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Public Ruling Duties Act:

REASSESSMENT OF TRANSFER DUTY— HOME CONCESSIONS—WHERE NOT ALL TAXPAYERS COMPLY WITH THE CONDITIONS

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. Section 8(2) of the *Duties Act 2001* (the Duties Act) imposes transfer duty on the dutiable value of a dutiable transaction.
2. Section 17(2) of the Duties Act provides that transfer duty is to be paid by the parties to the transaction (the taxpayers).
3. Chapter 2 Part 9 of the Duties Act provides a number of concessions for transfer duty on certain dutiable transactions to assist taxpayers to acquire their homes or first homes. These concessions are subject to requirements relating to the occupation and disposal of the land (occupancy requirements).
4. Sections 153 and 154 of the Duties Act require the Commissioner to reassess transfer duty in certain circumstances where the occupancy requirements are not satisfied.
5. Under s.153 of the Duties Act, a taxpayer's transfer duty concession is reassessed if they dispose of all or part of the land within a year after the occupation date¹, other than because of an intervening event². The taxpayer may retain a partial concession, based on the proportion of the year between their occupation date and the date of disposal, both days inclusive.

¹ Defined in s.88 of the Duties Act. Also see ss.86 and 86B of the Duties Act.

² Defined in Schedule 6 of the Duties Act

6. Under s.154 of the Duties Act, transfer duty is reassessed in full as if the concession never applied if, other than because of an intervening event:
- (a) the taxpayer's occupation date is not within:
 - (i) one year after the transfer date³—for a dutiable transaction related to residential land
 - (ii) two years after the transfer date—for a dutiable transaction related to vacant landor
 - (b) the taxpayer disposes⁴ of all or part of the land before their occupation date.
7. The purpose of this public ruling is to explain the Commissioner's practice in identifying the taxpayer to whom a reassessment under s.153 or s.154 of the Duties Act is issued where:
- (a) a number of taxpayers have purchased residential land⁵ or vacant land⁶
 - (b) an assessment of transfer duty has been made based on at least one taxpayer receiving a concession under Chapter 2 Part 9 of the Duties Act
 - (c) that assessment has been paid
 - (d) at least one of the taxpayers who received a concession failed to satisfy the occupancy requirements
- and
- (e) the reassessment was required under s.153 or s.154 of the Duties Act.

Ruling and explanation

8. Where an assessment of transfer duty has been paid and a reassessment has been made under s.153 or s.154 of the Duties Act, the Commissioner's practice, in the first instance, is to issue the reassessment to those taxpayers whose actions or inactions directly triggered the reassessment.

Example 1—Reassessment under s.153 of the Duties Act

Mark and Jane are de facto partners and enter into a contract for the purchase of a home. Mark and Jane are both eligible for the transfer duty home concession for the transaction and pay the duty assessment accordingly. Mark and Jane both occupy the home within 1 year of the transfer date. However, Mark and Jane separate, and within 3 months of occupation, Mark moves out of the property and transfers his interest to Jane. Jane continues to reside in the property and eventually satisfies the occupancy requirements. A reassessment under s.153 of the Duties Act is issued to Mark, but not Jane.

³ Defined in s.89 of the Duties Act

⁴ Defined in s.154(2), (2AA), (2A) and (2B) of the Duties Act

⁵ Section 86A of the Duties Act

⁶ Section 86C of the Duties Act

Example 2—Reassessment under s.154 of the Duties Act

Jack and Dennis, two brothers, enter into a contract for the purchase of their first home. Jack and Dennis are both eligible for the transfer duty first home concession for the transaction and pay the duty assessment accordingly. Before occupation of the property, Dennis accepts a job overseas. Dennis never moves into the property and instead sells his share in the property to his parents. Jack moves into the home and subsequently satisfies the occupancy requirements. A reassessment under s.154 of the Duties Act is issued to Dennis, but not Jack.

Date of effect

9. This public ruling takes effect from the date of issue.

Elizabeth Goli
Commissioner of State Revenue
Date of issue 12 December 2016

References

Public Ruling	Issued	Dates of effect	
		From	To
DA000.11.3	12 December 2016	12 December 2016	Current
DA000.11.2	3 July 2012	1 July 2012	11 December 2016
DA000.11.1	12 September 2011	12 September 2011	30 June 2012
Supersedes Revenue Ruling DA 23.2	2 January 2007	1 January 2007	23 February 2009