



New South Wales

State Revenue Legislation Amendment (Budget Measures) Act 2016 No 32

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New South Wales

State Revenue Legislation Amendment (Budget Measures) Act 2016 No 32

Act No 32, 2016

An Act to amend State revenue legislation to implement certain revenue-related measures in the 2016–17 State budget. [Assented to 28 June 2016]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *State Revenue Legislation Amendment (Budget Measures) Act 2016*.

2 Commencement

- (1) Schedule 1 is taken to have commenced on 21 June 2016.
- (2) This Act (except Schedule 1) commences on the date of assent to this Act.

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 Amendment of Duties Act 1997 No 123

- [1] **Section 15 Necessity for written instrument or written statement**
Insert “or Chapter 2A” after “this Chapter” in section 15 (1).
- [2] **Section 15 (4)**
Insert “under this Chapter or Chapter 2A” after “pay duty”.
- [3] **Section 16 Lodging written instrument or written statement with Chief Commissioner**
Insert “under this Chapter or Chapter 2A” after “duty” in section 16 (1).
- [4] **Section 16 (1) (a)**
Omit “section 18 (1)”. Insert instead “sections 18 (1) and 104X (1)”.
- [5] **Section 16A**
Insert after section 16:
- 16A Lodging purchaser’s declaration with Chief Commissioner**
A transferee who is liable to pay duty in respect of a dutiable transaction under this Chapter or Chapter 2A must lodge a declaration in the approved form with the written instrument or written statement lodged under section 16 (1).
- [6] **Sections 18 (4)–(6), 25 (4), 29 (3), 53 (1) (a) (ii), 62B (1) (b), 64AA (b) (i) and 68 (4) (a), (4AA) (a) and (4A) (a)**
Insert “under this Chapter” after “ad valorem duty” wherever occurring.
- [7] **Section 18 (6A) (a)**
Insert “under this Chapter” after “duty”.
- [8] **Section 30 Partitions**
Omit “and 18” from section 30 (2). Insert instead “, 18 and 104X”.
- [9] **Sections 32A (3) (c) and 104A (1) (c)**
Omit “confers an entitlement” wherever occurring.
Insert instead “entitles the holder of the land use entitlement”.
- [10] **Section 49A Purchases “off the plan”**
Insert after section 49A (3):
- (3A) This section does not apply in relation to an off the plan purchase agreement if any purchaser or transferee under the agreement is a foreign person (within the meaning of Chapter 2A).
- [11] **Section 51 Transfers arising from mortgages of land under Real Property Act 1900**
Insert after section 51 (2):
- (3) In this section:
ad valorem duty means ad valorem duty under this Chapter.
- [12] **Section 57 Property passing to beneficiaries**
Omit “this Act” from section 57 (2) (a) (i). Insert instead “this Chapter”.

[13] Section 64 (c) (i)

Insert “under this Chapter or Chapter 3” after “ad valorem duty”.

[14] Chapter 2A

Insert after Chapter 2:

Chapter 2A Duty charged on certain residential land transactions involving foreign persons

Part 1 Preliminary

104G Introduction and overview

- (1) This Chapter charges duty on certain dutiable transactions in respect of residential land that are, or are taken to be, transfers to foreign persons.
- (2) The duty charged by this Chapter is additional to any duty charged by Chapter 2.
- (3) The duty charged by this Chapter is referred to as *surcharge purchaser duty*.

104H Application of Chapter 2

Except as provided by this Chapter or Chapter 2, Chapter 2 does not apply in relation to duty charged by this Chapter.

Note. See, for example, sections 15, 16 and 16A.

104I Definitions

In this Chapter:

dwelling means a house, or a room or a suite of rooms (whether or not forming part of a building or a detached building), that is:

- (a) occupied or used as a separate dwelling, or
- (b) so constructed, designed or adapted as to be capable of being occupied or used as a separate dwelling.

partnership interest—see section 104K.

residential land means any of the following and does not include any land used for primary production:

- (a) a parcel of land on which there are one or more dwellings, or a parcel of land on which there is a building or buildings under construction that, when completed, will constitute one or more dwellings,
- (b) a strata lot, if it is lawfully occupied as a separate dwelling, or suitable for lawful occupation as a separate dwelling,
- (c) a utility lot (within the meaning of the *Strata Schemes Management Act 2015*), if its use is restricted to the owner or occupier of a strata lot referred to in paragraph (b),
- (d) a land use entitlement, if it entitles the holder of the land use entitlement to occupy a building, or part of a building, as a separate dwelling,
- (e) a parcel of vacant land (including any land that the Chief Commissioner is satisfied is substantially vacant) that is zoned or otherwise designated for use under an environmental planning instrument (within the

meaning of the *Environmental Planning and Assessment Act 1979*) for residential purposes or principally for residential purposes.

Note. *Land used for primary production* is defined in the Dictionary.
residential-related property—see section 104K.

104J Meanings of “foreign person” and “foreign trustee”

(1) In this Chapter:

foreign person means a person who is a foreign person within the meaning of the *Foreign Acquisitions and Takeovers Act 1975* of the Commonwealth, as modified by this section.

foreign trustee means a person who is a foreign person because of the person’s capacity as the trustee of a trust.

(2) The definition of **foreign person** in the *Foreign Acquisitions and Takeovers Act 1975* of the Commonwealth is modified as follows:

- (a) an Australian citizen is taken to be ordinarily resident in Australia, whether or not the person is ordinarily resident in Australia under that definition,
- (b) a New Zealand citizen who holds a special category visa, within the meaning of section 32 of the *Migration Act 1958* of the Commonwealth, at any particular time is taken at that time to be an individual whose continued presence in Australia is not subject to any limitation as to time imposed by law.

Note. Section 5 of the *Foreign Acquisitions and Takeovers Act 1975* of the Commonwealth provides that an individual who is not an Australian citizen is ordinarily resident in Australia at a particular time (and is therefore not a foreign person) if and only if:

- (a) the individual has actually been in Australia during 200 or more days in the period of 12 months immediately preceding that time, and
- (b) at that time:
 - (i) the individual is in Australia and the individual’s continued presence in Australia is not subject to any limitation as to time imposed by law, or
 - (ii) the individual is not in Australia but, immediately before the individual’s most recent departure from Australia, the individual’s continued presence in Australia was not subject to any limitation as to time imposed by law.

(3) For the purposes of charging surcharge purchaser duty on a surcharge duty transaction, a person is taken to be a foreign person if the person is a foreign person when a liability for duty charged by Chapter 2 on the transaction arises (or would arise but for section 53A or a concession or exemption from duty under that Chapter).

Note. See section 12.

104K Meaning of “residential-related property” (cf section 11)

Residential-related property is any of the following dutiable property:

- (a) residential land in New South Wales,
- (b) an option to purchase residential land in New South Wales,
- (c) an interest in any residential-related property referred to in paragraph (a) or (b), except to the extent that:
 - (i) it arises as a consequence of the ownership of a unit in a unit trust scheme and is not a land use entitlement, or
 - (ii) it is, or is attributable to, an option over residential-related property, or

- (iii) it is a marketable security,
- (d) a **partnership interest** (being an interest in a partnership that has partnership property that is residential-related property elsewhere referred to in this section).

104L Transactions on which surcharge purchaser duty is charged (cf section 8)

- (1) Surcharge purchaser duty is chargeable on the following dutiable transactions:
 - (a) a transfer of residential-related property to a foreign person,
 - (b) the following transactions:
 - (i) an agreement for the sale or transfer of residential-related property to a foreign person,
 - (ii) a declaration of trust over residential-related property by a person who, because of the declaration, is a foreign trustee in respect of the trust,
 - (iii) a surrender of an interest in residential land in New South Wales to a foreign person,
 - (iv) a foreclosure of a mortgage over residential-related property by a mortgagee who is a foreign person,
 - (v) a vesting of residential-related property in a foreign person by or as a consequence of an order of a court of this or another jurisdiction, whether inside or outside Australia,
 - (vi) the enlargement of a term in residential land into a fee simple under section 134 of the *Conveyancing Act 1919* where the person who acquires the estate in fee simple (or, if there is more than one such person, at least one of those persons) is a foreign person,
 - (vii) a vesting of residential land in New South Wales in a foreign person by, or expressly authorised by, statute law of this or another jurisdiction, whether inside or outside Australia,
 - (viii) a lease of residential land to a foreign person, being a lease in respect of which a premium is paid or agreed to be paid.

- (2) Such a transfer or transaction is a **surcharge duty transaction** for the purposes of this Act.

Note. The above listed transfers and transactions are all also dutiable transactions under Chapter 2. Generally speaking, a transferee (including a person taken to be a transferee under sections 9 and 104N) who is a foreign person is liable to pay duty on those transactions under Chapter 2 and under this Chapter.

- (3) A reference in subsection (1) (b) (ii) to a person who, because of a declaration of trust, is a foreign trustee in respect of the trust includes a reference to a person who would be a foreign trustee in respect of the trust if any identified property to be vested in the person were actually vested in the person when the declaration is made.

- (4) In this Chapter:

declaration of trust and **premium** have the same meanings as in Chapter 2.

Note. See section 8 for definitions of the above expressions.

lease or **lease of residential land** means a lease of residential land in New South Wales or an agreement for a lease of residential land in New South Wales.

transfer includes an assignment and an exchange.

Note. See also sections 104N and 104O in relation to transactions treated as transfers.

104M Vesting of land in New South Wales by statute law

- (1) Section 8A is to be applied, for the purposes of this Chapter, in determining whether or not residential land is vested in New South Wales under statute law and in identifying a person in whom residential land is so vested.
- (2) For those purposes, a reference in section 8A to section 8 (1) (b) (vii) is taken to include a reference to section 104L (1) (b) (vii).

104N Imposition of surcharge purchaser duty on transactions that are not transfers
 (cf section 9)

- (1) The duty charged by this Chapter on a surcharge duty transaction referred to in section 104L (1) (b) is to be charged as if each such surcharge duty transaction were a transfer of residential-related property.
- (2) Accordingly, for the purpose of charging duty under this Chapter, in relation to a surcharge duty transaction specified in Column 1 of the following Table:
 - (a) the property specified opposite the surcharge duty transaction in Column 2 is taken to be the property transferred (and a reference in this Act to property transferred includes a reference to such property), and
 - (b) the person specified opposite the surcharge duty transaction in Column 3 is taken to be the transferee of the residential-related property (and a reference in this Act to a transferee includes a reference to such a person), and
 - (c) the transfer of the residential-related property is taken to have occurred at the time specified opposite the surcharge duty transaction in Column 4 (and a reference in this Act to the time at which a transfer occurs includes a reference to such a time).

Table

Column 1	Column 2	Column 3	Column 4
Surcharge duty transaction	Property transferred	Transferee	When transfer occurs
agreement for sale or transfer	the property agreed to be sold or transferred	any foreign person who is a purchaser or transferee	when the agreement is entered into
declaration of trust	the property vested or to be vested in the declarant	any person declaring the trust who, because of the declaration, is a foreign trustee in respect of the trust	when the declaration is made
surrender	the surrendered property	any foreign person to whom the property is surrendered	when the surrender takes place
foreclosure	the mortgaged property	any foreign person who is a mortgagee	when the foreclosure order is made
vesting by court order	the vested property	any foreign person in whom the property is vested	when the order is made

Column 1	Column 2	Column 3	Column 4
Surcharge duty transaction	Property transferred	Transferee	When transfer occurs
enlargement of a term in land into a fee simple	the estate in fee simple	any foreign person who acquires the estate in fee simple	when the term is enlarged
vesting by statute law	the vested land in New South Wales	any foreign person in whom the land is vested	when the vesting by statute law occurs
lease	the leased property	any foreign person who is the lessee	when the lease is entered into

Note. See also section 104O and Part 2 of Chapter 3 for other transactions that are deemed to be transfers of residential-related property under this Chapter.

104O Other transactions taken to be transfers

- (1) Sections 9A–9C apply, subject to this section and to any other necessary modifications, for the purpose of charging surcharge purchaser duty under this Chapter.
- (2) For that purpose:
 - (a) a change in partnership arrangements that is of a kind referred to in section 9A is taken to be a transfer of a partnership interest (within the meaning of this Chapter) if the partnership has partnership property that is residential-related property, and
 - (b) a transaction of a kind referred to in section 9B in respect of an option to purchase residential land in New South Wales is taken to be a transfer of an option to purchase residential land, and
 - (c) a transaction of a kind referred to in section 9C that is a novation of an agreement for the lease of residential land in New South Wales is taken to be a transfer of residential-related property as if:
 - (i) the lessee’s interest in the agreement were residential-related property, and
 - (ii) the novation of the agreement were a transfer of that residential-related property.
- (3) Surcharge purchaser duty is chargeable on any such transfer if any of the persons taken to be transferees by section 9A, 9B or 9C (as the case may be) are foreign persons.
- (4) To avoid doubt:
 - (a) this section does not affect liability for surcharge purchaser duty on a transfer of a partnership interest that occurs otherwise than because of a change in partnership arrangements, and
 - (b) a reference in this Act to a transfer of residential-related property includes a reference to a transaction taken to be a transfer by this section, and
 - (c) a reference in this Act to a surcharge duty transaction includes a reference to a transaction chargeable with surcharge purchaser duty under this section, and
 - (d) a reference in this Act to residential-related property includes, in relation to a transfer that is taken to occur under subsection (2) (c), a

reference to a lessee's interest in an agreement for the lease of residential land in New South Wales.

104P What form must a surcharge duty transaction take?

To avoid doubt, section 10 extends to dutiable transactions that are surcharge duty transactions.

104Q When does a liability for duty arise?

- (1) Section 12 applies in respect of surcharge purchaser duty in the same way as it applies in respect of duty charged by Chapter 2.
- (2) For that purpose, references in section 12 are to be read as follows:
 - (a) a reference to duty charged by Chapter 2 is to be read as a reference to surcharge purchaser duty,
 - (b) a reference to dutiable property is to be read as a reference to residential-related property,
 - (c) a reference to a dutiable transaction is to be read as a reference to a surcharge duty transaction.

104R Who is liable to pay surcharge purchaser duty? (cf section 13)

- (1) The person liable to pay surcharge purchaser duty is the transferee.
- (2) Only transferees who are foreign persons are liable to pay surcharge purchaser duty.

104S Liability for surcharge purchaser duty on certain trust-related transactions

- (1) This section applies to a surcharge duty transaction that is:
 - (a) a transfer, or an agreement for the sale or transfer, of residential-related property where the transferee is acquiring the residential-related property in a trustee capacity, or
 - (b) a declaration of trust over residential-related property by a person who, because of the declaration, is a foreign trustee in respect of the trust.
- (2) The transferee is only liable to pay surcharge purchaser duty on any such surcharge duty transaction if the transferee is a foreign trustee in respect of the trust.
- (3) In applying the provisions of this Chapter to a surcharge duty transaction referred to in subsection (1) (a), the transferee is not to be treated as a foreign person unless the transferee is a foreign trustee.

Note. For example, a trustee who is not a foreign trustee will not be liable for surcharge purchaser duty, even if the trustee is otherwise a foreign person.

104T Property purchased by apparent purchaser

- (1) This section applies to a transfer, or an agreement for the sale or transfer, of residential-related property if the Chief Commissioner is satisfied that the transferee is an apparent purchaser and that the money for the purchase has been or will be provided by the real purchaser.
- (2) In applying the provisions of this Chapter in relation to a transfer or agreement to which this section applies:
 - (a) the apparent purchaser is taken to be acquiring the residential-related property in a trustee capacity, and

- (b) if any of the real purchasers are foreign persons, the apparent purchaser is taken to be a foreign trustee in respect of the trust.
- (3) Accordingly, section 104S (3) applies in relation to the apparent purchaser.
- (4) For the purposes of this section, money provided by a person other than the real purchaser is taken to have been provided by the real purchaser if the Chief Commissioner is satisfied that the money was provided as a loan and has been or will be repaid by the real purchaser.
- (5) This section applies whether or not there has been a change in the legal description of the residential-related property between the purchase of the property by the apparent purchaser and the transfer to the real purchaser.

Note. For example, if the residential-related property is land, this section continues to apply if there is a change in the legal description of the residential-related property as a consequence of the subdivision of the land.

104U Charging of duty at relevant rate (cf section 19 and Part 3 of Chapter 2)

- (1) Except as otherwise provided by this section, surcharge purchaser duty is to be charged on the dutiable value of the residential-related property subject to the surcharge duty transaction at a rate of 4% of the dutiable value of the residential-related property.
- (2) If any of the transferees are not foreign persons, surcharge purchaser duty is to be charged only on the proportion of the dutiable value of the residential-related property that is the same as the proportion of the share or shares in that property transferred to foreign persons.
- (3) If the surcharge duty transaction consists of a partition and any of the transferees are not foreign persons, surcharge purchaser duty is to be charged only on the proportion of the dutiable value of the partition that is the same as the proportion of the share or shares in the residential land transferred, or agreed to be transferred, to foreign persons.
- (4) In this section:
partition has the same meaning as in section 30.

104V The liability of joint tenants

- (1) Section 14 applies in respect of surcharge purchaser duty in the same way as it applies in respect of duty charged by Chapter 2.
- (2) For that purpose, a reference in section 14 to duty charged by Chapter 2 is to be read as a reference to surcharge purchaser duty.

104W When must surcharge purchaser duty be paid? (cf section 17)

A tax default does not occur for the purposes of the *Taxation Administration Act 1996* if surcharge purchaser duty is paid within 3 months after the liability to pay the duty arises.

104X No double surcharge purchaser duty (cf section 18)

- (1) If a surcharge duty transaction is effected by more than one instrument, one instrument is to be stamped with the surcharge purchaser duty payable on the surcharge duty transaction and each other instrument is not chargeable with surcharge purchaser duty.

- (2) Surcharge purchaser duty is not chargeable on a transfer of residential-related property made in conformity with an agreement for the sale or transfer of the residential-related property if:
 - (a) surcharge purchaser duty has been paid on the agreement, and
 - (b) no surcharge purchaser duty is chargeable under section 104Y on the transfer.
- (3) Surcharge purchaser duty is not chargeable on a transfer of residential-related property that is not made in conformity with an agreement for the sale or transfer of the residential-related property if:
 - (a) surcharge purchaser duty has been paid on the agreement, and
 - (b) no surcharge purchaser duty is chargeable under section 104Y on the transfer, and
 - (c) the transfer would be in conformity with the agreement if the transferee was the purchaser under the agreement, and
 - (d) the transfer occurs at the same time as, or proximately with, the completion or settlement of the agreement, and
 - (e) at the time the agreement was entered into, and at the completion or settlement of the agreement:
 - (i) the purchaser under the agreement and the transferee under the transfer are related persons, except as provided by subparagraph (ii), or
 - (ii) if the purchaser purchased as a trustee, the transferee and the beneficiary are related persons.
- (4) Surcharge purchaser duty is not chargeable on a transfer to a trustee of residential-related property subject to a declaration of trust if surcharge purchaser duty has been paid on the declaration of trust in respect of the same residential-related property.
- (5) Surcharge purchaser duty is not chargeable on a transfer of residential-related property as a consequence of a foreclosure order if surcharge purchaser duty has been paid on the foreclosure.
- (6) Surcharge purchaser duty is not chargeable on a declaration of trust that declares the same trusts as those upon and subject to which the same residential-related property was transferred to the person declaring the trust if surcharge purchaser duty has been paid on the transfer.
- (7) Surcharge purchaser duty is not chargeable on a declaration of trust if the Chief Commissioner is satisfied that:
 - (a) the declaration of trust supersedes another declaration of trust in respect of which surcharge purchaser duty has been paid and declares the same trusts as were declared under the superseded declaration of trust, and
 - (b) the beneficiary under the declaration of trust is the same as under the superseded declaration of trust, and
 - (c) the residential-related property subject to the declaration of trust:
 - (i) is wholly or substantially the same as the property that was the subject of the superseded declaration of trust at the time of the declaration of the superseded declaration of trust, or
 - (ii) represents the proceeds of re-investment of property that was the subject of the superseded declaration of trust at the time of the declaration of the superseded declaration of trust, or

(iii) is property to which both subparagraphs (i) and (ii) apply.

- (8) Despite subsection (1), if a single surcharge duty transaction is effected by more than one electronic registry instrument, it is sufficient that one of those instruments is duly stamped with the duty chargeable on the surcharge duty transaction.

Note. See section 290.

104Y Change in proportion of share transferred to foreign persons

- (1) If the share or shares in the residential-related property agreed to be sold or transferred to foreign persons are less than the share or shares actually transferred to foreign persons, surcharge purchaser duty is to be charged on the additional proportion of the share or shares transferred to foreign persons.
- (2) If the share or shares in the residential-related property agreed to be sold or transferred to foreign persons exceed the share or shares actually transferred to foreign persons under the transfer and surcharge purchaser duty was paid on the agreement:
- (a) surcharge purchaser duty is not chargeable on the transfer, and
 - (b) the Chief Commissioner is to reassess the agreement, by calculating the surcharge purchaser duty chargeable in proportion to the share or shares in the residential-related property actually transferred to foreign persons, and refund any excess surcharge purchaser duty paid.

Note. Section 104ZF provides for a full refund in cases where no surcharge purchaser duty is payable on the actual transfer because the transferees are no longer foreign persons.

Part 2 Dutiable value

104Z What is the “dutiable value” of residential-related property? (cf section 21)

- (1) Part 2 of Chapter 2 applies, subject to this Part and to any other necessary modifications, in respect of surcharge duty transactions and surcharge purchaser duty in the same way as it applies in respect of dutiable transactions and the duty chargeable under Chapter 2.
- (2) For the purposes of this Chapter, references in Part 2 of Chapter 2 are to be read as follows:
- (a) a reference to a dutiable transaction is to be read as a reference to a surcharge duty transaction,
 - (b) a reference to dutiable property is to be read as a reference to residential-related property,
 - (c) a reference to duty chargeable under Chapter 2 or to ad valorem duty is to be read as a reference to surcharge purchaser duty.
- (3) Sections 21 (3) and (4), 25, 26, 28, 29 and 30 (5) do not apply in respect of surcharge duty transactions.

104ZA What is the “dutiable value” of a partnership interest? (cf section 29)

The dutiable value of a partnership interest (*DV*) is to be determined in accordance with the following formula:

$$DV = A \times \frac{X}{Y}$$

where:

A is the value of the partnership interest, or so much of the consideration for the surcharge duty transaction as relates to the partnership interest, whichever is the greater, and

X is the unencumbered value of all residential-related property of the partnership, and

Y is the unencumbered value of all assets of the partnership.

104ZB Reduction of dutiable value of land used for non-residential purposes

- (1) If the Chief Commissioner is satisfied that the residential land to which the residential-related property relates is used for purposes other than residential purposes, the duty chargeable under this Chapter is to be calculated after reducing the dutiable value of the residential-related property by the apportionment factor.
- (2) The apportionment factor is:
 - (a) if the land is mixed development land or mixed use land and there is an apportionment factor entered in the Register of Land Values in respect of the land value of the land under Division 5 or 5A of Part 1B of the *Valuation of Land Act 1916*—that apportionment factor, or
 - (b) if paragraph (a) is not applicable—such other apportionment factor as the Chief Commissioner considers fair and reasonable to reflect the use of the land for non-residential purposes, subject to subsections (3) and (4).
- (3) If there is no apportionment factor entered in the Register of Land Values in respect of the land value of the land, and the land is mixed development land or mixed use land, the Chief Commissioner may request the Valuer-General to determine the apportionment factor in respect of the land concerned.
- (4) If a request is made under subsection (3):
 - (a) the Valuer-General must determine the apportionment factor concerned and enter it in the Register of Land Values under the *Valuation of Land Act 1916*, and
 - (b) that apportionment factor is to be applied in respect of the residential land.

Note. Divisions 5 and 5A of Part 1B of the *Valuation of Land Act 1916* allow objections to be made against the amount of an apportionment factor.

- (5) In this section:

mixed development land has the same meaning as in Division 5 of Part 1B of the *Valuation of Land Act 1916*.

mixed use land has the same meaning as in Division 5A of Part 1B of the *Valuation of Land Act 1916*.

104ZC Transfer of property subject to a statutory trust to a beneficial owner (cf section 56A)

- (1) This section applies if residential-related property that is vested in a person as trustee of a statutory trust as a consequence of the making of an order under section 66G of the *Conveyancing Act 1919* is transferred or agreed to be transferred by the trustee to one or more of the beneficial owners of the residential-related property who are foreign persons.
- (2) For the purposes of calculating surcharge purchaser duty on the vesting of the residential-related property, the dutiable value of the residential-related property is to be calculated by deducting from the unencumbered value of the residential-related property or the consideration for the transfer or agreement, whichever is the greater, the proportion of that amount that is the same as the proportion of any foreign transferee's beneficial interest in the residential-related property immediately before the transfer or agreement.
- (3) A reference in this section to a foreign transferee is a reference to a transferee who is a foreign person.

104ZD Deceased estates where trusts under will are varied (cf section 63 (2) and (2A))

- (1) This section applies if a transfer of residential-related property is made by a legal personal representative of a deceased person to a foreign beneficiary under an agreement (whether or not in writing) between the foreign beneficiary and one or more other beneficiaries to vary the trusts contained in a will of the deceased person or arising on intestacy.
- (2) For the purposes of calculating surcharge purchaser duty on the transfer, the dutiable value of the residential-related property is to be reduced by the portion of the dutiable value that is referable to the residential-related property to which the foreign beneficiary had an entitlement arising under the trusts contained in the will or arising on intestacy.
- (3) A transmission application made in respect of residential-related property by a beneficiary under a will, with the consent of the legal personal representative of a deceased person, is taken, for the purposes of this section, to be a transfer of residential-related property by the legal personal representative to the beneficiary.
- (4) In this section:
foreign beneficiary means a beneficiary who is a foreign person.

Part 3 Refunds and special provisions

104ZE Cancelled agreements and transfers

- (1) The following transactions are not liable to surcharge purchaser duty if they are not liable to duty under Chapter 2 because of section 50 or 50A:
 - (a) an agreement for the sale or transfer of residential-related property that is cancelled (within the meaning of section 50),
 - (b) a transfer of residential-related property that is effected by a written instrument.
- (2) Section 50 (2) extends to surcharge purchaser duty that has been paid on an agreement that is not liable to surcharge purchaser duty because of this section.
- (3) Section 50A (2) and (3) extend to surcharge purchaser duty that has been paid on a transfer that is not liable to surcharge purchaser duty because of this

section and to any transfer instrument in respect of which the application for a refund is made.

104ZF Refund if property transferred to persons who are no longer foreign on transfer

If surcharge purchaser duty has been paid on an agreement for the sale or transfer of residential-related property and the Chief Commissioner is satisfied that none of the transferees in respect of a transfer made in conformity or partial conformity with the agreement are foreign persons, the Chief Commissioner must reassess and refund that duty if an application is made within 5 years of the initial assessment.

104ZG Transfers back from a nominee

The Chief Commissioner must reassess, and refund any surcharge purchaser duty paid on, an initial transfer to a trustee referred to in section 56 (2) if the Chief Commissioner is required by that subsection to reassess, and refund any duty under Chapter 2 paid on, the initial transfer.

104ZH Break-up of marriages, de facto relationships or domestic relationships

The Chief Commissioner must reassess, and refund any surcharge purchaser duty paid on, a transfer or agreement referred to in section 68 (4), (4AA) or (4A) if the Chief Commissioner is required by that subsection to reassess, and refund any duty under Chapter 2 paid on, the transfer or agreement.

104ZI Possessory applications

- (1) A possessory application under the *Real Property Act 1900* in respect of residential land that is chargeable with ad valorem duty under Chapter 2 because of section 52 is chargeable with surcharge purchaser duty, as a transfer of the land, if any of the applicants are foreign persons.
- (2) For that purpose:
 - (a) the dutiable value of the land is the land value of the land within the meaning of the *Valuation of Land Act 1916*, and
 - (b) applicants who are foreign persons are liable to pay the surcharge purchaser duty.

104ZJ Applications to bring land under Real Property Act 1900

- (1) An application to bring residential land under the *Real Property Act 1900* that is chargeable with ad valorem duty under Chapter 2 because of section 53 is chargeable with surcharge purchaser duty if any of the persons liable to pay duty under Chapter 2 on the application are foreign persons.
- (2) The surcharge purchaser duty chargeable is to be determined by applying section 53 as if a reference in that section to duty or ad valorem duty were a reference to surcharge purchaser duty.
- (3) Any foreign persons liable to pay duty under Chapter 2 on the application are liable to pay the surcharge purchaser duty.

Part 4 Exemptions and concessions

104ZK Transactions exempt from ad valorem duty under Chapter 2

- (1) Subject to this Part, no surcharge purchaser duty is chargeable on a surcharge duty transaction if:
 - (a) ad valorem duty is not chargeable on the transaction as a dutiable transaction under Chapter 2 because of any of the provisions of Parts 6 and 7 of that Chapter (other than sections 55, 57, 62, 62A and 62B), or
 - (b) the transaction is a relevant transfer to which section 61 applies, or
 - (c) the transaction is a dutiable transaction to which section 62 applies, or
 - (d) the transaction is a transfer, an agreement for the sale or transfer, of residential-related property and a duty concession is granted under Division 5 of Part 8 of Chapter 2 in respect of the transaction.
- (2) To avoid doubt, the exemptions and concessions provided for in Part 8 of Chapter 2 do not (except as provided by subsection (1) (d)) extend to surcharge duty transactions.

104ZL Change in trustees

- (1) This section applies to a surcharge duty transaction if:
 - (a) the transaction is a transfer of residential-related property to a person as a consequence of the retirement of a trustee or the appointment of a new trustee, and
 - (b) as a consequence of section 54 (3), the transfer is chargeable with the same duty under Chapter 2 as a transfer to a beneficiary under and in conformity with the trusts subject to which the property is held.
- (2) Surcharge purchaser duty is chargeable on the surcharge duty transaction if ad valorem duty is chargeable on the transaction as a dutiable transaction.

104ZM Reduction of duty on transactions involving apparent purchasers

- (1) Any surcharge purchaser duty chargeable on a declaration of trust to which section 55 (1) (a) applies is to be reduced by the amount of surcharge purchaser duty (if any) paid on the transfer, or agreement for the sale or transfer, of the identified residential-related property to the apparent purchaser.
- (2) Any surcharge purchaser duty chargeable on a transfer to which section 55 (1) (b) applies from an apparent purchaser to the real purchaser is to be reduced by the amount of surcharge purchaser duty (if any) paid on:
 - (a) any declaration of trust to which section 55 (1) (a) applies made by the apparent purchaser in respect of the residential-related property, and
 - (b) the transfer, or agreement for the sale or transfer, to the apparent purchaser.

104ZN Exemption for property passing to beneficiaries (cf section 57)

- (1) No surcharge purchaser duty is chargeable on a transfer for no consideration of residential-related property to a beneficiary made under and in conformity with the trusts contained in a declaration of trust, subject to subsections (2) and (3).

- (2) Subsection (1) applies only to the extent that the property being transferred is property that the Chief Commissioner is satisfied is:
 - (a) wholly or substantially the same as the property the subject of the declaration of trust and that:
 - (i) any surcharge purchaser duty has been paid on the declaration of trust over that property, or
 - (ii) the declaration of trust is exempt from surcharge purchaser duty, or
 - (b) dutiable property representing the proceeds of re-investment of property referred to in paragraph (a), or
 - (c) property to which both paragraphs (a) and (b) apply.
- (3) Subsection (1) applies only if the transferee was a beneficiary at the time at which duty became chargeable on the declaration of trust.

104ZO Reduction of duty on transfers made on exercise of option to purchase land
(cf section 64D)

The surcharge purchaser duty chargeable on a transfer of residential land in New South Wales that occurs as a consequence of the exercise of an option to purchase the land is to be reduced by the amount of surcharge purchaser duty (if any) paid on the transfer of the option to the transferee.

Part 5 Stamping and enforcement

104ZP Definition of “purchaser duty”

For the purposes of this Part, *purchaser duty* is the duty (if any) payable in respect of a dutiable transaction under Chapter 2.

104ZQ Stamping and endorsement of surcharge duty transactions

- (1) If an instrument that effects or evidences a dutiable transaction that is also a surcharge duty transaction is stamped under this Act to indicate payment of duty, it must be stamped in a manner approved by the Chief Commissioner to indicate that surcharge purchaser duty has been paid.
- (2) If an instrument that effects or evidences a dutiable transaction that is also a surcharge duty transaction is endorsed under this Act to indicate payment of duty, it must be endorsed in a manner approved by the Chief Commissioner to indicate that surcharge purchaser duty has been paid.

Note. See section 289A, which allows stamping to occur by means of an endorsement.
- (3) An instrument that effects or evidences a dutiable transaction that is also a surcharge duty transaction is not duly stamped unless it is stamped or endorsed in accordance with this section.

104ZR Stamping of surcharge duty transactions not chargeable with duty

- (1) If a surcharge duty transaction is not chargeable with surcharge purchaser duty, an instrument that effects or evidences the surcharge duty transaction must be stamped in a manner approved by the Chief Commissioner to indicate that the transaction is not chargeable with surcharge purchaser duty.
- (2) If a surcharge duty transaction is not chargeable with purchaser duty, an instrument that effects or evidences the transaction must be stamped in a

manner approved by the Chief Commissioner to indicate that the transaction is not chargeable with purchaser duty.

Note. See section 301 in relation to the registration of an instrument that effects or evidences a surcharge duty transaction.

104ZS Interim payment of duty

- (1) In this section:
relevant dutiable transaction means an agreement for sale or transfer that is a dutiable transaction.
relevant surcharge duty transaction means an agreement for sale or transfer that is a surcharge duty transaction.
- (2) Section 49 applies in respect of residential-related property subject to a relevant surcharge duty transaction in the same way as it applies in respect of dutiable property subject to a relevant dutiable transaction.
- (3) For that purpose, references in section 49 are to be read as follows:
 - (a) a reference to the dutiable value of dutiable property is to be read as a reference to the dutiable value of residential-related property, determined in accordance with this Chapter,
 - (b) a reference to duty is to be read as a reference to surcharge purchaser duty.

104ZT Duplicates or counterparts

The duty chargeable under section 271 in respect of a duplicate or counterpart of an instrument is not payable in respect of any duplicate or counterpart of an instrument that effects or evidences a surcharge duty transaction.

[15] Section 105 Introduction and overview

Insert at the end of section 105:

- (2) This Chapter also charges duty on certain transactions involving foreign persons that are not “surcharge duty transactions” under Chapter 2A, at the same rate under that Chapter as for a transfer of residential-related property to a foreign person.

[16] Section 106 Definitions

Insert in alphabetical order:

residential land has the same meaning as in Chapter 2A.

[17] Section 107 Assignment of rights under call option dutiable as transfer

Insert “The duty chargeable on that assignment is referred to in this Part as *call option assignment duty*.” after “concerned.” in section 107 (1).

[18] Section 107 (1A)

Insert after section 107 (1):

- (1A) Duty under Chapter 2A is also chargeable on the assignment if A is a foreign person and the dutiable property concerned is residential-related property. The duty chargeable on that assignment is additional to call option assignment duty and is referred to in this Part as *surcharge call option assignment duty*.

[19] Section 107 (4)

Omit “duty”. Insert instead “call option assignment duty”.

[20] Section 107 (4A)

Insert after section 107 (4):

- (4A) If the assignment is chargeable with surcharge call option assignment duty, Chapter 2A applies in respect of the assignment in the same way as it applies to other transfers of residential-related property, and a reference in this Act to a surcharge duty transaction includes such an assignment, subject to this Part.

[21] Section 107 (5)

Omit “purpose of Chapter 2, the transfer of dutiable property”.

Insert instead “purposes of Chapters 2 and 2A, the transfer of dutiable property (including dutiable property that is residential-related property)”.

[22] Section 108 Person liable to pay call option assignment duty

Omit “The duty” wherever occurring from section 108 (1) and (3).

Insert instead “The call option assignment duty”.

[23] Section 108 (4)

Omit “the duty”. Insert instead “the call option assignment duty”.

[24] Section 108 (5)

Omit the subsection.

[25] Section 108A

Insert after section 108:

108A Person liable to pay surcharge call option assignment duty

- (1) Surcharge call option assignment duty on a call option assignment is payable by any foreign person who assigns the right under the call option to require another person to sell residential-related property (*the foreign option holder*).
- (2) Accordingly, the foreign option holder is taken, for the purposes of charging duty under Chapter 2A, to be the transferee of the residential-related property.
- (3) The duty payable by the foreign option holder is additional to the duty (if any) payable under Chapter 2A by a transferee on the transfer of an option to purchase residential land in New South Wales.
- (4) However, the duty payable by the foreign option holder as a consequence of this Part is to be reduced by the amount of duty (if any) paid by the foreign option holder under Chapter 2A on the transfer of the call option to the foreign option holder.

[26] Section 109 Determination of dutiable value of transfer

Omit “Chapter 2, the *dutiable value* of dutiable property”.

Insert instead “Chapters 2 and 2A, the *dutiable value* of dutiable property (including residential-related property that is dutiable property)”.

[27] Section 110 Stamping or endorsement of transactions

Omit “or call option assignment duty” wherever occurring from section 110 (1) and (2).

Insert instead “, surcharge purchaser duty, call option assignment duty or surcharge call option assignment duty”.

[28] Section 111 Exemptions

Insert “or 2A” after “Chapter 2” in section 111 (2).

[29] Chapter 3, Part 4A

Insert after Part 4 of Chapter 3:

Part 4A Acquisition by foreign person of land use entitlement to which Part 4 applies

137AA Meaning of “residential land use entitlement”

In this Part:

residential land use entitlement means a land use entitlement that entitles a person to occupy residential land (within the meaning of Chapter 2A) in New South Wales.

137AB When does a liability for duty arise?

A liability for duty charged by this Part arises when a residential land use entitlement is acquired by an allotment of shares or an issue of units to a foreign person otherwise than in circumstances to which Part 5 applies.

137AC Who is liable to pay the duty?

- (1) Duty under this Part is payable by the person who acquires the residential land use entitlement.
- (2) Only acquirers who are foreign persons are liable to pay duty under this Part.

137AD Assessment of duty

- (1) The share allotment or unit issue by which a foreign person acquires a residential land use entitlement is chargeable with duty at 4% of the dutiable value of the residential land use entitlement.
- (2) If any of the acquirers are not foreign persons, duty under subsection (1) is to be charged only on the proportion of the dutiable value of the residential land use entitlement that is the same as the proportion of the total shares or units allotted or issued in respect of the land use entitlement to acquirers who are foreign persons.
- (3) The dutiable value of the residential land use entitlement is to be determined, for the purposes of this section, in accordance with Part 2 of Chapter 2A, with any necessary modifications.

137AE Application of Part 4

- (1) The duty chargeable under this Part in respect of a share allotment or unit issue by which a person acquires a land use entitlement is in addition to any duty chargeable under Part 4 in respect of the share allotment or unit issue.
- (2) Sections 133, 135 and 136 apply, with any necessary modifications, in respect of duty chargeable under this Part and a person liable to pay duty chargeable under this Part in the same way as those sections apply in respect of duty chargeable under Part 4 and a person liable to pay duty chargeable under that Part.

[30] Section 145 Overview

Insert “or “surcharge duty transactions” under Chapter 2A” after “Chapter 2”.

[31] Section 145, note

Insert “Part 2B of this Chapter charges additional duty, at the same rate as the surcharge purchaser duty chargeable under Chapter 2A, if the person acquiring the significant interest is a foreign person and the landholder concerned is a private landholder.” after “Chapter 2.”.

[32] Part 2B

Insert after Part 2A of Chapter 4:

Part 2B Charging of surcharge duty on acquisitions made by foreign persons

157D Meaning of “residential land holding”

- (1) In this Part:
residential land holding means any land holding that is an interest in residential land (within the meaning of Chapter 2A).
- (2) For the purposes of charging duty under this Part in respect of a relevant acquisition in a landholder, a person is taken to be a foreign person if the person is a foreign person when the relevant acquisition is made.

157E Circumstances in which surcharge duty is chargeable

Duty is chargeable under this Part on a relevant acquisition in a private landholder if:

- (a) the private landholder has any residential land holding in New South Wales, and
- (b) any person who makes the relevant acquisition (or, if a relevant acquisition results from the aggregation of interests of associated persons, any of the associated persons) is a foreign person on the date of the relevant acquisition.

157F Relationship with Part 2

- (1) This Part charges duty in addition to any other duty chargeable under Part 2 on a relevant acquisition.
- (2) Part 2 applies in respect of duty charged by this Part, subject to this Part and any necessary modifications, in the same way as it applies in respect of duty charged by Part 2.
- (3) Sections 154–157 do not apply in respect of duty charged by this Part.

157G Who is liable to pay the duty?

- (1) Duty chargeable under this Part is payable by any foreign person who makes the relevant acquisition, except as provided by subsection (2).
- (2) If a relevant acquisition results from an aggregation of the interests of associated persons, any foreign person who made the relevant acquisition and any associated person who is a foreign person is jointly and severally liable for payment of the duty.

157H How duty is charged on relevant acquisitions by foreign persons

- (1) If an acquisition statement that discloses a relevant acquisition in a private landholder does not disclose any other acquisitions by a foreign person during the statement period, duty is chargeable, at 4% (*the general surcharge rate*), on the amount calculated by multiplying the unencumbered value of all

residential land holdings of the landholder in New South Wales (calculated at the date of acquisition of the interest acquired) by the proportion of that value represented by the interest acquired in the relevant acquisition.

- (2) If a relevant acquisition results from the aggregation of the interests of associated persons who are foreign persons, the reference in subsection (1) to the interest acquired includes a reference to any interests acquired by any such associated persons on the same date.
- (3) If an acquisition statement disclosing a relevant acquisition in a private landholder also discloses one or more other acquisitions by a foreign person during the statement period, duty is chargeable, at the general surcharge rate, on the aggregate of amounts severally calculated, in the manner provided by subsection (1), in respect of each interest required to be disclosed in the statement that is an interest of a foreign person.
- (4) Duty payable under this Part is to be reduced by the sum of the duty paid or payable under this Part in respect of an acquisition, during the statement period, by the foreign person or any associated person who is a foreign person of an interest in the same landholder, but only in proportion to the extent to which the duty paid or payable is attributable to the amount of the duty payable under this Part.
- (5) Duty is not chargeable under this Part on the acquisition of an interest in a landholder that is required to be disclosed in an acquisition statement if the acquisition is an exempt acquisition.

[33] Section 163A General exemptions

Insert at the end of section 163A:

- (2) Without limiting subsection (1), an acquisition by a foreign person of an interest in a landholder is an exempt acquisition for the purposes of duty chargeable under Part 2B if the interest concerned is an interest in a private landholder acquired before 21 June 2016.

[34] Section 221A Definitions

Omit “confers a right” from paragraph (b) of the definition of *private dwelling house*.

Insert instead “entitles the holder of the land use entitlement”.

[35] Section 271 Duplicates or counterparts

Insert at the end of section 271:

Note. See section 104ZT in relation to the duplicates or counterparts of an instrument that effects a surcharge duty transaction.

[36] Section 275A Partial exemption for certain transactions by charitable and benevolent bodies

Insert “or 2A” after “Chapter 2” in section 275A (1).

[37] Section 288 Stamping of instruments

Insert at the end of section 288:

Note. In relation to dutiable transactions that are surcharge duty transactions, see Part 5 of Chapter 2A.

[38] Section 293 Reassessments—failed instruments

Insert “See Part 3 of Chapter 2A for refunds of surcharge purchaser duty on failed instruments.” after “failed instruments.” in the note to section 293.

[39] Section 301 Registration of transactions and instruments

Insert at the end of section 301:

- (2) In the case of a dutiable transaction that is also a surcharge duty transaction, the transaction or instrument referred to in subsection (1) must be stamped or endorsed, in accordance with Part 5 of Chapter 2A, in a manner that indicates:
 - (a) that purchaser duty has been paid in respect of the transaction or that the transaction is not chargeable with purchaser duty, and
 - (b) that surcharge purchaser duty has been paid in respect of the transaction or that the transaction is not chargeable with surcharge purchaser duty.

[40] Schedule 1 Savings, transitional and other provisions

Insert at the end of Schedule 1:

Part 45 Provisions consequent on enactment of State Revenue Legislation Amendment (Budget Measures) Act 2016

118 Definition

In this Part:

amending Act means the *State Revenue Legislation Amendment (Budget Measures) Act 2016*.

119 Application of amendments to Chapter 2

- (1) An amendment made to Chapter 2 by the amending Act applies in respect of a dutiable transaction that occurs on or after the commencement of the amendment.
- (2) However, an amendment made to Chapter 2 by the amending Act does not apply to a transfer of dutiable property made in conformity with an agreement for sale or transfer of the dutiable property that was entered into before the commencement of the amendment.

120 Application of surcharge purchaser duty

- (1) The duty charged by Chapter 2A, as inserted by the amending Act, is charged on surcharge duty transactions that occur on or after the commencement of that Chapter, except as otherwise provided by this clause.
- (2) Surcharge purchaser duty is not chargeable on a transfer of residential-related property made in conformity with an agreement for sale or transfer of the residential-related property entered into before the commencement of Chapter 2A.
- (3) Surcharge purchaser duty is not chargeable on a surcharge duty transaction that results from the exercise of an option for the sale or purchase of residential-related property, if the option was granted before the commencement of Chapter 2A.
- (4) However, surcharge purchaser duty is chargeable on any of the following surcharge duty transactions occurring on or after the commencement of Chapter 2A:
 - (a) a transaction that is taken by section 9B (as applied by section 104O) to be the transfer of an option,

- (b) a transaction that results from the exercise of an option that, on or after the commencement of Chapter 2A, is taken by section 9B (as applied by section 104O) to have been transferred.

121 Application of amendments to Chapter 3 relating to surcharge call option assignment duty

An amendment made to Part 2 of Chapter 3 by the amending Act applies only in respect of a call option assignment (within the meaning of that Part) made on or after the commencement of the amendment.

122 Application of Part 4A of Chapter 3

The duty charged by Part 4A of Chapter 3, as inserted by the amending Act, applies only in respect of an allotment of shares or an issue of units made on or after the commencement of that Part.

123 Application of amendments to Chapter 4

The duty charged by Part 2B of Chapter 4, as inserted by the amending Act, applies only in respect of a relevant acquisition (within the meaning of that Chapter) occurring on or after the commencement of that Part.

[41] Dictionary

Insert in alphabetical order in clause 1:

foreign person has the meaning given by Chapter 2A.

residential-related property has the meaning given by Chapter 2A.

surcharge duty transaction has the meaning given by Chapter 2A.

surcharge purchaser duty means duty charged by Chapter 2A.

Explanatory note

Schedule 1 amends the *Duties Act 1997* to impose additional duty of 4% on transactions involving the acquisition by foreign persons of interests in residential land in New South Wales. The transactions concerned are generally already dutiable under Chapter 2, 3 or 4 of that Act. The additional duty is payable by the foreign persons concerned on relevant transactions occurring on or after 21 June 2016.

The various kinds of additional duty are explained in detail below.

Surcharge purchaser duty

Item [14] of the proposed amendments inserts a new Chapter 2A into the *Duties Act 1997*, which provides for the charging of a duty (referred to as surcharge purchaser duty), in addition to duty under Chapter 2, on certain dutiable transactions (referred to as **surcharge duty transactions**) involving a transfer of residential-related property to a foreign person.

Foreign person is defined in proposed section 104J and has the same meaning as in the *Foreign Acquisitions and Takeovers Act 1975* of the Commonwealth, with modifications relating to Australian citizens and New Zealand citizens. Under that Act, an individual who is not ordinarily resident in Australia is a foreign person. If the individual is an Australian citizen, the modifications will ensure that the individual is taken to be ordinarily resident in Australia. If the individual is a New Zealand citizen holding a special category visa under the *Migration Act 1958* of the Commonwealth, the modifications will ensure that (generally in line with permanent residents) the individual will be regarded as ordinarily resident in Australia if the individual has actually been in Australia during 200 or more days in the preceding 12 months.

Residential-related property is defined in proposed section 104K as any of the following:

- (a) residential land in New South Wales,
- (b) an option to purchase residential land in New South Wales,
- (c) an interest in any residential-related property referred to in paragraph (a) or (b), except to the extent that:
 - (i) it arises as a consequence of the ownership of a unit in a unit trust scheme and is not a land use entitlement, or
 - (ii) it is, or is attributable to, an option over residential-related property, or

(iii) it is a marketable security,

- (d) a **partnership interest** (being an interest in a partnership that has partnership property that is residential-related property elsewhere referred to in the proposed section).

The additional duty is charged at the rate of 4% of the dutiable value of the residential-related property (proposed section 104U). Dutiable value is generally determined in accordance with the principles already set out in Chapter 2 of the *Duties Act 1997* (proposed section 104Z). If the residential land to which the residential-related property relates is used for non-residential purposes, surcharge purchaser duty will apply only to the dutiable value that is attributable to the residential use of the land. This will involve an apportionment of the dutiable value of the residential-related property (proposed section 104ZB).

General exemptions under Chapter 2 of the *Duties Act 1997* will also apply in respect of surcharge purchaser duty. Generally, a transaction that is not chargeable with ad valorem duty under Chapter 2 (including transactions chargeable with nominal duty of \$50 under that Chapter) is not chargeable with surcharge purchaser duty (proposed section 104ZK).

An instrument that effects a dutiable transaction that is also a surcharge duty transaction will need to be stamped to indicate that the surcharge purchaser duty has been paid, or that no surcharge purchaser duty is payable on the transaction.

Items [1]–[8], [11]–[13], [35]–[39] and [41] make consequential amendments.

Surcharge call option assignment duty

Item [18] provides for the charging of duty, in addition to the call option assignment duty that is chargeable on the assignment of a right under a call option to purchase dutiable property, if the property is residential-related property and the person assigning the right is a foreign person. The additional duty is referred to as **surcharge call option assignment duty**.

Item [20] provides that, if the assignment is chargeable with surcharge call option assignment duty, Chapter 2A applies to the assignment in the same way as it applies to other transfers of residential-related property. Accordingly, duty on the assignment is charged at the rate of 4% of the dutiable value of the residential-related property.

Item [25] ensures that surcharge call option assignment duty is payable by the foreign person.

Items [15]–[17], [19], [21]–[24] and [26]–[28] make consequential amendments.

Additional duty on acquisition of residential land use entitlements

Item [29] inserts a new Part 4A into Chapter 3 of the *Duties Act 1997*, which provides for the charging of duty, in addition to the duty charged by Part 4 of that Chapter, on the acquisition by a foreign person of a land use entitlement that entitles a person to occupy residential land in New South Wales. The additional duty is payable by the foreign person at the rate of 4% of the dutiable value of the residential land use entitlement.

Additional duty on acquisition of interests in landholders

Item [32] inserts a new Part 2B into Chapter 4 of the *Duties Act 1997*, which provides for the charging of duty, in addition to the duty charged by Part 2 of that Chapter, on a relevant acquisition in a private landholder that has any residential land holding in New South Wales if the person making the relevant acquisition is a foreign person. Duty is charged at 4% of the amount calculated by multiplying the unencumbered value of all of the landholder's residential land holdings in New South Wales by the proportion of that value represented by the interest acquired in the relevant acquisition. Items [30] and [31] make consequential amendments.

Item [33] ensures that an acquisition by a foreign person in a private landholder is an exempt acquisition for the purposes of the additional duty provided for in proposed Part 2B of Chapter 4 if the interest was acquired before 21 June 2016.

Other amendments

Item [10] ensures that a concession provided for in Chapter 2 of the *Duties Act 1997* in relation to an off the plan purchase agreement is not available if any purchaser or transferee under the agreement is a foreign person. Under the concession, the date on which liability for duty under Chapter 2 arises on an off the plan purchase agreement is deferred.

Item [40] provides for savings and transitional matters.

Items [9] and [34] make amendments by way of statute law revision.

Schedule 2 Amendment of Land Tax Act 1956 No 27

[1] Section 5A

Insert before section 6:

5A Levy of surcharge land tax on residential land owned by foreign persons— 2017 and subsequent land tax years

- (1) Land tax is payable under this section in respect of residential land owned by a foreign person (*surcharge land tax*).
- (2) In respect of the taxable value of all the residential land owned by the foreign person at midnight on 31 December in any year (commencing with 2016), surcharge land tax is to be charged, levied, collected and paid under the provisions of the Principal Act and in the manner prescribed under that Act for the period of 12 months commencing on 1 January in the next succeeding year at the rate of 0.75% of that taxable value as assessed under the Principal Act.
- (3) Surcharge land tax is payable in addition to any land tax payable in respect of the residential land under the other provisions of this Act, and is so payable even if no land tax is payable under those other provisions.
- (4) The Principal Act applies to surcharge land tax in respect of residential land owned by a foreign person subject to the following:
 - (a) surcharge land tax is payable as if the residential land were the only land owned by the foreign person,
 - (b) if the residential land is also owned by a person who is not a foreign person, the taxable value of the land is to be reduced to the proportionate value of the interest in the land of the foreign person,
 - (c) if the foreign person is a joint owner of the residential land, the person is to be individually (and not jointly) assessed and is liable in respect of the value of the person's proportionate interest in the land as if the person were the owner of a part of the land in proportion to the person's interest (and accordingly section 27 (2)–(4) of the Principal Act does not apply),
 - (d) if the Chief Commissioner is satisfied that the residential land is used for purposes other than residential purposes, the taxable value of the land is to be reduced by the apportionment factor determined in accordance with section 104ZB of the *Duties Act 1997* in relation to the land,
 - (e) if the foreign person is the trustee of a fixed trust (within the meaning of section 3A of the Principal Act) in relation to the residential land, the person is not liable to surcharge land tax,
 - (f) the provisions of the Principal Act relating to the persons who are taken to be owners of the residential land apply to surcharge land tax, except that section 23 of the Principal Act does not operate to make a mortgagee in possession an owner of the land unless the mortgagee is a foreign person,
 - (g) the residential land is not exempt from surcharge land tax because it is the principal place of residence of the foreign person (and accordingly sections 9C and 9D of the Principal Act do not operate to reduce the land value of the residential land if it is the principal place of residence of the person),
 - (h) the tax thresholds under Division 4A of Part 7 of the Principal Act do not apply to surcharge land tax,

- (i) any other modification prescribed by the regulations under the Principal Act applies to surcharge land tax.
- (5) If a foreign person defaults in the payment of surcharge land tax then, without releasing the foreign person from his or her liability, the following provisions apply as long as the default continues:
 - (a) if the foreign person is a joint owner of the land concerned—any other joint owner (whether or not a foreign person) is, on being served with a notice by the Chief Commissioner requiring payment of the unpaid surcharge land tax, responsible for its payment and the unpaid tax may be recovered from that other joint owner as if he or she were the defaulting taxpayer,
 - (b) if the foreign person is a beneficiary of a trust relating to the land concerned—the trustee (whether or not a foreign person) is, on being served with a notice by the Chief Commissioner requiring payment of the unpaid surcharge land tax, responsible for its payment and the unpaid tax may be recovered from that trustee as if he or she were the defaulting taxpayer,
 - (c) all payments made under this subsection by that other joint owner or that trustee are taken to be made on behalf of the defaulting taxpayer,
 - (d) that other joint owner or that trustee may recover from the foreign person any amount paid by that other joint owner or that trustee under this subsection.
- (6) In this section:
foreign person and *residential land* have the same meanings as in Chapter 2A of the *Duties Act 1997*.

[2] Section 6 Land tax liability in respect of flood liable land

Insert at the end of the section:

- (3) This section does not apply to surcharge land tax under section 5A.

Explanatory note

Item [1] of the proposed amendments to the *Land Tax Act 1956* imposes surcharge land tax at the rate of 0.75% of the taxable value of residential land owned by a foreign person. The tax is to be separately assessed in relation to each parcel of land owned by the foreign person and is payable in addition to land tax otherwise payable by the foreign person. There will be no tax threshold to exempt land below a specified value nor any exemption for land occupied by the foreign person as a principal place of residence. The meanings of *residential land* and *foreign person* are linked to the meanings of those expressions in the proposed surcharge purchaser duty provisions in the amendments to the *Duties Act 1997* set out in Schedule 1 to the proposed Act.

Item [2] makes a consequential amendment.

Schedule 3 Amendment of Payroll Tax Rebate Scheme (Jobs Action Plan) Act 2011 No 19

[1] Section 12 Excluded employment

Insert at the end of section 12 (1) (k):

, or

- (l) in the case of employment commencing on or after 31 July 2016—the number of full time equivalent employees of the employer (excluding the person) is more than 50 on the date on which the employment commences.

[2] Section 15 Amount of rebate

Insert “and before 31 July 2016” after “2013” in section 15 (1A) (b).

[3] Section 15 (1A) (c)

Insert at the end of section 15 (1A) (b) (ii):

, or

- (c) for eligible employment commencing on or after 31 July 2016:
 - (i) \$2,000 for the first year of employment, and
 - (ii) \$4,000 for the second year of employment.

Explanatory note

Item [3] of the proposed amendments to the *Payroll Tax Rebate Scheme (Jobs Action Plan) Act 2011* increases the payroll tax rebate payable under that Act in respect of new jobs. In particular, the rebate payable, in relation to eligible employment commencing on or after 31 July 2016, is increased for the second year of employment from \$3,000 to \$4,000. Item [2] makes a consequential amendment.

Item [1] restricts the rebate payable, in relation to employment commencing on or after 31 July 2016, to employers that have 50 or fewer full-time equivalent employees (apart from the new employee or employees) on the date on which the employment commences.

[Second reading speech made in—
Legislative Assembly on 21 June 2016
Legislative Council on 23 June 2016]