



New South Wales

State Revenue Legislation Amendment (Tax Concessions) Bill 2006

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* so as:
 - (i) to limit the circumstances in which the Chief Commissioner can aggregate dutiable transactions under that Act, and
 - (ii) to remove the nominal duty on certain documents relating to managed investment schemes that do not attract ad valorem duty, and
 - (iii) to extend an exemption from duty that applies in respect of certain home equity release schemes, and
 - (iv) to limit the application of call option assignment duty and provide for further exemptions in respect of that duty, and
 - (v) to clarify the time at which a liability to land rich duty arises, and
 - (vi) to confer an exemption from duty so as to allow certain unit trusts to be restructured for land tax purposes, and
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- (vii) to make further provision with respect to land used for primary production and the duty exemptions that apply in respect of such land, and
- (b) to amend the *Land Tax Management Act 1956* so as:
 - (i) to clarify the circumstances in which a trust will be treated as a fixed trust or special trust under that Act and to grant land tax concessions in respect of certain family unit trusts and other unit trusts that are restructured to comply with the new provisions, and
 - (ii) to make further provision with respect to the determination of the average value of land under that Act and with respect to other 2006–2007 Budget measures that have already been passed by Parliament, and
- (c) to make miscellaneous amendments to other Acts:
 - (i) in connection with the changes to the *Land Tax Management Act 1956* that provide for the use of an average value of land for land tax purposes, and
 - (ii) for statute law revision purposes.

The Bill also makes other minor and consequential amendments.

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 that gives effect to the amendments to the *Duties Act 1997* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the *Land Tax Management Act 1956* set out in Schedule 2.

Clause 5 is a formal provision that gives effect to the amendments to the *Gaming Machine Tax Act 2001*, the *Taxation Administration Act 1996* and the *Valuation of Land Act 1916* set out in Schedule 3.

Clause 6 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendment of Duties Act 1997

Aggregation of dutiable transactions

At present the *Duties Act 1997* allows separate dutiable transactions to be treated as a single dutiable transaction if they occur within 12 months, the transferee is the same or the transferees are associated persons and the dutiable transactions together form, evidence, give effect to or arise from what is substantially one arrangement relating to all of the items of dutiable property concerned.

Schedule 1 [1] provides that the transactions can only be aggregated if the transferor is same person or the transferors are associated persons.

Schedule 1 [2] and [3] remove the general discretion of the Chief Commissioner of State Revenue to decline to aggregate transactions under the section. Instead, the Chief Commissioner will be required to decline to aggregate the transactions if satisfied that:

- (a) the dutiable property to which the transactions relate are comprised of separate allotments of vacant land, and
- (b) the transferee is a person authorised to contract to do residential building work under the *Home Building Act 1989*, and
- (c) the transferee intends to construct residential premises on the allotments for the purposes of sale to the public.

Managed investment schemes

Schedule 1 [4] removes the nominal duty that would otherwise apply in respect of an instrument relating to a managed investment scheme that amends, varies or replaces the instrument establishing or governing the scheme without transferring dutiable property or affecting unit entitlements, which would not otherwise be chargeable with duty.

Home equity release schemes

Duty is not chargeable on a transfer or agreement to transfer land if the transfer or agreement is entered into in connection with an approved home equity release scheme. At present, at least one of the transferors must be 65 years of age or older for this concession to apply. **Schedule 1 [5]** extends the concession to persons aged 60 years or over, with effect on 29 June 2006.

Call option assignment duty

At present, an assignment of a right to purchase dutiable property under a call option is treated in certain circumstances as a transfer of the dutiable property concerned and is chargeable with duty under the *Duties Act 1997* accordingly.

Schedule 1 [6] redefines the expression “call option” so as to make it clear the call option must confer a right to require a person to sell dutiable property and the right must be conferred by an agreement or arrangement that is not a dutiable transaction under Chapter 2. The purpose is to clarify that agreements for sale of dutiable property do not attract duty under the call option assignment provisions. **Schedule 1 [7]–[11]** are consequential amendments.

Schedule 1 [12] and [13] confer further exemptions from call option assignment duty. These exemptions apply to:

- (a) a call option that is assigned by a licensed builder in connection with the building of or an agreement to build residential premises, and
- (b) a call option that is assigned by a corporation to another corporation who is a member of the same corporate group.

Schedule 1 [22] includes a transitional provision that ensures that the amendments do not operate to impose duty on a call option assignment relating to a call option or put option granted before the amendments commence.

Land rich duty

At present, a liability for land rich duty arises when a person acquires a relevant interest in a land rich entity (such as a unit trust scheme or private company with significant land holdings). **Schedule 1 [14]** clarifies that if the acquisition arises from an agreement to purchase, allot or issue a unit or share, the acquisition is made when the agreement is completed (that is, the necessary transfer or title documents are delivered and the purchase price is paid in full). Accordingly, the liability for land rich duty arises when the agreement is completed, whether or not the acquisition or interest acquired is registered.

Exemption for restructuring of unit trust for land tax purposes

Schedule 1 [20] confers an exemption from duty in respect of an instrument executed on or after 6 June 2006 and before 1 January 2008 that effects a variation to a trust deed for a unit trust, the purpose of which is to enable the trust to satisfy the criteria for being treated as a fixed trust under the *Land Tax Management Act 1956*. The amendment relates to concessions announced by the Treasurer on 6 June 2006 in connection with unit trusts. These concessions are explained further in the matter relating to Schedule 2.

Exemptions for land used for primary production

At present, certain duty exemptions apply in respect of land used for primary production. **Schedule 1 [23]** adopts the land tax definition of *land used for primary production*, so as to make the tax exemptions consistent. **Schedule 1 [15], [16], [17] and [19]** are consequential amendments.

Schedule 1 [18] extends an exemption that applies in respect of transfers of land used for primary production between family members so that former spouses or de facto partners are considered family members for the purposes of the exemption in certain circumstances.

Regulations

Schedule 1 [21] provides for the making of savings and transitional regulations as a consequence of the amendments.

Schedule 2 Amendment of Land Tax Management Act 1956

Classification of trusts as fixed trusts and special trusts, and tax concessions

Schedule 2 makes further provision with respect to the classification of trusts as fixed trusts and special trusts for the purposes of the *Land Tax Management Act 1956* and provides for certain land tax concessions in respect of unit trusts, as announced by the Treasurer on 6 June 2006.

Under the *Land Tax Management Act 1956*, if land is the subject of a fixed trust, the tax-free threshold applies in respect of land that is the subject of that trust. If the trust is not a fixed trust, it is treated as a special trust and the tax-free threshold does not apply to land the subject of the trust.

Schedule 2 [1] provides that a trust is a fixed trust if the equitable estate in the land is owned by persons who are owners of the land for land tax purposes (for example, under section 25 of the Act, which deems owners of an equitable estate in land to be owners of the land for land tax purposes). The amendment clarifies that the Chief Commissioner of State Revenue does not have any discretion to determine who is considered to be an owner of land for land tax purposes.

Schedule 2 [2] provides that if a trust satisfies the relevant criteria, the beneficiaries of the trust will be taken to be owners of an equitable estate in the land the subject of the trust. Accordingly, the trust will be taken to be a fixed trust (and the tax-free threshold will apply in respect of the trust). The relevant criteria are as follows:

- (a) the trust deed specifically provides that the beneficiaries of the trust:
 - (i) are presently entitled to the income of the trust, subject only to payment of proper expenses by and of the trustee relating to the administration of the trust, and
 - (ii) are presently entitled to the capital of the trust, and may require the trustee to wind up the trust and distribute the trust property or the net proceeds of the trust property,
- (b) the entitlements referred to in paragraph (a) cannot be removed, restricted or otherwise affected by the exercise of any discretion, or by a failure to exercise any discretion, conferred on a person by the trust deed.

Schedule 2 [12], proposed clause 42, allows a unit trust that is restructured to comply with the relevant criteria before 1 January 2008 to be treated as a fixed trust in respect of the land tax year commencing 1 January 2006 and subsequent land tax years. Land tax is to be assessed, or reassessed, accordingly. The concession applies only if, before the restructuring, the unit holders have fixed entitlements to income and capital distributions under the trust. This concession applies in addition to the duty concession set out in **Schedule 1 [20]**.

Schedule 2 [3] and [10] allow certain family unit trusts that are not fixed trusts to be excluded from the definition of *special trust* (and, accordingly, to gain the benefit of the tax-free threshold). The key criteria for classification as a family unit trust are as follows:

- (a) the trust holds land on 31 December 2005 the taxable value of which does not exceed \$1,000,000,
- (b) the unit holders in the trust have fixed entitlements to capital and income distributions under the trust,
- (c) the units in the trust are family-owned.

The criteria are explained further in proposed clause 2 of Schedule 1AA (as inserted by Schedule 2 [10]). The trust must continue to comply with certain criteria in order to continue to be treated as a family unit trust.

If a trust is a family unit trust, the unit holders in the trust will be treated as joint owners of the land which is the subject of the trust for land tax purposes.

Schedule 2 [9] is a consequential amendment.

The changes relating to trusts will have effect in respect of the 2006 land tax year and subsequent land tax years, as if they had commenced on 31 December 2005 (**Schedule 2 [12], proposed clause 41**).

Average valuations of land and other 2006–2007 Budget measures

The *State Revenue and Other Legislation Amendment (Budget Measures) Act 2006* (the **Budget measures**) changed the method for determining the taxable value of land for land tax purposes.

From the 2007 land tax year, land tax will be based on the average value of land, determined as an average of the land value of the land in the most recent 3 land tax years (including the land value of the land in the tax year in respect of which the average value is being determined).

Schedule 2 [4] and [5] remove the provisions for special valuations in respect of rent-protected land and land which is the subject of a heritage valuation under the *Heritage Act 1977*. As a consequence, the average value of rent-protected and all heritage-protected land will be determined in accordance with the general principles (that is, as an average of the land value of the land in the most recent 3 land tax years). If land was not heritage-protected in one of the previous years generally used to determine the average value, that year will be disregarded (see **Schedule 2 [6] and [7]**). This is consistent with the rules that apply when land has been recently subdivided.

Schedule 2 [8] provides for a similar approach in relation to land owned by the Crown that is the subject of a lease. Under the *Land Tax Management Act 1956* a lessee of Crown land is liable for land tax in respect of the land. Under the amendments, for the purpose of determining the average value of the land, the land value of the land in any preceding land tax year in which it was not leased is to be disregarded. In addition, the amendments require the Valuer-General to determine the annual land value in respect of the land.

The Budget measures also changed the method of determining the tax-free threshold for the 2007 land tax year and subsequent land tax years. Under the Budget measures, the tax-free threshold is based on an average of the tax-free threshold for 3 years (with an adjustment for indexation). The relevant provisions of the Budget measures do not commence until 31 December 2006 (immediately before the start of the 2007 land tax year). However, the Valuer-General generally determines and publishes the relevant tax-free threshold for a land tax year in the month of October before the land tax year commences. **Schedule 2 [12], proposed clause 43**, validates the determination and publication by the Valuer-General of the relevant figures for the 2007 land tax year in anticipation of the commencement of the relevant provisions of the Budget measures.

Regulations

Schedule 2 [11] provides for the making of savings and transitional regulations as a consequence of the amendments.

Schedule 3 Miscellaneous amendments

Amendment of Gaming Machine Tax Act 2001

Schedule 3.1 makes an amendment, by way of statute law revision, to clarify that tax is payable by a registered club with gaming machine profits that exceed \$200,000 only on that part of the profits that exceeds \$200,000.

Amendment of Taxation Administration Act 1996

Schedule 3.2 makes an amendment to the *Taxation Administration Act 1996* in connection with the Budget measures. Under the Budget measures, land tax liability for the 2007 land tax year and subsequent land tax years will be based on an average of the land value of land over 3 years. The purpose of the amendment is to ensure that if an objection to or appeal against a land tax assessment is made, that objection or appeal does not affect the validity of any land tax assessment for a previous year, even though the earlier land tax assessment may have been based on one or 2 of the same land values as the subsequent assessment.

Amendment of Valuation of Land Act 1916

Schedule 3.3 amends the *Valuation of Land Act 1916* in connection with the Budget measures. Under the *Valuation of Land Act 1916* a person has a right to object to a land value determination made by the Valuer-General for the purposes of a land tax assessment within 60 days after service of the relevant land tax assessment.

As a consequence of the Budget measures, land tax assessments for the 2007 land tax year and subsequent land tax years will be based on a 3-year average of land values. Accordingly, it will be possible to object to all 3 of the land values on which the land tax assessment is based.

Schedule 3.3 [1] restricts the entitlement to lodge an objection against a land valuation that is used as a basis of a land tax assessment if the land valuation concerned has previously been the subject of an objection under the Act. An objection against such a land valuation will be permitted only if the Valuer-General is satisfied that there are special reasons for allowing the objection to be made. The fact that the person seeking to make the objection did not own the land concerned when the previous objection was made does not of itself constitute a special reason for allowing a further objection to be made.

Schedule 3.3 [2] is a consequential amendment.