

CLAUSE NOTES

Duties Amendment Bill 2019

Part 1 - Preliminary

- Clause 1 This Act may be cited as the *Duties Amendment Act 2019*.
- Clause 2 The Bill is to commence on the day it receives Royal Assent, with the exception of:
- Part 3, which is taken to commence on 1 April 2020; and
 - Part 4, which is taken to have commenced on 1 July 2018.
- Clause 3 This Act will be repealed on the first anniversary of the day on which the last uncommenced provision of this Act commenced.

Part 2 - Duties Act 2001 Amended

- Clause 4 In this Part, the *Duties Act 2001* is referred to as the Principal Act.
- Clause 5 Inserts section 259G into the Principal Act to provide that if a payment is made to a transferee in anticipation of the commencement of the *Duties Amendment Act 2019* and the payment is equal to the amount eligible to be refunded after the commencement of the Act, that payment is taken to be a refund of the duty paid under Part 3A of Chapter 2 (Additional duty on certain dutiable transactions involving foreign persons).

Part 3 - Duties Act 2001 Further Amended

- Clause 6 In this Part, the *Duties Act 2001* is referred to as the Principal Act.
- Clause 7 Amends section 30C of the Principal Act (Additional duty chargeable for foreign purchasers of residential property) to increase the rate of additional duty paid from 3 per cent to 8 per cent of the dutiable value of residential property acquired by a foreign person.
- Inserts subsection (2A) into 30C to provide that if a written agreement for sale is entered into prior to 1 April 2020 and additional duty is chargeable on the transaction under section 30C, the additional duty chargeable is equal to 3 per cent of the dutiable value of the residential property.
- Clause 8 Amends section 30E of the Principal Act (Additional duty chargeable for foreign purchasers of primary production property) to increase the rate of additional duty paid from 0.5 per cent to 1.5 per cent of the dutiable value of primary production property acquired by a foreign person.
- Inserts subsection (2A) into 30E to provide that if a written agreement for sale is entered into prior to 1 April 2020 and additional duty is chargeable on the transaction under section 30E, the additional duty chargeable is equal to 0.5 per cent of the dutiable value of the primary production property.

Part 4 - Duties Act 2001 Retrospectively Amended

Clause 9 In this Part, the *Duties Act 2001* is referred to as the Principal Act.

Clause 10 Amends section 4C of the Principal Act (Presumption in respect of corporations and trusts) to provide that a trust may be taken to be a non-foreign trust if the Commissioner of State Revenue is satisfied that the trust is not a foreign trust under section 30HB, 30L or 30M of the Principal Act.

Clause 11 Sections 30HA and 30HB are inserted after section 30H of the Principal Act (Reassessment of duty if transferee becomes a foreign person).

Section 30HA provides that a reassessment and where applicable, a refund, of the duty payable in respect of a dutiable transaction may occur where a transferee was a foreign natural person at the time of the transaction but within six months of the transaction, ceases to be a foreign natural person.

Subsection (5) of 30HA provides that if a transferee to whom this clause applies subsequently becomes a foreign person again within a three year period after the dutiable transaction, reassessment of the duty payable will occur as per section 30H of the Principal Act.

Section 30HB establishes how a foreign discretionary trust, for the purposes of a dutiable transaction, may be considered a non-foreign trust and how duty payable in respect of that transaction may be reassessed and, where applicable, refunded.

Subsection (4) of 30HB provides that if a discretionary trust was considered a non-foreign trust in respect of a dutiable transaction by virtue of subsection (1) of 30HB, but subsequently becomes a foreign trust again within a three year period after the dutiable transaction, reassessment of the duty payable will occur as per section 30H of the Principal Act.`

Clause 12 Sections 30J, 30K, 30L and 30M are inserted after section 30I of the Principal Act (Dutiable transactions before 1 July 2018).

Section 30J provides an exemption to additional duty chargeable under Part 3A of Chapter 2 (Additional duty on certain dutiable transactions involving foreign persons) in certain circumstances involving the purchase of a property by a non-foreign person and their foreign spouse, if the property is to be their principal residence within six months of the transaction. This section:

- contains eligibility criteria for the exemption;
- provides that the Commissioner must reassess the duty payable on a transaction and, where applicable, provide a refund, if the requirements of the exemption are met;
- establishes that a transferee must notify the Commissioner if they do not use the property as their principal residence within six months of the transaction;
- provides that if the Commissioner becomes aware that a transferee has not met the requirements of the exemption, the Commissioner must reassess the duty payable on the transaction as if this section did not apply; and
- provides that the Commissioner can consider an application to not reassess the duty payable on the transaction, from a transferee who has not met the requirements of the exemption.

Section 30K provides for a refund of the surcharge paid under Part 3A of Chapter 2 (Additional duty on certain dutiable transactions involving foreign persons) in certain circumstances involving the purchase of vacant land by a non-foreign person and their foreign spouse who establish and reside in a dwelling on the property as their principal residence within two years of the dutiable transaction. This section contains eligibility criteria for the provision and provides that the Commissioner must reassess the duty payable on a transaction and, where applicable, provide a refund, if the Commissioner is satisfied that the requirements of the provision have been met.

Section 30L provides that the Commissioner may determine, after receiving an application from a transferee who is a foreign person under Part 3A of Chapter 2 (Additional duty on certain dutiable transactions involving foreign persons), that the transferee is not a foreign person for the purposes of this Part. This section:

- provides that the Commissioner must reassess the duty payable on a transaction and, where applicable, provide a refund, if the Commissioner determines that the transferee is not a foreign person; and
- establishes the Commissioner's right to revoke their determination and reassess the duty payable in respect of the transaction if provided with false or misleading information by the transferee in their application.

Section 30M provides that the Commissioner may publish circumstances in which a transferee is not considered a foreign person under Part 3A of Chapter 2 (Additional duty on certain dutiable transactions involving foreign persons). This section establishes that a transferee may apply to the Commissioner to refund additional duty paid under this Part and that if the Commissioner is satisfied that the transferee meets the circumstances published, the Commissioner must reassess the duty payable on a

transaction as if the person were not a foreign person and, where applicable, provide a refund.