



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: RNLS:CBgl190523

19 May 2023

The Hon. Daniel Mookhey, MLC
Treasurer
52 Martin Place
SYDNEY NSW 2000

The Hon. Courtney Houssos, MLC
Minister for Finance
52 Martin Place
SYDNEY NSW 2000

Dear Treasurer and Minister,

Revenue Legislation Amendment Bill 2023

We write to you in relation to the Revenue Legislation Amendment Bill 2023 (Bill), introduced in the Legislative Assembly on 11 May 2023. The Law Society members of the Revenue NSW/Law Society Liaison Committee have contributed to this submission.

The Law Society is concerned about the proposed amendment to section 156 of the *Duties Act 1997*, which removes a concession in the amount of duty payable on the acquisition of a public landholder, commencing from 1 July 2023. We note that there are no transitional provisions applying to the measure.

We acknowledge that the intention to remove the concessional duty for the acquisition of a public landholder was outlined by the previous State Government in the 2022-23 Half-Yearly Review.¹ However, we are not aware of any announcement by the incoming Government about whether the change would be implemented, until the introduction of the Bill.

Transactions involving acquisitions of listed companies and public unit trusts are often on foot for many months, given the nature of the transaction. There are likely to be a number of transactions currently on foot which will be impacted by this reform. Relevant taxpayers would have committed to or entered into these transactions on the basis that the concessional rate of duty would apply. A tenfold increase in the duty imposed on these transactions would materially affect the agreed pricing and economics of these transactions - in some cases the transactions might not have proceeded at all if the taxpayers had been aware that the new Government would implement the proposed change.

Accordingly, the Law Society requests consideration be given to inserting a transitional provision in the Bill to the effect that where a transaction is completed after the

¹ 2022-23 Half-Yearly Review, page 30 <https://www.budget.nsw.gov.au/sites/default/files/2023-02/2022-23-Half-Yearly-Budget-Review.pdf>

commencement date (1 July 2023), pursuant to an agreement or arrangement entered into prior to the commencement date, the concessional rate of 10% of the general rate will apply.

In the alternative, a narrower transitional provision should be considered to the effect that the concessional rate of 10% of the general rate will apply where the transaction is completed after 1 July 2023, pursuant to an agreement or arrangement entered into prior to the introduction of the Bill into Parliament. We suggest that, in light of the change of Government, it was unclear until that date that the current Government would follow the previous Government's announcement. Failing this, it would be fundamentally unfair to fail to exempt transactions pursuant to an agreement or arrangement entered into prior to the announcement of the measure in the 2022-23 Half-Yearly Review.

We submit that the insertion of a transitional provision is warranted as a matter of fairness. In our view, taxpayers should be able to enter transactions with a degree of assurance that the relevant state tax provisions will not substantially alter whilst the transaction is on foot. The omission of a transitional provision would effectively result in a retrospective ten-fold increase in the rate of tax imposed on such a transaction.

The Law Society supports the other main purpose of the Bill, namely the proposed amendments to Schedule 1A of the *Land Tax Management Act 1956* to provide for an extension of time during which unoccupied land may be treated as a person's principal place of residence in certain circumstances.

The Law Society would welcome the opportunity to further discuss potential transitional provisions in the Bill. If you have any questions, please contact Gabrielle Lea, Senior Policy Lawyer, by phone (02) 9926 0375 or by email to gabrielle.lea@lawsociety.com.au.

Yours sincerely,



Cassandra Banks
President

cc Cullen Smythe, Commissioner of State Revenue