

# Update: 18 February 2009 Stamp duty abolition: Too risky to count on



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## Summary

We have recently seen schemes being promoted that promise significant stamp duty savings, based on the proposed abolition of NSW duty for business and share sales.

However, we believe that uncertainty about the abolition, together with clear anti-avoidance provisions, make the schemes too risky.

## What's changed?

The abolition of business stamp duty was first promised as part of the GST package, but scuttled as a trade-off for exempting food.

More recently, it was scheduled to be removed in July 2012, before being brought forward to January 2011. Duty on unlisted share and unit transfers was to disappear from January 2009.

The November 2008 Mini-Budget, however, pushed both of these dates back to 1 July 2012.

## What have advisors done?

Before lease duty was abolished on 1 January 2008, some landlords and tenants entered into short-term tenancies, combined with put and call options to give effect to a longer term lease without incurring duty for the period after abolition.

We have recently started to see similar schemes proposed for sales of business assets and shares. The savings would certainly be significant:- \$150,000 for a business with \$3M in dutiable assets.

## What are the risks?

There are two risks.

First, the Mini-Budget shows that these planned abolitions can't be relied upon until they happen.

Second, few practitioners seem to be aware that the *Duties Act* contains an anti-avoidance provision that imposes duty at current rates on a post-2012 transaction if it is the result of an option or other arrangement made before the abolition.

## How can Fleming Muntz help?

In our view, these 'aggressive' schemes carry too great a risk and we cannot recommend them to clients, however great the potential savings.

Our specialist business lawyers, however, can advise clients on more rational ways to structure acquisitions and mergers to their best advantage.

### Important fine print

This update is for general information only. It is not a complete guide to the area of law. Competent advice should be obtained before taking any action.

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