



Office of State Revenue  
NSW TREASURY

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## Revenue Ruling No. DUT 39

# Changes to Mortgage Duty

### Ruling history

Ruling no.	Issued date	Dates of effect		Status
		From	To	
DUT 39	09 November 2009	1 July 2009	-	Current.

### Preamble

1. Mortgage duty is imposed under Chapter 7 of the *Duties Act 1997* (the Act) on instruments of security by way of mortgage or charge over property wholly or partly in New South Wales. Duty is payable on the amount secured by the mortgage at each liability date, subject to certain exemptions and concessions.
2. *The State Revenue Legislation Further Amendment Act 2009* applies to the assessment of duty in respect of the following:
  - (a) A mortgage first executed on or after 1 July 2009 or that first becomes liable to duty as a mortgage on or after 1 July 2009.
  - (b) An instrument of security that first affects property in New South Wales on or after 1 July 2009 (whether or not the instrument of security was first executed before that date).
  - (c) A mortgage first executed before 1 July 2009 or that first became liable to duty as a mortgage before 1 July 2009 if an advance or further advance is made on or after 1 July 2009 that is secured by the mortgage.

This ruling outlines how mortgage duty will be applied to:

- the amount secured by a mortgage
- mortgage packages
- refinancing
- transitional rules relating to limited mortgages and mortgage packages.

### Ruling

3. *The State Revenue Legislation Further Amendment Act 2009* introduced new provisions to simplify the calculation of mortgage duty.

#### *When does a liability arise?*

4. A mortgage becomes liable to duty on the date of its first execution. A mortgage becomes liable to additional duty on the making of an advance or further advance if, as a result of that advance or further advance, the amount secured by the mortgage exceeds the amount secured by the mortgage at the time a liability to duty last arose under the Act.

### *Amount Secured by Mortgage*

5. Under section 213 (1) of the Act, the amount secured by a mortgage is the amount of advances made under an agreement, understanding or arrangement for which the mortgage is security or under any variation to the agreement, understanding or arrangement (even if the amount of advances made exceeds the amount of advances recoverable under the mortgage). Duty is calculated by reference to such amount secured.
6. The amount of duty chargeable on a mortgage at a liability date is to be reduced by the amount of ad valorem duty (if any) for which the mortgage has already been duly stamped under the Act.

#### **Example 1**

NSW mortgage stamped with duty of \$1,941 to secure \$500,000

Amount outstanding reduced to \$450,000

Further advance of \$100,000 made on or after 1 July 2009

Amount secured ( $\$450,000 + \$100,000$ ) = \$550,000

Duty payable on \$550,000 = \$2,141

Less duty paid of \$1,941

Additional duty payable = \$200

### *Mortgage Packages*

7. If a mortgage and any other instrument of security secure or partly secure the same money at a liability date, they must be assessed as a mortgage package. It does not matter when the other instruments of security were first executed. Duty on a mortgage package is assessed as if the instruments comprising the mortgage package were a single mortgage.
8. The principal consequence of this approach is that when an advance or additional advance is made or a further NSW mortgage is executed, duty will be calculated on the total amount secured at the liability date, less credit for any duty paid under the Act. One of the mortgages in the mortgage package is to be stamped or upstamped with any ad valorem duty payable under the Act for the mortgage package and each other mortgage in the mortgage package is to be stamped as a collateral mortgage.

#### **Example 2**

NSW mortgage stamped with duty of \$3,941 to secure an advance of \$1 million

New NSW mortgage dated 1 December 2009 executed and a further advance of \$500,000

Package created on 1 December 2009 (100% NSW)

Total advance = \$1.5 million

Duty payable on \$1.5 million = \$5,941

Less duty paid = \$3,941

Additional duty payable = \$2,000

Collateral mortgage liable to duty of \$50

### **Example 3**

2 NSW mortgages secure an advance of \$1million

Prime stamped with duty of \$3,941

Other NSW mortgage stamped collateral with \$50

Prime discharged and collateral now prime

New NSW mortgage dated 1 December 2009 executed and a further advance of \$1m

Total advance = \$2 million

Duty payable on \$2 million = \$7,941

Less duty paid = \$3,941

Additional duty payable = \$4,000

#### *Mortgages over property not wholly within NSW*

9. Mortgage duty is to be assessed for a mortgage (including a mortgage package) over property that is partly within and partly outside NSW as if the amount secured by the mortgage were only the dutiable proportion. For mortgages or packages over property not wholly in NSW, the property proportion will be determined each time a liability date occurs, typically, when an advance is made or when a collateral security is executed.
10. In all instances a multi-jurisdictional statement must be completed with details about the location and value of the secured property. The value of the properties must be according to any referable point<sup>1</sup> prepared within 12 months before the liability date for the mortgage. The Chief Commissioner may request evidence to validate the information provided in the statement.

### **Example 4**

NSW & Interstate mortgages secure \$1 million (no duty payable in other states)

NSW portion = 60%

Duty payable on (60% of \$1 million) \$600,000 = \$2,341

Duty paid in other states = nil

Further advance of \$500,000 secured at a later date

NSW portion now = 50%

Total amount secured = \$1.5 million

Duty payable on (50% of \$1.5 million) \$750,000 = \$2,941

Less duty paid of \$2,341

Additional duty payable = \$600

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<sup>1</sup> See section 216(4) of the *Duties Act 1997*

### **Example 5**

NSW & QLD mortgages secure \$1 million

NSW portion = 50%

Duty paid in NSW on (50% of \$1 million) \$500,000 = \$1,941

Duty paid in QLD = \$2,000

QLD mortgage discharged

New NSW mortgage dated 1 December 2009 executed to secure further advance of \$1m

Total amount secured = \$2 million

Duty payable on \$2m = \$7,941

Less duty paid in NSW= \$1,941

(no reduction for duty paid on a discharged interstate mortgage)

Additional duty payable = \$6000

#### *Stamping a mortgage collateral to an instrument of security wholly or partly outside NSW*

11. Upon execution of a collateral mortgage, a mortgage package or new mortgage package is created. Duty is payable on the new NSW portion of the total amount secured with a credit for NSW duty previously paid. If the collateral mortgage is the first NSW mortgage it would be stamped with ad valorem duty. Otherwise the earliest NSW mortgage would be upstamped and the collateral mortgage stamped with \$50 duty. A multi-jurisdictional statement needs to be lodged each time.

#### *Concession for advances charged with duty under corresponding Acts*

12. Under 218D of the Act, a concession applies for advances charged with duty under corresponding Acts, so that the maximum duty that may be charged in respect of a mortgage package is the duty that would be chargeable if it were a single mortgage over property wholly within New South Wales and the mortgage had not previously been stamped with ad valorem duty.
13. If the total duty chargeable under the Act in respect of the amount secured by a mortgage at the liability date and the amount paid under a corresponding Act exceeds the maximum duty charge, the amount of ad valorem duty chargeable on the mortgage at the liability date is to be reduced by the amount necessary to ensure that the maximum duty charge is not exceeded.

### **Example 6**

NSW mortgage executed post 1 July 2009 to secure same moneys as package stamped prior 1 July 2009

Original package stamped to secure \$1 million

NSW portion = 50%

NSW duty paid = \$1,941

Duty paid in other States = \$1,600

New mortgage introduced into the package (no further advance)

New NSW portion = 75%

Duty payable on (75% of \$1 million) \$750,000 = \$2,941

Maximum duty (duty on \$1million) = \$3,941

Duty payable in NSW (\$2,941) + duty paid in other states (\$1,600) = \$4,541.00 (exceeds maximum amount by \$600)

Therefore reduced duty payable in NSW is (\$2,941 -\$600) = \$2,341

Duty already paid in NSW of \$1,941

Additional duty payable is (\$2,341-\$1,941) = \$400

14. If any of the mortgages in the mortgage package partly secures other moneys, that mortgage is to continue to be treated as a separate mortgage in respect of the other moneys that it secures.
15. No refund of duty is payable because the amount of ad valorem duty for which a mortgage has already been duly stamped under the Act exceeds the duty chargeable on the amount secured by the mortgage at a subsequent liability date.

### **Example 7**

NSW mortgage dated 1 August 2009 stamped with duty of \$3,941 to secure 1 million

QLD mortgage dated 10 October 2009 to secure further advance of = \$500,000

Package created 10 October 2009

Total amount secured = \$1.5 million

Duty on NSW portion (60% of \$1,500,000) \$900,000 = \$3,541

Duty already paid = \$3,941

No additional duty. No refund applicable

### *Transitional rules for mortgage packages*

16. A mortgage with a liability date occurring on or after 1 July 2009 may be assessed as part of the same package as other mortgages or instruments of security even if one or more of the other mortgages or instruments of security were first executed before 1 July 2009.

### *Refinancing Concession*

17. A refinancing mortgage is taken to have been stamped with ad valorem duty as a mortgage in respect of the duty-free refinancing amount. The duty free refinancing amount<sup>2</sup> is the lesser of the following amounts:

- (a) the amount secured by the earlier mortgage on which duty has been paid under the Act or in relation to which an exemption has been obtained; and

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<sup>2</sup> The duty free refinancing amount is the maximum amount payable under or secured by the earlier mortgage if the refinancing mortgage is over land used for primary production or aquaculture.

(b) \$ 1,000,000.

### **Example 8**

Package stamped to secure \$10m. NSW portion 50%. NSW duty paid = \$19,941

Refinance of \$11m. NSW portion 50%

Duty on NSW portion = \$21,941

Deemed stamped to \$1m. Duty paid on \$1m = \$3,941

Additional duty payable (\$21,941 - \$3,941) = \$18,000

### *Pre-stamping Mortgages from 1 July 2009*

18. Mortgages sometimes secure progressive drawdown or revolving facilities which involve frequent advances. Where securities relate only to NSW property, the Chief Commissioner will pre-stamp the facility. However where non NSW property is also secured under a mortgage package, stamping in advance will be considered on a case by case basis.

### *Floating Charges*

19. Where multiple additional advances are made under a revolving facility secured by a floating charge relating to property both in and outside NSW, it is accepted that it may in some cases be administratively difficult to determine the NSW proportion of the total property secured at each liability point. In these cases the Chief Commissioner will accept the stampings being reviewed at six monthly intervals. This administrative policy does not apply where any new mortgages are executed.

### *Transitional rules for mortgages for definite and limited sum*

20. (1) If the amount of advances recoverable under a mortgage or a mortgage package first executed before 1 July 2009 is a definite and limited sum, the *amount secured by the mortgage* is taken, for the purpose of determining whether the mortgage becomes liable to additional duty on the making of an advance or further advance on or after 1 July 2009, and determining the amount of duty chargeable, to be the total of the following:
- (a) the definite and limited sum; and
  - (b) the amount of any advance or further advance made on or after 1 July 2009 in excess of the definite and limited sum.
- (2) The amount secured by any such mortgage *at the time a liability to duty last arose under the Act* is taken to be the total of the following:
- (a) the definite and limited sum; and
  - (b) the amount of any advance or further advance in excess of that definite and limited sum in respect of which duty has already been paid under the Act.

### **Example 9**

Mortgage prior to 1 July 2009 over property in NSW limits the amount recoverable to \$1 million.

Total advances under the facility for which the mortgage is security = \$10 million

Mortgage stamped in NSW with duty on \$1 million = \$3,941

Further advance made post 30 June 2009 = \$2 million

Total advance (\$1 m + \$2 m) = \$3 million

Duty payable on \$3 million = \$11,941

Duty paid = \$ 3,941

Additional duty payable = \$ 8,000

Any increases in the amount of advances recoverable under a mortgage first executed before 1 July 2009 is taken to be a further advance for the amount of the increase.

### **Example 10**

Mortgage prior to 1 July 2009 over property in NSW limits the amount recoverable to \$1 million.

Total advances under the facility for which the mortgage is security = \$10 million

Mortgage stamped in NSW with duty on \$1 million = \$3,941

Increase in limit made post 30 June 2009 where the limit became \$15 million

Duty payable on \$15 million = \$59,941

Duty paid = \$ 3,941

Additional duty payable = \$56,000

Note: no duty would be imposed on advances exceeding the limit drawn down before 1 July 2009.

21. However the transitional provisions will not apply, where:
- i. a mortgage over NSW property was executed prior to 1 July 2009 which limited the amount recoverable to a definite sum;
  - ii. after 30 June 2009, a further mortgage is executed over NSW property which contains no limit on the amount recoverable and advances are made in excess of the limit in the earlier mortgage; and
  - iii. the mortgages secure the same moneys.
- Mortgage duty will be payable on the total advances, with credit for previous NSW duty paid.
22. An additional ruling will be published dealing with deferred purchase price arrangements.

**Tony Newbury**

Chief Commissioner of State Revenue

09 November 2009