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Public Ruling Duties Act:

CONCESSION FOR HOMES AND FIRST HOMES – RESIDENTIAL PURPOSES

A Public Ruling, when issued, is the published view of 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 2, Part 9 of the *Duties Act 2001* (the Duties Act) provides for concessions for transfer duty for a dutiable transaction that is either of the following (each a relevant transaction)—
 - the transfer, or agreement for the transfer, of a home or first home, or land on which a first home is to be constructed
 - the acquisition, on its creation, grant or issue, of a new right that is a lease—
 - of residential land on which a home or first home is constructed or of vacant land on which a first home is to be constructed and
 - for which a premium, fine or other consideration is payable.¹
- In relation to a relevant transaction involving the acquisition of residential land, or interest in residential land, a residence is a person's home if the person's occupation date² for the residence is within one year after the person's transfer date³ for the residential land.⁴
- In relation to a relevant transaction involving the acquisition of vacant land, or interest in vacant land, on which a first home is to be constructed, a residence that is to be constructed on vacant land⁵ is a person's first home if, among other things, the person's occupation date for the residence is within two years after the person's transfer date for the vacant land.⁶

¹ Section 85 of the Duties Act. The transfer duty home concession provisions (Chapter 2 Part 9 and Part 14 Division 1 of the Duties Act) were extended, from 1 December 2003, to include the acquisition of a new right that is a lease of residential land where the lessee is required to pay a premium, fine or other consideration: s.614 of the Duties Act.

² Sections 88 and 95A(2) of the Duties Act

³ Defined in s.89 of the Duties Act

⁴ Section 86(1) of the Duties Act

⁵ Defined in s.86C of the Duties Act

⁶ Section 86B of the Duties Act

4. Section 87 of the Duties Act defines a residence as a building, or part of a building, that is:
 - (a) fixed to land and
 - (b) designed, or approved by a local government, for human habitation by a single family unit and
 - (c) used for residential purposes.
5. Section 86A of the Duties Act defines residential land to be land, or part of the land, on which a residence is constructed, and includes the curtilage attributable to the residence if the curtilage is used for residential purposes.
6. This Public Ruling clarifies the term 'residential purposes'.

Ruling and explanation

7. To be eligible for the home or first home concessions in relation to a relevant transaction involving the acquisition of residential land, the residence and the surrounding land (curtilage) needs to be used for residential purposes.
8. This imposes a positive obligation on the transferees or the lessees that the building and surrounding land is actually used for a purpose based on or connected with the home. That is, the home or first home must be 'lived in' and the land surrounding the home must be used for normal home living.
9. If part of the residence or surrounding land is not used for residential purposes, (for example if a business, or other income producing activity, is being conducted on the property) then only the proportion of the land that is used for residential purposes will attract the concession.

Example 1

A purchases property consisting of a general store and a home. The general store is worth \$30,000 and the home is worth \$50,000.

A will only be entitled to the concession on \$50,000.

Example 2

B purchases land and premises with an area of 15,000m². 6,000m² of the property contains the residence and a fenced yard. The other 9,000m² contains an area for small crop farming and sheds for business use. The property is valued at \$250,000. The house and the 6,000m² of land is valued at \$180,000 and the other 9,000m² containing the area for small crop farming and sheds for business use is valued at \$70,000.

B will only be entitled to the concession on \$180,000.

Example 3

C purchases a property with an area of 10,000m². The house, gardens, garden sheds, swimming pool and tennis court occupies 2,500m². The other 7,500m² is vacant land used by the family for keeping their horses.

The property is valued at \$200,000. The house and the 2,500m² of land is valued at \$130,000 and the other 7,500m² of vacant land is valued at \$70,000.

As the curtilage is used as part of the ordinary enjoyment of the land for residential purposes, C will be entitled to the concession on \$200,000.

10. Whether or not an area of the residence used as a home office will be considered as being used for residential purposes will depend on the nature of the use. This is a question of fact which must be determined with regard to the individual circumstances of each case.
11. Where the nature of the use indicates that the particular area has the character of a place of business the concession will not be allowed in respect of that area.
12. The following factors may be relevant in determining whether or not an area has the character of a place of business:
 - (a) the area is clearly identifiable as a place of business
 - (b) the area is not readily suitable or adaptable for use for private or domestic purposes in association with the home generally
 - (c) the area is used exclusively or almost exclusively for carrying on a business or
 - (d) the area is used regularly for visits by clients or customers.

Example 4

D acquires a three-bedroom home. D runs a business from the home and will utilise one of the rooms for this purpose. D acquired the property for \$150,000. A valuer has valued the room at \$20,000.

D will only be entitled to the concession on \$130,000.

This can be contrasted with the circumstance where the transferee will maintain an office or study as a matter of convenience (i.e. so that he or she can carry out work at home which would otherwise be done at his or her regular place of business or employment). In this case the home office will attract the concession.

Example 5

E purchases a four-bedroom home. As E works from home three days per week, one of the bedrooms will be used as a home office; however, no business is being conducted on the property. E acquired the property for \$220,000.

E will be entitled to the concession on \$220,000.

Date of effect

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

David Smith
Commissioner of State Revenue
Date of Issue 16 April 2010

References

Public Ruling	Issued	Dates of effect	
		From	To
DA087.1.2	16 April 2010	16 April 2010	31 July 2011
DA087.1.1	24 February 2009	24 February 2009	15 April 2010
Supersedes Revenue Ruling DA 1.3	22 January 2009	22 January 2009	23 February 2009