

CLAUSE NOTES

Duties Amendment Bill 2022

Part 1 - Preliminary

- Clause 1 This Act may be cited as the *Duties Amendment Act 2022*.
- Clause 2 Part 2 of this Act is taken to have commenced on 1 July 2018. Part 3 of the Act commences on 1 July 2022. The remaining provisions commence on the day on which the Act receives Royal Assent.

Part 2 - Duties Act 2001 Amended

- Clause 3 In this Part, the *Duties Act 2001* is referred to as the Principal Act.
- Clause 4 Inserts subsections (4), (5) and (6) into section 4B of the Principal Act to clarify that:
- if a trust is a self-managed superannuation fund, 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;
 - for the purposes of a self-managed superannuation fund, a reference to a member of a superannuation fund includes a reference to a beneficiary of the fund; and
 - if a trust is established by a testamentary instrument then, 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.
- Clause 5 Amends section 30A of the Principal Act to clarify that the definition of residential property does not include short-term accommodation, hostels or boarding houses, certain student accommodation, residential care services, and retirement villages. It also clarifies that short stay premises within the meaning of the *Short Stay Accommodation Act 2019* are not commercial establishments for the purposes of this section.
- Clause 6 Inserts section 30DA into Part 3A of the Principal Act to provide that a transferee, with a premises listed in section 30A(2) that is not being "used" at the time of the dutiable transaction, may apply to the Commissioner for a reassessment of additional duty paid under Part 3A if:
- at the time of the dutiable transaction the property had been a premises to which section 30DA(2) applies; and
 - within 12 months after the dutiable transaction the premises ceases to be residential property because it becomes premises to which section 30A(2) relates.

Subsection (2) provides that this section applies to property that has a building that had been used, within the 12 month period before the transaction, solely or primarily for purposes to which section 30A(2) relates, but was not being used for those purposes at the time of the transaction.

Subsection (3) provides that a transferee to whom this section applies may apply to the Commissioner, in writing, to reassess the duty payable under Part 3A of the Principal Act in relation to property as if at the time of the dutiable transaction, the property was not residential property because it was a premises to which section 30A(2) applies.

Subsection (4) provides that the transferee may only apply for a reassessment if they have not transferred any of the relevant property.

Subsection (5) provides that, if the Commissioner receives such an application, and is satisfied that this section does apply to the transferee, the Commissioner must reassess the duty payable under Part 3A of the Principal Act as if, at the time of the dutiable transaction, the property was not residential property because premises to which section 30A(2) applies were situated on the property, and refund any amount of additional duty paid that is in excess of the reassessed amount.

Subsection (6) provides that if a premises becomes residential property again within the three year period after the dutiable transaction, the Commissioner may reassess the dutiable transaction as if the premises was residential property under the relevant provisions of section 30D (Duty in respect of change in land to residential property)

Part 3 - Duties Act 2001 Further Amended

Clause 7 In this Part, the *Duties Act 2001* is referred to as the Principal Act.

Clause 8 Inserts section 30AA into Part 3 of the Principal Act to provide that the Commissioner may make a determination that land is (or will be) capable of being lawfully used primarily for primary production purposes, if satisfied that at least 50 per cent of the land is (or will be) capable of being used for primary production purposes, regardless of whether it is also capable of being used for another purpose.

This section also provides that the Commissioner may make a determination that land is (or will be) capable of being lawfully used primarily for residential purposes, if satisfied that at least 50 per cent of the land is (or will be) capable of being used for residential purposes, regardless of whether it is also capable of being used for another purpose.

Clause 9 Inserts section 30HC into Part 3A of the Principal Act to provide that a Tasmania-based foreign developer may apply to the Commissioner for a reassessment of duty payable on the acquisition of land, for a specified financial year subject to meeting a number of criteria.

Subsection (1) defines occupancy permit, relevant dwelling, and Tasmania-based foreign developer for the purposes of this section.

Subsection (2) provides that a Tasmania-based foreign developer may apply to the Commissioner for a reassessment of duty paid under Part 3A of the Principal Act (duty paid) on land for a specified financial year if a number of criteria are met.

This includes a requirement that the business has a significant management and administration presence in Tasmania, and that it has built at least 50 residential dwellings in that financial year.

Under subsection (3), where such an application is received and the Commissioner is satisfied the applicant meets the requirements of subsection (2), the Commissioner must reassess the duty paid as if the Tasmania-based foreign developer was not a

foreign person and refund any amount of duty paid by the person that is in excess of the reassessed amount.

Subsection (4) and (5) clarify how a reassessment is to be performed where has been paid in respect to an area of land and a relevant dwelling is situated on a portion of that land.

Subsection (6) provides that the Commissioner must not provide a refund unless satisfied that the Tasmania-based foreign developer has complied with all relevant requirements of the Foreign Investment Review Board.

Clause 10 Amends section 30M of the Principal Act to replace phrases in subsections (1), (2), (4)(a) and (5) which provide that a transferee “meets circumstances” to instead provide that the relevant circumstances “apply” to the transferee.

Clause 11 Inserts section 57B into Part 6 of the Principal Act to prevent double duty applying to certain non-interest-based financing arrangements where:

- a natural person and authorised deposit-taking institution (ADI) enter into an agreement where the natural person, acting as agent for the ADI, and a third party enter into an agreement for the sale of real property. Under this agreement, the property is transferred from the third party to the ADI (the first transaction), and at the same time, the ADI and the natural person enter into an agreement for sale in relation to the property which involves the ADI transferring the relevant property to the natural person for consideration (the second transaction) (Subsection (2)); or
- a natural person and an ADI enter into an agreement where the natural person, acting as agent for the ADI, and a third party enter into an agreement for the sale of real property. Under this agreement, the property is transferred from the third party to both the ADI and the natural person (the first transaction) in the percentages specified in the agreement. At the same time as the first transaction, the ADI and the natural person enter into an agreement where the natural person is to purchase such percentage of the property as is owned by the ADI, and in accordance with that agreement, the ADI transfers, in one or more transactions, the property to the natural person for consideration (the second transaction) (Subsection (3)).

Subsection (4) provides that no duty is chargeable in respect of a transaction, relating to dutiable property, that is a first transaction, or a second transaction, within the meaning of subsection (5).

Subsection (5) provides for the transfer of dutiable property held by an ADI to another ADI where the other ADI complies with the terms of an agreement specified in subsections (2) and (3).

Likewise under subsection (6) if, before the agreement has been completed, the natural person dies, and the relevant transfer is made to another natural person to whom the interest under the agreement has been transferred by virtue of a testamentary gift, the right of survivorship or under the *Administration and Probate Act 1935* no duty is chargeable in respect of the relevant transfer.

Part 4 - Concluding provisions

Clause 12 This Act is repealed on the first anniversary of the day on which this Act commenced.

