

State
Revenue
Office

Presentation Notes:

State Taxation Information

March 2017

for
**Graduate Diploma in Legal Practice
students**

Duties

Duty (previously known as “stamp duty”) is a form of taxation charged by the State Government, under the [Duties Act 2001](#), when someone acquires an interest in property, usually by buying a property.

In addition to charging duty on transactions involving dutiable property, the Duties Act also imposes duty on a range of transactions and (paper) instruments, including:

- An application to register a motor vehicle or change its beneficial ownership;
- A general insurance contract;
- The sum insured under a life insurance policy; and
- The acquisition of significant interests in land holding entities.

Transfer of Property

(Section 6, Duties Act 2001)

A dutiable transaction (Section 6, Duties Act 2001) includes:

- a transfer of ‘*dutiable property*’;
- a declaration of trust;
- a grant or surrender of an interest in land in Tasmania;
- a foreclosure of a mortgage over dutiable property;
- an application for the amendment of a strata plan, made in accordance with [Division 6 of Part 2 of the Strata Titles Act 1998](#);
- any other transaction that results in a change of beneficial ownership; and
a vesting of ‘*dutiable property*’

Dutiable property (Section 9, Duties Act 2001) includes –

- Land in Tasmania
- A mineral tenement
- Fixtures to land or a mineral tenement
- A land use entitlement
- A partnership interest
- A business asset if there is also a transfer of other dutiable property
- An option to purchase dutiable property
- An interest in any dutiable property

When does a liability for duty arise?

- When a dutiable transaction occurs

Who is liable for duty?

- Duty is payable by the transferee

When is the duty payable?

- Duty is payable within 3 months of the transfer date

Dutiable Transactions – Not Transfer of Property

For a specific transferee – see Section 7, Duties Act 2001

Example: Declaration of Trust – the person declaring the trust
Foreclosure – the mortgagee

What is the rate of duty?

- In the case of real property, duty is charged on a sliding scale based on the dutiable value of the property acquired

Duty is payable on the greater of:

- the consideration; or
- the unencumbered value (*Section 18, Duties Act 2001*)

Value of Property	Duty Payable
\$0 – \$3 000	\$50
\$3 000 - \$25 000	\$50 plus \$1.75 for every \$100, or part, by which the dutiable value exceeds \$3 000
\$25 001 - \$75 000	\$435 plus \$2.25 for every \$100, or part, by which the dutiable value exceeds \$25 000
\$75 001 - \$200 000	\$1 560 plus \$3.50 for every \$100, or part, by which dutiable value exceeds \$75 000
\$200 001 - \$375 000	\$5 935 plus \$4 for every \$100, or part, by which dutiable value exceeds \$200 000
\$375 001 - \$725 000	\$12 925 plus \$4.25 for every \$100, or part, by which dutiable value exceeds \$375 000
Over \$725 001	\$27 810 plus \$4.50 for every \$100, or part, by which dutiable value exceeds \$725 000

Transactions to be aware of:

Subsequent Transactions:

Under the Duties Act, a 'subsequent transaction' occurs when a vendor enters into an agreement for sale with one person but transfers the property to another person.

A dutiable sub-sale is deemed to have occurred in respect of a 'subsequent transaction' when the subsequent purchaser pays an additional consideration to the first purchaser for the transfer right.

This may be in cash or in kind (ie: car parking space, child minding services, use of a sporting club, or time share apartment).

Aggregation:

As duty is charged according to a sliding scale duty could be minimised if a transaction is split into separate contracts.

The aggregation provisions of the Duties Act are designed to prevent the minimisation of duty by allowing the Commissioner to impose duty on the combined value of the transactions. That is, aggregation captures transactions that are essentially one arrangement made up of a number of separate transactions.

There is requirement to advise the Commissioner when aggregation provisions apply - section 22(6)

You should note also that the Commissioner has the discretion not to aggregate where they are satisfied that it would not be just and reasonable to do so. A written submission is required where exercise of discretion is to be considered, ie aggregated in the absence of a statement - refer to our comprehensive guideline titled "Application of section 22 of the Duties Act 2001" located on the SRO website (www.sro.tas.gov.au)

Common exemptions you may encounter

Section 55

- A person holding property in their own right can transfer it to their spouse or partner without paying duty.

Requirements:

- the property must be the couple's principal place of residence, or
- the property must be vacant land that will become their principal place of residence within 12 months of the transfer

Section 56

- Parties to a marriage that is dissolved or annulled, or has irretrievably broken down, can transfer matrimonial property without paying duty.

Requirements:

- a copy of a registered family court order, or a financial agreement; and
- evidence that marriage has been dissolved, annulled or has irretrievably broken down

Section 57

- Parties to a personal relationship (previously de facto couples) that has ended can transfer personal property without paying duty.

Requirements:

- a financial / separation agreement made under the *Relationships Act 2003*; and
- certificate of independent legal advice for each party

Common errors & pitfalls

- treating a gift as exempt from duty where consideration has been paid
- not paying duty on the unencumbered value
- failing to aggregate several smaller transactions
- failing to pay duty on the acquisition of a business or business assets
- failing to consider the application of the Land Rich provisions

General / Administration

Objections, Reviews & Appeals

You are able to object to decisions and assessments made by the Commissioner.

To be valid an objection must:

- be in writing
- state your grounds of objection (must relate to interpretation and application of the law)
- be lodged within 60 days of the date you received the Commissioner's decision or assessment

If unhappy with objection determination, you are able to seek review by the Magistrates Court (Administrative Appeals Division) or lodge an appeal with the Supreme Court

(Section 80 – Objections; Section 89 – Right of review or appeal)

Tasmania Revenue Online

- is the State Revenue Office's web based application that,
- allows a previously approved person to:
 - lodge monthly (e.g. Payroll Tax, Insurance Duty) and annual returns (e.g. Payroll Tax),
 - send details and stamp documents subject to duty, and
 - pay State taxes via the internet.
- commonly known as TRO.

Land Tax

What is land tax?

It's an annual tax applied to properties known as 'general' land. The amount of tax payable on land in this category is assessed as at 1 July each year. Land tax accounts are mailed at different stages between October and March each year.

Land Tax is a source of general revenue charged by the Tasmanian State Government in accordance with the provisions of the *Land Tax Act 2000*.

What is general land?

General land (shown as 'GEN' on your land tax assessment) includes holiday homes, rental properties, and commercial or vacant land.

What type of land may not be taxable?

- the landowner's principal place of residence;
- primary production land;
- land used by the owners for religious purposes;
- land used as a medical establishment;
- land used principally for Aboriginal cultural activities and that is Aboriginal land;
- land used to operate a retirement village, or for related purposes;
- land subject to a conservation covenant;
- land owned by a charitable institution.

Sporting clubs are not exempt from paying land tax but may be entitled to a concessional rate of tax.

Applications for a concession must be in writing to the Commissioner of State revenue and include copies of the club's constitution, rules and objects.

Who is liable to pay land tax?

The owner of land at the date of liability: in Tasmania this is the commencement of the financial year – 1 July. (*Section 10 (1) Land Tax Act 2000*)

How is land tax calculated?

The current tax rates are applied to the assessed land value of all your taxable properties. For information on land values go to the Valuer-General's website, (www.dpipwe.tas.gov.au/ovg). For land tax rates see next page.

On the SRO website there is a Land Tax calculator page.

Rates of Tax

Assessed Land Value	Current Tax scale
\$0 – \$24 999	Nil
\$25 000 - \$349 999	\$50 plus 0.55% of value above \$25 000
\$350 000 and above	\$1 837.50 plus 1.5% of value above \$350 000

(as per Land Tax Rating Act 2000)

Principal Residence land – section 6

- Commonly referred to as Principal Place of Residence (PPR)
- NOT exempt from Land Tax
- Current rate of Land Tax – Nil

Primary Production land – section 7

- Commonly abbreviated as PPL
- NOT exempt from Land Tax
- Current rate of Land Tax – Nil

Section 7 of the Act provides for PPL where a business of primary production is carried out in a businesslike manner with a reasonable expectation of profit.

It mainly relates to cultivation of land to sell the produce of that cultivation, and maintaining animals or poultry for sale or selling their natural increase or bodily produce.

Some less common forms are;

- Keeping bees for sale of honey
- Commercial fishing or cultivation of aquatic plants or animals including the preparation for fishing, preservation of fish or stowage of fishing gear
- Cultivation or propagation for the sale of plants, seedlings, mushrooms or orchids.

Some common areas are:

- Viticulture (vine growing)
- Horticulture
- Horse breeding
- Forestry (plantations, Private Timber Reserves under the *Forest Practices Act 1985* or State Forests under the *Forestry Act 1920*)
- Agriculture
- Pastoral
- Poultry farming,
- Orchardring
- Dairy farming
- Apiculture (bee-keeping)

Land may qualify if operated as a business of primary production by the User. It does not have to be the owner.

Club Land – section 38(2)

- Land used by a sporting club or body of persons principally for certain sporting activities
- Commonly abbreviated as CLB
- NOT exempt from Land Tax
- Current receives a concessional rate of Land Tax

This concession provides for a flat rate of tax for land that is used for prescribed sporting activities such as athletics, football, golf tennis etc.

The rate is currently 4 cents for every \$100 of assessed land value applied

The current threshold amount of tax where the Club rate provides a concession to clubs is **\$58,300**. There is no advantage for clubs with club land valued below this threshold.

- Clubs need to apply to the Commissioner for approval to receive the concession
- The Commissioner must be notified within 30 days where land use changes or the land is disposed of.

NOTE:

The land is to be used principally for the purpose of cricket, football, golf, tennis, bowls or other athletic sports or exercises and not for the pecuniary profit of the members of that club or body; or

The club or body of persons is to be formed for the purpose of promoting or controlling horseracing, trotting-racing, dog-racing, or the racing of motor vehicles and the land is used principally for those purposes.

Exemptions:

Crown and public lands – section 17

Trust land – section 18

Other exempt land – section 19

- Land used for the purpose of a retirement village, or purposes ancillary to a retirement village
- Aboriginal land within the meaning of the Aboriginal Land Act 1995
- Partially exempt land: public parks and gardens
- Partially exempt land: Land subject to a conservation covenant under Part 5 of the Nature Conservation Act 2002
- Partially exempt land: flood levees
- Land subject to section 10(1)(q)(ix) of the **Land and Income Taxation Act 1910**.

Commonly asked Questions:

What happens if my client is going to sell their taxable land?

Where land tax applies to a property, the tax must be paid on the sale or transfer of that land.

Why would my client's land tax bill have increased when the tax rates haven't?

There could be several reasons for this:

- land value adjustment factors determined by the Valuer-General may have been applied to your property; to find out about adjustment factors and land valuations, please go to the Valuer-General's website, www.dpipwe.tas.gov.au/ovg;
- you may have purchased additional taxable properties since the last tax year; if you own more than one property, land tax is calculated on the combined assessed land value of all your properties;
- your land may have been incorrectly classified as General Land (it would appear as 'GEN' under the Land Class heading on your land tax account). If you believe there is a mistake, please contact the State Revenue Office.

I don't think that my client's land has been classified correctly. What should I do?

Principal Place of Residence – your home

If you believe that your client's land should be re-classified as their principal place of residence (and therefore no land tax should be payable), please have them use the online form to apply for a change in classification. This form is located on our website homepage, (www.sro.tas.gov.au).

Primary Production Land

If you think your client's property should be re-classified as Primary Production Land, please have them complete the application form downloadable from our website.

If they prefer, they can write to the SRO setting out how the property is used, giving details such as the types of crops and/or livestock, and how much land is being used for cropping and/or grazing.

There's been a change in how my client's land is used. What should I do?

If the land (and attached building) is no longer their principal place of residence, primary production or exempt land, they must tell the State Revenue Office within 30 days of the change taking place.

This notification can be via the appropriate online form at our website.

Objections

If your clients have an objection about their land tax assessment they can write to the Commissioner of State Revenue. This must be done within sixty (60) days from the date printed on their assessment notice.

Their letter should set out all the reasons for their objection. Disagreeing with the value and fairness of land tax is not a valid ground for an objection.

If they lodge an objection, they must still pay their land tax bill by the due date. If their objection is successful, they will receive a refund.

If your clients are worried about how they are going to pay their land tax bill on time,

...they should contact the State Revenue Office as soon as possible. We may be able to put their account on hold for a while or guide them through different payment options.

To avoid penalties being applied to the land tax owed, they must contact the SRO before the due date for payment printed on the assessment notice.

Important notice – *please read*

- This information is designed to give you the best information possible in brief.
- We try to avoid using legal and technical language to ensure that our documents are easily understood. This information contains general information only.
- If you need detailed advice about your taxation affairs, you must contact a tax advisor, accountant or solicitor.
- For the [Land Tax Act 2000](#), go to www.thelaw.tas.gov.au .

For more information about land tax from the State Revenue Office

- Web: www.sro.tas.gov.au
- Email: taxhelp@treasury.tas.gov.au

