



## **CIRCULAR 9**

## **DUTIES ACT 2008 DUTIES AMENDMENT ACT (NO. 2) 2011**

The *Duties Amendment Act (No. 2) 2011* (“the Act”) received Royal Assent on 12 September 2011 and contains various amendments to the *Duties Act 2008* (“Duties Act”). Part 2 of the Act comes into operation on 24 December 2010, the day after an announcement was made by the Minister for Finance that the Government would amend the Duties Act as a consequence of the High Court decision in *TEC Desert Pty Ltd & Anor v Commissioner of State Revenue* [2010] HCA 49. Part 3 comes into operation on the day after the day of Assent i.e. 13 September 2011.

As 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.

### **DEFINITION OF “LAND”**

These amendments apply to transactions entered into or acquisitions made on or after 24 December 2010. They are intended to address concerns arising from the stamp duty decision in *TEC Desert Pty Ltd & Anor v Commissioner of State Revenue* [2010] HCA 49.

With effect from 24 December 2010, the definition of the term “*land*” in section 3 of the Duties Act has been amended to include:

- an estate or interest in a mining tenement - new paragraph (ca);
- anything that:
  - under the authority (whether direct or indirect) of a mining tenement, is fixed to land that is the subject of that mining tenement : and
  - would be part of that land as a fixture if the mining tenement were a freehold estate in the land – new paragraph (cb);
- a pipeline, as defined in the *Petroleum Pipelines Act 1969 section 4(1)*, constructed on land under the authority of a licence under that Act – new paragraph (da).

The amendments clarify the definition of land to include any estate or interest in a mining tenement (e.g. sub-lease, sub-licence or equitable interest) and to specify what constitutes a fixture in relation to mining tenements and petroleum licences.

## LANDHOLDER DUTY

With effect from 24 December 2010, section 149 of the Duties Act has been amended to:

- Amend section 149 to insert subsection (2A) to provide that anything fixed to a mining tenement and pipelines constructed under the *Petroleum Pipelines Act 1969* are to be taken to be part of the land. These amendments correspond to the above amendments to the definition of “land” in section 3 and ensure that the landholder provisions operate in a similar manner where the land and items attached to it are, or purport to be, separately owned.
- Amend section 149 to insert subsection (4). This subsection clarifies that the term “land” when used in subsections (2A), (2) and (3) of section 149 is to be read more narrowly than the general definition of land in section 3. It ensures the general definition of land in section 3 will apply to all other provisions in Chapter 3 – Landholder Duty of the Duties Act.

## TRANSITIONAL PROVISIONS

The transitional provisions in Schedule 3 of the Duties Act have been amended by inserting Division 5:

- The new division provides that transactions entered into and relevant acquisitions made between 24 December 2010 and the day of Assent, that would not have been dutiable but for the operation of the above amendments, will be liable to duty. The date that liability for duty arises is taken to be the later of the day after the day of Assent i.e. 13 September 2011 or the day on which the liability would ordinarily arise by the operation of the Duties Act.
- The new division also provides that transfer and landholder duty matters assessed between 24 December 2010 and 12 September 2011 will be liable to be reassessed if affected by the amendments to sections 3 and 149 of the Duties Act.

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