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Public Ruling Duties Act:

SECURITY TRUSTS

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. Where different financial institutions provide financial accommodation to a borrower or corporate group, it is common commercial practice for any security for the accommodation to be granted to the trustee of a security trust. Under the terms of the trust deed, the security is held for the beneficiaries, for the time being. Often, beneficiaries hold participation certificates.
2. One common example of the use of security trusts is in syndicated lending where a large loan facility is provided by a number of different financiers in the lending syndicate. Another is where there are different providers of financial accommodation to a corporation for different purposes. In both cases, the financiers participate in the security trust rather than each taking their own security.
3. Security trusts greatly simplify arrangements for secured lending and other financial arrangements as the rights of each financier are clearly set out in the trust deed. They also facilitate financiers coming and going without the need for refinancing or transferring of the securities given by the corporation. The trusts also eliminate the need for financiers to negotiate with the corporation and its other financiers in relation to the priority of their security as these matters are dealt with in the security trust deed.

4. Under s.121 of the *Duties Act 2001* (the Duties Act), transfer duty is not imposed on a dutiable transaction that is a trust acquisition or trust surrender of a trust interest if:
 - (a) the only dutiable property of the trust are existing rights of the holder of a mortgage, charge, bill of sale or other security over dutiable property located in Queensland and
 - (b) the existing rights have been given in favour of the trustee for the sole purpose of being held for the benefit of the beneficiaries of the trust who have provided, or will from time to time provide, financial accommodation.
5. The Explanatory Notes to the Duties Bill 2001 provide as follows in relation to this section.¹

‘Section 121 provides an exemption from duty on trust acquisitions and trust surrenders in security trusts. These arrangements are common in syndicated loans. The trustee is usually a special purpose vehicle established by the lending syndicate to lend the jointly provided funds and to hold the security on trust for the members of the syndicate in proportion to their loans. The exemption prevents duty applying to the initial acquisition, fluctuations in interests and exiting the syndicate. However, this exemption is not concerned with trust acquisitions or trust surrenders of mortgage-backed securities or other securitisation schemes.’
6. This Public Ruling explains the conditions of operation of s.121 of the Duties Act and also clarifies the application of the exemption in relation to securitisation transactions.

Ruling and explanation

The dutiable property of the trust

7. The condition in s.121(a) of the Duties Act is satisfied if the dutiable property of the trust consists solely of the specified existing rights. This would include any debt secured by the security. The debt would not be treated as a Queensland business asset but, rather, would be treated as an integral part of the existing rights.²
8. If the trust holds other dutiable property, such as land in Queensland or a Queensland business asset, the section would not apply.
9. Condition (a) of s.121 of the Duties Act is concerned that the dutiable property of the trust comprises only the relevant type of existing right. Consequently, the condition can be satisfied even though the trust may hold other property, whether or not relating to Queensland, which is not dutiable property.

Example

A security trust holds a mortgage over dutiable property of a corporation being land and business assets. The trust also holds charges over property in New South Wales and overseas and owns real estate in Victoria.

Condition (a) of s.121 of the Duties Act is satisfied because the only dutiable property of the trust is the mortgage. This would not be the case, however, if the trust also owned land in Queensland.

¹ At page 35

² See Public Ruling DA010.2—*Transfer of secured and unsecured debts*

The beneficiaries

10. Condition (b) of s.121 of the Duties Act requires that the sole purpose of the giving of the existing rights to the trustee is for the rights to be held for the benefit of the beneficiaries who have, or will, provide financial accommodation.
11. This condition requires that the rights be held for the benefit of all beneficiaries of the trust. This follows from the reference to the beneficiaries rather than simply beneficiaries.
12. It is usual for the trustee of a security trust to charge fees and claim expenses. Although the trustee's right of indemnity for these amounts results in the trustee having a beneficial interest in the trust property, this does not exclude the operation of s.121 of the Duties Act. The existing rights will still have been given for the sole purpose of being held for the benefit of the beneficiaries who have or will provide financial accommodation. The fact that the trustee may acquire a beneficial interest in the trust property to cover usual trustee fees does not alter the purpose for which the existing rights were originally conferred.

Financial accommodation

13. Condition (b) of the Duties Act also requires that all beneficiaries of the trust must have provided, or will from time to time provide, financial accommodation.
14. Often, a financier will become a beneficiary of the trust by acquiring all or part of the interest of another beneficiary. Where this occurs because of a substitution to a finance facility so that an incoming financier substitutes for an outgoing financier (assuming its obligations and acquiring its rights), the incoming beneficiary will be taken to have provided financial accommodation.
15. Financial accommodation is not defined in the Duties Act and therefore has its ordinary meaning. This would cover all financial arrangements or facilities usually provided by financial institutions in the ordinary course of business. Examples include:
 - (a) loans
 - (b) guarantee and performance bond facilities
 - (c) letter of credit facilities
 - (d) chattel lease facilities
 - (e) hire purchase facilities
 - (f) off balance sheet financing arrangements such as repurchase facilities (where the financier purchases a product from its customer and the customer agrees to repurchase it at a later date for the original price plus a margin)
 - (g) financial market lines such as hedging arrangements and swaps
 - (h) bill acceptance or discount facilities.
16. A beneficiary may provide both financial accommodation and some other financing facility which, despite the breadth of the term financial accommodation, does not fall within the scope of that term. In that case, the sole purpose test in s.121(b) of the Duties Act will be satisfied if the other facilities are incidental or ancillary to the provision of the financial accommodation by the beneficiary.

Section 121 and securitisations

17. The exemptions in s.121 of the Duties Act have no application in relation to securitisation transactions. This is confirmed by the Explanatory Notes³ which provide:

‘...However, this exemption is not concerned with trust acquisitions or trust surrenders of mortgage-backed securities or other securitisation schemes.’

Date of effect

18. This Public Ruling takes effect from 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
DA121.1.1	24 February 2009	24 February 2009	Current
Supersedes Practice Direction DA 42.3	16 May 2003	16 May 2003	23 February 2009

³ Page 35. See also Public Ruling DA000.3—*Securitisation transactions*