



CIRCULAR 7 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. Part 2, Division 2 and sections 11, 14 and 15 of the Act contain various amendments to the *Duties Act 2008* (“Duties Act”) to take effect from a date to be fixed by proclamation. 1 March 2011 has been gazetted as the proclamation date for the amendments to take effect.

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.

TRANSFER DUTY LODGMENT AND PAYMENT ARRANGEMENTS

These amendments apply to transaction records executed on or after 1 March 2011 and are intended to simplify the current arrangements pertaining to the lodgment of transaction records and payment of transfer duty under the Duties Act. With effect from 1 March 2011 the Duties Act will be amended to:

- Amend section 23 to require all transaction records to be lodged within two months after the date that liability to duty arises, either with the Commissioner of State Revenue (“the Commissioner”), or by using the Office of State Revenue’s electronic self-assessment system, Revenue Online (“ROL”).

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 include the electronic lodgment of transaction records. This will ensure that instruments processed under ROL, rather than physically lodged with the Commissioner, will still be considered lodged for the purposes of section 23.
- 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 define 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);
 - (b) the issue of a certificate of title (as set out in section 87(2)(m) of the Duties Act); or
 - (c) the sale of a strata lot that includes the construction on the strata lot, after liability for duty on the agreement arises, of a building for commercial, residential or mixed use purposes.
- 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 where a further dutiable transaction is entered into in respect of an off-the-plan or subdivision conditional agreement.
 - 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. Accordingly, from 1 March 2011 a ROL user may apply for the residential rate of duty in the approved form by confirming in ROL that

the transaction includes residential land as defined under s147D of the Duties Act.

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