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**Public Ruling
Duties Act:**

**GUIDELINES FOR DETERMINING THE
EXISTENCE OF A BUSINESS—
FAMILY BUSINESSES**

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

- Chapter 2, Part 10 of the *Duties Act 2001* (the Duties Act) provides concessions for transfer duty on particular dutiable transactions relating to particular family businesses.
- Section 97(1)(a)–(e) of the Duties Act outlines the dutiable transactions to which Part 10 applies provided that certain conditions Applying to the transaction are satisfied.¹
- Where the business property to which the transaction relates is used to carry on a primary production business, the dutiable value of the business property is taken to be nil.²
- Where the business property to which the transaction relates is used to carry on a prescribed business and to the extent the transaction is by way of gift, the unencumbered value of the business is limited to the amount by which the value exceeds \$500,000.³
- The term 'business property' is defined in Schedule 6 of the Duties Act to mean:
 - land primarily used to carry on a business of primary production or a prescribed business or
 - personal property used to carry on the business on the land.
- This public ruling provides guidelines to assist in determining whether a business is being carried on.

¹ The conditions for each dutiable transaction are fully set out in ss.98–102 of the Duties Act.

² Section 105 of the Duties Act

³ Section 105A of the Duties Act

Ruling and explanation

Existence of a business

7. To determine the existence of a business, regard should be had to a number of factors including:
 - (a) whether the activity has a significant commercial purpose or character
 - (b) whether there is more than just an intention to engage in a business (i.e. look to the extent of activity to develop same)
 - (c) whether there is an intention to make a profit as well as the profitability of the activity
 - (d) whether there is repetition and regularity of the activity
 - (e) whether the activity is of the same kind and carried on in a similar manner to that of the ordinary trade in that line of business
 - (f) whether the activity is planned, organised and carried on in a business-like manner such that it is directed at making a profit
 - (g) the size, scale and permanency of the activity
 - (h) whether the activity is better described as a hobby, a form of recreation or a sporting activity.
8. The existence of one of the factors may not conclusively establish the existence of a business; however, a combination of those factors may indicate that the operation in question is a business. The relevance and weight to be given to each factor will depend on the circumstances of each particular case.

Business of primary production

9. The business of primary production is defined to mean a business of agriculture, pasturage or dairy farming.⁴
10. The words 'agriculture, pasturage or dairy farming' refer to production resulting directly from either:
 - (a) the cultivation of the land
 - (b) the maintenance of animals for the purpose of selling them or their bodily produce, including their natural increase.

The words include the manufacture of dairy produce by the person who produced the raw materials used in that manufacture.

⁴ Schedule 6 of the Duties Act

Prescribed business

11. Prescribed business is defined to mean a business involving solely an activity prescribed under a regulation.⁵ Those activities are listed in Schedule 4 of the Duties Regulation 2023.⁶

Application for concession

12. Application for the concession must be made in the approved form.⁷

Date of effect

13. This public ruling takes effect from 1 July 2016.

Elizabeth Goli
Commissioner of State Revenue
Date of issue: 1 July 2016

References

Public Ruling	Issued	Dates of effect	
		From	To
DA105.2.3	1 July 2016	1 July 2016	Current
DA105.2.2	3 September 2013	3 September 2013	30 June 2016
DA105.2.1	24 February 2009	24 February 2009	2 September 2013
Supersedes Practice Direction DA16.1	1 March 2002	1 March 2002	23 February 2009

⁵ Schedule 6 of the Duties Act

⁶ As prescribed by section 8 of the Duties Regulation 2023

⁷ Section 107 of the Duties Act