
Contents	Page
What this Ruling is about	1
Ruling and explanation	2
Date of effect	3
References	3

Public Ruling Duties Act:

TRANSFER DUTY ON DUTIABLE TRANSACTIONS IN ACCORDANCE WITH SECTIONS 36 AND 39A–39D OF THE *SUCCESSION ACT 1981*

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 *Succession Act 1981* (the Succession Act) provides for the distribution of property on intestacy to more than 1 spouse of the intestate, and to give a spouse of an intestate the right to elect to acquire the matrimonial home.¹
2. An instrument executed in accordance with ss.36 or 39A to 39D of the Succession Act that evidences or effects a dutiable transaction² may be liable to transfer duty under s.8 of the *Duties Act 2001* (the Duties Act).
3. Under s.124(a) 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.
4. However, a transfer is not exempt from transfer duty under s.124(a) of the Duties Act on the part of the transaction that relates to a sale of property involving a contractual element.
5. This Public Ruling explains how transfer duty under the Duties Act applies to dutiable transactions that evidence or effect the distribution of property in accordance with ss.36 and 39A–39D of the Succession Act.

¹ Sections 36 and 39A–39D of the Succession Act

² Section 9 of the Duties Act

Ruling and explanation

Distribution of residuary estate to more than 1 spouse

6. Section 36(1) of the Succession Act provides three alternative methods for distributing the entitlement where more than 1 spouse of an intestate are entitled to the whole or part of the intestate's residuary estate. Those are:
 - (a) under a written agreement, called a distribution agreement, between the spouses about the manner in which the property is to be distributed between them
 - (b) under a court order, called a distribution order, on the basis of what the court considers just and equitable or
 - (c) in equal shares as decided by the personal representative if a number of conditions are met.
7. The following are exempt from transfer duty under s.124(a) of the Duties Act:
 - (a) A transfer or an agreement for the transfer of dutiable property by the personal representative to the extent that it gives effect to a distribution agreement under s.36(1)(a) of the Succession Act.
 - (b) A distribution order, or a transfer, or an agreement for the transfer of dutiable property by the personal representative to the extent that it gives effect to a distribution order under s.36(1)(b) of the Succession Act.
 - (c) A transfer or an agreement for the transfer of dutiable property by the personal representative under s.36(1)(c) of the Succession Act.

Purchase of matrimonial property by spouse

8. Sections 39A–39D of the Succession Act apply where an intestate has an interest in a matrimonial home that is not effectively disposed of by a will (whether or not the intestate leaves a will) and at the time of death the intestate's spouse ordinarily resided in the home.
9. The sections confer a right upon the spouse to acquire the intestate's interest in the home for an amount equal to the transfer value adjusted for amounts such as any outgoings payable or rent received.
10. The transfer value of an intestate's interest in the matrimonial property is its market value less any amount needed to discharge a mortgage, charge, encumbrance or lien under s.34B(4) of the Succession Act.
11. Under s.39C(4) of the Succession Act, the transferee may elect to set-off against the transfer value the amount of any money which may be distributed to the transferee from the deceased's estate (set-off amount).
12. Prior to the payment of the transfer value, the transfer documentation must be stamped under the Duties Act at the transferee's expense under s.39C(3)(a) of the Succession Act.

DA124.2.1

3 of 3

13. The transfer of the intestate's interest in the matrimonial home under s.39A(2) of the Succession Act is a transfer of dutiable property, being an interest in land in Queensland.³ As the transfer is not to give effect to a distribution in the estate of a deceased person, s.124(a) of the Duties Act will not apply.
14. In determining the dutiable value of the transfer, any mortgage, charge, encumbrance or lien for which the transferee assumes liability forms part of the consideration for the transfer.⁴
15. In assessing transfer duty on these types of dutiable transactions the following is to be noted:
- (a) Transfer duty is calculated on the dutiable value which is the greater of the consideration for the dutiable transaction or unencumbered value of the dutiable property.⁵
 - (b) This dutiable value is not reduced by the set-off amount.
 - (c) The concession for homes and first homes outlined in Chapter 2 Part 9 of the Duties Act may be applicable.

Date of effect

16. 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
DA124.2.1	24 February 2009	24 February 2009	Current
Supersedes Revenue Ruling DA 26.1	1 March 2002	1 March 2002	23 February 2009

³ Sections 9(1)(a), 10(1)(a) and 10(2) of the Duties Act

⁴ Section 12(1) of the Duties Act

⁵ Section 11(7) of the Duties Act