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Practice Direction Duties Act:

NOMINEE AGREEMENTS—UNDER AN AGENCY RELATIONSHIP

A practice direction, 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 practice direction, the change in the law overrides the practice direction—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 direction is about

1. The purpose of this practice direction is to explain what is required for the Commissioner to be satisfied under s.22(3) of the *Duties Act 2001* (Duties Act) that a purchaser was acting as an agent for a principal when entering into an agreement for the transfer of dutiable property.
2. Section 22(3) of the Duties Act states that no transfer duty is imposed on the agency transfer or the trust acquisition or trust surrender by the principal because of the agreement or agency transfer if the Commissioner is satisfied all the following apply:
 - (a) a person (the agent) is appointed in writing as an agent for another person (the principal)
 - (b) under the appointment, the agent enters into a dutiable transaction that is an agreement for the transfer of dutiable property from a person (the original transferor) to the agent on behalf of the principal (the agreement)
 - (c) the principal provided all the consideration, including any deposit paid
 - (d) transfer duty imposed on the agreement is paid
 - (e) the dutiable property is later transferred to the principal by the original transferor or the agent (the agency transfer).
3. Section 22(4) of the Duties Act provides that for paragraph 2(a) above, the Commissioner must not be satisfied the person was properly appointed as agent unless the original instrument of appointment is lodged.

Direction and explanation

4. When determining whether s.22(3) of the Duties Act applies, the Commissioner is required to consider all the relevant facts of each case.
5. In considering s.22(3) of the Duties Act, the Commissioner requires the following:
 - (a) a statutory declaration from the principal declaring
 - (i) the principal provided all purchase monies, including any deposit paid
 - (ii) when the agent signed the agreement to acquire the property, the agent was acting for the principal under a current written authority
 - (b) a statutory declaration from the agent declaring
 - (i) the agent did not provide any of the purchase monies, including any deposit paid
 - (ii) when signing the agreement to acquire the property, the agent was acting for the principal under a current written authority
 - (c) a copy of the written authority witnessing the agency relationship
 - (d) a written outline of all other relevant facts and circumstances that clarify the nature of the agency relationship.

Date of effect

6. This practice direction takes effect from 8 April 2024.

Simon McKee
 Commissioner of State Revenue
 Date of issue: 3 April 2024

References

Practice Direction	Issued	Dates of effect	
		From	To
DA022.1.1	3 April 2024	8 April 2024	Current
Supersedes Public Ruling DA022.1.1	24 February 2009	24 February 2009	7 April 2024