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STATE TAXES ON THE DECLINE?

The NSW Government has previously published a timetable for the abolition of certain business and other taxes which were earmarked for abolition as a result of the introduction of the GST in 2000. These are mainly various forms of stamp duties including hire of goods duty, lease duty, unlisted marketable securities duty, mortgage duty and duty imposed on the transfer of certain business assets other than land.

Two of these taxes are now either progressively being abolished (in the case of Mortgage duty) or due for abolition shortly (in the case of Lease duty).

Abolition of Mortgage Duty

Mortgage duty is being abolished in three stages commencing on 1 September 2007 with the abolition of mortgage duty in respect of a mortgage if the mortgage secures an advance or advances made for the purpose of owner occupied housing, and no other advance.

The exemption applying from 1 September 2007 is in respect of a mortgage only if the borrower under the mortgage is a natural person (or if there is more than one borrower, each of those borrowers is a natural person). To be eligible for the exemption, the definition of "owner occupied housing" must be satisfied. It is important, therefore, that persons having dealings

in relation to Mortgage Duty be aware of that definition and the extent to which it applies to certain types of financing arrangements.

In particular, to satisfy the OSR that an advance falls within the exemption, there will need to be evidence of matters such as:

1. The date and amount of the advance.
2. The identity of the borrower.
3. The property description of the security property.
4. The predominant purpose of the advance.

The second stage of the abolition of mortgage duty takes effect on and from 1 July 2008 where mortgage duty is not chargeable if the mortgage secures an advance or advances made for the purpose of investment housing and no other advances. Again, borrowers must be natural persons.

Finally, mortgage duty is fully abolished with effect from 1 July 2009 .

Abolition Of Lease Duty In New South Wales

Lease Duty is abolished for leases first executed on or after 1 January 2008. "Lease" means a lease of land in New South Wales, or an agreement for a lease of land in New South Wales. Importantly, the definition of lease for NSW duty purposes includes licences to



occupy or use land. Currently, lease duty is imposed in New South Wales at the rate of 0.35% of the total cost of the lease, (as defined).

Duty can not only be a significant cost to business in the form of the duty itself, but also an administrative burden which must be satisfied because leases in New South Wales are not able to be registered on titles to land by the NSW Land and Property Information Service unless the NSW Lease Duty has first been paid.

Importantly however, NSW lease duty will continue to be payable on any premium paid or payable in respect of a lease even for a lease first executed on or after 1 January 2008.

Businesses should obtain legal advice in this area if you are contemplating entering into a lease of land in New South Wales in the next couple of months, either as a lessor or a lessee.

If you would like more information about the abolition of mortgage duty, please contact Simon Cotterill at Rankin Nathan Lawyers on 1300 727 813.



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