

TASMANIA

DUTIES AMENDMENT BILL 2019

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DUTIES AMENDMENT BILL 2019

(Brought in by the Treasurer, the Honourable Peter Carl Gutwein)

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 2019*.

2. Commencement

- (1) Except as provided for by this section, the provisions of this Act commence on the day on which this Act receives the Royal Assent.
- (2) Part 3 commences on 1 April 2020.
- (3) Part 4 is taken to have commenced on 1 July 2018.

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Part 1 – Preliminary

3. Repeal of Act

This Act is repealed on the first anniversary of the day on which the last uncommenced provision of this Act commenced.

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PART 2 – DUTIES ACT 2001 AMENDED

4. Principal Act

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

5. Section 259G inserted

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

259G. Transitional provisions consequent on commencement of *Duties Amendment Act 2019*

If –

- (a) a payment was made to a transferee in respect of a dutiable transaction, for which duty was paid under Part 3A of Chapter 2, in anticipation of Part 4 of the *Duties Amendment Act 2019* receiving the Royal Assent; and
- (b) the payment is up to, or equal to, the amount of duty that the transferee would be eligible to have refunded, in respect of the dutiable transaction, after the *Duties Amendment Act 2019* received the Royal Assent –

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the payment is taken for the purposes of this Act to be a refund, to the extent of the amount of the payment, of the duty paid under Part 3A of Chapter 2 in respect of the dutiable transaction.

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PART 3 – DUTIES ACT 2001 FURTHER AMENDED

6. Principal Act

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

7. Section 30C amended (Additional duty chargeable for foreign purchasers of residential property)

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

- (a) by omitting from subsection (2) “3%” and substituting “8%”;
- (b) by inserting the following subsection after subsection (2):

(2A) Despite subsection (2), if –

- (a) duty is chargeable under this section on a dutiable transaction; and
- (b) the dutiable transaction is the result of a written agreement for sale that was entered into before 1 April 2020 –

the duty chargeable on the dutiable transaction under subsection (2) is chargeable at a

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rate of 3% of the dutiable value
of the residential property.

**8. Section 30E amended (Additional duty chargeable
for foreign purchasers of primary production
property)**

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

- (a) by omitting from subsection (2) “0.5%”
and substituting “1.5%”;
- (b) by inserting the following subsection
after subsection (2):

(2A) Despite subsection (2), if –

- (a) duty is chargeable under
this section on a dutiable
transaction; and
- (b) the dutiable transaction is
the result of a written
agreement for sale that
was entered into before
1 April 2020 –

the duty chargeable on the
dutiable transaction under
subsection (2) is chargeable at a
rate of 0.5% of the dutiable value
of the primary production
property.

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**PART 4 – DUTIES ACT 2001 RETROSPECTIVELY
AMENDED**

9. Principal Act

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

10. Section 4C amended (Presumption in respect of corporations and trusts)

Section 4C of the Principal Act is amended by omitting “section 4A or 4B” and substituting “section 4A, 4B, 30HB, 30L or 30M”.

11. Sections 30HA and 30HB inserted

After section 30H of the Principal Act, the following sections are inserted in Part 3A:

30HA. Reassessment of duty if natural person transferee is no longer foreign person

- (1) This section applies to the transferee for a dutiable transaction if –
 - (a) at the time of the dutiable transaction, the transferee was a foreign natural person; and
 - (b) within 6 months after the dutiable transaction, the transferee ceases to be a foreign natural person.

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- (2) 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 as if, at the time the dutiable transaction occurred, the transferee was not a foreign person.
- (3) A transferee may only apply for a reassessment under subsection (2) if the transferee has not transferred all, or any part, of the property that was the subject of the dutiable transaction.
- (4) If the Commissioner receives an application under subsection (2) in respect of a dutiable transaction 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 the dutiable transaction occurred, the transferee was not a foreign person; and
 - (b) refund any amount of duty paid in respect of the dutiable transaction that is in excess of the amount so reassessed.
- (5) If a transferee to whom this section applies becomes a foreign person again within the 3-year period after the relevant

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dutiable transaction, section 30H(2), (3), (4) and (5) apply to the dutiable transaction as if a reference to subsection (1)(b) in section 30H were a reference to this subsection.

30HB. Reassessment of duty if trust is taken to not be foreign trust

- (1) Despite section 4B, a trust is not a foreign trust in respect of a dutiable transaction if –
- (a) at the time of the dutiable transaction the trust was a foreign trust; and
 - (b) under the terms of the trust deed, a trustee has a power or discretion referred to in section 4B(3) in respect of the distribution of the capital of the trust estate; and
 - (c) a trustee of the trust, in his or her capacity as trustee, was a transferee in respect of the dutiable transaction; and
 - (d) the trust deed for the trust is amended –
 - (i) if the dutiable transaction occurred before the *Duties Amendment Act 2019* received the Royal Assent, within 6 months after that Royal Assent; or

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- (ii) if the dutiable transaction occurred on or after the *Duties Amendment Act 2019* received the Royal Assent, within 6 months after the dutiable transaction; and
 - (e) as a result of the amendment to the trust deed, the trust is not a foreign trust; and
 - (f) a trustee of the trust has not –
 - (i) transferred or distributed to a foreign person; or
 - (ii) entered into an agreement to transfer or distribute to a foreign person –

all, or any part of, the dutiable property that was the subject of the dutiable transaction.
- (2) If a trust is not a foreign trust in respect of a dutiable transaction by virtue of subsection (1), the transferee may apply to the Commissioner, in writing, to reassess the duty payable under this Part on the dutiable transaction.
- (3) If the Commissioner receives an application under subsection (2) in respect of a dutiable transaction and the Commissioner is satisfied that the relevant trust is not a foreign trust in

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respect of the dutiable transaction, the Commissioner must –

- (a) reassess the duty payable under this Part on the dutiable transaction as if, at the time the dutiable transaction occurred, the trust was not a foreign trust; and
 - (b) refund any amount of duty paid in respect of the dutiable transaction that is in excess of the amount so reassessed.
- (4) If –
- (a) a trust is not a foreign trust in respect of a dutiable transaction by virtue of subsection (1); and
 - (b) the trust becomes a foreign trust again within the 3-year period after the dutiable transaction –

section 30H(2), (3), (4) and (5) apply to the dutiable transaction as if a reference in section 30H to a transferee referred to in subsection (1)(b) were a reference to each trustee of the trust.

12. Sections 30J, 30K, 30L and 30M inserted

After section 30I of the Principal Act, the following sections are inserted in Part 3A:

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30J. Exemption relating to dwellings used as principal residences in certain circumstances

- (1) Duty is not chargeable under this Part on a dutiable transaction if –
 - (a) the dutiable transaction is the acquisition of property which is residential land that has an existing dwelling on it; and
 - (b) as a result of the dutiable transaction, the whole of the property is or will be held by the parties to a marriage or significant relationship, or by caring partners, as joint tenants or as tenants in common in equal shares; and
 - (c) only one transferee for the transaction is a foreign natural person; and
 - (d) the property is to be the principal place of residence for both transferees for the dutiable transaction within the 6-month period after the transaction.
- (2) If a dutiable transaction meets the requirements of subsection (1), and duty has been paid under this Part on the transaction, the Commissioner must –

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- (a) reassess the duty payable under this Part on the dutiable transaction; and
 - (b) refund any amount of duty paid in respect of the dutiable transaction that is in excess of the amount so reassessed.
 - (3) Despite subsection (1), a transferee must notify the Commissioner, in writing, as soon as practicable after becoming aware that –
 - (a) a transferee is not intending, or both transferees are not intending, to use the property as a principal place of residence; or
 - (b) a transferee has not, or both transferees have not, used the property as a principal place of residence –within the 6-month period after the relevant dutiable transaction.

- (4) If the Commissioner becomes aware that a transferee, for a dutiable transaction referred to in subsection (1), has not used the property acquired under the dutiable transaction as a principal place of residence within the 6-month period after the dutiable transaction, the Commissioner must reassess the duty payable on the dutiable transaction under this Part as if, at the time the dutiable

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transaction occurred, this section did not apply to the dutiable transaction.

- (5) Despite subsection (4), a transferee for a dutiable transaction to be reassessed under that subsection may apply to the Commissioner, in writing, for the duty on the dutiable transaction not to be so reassessed.
- (6) After considering an application under subsection (5), the Commissioner may decide that there are reasonable grounds not to reassess duty on a dutiable transaction in accordance with subsection (4).
- (7) Despite section 10, if duty is charged as a consequence of a reassessment under subsection (4), liability for that duty arises 6 months after the dutiable transaction occurred.

30K. Refund relating to duty paid on vacant land where principal residences are built in certain circumstances

- (1) If –
 - (a) a dutiable transaction is for the acquisition of residential land that is vacant land; and
 - (b) duty was paid under this Part on the dutiable transaction; and

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- (c) as a result of the dutiable transaction, the whole of the property is or will be held by the parties to a marriage or significant relationship, or by caring partners, as joint tenants or as tenants in common in equal shares; and
 - (d) only one transferee for the transaction is a foreign person; and
 - (e) within 2 years after the dutiable transaction –
 - (i) a dwelling is built on the property; and
 - (ii) the dwelling is the principal place of residence for both transferees for the dutiable transaction; and
 - (f) once the property is held by both transferees as joint tenants, or as tenants in common in equal shares, as required under paragraph (c), the property is so held by the transferees until the dwelling becomes the principal place of residence for both transferees in accordance with paragraph (e)(ii) –

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a transferee may apply to the Commissioner, in writing, for a refund of the amount of duty paid under this Part on the dutiable transaction.

(2) If the Commissioner receives an application under subsection (1) and the Commissioner is satisfied that the dutiable transaction meets the requirements of that subsection, the Commissioner must –

(a) reassess the duty payable under this Part on the dutiable transaction as if, at the time the dutiable transaction occurred, both transferees were not a foreign person; and

(b) refund any amount of duty paid in respect of the dutiable transaction that is in excess of the amount so reassessed.

30L. Determination that transferee not a foreign person

(1) A transferee who –

(a) is a foreign person for the purposes of this Part; and

(b) as a result of being a foreign person, is liable to pay duty under this Part on a dutiable transaction –

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may apply to the Commissioner, in writing, for the Commissioner to determine that the transferee is not to be taken to be a foreign person for the purposes of this Part.

- (2) After considering an application under subsection (1), the Commissioner may –
- (a) determine that the transferee is not a foreign person, for the purposes of this Part, in respect of the relevant dutiable transaction; or
 - (b) refuse the application.
- (3) If the Commissioner determines under subsection (2)(a) that a transferee is not a foreign person in respect of a dutiable transaction and duty has been paid under this Part in respect of the transaction, the Commissioner must –
- (a) reassess the duty payable under this Part on the dutiable transaction as if, at the time the dutiable transaction occurred, the transferee was not a foreign person; and
 - (b) refund any amount of duty paid in respect of the dutiable transaction that is in excess of the amount so reassessed.

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- (4) A decision of the Commissioner under subsection (2) is a non-reviewable decision within the meaning of the *Taxation Administration Act 1997*.
- (5) If a determination under subsection (2)(a), in relation to a dutiable transaction, was made based on false or misleading information provided as part of an application under subsection (1), the Commissioner –
 - (a) may revoke the determination; and
 - (b) if the determination was revoked under paragraph (a), is to reassess the relevant dutiable transaction as if the determination had not been made.

30M. Circumstances in which transferee not a foreign person

- (1) The Commissioner may publish, in a manner that is freely available to members of the public, circumstances where a transferee is not to be taken to be a foreign person for the purposes of this Part.
- (2) A transferee who meets the circumstances published by the Commissioner under subsection (1), and in force in accordance with subsection (3), is not a foreign person for

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the purposes of this Part while the transferee meets those circumstances.

(3) For the purposes of this section, circumstances published by the Commissioner under subsection (1) are only in force while they remain so published.

(4) If –

(a) a transferee meets the circumstances, published and in force under this section, in respect of a dutiable transaction; and

(b) the transferee has paid duty under this Part in respect of the dutiable transaction –

the transferee may apply to the Commissioner, in writing, for a refund of the amount of duty paid by the transferee under this Part in respect of the dutiable transaction.

(5) If the Commissioner receives an application under subsection (4) and the Commissioner is satisfied that the transferee meets the circumstances published and in force under this section, the Commissioner must –

(a) reassess the duty payable under this Part on the dutiable transaction as if, at the time the

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dutiable transaction occurred, the transferee was not a foreign person; and

- (b) refund any amount of duty paid in respect of the dutiable transaction that is in excess of the amount so reassessed.