

Q&S CONVEYANCING UPDATE

ISSUE 9, 21 JULY 2008

**WARNING - NO AVOIDING WAIT UNTIL 1 SEPTEMBER 2008
FOR REDUCTION IN RATE TO FIRST HOME OWNER DUTY CONCESSIONS**

Some commentators have formed the view that a First Home Buyer can secure a property but delay settlement and save paying transfer duty ("Duty") in the process.

The suggestion of those promoting this idea is that First Home Buyers may use a Put and Call Option Agreement to delay the date of the Contracts and thereby avoid or reduce Duty payable and access the reduced new duty regime earlier than the 1 September 2008 commencement date.

Not only is it suggested that prospective Buyer can avoid duty it is suggested that a Buyer bold enough to take this advice will avoid trouble from the Office of State Revenue (OSR) which collects Duty.

The First Home Concession will increase from 1 September 2008 where the value of residential land is less than \$550,000, e.g. a saving for a First Home Buyer of \$8,750 in Duty if the purchase price is \$500,000 (the duty-free threshold).

The OSR not surprisingly has foreseen potential avoidance arrangements such as Put and Call Options.

Section 23 of the *Revenue and Other Legislation Amendment Act 2008* amends the Duties Act 2001 and also commences on 1 September 2008 and states as follows:

"The relevant provisions, as in force immediately before 1 September 2008, apply to a dutiable transaction that is the transfer or agreement or agreement for the transfer of residential land made on or after 1 September 2008 if-

... The Transferee had an option to purchase the land or the Transferor had an option to require the Transferee to purchase the land, granted or after 1 July 2008 and before 1 September 2008 and exercised on or after 1 September 2008"

As most Contracts of Sale are stamped in house in solicitor's offices it may well be that initially assessment of Duty for these Put & Call deals to will not include the correct Duty.

But the OSR is vigilant in its recovery of Duty and conducts audits of every Duty assessor for anomalies like this. We predict that eventually the correct Duty and penalties will be payable and extracted by the OSR.

Under no circumstances should agents encourage buyers and sellers to enter into Put and Call Option Agreements to avoid Duty prior to 1 September 2008.

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In these circumstances failure to do so will not only lead to embarrassment but might lead to prosecution under the Duties Act 2001 and in a worse case situation, the loss of real estate or salesperson's licence as someone found guilty would also likely not be a fit and proper person to practice as an agent.

As always, you should seek proper legal advice.

**Richie Muir,
Solicitor
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If you would like to ask any question about this or any other similar issue Richie may be contacted on 38212766 between 8.30am to 5pm Monday to Friday.

Quinn & Scattini Lawyers has offices in Brisbane, Beenleigh, Caboolture, Southport, Ipswich and Cleveland. In addition to residential and commercial Conveyancing services, our team of experienced lawyers practice in Business Law, Commercial Litigation, Property Law, Wills & Estates, Criminal Law and Family Law.

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