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## Public Ruling Duties Act:

### **EXTENSION OF TIME TO LODGE CERTAIN AGREEMENTS TRANSFERRING DUTIABLE PROPERTY**

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*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**

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1. The purpose of this public ruling is to explain when the Commissioner may grant an extension of time to lodge an agreement for the transfer of dutiable property<sup>1</sup> (agreement), in particular circumstances.
2. Section 19(3) of the *Duties Act 2001* (the Duties Act) provides that parties to an agreement must lodge the agreement within 30 days after the liability arises, being the time the agreement is made.<sup>2</sup>
3. A person who fails to comply with s.19(3) of the Duties Act commits an offence and may be liable to unpaid tax interest and penalty tax under the *Taxation Administration Act 2001* (the Administration Act).
4. Section 151 of the Administration Act provides the Commissioner with the discretion to extend the date for lodgement of an agreement.

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<sup>1</sup> Section 9(1)(b) of the Duties Act

<sup>2</sup> Section 16 and Schedule 2 of the Duties Act

## **Ruling and explanation**

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5. The following details the Commissioner's practice in determining whether an extension of time to lodge an agreement should be granted for:
  - (a) certain conditional agreements
  - (b) relevant transfer agreements<sup>3</sup>.
6. Extensions of time for the lodgement of an agreement which is both a relevant transfer agreement and a conditional agreement will only be considered as alternatives for the exercise of the Commissioner's discretion, and not cumulatively. Should a party apply for both extensions and their circumstances make them eligible for both extensions, the Commissioner will take into account which extension would provide the latest lodgement date to the taxpayer.

### **Conditional agreements**

#### *Considerations for extension of time*

7. Subject to other matters mentioned in this public ruling, an extension of time for lodgement of an agreement will generally be granted where:
  - (a) completion of the agreement is conditional on an event  
and
  - (b) the parties to the agreement do not have control over the event except only that they must use their best endeavours to secure the event happening.
8. Where an extension of time to lodge an agreement is requested and the agreement contains a condition that is part of an arrangement to defer the payment of transfer duty, an extension of time will not be granted.
9. Examples of conditions to an agreement that may result in an extension of time being granted are:
  - (a) A party to the agreement obtains a satisfactory private taxation ruling on the taxation consequences of the transaction from the Australian Taxation Office.
  - (b) Finance is approved that is satisfactory to the purchaser.
  - (c) A party to the agreement obtains subdivisional or rezoning approval.
  - (d) A purchaser obtains a satisfactory building inspection report from a third party.

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<sup>3</sup> Defined in s.156D of the Duties Act

- (e) A vendor obtains the Minister's consent to transfer a lease to the purchaser in respect of leasehold land.
  - (f) The purchaser is granted a liquor licence.
  - (g) The vendor of a shopping centre obtains renewal of existing leases.
  - (h) The sale is subject to the sale of another property.
  - (i) A plan of subdivision is registered ('off the plan' sales).
  - (j) A condition is designed to meet the requirements of the *Foreign Acquisitions and Takeovers Act 1975* (Cwlth).
  - (k) A purchaser carries out due diligence where the outcome is to be measured against objective criteria set out in the agreement. A general provision that the agreement is 'subject to due diligence' will not suffice.
10. Examples of conditions to an agreement that may not result in an extension of time being granted are:
- (a) Completion is made conditional on payment of the purchase money.
  - (b) The vendor is to deliver records or information to the purchaser.
  - (c) The property is to be leased back to the vendor.
  - (d) The payment of money is to discharge an outstanding debt on the property.
  - (e) There is a condition that depends for its fulfilment solely on the purchaser or the vendor being satisfied of a particular matter or thing (e.g. purchaser being satisfied of the condition of a dwelling or satisfied as to finishes).
  - (f) There is a condition that the purchaser and vendor complete another agreement or transaction between themselves where neither agreement contains other conditions that gives rise to an extension of the time for lodgement in accordance with this public ruling.

*Time for lodgement if extended*

11. Where an exercise of the Commissioner's discretion to extend the time for lodgement of a conditional agreement under paragraphs 7 to 10 is sought, a conditional agreement must be lodged with the Commissioner for assessment of transfer duty within 30 days of the earliest of the following dates:
- (a) the date upon which all the relevant conditions to the agreement are satisfied
  - (b) subject to paragraph 15, where the agreement is cancelled due to a relevant condition of the agreement not being satisfied, the date that the agreement was cancelled
  - (c) the date specified under a written notice by the Commissioner to lodge the agreement.

*How to apply*

12. Once the relevant conditions to an agreement are satisfied, the following documents must be lodged with the agreement in order for an application for an extension of time to be considered:
  - (a) a request for the time of lodgement to be extended including reasons for the late lodgement
  - (b) documents from a third party evidencing when the conditions were met. Where a condition relates to obtaining finance, the Commissioner will accept a copy of the financier's letter of approval or written advice from the purchaser's solicitor of the date of the financier's letter of approval.
13. The time at which the condition is satisfied is determined by the terms of the agreement. For example, if the agreement provides that it is conditional on the purchaser obtaining finance approval for a specified amount by a certain date, the time at which the condition is satisfied is the time when the purchaser receives that approval rather than when the purchaser notifies the vendor of the approval.
14. Finance approval is commonly given subject to mortgage insurance being effected or acceptance by the borrowers of the terms and conditions of the loan. This conditional approval is sufficient for the Commissioner to treat the agreement as unconditional to finance for the purposes of this ruling. The 30-day period during which the agreement can be lodged without penalty commences two days after the date of the letter of approval from the financier (subject to any other conditions that result in further extension).

*Cancellation of a conditional agreement*

15. Where an agreement is cancelled due to a condition of that agreement not being satisfied, the agreement is exempt from transfer duty and is not to be lodged, unless either of the following applies:
  - (a) the Commissioner requires, by notice in writing, that the agreement be lodged
  - or
  - (b) the agreement remains chargeable with transfer duty as a 'resale agreement' under s.115(1)(d) of the Duties Act.

## Relevant transfer agreement for electronic conveyancing

### *Considerations for extension of time*

16. Subject to other matters mentioned in this public ruling, an extension of time for lodgement of an agreement will be granted for a relevant transfer agreement within the meaning of s.156D of the Duties Act, provided the relevant transfer agreement will be followed by a transfer of dutiable property (transfer) that:
  - (a) includes eligible land, of which the instrument of transfer must comply with the requirements of s.61 of the *Land Title Act 1994* for transferring the land under that Act <sup>4</sup>
  - (b) is to the transferee under a relevant transfer agreement and for the same consideration as provided for under the agreement
  - (c) is not a transfer by direction.
17. Provided subparagraphs 16(a) – (c) apply to the transfer, the Commissioner may exercise the discretion to extend the time for lodgement of the relevant transfer agreement under paragraph 16, whether or not the transfer will occur through an electronic lodgment network<sup>5</sup>.
18. A relevant transfer agreement is defined in s.156D of the Duties Act to mean an agreement for the transfer of dutiable property:
  - (a) that includes eligible land
  - (b) on which transfer duty is imposed
  - (c) that is not eligible for a concession, exemption or other reduction of transfer duty, other than a concession, exemption or reduction for transfer duty for an ELN transfer prescribed by regulation
  - (d) that:
    - (i) is aggregated under s.30 of the Duties Act with a transfer of other dutiable property under that agreement  
or
    - (ii) is aggregated under s.30 of the Duties Act only with another agreement for the transfer of dutiable property that complies with paragraphs (a) to (c) above  
or
    - (iii) if subparagraph (i) or (ii) does not apply, is not aggregated under s.30 of the Duties Act with any other dutiable transaction.

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<sup>4</sup> Defined in s.156D of the Duties Act

<sup>5</sup> See definition of 'ELN' in the Dictionary in Schedule 6 of the Duties Act.

*Time for lodgement if extended*

19. Where an exercise of the Commissioner's discretion to extend the time for lodgement of a relevant transfer agreement under paragraphs 16–18 is sought, a relevant transfer agreement must be lodged with the Commissioner for assessment of transfer duty within 60 days after the liability on the agreement for transfer arises.

*How to apply*

20. In order for an application for an extension of time to be considered, a request for the time of lodgement to be extended, including reasons for the late lodgement, must be made when lodging the relevant transfer agreement.

**Self assessors**

21. This public ruling also applies to self assessors who are approved under Chapter 12 of the Duties Act to account for transfer duty by returns or lodging transaction statements, and are able to remit unpaid tax interest.
22. Where a self assessor lodges a transaction statement in relation to a conditional agreement, the transaction statement is to be lodged no later than the date by which the agreement must be lodged under paragraph 11 if the discretion is exercised. Where a self assessor lodges a transaction statement in relation to a relevant transfer agreement, the transaction statement is to be lodged no later than the date by which the agreement must be lodged under paragraph 19 if the discretion is exercised.

**Lodgement before end of extension period**

23. An assessment will be issued and no extension of time for payment will be granted where:
- (a) a conditional agreement is lodged while the agreement is still conditional
  - or
  - (b) a relevant transfer agreement is lodged before the end of the period referred to in paragraph 19.

**Unpaid tax interest**

24. Unpaid tax interest will not be payable under s.54 of the Administration Act solely because lodgement occurs later than the period specified in s.19 of the Duties Act provided:
- (a) the Commissioner has exercised a discretion to extend the time for lodgement under this public ruling
  - (b) lodgement occurs within the time required under the exercise of discretion.

## Date of effect

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

Elizabeth Goli  
Commissioner of State Revenue  
Date of issue: 12 November 2018

## References

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Public Ruling	Issued	Dates of effect	
		From	To
DA019.1.5	12 November 2018	12 November 2018	Current
DA019.1.4	31 March 2017	31 March 2017	11 November 2018
DA019.1.3	11 December 2015	11 December 2015	30 March 2017
DA019.1.2	3 July 2009	3 July 2009	10 December 2015
DA019.1.1	24 February 2009	24 February 2009	2 July 2009
Supersedes Revenue Ruling DA12.1	1 March 2002	1 March 2002	23 February 2009