

I am a NSW Solicitor and State Taxes Consultant who has specialised in Australian Stamp Duties for over 30 years and I have also been an adviser on other NSW State Taxes for nearly 20 years. I was a part-time Judicial Member of the NSW Administrative Decisions Tribunal allocated to the Revenue Division when it was first established on 1 July 2001 until 31 October 2007.

### **Stamp Duty - General**

Stamp Duty has raised significant revenue for NSW since it was first introduced 154 years ago, in 1865.

Over the past 30 to 40 years, there has been intensive work by successive NSW Governments to effectively close Stamp Duty loopholes and there has been dutiful (excuse the pun) administration by NSW OSR/ Revenue NSW in collecting State revenue.

With greatest respect, it is submitted that one of the major shortcomings of previous taxation reviews and many commentaries on State taxation and has been the failure to consider the impacts on State revenue and the efficiency of Stamp Duty (as compared to other taxes), when Stamp Duty rates are low (collectively, “the Effects of Lower Stamp Duty Rates”).

Proposals for abolition of Stamp Duty without consideration of the Effects of Lower Stamp Duty Rates are like “*throwing the baby out with the bathwater*”.

As much as successive NSW Governments have worked intensively to close Stamp Duty loopholes over the past 30 to 40 years, unfortunately and regrettably, those NSW Governments have:

- kept Stamp Duty rates **very high**;
- failed to address **Stamp Duty Bracket Creep** and **Cascading**; and
- permitted inequities such as **Tax on Tax** - Stamp Duty on GST to exist.

It is because of these factors that Stamp Duty has earned a “*bad tax*” reputation.

It is submitted that Stamp Duty deserves to be looked at in the context of its history and that in any review, proper and full consideration should be given to analysis of the consequences of:

- lowering Stamp Duty rates;
- regular address of Stamp Duty Bracket Creep and Cascading; and
- removing inequities such as Tax on Tax - Stamp Duty on GST.

### **Intergovernmental Agreement**

Under the Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations (“IGA”) made on 1 July 1999, all States and Territories agreed to abolish and not reintroduce certain Stamp Duties and to review the need for retention of certain other Stamp Duties. Under the IGA made on 1 January 2009, all States and Territories agreed to abolish and not reintroduce certain Stamp Duties including, Stamp Duty on transfers of unquoted marketable securities.

Since the abolition of Stamp Duty on unquoted marketable securities in all States and Territories, various of the States and Territories (including NSW) have amended their Duties legislation to broaden their “landholder duty” provisions which impose ad valorem land transfer rates of duty (as compared to lower, marketable securities duty rates) in respect to certain transfers and other acquisitions of unquoted marketable securities. Most recently, NSW introduced a [State Revenue Legislation Further Amendment Bill 2019](#) (“the Bill”) the proposed amendments in which will create red tape and burdensome legal, accounting, valuation and administrative costs to parties to transactions, including in some cases, where those costs will simply clarify or confirm that no liability to tax actually exists. All of these amendments could be argued to be contrary to the spirit of the IGA of 1 January 2009 but they highlight the price being paid, in terms of red tape, complexity, uncertainty and inequity, for the abolition of some of the Stamp Duties abolished pursuant to the IGA.

It is submitted that the IGA should be reviewed and the efficiency, certainty, equity and simplicity of some of the taxes that were agreed to be abolished and not to be reintroduced under the IGA should be reconsidered in that review.