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Public Ruling Duties Act:

TRANSFER DUTY – RELIEF FOR CERTAIN TRUST ACQUISITIONS, TRUST SURRENDERS AND PARTNERSHIP ACQUISITIONS

A Public Ruling, when issued, is the published view of the Commissioner of State Revenue (the Commissioner) on the particular topic to which it relates. It therefore replaces and overrides any existing private rulings, memoranda, manuals and advice provided by the Commissioner in respect of the issue(s) it addresses. Where a change in legislation or case law (the law) affects the content of a Public Ruling, the change in the law overrides the Public Ruling—that is, the Commissioner will determine the tax liability or eligibility for a concession, grant or exemption, as the case may be, in accordance with the law.

What this Ruling is about

1. Under Chapter 2 of the *Duties Act 2001* (the Duties Act), transfer duty is imposed on the dutiable value of a dutiable transaction¹ unless an exemption applies.
2. The types of dutiable transactions include:
 - (a) a transfer of dutiable property
 - (b) an agreement for the transfer of dutiable property
 - (c) a partnership acquisition and
 - (d) a trust acquisition or trust surrender.²
3. A number of exemptions from transfer duty are dependent upon there being a transfer of, or agreement to transfer dutiable property³. Trust interests and partnership interests are not dutiable property under the Duties Act.⁴ Instead, transfer duty is imposed on a trust acquisition, trust surrender or partnership acquisition by reference to the value of the underlying trust or partnership dutiable property.⁵

¹ Section 8 of the Duties Act

² See s.9 of the Duties Act.

³ Defined in s.10 of the Duties Act

⁴ See s.10(2) of the Duties Act.

⁵ See ss.45-47 and 62-63 of the Duties Act.

4. As a result of trust interests and partnership interests not being dutiable property under the Duties Act, certain transfer duty exemptions, that would otherwise apply if such interests were deemed dutiable property, are not available.
5. Ex gratia relief from transfer duty will be considered on a case by case basis in relation to certain transactions relating to trust acquisitions, trust surrenders or partnership acquisitions.
6. This Public Ruling sets out the circumstances in which ex gratia relief may be provided.

Ruling and explanation

7. Ex gratia relief may be provided from transfer duty on a dutiable transaction relating to a trust acquisition, trust surrender or partnership acquisition where the dutiable transaction would satisfy the conditions of the relevant exemption⁶ in the Duties Act, but for the fact that trust interests and partnership interests are not dutiable property and the Commissioner is satisfied it is appropriate for the exemption to apply.
8. An application for ex gratia relief is to be made in writing to the Office of State Revenue and be lodged with all other documents necessary to enable an assessment of duty to be made.

Date of effect

9. This Public Ruling takes effect from the date of issue.

David Smith
 Commissioner of State Revenue
 Date of Issue 12 August 2011

References

Public Ruling	Issued	Dates of effect	
		From	To
DA000.10.1	12 August 2011	12 August 2011	Current

⁶ See ss.33, 46(5), 48, 108-109 (trust interests only), 123-126 (trust interests only), 130B (trust interests only) and 134 (trust interests only) of the Duties Act.