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Update Summary

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HILL'S DUTIES LEGISLATION

HR Sorensen, SJ McMillan, DKL Raphael

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UPDATED COMMENTARY

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

Duties Act 1997 (NSW)

Instruments relating to superannuation – s 65

Section 65 sets out the exemptions applicable to duty that would be otherwise payable under Ch 2. Section 65(10)(b) provides an exemption from duty on superannuation and applies where there is a dutiable transaction effected by an “instrument”. Section 55 imposes a nominal duty on a declaration of trust by an apparent purchaser but a trust deed is not a transaction for the purposes of s 55. However, there is a question of public importance about the meaning and scope of “real purchaser”: *Imbree v Chief Commissioner of State Revenue* [2024] NSWCATAP 158. See [3.3416].

Principal place of residence – s 104B

Section 104B exempts from duty certain transfers of residential land between married couples and de facto partners. The dwelling must be used as the principal place of residence of the couple at the time of the transfer. However, this does not require that the property was actually being physically occupied by both or either of the couple as long as, at that time, the property was being “used” as their principal place of residence. The couple is to be considered as a unit, rather than two individuals separately: *Bo v Chief Commissioner of State Revenue* [2024] NSWCATAD 219. See [DA.104B.10].

Permanent resident and principal place of residence – s 104ZKA

Section 104ZKA(4) exempts from surcharge purchaser duty certain permanent residents with regard to transfers of residential property if it is their principal place of residence and they used and occupied it for at least 200 days in the first 12 months after the liability date. Whether they did so is a question of fact. The taxpayer’s own personal period of residence in Australia is to be considered and not that of his wife: *Sar v Chief Commissioner of State Revenue* [2024] NSWCATAD 246. See [DA.104ZKA.10].

Taxation Administration Act 1996 (NSW)

Remission of interest – s 25

Section 33 enables the Chief Commissioner of State Revenue to remit interest and issue guidelines about how it must be remitted. Premium interest may be reduced owing to delay on the part of the Chief Commissioner: *Griglio v Chief Commissioner of State Revenue* [2024] NSWCATAD 212. The determination of whether remission of the premium component is justified involves the question of whether or not the taxpayer took reasonable care to comply with their obligations: *Topcubasi v Chief Commissioner of State Revenue* [2024] NSWCATAD 258. See [TAA.25.10].

New developments

Revenue Legislation Amendment Act 2024 guide

RevenueNSW has issued a guide to changes in surcharge purchaser duty arising from the *Revenue Legislation Amendment Act 2024* (NSW) which take effect on 1 January 2025. The rate of the surcharge duty will increase from 8% to 9% although transitional arrangements will apply. See [50.7250].

Recent judgments

Discussion of recent decisions on duties matters:

- *Griglio v Chief Commissioner of State Revenue* [2024] NSWCATAD 212: see [50.7255];
- *Denton v Chief Commissioner of State Revenue* [2024] NSWCATAD 206: see [50.7260];
- *Kirkovski v Chief Commissioner of State Revenue* [2024] NSWCATAD 223: see [50.7265];
- *Bo v Chief Commissioner of State Revenue* [2024] NSWCATAD 219: see [50.7270];
- *Zhu v Chief Commissioner of State Revenue* [2024] NSWCATAD 231: see [50.7275];
- *Imbree v Chief Commissioner of State Revenue* [2024] NSWCATAP 158: see [50.7280];
- *Sar v Chief Commissioner of State Revenue* [2024] NSWCATAD 246: see [50.7285];
- *Topcubasi v Chief Commissioner of State Revenue* [2024] NSWCATAD 258: see [50.7290].

Revenue Legislation Further Amendment Bill 2024 (NSW)

Among other things this bill proposes to insert a new s 5A into the *Duties Act 1997* (NSW) regarding corporate collective investment vehicles under the *Corporations Act 2001* (Cth) and a new s 54B which aims to provide for concessional duty for certain transfers in relation to them. See [50.7295].

