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Public Ruling Duties Act:

EXTENSION OF TIME TO LODGE CERTAIN AGREEMENTS TRANSFERRING DUTIABLE 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. The purpose of this Public Ruling is to explain when the Commissioner may grant an extension of time to lodge an agreement for the transfer of dutiable property¹ (agreement), in particular circumstances.
2. Section 19(3) of the *Duties Act 2001* (the Duties Act) provides that parties to an agreement must lodge the agreement within 30 days after the liability arises, being the time the agreement is made.²
3. A person who fails to comply with s.19(3) of the Duties Act commits an offence and may be liable to unpaid tax interest and penalty tax under the *Taxation Administration Act 2001* (the Administration Act).
4. Section 151 of the Administration Act provides the Commissioner with the discretion to extend the date for lodgement of an agreement.

¹ Section 9(1)(b) of the Duties Act

² Section 16 and Schedule 2 of the Duties Act

Ruling and explanation

5. The following details the Commissioner's practice in determining whether an extension of time to lodge an agreement should be granted for:
 - (a) certain conditional agreements, or
 - (b) relevant transfer agreements.³
6. For the removal of doubt, an extension for lodgement of a relevant transfer agreement and an extension for lodgement of a conditional agreement will only be considered as alternatives for exercise of the Commissioner's discretion, and not cumulatively. Should a party apply for both extensions and their circumstances make them eligible for both extensions, in determining how to exercise the discretion, the Commissioner will take into account which extension would provide the latest lodgement date to the taxpayer.

Conditional agreements

Considerations for extension of time

7. Subject to other matters mentioned in this Public Ruling, an extension of time for lodgement of an agreement will generally be granted where:
 - (a) completion of the agreement is conditional on an event and
 - (b) the parties to the agreement do not have control over the event except only that they must use their best endeavours to secure the event happening.
8. Where an extension of time to lodge an agreement is requested and the agreement contains a condition which is part of an arrangement to defer the payment of transfer duty, an extension of time will not be granted.
9. Examples of conditions to an agreement which may result in an extension of time being granted are:
 - (a) a party to the agreement obtaining from the Australian Taxation Office a satisfactory private taxation ruling as to the taxation consequences of the transaction
 - (b) approval of finance satisfactory to the purchaser
 - (c) subdivisional or rezoning approval
 - (d) a purchaser obtaining a satisfactory building inspection report from a third party
 - (e) a vendor obtaining the Minister's consent to transfer a lease to the purchaser in respect of leasehold land
 - (f) the granting of a liquor licence
 - (g) the vendor of a shopping centre obtaining renewal of existing leases

³ Defined in s.156D of the Duties Act.

- (h) the sale being subject to sale of another property
 - (i) registration of a plan of subdivision ('off the plan' sales)
 - (j) a condition designed to meet the requirements of the *Foreign Acquisitions and Takeovers Act 1975* (Cwlth)
 - (k) a purchaser carrying out due diligence enquiries where the outcome of those inquiries is to be measured against objective criteria set out in the agreement. A general provision that the agreement is 'subject to due diligence' will not suffice.
10. Examples of conditions to an agreement which may not result in an extension of time being granted are:
- (a) Completion is made conditional on payment of the purchase money.
 - (b) The vendor is to deliver records or information to the purchaser.
 - (c) The property is to be leased back to the vendor.
 - (d) The payment of money to discharge an outstanding debt on the property.
 - (e) A condition which depends for its fulfilment solely on the purchaser or the vendor being satisfied of a particular matter or thing (e.g. purchaser being satisfied of the condition of a dwelling or satisfied as to finishes).
 - (f) A condition that the purchaser and vendor complete another agreement or transaction between themselves where neither agreement contains other conditions which give rise to an extension of the time for lodgement in accordance with this Public Ruling.

Time for lodgement if extended

11. Where an exercise of the Commissioner's discretion to extend the time for lodgement of a conditional agreement under paragraphs 7 to 10 is sought, a conditional agreement must be lodged with the Commissioner for assessment of transfer duty within 30 days of the earliest of the following dates:
- (a) the date upon which all the relevant conditions to the agreement are satisfied
 - (b) subject to paragraph 15, where the agreement is cancelled due to a relevant condition of the agreement not being satisfied, the date that the agreement was cancelled
 - (c) the date specified under a written notice by the Commissioner to lodge the agreement.

How to apply

12. Upon the relevant condition to an agreement being satisfied, the following documents must be lodged with the agreement in order for an application for an extension of time to be considered:
- (a) a request for the time of lodgement to be extended including reasons for the late lodgement
 - (b) documents from a third party evidencing when the condition(s) were met. Where a condition relates to obtaining finance, the Commissioner will accept a copy of the financier's letter of approval or written advice from the purchaser's solicitor of the date of the financier's letter of approval.

13. The time at which the condition is satisfied is determined having regard to the terms of the agreement. For example, pursuant to Clause 3 (Finance Clause) of the standard Real Estate Institute of Queensland Contract for Houses and Residential Land (Tenth Edition) (REIQ contract), the time at which the condition is satisfied is the time when the purchaser receives finance approval from that person's financier rather than the time when the purchaser's solicitor gives notice to the vendor that the finance has been approved.
14. Finance approval is commonly given subject to mortgage insurance being effected or acceptance by the borrowers of the terms and conditions of the loan. This conditional approval is sufficient to make an agreement unconditional as to finance pursuant to the REIQ contract. The 30-day period during which the agreement can be lodged without penalty commences two days after the date of the letter of approval from the financier.

Cancellation of a conditional agreement

15. Where an agreement is cancelled due to a condition of that agreement not being satisfied, the agreement is exempt from transfer duty and is not to be lodged, unless:
 - (a) the Commissioner requires, by notice in writing, that the agreement be lodged or
 - (b) the agreement remains chargeable with transfer duty as a 'resale agreement' under s.115(1)(d) of the Duties Act.

Relevant transfer agreement for electronic conveyancing

Considerations for extension of time

16. Subject to other matters mentioned in this Public Ruling, an extension of time for lodgement of an agreement will be granted for a relevant transfer agreement within the meaning of s.156D of the Duties Act, provided the relevant transfer agreement will be followed by a transfer of dutiable property (transfer):
 - (a) that consists only of relevant residential land and any chattel incidental to the land, and
 - (b) that is to the transferee under a relevant transfer agreement and for the same consideration as provided for under the agreement.
17. Provided subparagraphs 16(a) and 16(b) apply to the transfer, the Commissioner may exercise the discretion to extend the time for lodgement of the relevant transfer agreement under paragraph 16, whether or not the transfer will occur through an Electronic Lodgment Network⁴.

⁴ See definition of "ELN" in the Dictionary in Schedule 6 of the Duties Act.

18. A relevant transfer agreement is defined in s.156D of the Duties Act to mean an agreement for the transfer of dutiable property:
- (a) that consists only of relevant residential land⁵ and any chattel incidental to the land, and
 - (b) on which transfer duty is imposed, and
 - (c) that is not eligible for a concession, exemption or other reduction of transfer duty, other than a concession under Chapter 2, Part 9 of the Duties Act, and
 - (d) that is either:
 - (i) not aggregated under s.30 of the Duties Act with any other dutiable transaction, or
 - (ii) is aggregated under s.30 of the Duties Act only with another agreement for the transfer of dutiable property that complies with paragraphs (a) to (c) above.

Time for lodgement if extended

19. Where an exercise of the Commissioner's discretion to extend the time for lodgement of a relevant transfer agreement under paragraphs 16-18 is sought, a relevant transfer agreement must be lodged with the Commissioner for assessment of transfer duty within 60 days after the liability on the agreement for transfer arises.

How to apply

20. In order for an application for an extension of time to be considered, a request for the time of lodgement to be extended, including reasons for the late lodgement, must be made when lodging the relevant transfer agreement.

Self assessors

21. This Public Ruling also applies to self assessors who are approved to either:
- (a) account for transfer duty by returns or
 - (b) lodge transaction statements
- and remit unpaid tax interest under Chapter 12, Part 4 of the Duties Act.
22. Where a self assessor lodges a transaction statement in relation to a conditional agreement, the transaction statement is to be lodged no later than the date by which the agreement must be lodged under paragraph 11 if the discretion is exercised. Where a self assessor lodges a transaction statement in relation to a relevant transfer agreement, the transaction statement is to be lodged no later than the date by which the agreement must be lodged under paragraph 19 if the discretion is exercised.

⁵ Defined in s.156D of the Duties Act.

Lodgement before end of extension period

23. Where:

- (a) a conditional agreement is lodged while the agreement is still conditional, or
 - (b) a relevant transfer agreement is lodged before the end of the period referred to in paragraph 19 above,
- an assessment will be issued and no extension of time for payment will be granted.

Unpaid tax interest

24. Unpaid tax interest will not accrue under s.54 of the Administration Act⁶ solely because lodgement occurs later than the period specified in s.19 of the Duties Act provided:

- (a) the Commissioner has exercised a discretion to extend the time for lodgement under this Public Ruling, and
- (b) lodgement occurs within the time required under the exercise of discretion.

Date of effect

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

Elizabeth Goli
Commissioner of State Revenue
Date of issue: 11 December 2015

References

Public Ruling	Issued	Dates of effect	
		From	To
DA019.1.3	11 December 2015	11 December 2015	30 March 2017
DA019.1.2	3 July 2009	3 July 2009	10 December 2015
DA019.1.1	24 February 2009	24 February 2009	2 July 2009
Supersedes Revenue Ruling DA12.1	1 March 2002	1 March 2002	23 February 2009

⁶ An extension under this Public Ruling will adjust the start date for the purposes of calculating unpaid tax interest under s.54(4) of the Administration Act.