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Public Ruling Duties Act:

MERGERS, ACQUISITIONS AND TRANSFERS OF ASSETS OF FINANCIAL INSTITUTIONS

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 outlines the terms of approved ex gratia relief for certain transactions involving mergers, acquisitions and transfers of assets of financial institutions (business transfer transactions).
2. Business transfer transactions are potentially liable to transfer duty under Chapter 2 of the *Duties Act 2001* (the Duties Act), in respect of the transfers of assets such as land, goodwill, mortgages and other loan securities.
3. In recognition of the fact that special considerations may arise in these cases, ex gratia relief from transfer duty is available for certain dutiable transactions arising from business transfer transactions, subject to certain conditions (the approved ex gratia relief).
4. For the purposes of this public ruling, a financial institution means an authorised deposit-taking institution within the meaning of s.5 of the *Banking Act 1959* (Cwlth).

Ruling and explanation

5. The approved ex gratia relief, as set out in paragraph 7 of this public ruling, applies where:
 - (a) all the parties to the business transfer transaction are financial institutions
 - and
 - (b) the business transfer transaction is made under and in accordance with the *Financial Sector (Transfer and Restructure) Act 1999* (Cwlth) (the Transfer and Restructure Act).
6. To remove doubt, the approved ex gratia relief applies to mergers, acquisitions or transfers of either the whole or part of the assets of a financial institution.

7. Subject to the conditions set out in paragraph 5, the approved ex gratia relief provides for concessional transfer duty treatment in relation to voluntary¹ and compulsory² transfers of specific types of property (eligible dutiable property) arising from a business transfer transaction. The concessional transfer duty imposed on a dutiable transaction involving eligible dutiable property is shown in the table below.

Item	Eligible dutiable property	Concessional transfer duty
1	(a) A loan secured by a mortgage solely over land in Queensland (b) A loan secured by another mortgage that is incidental to, and transferred in connection with, a mortgage referred to in subparagraph (a) (a primary mortgage) if the primary mortgage is the principal security held by the transferor	\$5 ³
2	A loan secured by a mortgage over property other than a loan covered by Item 1	No duty
3	An unsecured loan	No duty
4	Liquid assets required to be maintained as such to meet regulatory requirements, if the transfer of the assets is liable to transfer duty under the Duties Act.	No duty

8. Where the business transfer transaction involves other dutiable property such as land in Queensland and goodwill (non-eligible dutiable property), dutiable transactions involving that non-eligible dutiable property will be assessed to transfer duty at the relevant rate set out in Schedule 3 of the Duties Act.
9. In addition, the approved ex gratia relief under this ruling will operate so that s.30 of the Duties Act⁴ will not be applied to aggregate transactions involving eligible dutiable property with transactions involving non-eligible dutiable property. However, s.30 of the Duties Act will be applied to aggregate transactions involving any non-eligible dutiable property.

Information required

10. Applications for the approved ex gratia relief are to include all documentation required by the Commissioner under the Duties Act and the *Taxation Administration Act 2001* to assess the transaction.

¹ See Part 3 of the Transfer and Restructure Act.

² See Part 4 of the Transfer and Restructure Act.

³ As per s.24(1) of the Duties Act

⁴ Section 30 of the Duties Act provides for the aggregation of dutiable transactions that form, evidence, give effect to or arise from what is substantially the one arrangement.

11. Without limiting paragraph 10, the following information is required to be lodged:
- (a) copies of any agreements or deeds relating to the business transfer transaction; or where these have not been prepared, a transfer duty statement (Form D2.3)
 - (b) copies of transfer documents
 - (c) certified copies of all relevant Australian Prudential Regulatory Authority (APRA) approvals
 - (d) a copy of any statement prepared in accordance with ss.19 or 20(1) of the Transfer and Restructure Act, where prepared
 - (e) details of all dutiable property, including valuations where necessary, involved in the business transfer transaction:
 - (i) land in Queensland
 - (ii) transferable site areas
 - (iii) existing rights, including but not limited to:
 - number and value of mortgages secured solely over land in Queensland
 - number and value of other mortgages that are incidental to, and transferred in connection with, a mortgage secured solely over land in Queensland (a primary mortgage) if the primary mortgage is the principal security held by the transferor
 - value of loans secured over property in Queensland other than land
 - (iv) Queensland business assets, including but not limited to:
 - value of unsecured loans
 - goodwill
 - (v) chattels in Queensland
 - (vi) value and nature of liquidity assets that are dutiable property
 - (f) where the business transfer transaction relates to the whole of the business, copies of audited financial statements.

Date of effect

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

Elizabeth Goli
Commissioner of State Revenue
Date of issue: 14 March 2019

References

Public Ruling	Issued	Dates of effect	
		From	To
DA000.8.4	14 March 2019	14 March 2019	Current
DA000.8.3	3 January 2018	3 January 2018	13 March 2019
DA000.8.2	19 January 2017	19 January 2017	2 January 2018
DA000.8.1	17 February 2010	17 February 2010	18 January 2017