

# State Revenue and Other Legislation Amendment (Budget Measures) Act 2017 No 33

[2017-33]



New South Wales

## Status Information

### Currency of version

Repealed version for 2 July 2017 to 4 March 2018 (accessed 28 November 2024 at 19:51)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

### Notes—

- **Repeal**

This Act was repealed by sec 3 of the [State Revenue Legislation Amendment \(Surcharge\) Act 2017 No 67](#) with effect from 5.3.2018.

- **Note**

Amending Acts and amending provisions are subject to automatic repeal pursuant to sec 30C of the [Interpretation Act 1987 No 15](#) once the amendments have taken effect.

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 5 March 2018

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# State Revenue and Other Legislation Amendment (Budget Measures) Act 2017 No 33



New South Wales

An Act to amend State revenue and other legislation in connection with the State budget for the 2017-2018 financial year and for other purposes.

## 1 Name of Act

This Act is the *State Revenue and Other Legislation Amendment (Budget Measures) Act 2017*.

## 2 Commencement

- (1) This Act commences on 1 July 2017, except as otherwise provided by this section.
- (2) Schedule 2.1 [3] and 2.2 [5] commence on a day or days to be appointed by proclamation.
- (3) Schedule 2.1 [5] is taken to have commenced on 20 June 2017.

## 3 Explanatory notes

The matter appearing under the heading “Explanatory note” in any of the Schedules does not form part of this Act.

## Schedule 1 (Repealed)

## Schedule 2 Amendments relating to foreign persons

### 2.1 Duties Act 1997 No 123

[1], [2] (Repealed)

[3] Section 104ZJA

Insert after section 104ZJ:

#### **104ZJA Refunds for certain Australian-based developers that are foreign**

## persons

- (1) The Chief Commissioner must reassess and refund the whole or a proportion of surcharge purchaser duty paid on a transfer, or an agreement for the sale or transfer, of residential-related property to an Australian corporation if the Chief Commissioner is satisfied that:
  - (a) the corporation or a related body corporate of the corporation constructed a new home on the residential land to which the residential-related property relates after completion of the transfer of the property to the corporation, and
  - (b) the corporation has sold the new home to a person other than an associated person of the corporation, and
  - (c) the home was not occupied or used as a place of residence or for any other purpose at any time during the period commencing on completion of construction of the new home and ending on completion of its sale.
- (2) The amount of any refund under this section is to be determined by the Chief Commissioner, in accordance with an order made by the Treasurer for the purposes of this section and published in the Gazette.
- (3) Surcharge purchaser duty may be refunded under this section only if an application for the refund is made within 12 months after the completion of the sale of the new home to which the application relates and no later than 5 years after completion of the transfer of the residential-related property to the Australian corporation.
- (4) In this section:

**Australian corporation** means a corporation that is incorporated under the [Corporations Act 2001](#) of the Commonwealth.

**new home** has the same meaning as in the [First Home Owner Grant \(New Homes\) Act 2000](#).

## [4]-[6] (Repealed)

### Explanatory note

Item [1] of the proposed amendments to the [Duties Act 1997](#) enables the Chief Commissioner to determine that a room or suite of rooms is not a dwelling for the purposes of determining additional duty (surcharge purchaser duty and other forms of duty) chargeable on transactions involving the acquisition by foreign persons of interests in residential land in New South Wales.

Item [2] increases from 4% to 8% the additional duty (surcharge purchaser duty and other duty) that is imposed on such transactions.

Item [3] provides for refunds of surcharge purchaser duty paid on transfers, or agreements for the sale or transfer, of residential-related property to Australian corporations that construct and sell new homes on the residential land concerned.

Item [5] exempts certain foreign persons who are permanent residents (including New Zealand citizens holding special category visas under the *Migration Act 1958* of the Commonwealth) from liability to pay surcharge purchaser duty on transfers, or agreements for the sale or transfer, of residential-related property. The exemption will apply to such a permanent resident if the resident uses and occupies the residential land concerned as a principal place of residence for at least 200 days within the first 12 months after the liability to pay surcharge purchaser duty first arises on the property transferred.

Item [4] makes an amendment in the nature of statute law revision.

Item [6] inserts savings and transitional provisions that are consequent on the amendments made by items [1]-[3] and [5].

## 2.2 Land Tax Act 1956 No 27

### [1]-[4] (Repealed)

### [5] Section 5C

Insert before section 6:

#### 5C Surcharge land tax—Australian-based developers

- (1) An Australian corporation is exempt from liability to pay any, or a proportion of, surcharge land tax for a land tax year in respect of residential land owned by the corporation at midnight on 31 December of the previous year (the **taxing date**) if the Chief Commissioner is satisfied of the following (the **relevant criteria**):
  - (a) the corporation or a related body corporate of the corporation has constructed a new home on the residential land,
  - (b) after the taxing date, the corporation sold the new home to a person other than an associated person of the corporation,
  - (c) the home was not occupied or used as a place of residence or for any other purpose at any time during the period commencing on completion of the construction of the new home and ending on completion of its sale.
- (2) The Chief Commissioner must reassess and refund the whole or a proportion of the surcharge land tax paid by an Australian corporation for a land tax year in respect of residential land owned by the corporation at midnight on 31 December of the previous year if the Chief Commissioner is satisfied that the relevant criteria are met in relation to the residential land.
- (3) The extent to which an Australian corporation is exempt from liability to pay surcharge land tax, or the amount of any refund, under this section is to be determined by the Chief Commissioner, in accordance with an order made by the Treasurer for the purposes of this section and published in the Gazette.
- (4) An exemption or refund under this section is available only if an application for the exemption or refund is made within 12 months after completion of the sale of the new home and no later than:

- (a) if completion of the transfer of the residential land to the Australian corporation concerned occurred before 21 June 2016—21 June 2021, or
  - (b) in any other case—5 years after completion of the transfer of the residential land to the Australian corporation concerned.
- (5) In this section:

**Australian corporation** means a corporation that is incorporated under the *Corporations Act 2001* of the Commonwealth.

**new home** has the same meaning as in the *First Home Owner Grant (New Homes) Act 2000*.

**related body corporate** has the same meaning as in the *Corporations Act 2001* of the Commonwealth.

**transfer** includes an assignment and an exchange.

#### **Explanatory note**

Item [1] of the proposed amendments to the *Land Tax Act 1956* increases from 0.75% to 2% the surcharge land tax rate applying in respect of residential land owned by a foreign person on 31 December in a year. The new land tax rate will take effect on 31 December 2017 for the 2018 land tax year.

Items [2] and [4] extend the principal place of residence exemption (currently available as an exemption from land tax only), so that it will be available as an exemption from surcharge land tax to foreign persons who are permanent residents (including New Zealand citizens holding special category visas under the *Migration Act 1958* of the Commonwealth). The exemption will apply to such a permanent resident if the resident uses and occupies the residential land concerned as a principal place of residence for at least 200 days in the land tax year concerned.

Item [5] provides for an exemption from, or refund of, surcharge land tax for Australian corporations that sell new homes they have constructed on the residential land concerned.

Item [3] makes an amendment consequent on items [4] and [5].

## **2.3**

(Repealed)

## **Schedules 3-7 (Repealed)**