



NSW State Taxes and Your Business

Duties

When is duty payable?

In NSW, duty is payable on certain transactions, such as the acquisition of a business, regardless of whether or not a written agreement is used. It is also payable on various legal documents such as mortgages.

In general, you must pay duty within three months of signing a dutiable document or entering into a dutiable transaction.

Acquisition of a business

If you acquire certain business assets in NSW, duty is payable. Dutiable assets include:

- goodwill
- intellectual property, such as trademarks, copyright and patents, (when part of a transaction which includes goodwill)
- plant and equipment (when part of a transaction which includes other dutiable assets)
- licences, such as taxi and liquor licences
- the interest of a lessee in a lease of business premises
- land in NSW.

The duty you pay is calculated on the dutiable value of the acquisition, which is the higher of:

- the consideration (if any) for the business assets acquired (which may be money and/or liabilities assumed)
- the current market value of the business assets acquired.

Duty is assessed at the general transfer rate, which varies from 1.25 per cent to 5.5 per cent depending on the dutiable value of the acquisition.

Duty is also payable when an existing business is incorporated by a sole trader or partnership or certain business assets are transferred from individuals to a partnership. If there is no written agreement evidencing or effecting the acquisition of the business, a written statement must be lodged with the Chief Commissioner of State Revenue within three months of the acquisition.

When you acquire a business, you don't have to pay duty on assets like goods that are stock-in-trade, registered motor vehicles (duty is paid at the RTA when the vehicle is registered in your name), materials held for use in manufacture, goods under manufacture, goods held or in connection with land used for primary production, livestock or a ship or vessel.

Duty on the transfer of business assets (other than land), statutory licences or permissions and poker machine entitlements will be abolished on 1 July 2012.

Acquisition of business premises

If you buy business premises (such as a shop), you pay duty at the general transfer rate on the amount paid for, or the market value of, the premises, whichever is the greater.

Generally, when you acquire business premises, as well as the business conducted on those premises, from the same

or associated persons, duty is chargeable on the combined value of the business and the premises.

Lease of business premises

Leases executed on or after 1 January 2008 are not liable to duty unless a 'premium' is paid or agreed to be paid in respect of the lease. The premium paid or agreed to be paid will be liable to duty at the general rate.

The person liable to pay the duty is the lessee.

Mortgages

If you borrow money, and to secure repayment of the loan you enter into a mortgage over property in NSW (such as land or assets of a business), you must pay mortgage duty. The rate of duty is \$5 for the first \$16 000 of the loan, plus \$4 for every \$1000 of the balance. For example, you pay \$341 duty on a loan of \$100 000. Duty is also payable on any further loans secured by the mortgage.

- **1 September 2007**
Duty is not chargeable on advances made to a natural person/s on or after this date in connection with owner occupied housing.
- **1 July 2008**
Duty is not chargeable on advances made to a natural person/s on or after this date for investment housing.
- **1 July 2012**
Mortgage duty is abolished. NSW Mortgage duty will not be chargeable on advances made on or after 1 July 2012.



Land tax in 2009

This is a tax on the ownership of land in NSW as at 31 December 2008. It includes:

- vacant land, including vacant rural land
- land where a house, residential unit or flat has been built
- holiday homes
- company title units
- residential, commercial or industrial units
- commercial properties, including factories, shops and warehouses.

Ownership of land includes joint and individual ownership, interests in jointly owned land, and any interest in land held by a trust or estate.

Exemptions

Generally exemptions apply to the following:

- principal place of residence (your own home)
- primary production land (land used for farming)
- non-profit organisations.

Partial exemptions

If the land you use as your principal place of residence is used for another activity, the value of your land will be split between the residential use and the other use.

Example:

Mr Brown lives in a two storey building. The bottom floor is a shop and Mr Brown lives upstairs. The value of the land is \$800 000. On a floor area basis, the value is split \$400 000 shop and \$400 000 residence. Mr Brown's residential part is not liable. The non-residential usage is taxable at the land value of \$400 000.

Land values

Annual valuations for land tax are made by the Valuer-General as at 1 July preceding each land tax year.

These values should not be confused with those generally made every three years for local government rating purposes. The Register of Land Values

is maintained by the Land and Property Information Division of the Department of Lands, on behalf of the Valuer-General.

Average values

For 2007 and subsequent tax years, the value used to determine your land tax liability will generally be the average of the land value for the current tax year and the land values for the previous two years.

Example:

2009 land value \$560 000
(land value as at 1 July 2008)

2008 land value \$450 000
(land value as at 1 July 2007)

2007 land value \$400 000
(land value as at 1 July 2006)

Total = \$1 410 000 divided by three

Average land value = \$470 000

How is land tax calculated?

Land tax is calculated on the combined value of all the taxable land you own.

The land tax threshold for 2009 is \$368 000. This means your land tax assessment is calculated on the combined average value of all the taxable land you own above this threshold.

The tax rate is \$100 plus 1.6 per cent of the land value in excess of the threshold.

From the 2009 tax year, a new premium land tax marginal rate of 2 per cent will apply to you if your total taxable land value is above \$2 250 000. The higher rate will only apply to land holdings in excess of \$2 250 000.

If the combined taxable value of your land is equal to or under the \$368 000 threshold no land tax is payable.

General example

Total taxable value of land	Rate of land tax payable	Example	Land tax payable
\$470 000	1.6 cents for each \$1	Total value of land =	\$470 000
		Threshold	\$368 000
		value of land above the land tax threshold	\$102 000
		rate of land tax payable	x 1.6% (plus \$100)
			\$1 732 (\$1 632 + \$100)

Premium threshold example

\$3 000 000 taxable value of land	Rate of land tax payable	Land tax payable
≤ \$368 000	–	–
\$368 001 to \$2 250 000	1.6% (plus \$100)	\$30 212
\$2 250 000 to \$3 000 000	2%	\$15 000
Total land tax payable		\$45 212

Special trusts example

\$3 000 000 taxable value of land	Rate of land tax payable	Land tax payable
\$2 250 000	1.6%	\$36 000
\$750 000	2%	\$15 000
Total land tax payable		\$51 000

Who is liable to pay land tax?

If you own any property that is not your principal place of residence, including a holiday house or unit, you may be liable to pay land tax. This includes property that does not earn any income.

The amount of land tax payable depends on the combined value of any taxable land you own or have an interest in, excluding exempt land. The value of taxable land does not include any structural improvements, such as a house. Also, you do not pay land tax in NSW on any properties you own outside of NSW.

For land tax purposes, an owner is defined as any of the following:

- sole owner
- joint owner
- company – whether solely or as a part of a group of related companies
- trustee of any trust
- beneficiary of a trust
- society or organisation whose land is not exempt from land tax
- superannuation funds.

Joint owners

Joint owners are assessed jointly on one or more parcels of non-exempt land. One threshold applies regardless of the number of owners.

Sole owner

An individual's interest in a partnership may be assessable if that owner holds other land individually or with other partners.

Companies

A company is assessed in the same way as a sole owner unless it is related to a company or a group of companies.

Where a company is a member of a group and the total land holdings of the group exceed the premium rate threshold of \$2 250 000 then one member of the group will be taxed using the premium rate threshold and the remaining members of the group will be taxed at a flat rate of 2 per cent.

Alternatively, where a company is a member of a group where the total land holdings of the group does not reach the premium rate threshold then one member of the group will be entitled to the \$368 000 threshold and the remaining members of the group will be taxed at a flat rate of 1.6 per cent.

Trusts

The trustee of a trust is assessed in the same way as a sole owner unless it is a special trust.

Special trusts can include:

- trusts which elect to be taxed as special trusts
- discretionary trusts
- non-complying superannuation trusts
- unit trusts
- most family trusts
- some deceased estates
- trusts in which the beneficiaries are not owners for land tax purposes.

Special trusts are not entitled to the threshold and are taxed at 1.6 per cent up to \$2 250 000 in land value. Land holdings exceeding \$2 250 000 will be taxed at 2 per cent. If the land is the subject of a fixed trust, concessional trust or complying superannuation fund, it is assessed with the benefit of the threshold.

From 2006, 'family-held unit trusts' may be assessed as fixed trusts after completing a 'unit trust declaration form'. Other unit trusts may undertake to restructure the trust deed in order to be classified as a fixed trust.

How do I deal with OSR to determine my liability?

If you become liable for land tax in NSW as at 31 December 2008, you will need to lodge a registration form. The registration form is available from the OSR website and you can lodge it electronically at www.osr.nsw.gov.au or by contacting OSR on 1300 139 816.

Upon receipt and processing of your registration form, OSR will issue you with an assessment detailing the land tax payable.

Payroll tax

Is your business liable?

You are liable to payroll tax if you are an individual employer or one of a group of employers whose total taxable wages throughout Australia, including NSW, exceeds \$600 000 for the payroll tax year.

The threshold for the 2008–09 financial year is \$623 000.

Threshold indexation from 1 July 2008

The tax free threshold is to be indexed annually in line with the percentage increase in the Sydney CPI All Groups Index, as determined by the ABS for the 12 months ending on 31 March prior to each financial year. The calculation is to be rounded to the nearest \$1000. If the CPI falls, the threshold will not fall below the previous year's threshold.

You may also be liable if you pay wages for only part of the payroll tax year as the threshold is apportioned to the number of days you employ.

Payroll tax in NSW is levied on the employer's wages that exceed the NSW threshold. The employer's entitlement to this threshold is reduced if the employer pays wages in other states of Australia or is a member of a group.

How payroll tax is calculated

Employers pay six per cent of the value of wages that exceed their threshold entitlement.

Tax rate

The payroll tax rate of 6 per cent is to be reduced as follows:

- to 5.75 per cent from 1 January 2009
- to 5.65 per cent from 1 January 2010
- to 5.5 per cent from 1 January 2011.

Example:

An employer has total Australian wages of \$2 million with \$500 000 in each of NSW, Victoria, Australian Capital Territory and Western Australia.

The NSW threshold allocation would be:

$$\text{NSW} \quad \frac{\$500\,000}{\$2\,000\,000} \times \$600\,000 = \$150\,000$$

Similar calculations apply for each of the other jurisdictions.

What are wages?

Wages are considered to be any of the following:

- wages, salaries, commissions, bonuses, allowances, remuneration
- employer superannuation contributions, including salary sacrifice
- fringe benefits
- employment termination payments and paid out annual and long service leave
- all payments to workers under employment agency agreements
- the value of shares and options provided to employees and directors
- the labour content of payments to contractors, unless the contract is exempt.

If you pay wages outside NSW for services performed wholly in NSW, these wages are liable to tax in NSW.

Payments to contractors

Payments to contractors and subcontractors under contracts for services are liable as wages unless the contract is exempt. There are nine exemption provisions and only one need apply. Contracts that are commonly liable are:

- contracts where the contractor works for 90 days or more for the one business, and
- the contractor does the work personally without paying another worker to assist, and
- the work performed is a normal activity of the business.

The payments can be wages even if the contractor is incorporated or a partnership. Further information about contractors is available on the OSR website.

Employment agents

Payments made by employment agencies and labour hire firms to workers under agency contracts are liable wages for the agency unless the client of the employment agency declares they are an exempt employer by completing an OSR declaration.

Grouping provisions

Grouping provisions allow only one threshold to all the businesses that make up a group. Your business may be related to another business if:

- your company and another company are related within the meaning of the *Corporations Act 2001* or
- one or more of your employees perform duties for or in connection with another business, or businesses, under any form of agreement or
- the person or persons who have a controlling interest (more than 50 per cent) in one business also have a controlling interest in another business.

Grouping provisions are complex and further information is available on the OSR website.

MORE INFORMATION



www.osr.nsw.gov.au

OSR directory

Duties

(Conveyances, mortgages, contracts etc)

Phone: 1300 139 814*

Fax: (02) 9689 8280

Email: duties@osr.nsw.gov.au

Duties returns and gaming

(Parking space levy, general insurance, insurance protection tax, gaming and racing)

Phone: 1300 139 817*

Fax: (02) 9689 8200

Email: returns@osr.nsw.gov.au

Payroll tax

Phone: 1300 139 815*

Fax: (02) 9689 8200

Email: payrolltax@osr.nsw.gov.au

Land tax

Phone: 1300 139 816*

Fax: 1300 363 806

Email: landtax@osr.nsw.gov.au



Payments by post:
GPO Box 530
Sydney NSW 1159



GPO Box 4042
Sydney NSW 2001

DX 456 Sydney



Phone enquiries
8.30 am – 5.00 pm, Mon. to Fri.
Counter services
8.30 am – 4.30 pm, Mon. to Fri.

*Interstate clients please call (02) 9689 6200.
Help in community languages is available.

© State of New South Wales through the Office of State Revenue, 2008. This work may be freely reproduced and distributed for most purposes, however some restrictions apply. Read the copyright notice at www.osr.nsw.gov.au or contact OSR.