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Public Ruling Duties Act:

TRANSFER DUTY – PUBLIC UNIT TRUSTS – COMMISSIONER’S SATISFACTION IN RELATION TO RELATED PERSON’S INTEREST BEING USED AND ACQUIRED INDEPENDENTLY

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. A trust acquisition or trust surrender is a dutiable transaction¹. A person makes a trust acquisition if the person acquires a trust interest in a trust that:
 - (a) holds dutiable property or
 - (b) has an indirect interest in dutiable property².
2. However, the acquisition of a trust interest in a public unit trust is not a dutiable transaction, unless it is a majority trust acquisition in a land holding trust³. Chapter 2, Part 8, Division 7 of the *Duties Act 2001* (the Duties Act) lists the categories of public unit trusts, including wholesale unit trusts and pooled public investment unit trusts⁴. A land holding trust is a wholesale unit trust or pooled public investment unit trust that holds, or has an indirect interest in, land in Queensland⁵.
3. A person who makes a trust acquisition in a land holding trust makes a majority trust acquisition if:
 - (a) the person, or the person and related persons of the person (whether alone or jointly), acquire a trust interest in the trust of 50% or more or

¹ Section 9(1)(i) of the Duties Act

² Section 55 of the Duties Act

³ Section 49(2) of the Duties Act

⁴ Section 68 of the Duties Act

⁵ Defined in Schedule 6 of the Duties Act

- (b) the person, or related persons of the person (whether alone or jointly), acquire a trust interest in the land holding trust that, when aggregated with trust interests already held by the person and related persons of the person (whether alone or jointly), is 50% or more.⁶
4. The term 'related person' is broadly defined under section 61(1) of the Duties Act. In particular, section 61(1)(f) provides that for trustees, a person is a related person of another person if:
 - (i) there is a person who is a beneficiary of both trusts or
 - (ii) a person is a beneficiary of 1 trust and a related person, as prescribed under section 61 of the Duties Act, is a beneficiary of the other trust.
 5. Also, section 61(2) expands the definition of related person to include persons who acquire an interest in a land holding trust under essentially one arrangement.
 6. However, section 61(3) of the Duties Act provides the Commissioner with the discretion not to treat persons identified in section 61(1), other than subsection (1)(d), as related persons of another person in certain circumstances.
 7. This Public Ruling sets out how the Commissioner will be satisfied under section 61(3) of the Duties Act.

Ruling and explanation

8. For a trust acquisition in a land holding trust, the Commissioner will exercise the discretion under section 61(3) if satisfied that the trust interests of the persons in the land holding trust:
 - (a) were acquired, and will be used, independently and
 - (b) were not acquired, and will not be used, for a common purpose.
9. In circumstances where a person is a beneficiary of more than one trust, or a person is a beneficiary of one trust and a related person of that person is the beneficiary of another trust, the trustees of those trusts may independently acquire a trust interest in a land holding trust. The trustees will be related persons under section 61(1) but may request the Commissioner to exercise the discretion under section 61(3).
10. To assist the Commissioner in determining the matters referred to in paragraph 8, the following must be lodged:
 - (a) a statutory declaration by each of the persons, declaring that:
 - (i) there is no arrangement, understanding or agreement, whether in writing or orally, between any of the persons, under which the interests are acquired or the interests held are to be used inter-dependently and for a common purpose
 - (ii) none of the persons required as a condition of any arrangement, understanding or agreement to acquire the interests, whether in writing or orally, the making or

⁶ Section 80 of the Duties Act

completing of any other arrangements, understandings or agreements to acquire the interests and

(iii) all of the arrangements, understandings or agreements to acquire the interests, whether in writing or orally, were made independently of each other.

(b) all written arrangements, understandings or agreements and any other information relevant to the acquisition.

Example

John B is a member of the ABC Superannuation Fund, the trustee of which is ABC Ltd. John B's wife Jane B is a member of the DEF Superannuation Fund, the trustee of which is DEF Ltd. Both funds are industry superannuation funds with a large number of industry employees as members. ABC Ltd and DEF Ltd each acquire, as trustees of the relevant superannuation funds, 30% of the units in the XYZ unit trust, a wholesale unit trust that holds land in Queensland. The transactions are entered independently by ABC Ltd and DEF Ltd, which have no relationship other than the common beneficiaries. The Commissioner will exercise the discretion under section 61(3) of the Duties Act if the documents lodged indicate the absence of common purpose or inter-dependent actions.

Date of effect

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

David Smith
Commissioner of State Revenue
Date of Issue: 16 February 2011

References

Public Ruling	Issued	Dates of effect	
		From	To
DA061.1.1	16 February 2011	16 February 2011	Current