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Public Ruling Duties Act:

RIGHT TO INCOME FROM DUTIABLE PROPERTY

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. Under s.10(1)(c) of the *Duties Act 2001* (the Duties Act) an existing right is dutiable property.
2. The definition of existing right in Schedule 6 of the Duties Act includes an existing right to the income from dutiable property.¹
3. This Public Ruling clarifies the circumstances where a transaction relating to an existing right to the income from dutiable property will be dutiable.

Ruling and explanation

4. An existing right to the income from dutiable property is dutiable property². Consequently, where a person holds, as a separate asset, an existing right to income and that right is the subject of a dutiable transaction³, duty will apply.

¹ Paragraph (m) of the definition

² Section 10(1)(c) and paragraph (m) of the definition of existing right in Schedule 6 of the Duties Act

³ Section 9(1) of the Duties Act sets out a list of the dutiable transactions

Example 1

C is the mortgagee of land in Queensland securing the repayment of a loan with interest. C transfers to D the mortgage, including the secured debt.

The transfer is a dutiable transaction – the transfer of dutiable property. The dutiable property is an existing right, namely, C’s right as the holder of the mortgage.⁴ Duty is \$5.⁵

Although the secured debt carries interest, the transaction is not a transfer of an existing right being the right to income from dutiable property. The right to interest is not an existing right; it is not a separately existing asset in C’s hands.

Example 2

X is the mortgagee of land in Queensland and grants to Y the right to all the interest payable under the mortgage. Y subsequently transfers that right to Z.

The initial grant of the right by X to Y is not a dutiable transaction because the right is not a new right.⁶ Nor is it an existing right.

The transfer of the right from Y to Z is a dutiable transaction. It is the transfer of an existing right being the right to income from dutiable property.⁷

Date of effect

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

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

References

Public Ruling	Issued	Dates of effect	
		From	To
DA010.1.1	24 February 2009	24 February 2009	Current
Supersedes Practice Direction DA 40.1	1 March 2002	1 March 2002	23 February 2009

⁴ Paragraph (h) of the definition of existing right in Schedule 6 of the Duties Act

⁵ Section 24(1) of the Duties Act

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

⁷ Section 9(1)(a), 10(1)(c) and paragraph (m) of the definition of existing right in Schedule 6 of the Duties Act