

NSW property tax update

The NSW Government's mini-budget in April 2004 changed a number of property related taxes in New South Wales and introduced a series of new ones.

This guide provides a brief update on the major property taxes and provides an overview to the new rates, eligibility criteria, exemptions and associated issues.

This update and its contents are informative in nature only. It is not intended to be advice and you should not act specifically on the basis of this information. If expert assistance is required, professional advice should be sought.

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Sources utilised in this publication

This publication utilises information from three primary sources: the Office of State Revenue, the relevant legislation currently before the NSW Parliament and the Treasurer’s Budget Speech.

Vendor Duty

Key details

- Duty of 2.25% on disposal of property
- Applies from 1 June 2004

The NSW mini-budget in April 2004 introduced a new tax, Vendor Duty. From 1 June, a Vendor Duty of 2.25% will apply to consideration received on the sale (or disposal) of a property.

The Vendor Duty is paid prior to the settlement of a property and is paid by cheque from a financial institution or clearly marked Solicitors or Licensed Conveyers trust account cheque.

Exemptions

Vendor duty generally doesn't apply where the property:

- is the vendor's principal place of residence; or
- is for primary production; or
- is a deceased estate in certain circumstances; or
- has not increased significantly in value relative to the purchase price; or
- is a first sale of a new building by a builder or developer.

Principal place of residence

To qualify as the principal place of residence:

- The Vendor must have lived in the property continuously for two years prior to disposal. The two year principal place of residence exemption applies even if the Vendor has been absent from the property for up to six years provided they initially lived in the property continuously for 2 years prior to the absence.
- Where the Vendor has owned the property for less than two years, lived in the property continuously to the satisfaction of the Chief Commissioner.
- The Vendor must have maintained the property as the principal place of residence for three years out of the five years prior to disposal.
- Where the Vendor stopped using the property as their principal place of residence six months prior to sale, as long as the Vendor did not earn an income from the property in that time, this period will be counted for the purposes of the exemption.

Primary production

The Vendor Duty does not apply where the property is used for a primary production business. To qualify, the land needs to have been used in the course of carrying on a primary production business:

- For at least 2 years immediately prior to disposal; or
- For a total period of at least 3 years of the last 5 years immediately prior to disposal.

Deceased estate

Vendor Duty does not apply to a deceased estate where:

- land related property has passed to a beneficiary (regardless of whether or not the property was the principal place of residence of the deceased)
- A beneficiary or estate sells the deceased's principal place of residence within 12 months of death

Where a will provides for life tenancy for the deceased's principal place of residence, the exemption will apply for up to 12 months after the termination of the life estate or until the property vests in another person.

No significant increase in value

Vendor Duty does not apply to properties where the value of the property at disposal has not increased by more than 12% since the Vendor acquired the property.

Where the value has only increased between 12% and 15% a discount applies:

Increase in value	Discount
More than 12% - 13%	75%
More than 13% - 14%	50%
More than 14% - 15%	25%

If the value of the property on disposal includes GST but the acquisition value does not, the purchase price will be notionally increased by 10%.

First sale by builders

An exemption also exists for the first sale by builders or developers of new properties (including off the plan sales) where the building remains untenanted.

Where a new building is tenanted after completion but prior to the first sale, the exemption still applies if the property is sold within 12 months of the date of completion.

The exemption also applies to the first sale of a lot in an unregistered plan of subdivision on which a new building will be erected before the completion of the sale.

While the exemption does not apply to renovations, the Office of State Revenue states that an exemption will be considered if the premises have been "substantially rebuilt". Greater detail about these exemptions is available on the exemption form.

Mixed residential and commercial

Where the property is mixed residential and commercial, the principal place of residence exemption applies to the portion of the property used for residential purposes only.

Interaction with capital gains tax

On property sales that are subject to capital gains tax, the new vendor duty forms part of the cost base of the asset. This means for income tax purposes, taxpayers will recover up to 24.25% of the duty on their end of year tax assessment (assuming the taxpayer is paying the top marginal rate of tax and the capital gain is a discount gain).

For example:

Bridget owns a rental property that she purchased for \$250,000 in 2001. On 1 June 2004, she sold the property for \$400,000. Assuming she is ineligible for any of the vendor duty exemptions, she is liable to vendor duty of \$9,000.

When Bridget prepares her 2004 income tax return, the cost base of the asset includes the vendor duty paid. Assuming Bridget pays the top marginal rate of tax and has no other capital off-sets, she will recover \$2,182.50 of the \$9,000 via a reduction of capital gains tax on her income tax assessment.

Date of effect

On viable contracts executed on or after 1 June 2004

Forms

[Exemption from vendor duties](#) (principal place of residence or farm)

[Exemption based on sale price](#) (not exceeding acquisition price)

[Exemption, new buildings](#)

Legislative reference

[Schedule 4 Amendments to Duties Act 1997 No 123 relating to vendor duty](#)

First home buyers

There are two schemes that can be accessed by first home buyers in NSW:

- First Home Plus concession on stamp duty (and mortgage duty)
- The First Home Owner Grant Scheme – a Federal Government Scheme administered by NSW Office of State Revenue; and

First Home Plus

Key details
▪ New thresholds apply from 4 April 2004
▪ New or established properties up to \$600k (phasing out from \$500K)
▪ Vacant land up to \$450k (phasing out from \$300k)
▪ Applies where at least one purchaser has not owned property

First Home Plus is a concession applying to stamp duty and mortgage duty for first home buyers in NSW. The concession is not means tested and can save up to \$17,990 in stamp duty and up to 100% of the mortgage duty.

You apply for First Home Plus at the same time your purchase agreement is lodged with the Office of State Revenue.

Eligibility

It is important to note that the completed eligibility criteria are still being developed to bring them into line with the First Home Owner Grant Scheme. As a result, the information below is interim in nature only.

- New thresholds apply to contracts signed on or after 4 April 2004.
- The agreement must be for the whole of the property;
- Every purchaser/ transferee must not have previously received an exemption concession under the scheme (except where a person is acquiring an interest in the property solely for the purpose of assisting the other purchaser(s) to finance the acquisition);
- At least one purchaser/ transferee must not have owned and occupied a residential property in Australia either solely or with someone else.

You are still able to apply for First Home Plus if you have owned vacant land or a commercial property.

Companies, partnerships, trustees, a business premises, holiday house or renovations to existing building do not qualify for the concession.

How the duty works

The amount of stamp and mortgage duty paid on your contract depends on the higher of the purchase price or the value of the property.

The Office of State Revenue has provided these useful tables as a guide to the discounts available under the scheme:

Discounts on stamp duty for residential property for first home buyers

Purchase price	Usual duty	First home plus duty	Saving
\$	\$	\$	\$
250,000	7,240	0	7,240
300,000	8,990	0	8,990
350,000	11,240	0	11,240
400,000	13,490	0	13,490
450,000	15,740	0	15,740
500,000	17,990	0	17,990
510,000	18,440	2,249	16,191
520,000	18,890	4,498	14,392
530,000	19,340	6,747	12,593
540,000	19,790	8,996	10,794
550,000	20,240	11,245	8,995
560,000	20,690	13,494	7,196
570,000	21,140	15,743	5,397
580,000	21,590	17,992	3,598
590,000	22,040	20,241	1,799
600,000	22,490	0	0

Mortgage duty discount on residential premises for first home buyers

Purchase price	Discount on duty
Less than \$500k	100%
More than \$500k and no more than \$535k	75%
More than \$535k and no more than \$565k	50%
More than \$565k and less than \$600k	25%

Discounts on stamp duty for first home buyers for vacant residential land

Purchase price	Usual duty	First home plus duty	Saving
\$	\$	\$	\$
100,000	1,990	0	1,990
150,000	3,740	0	3,740
200,000	5,490	0	5,490
250,000	7,240	0	7,240
300,000	8,990	0	8,990
310,000	9,440	1,049	8,391
320,000	9,890	2,098	7,792
330,000	10,340	3,147	7,193
340,000	10,790	4,196	6,594
350,000	11,240	5,245	5,995
360,000	11,690	6,294	5,396
370,000	12,140	7,343	4,797
380,000	12,590	8,392	4,198
390,000	13,040	9,441	3,599
400,000	13,490	10,490	3,000
410,000	13,940	11,539	2,401
420,000	14,390	12,588	1,802
430,000	14,840	13,637	1,203
440,000	15,290	14,686	604
450,000	15,740	0	0

Mortgage duty discount on a vacant block for first home buyers

Purchase price	Discount on duty
Less than \$300k	100%
More than \$300k and no more than \$350k	75%
More than \$350k and no more than \$400k	50%
More than \$400k and less than \$450k	25%

Date of effect

All new contracts entered into on 4 April 2004*

Forms

[First Home Plus](#) (agreements entered into on or after 4 April 2004)

Legislative reference

[Schedule 1 Amendments to Duties Act 1997 No 123 relating to First Home Plus](#)

*Special conditions exist where a first home buyer entered into a contract before midnight on 3 April 2004 and rescinds the contract by mutual agreement with the vendor.

First home owner grant scheme

Key details
▪ Applies from 1 July 2000
▪ Up to \$7000
▪ Applies where purchaser has not owned property
▪ Applies to principal place of residence

The First Home Owner Grant Scheme has been around since 1 July 2000 and provides an incentive for first home buyers to buy their first residential premises (it does not apply to vacant land). The scheme is not means tested and applies where the purchasers have not previously owned property. Interestingly, the grant applies to property of any value.

Applications for the grant must be made within the first 12 months of completion or settlement of the home. Applications can be made directly to the Office of State Revenue or through a financial institution.

Eligibility

A person is eligible for the home owner grant scheme if:

- This is the first time the person or their spouse/ de facto will receive the grant
- The person or their spouse/ de facto has not previously owned residential property jointly, separately or with any other person in Australia prior to 1 July 2000.
- The person or their spouse/ de facto has not previously owned residential property and occupied that property jointly, separately or with any other person in Australia after 1 July 2000.
- Each applicant is at least 16 years of age (although some discretion may be applied by the Chief Commissioner in certain circumstances where the property is the principal place of residence).
- At least one of the applicants is a permanent resident or an Australian citizen
- At least one of the applicants will occupy the home as their principal place of residence for a continuous period of six months within 12 months of settlement or construction
- They have entered into the contract to buy the home or have signed a contract to build a home on or after 1 July 2000. For owner builders, the grant applies from the date the foundations were laid.

The grant does not apply to companies or trusts.

Date of effect

1 July 2000

Forms

[First home owner grant scheme](#)

Land Tax

Key details
▪ New tax rate scales apply
▪ Threshold abolished – land tax applies to all non-exempt land
▪ Abolition of premium property tax

Land tax applies to the ownership of all land including vacant land, houses, flats, home units, strata lots and holiday homes and is levied on ownership at midnight on 31 December each year. Exemptions apply if the land is the principal place of residence and for primary producers.

The NSW mini-budget introduced significant changes to Land Tax for 2005. Among the changes is a new land tax rate scale, the abolition of thresholds (it applies to all non-exempt property) the abolition of premium property tax, and the introduction of an extension of time for payment by low income earners.

The new land tax rate scales

In 2005, Land tax moves to a marginal rate scale (instead of the single rate of 1.7%).

Land value	Land tax rate
Not more than \$400k	0.4%
More than \$400k but less than \$500k	\$1,600 + 0.6% on value of the land above \$400k
More than \$500k	\$2,200 + 1.4% on value above \$500k

If land is subject to a special trust, or is owned by a company, classified under Section 29 as a non-concessional company, land tax will be charged at the rate of 1.4 cents for each \$1 of the taxable value.

Mixed use

Where land is used for other purposes, the portion of the land not used as the residence of the owner, is liable for land tax.

Examples of mixed use include a boarding kennel, plant nursery, or a shop.

Extension of time for low income earners

Given that land tax applies to all land (that is not exempt), the Government has provided an extension of time for people on low incomes to pay the land tax as long as they do not earn an income from the land.

The extension of time is until the land is sold or distributed in accordance with a will. However, interest applies at Sydney CPI.

The extension is available to people who:

- own taxable land with an aggregate value up to \$400,000;

and

- who qualify to hold Pensioner Concession Cards from Social Security or Veterans Affairs; or
- are in receipt of a pension paid by Veterans Affairs; or
- are an Armed Services Widow and in receipt of a pension under the Veteran's Entitlement Act; or
- are not pensioners but meet the **income test** for a full payment or part payment of the age pension (and do not meet the other criteria).

Income test

[Centrelink information on pension income test](#)

Legislative reference

[Schedule 2 Amendments relating to land tax](#)

Premium Property Duty

Key details
▪ Applies from 1 June 2004
▪ Applies to residential property above \$3m
▪ Purchaser liable for the duty

The premium property duty was introduced in the NSW Government's mini-budget. While not the same, it conceptually replaces the Premium Property Tax.

The Premium Property Duty applies to the purchaser of a premium property (residential property with a value of \$3m or above) from 1 June 2004.

The Duty must be paid within three months of the exchange date except off the plan purchases where the duty is paid within three months of the earlier of:

- Completion of the agreement; or
- The assignment of the whole or any part of the purchaser's interest under the agreement; or
- 12 months after the date of the agreement.

How the duty applies

The duty applies to that portion of the value of the property above \$3m. The duty payable is \$150,490 plus 7%.

What types of property does the duty apply to?

For the purposes of the duty, residential land is:

- land on which there is a single dwelling or flat (or where a single dwelling or flat is being built);
- A strata lot that is lawfully occupied as a separate dwelling or suitable for that purpose;
- A land use entitlement, if it confers an entitlement to occupy a building, or part of a building, as a separate dwelling
- Vacant land that is zoned or designated for residential or principally for residential purposes.

Residential land used for other purposes

Where a property is a mix of residential land and is also used for other purposes, the duty applies to the value of the residential portion of the land that exceeds \$3 million.

How the value of the land is apportioned is either through the apportionment factor entered into the Register of Land Values or a factor the Chief Commissioner considers reasonable.

Large parcels of vacant land

Where the transaction has a value exceeding \$3 million, and the area of land exceeds two hectares, the duty applies to the portion of the value of the residential land that exceeds \$3 million. Duty applies at a flat rate of 7% on the residential component over \$3 million.

Legislative reference

[Schedule 3 Amendments relating to premium property duty](#)

Further information

The Office of State Revenue administers property taxes in NSW.

Website

www.osr.nsw.gov.au

Hotline numbers

First Home Plus	1300 139 814
First Home Owner Grant	1300 130 624
Vendor Duty	1300 784 010
Land Tax	1300 139 816
Premium Property Duty	1300 139 814

NSW legislation

NSW legislation is available online through the Parliamentary Council's office.

See: <http://www.legislation.nsw.gov.au/>

NSW Mini-Budget

Mini Budget Speech 6 April 2004

See: <http://www.treasury.nsw.gov.au/bp03-04/minibudget/minibudget-04.pdf>