

CURRENT DEVELOPMENTS
Stamp Duty

QUESTIONS AND ANSWERS

Question – Brad Vann:

Bill, with the trend in most States to start intervening in financial transactions to make them liable to duty and the possibility that support guarantee facilities, if I can call them that, still escape the net, do you foresee that in due course they will also be brought in so as to be liable to duty?

Response – Bill Wallace:

I think, Brad, it is likely. It is difficult, as I mention in the summary of the paper, to predict which way we are going in the stamp duty field in relation to these mortgage transactions. On the one hand, you get these statements forever that we are going to try and simplify the duty, we are going to promote each State as a financial centre. For example, there is total exemption for transfers of mortgages to promote the secondary mortgage market, and you have Victoria putting a specific exemption in those land based conveyance duty provisions for financing transactions. On the other hand, you then have these very tight penalty provisions as we have seen in this recent Queensland legislation, we now have reciprocal legislation in most places in the stamp duties field allowing, for example, a Queensland stamp duties officer to go to New South Wales to look at New South Wales books and records and to be given, for the purposes of the New South Wales legislation, recognition under its legislation and vice versa. So you have a constant see-sawing between the two. The silly thing about it if you look at the figures that are collected from mortgage and loan security duty, and I mention some in the paper, is that it is a very small part of the State revenue collection, and there seems to be an enormous amount of time and effort spent on these complicated provisions that could easily be forgotten about, and only a slight increase in FID or a simple, very low based loan transaction tax. But until we get to that stage, to answer your question in a long handed way, I think that yes, there will be this constant tightening and certainly the securities over contingent obligations, and the support facility is one area that stamp duties officers are concerned about.

Comment - Brad Vann:

Thanks Bill. Perhaps the message in the Commissioner's catch-cry is "bankers beware!".

Question - Phillip Taylor (Freehill, Hollingdale and Page):

Just elaborating a little on that point in securities for bill facilities. If the bill facility is simply an accommodation facility, either an acceptance facility or an endorsement facility, with no obligation to discount the bills, is there an obligation to stamp up, and if so, when - in New South Wales, for example?

Response - Bill Wallace:

You mean Phillip, a secured financial accommodation facility? Yes. As I said, I do not think the provisions are effective in New South Wales. If a transaction is structured properly it seems to me that you do not come within the primary definition of a mortgage in relation to that and therefore you do not get within the upstamping provisions. That may seem a view that one does not want to test too much. If you do not take that view and you then get into the upstamping provisions and you look at the definition of financial accommodation, then yes, you would be arguably within that definition. The only qualification, that is while you may come within the definition of financial accommodation, you still have to have a situation where there is a provision of funds and there is no extended definition of provision of funds. So you have got the old argument of are you really providing funds as a result of that facility.