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Practice Direction Duties Act:

CONCESSION FOR HOMES AND FIRST HOMES—IN SPECIE DISTRIBUTIONS OF RESIDENTIAL LAND

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. This practice direction sets out when the concessions available to homes will apply to *in specie*¹ distributions of residential land from the trustee(s) of a trust to the beneficiaries of the trust where the distribution is not otherwise eligible for an exemption under the *Duties Act 2001* (Duties Act).
2. Under Chapter 2 Part 1 of the Duties Act, transfer duty is imposed on dutiable transactions.
3. The types of dutiable transactions include:
 - (a) a transfer of dutiable property
 - (b) an agreement for the transfer of dutiable property
 - (c) a vesting of dutiable property
 - (i) by, or expressly authorised by, statute law of this or another jurisdiction, whether inside or outside Australia
 - (ii) by a court order, of this or another jurisdiction, whether inside or outside Australia
 - (d) an acquisition of a new right on its creation, grant or issue
 - (e) the creation or termination of a trust of dutiable property.²

¹ *In specie* is a phrase describing the distribution of an asset in its actual or present form, rather than selling it and distributing the cash proceeds.

² See s.9 of the Duties Act.

4. Under s.54 of the Duties Act, a trust of dutiable property is terminated if a person, having held the property as trustee, starts to hold the property other than as trustee.
5. Chapter 2 Part 9 of the Duties Act provides concessions on the transfer duty payable for a dutiable transaction that is one of the following (each a relevant transaction)³:
 - (a) the transfer, or agreement for the transfer, of a home, first home other than a new home, first and new home, or of vacant land on which a first home is to be constructed
 - (b) the acquisition—on its creation, grant or issue—of a new right that is a lease
 - (i) of residential land on which a home, first home other than a new home, or first and new home is constructed, or of vacant land on which a first home is to be constructed
and
 - (ii) for which a premium, fine or other consideration is payable
 - (c) the vesting—under section 9(1)(d) of the Duties Act—of a home, first home other than a new home, first and new home, or of vacant land on which a first home is to be constructed.
6. Under the Duties Act, a termination of a trust is not a relevant transaction to which the concessions for a home, first home other than new home, first and new home and vacant land on which a first home is to be constructed (home concessions) apply.

Direction and explanation

7. If the trustees of a trust are natural persons who are also the beneficiaries of the trust, an *in specie* distribution of residential land from the trustees to the beneficiaries will be assessed as a termination of a trust of dutiable property. This is because the persons, having held the residential land as trustees, then start to hold the property other than as trustees. As a termination of a trust of dutiable property does not involve the creation of new rights or a change in the legal ownership of property, it cannot qualify as a relevant transaction to which the home concessions apply.

Example

Sam Jones and Kim Jones establish a self-managed superannuation fund known as the Jones Family Superannuation Fund. Sam and Kim are both the trustees and beneficiaries of the trust fund.

Sam and Kim as trustees of the Jones Family Superannuation Fund purchase residential land to be used as an investment property for their retirement. On retirement, Sam and Kim decide to occupy the residential land held by the fund as their principal place of residence. In order to achieve this, Sam and Kim take a lump sum from the Jones Family Superannuation Fund in the form of an *in specie* distribution of the residential land.

Sam and Kim as trustees of the Jones Family Superannuation Fund complete a Queensland Titles Registry Form 1 Transfer of the residential land from themselves as trustees of the fund to themselves as joint tenants in their own right. The transfer of the land is assessed as a termination of a trust of

³ Section 85 of the Duties Act

dutiable property under the Duties Act because Sam and Kim, having held the property as trustees, start to hold the property other than as trustees.

The termination of a trust of dutiable property is ineligible for the home concessions.

8. If the trustees of a trust are not also beneficiaries of the trust, an *in specie* distribution of residential land from the trustees to the beneficiaries will generally be assessed as a transfer or an agreement for the transfer of dutiable property. This is because the transaction involves a change in legal ownership of the property from the persons acting as trustees to the beneficiaries. The home concessions may be available subject to conditions.

Date of effect

9. This practice direction takes effect from the date of issue.

Simon McKee
Commissioner of State Revenue
Date of issue: 1 May 2025

References

Practice direction	Issued	Dates of effect	
		From	To
DA085.2.1	1 May 2025	1 May 2025	Current
Supersedes Public Ruling DA085.3.1	13 March 2018	13 March 2018	30 April 2025