



2003-04 Budget amendments various stamp duty measures

This circular provides information on proposed amendments to the Taxation (Administration) Act and the Stamp Duty Act to implement the various stamp duty measures announced as part of the 2003-04 Budget.

**Summary of
measures
commencing
27 May 2003**

In summary, the amendments are as follows.

- (a) The "land rich" stamp duty provisions have been amended to more closely align the stamp duty consequences of indirect acquisitions of land with direct acquisitions. *See Revenue Circular SD 026 for more information.*
- (b) The stamp duty treatment of property vestings occurring under a statute has been clarified. Details follow.
- (c) The exemption for conveyances of property to effect a change of trustee of a trust has been clarified to ensure the exemption only applies where the conveyance is made solely for this purpose. Details follow.
- (d) The "Clayton's contract" provisions have changed so that stamp duty is payable on a change in beneficial ownership of dutiable property occurring as a result of the issue or redemption of units, unless it is shown that the issue or redemption is not a tax avoidance scheme. Details follow.

**Summary of
measures
commencing
1 July 2003**

- (a) The exemption threshold that applies before hiring receipts become dutiable has increased from \$36 000 per annum to \$90 000 per annum. *See the hiring brochure for more information about stamp duty on hiring arrangements.*
- (b) A technical correction has been made to the way in which a partnership interest is valued on the formation of a partnership. Details follow.
- (c) The application of the exemption to certain corporate reconstructions has been clarified and the "claw back" of duty on a foreign corporation ceasing to exist has been removed. Details follow.
- (d) An exemption threshold for the grant of leases and franchises with an average rent of \$30 000 or less per annum has been provided. Details follow.
- (e) An exemption on the conveyance of dutiable property and marketable securities to a former bankrupt from the estate of the former bankrupt has been provided. Details follow.
- (f) An exemption has been provided for agreements to temporarily transfer fishing licences and for temporary transfers made in accordance with such agreements. Details follow.
- (g) The exempt treatment of policies of health insurance entered into by insurers in the course of their health insurance business has been clarified. Details follow.
- (h) Certain agreements under seal are no longer liable to nominal deed duty. Details follow.

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2003-04 Budget Amendments

Stamp duty cont ...

- (i) A refund of stamp duty is provided on the cancellation of the sale of a motor vehicle. See *Revenue Circular MVR 005* for more information.

commencement date to be Gazetted

Licensed motor vehicle dealers have been made jointly and severally liable with the purchasers of used vehicles for the duty payable on the transfer of such vehicles. See *Revenue Circular MVR 005* for more information.

Statutory vestings

The operation of existing laws allows an entity to be considered the successor in law of, (or the continuation of or the same entity as), another entity in which property was previously vested. This may allow dutiable property to be effectively transferred between entities. Under existing stamp duty legislation duty is payable in these circumstances. The amendments introduced with this budget further clarify the operation of this legislation in relation to such vestings.

It is recognised, however, that it is not appropriate for stamp duty to be paid where a vesting occurs only because of the registration of a body corporate as a company under the *Corporations Act* of the Commonwealth. Accordingly, an exemption is provided.

These amendments commence on 27 May 2003.

Change of trustees

The *Stamp Duty Act* provides an exemption for conveyances of property made to effect the appointment of a new trustee on the retirement of a former trustee, where no beneficial interest passes in the property conveyed.

This exemption has been exploited through the use of complex stamp duty avoidance schemes.

As a consequence, from 27 May 2003, the exemption only applies where the Commissioner is satisfied that the conveyance is made **solely** for the purpose of effecting the appointment of a new trustee on the retirement of a former trustee and no beneficial interest passes in the property conveyed.

“Clayton’s contract” changes

The “Clayton’s contract” anti-avoidance provisions are designed to ensure that stamp duty is payable on a change in the beneficial ownership of dutiable property or marketable securities that is not effected by a dutiable instrument. One of several exceptions to the operation of the provisions is when the change occurs as a result of the issue or redemption of units in a unit trust.

There have been a number of complex schemes using a contrived set of steps that have utilised this exception to avoid paying stamp duty. These schemes were held to be effective by the New South Wales Court of Appeal in *ISPT Pty Ltd v Chief Commissioner of Stamp Duties (NSW)* 99 ATC 4,066, and by the New South Wales Supreme Court in *Nemkal Investments Pty Ltd v Chief Commissioner of State Revenue (NSW)* 2003 ATC 4,259.

From 27 May 2003, the “Clayton’s contract” provisions apply to a change in beneficial ownership of dutiable property occurring as a result of the issue or redemption of units, unless it is shown that the issue or redemption is not a tax avoidance scheme.

2003-04 Budget Amendments

Stamp duty cont ...

Formation of a partnership

Where a partnership holds dutiable property and there is a conveyance of an interest in the partnership, stamp duty is payable. Acquisitions of interests in partnerships are valued by assessing the unencumbered value of the interest acquired by a partner, less the value of the partner's existing interest in the partnership (if any).

The current stamp duty provisions used to value partnership interests on the formation of a partnership do not always operate as was originally intended, resulting in incorrect assessments in some instances.

The amendments make a technical correction to the valuation of a partnership interest acquired on the formation of a partnership that admits one or more new partners. In determining the unencumbered value of a partner's acquisition in these circumstances, the correct allowance will now be made for any dutiable property that the partners contributed to the partnership on its formation.

See Revenue Circular SD 022 for more information about stamp duty and partnerships.

Corporate reconstructions

A group corporation that was party to a corporate reconstruction transaction is generally required to belong to the same corporate group for three years after an exempt transaction. One exception to this requirement arises where one of the parties to the exempt transaction has been deregistered under the *Corporations Act* of the Commonwealth. Members of a corporation may agree to deregister a corporation in the circumstances where it is not carrying on a business, has assets worth less than \$1 000 and has no outstanding liabilities.

Currently this exception does not apply to corporations that were incorporated **outside** of Australia, as they are not capable of being deregistered under the *Corporations Act*. From 1 July 2003, this exception is extended to include the cessation of a foreign corporation that is a party to an exempt transaction.

These Budget measures also make clear that this exemption does not apply on the transfer of assets between closely related members of a corporate group. As originally intended, the exemption will not apply if the transaction is pursuant to an arrangement under which a group corporation may dispose of any of the consideration through a payment or other disposition to a person who is **not** a group corporation **unless** it is by way of a loan on ordinary commercial terms.

Leases and franchises

No duty is payable on the grant of leases and franchises, including sub-leases and agreements for a lease, executed on or after 1 July 2003 that have an average annual rental of \$30 000 or less per annum. The threshold is reduced by a proportionate amount where the lease or franchise has a term of less than a year. Where the average rent under a lease or franchise exceeds this threshold, duty is payable on the full amount of the rent.

The exemption threshold does not apply to leases executed prior to 1 July 2003. In addition, a refund of duty will not be given where a person attempts to obtain the benefit of the exemption threshold by cancelling a lease executed prior to 1 July 2003 in order to enter into a new lease.

2003-04 Budget Amendments

Stamp duty cont ...

Conveyance of property back to former bankrupt

When a person is declared bankrupt all of their property is vested in a receiver or trustee in bankruptcy. A stamp duty exemption is currently provided for this transaction.

Where a bankrupt person is discharged from bankruptcy before the receiver or trustee in bankruptcy has sold all of their property, the former bankrupt is entitled to have their property transferred back to them. Prior to 1 July 2003, this transfer was liable to stamp duty.

The amendments provide a stamp duty exemption for a conveyance of dutiable property and marketable securities to a former bankrupt from the estate of the former bankrupt after 1 July 2003. The exemption will only apply where the transfer results in the former bankrupt holding both the legal and beneficial title to the property conveyed. That is, the former bankrupt does not hold the property on trust for the benefit of others.

Temporary transfer of fishing licences

The technical operation of the stamp duty legislation results in the temporary transfer of fishing licences being subject to conveyance stamp duty. However, it has not been the practice of the Commissioner of Taxes to assess duty on such temporary transfers.

Accordingly, a stamp duty exemption has been provided for agreements to temporarily transfer licences issued under the *Fisheries Act* and on temporary transfers made in accordance with such agreements, in accordance with the prior practice.

However, this exemption is conditioned upon the Commissioner being of the opinion that an arrangement does not amount to or have the same effect as the permanent transfer of the licence.

Health insurance

The stamp duty legislation imposes duty on general insurance policies at the rate of 10 per cent of the premium paid or payable for that insurance (inclusive of GST). Technically health insurance may fall within the definition of "insurance" as used by the stamp duty legislation. However, this is an unintentional consequence, thus it has not been the practice of the Commissioner of Taxes to assess this duty.

Accordingly, the stamp duty legislation has been amended to ensure policies of health insurance entered into by insurers in the course of their health insurance business under the Commonwealth *National Health Act* are exempt from stamp duty.

Agreements under seal

Presently, deeds not otherwise chargeable with stamp duty are subject to deed duty of \$20. This includes agreements under seal. This liability may arise, for example, where a company has executed an agreement using its company seal, but will not apply to similar agreements executed by individuals that do not place a seal on the agreement.

The amendments remove deed duty from agreements under seal as charging deed duty on agreements under seal discriminates against certain businesses. However, an instrument that is signed, sealed and delivered, or would otherwise be a deed, will continue to be subject to stamp duty.

2003-04 Budget Amendments Stamp duty cont ...

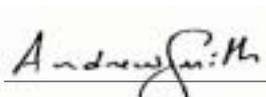
Other stamp duty changes

More details on the changes to the land rich provisions, stamp duty on hiring arrangements and the changes to the stamp duty treatment on motor vehicle certificates of registration can be found in the following circulars:

- SD 026 for the land rich changes
- SD 027 for the hiring duty changes
- MVR 005 for the motor vehicle certificates of registration changes

Revenue Circular RA001, which sets out information on the revenue circular system, is incorporated into and is to be read as one with this Circular.

Refer to the Taxation (Administration) Amendment Bill 2003 and the Stamp Duty Amendment Bill 2003 for precise details of the changes. For general information, please contact TRM on 1300 305 353.


Authorised by
the Commissioner of Taxes
6 June 2003

CORRIGENDUM

2003-04 Budget Amendments *Stamp duty*

On page 5, the paragraph on “Other Stamp Duty Changes” should read:

Other stamp duty changes

More details on the changes to the land rich provisions and the stamp duty treatment on motor vehicle certificates of registration can be found in the following circulars:

- SD 026 for the land rich changes
- MVR 005 for the motor vehicle certificates of registration duty changes.

More information on the stamp duty levied on hiring arrangements can be found in the brochure *Stamp Duty and Hiring Arrangements*.

Revenue Circular RA001, which sets out information on the revenue circular system, is incorporated into and is to be read as one with this Circular.

Refer to the Taxation (Administration) Amendment Bill 2003 and the Stamp Duty Amendment Bill 2003 for precise details of the changes. For general information, please contact TRM on 1300 305 353.