CIRCULAR 1 **DUTIES ACT 2008**
DUTIES LEGISLATION AMENDMENT ACT 2008

The Duties Bill 2007 and the Duties Legislation Amendment Bill 2007 received Royal Assent on 14 April 2008 and will come into operation on 1 July 2008. The Acts put in place a new duties regime to replace the outdated stamp duty arrangements that are currently imposed by the *Stamp Act 1921* ("the Stamp Act").

The *Duties Act 2008* ("the Duties Act") has a logical structure which is based on self contained Chapters, together with Schedules relating to transfer duty and the transitional provisions.

The following is a general summary of the Duties Act. Reference should be made to the Duties Act and the associated explanatory memorandum for further details.

Chapter 1 – Preliminary

This Chapter contains the preliminary provisions setting out the name of the Duties Act, its commencement and definitions of the terms used within the Act. It also sets out the relationship of the Duties Act with the *Taxation Administration Act 2003* (the "TAA") and explains the status of notes in the text.

Chapter 2 – Transfer Duty

This Chapter relates to transfer duty, which is the new term for conveyance duty that was imposed under the Stamp Act. The Chapter is structured in Parts, with Parts 1 and 2 dealing with the definitions applicable to the Chapter and the imposition of transfer duty. The Chapter imposes duty on dutiable transactions.

Part 3 of the Chapter contains the dutiable transaction and dutiable property lists. This means that the transactions over certain types of property that will be subject to transfer duty are clearly specified. This reflects a significant change from the Stamp Act, which charges duty on all property except that which is exempt.

The approach taken in the Duties Act is to specify a list of dutiable transactions, along with a list of the dutiable property that may be the subject of a dutiable transaction.

The dutiable property list contains four items of property that will attract duty, being land, a right, a chattel and a Western Australian business asset.

Part 4 of the Chapter deals with the collection of transfer duty, including liability for transfer duty, lodgment and payment obligations, the dutiable value of transactions and ensuring that duty is not charged twice on the same transaction.

Part 5 of the Chapter is structured into Divisions that set out how the Chapter applies to specific transactions.

Division 1 relates to simultaneous put and call options. The policy underlying these provisions remains largely unchanged from the provisions that they replace in the Stamp Act.

Division 2 relates to trust acquisitions and trust surrenders, and charges duty on a change in a taker in default's interest in a discretionary trust. While imposing duty on a change in a taker in default's interest does not represent a change in policy, the Stamp Act did not include specific provisions that dealt with this matter. These provisions ensure that duty cannot be avoided by changing discretionary trust beneficiaries.

Division 3 relates to the transfers of shares in a corporate trustee of a discretionary trust. However, the policy underlying these provisions is largely consistent with the policy of section 73E of the Stamp Act.

Division 4 relates to partnership acquisitions. While partnership interests have always attracted stamp duty under the Stamp Act, specific provisions that dealt with partnerships did not previously exist in the Stamp Act. Rather, the method of assessing duty was originally derived from very old English common law and was set out in a Commissioner's Practice. The Duties Act clearly sets out the transactions in relation to partnerships that will be subject to duty, and how the dutiable value of such transactions is calculated.

Division 5 deals with business assets. There has been no significant change to the policy relating to business assets. However, the provisions have been included in a self contained Division so that the abolition of duty on non-real business assets on 1 July 2010 can be easily accommodated.

Division 6 sets out the provisions in relation to conditional agreements, which are the subject of alternative lodgment and payment arrangements in certain circumstances.

Part 6 of the Chapter sets out the transactions that are the subject of exemptions, nominal duty and concessions. A significant change in this Part from the Stamp Act is that there is no longer a general "no change in beneficial ownership" provision as is currently contained in section 73AA(1)(f) of the Stamp Act. Instead, specific provisions dealing with matters that were previously assessed under this provision have been included.

Chapter 3 – Landholder Duty

The provisions that are contained in this Chapter represent a significant reform to the duty treatment of acquisitions of indirect interests in land, and are intended to achieve greater consistency between the duty treatment acquisitions through corporations and unit trust schemes and to simplify the duty arrangements.

This Chapter replaces the land-rich and private unit trust provisions of the Stamp Act. It provides for the imposition of landholder duty on a relevant acquisition of an interest in a corporation or a unit trust scheme that is a landholder. Corporations and unit trust schemes are referred to as "entities" for the purposes of this Chapter.

In relation to unlisted entities, acquisitions of interests of 50% or more in landholder entities will be subject to duty, along with any subsequent interests acquired. The threshold for unlisted corporations is currently set at greater than 50%, while there is no acquisition threshold for private unit trusts.

The treatment of listed entities will be different to that of unlisted entities, in that the provisions only seek to apply duty on land being indirectly acquired in instances where a 90% or greater interest in a listed corporation or unit trust scheme is acquired. This is the threshold that currently applies to listed land-rich corporations. By applying this threshold to both listed corporations and unit trust schemes, consistency between these entities will be significantly improved.

In relation to what constitutes a landholder, the same test applies regardless of the type of entity involved or its status as listed or unlisted.

A landholder is defined with reference to the value of the Western Australian land held by the entity. Only transactions involving entities that hold Western Australian land valued at $2 million or more will be subject to duty.

There is no "land as a proportion of total property" threshold, unlike the 60% land-rich threshold that currently features in the Stamp Act. Only the value of the Western Australian land will be relevant. Where the landholder provisions apply, duty is charged with reference to the value of the Western Australian land and chattels in which the entity has an interest.

Chapter 4 – Insurance Duty

This Chapter is largely based on the provisions of Part IIIF of the Stamp Act. The main difference is that this Chapter has adopted a transaction-based approach, and charges duty on the premium paid in relation to a contract of general insurance.

A general insurer is generally liable to pay the duty payable on a premium. If the insurer is not a general insurer, the insured person is liable to pay the duty payable on the premium. There are obligations in relation to a general insurer being registered, lodging returns and paying the duty payable on a premium. These obligations are consistent with the obligations imposed on an insurer under the Stamp Act.

Similarly, the obligations on a person entering into a contract of insurance with an insurer that is not a general insurer to lodge a statement and pay the duty payable on a premium are consistent with the current Stamp Act obligations.

Determining the proportion of a premium that is attributable to general insurance is subject to the same apportionment arrangements that currently exist under the Stamp Act. Refund provisions and record-keeping obligations have also been included, which are consistent with the current requirements.

Chapter 5 – Vehicle Licence Duty

This Chapter imposes duty on the grant or transfer of a licence for a motor vehicle. It is largely based on the provisions contained in Part IIIC of the Stamp Act. However, the definition of a "new vehicle" includes a vehicle that has been used for certain demonstration or charitable purposes for a period of up to 2 months, rather than 3 months under the equivalent Stamp Act provisions.

An anti-avoidance provision is included to apply where the Commissioner is of the opinion that a vehicle has been licensed in another jurisdiction as part of a scheme to avoid vehicle licence duty.

There has also been a change to the provisions that apply where the grant or transfer of a licence to a dealer has been exempted because the vehicle is used for demonstration purposes, or is loaned, to be used for charitable purposes, and the use of the vehicle subsequently changes. The Commissioner is required to be notified and duty will be imposed based on the value of the vehicle at the time of the change in use without the imposition of penalty tax.

Further, the definition of “dealer” has been amended as a result of changes to the Road Traffic Act 1974 to ensure that financiers are not required to pay duty where a vehicle that is the subject of a chattel mortgage, is repossessed and sold to a third party.

The provisions which impose nominal duty on the transfer of a licence are linked to the relevant provisions within the Transfer Duty Chapter. The current policy in relation to transfers that are subject to nominal duty has been maintained, however, specific provisions have been inserted to ensure that transfers pursuant to the winding-up of a company or unit trust and the breakdown of a marriage or de facto relationship are also subject to nominal duty.

Chapter 6 – Certain Exemptions For Connected Entities

This Chapter sets out the exemption from duty for certain transactions that occur in relation to entity restructuring. These provisions represent a major redesign of the corporate reconstruction arrangements under the Stamp Act.

While the policy of facilitating more efficient business structures still underlies the new regime, the parameters of the previous exemption have been relaxed. This Chapter is the subject of a separate circular.

Chapter 7 – General Anti-Avoidance Provisions

This Chapter contains a general anti-avoidance provision which allows the Commissioner to disregard a scheme where he determines that a person who entered into or carried out the scheme did so with the sole or dominant purpose of reducing, eliminating or postponing a liability for duty, and the scheme is of a blatant, artificial or contrived nature. The Commissioner may then assess the duty that he determines would have been payable if the scheme had not been entered into.

This Chapter also provides the ability for a person to seek a decision of the Commissioner as to whether the Commissioner would apply the general anti-avoidance provision to a proposed scheme for a particular transaction or acquisition.

Chapter 8 – Other General Provisions

This Chapter contains a range of general provisions relating to endorsing transaction records, enforcement and other miscellaneous matters.

DUTIES LEGISLATION AMENDMENT ACT 2008

The following is a general summary of the Duties Legislation Amendment Act 2008 (“the DLAA”). Reference should be made to the DLAA and the associated explanatory memorandum for further details. The amendments in the DLAA complement the new duties regime contained in the Duties Act.

The DLAA amends:

- the *Stamp Act 1921*;
- the *Duties Act 2008*; and
- the *Taxation Administration Act 2003.*

The amendments to the Stamp Act ensure that the Stamp Act no longer applies to transactions that will be subject to duty under the Duties Act from 1 July 2008. These amendments also ensure that certain obligations under the Stamp Act remain for instruments executed, or transactions occurring, prior to 1 July 2008.

The DLAA also amends the TAA and a range of other statutes. The amendments to the TAA facilitate the operation of the Duties Act by making necessary changes, such as updating the language to reflect the terminology and concepts of the Duties Act.

The DLAA also includes amendments to the Duties Act to abolish duty on non-real business assets from 1 July 2010.

HOW TO OBTAIN FURTHER INFORMATION

The Duties Act and the DLAA, together with the explanatory memoranda, are available on the Department of Finance website at www.osr.wa.gov.au

An extensive taxpayer awareness and education campaign, including new publications and a free customer education program, will be undertaken by the Office of State Revenue to assist taxpayers in meeting their obligations under the Duties Act.

The Department of Finance website will be updated regularly as new publications and education seminars become available.

May 2008