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Public Ruling Duties Act:

BUSINESS ASSETS – RESIDENCE OF A COMPANY

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. Dutiable property, as defined in s.10 of the *Duties Act 2001* (the Duties Act), includes a Queensland business asset.¹
2. A business asset is defined in s.35 of the Duties Act and includes a debt of a business if the debtor resides in Queensland.²
3. This Public Ruling examines where a debtor that is a company is considered to reside.

Ruling and explanation

4. The general principle for determining the residence of a company is that a company resides where its real business is carried on, being where the central management and control abides.³
5. Central management and control is considered to be located in the place where the actual decisions are made and control is exercised.⁴ The term ‘control’ refers to control of the corporate affairs of the company including matters of policy and finance.

¹ Section 10(1)(d) of the Duties Act

² Section 35(1)(f) of the Duties Act

³ *Cesena Sulphur Co Ltd v Nicholson* (1876) 1 TC 88, *De Beers Consolidated Mines Ltd v Howe* (1906) AC 455

⁴ *Esquire Nominees Ltd v Federal Commissioner of Taxation* (1973) 129 CLR 177

6. If central management and control is exercised by the directors then it is usually located where the directors meet to do the business of the company.⁵ If central management and control is exercised by the shareholders it is usually located where the shareholders with voting power reside.⁶
7. A company can reside in more than one place.⁷
8. The following examples are provided as a general guide only. Each case will depend on its own particular facts and circumstances.

Example 1

A company is incorporated in Queensland and has its registered office in Queensland where its directors meet and its shareholders reside and meet. The company owns a business that is conducted in NSW and is managed by an officer of the company who resides there. The central management and control of the company would be considered to abide in Queensland and therefore the company would be considered to reside in Queensland. Any debt owed to a Queensland business by the company would be a Queensland business asset.

Example 2

A company is incorporated in Queensland where it operates a business. The registered office is in Queensland. There are three directors, one residing in Queensland, one in NSW and one in Victoria. Central management and control is exercised by the directors through meetings held by tele-conference. The central management and control of the company would be considered to abide in Queensland, NSW and Victoria. Therefore the company would be considered to reside in all three States. Any debt owed by the company to a Queensland business would be a Queensland business asset.

Example 3

A company conducts a business in Queensland where its directors reside and meet. The company is owned by a sole-shareholder residing in Victoria. The sole-shareholder has the power, through its constitution, to appoint and remove the managing director and any directors and exercises complete management and control over the business operations and internal administration of the company. As the place where the actual decisions are made is Victoria, central management and control would be considered to abide in that State and not in Queensland. Therefore the company would be considered to reside in Victoria. Any debt owed by the company to a Queensland business would not be a Queensland business.

⁵ *Koitaki Para Rubber Estates v Federal Commissioner of Taxation* (1941) 6 ATD 82

⁶ *John Hood & Co Ltd v Magee* (1918) 7 TC 327

⁷ *Swedish Central Railway Co Ltd v Thompson* (1925) 9 TC 342

Date of effect

9. This Public Ruling takes effect on 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
DA035.1.1	24 February 2009	24 February 2009	Current
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