

Duties Amendment Act 2009

No. 39 of 2009

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Victoria

Duties Amendment Act 2009[†]

No. 39 of 2009

[Assented to 7 July 2009]

The Parliament of Victoria enacts:

PART 1—PRELIMINARY

1 Purpose

The main purpose of this Act is to amend the **Duties Act 2000**—

- (a) to ensure that leases are not used as a mechanism for avoiding duty;
- (b) to clarify when duty is payable in relation to changes in beneficial ownership.

2 Commencement

- (1) This Act, except Part 2, comes into operation on the day after the day on which it receives the Royal Assent.
 - (2) Part 2 is deemed to have come into operation on 21 November 2008.
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**PART 2—AMENDMENTS IN RELATION TO CERTAIN
LEASES AND BENEFICIAL OWNERSHIP**

3 Definitions

In section 3(1) of the **Duties Act 2000** insert the following definitions—

"lease means a lease of land in Victoria or an agreement for a lease of land in Victoria;

rent reserved in relation to a lease, means the rent paid or payable during the term of the lease and any amount paid or payable for the right to use the land under the lease;

Example

Amounts paid under the lease for the following purposes are payments for the right to use the land under the lease—

- (a) rates;
- (b) charges;
- (c) taxes;
- (d) maintenance;
- (e) utilities;
- (f) legal costs required to be paid by the lessee on behalf of the lessor in relation to the grant of the lease;
- (g) insurance premiums;
- (h) marketing costs;
- (i) car park contributions.

**4 Imposition of duty on certain transactions
concerning dutiable property**

(1) For section 7(1)(b)(ii) of the **Duties Act 2000** substitute—

"(ii) a surrender of dutiable property;"

See:
Act No.
79/2000.
Reprint No. 6
as at
25 July 2007
and
amending
Act Nos
12/2008 and
31/2008.
LawToday:
www.
legislation.
vic.gov.au

(2) For section 7(1)(b)(v) of the **Duties Act 2000**
substitute—

- "(v) the granting of a lease for which any consideration other than rent reserved is paid or agreed to be paid, either in respect of the lease or in respect of—
- (A) a right to purchase the land or a right to a transfer of the land;
 - (B) an option to purchase the land or an option for the transfer of the land;
 - (C) a right of first refusal in respect of the sale or transfer of the land;
 - (D) any other lease, licence, contract, scheme or arrangement by which the lessee, or an associated person of the lessee, obtains any right or interest in the land that is the subject of the lease other than the leasehold estate;
- (va) the transfer or assignment of a lease for which any consideration is paid or agreed to be paid, either in respect of the transfer or assignment or in respect of—
- (A) a right to purchase the land or a right to a transfer of the land;
 - (B) an option to purchase the land or an option for the transfer of the land;
 - (C) a right of first refusal in respect of the sale or transfer of the land;
 - (D) any other lease, licence, contract, scheme or arrangement by which the transferee or assignee, or an associated person of the transferee or assignee, obtains any right or interest in the land that is the subject of the lease other than the leasehold estate;"

- (3) In section 7(3) of the **Duties Act 2000**, after "dutiable transaction" **insert** "unless it is a transaction referred to in subsection (1)(b)(va)".
- (4) After section 7(3) of the **Duties Act 2000** **insert**—
- "(3AA) Despite subsection (1), the granting, transfer, assignment or surrender of a lease creating or giving rise to a residency right in a retirement village within the meaning of the **Retirement Villages Act 1986** is not a dutiable transaction.
- (3AAB) Despite subsection (1), the granting of a lease is not a dutiable transaction if the lease was granted as a result of the exercise of an option for a further term where—
- (a) the option was provided for by a lease which was granted before 21 November 2008; and
 - (b) the lease referred to in paragraph (a) required the payment of consideration for the exercise of the option.
- (5) In section 7(4) of the **Duties Act 2000** **insert** the following definitions—
- beneficial ownership*** includes, but is not limited to, ownership of dutiable property by a person as trustee of a trust;
- change in beneficial ownership*** includes, but is not limited to—
- (a) the creation of dutiable property;
 - (b) the extinguishment of dutiable property;
 - (c) a change in equitable interests in dutiable property;

- (d) dutiable property becoming the subject of a trust;
 - (e) dutiable property ceasing to be the subject of a trust;"
- (6) In section 7(4) of the **Duties Act 2000**, for the definition of *excluded transaction substitute*—
- "excluded transaction* means—
- (a) the purchase, gift, allotment or issue of a unit in a unit trust scheme;
 - (b) the cancellation, redemption or surrender of a unit in a unit trust scheme;
 - (c) the abrogation or alteration of a right pertaining to a unit in a unit trust scheme;
 - (d) the payment of an amount owing for a unit in a unit trust scheme;
 - (e) any combination of the transactions referred to in paragraphs (a), (b), (c) and (d)."

5 Imposition of duty on dutiable transactions that are not transfers

In section 8(2) of the **Duties Act 2000**, in the Table—

- (a) in Column 2 of the item relating to "surrender", for "estate" **substitute** "dutiable property";
- (b) for the item relating to "granting of lease with covenant for future transfer or sale" **substitute**—

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"granting of a lease for consideration other than rent reserved	the leased property	the lessee	when the lease is granted
transfer or assignment of lease	the leased property	the transferee or assignee	when the lease is transferred or assigned";

- (c) in Column 2 of the item relating to "any other transaction that results in a change in beneficial ownership of dutiable property" **omit** "(but only to the extent of the change in beneficial ownership)".

6 What is dutiable property?

- (1) Section 10(1)(a)(iv) of the **Duties Act 2000** is **repealed**.
- (2) After section 10(1)(a) of the **Duties Act 2000** **insert—**

- "(ab) a lease, if the lease is of a kind referred to in section 7(1)(b)(v) or 7(1)(b)(va);
- (ac) an interest in any dutiable property referred to in paragraph (a) or (ab) other than—
- (i) a security interest;
 - (ii) an option to purchase;
 - (iii) a lease other than a lease referred to in paragraph (ab);"

7 What is the dutiable value of dutiable property?

After section 20(2) of the **Duties Act 2000** **insert—**

- "(3) Despite subsection (1), the dutiable value of a lease referred to in section 10(1)(ab) that is the subject of a dutiable transaction is the greater of—

- (a) any consideration (being the amount of a monetary consideration or the value of a non-monetary consideration) other than rent reserved that is paid or agreed to be paid; and
- (b) the unencumbered value of the land that is subject to the lease."

8 References to dutiable property—Division 1

After the heading to Division 1 of Part 5 of the
Duties Act 2000 insert—

"32Y References to dutiable property

For the purposes of this Division, a reference to—

- (a) a declaration of trust over dutiable property includes a declaration of trust over a lease referred to in section 7(1)(b)(v) or 7(1)(b)(va);
- (b) a transfer of dutiable property includes—
 - (i) the granting of a lease referred to in section 7(1)(b)(v);
 - (ii) the transfer or assignment of a lease referred to in section 7(1)(b)(va)."

9 References to dutiable property—Division 2

After the heading to Division 2 of Part 5 of the
Duties Act 2000 insert—

"38B References to dutiable property

For the purposes of this Division, a reference to a transfer of dutiable property includes—

- (a) the granting of a lease referred to in section 7(1)(b)(v);
-

- (b) the transfer or assignment of a lease referred to in section 7(1)(b)(va).".

10 References to dutiable property—Division 3

After the heading to Division 3 of Part 5 of the **Duties Act 2000** insert—

"41B References to dutiable property

For the purposes of this Division, a reference to—

- (a) a transfer of dutiable property or a vesting of dutiable property includes—
- (i) the granting of a lease referred to in section 7(1)(b)(v);
 - (ii) the transfer or assignment of a lease referred to in section 7(1)(b)(va);
- (b) a declaration of trust over dutiable property includes a declaration of trust over a lease referred to in section 7(1)(b)(v) or 7(1)(b)(va).".

11 New section 49 inserted

After section 48A of the **Duties Act 2000** insert—

"49 Leases of residential sites in caravan parks

- (1) No duty is chargeable under this Chapter in respect of the granting, transfer, assignment or surrender of a lease if—
- (a) the lease is a lease for a site or a site and caravan in a registered caravan park; and

- (b) a caravan is located or to be located on the site and is used or intended to be used as the principal place of residence of the lessee or intended lessee.
- (2) In this section—
 - (a) *site* and *caravan* and *caravan park* have the same meanings as they have in the **Residential Tenancies Act 1997**; and
 - (b) *registered caravan park* means a caravan park that is registered in accordance with the regulations made under section 515 of the **Residential Tenancies Act 1997**."

12 References to dutiable property—Division 4

After the heading to Division 4 of Part 5 of the **Duties Act 2000** insert—

"50B References to dutiable property

For the purposes of this Division, a reference to—

- (a) a transfer of dutiable property includes—
 - (i) the granting of a lease referred to in section 7(1)(b)(v);
 - (ii) the transfer or assignment of a lease referred to in section 7(1)(b)(va);
- (b) a transfer of an estate in fee simple includes—
 - (i) the granting of a lease referred to in section 7(1)(b)(v);

- (ii) the transfer or assignment of a lease referred to in section 7(1)(b)(va)."

13 Subsequent transfer not dutiable if duty paid on lease

For section 57 of the **Duties Act 2000** substitute—

"57 Subsequent transfer not dutiable if duty paid on lease

If duty is paid under this Chapter in respect of a dutiable transaction referred to in section 7(1)(b)(v) or 7(1)(b)(va), no duty is chargeable under this Chapter in respect of—

- (a) the subsequent transfer of the land to the lessee, transferee or assignee; or
- (b) the enlargement of a term into fee simple under section 153 of the **Property Law Act 1958**."

14 Definitions

At the end of section 57G of the **Duties Act 2000** insert—

"(2) For the purposes of this Division, a reference to—

- (a) a bona fide purchaser of the land for adequate consideration includes a reference to—
 - (i) a person to whom a lease referred to in section 7(1)(b)(v) has been granted;
 - (ii) a person to whom a lease referred to in section 7(1)(b)(va) has been transferred or assigned;

- (b) a contract for the purchase of the land includes a reference to—
 - (i) the granting of a lease referred to in section 7(1)(b)(v);
 - (ii) the transfer or assignment of a lease referred to in section 7(1)(b)(va);
- (c) a transfer of dutiable property, being an estate in fee simple includes a reference to—
 - (i) the granting of a lease referred to in section 7(1)(b)(v);
 - (ii) the transfer or assignment of a lease referred to in section 7(1)(b)(va);
- (d) a transferee includes a person to whom a lease referred to in section 7(1)(b)(v) or 7(1)(b)(va) is granted, transferred or assigned."

15 Who is an eligible pensioner?

After section 58(2) of the **Duties Act 2000**
insert—

- "(3) For the purposes of sections 58, 59, 60, 61, 62 and 63, a reference to—
- (a) a bona fide purchaser of an estate in fee simple in land includes a reference to—
 - (i) a person to whom a lease referred to in section 7(1)(b)(v) has been granted;
 - (ii) a person to whom a lease referred to in section 7(1)(b)(va) has been transferred or assigned;

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- (b) a transfer of dutiable property, being a
estate in fee simple in land includes a
reference to—
 - (i) the granting of a lease referred to
in section 7(1)(b)(v);
 - (ii) the transfer or assignment of a
lease referred to in section
7(1)(b)(va).
 - (4) For the avoidance of doubt, nothing in
subsection (3) affects the operation of this
Act other than sections 58, 59, 60, 61, 62 and
63 relating to the transfer of dutiable
property."
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PART 3—REPEAL OF AMENDING ACT

16 Repeal of amending Act

This Act is **repealed** on the first anniversary of its commencement.

Note

The repeal of this Act does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

ENDNOTES

† *Minister's second reading speech—*

Legislative Assembly: 4 December 2008

Legislative Council: 26 February 2009

The long title for the Bill for this Act was "A Bill for an Act to amend the **Duties Act 2000** and for other purposes."