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Public Ruling Duties Act:

CORRECTING A CLERICAL ERROR IN A PREVIOUS TRANSFER—MISDESCRIPTION OF THE PROPERTY

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. 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, subject to certain conditions being satisfied under s.152 of the *Duties Act 2001* (the Duties Act). These conditions are set out in Public Ruling DA152.1—*Correcting a clerical error in a previous transfer*.
2. Where the clerical error in the previous dutiable transaction was a misdescription of the property, s.152A of the Duties Act may provide an additional exemption from transfer duty. Exemption under that section applies to the previous dutiable transaction containing the clerical error.
3. This public ruling outlines the requirements for exemption under s.152A of the Duties Act and provides an example of its operation.

Ruling and explanation

4. Under s.152A of the Duties Act, transfer duty will not be imposed on the previous dutiable transaction² for a section 152 exempt transaction if each of the following conditions is met.
 - (a) There is a section 152 exempt transaction. That is, s.152 applies to exempt from transfer duty a transaction correcting a clerical error in a previous dutiable transaction.³

¹ Section 152(3) Duties Act

² Section 152A(3) Duties Act

³ Section 152A(1) Duties Act; Public Ruling DA152.1—*Correcting a clerical error in a previous transfer* explains the operation of s.152.

DA152A.1.1

- (b) The previous dutiable transaction containing the clerical error is the transfer or agreement for transfer of dutiable property.⁴
 - (c) The clerical error in the previous dutiable transaction is a misdescription of the property.⁵
 - (d) In addition to the s.152 exempt transaction, there is another transfer, or agreement for the transfer, of dutiable property (the third dutiable transaction) that, other than for the error, would have been the subject of the previous dutiable transaction.⁶
 - (e) The sole purpose of the third dutiable transaction is to correct the error.⁷
 - (f) No consideration is paid or payable for any dutiable transaction entered into to correct the error, other than the consideration already paid or payable for the previous dutiable transaction.⁸
 - (g) The beneficial interests in the property the subject of the previous dutiable transaction and the third dutiable transaction change only to the extent necessary to correct the error.⁹
 - (h) The third dutiable transaction is entered into on or after 4 February 2012.¹⁰
5. Where above conditions are met, a party to the previous dutiable transaction on which transfer duty has been imposed may apply to the Commissioner in the approved form¹¹, and the Commissioner must reassess transfer duty on the previous dutiable transaction on the basis that duty is not imposed on the transaction.¹²
6. Section 152A of the Duties Act does not affect the duty payable on the third dutiable transaction.

Example¹³

Blackacre is conveyed by A to B (transfer 1). A intended to convey Whiteacre to B but the incorrect real property description was inserted in the transfer in error.

To correct the error, B transfers Blackacre back to A (transfer 2), and A transfers Whiteacre to B (transfer 3). If the conditions for application of ss.152 and 152A are met, transfer 2 will be exempt from transfer duty under s.152 of the Duties Act, and transfer 1 will be exempt from transfer duty under s.152A of the Duties Act.

Duty will be payable on transfer 3.

⁴ Section 152A(1)(a) Duties Act

⁵ Section 152A(1)(b) Duties Act

⁶ Section 152A(1)(c) Duties Act

⁷ Section 152A(1)(d) Duties Act

⁸ Section 152A(1)(e) Duties Act

⁹ Section 152A(1)(f) Duties Act

¹⁰ Section 650 Duties Act

¹¹ Application is made by completion of Form QRO–D2.2—*Dutiable transaction statement*.

¹² Section 152A(2) Duties Act

¹³ This example is taken from Public Ruling DA152.1. See example 2 at paragraph 8.

Date of effect

7. 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
DA152A.1.1	24 June 2013	24 June 2013	Current