

TAXATION BULLETIN: DUTIES AMENDMENT ACT 2009 (VIC)

The *Duties Amendment Act 2009 (Vic)* received Royal Assent on 7 July 2009.

The purposes of the amendments are to ensure that leases are not used as a mechanism for avoiding duty and also to clarify when duty is payable in relation to changes in beneficial ownership.

The amendments introduce significant changes to the *Duties Act 2000 (Vic)* in respect of:-

- the imposition of duty on certain leasing arrangements; and
- the payment of duty on changes in beneficial ownership of dutiable property in Victoria.

These changes were backdated to 21 November 2008.

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THE AMENDMENTS

The following is a brief summary/overview of the changes to the operation of the duty provisions contemplated by the *Duties Amendment Act 2009 (Vic)*:

A. IMPOSITION OF DUTY ON CERTAIN LEASING ARRANGEMENTS

Duty on leases and agreements for lease has been abolished from 26 April 2001. However, due to the amendments, it is not so clear anymore.

The amendments to the lease duty provisions mean that on and from 21 November 2008:

- Grants of leases of land in Victoria are now subject to duty on the underlying land value if any consideration paid for grant of Lease or for an option or for a right of refusal to purchase or transfer the land;
- Transfers or assignments of leases are now subject to duty if any consideration is paid or agreed to be paid, either in respect of the transfer or assignment, or in respect of various other rights, options or arrangements; and
- Surrenders of leases are now subject to duty if the lease has value or if the Landlord has been paid consideration for the surrender.

B. EXEMPTIONS AND TRANSITIONAL PROVISIONS

The lease duty provisions do not apply to the following circumstances:

- Residency rights in retirements villages under the *Retirement Villages Act 1986 (Vic)*;
- Leases of residential sites in Caravan Parks under the *Residential Tenancies Act 1997 (Vic)*; and
- Renewals of existing leases as a result of exercise of an option for a further term where:-

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- the option was provided in the original lease granted prior to 21 November 2008; and
- the lease requires the tenant to pay consideration to the landlord for the exercise of the option.

C. CHANGES IN BENEFICIAL OWNERSHIP

The amendments include:-

- Clarification that the term "beneficial ownership" can include ownership of dutiable property by a person as trustee of a trust;
- Clarification that the term "change in beneficial ownership" can include the creation or extinguishment of dutiable property, a change in equitable interests in dutiable property and dutiable property becoming the subject of a trust or ceasing to be the subject of a trust; and
- The extension of the definition of "dutiable property" to include an interest in any dutiable property.

Therefore, transactions involving the sales/purchases or transfers of businesses and also those including sales/purchases of freehold land (in particular terms contracts) as well as the creation, surrender or transfer of an easement or a *profit à prendre* (a right to take something off another person's land) may be subject to duty.

D. LIABILITY FOR PAYMENT OF DUTY

Duty on a dutiable transaction is paid on the greater of the consideration (other than the rent reserved that is paid or agreed to be paid) and the unencumbered value of the land that is the subject of the lease.

Liability for payment of duty falls on:-

- **the tenant** - in respect of leases (or agreements for lease) constituting a dutiable transaction;
- **the assignee or transferee** - in respect of transfers or assignments of leases constituting a dutiable transaction; and
- **the landlord** - in respect of a surrender of a dutiable lease.

E. THREE (3) MONTH PERIOD & MORATORIUM

Duty must be paid on a dutiable transaction (including a land rich transaction) within three (3) months of the dutiable transaction occurring.

Although the amendments have effect from 21 November 2008, there will be no penalty or interest for those transactions affected by the amendments between 21 November 2008 and 7 July 2009 so long as full disclosure is made to the State Revenue Office and duty is paid by 7 October 2009.

F. REQUEST FOR PRIVATE RULING AND ASSESSMENT

If there is uncertainty whether or not duty is payable, then you may request the State Revenue Office to issue a private ruling and/or an assessment. This should be done

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within two (2) months of the dutiable transaction occurring so as to allow the State Revenue Office sufficient time to with advice or to issue an assessment within the three (3) month period.

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IMPLICATION

You should obtain legal advice and take into consideration whether duty might be payable when any one of the following circumstances arises:

- A sale of a business which includes a lease being assigned to the purchaser;
- A grant of a lease where amounts other than rent or outgoings are payable (i.e. lease involving payment of a premium);
- A transfer or assignment of a lease where consideration is payable for the transfer or assignment;
- A surrender of a lease where consideration is payable for the surrender; and
- The creation or cessation of a trust over land, or a change in trustee in respect of a trust over land.

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WANT TO KNOW MORE?

We are ready to assist with any queries that you may have with respect to the recent changes to the *Duties Act 2000 (Vic)* by the *Duties Amendment Act 2009 (Vic)*.

For more information regarding this Bulletin or assistance with any duty related issues, please do not hesitate to contact Jeannette Eid or Derrick Ting and their team.

Although all care and skill has been used in the preparation of this article, it is intended only to provide a general outline and summary of the legislative changes and should not be relied upon as a substitute for legal advice.