



CIRCULAR 6 DUTIES ACT 2008 REVENUE LAWS AMENDMENT AND REPEAL ACT 2010

The *Revenue Laws Amendment and Repeal Act 2010* (“the Act”) received Royal Assent on 25 June 2010. The Act contains various amendments to the *Duties Act 2008* (“Duties Act”) which are to take effect from either the date of Royal Assent or a date to be fixed by proclamation, whichever is applicable.

The information provided in this circular is not an exhaustive explanation of the amendments. Reference should also be made to the Act and the Explanatory Memorandum.

A general summary of the amendments to the Duties Act follows.

PARTNERSHIPS

With effect from the date of Royal Assent, the Act has made two amendments that clarify the operation of the Duties Act relating to partnerships.

The first amendment modifies section 70 of the Duties Act and applies retrospectively to 1 July 2008. The amendment ensures that the dutiable value of a transfer of dutiable property to a partner on the dissolution of, or retirement from, a partnership is reduced according to the partner’s interest in the partnership immediately prior to the transfer.

The original provisions were intended to operate to reduce the duty payable on the dutiable transaction by taking into account the dutiable value of the interest the partner already has in the partnership property they are receiving. However, this did not operate correctly where the partner received property other than land and chattels. The amendment provides that a partner retiring from a partnership who receives a right or business asset is given a reduction in their duty assessment that reflects their interest in the partnership which includes rights and business assets.

The second amendment to the partnership provisions amends section 72 of the Duties Act to clarify the operation of the partnership provisions in relation to the formation of a partnership. The amendment clarifies that a partnership acquisition occurs on the formation of a partnership and duty is charged in respect of land that is contributed to a partnership on its formation.

ENTITY RESTRUCTURING EXEMPTION APPLICATIONS

With effect from the date of Royal Assent, section 262(3)(a) of the Duties Act has been amended to clarify the time period in which an application for an entity restructuring exemption can be made.

Prior to the amendment, section 263 of the Duties Act allowed the Commissioner to issue a certificate of exemption for the transfer of a motor vehicle licence before the transfer was made, however, section 262(3)(a) of the Duties Act did not allow an application to be made until after the date of the transaction. The amendment allows for an exemption application to be lodged before the date of the transaction.

TRANSFER DUTY LODGMENT AND PAYMENT ARRANGEMENTS

These amendments are intended to simplify the current arrangements pertaining to the lodgment of transaction records and payment of transfer duty under the Duties Act. The amendments have been designed to come into operation on a date (or dates) to be fixed by proclamation. With effect from a date to be proclaimed, the Duties Act will be amended to:

- Amend section 23 to provide a single two month lodgment period from the date that liability to duty arises for all transaction records requiring lodgment, either with the Commissioner of State Revenue (“the Commissioner”) or using the Office of State Revenue’s electronic self-assessment system, Revenue Online (“ROL”).

Currently, some transaction records are required to be lodged within two months of the date that liability to duty on the transaction arises, whilst certain types of conditional agreements are not required to be lodged for up to 12 months from the date liability to duty arises. This amendment will require some transaction records to be lodged sooner than is currently required, however amendments to section 25 of the Duties Act contained in the Act ensure that only in very rare circumstances will duty be required to be paid any earlier than is currently the case and, in some circumstances, will allow a longer payment period.

- Amend the definition of the term *lodge* in section 3 to clarify that it includes the electronic lodgment of transaction records. This will ensure that agreements processed under ROL, rather than physically lodged with the Commissioner, will still be considered lodged for the purposes of the two month lodgment requirement.
- Amend section 9 to delete the definitions of *off-the-plan conditional agreement* and *unconditional* which are no longer relevant under the pending lodgment and payment arrangements. The amendments will insert a new definition of *issue of title conditional agreement*, and amend the definition of *general conditional agreement* as a consequence.
- Amend section 90 of the Duties Act to provide a definition of the new term *issue of title conditional agreement*. This type of agreement incorporates agreements previously known as *off-the-plan conditional agreements* as well as certain other conditional agreements that were previously classified as *general conditional agreements*.

An *issue of title conditional agreement* is an agreement for the transfer of dutiable property that is conditional upon:

- (a) the obtaining by the vendor of the approval under the *Planning and Development Act 2005* section 135 for subdivision, or the obtaining by the vendor of the registration of a strata/survey-strata plan (as set out in section 87(2)(j) of the Duties Act); or
 - (b) the issue of a certificate of title (as set out in section 87(2)(m) of the Duties Act).
- Amend section 25 to include a maximum payment period for certain transactions of either 12 months or three years from the date that liability to duty arose, depending on the type of agreement involved.
 - Delete section 87(3) which explains when a conditional agreement is terminated on relevant grounds and insert a new provision, section 88A into the Duties Act. Section 88A will provide a description of when a general conditional agreement is terminated on relevant grounds and how such agreements are to be treated.
 - Amend section 19, which specifies when a liability for transfer duty arises. Section 19(2) will be amended so that it refers to an *instrument* that is required to be lodged under section 23 in respect of a general conditional agreement, rather than a *transaction record*. This is necessary as a transaction record includes both an instrument and a transfer duty statement. However, under section 23(3), a general conditional agreement must be effected or evidenced by an instrument in hard copy form. This means that a transfer duty statement cannot be a general conditional agreement.
 - Remove the requirement for a liable party to notify the Commissioner of State Revenue where a further dutiable transaction in respect of an off-the-plan or subdivision conditional agreement is entered into.
 - Amend the application process for the residential rate of duty by requiring that the application be made in the approved form and removing the requirement for the application to be made by the taxpayer.

Further information will be published to coincide with the commencement of the amendments to the duties lodgment and payment arrangements as they occur.

It is recommended that interested persons take advantage of the Online Subscription Service to receive notification of publications as they are issued. Publications that are available include Revenue Rulings, Circulars, Commissioner's Practices, Fact Sheets and e-Newsletters.

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