

First Home Buyers Stamp Duty Exemption and Premium Property Tax

First home buyers stamp duty exemption

The first home buyers will receive the most positive benefit from the new changes. The Government has provided a significant extension to the First Home Plus Scheme to cover more first home buyers.

In particular for those individuals who are eligible as first home buyers and who entered into contracts for the purchase of property either on or after 1 July 2004 will benefit from the following changes to the thresholds:

- Homes valued up to \$500,000 are stamp duty free for the first home buyers and discounts on stamp duty are available on homes valued between \$500,000 and \$600,000.
- A vacant block of residential land will be stamp duty free for first home buyers where the land is valued up to \$300,000 and discounts on stamp duty will be available on vacant land valued between \$300,000 and \$450,000.

Eligible Persons

There are certain requirements to be fulfilled in order to be an eligible person.

Firstly, at least one (but not all) of the applicants must be an Australian citizen or permanent resident.

Secondly, a purchaser will be an eligible person only if the purchaser has not at any time owned residential property in Australia either solely or with someone else. If a purchaser has a spouse then they will only be eligible if the spouse has not at any time owned residential property in Australia either solely or with someone else. If there is more than one purchaser then they will only be eligible if they all fit this criteria. The Chief Commissioner may however determine that the purchasers are eligible persons if the Chief Commissioner is satisfied that the purchaser who has previously owned property is acquiring an interest in the property solely for the purpose of assisting in financing the acquisition.

A purchaser who is under 16 will not be an eligible person except where the Chief Commissioner is satisfied that the home will be occupied by the purchaser

as his or her principal place of residence and the application does not form part of a scheme to circumvent limitations on, or requirements affecting, eligibility under the Scheme.

Residence Requirement

The legislation requires that in order to receive the exemption the home must be occupied by the purchaser(s) who are acquiring it as the principal place of residence for a continuous period of at least six (6) months, with that occupation starting within twelve (12) months after completion of the contract. The Chief Commissioner may, if satisfied that there are good reasons for doing so, lengthen the twelve (12) month completion period or shorten the six (6) month occupation period.

Where land is a vacant block of residential land, for the exemption to apply it is sufficient where the Chief Commissioner is satisfied that the block is intended to be used as a site of the home to be occupied by the purchaser(s).

Purchasers should note that if they are claiming the first home owners grant of \$7,000 directly from the Office of State Revenue and the land is a vacant block of residential land then the grant will not be available to the purchaser until the home intended to be built on the land is ready for occupation as a place of residence and the Council has issued an Occupation Certificate for the home. However when the grant is claimed through the purchaser's mortgagee, the grant will be available on the first progressive payment, in other words the first bill they pay to their builder. Purchasers obviously should consider applying through their mortgagee in this situation.

This requirement again will not apply to a person who is solely assisting the purchaser in financing the acquisition.

In conclusion, the new exemptions and discounts apply equally to first home buyers anywhere in New South Wales. Combined with the Governments first home owners grant of \$7,000 this initiative will save first home buyers substantial

amounts of money and encourage more first home purchases in the current property market.

Premium Property Tax

Previously a tax applied to owners of homes with a land value of \$1.9 million or more, however under the new changes to the legislation this arrangement has now been abolished, and a new regime applies.

For contracts or transfers entered into on or after 1 June 2004 in addition to the standard conveyancing rates (ad valorem duty), section 32 of the Duties Act 1997 provides a Premium Property Tax will be applied as a marginal stamp duty rate of 7 per cent on that part of the value that exceeds \$3 million.

Residential land for the purposes of this section is defined as follows:

- (a) a parcel of land on which there is one single dwelling or one flat, or a parcel of land on which there is a building under construction that, when completed, will constitute one single dwelling or one flat, or
- (b) a strata lot, if it is lawfully occupied as a separate dwelling, or suitable for lawful occupation as a separate dwelling, or
- (c) a land use entitlement, if it confers an entitlement to occupy a building, or part of a building, as a separate dwelling, or
- (d) a parcel of vacant land that is zoned or otherwise designated for use under an environmental planning instrument (within the meaning of the Environmental Planning and Assessment Act 1979) for residential or principally for residential purposes.

Land that has other usage other than sole residence of the owner-occupier may be liable for duty. This would depend upon the circumstances.

Where the property comprises of 2 or more individual items of residential land and one of those items has a dutiable value exceeding \$3 million, then the residential land that has a dutiable value exceeding \$3 million will be charged with the Premium Property Tax and the rest of the dutiable property will be charged at the normal stamp duty rate.

Residential land used for other purposes

Residential land which is partly used as residential land and partly used for purposes other than residential purposes ("Mixed Use Land"), and the Chief Commissioner is satisfied as that those purposes are other than residential purposes then an apportionment factor will be used. In addition to the normal stamp duty rate Premium Property Tax will be charged on the premium value of residential land which is the dutiable value of the residential land when reduced by the apportionment factor and exceeds \$3 million.

The apportionment factor will be either the amount registered in the Register of Land Values under the Valuation of Land Act 1916 where the land is mixed development land (a parcel of land occupied or used solely as the site of one or more buildings comprising of one or more than one flat or office) or Mixed Use Land. Where there is no apportionment factor entered into the Register then the Chief Commissioner may request the Valuer-General to determine the apportionment factor in respect of the land, or the Chief Commissioner may himself determine such other apportionment factor as he considers fair and reasonable.

Large Parcels of Vacant Residential Land

Large parcels of vacant residential land where the area of the parcel of land exceeds 2 hectares will also be apportioned. The apportionment factor is the proportion that 2 hectares bears in relation to the total area of the parcel of land in hectares. In addition to the normal stamp duty rate Premium Property Tax will be charged on the premium value of the land which is the amount by which the dutiable value of the residential land when multiplied by the apportionment factor exceeds \$3 million.

As we can see the Premium Property Tax can be a complex area of law. Before purchasing property in excess of \$3 million we recommend you seek legal advice as to the duty payable on such properties.

This article is a summary of the applicable law as at July 2004 and should not be relied upon as a definitive or complete statement of the relevant laws. Vendors and purchasers are advised to seek independent legal advice prior to buying or selling property.

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