

# scoop

entertaining the law



Dequetteville Chambers  
1 Dequetteville Terrace  
Kent Town South Australia 5067  
phone +61 8 8132 5000  
facsimile +61 8 8363 1633  
admin@baggiolegal.com.au

## SA State Budget 2015-16: Backin' Business!

Yesterday's **SA State Budget** was the most progressive in years. It presents opportunities that businesses have been waiting on for years. Here is a summary of the **measures**, the **do's**, the **don'ts** and the **opportunities**:



### Abolition of stamp duty on transfers of private company shares/ units (excluding land rich)

**Do** celebrate that this 0.6%/ 5.5% stamp duty is abolished from 18 June 2015

**Do** celebrate that you will not waste time/ money dealing with RevenueSA/ lawyers to stamp transfers of SA private company shares/ units

**Don't** forget that duty continues to apply to land rich shares/ units

*This impediment to a tidy corporate structure is gone. It is now quick and cost effective to buy shares in a business, restructure a corporate group, substitute corporate trustees, establish structural asset protection and/ or reorganise ownership for a tax effective structure. Tell your clients and put their house in order.*

### Abolition of stamp duty on business assets (excluding real property/ fixtures)

**Do** celebrate that this 5.5% stamp duty is abolished from 18 June 2015

**Do** celebrate that this means transfers of SA business assets like goodwill, IP, debts, P&E are now exempt from stamp duty

**Don't** forget that in the short term land/ fixtures are dutiable to 1 July 2018 (although flagged to be fully abolished then)

**Don't** forget about the payroll tax consequences if you move from a partnership of trusts to a corporate

*Clients were holding back on restructures and purchases because of this. If your client is in a risky (e.g. sole trader) or cumbersome (e.g. partnership of trusts) structure and wants to move to a corporate, get to it! CGT rules were relaxed for rollovers in the Federal Budget. And now no stamp duty applies!*

### Phased abolition by 1 July 2018 of stamp duty on non-residential non-farm real property

Stamp duty on transfers of non-residential, non-primary production real property will be abolished in 1/3 increments from 1 July 2016 to a full abolition from 1 July 2018

Liability limited by a scheme approved under Professional Standards Legislation.

*Did you know that the American Revolution was triggered by the Stamp Act 1765 whereby England imposed stamp duty on the colonies of British America!*

*The Americans rejected the duty as unconstitutional... and from this came the phrase "no taxation without representation".*

*We Australians are a more law abiding bunch... and continue to have to co-exist with this absurd tax*



Andrew Baggio  
LLB MTax BA GCLP FTIA

**Do** celebrate that by 1 July 2018, it should be possible to buy business assets and business land in SA without any stamp duty liability

**Don't** forget stamp duty on transfers of residential (including vacant land or vacant homes) and primary production land remains unchanged

**Don't** ignore that, as a trade-off for this change, the \$1m landholder threshold has also been abolished. So any land rich share/ unit transfer is fair game for stamp duty

*Again, clients were holding back on restructures and purchases because of this. This is a great opportunity to move business real property into a SMSF – the State Government will no longer clip the ticket on the way through!*

### **The date of conveyance/ transfer is the date market value is determined for stamp duty purposes**

This amendment legislates the previous policy position of RevenueSA. What it means is that, in the case of a transfer of property for consideration, stamp duty is determined as the higher of the greater of the consideration and the market value - as at the date of the conveyance/ transfer

**Do** note this is different to the CGT position (where it is the contract date that is significant)

**Don't** bank on making significant improvements, sub-divisions and property development in the settlement period to minimise stamp duty on the purchase of land

### **Abolition of stamp duty family group partition exemption**

This old favourite has been abolished from 16 June 2015. It was previously possible to structure intra-family transactions to manufacture the application of this exemption. Forget about it from now on

### **Interfamilial/ intergenerational farm transfers involving narrow definition family trusts – doubts resolved**

Section 71CC will be amended to confirm *RevenueSA's* long standing assessing practice in relation to the stamp duty exemption for transfers to and from narrow definition family trusts

**Do** celebrate that the status quo is unchanged

The family group exemption will be amended to include *domestic partners* (i.e. persons not legally married)

**Do** celebrate that this silly stamp duty trap has been abolished

### **Relaxation of tax payment requirements on appeal**

The rules have been changed so that only one-half of the tax in dispute (and not the whole of the disputed amount) must be paid before an appeal can be lodged at the Supreme Court

**Do** celebrate that the cost of justice just became (slightly) more affordable...

### **A more relaxed corporate group restructure exemption**

In keeping with the above relaxation of stamp duty applicable to transfers of business assets and land, this exemption has also been expanded

### **Land tax minority trust interests targeted and shot down**

Amendments have been introduced to prevent the use of minority interests by a trustee that also owns the majority interest personally. This addresses a technical loophole in the law and should come as no surprise

**Other positive budget measures** have also been introduced. These include the extension of the small business payroll tax rebate, stamp duty/ land tax exemptions for transfers into special disability trusts

***There are many opportunities in the Budget for you and your clients. Please call us to discuss these opportunities.***