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Public Ruling Duties Act:

CORPORATE TRUSTEE DUTY DEDUCTION—TRANSFER DUTY FOR TRUST ACQUISITION

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

- Chapter 3, Part 2 of the *Duties Act 2001* (Duties Act) imposes corporate trustee duty on the dutiable value of a relevant acquisition.¹
- Section 209 of the Duties Act defines a corporate trustee as an unlisted corporation², other than an authorised trustee corporation³, that is the trustee of a discretionary trust that:
 - holds dutiable property on trust for the discretionary trustor
 - has an indirect interest in dutiable property and that interest is held on trust for the discretionary trust.
- Under s.207 of the Duties Act, a relevant acquisition is made if:
 - a person acquires a share interest⁴ in a corporate trustee or relevant corporation⁵ for a corporate trusteeand
 - the acquisition is part of an arrangement under which any person obtains, directly or indirectly, a benefit relating to the property held by the corporate trustee on trust.

¹ Section 205 of the Duties Act

² See schedule 6 of the Duties Act.

³ See schedule 6 of the Duties Act.

⁴ Defined in s.208 of the Duties Act

⁵ Defined in s.211 of the Duties Act

4. The dutiable value of a relevant acquisition is determined under Chapter 3, Part 2, Division 5 of the Duties Act.⁶
5. Under s.228 of the Duties Act, corporate trustee duty imposed on a relevant acquisition must be reduced by the amount of transfer duty paid or payable if:
 - (a) a person makes a trust acquisition⁷ for which transfer duty is paid or payable
 - (b) the acquisition is a relevant acquisition.
6. This public ruling clarifies the meaning of 'the acquisition' as it appears in s.228(1)(b) and outlines the circumstances where s.228 of the Duties Act will apply.

Ruling and explanation

7. Section 228 of the Duties Act applies when a person makes a trust acquisition in a discretionary trust for which transfer duty is paid or payable and also makes a relevant acquisition by acquiring a share interest in the corporate trustee of the trust or relevant corporation for the corporate trustee.
8. The acquisitions described in s.228 of the Duties Act as a trust acquisition under subsection (1)(a) and a relevant acquisition under subsection (1)(b) are separate and distinct transactions.
9. A trust acquisition occurs through the acquisition of a trust interest⁸, and a relevant acquisition occurs through the acquisition of a share interest.
10. It is necessary for both a trust acquisition and a relevant acquisition to be made by the same person, and to occur as part of the one arrangement in order for s.228 of the Duties Act to apply.

Example 1

ABC Pty Ltd is the corporate trustee of the ABC Investment Trust, a discretionary trust that holds dutiable property. The shareholders of ABC Pty Ltd are X and Y, each holding one share.

Under the terms of the ABC Investment Trust, X, Y and Z are all discretionary objects with X and Y also being takers in default.

A deed of variation of trust is executed removing Y as a beneficiary of the ABC Investment Trust. Consequently, X makes a trust acquisition by acquiring a trust interest in the ABC Investment Trust for which X pays transfer duty.

As part of the same arrangement, Y transfers their share in ABC Pty Ltd to X. Consequently X also makes a relevant acquisition by acquiring a share interest in and control of ABC Pty Ltd.

Corporate trustee duty imposed on the relevant acquisition in ABC Pty Ltd that is payable by X will be reduced by the amount of transfer duty paid by X for the trust acquisition in the ABC Investment Trust.

⁶ Refer to ss.221–223 of the Duties Act.

⁷ Defined under s.55 of the Duties Act

⁸ Defined under ss.57 and 59 of the Duties Act

Example 2

Same facts as Example 1, except that instead of X making the relevant acquisition, X's wholly owned company X Pty Ltd makes the relevant acquisition.

Corporate trustee duty imposed on the relevant acquisition in ABC Pty Ltd that is payable by X Pty Ltd will not be reduced by the amount of transfer duty paid by X for the trust acquisition in the ABC Investment Trust because the acquisitions were not made by the same person.

Date of effect

11. This public ruling takes effect from the date of issue.

Elizabeth Goli
Commissioner of State Revenue
Date of issue: 30 May 2017

References

Public Ruling	Issued	Dates of effect	
		From	To
DA228.1.1	30 May 2017	30 May 2017	Current