

Stamp duty exemptions for principal places of residence

In very limited circumstances, in NSW a property can be transferred without paying transfer duty. Townsend Law's Jonathan See knows those circumstances.

Your residences often enjoy certain concessions or exemptions when it comes to tax or state duty.

If you decide to acquire your first home, you may be eligible for the first homeowner's grant. Your home will also be exempt from land tax.

And when you sell your home, you'll be exempt from capital gains tax.

Normally these concessions are not available if your home is owned by a company or trust but there are exceptions. In New South Wales, there are limited instances when a transfer of residence may qualify for not just a concession but an exemption from duties.

The general requirements for duties exemption of transfers of residence are:

1. Land must be a "principal place of residence" which means the one place of residence of a person, whether within or outside Australia, that is the principal place of residence of that person in New South Wales. So if a person has residences in other states or countries their principal place of residence should be in New South Wales.
2. If the property is owned by a corporation or special trust it must have owned the land as at 11 September 1990.

A special trust is a trust which is not a fixed trust, has property that includes land and where its trustee owns the legal estate of the land. A discretionary trust is an example of special trust.

3. If the transferee had been the owner of the land on 31 December preceding the date of transfer, the land would have been exempted from land tax for being a "principal place of residence". In other words, the transferee must have been residing in the land for the land tax year preceding the transfer.

Continuing from the general requirements above, the following transfers of land may be eligible for duties exemption:

- (a) Transfer of land by a corporation to the following:
 - (i) principal shareholder or spouse

A principal shareholder includes a shareholder who owns at least 50% of the total shares of the corporation.

For example, Alpha Pty Ltd ("Corporation") owns a land in New South Wales which it had acquired on 11 April 1990. Bob owns 60 shares out of the total 100 shares of the Corporation. Bob's wife is Carly.

If Bob or Carly were owners of the land on 31 December 2020, the land would have been exempt from land tax as their principal place of residence.

The transfer may be eligible for duties exemption if the corporation transfers the land on 1 May 2021 to:

- Bob as he is a principal shareholder (being 60% shareholder of the Corporation).
- Carly as she is the spouse of Bob.

(ii) beneficiary of special trust or spouse

Here, the trustee of the special trust must be a principal shareholder in the corporation at the time of the transfer and the transferee must be a beneficiary of the special trust when the land was acquired by the corporation and at the time of transfer.

For example, Frank is the trustee of Gareth Family Trust ("Trust") established on 1 May 1988. He also owns 60 shares out of the total 100 shares of Echo Pty Ltd ("Corporation") which owns land in New South Wales it acquired on 11 February 1990. Henry is a beneficiary of the Trust since its establishment. Henry's wife is Irene.

If Henry or Irene were owners of the land on 31 December 2020, the land would have been exempt from land tax as their principal place of residence.

The transfer may be eligible for duties exemption if the corporation transfers the land on 1 May 2021 to:

- Henry as: i) Frank is the trustee of a special trust and principal shareholder (being 60% shareholder of the Corporation) of the corporation which owned the land; and ii) Henry is the beneficiary of the special trust at the time the corporation acquired the land and at the time the corporation transferred the land to him.
- Irene as she is the spouse of Henry.

(b) Transfer of land by the special trust to the following who will hold the land beneficially after the transfer:

- (i) settler or person who actually paid the purchase price for the land or their spouse.
- (ii) beneficiary of special trust or spouse.

For example, Jack as the trustee of Keller Family Trust ("Trust"), a discretionary trust established on 1 May 1988, owns land in New South Wales which was purchased with money paid by Lee on 11 April 1990. Lee's wife is Maria. One of the beneficiaries of the Trust is Neil whose wife is Olga. Neil has been a beneficiary of the Trust since its establishment.

If Lee, Maria, Neil or Olga were owners of the land on 31 December 2020, the land would have been exempt from land tax as their principal place of residence.

The transfer may be eligible for duties exemption if the Trust transfers the land on 1 May 2021 to:

- Lee as he provided the purchase price for the Trust's acquisition of the property.
- Maria as she is the spouse of Lee.

- Neil as he is a beneficiary of the Trust prior to the Trust's acquisition of the property and at the time of the transfer.
- Olga as she is the spouse of Neil.

Professional advice should be sought to see if your circumstances meet the requirements to avail of these exemptions.

For more information on any aspect covered in this article, please call SUPERCentral on 02 8296 6266 or email info@supercentral.com.au.