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

Public Ruling Duties Act:

DEBT FACTORING AGREEMENTS

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. Debt factoring is a form of financing which allows a business to obtain immediate cash funds by selling book debts, usually on a regular and continuing basis. The purchaser of the debts is commonly a factor company such as a finance company, bank or other financial institution in the business of providing finance.
2. Under the *Duties Act 2001* (the Duties Act) transfer duty is not imposed on a transfer, or agreement for the transfer, of a business asset that is a book debt if the transaction is part of a debt factoring agreement between the parties.¹
3. A debt factoring agreement is an agreement for purchasing, acquiring or factoring a book debt for providing finance to the transferor of the book debt.²
4. This Public Ruling explains the requirement that the agreement be for providing finance to the transferor.

Ruling and explanation

5. For the exemption to apply, the relevant agreement must be to provide finance to the transferor of the book debt.

¹ Section 149(1) of the Duties Act

² Section 149(2) of the Duties Act

6. The Commissioner will be satisfied that such an agreement exists where:
- (a) the transferor of the debts seeks finance from a transferee and
 - (b) the debt factoring agreement is entered into by the transferor and transferee as part of a finance arrangement.

Example 1

Y Pty Ltd (Y) enters into an agreement with X Pty Ltd (X) to purchase X's business. Amongst other things, Y will purchase X's book debts at a discount. The exemption for debt factoring agreements in s.149 of the Duties Act will not apply because X and Y do not enter into the transaction as part of a finance arrangement. Further, the transaction is one of purchase and sale.

Example 2

GHI Pty Ltd (GHI) has book debts that it is unable to recover. GHI subsequently sells the book debts to MNO Debt Collection Pty Ltd ("MNO") at a discount. The exemption in s.149(1) of the Duties Act does not apply because the agreement entered into by GHI and MNO is primarily an arrangement for the recovery of bad debts by GHI rather than a finance arrangement. The transaction is one of purchase and sale.

Example 3

V Pty Ltd (V) applies for finance to XYZ Pty Ltd (XYZ), a financial institution. The finance will be provided by debt factoring. V enters into an agreement to sell some or all of its book debts to XYZ. XYZ will pay a percentage of the face value of each book debt to V when the debts are sold to XYZ. When the debts are due, they are collected by V on behalf of XYZ. The exemption in s.149(1) of the Duties Act applies because the agreement is entered into as part of a finance arrangement between V and XYZ.

Date of effect

7. 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
DA149.1.1	24 February 2009	24 February 2009	Current
Supersedes Practice Direction DA 68.1	17 August 2004	17 August 2004	23 February 2009