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Public Ruling
Duties Act:

CORPORATE TRUSTEE DUTY – BENEFIT RELATING TO PROPERTY HELD ON TRUST BY A CORPORATE TRUSTEE

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. Chapter 3, Part 2 of the *Duties Act 2001* (Duties Act) imposes corporate trustee duty on the dutiable value of a relevant acquisition.[1]

2. Corporate trustee duty applies in respect of discretionary trusts only. Section 209 of the Duties Act defines a corporate trustee as a corporation, other than an authorised trustee corporation, that is the trustee of a discretionary trust that:

   (a) holds dutiable property on trust for the discretionary trust or

   (b) has an indirect interest in dutiable property and that interest is held on trust for the discretionary trust.

3. Under s.207 of the Duties Act, a relevant acquisition is made if:

   (a) a person acquires a share interest[2] in a corporate trustee or relevant corporation[3] for a corporate trustee and

   (b) the acquisition is part of an arrangement under which any person obtains, directly or indirectly, a benefit relating to the property held by the corporate trustee on trust.

4. The dutiable value of a relevant acquisition is determined under Chapter 3, Part 2, Division 5 of the Duties Act.[4]

[1] Section 205 of the Duties Act
[2] Defined in s.208 of the Duties Act
[3] Defined in s.211 of the Duties Act
[4] Refer to ss.221–223 of the Duties Act

5. Corporate trustee duty is not imposed on a relevant acquisition if:
   (a) the acquisition is for the sole purpose of giving effect to a change of trustee[5]
   (b) the trust of which the corporate trustee is trustee is established and maintained primarily for the benefit of the members of a particular family or family company and the acquirer is a member of the family who, or is a family company that, does not hold the shares acquired as trustee[6]
   (c) an exemption under ss.123–126 of the Duties Act applies for the dutiable transaction representing the acquisition.[7]

6. This Public Ruling sets out the Commissioner's interpretation of when a person obtains, directly or indirectly, a benefit relating to property held on trust by the corporate trustee.

Ruling and explanation

7. The issue of whether a person obtains, directly or indirectly a benefit relating to property held by a corporate trustee on trust is a question of fact.

8. In determining this question, one of the factors to be taken into account is the potential distribution of the income and/or capital of the trust following the acquisition. In looking at this factor, the following considerations will be relevant:
   (a) whether the relevant acquisition results in a change of control of the corporate trustee
   (b) whether there is any arrangement as to the composition or otherwise of the trustee company's board.

9. Below are examples showing when corporate trustee duty will or will not apply.

Example 1

ABC Pty Ltd is trustee for the Jones Family Trust, a discretionary trust that holds dutiable property. The shareholders of ABC Pty Ltd are Albert Jones and his wife Beryl Jones, each holding one share.

The beneficiaries of the trust are Albert Jones, Beryl Jones, their sons - Craig and Donald, Craig's wife, Elizabeth and Donald's wife, Frances. Each beneficiary is both a discretionary beneficiary and a taker in default.

Beryl Jones transfers her share in ABC Pty Ltd to Albert.

By this acquisition, Albert now has control of ABC Pty Ltd, the corporate trustee and thereby control of the trust's property. As Albert is a discretionary beneficiary, he obtains a benefit relating to the property held by ABC Pty Ltd as trustee. Therefore, this acquisition is a relevant acquisition under s.207 of the Duties Act.

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5 Section 224 of the Duties Act
6 Section 225 of the Duties Act
7 Section 226 of the Duties Act

As the trust is established and maintained primarily for the benefit of the Jones family and the acquirer, Albert, is a member of that family then the acquisition will be exempt under s.225 and corporate trustee will not be imposed.

Example 2

Same facts as Example 1 except that evidence available shows that, prior to the acquisition, Beryl previously held her share on trust for Albert and that trust provided that Albert could direct Beryl as to how to vote.

If Beryl transfers the share to Albert, the acquisition would not be a relevant acquisition as Albert does not obtain any more benefit in relation to the trust property than he had previously.

Example 3

Same facts as Example 1 except that instead of Beryl transferring her share to Albert, ABC Pty Ltd allot 3 shares to Craig who will hold the shares as trustee for C J Unit Trust.

By this acquisition, Craig has control of ABC Pty Ltd and therefore has control of the trust property. As Craig is a discretionary beneficiary he has obtained a benefit relating to the property by ABC Pty Ltd on trust.

The exemption in s.225 would not be applicable as Craig holds the share as trustee.

Example 4

B and C each hold one ordinary share in Z Pty Ltd, a corporate trustee of a discretionary trust which is not a family discretionary trust.

Under the terms of the trust, C is a taker in default but not a discretionary object. B on the other hand is a discretionary object and a taker in default.

C transfers his one share in Z Pty Ltd to B.

Corporate trustee duty would be payable as the acquisition is a relevant acquisition as B now has control of Z Pty Ltd and has obtained a benefit relating to the property held by Z Pty Ltd on trust.

If B transferred his share to C, corporate trustee duty would not be payable, as, although the acquisition results in a change in control in favour of C, C has not obtained a benefit in relation to the trust property as there is no change in his interest as he is a taker in default.

Example 5

X Pty Ltd is a corporate trustee of the XYZ Discretionary Trust, which is not a family discretionary trust. The beneficiaries of the trust are B and C who are both discretionary beneficiaries and takers in default.

The shareholders of X Pty Ltd are W Pty Ltd and V Pty Ltd, each holding one share.

W Pty Ltd and V Pty Ltd are relevant corporations[8] for a corporate trustee.

[8] Defined in s.211 of the Duties Act

The shareholders of both W Pty Ltd and V Pty Ltd are B and C and they hold one share each.

B transfers all his shares in W Pty Ltd and V Pty Ltd to C.

Corporate trustee duty will be payable as C obtains a benefit in relation to W Pty Ltd and V Pty Ltd. As he now owns those companies outright, then he also obtains control of X Pty Ltd.

As X Pty Ltd is a corporate trustee of the XYZ Discretionary Trust, C obtains a benefit relating to the property held by the corporate trustee on trust.

Date of effect

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

Tony Kulpa
Deputy Commissioner of State Revenue
Date of Issue 20 June 2011

References

Public Ruling	Issued	Dates of effect	
		From	To
DA207.1.2	20 June 2011	20 June 2011	Current
DA207.1.1	24 February 2009	24 February 2009	19 June 2011
Supersedes Revenue Ruling DA 11.1	2 August 2002	2 August 2002	23 February 2009