



Office of State Revenue
NSW TREASURY

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Revenue Ruling No. DUT 1

Commencement of the Duties Act 1997

Ruling history

Ruling no.	Issued date	Dates of effect		Status
		From	To	
DUT 1	01 July 1998	01 July 1998 -	Present	Current

Preamble

1. The *Duties Act 1997* (Act No 123) was assented to on 15 December 1997, and commences on 1 July 1998. The Act was developed under the Stamp Duties Rewrite Project, and as such is primarily a rewrite of the *Stamp Duties Act 1920*.
2. From 1 July 1998, the *Taxation Administration Act 1996* applies to both the Stamp Duties Act ("SD Act") and the Duties Act. This Ruling identifies the manner in which these 3 Acts apply on and from that date. (References to sections and Schedules are references to the Duties Act unless otherwise noted.)

Ruling

Application of the Duties Act to matters arising before 1 July 1998

3. Schedule 1 to the Duties Act contains a number of commencement and transitional provisions. While these provide, as a general rule, that the Act only applies to instruments executed and transactions effected on or after 1 July 1998, the effect in most cases is that liability will be identical with the liability under the SD Act. However, there are a number of exceptions where the Duties Act applies despite the original liability arising under the SD Act.
4. Recognition of stamp duty. If an assessment in some way depends on another amount of duty paid or on an instrument which is duly stamped, a reference to duty or stamping includes a reference to stamp duty paid and stamped under the SD Act. For example, a transfer effected after 1 July 1998 that is in conformity with an agreement for sale upon which stamp duty was paid under the SD Act is chargeable with \$2¹ duty (section 18 (2)). Further, the new concession for a transfer which is not in conformity with the agreement but is to a related person (section 18 (3)) will apply to transfers effected on or after 1 July even if the agreement was executed before 1 July [Schedule 1, clauses 13 & 14].
5. Aggregation of dutiable transactions.² Section 25 aggregates certain dutiable transactions which are substantially one arrangement. The provision applies even when one or more of the earlier transactions occurred prior to 1 July 1998. However, the new aggregation provisions are in some respects broader than the aggregation provisions in the SD Act (including the reference to "associated persons"). If the transactions could not have been aggregated under the SD Act, section 25 will not apply to the prior transactions [Schedule 1, clauses 4 (2) & 4 (3)].

¹ This duty is \$10 if executed on or after 1 January 2009

² See Revenue Ruling DUT 22

6. Cancelled agreements. Section 50 provides that an agreement that is cancelled or annulled is not liable to duty. The grounds for assessing or reassessing as not liable are broader than section 41 (7) of the SD Act, including a new concession for related persons. An agreement which is cancelled on or after 1 July 1998 will be reassessed under section 50 even if first executed before 1 July [Schedule 1, clause 4 (6)].
7. Transfers to and from a nominee. Section 56 provides a new concession on transfers to and from a nominee. Section 56 (2) requires the initial transfer to be reassessed if duty in excess of \$10 was paid. If a transfer back is assessed to \$10³ duty under section 56, the requirement to reassess will apply even if the transfer to the nominee was first executed before 1 July 1998 [Schedule 1, clause 4 (4)].
8. Land-rich private corporations. Section 118⁴ identifies how duty is charged on relevant acquisitions in land-rich companies and unit trusts, including the aggregation of acquisitions within 3 years. The aggregation provisions apply even when one or more of the earlier acquisitions occurred prior to 1 July 1998. However, the new provisions are in some respects broader than the equivalent provisions in Division 30 of the SD Act (including the reference to "associated persons", and a wider definition of "interest" in section 111⁵). If the transactions could not have been aggregated under the SD Act, the prior acquisitions will not be considered for the purposes of determining a majority interest or calculating duty [Schedule 1, clause 5 (3)].
9. Variation of lease instruments.⁶ Section 169 provides that a lease instrument is liable to duty both on first execution and on the making of a variation that increases the cost of the lease. This contrasts with section 78C of the SD Act, under which the instrument that varies the lease is subject to ad valorem duty and the original lease is not liable to further duty. If a variation to a lease increases the cost of the lease, the original lease instrument will be liable to ad valorem duty under the Duties Act in respect of the variation, even if the original lease was executed prior to 1 July 1998. The original lease instrument will be stamped with the ad valorem duty and any instrument of variation will be assessed to \$10 duty under section 171 (3) [Schedule 1, clause 7 (2)].
10. Lease reassessments and refunds⁷. Sections 177 and 178 provide for a reassessment and refund of duty if a lease is terminated early, or is varied so as to reduce the cost of the lease. Both provisions are wider than the equivalent in the SD Act. The wider concessions will apply to any lease terminated or varied on or after 1 July 1998, even if executed before 1 July [Schedule 1, clauses 7 (3) & 7 (4)].
11. Refunds generally. Consistent with the Taxation Administration Act, the time limit for reassessment (and consequently for refunds) has generally been extended to 5 years from the date of assessment, and this time limit will apply if the reassessment occurs under the Duties Act, even if the original assessment was under the SD Act. In addition, a change in circumstances which triggers an entitlement to refund might not occur until more than 5 years from the initial assessment. In such cases, the right to reassessment is extended to 12 months after that thing occurs [sections 50, 56, 177, 178 and 293].

Application of the Stamp Duties Act on and after 1 July 1998

12. Section 1A of the SD Act effectively sunsets most provisions of that Act on 30 June 1998. The most notable exception is financial institutions duty, which was not a part of the Stamp

³ This duty is \$50 if executed on or after 1 January 2009

⁴ See Section 163K Duties Act as amended

⁵ See Section 163K Duties Act as amended

⁶ Leases executed on or after 1 January 2008 will not be liable to duty unless a "premium" is paid or agreed to be paid in respect of the lease

⁷ see footnote 4

Duties Rewrite, and has been retained unchanged in the SD Act (other than the application of the Taxation Administration Act on and after 1 July 1998).

13. Lease rental variations. The SD Act applies to lease instruments executed prior to 1 July 1998. If section 78D (2) of the SD Act applies such that a redetermination of the rent is required on or after 1 July, liability will continue under the SD Act.
14. Loan securities upstamping. The SD Act applies to loan securities executed prior to 1 July 1998. If further advances are made on or after 1 July, liability will continue under the SD Act. However, the Duties Act only applies to "mortgages", which is more narrowly defined than "loan securities". The SD Act will not apply to advances on or after 1 July 1998 if secured only by a "loan security" which is not a "mortgage" (within the meaning of the Duties Act) [SD Act section 1A (8)].

Taxation Administration Act 1996

15. Administration generally. From 1 July 1998, the Taxation Administration Act ("TAA") will apply to the Stamp Duties Act. To enable a more complete transition to the new administrative provisions, the TAA will also apply to any assessments, liabilities, refunds, objections and appeals which have not been determined at that date. Although this will give a retrospective effect to some provisions, taxpayers will not be disadvantaged by the transition. The provisions of the TAA are generally more favourable to the taxpayer than the equivalent provisions of the SD Act.
16. Fines, interest and penalties. Interest and penalty tax under the TAA will not apply to liabilities incurred before 1 July 1998. Any instruments or transactions which are liable to duty under the SD Act and are not stamped within 2 months of the liability arising will be subject to fines under section 25 (2) of the SD Act (subject to remission under section 25 (3A)) if that liability arose before 1 July. Where liability arises under the SD Act on or after 1 July, TAA interest and penalty tax will apply [SD Act s3AA]. [Note: a tax default under the Duties Act does not arise until 3 months after the liability, as opposed to 2 months under the SD Act.]

Other matters

17. Revenue Rulings. This is the first of a new series of revenue rulings providing interpretations, guidelines, precedents and practice under the Duties Act. They are in addition to, and not in replacement of, rulings under the SD Act. Although most of the "SD" rulings are effectively obsolete, some may continue to be of guidance in interpreting the provisions of the Duties Act. Revenue rulings do not supplant the terms of the law, and statements or declarations by the Chief Commissioner or his officers do not have the effect of an estoppel against the operation of the law.
18. Other States and Territories. Until such time as other States and Territories adopt new stamp duties legislation, the possibility exists of "double duty" on transactions relating to NSW and elsewhere. To the extent that any new "double duty" liability arises because of changes introduced by the Duties Act, the Chief Commissioner will favourably consider requests for relief, including by way of ex gratia payment of duty.
19. Exemptions. A provision in another Act that is expressed as an exemption from "stamp duty", or exemption from liability under the "Stamp Duties Act 1920", will be taken to apply to the equivalent duty under the Duties Act.

B Buchanan

Chief Commissioner of State Revenue
1 July 1998