

TASMANIA

DUTIES AMENDMENT BILL 2009

CONTENTS

1. Short title
2. Commencement
3. Principal Act
4. Section 6 amended (Imposition of duty on certain transactions concerning dutiable property)
5. Section 7 amended (Imposition of duty on dutiable transactions that are not transfers)
6. Section 10 substituted
 10. When does a liability for duty arise?
7. Section 16 substituted
 16. No double duty
8. Section 19 amended (What is the consideration for the transfer of dutiable property?)
9. Section 20 amended (What is the unencumbered value of dutiable property?)
10. Section 22 amended (Aggregation of dutiable transactions)
11. Section 27 substituted
 27. Effect of alteration in purchase price
12. Sections 32 and 33 repealed
13. Section 34 substituted
 34. Transfer arising from mortgage of land
14. Chapter 2, Part 4A inserted
 - PART 4A – Transactions Treated as Subsales of Land

Division 1 – Introduction

36A. Definitions

Division 2 – Transfers involving additional consideration

36B. Application of Division

36C. How duty is charged on transfer

36D. Dutiable value of transactions

36E. When does liability to duty arise?

36F. Who is liable to pay duty?

36G. Exemptions and concessions

Division 3 – Miscellaneous

36H. Provisions for determining consideration

36I. Parties required to provide information to
Commissioner

15. Section 54 repealed
16. Section 91 amended (Application of Act to put and call option,
&c.)
17. Section 259B inserted
 - 259B. Transitional provisions consequent on *Duties
Amendment Act 2009*

DUTIES AMENDMENT BILL 2009

(Brought in by the Premier, the Honourable David John Bartlett)

A BILL FOR

An Act to amend the *Duties Act 2001*

Be it enacted by His 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:

1. Short title

This Act may be cited as the *Duties Amendment Act 2009*.

2. Commencement

This Act is taken to have commenced on 1 July 2009.

3. Principal Act

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

*No. 15 of 2001

Duties Amendment Act 2009
Act No. of

s. 4

4. Section 6 amended (Imposition of duty on certain transactions concerning dutiable property)

Section 6(1)(b) of the Principal Act is amended as follows:

- (a) by omitting subparagraph (i);
- (b) by omitting from subparagraph (v) “Division 6 of Part 2 of the *Strata Titles Act 1998*; and” and substituting “Division 6 of Part 2 of the *Strata Titles Act 1998*.”;
- (c) by inserting the following subparagraph after subparagraph (v):
 - (vi) any other transaction that results in a change of beneficial ownership of dutiable property; and

5. Section 7 amended (Imposition of duty on dutiable transactions that are not transfers)

Section 7(2) of the Principal Act is amended as follows:

- (a) by omitting the following item from the table:

agreement for sale or transfer	the property agreed to be sold or transferred	the purchaser or transferee	when the agreement is entered into
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Duties Amendment Act 2009
Act No. of

s. 6

(b) by inserting in the table after

giving, granting or issue of licence	the licence	the person to whom the licence is issued	when the licence is issued
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the following item:

any other transaction that results in a change in beneficial ownership of dutiabale property	the property the beneficial ownership of which is changed (but only to the extent of the change in beneficial ownership)	the person who obtains the beneficial ownership or whose beneficial ownership is increased	when beneficial ownership changes
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6. Section 10 substituted

Section 10 of the Principal Act is repealed and
the following section is substituted:

10. When does a liability for duty arise?

A liability for duty charged by this
Chapter arises when a dutiable
transaction occurs.

7. Section 16 substituted

Section 16 of the Principal Act is repealed and
the following section is substituted:

16. No double duty

- (1) If a dutiable transaction is effected by more than one instrument, one instrument is to be stamped with the duty payable on the dutiable transaction and each other instrument is to be denoted with a statement of the amount, and date of payment, of the duty.
- (2) If a dutiable transaction is effected electronically (in accordance with the *Electronic Transactions Act 2000*) in whole or in part and duty has been paid, no further duty is payable in respect of an instrument or electronic transaction that forms part of the dutiable transaction.
- (3) No duty is chargeable under this Chapter on a transfer to a trustee of dutiable property subject to a declaration of trust if *ad valorem* duty has been paid on the declaration of trust in respect of the same dutiable property.
- (4) No duty is chargeable under this Chapter on a declaration of trust that declares the same trusts as those upon and subject to which the same dutiable property was transferred to the person declaring the trust if *ad valorem* duty has been paid on the transfer.

8. Section 19 amended (What is the consideration for the transfer of dutiable property?)

Section 19 of the Principal Act is amended by omitting subsections (2) and (3).

9. Section 20 amended (What is the unencumbered value of dutiable property?)

Section 20 of the Principal Act is amended as follows:

(a) by omitting subsection (1) and substituting the following subsection:

(1) The unencumbered value of dutiable property is the amount for which the property might reasonably have been sold in the open market or as calculated by sections 247 and 248(2) and (2A), as may be appropriate –

(a) in the case of a transfer of dutiable property on a sale of the property, at the time the agreement for sale was entered into; or

(b) in any other case, at the time the dutiable transaction occurred –

free from any encumbrance to which the property was subject at that time.

Duties Amendment Act 2009
Act No. of

s. 10

(b) by omitting subsection (2).

10. Section 22 amended (Aggregation of dutiable transactions)

Section 22(1) of the Principal Act is amended by omitting paragraph (a) and substituting the following paragraph:

(a) either –

(i) in the case of dutiable transactions that are transfers on a sale of an item or part of dutiable property, the agreements for sale are entered into within 12 months; or

(ii) in any other case, the dutiable transactions occur within 12 months; and

11. Section 27 substituted

Section 27 of the Principal Act is repealed and the following section is substituted:

27. Effect of alteration in purchase price

If, after an agreement for the sale of dutiable property is entered into and before the property is transferred –

(a) the consideration under the agreement is reduced and the

reduced consideration is not less than the unencumbered value of the dutiable property when the consideration was reduced; or

- (b) the consideration under the agreement is reduced because the parties have agreed not to transfer some of the dutiable property previously agreed to be transferred and the reduced consideration is not less than the unencumbered value of the dutiable property that remained to be transferred when the consideration was reduced; or
- (c) the consideration under the agreement is increased and the dutiable value when the consideration was increased is greater than the dutiable value when the agreement was entered into –

the Commissioner must assess or reassess the liability to duty of the transfer in accordance with the change in the consideration.

12. Sections 32 and 33 repealed

Sections 32 and 33 of the Principal Act are repealed.

Duties Amendment Act 2009
Act No. of

s. 13

13. Section 34 substituted

Section 34 of the Principal Act is repealed and the following section is substituted:

34. Transfer arising from mortgage of land

If a mortgage also operates as a conveyance of the equity, right of redemption or reversion of the property comprised in the instrument to or in trust for, and according to the direction of, the purchaser, it is chargeable with duty as a transfer under this Chapter, but, if the equity or right of redemption or reversion is thereby conveyed or limited in any other manner, it is not chargeable with duty under this Chapter.

14. Chapter 2, Part 4A inserted

After section 36 of the Principal Act, the following Part is inserted in Chapter 2:

**PART 4A – TRANSACTIONS TREATED AS
SUBSALES OF LAND**

Division 1 – Introduction

36A. Definitions

(1) In this Part –

“associate” of a person means an associated person of that person;

“consideration” means the amount of a monetary consideration or the value of a non-monetary consideration;

“first purchaser” –

- (a) for the purposes of Division 2, has the meaning given in section 36B(1)(a); and
- (b) for the purposes of Division 3, has the meaning given in section 36I(1)(a);

“sale agreement” has the meaning given in section 36B(1)(a);

“subsequent purchaser” has the meaning given in section 36B(1)(b);

“subsequent transaction” has the meaning given in section 36B(3);

“transfer right” has the meaning given in section 36B(1)(b);

“vendor” –

- (a) for the purposes of Division 2, has the meaning given in section 36B(1)(a); and

Duties Amendment Act 2009
Act No. of

s. 14

(b) for the purposes of Division 3, has the meaning given in section 36I(1)(a).

(2) For the purposes of this Part –

- (a) if a person who has a transfer right obtains an increased transfer right by a subsequent transaction, the person is a subsequent purchaser in relation to that subsequent transaction only to the extent of the increase in the transfer right; and
- (b) if, by a subsequent transaction, a person retains a transfer right and another person obtains a transfer right, that other person is a subsequent purchaser in relation to that subsequent transaction only to the extent of the transfer right obtained by that other person.

Division 2 – Transfers involving additional consideration

36B. Application of Division

- (1) This Division applies to a transfer of dutiable property referred to in section 9 if –
 - (a) a person (the “**vendor**”) enters into an agreement (the “**sale**”

- agreement**) to sell or transfer the property to another person (the **“first purchaser”**); and
- (b) any of the following persons (a **“subsequent purchaser”**) obtains the right (a **“transfer right”**) to have the property or any part of it transferred, on completion of the sale agreement, to the subsequent purchaser:
- (i) a person other than the first purchaser;
 - (ii) the first purchaser and a person other than the first purchaser;
 - (iii) if there is more than one first purchaser, one or more of the first purchasers in different proportions from those in the sale agreement; and
- (c) a subsequent purchaser or an associate of the subsequent purchaser gives or agrees to give additional consideration in order for the subsequent purchaser to obtain the transfer right; and
- (d) the vendor transfers the property or any part of it to a subsequent purchaser.

Duties Amendment Act 2009
Act No. of

s. 14

- (2) It is immaterial whether a subsequent purchaser obtains a transfer right –
- (a) by way of an assignment, nomination, novation or otherwise; or
 - (b) from the first purchaser or from another subsequent purchaser.
- (3) Each assignment, nomination, novation or other arrangement by which a subsequent purchaser obtains a transfer right is called a “**subsequent transaction**”.
- (4) In this section –
- “**additional consideration**” for a transfer right means any consideration given or agreed to be given by a subsequent purchaser or an associate of the subsequent purchaser in order for the subsequent purchaser to obtain the transfer right and –
 - (a) if the subsequent purchaser obtained the transfer right from the first purchaser, the additional consideration is the amount that exceeds the consideration given or agreed to be given to the vendor by the first purchaser under the sale agreement in respect of the property that is the subject of the transfer right; or

- (b) if the subsequent purchaser obtained the transfer right from another subsequent purchaser, the additional consideration is the amount that exceeds the consideration given or agreed to be given by that other subsequent purchaser or an associate of that other subsequent purchaser in order for that other subsequent purchaser to obtain a transfer right, to the extent that the consideration relates to the first-mentioned transfer right.

36C. How duty is charged on transfer

- (1) Duty on a transfer to which this Division applies is not charged in respect of the transfer from the vendor to the transferee, but is charged separately and distinctly on –
 - (a) the dutiable value of the sale agreement as if it had been completed by the first purchaser; and
 - (b) the dutiable value of the subsequent transaction by which the final subsequent purchaser obtained the transfer right; and
 - (c) if there were any other subsequent transactions, the

Duties Amendment Act 2009
Act No. of

s. 14

dutiable value of each of those transactions.

- (2) Duty is charged at the rate set out in Part 3 on the dutiable value referred to in section 36D.
- (3) If a subsequent purchaser or an associate of a subsequent purchaser has not given or agreed to give additional consideration in order to obtain a transfer right and –
 - (a) if the subsequent purchaser obtained the transfer right from the first purchaser, duty is not chargeable under this Division on the sale agreement to the extent of the transfer right obtained by the subsequent purchaser; or
 - (b) in the case of a subsequent transaction referred to in subsection (1)(c), duty is not chargeable under this Division on the subsequent transaction, by which the subsequent purchaser obtained the transfer right, to the extent of the transfer right obtained by the subsequent purchaser.
- (4) Subsection (3)(b) applies only where a subsequent purchaser obtained a transfer right from another subsequent purchaser.

36D. Dutiable value of transactions

- (1) For the purposes of this Division, the dutiable value of the sale agreement referred to in section 36C(1)(a) is the greater of –
 - (a) the consideration given or agreed to be given under the sale agreement; and
 - (b) the amount for which the property might reasonably have been sold if it had been sold, free from encumbrances, in the open market on the date on which the sale agreement was entered into, or as calculated by sections 247 and 248(2) and (2A), as may be appropriate.
- (2) For the purposes of this Division, the dutiable value of a subsequent transaction referred to in section 36C(1)(b) or (c) is the greater of the following:
 - (a) the consideration given or agreed to be given by the subsequent purchaser or an associate of the subsequent purchaser in order for the subsequent purchaser to obtain the transfer right under the transaction;
 - (b) the amount for which the property might reasonably have

Duties Amendment Act 2009
Act No. of

s. 14

been sold if it had been sold, free from encumbrances, in the open market on the date on which the sale agreement was entered into or as calculated by sections 247 and 248(2) and (2A), as may be appropriate.

36E. When does liability to duty arise?

A liability for duty charged by this Division arises when the transfer occurs.

36F. Who is liable to pay duty?

- (1) Duty charged by this Division is payable –
 - (a) in the case of duty referred to in section 36C(1)(a), by the first purchaser; or
 - (b) in the case of duty referred to in section 36C(1)(b) or (c), by the subsequent purchaser who obtains a transfer right under the relevant subsequent transaction.
- (2) A transferee who pays duty payable by another person under this Division may recover the amount of that duty as a debt due to the transferee from the other person.

36G. Exemptions and concessions

- (1) Duty is not chargeable under section 36C(1)(a) if the sale agreement would be exempt from duty under this Chapter if it were a transfer of dutiable property to the first purchaser.
- (2) If the first purchaser would be entitled to a concession under this Chapter if the sale agreement were a transfer to the first purchaser, the first purchaser is entitled to that concession in respect of duty charged under section 36C(1)(a).
- (3) Duty is not chargeable under section 36C(1)(b) or (c) if the subsequent transaction would be exempt from duty under this Chapter if it were a transfer of dutiable property to the subsequent purchaser who obtains the transfer right under the subsequent transaction.
- (4) If a subsequent purchaser would be entitled to a concession under this Chapter if the subsequent transaction were a transfer to the subsequent purchaser, the subsequent purchaser is entitled to that concession in respect of duty charged under section 36C(1)(b) or (c).

Division 3 – Miscellaneous

36H. Provisions for determining consideration

- (1) This section applies for the purpose of determining in Division 2 –
 - (a) the consideration given or agreed to be given under a sale agreement; or
 - (b) the consideration given or agreed to be given to obtain a transfer right under a subsequent transaction.
- (2) The consideration is taken to include the amount or value of all encumbrances, whether certain or contingent, subject to which the property would be transferred in accordance with, or as contemplated by, the relevant transaction.

36I. Parties required to provide information to Commissioner

- (1) This section applies if –
 - (a) a person (the “**vendor**”) enters into an agreement to sell or transfer any dutiable property referred to in section 9 to another person (the “**first purchaser**”), or an option is granted in respect of

that property to or by the first purchaser; and

- (b) the transfer executed by the vendor transfers the property or any part of it not to the first purchaser but to another person (“**the transferee**”).
- (2) The transferee must give the Commissioner a statutory declaration in the approved form, containing the details required by the Commissioner for the purposes of determining any liability of the transferee or any other person to duty under this Chapter.
 - (3) If the Commissioner considers it necessary for the purposes of determining liability to duty under this Chapter, the Commissioner may require any person he or she reasonably believes may be liable to duty to give the Commissioner a statutory declaration in the approved form, containing the details required by the Commissioner.

15. Section 54 repealed

Section 54 of the Principal Act is repealed.

Duties Amendment Act 2009
Act No. of

s. 16

16. Section 91 amended (Application of Act to put and call option, &c.)

Section 91 of the Principal Act is amended as follows:

- (a) by omitting “an agreement for sale” and substituting “a transfer”;
- (b) by omitting “section 6(1)(b)(i)” and substituting “section 6(1)(a)”;
- (c) by omitting paragraph (b) and substituting the following paragraph:
 - (b) the dutiable property which is the subject of the call option and the put option is taken to be property which is transferred by that transfer of dutiable property; and
- (d) by omitting from paragraph (c) “agreement for sale” and substituting “transfer”.

17. Section 259B inserted

After section 259A of the Principal Act, the following section is inserted in Part 3:

259B. Transitional provisions consequent on *Duties Amendment Act 2009*

Any obligation to pay or refund duty under this Act immediately before the commencement of the *Duties*

Duties Amendment Act 2009
Act No. of

s. 17

Amendment Act 2009 continues on and after that commencement until it is discharged in accordance with the provisions of this Act as in force immediately before the commencement of the *Duties Amendment Act 2009*.