Stamp Duty Changes –

Must know facts for NSW Business Purchasers

From the 1st of July 2016, the New South Wales Office of State Revenue has announced that a number of duties will no longer apply. This includes mortgage duty, business asset duty and marketable securities duty. This article principally deals with changes to duty on sale of business transactions.

The change means that mortgages executed on or after the 1st of July 2016 or further advances made on mortgages made on or after this date (irrespective of the date of the mortgage) are not liable for duty.

Below is a summary of the new state legislation based on the information we have received from the New South Wales Office of State Revenue, this will assist with any questions investors may have regarding these changes. Tourism Brokers have discussed the implications changes to duties could have on claiming depreciation deductions with our preferred depreciation schedule provider, BMT Tax Depreciation and the effect on business sales with accommodation industry specialist David Burrough, a partner at Hillhouse Burrough McKeown Lawyers.

Legislation changes

Under the new state legislation, stamp duty will not be payable on the following types of business assets from the 1st of July 2016:

- The goodwill of a business (if the business supplied or provided services in New South Wales to a customer of the business)
- Intellectual property that has been used or exploited in New South Wales
- A statutory licence or permission under a Commonwealth law if the rights under the licence or permission have been exercised in New South Wales
- A statutory license or permission under New South Wales law (for example a taxi licence)
- A gaming machine entitlement as according with meanings outlined within the Gaming Machines Act 2001

The changes to business duties outlined by the Office of State Revenue impact the sale of any business assets that occur on or after the 1st of July 2016. The benefit of the abolition of stamp duty on business asset applies only to contracts exchanged after the 1st of July 2016.

In a typical business sale where the vendor of the business owns plant and equipment, goodwill, statutory licences and the business enjoy the benefit of an interest in a lease of the premises, no stamp duty will usually be payable on the sale of the business.

Where the arms-length vendor and purchaser of the business agree that the value of interest in the lease (still a dutiable asset after 1 July 2016) is of nominal value, then the provisions of section 26 of the Duties Act will likely apply where if the dutiable assets of the transaction amount to less than 10 per cent of the sales price, then the Chief Commissioner may disregard the value of the goods in the transaction.

The parties to the transaction should seek expert advice to confirm that the interest in the lease is of nominal value. Stamp duty of only $10 will be payable (minimum duty under section 273 of the Act).

Apportionment

In circumstances where a purchaser is buying land and buildings, goodwill and plant and equipment, stamp duty is payable on the value of the land and buildings and the plant and equipment.

If no apportionment can be agreed, it may be advisable for the purchaser to obtain a valuation of the plant and equipment prior to stamping the document so that duty will be assessed on the value of the land and buildings and the plant and equipment as contained in the valuation. This will also assist the purchaser in establishing his depreciation schedule post-settlement.

Purchasers should bear in mind that where the land and buildings and the businesses are being purchased by separate related entities, the provisions of clause 25 of the Act will aggregate the contracts for the purpose of assessment of duty, resulting in duty being assessed on the value of the land and improvements and the value of the plant and equipment.

What are the implications for plant and equipment depreciation?

Owners of an income producing property can claim depreciation deduction for the wear and tear that occurs to a building and the plant and equipment assets contained within the property.

BMT Tax Depreciation's Chief Executive Officer explains the implications changes to duties might have on the depreciation deductions available to be claimed.

"Deductions relating to the wear and tear of the building claimed under division 43 will not be impacted by the legislation changes. This is because these are calculated based on the historical construction cost of the building."

Bradley advises that the cost of plant and equipment assets will be apportioned when determining depreciation claims.

"While apportioning even $100,000 to goodwill away from plant and equipment might save $3,500 in stamp duty, this would be at the detriment of tax savings to the value of $30,000 (based on the 30 per cent company tax rate) or higher in lost depreciation deductions," said Bradley Beer.

Depreciation benefits for hotel and motel owners

The following table provides an example of the depreciation deductions the owner of a hotel or motel could claim in the first financial year and over the first five cumulative years.

Hotel and Motel example deductions			
Property type	Purchase price	First year claim	Year 1-5 cumulative depreciation
Motel	$770,000	$131,561	$634,157
Hotel	$2,110,000	$254,746	$1,002,996

The depreciation deductions in the above example have been calculated using the diminishing value method.

Seek advice from the experts

It is recommended to seek legal advice during the contract of sale of any property. It is also imperative to get apportionment right before signing contracts. Once a signed contract is entered into with apportioned values, it becomes binding.

A specialist Quantity Surveyor such as BMT Tax Depreciation can assist with queries relating to depreciation and prepare a comprehensive depreciation schedule prior to purchase which can later be updated with specific settlement details.

An asset register, which contains a comprehensive inventory list of all plant and equipment items identified during a site inspection of a property, can also be provided by BMT.

Clients of Tourism Brokers with any queries can speak with one of our staff on 1300 521 566. For assistance on claiming depreciation, speak with one of the expert staff at BMT Tax Depreciation on 1300 728 726.

Article provided by Tourism Brokers in association with BMT Tax Depreciation and Hillhouse Burrough McKeown.

Michael Philpott (Grad. Cert. Commercial Property Mgt, Dip. Retail Leasing, Cert. Human Resource Mgt, Lic. Real Estate, Strata Managing, Auctioneer, Stock and Station and Business Agent) is the Director of Tourism Brokers. Please contact 1300 512 566 or visit www.tourismbrokers.com.au.

Bradley Beer (B. Con. Mgt, AAIQS, MRICS, AVAA) is the Chief Executive Officer of BMT Tax Depreciation. Please contact 1300 728 726 or visit www.bmtqs.com.au for an Australia-wide service.

David Burrough (Director, Hillhouse Burrough McKeown Pty Ltd, Lawyers). Please contact (07) 3220 1144 or visit www.hillhouse.com.au