

TASMANIA

DUTIES AMENDMENT BILL 2022

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DUTIES AMENDMENT BILL 2022

*(Brought in by the Treasurer, the Honourable Michael Darrel
Joseph Ferguson)*

A BILL FOR

An Act to amend the *Duties Act 2001*

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Duties Amendment Act 2022*.

2. Commencement

- (1) Except as provided by this section, this Act commences on the day on which this Act receives the Royal Assent.
- (2) Part 2 is taken to have commenced on 1 July 2018.
- (3) Part 3 commences on 1 July 2022.

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Part 2 – Duties Act 2001 Amended

PART 2 – DUTIES ACT 2001 AMENDED

3. Principal Act

In this Part, the *Duties Act 2001** is referred to as the Principal Act.

4. Section 4B amended (Meaning of foreign trust)

Section 4B of the Principal Act is amended by inserting after subsection (3) the following subsections:

- (4) If a trust is a self managed superannuation fund, within the meaning of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth, then, for the purposes of subsection (1), a member of the fund is taken to have a beneficial interest in the capital of the fund, to be calculated as the amount to which the member would be entitled on transfer of the member's membership to another self managed superannuation fund.
- (5) For the purposes of subsection (4), a reference to a member of a superannuation fund includes a reference to a beneficiary of the fund.
- (6) If a trust is established by a testamentary instrument, then, for the purposes of

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subsection (1), a beneficiary of the trust is taken to have a beneficial interest in the capital of the trust, to be calculated as the amount to which the beneficiary would be entitled were the estate fully administered.

5. Section 30A amended (Meaning of residential property)

Section 30A of the Principal Act is amended as follows:

- (a) by renumbering the section as subsection (1);
- (b) by inserting the following subsections after subsection (1):
 - (2) Despite subsection (1), residential property does not include land on which a building is being lawfully used solely, or primarily, as one of the following premises:
 - (a) a commercial establishment whose primary purpose is to offer short-term accommodation, or lodging, to persons for consideration;
 - (b) a hostel or boarding house;

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- (c) premises that are primarily used, to provide residential accommodation, by or on behalf of –
 - (i) a school, within the meaning of the *Education Act 2016*; or
 - (ii) TasTAFE, within the meaning of the *Education Act 2016*; or
 - (iii) an institution within the meaning of the *Higher Education Funding Act 1988* of the Commonwealth;
 - (d) a residential care service, within the meaning of the *Land Tax Act 2000*;
 - (e) a retirement village, within the meaning of the *Land Tax Act 2000*.
- (3) For the purposes of subsection (2), premises that are short stay premises, within the meaning of the *Short Stay*

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Accommodation Act 2019, are not commercial establishments.

6. Section 30DA inserted

After section 30D of the Principal Act, the following section is inserted in Part 3A:

30DA. Reassessment of duty if premises cease to be residential premises

- (1) This section applies to the transferee for a dutiable transaction in relation to dutiable property if –
 - (a) at the time of the dutiable transaction, the dutiable property was dutiable property to which subsection (2) applies; and
 - (b) within 12 months after the dutiable transaction, the dutiable property ceases to be residential property because premises situated on the dutiable property become premises to which section 30A(2) relates.
- (2) This subsection applies to dutiable property at the time of a dutiable transaction if, at that time, the dutiable property was residential property only by reason that a building on the dutiable property that had, within the 12-month period before that time, been used solely, or primarily, as premises to which

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section 30A(2) relates, was not being used solely, or primarily, as such premises.

- (3) A transferee to whom this section applies may apply to the Commissioner, in writing, to reassess the duty payable under this Part on a dutiable transaction in relation to dutiable property as if, at the time at which the dutiable transaction occurred, the dutiable property was not residential property because premises situated on the dutiable property were premises to which section 30A(2) applies.
- (4) A transferee may only apply for a reassessment under subsection (3) if the transferee has not transferred all, or any part, of the property that was the subject of the dutiable transaction.
- (5) If the Commissioner receives an application under subsection (3) in respect of a dutiable transaction in relation to dutiable property and the Commissioner is satisfied that the transferee is a transferee to whom this section applies, the Commissioner must –
 - (a) reassess the duty payable under this Part on the dutiable transaction as if, at the time at which the dutiable transaction occurred, the dutiable property was not residential property

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because premises situated on the dutiable property were premises to which section 30A(2) applies; and

- (b) refund any amount of duty paid in respect of the dutiable transaction that is in excess of the amount so reassessed.
- (6) If dutiable property to which this section applies becomes residential property again within the 3-year period after the relevant dutiable transaction, section 30D(2), (3), (4) and (6) apply to the dutiable transaction as if a reference to subsection (1)(c) were a reference to this subsection.

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Part 3 – Duties Act 2001 Further Amended

PART 3 – DUTIES ACT 2001 FURTHER AMENDED

7. Principal Act

In this Part, the *Duties Act 2001** is referred to as the Principal Act.

8. Section 30AA inserted

After section 30A of the Principal Act, the following section is inserted in Part 3A:

30AA. Determinations in relation to use of land

- (1) The Commissioner may make a determination that, for the purposes of section 30, land is, or will be, capable of being lawfully used primarily for primary production purposes if the Commissioner is satisfied, on reasonable grounds, that at least 50% of the land is, or will be, capable of being used for such a purpose, whether or not the land is, or will be, capable of use for another purpose.
- (2) The Commissioner may make a determination that, for the purposes of section 30A, land is, or will be, capable of being lawfully used primarily for residential purposes if the Commissioner is satisfied, on reasonable grounds, that at least 50% of the land is, or will be, capable of being used for such a purpose,

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whether or not the land is, or will be,
capable of use for another purpose.

9. Section 30HC inserted

After section 30HB of the Principal Act, the
following section is inserted in Part 3A:

**30HC. Reassessment of duty for certain developers
of property**

(1) In this section –

occupancy permit has the same
meaning as in the *Building Act*
2016;

relevant dwelling means a dwelling
where –

(a) the dwelling is situated on
land, within Tasmania,
that is acquired by a
person (the *relevant*
person) on or after
1 July 2022; and

(b) on or after that date –

(i) the laying of the
foundations of the
dwelling occurred;
or

(ii) if no foundations
are to be laid in
respect of the

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dwelling, an
equivalent act
determined by the
Commissioner
occurred in
respect of the
dwelling; and

- (c) the completed dwelling is capable of being lawfully used solely, or primarily, for residential purposes; and
- (d) an occupancy permit is first issued, to the relevant person, in respect of the dwelling within 3 years after the relevant person acquired the land on which the dwelling is situated;

Tasmania-based foreign developer, in respect of a financial year, means a foreign person who operates a business –

- (a) that acquires land within Tasmania with the aim of developing the land; and
- (b) of which at least 80% of the wages of management and administration staff of the business are taxable

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wages within the meaning of the *Payroll Tax Act 2008*, in that year; and

- (c) that operates in Tasmania for the majority of its business hours in that year.
- (2) A person may apply to the Commissioner, in writing, to reassess the duty payable by the person under this Part, for a specified financial year, in relation to a dutiable transaction consisting of an acquisition of land, if –
- (a) the person is a Tasmania-based foreign developer in respect of the financial year; and
 - (b) the person, or the business by virtue of which the person is a Tasmania-based foreign developer for the purposes of this section, has –
 - (i) been issued with occupancy permits, in that year, in respect of at least 50 relevant dwellings on the land; and
 - (ii) paid duty under this Part in respect of the dutiable transaction consisting of the acquisition of the land on which one or more of

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those relevant dwellings
are situated.

- (3) If the Commissioner receives an application under subsection (2) from a person in respect of a financial year, in relation to a dutiable transaction consisting of an acquisition of land, the Commissioner must –
- (a) reassess the duty payable under this Part by the person, in respect of the dutiable transaction, as at the time at which the transaction was made, as if the person were not a foreign person; and
 - (b) refund any amount of duty paid by the person under this Part, in respect of the dutiable transaction, that is in excess of the amount so reassessed in relation to that dutiable transaction.
- (4) If a Tasmania-based foreign developer has paid duty under this Part in relation to a dutiable transaction consisting of an acquisition of a parcel of land and a relevant dwelling is situated on a portion, of that land, that –
- (a) is recorded in a single certificate of title within the meaning of the *Land Tax Act 2000*; or

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(b) is a lot or area of common property, of a strata scheme within the meaning of the *Strata Titles Act 1998*; or

(c) was created by the division of the land in a manner that is identified, or recognised, in another way –

the Commissioner is to reassess, under subsection (3), in accordance with subsection (5), the amount of duty payable.

(5) The reassessment under subsection (3) of duty payable in respect of a dutiable transaction consisting of an acquisition of land is, if subsection (4) applies in relation to one or more portions of the land, to be determined by –

(a) reassessing the duty payable under this Part in respect of all of the land of which the portion of land is, or the portions of land are, part; and

(b) calculating the percentage, of all of the land, that consists of the portion of land or portions of land; and

(c) reducing the amount of duty payable in respect of the land under this Part by the percentage calculated under paragraph (b) for

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the portion of land or the portions
of land.

- (6) The Commissioner may only refund, under subsection (3), an amount of duty paid by a Tasmania-based foreign developer if the Commissioner is satisfied that the developer complied with all of the relevant requirements of the Foreign Investment Review Board, established by the Commonwealth Government, that apply in respect of the acquisition of the land for which duty is being reassessed under subsection (3).

10. Section 30M amended (Circumstances in which transferee not a foreign person)

Section 30M of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “where” and substituting “in which”;
- (b) by omitting subsection (2) and substituting the following subsection:
- (2) While the circumstances published by the Commissioner under subsection (1), and in force in accordance with subsection (3), apply in relation to a transferee, the transferee is not a foreign person for the purposes of this Part.

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- (c) by omitting from subsection (4)(a) “a transferee meets the circumstances, published and in force under this section,” and substituting “the circumstances published by the Commissioner under subsection (1), and in force in accordance with subsection (3), apply in relation to a transferee”;
- (d) by omitting from subsection (5) “the transferee meets the circumstances published and in force under this section” and substituting “the circumstances published by the Commissioner under subsection (1), and in force in accordance with subsection (3), apply in relation to a transferee”.

11. Section 57B inserted

After section 57AA of the Principal Act, the following section is inserted in Part 6:

57B. Exemptions – certain financing arrangements

- (1) No duty is chargeable under this Chapter in respect of a transaction, relating to dutiable property, that is a second transaction within the meaning of subsection (2) or (3).
- (2) This subsection applies if a natural person and an authorised deposit-taking

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institution enter into an agreement where –

- (a) the natural person, acting as agent for the authorised deposit-taking institution, and a third party enter into an agreement for sale in relation to real property (the *relevant property*); and
 - (b) in accordance with the agreement for sale referred to in paragraph (a), the relevant property is transferred from the third party to the authorised deposit-taking institution (the *first transaction*); and
 - (c) at the same time as the first transaction, the authorised deposit-taking institution and the natural person enter into an agreement for sale in relation to the relevant property; and
 - (d) in accordance with the agreement for sale referred to in paragraph (c), the authorised deposit-taking institution transfers the relevant property to the natural person for consideration (the *second transaction*).
- (3) This subsection applies if a natural person and an authorised deposit-taking

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institution enter into an agreement where –

- (a) the natural person, acting as agent for the authorised deposit-taking institution, and a third party enter into an agreement for sale in relation to real property (the *relevant property*); and
- (b) in accordance with the agreement for sale referred to in paragraph (a), the relevant property is transferred from the third party to both the authorised deposit-taking institution and the natural person (the *first transaction*) in the percentages specified in the agreement; and
- (c) at the same time as the first transaction, the authorised deposit-taking institution and the natural person enter into an agreement where the natural person is to purchase such percentage of the relevant property as is owned by the authorised deposit-taking institution; and
- (d) in accordance with the agreement referred to in paragraph (c), the authorised deposit-taking institution transfers, in one or more transactions, the relevant

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property to the natural person for consideration (the *second transaction*).

- (4) No duty is chargeable under this Chapter in respect of a transaction, relating to dutiable property, that is a first transaction, or a second transaction, within the meaning of subsection (5).
- (5) This subsection applies if –
- (a) a natural person and an authorised deposit-taking institution enter into any of the agreements referred to in subsection (2) or (3) (the *relevant agreement*); and
 - (b) the authorised deposit-taking institution transfers the dutiable property to another authorised deposit-taking institution (the *first transaction*) on the condition that the other authorised deposit-taking institution complies with the terms of the relevant agreement; and
 - (c) in accordance with the relevant agreement, the other authorised deposit-taking institution transfers the dutiable property to the natural person (the *second transaction*).

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- (6) No duty is chargeable under this Chapter in respect of a transfer (the *relevant transfer*), of an interest, held by an authorised deposit-taking institution in accordance with an agreement referred to in subsection (2), (3) or (5), if –
- (a) before the agreement has been completed, a natural person, referred to in subsection (2), (3) or (5), respectively, who held an interest under the agreement, has died; and
 - (b) the relevant transfer is made to another natural person, to whom the interest, under the agreement, of the natural person has been transferred by virtue of –
 - (i) a testamentary gift; or
 - (ii) the right of survivorship; or
 - (iii) the *Administration and Probate Act 1935*.

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Part 4 – Concluding Provision

PART 4 – CONCLUDING PROVISION

12. Repeal of Act

This Act is repealed on the first anniversary of the day on which the last uncommenced provision of this Act commenced.