

## Information Notice

<b>Act Title</b>	<b>Duties Act 2000</b>
<b>Information Title:</b>	<b>Retrospective Commencement</b>
<b>Version:</b>	<b>001</b>

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The amendments made to the **Duties Act 2000** by sections 3(1)(3), 4, 5, 7(2), 8(3) and 13 of the **State Taxation Legislation (Further Amendment) Act 2002**, No. 30/2002 are deemed to have come into operation on 1 July 2001.  
Sections 3(1)(3), 4, 5, 7(2), 8(3) and 13 read as follows:

### **3. Definitions**

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

(a) for the definition of "mortgage-backed security" **substitute**—

' "mortgage-backed security" means—

- (a) an interest in a trust that entitles the holder of or beneficial owner under the interest—
  - (i) to the whole or any part of the rights or entitlements of a mortgagee and any other rights or entitlements in respect of a mortgage or any money payable by the mortgagor under the mortgage (whether the money is payable to the holder of or beneficial owner under the interest on the same terms and conditions as under the mortgage or not); or
  - (ii) to the whole or any part of the rights or entitlements of a mortgagee and any other rights or entitlements in respect of a pool of mortgages or any money payable by mortgagors under those mortgages (whether the money is payable to the holder of or beneficial owner under the interest on the same terms and conditions as under the mortgages or not); or
  - (iii) to payments that are derived substantially or, if the regulations prescribe the extent, to the prescribed extent, from the income or receipts of a pool of mortgages—

and that may, in addition, entitle the holder or beneficial owner to a transfer or assignment of the mortgage or mortgages; or

- (b) a debt security (whether or not in writing) the payments under which by the person who issues or makes the debt security are derived substantially or, if the regulations prescribe the extent, to the prescribed extent, from the income or receipts of a pool of mortgages; or
- (c) any of the following—
  - (i) an interest in a trust creating, conferring or comprising a right or interest (whether described as a unit, bond or otherwise) of or on a beneficiary in a scheme under which any profit or income in which the beneficiaries participate arises from the acquisition, holding, management or disposal of prescribed property, or any instrument that evidences such a right or interest;
  - (ii) a security (whether or not in writing) the payments under which by the person who issues or makes the security are derived substantially from the income or receipts of prescribed property;
  - (iii) an interest in a trust, a debt security (whether or not in writing), an instrument or property that creates an interest in or charge over an interest in a trust, a debt security (whether or not in writing) or other instrument or property, to which paragraph (a) or (b) or sub-paragraph (i) or (ii) of this paragraph applies—

but does not include an instrument or property comprising—

- (d) a mortgage; or
  - (e) the transfer of a mortgage; or
  - (f) a declaration of trust; or
  - (g) an instrument of a class or description of instruments, or property of a class or description of property, prescribed not to be a mortgage-backed security for the purposes of this definition;'
- (b) after the definition of "premium" **insert—**
- ' "**prescribed property**" means any of the following—
- (a) cash;
  - (b) investments of a kind referred to in section 4(1)(a), (b), (c), (d), (e), (f), (g), (h), (i), (ia), (j), (k) or (o) of the **Trustee Act 1958** as in force immediately before the commencement of section 4 of the **Trustee and Trustee Companies (Amendment) Act 1995**;'.
- (3) In section 3(2) of the **Duties Act 2000**, paragraphs (a), (b) and (c) are **repealed**.

#### 4. *Dutiable transactions and dutiable property*

In the **Duties Act 2000**—

- (a) in section 7(1)(b)(vi), for "an estate in land" **substitute** "dutiable property";
- (b) in section 10(1)(d), for "held or used in connection with a dutiable transaction in respect of any estate in land" **substitute** ", if the subject of an arrangement that includes a dutiable transaction over an estate in land";
- (c) in section 11, sub-section (2) is **repealed**.

#### 5. *No double duty*

At the end of section 17 of the **Duties Act 2000 insert**—

- "(2) 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.
- (3) 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."

#### 7. *Trust exemptions*

(2) In section 34(1) of the **Duties Act 2000**—

- (a) in paragraph (a)—
  - (i) after "identified dutiable property" **insert** "or marketable securities referred to in section 10(2)";
  - (ii) in sub-paragraphs (i) and (ii), after "dutiable property" **insert** "or marketable securities";
- (b) for paragraph (b) **substitute**—
  - "(b) a transfer of dutiable property or marketable securities referred to in section 10(2) from an apparent purchaser to the real purchaser in a case where dutiable property or marketable securities are vested in an apparent purchaser upon trust for the real purchaser who provided the money for the purchase of the dutiable property or marketable securities."

#### 8. *Mortgage duty*

(3) In section 166(1) of the **Duties Act 2000**, for "an earlier duly stamped mortgage to the same borrower" **substitute** "an earlier mortgage to the same borrower duly stamped under this or a corresponding Act".

**13. *Transitional provisions—mortgage duty***

In clause 9 of Schedule 2 to the **Duties Act 2000**, after sub-clause (5) **insert—**

- "(6) Sub-clause (4) does not apply to the extent that duty has been paid under a corresponding Act on an amount to which that sub-clause would otherwise apply."