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Public Ruling Duties Act:

CORRECTING A CLERICAL ERROR IN A PREVIOUS TRANSFER

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. Section 152 of the *Duties Act 2001* (the Duties Act) provides that transfer duty is not imposed on a dutiable transaction (a section 152 exempt transaction¹) to correct a clerical error in a previous dutiable transaction about the same property if:
 - (a) no additional consideration is paid or payable and
 - (b) the beneficial interests in the property change only to the extent necessary to correct the error.
2. Property may be transferred in error, for example, when the wrong property is transferred or when the property has been transferred to the wrong person.
3. This Public Ruling addresses the information that is required to satisfy the Commissioner that a clerical error of a type contemplated by s.152 of the Duties Act has occurred in a previous transfer and also contains examples of when and how the provision applies.
4. An additional exemption may be available under s.152A of the Duties Act where the clerical error in the previous transaction was a misdescription of the property. Public Ruling DA152A.1—*Correcting a clerical error in a previous transfer—misdescription of the property* outlines the conditions of that exemption.

¹ Section 152(3) Duties Act

Ruling and explanation

5. The exemption under s.152 only applies to a dutiable transaction which either returns the parties to their original positions or places the parties in their correct positions.
6. For the exemption to apply, the following facts must be established:
 - (a) There must be a clerical error in a previous dutiable transaction (the defective transaction), such as an accidental misdescription of the property or a party to the transaction.
 - (b) The dutiable transaction being considered for the exemption (the correcting transaction) must be entered into to correct the clerical error in the defective transaction.
 - (c) The correcting transaction must be for the same property transferred by the defective transaction.
 - (d) There must be no additional consideration for the correcting transaction.
 - (e) If the correcting transaction alters the beneficial interest in the property, it does so only to the extent necessary to correct the clerical error.
7. To claim an exemption under s.152 of the Duties Act, evidence must be produced to establish each of the facts in paragraph 6. This evidence must include statutory declarations by all parties to the defective transaction and the correcting transaction as to each of those facts with a full explanation of the facts and circumstances that led to the clerical error being made.
8. Section 152 does not affect the duty payable on the defective dutiable transaction.

Example 1

A intended to convey Blackacre to C. By mistake the incorrect name of the transferee was inserted in the transfer. This resulted in A transferring Blackacre to B instead of C.

Two ways this error might be corrected are as follows.

Alternative 1

B signs a transfer of Blackacre back to A.

A signs a transfer of Blackacre to C.

The first transfer will be exempt from transfer duty under s.152 of the Duties Act.

The second transfer will also be exempt from transfer duty under s.152 of the Duties Act.

Alternative 2

B signs a transfer of Blackacre to C.

This transfer will be exempt from transfer duty under s.152 of the Duties Act.

Example 2

Blackacre is conveyed by A to B. A intended to convey Whiteacre to B but the incorrect real property description was inserted in the transfer in error.

B may transfer Blackacre back to A. Section 152 of the Act will apply so the transfer will be exempt from transfer duty.

However, if A subsequently transfers Whiteacre to B, this transfer will not be exempt under s.152, because that transaction is not for the same property as that dealt with in the original defective transaction.

However, if the conditions of s.152A are met, exemption under that section may apply to the original transfer of Blackacre from A to B.² In that case, the only transaction on which transfer duty will be imposed would be the subsequent correct transfer of Whiteacre from A to B.

Date of effect

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

David Smith
Commissioner of State Revenue
Date of issue: 24 June 2013

References

Public Ruling	Issued	Dates of effect	
		From	To
DA152.1.2	24 June 2013	24 June 2013	Current
DA152.1.1	24 February 2009	24 February 2009	23 June 2013
Supersedes Practice Direction DA55.2	22 November 2006	22 November 2006	23 February 2009

² Refer to Public Ruling DA152A.1—*Correcting a clerical error in a previous transfer—misdescription of the property*.