

**PROPOSED PROPERTY TAX REFORM
IMPACT ON CURRENT DUTIES ACT
AND TRANSITION**

[REDACTED]

The purpose of this paper is to raise awareness of the current provisions of the Duties Act (Act) that may or may not need to be integrated into the proposed Property Tax format.

HOW THE DUTIES ACT WORKS

Simply, the Act imposes a rate of duty on a transaction which transfer or vests an interest in dutiable property for value or consideration. This would be the basic sale and purchase of land or house in NSW and the proposed tax could replace this method of paying tax on a property.

The Act also charges fixed duty on land transaction which also must be a transfer of dutiable property but for no consideration as technically there is no sale or change in the beneficial ownership.

There are also provisions under the Act for exemptions on a transfer of dutiable property for consideration or for no consideration.

There is also a Landholder provision which charges the land rate of duty on the acquisition of a majority interest by shares in a company that owns land with a value over \$2,000,000.

The Act also provides fixed duty for Super Fund transactions.

FIXED DUTY

The fixed duties are provided to support the common and statute law in the areas of the Successions Act, the Trustees Act, the Real Property Act and the Superannuation Industry (Supervisions) Act. These transfers may not change the beneficial or equitable interest in the dutiable property and for that reason the Commissioner provides for a fixed duty so the tax can be applied fairly and with equity. This applies to transaction under Section 18 which purpose is not to charge duty twice on the same transaction.

Section 18 issues could be incorporated into the proposed Property Tax as there is no outcome that would cause a second charge as there is no transactional charge under the proposed tax.

The transfer to a new trustee of a trust is at a fixed duty providing there is no change in the beneficial ownership of the land. The Real Property Act requires a transfer for registration to correct the title and duty to be paid on that transfer. This would also cover a transfer to a real purchaser of land after a trustee has purchased the land on their behalf. These methods of transfer registration and payment of duty is to stop fraud. A deed establishing a Trust is also a dutiable transaction and has a fixed duty.

The same on a transfer from a deceased person to their personal representative being the Executor to be able to deal with the land. The transfer between and from members of a Super Fund has the same principles. The beneficial ownership, or equitable right, is with the members of the fund and or the beneficiaries of the trust but the trustee holds the legal ownership.

These provisions provide a fair and equitable application of the Duties Act. Without these provisions the full duty would be payable on these transactions.

EXEMPTIONS

The current exemptions provided under the Act are for the transfer of dutiable property and would be the purchase of land or property under the proposed Property Tax. If the government desires for these exemptions to continue I would assume that provisions can be made under the proposed Property Tax legislation.

They current provisions cover transfer for Charitable Organisation, Corporate Reconstructions, Inter-Generational, Registered Clubs Act, Family Law Act, Trustee in Bankruptcy, Legal Professions Act, Strata Scheme Development Act, Local Government Act and the Conveyancing Act.

LANDHOLDER DUTY

These provisions are anti avoidance provisions as a person could acquire the shares in the company who was the landholder without paying the higher land rate of duty. The company has paid the full duty on purchasing the property but the Commissioner deemed the practice of purchasing shares in the landholder company was a way of obtaining ownership of the land without paying the land rate of duty.

As the provision is an anti-avoidance tool the provisions are complex and the test for the tax to apply covers several scenarios. If the Government desires to continue with this provision the proposed Property Tax may be simplified to apply the tax to these types of transitions given the proposed Property Tax would applied to the company in the first instance.

TAX REFORM

In the past legislators and Governments have had to amend the Duties Act as there was always avoidance of duties and working around the current provisions by structuring transaction. This has caused the legislation to be complex and always changing it was challenging working in that environment and testing your knowledge with the major law firms. The rate of duty did not change for 40 years but the revenue increased because the cost of houses increased.

I would like to think that the reformed tax base was fair and equitable and easy to understand and administer with less chance of avoidance and fraud. The Duties Act has a whole chapter on fraud and what a scheme is so people can be prosecuted. I think that education and understanding of the law is a much better path and I think that Governments have been lacking in this area.

It comes down to, the government wants to outsource their collection and administration of the law to practitioners but does not want to trust them with the knowledge they need to implement the tax the same way that a person doing it at Revenue NSW does.

I would hope that through the Conveyancing Institute and the Law Society that practitioners are given the skills and information to understand and apply any new tax that may be introduced.

I am happy to be involved in this process as I have provided training and a Duties Assessing Handbook to practitioners to benefit the governments in outsourcing assessment practices and protected the practitioners from audits for additional duty which would fall on them and not their clients.

The issues I have raised is an overview and I have provided basic information about these issues. I do have a full understanding and knowledge of how these issues are applied and can be used for fraud purposes.

I hope that this will be helpful and I am available if any further discussion on the issued raised is needed.

