



Transactional Taxes | A refresher on transfer duty, GST and land tax: Advisor essentials

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1. Introduction

- 1.1 Transactional taxes are yet another area where advisors (especially accountants) and lawyers often overlap in the work we do.
- 1.2 We work closely with many of our clients' advisors in the application of these taxes and given the volume of transactions we are involved in, we see many different situations arise where we endeavour to ensure the transaction is structured within the legislative requirements, but to achieve the best tax outcome for the client.
- 1.3 This paper intends to cover the basics of applying transfer duty (still often referred to as 'stamp duty'), landholder duty (what is still often known as 'land rich duty'), GST and their most common exemptions in usual transaction settings. These topics are very broad, so this paper focuses on the most common scenarios where these transactional taxes (and complications with their application) arise.

2. Transfer Duty

2.1 What is transfer duty?

Transfer duty is a state tax imposed by the State of Queensland pursuant to the *Duties Act 2001* (Qld) (**Duties Act**) and administered by the Commissioner of State Revenue and the Office of State Revenue (**OSR**). Unfortunately, the Duties Act is a fairly complex piece of legislation, and it is necessary to take the time to understand the basics of how the Duties Act applies, to ensure transactions which attract stamp duty are not missed.

2.2 Transfer duty rates

The current transfer duty rates are shown below:

Dutiable value	Duty rate
Not more than \$5,000	Nil
More than \$5,000 up to \$75,000	\$1.50 for each \$100, or part of \$100, over \$5,000
\$75,000 to \$540,000	\$1,050 plus \$3.50 for each \$100, or part of \$100, over \$75,000
\$540,000 to \$1,000,000	\$17,325 plus \$4.50 for each \$100, or part of \$100, over \$540,000
More than \$1,000,000	\$38,025 plus \$5.75 for each \$100, or part of \$100, over \$1,000,000

2.3 These rates are payable on a 'dutiable transaction'.

(a) A 'dutiable transaction' is defined under section 9 of the Duties Act as:

a. *the transfer of dutiable property;*

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- b. *an agreement for the transfer of dutiable property, whether conditional or not;*
 - c. *a surrender of dutiable property, whether conditional or not;*
 - d. *a vesting of dutiable property-*
 - i. *by, or expressly authorised by, statute law of this or another jurisdiction, whether inside or outside Australia; or*
 - ii. *by a court order, of this or another jurisdiction, whether inside or outside Australia;*
 - e. *a foreclosure of a mortgage over dutiable property;*
 - f. *an acquisition of a new right on its creation, grant or issue;*
 - g. *a partnership acquisition;*
 - h. *the creation or termination of a trust of dutiable property;*
 - i. *a trust acquisition or surrender.*

'Dutiable property' is defined by section 10 of the Duties Act as:

- a. *land in Queensland;*
- b. *a transferable site area;*
- c. *an existing right;*
- d. *a Queensland business asset;*
- e. *a chattel in Queensland.*

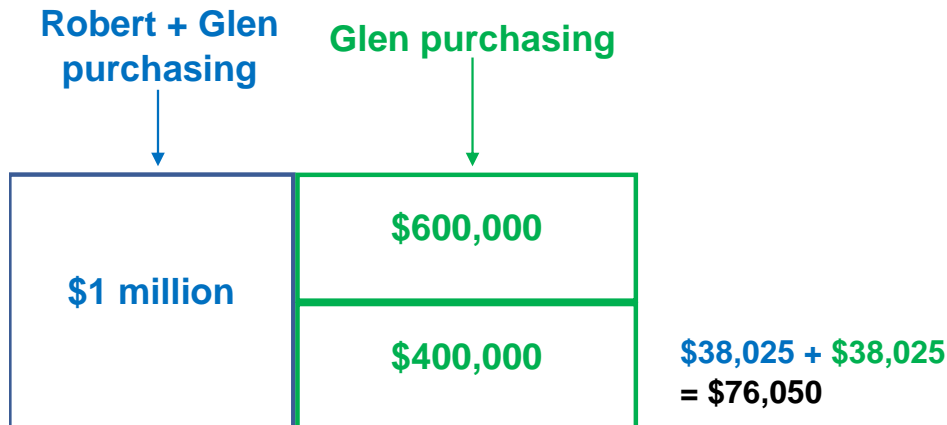
A 'business asset' includes each of the following:

- a. *goodwill;*
- b. *a statutory business licence used for carrying on a business;*
- c. *a right to use a statutory business licence used for carrying on a business;*
- d. *the business name used for carrying on a business;*
- e. *a right under a franchise arrangement used for carrying on a business;*
- f. *a debt of a business if the debtor resides in Queensland;*
- g. *a supply right of a business; and*
- h. *intellectual property used for carrying on a business.*

2.4 Aggregation

- (a) It is important when structuring a transaction, especially if there are multiple sets of related contracts, to consider whether duty is aggregable on the series of transactions. Because duty is paid on a sliding scale, the Duties Act is careful to throw a wide net over transactions between unrelated sets of parties that are substantially part of one arrangement. This way the duty is assessed on the total, aggregated consideration which typically will result in a higher duty being imposed.

- (b) For example, the duty payable on the sale of a \$1,000,000 piece of land (assuming no concession and no GST) is \$38,025. Therefore, if there were two transactions of \$1,000,000 that were not aggregated, \$76,050 duty is payable in total. However, if the transactions were aggregated and duty was payable on the combined consideration of \$2,000,000, then \$95,525 duty is payable. The additional \$19,475 in duty is an amount that clients are often wanting to avoid. See the example below, which is likely to be aggregated where the same seller is selling all three properties Robert and Glen will use all three properties together in a single farming operation after settlement and the purchases are negotiated at the same time, though documented separately. So what are the key elements which indicate that these purchases should be aggregated?



\$2 million = \$95,525

[\$19,475 extra]

- (c) In deciding whether transactions are substantially part of one arrangement, the Commissioner of State Revenue will look at “all relevant circumstances”.¹ These include:
- (i) whether the transactions are contained in 1 instrument;
 - (ii) whether any of the transactions are conditional on entry into, or completion of, any other transactions;
 - (iii) whether the parties to any of the transactions are the same;
 - (iv) the time over which the transactions occur; and
 - (v) whether the dutiable property the subject of the transactions will be used together, or independently by the transferees².
- (d) It is important to give these circumstances careful consideration and the relevant public ruling also provides useful guidance³. If parties are unsure if a transaction will be aggregable, it is possible to write to the Office of State Revenue with a detailed synopsis of the transactions to be undertaken, asking them to state if they will treat the transactions as aggregable (noting the OSR is pushing back more and more, requiring clients and their advisers to make this assessment, while reserving the right to take a different view if such a transaction is audited).

¹ Section 30(3) of the *Duties Act 2001* (Qld)

² Section 30(4) of *Duties Act 2001* (Qld)

³ Public Ruling DA030.1.2

2.5 Exemptions and concessions

There are some common transactions that are not typically dutiable, or which attract concessions. Concessions are often tweaked by the State Government when attempting to pull economic 'levers' and stimulate sectors of the economy (such as the construction of new homes).

2.6 Transfer of assets held by partnership to a partner on retirement or dissolution

- (a) Pursuant to Queensland law, every time a partner retires then technically the partnership dissolves. Most deeds of partnership encompass a mechanism where this happens as technicality, and a new partnership immediately reforms with the remaining partners.
- (b) In the circumstance though where the partnership is dissolved, and the retiring partner is to receive its property, then the dutiable value of that property is reduced by the proportion of the partner's existing interest in the property.
- (c) For example, where:
 - (i) A, B and C are equal partners in a partnership;
 - (ii) the partnership owns three, equally valued blocks of land;
 - (iii) B's interest in each block of land immediately before retiring is one third; and
 - (iv) one block of land is transferred to B upon B's retirement; then
 - (v) the dutiable value of the block of land being transferred is reduced by a third.

2.7 Exemptions for family businesses

- (a) The Duties Act permits concessions/exemptions for the transfer of:
 - (i) family businesses of 'primary production', being a business of agriculture, pasturage or dairy farming; and
 - (ii) 'particular family prescribed businesses'. The list of prescribed family businesses are listed at Schedule 3 of the Duties Regulation⁴ and are far ranging including everything from gunsmithing, locksmithing, newsagency and much, much more...⁵

to a defined relative of a person.
- (b) A defined relative means each of the following
 - (i) the person's spouse;
 - (ii) a parent of the person or the person's spouse;
 - (iii) a grandparent of the person or the person's spouse;
 - (iv) a brother, sister, nephew or niece of the person or the person's spouse;
 - (v) a child or grandchild of the person or the person's spouse;
 - (vi) an aunt or uncle of the person or the person's spouse; and
 - (vii) the spouse of anyone mentioned in (1.) to (6.) inclusive.⁶
- (c) The nature of the transfer can include:

⁴ *Duties Regulation 2013* (Qld)

⁵ section 96 *Duties Act 2001* (Qld) s96

⁶ Schedule 6 of the *Duties Act 2001* (Qld)

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- (i) a straight transfer, or agreement for a transfer, of business property;
 - (ii) a partnership acquisition if property of the partnership includes business property;
 - (iii) a trust acquisition, other than a trust acquisition on the creation of a trust or a trust acquisition for a unit trust, if property of the trust includes business property;
 - (iv) the creation of a trust, or trust acquisition on creation of a trust of:
 - I. business property; or
 - II. an indirect interest in dutiable property if the dutiable property includes business property; and
 - III. a trust acquisition for a unit trust if the property of the trust includes business property.
 - (d) For a primary production business- the dutiable value is treated as nil.
 - (e) For a prescribed family business, the concession applies only to the first \$500,000 of the total value of the property that has been gifted.
 - (f) As with all matters, it is important to evidence the value of the assets and submit the appropriate, prescribed Office of State declarations to ensure the concession is appropriately documented and claimed.

2.8 Other concessions

- (a) Other transfer duty exemptions and concessions include:
 - (i) Home (first home, principal place of residence);
 - (ii) Charitable institutions;
 - (iii) Death (transfer pursuant to a will); and
 - (iv) Matrimonial (transfer pursuant to Family Court agreement/Order);which will not be discussed in detail in this paper.

2.9 When does the obligation to pay duty arise?

- (a) Typically duty must be paid within 30 days of the agreement becoming unconditional. However, it is important to note that some contractual conditions are not sufficient to constitute a suitable condition. For example, a due diligence condition that may be exercised by a buyer in its complete discretion, and without reference to an independent objective standard, is not recognised as being a condition for an agreement.
- (b) The most typical condition in a contract that defers or delays the obligation to pay duty is a finance condition.

2.10 Beware unpaid tax interest

- (a) As with any tax, the Office of State Revenue imposes a high interest rate on unpaid duty to make it commercially attractive to tax payers to pay this debt before any others they may have.
- (b) Unpaid tax interest (**UTI**) will typically accrue from the day after the duty is payable on a dutiable transaction up until the point the duty is paid. The UTI rate is 8.10% for financial year 2020/2021. It is therefore important to pay duty promptly. Most issues arise on substantial transactions that were not initially thought to have been dutiable, but which in fact later discovered to be dutiable, and in the interim a large amount of UTI has accrued, even if the lack of payment was simply an oversight.

2.11 Who is liable to pay duty?

- (a) The standard commercial and contractual position is that a buyer or beneficiary of a contract (or deed) is typically liable to pay any transfer duty arising from a dutiable transaction⁷. Usually it is a necessity of the conveyancing function (especially with real property) that duty is paid by the buyer at or prior to completion of the contract.
- (b) It is extremely important to note however that though contract and custom typically has the buyer (or beneficiary of the asset or right) as liable for paying the duty, the Duties Act prescribes that duty must be paid by the parties to the transaction.⁸ Therefore, if the buyer did not pay the duty, and later became insolvent, then the Commissioner of State Revenue could recover the duty from the seller (or assignee etc). It is therefore always important for the other party to the transaction to confirm that the party obligated to pay the duty has done so.



2.12 Related Parties

- (a) Transfers between related parties will typically require some evidence of value to be provided to the Commissioner of State Revenue, as 'dutiable value' for most dutiable transactions is the higher of:
- (i) consideration (amount payable under the agreement/contract); or
 - (ii) the unencumbered value of the property, which requires any arrangement to be excluded where the parties are not dealing with each other at arms' length which results in a value reduction⁹.
- (b) The ability for the Commissioner to request evidence is set out clause 505 of the Duties Act, which states that the Commissioner may:
- (i) by notice to the person, require the person to lodge a valuation of property prepared by a registered property valuer or to provide the other evidence of value that the commissioner considers appropriate;

⁷ Clause 10.3 of the REIQ Standard Terms - Contract for Houses and Residential Land (Sixteenth edition), clause 23 of the REIQ Standard Terms - Contract for Commercial Land and Buildings (Eight edition), and clause 31.2 of the Standard Conditions of Sale - Business Sale

⁸ Section 17 of the *Duties Act 2001* (Qld)

⁹ Sections 11(7) and 14 of the *Duties Act 2001* (Qld)

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- (ii) have property valued; or
 - (iii) rely on a valuation of the property prepared by a registered valuer, or other person the commissioner is satisfied is properly qualified to provide evidence of value of the property.
- (c) In almost all circumstances where the parties are unrelated, the Commissioner of State Revenue will assume the consideration paid is the fair market value for the property.
- (d) These powers are tempered somewhat within the Commissioner of State Revenue's public ruling DA 505.1.2 which prescribes (in respect to residential property):
- (i) when a valuation must be submitted for a dutiable transaction, including:
 - I. a person in the transaction is a member of the family of another person in the transaction¹⁰; or
 - II. one or more of the persons in the transaction is a corporation and there is an element of association with another person in the transaction by way of directorships, shareholdings, partnership or joint venture arrangements; or
 - III. there is no consideration for the transaction;¹¹
 - (ii) what evidence will be accepted, being:
 - I. a valuation by a registered property valuer (without need for comparable sales, although they will often be reference too); or
 - II. a valuation by a real estate agent which references three comparable sales to justify the value.
- (e) With other related party transactions, it is always prudent to obtain a valuation by an independent third party to demonstrate correct duty has been paid. Please note the Office of State Revenue requires declaration as to whether the parties are related at the point of duty being assessed. A false declaration is a criminal offence.

3. GST

3.1 GST basics

- (a) As we all know, a goods and services tax (**GST**) is payable by suppliers who are registered (or required to be registered) for GST on taxable supplies.
- (b) Both land and businesses are taxable supplies.
- (c) GST is not payable on the sale of shares, so that will not be covered in this section.

3.2 Avoiding GST on the supply of a going concern

- (a) GST is not a 'sticky tax', in that it is often claimed back as a credit by the payer. Structuring a transaction as a GST exempt transaction is still preferable though as:
 - (i) it impacts the cash flow of the payer; and
 - (ii) transfer duty is payable on the GST inclusive purchase price, so that is an extra cost which cannot be claimed back like the GST component. When purchasing valuable pieces of property, this can be a significant saving.

¹⁰ Member of person's family is defined in the Schedule 6 Dictionary of the Duties Act.

¹¹ Section 11(7) of the Duties Act.

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- (b) Subdivision 38-J of the *A New Tax System (Goods and Services Tax) Act 1999 (GST Act)* sets out the legislative underpinnings of when the 'supply of a going concern' is GST-free. In addition, the GST Ruling 2002/5 (**Ruling**) by the Commissioner of Taxation is a valuable guide, which includes useful examples to assist in determining when the supply of a 'going concern' is GST free. It is important to break down the components for meaning.
 - (c) A supply of a going concern is a supply under an arrangement which¹²:
 - (i) the supplier supplies to the recipient all of the things that are necessary for the continued operation of an enterprise; and
 - (ii) the supplier carries on, or will carry on, the enterprise until the day of supply (whether or not as part of a larger enterprise carried on by the supplier).
 - (d) For such an arrangement to be GST free, the following requirements must also be satisfied¹³:
 - (i) the supply is for consideration;
 - (ii) the recipient (buyer) is registered, or required to be registered, for GST; and
 - (iii) the supplier and recipient (seller and buyer) have agreed in writing that the supply is a going concern.
 - (e) All of these separate elements need to be met to qualify for the 'going concern' exemption.
 - (f) The ordinary understanding of what a 'going concern' is does not directly accord with the requirements under the GST Act, so it is always important not to assume its application without working through the various elements.

3.3 Going concern - sale of business

- (a) The 'quick reference' elements to be considered as to whether the sale of a business is a going concern include:
 - (i) the enterprise exists - and all those things required for the conduct of the business are being sold;
 - (ii) checking both parties are registered for GST; and
 - (iii) the business is conducted, as usual, until the day of settlement.
- (b) The standard REIQ Business Contract¹⁴ includes contractual promises between the buyer and seller to cover those matters which can be promised - the GST registration of the parties, the carrying on of the business until the day of settlement, etc. The standard position is if the exemption does not apply for some reason (other than a breach of the warranties regarding these specific issues), the buyer must pay GST in addition to the purchase price.
- (c) We often see situations where a seller is purporting to sell a business as a going concern, but as the buyer's advisor, we form a view that the exemption is either definitely not able to be claimed or there is some risk that the Commissioner of Taxation (in an audit scenario) may not agree that it is applicable. In that circumstance, if the seller will only sell their business on that basis, the standard contractual position may need to be amended to seek an indemnity from the seller if GST is payable. Of course, we need to counsel our buyer client in this situation in the event that the seller is insolvent at the point that our client may need to enforce the indemnity.
- (d) It is very important to turn your mind to the actual situation and ensure the legislative requirements are met. This usually involves asking our client lots of questions about the nature

¹² Section 38-325 of the GST Act

¹³ Section 38-325(1) of the GST Act

¹⁴ Clause 3.3 of the Standard Conditions of Sale - Business Sale

of the business and its assets and making an assessment as to the application of the exemption.

3.4 Going concern - sale of land and leased/occupied property

- (a) An “enterprise” has a broad definition¹⁵ and includes an activity of “on a regular or continuous basis, in the form of a lease, licence or other grant of an interest in property”. Accordingly, the sale of a fully tenanted property includes and sale of a leasing enterprise and GST is not payable.
- (b) The Ruling sets out as “Example 1: fully tenanted building” as a situation where a commercial leasing situation does not qualify as a ‘going concern’.
- (c) In summary:
 - (i) InsuranceCo owns a building and also operates an insurance business from the same building (i.e. same entity owns building and business);
 - (ii) InsuranceCo sells the building to Landlord Unit Trust and will, upon settlement, lease back from Landlord Unit Trust; but
 - (iii) the sale of the building is not the supply of an enterprise as it was not carried on prior to settlement.
- (d) The reason is not clear in the Ruling, but it is important to note that it is legally impossible for the same entity that owns the freehold of land to separately lease the leasehold (i.e. the right for exclusive possession of the land) to itself. As the same entity has right to both freehold and leasehold there is ‘merger’, a legal mechanism where all rights revert back to the entity as owner.

3.5 Getting creative to create a going concern

- (a) If the situation is a little different, and parties are willing to be creative, it is sometimes possible to achieve the sale of a going concern to avoid payment of GST and the payment of duty on the higher GST-inclusive amount.
- (b) Consider the following examples for an unoccupied building:
 - (i) the Seller wishes to sell an unoccupied commercial property;
 - (ii) the Buyer wishes:
 - I. to purchase the property in a self-managed superannuation fund (**SMSF**); and
 - II. to lease the property after settlement from the SMSF to the Buyer’s business entity (**Business**);
- (c) The Buyer can require a clause in the commercial property sale contract (**Contract**) that:
 - (i) seven days prior to the settlement date of the Contract, the Seller must enter into a simple lease with the Business (for a rental consideration) which gives the Business exclusive right of possession of the whole property prior to the settlement date;
 - (ii) the lease is for a term that expires the day after the completion of the Contract;
 - (iii) the lease has a bilateral early termination clause in the event the Contract is terminated or does not complete by a sunset date; and
 - (iv) the SMSF acknowledges the terms of the lease and that the property is sold subject to the lease.

¹⁵ section 9-20 of the GST Act

- (d) In this example a lease is created for consideration and therefore the property is carrying on the enterprise of commercial leasing at the time of supply, therefore the transaction represents the sale of a 'going concern' within the meaning of the Act.
- (e) A cautionary note - the Australian Tax Office appears broadly tolerant of a wide range of arrangements that are brought into existence to qualify for a going concern, which could arguably be an attempt at tax avoidance. Where possible then, it is preferable to anchor the lease back to a genuine and material use. An example may be the tenant taking advantage of the period it has exclusive possession to have fit-out works estimated and preliminary occupation of the premises, such as moving equipment in.

3.6 Informal tenancies and going concern

Sometimes there are situations where there is a third-party tenant leasing the premises, but the lease has expired and converted to a periodic month to month tenancy (i.e. 'a holding over'). A periodic tenancy can still qualify the sale of a property as the supply of a going concern. Please note that it is very important to seek legal advice on the nature of the tenancy, as there are a variety of ways a tenancy can come into existence but not qualify for the exemption (for example, tenancies at will).

3.7 Going concern summary

It is always valuable, when acting for a buyer of a commercial property or a business, to consider the ability to have the purchase fit within the 'going concern' requirements. The strategy should be formulated and agreed upon in the course of negotiations - that is when the buyer has commercial leverage to convince the seller to assist with the strategy and ensures it is documented clearly between the parties.

4. Land Tax

4.1 What is Land Tax?

- (a) Land tax is an annual tax levied on certain landowners by the State of Queensland under the *Land Tax Act 2010*. It is administered by the Office of State Revenue and is calculated with reference to the unimproved value of land owned by a particular entity on 30 June each year. The valuations are supplied by the Queensland Valuer-General, operating under the Department of Natural Resources, Mines and Energy in accordance with the *Land Valuation Act 2010*.
- (b) The obligation to pay land tax arises when an entity crosses the following thresholds in relation to the aggregated unimproved value of all the land owned:

Entity	Taxable Value as at 30 June 2020
Individuals	\$600,000
Companies	\$350,000
Trustees of trusts and superannuation funds	\$350,000
Foreign companies	\$350,000
Trustees of foreign trusts	\$350,000

- (c) The rate of tax is calculated on a sliding scale basis as follows:

Individuals (other than absentees and trustees)	
Total taxable value	Tax payable
Less than \$600,000	Nil
\$600,000 or more but less than \$1,000,000	\$500 plus 1c for each \$1 more than \$600,000
\$1,000,000 or more but less than \$3,000,000	\$4,500 plus 1.65c for each \$1 more than \$1,000,000
\$3,000,000 or more but less than \$5,000,000	\$37,500 plus 1.25c for each \$1 more than \$3,000,000

\$5,000,000 or more	\$62,500 plus 1.75c for each \$1 more than \$5,000,000
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Companies and trustees

Total taxable value	Tax payable
Less than \$350,000	Nil
\$350,000 or more but less than \$2,250,000	\$1,450.00 plus 1.7c for each \$1 more than \$350,000
\$2,250,000 or more but less than \$5,000,000	\$33,750 plus 1.5c for each \$1 more than \$2,250,000
\$5,000,000 or more	\$75,000 plus 2c for each \$1 more than \$5,000,000.

4.2 Land Tax affixes to land

Land tax is a tax which affixes to the land. Unpaid land tax is a first charge on the land on which the tax is imposed, and the liability of the seller (or not discharged or accounted for) will therefore transfer to the buyer in the event of a transfer of title. It is therefore extremely important to consider the implications of land tax when buying land in Queensland and a buyer must ensure a search is undertaken and a payment for outstanding land tax is obtained from the seller at settlement.

4.3 Standard Residential Contract conditions and land tax

- (a) The REIQ Contract for Houses and Residential Land (16th edition) (**Residential Contract**) is the current industry standard for 'cottage' conveyancing of residential houses and land. It is overwhelmingly preferred by agents and lawyers alike because it has standard terms (that may be amended as required by special conditions) which are generally viewed as being balanced as between the interests of the buyer and the seller, and it allows lawyers to offer conveyancing as an affordable service as they are dealing with a standard set of known contractual terms.
- (b) Under the standard terms of the Residential Contract:¹⁶
- (i) the seller is liable for any land tax assessed on the land subject of the contract for the financial year current at the Settlement Date; and
 - (ii) if land tax is unpaid at the settlement date, and the Office of State Revenue advises it will issue a final clearance certificate on the land on payment of a specified amount, then the buyer may pay a portion of the settlement funds to the Office of State Revenue (without need of reference to the seller).
- (c) If you act for a seller of a piece of residential property who is liable to pay land tax on the property, then you should consider a pro-rata adjustment clause as a special condition.

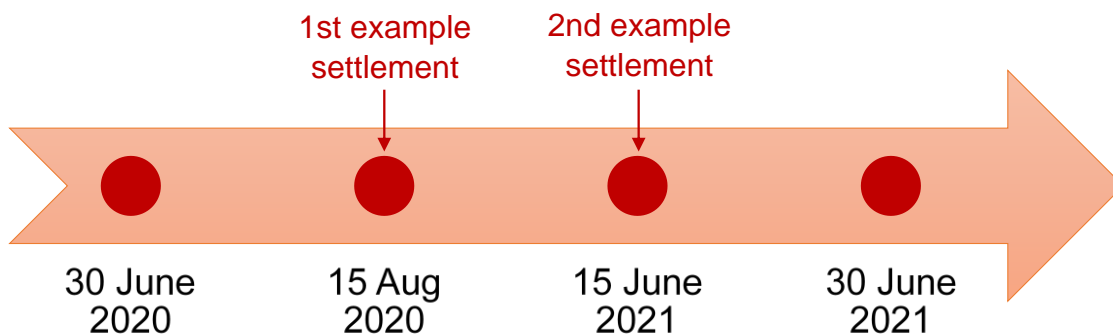
4.4 Standard Commercial Contract conditions and land tax

- (a) The REIQ Contract for Commercial Land and Buildings (eighth edition) (**Commercial Contract**) is again the industry standard in Queensland.
- (b) Under the standard terms of the Commercial Contract:
- (i) the Buyer must discharge the land tax in respect to the property up to and including date of possession¹⁷;
 - (ii) the land tax is apportioned as follows:
 - I. on the artificial presumption that:

¹⁶ Clause 2.6(4) of the Terms of Contract for Houses and Residential Land.

¹⁷ Clause 15.1 of the REIQ Standard Terms - Contract for Commercial Land and Buildings (Eight edition)

- the land tax was issued for one year if the seller was one natural person resident in Queensland; and
 - the land was the seller's only land; or
- II. if no separate site value for the land is available, on a notional site value calculated by the proportion the land subject of the Commercial Contract represents to the area of the whole of the land owned by the seller.
- (c) This can result in the seller artificially paying a far higher proportion of the land tax. This is especially galling if the seller is in fact selling to a company or trust that is already likely paying land tax.



Unimproved value = \$500,000

Land tax = \$4000

- (d) We regularly insert a special condition in contracts, where the land tax is apportioned on the actual basis that it was incurred by the seller. Again, this is only possible where our advice is sought during the negotiation phase. In the situation above, with a settlement which occurs early in the land tax year (15 August 2020) a special condition amending the standard condition to provide for an adjustment to take place at settlement results in the seller receiving \$3495.89 from the buyer at settlement, rather than nothing. Obviously, a settlement early in the tax year has that more significant outcome - the same change to the standard condition has a less significant outcome for a settlement which occurs late in the land tax year (15 June 2021) - resulting in an adjustment of \$164.38 rather than zero.

4.5 Exemptions

- (a) There are exemptions where, if applicable, the taxable value of that land is excluded from the total value of a person/entity's land.
- (b) These exemptions include:
- (i) home (you can only have one property as your home - including outside of Queensland);
 - (ii) primary production¹⁸; and
 - (iii) land owned by charitable institutions.
- (c) You must be careful to advise the OSR of a change in circumstances - you may otherwise be liable to back-pay land tax.

¹⁸ Primary production activities are prescribed in *Land Tax Regulation 2020*.

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- (d) The Queensland Government has also granted land tax relief in certain circumstances as part of their COVID-19 relief measures.

5. Landholder duty

- 5.1 When an entity, such as a company or a unit trust, has land holdings in Queensland which have an unencumbered value of \$2,000,000 or more than the entity is defined as a 'landholder' under the Duties Act.¹⁹
- 5.2 The Duties Act imposes duty on the dutiable value of the relevant acquisition in a private landholder. This can include:
- (a) sale or transfer of shares in a landholder corporation; and
 - (b) the sale or transfer of units in a landholder unit trust.
- 5.3 It is very important to note that the improvements on the land must also be valued (and included in the dutiable value). It is a common mistake in related party transactions that property valuers are only instructed to value the land and not the improvements, so it is important to ensure the client properly instructs the property valuer.
- 5.4 Landholder duty on share transactions can be missed, because GST is not a consideration and the interest being transferred is not the land directly.

6. Conclusion

A close consideration of transactional taxes demonstrates the importance of early advice when embarking on a sale, purchase or other restructure which might attract a transactional tax. An investment of time and money in good advice is akin to advance tax planning with an accountant, and can have the same outcome in minimising the transactional tax payable, along with reducing unforeseen risk.



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¹⁹ Section 165 of the *Duties Act 2001* (Qld)