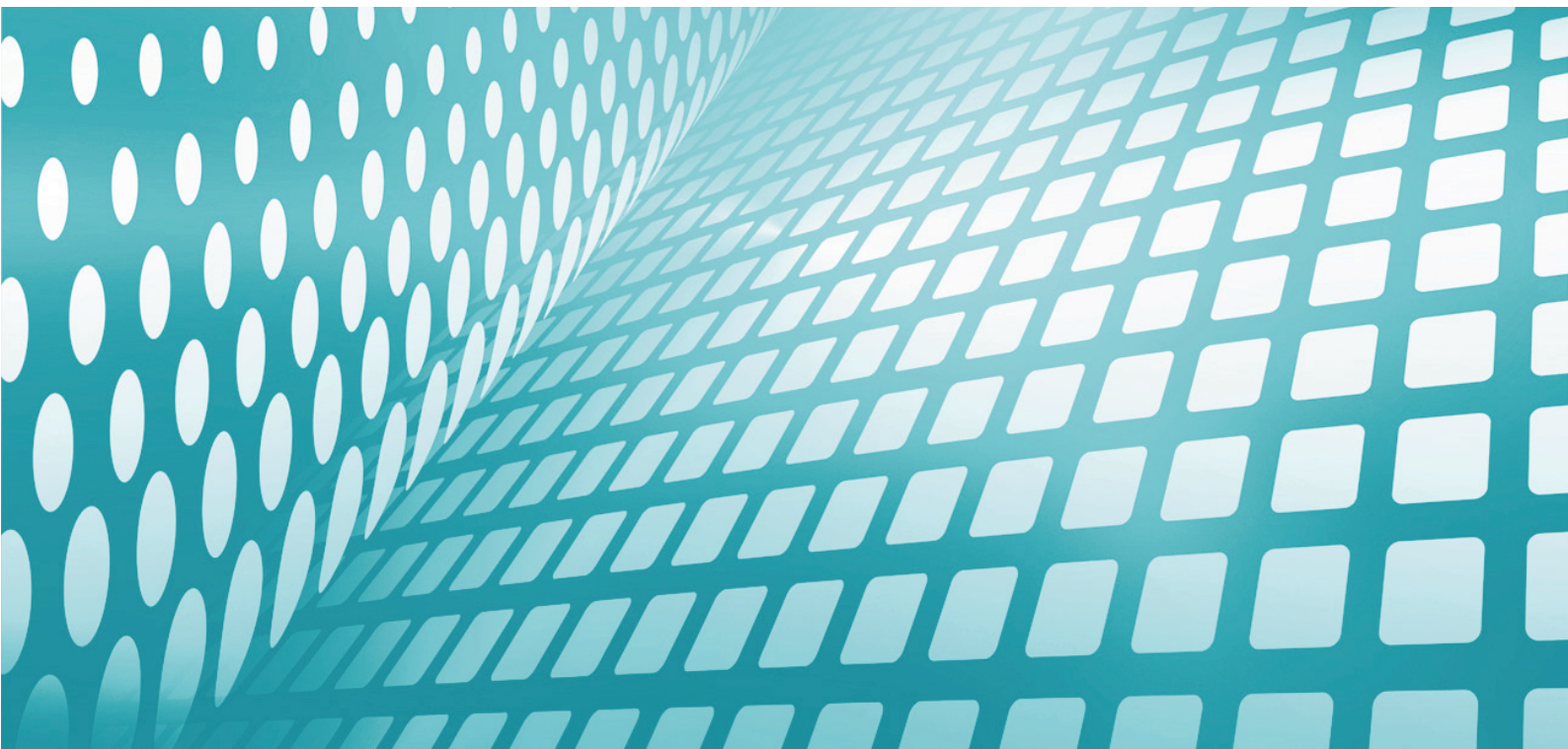


2008 NSW Mini-Budget

Seminar Notes



Duties

Deferred abolition

The abolition of marketable security duty (including duty on share managed fisheries) has been deferred until 1 July 2012.

Abolition of remaining mortgage duty has been deferred until 1 July 2012.

Abolition of duty on the transfer of non-land business assets has been deferred until 1 July 2012.

Fixed and nominal duties

For any liability for duty that arises on or after 1 January 2009:

- minimum duty under Section 273(1) will increase from \$2 to \$10 (ad valorem mortgage duty and insurance duty excepted)
- \$2 nominal duties will increase to \$10
- \$10 nominal duties will increase to \$50
- \$200 duties will increase to \$500.

Transfers in conformity with contracts

Transfers made in conformity with agreements for sale stamped with ad valorem duty will be liable to duty of \$10 (Section 18(2)), if first executed on or after 1 January 2009.

Duplicates

The duty on duplicates or counterparts first executed on or after 1 January 2009 is \$10 (Section 271). This includes copies of contracts not presented for stamping.

Some other Sections where duty increased from 1 January 2009:

- Transfers not in conformity from \$2 to \$10. Section 18(3)
- Transfers pursuant to a will from \$10 to \$50. Section 63
- Partitions minimum duty from \$10 to \$50. Section 30
- Transfers following a change of trustee from \$10 to \$50. Section 54
- Resulting trusts from \$10 to \$50. Section 55
- Aggregation related documents from \$10 to \$50. Sections 18(1) and 25

Surrender of lease

A surrender of lease is a dutiable transaction in respect of dutiable property (being an interest in land) and is liable to duty at the general rate of duty prescribed by Section 32 of the Act.

Where it is considered the interest being surrendered has little value, the surrender will continue to be stamped with duty of \$10 (being the minimum duty payable under Section 273(1)).

The same principle will apply to a transfer or assignment of lease not pursuant to a sale of business.

A transfer or assignment of lease made pursuant to a sale of business will be liable to duty of \$10, if executed on or after 1 January 2009.

Marketable security duty

The rate of duty remains at 60 cents per \$100 on the dutiable value of the marketable securities.

Under Section 33(3) a minimum amount of \$50 duty is chargeable in respect of a transfer of shares in a corporation that is not the legal and beneficial owner of land in NSW. This applies to an agreement for sale of shares or a transfer of shares (not made pursuant to an agreement) first executed on or after 1 January 2009.

The minimum rate of duty payable on a transfer of shares in a corporation that does own land in NSW will be \$10 if executed on or after 1 January 2009.

The amount of duty payable on nominee transactions for marketable securities under Section 59A increases from \$10 to \$50 if first executed on or after 1 January 2009.

Transfers of marketable securities pursuant to a will are liable to duty of \$50 under Section 63 if first executed on or after 1 January 2009.

\$200 duties to \$500

From 1 January 2009 the duty of \$200 increases to \$500 in the following Sections:

- Section 58 – Establishment of a trust relating to unidentified property and non-dutiable property
- Section 61 – Transfers of property in connection with persons changing superannuation funds (maximum duty of \$500)
- Section 62 – Transfers between trustees and custodians of superannuation funds or trusts (maximum duty of \$500 for dutiable property other than marketable securities which are \$10).

Mortgage duty

Advances for owner occupied and investment housing loans remain not chargeable if they meet the criteria set out in Sections 221B and 221C.

The duty payable on a mortgage that secures no advances or if the advances secured is not more than \$16 000 remains at \$5.

The duty payable on upstamping or refinancing on which duty is payable remains at \$4 per \$1 000.

Collateral mortgages are liable to duty of \$50 from 1 January 2009.

Section 218BA still applies to any new NSW mortgage that is collateral to a mortgage or package on which a reduced rate has been paid in another jurisdiction.

The NSW duty payable on a NSW mortgage that is collateral to a mortgage over property in another jurisdiction on which no duty has been paid, is the NSW proportion of the total amount secured.

For new mortgage packages and further advances on existing mortgage packages (excluding limited mortgages) the duty payable in NSW is calculated on the dutiable proportion of the amount secured or further advance, as the case may be. This applies whether or not any duty is payable in the other jurisdictions. The dutiable proportion is determined by the formula set out in Section 216(2) of the Act.

Caveats

A caveat under the Real Property Act 1900 in which an estate or interest is claimed under an unregistered mortgage is chargeable with duty.

The amount of duty is:

- a) if the mortgage is chargeable, but not stamped, with mortgage duty – the same amount as is chargeable on the mortgage, or
- b) if the mortgage is stamped, or is not chargeable, with mortgage duty – \$50.

Replicas

From 1 January 2009, the duty chargeable on a replica is \$50, or the same amount as the duty with which the instrument the replica is intended to replace was stampable, whichever is the lesser.

Landholder duty

Land rich duty is currently paid on the acquisition of a 'significant interest' of a private company, private unit trust or wholesale unit trust, where more than 60 per cent of its property is land. From 1 July 2009, the tax will move from a land rich to a landholder basis.

Under the landholder model, certain acquisitions of shares or units in an entity that owns land above a threshold value is subject to transfer duty as if there was a direct purchase of the land. Under the landholder model, the 60 per cent test is eliminated.

First Home Owner Grant – NSW New Home Buyers Supplement

Effective from 11 November 2008, a NSW New Home Buyers Supplement has been added to the existing \$7 000 grant for eligible First Home Owner Grant applicants building a new home or buying a newly constructed home. The \$3 000 Supplement is available for 12 months (11 November 2008 to 10 November 2009 inclusive), at which time it will be reviewed in the context of the property market. This Supplement is in addition to the \$14 000 provided under the Commonwealth's First Home Owner Boost Scheme. This will give eligible First Home Owner Grant applicants building a new home or buying a newly constructed home a total of \$24 000.

Effective from 1 July 2009 (subject to Federal Government approval) the First Home Owner Grant and New Home Buyers Supplement will be capped and only available for properties valued up to \$750 000.

Parking Space Levy

From 1 July 2009, the category 1 rate increases from \$950 to \$2 000 per space and the category 2 rate increases from \$470 to \$710 per space.

Category 1 areas: Sydney, North Sydney and Milsons Point

Category 2 areas: Bondi Junction, Chatswood, Parramatta and St Leonards.

Land tax

Effective from the 2009 land tax year, a marginal rate of 2 per cent will apply to land tax payers with total taxable land holdings above \$2.25 million. Taxable land holding below this amount will remain subject to the 1.6 per cent rate and receive the 2009 tax free threshold of \$368 000. The premium threshold will be indexed for the 2010 and following tax years. The premium marginal rate does not apply to exempt land such as principal place of residence or primary production land.