



STAMP DUTY – CHANGES TO CONVEYANCE DUTY – PART 1

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, there have been a number of amendments made to the imposition of conveyance duty under the Stamp Act 1921 (WA).

In Part 1 of our three Part discussion on these changes, we explore a number of unrelated but significant changes to the application of conveyance duty on transactions.

In Part 2 of our three Part series, we will explore changes that specifically affect unit trusts. Finally, in Part 3 of our three Part series, we will explore the implications arising from the intended extension of the conveyance duty head to apply to chattels conveyed with other dutiable property.

These changes are effective from 1 January 2004.

Put and Call options

Conveyance duty will now be imposed on simultaneous put and call options as if they were a contract to purchase the property. However, put and call options will not be subject to conveyance duty where:

1. they are for the purposes of obtaining finance or making other financial arrangements; or
2. they are contained in a Buy/ Sell Agreement where the put and call options are not exercisable except on the occurrence of a specified event (eg death TPD of a proprietor) that would cause the continuing proprietors of a business to seek to acquire the interest of another proprietor.

“Farm-in” arrangements

Mining “farm-in” arrangements will now only be assessed with nominal duty. A “farm-in” arrangement is one where someone agrees to contribute an amount towards the future exploration and development costs of a mining tenement, in order to earn an “interest” in the tenement, with the “interest” being transferred after the amount has been expended.

Land-Rich Provisions

The application of the land-rich provisions of the Act will be significantly widened by reducing the threshold at which a company is considered to be land rich from 80% to 60%. Although, stamp duty will no longer be imposed on the transfer of shares in private companies (nor public companies), if the private company is land rich under the new rules, the transfer of shares in that company will be subject to stamp duty.

Corporate Reconstruction Relief

The corporate reconstruction relief provisions contained in the Act have been widened to ensure that the existing relief provisions:

1. apply to motor vehicle licence transfers; and
2. allow relief from stamp duty for direct property transfers between certain (sister) subsidiaries of holding companies.

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Intellectual Property

The transfer of intellectual property in conjunction with another business asset is now included in the conveyance duty base. Special rules have been introduced that provide an apportionment method for calculating the value of such assets that will be dutiable in Western Australia where the business operates in Western Australia and elsewhere.

Undocumented Transfer of Goodwill

Undocumented transfers of goodwill will now be included in the conveyance duty base.

Extended Application of Duty on Undocumented Transfers

Section 31B of the Stamp Act has been amended so that it applies to all changes in beneficial ownership, regardless of how a transaction is structured. Section 31B will now apply to an acquisition of the beneficial ownership of certain property and will extend to apply to changes in beneficial ownership arising through court orders, schemes of arrangement, mergers and statutory vestings. Specific provisions have been included in relation to mergers under international laws to ensure that section 31B applies to these forms of acquisitions.

Substituting Purchaser

Stamp duty relief has been extended to apply where a purchaser is substituted in the period between entering into an agreement or contract (e.g. an offer and acceptance) and the final conveyance or transfer (e.g. nominee arrangements). The amendments seek to extend the circumstances in which relief is provided to include situations where:

1. substituted purchaser is a shelf company yet to be purchased;
2. the purchaser substitutes the members, or a custodian or trustee for the members, of a single managed investment scheme; or
3. substituted purchaser is related to the original purchaser.

First Home Buyers Rebate

The property value thresholds for the \$500 conveyance duty rebate for first home buyers have been increased to the following amounts:

1. from \$135,000 to \$185,000 for established homes;
2. from \$202,500 to \$277,500 for established homes north of the 26th parallel; and
3. from \$2,000 to \$72,000 for vacant land.

Reassess Conveyance Duty where Contingent Amounts Payable

The Commissioner will now have the ability to reassess conveyance duty where a lower contingent amount is ultimately realised within 5 years of the execution of an instrument. Under the legislation prior to 1 January 2004, if a contract for a conveyance included contingency provisions (i.e. allowance for payment of a different amount depending on a contingent event), stamp duty was payable on the highest possible consideration, whether or not that turned out to be the ultimate consideration.

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