

REVENUE CIRCULAR

RC-GEN-010:

2010-11 BUDGET MEASURES

Purpose

This Circular provides information on amendments to the *Stamp Duty Act*, the *Taxation Administration Act*, the *First Home Owner Grant Act* and the *Mineral Royalty Act* that implement the 2010-11 Budget revenue measures announced by the Treasurer on 4 May 2010.

Stamp duty home owner incentives

First home owner concession (FHOC) increased

From 4 May 2010, the FHOC is increased, raising the maximum stamp duty concession from \$15 515.50 to \$26 730. This represents an increase from \$385 000 to \$540 000 of a property's value that is stamp duty free.

This is subject to the transitional provisions explained in more detail below.

A person who is not entitled to the FHOC may be entitled to the new senior, pensioner and carer concession (SPCC) or the principal place of residence rebate (PPRR). For more detailed information please refer to Commissioner's Guideline [CG-HI-001: *First Home Owner Concession, Senior Pensioner and Carer Concession and Principal Place of Residence Rebate*](#).

Principal place of residence rebate (PPRR) increased

From 4 May 2010, the PPRR is increased from \$2500 to \$3500. This is also subject to the transitional provisions explained in more detail below.

New senior, pensioner and carer concession (SPCC)

From 4 May 2010, a new stamp duty concession of up to \$8500 is available to non-first home buyers who are at least 60 years of age or the holder of a Northern Territory Pensioner and Carer Concession Card. As a result, these home buyers will pay no stamp duty on about the first \$263 190 of the property's value.

Other eligibility criteria for the new SPCC are similar to the FHOC and PPRR. For example, the SPCC is subject to the same value limits of \$385 000 for vacant land and \$750 000 for a home that currently apply to the FHOC. Prescribed time limits apply to the occupation, occupation period and building of a home on which the concession is claimed and the SPCC is also subject to the transitional provisions explained in more detail below.

Transitional arrangements

Where a conveyance is secured prior to 4 May 2010, including by a contract or an option agreement, there are provisions in the amending legislation that will exclude

this conveyance from being eligible for the increased FHOC or PPRR or the new SPCC. These transitional provisions will cause the lower FHOC and PPRR as in force prior to 4 May 2010 to apply to a conveyance executed on or after 4 May 2010 where:

- that conveyance replaces a conveyance first executed before 4 May 2010 for the same or substantially similar land; or
- the conveyee entered into a contract or option, before 4 May 2010, to purchase the land, or substantially similar land, to which the conveyance relates; or
- the conveyor had an option, granted before 4 May 2010, to require the conveyee to purchase the land, or substantially similar land, to which the conveyance relates.

Home occupancy requirements

The following measures that apply from 4 May 2010 improve the fairness of the stamp duty home incentive schemes generally and more closely align the administration of the FHOC with the administration of the first home owner grant (FHOG).

Where a home is purchased, the measures extend the date for commencing occupation of that home (including a home purchased off-the-plan) to 12 months from the date the purchasers take possession of the home. The measures also extend the time for occupying a home that is to be built on vacant land to a maximum of five years from the date the purchaser takes possession of the land. This provides a person purchasing vacant land with five years to build a home on the land.

Previously, the period for commencing occupation and the three-year period to complete the building of a home were linked to the date that the contract for the purchase of the property was entered into. This caused difficulties particularly where title to the property was unavailable for an extended period, such as in some off-the-plan purchases.

More specifically, the measures provide that:

- a) where a person is building a home whether as an owner builder or under a building contract, the person must occupy the home within the earlier of five years of becoming entitled to possession of the land or 12 months after the building is completed. Previously, an owner builder had to complete the home within three years from the date the contract to purchase the land was entered into;
- b) where a person is purchasing a home, including by way of an off-the-plan contract, the person must occupy the home within 12 months of becoming entitled to possession of the home. Previously a home had to be completed within three years from the date the contract to purchase the home off-the-plan was entered into;
- c) the above stamp duty home incentives are conditioned on the person becoming entitled to possession of the land within 12 months after settlement of the conveyance – this is similar to an existing requirement applying to the FHOG; and
- d) the FHOC and PPRR, as amended in relation to the period for occupancy, apply to persons who would have been entitled but for the previous requirement to have a home built within three years. On application by the person, the Commissioner

may reassess duty on the basis of the amended occupancy requirements and refund the amount of the FHOC or PPRR that would otherwise have applied;

The Commissioner may also approve a longer period to commence occupation where appropriate. For further details, refer to Commissioner's Guideline [CG-HI-003: *Commissioner's discretion to exempt or vary compliance with the eligibility criteria.*](#)

As a result of the better alignment of the stamp duty home incentive schemes and the FHOG, Commissioner's Guideline CG-HI-009: *Alignment of first home owner incentives residency requirements* is no longer required and has been withdrawn.

Leases under *Aboriginal Land Rights (Northern Territory) Act 1976 (Cth)*

From 4 May 2010, the FHOG and the stamp duty home ownership incentive schemes are extended to purchasers of homes pursuant to a long-term lease granted under section 19 or 19A of the *Aboriginal Land Rights (Northern Territory) Act 1976 (Cth)*.

Sections 19 and 19A of this Act set out the circumstances and manner in which Aboriginal land trusts can grant an interest in land they own. Section 19A provides for the grant of long-term township leases. Subleases of either a township lease or a lease under section 19 may provide an effective mechanism for community members to purchase, via long term leases, their own homes should they wish to.

The interest in the home may be held as a lessee or sublessee and the lease or sublease must be registered and be for a term of at least 15 years.

Exempt Special Disability Trusts from stamp duty

Special disability trusts assist relatives of disabled persons to engage in succession planning for the benefit of the disabled person by providing concessional means testing and tax treatment to assets held in such trusts.

To further encourage the use of these trusts, from 1 July 2010 the establishment of and the conveyance of property to a special disability trust will be exempt from stamp duty where no valuable consideration has been given for the conveyance.

Stamp duty on the grant of a lease for valuable consideration

Duty is only chargeable on the grant of a lease of land if, in addition to or instead of rent payable for the lease, valuable consideration is given for the lease.

From 4 May 2010, the meaning of valuable consideration is amended to clarify that it includes valuable consideration given for an option under which the lease is granted.

Landholder stamp duty

Finance arrangements

From 4 May 2010, interests acquired in a corporation or unit trust scheme pursuant to a finance arrangement will not be excluded from the landholder stamp duty provisions.

Instead, a deduction from landholder stamp duty will be provided where the Commissioner is satisfied that the acquisition is made only for enabling a person, other than the corporation or unit trust in which the interest is held, to obtain finance, to extend the period of the finance arrangement or to enforce or terminate the finance arrangement.

The deduction is only retained where either of the following events occur within five years (or a longer period approved in writing by the Commissioner):

- the person from whom the interest in the corporation or unit trust was acquired (i.e. the borrower) reacquires the interest; or
- if the interest in the corporation or unit trust was acquired by the finance provider by way of mortgage, the interest is sold by the finance provider to a third person in exercise of a mortgagee's power of sale.

If a person receives the stamp duty deduction and it later becomes apparent that the above mentioned events will not occur within the five year period (or the longer period approved by the Commissioner), the person must within 30 days:

- reodge the statement of acquisition; and
- pay duty (including interest and penalty tax) on that statement as if the deduction had never applied.

When an interest is acquired

From 1 July 2010, if an acquisition of an interest in a corporation or unit trust scheme is, or is to be, evidenced by a transfer of shares or units, the acquisition is taken to occur on the earlier of the following dates:

- the date that the necessary transfer or title documents are delivered to the person acquiring the shares or units;
- the date that all or part of the consideration for the shares or units is provided;
- the date that the name of the person acquiring the shares or units is entered on the register of members of the corporation or unit trust scheme.

Accordingly, at the earliest of these dates, the person acquiring the shares or units is taken to be the shareholder or unit holder of those shares or units.

However, where an acquisition is taken to have occurred on the date that consideration is provided and the transaction is then rescinded, annulled or otherwise terminated, the Commissioner may assess or reassess duty on the basis that the acquisition did not occur. This is provided:

- the necessary transfer or title documents were not delivered; and
- the person's name was not entered on the register of members.

Creating a stamp duty memorandum

From 1 July 2010, the *Stamp Duty Act* is being amended to clarify that the Commissioner can create a memorandum where:

- it is impractical or impossible for the original instrument to be lodged; or
- duty was under-paid on a motor vehicle certificate of registration because an assessment was not based on the correct value of the vehicle.

Substituting a related purchaser without paying double stamp duty

The substituted purchaser provisions (introduced in 2009) allow a purchaser to nominate a related person prior to settlement to receive the property being purchased without double stamp duty consequences unless a sub-sale of the property has occurred.

From 1 July 2010, for the purpose of the substituted purchaser provisions, the concept of the family trust will be broadened to allow a family company to be a beneficiary of the trust. A family company is a company of which all shareholders are members of the same family.

For more detailed information please refer to Commissioner's Guideline [CG-SD-014: Stamp duty concession for substituting a related purchaser](#).

Land granted by the Territory for unascertainable consideration

A grant by the Northern Territory of an estate in fee simple in land, or of a convertible Crown lease, for monetary consideration is subject to conveyance stamp duty.

From 1 July 2010, if all or part of the consideration is unascertainable at the time of the grant by the Territory, stamp duty will be calculated on the greater of the amount of the ascertainable consideration or the unencumbered value of the land.

Minor amendments to the *Taxation Administration Act*

The *Taxation Administration Act* will be amended to:

- ensure that payments by or on behalf of a taxpayer can be allocated in the order of interest, penalty tax and primary tax; and
- clarify that, despite their repeal, the former *Pay-roll Tax Act* and *Stamp Duty Act* and the Act previously titled the *Taxation (Administration) Act* continue to be taxation laws.

Mineral royalty rate increase

From 1 July 2010, the mineral royalty rate will increase from 18 per cent to 20 per cent of the net value of a mine's production over \$50 000.

The new rate will apply from 1 July 2010 for all royalty payers, whether operating on a calendar year or financial year basis. Where 1 July 2010 is not the start of a royalty payer's royalty year, in calculating the net value of a mineral commodity, elements such as the gross realization and the operating costs of the production unit must be apportioned between the period before 1 July 2010 and the period on and after 1 July 2010.

This is to be done in the manner agreed between the royalty payer and the Mineral Royalty Secretary by 31 December 2010 or, in the absence of an agreement, as determined by the Secretary.

Commissioner's Guideline [CG-GEN-001](#), which sets out information on the revenue publication system, is incorporated into and is to be read as one with this Circular. All Circulars and Guidelines are available from TRO's website.

Refer to the Revenue and Other Legislation Amendment Bill 2010 and explanatory statement for precise details of the amendments.



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