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Public Ruling Duties Act:

CONCESSION FOR HOMES AND FIRST HOMES—IN SPECIE DISTRIBUTIONS OF RESIDENTIAL LAND

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

- Under Chapter 2 Part 1 of the *Duties Act 2001* (Duties Act), transfer duty is imposed on dutiable transactions.
- The types of dutiable transactions include:
 - a transfer of dutiable property
 - an agreement for the transfer of dutiable property
 - a vesting of dutiable property:
 - by, or expressly authorised by, statute law of this or another jurisdiction, whether inside or outside Australia
 - by a court order, of this or another jurisdiction, whether inside or outside Australia
 - an acquisition of a new right on its creation grant or issue
 - the creation or termination of a trust of dutiable property.¹
- Under s.54 of the Duties Act, a trust of dutiable property is terminated if a person, having held the property as trustee, starts to hold the property other than as trustee.

¹ See s.9 of the Duties Act.

4. Chapter 2 Part 9 of the Duties Act provides concessions on the transfer duty payable for a dutiable transaction that is one of the following (each a relevant transaction)²:
 - (a) the transfer—or agreement for the transfer—of a home or first home, or of vacant land on which a first home is to be constructed
 - (b) the acquisition—on its creation, grant or issue—of a new right that is a lease
 - (i) of residential land on which a home or first home is constructed, or of vacant land on which a first home is to be constructedand
 - (ii) for which a premium, fine or other consideration is payable
 - (c) the vesting—under section 9(1)(d) of the Duties Act—of a home or first home, or of vacant land on which a first home is to be constructed.
5. Under the Duties Act, a termination of a trust is not a relevant transaction to which the concessions for homes and first homes (home concessions) apply.
6. This public ruling sets out when the home concessions will apply to *in specie*³ distributions of residential land from the trustee(s) of a trust to the beneficiaries of the trust where the distribution is not otherwise eligible for an exemption under the Duties Act.

Ruling and explanation

7. If the trustees of a trust are natural persons who are also the beneficiaries of the trust, an *in specie* distribution of residential land from the trustees to the beneficiaries will be assessed as a termination of a trust of dutiable property. This is because the persons, having held the residential land as trustees, then start to hold the property other than as trustees. As a termination of a trust of dutiable property does not involve the creation of new rights or a change in the legal ownership of property, it cannot qualify as a relevant transaction to which the home concessions apply.

Example

Sam Jones and Kim Jones establish a self-managed superannuation fund known as the Jones Family Superannuation Fund. Sam and Kim are both the trustees and beneficiaries of the trust fund.

Sam and Kim as trustees of the Jones Family Superannuation Fund purchase residential land to be used as an investment property for their retirement.

On retirement, Sam and Kim decide to occupy the residential land held by the fund as their principal place of residence.

In order to achieve this, Sam and Kim take a lump sum from the Jones Family Superannuation Fund in the form of an *in specie* distribution of the residential land.

² Section 85 of the Duties Act

³ *In specie* is a phrase describing the distribution of an asset in its actual or present form, rather than selling it and distributing the cash proceeds.

Sam and Kim as trustees of the Jones Family Superannuation Fund complete a Queensland Titles Registry Form 1 Transfer of the residential land from themselves as trustees of the fund to themselves as joint tenants in their own right.

The transfer of the land is assessed as a termination of a trust of dutiable property under the Duties Act because Sam and Kim, having held the property as trustees, start to hold the property other than as trustees.

The termination of a trust of dutiable property is ineligible for the home concessions.

8. If the trustees of a trust are not also beneficiaries of the trust, an *in specie* distribution of residential land from the trustees to the beneficiaries will generally be assessed as a transfer or an agreement for the transfer of dutiable property. This is because the transaction involves a change in legal ownership of the property from the persons acting as trustees to the beneficiaries. The home concessions may be available subject to conditions.

Date of effect

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

Elizabeth Goli
 Commissioner of State Revenue
 Date of issue: 13 March 2018

References

Public Ruling	Issued	Dates of effect	
		From	To
DA085.3.1	13 March 2018	13 March 2018	Current