables the Legal Services Commissioner or a member of the Law Society Council to disclose information obtained in the administration of Part 10 (Complaints and discipline) of the *Legal Profession Act 1987* to the Chief Commissioner of State Revenue.

Schedule 6 Amendment of Pay-roll Tax Act 1971

Employment agents

The *Pay-roll Tax Act 1971* is amended by **Schedule 6 [2]** and **[3]** to make employment agents, instead of the end-user, liable for pay-roll tax in respect

of employment agency contracts, not being contracts of employment. An employment agent is not liable for pay-roll tax if:

- the contract worker is liable for pay-roll tax in respect of the wages paid for provision of the services, or
- the wages paid to the contract worker would be exempt from pay-roll tax if they had been paid to the contract worker by the end-user of the services, or
- the end-user of the services is not liable to pay pay-roll tax.

Grouping provisions

Schedule 6 [8]-[13]:

- amend the ownership/control test for grouping of commonly owned or controlled businesses to remove the application of the grouping provisions to 50/50 joint ventures and other arrangements where there is no more than 50% common ownership or control of a business, and
- remove the Chief Commissioner's discretion to exclude a member who is grouped if the grouping occurs due to more than 50% common ownership or control.

Exemptions from pay-roll tax

Schedule 6 [4] and [5] exempt wages paid by the Home Care Service from pay-roll tax.

Other amendments

Schedule 6 [1] makes a minor amendment in relation to the liability to pay-roll tax, as wages, of certain superannuation benefits.

Schedule 6 [6] updates an out-of-date reference.

Schedule 6 [7] exempts from pay-roll tax:

- wages (not including wages for recreation leave, annual leave, long service leave or sick leave) paid to State Emergency Service volunteers while taking part in providing emergency assistance under the *State Emergency and Rescue Management Act 1989*, and

- wages that would be exempt from the payment of income tax by an employee under section 23 (z) of the Commonwealth *Income Tax Assessment Act 1936* (certain income derived by way of scholarship or other educational assistance by a full-time student at a tertiary educational institution).

Schedule 6 [14] and [15] contain savings and transitional provisions arising from the amendments to the *Pay-roll Tax Act 1971*.

Schedule 7 Amendment of Stamp Duties Act 1920

Exemption of certain receipts from financial institutions duty

Schedule 7 [1] and [4]–[8] exempt from the payment of duty certain receipts in respect of accounts used by financial institutions solely for the purposes of clearing payments.

Schedule 7 [2] converts a reference to a bank cheque to a cheque that a financial institution draws on itself as a consequence of recent amendments to the Commonwealth *Cheques and Payment Orders Act 1986* that enable a financial institution to issue cheques.

Schedule 7 [3] exempts from the payment of duty a receipt to a farm management deposit as a result of the transfer by the Commonwealth Department of Primary Industry and Energy of an amount held in an income equalisation deposit or a farm management bond.

Abolition of liability to pay death duty

Schedule 7 [10] and [11] abolish existing liabilities to pay death duties.

Savings and transitional provisions

Schedule 7 [9] enables the making of regulations of a savings and transitional nature as a consequence of the enactment of the proposed Act.

Schedule 8 Amendment of Taxation Administration Act 1996

Disclosure of information by tax officers to certain persons

Schedule 8 [1] enables a tax officer to disclose information obtained in the administration of the *Taxation Administration Act 1996* to the Legal Services Commissioner, a member of the Law Society Council or a trust account inspector or investigator appointed under the *Legal Profession Act 1987* to investigate the affairs of a solicitor.

Objections to Chief Commissioner of State Revenue

Schedule 8 [2] provides that a decision of the Chief Commissioner against which an objection may be lodged to the Chief Commissioner does not include a determination by the Chief Commissioner of an objection.