

Stamp Duty Bulletin

# September 2013 stamp duty developments

## WHAT YOU NEED TO KNOW

This Bulletin outlines Australian stamp duty developments in September 2013, which may impact your business, including:

### Administration

- **ACT: Disallowable Instrument Duties (Stock Exchanges) Declaration 2013** – declares certain financial markets as recognised stock exchanges.
- **SA: RevenueSA Information Circular No 63** – RevenueSA has released *Information Circular No 63* in relation to the replacement *Stamp Duty Regulations 2013*.
- **QLD: Duties Regulation 2013 (Qld)** – the new replacement regulations have been made. The repeal of the *Duties Regulation 2002* (Qld) has been delayed. Various Public Rulings have been updated to reflect the *Duties Regulation 2013* (Qld).
- **WA: Revenue Laws Amendment Act 2013 (WA)** – the *Revenue Laws Amendment Bill 2013* (WA) has received assent. The Act makes changes to introduce a new interim assessment regime and makes amendments to certain provisions relating to valuations, prescribing certain non-dutiable transactions.
- **WA: Duties Amendment Regulations (No 2) 2013 (WA)** – the *Duties Amendment Regulations (No 2) 2013* (WA) have been gazetted to replace regulation 4 of the *Duties Regulations 2008* (WA).
- **TAS: Tax and Related Legislation (Miscellaneous Amendments) Bill 2013** – the *Tax and Related Legislation (Miscellaneous Amendments) Bill 2013*, dealing with amendments to several tax Acts including the *Duties Act 2001*, has passed the House of Assembly.

### Transfer Duty

- **WA: O'Meagher v Commissioner of State Revenue [2013] WASAT 116** – the Western Australian Administrative Tribunal has found that section 78 of the Duties Act applied regarding the dutiable value of dutiable transactions arising in relation to a written agreement setting out the distribution of property of a partnership, rather than section 39 regarding the dutiable value of a partition.

Relevant area	At a glance
Administration	<p><b>ACT: <i>Disallowable Instrument Duties (Stock Exchanges) Declaration 2013</i></b></p> <p>The <a href="#">Disallowable Instrument Duties (Stock Exchanges) Declaration 2013</a> has been made. The Instrument declares certain financial markets to be "recognised stock exchanges" for the purposes of the <i>Duties Act 1999</i> (ACT). These are the National Stock Exchange of Australia Limited and Asia Pacific Exchange Limited.</p> <p>The Instrument has revoked <a href="#">Disallowable Instrument DI2008-223</a>.</p>
	<p><b>RevenueSA: Information Circular 63</b></p> <p>RevenueSA has released <a href="#">Information Circular 63</a>. The Circular provides information on the replacement regulations, <a href="#">Stamp Duty Regulations 2013 (SA)</a>, which came into force on 1 September 2013.</p> <p>Among other things, the Circular notes the changes since the previous regulations, including the removal of a regulation to reflect that RevenueSA will no longer deduct an administrative fee for processing refunds.</p>
	<p><b>QLD: <i>Duties Regulation 2013 (Qld)</i></b></p> <p>On 16 August 2013 the <a href="#">Duties Regulation 2013 (Qld)</a> were made. The Regulation remakes the <i>Duties Regulation 2002</i> (Qld). The Regulation replicates the <i>Duties Regulation 2002</i> (Qld), which were to expire.</p> <p>The repeal of the <a href="#">Duties Regulations 2002 (Qld)</a> has now been delayed to 31 August 2014.</p> <p>The Queensland OSR has updated the following Public Rulings to reflect the recent replacement of <i>Duties Regulation 2002</i> (Qld) with <i>Duties Regulation 2013</i> (Qld):</p> <ul style="list-style-type: none"> <li>• <a href="#">DA000.5.4</a>: Securities quoted on the market operated by a recognised stock exchange;</li> <li>• <a href="#">DA105.2.2</a>: Guidelines for determining the existence of a business;</li> <li>• <a href="#">DA495.1.6</a>: Waiving of adjudication fees; and</li> <li>• <a href="#">DA498A.1.4</a>: Securities quoted on the market operated by a recognised stock exchange.</li> </ul> <p>The above Rulings took effect on 3 September 2013.</p>
	<p><b>WA: <i>Revenue Laws Amendment Act 2013 (WA)</i></b></p> <p>The <a href="#">Revenue Laws Amendment Bill 2013 (WA)</a> received assent on 24 September 2013.</p> <p>The Act amends the <i>Duties Act 2008</i> (WA) and the <i>Taxation Administration Act 2003</i> (WA) to introduce interim assessment related provisions to allow the Commissioner to assess and collect duty on large, complex transactions in a more efficient manner. Amendments are also made to certain provisions relating to valuations. These amendments allow the Commissioner to recover</p>

	<p>valuation costs and charge penalty tax for undervaluation, in certain circumstances.</p> <p><a href="#">Information Circular 11</a> released by the WA Office of State Revenue, explains the recent amendments made by the <i>Revenue Laws Amendment Act 2013</i> (WA).</p>
	<p><b>WA: Duties Amendment Regulations (No 2) 2013 (WA)</b></p> <p>The <a href="#">Duties Amendment Regulations (No 2) 2013 (WA)</a> have been gazetted to replace regulation 4 of the <a href="#">Duties Regulations 2008 (WA)</a>.</p> <p>The Amendments have the result in prescribing several transactions as not dutiable, some of which include the following:</p> <ul style="list-style-type: none"> <li>• a transfer of dutiable property (other than land or a right in relation to land) that would otherwise be a transfer on which duty is not chargeable under section 42(1) of the <i>Duties Act 2008</i> (the 'no double duty' provision);</li> <li>• the creation of an easement under the <i>Transfer of Land Act 1893</i> Part IVA. If an easement is created under the provisions under Part IVA (which considers creation by notation on subdivision plans and diagrams) of the <i>Transfer of Land Act</i>, the transaction will not be considered dutiable; and</li> <li>• the surrender of an easement under section 129C or 229A(2) of the <i>Transfer of Land Act 1893</i>. This may occur when the Court exercises its power to extinguish or discharge the easement broadly, where the easement is abandoned, obsolete or unused for 20 years or more.</li> </ul>
	<p><b>Tas: Tax and Related Legislation (Miscellaneous Amendments) Bill 2013</b></p> <p>The <a href="#">Tax and Related Legislation (Miscellaneous Amendments) Bill 2013</a> has passed the Tasmanian House of Assembly.</p> <p>The Bill makes various miscellaneous amendments to the <i>Duties Act 2001</i> (Tas), <i>Land Tax Act 2000</i> (Tas) and the <i>Taxation Administration Act 1997</i> (Tas).</p> <p>Some of the various changes to the <i>Duties Act 2001</i> (Tas) will include the following:</p> <ul style="list-style-type: none"> <li>• changes to the minimum duty payable under general rates and concessions;</li> <li>• various changes to the exemption rules for intergenerational rural transfers;</li> <li>• treat put and call options identically with standard agreements for sale and to treat the assignment of a call option (under a put and call agreement) in the same manner as sub-sales of dutiable property;</li> <li>• expand the exemption for gifts made to charitable, religious or educational organisations to include any dutiable transactions made for no consideration; and</li> </ul>

	<ul style="list-style-type: none"> <li>include as consideration for the transfer of land, any payment agreed to be given for improvements to the land, to be carried out by the transferor or associate of the transferor (for example house and land packages).</li> </ul>
Transfer duty	<p><b><i>O'Meagher v Commissioner of State Revenue [2013] WASAT 116</i></b></p> <p>In <a href="#"><i>O'Meagher v Commissioner of State Revenue [2013] WASAT 116</i></a>, the Western Australian State Administrative Tribunal found that duty was required to be paid on a written agreement setting out the distribution of property, following the dissolution of a partnership under section 78 of the <b><i>Duties Act 2008</i></b> (WA) (<b><i>Duties Act</i></b>), regarding the transfer of dutiable property of a partnership to a retiring partner on the partnership's dissolution.. Although argued by the taxpayers, section 39 regarding the dutiable value of a partition of land held jointly, was held not to apply.</p> <p><b>Facts</b></p> <p>A partnership was entered into between two brothers (<b>Applicants</b>) known as M Maher &amp; Co (<b>Partnership</b>). Both brothers, had equal shares to the profits and losses and the capital of the Partnership.</p> <p>In 2009, the Applicants began negotiating the separation of their assets, which included several lots of land. In July 2011, a final agreement was reached for the separation of the business interests. A deed of Settlement and Release (<b>Deed</b>) was entered into to give effect to that agreement. The Deed provided that upon dissolution of the Partnership, one brother was to receive the partnership share of Lot 5, the whole of Lot 6 and 4 acres of Lot 10. The other brother was to receive the balance of Lot 10.</p> <p>On 23 November 2011, the Applicants' solicitors wrote to the Commissioner lodging the Deed which evidenced various dutiable transactions for assessment of duty. On 20 April 2012, the Commissioner issued a Duties Assessment Notice. The Commissioner applied section 78 to reach the dutiable value of the dutiable transactions. The Applicants argued this was incorrect and the dutiable value should be assessed under section 39. The application of section 39 would have resulted in a lower dutiable value for the dutiable transactions, and therefore, a lower duty impost.</p> <p>The Applicants objected to the Commissioner's assessment, which objection was disallowed. The current proceedings are a review of that decision.</p> <p><b>Held</b></p> <p>The issues for the Tribunal were what transactions, dutiable or otherwise, were affected by the Deed in relation to the transfer of the relevant land, and what the dutiable value of the dutiable transactions were. The parties differed in their arguments regarding the effect of the Deed.</p> <p>The Applicants submitted that the Commissioner fell into error by concluding that the Deed comprises one transaction (ie an agreement for distribution in lieu of a sale of the Properties). The Applicants contended that in fact there are two transactions upon the dissolution of the Partnership. The first transaction arises, by operation of law or by agreement, to the effect that the Properties are all to be held beneficially as well as legally by each brother as tenants in common. This transaction results in the Applicants becoming</p>

entitled to the properties in equity and law as tenants in common in equal shares and it is submitted that this transaction is not dutiable. The second transaction is the partitioning of the properties as set out in the manner in the Deed.

The Commissioner argued that upon the dissolution of the Partnership, properties were transferred in four respective transfers which involved the transfer of particular lots to each respective brother.

The Tribunal examined the provisions of the Deed and did not accept the Applicant's argument that there had been two transactions. Although it would have been open to the Applicants to agree this, the Deed was not drafted in that way. The Tribunal then examined the relevant sections of the Act. The Tribunal found that section 78 applied and the requirements of section 39, dealing with partitions, were not met in the circumstances. Accordingly, the Tribunal affirmed that the dutiable value of the relevant transactions was as set out in the Commissioner's assessment.

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