State Taxes 2016

Seminar Notes

Office of State Revenue

June 2016

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Duties

Legislative changes

State Revenue Legislation Amendment (Budget Measures) Bill 2016

The proposed amendment introduces a surcharge purchaser duty of 4 per cent on the acquisition of interests in residential land by foreign persons to commence on 21 June 2016. The surcharge is in addition to the duty payable on the purchase of residential property.

The amendment defines a foreign person to have the same meaning as in the *Foreign Acquisitions and Takeovers Act 1975* of the Commonwealth (which generally includes an individual not ordinarily resident in Australia, a corporation in which such an individual has a substantial interest, a trustee of a trust in which such an individual holds a substantial interest or a foreign government). The definition is modified to ensure that Australian citizens are not foreign persons (wherever they reside) and that New Zealand citizens holding special category visas are not foreign persons if they have been in Australia for at least 200 days in the previous 12 months.

The surcharge also applies to landholder transactions if there is a landholder liability and one or more of the properties owned by the landholder is classified residential and the purchaser is a foreign person who purchases shares or units in the landholder.

The proposed amendment also removes the off the plan duty concession in the case of foreign persons.

From 21 June 2016 all transferees who are liable to pay duty in respect of a dutiable transaction must lodge a declaration in the approved form.

State Revenue Legislation Amendment Act 2016

The *State Revenue Legislation Amendment Act 2016* received assent on 11 May 2016. The *Duties Act 1997* (the Duties Act) contained the following amendments:

Corporate reconstruction transactions

An exemption from duty applies to corporate reconstruction transactions and corporate consolidation transactions, including transactions involving unit trust schemes.

The amendments extend references to anything done by or held by a trustee of a unit trust scheme as trustee to ensure that they include a custodian of the trustee of a managed investment scheme.

Substantially renovated homes

The definition of a substantially renovated home used for the purpose of establishing eligibility under the First Home—New Home scheme now has the same meaning as in the *First Home Owner Grant* (New Homes) *Act 2000*. That is, a substantially renovated home is a home that:

a) has been created through renovations in which all, or substantially all, of a building is removed or replaced (whether or not the renovations involve the removal or replacement of foundations, external walls, interior supporting walls, floors or staircases), and

b) as renovated, has not been previously occupied or sold as a place of residence.

Abolition of duties

From 1 July 2016, the following duties will be abolished:

Mortgage duty

Duty on all mortgages is abolished from 1 July 2016. Mortgages executed on or after 1 July 2016 will not be liable to duty. Further advances made on or after 1 July 2016 are also not liable to duty, irrespective of the date of the mortgage.

No duty is payable on a caveat, protecting an interest under an unregistered mortgage executed on or after 1 July 2016.

Mortgages do not need to be stamped or marked in respect of any of the above.

Business assets duty

The following types of property cease to be dutiable property from 1 July 2016:

- business asset, being, at any relevant time:
  - the goodwill of a business, if the business supplied in New South Wales (NSW), or provided services in NSW, to a customer of the business
  - intellectual property that has been used or exploited in NSW
  - a statutory licence or permission under a Commonwealth law if the rights under the licence or permission have been exercised in NSW.
- statutory licence or permission under a NSW law (for example, a taxi licence or water access licence)
- gaming machine entitlement within the meaning of the *Gaming Machines Act 2001.*

Abolition does not apply in respect of a transfer or transaction that occurs on or after 1 July 2016 if it:

- replaces a transfer or transaction involving the same business asset, statutory licence or permission, or gaming machine entitlement that occurred before 1 July 2016
- is made or entered into pursuant to an option to purchase the business asset, statutory licence or permission, or gaming machine entitlement that was granted before 1 July 2016
- was made or entered into pursuant to another arrangement, made before 1 July 2016, the only or main purpose of which was to defer the transfer or transaction until 1 July 2016, or later, so that duty would not be chargeable on the transfer or transaction.

An agreement to transfer any of the abolished dutiable property first executed before 1 July 2016 which was interim stamped with estimate duty (under Section 49 of the Duties Act) will continue to be liable to additional duty even if the date of final purchase price or completion occurs on or after 1 July 2016. A refund of estimate duty will also be provided in these circumstances if the estimate duty was more than should have been paid at completion.

Marketable securities duty

The following types of property cease to be dutiable property from 1 July 2016:

- shares in a NSW company, and shares in a corporation incorporated outside Australia kept on the Australian register kept in NSW
- units in a unit trust scheme, being units:
  - registered on a register kept in NSW
  - that are not registered on a register kept in Australia, but in respect

of which the manager (or, if there is no manager, the trustee) of the unit trust scheme is a NSW company or is a natural person resident in NSW.

An agreement to transfer any of the abolished dutiable property first executed before 1 July 2016 which was interim stamped with estimate duty (under Section 49 of the Duties Act) will continue to be liable to additional duty even if the date of final purchase price or completion occurs on or after 1 July 2016. A refund of estimate duty will also be provided in these circumstances if the estimate duty was more than should have been paid at completion.

Repeal of Valuers Act 2003

The *Valuers Act 2003*, which required persons practising as property valuers in NSW to be registered, has been repealed, effective 1 March 2016.

As a consequence, Section 305 of the Duties Act has been amended to remove references to registered valuers and replace them with references to suitably qualified valuers. Effective from 1 March 2016, Section 305(1) states that the Chief Commissioner may, for the purpose of determining whether a person is liable for duty or determining a person's duty liability:

a) require the person, by notice in writing given to the person, to provide any evidence of the value of property that the Chief Commissioner considers appropriate

b) obtain a valuation of property from a person the Chief Commissioner is satisfied is suitably qualified to provide evidence of the value of property

c) rely on a valuation of property prepared for any purpose by a person the Chief Commissioner is satisfied is suitably qualified to provide evidence of the value of property.

Revenue Ruling DUT 044 (which should be read in conjunction with Revenue Ruling DUT 012) sets out who the Chief Commissioner considers is 'suitably qualified' to provide a valuation of property for the purpose of Section 305:

- a member of the Australian Valuers Institute (other than an associate or student member)
- a member of the Australian Property Institute (other than a student or provisional member), who has acquired membership in connection with his or her occupation as a valuer member of the Royal Institution of Chartered Surveyors who holds the designation 'Chartered Value' or 'Chartered Valuation Surveyor'.

The valuer's qualifications and relevant membership number need to be shown in the valuation. For Electronic Duties Returns (EDR) clients, the membership number and other details will need to be inserted in the appropriate field for online assessments.

A valuation made by any other person would need to be considered on a case-by-case basis by the Chief Commissioner.

Commonwealth reporting requirements

From 1 July 2016, additional information will be required on real property transfers.

In a meeting of the Commonwealth, State and Territory Treasurers, it was agreed to establish a National Register of Foreign Ownership of Land Titles. The register would build on the Commonwealth's existing National Register of Foreign Ownership of Agricultural Land.

On 30 November 2015, the Federal Government enacted an amendment to Division 396 of Schedule 1 of the *Taxation Administration Act 1953* to include Subdivision 396-B. The Australian Taxation Office (ATO) administers this legislation. Under this law the Commissioner of Taxation can require certain entities to give information about transactions that could reasonably be expected to have tax consequences for other entities.

As a result, OSR will be required to collect and report transfers of freehold or leasehold interests in real property situated in NSW to the Commissioner of Taxation from 1 July 2016.

For each transaction, the information collected and reported will include:

- property details including land title information, property address and other descriptors
- transactional information including transfer price, contract date and settlement date
- identity information of the purchaser/transferee and vendor/transferor including name, address, date of birth for individuals, name, address and ACN/ABN for non-individuals
- foreign identity details.

The information is proposed to be used by the ATO for the purpose of information-matching and ensuring compliance with the taxation laws of the Commonwealth. In addition, the information (which will include information about the nationality and residency of vendors and purchasers) is to be used for the purposes of a National Register of Foreign Ownership of Land Titles to be administered by the ATO.

Provision of the information to the ATO will be enabled by changes to the *Taxation Administration Act 1996* and will extend to various offences provided in the Act to persons who are required to provide the information to OSR.

Purchaser or transferee

On or after 1 July 2016, additional purchaser or transferee information (where applicable) will be required when completing a Duties assessment. This information will be required for all agreements for sale of land and transfers of real property. Please refer to the **Commonwealth Reporting Reference Table** which outlines the additional purchaser or transferee information required.

Note: For land tax changes resulting from the National Register of Foreign Ownership of Land Titles, see page 12 (Land Tax Clearance Certificates).

Hot topics

Electronic Duties Return

Electronic Duties Return (EDR) is a service that allows an approval holder (approved person) to electronically assess and endorse a range of duties transactions, and pay duty by way of a periodic remittance.

Commencing 1 July 2016, conveyancing documents which can be processed via the EDR system will no longer be assessed by OSR.

You can register for **EDR** online.

Landholder duty

Whilst marketable security duty is not payable on a share or unit acquisition from 1 July 2016, the acquisition could attract landholder duty.

Landholder duty is duty paid on the acquisition, by a person, of a significant interest in a landholder. A landholder is a unit trust scheme, a private company or a listed company that has land holdings in NSW with a threshold value of $2,000,000 or more. A landholder can be either private (private unit trust scheme or private company) or public (public unit trust scheme or listed company).

A land holding is an interest in land other than the estate or interest of a mortgagee, chargee or other secured creditor. The most common interest in land is an estate in fee simple. However, other interests, such as leasehold interests, options to purchase land, some (but not all) mining tenements, and tenants' fixtures, are also included for the purposes of determining if a landholder duty liability exists.

Land holdings also include constructive ownership of land holdings through linked entities and discretionary trusts, land holdings recently transferred to the acquirer of an interest in the landholder, and uncompleted agreements for sale of land.

The threshold value of land holdings is the total value of all land holdings in NSW of the unit trust or company. For freehold interests in land (including strata title), the threshold value is the registered land value (Value General) as at 1 July in the previous year. For interests other than freehold interests in land (for example, leasehold interests, tenant's fixtures, etc.) the threshold value is the unencumbered value as at the date of acquisition of the interest in the landholder.

You have an interest in a landholder if, in the event of a distribution of all property in the landholder, you would be entitled to any of the property distributed. You have a significant interest in a landholder if you are entitled to the following, in the case of a distribution of all property in the landholder:

- Private landholder – 50 per cent or more of the property distributed
- Public landholder – 90 per cent or more of the property distributed.

Where a relevant acquisition is made, an acquisition statement must be lodged with the Chief Commissioner within three months after the acquisition is made.

Options

A transfer of an option to purchase land in NSW is a dutiable transaction under the Duties Act. A transfer is taken to occur if an option holder, for valuable consideration:

- nominates another person to exercise the option
- nominates another person as purchaser or transferee of the land the subject of the option on or before the exercise of the option
- agrees to a novation of the option, or otherwise relinquishes rights under the option, so that another person obtains a right to exercise the option or to purchase the land.

Duty is calculated on the dutiable value of the option being transferred, being the greater of the consideration or the unencumbered value of the option.

When the option is exercised, duty is charged on the dutiable value of the dutiable property. The consideration for the transfer of the land will be taken to include the amount or value of the consideration provided by the transferee for the option (whether for its grant, transfer, exercise or otherwise).

The duty payable on the transfer of the land will, however, be reduced by the amount of duty (if any) paid by the transferee on the transfer of the option.

Put and call options

Where there is a put and call option, and the call option is assigned, duty is also payable by the option holder on the dutiable value of the relevant land.

Example

Where A has a right under a call option requiring B to sell dutiable property, and B has a right under a put option requiring A to purchase the dutiable property, an assignment or transfer by A to C, for valuable consideration, will be liable to duty on the dutiable value of the dutiable property. This is in addition to the duty payable by C on the assignment or transfer of the option itself.

The duty payable by A will be reduced by the amount of duty (if any) paid by A on any transfer of the call option to A.

The dutiable value of the dutiable property subject to a call option assignment is the greater of:

- the sum of the consideration for the assignment of the right under the call option and the consideration payable in the event that the call option is exercised
- the unencumbered value of the dutiable property.

Recent decisions

Perizon Nominees Pty Ltd v Chief Commissioner of State Revenue [2016] NSWCATAD 84

Decision of Senior Member Walker on 5 May 2016

Issue

Concession for transfers not in conformity with an agreement for sale or transfer of dutiable property.

Background

Perizon Nominees Pty Ltd (the Taxpayer) sought review of the Chief Commissioner's decision to assess ad valorem duty in respect of a Transfer which was executed by the Taxpayer in relation to the purchase of a property at Vaucluse, New South Wales (the Vaucluse Property).

The key issue in this matter was whether the Transfer was eligible for the concession in Section 18(3) of the Duties Act, in particular, whether the requirement in Section 18(3)(d)(i) was satisfied. That is, at the time the agreement was entered into, and at the completion or settlement of the agreement, whether the purchaser under the agreement and the transferee under the transfer were related persons.

Decision

The Tribunal agreed with the Chief Commissioner's submission that there were two dutiable transactions, being the Contract and the Transfer, with the result that each transaction independently gave rise to a liability for duty under section 12 of the Duties Act. The Tribunal also agreed that the concession under Section 18(3) cannot apply as at the time the Contract was entered into (on 26 April 2012), the purchaser named in the Contract (Mrs Perry) and the transferee under the transfer (the Taxpayer) could not possibly be related persons as the Taxpayer did not then exist, being incorporated only on 13 June 2012.

Read the case decision on Perizon Nominees Pty Ltd.

Chief Commissioner of State Revenue v Webeck [2015] NSWCATAP 279

Decision of Principal Member Harrowell and Senior Member Walker on 21 December 2015

Issues

Concession for transfer of dutiable property assessed as a partition.

Background

These proceedings concern the transfer of a property in Newport, New South Wales (the Newport property) in 2011 between family members in accordance with a Deed of Partition. In 2014, the same family members entered into other transactions involving the same property in accordance with a Deed of Family Arrangement and a consequential transfer.

The Tribunal concluded that the Chief Commissioner had incorrectly assessed the transfer of the Newport property as it should have been assessed as a partition pursuant to Section 30 of the Duties Act. Accordingly, it set aside the Chief Commissioner's Duties Notice of Assessment.

The Chief Commissioner sought a review of the Tribunal's decision. The issue for the Appeal Panel to consider was whether or not the form of the Newport transfer wherein the Respondent's family members transferred their interests to the Respondent was a partition within the meaning of Section 30(1) of the Duties Act, and therefore should have assessed as a single dutiable transaction.

Decision

The Appeal Panel concluded that there was no partition to which Section 30 of the Duties Act could apply in this matter because there was no division of the land by the Newport transfer. Rather, the transfer simply transferred to the respondent the 50 per cent undivided interest of the other co-tenants in the whole of a single parcel of land to him.

Read the case decision on Webeck.

BD Corporation Pty Ltd v Chief Commissioner of State Revenue [2015] NSWCATAD 163

Decision of Senior Member Verick on 6 August 2015

Issue

Existence of a declaration of trust over dutiable property.

Background

BD Corporation Pty Ltd (the Taxpayer) sought review of the Chief Commissioner's decision to assess ad valorem duty on the value of a property situated at Rockdale (the Rockdale Property).

The issue before the Tribunal was whether there was a transaction within the meaning of Section 8(1)(b)(ii) of the Duties Act, or in other words, whether there was a declaration of trust over dutiable property such that duty would be imposed pursuant to Section 8.

The Directors agreed to acquire the Rockdale Property as partners, and that the Rockdale Property should be owned by the Rockdale Unit Trust with the Taxpayer as the trustee.

The Unit Trust Deed was executed by the Directors, however, the Trust Deed was not signed by the Taxpayer. The Taxpayer subsequently executed a contract to purchase the Rockdale Property.

Counsel for the Chief Commissioner referred to several authorities that establish that a *'declaration of trust may be made in writing, orally, by conduct or by a combination of these matters'*. He also noted the liability to duty under the Duties Act was in respect of transactions as opposed to instruments.

Decision

The Tribunal cited and applied legal principles set out by his Honour Pembroke J in McEvoy v McEvoy [2012] NSWSC 1494. The key question is whether there is language or conduct that shows a sufficiently clear intention to create a trust. The court may look to the nature of the transaction and the whole of the circumstances attending the relationship between the parties.

The Tribunal noted the Taxpayer's contention was contrary to all other relevant facts and circumstances. Further, the Taxpayer failed to establish, on the balance of probabilities, that it was not a party to any dutiable transaction within the meaning of Section 8(1)(b)(ii) of the Duties Act prior to the contract to purchase the Rockdale Property. Accordingly, the assessment was confirmed.

Read the case decision on BD Corporation Pty Ltd.

Land Tax

What is land tax?

Land tax is an annual tax levied on the owners of land in NSW other than land which is exempt. Land tax is calculated on the land value of all land owned at midnight 31 December each year (otherwise known as the 'taxing date'). For example, the total value of non-exempt landholdings as at midnight 31 December 2015 is the land assessed for the 2016 tax year. Land tax years are the same as calendar years, that is 1 January to 31 December. There is no pro-rata or apportionment of land tax for land acquired or disposed of during the course of the year.

How is land tax calculated for 2016?

Land tax is calculated on the combined value of all the taxable land owned. The land tax threshold for 2016 is $482,000. The land tax assessment is calculated on the combined value of all the taxable land owned above this threshold. The amount of tax is $100 plus 1.6 per cent of the land value between the threshold and the premium rate threshold ($2,947,000) and 2 per cent thereafter. If the combined value of the land does not exceed the threshold, no land tax is payable.

General example

Basic land tax calculation

Use the following formula to calculate basic land tax: **(A minus B) multiplied by C plus D = Land tax payable.**

Reference	Amount
A is the total land value	$610,000
B is the land tax threshold	$ 482,000
C is the land tax rate	1.6%
D is the standard tax	$100

Total land tax payable on total land value of $610,000 is: ($610,000 minus $482,000) multiply by 1.6% plus $100 = $2,148.

Premium land tax calculation

Use the following formula to calculate premium land tax: **(A minus B) multiplied by C plus D = Total premium land tax payable.**

Reference	Amount
A is the total land value	$3,881,000
B is the premium land tax threshold	$2,947,000
C is the land tax rate	2%
D is the basic land tax payable	$39,540

Total premium land tax payable on total land value of $3,881,000 is: ($3,881,000 minus $2,947,000) multiply by 2% plus $39,540 = $58,220.

Special trusts land tax calculation

Use the following formula to calculate special trusts land tax: **A multiplied by B = total special trust land tax payable.**

Reference	Amount
A is the total land value	$600,000
B is the land tax rate	1.6%

Total special trust land tax payable on total land value of $600,000 is: $600,000 multiply by 1.6% = $9,600.

How land values are determined

The Valuer-General values all land in NSW annually and provides these values to the OSR for land tax purposes. Any land owner who believes that their land value is incorrect may object to the land value with the Valuer-General. There is a time limit for lodging objections, 60 days from either the date of a land tax notice of assessment from OSR or the date of a notice of valuation from the Valuer-General.

See **Land Values** at Valuer General of NSW website.

Strata unit valuations

For strata units, the land value for each individual strata lot is calculated on a proportional basis using the unit entitlement for each lot and the aggregate for the strata scheme.

Average values

The value used to determine the land tax liability will generally be the average of the land value for the current tax year and the land values for the previous two tax years. Where a parcel of land was only recently created (for example, by subdivision or amalgamation) the average value will be based only on the land values for those taxing dates when the newly created land item existed.

Taxation of joint ownerships

Joint owners are assessed as if they are a single owner. Each joint owner may also be assessed separately on all their interests in land, with their share of each jointly owned parcel of land added to the value of each parcel of land that they own individually. Where tax is paid by the joint owners, each joint owner is entitled to a deduction in their separate assessments to prevent double taxation of the jointly owned land.

Taxation of companies

A company is assessed in the same way as a sole owner unless it is related to another company. A related company can be assessed separately or assessed jointly with another company or companies to which it is related. In assessing land tax, each member of the group will be assessed as either a concessional, joint concessional or non-concessional company.

Where the concessional or joint concessional companies total taxable land value does not exceed the premium rate threshold, but exceeds the general threshold, these companies are assessed at 1.6 per cent of the taxable value above the land tax threshold plus $100. Each non-concessional company is then assessed at 1.6 per cent of their taxable value as it does not qualify for the threshold.

Where the total taxable land value of the group exceeds the premium rate threshold, the total taxable land value of each non-concessional company is assessed at 2 per cent.

Taxation of trusts

A trustee of a trust is assessed in the same way as a sole owner unless it is a special trust.

Special trusts do not qualify for the general threshold. A special trust is assessed at the rate of 1.6 per cent on the combined taxable value of the land up to the premium land tax threshold ($2,947,000) and then 2 per cent thereafter.

As well as the trustee receiving a land tax assessment, a secondary assessment may be issued to a beneficiary as well where they are equitable owners, or deemed equitable owners. Similar to joint owners, any such beneficiaries are entitled to a deduction in their individual assessments to prevent double taxation of the property held in trust.

Exemption for principal place of residence

Land that is used and occupied as the principal place of residence (PPR) of the owner of the land may be exempt from land tax. This applies to both residential land and strata lots. The exemption is not affected by the value or size of the land.

Each family, including dependents under 18 years, can only claim the principal place of residence exemption for one property. If there is more than one owner for the land, at least one owner must use and occupy the property as their principal place of residence for the exemption to apply.

Exemption for primary production land

Rural zoned land may be exempt from land tax if the dominant use of the land is for primary production. Where land is used for more than one purpose, the different uses are weighed up to determine which is the dominant use. It is important to remember that 'use' is not limited to physical use. For instance, the development of land is a considered a use even if physical construction has not yet commenced. To determine dominance, factors taken into account include:

- the area of land attributed to each use
- the level of capital investment in each use
- the level of income received from each use
- the size, scale and intensity of each use
- the labour input required for each use.

Land that is not zoned rural must meet a further test to qualify for the primary production exemption. The primary production use of the land must have a significant and substantial commercial purpose or character, and it must be engaged in for the purpose of profit on a continuous or repetitive basis (whether or not a profit is actually made). To qualify for this exemption, the person conducting the primary production activity would need to demonstrate that the activity is financially viable or self-sustaining, taking into account all reasonable costs associated with the activity (including wages).

Legislative changes

State Revenue Legislation Amendment (Budget Measures) Bill 2016

The proposed amendment to the *Land Tax Act 1956* imposes surcharge land tax of 0.75 per cent on residential land owned by foreign persons from the 2017 tax year.

The Bill defines a foreign person to have the same meaning as in the *Foreign Acquisitions and Takeovers Act 1975* of the Commonwealth (which generally includes an individual not ordinarily resident in Australia, a corporation in which such an individual has a substantial interest, a trustee of a trust in which such an individual holds a substantial interest or a foreign government). The definition is modified to ensure that Australian citizens are not foreign persons (wherever they reside) and that New Zealand citizens holding special category visas are not foreign persons if they have been in Australia for at least 200 days in the previous 12 months.

State Revenue Legislation Amendment Act 2016

Unoccupied land intended to be owner's principal place of residence

Unoccupied land may be exempt under the principal place of residence exemption if the owner intends to use and occupy the land as his or her principal place of residence at the completion of proposed building or renovation works. Prior to the amendments on 11 May 2016, if the land was used and occupied by a person other than the owner after its acquisition, the exemption applied for up to four tax years following the year in which building works physically commenced on the land.

The amendments simplify this exemption by allowing a period of up to four tax years following the year in which a person, other than the owner, ceases to use and occupy the land for residential purposes. For example, if the property is leased to tenants, the owner may claim the exemption once the tenants vacate the property.

The owner will be entitled to claim the unoccupied land as his or her principal place of residence if the Chief Commissioner is satisfied that significant steps enabling work to physically commence are taken by the end of the first of the four tax years concerned.

Land tax clearance certificates

An amendment to the *Conveyancing* (Sale of Land) *Regulation 2010* will require the vendor under a contract for the sale of land to provide a current land tax clearance certificate (Section 47 certificate) to the purchaser.

All contracts entered into on or after the 1 July 2016 will require the vendor to provide the purchaser with a current certificate. Vendor information required (where applicable) when completing the application for a land tax clearance certificate is listed in the Commonwealth Reporting Reference Table at www.osr.nsw.gov.au/info/commonwealth.

From 1 July 2016, you will need to apply for any land tax certificates through a **Client Service Provider (CSP)**.

Hot topics

Self-managed super funds and limited recourse borrowing arrangements

Purchasing land in self-managed super funds (SMSFs) is increasing in popularity. SMSFs are entitled to the land tax threshold provided they are complying super funds. If land is purchased under a limited recourse borrowing arrangement there will generally be a custodian registered on title who will hold the land on trust for the trustee of the super fund. For land tax purposes, the custodian is disregarded and the land tax assessment is issued in the name of the trustee of the super fund. If you purchase land in a SMSF under a limited recourse borrowing arrangement make sure to register the super fund for land tax and advise OSR of the trustee's details so that the assessment can be issued in the correct name.

Crown leases

Lessees of land owned by the Government are deemed to be owners of land and may need to pay land tax. Importantly, it is also the responsibility of the lessee to register for land tax. If you lease any property from the Government (such as shops, offices and parking spaces) you need to register for land tax. Government includes local Councils, county Councils and statutory bodies representing the Crown. It does not, however, include land owned by the Commonwealth.

Unit holders of fixed unit trusts

Unit holders in a fixed unit trust are taken to be owners of any land held by the trust. If you hold units in a fixed unit trust which owns land you are required to register for land tax. Your interest in the land held by the trust will be combined with any other land which you own or partly own in NSW in determining your taxable value.

Compliance activity

OSR regularly conducts compliance activities to ensure the integrity of the tax and benefits systems we administer. Below are some of the areas we will be focusing on in the coming year for land tax:

Exemption for intended principal place of residence

Unoccupied land may be exempt if the owner intends to use and occupy the land as his or her PPR at the completion of proposed building or renovation works. An owner may clam this exemption for up to 4 tax years whilst works are taking place. Importantly, the owner must, at the completion of the works, use and occupy the property as their PPR, and continue to do so for a minimum period of 6 months. If the owner does not meet this residency requirement, the exemption will be revoked for all tax years in question and the owner may be liable for land tax for each year.

If you have claimed this exemption and your circumstances have changed (in that you are no longer able to meet the residency requirement) make sure to advise OSR to avoid penalties or interest.

Reviewing existing exemptions – advise us of any changes

Part of our regular compliance activities include reviewing existing exemptions to ensure they are correctly applied. If you have claimed an exemption for land and the use of that land has since changed (for example, you no longer reside in the property) make sure to let OSR know to avoid incurring penalties or interest.

Trusts – beneficiaries and unit holders of fixed trusts also need to register

Beneficiaries of fixed trusts and unit holders in fixed unit trusts are taken to be owners of any land held by the trust. If you are a beneficiary of a fixed trust or you hold units in a fixed unit trust which owns land you are required to register for land tax. This applies to natural persons, companies, or trusts. Your interest in the land held by the trust will be combined with any other land which you own in NSW in determining your taxable value. This includes any land which you own jointly as part of a partnership and any land you own as a beneficiary or unit holder in any other trust.

Recent decisions

Australian Native Landscapes v Chief Commissioner of State Revenue [2015] NSWCATAD 189

Decision of Judicial Member Verick on 10 September 2015

Issues

- Exemption for land used for primary production.
- Land consisting of separate parcels of land.

Background

Australian Native Landscapes (the Taxpayer) sought review of the Chief Commissioner's land tax assessment requiring them to pay land tax, in respect to land at Blayney, for the 2010 to 2014 land tax years.

The Taxpayer owned land which consisted of two separate parts, each with their own postal code, which was treated by the Valuer-General as one parcel of land for valuation purposes. The Taxpayer conducted compost farming on the land.

The Taxpayer contended that the land comprised of two separate 'parcels of land' for a number of reasons, including that both parcels had separate legal titles, separate postal identities and separate physical characters. The Chief Commissioner contended that it did not have the legislative power to 'dissect' a parcel of land.

The Taxpayer also contended that the land was used for compost farming and that this use is a form of 'cultivation', with the produce of the cultivation being for the purpose of sale. The Chief Commissioner contended that the taxpayer applied processes to organic matter rather than to the land itself and as such, the making of compost was not 'cultivation'.

Decision

The Tribunal agreed with the Chief Commissioner on both issues. On the issue of parcels of land, the Tribunal noted that 'land tax is imposed on the taxable value of land' and that the taxable value is 'calculated on the basis of the value entered in the Register kept by the Valuer-General'. On the issue of compost farming, the Tribunal agreed with the Chief Commissioner, concluding that the idea conveyed by 'cultivation' is the improvement of the land for the purpose of selling the produce of the improved land. The Tribunal noted that any activity on land involving cultivation without sown crops, plants or trees would not satisfy the requirements of 'cultivation' for the purposes of the exemption provided to primary producers.

Read the case decision on Australian Native Landscapes.

White Star Developments Pty Limited v Chief Commissioner of State Revenue [2015] NSWCATAD 180

Decision of Senior Member Perrignon on 26 August 2015

Issue

Requirement of land owner to furnish land tax returns.

Background

White Star Developments Pty Limited (the Taxpayer) sought a review of the Chief Commissioner's land tax assessments for the 2013 and 2014 land tax years.

The main issue for determination was whether the assessments ought to be set aside as the Chief Commissioner had not alerted the taxpayer in 2012 to the fact that the trust deed did not fulfill the requirements for a fixed trust.

The Taxpayer purchased land as the trustee of the Moffat Street Unit Trust in 2011. A questionnaire was sent by OSR to the taxpayer in 2014. Based on the response provided, the Chief Commissioner assessed the taxpayer as the trustee of a special trust for the 2012 to 2014 tax years. The trust deed was subsequently amended to comply with the requirements of a fixed trust for the 2015 tax year.

The taxpayer claimed that if the Chief Commissioner had issued an assessment notice for the 2012 tax year in 2012, the Taxpayer would have been able to amend the trust deed earlier, thereby not incurring liability for the 2013 and 2014 tax years.

Decision

The Tribunal outlined that the Taxpayer did not fulfill its duty to provide returns as required for the relevant tax years, and there was no evidence provided by the Taxpayer prior to answering the questionnaire in 2014. Therefore, it was not possible for the Chief Commissioner to know whether or not the trust ought to be assessed as a fixed or special trust until then.

The Tribunal reasoned that even if the Chief Commissioner had caused the delay in issuing in the notices of assessment, it would not have affected the Taxpayer's liability to pay tax. Accordingly, the Tribunal confirmed the land tax assessments.

Read the case decision on White Star Developments Pty Limited.

Codlea Pty Ltd v Chief Commissioner of State Revenue [2015] NSWCATAP 30

Decision of Senior Members Dr J Renwick and Prof G Walker on 8 February 2016

Issue

Exemption for land used for primary production.

Background

Codlea Pty Ltd (the Taxpayer) appealed the decision of the Tribunal to deny the primary production land exemption under Section 10AA of the *Land Tax Management Act 1956* on non-rural land used for beekeeping for the 2012 to 2014 land tax years.

The Appeal Panel was concerned primarily with whether the commerciality test in Section 10AA(2) of the LTMA was correctly applied.

In 2011, the Taxpayer decided to pursue beekeeping and honey production as an economic interim use of land comprised of 31.33 ha situated in Brunswick Heads which was intended to be later subdivided into 167 residential lots.

At first instance, the Tribunal held that the dominant use of the land was the beekeeping use. However, the beekeeping operations were found not to have a 'significant and substantial commercial purpose or character' nor were they 'engaged in for the purpose of profit on a continuous or repetitive basis' as required for the exemption to be available for non-rural land.

The Taxpayer was described as a 'part-time' or 'sideline' beekeeper, and therefore did not have the requisite commercial character. The Tribunal also found that the Taxpayer's beekeeping operations for the relevant period were not conducted for the purpose of profit on a continuous or repetitive basis after including Council rates as an expense.

Decision

The Appeal Panel concluded that the Tribunal did not misconstrue the commerciality tests. The Taxpayer's appeal was dismissed.

Read the case decision on Codlea Pty Ltd.

Bright v Chief Commissioner of State Revenue [2015] NSWCATAD 80

Decision of Senior Member N S Isenberg on 21 April 2015

Issue

Concession for absence from former residence.

Background

Geoffrey and Sandra Bright (the Taxpayers) sought review of the Chief Commissioner's land tax assessment of their former residence at Longueville, NSW (Longueville property) for the 2012 and 2013 land tax years. The Longueville property was rented during these years.

The issue for the Tribunal to consider was whether the Longueville property was exempt from land tax pursuant to Schedule 1A Clause 8 of the LTMA (referred to as the concession for absence from former residence).

The Taxpayers had occupied the Longueville property as their PPR since 1987. In 2011, Mr Bright moved to Melbourne for employment. The Taxpayers rented accommodation in Melbourne. The Longueville property was leased to tenants from 30 May 2011, initially for a 12 month period, however the lease was eventually continued until 30 June 2014.

The Taxpayers returned to Sydney in December 2011 and resided in rented accommodation. In June 2013 the Taxpayers purchased a property in Clovelly in which they resided from 1 July 2013 and in respect of which they were granted a PPR exemption for the 2014 tax year.

The Taxpayers submitted that they were unable to take up residence at the Longueville property upon their return to Sydney in December 2011 as it was still subject to a lease at the time. They further submitted that they had wished to sell the property in mid-2013 however they were unable to do so as their agent leased the property for an additional period without their knowledge. Furthermore, the Taxpayers submitted that they did not derive a 'great financial benefit' from the rent of the Longueville property as they had incurred additional expenses, such as the cost of renting other accommodation in Sydney and Melbourne, as a result of renting the Longueville property.

Decision

The Tribunal affirmed the decision of the Chief Commissioner to assess the Longueville property for land tax. The Tribunal was not satisfied that the Taxpayers met the requirements specified in Schedule 1A Clause 8 of the LTMA because, during the relevant period, the property was leased for a period exceeding 6 months in each tax year and income was derived under the lease.

Furthermore, the Tribunal concluded that the income derived from the lease was more than reasonably required to cover council, water and energy rates and charges and maintenance costs of the owner in respect of the Longueville property. The other expenses incurred by the Taxpayers, being the cost of alternative rental accommodation in Melbourne and Sydney and flights from Melbourne to Sydney to visit family members, were not relevant.

Read the case decision on Bright.

Payroll Tax

For the 2016–17 financial year, the NSW threshold deduction is $750,000 and the tax rate is 5.45 per cent.

What's new for the 2016–17 financial year

Jobs Action Plan rebate – Legislative amendment effective from 31 July 2016

New jobs commencing on or after 31 July 2016, will only be eligible for the rebate if the employers full-time equivalent (FTE) employee number, prior to the new job, is 50 or below.

The total rebate amount per new job has increased to $6,000. New jobs commencing on or after 31 July 2016 will receive a rebate of $2,000 payable on the first anniversary and $4,000 on the second anniversary.

To be eligible for the scheme you must be registered as an employer and paying payroll tax in NSW and from 23 November 2015, late registrations for the Jobs Action Plan will only be accepted, without justification, if made within 90 days of the commencement of the new position.

To calculate your number of FTE employees use the following formula:

FTE = F + A/B

Where:

FTE = Full-time Equivalent

F = number of NSW full-time employees on the relevant date

A = total number of hours worked in the preceding pay period by all NSW part-time employees employed on the relevant date

B = average number of hours worked in the preceding pay period by all NSW full-time employees employed on the relevant date.

To calculate the number of FTE employees:

- on the date of commencement of a person in a new job, exclude the person employed in the new job
- on the first and second anniversaries of commencing the new job, include the person employed in the new job.

Fringe Benefits Tax gross-up rate Type 2

From 1 July 2016 to 30 June 2017, businesses are still to use 1.9608 as the Type 2 grossed-up rate multiplier for the aggregate value of all fringe benefits. This rate is to be applied by all taxpayers who either use the actual or estimate method of returning fringe benefits for payroll tax purposes.

Motor vehicle allowance exempt component

66c/km during the period 2016–17.

Local Government Business Entities

From 1 May 2016, a wholly-owned subsidiary of a local council is exempt from the liability to pay payroll tax on wages that are paid or payable to a person for an activity conducted for the council.

This amendment extends the exemption to a body corporate wholly owned by 2 or more local councils if the wages are paid or payable to a person for an activity conducted for those councils.

Common payroll tax mistakes

We have identified a number of errors clients generally make when lodging their payroll tax returns. To ensure your business correctly complies with the payroll tax provisions, below is a list of common errors.

- Wages – for the purposes of determining the payroll tax liability, gross wages should be used rather than net wages.
- Allowances – claiming an exempt component for motor vehicle and accommodation allowances requires substantiation with log books or records.
- Fringe benefits:
  - using reportable values from employee pay summaries results in an incorrect calculation of fringe benefits for payroll tax purposes
  - including salary sacrifice amounts towards fringe benefits results in an overstatement of payroll tax liability
  - using the Type 1 grossing up factor when calculating the taxable amount results in an overstatement of liability. Only use Type 2 grossing up factor for both benefit types
  - forgetting to proportion the fringe benefits taxable amount according to the State's wages proportionate to total Australian wages results in an overstatement of taxable fringe benefits.
- Superannuation – only including up to the Super Guarantee Charge leads to an understatement of liability. All amounts paid into Superannuation including salary sacrifice amounts are liable.
- Third-party payments to Directors – if a director provides services to a corporation, all payments relating to those services are wages for the corporation even if the payments are made to another company, a superannuation fund or other entity.

- Contractors – failure to include liable contractor payments (less GST and approved deductions) results in an understatement of payroll tax unless an exemption applies. If an employer is claiming an exemption for one of their contractors, the employer needs to have the evidence to be able to substantiate the exemption they wish to claim.
This involves the employer being aware of the contractor's business, for example, do the contractors engage others to fulfil the contract, do they have other customers that they provide services to?
- Threshold entitlement – excluding interstate wages when calculating payroll tax results in incorrect threshold allocation and underpayment of tax. Including interstate wages allows for the threshold to be proportioned according to total Australian wages.
- Apprentices and Trainees – to claim the available rebate the apprentices and trainees must be registered with the Department of Education and Communities. Additionally, all forms of wages (wages, allowances, super, fringe benefits) paid to apprentices and trainees are rebateable wages. Trainees must be new entrant trainees, not working more than three months full time or three months part time or casual to be eligible for the rebate.
- Grouping – multiple thresholds claimed by group members. This often eventuates due to businesses not being aware of the grouping provisions.

Recent decisions

Regis Mutual Management Pty Ltd v Chief Commissioner of State Revenue [2015] NSWCATD 213

Decision of Senior Member Isenberg on 19 October 2015

Issues

- Grouping Provisions
- Common Employee Grouping
- Chief Commissioner's discretion to exclude from a group

Background

The key question was whether or not the duties being performed by Capricorn Society Ltd (CSL) employees were for or in connection with the Regis Mutual Management (Regis) business. The first issue for the Tribunal to consider was whether or not Regis was a member of the payroll tax group which included CSL in respect of the relevant period from 1June 2008 to 31 December 2011. The second issue was whether or not the Chief Commissioner's discretion not to give a de-grouping was warranted.

Regis stated that CSL employees were performing duties for or in connection with CSL's business and then providing services to Regis. The Tribunal did not accept Regis' submission that the duties being performed by CSL's employees were not also for or in connection with Regis' business.

Decision

Having regard to the terms of the Service Agreement, the Tribunal accepted Regis' submission that CSL employees were performing duties for or in connection with CSL's business and that services were being provided to Regis.

However, it did not accept Regis' submission that the duties being performed by CSL's employees were not also for or in connection with the Regis business. The carrying out of duties in connection with one business did not preclude those duties also being carried out in connection with another business. Accordingly, the Tribunal concluded that it was not satisfied on the balance of probabilities that Regis and CSL were not grouped for the purpose of Section 71(3) of the Act.

Read the case decision on Regis Mutual Management Pty Ltd.

Headwear Pty Ltd v Chief Commissioner of State Revenue [2015] NSWCATAD 166

Decision of Senior Member Isenberg on 10 August 2015

Issues

- Grouping Provisions
- Common Control Grouping
- Chief Commissioner's discretion to exclude from a group (de-group)

Background

The Taxpayer, Headwear Pty Ltd, sought review of the Chief Commissioner's decision not to de-group the Taxpayer and three other employers (the Headwear Group) under Section 79 of the *Payroll Tax Act 2007* (the Act) in respect of the 2008 to 2011 tax years (the Relevant Period). The issue for determination was whether the Tribunal, standing in the shoes of the Chief Commissioner, should exercise that discretion to de-group.

Headwear provides customised headwear for corporate, sporting, licensed and retail customers. By letters dated 28 March 2011 and 12 December 2011, the advisers for the Taxpayer, Nexia Perth Pty Ltd (the Advisers) conceded that the Headwear Group constituted a group for payroll tax purposes. However, they requested that the Chief Commissioner exercise his discretion to exclude the Taxpayer from the group. The decision was based on the nature, degree and ownership of control, the nature of the business, plus relevant, business and commercial matters.

Decision

The Tribunal found that the Chief Commissioner's determination not to de-group was correct. It found that the use of the same external advisers, postal address and registered business office and these factors alone inconsequential. However, the more relevant matters in making its determination included:

- the role played by the same person in the business activities of both Headwear and the WA business, the supply of all stock to all group members from a single factory with exclusive communications through the WA business; the financial connections between Headwear Pty Ltd and other members of the Headware Group
- the businesses' failure to consider alternate sources of stock, funding, administrative and accounting services; group marketing and the joint Headwear Group website
- the communication process for potential clients of the Headwear Group; and the use of the same 'Headwear' branding by all group members.

Read the case decision about Headwear Pty Ltd.

Namoi Tyreright Pty Ltd v Chief Commissioner of State Revenue [2016] NSWCATAD 88

Decision of Senior Member Isenberg on 13 May 2016

Issues

- Grouping Provisions
- Common Control Grouping
- Chief Commissioner's discretion to exclude from a group (de-group)

Background

This was an exclusion from grouping case where Namoi Tyreright (the Taxpayer) was a tyre retailer partly owned by Tyres 4 U (T4U). T4U was the main provider of tyres to the Taxpayer under a non-exclusive dealership agreement, which was part of the business strategy of T4U to sell its tyres nationwide through several Tyreright retailers. The Chief Commissioner issued payroll tax assessments to the Taxpayer for the years 2012 to 2014 where the Taxpayer and T4U were treated as a payroll tax group. The Taxpayer challenged the assessments on the basis that the Chief Commissioner should have exercised his discretion under Section 79 of the *Payroll Tax Act 2007* (NSW) to de-group the companies as they were not connected and carried on independently of one another.

Decision

The Tribunal referred to the *Boston Sales and Marketing Pty Limited v Chief Commissioner of State Revenue* [2014] NSWCATAD case where Justice Block said that:

'The only statutory question which requires an answer is as to whether a business carried on by the person, is carried on independently of, and is not connected with the carrying on of, a business carried on by any other member of that group, the Chief Commissioner (or, Tribunal in this instance) is to have regard to:

1. the nature and degree of ownership and control;
2. the nature of the businesses; and
3. any other matter considered relevant.'

The Tribunal established that although the Taxpayer may have had day-to-day managerial control of its business without T4U's interference, the Taxpayer conducted its business in compliance with the comprehensive standards and requirements contained in the dealership agreement with T4U and therefore no exclusion was available.

Read the case decision on Namoi Tyreright Pty Ltd.

Eastside Veterinary Emergency & Specialists Pty Ltd v Chief Commissioner of State Revenue [2016] NSWCATAD 104

Decision of Senior Member Verick on 26 May 2016

Issues

- Grouping Provisions
- Common Control Grouping
- Chief Commissioner's discretion to exclude from a group (de-group)

Background

This was a case where the applicant challenged the Chief Commissioner's decision not to grant a de-grouping of three businesses, Eastside Veterinary Emergency and Specialists Pty Ltd (Eastside), Rose Bay Veterinary Hospital Pty Ltd (Rose Bay), and ANHM Investments ATF Eastside Property Unit Trust (ANHM).

The taxpayer conceded that there was a grouping under Section 72 of the *Payroll Tax Act 2007* from 19 December 2011 to 31 August 2014, but was asking the Chief Commissioner to use his discretion to de-group Eastside under Section 79. From 13 July 2011 to 13 April 2012, the shareholders had 67 per cent joint control of the shares of Eastside. The same shareholders were also the sole unit holders of the Eastside Property Unit Trust.

The argument put forward by the applicant was that Eastside and ANHM ran different businesses. Eastside was a specialist emergency veterinary hospital providing different veterinary services to ANHM, which offered the services associated with an ordinary veterinary practice. The Applicant stated that:

- each shareholder had complete responsibility for managing their separate businesses
- only 6 per cent of Eastside's income is from referrals by ANHM
- bookkeeping and accounting functions were separate
- there was no sharing of premises and staff
- and there were no loan agreements or any other shared financial arrangements.

The Applicant also stated that the only shared arrangement was an x-ray machine with costs being borne at an arm's length basis.

The Chief Commissioner's argument was that:

- from the date of registration until 14 January 2014 Eastside and ANHM shared and occupied the same premises
- one shareholder was a guarantor for the leases of Eastside and ANHM since 2011, and that both directors were on the payroll records of both businesses
- Eastside and ANHM are joint lessees of the x-ray and blood equipment and split the purchasing cost
- both Eastside and ANHM's websites provided links to each other's websites which also advertised the services of each director/doctor
- in May 2014 the Rose Bay address is recorded as the postal and business address of Eastside for income tax and BAS records in 2014 Eastside and Rose Bay used the same tax agents for income tax, and Eastside charged fees to Rose Bay
- Eastside and Rose Bay had common suppliers of medication
- both directors were signatories for Eastside and Rose Bay
- an ASIC notice to cease being a director of Eastside, was only given two days after Eastside lodged its application for a grouping exclusion.

The applicant cited the decision of C J Martin in the *1994 Crusher Holdings NTSC* case emphasising the focus should have been on the *'nature of the business and not the control'*.

Justice Verick:

- Discussed the old wording of the equivalent of Section 79 which required application of the *'substantial independence and connection'* test stated that from the 1 July 2007 there was now no need to determine the *'quantum of independence or connection'*.
- Highlighted the earlier Supreme Court decision in the *1997 Commissioner of Stamps v Hunter Garrett Pty Ltd* case where the importance on the *capacity to control* as well as the relationship between the nature of the businesses was influential. Therefore *one aspect of the test could not be ignored at the expense of the other.*
- Cited subsequent cases like the *2012 Port Augusta Medical Centre* Supreme Court case, and the 2014 Supreme Court *Conrad Holdings* case which reinforced the new focus on the control of the business, having regard to the *nature and degree of ownership*.
- Mentioned Justice Anderson's reasoning in the 2014 NCAT *Seovic Civil Engineering Appeal* case, where he stated that the new Section 79 now focuses on the *interconnections between grouped businesses, the nature of the businesses and other relevant matters.*

Decision

In his summary, Justice Verick stated that the Chief Commissioner was correct in his decision and the applicant had not established the commercial independence of Eastside's business and its lack of connection with ANHM.

Read the case decision on Eastside Veterinary Emergency & Specialists.

Styling Australia Pty Ltd v Commissioner of State Revenue (Review and Regulation) (Correction) [2015] VCAT 1792

Decision of Senior Member Davis on 10 November 2015

Issues

- Common law employees or independent contractors
- Employment agency provisions

Background

Styling Australia (Styling) sought a review of the Victorian Commissioner's determination disallowing the applicant's objection against the Commissioner's Notice of Assessment relating to a period from 1July 2010 to 30 June 2013 inclusive. The issue to be determined was whether the promotional hosts hired by Styling, were employees, on-hired employees or independent contractors.

Styling supplied promotional hosts to clients throughout Australia. Its clients were often marketing companies that sought quotes from Styling for services to provide skilled people to host and manage events, campaigns and carnivals. Depending on the budgets and criteria of the client, Styling found suitable hosts which fitted the brief for the job. Many of the staff that were sent to host the events were aspiring models, actors and individuals, who saw this type of work as an entry level into the entertainment industry.

Styling argued the workers were independent agents, and not their employees or on-hired employees. Styling argued that the promotional hosts were independent contractors because:

- they had ABNs
- the client decides when and where the workers should attend
- Styling doesn't run an agency, but merely represents the workers
- once the worker arrives at the event, they are under the control of the client, not Styling
- the client decides when and where the workers should attend
- Styling doesn't preclude the workers from sub-contracting
- they were responsible for their own risk and insurance
- they were required to bring their own public address system, assorted costumes including clothing, accessories, evening gowns, swimwear, general wardrobe, props and electronic devices (iPads, mobile phones)
- Styling couldn't suspend or dismiss them.

In addition, Styling maintained that as there was an investigation in relation to the period from 1 July 2005 to 30 June 2010, whereby the Commissioner didn't assess Styling for payroll tax in that period, therefore it shouldn't be liable to pay such tax now until the investigation had been finalised.

The Commissioner argued that the promotional hosts were:

- under the control of the agency at all times prior to entering the function
- only under the control of the client because of the contract between the workers and the applicant

- forced to notify Styling when they were not available to accept an assignment offered
- not allowed to accept an offer of employment, without the consent of Styling
- asked to immediately notify Styling of any difficulties arising in relation to the assignment
- paid by Styling and didn't take any commercial risk in relation to the venture and required to keep a record of the work they performed and would get paid for a minimum for 3 hours.

Decision

As there was no evidence to support the promotional hosts running independent businesses, the Tribunal found them to be on-hired temporary or casual employees of Styling. However, it was also mentioned by Senior Member Davis that the workers could have also been seen as service providers and deemed employees under Section 37 of the *Payroll Tax Act 2007* as an employment agency arrangement.

In addition, the Tribunal found that the investigations that the Commissioner made during a previous audit period were a different period to the present, and it wasn't clear that the same material was presented before the Commissioner. In any event, a previous decision of the Commissioner cannot operate as an estoppel against the proper construction and application of the Act, and cannot prevent the Commissioner from performing his statutory duty to administer taxation laws. See Kurtovic v the Minister of Immigration [1990] FCA 22; (1990) 21 FCR 193 at [196], [200], [207-208], [210-211], [214-215].

Read the case decision on Styling Australia Pty Ltd.

Small Business Grant

The Small Business Grant (SBG) is a key priority of the NSW Government designed to encourage small businesses in NSW, that do not pay payroll tax, to hire new employees and expand their business. The SBG applies to new jobs created on or after 1 July 2015 and will continue until 30 June 2019.

The SBG is a one-off payment and is paid when a claim is made on the 12-month anniversary of the hire of a new employee. For full time employees, the amount of the SBG is $2,000. In the case of a part time or casual employee, the amount of the SBG will be prorated based on the number of hours worked compared to the standard hours of that particular employer's full time employees.

Businesses cannot claim both the $2,000 SBG and the $5,000 Payroll Tax Jobs Action Plan rebate.

To obtain the SBG, employers will initially register a new employee with OSR within 60 days after the employee commences work. An employer who satisfies the eligibility criteria can apply for payment of the SBG within 60 days after the first anniversary of the date on which the employment commenced.

To be eligible for the SBG, a business must:

- have an active ABN
- during the 12-month employing period of a new person, not have a payroll tax liability as at 30 June of that financial year.

The eligibility criteria for the SBG have been designed to ensure employers increase the number of employees for at least 12 months.

Employment is eligible employment if:

- the employer is an eligible small business
- the person is employed in a position that is a new job
- the employment commences between 1 July 2015 and 30 June 2019
- the services of the employee are performed wholly or mainly in NSW.

A business can **register for the Small Business Grant online**.

First Home Owner Grant (New Homes)

The First Home Owner Grant (New Homes) scheme is available to first home buyers who purchase or build a new home in NSW valued at up to $750,000.

For eligible transactions made on or after 1 January 2016, the grant amount is $10,000.

Legislative changes

State Revenue Legislation Amendment Act 2016

Substantially renovated homes and homes built to replace demolished premises

The First Home Owner Grant (New Homes) scheme is available to first homebuyers who purchase or build a new home. A new home is a home that has not been previously occupied or sold as a place of residence, and includes a substantially renovated home and a home built to replace demolished premises.

The definition of a substantially renovated home now requires that the home must be created through renovations in which all, or substantially all, of a building is removed or replaced (whether or not the renovations involve the removal or replacement of foundations, external walls, interior supporting walls, floors or staircases).

The definition of a home built to replace demolished premises now requires that the home must be built on the same land as the demolished premises.

Recent decisions

Wang v Chief Commissioner of State Revenue [2016] NSWCATAD 61

Decision of Senior Member Isenberg on 7 April 2016.

Issue

Definition of a 'new home'.

Background

The case concerned the Chief Commissioner's decision not to grant the applicant's first home owner grant application in relation to a property in Macquarie Park. The Tribunal confirmed the applicant was ineligible for the grant because the property was not a 'new home' within the meaning of the *First Home Owner Grant* (New Homes) *Act 2000* (the FHOG Act), since the property had previously been sold by the developer to another purchaser who had on-sold the property to the applicant and co-purchaser.

The applicant submitted that the use of the word 'or' in the definition means that a new home need only meet one of the two options expressed in the definition. The applicant submitted that the fact that the property had not been previously occupied satisfied the first limb of the definition, and as a result, the property should qualify for the Grant.

The Chief Commissioner submitted that emphasis must be placed on the phrase ‘has not been previously’, therefore either prior occupation or prior sale of the property as a place of residence will disqualify a home from being a new home for the purposes of the FHOG Act.

Decision

Senior Member Isenberg preferred the Chief Commissioner’s interpretation, and held that the words ‘has not been previously’ serve to qualify the words ‘occupied’ and ‘sold’, such that if the home has been previously occupied or previously sold as a place of residence, the home no longer fits within the definition of a new home contained within Section 4A(1) of the FHOG Act. Senior Member Isenberg affirmed the decision of the Commissioner, and concluded that because the property had been previously sold as a place of residence, it could not meet the definition of a new home for the purposes of the FHOG Act.

Read the case decision on Wang.

Unclaimed Money

Unclaimed money is money held in an account that has been inactive for at least 6 years. Once the 6 years has passed, it is deposited with OSR. The owner of unclaimed money generally has 6 years from the time OSR receives that money to make a claim.

Legislative changes

State Revenue Legislation Amendment Act 2016

Enterprises holding unclaimed money on 30 June of each year are required to lodge a return relating to that money with the Chief Commissioner.

Before the amendments, money is not deemed to be unclaimed money if the amount does not exceed $100. The amendments now enable an enterprise to voluntarily report, in any such return, amounts that are not unclaimed money because they are $100 or less. If an enterprise chooses to report any such amount in a return, the amount must be paid to the Chief Commissioner for payment into the Consolidated Fund and may be recovered by the owner of that unclaimed money.

The amendments also give the Chief Commissioner the discretionary power to permit an owner of unclaimed money to claim that money even though the owner’s right to the money has been extinguished (being 6 years from the date that that unclaimed money has been paid to the Chief Commissioner).