

Client Alert

Australia

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New South Wales Mini Budget

On 11 November 2008, Treasurer Eric Roozendaal handed down a mini budget (Mini Budget) in New South Wales that includes a number of revenue related measures affecting a variety of state taxes, levies and royalty regimes. The key change arising from the Mini Budget is the move from a “land rich” to “land holder” model for stamp duty that will commence on 1 July 2009. Effectively, the move will broaden the tax base to capture certain dealings in private companies and trusts that hold land in New South Wales even though land may not be the entity’s primary asset and it may hold valuable non land assets. Legislation to implement the measures has yet to be introduced and many of the measures will not have immediate effect.

Land holder Duty

The key measure in the Mini Budget is the move from a “land rich” to a “land holder” model which will commence on 1 July 2009.

New South Wales, along with most other states presently charges transfer duty at rates of up to effectively 5.5% on certain dealings in “land rich” private companies and unit trusts. Under current law a private company or unit trust is land rich, if, among other things, 60% or more of its total property (with certain exclusions for liquid and non arm’s length assets) consists of land (including most interests in land). The Territories, Western Australia and (in relation to trusts) Queensland have moved away from this model to a land holder duty. Essentially, under a land holder model the acquisition of significant interests in a private company or trust will trigger a duty liability if the entity in question holds land or is deemed to hold land over a specified dollar value regardless of the value of its other assets. Under current law, the value threshold is A\$2,000,000 or more. It is unclear from the Mini Budget if this threshold will be retained or increased. The Government has acknowledged that the move to a land holder duty will require extensive legislative change and industry will be consulted as part of this process. This change represents the final steps in the evolution of “land rich” duty from an anti-avoidance regime to a general tax in respect of land.

Deferred abolition of duties

The Government had previously announced the abolition of mortgage duty on business loans, transfer duty on non land business assets and transfer duty on unquoted shares or units in New South Wales companies and trusts. The respective abolition dates were 1 July 2009, 1 January 2011 and 1 January

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2009. The Mini Budget measures include deferring the abolition of these taxes until 1 July 2012. The deferral of the abolition of mortgage duty will leave New South Wales as the only jurisdiction charging this duty from 1 July 2009. Currently only South Australia and New South Wales continue to charge mortgage duty with the remaining states having abolished it over the last few years. Similarly, with the exception of the Australian Capital Territory and South Australia, duty on unquoted shares in non land rich companies has been abolished in the other jurisdictions.

Increase in Nominal Duties

Nominal duties will also increase as part of the Mini Budget measures with effect from 1 January 2009. The biggest increase is in relation to certain declarations of trust that are not subject to ad valorem duty. Under current law, these trust deeds are subject to A\$200 of duty. Under the Mini Budget measures this will be increased to A\$500.

Land Tax

A marginal rate of 2% will apply to taxpayers with total taxable land holdings above A\$2,250,000 from the 2009 land tax year. The current rate of 1.6% will continue to apply for total taxable land holdings below this amount. Exemptions will continue to be retained for a person's principal place of residence and rural properties. The A\$2,250,000 threshold will be indexed as is the case with the existing land tax threshold.

Parking Space Levies

From 1 July 2009, the parking space levy will increase from A\$950 a year to A\$2,000 a year per off-street, non residential parking space in the Sydney, North Sydney and Milsons Point business districts and from A\$470 to A\$710 a year in the business areas of St Leonards, Chatswood, Parramatta and Bondi Junction. Existing exemptions will continue to remain in place. Landlords and Lessees should check their leases to see how the parking space levy or increases to the levy are dealt with contractually between the parties.

Mining Royalties

Coal royalty rates will increase from 1 January 2009. The table below outlines the current and new royalty rates.

Method of coal recovery	Current	From 1 January 2009
Open cut mining	7%	8.2%
Underground mining	6%	7.2%
Deep underground mining	5%	6.2%