

STAMP DUTIES (FURTHER AMENDMENT) BILL 1987

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The following Bills are cognate with this Bill:

Land Tax (Amendment) Bill 1987;

Land Tax Management (Amendment) Bill 1987;

Pay-roll Tax (Amendment) Bill 1987.

The objects of this Bill are—

- (a) to make miscellaneous amendments to the Stamp Duties Act 1920 to clarify the operation of certain of its provisions, to avoid the impost of double-duty in certain cases and in other respects;
- (b) to give effect to certain statements made by the Treasurer in presenting this year's Budget concerning duty payable on betting tickets, residential leases, debentures issued by financial corporations and first home purchases; and
- (c) to make amendments to the Principal Act by way of statute law revision.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the provisions of the proposed Act on a number of different dates, some of them retrospective. The dates of commencement and the reasons for those dates, where they are retrospective, are given elsewhere in this Explanatory Note.

Clause 3 gives effect to the Schedules of amendments.

Clause 4 gives effect to a Schedule which contains provisions specifying how some of the amendments to the Principal Act are to apply to various instruments.

Stamp Duties (Further Amendment) 1987

SCHEDULE 1—MISCELLANEOUS AMENDMENTS

Schedule 1 (1) increases the penalty for an offence under section 21 (Penalty for not fully setting forth facts) of the Principal Act from \$100 to 50 penalty units in the case of a corporation and 20 penalty units in any other case. Under section 56 of the Interpretation Act 1987, the value of a penalty unit is currently \$100. This amendment commences 28 days after the date of assent to the proposed Act.

Schedule 1 (2) amends section 25 (Terms on which instruments may be stamped after execution) of the Principal Act to clarify the operation of that section in relation to the interim stamping of instruments. The amendment makes it clear that fines for late payment become payable, not after 2 months have expired from the date of interim stamping, but after 2 months have expired from the date the correct amount of duty has been assessed.

Schedule 1 (3) makes amendments to section 41 (Agreements for sale or conveyance to be chargeable as conveyances etc.) of the Principal Act.

Schedule 1 (3) (a) provides that an application for a refund of duty paid on an agreement which is rescinded or annulled is to be made in a form approved by the Chief Commissioner rather than in a form prescribed by regulations under the Principal Act.

Schedule 1 (3) (b) provides for a deduction of \$25 to be made from any such refund to cover the administrative costs of processing the application.

Schedule 1 (3) (c) enables a refund of duty to be made in respect of a duly stamped agreement if, under section 66M of the Conveyancing Act 1919, the consideration expressed in the agreement is reduced or the purchaser recovers an amount from the vendor as a debt.

Schedule 1 (3) (d) removes a provision which is spent.

Schedule 1 (4) amends section 45A (Bookmakers to issue betting tickets etc.) of the Principal Act to remove the stamp duty on betting tickets issued for bets made with bookmakers on or after 1 January 1988.

Schedule 1 (5) substitutes section 46A (Cheque defined) of the Principal Act to bring the definition of "cheque" in the Principal Act into conformity with the recently enacted Cheques and Payment Orders Act 1986 of the Commonwealth.

Schedule 1 (6) amends section 66E (Conveyance between married couple) of the Principal Act to provide that the exemption from duty for a transfer of the principal place of residence between married or de facto spouses be extended so as to enable a refund of duty on a transfer of vacant land where the principal place of residence of the spouses is built on the land after the transfer.

Schedule 1 (7) amends section 74CB (Certain instruments exempt from duty) of the Principal Act to provide that the exemption from duty for a transfer of property between married or de facto spouses on the breakdown of the marriage or de facto relationship be extended to include transfers of property to the children of the spouses or of either of them. The amendment also provides that a deed under section 87 of the Family Law Act 1975 of the Commonwealth approved by the Family Law Court will be exempt from duty notwithstanding that the marriage of the parties to the deed has not been dissolved or annulled.

Stamp Duties (Further Amendment) 1987

Schedule 1 (8) inserts proposed section 74H (Exemption from duty) into the Principal Act. The proposed section is to remove a double duty impost by exempting from hiring arrangement duty the hire income generated by goods in respect of which the owner has paid conveyance duty on their purchase. The proposed section is deemed to have commenced on 10 August 1987, the date on which the Minister for Finance approved of the Principal Act being administered on the basis that the exemption would apply.

Schedule 1 (9) substitutes section 78F (Exemption from duty—residential leases) of the Principal Act to exempt from duty rent under certain residential leases in so far as the rent relates to premises or a part of premises used, or intended to be used, exclusively as a place of residence. The substituted section is deemed to have commenced on 23 September 1987 in accordance with the statement made by the Treasurer in presenting this year's Budget.

Schedule 1 (10) amends section 84B (Collateral security) of the Principal Act to remove a minor ambiguity.

Schedule 1 (11) amends section 84EA (Re-issue of certificates of debentures not liable to duty) of the Principal Act to make a minor amendment consequent on the amendments made by the Stamp Duties (Further Amendment) Act 1986 concerning loan securities.

Schedule 1 (12) inserts proposed section 84EC (Exemption of certain debentures and related instruments from duty) into the Principal Act. The purpose of the proposed section is to remove a double tax anomaly applying to finance corporations which provide finance to the public by abolishing loan security duty on debentures issued by those corporations. The proposed section is deemed to have commenced on 23 September 1987 in accordance with the statement made by the Treasurer in presenting this year's Budget.

Schedule 1 (13) amends section 84G (Duty on motor vehicle certificates of registration) of the Principal Act.

Schedule 1 (13) (a) removes a double duty impost by exempting from duty a transfer of a motor vehicle certificate of registration if ad valorem duty at conveyance rates has been paid in connection with the acquisition of the motor vehicle. The amendment is deemed to have commenced on 10 August 1987, the date on which the Minister for Finance approved of the Principal Act being administered on the basis that the exemption would apply.

Schedule 1 (13) (b) clarifies the circumstances in which a motor vehicle certificate of registration issued to a motor dealer is exempt from duty by limiting the exemption (in addition to the existing limitations) to motor vehicles which have previously been registered in New South Wales or elsewhere in Australia.

Schedule 1 (14) inserts proposed section 87A (Exemption from duty—property etc. outside New South Wales) into the Principal Act. The proposed section removes a double duty impost in relation to policies of insurance by exempting policies from duty to the extent to which they apply to property and risks outside New South Wales. The proposed section is deemed to have commenced on 24 June 1987, the date on which the Minister for Finance approved of the Principal Act being administered on the basis that the exemption would apply.

Schedule 1 (15) amends section 124 (Objections and appeals) of the Principal Act to remove minor inconsistencies in the objection and appeals provisions and to provide a right of appeal against a refusal to allow a refund.

Schedule 1 (16) makes various amendments to the Second Schedule to the Principal Act.

Stamp Duties (Further Amendment) 1987

Schedule 1 (16) (a) makes an amendment consequential on the amendment made to section 45A of the Principal Act relating to betting tickets.

Schedule 1 (16) (b) makes it clear that a policy providing hospital or medical benefits issued by a health care organisation registered under the National Health Act 1953 of the Commonwealth is exempt from duty.

Schedule 1 (16) (c) and (d) impose a minimum duty of \$10 on transfers of shares of companies the shares of which are not listed on a recognised stock exchange and which do not own land in New South Wales and enable the duty to be paid by adhesive stamp.

Schedule 1 (16) (e) enables the Minister to exempt from duty instruments involved in corporate reconstructions which do not involve significant changes in the beneficial ownership of property.

SCHEDULE 2—AMENDMENTS CONCERNING THE FIRST HOME PURCHASE SCHEME

Schedule 2 inserts proposed Division 3B—First home purchase scheme— into Part III of the Principal Act and adds proposed Schedule 2A to the Principal Act. The provisions inserted by Schedule 2 give effect to the proposition contained in this year's Budget Papers that statutory recognition be given to the Stamp Duty Deferred Payment Scheme which has operated administratively in relation to first home purchases since 1 November 1977.

The statutory scheme is intended to help people who are buying their first home by enabling them to choose to pay stamp duty on the contract by instalments over a period of 5 years (instead of at the time of purchase). The statutory scheme differs from the previous scheme in 2 major respects. The total consideration payable under the contract is raised from \$75,000 to \$105,000. Under the statutory scheme, any mortgage given to assist the financing of the purchase may be exempted from payment of duty. These provisions are deemed to have commenced on 23 September 1987 in accordance with the Treasurer's statement.

SCHEDULE 3—STATUTE LAW REVISION

Schedule 3 makes several amendments to the Principal Act by way of statute law revision.

SCHEDULE 4—APPLICATION OF CERTAIN AMENDMENTS

Schedule 4 contains provisions which specify how the amendments made to sections 41, 66E (3), 74CB (1) and 84EC of the Principal Act apply to instruments affected by those sections.
