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Public Ruling Duties Act:

ADMINISTRATIVE ARRANGEMENT—DUTY EXEMPTIONS FOR ELIGIBLE SMALL BUSINESS RESTRUCTURES

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. This public ruling sets out the terms of an administrative arrangement that enables the Commissioner to administer the *Duties Act 2001* (Duties Act) to provide an exemption from transfer duty and vehicle registration duty for certain transactions relating to particular small business restructures.
2. The administrative arrangement was first approved on 25 September 2020, and provided exemption for eligible transactions entered into on and from 7 September 2020, relating to a transfer or agreement for transfer of small business property to an unlisted corporation from any of:
 - (a) an individual, where the individual is a shareholder of the corporation
 - (b) one or more members of a partnership, where all the partners of the partnership are shareholders of the corporation
 - (c) the trustee of a discretionary trust, where all the beneficiaries of the trust are shareholders.¹
3. On 28 June 2021, an expansion of the administrative arrangement was approved to provide an exemption to eligible transactions entered into on and from that date relating to the transfer or agreement for transfer of small business property from the trustee of a discretionary trust to an unlisted corporation of which the trustee is the sole shareholder.²

¹ See paragraphs 7(a)-(c) and examples 1-6.

² See paragraph 7(d) and examples 7-8.

4. Unless an exemption applies, the Duties Act imposes, among other things, transfer duty on the dutiable value of dutiable transactions and vehicle registration duty on applications to register or transfer a vehicle.

Ruling and explanation

Overview of the exemptions

5. The Duties Act will be administered as if it provides for an exemption from transfer duty (as calculated in paragraphs 15 to 18) for eligible transactions entered into on and from 7 September 2020 relating to restructures of small business entities listed in paragraphs 7(a)-(c) and from 28 June 2021 for restructures of small business entities listed in paragraph 7(d).
6. If an eligible transaction qualifies for an exemption from transfer duty, the eligible transaction will also qualify for an exemption from vehicle registration duty, if applicable. Accordingly, for the purposes of this public ruling, an application to transfer a vehicle is treated as an agreement for the transfer of dutiable property (see paragraph 19 for how the exemption from vehicle registration duty is calculated).
7. Each of the following transactions are eligible transactions:
 - (a) if the small business entity is an individual—a dutiable transaction that is the transfer or agreement for the transfer of small business property directly held by the individual, the dutiable value of which is not more than \$10 million, from the individual to a newly registered unlisted corporation or an unlisted corporation that has been dormant since its registration, of which the individual is a shareholder
 - (b) if the small business entity is a partnership—a dutiable transaction that is the transfer or agreement for the transfer of small business property directly held by one or more of the partners of the partnership, the dutiable value of which is not more than \$10 million, from those partners to a newly registered unlisted corporation or an unlisted corporation that has been dormant since its registration, of which all partners of the partnership are shareholders
 - (c) if the small business entity is a discretionary trust—a dutiable transaction that is the transfer or agreement for the transfer of small business property directly held by the trustee of the trust, the dutiable value of which is not more than \$10 million, from the trustee to a newly registered unlisted corporation or an unlisted corporation that has been dormant since its registration, of which all beneficiaries of the trust are shareholders
 - (d) if the small business entity is a discretionary trust—a dutiable transaction that is the transfer or agreement for the transfer of small business property directly held by the trustee of the trust, the dutiable value of which is not more than \$10 million, from the trustee to a newly registered unlisted corporation or an unlisted corporation that has been dormant since its registration, of which the trustee is the sole shareholder and the rights and interests of the beneficiaries of the trust immediately before the transaction are the same immediately after the transaction.

Definitions

8. For paragraph 7(c), a *beneficiary*, of a discretionary trust, is a taker in default of an appointment by the trustee, other than a last taker in default of appointment that is a person decided under the *Succession Act 1981* or a charitable institution.
9. For paragraph 7(d), a *beneficiary*, of a discretionary trust, is a beneficiary under paragraph 8 as well as a person entitled to trust income or trust property upon appointment by the trustee (discretionary beneficiary).
10. *Dormant*, for an unlisted corporation for a period, means the corporation has not, in the period:
 - (a) had any assets or liabilities
or
 - (b) been party to an agreement or a beneficiary or trustee of a trust
or
 - (c) issued or sold any shares or rights relating to shares.
11. *Dutiable value*—see s.11 of the Duties Act. However, for the purposes of determining the dutiable value of small business property in the way provided for under the Duties Act, the Commissioner may take the property's book value as evidence of its unencumbered value.
12. A *small business entity* is an individual, partnership or discretionary trust that directly holds small business property and carries on a business that:
 - (a) is conducted on or from a place in Queensland, or the conduct of which consists wholly or partly of supplying land, money, credit or goods or any interest in them, or providing any service, to Queensland customers
and
 - (b) has an annual turnover of not more than \$5 million.

Note: A reference to a partnership or discretionary trust that carries on a business or holds property is a reference to the carrying on of the business or holding of the property by the partners of the partnership or the trustee of the discretionary trust.

13. *Small business property* means dutiable property³ that is actively used by a small business entity to carry on the small business entity's business.

Note: To remove doubt, any property that is not directly used in the conduct of the small business is not small business property. This includes but is not limited to a home that is used for residential purposes (even if part of the home is used to conduct the business) or passive investments.

³ See s.10 of the Duties Act for the definition of 'dutiable property'.

14. *Unlisted corporation* means a corporation other than a listed corporation.⁴

How the exemptions apply to eligible transactions

15. For an eligible transaction mentioned in paragraph 7(a), transfer duty will not be imposed on the dutiable value of the transaction to the lesser of the extent of:
- (a) the individual's ownership interest in the small business property immediately before it was transferred
 - or
 - (b) the individual's share interest in the newly registered or dormant unlisted corporation immediately after the small business property was transferred.
16. For an eligible transaction mentioned in paragraph 7(b), transfer duty will not be imposed on the dutiable value of the transaction to the lesser of the extent of:
- (a) each partner's separate partnership interest in the partnership that held the small business property immediately before it was transferred
 - or
 - (b) each partner's separate share interest in the newly registered or dormant unlisted corporation immediately after the small business property was transferred.
17. For an eligible transaction mentioned in paragraph 7(c), transfer duty will not be imposed on the dutiable value of the transaction to the lesser of the extent of:
- (a) each beneficiary's separate trust interest in the trust that held the small business property immediately before it was transferred
 - or
 - (b) each beneficiary's separate share interest in the newly registered or dormant unlisted corporation immediately after the small business property was transferred.
18. For an eligible transaction mentioned in paragraph 7(d), transfer duty will not be imposed on the dutiable value of the transaction.
19. For an eligible transaction mentioned in paragraph 7 for which the small business property transferred includes a vehicle⁵, vehicle registration duty will not be imposed on an application to transfer the vehicle.

Definitions

20. An *ownership interest*, of an individual in small business property, is the individual's legal ownership in the property expressed as a percentage.

⁴ See schedule 6 of the Duties Act for the definition of 'listed corporation'.

⁵ See schedule 6 of the Duties Act for the definition of 'vehicle'.

21. A *partnership interest*, of a partner in a partnership, is calculated by reference to s.42 of the Duties Act.
22. A *trust interest*, of a beneficiary⁶ of a discretionary trust, is calculated by reference to s.60 of the Duties Act. However, if there is more than one beneficiary of a discretionary trust, and there is no percentage of the trust income or trust property the beneficiary would receive specified in the trust deed, the beneficiaries are taken to hold the trust interests in equal shares.
23. A *share interest*, of a shareholder in a newly registered or dormant unlisted corporation, is the shareholder's entitlement⁷ expressed as a percentage of the value of the corporation's property that would be distributed, if immediately after the shareholder acquired their interest in the corporation, the corporation were to be wound up.

Example 1—small business entities that are individuals

An individual carries on a business and has 100% legal ownership of the small business property. The individual registers a new company and is the only shareholder of the company. The individual transfers the small business property to the company.

Assuming the transaction is an eligible transaction, transfer duty will not be imposed on the full dutiable value of the small business property. This is because the individual's ownership interest in the property immediately before the transfer, and their share interest in the company immediately after the transfer, are the same (100%).

Example 2—small business entities that are individuals

The same facts apply as for Example 1, with the exception that another shareholder is brought into the business when the company is registered. The individual and the other shareholder each have a 50% share interest in the company.

Assuming the transaction is an eligible transaction, transfer duty will not be imposed on 50% of the dutiable value of the small business property. This is because the individual's share interest in the company immediately after the transfer is only 50%, whereas the individual originally had a 100% legal ownership interest in the property. Accordingly, transfer duty will still be imposed on 50% of the dutiable value of the business property.

Example 3—small business entities that are partnerships

A partnership comprising two partners, each with a 50% partnership interest, directly holds small business property and carries on a business. The partners buy a shelf company that has been dormant since it was registered, and the partners each have a 50% share interest in the company. The partners then transfer the small business property to the company.

Assuming the transaction is an eligible transaction, transfer duty will not be imposed on the full dutiable value of the small business property. This is because there has been no change in the proportion of each partner's partnership interests immediately before the transfer, and their share interests in the new company immediately after the transfer.

⁶ See paragraphs 8 and 9 for the definition of 'beneficiary'.

⁷ See s.161 of the Duties Act for how to determine a shareholder's entitlement.

Example 4—small business entities that are partnerships

A partnership comprises four partners: A, B, C and D. The partners have partnership interests of 40%, 20%, 20% and 20% respectively. The partnership directly holds small business property and carries on a business. The partners register a new company. However, the partner's share interests in the company are 25%, 25%, 25% and 25% respectively. The partners then transfer the small business property to the company.

Assuming the transaction is an eligible transaction, the transfer duty exemption will be calculated as follows:

- For A—transfer duty will not be imposed on 25% of the dutiable value of the small business property, because A's share interest in the company immediately after the transfer is 25%, compared to their original 40% partnership interest.
- For B, C and D respectively—transfer duty will not be imposed on 20% of the dutiable value of the small business property (totalling 60%), because each of their partnership interests immediately before the transfer was 20%; whereas each of their share interests immediately after the transfer is 25%.
- Accordingly, when totalled, transfer duty will not be imposed on 85% of the dutiable value of the small business property. Transfer duty will be imposed on the remaining 15% of the dutiable value of the small business property.

Example 5—small business entities that are discretionary trusts

The trustee of a discretionary trust directly holds small business property and carries on a business. There are three beneficiaries that are takers in default: A and B are individuals; whereas C is the last taker in default of appointment by the trustee and a charity. Under this administrative arrangement, C is not a beneficiary of the discretionary trust. Accordingly, A and B are the beneficiaries, and are taken to hold their trust interests in equal shares (50% and 50%).

The trustee registers a new company, with A and B as shareholders, each with an equal share interest (50% and 50%). The trustee then transfers the small business property to the company.

Assuming the transaction is an eligible transaction, transfer duty will not be imposed on the full dutiable value of the small business property. This is because each beneficiary's trust interest in the discretionary trust immediately before the transfer, and their share interest in the company immediately after the transfer, are the same (50% each, totalling 100%).

Example 6—small business entities that are discretionary trusts

The same facts apply as for Example 5, with the exception that A's share interest in the new company is 80% and B's share interest in the new company is 20%.

Assuming the transaction is an eligible transaction, the transfer duty exemption will be calculated as follows:

- For A—transfer duty will not be imposed on 50% of the dutiable value of the small business property, because A's trust interest in the discretionary trust immediately before the transfer was 50% whereas their share interest in the new company immediately after the transfer is 80%.
- For B—transfer duty will not be imposed on 20% of the dutiable value of the small business property, because B's share interest in the new company is 20%, compared to their original trust interest of 50%.

- Accordingly, when totalled, transfer duty will not be imposed on 70% of the dutiable value of the small business property. Transfer duty will be imposed on the remaining 30% of the dutiable value of the small business property.

Example 7—small business entities that are discretionary trusts

The trustee of a discretionary trust directly holds small business property and carries on a business. There are two beneficiaries that are discretionary beneficiaries—A and B—and one beneficiary that is a taker in default—C.

The trustee registers a new company, with the trustee as the sole shareholder. The trustee then transfers the small business property to the company.

There is no alteration to the trust deed for the trust with the rights and interests of the beneficiaries of the trust immediately before the transfer being the same immediately after the transfer.

Assuming the transaction is an eligible transaction, transfer duty will not be imposed on the full dutiable value of the small business property.

Example 8—small business entities that are discretionary trusts

The same facts apply as for Example 7, with the exception that the transaction is part of an arrangement involving a change to add an additional beneficiary that is a taker in default—D.

The transaction is not an eligible transaction as the rights and interests of the beneficiaries of the trust that existed immediately before the transaction are not the same immediately after the transaction.

Transfer duty will therefore be imposed on the full dutiable value of the small business property.

Application for an exemption

24. An application for exemption must be made in the approved form (Form D2.2) and supported by the information required by the Commissioner.

Date of effect

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

Mark Jackson
 Commissioner of State Revenue
 Date of issue: 21 July 2021

References

Public Ruling	Issued	Dates of effect	
		From	To
DA000.16.2	21 July 2021	21 July 2021	Current
DA000.16.1	9 October 2020	9 October 2020	20 July 2021