

Contents	Page
What this Ruling is about	1
Ruling and explanation	1
Date of effect	2
References	2

Public Ruling Duties Act:

TRANSFERS OF SECURED AND UNSECURED DEBTS

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 clarifies the circumstances under which a transfer, or agreement for the transfer, of secured and unsecured debts will be dutiable under the *Duties Act 2001* (the Duties Act).

Ruling and explanation

2. Debts may be unsecured or secured.
3. The following apply for the transfer, or agreement for the transfer, of an unsecured debt:
 - (a) It will be a dutiable transaction only if the debt is a Queensland business asset. A debt of a business is a business asset if the debtor resides in Queensland.¹
 - (b) The dutiable transaction will be a transfer, or agreement for the transfer, of dutiable property being a Queensland business asset.²
 - (c) Duty will not apply if the transfer, or agreement for the transfer, is of a corporate debt security.³

¹ Section 35(1)(f) of the Duties Act

² Sections 9(1)(a) or (b) of the Duties Act, as the case may be, and s.10(1)(d) of the Duties Act

³ Section 148(b) and the definition of corporate debt security in the Dictionary in Schedule 6 of the Duties Act

4. The following apply for the transfer, or agreement for the transfer, of a secured debt (that is, a transfer of the security which carries with it a transfer of the debt):
- (a) It will be a dutiable transaction if the security is over dutiable property.
 - (b) The dutiable transaction will be the transfer, or agreement for the transfer, of dutiable property being an existing right.⁴
 - (c) This will be the case even if the debt is also a Queensland business asset.⁵
 - (d) Nominal duty of \$5 will apply if the security is a mortgage over land and certain other conditions are satisfied.⁶
 - (e) Duty will not apply if the transfer, or agreement for transfer, is of:
 - (i) a mortgage-backed security⁷
 - (ii) a mortgage or pool of mortgages for creating, issuing, marketing or securing a mortgage-backed security.⁸ This exemption applies from 28 November 2002.⁹ A transfer, or agreement for transfer, of a mortgage or pool of mortgages before that date would be dutiable at the rate set out in s.24(3) or (4)¹⁰ of the Duties Act.
 - (iii) an asset-backed security¹¹ or
 - (iv) a financial asset or pool of financial assets for creating, issuing, marketing or securing an asset-backed security.¹²

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
DA010.2.1	24 February 2009	24 February 2009	Current
Supersedes Practice Direction DA 41.4	2 January 2007	2 January 2007	23 February 2009

⁴ Sections 9(1)(a) or (b), 10(1)(c) and paragraph (h) of the definition of existing right in the Dictionary in Schedule 6 of the Duties Act

⁵ Sections 10(1)(d) and 35(1)(f) of the Duties Act

⁶ Section 24(1) of the Duties Act

⁷ Defined in s.286 of the Duties Act. These securities are not existing rights; see the definition of existing right in the Dictionary in Schedule 6 of the Duties Act.

⁸ Section 130I(1) of the Duties Act

⁹ Date of assent of *Revenue Legislation Amendment Act 2002*

¹⁰ As in force prior to 1 January 2007 – the commencement date of s.18 of the *Revenue and Other Legislation Amendment Act 2006*.

¹¹ Section 130H(1)(a) of the Duties Act

¹² Section 130H(1)(b) of the Duties Act