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Public Ruling Duties Act:

DISTRIBUTION IN THE ESTATE OF DECEASED PERSON—POWER TO APPROPRIATE

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. The *Duties Act 2001* (the Duties Act) provides an exemption from transfer duty where dutiable transactions are made to the extent that it gives effect to a distribution in the estate of a deceased person.¹
2. This Public Ruling clarifies the application of the deceased person's estate exemption under s.124 of the Duties Act, where the will contains a power to appropriate or the executor in intestacy has a power to appropriate.

Ruling and explanation

3. Under s.124 of the Duties Act, transfer duty is not imposed on a transfer, or agreement for the transfer of dutiable property to the extent that it gives effect to a distribution in the estate of a deceased person.

Power of appropriation

4. Appropriation is the practice of giving or appropriating to a beneficiary actual property of a deceased person in satisfaction of a pecuniary legacy or a share of the residue of an estate. The practice may occur where the deceased dies testate, that is with a will, or intestate, that is without a will. The power of appropriation can be specifically incorporated into a testator's will or alternatively it may be derived from, in the case of either an intestate or testate estate, s.90 of the *Trusts Act 2025*.

¹ Section 124 of the Duties Act

Power of appropriation not relevant to exemption

5. In determining whether the exemption applies to a transfer of dutiable property to the extent that it gives effect to a distribution in the estate of a deceased person and the dutiable transaction is the result of an appropriation under the will, it is not relevant whether the will contains a power of appropriation as the executor already has that power under s.90 of the *Trusts Act 2025*. In the case of an intestacy, the power to appropriate is also derived from s.90 of the *Trusts Act 2025*.
6. It is also not relevant that the appropriated dutiable transaction does not equate directly in value to the pecuniary legacy being satisfied as long as the variation to the beneficiary's entitlement is insignificant in view of the nature of assets subject to the appropriation. The variation to the beneficiary's entitlement must be small enough to satisfy the Commissioner that the executor has followed, as closely as possible, the intent of the will in relation to the overall benefit to each beneficiary.

Example 1

A person dies intestate, leaving three adult children who therefore share equally in the deceased's estate. The estate consists of \$140,000.00 cash and a block of land valued at \$100,000.00. The beneficiaries are each entitled to a third interest in the land and a third of the cash. A wants cash only, whereas beneficiaries B and C want the land. It is proposed to appropriate the land to B and C. The extra land that each gets appropriated is valued at approximately \$16,666.67. This is to satisfy that portion of their pecuniary legacy equal to that amount. It is proposed to pay A \$50,000.00. The rest of the estate (i.e. \$90,000.00) can be distributed equally (i.e. \$30,000.00 each) without the need for any further appropriation.

A transfer of the land to B and C as tenants in common in equal shares is made for no other purpose than to appropriate the assets of the intestate estate. B and C also receive \$30,000.00 cash each and A receives \$80,000 cash. The transfer to B and C will be exempt from transfer duty.

Example 2

As for Example 1 except the deceased has a will stating that A, B and C are to share equally in the deceased's estate. The will contains no power to appropriate. An appropriation as in Example 1 is carried out. The transfer to B and C will be exempt from transfer duty.

Example 3

A deceased's will devises a house and land valued at \$100,000.00 to A and B in equal shares. B does not want to take ownership of his/her entitlement and agrees to accept \$50,000.00 from C for the half share which is to be transferred to C who is not a beneficiary. The will contains a power to appropriate. Transfer document (a) is signed by the executor of the deceased's estate. This document conveys a half share in the house and land to A. Transfer document (b) is signed by the executor of the deceased's estate. This document conveys a half share in the house and land to C. C pays B \$50,000.00.

In this case, the transfer (a) will be exempt from transfer duty as it gives effect to a distribution in the estate of a deceased person under s.124(a) of the Duties Act.

The transfer (b) will be assessed to full transfer duty. The transfer to C is *not* an appropriation as C is not a beneficiary under the deceased's will. Further, the conveyance to C does not give effect to a distribution in estate of a deceased person. What has in effect occurred is the sale by B of his interest in the deceased's property.

Example 4

A is bequeathed a pecuniary legacy of \$30,000.00. The executor asks A to accept, in satisfaction of his pecuniary legacy, a transfer of a parcel of land in Queensland. A agrees. At the time of the transfer the land is valued at \$40,000.00. A's appropriated share will be assessed to duty on \$40,000.00. The appropriation of A's share does not give effect to a distribution in the estate of the deceased person as the benefit to A is significantly greater than the pecuniary legacy contained in the will and the executor has not followed, as closely as possible, the intent of the will in relation to the overall benefit to each beneficiary.

Example 5

As for Example 4 except that, at the time of the transfer, the land is valued at \$31,000.00. The transfer of A's appropriated share will be exempt from transfer duty. The transfer is considered to give effect to a distribution in the estate of a deceased person, as the variation in value is not significant.

Evidence requirements

7. As with any other assessing under the exemptions, assessors must be satisfied in terms of the criteria of the exemption. This will depend on the facts of each case. It is suggested that a letter from the estate's solicitors as to the facts be requested.
8. When examining these issues, assessors should be mindful of exactly what appropriation is. Reference should be made to paragraph 4 of this public ruling. If the instrument or transfer statement is not within the ambit of what an appropriation is then this public ruling will not apply.

Date of effect

9. 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
DA124.1.1	24 February 2009	24 February 2009	Current
Supersedes Practice Direction DA 20.2	12 February 2008	12 February 2008	23 February 2009