



Stamp Duty Update

15 January 2004

STAMP DUTY - NEW HIRE OF GOODS AND MORTGAGE DUTY REGIME

As a result of the passing of the Business Tax Review (Assessment) Act (No.2) 2003 and the Business Tax Review (Taxing) Act (No.2) 2003, a new mortgage duty regime is proposed to commence from 1 January 2004 and a new hire of goods regime is to replace the existing rental business provisions from 1 July 2004.

We set out below a snapshot of the new mortgage duty and hire of goods regimes.

Mortgage Duty Regime

The new mortgage duty regime will differ from the old mortgage duty regime in the following areas:

1. The existing mortgage duty base will be narrowed by limiting mortgage duty to apply to actual financing arrangements and not to arrangements such as:
 - (a) agreements to grant a mortgage (being agreements that would not be treated as satisfying the definition of a mortgage in their own right), a loan application and loan agreements;
 - (b) instruments securing the payment or repayment of money at stated periods (including annuities) which are not considered a mortgage;
 - (c) bonds, guarantees, covenants and unsecured debentures; and
 - (d) other securities that fall outside of the definition of mortgage to be contained in the Act.

As a result of the narrowing of the existing mortgage duty regime, a covenant to pay money contained in an instrument will no longer result in the instrument being subject to mortgage duty (providing that the instrument itself is not considered a mortgage for the purposes of the new rules). This is a significant alteration which will impact on a number of commercial arrangements.

2. The duty sharing arrangements will ensure that duty will only be calculated on a pro-rata basis. The amount of duty will be calculated as a proportion of the amount that is secured by Western Australian property over the amount secured by all property under the mortgage. This calculation excludes property located overseas and in jurisdictions that do not impose mortgage duty.
3. Introduce a single rate of mortgage duty of 0.4%, with the exception that owner-occupied loans will be subject to a single rate of mortgage duty of 0.25%.

New Hire of Goods Regime

From 1 July 2004, the existing rental business duty provisions will be replaced with a new hire of goods regime. Under the hire of goods regime, duty will be imposed as follows:

1. at the rate of 0.75% if the hire of goods is an "equipment financing arrangement" (i.e. hire purchase agreements or agreements of a term not less than 9 months). If the annual hiring charge exceeds \$50,000, duty is payable on the total hiring ;
2. at a rate of 1.5% if the hire of goods is an "ordinary hiring arrangement" (i.e. agreements with a term of less than 9 months). Ordinary hiring arrangements will be only assessed on the amount that exceeds \$50,000.

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The following highlights some of the important features of the new hire of goods regime:

1. Hire Purchase arrangements are now caught by the new hire of goods regime.
2. There is separate treatment for a commercial hire business as opposed to a non-commercial hire business. A commercial hire business includes a person who hires out goods as a business, whether as a principal business or a business ancillary to another business carried on by that person.
3. A person conducting a commercial hire business is required to register the business for the purposes of the new hire of goods regime where hiring charges it receives in a month exceed \$4,167. This is a significant increase in the previous threshold of \$2,000 per month under the old hire of goods regime.
4. A person conducting a commercial hire business is required to lodge monthly or annual returns and pay duty payable on the hire of goods to third parties.
5. A person who hires goods from a non-commercial hire business is required to lodge a statement with the Commissioner where the hiring charges payable for the hire of goods is at least \$1,000. The **hirer** will pay any stamp duty liability applicable to these arrangements.
6. For “ordinary hiring arrangements” between a hirer and a person that is not a commercial hiring business, the hirer will pay duty on the total amount of the hiring charges (ie there is no threshold amount of \$50,000 that must be derived before liability to “ordinary hiring arrangements” duty at the rate of 1.5% is imposed).
7. If the sum of all assessable hiring charges of a registered commercial hire business in a financial year does not exceed \$50,000, the commercial hire business is entitled to a refund or rebate of all duty paid or payable in respect of those assessable hire charges.
8. Among other exclusions, a hire of goods will not include arrangements made between related corporations, being a related bodies corporate as defined in section 9 of the Corporations Act 2001.

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