

Taxation

Key information:

- **Grant of leases are now subject to duty on the underlying land value if any consideration paid for grant of lease or for an option or right of first refusal to purchase the land.**
- **Transfer of leases are now subject to duty if lease has value or if consideration is paid for the transfer.**
- **Surrender of leases are now subject to duty if lease has value or if consideration is paid by landlord for surrender.**
- **State Revenue Office (SRO) may treat terms contracts as being subject to duty.**
- **Changes backdated to 21 November 2008.**
- **No penalties or interest on transactions entered into between 21 November 2008 and 7 July 2009 if disclosed to SRO and duty paid by 7 October 2009.**

The *Duties Amendment Act 2009* (Vic) (the New Act) received Royal Assent on 7 July 2009.

The New Act makes significant changes to the operation of the transfer duty provisions in two areas (backdated to 21 November 2008):

- duty is imposed on certain lease arrangements; and
- definitions associated with dutiable 'changes in beneficial ownership' are expanded to overcome some certain perceived avoidance structures.

Originally, the New Act also proposed to reduce the time for lodgement of dutiable documents from 3 months to 14 days; however this was subsequently dropped by Parliament.

Lease duty amendments

The lease duty amendments will mean that from 21 November 2008:

- any premium in a lease will result in transfer duty on the underlying land value. Therefore premiums in leases are likely to be commercially undesirable;
- options to purchase land and rights of first refusal to purchase land that are contained in or associated with leases where there is any payment for those options or rights will result in transfer duty on the underlying land value;

- the assignment of any lease for a monetary consideration will also result in full duty on the underlying land value (however the SRO have indicated that a nominal \$1 consideration ascribed to the transfer if it is part of a larger transfer of business is unlikely to be assessed to duty);
- surrenders of leases will be subject to transfer duty on the higher of the value of the lease surrendered or the consideration paid by the landlord for the surrender; and
- renewals of existing leases in a form that would now be subject to duty, if renewed pursuant to an option to renew in existence prior to 21 November 2008 will be grandfathered and therefore not subject to duty under the new provisions.

Residency rights in retirement villages under the *Retirement Villages Act 1986* and leases of residential sites in caravan parks have been exempted from the lease duty provisions.

Change of beneficial ownership

The change in beneficial ownership amendments contained in the New Act was introduced to overcome avoidance schemes. However, we still have significant concern with the operation of those provisions in relation to:

- contracts of sale (particularly terms contracts);
- the creation, surrender or transfer of an easement; and
- the creation, surrender or transfer of a profit à prendre (being a right to take something off someone's land).

These transactions all create interests in land and therefore now appear to be subject to duty based upon the wording of the New Act. However, the SRO has said that in practice it will not impose duty on these transactions as the New Act is not designed to change the law, but merely to prevent avoidance of duty.

Transitional

On 10 July 2009, the SRO issued *Duties Act Bulletin D2/09*, which announced a 3-month moratorium on transactions affected by the New Act and entered into between 21 November 2008 and 7 July 2009.

For those transactions, no penalty or interest will be payable if full disclosure is made to the SRO and payment of duty occurs by 7 October 2009.



Contacts

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