



NSW State taxes and your business

August 2005

Information for NSW business owners, people acquiring a business, or starting a business.

More information

Duties

(Conveyances, mortgages, contracts, etc)

Phone: 1300 139 814*

Fax: (02) 9689 8280

Email: duties@osr.nsw.gov.au

Duties returns and gaming

(Hire of goods, parking space levy, insurance protection tax, gaming and racing)

Phone: 1300 139 817*

Fax: (02) 9689 8200

Email: returns@osr.nsw.gov.au

Pay-roll tax

Phone: 1300 139 815*

Fax: (02) 9689 8200

Email: payrolltax@osr.nsw.gov.au

Land tax

Phone: 1300 139 816*

Fax: (02) 9689 6763

Email: landtax@osr.nsw.gov.au

Postal address

GPO Box 4042, Sydney NSW 2001

Payments

GPO Box 530, Sydney NSW 1159

Hours

Phone enquiries: 8.30am – 5.00pm

Counter services: 8.30am – 4.30pm

*Free call within NSW. Interstate clients, please call (02) 9689 6200.

Duties

When is duty payable?

In NSW, duty is payable on certain transactions, such as the acquisition of a business, regardless of whether or not a written agreement is used. It is also payable on various legal documents such as leases and mortgages.

In general, you must pay duty within three months of signing a dutiable document or entering into a dutiable transaction.

Acquisition of a business

If you acquire certain business assets in NSW, duty is payable. Dutiable assets include:

- goodwill
- intellectual property, such as trademarks, copyright and patents, (when part of a transaction which includes goodwill)
- plant and equipment (when part of a transaction which includes other dutiable assets)
- licences, such as taxi and liquor licences
- the interest of a lessee in a lease of business premises
- land in NSW

The duty you pay is calculated on the dutiable value of the acquisition, which is the higher of:

- the consideration (if any) for the business assets acquired (which may be money and/or liabilities assumed)

- the current market value of the business assets acquired.

Duty is assessed at the general transfer rate, which varies from 1.25 per cent to 5.5 per cent depending on the dutiable value of the acquisition.

Duty is also payable when an existing business is incorporated by a sole trader or partnership or certain business assets are transferred from individuals to a partnership. If there is no written agreement evidencing or effecting the acquisition of the business, a written statement must be lodged with the Chief Commissioner of State Revenue within three months of the acquisition.

When you acquire a business, you don't have to pay duty on assets like goods that are stock-in-trade, registered motor vehicles (duty is paid at the RTA when the vehicle is registered in your name), materials held for use in manufacture, goods under manufacture, goods held or in connection with land used for primary production, livestock or a ship or vessel.

Acquisition of business premises

If you buy business premises (such as a shop), you pay duty at the general transfer rate on the amount paid for, or the market value of, the premises, whichever is the greater.

Generally, when you acquire business premises, as well as the business conducted on those premises, duty is chargeable on the combined value of the business and the premises.



Lease of business premises

If you lease business premises in NSW, you pay duty at lease rates (35 cents per \$100, or any part of \$100) on the total of the following:

- the rent payable in advance of, and during the term of the lease (including any rent which is a percentage of turnover)
- the amount of council rates, water rates, land tax and GST payable by you on behalf of the lessor
- the value of any improvements you agree to make to the business premises (not including 'fit-out costs')
- any royalties payable under the lease
- any amount paid or payable for the right to use land under the lease.

NOTE: Rent includes any payment under the lease expressed to be rent.

A lease whose total cost is not more than \$20 000 in any year is exempt from duty. In addition, duty at the general transfer rate (1.25% – 5.5%) is chargeable on the amount of any premium paid or payable in respect of a lease.

Mortgages

If you borrow money, and to secure repayment of the loan you enter into a mortgage over property in NSW (such as land or assets of a business), you must pay mortgage duty. The rate of duty is \$5.00 for the first \$16 000 of the loan, plus \$4.00 for every \$1000 of the balance. For example, you pay \$341 duty on a loan of \$100 000. Duty is also payable on any further loans secured by the mortgage.

Hire of goods

Duty is payable on certain hires of goods where the goods are used solely or predominantly in NSW. Goods are used predominantly in NSW if they are used more in NSW than in any other single Australian jurisdiction. Duty is payable by the person who hires out the goods (normally the owner) and is calculated on the amount of the hiring charges.

For equipment financing arrangements the rate is 0.75 per cent of the total hiring charges, and for all other hires (ordinary hires) the rate is 1.5 per cent of the total hiring charges. The maximum duty payable on any one arrangement is \$10 000. An 'equipment financing arrangement' is defined as either a hire purchase agreement or some other agreement for a term of nine months or more and where the final payment is payable not earlier than eight months after the agreement is entered into.

In the case of commercial hire businesses, any person who hires out goods as a business, irrespective of whether it is in the principal business or simply ancillary to some other business is a commercial hire business.

A commercial hire business must register with OSR, if in any month, the total hire charges received exceeds the amount of \$14 000.

NOTE: Related bodies corporate, as defined in the *Corporations Act 2001* are grouped for the purpose of this threshold.

Applications for registration must be received within 21 days of the end of the month in which the threshold was exceeded. The business is then required to pay duty by way of monthly return calculated on the amount of hiring charges received in the previous month. A duty free threshold of \$14 000 per month applies to hire charges received from ordinary hires only. However, once registered, any amounts received from equipment financing arrangements, or where the \$10 000 maximum applies, are liable from the first dollar.

Land tax in 2005

This is a tax on the ownership of land in NSW as at 31 December 2004.

It includes:

- vacant land
- a house
- a flat
- home unit
- commercial land
- industrial land.

Your principal place of residence is exempt.

Ownership of land includes individual ownership, interests in jointly owned land, and any interest in land held by a trust or estate.

Exemptions

Generally exemptions apply to the following:

- Principal place of residence (your own home)
- Primary production land (land used for farming)
- Non profit organisations.

Partial exemptions

If the land you use as your principal place of residence is used for another activity the value of your land will be split between the residential use and the other use.

For example: Mr Brown lives in a two storey building. The bottom floor is a shop and Mr Brown lives upstairs. The value of the land is \$800 000. On a floor basis, the value is split \$400 000 shop and \$400 000 residence. Mr Brown's residential part is not liable. The non-residential usage is taxable at the land value of \$400 000.

How is land tax calculated?

For the 2005 land tax year, land tax is calculated on the combined value of all the taxable land you own at midnight on 31 December 2004. There is no land tax threshold. If your land tax liability is less than \$100 no land tax will be charged.

Concessional rates of tax

Total value of land	Rate of land tax payable	Examples
Not more than \$400 000	0.4 cents for each \$1	Total land value = \$180 000 Land tax rate 0.4 cents per \$1 \$180 000 @ 0.4% Land tax payable = \$720
More than \$400 000 but not more than \$500 000	\$1 600 plus 0.6 cents for each \$1 over \$400 000 up to \$500 000	Total land value = \$480 000 Land tax rate up to \$400 000 = \$1 600 plus \$80 000 @ 0.6 cents = \$480 Land tax payable = \$2 080
More than \$500 000	\$2 200 plus 1.4 cents for each \$1 above \$500 000	Total land value = \$850 000 Land tax rate \$500 000 = \$2 200 plus \$350 000 @ 1.4 cents = \$4 900 Land tax payable = \$7 100

Non-concessional companies and special trusts

The concessional rates do not apply to non-concessional companies and special trusts.

Taxable value	Land tax rate
Land owned by a company classified as a non-concessional company or a special trust	1.4 cents for each \$1

Example:

Total land value = \$400 000
Tax threshold = \$0
Balance of \$400 000 @ 1.4% = \$5600
Total tax = \$5600

Land values

Annual valuations for land tax are made by the Valuer-General as at 1 July preceding each land tax year. These values should not be confused with those generally made every three years for local government rating purposes. The Register of Land Values is maintained by the Land and Property Information Division of the Department of Lands, on behalf of the Valuer-General.

Who is liable to pay land tax?

If you own any property that is not your principal place of residence, including a holiday house or unit, you may be liable to pay land tax. This includes property that does not earn any income.

The amount of land tax payable depends on the combined value of any taxable land you own or have an interest in, excluding exempt land. The value of taxable land does *not* include any structural improvements, such as a house. Also, you do not pay land tax in NSW on any properties you own outside of NSW.

For land tax, an owner is defined as any of the following:

- sole owner
- joint owner
- company – whether solely or as a part of a group of related companies
- trustee of any trust
- beneficiary of a trust
- society or organisation whose land is not exempt from land tax
- unit holders with interests in unit trusts
- superannuation funds.

Joint owners

Joint owners are assessed jointly on one or more parcels of non-exempt land.

Companies

A company is assessed in the same way as a sole owner unless it is related to another company. A related company can be assessed separately or assessed jointly with another company or group of companies. Where a group of companies are liable only one company is entitled to the concessional rates of tax.

Trusts

The trustee of a trust is assessed in the same way as a sole owner unless it is a special trust. Special trusts can include:

- Trusts which elect to be taxed as special trusts
- Discretionary trusts
- Non-complying superannuation trusts
- Most family trusts
- Some deceased estates
- Trusts in which the beneficiaries are not owners for land tax purposes.

Special trusts are not entitled to the concessional rates and are taxed at 1.4 per cent.

If the land is the subject of a fixed, concessional or complying superannuation trust, it is assessed at the concessional rates of tax.

How do I deal with OSR to determine my liability?

If you own taxable land in NSW as at 31 December 2004, you will need to lodge an initial return. The initial return form is available from the OSR website www.osr.nsw.gov.au or by contacting OSR on 1300 139 816.

Upon receipt and processing of your initial return, OSR will issue you with an assessment detailing the land tax payable.

Land tax in 2006

Threshold and Rates

For the 2006 land tax, a \$330 000 threshold will apply. The land tax liability for 2006 is based on the total land value of all liable land owned at midnight 31 December 2005. In subsequent years the threshold will be indexed annually to average increases in State-wide values for business, commercial, industrial and

residential land. No adjustments to the threshold will be made if state-wide land values decrease.

The land tax rate for 2006 will be 1.7 per cent (plus \$100) on the value of liable land in excess of \$330 000. There is no threshold for non-concessional companies and special trusts. Land owned by special trusts and non-concessional companies will be taxed at the flat rate of 1.7 per cent.

Taxable value of land owned	Rates of land tax payable
Up to \$330 000	Nil
Above \$330 000	\$100 plus 1.7% of value over \$330 000

Pay-roll tax

Is your business liable?

You are liable to pay-roll tax if you are an individual employer or one of a group of employers whose total wages throughout Australia, including NSW, exceeds \$600 000 for the pay-roll tax year.

You may also be liable if you pay wages for only part of the pay-roll tax year as the threshold is apportioned to the number of days you employ.

Pay-roll tax in NSW is levied on the employer's wages that exceed the NSW threshold. The employer's entitlement to this threshold is reduced if the employer pays wages in other states of Australia or is a member of a group.

How pay-roll tax is calculated

Employers pay 6 per cent of the value of wages that exceed their threshold entitlement.

For example:

XYZ Pty Ltd pays wages of \$500 000 in NSW and \$250 000 in Victoria.

Threshold entitlement is

$$\frac{\$500\,000 \times \$600\,000}{\$750\,000}$$

$$\$500\,000 - \$400\,000 = \$100\,000$$

$$\$100\,000 \times 6\% = \$6\,000$$

What are wages?

Wages are considered to be any of the following:

- wages, salaries, commissions, bonuses, allowances, directors fees
- superannuation contributions by employers including salary sacrifice
- fringe benefits as returnable for the Australian Taxation Office
- eligible Termination Payments and paid out leave
- payments to workers under employment agency agreements
- the value of shares and options provided to employees and directors
- trust distributions to beneficiaries who work for a business
- payments to contractors under direct, relevant contracts or liable employment agency, labour hire firm contracts.

If you pay wages outside NSW for services performed wholly in NSW, these wages are liable to tax in NSW.

Payments to contractors

Payments to contractors and subcontractors under contracts for services are liable as wages unless the contract is excluded by the provisions in section 3A. There are 11 exclusion provisions and only one need apply for an exclusion. Contracts that are commonly liable are:

- contracts where the contractor works for 90 days or more for the one business, and
- the contractor does the work personally without paying another worker to assist, and
- the work performed is a normal activity of the business.

The payments can be wages even if the contractor is incorporated or a partnership. Further information about contractors is available on the OSR website.

Employment agents

Payments made by employment agencies and labour hire firms to workers under agency contracts are liable wages for the agency unless at least 1 of 3 declaration based exclusions applies to the contract.

- 1 the worker declares pay-roll tax is already liable on the payments
- 2 the client declares they are an exempt employer
- 3 the client declares they do not need to register for pay-roll tax.

Grouping provisions

Grouping provisions allow only one threshold to be shared by businesses that are controlled by the same person or persons. Your business may be related to another business if:

- your company and another company are related under section 46 and 50 of the *Corporations Act 2001*, or
- your employees mainly provide services in connection with another business or the other business's employees mainly provide services in connection with your business or both businesses
- the person or persons who have a controlling interest (more than 50 per cent of the voting power attached to the voting shares) in your business also have a controlling interest in another business.
- you, or another business, or both, carry on the businesses as trustees and there are common beneficiaries.

Grouping provisions are complex and further information is available on the OSR website.

How to register

If you employ in NSW and your total Australian weekly wages exceed \$11 538 per week you must register with the NSW Office of State Revenue.

You can register online at OSR's website: www.osr.nsw.gov.au

There are penalties for non-payment of pay-roll tax. If you fail to lodge returns or make payments in accordance with requirements, interest and penalty tax will be charged in accordance with the *Taxation Administration Act 1996*.