

Legal Alert

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NSW duties abolitions

The NSW Treasurer has confirmed the abolition of a number of duties from 1 July 2016 in her budget for 2016-17.

In summary:

- mortgage duty will be abolished from 1 July 2016;
- stamp duty on transfers of intangible business assets will be abolished from 1 July 2016; and
- share transfer duty will be abolished from the same date on transfers of shares in companies registered in NSW or unit trusts whose register is kept in NSW.

Mortgage duty

Mortgage duty levied before 1 July 2016 at the effective rate of 0.4% on mortgages will be abolished. That abolition will apply to mortgages executed on or after that date as well as advances made on or after that date. Where a mortgage was executed before 1 July 2016 and advances secured on the mortgage are made on or after that date, no further duty will apply on the advances made after the abolition date.

Fixed duties have not been abolished, such as those applying to security trust deeds of the usual kind that do not identify any dutiable property and attach only to an initial settlement sum on the date of execution.

Business duties

Duty on business sale agreements and transfers dealing with intangible business assets will be abolished with effect from 1 July 2016. Specifically, no duty will apply in respect of transfers of goodwill, intellectual property and most statutory licences. This will apply to business sale agreements executed on or after 1 July 2016. The relevant duties will however apply to business sale agreements entered into before this date even if completed after 1 July 2016.

However, business sale agreements will continue to remain dutiable with respect to land interests in NSW sold under the agreement. This will include estates in fee simple, leases, mining tenements and fixtures upon land.

Where a land interest is sold under a business sale agreement, most types of goods (such as plant and equipment) sold with the land interest will also remain dutiable (except categories of goods that are already exempt such as stock in trade). For example, a sale agreement for a business comprising a commercial lease, plant, goodwill, intellectual property and receivables will still need to be lodged for stamping, even if duty is paid only on the land and plant but not intangibles. This means that there will be a need to apportion the price between categories of assets that are dutiable property and other

assets in accordance with market value, so that duty can be returned on the amounts apportioned to dutiable property. In other jurisdictions, disputes have arisen with the Revenue where the Revenue has taken the view that too much of the consideration has been attached to non-dutiable assets such as goodwill. Accordingly, apportionment needs to be made carefully.

Other jurisdictions, namely Queensland, Western Australia and the Northern Territory continue to levy duty on transfers of intangible business assets such as goodwill and intellectual property. Business sale agreements that deal with such assets only may no longer be required to be stamped in NSW but may be required to be stamped outside NSW. For example, an agreement for the sale of a business carried on from premises in NSW that makes sales to customers in Queensland, will still need to be lodged for stamping in Queensland in respect of Queensland goodwill.

Marketable security duty

Marketable security duty levied before 1 July 2016 on the greater of consideration and unencumbered market value of relevant marketable securities will be abolished. This will apply to agreements for the sale and transfer of shares in NSW registered companies and transfers of units in unit trust schemes whose registers are kept in NSW.

However, where the target entity is a "landholder", landholder duty will continue to apply. Landholdings on which duty applies include fee simple estates, easements, leases and fixtures that have a value above certain de minimis thresholds. For example, if shares in a company carrying on a business are transferred, and that company holds a commercial lease and fixed plant with a value of \$2,000,000 or more in NSW, landholder duty will apply.

Conclusion

The abolition of the relevant duties in NSW completes certain obligations of the State to reform its tax system under intergovernmental agreements between NSW and the Commonwealth and other States. NSW was the last State to abolish mortgage duty and marketable securities duty so that this tax no longer applies in any State or Territory of Australia.



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