Stamp Duty Bulletin

December 2013 / January 2014 stamp duty developments

WHAT YOU NEED TO KNOW

This Bulletin outlines Australian stamp duty developments in December 2013 / January 2014, which may impact your business, including:

Administration

- **QLD: Market Square (Queensland) Pty Ltd v Comr of State Revenue [2013] QCAT 578** – the Tribunal found it did not have the jurisdiction to review the decision of the Commissioner of State Revenue in relation to a default assessment due to late payment of $51

Transfer Duty

- **SA: Revenue Ruling SDA007** – Section 71CC Ex Gratia Scheme for transferor / transferee trusts regarding family farm type transactions
- **SA: Revenue Ruling SDA008** – Retrospective amendments to section 60(A)(1) of the Stamp Duties Act 1923 (SA) regarding the value of property conveyed or transferred
- **VIC: Draft Revenue Ruling DA.026 (version 2)** – Aggregation of dutiable transactions and the exception from aggregation for domestic builders where residential premises are to be constructed
- **QLD: Public Ruling DA012.2.1** – Assessment of transfer duty on transfers of crown leases that can be converted to freehold title
- **QLD: Public Ruling DA000.7.3** – Transfer duty relief on acquisition of rural properties for farm rationalisation purposes withdrawn
- **ACT: Commissioner of ACT Revenue v Araghi & Anor [2013] ACTCA 54** – the ACT Court of Appeal held that stamp duty was only payable on the contract for the sale of land and not on the value of a related contract to construct on the land
- **ACT: Notice to Taxpayers** – regarding the Commissioner's approach to interdependent sale of land and building contracts, in light of the decision in Commissioner of ACT Revenue v Araghi & Anor [2013] ACTCA 54

Landholder Duty

- **ACT: Francey v the Commissioner of ACT Revenue (Administrative Review) [2013] ACAT 84** – the Tribunal held that a taxpayer held a beneficial interest in a company which purchased land. When the taxpayer exercised her option to acquire the shares in the company, she acquired bare legal title and the transaction was not dutiable

Insurance Duty

- **ACT: Revenue Circular DAA013** – General Insurance Duty Adjustments
Relevant Area

**Administration**

**QLD: Market Square (Queensland) Pty Ltd v Comr of State Revenue [2013] QCAT 578**

In *Market Square (Queensland) Pty Ltd v Commissioner of State Revenue [2013] QCAT 578* the Queensland Civil and Administrative Tribunal (QCAT) found that it did not have the jurisdiction to review the decision of the Commissioner in relation to a default assessment.

**Facts**

The taxpayer was the trustee of a unit trust that was issued with default assessments under the *Duties Act 2001* (Qld) in relation to trust surrenders.

The taxpayer paid the assessment on 2 November 2012, which comprised the amount payable (~$141,000) and late payment interest of $535. According to the Commissioner, the interest payment was short by $51. The taxpayer filed an application with QCAT on 12 November 2012 (the last date available for doing so) to review the Commissioner’s decision disallowing in part an objection against the assessment. On 15 November, three days late, the taxpayer paid the $51 shortfall in interest payment.

QCAT has the jurisdiction to review decisions by the Commissioner under section 69 of the *Taxation Administration Act 2001* (Qld) (**TA Act**). For the jurisdiction to be enlivened, the taxpayer must have paid the "whole amount of the tax and the late payment interest payable under the assessment to which the decision relates."

**Held**

QCAT held that it did not have jurisdiction to hear the taxpayer’s application under section 69 of the TA Act.

QCAT considered that the requirement to pay the whole amount of the tax and the late payment interest under section 69(1) of the TA Act was both substantive and mandatory, and goes to the jurisdiction of QCAT. QCAT dismissed the taxpayer’s argument that the *de minimis* principle, which holds that the "law does not concern itself with trifling matters", applied. This was in large part because it was a jurisdictional issue, going to the activating of decision making powers under the legislation.

On this basis, QCAT held that the taxpayer had not activated the jurisdiction of QCAT because it did not pay the whole tax and late payment interest as required under section 69(1) of the TA Act.

**Transfer Duty**

**SA: Revenue Ruling SDA007**

RevenueSA has issued Revenue Ruling SDA007 – Section 71CC Ex Gratia scheme for transferor / transferee trusts.

Revenue Ruling SDA007 deals with the exemption from stamp duty on the transfer of primary production land and associated farming goods between certain relatives (family members) and / or their trustees under section 71CC of the *Stamp Duties Act 1923* (SA). Historically, RevenueSA has extended the exemption to transfers between trusts where the beneficiaries of the trusts are relatives of the transferor. However, RevenueSA has recently received advice that the exemption cannot be applied to transfers involving...
trusts which have more than one beneficiary.

Accordingly, the SA Treasurer has approved an *ex gratia* scheme to provide stamp duty relief so that RevenueSA’s existing assessment practice in relation to section 71CC can be maintained. Revenue Ruling SDA007 outlines a number of criteria which must be satisfied in order to obtain the *ex gratia* relief, including in relation to land size, relationship between transferor and transferee, the business of the transferor.

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<tr>
<th>Transfer Duty</th>
<th>SA: Revenue Ruling SDA008</th>
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<td>RevenueSA has issued Revenue Ruling SDA008 – Retrospective amendments to section 60(A)(1) of the Stamp Duties Act 1923 (SA).</td>
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<td>Revenue Ruling SDA008 deals with the retrospective amendments made to section 60A(1) regarding the &quot;date of sale&quot;. The ruling states that RevenueSA has always interpreted the date of sale to mean the date the property is transferred or conveyed. In the context of real property, this has meant the date the Memorandum of Transfer is executed.</td>
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<td>The SA Cabinet has approved the drafting of retrospective amendments to section 60A(1) to reflect RevenueSA’s longstanding interpretation of the section.</td>
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<td>The Revenue Ruling took effect on 17 December 2013.</td>
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<th>Transfer Duty</th>
<th>VIC: Draft Revenue Ruling DA.026 (version 2) – Aggregation Provisions</th>
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<td>The State Revenue Office of Victoria has issued a draft Revenue Ruling DA.026 (version 2) — Aggregation of dutiable transactions and the exception from aggregation for domestic builders where residential premises are to be constructed, following changes made under the State Taxation Acts Amendment Act 2012, effective from 28 June 2012. The changes were summarised in our June 2012 Stamp Duty Bulletin.</td>
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<td>The ruling clarifies how the Commissioner will apply the aggregation provisions in s 24 of the Duties Act 2000 (Vic) particularly:</td>
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<td>(a) the circumstances in which two or more dutiable transactions will be considered to form &quot;substantially one arrangement” and thus be aggregated;</td>
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<td>(b) the exception from aggregation for domestic builders in some circumstances, and</td>
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<td>(c) re-assessment of duty where the domestic builder exception is applied and residential premises are not constructed.</td>
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<th>Transfer Duty</th>
<th>QLD: Public ruling DA012.2.1: Duty on transfer of crown leases (Qld)</th>
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<td>The Commissioner of State Revenue (Qld) has issued Public Ruling DA012.2.1 Assessment of transfer duty on transfers of crown leases that can be converted to freehold title. The Ruling confirms the Commissioner’s practice</td>
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in relation to calculating the dutiable value of a transfer or agreement for the transfer of a crown lease that can be converted to freehold.

The ruling clarifies that the consideration for such a transfer will include the amount of any liabilities assumed under the transaction, including payment of any amounts to the vendor payable to obtain freehold title, eg payments to the Chief Executive for the conversion.

The ruling takes effect from 16 December 2013.

**Transfer Duty**

**QLD: Public Ruling DA000.7.3 – Transfer duty relief on acquisition of rural properties for farm rationalisation purposes withdrawn**

The Commissioner of State Revenue (Qld) has issued Public Ruling DA000.7.3 Transfer duty relief on acquisition of rural properties for farm rationalisation purposes. The Ruling withdraws Public Ruling DA000.7.2.

The Ruling withdraws Public Ruling DA000.7.2 which outlined a scheme that provided ex gratia relief from the transfer duty otherwise payable on the transfer of farm properties from joint owners to individual owners.

The relief under this scheme was discontinued on 1 September 2013.

**Transfer Duty**

**ACT: Commissioner of ACT Revenue v Araghi & Anor [2013] ACTCA 54**

In Commissioner of ACT Revenue v Araghi & Anor [2013] ACTCA 54 the ACT Court of Appeal dismissed an appeal from the Commissioner, and held that stamp duty was only payable on the contract for the sale of land and not on the value of a related contract to build on the land. A summary of the Supreme Court decision can be found in our April 2013 Stamp Duty Bulletin.

**Facts**

The taxpayers entered into a contract to purchase a Crown Lease as joint tenants for $81,000 (Land Sale Contract). The taxpayers also entered into a contract with Crace Developments Pty Ltd (Crace) for the construction of a two storey house on the land for $352,900 (Building Contract). The Land Sale Contract and the Building Contract were entered into on the same day and were interdependent.

The Commissioner assessed stamp duty for the transaction based on the dutiable value of $433,900, being the combined value of the Land Sale Contract and the Building Contract. The taxpayers challenged the assessment in the ACT Civil and Administrative Tribunal, which set aside the assessment. The Commissioner appealed to the Court of Appeal.

**Held**

The Court of Appeal held that stamp duty was only payable on the Land Sale Contract. The key issue was what comprised "the consideration for the dutiable transaction" within section 20(1)(a) of the Duties Act 1999 (ACT).

Relying on case law, their Honours determined that "consideration" should be equated to that which "moves the conveyance". Mere interdependence of the contracts for sale and construction was not sufficient that each agreement
should be viewed together. Their Honours determined that the payments made "for" the dutiable transaction were solely those which moved the land. As the Building Contract did not satisfy this test, it was not subject to stamp duty.

**Transfer Duty**

**ACT: Notice to Taxpayers – Purchase of land and interdependent building contract**

The ACT Revenue Office issued a Notice to Taxpayers regarding the decision of the ACT Court of Appeal in *Comr of ACT Revenue v Araghi & Anor* [2013] ACTCA 54 (handed down on 20 December 2013) (see above). In similar situations, the Commissioner had previously assessed stamp duty on the combined value of the land and house contracts, treating the acquisitions as off the plan purchase agreements. However, the Court of Appeal ruled that the taxpayers were only liable to pay duty in respect of the consideration paid by them for the purchase of the Crown lease.

The Commissioner has accepted the judgment in *Araghi*. The ACT Revenue Office will accept applications for reassessment of those contracts within a limited time and subject to certain conditions (set out in the Notice to Taxpayers).

Applications must be received in time for any reassessment to be issued within five years of the original assessment. Applications must also contain all required information. Further information is available on the ACT Revenue Office website.

**Landholder Duty**

**ACT: Francey & Commissioner for ACT Revenue (Administrative Review) [2013] ACAT 84**

In *Francey & Commissioner For ACT Revenue (Administrative Review)* [2013] ACAT 84 the ACT Tribunal has found that a taxpayer was not liable to pay duty on the acquisition of an interest in a landholding entity in the ACT because she had been the beneficial owner of the company before the land was purchased.

**Facts**

On 14 December 2007, the taxpayer entered into a Purchase Option Agreement with her brother-in-law for the right to purchase 59,999 of the 60,000 shares in Un De Six Pty Ltd (UDS) at 24 hours' notice for the sum of $1.00. On 14 January 2008, UDS purchased a property for $1,150,000. The taxpayer was responsible for sourcing and securing finance (to the satisfaction of NAB) necessary for UDS to purchase and pay duty on the property. On 16 August 2011, 59,999 shares in UDS were transferred to the taxpayer for $1.00.

The Commissioner issued the taxpayer with an assessment of duty payable on the acquisition of a significant interest in a landholding entity in the ACT. The acquisition was found to have occurred on 16 August 2011 (ie the date the option was exercised). An objection to the decision by the taxpayer was partly allowed by the Commissioner, reducing the value of the property to $1,080,000. The taxpayer made an application to the ACT Tribunal for a review of the decision.
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| The Tribunal held that at all relevant times the shares in UDS were beneficially held for the taxpayer, and was satisfied that a constructive trust arose no later than 14 January 2008 (the date the property was acquired).

The Commissioner submitted that the interest acquired by the taxpayer in UDS was limited, given that no money changed hands, nor voting rights or entitlement to dividends obtained.

Notwithstanding the Tribunal’s lack of jurisdiction to declare a constructive trust, it found no reason not to accept that the factual history put forward by the taxpayer. In particular, the Tribunal accepted that the stated intention of the taxpayer, her brother-in-law and her then spouse was that the UDS shares were beneficially held for the taxpayer, and that by 14 January 2008, the applicant had sourced all finance (including duty) for UDS to purchase the property and business. The Tribunal agreed with the taxpayer that from 14 January 2008 at the latest, “no shareholder could assert beneficial ownership in the shares or property of UDS against the taxpayer and the taxpayer’s interest in UDS and the property would prevail over any creditor.” Accordingly, the Tribunal found that what was transferred to the taxpayer on 16 August 2011 was the bare legal title, and it follows that the taxpayer was not liable for the payment of duty on the transfer.

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| The ACT Revenue Office has issued Revenue Circular DAA013 (General insurance duty adjustments) which provides details on how to adjust online duty returns when refunding the premium and duty from an earlier period in which the duty rate was different.

As part of the ACT’s taxation reform measures, the amount of duty charged on general insurance is being abolished progressively over five years. Duty will be reduced by 20% each year until 1 July 2016, when the duty on general insurance premiums will be abolished. If a policy is cancelled under an earlier duty rate period, the ACT Revenue Office says that the insurer can calculate the duty payable according to adjustment formulas set out in the Circular. The Revenue Circular took effect on 16 January 2014 |