



F A C T S H E E T

Vendor Duty

July 2004

- Who is liable for vendor duty
- How the NSW vendor duty works

Who is liable for vendor duty?

The vendor (seller) or the transferor is liable for vendor duty. In the case of a declaration of trust, the person declaring the trust is the liable person.

Generally, vendor duty does not apply to transactions over land-related property, if the land is used as the vendor's principal place of residence or for primary production. See page 2 for more information about how these exemptions apply.

How vendor duty works

Effective from 1 June 2004, vendors or transferors of land-related property in NSW are required to pay a vendor duty of 2.25 per cent of the dutiable value of the property.

Note: Certain exemptions may apply (see page 2 for details).

Land-related property includes;

- land in NSW, or
- a land use entitlement, or
- an interest in any land-related property (including a beneficial interest under a trust).

A vendor duty transaction is:

- a transfer of land-related property, or
- an agreement for the sale or transfer of land-related property, or
- a declaration of trust over land-related property.

Vendor duty will be calculated on the *dutiable value* of the land-related property at the time of entering into one of the above transactions.

Note: when determining *dutiable value* the higher of either the consideration (sale price) - inclusive of GST (where it is payable), or the unencumbered value of the land-related property should be used.

If under the arrangement, the purchaser agrees to pay the vendor duty, that amount is not taken into account when determining the consideration paid for the land-related property.

When is vendor duty payable?

When an agreement for sale is entered into (including an off-the-plan purchase), the vendor duty must be paid by the settlement date.



For a transfer or declaration of trust, the vendor duty must be paid within 3 months from the date the liability first arises (normally the date of first execution of the instrument).

Lodgement and stamping

In the case of an agreement for sale, vendor duty (liable or exempt) will be endorsed on either the vendor or purchaser's copy of the contract.

To comply with Land and Property Information NSW (LPI) requirements, the transfer, in conformity with the agreement, will also be noted to reflect that vendor duty has been paid or an exemption applied.

Where the vendor duty transaction is a transfer (only) or a declaration of trust, the vendor duty will be endorsed on the relevant instrument.

Agreements exchanged before 1 June 2004

These agreements are not liable for vendor duty. Agreements stamped before 1 June 2004 do not require further stamping provided the date on the purchase duty stamp clearly shows the payment was effected before 1 June 2004. Agreements stamped on or after 1 June 2004 do not require marking, however the transfers in conformity must be stamped with the Vendor Duty Endorsed stamp and marked 'Not Liable'.

Method of Payment

Payment for vendor duty will only be accepted in the form of a cheque drawn by a financial institution (bank, credit union or building society) or clearly marked Solicitors, Licensed Conveyancers or Real Estate Agent trust account cheques.

Vendor duty exemptions and concessions

1 Principal place of residence

- Vendor duty does not apply to transactions over land, or a

land use entitlement if the land was used as the vendor's principal place of residence.

- The exemption does not apply unless the person or persons using and occupying the land as a principal place of residence are natural persons who own, individually or together, 50% or more of the property.
- Such persons must have used and occupied the land as their principal place of residence:
 - ▶ continuously for the last two years;
 - ▶ for three out of the last five years; or
 - ▶ since the vendor became the owner of the land
- The legislation allows the vendor six months (or a period as the Chief Commissioner may allow) to enter into an agreement to sell their former principal place of residence and claim the exemption.
- The vendor can be absent from their principal place of residence for up to six years and claim an exemption on it's sale provided they lived there for a continuous period of two years before leaving. Once claimed, any period spent in another residence is not counted for the purpose of principal place of residence exemption.

Apportionment for mixed use

The principal place of residence exemption only applies to land used for residential purposes and no other purpose.

Where the land is used as the vendor's principal place of residence and a commercial or industrial use (mixed use), vendor duty is payable on an 'apportionment' basis.

Deceased estates

Vendor duty is not payable on deceased estates where:

- land-related property is transferred to a beneficiary of the deceased regardless of whether the property was the deceased's principal place of residence or not
- the deceased's principal place of residence is subsequently disposed of by a beneficiary, provided it was sold within 12 months of the grant of probate or letters of administration. Where the beneficiary disposes of the property after 12 months, the vendor duty liability will depend on whether the property meets the principal place of residence test for the beneficiary.
- the estate sells the deceased's principal place of residence within 12 months of the grant of probate or letters of administration.
- under the transitional provisions, if the probate or letters of administration were issued before 1 June 2004, then OSR deems the date of issue to be 1 June 2004.
- vendor duty is payable by the estate if the property sold was not the deceased's principal place of residence.
- where a will provides for a life tenancy in respect of the deceased's principal place of residence the exemption will continue for a period up to 12 months after the termination of the life estate.

2 Farms

Vendor duty does not apply to transactions over land used for primary production, if either:

- the land has been used in the course of carrying on a business of primary production for at least two years immediately prior to disposal, or

- the land has been used in the course of carrying on a business of primary production for a total period of at least three years in the last five immediately prior to disposal.

3 First sale of new buildings

- No vendor duty is payable on the sale of a new building where the new building remains unoccupied before the first sale.
- Where a newly constructed building is tenanted after completion but prior to the first sale, the exemption will apply provided the property is sold within 12 months of the date of completion.
- This exemption also covers the first sale of a lot in an unregistered plan of subdivision on which a new building is to be erected before completion of the sale (eg off-the-plan purchases).
- The exemption can also apply to substantially rebuilt buildings, but the renovation of existing premises will not qualify for this exemption.

4 Dutiable value has not significantly increased

- Where the dutiable value of the property at the time of disposal has increased by 12 per cent or less from the dutiable value of the property at the time of acquisition by the vendor, no vendor duty is payable.
- Where the dutiable value has increased by between 12 and 15 per cent the following discounts apply:
 - ▶ more than 12 per cent, but not more than 13 per cent – 75%
 - ▶ more than 13 per cent, but not more than 14 per cent – 50%
 - ▶ more than 14 per cent, but not more than 15 per cent – 25%

Note: The cost or value of any improvements made to the property since the date of acquisition are not taken into account when determining the dutiable value at acquisition.

Where the dutiable value at acquisition date does not include GST but the dutiable value at disposal does, for the purposes of the 12% test the original purchase price will be notionally increased by 10%.

5 Vacant land that has been substantially improved by the vendor

No vendor duty is payable on the disposal of vacant land where that land has been substantially improved by the vendor at their expense.

6 Land sold in connection with the sale of a business

Where land-related property is sold in conjunction with the sale of the whole of a business, no vendor duty is payable if the dutiable value of the land-related property comprises less than 60% of the total value of all dutiable property agreed to be sold.

7 Other transactions not liable to vendor duty

- Compulsory acquisitions of land in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*
- The sale by a mortgagee, receiver, liquidator or trustee in bankruptcy in bona fide exercise of a power of sale
- Transactions relating to land which is wholly or partly the subject of certain conservation agreements
- Disposals of land-related property by a charitable or benevolent organisation approved under section 275 of the *Duties Act, 1997*
- Gifts of land-related property to a charitable or benevolent organisation approved under section 275 of the *Duties Act, 1997*

- Corporate reconstructions approved for exemption from transfer duty under section 281 of the *Duties Act 1997*

- Possessory applications and applications to bring land under the *Real Property Act 1900*

- Transactions that result from the exercise of an option for the sale or purchase of a property, if the option contract being exercised was made prior to 7 May 2004.

8 General

- As a general rule, vendor duty does not apply to a **transaction** that is not otherwise chargeable with ad valorem duty under Chapter 2 of the *Duties Act, 1997*.

One exception to this rule is an eligible agreement or transfer that is exempt under the First Home Plus Scheme.

- Despite the above, a vendor duty transaction is not exempt from vendor duty under Chapter 11 merely because the **transferee** is not liable to pay duty on a transaction under that Chapter.



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More information

If you have any questions about vendor duty, please contact our service staff.

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