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Public Ruling Duties Act:

DUTY IMPLICATIONS OF DEALINGS WITH WATER ENTITLEMENTS ISSUED UNDER THE WATER ACT 2000

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. The *Water Act 2000* (the Water Act) regulates the right to take water through the issue of water entitlements.¹
2. This Public Ruling explains the duty implications of various dealings with water entitlements.

Ruling and explanation

3. Transfer duty is imposed under the *Duties Act 2001* (the Duties Act) on the dutiable value of a dutiable transaction and is payable by the parties to the transaction at the rates set out in Schedule 3 of the Duties Act.²
4. The parties liable to pay transfer duty must, within 30 days after liability arises³, lodge the instrument that effects or evidences the transaction, or a Form 2.3 - *Transfer Duty Statement*⁴ for the transaction, and an approved form for the transaction.⁵

¹ See definition of water entitlement in Schedule 4 of the Water Act which refers to water licences, water allocations and interim water allocations.

² Sections 8(2), 17(2) and 24(2) of the Duties Act

³ As to determining the liability date of a transaction, see s.16 and Schedule 2 of the Duties Act.

⁴ Section 18 of the Duties Act requires the creation of a transfer duty statement if a dutiable transaction is not effected or evidenced by an instrument.

⁵ Section 19(3) of the Duties Act

Dutiable transactions

5. The following are the most common dutiable transactions relating to water entitlements:
 - (a) The initial grant of a water entitlement, or the licence or lease of a water entitlement by the entitlement holder to another party, being a dutiable transaction that is the acquisition of new right on its creation, grant or issue.⁶
 - (b) An agreement for the transfer of a water entitlement.⁷
 - (c) The transfer of a water entitlement.⁸
6. The grant of a water permit does not constitute a dutiable transaction as a water permit is not a water entitlement under the Water Act.

Dutiable value

7. The dutiable value of a dutiable transaction mentioned in paragraph 5 is either the consideration for the dutiable transaction or the unencumbered value of the dutiable property that is the subject of the transaction.
8. The dutiable value of the dutiable transaction is the unencumbered value of the dutiable property that is the subject of the transaction where:
 - (a) there is no consideration
 - (b) the consideration cannot be ascertained or
 - (c) the unencumbered value of the dutiable property is greater than the consideration.⁹

Exemption from transfer duty on certain grants of water entitlements

9. Transfer duty is not imposed on a dutiable transaction that is the grant of a water entitlement to the extent that it replaces and represents:
 - (a) a water entitlement held by the grantee or
 - (b) an authority to take water under the repealed *Water Resources Act 1989* held by the grantee immediately before the repeal of that Act.¹⁰

Date of effect

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

David Smith
Commissioner of State Revenue
Date of Issue 24 February 2009

⁶ Section 9(1)(f) and paragraphs (h) and (d) of definition of new right in the Schedule 6 of the Duties Act

⁷ Section 9(1)(b), s.10(1)(c), paragraph (a) of definition of existing right and definition of statutory licence in the Schedule 6 of the Duties Act

⁸ Section 9(1)(a) and paragraph (a) of definition of existing right in the Schedule 6 of the Duties Act

⁹ Section 11(7) of the Duties Act. Also, see s.505 of the Duties Act in relation to valuation or evidence of value of property.

¹⁰ Section 140 of the Duties Act

References

Public Ruling	Issued	Dates of effect	
		From	To
DA000.4.1	24 February 2009	24 February 2009	Current
Supersedes Practice Direction DA 57.4	14 July 2008	14 July 2008	23 February 2009