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Public Ruling Duties Act:

SALE OF RETIREMENT VILLAGE BUSINESSES—OBLIGATION UNDER SECTION 71 OF THE *RETIREMENT VILLAGES ACT 1999* TO PAY EXIT ENTITLEMENTS TO OUTGOING RESIDENTS

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 purpose of this ruling is to clarify the duty treatment of certain liabilities assumed by a purchaser of a retirement village.
2. Transfer duty is imposed on the dutiable value of a dutiable transaction.¹
3. The sale of a retirement village business, being Queensland business assets and land in Queensland, constitutes a dutiable transaction, being a transfer or agreement to transfer dutiable property.² The dutiable value of these transactions is the consideration for the dutiable transaction or the unencumbered value of dutiable property the subject of the transaction, whichever is greater.³
4. Under s.12(1)(a) of the *Duties Act 2001* (Duties Act), consideration for a dutiable transaction includes:

the amount of any liabilities assumed under the transaction, including an obligation, whether contingent or otherwise, to pay any unpaid purchase money payable under an agreement for the transfer of dutiable property.
5. This Public Ruling clarifies whether the Commissioner will apply s.12(1)(a) of the Duties Act in relation to the assumption, by the purchaser of a retirement village business, of a vendor's contingent obligation to make payments to outgoing retirement village residents.

¹ Section 8(2) of the Duties Act

² Section 10 of the Duties Act defines 'dutiable property'.

³ Section 11(7) of the Duties Act

Ruling and explanation

6. Under s.71 of the *Retirement Villages Act 1999* (RV Act), retirement village residents are given certain rights to recover payments (exit entitlement⁴) to which they are entitled under the contract governing their residence in a retirement village (residence contract⁵) from specified persons whether or not they were a party to the relevant residence contract.
7. Where s.71 of the RV Act imposes an obligation to repay liabilities to outgoing residents on the purchaser of a retirement village business, the amount of these liabilities (that is, the exit entitlements under the residence contracts) is not considered to be 'assumed under the transaction' for the purposes of s.12(1)(a) of the Duties Act and is not included in the consideration.⁶ This is so even if the contract includes an obligation, however described, on the part of the purchaser to pay the amount of those liabilities.
8. However, if the purchaser assumes an obligation to repay liabilities to outgoing residents beyond the amount of liabilities imposed under s.71 of the RV Act, the amount of those additional liabilities must be included in the consideration under s.12(1)(a) of the Duties Act.

Date of effect

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

Elizabeth Goli
 Commissioner of State Revenue
 Date of issue: 23 June 2016

References

Public Ruling	Issued	Dates of effect	
		From	To
DA012.3.1	23 June 2016	23 June 2016	Current
Supersedes Practice Direction DA6.1	1 March 2002	1 March 2002	23 February 2009

⁴ Section 16 of the RV Act

⁵ Section 10 of the RV Act

⁶ *Swayne v Commissioner of Inland Revenue* [1899] 1 QB 335