



New South Wales

# State Revenue Legislation Amendment (Budget Measures) Act 2005 No 42

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New South Wales

# **State Revenue Legislation Amendment (Budget Measures) Act 2005 No 42**

Act No 42, 2005

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An Act to make miscellaneous amendments to certain State revenue legislation; and for other purposes. [Assented to 16 June 2005]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *State Revenue Legislation Amendment (Budget Measures) Act 2005*.

**2 Commencement**

- (1) This Act commences on the date of assent, except as provided by subsection (2).
- (2) Schedule 1 [4]–[8] commence, or are taken to have commenced, on 1 August 2005.

**3 Amendment of Acts**

The Acts specified in the Schedules are amended as set out in those Schedules.

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## Schedule 1 Amendment of Duties Act 1997 No 123

(Section 3)

**[1] Section 162M What is the vendor acquisition date?**

Insert “, subject to this section” after “under Chapter 2” in section 162M (3).

**[2] Section 162M (6) and (7)**

Insert after section 162M (5):

- (6) If the land-related property the subject of a vendor duty transaction is held by the vendor subject to a trust and the vendor acquired the property by means of a dutiable transaction that was not chargeable with ad valorem duty:
  - (a) the vendor acquisition date is taken to be the most recent date (before that dutiable transaction occurred) on which another dutiable transaction occurred, being a dutiable transaction that was chargeable with ad valorem duty under Chapter 2 as a transfer of the land-related property (an *ad valorem duty transaction*), and
  - (b) the vendor is taken, for the purposes of this Division, to have acquired the land-related property on that date.
- (7) In a case referred to in subsection (6), if no ad valorem duty transaction has occurred, sections 162I–162K do not apply to the vendor duty transaction.

**Note.** If land-related property is the subject of a trust and a new trustee is appointed, the acquisition of the legal interest by the trustee is generally not chargeable with ad valorem duty under Chapter 2. Under subsection (6), the vendor acquisition date is taken to be the most recent date on which another dutiable transaction occurred that was chargeable with ad valorem duty under Chapter 2, not the date on which any new trustee acquired the legal interest to the property. Note that a declaration of trust over land-related property is chargeable with duty as if it were a transfer of the property under Chapter 2.

**[3] Section 163ZL What is the disposer acquisition date?**

Insert after section 163ZL (2):

- (3) For the purposes of subsection (1) (a), if the interest being disposed of by the person was acquired by the person subject to a trust, a reference to the person making the relevant disposal is taken to be a reference to the beneficial owner or owners of that interest.

- (4) For the purposes of subsection (1) (b), if a linked entity (within the meaning of section 163T) of a landholder acquires a land holding, the landholder is taken to have acquired the land holding.

**[4] Section 220 Refinancing of loans**

Insert in alphabetical order in section 220 (1):

*land used for aquaculture* means land subject to an aquaculture permit (within the meaning of the *Fisheries Management Act 1994*).

**[5] Section 220 (3)–(3B)**

Omit section 220 (3). Insert instead:

- (3) A refinancing mortgage is taken to have been stamped with ad valorem duty as a mortgage in respect of the duty-free refinancing amount, except as provided by subsection (5).
- (3A) For the purposes of this section, the *duty-free refinancing amount* is the lesser of the following amounts:
- (a) the maximum amount payable under or secured by the earlier mortgage (being an amount in relation to which mortgage duty has been paid or in relation to which an exemption from duty has been obtained),
  - (b) \$1,000,000.
- (3B) However, if the refinancing mortgage is over land used for primary production or land used for aquaculture, the *duty-free refinancing amount* is the maximum amount payable under or secured by the earlier mortgage (being an amount in relation to which mortgage duty has been paid or in relation to which an exemption from duty has been obtained).

**Note.** “Land used for primary production” is defined in the Dictionary.

**[6] Section 220 (5)**

Omit “maximum amount secured by the earlier mortgage”.

Insert instead “duty-free refinancing amount”.

**[7] Section 220 (8) (a)**

Omit “maximum amount secured by the earlier mortgage”.

Insert instead “duty-free refinancing amount”.

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**[8] Section 227A**

Insert after section 227:

**227A Transfer of mortgages**

- (1) If a mortgage is transferred (whether or not at the request or direction of any party) to:
  - (a) a person who, either in connection with the transfer or at a later time, makes an advance or further advance under or secured by the mortgage, or
  - (b) a person who is a party to arrangements (referred to in section 215) relating to such an advance or further advance,

the transferred mortgage is taken, for the purpose of determining its liability to duty under this Act, to be a new mortgage on which no duty has been paid and is liable to duty in respect of the advance or further advance accordingly.
- (2) The date of first execution of the transferred mortgage is taken to be:
  - (a) in the case of a mortgage where the advance or further advance was made in connection with the transfer—the date of first execution of the transfer, and
  - (b) in the case of a mortgage where the advance or further advance was made at a later time—the date of the first such advance or further advance.
- (3) If an insufficient amount of duty has been paid on a mortgage to which this section applies before it is taken by this section to be a new mortgage, the Chief Commissioner is not prevented from recovering at any time the amount of duty with which, in the Chief Commissioner's opinion, the mortgage was properly chargeable from the mortgagor or person bound.
- (4) This section does not apply to a mortgage referred to in section 220 (3B).
- (5) This Chapter applies to a mortgage referred to in subsection (1) in the same way as it applies to any other mortgage, except as provided by subsection (6).
- (6) For the purposes of section 218B (1), a transferred mortgage is not considered to have been duly stamped in respect of any duty paid before the transfer on advances made before the transfer.

**[9] Section 233 Types of general insurance**

Omit section 233 (1) and (2). Insert instead:

- (1) For the purpose of charging duty, general insurance is divided into 3 types, Type A insurance, Type B insurance and Type C insurance.
- (2) **Type A insurance** is general insurance other than Type B insurance or Type C insurance.
- (2A) **Type B insurance** is:
  - (a) motor vehicle insurance, being insurance covering any one or more of the following:
    - (i) the loss (including the loss by theft) of a motor vehicle,
    - (ii) damage to a motor vehicle,
    - (iii) loss of or damage to property by a motor vehicle, being a motor vehicle within the meaning of the *Motor Accidents Compensation Act 1999*, or
  - (b) aviation insurance, being insurance covering any one or more of the following:
    - (i) the loss (including the loss by theft) of an aircraft,
    - (ii) damage to aircraft,
    - (iii) the death of or injury to a person by an aircraft or a thing falling from an aircraft,
    - (iv) the loss of or damage to property by an aircraft or a thing falling from an aircraft, or
  - (c) disability income insurance, being insurance effected by a contract of insurance under which an amount is payable in the event of disablement of the insured by accident or sickness, or
  - (d) occupational indemnity insurance, being insurance covering liability arising out of the provision by a person of professional services or other services, or
  - (e) hospital and ancillary health benefits insurance, being insurance covering liability incurred in respect of fees or charges for hospital treatment, or for health care ancillary to hospital treatment, if the liability is not covered by an organisation registered under Part VI of the *National Health Act 1953* of the Commonwealth.

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**[10] Section 233 (3)**

Omit “*Type B insurance*”. Insert instead “*Type C insurance*”.

**[11] Section 234**

Omit the section. Insert instead:

**234 What duty is payable?**

- (1) The amount of duty chargeable on the premium paid in relation to a contract of insurance is 9% of the amount of the premium to the extent to which the premium is paid to effect Type A insurance.
- (2) The amount of duty chargeable on the premium paid in relation to a contract of insurance is 5% of the amount of the premium to the extent to which the premium is paid to effect Type B insurance.
- (3) The amount of duty chargeable on the premium paid in relation to a contract of insurance is 2.5% of the amount of the premium to the extent to which the premium is paid to effect Type C insurance.

**[12] Section 253 Monthly returns and payment of duty**

Insert after section 253 (a) (ii):

- (iii) the total amount of all premiums for Type C insurance paid to the registered insurer in the preceding month, and

**[13] Schedule 1 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*State Revenue Legislation Amendment (Budget Measures) Act 2005*

**[14] Schedule 1**

Insert at the end of the Schedule (with appropriate Part and clause numbers):

**Part Provisions consequent on enactment of  
State Revenue Legislation Amendment  
(Budget Measures) Act 2005**

**Changes to vendor duty and land rich disposal concessions**

- (1) The amendments made by the *State Revenue Legislation Amendment (Budget Measures) Act 2005* to sections 162M and

163ZL are taken to have effect as if they had commenced on the date on which the Bill for the *State Revenue Legislation Amendment (Budget Measures) Act 2005* was introduced in the Legislative Assembly (the **effective date**).

- (2) Accordingly, section 162M (6) applies in respect of any vendor duty transaction that occurs on or after the effective date and section 163ZL (3) and (4) apply in respect of any relevant disposal that is made on or after the effective date.
- (3) If a vendor duty transaction or relevant disposal that occurred or was made before the date of assent to the *State Revenue Legislation Amendment (Budget Measures) Act 2005* becomes chargeable with duty or additional duty as a result of the amendments made by that Act to sections 162M and 163ZL, the vendor duty transaction or relevant disposal is taken (if the duty or additional duty has not already been paid) to become chargeable with that duty or additional duty on the date of assent to that Act.
- (4) In section 162M, as amended by the *State Revenue Legislation Amendment (Budget Measures) Act 2005*:
  - (a) a reference to an ad valorem duty transaction includes an ad valorem duty transaction that occurred before the effective date, and
  - (b) a reference to Chapter 2 of this Act includes a reference to any corresponding provisions of the *Stamp Duties Act 1920* that have been repealed.

#### **Mortgage duty—refinancing**

- (1) The amendments made to section 220 by the *State Revenue Legislation Amendment (Budget Measures) Act 2005* apply to any refinancing mortgage (within the meaning of section 220) that is first executed on or after 1 August 2005, regardless of when the earlier mortgage that is discharged or to be discharged as part of the arrangements relating to the refinancing mortgage was first executed.
- (2) Section 227A, as inserted by the *State Revenue Legislation Amendment (Budget Measures) Act 2005*, applies to any mortgage transferred on or after 1 August 2005, regardless of when it was first executed.

#### **Insurance duty**

- (1) The amendments made to Chapter 8 by the *State Revenue Legislation Amendment (Budget Measures) Act 2005* have effect

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only in relation to premiums paid on or after the date of assent to that Act for contracts of insurance and renewals of contracts of insurance that take effect on or after 1 September 2005.

- (2) Despite section 253, the Chief Commissioner may, having regard to the amendments made to Chapter 8 by the *State Revenue Legislation Amendment (Budget Measures) Act 2005*, determine the categories of premiums to be shown in a form of a return required to be lodged under that section on or before 21 August 2005 or a subsequent month.

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## Schedule 2 Amendment of Land Tax Act 1956 No 27

(Section 3)

### [1] Section 2A

Omit the section. Insert instead:

#### 2A Definition

In this Act:

*tax threshold* means:

- (a) in relation to a land tax year before the 2005 land tax year—the tax threshold determined in accordance with section 62TB of the Principal Act, and
- (b) in relation to the 2006 land tax year or any subsequent land tax year—the tax threshold determined in accordance with section 62TBA of the Principal Act.

### [2] Section 3AI Levy of land tax after 31 December 2004 and before 31 December 2005

Omit “on 31 December in any year (commencing with 2004)” wherever occurring in section 3AI (1) and (2).

Insert instead “on 31 December 2004”.

### [3] Section 3AJ

Insert after section 3AI:

#### 3AJ Levy of land tax after 31 December 2005

- (1) Except as provided by subsection (2), in respect of the taxable value of all the land owned by any person at midnight on 31 December in any year (commencing with 2005) there is to be charged, levied, collected and paid under the provisions of the Principal Act and in the manner prescribed under that Act, land tax for the period of 12 months commencing on 1 January in the next succeeding year and at the rates set out in Schedule 11.
- (2) In respect of the taxable value of all the land owned by a person at midnight on 31 December in any year (commencing with 2005) where:
  - (a) the owner is a company classified under section 29 of the Principal Act as a non-concessional company, or
  - (b) the land is subject to a special trust,

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land tax for the period of 12 months commencing on 1 January in the next succeeding year is, except as provided by section 27 (2A) of the Principal Act, to be charged, levied, collected and paid as referred to in subsection (1) at the rate of 1.7 cents for each \$1 of the taxable value.

- (3) If the total amount of land tax payable pursuant to this section by any person in any year would, but for this subsection, be less than \$100, no land tax is payable.

**[4] Schedule 11**

Insert after Schedule 10:

**Schedule 11**

(Section 3AJ)

<b>Where the taxable value assessed under the Principal Act</b>	<b>Rates of land tax payable</b>
is not more than the tax threshold	nil
is more than the tax threshold	\$100 plus 1.7c for each \$1 in excess of the tax threshold

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## Schedule 3 Amendment of Land Tax Management Act 1956 No 26

(Section 3)

**[1] Part 7, Division 4A, note**

Insert after the heading to Division 4A of Part 7:

**Note.** Sections 62TA and 62TB provide for the determination of the tax threshold for the land tax years from 1998 to 2004. In 2004, the tax threshold was abolished, with effect from the 2005 land tax year. Accordingly, there is no tax threshold for the 2005 land tax year. The tax threshold was then re-introduced, with effect from the 2006 land tax year. Sections 62TBA and 62TBB provide for the determination of the tax threshold for the 2006 land tax year and subsequent land tax years.

**[2] Section 62T Abolition of tax threshold from 2005 land tax year**

Omit the section.

**[3] Section 62TA Determination of change in NSW property values—pre-2004**

Insert “before 2004” after “in each year” wherever occurring in section 62TA (1) and (3).

**[4] Section 62TA (2)**

Omit the subsection.

**[5] Section 62TB Tax threshold—pre-2005 land tax year**

Insert “and before the 2005 land tax year” after “subsequent to the 1998 land tax year” in section 62TB (2).

**[6] Section 62TB (5)**

Insert “before 2004” after “in each year”.

**[7] Sections 62TBA and 62TBB**

Insert after section 62TB:

**62TBA Tax threshold—2006 land tax year and subsequent years**

(1) The tax threshold for the 2006 land tax year is \$330,000.

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- (2) The tax threshold for a land tax year subsequent to the 2006 land tax year is to be determined in accordance with the following formula:

$$T \times (100\% + I)$$

where:

*T* is the tax threshold for the previous land tax year.

*I* is the indexation factor for the land tax year, determined in accordance with section 62TBB.

- (3) A tax threshold determined in accordance with this section is to be rounded off to the nearest \$1,000.
- (4) On or before 15 October in each year (commencing with 2006), the Valuer-General is to publish in the Gazette the tax threshold applicable to the following land tax year, as determined in accordance with this section.

**62TBB Determination of indexation factor**

- (1) During the month of September in each year (commencing with 2006), the Valuer-General is to determine:
- (a) the average land values of land within residential, commercial, business and industrial zones in New South Wales at 1 July in that year, and
  - (b) the percentage by which those average land values have changed between 1 July in the year preceding the determination and 1 July in the year in which the determination is made (*the percentage change in land values*).
- (2) For the purpose of determining the tax threshold for a land tax year subsequent to the 2006 land tax year, the *indexation factor* is:
- (a) the percentage change in land values determined by the Valuer-General in the year preceding the land tax year, or
  - (b) if the Valuer-General determines in the year preceding the land tax year that the average land values of land within residential, commercial, business and industrial zones in New South Wales at 1 July in that year are less than the average land values of land within residential, commercial, business and industrial zones in New South Wales at 1 July in any previous year (excluding any year before 2005)—zero.

- (3) On or before 15 October in each year (commencing with 2006), the Valuer-General is to publish in the Gazette the percentage change in land values, and the indexation factor applicable to the following land tax year, as determined in accordance with this section.

**[8] Section 62TC Definitions**

Insert at the end of the section:

- (2) For the purposes of this Division, land is within a *residential, commercial, business or industrial zone* if it is zoned or otherwise designated for use under an environmental planning instrument (within the meaning of the *Environmental Planning and Assessment Act 1979*) for, or principally for, residential, commercial, business or industrial purposes, or for some or all of those purposes.

**[9] Schedule 2 Savings and transitional provisions**

Insert at the end of clause 1A (1):

*State Revenue Legislation Amendment (Budget Measures) Act 2005*

[Second reading speech made in—  
Legislative Assembly on 24 May 2005  
Legislative Council on 9 June 2005]

BY AUTHORITY