

State Taxation Acts Amendment Bill 2019

Introduction Print

EXPLANATORY MEMORANDUM

General

This Bill amends the **Duties Act 2000** in relation to—

- increasing the foreign purchaser additional duty rate from 7% to 8%; and
- increasing the motor vehicle duty rate for vehicles valued at above \$100 000, providing a concessional duty rate for green cars and primary producer passenger cars and introducing an exemption from motor vehicle duty for service demonstrator vehicles; and
- expanding the coverage of the corporate reconstruction duty provisions and replacing the exemption with a concession; and
- introducing a land transfer duty concession for commercial and industrial properties in regional Victoria; and
- supporting the imposition of duty on arrangements where fixtures are acquired independently from the underlying land; and
- removing the restriction that prevents a unit trust scheme that was at any time eligible for registration as a wholesale unit trust scheme from being a public unit trust scheme; and
- addressing the Supreme Court's decision in *BPG Caulfield Village Pty Ltd v Commissioner of State Revenue* [2016] VSC 172 regarding the economic entitlement landholder provisions in order to safeguard the revenue.

This Bill amends the **Land Tax Act 2005** in relation to—

- increasing the absentee owner surcharge rate from 1·5% to 2%; and
- limiting the principal place of residence exemption for contiguous land to land in regional Victoria.

This Bill amends the **Payroll Tax Act 2007** in relation to—

- extending the exemption for wages paid or payable to employees on maternity or adoption leave to all types of parental leave; and
- increasing the payroll tax annual threshold amount to \$675 000 from 1 July 2021 and to \$700 000 from 1 July 2022; and
- decreasing the payroll tax rate for regional employers to 2·02% from 1 July 2020, to 1·62% from 1 July 2021 and to 1·2125% from 1 July 2022 while expanding the range of eligible regional employers.

This Bill amends the **Valuation of Land Act 1960** to remove the special provisions for calculating the value of land on which a heritage building is situated or where removal of a heritage building is prohibited.

Clause Notes

Part 1—Preliminary

Part 1 of the Bill outlines the purposes of the Bill and contains the commencement provision.

Clause 1 outlines the purposes of the Bill.

Clause 2 provides the commencement dates for the Bill.

The Act (except Divisions 4, 5, 6 and 7 of Part 2 and Part 4) comes into operation on the day after the day on which it receives Royal Assent.

Divisions 4, 5, 6 and 7 of Part 2 of the Act, which amend the **Duties Act 2000** in relation to foreign purchasers, concessions for transfers of certain commercial and industrial properties in regional Victoria, motor vehicle duty and corporate reconstructions, come into operation on 1 July 2019.

Part 4 of the Act, which amends the **Payroll Tax Act 2007** in relation to regional employers, parental leave and certain rates and thresholds, comes into operation on 1 July 2019.

Part 2—Amendment of Duties Act 2000

Division 1—Public unit trust schemes

Division 1 of Part 2 of the Bill amends the **Duties Act 2000** to remove a restriction that prevents a unit trust scheme that was at any time eligible for registration as a wholesale unit trust scheme from being a public unit trust scheme.

Clause 3 amends the definition of *public unit trust scheme* in section 3(1) of the **Duties Act 2000** so that a unit trust scheme that was a wholesale unit trust scheme, or eligible for registration as a wholesale unit trust scheme, will no longer be prevented from being a public unit trust scheme.

Clause 4 amends section 89B of the **Duties Act 2000** to extend the application of the section to the conversion of a wholesale unit trust scheme to a public unit trust scheme.

The amendment ties in with the change to the definition of *public unit trust scheme* in section 3(1) where it will now be possible for a unit trust scheme that was a wholesale unit trust scheme to convert to a public unit trust scheme.

Division 2—Fixtures

Division 2 of Part 2 of the Bill amends the **Duties Act 2000** to support the collection of duty on arrangements where fixtures are acquired independently from the underlying land. The new provisions expressly provide that an interest in a fixture is a form of dutiable property. The new provisions are deliberately targeted to the acquisition of fixtures with significant value only. A threshold value test will ensure that the acquisition of insignificant fixtures, such as part of the sale of a small retail business, will not be subject to duty. The new provisions also provide for the phasing-in of duty so that a duty concession applies for fixtures valued between \$2 million and \$3 million and full duty is only payable where the fixture is more than \$3 million in value. These provisions will provide greater certainty to taxpayers in the application of duty where fixtures are transacted independently of the land and will align the duty treatment of fixtures closer to how they are treated in other jurisdictions.

Clause 5 amends the definition of *land-related interest* in section 3(1) of the **Duties Act 2000** to insert a reference to an interest referred to in new section 10(1)(ad).

New section 10(1)(ad) is inserted by clause 6 of this Bill to provide that an interest in fixtures or any other items fixed to land (including tenant's fixtures) is dutiable property.

This clause also inserts a reference to the existing definition of *tenant's fixtures* in section 22A(3) of the **Duties Act 2000**.

Clause 6 inserts new section 10(1)(ad) and (3) into the **Duties Act 2000**.

New section 10(1)(ad) provides that dutiable property includes an interest in fixtures where the interest is created, dealt with or held separately from an estate or interest in the land on which the fixtures are located.

While new section 10(1)(ad) makes fixtures dutiable, this only applies where the items are created, dealt with or held separately from the underlying land. Where the underlying land is being dealt with, the fixtures will be brought to duty as part of the transfer of the underlying land under the existing provisions of the **Duties Act 2000** as is currently the case.

New section 10(3) defines *fixtures* to mean anything that constitutes a fixture at law or any other items fixed to land, including tenant's fixtures.

The reference to "any other items fixed to land" ensures all items currently fixed to land are captured, irrespective of whether the item is technically not a common law fixture because, for example, it can be severed and moved from the land sometime in the future.

New section 10(1)(ad) must be read together with new sections 57FA and 57FB, which target this measure to arrangements concerning significant fixtures.

Clause 7 amends section 24(1) of the **Duties Act 2000**, which provides for the aggregation of dutiable transactions relating to separate items of certain dutiable property.

Subclause (1) inserts references to section 10(1)(ad). The effect of this amendment is that aggregation under section 24 will apply to separate dutiable transactions relating to an interest in fixtures provided the transactions together form, evidence, give effect to

or arise from what is substantially, one arrangement relating to the fixtures. Aggregation will also apply to separate dutiable transactions relating to fixtures and land provided the transactions together form, evidence, give effect to or arise from what is substantially, one arrangement relating to the fixtures and land.

Subclause (2) inserts 2 notes.

The first note refers to new section 57FB. New section 57FB is relevant to the calculation of duty on an aggregation of dutiable transactions in relation to an interest in fixtures referred to in section 10(1)(ad) and dutiable transactions in relation to land other than land on which the fixtures are located.

The second note refers to new section 64C. New section 64C is relevant to the calculation of duty on an aggregation of dutiable transactions in relation to eligible transfers within the meaning of new section 64A.

Subclause (3) inserts new section 24(1A), which provides that section 24(1)(a) does not apply in the case of an arrangement that comprises one or more dutiable transactions that relate to dutiable property referred to in section 10(1)(ad).

Although the effect of new section 24(1A) is that the 12 month requirement in section 24(1)(a) does not apply if one of the dutiable transactions relates to dutiable property referred to in section 10(1)(ad), the dutiable transactions that are to be aggregated must still together form, evidence, give effect to or arise from what is, substantially, one arrangement relating to all of the items or parts of the dutiable property for aggregation to apply.

Clause 8 inserts new sections 57FA and 57FB into the **Duties Act 2000**.

New section 57FA provides for an exemption and phasing-in of duty for dutiable transactions concerning fixtures referred to in section 10(1)(ad).

New section 57FA(1) provides that no duty is chargeable on a dutiable transaction in relation to dutiable property referred to in section 10(1)(ad) if the unencumbered value of the fixtures to which the dutiable property relates does not exceed \$2 000 000.

The "unencumbered value of the fixtures to which the dutiable property relates" is a reference to the unencumbered value of the fixtures taken as a whole, rather than the unencumbered value of the interest in the fixtures subject to the dutiable transaction.

New section 57FA(2) provides that if the unencumbered value of the fixtures to which the dutiable property relates exceeds \$2 000 000 but does not exceed \$3 000 000, duty is chargeable on the dutiable transaction in accordance with a formula set out in the subsection.

The effect of the formula is that duty is phased in. The closer the unencumbered value of the fixtures (taken as a whole) is to \$2 000 000, the closer the duty chargeable will be to nil; whereas the closer the unencumbered value is to \$3 000 000, the closer the duty chargeable will be to the full amount that would normally apply.

Example

ABC, who is not a foreign purchaser, enters into an arrangement to purchase a 50% interest in fixtures (but not the underlying land) owned by XYZ. The unencumbered value of the fixtures taken as a whole is \$2 500 000. The dutiable value of the dutiable property acquired is \$1 250 000 (being \$2 500 000 × 50%).

As the unencumbered value of the fixtures taken as a whole is above \$2 000 000, the exemption in new section 57FA(1) does not apply, but the phasing-in formula will apply.

After making the relevant calculations, the duty payable is \$34 375 being half the duty otherwise payable. This is to be expected as the value of the fixtures (taken as a whole) is the mid-point of the phasing-in range.

New section 57FA(3) provides that the section does not apply to a transaction if it is part of an arrangement that includes a dutiable transaction in relation to any estate or interest in the land on which the fixtures or items are located. Where there is such an arrangement the fixtures or items will be brought to duty without the benefit of the exemption or concession in section 57FA, as is currently the case.

Note the reference to "any estate or interest in the land" in section 57FA(3) includes a lease referred to in section 7(1)(b)(v) or 7(1)(b)(va). Accordingly, where an arrangement involves a

dutiable transaction over a lease referred to in section 7(1)(b)(v) or 7(1)(b)(va), and a separate dutiable transaction concerning fixtures on the leased land, the exemption and concession provided by section 57FA will not apply when assessing the duty to be paid on these dutiable transactions.

New section 57FB provides for how duty is to be calculated for aggregated transactions involving fixtures and land other than the land on which the fixtures are located.

The provision enables a dutiable transaction relating to fixtures referred to in section 10(1)(ad) to be disaggregated so an exemption or concession referred to in section 57FA can be applied to that transaction. The provision can only apply if the arrangement that gave rise to aggregation in the first place does not include a dutiable transaction relating to land on which the fixtures are located.

Division 3—Economic entitlements in relation to land and landholders

Division 3 of Part 5 of the Bill amends Chapters 2 and 3 of the **Duties Act 2000** to address the Supreme Court's decision in *BPG Caulfield Village Pty Ltd v Commissioner of State Revenue* [2016] VSC 172 regarding the economic entitlement provisions.

BPG concerned the economic entitlement provisions in Part 2 of Chapter 3 of the **Duties Act 2000** and found, among other things, that an economic entitlement could not be acquired in circumstances where the taxpayer only acquired an economic entitlement to some, but not all, of the land holdings of a landholder.

The decision in the *BPG* case meant that matters could be easily arranged to avoid the application of the provisions. For example, quarantining a portion of land from an arrangement, no matter how small, would result in the whole arrangement being outside the scope of the provisions.

These amendments address this issue. Consistent with the reasoning by the Supreme Court in *BPG*, the amendments provide for the imposition of duty on economic entitlements focusing on the relevant land itself, rather than the landholding entity. To achieve this, the economic entitlement provisions in Part 2 of Chapter 3 that concerned obtaining an economic entitlement by reference to the land holdings of the landholder have been repealed and new provisions addressing these arrangements have been inserted into Chapter 2, specifically new Part 4B.

Clause 9 substitutes the definition of *economic entitlement* in section 3(1) of the **Duties Act 2000** to include a reference to new Part 4B of Chapter 2.

Clause 10 inserts new Part 4B into Chapter 2 of the **Duties Act 2000**.

New section 32XA provides that new Part 4B applies if a person acquires an economic entitlement in relation to relevant land, other than by a transaction that is a dutiable transaction apart from new Part 4B. A transfer of freehold land will result in the transferee acquiring an economic entitlement in relation to the land. As such a transfer is already a dutiable transaction under the **Duties Act 2000**, section 32XA ensures that new Part 4B will not apply to the transfer.

New section 32XB defines *relevant land* for the purposes of new Part 4B as dutiable property referred to in section 10(1)(a), (ab) or (ac) of the **Duties Act 2000**, as well as new section 10(1)(ad) inserted by clause 6 of the Bill.

Part 4B is not limited in its application to relevant land held by a private landholder as defined in Part 2 of Chapter 3 and can apply with respect to relevant land held by any person.

New section 32XC sets out what an economic entitlement is and how it can be acquired.

As a result of sections 32XB and 32XC(1)(a), before new Part 4B can apply, an arrangement to acquire an economic entitlement must be made in relation to *relevant land* that has an unencumbered value that exceeds \$1 000 000. If the unencumbered value of the land is at or below \$1 000 000, new Part 4B will have no application to the arrangement irrespective of the economic entitlement obtained under the arrangement.

New section 32XC(1)(b) sets out what entitlements will constitute an economic entitlement. These entitlements were previously part of the economic entitlement provisions in Part 2 of Chapter 3 of the **Duties Act 2000**.

New section 32XC(2) provides that it is not necessary for the person who acquires the economic entitlement to be a party to the arrangement by which the entitlement is acquired. The provision is directed to situations where a party under a relevant arrangement directs the benefit of the economic entitlement to flow to another person, such as a newly created subsidiary. Even though the newly created subsidiary is not a party to the

arrangement, it will be considered to have acquired an economic entitlement for the purposes of new Part 4B.

New section 32XC(3) provides that a person may acquire an economic entitlement by any means, including the creation of the economic entitlement or the transfer of an existing economic entitlement.

New section 32XD provides that a person who acquires an economic entitlement in relation to land is taken to have acquired beneficial ownership of the land. Further, the beneficial ownership taken to have been acquired is, subject to new Part 4B, chargeable with duty in accordance with Chapter 2.

New section 32XE specifies how to determine the percentage of beneficial ownership taken to have been acquired under an arrangement referred to in section 32XC.

Where only one form of economic entitlement is acquired, the percentage of which is specified, and the arrangement does not include any other amount payable to the person or an associated person, new section 32XE(1) provides that the extent of the beneficial ownership taken to be acquired is that specified percentage.

New section 32XE(2) deems the beneficial ownership in the land to be 100% if the arrangement under which the economic entitlement is acquired—

- does not specify the percentage of the economic entitlement that a person is entitled to receive or acquire to the total of all relevant entitlements;
- includes any other entitlement of, or amount payable to, the person or an associated person; or
- entitles the person or an associated person to 2 or more of the entitlements referred to in new section 32XC(1)(b)(i), (iii), (iii), (iv) and (v).

New section 32XE(2) is subject to the Commissioner of State Revenue (Commissioner) determining a lesser percentage under new section 32XE(3) in any particular case if the Commissioner considers it appropriate in the circumstances.

New sections 32XE(2) and 32XE(3) are an integrity measure to, among other things, ensure that taxpayers do not understate economic entitlements by representing the benefits as fees,

bonuses, charges and other items. The provisions aim to ensure taxpayers accurately disclose what the various payments represent (e.g. a payment solely relates to reimbursement of the cost of construction and not really a profit sharing fee) so that the duty liability calculated is referable only to the economic entitlements acquired. The intent of the provisions is to encourage taxpayers to be more transparent on the economic entitlements obtained under the arrangement to enable the appropriate duty to be applied.

New section 32XF states that, despite section 20 of the **Duties Act 2000**, the dutiable value of relevant land to which an economic entitlement relates is the unencumbered value of the relevant land at the time that the economic entitlement is acquired. Section 20 of the **Duties Act 2000** provides that the dutiable value of dutiable property that is the subject of a dutiable transaction is the greater of the consideration for the transaction or unencumbered value of the property. The purpose of section 32XF is to disregard the consideration limb of the dutiable value calculation for the purposes of new Part 4B.

New section 32XG provides that if the unencumbered value of relevant land in relation to which an economic entitlement is acquired exceeds \$1 000 000 but does not exceed \$2 000 000, duty is chargeable under Chapter 2 in accordance with a formula set out in the subsection.

The effect of the formula is that duty is phased in. The closer the unencumbered value of relevant land is to \$1 000 000, the closer the duty chargeable will be to nil; whereas the closer the unencumbered value is to \$2 000 000, the closer the duty chargeable will be to the full amount that would normally apply.

New section 32XH provides that section 24(2) of the **Duties Act 2000** does not apply to the aggregation of any dutiable transactions under section 24 if any of the transactions is dutiable because of new Part 4B inserted by this Bill.

Under section 24(2) of the **Duties Act 2000**, certain acquisitions of separate vacant land by a registered domestic builder under the **Building Act 1993** are excluded from aggregation under section 24(1). This exception to aggregation will not apply to arrangements concerning economic entitlements.

New section 32XI provides for a reduction of duty on the subsequent transfer of relevant land to a person who before the transfer held an economic entitlement in relation to the relevant land. The provision gives a credit for duty previously paid on the acquisition of an economic entitlement if, after having paid duty for the acquisition, the taxpayer receives a transfer of the relevant land. The credit is proportional and applies to the extent that the land transfer replaces the economic entitlement acquired under an arrangement referred to in new section 32XC(1).

Clause 11 substitutes section 72(1) of the **Duties Act 2000** with a new section. The effect of this amendment is to specify that a **land holding** for the purposes of Part 2 of Chapter 3 of the **Duties Act 2000** includes dutiable property referred to in new section 10(1)(ad) (inserted by clause 6 of this Bill) and land taken to be beneficially owned under new section 32XD (inserted by clause 10).

Clause 12 inserts new section 72A into the **Duties Act 2000**.

New section 72A ensures that where an economic entitlement under new Part 4B of Chapter 2 is acquired on behalf of a unit trust scheme or on behalf of the trustee of a unit trust scheme, the deemed beneficial ownership in the relevant land is taken to be a **land holding** of the unit trust scheme for the purposes of Part 2 of Chapter 3 of the **Duties Act 2000**.

Clause 13 amends section 81 of the **Duties Act 2000**.

Section 81 contains the existing economic entitlement provisions that are part of the landholder regime in Part 2 of Chapter 3. The section has been amended as a result of the insertion of new economic entitlement provisions in new Part 4B of Chapter 2 of the **Duties Act 2000**.

Subclause (1) amends the heading to section 81.

Subclause (2) repeals section 81(1)(b), (c) and (d). The repealed paragraphs refer to economic entitlements to income, rent, profits, capital growth, and proceeds of sale of land holdings. These matters are now addressed under new Part 4B of Chapter 2.

Section 81 will continue to apply when an economic entitlement currently referred to in section 81(2)(a) is acquired, being an economic entitlement to participate in the dividends or income of

a private landholder. This entitlement relates to the private landholder itself rather than any particular land so it will remain subject to the landholder duty provisions.

Subclause (3) substitutes sections 81(3) and 81(4) stating that the interest acquired under an economic entitlement, for the purposes of section 81, is the proportion of the total dividends or income of the private landholder that a person is entitled to receive under the economic entitlement.

As the amended section 81 only deals with one form of economic entitlement, a provision such as section 81(4) that concerns 2 or more entitlements is no longer necessary.

Division 4—Foreign purchasers

Dutiable transactions under which residential property is acquired by a foreign purchaser are subject to an additional duty at a rate of 7%. Division 3 of Part 2 of the Bill amends the **Duties Act 2000** to increase the foreign purchaser additional duty rate from 7% to 8%.

Clause 14 amends section 18A of the **Duties Act 2000** to give effect to the increased additional duty rate of 8% which applies from 1 July 2019.

Clause 15 amends section 28A(2) of the **Duties Act 2000** to give effect to the increased additional duty rate of 8% which applies from 1 July 2019.

Division 5—Motor vehicle duty

Division 5 of Part 2 of the Bill amends the **Duties Act 2000** in relation to increasing the motor vehicle duty rate for "luxury" passenger cars valued at above \$100 000, aligning the motor vehicle duty rates for used luxury passenger cars and new luxury passenger cars of the same value, introducing a concessional duty rate for "green cars" and "primary producer passenger cars" and introducing a motor vehicle duty exemption for service demonstrator vehicles.

Clause 16 amends section 3(1) of the Duties Act 2000 to insert new definitions of *green car*, *primary producer*, *primary producer passenger car* and *service demonstrator vehicle*.

green car means a passenger car that is of a model that has combined tailpipe carbon dioxide (CO₂) emissions of less than 120 grams per kilometre.

Tailpipe CO₂ emissions are currently considered the best method to compare the environmental performance of motor vehicles. "Combined" refers to the "combined" test results from the standard vehicle emissions test conducted for new light motor vehicles in Australia in accordance with the Australian Design Rules.

A green car includes a car which produces zero tailpipe CO₂ emissions (i.e. a pure electric vehicle).

Information about the combined tailpipe CO₂ emissions of passenger cars is available from a number of sources—

- the Green Vehicle Guide maintained by the Australian Government (www.greenvehicleguide.gov.au); or
- the fuel consumption label or energy consumption label attached to the windscreens of new motor vehicles sold in Australia; or
- the vehicle manufacturer's website.

primary producer means a person engaged solely or substantially in agricultural, horticultural, viticultural, dairying, pastoral or other like activities, or who is the holder of a licence under the **Fisheries Act 1995** to take fish for sale. This definition has been relocated from section 233(5) of the **Duties Act 2000** as it also applies to the definition of ***primary producer passenger car***.

primary producer passenger car means a passenger car that is registered or to be registered in the name of a person who is a primary producer and used or to be used primarily in the business of the person as a primary producer.

service demonstrator vehicle means a motor vehicle that is used for the purposes of the sale of another motor vehicle of the same class and made available without charge by a licensed motor car trader to a customer of the trader for use while the customer's motor vehicle is being serviced.

Clause 17 substitutes section 218(1) of the **Duties Act 2000** to specify new rates of duty on an application for registration or an application for transfer of registration of a motor vehicle.

New section 218(1) specifies the rates of duty on an application for registration or transfer of registration of a green car, primary producer passenger car or other passenger car, i.e. a new or used passenger car. The rates are set out in the Table at the foot of the subsection.

New section 218(1A)(a) provides for the rates of duty on an application for registration of a motor vehicle (other than a passenger car) that has not previously been registered in Victoria or elsewhere, i.e. a new non-passenger car.

New section 218(1A)(b) provides for the rates of duty on an application for registration of a motor vehicle (other than a passenger car) that has previously been registered in Victoria or elsewhere, i.e. a used non-passenger car that is being re-registered.

New section 218(1B) provides for the rates of duty on an application for transfer of registration of a motor vehicle, other than a passenger car, that has previously been registered in Victoria or elsewhere, i.e. a used non-passenger car.

Section 218(1)(ab) is impliedly repealed as a consequence of the substitution of section 218(1). Section 218(1)(ab) provides that certain motor vehicles first registered within the previous 60 days by a licensed motor car trader, and previously exempt from duty because of the use of the motor vehicle (e.g. demonstrator vehicles), were charged duty at the same rate as in section 218(1)(a) (i.e. the rate for new motor vehicles).

The new rates of duty provided by this Bill impose equivalent rates of duty on new and used passenger cars of the same dutiable value; accordingly, the provision in section 218(1)(ab) is no longer relevant.

Clause 18 amends section 231 of the **Duties Act 2000**, which provides exemptions from motor vehicle duty for certain vehicles registered by licensed motor car traders.

Subclause (1) inserts a new heading to section 231.

Subclause (2) extends the operation of the exemption to service demonstrator vehicles. The effect of the amendment is that a motor vehicle used solely or primarily for the purpose of use as a service demonstrator vehicle or for the purpose of sale of the vehicle or use of the vehicle as a demonstrator vehicle will be

eligible for a duty exemption if the other requirements of section 231(2)(a) are met.

- Clause 19 amends section 233(5) of the **Duties Act 2000** to omit the definition of *primary producer*, which is inserted into section 3(1) of that Act by clause 16 of this Bill.
- Clause 20 amends section 238 of the **Duties Act 2000**, which imposes duty on a change in usage of a motor vehicle.
- Subclause (1) substitutes section 238(2), which provides for the rates of duty payable on a statement of change of use. The current rate of \$8 per \$200, or part, of dutiable value is substituted with new rates set out in the Table at the foot of new section 238(2). The new rates are equivalent to the rates in new sections 218(1) and 218(1B) substituted by clause 17 of this Bill.
- This amendment provides consistency by ensuring that any duty imposed in accordance with section 238 is charged at an equivalent rate to the rates for a general application for registration or transfer of registration under section 218.
- Subclause (2) substitutes references in section 238(3)(a) and (4) to section 238(2)(b), which is impliedly repealed by subclause (1).

Division 6—Corporate reconstructions

Division 6 of Part 2 of the Bill amends Part 2 of Chapter 11 of the **Duties Act 2000**. The amendments reform the corporate reconstruction provisions so that the exemptions in Divisions 1, 1A and 1B of Part 2 apply as concessions rather than exemptions, while at the same time making it easier to access the concessions by removing restrictions such as the post association requirement.

- Clause 21 amends headings in relation to Chapter 11 of the **Duties Act 2000** as the Chapter now provides for concessions from duty.
- Subclause (1) amends the heading to Chapter 11 of the **Duties Act 2000** to refer to concessions.
- Subclauses (2) and (3) amend the heading to Division 1 and Division 1A of Part 2 of Chapter 11 of the **Duties Act 2000** to refer to concessions.

- Clause 22 amends section 250(1) of the **Duties Act 2000** by repealing the definition of *relevant corporate group*. The definition is not required as the focus of Division 1 is on the existence of an eligible transaction between members of a corporate group. It is the definition of *corporate group* that is pertinent.
- Clause 23 amends section 250A of the **Duties Act 2000** to specifically provide that an *eligible transaction* for the purposes of the corporate reconstruction provisions in Division 1 of Part 2 of Chapter 11 can include lease arrangements referred to in section 7(1)(b)(v) and section 7(1)(b)(va) and an application to transfer registration of a motor vehicle referred to in section 214.
- Clause 24 amends section 250B of the **Duties Act 2000**.
- Subclause (1) amends the heading to section 250B to reflect that the section now provides for a concession from duty. The reference to an exemption remains, as an exemption may apply where a corporate reconstruction arrangement involves multiple eligible transactions that relate to the first eligible transaction.
- Subclause (2) substitutes section 250B(1), (2) and (3) with new section 250B(1), (2), (3) and (3A). The new sections replace the application, exemption and refund provisions with a new concession provision, and provisions that apply to a corporate reconstruction arrangement involving multiple eligible transactions that relate to the first eligible transaction.
- New section 250B(1) sets out the new concession. It provides that, subject to the section, the duty chargeable on an eligible transaction is 10% of the duty that would otherwise be chargeable under the Act on the eligible transaction.
- New section 250B(2), (3) and (3A) apply to a corporate reconstruction arrangement involving multiple eligible transactions that relate to the first eligible transaction.
- New section 250B(2) provides that no duty is chargeable on an eligible transaction to the extent that duty is chargeable in relation to the same dutiable property on an earlier eligible transaction. To be entitled to the exemption or concession, the eligible transactions must be between members of the same corporate group and the eligible transaction or transactions being tested must occur within 30 days of the first eligible transaction that duty was chargeable on under Division 1.

New section 250B(3) allows new section 250B(2) to apply where either or both of the eligible transactions is a relevant acquisition in a landholder, by deeming the reference to dutiable property in new section 250B(2) to be a reference to the land holdings of the landholder.

New section 250B(2) can operate as a full exemption or a concession. If the duty chargeable in relation to the dutiable property or land holding on the subsequent eligible transaction is not more than the first eligible transaction, the provisions will apply as an exemption. However, if the duty chargeable on the subsequent eligible transaction is more than the first eligible transaction, then the provisions will apply as a concession. As a concession, the provisions reduce the duty chargeable on the second eligible transaction by the duty chargeable on the first eligible transaction.

Example

A corporate group undertakes a corporate reconstruction involving multiple steps. The first step involves the transfer of Blackacre from ABC to another subsidiary of the corporate group, XYZ. As a result of the first step, XYZ now holds Blackacre and Whiteacre (which it already held). The second step involves transferring all the shares in XYZ to another subsidiary of the corporate group, DEF, within 30 days of the first step.

The transfer of Blackacre will be chargeable with duty at 10% of the duty otherwise payable. For the relevant acquisition in XYZ (i.e. the second eligible transaction), it is necessary to determine the duty chargeable on the relevant acquisition (with both Blackacre and Whiteacre as land holdings) under section 250B(1) (being 10% of the duty otherwise chargeable), then reduce the portion of the duty relating to Blackacre by the duty chargeable on the transfer of Blackacre under the first eligible transaction.

New section 250B(3A) provides that a corporate reconstruction arrangement involving multiple eligible transactions concerning the registration of the same motor vehicle will only be charged duty once at the concessional rate under section 250B(1) if the eligible transactions occur within 30 days of the first eligible transaction and are between members of the same corporate group.

Subclause (3) amends section 250B(4) of the **Duties Act 2000** to replace the references to "exemptions granted and refunds made" with "concessions and exemptions". It also changes the reference to "relevant corporate group" to "corporate group".

Clause 25 repeals sections 250C and 250D of the **Duties Act 2000**.

Under section 250C the Commissioner has the power to impose conditions on the granting of an exemption that must be complied with post the eligible transaction.

Under section 250D, a corporate reconstruction exemption can be revoked if, among other things, a post association requirement or a condition imposed on the granting of the exemption is not complied with.

As part of the reforms to the corporate reconstruction provisions, there will no longer be any ongoing obligations on a corporate group post an eligible transaction. Accordingly, revocation provisions and a power to impose conditions post the eligible transaction are unnecessary.

Clause 26 amends section 250DC(1) of the **Duties Act 2000** to specifically provide that an *eligible transaction* for the purposes of the corporate consolidation provisions in Division 1A of Part 2 of Chapter 11 can include lease arrangements referred to in section 7(1)(b)(v) and section 7(1)(b)(va) and an application to transfer registration of a motor vehicle referred to in section 214.

Clause 27 amends section 250DD of the **Duties Act 2000**.

Subclause (1) amends the heading to section 250DD to reflect that the section now provides for a concession from duty, not an exemption.

Subclause (2) substitutes section 250DD(1).

Subclause (3) repeals section 250DD(2), (3) and (4).

These amendments repeal the application, exemption and refund provisions in section 250DD(1), (2), (3) and (4) and insert a new concession provision in new section 250DD(1). The new concession provision provides that the duty chargeable on an eligible transaction under Division 1A of Part 2 of Chapter 11 is 10% of the duty that would otherwise be chargeable under the **Duties Act 2000** on the eligible transaction.

With the repeal of section 250DD(2), it will now be permissible for the eligible transaction to interpose a new head corporation to an existing consolidated group. Previously, the requirement for the group to provide a copy of the choice made under section 703-50 of the **Income Tax Assessment Act 1997** of the Commonwealth meant the provisions only applied to the forming of a consolidatable or consolidated group for the first time.

Subclause (4) amends section 250DD(5) of the **Duties Act 2000** to replace the references to "exemptions" and "refunds" with "concessions".

Clause 28 repeals sections 250DE and 250DF of the **Duties Act 2000**.

Under section 250DE the Commissioner has the power to impose conditions on the granting of an exemption that must be complied with post the eligible transaction.

Under section 250DF, a corporate consolidation exemption can be revoked if, among other things, a post association requirement or a condition imposed on the granting of the exemption is not complied with.

As part of the reforms to the corporate consolidation provisions, there will no longer be any ongoing obligations on a corporate group post an eligible transaction. Accordingly, revocation provisions and a power to impose conditions post the eligible transaction are unnecessary.

Clause 29 substitutes section 250DI of the **Duties Act 2000** with a new section 250DI.

The effect of this amendment is that the exemption provided under Division 1B of Part 2 of Chapter 11 of the **Duties Act 2000** for the exchange of stapled ownership interests for ownership interests in a unit trust scheme will now operate as a concession, consistent with the reforms to Division 1 and Division 1A of Part 2 of Chapter 11. The concession is 10% of the duty otherwise chargeable under the Act.

Clause 30 repeals sections 250DJ and 250DK of the **Duties Act 2000**.

Under section 250DJ the Commissioner has the power to impose conditions on the granting of an exemption that have to be complied with post the eligible transaction.

Under section 250DK, an exemption granted under Division 1B of Chapter 11 can be revoked if, among other things, a post association requirement or a condition imposed on the granting of the exemption is not complied with.

As part of the reforms to Division 1B, there will no longer be any ongoing obligations on a corporate group post an eligible transaction. Accordingly, the revocation provisions and power to impose conditions post the eligible transaction are unnecessary.

Clause 31 repeals Division 2 of Part 2 of Chapter 11 of the **Duties Act 2000**.

Division 2 provides a notification requirement, reassessment power and penalty and interest provisions that apply in the event an exemption previously granted to an eligible transaction under Divisions 1, 1A or 1B of Part 2 of Chapter 11 is revoked. As the revocation provisions in those Divisions are being repealed, Division 2 is no longer necessary.

In the event a concession or exemption under Divisions 1, 1A or 1B is wrongly obtained (i.e. the matter was never entitled to the concession or exemption) the provisions of the **Taxation Administration Act 1997** apply to enable the matter to be reassessed.

Division 7—Transfers of commercial and industrial land in regional Victoria

Division 7 of Part 2 of the Bill inserts a new Division 5A in Part 5 of Chapter 2 of the **Duties Act 2000** to provide a concession for transfers of commercial and industrial land in regional Victoria as announced in the 2019–20 State Budget.

Clause 32 inserts new Division 5A of Part 5 of Chapter 2 of the **Duties Act 2000**.

New section 64A provides definitions for the purposes of new Division 5A.

AVPCC is defined to mean an Australian Valuation Property Classification Code based on the *Valuation Best Practice Specifications Guidelines* which is defined to have the same meaning as it has in the **Valuation of Land Act 1960**.

Section 5AA of the **Valuation of Land Act 1960** requires the Valuer-General to prepare the Valuation Best Practice Specifications Guidelines, which are the basis for the allocation of an AVPCC to land as part of a general or supplementary valuation.

eligible transfer is defined to mean a transfer of dutiable property referred to in section 10(1)(a) or (ad) that is wholly in **regional Victoria** and that the transferee intends to use solely or primarily for a *qualifying use*.

regional Victoria is defined to have the same meaning as it has in section 18(8) of the **First Home Owner Grant Act 2000**. Section 18(8) of that Act defines regional Victoria as the municipal districts of the municipal councils set out in Schedule 1 to that Act (which lists 48 rural-based municipal councils) and the alpine resorts within the meaning of the **Alpine Resorts Act 1983**.

qualifying use is defined to mean a land use described in an AVPCC in the range 210 to 299 or 310 to 499. These refer to an AVPCC in the commercial, industrial or extractive industries categories.

New section 64B provides that the duty chargeable under section 28(1) on an eligible transfer is to be reduced by the relevant percentage set out in Column 3 of the Table at the foot of the section. The concession does not reduce any duty chargeable under section 28A of the **Duties Act 2000**. A 10% duty concession under new Division 5A will apply from 1 July 2019. The relevant percentage will increase annually by 10 percentage points to provide a 50% duty concession from 1 July 2023. The relevant date is the date that the contract, arrangement or agreement for the eligible transfer was entered into.

New section 64C provides for the calculation of duty for transactions that are aggregated under section 24(1), where at least one of these transactions is an eligible transfer subject to a duty reduction under section 64B, and at least one is a dutiable transaction that is not an eligible transfer or an eligible transfer subject to a different reduction rate.

New section 64C(2) provides that the duty chargeable on aggregated transactions is the sum of the duty for each dutiable transaction, which is calculated in accordance with the formula set out in that section.

The effect of the formula is to ensure that the relevant duty reduction rate applies to the amount of duty apportioned to the transaction in relation to the eligible transfer where the transaction is aggregated with other dutiable transactions under section 24(1).

The formula requires the following steps—

1. Determine the total dutiable value of the transaction in relation to the eligible transfer.
2. Determine the total dutiable value of the aggregated transactions.
3. Determine the duty that would be chargeable on the aggregated transactions, without taking into account any reduction in duty under new section 64B.
4. Apportion the duty chargeable on the aggregated transactions to each transaction, in proportion to the dutiable value of each transaction.
5. Apply the relevant reduction under new section 64B to the duty apportioned to each transaction that is an eligible transfer.

Example

On 1 August 2019 XYZ Pty Ltd buys a property in Melbourne to be used as its head office (dutiable value of \$2 200 000), and a manufacturing plant located in regional Victoria (dutiable value of \$1 000 000), under a single contract. The purchase of the manufacturing plant is an eligible transfer. Both transactions are aggregated and the calculation of the duty payable is as follows.

The duty that is chargeable on the aggregated transactions, on a total dutiable value of \$3 200 000, is \$176 000.

The duty chargeable on the industrial property is—

$$\$176\,000 \times \frac{\$1\,000\,000}{\$3\,200\,000} \times \left(1 - \frac{10}{100}\right) = \$49\,500$$

The duty chargeable on the Melbourne property is—

$$\$176\,000 \times \frac{\$2\,200\,000}{\$3\,200\,000} \times (1-0) = \$121\,000$$

The total duty payable on the aggregated transactions is—

$$\$49\,500 + \$121\,000 = \$170\,500$$

New section 64D requires a transferee who would be entitled to a reduction of duty under new section 64B or any other exemption or concession from duty under the **Duties Act 2000** to elect to receive either one of these concessions or exemption and notify the Commissioner of their election.

A transferee who elects to receive another exemption or concession under the **Duties Act 2000** or who does not make an election under section 64E is not entitled to the duty concession under new section 64B in respect of the eligible transfer.

New section 64E sets out the qualifying use requirement that must be met for a reduction in duty under new section 64B to apply. The land must be used solely or primarily for a qualifying use for a continuous period of at least 12 months within the 2 year period immediately after the transferee became entitled to possession of the land.

Example

XYZ Pty Ltd enters into a contract of sale in September 2019 to acquire a vacant commercial site in Bendigo with a dutiable value of \$1 000 000. XYZ's intention is to build a medical centre on the land. Duty chargeable on the commercial land would be \$49 500 (i.e. \$55 000 reduced by 10%). The construction of the medical centre commences in January 2020 and completes in July 2020. XYZ Pty Ltd moves into the medical centre in August 2020 and commences its medical practice on the land. XYZ Pty Ltd has fulfilled the requirement under new section 64E.

New section 64F provides that the Commissioner, if satisfied that there is a good reason for doing so, may reduce the required period of qualifying use, or determine that a temporary cessation of qualifying use does not break the continuity of the qualifying use or extend the period in which the qualifying use must begin.

An example in which the Commissioner may exercise this discretion is when land is acquired by the transferee with the intention to develop the land for a qualifying use. The

Commissioner may consider the transferee's timeline for development and whether any land development activity has commenced or will commence on the land for a qualifying use.

New section 64G provides that if the qualifying use requirement for an eligible transfer is not met, duty is chargeable on the eligible transfer at the rate set out in section 28(1) of the **Duties Act 2000** as if section 64B does not apply, subject to any other exemption or concession under that Act. The Commissioner may reassess duty on the transfer accordingly.

New section 64G(2) specifies that a liability for duty imposed because of subsection 64B(1) on an eligible transfer arises when the qualifying use requirement for that transfer is not complied with. Section 16 of the **Duties Act 2000** requires the duty to be paid within 30 days after the liability for duty arises after which a tax default has occurred.

New section 64G(3) provides authority for a reassessment of duty under subsection 64G(1) to be made if more than 5 years have passed since the initial assessment was made.

New section 64H requires a transferee who has received a duty reduction under section 64B to lodge a written notice with the Commissioner within 30 days after becoming aware of any circumstances that may result in the qualifying use requirement not being met. A transferee's failure to notify the Commissioner of this does not affect the Commissioner's power to exercise his or her discretion under section 64F or to reassess duty under section 64G.

Clause 33 amends section 89E of the **Duties Act 2000**.

Section 89E provides the Commissioner with the discretion to reduce the duty that is payable for a relevant acquisition under Part 2 of Chapter 3 of the **Duties Act 2000** if, among other things, lesser duty is payable under Chapter 2 had the subject of the relevant acquisition been a transfer of the land of the landholder to the person. The amendment provides that the Commissioner is not to take into account any reduction in duty provided for under new Division 5A of Part 5 of Chapter 2 (inserted by clause 32) in determining the duty that would be payable under Chapter 2 for the purpose of section 89E. This amendment ensures that the duty concession provided in new Division 5A of Part 5 of Chapter 2 is limited to land transfer duty

and is not applicable as a concession in relation to landholder duty.

Division 8—Transitional arrangements

Division 8 of Part 2 of the Bill amends the **Duties Act 2000** to insert transitional provisions for the amendments made by Part 2.

Clause 34 inserts new clauses 45 to 55 into Schedule 2 to the **Duties Act 2000**.

New clause 45 provides transitional arrangements for the amendments made by Division 1 of Part 2 of the Bill in relation to public unit trust schemes. Clause 45 provides that section 89B of the **Duties Act 2000** does not apply to a wholesale unit trust scheme that becomes a public unit trust scheme if the wholesale unit trust scheme would not have become a public unit trust scheme had the amendments made by Division 1 of Part 2 not come into operation. The effect of clause 45 is that section 89B of the **Duties Act 2000** does not apply to a wholesale unit trust scheme that becomes a public unit trust scheme only by virtue of the amendments in Division 1.

New clause 46 provides transitional arrangements for the amendments made by Division 2 of Part 2 of the Bill in relation to fixtures. The effect of clause 46 is that the amendments made by Division 2 will not apply to a dutiable transaction that occurs on or after the commencement of the Division under an arrangement made before the provisions commenced.

New clause 47 provides transitional arrangements for the amendments made by Division 3 of Part 2 of the Bill in relation to economic entitlements. The effect of clause 47 is that the amendments will not apply in relation to an arrangement made before the commencement of Division 3.

New clauses 48 to 51 provide transitional arrangements for the amendments made by Division 4 of Part 2 of the Bill in relation to the increased rate of additional duty for foreign purchasers.

New clause 48 provides that the increased rate of additional duty for foreign purchasers does not apply to a dutiable transaction that occurs on or after commencement of the amendments in Division 4 if the dutiable transaction was entered into before commencement of the provisions. In such circumstances, the rate

of additional duty to apply is the applicable rate at the date the dutiable transaction was entered into.

New clauses 49 to 51 provide transitional arrangements for calculating additional duty where a foreign purchaser acquires an interest in a landholder that holds a land-related interest in residential property. The effect of these clauses is that when calculating the additional duty payable on a relevant acquisition under Part 2 of Chapter 3 of the **Duties Act 2000**, the additional rate to apply to an interest that forms part of the relevant acquisition is that which was applicable when the agreement or arrangement to acquire the interest was entered into by the foreign purchaser.

New clauses 52 to 55 provide transitional arrangements for the amendments made by Division 6 of Part 2 of the Bill in relation to corporate reconstructions.

New clauses 52 and 53 relate to Division 1 and Division 1A of Part 2 of Chapter 11 respectively. The effect of these clauses is that Division 1 and Division 1A (including the revocation provisions) as in force immediately before 1 July 2019—

- continue to apply in respect of an exemption granted under Division 1 or Division 1A prior to 1 July 2019;
- continue to apply to an eligible transaction completed before 1 July 2019 for which the taxpayer has yet to claim an exemption under Division 1 or Division 1A—this means a taxpayer will continue to be able to claim an exemption and seek a refund of any duty paid on an eligible transaction for a maximum period of 3 years from the date of the eligible transaction (even if the exemption or refund claim is made after 1 July 2019); and
- apply to an eligible transaction arising from an agreement or arrangement entered into before 1 July 2019 that completes after 1 July 2019—this means the relevant provisions to apply to an eligible transaction are those that existed when the taxpayer committed to the eligible transaction, not those in existence at the time the eligible transaction occurs.

New clause 54 relates to Division 1B of Part 2 of Chapter 11. The effect of the clause is that Division 1B (including the revocation provisions) as in force immediately before 1 July 2019—

- continues to apply in respect of an exemption granted under the Division prior to 1 July 2019;
- continues to apply to a relevant acquisition completed before 1 July 2019 for which the taxpayer has yet to claim an exemption under the Division—this means a taxpayer will continue to be able to claim an exemption and seek a refund of any duty paid on a relevant acquisition (even if the exemption or refund claim is made after 1 July 2019); and
- applies to a relevant acquisition arising from an agreement or arrangement entered into before 1 July 2019 that completes after 1 July 2019—this means the relevant provisions to apply to the relevant acquisition are those that existed when the taxpayer committed to the relevant acquisition, not those in existence at the time of relevant acquisition occurs.

New clause 55 relates to Division 2 of Part 2 of Chapter 11. Division 2 is being repealed as part of the amendments to Part 2 of Chapter 11. The effect of new clause 55 is to preserve the application of Division 2 so that it can apply to any exemption that is revoked under Division 1, 1A or 1B of Part 2 of Chapter 11 as in force immediately before 1 July 2019 or as continued under clauses 52, 53 and 54 of this Bill.

Part 3—Amendment of Land Tax Act 2005

Part 3 of the Bill amends the **Land Tax Act 2005** to limit the exemption for land that is contiguous to land used and occupied as a principal place of residence (PPR land) to relevant lands that are located wholly in regional Victoria, and to increase the rate of land tax for land owned by an absentee owner.

Division 1—Principal place of residence exemption

Clause 35 substitutes section 54(3) of the **Land Tax Act 2005** with new sections 54(3) and 54(3A) and inserts new section 54(5).

Section 54(3) extends the PPR exemption to land that is contiguous to the PPR land or is separated from the PPR land only by a road or railway or other similar area across or around which movement is reasonably possible.

Subclause (1) substitutes section 54(3) to improve syntax and to include the requirement under new paragraph (f) that both the land and the PPR land must be wholly in *regional Victoria*.

Subclause (1) also inserts new section 54(3A) to exempt land that is a unit in the same strata subdivision (contiguous land) with another unit that has a PPR exemption.

The purpose of new subsection (3A) is to continue the application of the PPR exemption to strata titled car parking or storage areas where they are located in the same complex as a unit with a PPR exemption, provided that they are owned by the same person and used by the person residing on the PPR land. As a car parking space or storage area may be separately titled from the unit, it can constitute taxable land unless an exemption is provided.

Subclause (2) inserts new section 54(5) of the **Land Tax Act 2005**, which defines *regional Victoria* and *strata subdivision* for the purposes of section 54.

The term *regional Victoria* is defined to have the same meaning as it has in section 18(8) of the **First Home Owner Grant Act 2000**. Section 18(8) of that Act defines *regional Victoria* as the municipal districts of the municipal councils set out in Schedule 1 to that Act (which lists 48 rural-based municipal councils) and the alpine resorts within the meaning of the **Alpine Resorts Act 1983**.

The term *strata subdivision* is defined to have the same meaning as it has in the **Transfer of Land Act 1958**, being a subdivision of land by sale transfer or partition into 2 or more units or into 2 or more units and common property whether or not any unit is on the same level as any other unit.

Division 2—Absentee owner surcharge

Land owned by an absentee owner is subject to a surcharge rate of 1.5%. Division 2 of Part 3 of the Bill amends the **Land Tax Act 2005** to increase the surcharge rate on land owned by an absentee owner to 2%.

- Clause 36 amends section 35(1A) of the **Land Tax Act 2005** to increase the rate of special land tax for an absentee owner from 6.5% to 7% of the taxable value of the land to give effect to the increase in the surcharge rate from 1.5% to 2% for an absentee owner.
- Clause 37 amends the formulas in section 46IA(1) and (1A) of the **Land Tax Act 2005** to give effect to the increase in the land tax surcharge rate from 1.5% to 2% for an absentee owner. The formulas in sections 46IA(1) and 46IA(1A) set out how land tax is assessed for an absentee trust that is a fixed trust or a unit trust scheme.
- Clause 38 amends the formulas in section 46IB(1)(b)(ii), (3)(b) and (4)(a) of the **Land Tax Act 2005** to give effect to the increase in the land tax surcharge rate for an absentee owner from 1.5% to 2%. The formulas in section 46IB are used to determine how land tax is assessed for an absentee fixed trust in respect of which a notice under section 46B of that Act is in force (i.e. where the Commissioner has been notified of the beneficial interests in the land).
- Clause 39 amends the formulas in section 46IC(1)(b)(ii), (3)(b) and (4)(a) of the **Land Tax Act 2005** to give effect to the increase in the land tax surcharge rate for an absentee owner from 1.5% to 2%. The formulas in section 46IC are used to determine how land tax is assessed for an absentee unit trust scheme in respect of which a notice under section 46C of that Act is in force (i.e. where the Commissioner has been notified of the unitholdings in the scheme).
- Clause 40 amends the formulas in section 46ID(3)(a) and (5)(a) of the **Land Tax Act 2005** to give effect to the increase in the land tax surcharge rate for an absentee owner from 1.5% to 2%. Section 46ID deals with the situation where a notice under section 46B or 46C of that Act is in force in respect of a fixed trust or unit trust scheme (the first trust) and the beneficiary or unitholder acts as a trustee of another trust (the sub-trust). The provision deems the trustee of the sub-trust to be the owner of the land under the first trust proportionate to the trustee's beneficial interest in the land under the first trust or the trustee's unitholding in the first trust. It also sets out the amount to be deducted to prevent double taxation. The formulas in section 46ID ensure that the appropriate deduction applies to a trustee of the sub-trust

that is an absentee trust and a trustee of a sub-trust that is not an absentee trust accordingly.

- Clause 41 amends the formulas in sections 46IF(2A)(a)(ii) and 46IF(2A)(b) of the **Land Tax Act 2005** to give effect to the increase in the land tax surcharge rate for an absentee owner from 1.5% to 2%. The formulas in section 46IF are used to determine how land tax is assessed for an absentee unit trust scheme or absentee discretionary trust if a nomination of a PPR beneficiary is in force under section 46H of that Act.
- Clause 42 amends the formula in section 50A(2) of the **Land Tax Act 2005** to give effect to the increase in the land tax surcharge rate for an absentee owner from 1.5% to 2%. The formula in section 50A(2) is used to determine how land tax is assessed for related corporations where at least one of the related corporations is an absentee corporation.
- Clause 43 amends clause 4.2 of Schedule 1 to the **Land Tax Act 2005** to ensure that the general absentee owner surcharge rates of land tax in Table 4.2 apply only for the 2017, 2018 and 2019 land tax years.
- Clause 44 inserts new clause 4.3 (and new Table 4.3) in Part 4 of Schedule 1 to the **Land Tax Act 2005** to give effect to the increase in the land tax surcharge rate for an absentee owner from 1.5% to 2% for the 2020 and subsequent land tax years.
- Clause 45 amends clause 5.2 of Schedule 1 to the **Land Tax Act 2005** to ensure that the surcharge rates of land tax for absentee trusts in Table 5.2 apply only for the 2017, 2018 and 2019 land tax years.
- Clause 46 inserts new clause 5.3 (and new Table 5.3) in Part 5 of Schedule 1 to the **Land Tax Act 2005** to give effect to the increase in the land tax surcharge rate for an absentee owner from 1.5% to 2% for absentee trusts for the 2020 and subsequent land tax years.

Part 4—Amendment of Payroll Tax Act 2007

Division 1—Regional employers

Division 1 of Part 4 of the Bill amends the **Payroll Tax Act 2007** to expand eligibility for the reduced payroll tax rate for regional employers by removing the restriction that the regional employer must have a registered business address in regional Victoria.

Clause 47 substitutes section 3A(1) of the **Payroll Tax Act 2007** to remove paragraph (1)(a) of that section, which provided that a *regional employer* must have a registered business address located in regional Victoria (if the employer has an ABN) or a principal place of business located in regional Victoria (if the employer does not have an ABN).

The effect of this amendment is that an employer will only need to meet the requirements specified in section 3A(2) of the **Payroll Tax Act 2007** to satisfy the definition of *regional employer*. Section 3A(2) requires at least 85% of the total taxable wages paid or payable by an employer to be paid to the employer's regional employees during a financial year in order for the employer to be a regional employer.

Clause 48 repeals section 12A of the **Payroll Tax Act 2007**.

Section 12A addresses additional matters for determining whether an employer has a registered business address or a principal place of business in regional Victoria, and is thus a regional employer, pursuant to section 3A(1)(a) of the **Payroll Tax Act 2007**.

As the effect of clause 47 of this Bill is to repeal section 3A(1)(a), section 12A is no longer necessary.

Division 2—Parental leave

Division 2 of Part 4 of the Bill extends the scope of the current exemption for maternity and adoption leave to include wages paid or payable to an employee who is the primary caregiver of a child regardless of their gender and to an employee who is the secondary caregiver of the child. A new Division 2A of Part 3 of Schedule 2 to the **Payroll Tax Act 2007** is inserted by clause 52 of the Bill to recast the current exemption in gender neutral terms using the concepts of a "primary caregiver" and "secondary caregiver".

Clause 49 inserts the definitions of *domestic partner* and *spouse* in section 3(1) of the **Payroll Tax Act 2007**.

A *domestic partner* of a person is defined to mean a person who is in a registered domestic relationship with the person, or a person to whom the person is not married but with whom the person is living as a couple on a genuine domestic basis (irrespective of gender).

A *spouse* of a person is defined to mean a person to whom the person is married.

Subclause (2) inserts new section 3(2) in the **Payroll Tax Act 2007** to clarify that for the purposes of the definition of *domestic partner* in section 3(1), *registered domestic relationship* has the same meaning as it has in the **Relationships Act 2008**. Further, in determining whether persons who are not in a registered domestic relationship are domestic partners of each other, all the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 35(2) of the **Relationships Act 2008** as may be relevant in a particular case.

Clause 50 substitutes the heading in Division 4 of Part 4 of the **Payroll Tax Act 2007** with the heading "**Parental leave**" and section 53 of the Act. New section 53 provides that wages are exempt wages as provided for in new Division 2A of Part 3 of Schedule 2 as inserted by clause 52 of the Bill.

Clause 51 repeals the definition of *domestic partner* in section 73(4) of the **Payroll Tax Act 2007** as this definition has been relocated to section 3(1) by clause 49 of the Bill. This clause also repeals section 73(5) of the **Payroll Tax Act 2007** as it is replicated in new section 3(2).

Clause 52 inserts new Division 2A in Part 3 of Schedule 2 to the **Payroll Tax Act 2007** (new clauses 17A to 17C). The new Division has the heading "**Parental leave**".

New clause 17A(1) sets out the definitions of *primary caregiver* and *secondary caregiver* for the purposes of new Division 2A.

The *primary caregiver* for a child is the person who is pregnant with the child in the case of a child yet to be born. Otherwise, the *primary caregiver* is the parent of the child who has the principal role of providing care and attention to the child.

The *secondary caregiver* for a child is a spouse or domestic partner of the primary caregiver for the child.

New clause 17A(2) provides that for the purposes of new Division 2A, there can only be one primary caregiver for a child at any one time.

New clause 17B(1) provides that wages are exempt wages if they are paid or payable to an employee in respect of leave for the employee's role as primary caregiver or secondary caregiver for a child (other than sick leave, recreation leave, annual leave or any similar leave).

New clause 17B(2) clarifies that it is immaterial whether parental leave is taken before or after the child is born or, in the case of adoption, before or after the child is adopted.

New clause 17B(3) limits the exemption to wages paid or payable in respect of a maximum of 14 weeks leave in relation to any one child.

New clause 17B(4) clarifies that a reference to 14 weeks leave includes a reference to an equivalent period of leave at a reduced rate of pay. A reference to wages paid or payable for a period of leave is the total wages that would normally have been paid or payable for that period of leave. For example, the exemption will apply to wages paid or payable to a part-time employee who has an extended leave of 28 weeks at half of the part-time rate of pay that would normally apply to an employee.

New clause 17B(5) provides that the exemption does not apply to any part of wages paid or payable in respect of leave for the employee's role as a primary caregiver or secondary caregiver that comprises a fringe benefit.

New clause 17C outlines the administrative requirements that apply to an employer wishing to claim an exemption under new Division 2A in respect of leave for an employee's role as a primary caregiver or secondary caregiver.

New clause 17C(1) requires an employer to obtain and keep a statutory declaration by an employee who is a primary caregiver for a child. The statutory declaration must state that the employee is a primary caregiver for a child and whether the employee is or was pregnant with the child (and the date of birth of the child) or is the parent of the child who has the principal role of providing care and attention to the child.

New clause 17C(2) imposes similar requirements in relation to an employee who is a secondary caregiver. The statutory declaration must state that the employee is a secondary caregiver for a child and that the employee is a spouse or domestic partner of the primary caregiver for the child.

Under section 55 of the **Taxation Administration Act 1997**, these records must be kept for at least 5 years unless the Commissioner authorises earlier destruction.

Clause 53 inserts clause 20 in Schedule 3 to the **Payroll Tax Act 2007** to provide transitional arrangements for the amendments made by this Division of the Bill.

New clause 20(1) provides that the new exemption for parental leave under new Division 2A of Part 3 of Schedule 2 to the **Payroll Tax Act 2007** does not apply to wages paid on or after 1 July 2019 in respect of any period of leave taken by an employee before that date.

New clause 20(2) provides that the previous exemption for maternity and adoption leave under Division 4 of Part 4 of the **Payroll Tax Act 2007** continues to apply (despite the repeal of Division 4 of Part 4) to wages paid to an employee on or after 1 July 2019 in respect of any period of leave taken by the employee before that date.

Division 3—Amendment of thresholds and tax rates

Division 3 of Part 4 of the Bill amends the **Payroll Tax Act 2007** to increase the payroll tax annual threshold amount to \$675 000 from 1 July 2021 and to \$700 000 from 1 July 2022, and to decrease the payroll tax rate for regional employers to 2.02% from 1 July 2020, 1.62% from 1 July 2021 and 1.2125% from 1 July 2022, as announced in the 2019-20 State Budget.

Clause 54 amends the **Payroll Tax Act 2007** to increase the payroll tax annual threshold amount.

Subclause (1) substitutes section 86(6)(c) of the **Payroll Tax Act 2007**, and inserts new paragraphs (d) and (e) into that subsection, to specify the *weekly threshold amount* as follows—

- \$12 500 per week for the financial year commencing on 1 July 2018, 2019 or 2020;
- \$12 980 per week for the financial year commencing on 1 July 2021; and
- \$13 461 per week for the financial year commencing on 1 July 2022 and each subsequent financial year.

Subclause (2) amends the definition of *TA* or *threshold amount* in clause 1 of Schedule 1 to the **Payroll Tax Act 2007** to specify the *TA* or *threshold amount* as follows—

- \$650 000 for the financial year commencing on 1 July 2018, 2019 or 2020;
- \$675 000 for the financial year commencing on 1 July 2021; and
- \$700 000 for the financial year commencing on 1 July 2022 and each subsequent financial year.

Subclause (3) amends the definition of *base deductible amount* in clause 1A of Schedule 2 to the **Payroll Tax Act 2007** to specify the *base deductible amount* as follows—

- \$54 166 for a month in the financial year commencing on 1 July 2018, 2019 or 2020;
- \$56 250 for a month in the financial year commencing on 1 July 2021; and
- \$58 333 for a month in the financial year commencing on 1 July 2022 and each subsequent financial year.

Clause 55 amends the **Payroll Tax Act 2007** to give effect to the reduction in the payroll tax rate for regional employers.

Subclause (1) amends the definition of *R* in clause 1 of Schedule 1 to the **Payroll Tax Act 2007** to specify *R* in the case of a regional employer as follows—

- 2·425% for the financial year commencing on 1 July 2018 or 1 July 2019;
- 2·02% for the financial year commencing on 1 July 2020;
- 1·62% for the financial year commencing on 1 July 2021; and
- 1·2125% for the financial year commencing on 1 July 2022 or any subsequent financial year.

The applicable payroll tax rate for other employers remains at 4.85%.

Subclause (2) amends clause 2 of Schedule 2 to the **Payroll Tax Act 2007** to insert the new rate of payroll tax for regional employers as referred to above.

The applicable payroll tax rate for other employers remains at 4.85%.

Part 5—Amendment of Valuation of Land Act 1960

Part 5 of the Bill amends the **Valuation of Land Act 1960** to remove the special provisions for calculating the value of land on which a heritage building is situated or where removal of a heritage building is prohibited. The amendments respond to the Victorian Civil and Administrative Tribunal ("VCAT") decision in *ISPT Pty Ltd v Melbourne City Council* [2018] VCAT 1647 (GPO case), which upheld a 2016 site value of \$1 for the Melbourne GPO building. The amendments will ensure that, consistent with valuations of other properties, the site value of heritage properties will be determined according to their highest and best use, taking into account the effects of heritage status.

The amendments also ensure the consistent treatment of all landowners for land tax purposes by providing that any objections, reviews and appeals to site values issued for heritage registered properties against the 2018 valuations onwards will be considered in light of the amendments being made by this Bill.

Clause 56 repeals section 2(8) and (9) of the **Valuation of Land Act 1960**.

Section 2(8) currently provides that, despite anything in the **Valuation of Land Act 1960**, the **Local Government Act 1989** or the **Fire Services Property Levy Act 2012**, the capital improved value, net annual value and site value of any rateable land, non-rateable leviable land or non-rateable non-leviable land which is a registered place within the meaning of the **Heritage Act 2017** or on which there is situated a building which is included in the Heritage Register established under that Act must be calculated on the basis of assumptions set out in paragraphs (a) to (c) of that subsection.

Section 2(9) currently provides that despite anything in the **Valuation of Land Act 1960**, the **Local Government Act 1989** or the **Fire Services Property Levy Act 2012**, if a planning scheme under the **Planning and Environment Act 1987**

prohibits the pulling down or removal of a building, or that a permit is required before a building may be pulled down or removed and the responsible authority has refused to grant a permit or VCAT has directed that no permit issue, the value of any rateable land or non-rateable leviable land that includes the building must be calculated on the basis that the building cannot be pulled down or removed.

Section 2(8) and (9) effectively require the value of heritage-affected land to be calculated to reflect the continual use of the land and improvements. This constrains the value of heritage-affected land in accordance with the existing improvements on the land and their associated use.

The repeal of section 2(8) and (9) allows the value of heritage-affected land (in particular, the site value of the land) to be determined in accordance with the requirements set out in section 5A and other relevant sections of the **Valuation of Land Act 1960**, taking into account the heritage nature of the land.

Clause 57 repeals sections 13DF(2)(g) and 13L(2)(f) of the **Valuation of Land Act 1960**.

Section 13DF deals with supplementary valuations of rateable land. Section 13DF(2)(g) provides that a supplementary valuation for the purposes of the **Local Government Act 1989** or for the purposes of the **Fire Services Property Levy Act 2012** in relation to rateable land may be made if the capital value, net annual value or site value of land has been materially decreased or materially increased by reason of—

- any building on the land being included in the Heritage Register established under the **Heritage Act 2017**;
- any building ceasing to be included in the Heritage Register; or
- the issue of a permit under the **Heritage Act 2017** to remove, demolish or alter a building included in the Heritage Register established under that Act or to subdivide or develop any land.

Section 13L deals with supplementary valuations of non-rateable leviable land. Section 13DF(2)(g) provides that a supplementary valuation may be made under section 13L in the same circumstances referred to in section 13DF(2)(g). Section 13L

deals with supplementary valuations for the purposes of the **Fire Services Property Levy Act 2012**.

The repeal of these provisions is intended to support the repeal of section 2(8) and (9) of the **Valuation of Land Act 1960** by removing heritage-related events as a basis for carrying out a supplementary valuation.

Clause 58 inserts new subsection (8) in section 21 of the **Valuation of Land Act 1960**, which provides for the process by which objections to valuations of land are determined.

New section 21(8) provides that, despite section 14(2) of the **Interpretation of Legislation Act 1984**, on an objection to the site value of any land contained in a general valuation or supplementary valuation as at 1 January 2018 or any later date, including an objection on foot at the commencement of the new subsection, no account is to be taken of sections 2(8) or 2(9) (as in force at the date of the valuation)—

- by the valuer to whom the objection is referred in determining whether an adjustment in the site value is justified; or
- by the valuer-general in determining whether a recommended adjustment in the site value is correct.

New section 21(8) applies the effect of the amendments made by Part 5 of the Bill to objections on foot on or after the commencement of the amendments, where the relevant valuation was carried out before commencement.

New section 21(8) expresses a contrary intention to section 14(2) of the **Interpretation of Legislation Act 1984**, which provides that the repeal of a provision does not affect the continuation of rights, privileges, obligations and liabilities after repeal, and investigations, legal proceedings or remedies may be instituted, continued or enforced, and any penalty, forfeiture or punishment imposed, as if that provision had not been repealed (unless the contrary intention expressly appears).

Clause 59 inserts new subsection (3) in section 24 of the **Valuation of Land Act 1960**, which limits the grounds of an objector's case on review by VCAT or appeal to the Supreme Court.

New section 24(3) provides that, despite section 14(2) of the **Interpretation of Legislation Act 1984**, on a review or appeal in relation to the site value of any land contained in a general valuation or supplementary valuation as at 1 January 2018 or any later date, including a review or appeal on foot at the commencement of the new subsection, no account is to be taken by VCAT or the Court (as the case requires) of sections 2(8) or 2(9) (as in force at the date of the valuation) in determining the correct site value of the land.

New section 24(3) applies the effect of the amendments made by Part 5 of the Bill to reviews or appeals on foot on or after the commencement of the amendments, where the relevant valuation was carried out before commencement.

As with new section 21(8), new section 24(3) expresses a contrary intention to section 14(2) of the **Interpretation of Legislation Act 1984**.

Part 6—Repeal of this Act

Clause 60 provides for the automatic repeal of the Act on 1 July 2020. The repeal of the Act does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).