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# Update Summary

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**HILL'S DUTIES LEGISLATION**

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## UPDATED COMMENTARY

Holger Sorensen and Stephen McMillan have updated the annotations. Highlights include:

### Duties Act 1997 (NSW)

#### **Another transaction that results in a change in beneficial ownership of dutiable property, other than an excluded transaction – s 8(1)(b)(ix)**

Section 8 defines which transactions are subject to duty. The purpose of s 8(1)(b)(ix) is to bring to duty a “change in beneficial ownership”, the “relevant second reading speech, disclosing a “broad intention of the Act”, to tax “changes in ownership of property—be they changes in legal or beneficial ownership: *Baxter v Chief Commissioner of State Revenue* [2024] NSWCATAD 170. See [3.0527].

#### **Transfers from legal personal representatives to beneficiaries – s 63**

Section 63(2) provides that if a transfer by a legal personal representative of a deceased estate is made to a beneficiary under an agreement between beneficiaries to vary the trusts in the will, the dutiable value of the property is to be reduced by the portion that is referable to the entitlement of the beneficiary in the will. However, an agreement to transfer is not a transfer and the property was transferred pursuant to the contract for sale. Duty is assessable on the sale: *Cohen v Chief Commissioner of State Revenue* [2024] NSWCATAD 136. See [3.3240].

### Taxation Administration Act 1996 (NSW)

#### **Remission of penalty tax – s 33**

Section 33 enables the Chief Commissioner of State Revenue to remit penalty tax by any amount including the premium component which is penal in nature. It serves the purpose of imposing a penalty for late payment and deterring other taxpayers from paying after the due date. As such, the extent of the taxpayer’s culpability is an important matter in exercising the Commissioner’s discretion: *Golden Age and Hannas the Rocks Pty Ltd v Commr of State Revenue* [2024] NSWSC 249. See [TAA.33.10].

### New developments

#### **Revenue Legislation Amendment Act 2024 (NSW) (Act No 38 of 2024)**

This Act increases from 8% to 9% the rate of surcharge purchaser duty and surcharges on acquisitions payable by foreign persons with effect from 1 January 2025. See [50.7230]

#### **Recent judgments**

Discussion of recent decisions on duties matters:

- *Cohen v Chief Commissioner of State Revenue* [2024] NSWCATAD 136: see [50.7235];
- *Golden Age and Hannas the Rocks Pty Ltd v Chief Commissioner of State Revenue* [2024] NSWSC 249: see [50.7240];
- *Baxter v Chief Commissioner of State Revenue* [2024] NSWCATAD 153: see [50.7245].

