

NSW State Taxes 2009

Seminar Notes



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Duties

Duties Act 1997

State Revenue Legislation Amendment Act 2009

NSW Housing Construction Acceleration Plan – sections 87A to 87J

Under the Plan, there is a 50 per cent duty reduction on the following dutiable transactions:

- a) an agreement for the sale or transfer, or a transfer, of dutiable property for the purposes of the acquisition of a new home that is complete and ready for occupation
- b) an agreement for the sale or transfer of land on which a new home is to be built before completion of the sale or transfer (an off the plan purchase agreement).

The agreement for sale or transfer, or transfer, must be entered into, or occur, on or after 1 July 2009 and before 1 January 2010. An 'off the plan' purchase agreement must generally be completed by 30 June 2011.

An agreement or transfer is not eligible under the scheme if it is eligible for a duty exemption or concession under the First Home Plus scheme or a grant is payable in respect of the acquisition of the new home under the *First Home Owner Grant Act 2000*.

The dutiable value of the dutiable property that is the subject of the agreement or transfer must not exceed \$600 000.

Other amendments

The amending Act exempts from duty an application to register a caravan or camper trailer from 1 July 2009.

The Act also extends the operation of the NSW New Home Buyers Supplement from 10 November 2009 to 30 June 2010. As a result, the amount of the supplement (\$3000) will continue to be available in respect of contracts for the purchase or construction of a new home that are made before 30 June 2010. Off the plan agreements entered into between 11 November 2009 and 30 June 2010 must be complete by 31 December 2011.

State Revenue Legislation Further Amendment Act 2009

The amendments apply from 1 July 2009 unless otherwise specified

Acquisitions of interests in landholders – Chapter 4

The amendments replace the provisions of the *Duties Act 1997* relating to charging of duty on the acquisition of an interest in a unit trust scheme or company that is a land rich landholder.

The principal changes effected by the new provisions are as follows:

- a) Liability for duty will be assessed on the acquisition of an interest in a landholder whether or not that landholder is 'land rich'. That is, an acquisition of a significant interest in a unit trust scheme or company will be dutiable under the provisions if the scheme or company has land holdings with an unencumbered value of \$2 000 000 or more. It is no longer necessary to establish that its land holdings comprise 60 per cent or more of the unencumbered value of all its property.

This change does not apply to acquisitions in primary producers. Duty will only be chargeable on an acquisition of a significant interest in a primary producer if the unencumbered value of its land holdings comprise 80 per cent or more of the unencumbered value of all its property.

- b) Duty on the acquisition of an interest in a landholder will be charged by reference to the value of the goods of the landholder, as well as the value of its land holdings.
- c) Liability for duty will be extended to acquisitions of interests in public unit trust schemes and listed companies that are landholders. However, for public unit trust schemes and listed companies that are landholders (public landholders), a different threshold for the charging of duty will apply. A significant interest is acquired in a public landholder only if a 90 per cent interest in the landholder is acquired. For private landholders a 50 per cent interest suffices. Duty on the acquisition of a significant interest in a public landholder will be charged at a concessional rate, being 10 per cent of the rate that would be charged on a transfer of all the land holdings and goods of the public landholder.
- d) The threshold at which duty is charged on an acquisition in a private unit trust scheme is increased so that it is the same as the threshold for the charging of duty on an acquisition in a private company. In both cases, a significant acquisition will now be an acquisition of an interest of 50 per cent or more (previously 20 per cent or more).
- e) Tracing provisions that allow land holdings to be traced through linked entities have changed so that entities can be linked only where an entity has an interest of 50 per cent or more in another entity (rather than 20 per cent).
- f) Provisions that quarantine interests in private landholders that were acquired before the landholder duty provisions commenced or before the landholder held land are removed. As a result, those interests may be counted for the purpose of determining whether a person has acquired a significant interest in a landholder. However, duty will not be chargeable on an interest to the extent that it was acquired before the commencement of the landholder duty provisions or before the landholder held land in New South Wales.

An interest in a landholder that is acquired at a time when a landholder does not hold land in NSW will continue to be quarantined for the period of 12 months after the landholder first holds land in NSW.

- g) The concessional treatment currently given to a private unit trust scheme that is in the process of converting into a public unit trust scheme is removed.
- h) Managed investment schemes, and sub-trusts of unit trust schemes, will be treated as unit trust schemes for the purposes of the provisions.
- i) Further provision is made for the disclosure of previous acquisitions in a landholder, so that an acquisition made more than three years before the acquisition to which a statement relates will have to be disclosed if it is related to a later acquisition.
- j) The definitions of associated person and related person are changed, to reflect the fact that the scheme now extends to public landholders. Interests acquired in a landholder by a person may be aggregated with interests acquired by associated persons for duty purposes. The new provisions allow trusts and companies to be treated as associated persons under the provisions if their securities are traded as stapled securities. The changes to the definition will also apply in respect of Chapter 2 of the Act (which similarly allows dutiable transactions made by or to associated persons to be aggregated).

- (k) The definition of associated person is also changed to limit the circumstances in which the responsible entity of a managed investment scheme will be deemed to be associated with or related to the responsible entity of another managed investment scheme. (Again, this affects when dutiable transactions and acquisitions in landholders can be aggregated.)
- (l) Provision is made for a partial exemption from duty under the landholder provisions where the Chief Commissioner considers it just and reasonable to grant a partial exemption.
- (m) The general exemption under the Act for corporate reconstructions is extended to landholder duty.

Transitional provisions relating to these amendments will apply to the assessment of duty on interests acquired in landholders on or after 1 July 2009. However, in the case of public landholders, an acquisition of a significant interest will be chargeable with duty under the new provisions only if an acquisition is made in the public landholder on or after 1 October 2009. Acquisitions in public landholders made before 1 July 2009 are exempt from duty. There is an exemption for acquisitions in public landholders that have already been announced to the market. Concessions also apply to acquisitions made as a result of an option or agreement entered into before 11 November 2008 (the date the removal of the land rich requirement was announced in Parliament).

Amendments relating to mortgage duty – Chapter 7

The amendments revise the provisions of the *Duties Act 1997* relating to mortgage duty, to simplify the duty assessment process and close avoidance opportunities. They apply to mortgages executed or advances made on or after 1 July 09.

The principal changes in respect of mortgage duty are as follows:

- a) Liability for duty will be assessed on the basis of the amount of advances made under the agreement, understanding or arrangement for which the mortgage is security.
- b) The Chief Commissioner will be required to reassess the total mortgage duty payable in respect of a mortgage any time the amount secured by the mortgage is increased. The mortgage will then be charged with additional duty on the basis of the difference between the total duty chargeable on the amount secured by the mortgage, and the amount of ad valorem duty for which the mortgage has already been stamped under NSW law. This replaces the arrangement where the amount of further mortgage duty that is chargeable is calculated by reference to the amount of any advance or further advance.
- c) All mortgages or other instruments that secure the same moneys will be treated as, and assessed as, a mortgage package (it will no longer be necessary for them to be executed within a 28-day period).
- d) There will be a concession for mortgage packages that have been charged with duty in other jurisdictions, so that the maximum duty that may be charged in respect of a mortgage package is the duty that would be chargeable if it were a single mortgage over property wholly within NSW.

Example

NSW mortgage executed on or after 1 July 2009 to secure same moneys as package stamped before 1 July 2009. No further advances

Original package stamped to secure \$1m.

NSW portion 50%.

NSW duty paid	= \$1 941
Duty paid in other States	= \$1 600

New NSW portion is 75%

Duty on the NSW portion (75% x \$1m)	= \$2 941
Maximum duty (duty on \$1m)	= \$3 941

Duty payable in NSW	= \$2 941 +
Duty paid in other States	= \$1 600

\$4 541
(exceeds maximum duty by \$600)

Therefore duty payable in NSW is reduced by \$600 to \$2 341
(\$2 941 – \$600)

Less duty paid in NSW of \$1 941

Additional duty payable is \$400. Initial NSW mortgage is upstamped and \$50 is payable on the collateral mortgage.

Transitional provisions relating to these amendments will apply to the assessment of mortgage duty for which a liability arises on or after 1 July 2009. However, any further advances made on or after 1 July 2009 in respect of mortgages first executed before 1 July 2009 that secure a definite and limited sum will continue to be assessed on the basis of the amount of the further advance, to avoid the imposition of a duty liability that would not have been anticipated at the time of first execution of the mortgage.

Tax avoidance schemes – Chapter 11A

The amending Act introduces new restrictions on tax avoidance schemes. The object of the new provisions is to deter artificial, blatant or contrived schemes to reduce or avoid liability for duty. The provisions require a person who has avoided the payment of duty, as a result of a tax avoidance scheme that is of an artificial, blatant or contrived nature, to pay the amount of duty avoided to the Chief Commissioner of State Revenue (the Chief Commissioner). A tax avoidance scheme is scheme entered into, made or carried out by a person, whether alone or with others, for the sole or dominant purpose of enabling liability for duty to be avoided or reduced.

'Scheme' is broadly defined to include trusts, contracts and other arrangements, promises, plans and other proposals. Section 284F lists a number of factors to be considered for the purpose of determining whether a scheme is a tax avoidance scheme and whether it is of an artificial, blatant or contrived nature.

The amount of duty avoided by a person as a result of a tax avoidance scheme is the amount of duty or additional duty that would have been payable (or that it is reasonable to expect would have been payable) by the person if the tax avoidance scheme had not been entered into or made. A liability to pay the duty avoided is taken to have arisen when the duty would have been payable had the scheme not been entered into or made.

The Chief Commissioner must give reasons to a taxpayer for assessing or reassessing liability for duty on the basis that a scheme is a tax avoidance scheme.

The amendment applies to tax avoidance schemes entered into or made, or carried out, on or after 1 July 2009.

First Home Plus scheme amendments

The First Home Plus scheme confers a duty exemption or concession on eligible first home buyers.

Amendments to section 71 make it clear that it is a strict requirement of the scheme that both the applicant, and his or her spouse, must not have owned residential property previously. A concession that allows a purchase to be treated as eligible under the scheme even though a small ownership share in a property is being acquired by a person who has previously owned residential property does not extend to the first home buyer's spouse.

The amendments also ensure that a person who has previously held a leasehold interest in residential property in the Australian Capital Territory is treated as a person who has previously owned residential land in Australia and, accordingly, is not eligible under the scheme.

The amendments make further provision for the recovery of duty payable where an agreement or transfer is wrongly assessed as eligible under the scheme. Previously, if the Chief Commissioner approved an application under the scheme in anticipation of the applicant complying with the residence requirement, and the applicant fails to comply with the residence requirement, the applicant is required to pay the amount of outstanding duty that would have been payable in respect of the relevant agreement or transfer if it had not been assessed as eligible under the scheme. New section 76A(5) provides that a failure to do so is a tax default under the *Taxation Administration Act 1996*, so that interest and penalty tax may be charged in respect of a failure to pay the amount to the Chief Commissioner. New sections 79 and 80 make it clear that the Chief Commissioner can reassess an agreement or transfer if the Chief Commissioner forms the opinion that the agreement or transfer is not eligible under the scheme (whether because of failure to comply with the residence requirement or otherwise). Any liability for outstanding duty that an applicant or former applicant has under the scheme is a charge on the applicant's interest in the land that is the subject of the agreement or transfer. The Chief Commissioner may lodge and maintain a caveat in respect of the land until the duty (and any interest or penalty tax) has been paid.

An amendment to section 64 ensures that, if a transfer of land is exempt from duty under the scheme, a conversion of the form of title to that land (for instance from company title to strata title) is also exempt from duty. This is consistent with the treatment of other conversions in the form of title to land.

Other amendments

Nominal duties

An amendment to section 33(3) requires a minimum duty of \$10, instead of \$50, to be charged in respect of a transfer of shares of a corporation that is not the legal or beneficial owner of land in NSW.

New section 33(5) provides that a transfer of marketable securities that is chargeable with duty at the concessional rate of \$50, is to be charged with ad valorem duty, if the ad valorem duty would be less than \$50. This is subject to a minimum duty of \$10 being payable.

An amendment to section 63 requires a transaction made in connection with a deceased estate that is chargeable with duty at the concessional rate of \$50 to be charged with ad valorem duty, if the ad valorem duty would be less than \$50. This is subject to a minimum duty of \$10 being payable.

An amendment to section 54A allows a nominal duty of \$50 to be charged in respect of a transfer of dutiable property from a sub-custodian of a custodian of a responsible entity of a managed investment scheme to the custodian of the responsible entity of a managed investment scheme.

Business assets

Amendments to sections 11 and 28 clarify the provisions of the *Duties Act 1997* relating to the charging of duty in respect of a transfer of business assets. The amendments make it clear that duty is chargeable in respect of a transfer of the goodwill of a business when goods have been supplied or services have been provided by the business in NSW in the previous 12 months. It is no longer necessary for there to have been a sale of goods or services by the business (that is, the provisions extend to goods supplied, or services provided, whether or not for consideration). Also, the provision of services that a business is contractually obliged to provide can fall within the ambit of the provisions.

De facto relationship exemptions

Amendments to certain sections, particularly section 68, update duty exemptions that apply in respect of transactions that are made as a consequence of the termination of a de facto relationship, to reflect the fact that financial settlements made in connection with the breakdown of a de facto relationships are now made under the *Family Law Act 1975* of the Commonwealth, rather than under State law. The dictionary definition of 'de facto relationship' has been replaced so that it is consistent with the Commonwealth law. These amendments relating to de facto relationships have effect from 1 March 2009 (when the relevant changes were made to Commonwealth law).

Application of Act to Crown – section 308

The amendments replace the current arrangements for specifying which (if any) Crown bodies are liable to pay duty under the *Duties Act 1997*. In general the Crown in right of NSW is not required to pay duty under the Act. However, the Act allowed the Governor to make an order applying the Act to specified persons or bodies (whether statutory or otherwise), so that those persons or bodies do not benefit from a duty exemption. The amendments remove the power to make such an order. Instead, the Crown bodies that are required to pay duty will be specified in Schedule 2 of the Act. The Schedule can be amended by proclamation of the Governor.

The Crown bodies which are required to pay duty (and which are already required to pay duty) are Forests NSW, the State Transit Authority of NSW and the Sydney Harbour Foreshore Authority.

Insurance duty

An amendment to section 231 requires an emergency services levy is to be treated as a part of the premium of an insurance policy, for duty purposes.

Amendments to section 243 clarify that a duty of five per cent of the premium is payable on life insurance that is trauma or disability insurance.

First Home Owner Grant

First Home Owner Grant Act 2000

First home owner boost for new and established homes

The amendments extend the first home owner boost for new and established homes from 30 June 2009 to 31 December 2009. For new homes, the current amount of the boost (\$14 000) remains in place for transactions with a commencement date between 1 July 2009 and 30 September 2009. The amount is reduced to \$7000 for transactions with a commencement date between 1 October 2009 and 31 December 2009. For established homes, the current amount of the boost (\$7000) remains in place for transaction with a commencement date between 1 July 2009 and 30 September 2009. The amount is reduced to \$3500 for transactions with a commencement date between 1 October 2009 and 31 December 2009.

First home owner grant cap

The *State Revenue Legislation Further Amendment Act 2009* establishes the first home owner grant cap, which will apply to all eligible transactions with a commencement date on or after 1 January 2010. The first home owner grant will only be payable in respect of an eligible transaction if the total value of the transaction does not exceed the cap, which is \$750 000 (or another amount prescribed by the regulations).

The total value of a transaction is:

- a) in the case of a contract to buy a home, the consideration for the transaction or the value of the property (whichever is the greater), or
- b) in the case of a contract to build a new home, the total of the consideration for the transaction and the value of the land on which the home is to be built, or
- c) in the case of the building of a home by an owner builder, the total of the value of the home (once it is built) and the value of the land on which the home is built.

New section 36A enables the Chief Commissioner to require an applicant for a first home owner grant to provide a valuation of the property or consideration for the purposes of determining the total value of a transaction. The Chief Commissioner may also have a valuation done or adopt a valuation by a registered valuer.

Amendments to section 20 provide that an applicant who receives the first home owner grant for the building of a home by an owner builder before the completion of the transaction must notify the Chief Commissioner and must repay the grant within 14 days of becoming aware that the transaction will exceed the first home owner grant cap.

Compliance with eligibility criteria

The amendments confirm that the commencement date of an eligible transaction is the date at which an applicant's compliance with certain eligibility criteria is to be determined. The commencement date of an eligible transaction is the date on which the contract for the purchase of a first home is made or, in the case of an owner builder, the date on which the laying of foundations for a first home is commenced.

An amendment to section 6 makes it clear that an applicant's relationship status (that is, whether the applicant has a spouse within the meaning of the Act) is to be determined on the commencement date of the eligible transaction for which the grant is sought. A further amendment to section 6 revises a provision that allows an applicant who is legally married but separated to have his or her marital status disregarded, to make it clear that the applicant must have been separated on the commencement date of the eligible transaction. An amendment to section 9 clarifies that an applicant must be an Australian citizen or permanent resident on the commencement date of the eligible transaction.

Miscellaneous

An amendment to section 23 removes the five-year time limit on the Chief Commissioner's power to vary or reverse a decision in relation to a grant if the decision was made on the basis of false or misleading information provided by an applicant. Accordingly, a decision to confer the grant based that was based on false and misleading information provided by the applicant may be varied or reversed at any time after it has been made.

An amendment to section 46 allows the Chief Commissioner to lodge and maintain a caveat in respect of land to ensure the payment of any amount the is recoverable from an applicant or former applicant for a first home owner grant.

An amendment to section 47 permits information obtained in the administration of the Act to be disclosed in connection with the administration of the *First Home Saver Accounts Act 2008* of the Commonwealth.

Land tax

Introduction

Land tax is calculated on the total land value of all land or interests in land, that a person or entity owns in NSW as at midnight on the 31 December. Some lands are exempt from taxation under the *Land Tax Management Act 1956*.

Threshold for 2009

Under the averaging system, which applies from 2007, the Valuer General uses changes in land values to determine an indexed amount for the year. The land tax threshold for a given year is the average of the indexed amount for that year plus the indexed amounts for the previous two years. The indexed amount for 2009 is \$380 000. Accordingly, under the averaging regime, the 2009 threshold is:

Indexed amount for 2007	\$ 356 000	
Indexed amount for 2009	\$ 369 000	
Indexed amount for 2009	\$ 380 000	
	<hr/>	
	\$1 105 000	(divided x 3)
	<hr/>	
Land tax threshold for 2009	\$ 368 000	

Premium rate threshold

From the 2009 tax year, a new premium rate threshold also applies where combined land holdings exceed \$2 250 000 of land value.

Rates

The land tax rate for 2009 is 1.6 per cent (plus \$100) on the combined value of all taxable land in excess of the threshold.

Premium rate

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

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

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 two 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.

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	\$1 732
		Threshold	\$368 000	(\$1 632 + \$100)
		value of land above the land tax threshold	\$102 000	
		rate of land tax payable	x 1.6% (plus \$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

State Revenue Legislation Further Amendment Act 2009

Land tax amendments applicable for 2010 tax year

- to provide that the joint assessment of joint owners of land is to be on the basis of the aggregated values of the proportionate interests of non-exempt joint owners
- to make it clear that when the Commonwealth is a joint owner of land, the Commonwealth's immunity from land tax does not confer immunity or exemption on any other joint owner
- to exempt company title home units from the provision that makes land tax a first charge on land

- to make it clear that a principal place of residence concession that applies following the death of the owner of residential land extends to strata lots
- to extend principal place of residence concessions that apply following the death of an owner to the land tax reductions that apply to partial use of land for residential purposes.

Related companies – Section 29 *Land Tax Management Act*

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

Generally, a company is related to another company:

- if one company controls the composition of the board of directors of the other company
- if one company is in a position to cast or control the casting of more than 50 per cent of the maximum number of votes that might be cast at a general meeting of the other company
- if one company holds more than 50 per cent of the issued share capital of the other company.

Two companies will also be related to each other if the same person has, or the same persons have together, a controlling interest in the companies whereby:

- the person or persons acting together can control the composition of the board of directors of the companies
- the person or persons acting together are in a position to cast or control the casting of more than 50 per cent of the maximum number of votes that might be cast at a general meeting of the companies.
- the person or persons acting together hold more than half of the issued share capital of the 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 the flat rate of two 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.

Schedule 1A *Land Tax Management Act 1956*

Schedule 1A of the *Land Tax Management Act 1956* (the Act), applies from the 2004 land tax year. It re-enacts and revises a number of former provisions of the legislation, with a condensed schedule bringing together all aspects of the principal place of residence (PPR) exemption. It also replaces with legislation, certain interpretations previously issued in Revenue Rulings LT 5, LT 20, LT 27 and LT 42.

Definitions – section 3

The term, principal place of residence, relates to the one place of residence of a person, whether within or outside Australia, that is the principal place of residence of that person. The term 'owner' includes joint owners, any one or more of whom, may occupy the land as the principal place of residence.

Clause 2 – Principal place of residence exemption

The exemption applies to a parcel of residential land or to a Strata lot, that is used and occupied as the principal place of residence of the owner of the land, and for no other purpose (except as allowed in Clauses 4 and 5). If there are joint owners, the land may be used and occupied by any one or more of them.

The owner must use and occupy the land to qualify for the exemption. The land will not be considered to be the principal place of residence unless the owner has continuously used and occupied the land for residential purposes since 1 July in the year preceding the relevant taxing date (ie 31 December). If the land has been purchased after 1 July, or if the owner has otherwise commenced or resumed occupation after 1 July, the exemption will be allowed if the Chief Commissioner of State Revenue is satisfied that the land is then used and occupied as the principal place of residence of the owner.

Clause 12 – Only one exempt residence for all members of the same family

Exemption is available for only one place of residence owned by a family. If a family own and occupy more than one residence, the exemption will apply to the one place of residence which most fully meets the requirements of Clause 2, that is, the place of residence that was continuously used and occupied in the six months preceding the relevant taxing date. If two residences are owned and both can be demonstrated to be continuously used and occupied by the family, the owners may then elect to have the exemption apply to either one of those residences. Such an election may not be made unless the continuous use and occupation requirements are met.

A family is defined as a person and his or her spouse together with any dependent child or step child who ordinarily resides with them. The spouse of a person may be a person to whom the person is legally married or a person with whom the person is living as a couple in a de facto relationship within the meaning in the *Property (Relationships) Act 1984*. A dependent child or step child is taken to be a person under the age of eighteen years and not legally married.

If it can be demonstrated that a person, although legally married to another person, is separated from that other person and has no intention of resuming cohabitation with that other person, the Chief Commissioner of State Revenue may deem that the person is not to be regarded as the spouse of the other person. In such circumstances, the owners may apply to have the exemption apply to more than one residence, each of which is then used and occupied by one of those owners, as the principal place of residence. Owners will be required to provide evidence of the circumstances giving rise to an application for exemption for two parcels of land used separately as their respective principal places of residence.

Clause 13 – Two or more lots, used as the site of the principal place of residence

The principal place of residence exemption may be extended to two or more lots of land, provided the lots are adjoining, are owned by the same person or persons, who occupy the land, and that land is the site of a single residence (which may include an 'excluded residential occupancy' – see Clause 4). Where separate buildings are erected on the separate lots, they will not be regarded as a single residence, if more than one building is capable of separate occupation.

Note: Clause 13 was introduced by *State Revenue Legislation Amendment Act, 2008*, and becomes effective from the 2009 tax year.

Clause 14 – Two or more strata lots used as the principal place of residence

The principal place of residence exemption may be extended to two or more (residential) strata lots, provided that, the lots have adjoining walls or floors, are owned by the same person or persons who occupy the site and the lots comprise a single residence (which may include an 'excluded residential occupancy' – see Clause 4). The separate lots will not be regarded as a single residence, unless there is evidence of internal structural modification, such as an 'inter-connecting passageway' or an 'internal staircase'.

Note: Reference to 'two or more strata lots' herein, does not include further lots, such as parking or storage lots – ancillary to the residential lots, and which may otherwise be exempt.

Note: Clause 14 was introduced by *State Revenue Legislation Amendment Act, 2008*, and becomes effective from the 2009 tax year.

Lessees of land owned by the Crown or by a local or county council

Under section 21C of the *Land Tax Management Act 1956*, if land is leased from the Crown or local or county council, the lessee may be deemed to be the 'owner' of that leased land, for example, shops, offices or warehouses leased from a NSW Government Department or a commercial car park leased from a local council. While lessees of Crown and Council land may be liable for land tax, the lessees may also be entitled to claim an exemption for that leased land. For example, if the land is being used by the lessee for his or her principal place of residence, the property would be exempt. Similarly, if the land was used for primary production purposes for the purpose of selling the produce, then the property would be exempt.

Land tax and unit trusts

In September 2005, the High Court of Australia in *CPT Custodian* held that unit holders in a unit trust, for land tax purposes, were not an 'owner' of the land. Owning a unit in most unit trusts now meant that a beneficiary had no interest in the land itself. The consequences were that unit trusts no longer fell within the definition of a 'fixed trust' and hence automatically became a 'special trust'. Unit trusts would therefore be taxed without the threshold.

Under section 3A(3A) of the LTMA, a unit trust will be classified as a fixed trust if it satisfies the 'relevant criteria'. The relevant criteria can be found in section 3A(3B). Both sections 3A(3B)(a)(i) and (ii) require that for a unit trust to be a fixed trust, the beneficiaries must be presently entitled to both the income and capital of the trust fund.

Unit trusts may undertake to restructure the trust deed so as to be then classified as a fixed trust. If they restructure to become a fixed trust they will be entitled to a threshold from the next tax year.

Assessment/Payment Notices – changes in format

Changes have been made to the format and text of the land tax assessment notice. The Client ID and correspondence id have been highlighted to provide for easy identification as both are required for any online query or variation to the client details. The main payment options are now on the front of the notice.

Land value enquiries should be directed to the Valuer General. The Department of Lands contact details have now been included on the back of the notice for those clients who wish to make general enquiries or lodge objections to their land value.

Clients are also being made aware that all outstanding land tax is to be paid before a clearance certificate can be issued with regard to the property they are selling.

New land tax online services

The Office of State Revenue (OSR) introduced in 2008 an online service on its website at www.osr.nsw.gov.au. Clients can now use the online service to:

- register for land tax
- view the properties owned
- view the land values
- tell us if your client has purchased or sold a property
- request a new exemption or update a current exemption
- update your postal and contact details
- view or print your current assessment (existing clients only).

Existing land tax clients can access the service using their Client ID and Correspondence ID. These can be found on a Notice of Assessment or recent letter from us.

New clients can access the service by firstly contacting OSR.

Payroll tax

Harmonisation

In response to business concerns about the compliance costs of eight different versions of payroll tax around Australia, all jurisdictions agreed to harmonise eight key aspects of payroll tax by 1 July 2008. NSW and Victoria introduced essentially identical legislation from 1 July 2007 and this wording was adopted by Queensland and Tasmania from 1 July 2008. South Australia and the Northern Territory will follow from 1 July 2009.

The ACT and Western Australia are harmonised in the eight key areas and may fully harmonise in the future. NSW and Victoria harmonised from 1 July 2007, all other jurisdictions agreed to harmonise from 1 July 2008.

The eight key areas of harmonisation

1. Timing of payment
2. Employees working overseas
3. Shares and options
4. Motor vehicle allowances
5. Accommodation allowances
6. Fringe benefits
7. Superannuation contributions
8. Grouping provisions

All jurisdictions are also committed to consistency of interpretation for identical legislation. NSW and Victoria have jointly issued 35 Revenue Rulings and other States have agreed to adopt these rulings when their legislation is the same.

Rates and thresholds

All jurisdictions have a threshold deduction and the NSW threshold deduction for the 2008–09 financial year is \$623 000. A NSW employer who doesn't pay interstate wages and is not a member of a group, with \$1 000 000 of taxable wages, would get a deduction of \$623 000 and pay tax on \$377 000.

The threshold deduction for the 2009–10 financial year is \$638 000.

The amount of the deduction is indexed to the Sydney CPI.

For the 2009–10 financial year, employers are required to register for NSW payroll tax when their total Australian taxable wages, including NSW wages, exceed a weekly amount of \$12 235.

The threshold deduction is reduced in three situations:

1. If the NSW employer pays wages in other States or Territories the threshold for NSW is reduced based on the proportion of NSW wages to total Australian wages.

Example

An employer for the 2009–10 tax year has NSW wages of \$500 000 with total Australian wages of \$2 000 000.

The NSW threshold deduction is 25 per cent of \$638 000 being \$159 500.

2. The NSW employer employs in NSW for only part of a financial year.

Example

An employer ceases to employ on 31 December 2009. That is 184 days out of 365.

$$\frac{184 \text{ days}}{365 \text{ days}} \times \$ 638 000 = \$ 321 621$$

3. Employers who are members of a group

From 1 July 2007, employers who are members of a group are required to nominate a qualified member of that group to take the full NSW group threshold deduction. All other group members pay payroll tax at the flat rate of tax.

Rates

The 2008 NSW State budget contained three payroll tax rate reductions from 1 January 2009.

Period	%
1996 to 31/12/2008	6
1/1/2009 to 30/12/2009	5.75
1/1/2010 to 31/12/2010	5.65
1/1/2011 onwards	5.5

Annual returns

The annual reconciliation for 2008–09 applies the 6 per cent rate for 184 days from 1 July to 31 December and the 5.75 per cent rate for 181 days from 1 January to the 30 June. Each six-month period has its own threshold deduction. If the wages in one half of the year are below the threshold deduction for that half, the unused threshold amount will be added to the other half in the annual reconciliation. The same principles apply for 2009–10.

Wages paid or payable for services performed up to and including 31 December 2008 must be returned at six per cent, including the return due on 7 January 2009 for the December wages.

Wages declared in the Annual return that were not payable for services in any particular month, such as FBT adjustments, are declared as June wages at 5.75 per cent.

Rebate for apprentice wages

From 1 July 2008, a rebate on payroll tax applied to all wages paid to apprentices and to new trainees. The rebate is 100 per cent of the tax payable on the wages of apprentices and eligible trainees.

Employers claim the rebate by clearly identifying in their monthly return the total value of all the wages for which the rebate is claimed.

MORE INFORMATION



www.osr.nsw.gov.au

OSR directory

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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*

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