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Public Ruling Duties Act:

EXTENSION OF CONCESSION FOR DUTIABLE TRANSACTIONS FOR FAMILY BUSINESSES OF PRIMARY PRODUCTION— DEFINED RELATIVE

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 extends the definition of 'defined relative' in Schedule 6 of the *Duties Act 2001* (Duties Act) to include a first cousin of a person and a spouse of a first cousin of a person.
2. The Duties Act imposes transfer duty on the dutiable value of dutiable transactions¹, unless an exemption or concession applies. Dutiable transactions are listed in s.9 of the Duties Act.
3. Chapter 2, part 10 of the Duties Act provides concessions for dutiable transactions for particular family businesses, including a concession for transfer duty on certain dutiable transactions for dutiable property used to carry on particular family businesses of primary production (the concession).
4. Sections 98 to 102 of the Duties Act set out the relevant conditions for each dutiable transaction to which the concession applies. It is a common condition that the dutiable transaction must be between defined relatives. For example, for a dutiable transaction that is a transfer, the transferor or person directing the transfer must be a defined relative of the transferee.
5. Defined relative of a person means each of the following²:
 - (a) the person's spouse
 - (b) a parent of the person or the person's spouse
 - (c) a grandparent of the person or the person's spouse

¹ Section 8 of the Duties Act

² Schedule 6 of the Duties Act

- (d) a brother, sister, nephew or niece of the person or the person's spouse
 - (e) a child or grandchild of the person or the person's spouse
 - (f) an aunt or uncle of the person or the person's spouse
 - (g) the spouse of anyone mentioned in paragraphs (b) to (f).
6. Defined relative is also referred to in s.123 and s.173 of the Duties Act, as these sections cross-reference the concession.
 7. On 23 May 2017 an administrative arrangement was approved to enable the Duties Act to be administered, for a 12-month period, on the basis that the definition of 'defined relative' in Schedule 6 of the Duties Act includes a first cousin of the person and a spouse of a first cousin of the person. The administrative arrangement applied to transactions where liability for duty arose between 23 May 2017 and 22 May 2018, both dates inclusive.
 8. On 29 November 2018, the administrative arrangement was approved for a further 12 months commencing 23 May 2018 (extended period), and to expand the administrative arrangement to include non-blood related first cousins for the extended period (expanded administrative arrangement).
 9. On 3 February 2020, the expanded administrative arrangement was approved for an additional 12 months commencing 23 May 2019.
 10. All other conditions of the concession continue to apply.

Ruling and explanation

11. For transactions where liability for duty arises (liability date) between 23 May 2017 and 22 May 2020, both dates inclusive, the definition of 'defined relative', for a person, in Schedule 6 of the Duties Act is to be administered on the basis it includes a first cousin of the person and the spouse of a first cousin of the person.
12. A 'first cousin' of a person is:
 - (a) a child³ of an aunt or uncle of the person, or a child of the spouse of an aunt or uncle of the person—for a liability date between 23 May 2018 and 22 May 2020, both dates inclusive
 - (b) a child of an aunt or uncle of the person who is related by blood, or considered to be related by blood at law by virtue of adoption—for a liability date between 23 May 2017 and 22 May 2018, both dates inclusive.

Example 1

Owen is the owner of a farming business. Amelia is the sister of Owen's mother and is therefore the aunt of Owen. Uri is the husband of Amelia and is therefore the uncle of Owen, by marriage rather than by blood. Amelia and Uri have a child together, Claire. Amelia has a child from a former marriage, Derek. Uri also has a child from a former marriage, Edwina.

³ A 'child' includes an adopted child.

Claire and Derek are each a first cousin of Owen as they are a child of Owen's aunt, Amelia. The concession will therefore apply if Owen transfers the farming business to either Claire or Derek, assuming all other conditions have been satisfied.

Example 2

Same facts as Example 1.

If Owen transferred the farming business to Edwina on 1 August 2018, the concession will apply. Owen and Edwina are first cousins, even though there is no blood relationship between them, because Edwina is a child of Uri, who is the spouse of Owen's aunt, Amelia. Edwina and Owen would also commonly be referred to as step-cousins.

Example 3

Same facts as Example 1.

If Owen transferred the farming business to Edwina on 1 August 2017, the concession will not apply. Owen and Edwina are not first cousins as there is no blood relationship. The relationship only exists by virtue of Uri marrying Amelia.

13. All other conditions of the concession apply.
14. All other conditions of s.123 and s.173 of the Duties Act apply.

Date of effect

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

Mark Jackson
Commissioner of State Revenue
Date of issue: 12 March 2020

References

Public Ruling	Issued	Dates of effect	
		From	To
DA105.4.3	12 March 2020	12 March 2020	Current
DA105.4.2	19 December 2018	19 December 2018	11 March 2020
DA105.4.1	24 May 2017	24 May 2017	18 December 2018