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Public Ruling Duties Act:

TRANSFER DUTY—SATISFACTION OF SECTION 123 WHERE NO DUTY IMPOSED UNDER SECTION 66(2)

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. In certain circumstances, trustees may make a distribution of a beneficiary's trust interest¹ under a trust, by transferring dutiable property² held by the trust to the beneficiary.
2. In some cases, the beneficiary of a trust may also surrender their trust interest in taking a distribution from the trustee under the trust.
3. Subject to any available exemptions, these transactions are liable for transfer duty under the *Duties Act 2001* (Duties Act), as:
 - (a) for paragraph 1 above, the transfer or agreement to transfer dutiable property;³ and
 - (b) for paragraph 2 above, a trust surrender.⁴
4. Section 123 of the Duties Act provides that duty is not imposed on those transactions to the extent they represent the beneficiary's trust interest on a distribution by the trustee under a trust⁵ where particular conditions specified in the section are met.

¹ Section 57 Duties Act

² Section 10 Duties Act

³ Section 9(1)(a) and (1)(b) Duties Act

⁴ Section 9(1)(i) Duties Act. See section 56 Duties Act for what is a 'trust surrender'.

⁵ Section 123(1) Duties Act

5. One of the conditions is that the Commissioner must be satisfied under Chapter 2 of the Duties Act that either:
 - (a) transfer duty imposed has been paid for the dutiable transactions that are the creation of a trust of the dutiable property⁶ or the trust acquisition⁷ of the beneficiary's trust interest (section 123(2)(b)(i)) or
 - (b) those transactions are exempt from transfer duty (section 123(2)(b)(ii)).
6. The Duties Act was amended by the *Revenue Amendment and Trade and Investment Queensland Act 2013* with effect from 12 June 2013, to insert a new section 123(3). Section 123(3) clarifies that the trust acquisition of a beneficiary's trust interest is not exempt for the purposes of section 123(2)(b)(ii) if the transfer duty is not imposed on the trust acquisition because of the operation of section 66(2) of the Duties Act.
7. Section 66(2) of the Duties Act provides that if a person acquires a trust interest in dutiable property because of the acquisition of dutiable property by a trust, transfer duty is not imposed on the acquisition of the trust interest if any of the following apply:
 - (a) The trustee has paid transfer duty for the acquisition of the property.
 - (b) The dutiable transaction that is the acquisition of the property is exempt from transfer duty.
 - (c) Duty is not imposed on the acquisition of the property by the trustee.
8. This Public Ruling sets out the Commissioner's practice in applying sections 123(2)(b) and 123(3) of the Duties Act.

Ruling and explanation

9. Section 66(2) applies to prevent the imposition of duty on a beneficiary's new or increased trust interest where duty has already been paid in relation to the dutiable property of the trust when it enters the trust.

Example 1

A enters an agreement to buy land in Queensland from B, to be held on trust for C. There is no trust in place prior to A entering the agreement with B. There is no trust creation within the meaning of the Duties Act, as the capacity in which A holds the dutiable property does not change.

The agreement for transfer between A and B is a dutiable transaction⁸, as is the trust acquisition of C's trust interest in the land. Duty is paid on the agreement for transfer of the land. Section 66(2) of the Duties Act applies so that no duty is imposed on the trust acquisition by C.

⁶ Section 9(1)(i) Duties Act. See section 53 Duties Act for how a trust of dutiable property is created.

⁷ Section 9(1)(h) Duties Act. See section 57 Duties Act for what is a 'trust acquisition', and section 59 Duties Act for how a trust interest is acquired.

⁸ Section 9(1)(b) Duties Act

Example 2

X owns land in Queensland. A transfer is executed so that X and Y hold the land as trustee for Z. The following dutiable transactions occur:

- The transfer from X to X as trustee is the creation of a trust of dutiable property.⁹
- The transfer from X to Y as trustee is a transfer of dutiable property.¹⁰
- There is a trust acquisition by Z.¹¹

The first two transactions would be aggregated under section 30 of the Duties Act. If duty is paid on those transactions, section 66(2) of the Duties Act applies so that no duty is imposed on the trust acquisition by Z.

10. The exemption provided by section 123 of the Duties Act applies to prevent double duty where duty is payable on a beneficiary's initial acquisition of a trust interest, and then again when the trustee transfers legal ownership of the property to the beneficiary. This does not occur when a trustee merely pays transfer duty for the acquisition of the property.
11. Section 123(3) confirms this by clarifying that a trust acquisition on which duty was not imposed by operation of section 66(2) is not an exempt transaction for the purposes of satisfying section 123(2)(b)(ii).

Example 3

Subsequent to the transactions described in Example 1 above, A transfers the land to the beneficiary C. The conditions under section 123(2)(b)(ii) are not met because:

- There was no trust creation on which duty was either imposed and paid, or which was exempt.
- The trust acquisition, while imposed with no duty because of section 66(2), does not qualify as exempt for the purposes of section 123(2)(b)(ii) because of section 123(3).

Consequently the transfer from A to C is liable to duty.

Example 4

Subsequent to the transactions described in Example 2 above, X and Y transfer the land to the beneficiary Z. Provided the other requirements of section 123 are met, no duty would be imposed in respect of the transfer by X as trustee to Z, as transfer duty was paid for the dutiable transaction that was the creation of a trust of the dutiable property. That is, the exemption will only be in respect of the duty paid under section 9(1)(i) on the transfer from X to X as trustee. Duty would, however, apply to the transfer from Y as trustee to Z because the transfer from X to Y as trustee does not meet the conditions under section 123(2)(b).

⁹ Section 9(1)(i) Duties Act. X acquired the property other than as trustee and then starts to hold the property as trustee which is the creation of a trust of dutiable property under section 53(1) Duties Act.

¹⁰ Section 9(1)(a) Duties Act

¹¹ Sections 9(1)(h), 57 and 59 Duties Act

Example 5

D enters into an agreement with E, to buy E's application for a petroleum lease to be granted under the *Petroleum and Gas (Production and Safety) Act 2004*. As applications for petroleum leases cannot be transferred, the agreement includes a term requiring E to transfer the granted authority to D, and to hold the petroleum lease on trust for D from the time it is granted to E. The following dutiable transactions occur:

- The grant of a petroleum lease to E is a vesting of dutiable property¹² being land in Queensland¹³ (Transaction 1).
- There is a trust acquisition by D¹⁴ (Transaction 2).
- The transfer from E to D is a transfer of dutiable property¹⁵ being land in Queensland (Transaction 3).

Transaction 1 is exempted from transfer duty under section 137(1)(a) of the Duties Act, which exempts grants of resource authorities.¹⁶

As Transaction 1 is exempt, section 66(2) of the Duties Act applies so that no duty is imposed on the trust acquisition by D in Transaction 2.

However, Transaction 3 does not receive the benefit of the exemption in section 123. When E transfers the granted authority to D, the conditions under section 123(2)(b)(ii) of the Duties Act are not met because:

- There was no trust creation on which duty was either imposed and paid, or which was exempt.
- The trust acquisition, while imposed with no duty because of section 66(2), does not qualify as exempt for the purposes of section 123(2)(b)(ii) because of section 123(3).

Date of effect

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

David Smith
 Commissioner of State Revenue
 Date of issue: 21 November 2013

References

Public Ruling	Issued	Dates of effect	
		From	To
DA123.1.1	21 November 2013	21 November 2013	Current
Supersedes Practice Direction DA 52.1	14 June 2002	14 June 2002	23 February 2009

¹² Section 9(1)(d) Duties Act

¹³ Section 10(1)(a) Duties Act. 'Land' is defined in Schedule 6 Duties Act to include a resource authority, which is in turn defined to include a petroleum lease.

¹⁴ Sections 9(1)(h), 57 and 59 Duties Act

¹⁵ Section 9(1)(a) Duties Act

¹⁶ 'Resource authority' is defined in Schedule 6 Duties Act to include a petroleum lease under the *Petroleum and Gas (Production and Safety) Act 2004*.