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Public Ruling Duties Act:

MERGERS, ACQUISITIONS AND TRANSFERS OF ASSETS OF FINANCIAL INSTITUTIONS

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. Mergers, acquisitions and transfers of assets of financial institutions (business transfer transactions) are potentially liable to transfer duty under Chapter 2 of the *Duties Act 2001* (the Duties Act) in respect of the transfers of assets such as land, goodwill, mortgages and other loan securities.
2. In recognition of the fact that special considerations may arise in these cases, an administrative arrangement has been approved to provide ex gratia relief from transfer duty on certain dutiable transactions arising from business transfer transactions, subject to certain conditions.
3. For the purposes of this Public Ruling, a financial institution means an authorised deposit-taking institution within the meaning of s.5 of the *Banking Act 1959* (Cwlth).
4. This Public Ruling outlines the terms of the administrative arrangement.

Ruling and explanation

5. The administrative arrangement, as set out in paragraph 7 of this Public Ruling, applies where
 - (a) all the parties to the business transfer transaction are financial institutions and
 - (b) the business transfer transaction is made under and in accordance with the *Financial Sector (Business Transfer and Group Restructure) Act 1999* (Cwlth) (the Business Transfer Act).

DA000.8.1

6. To remove doubt, the administrative arrangement applies to mergers, acquisition or transfers of either the whole or part of the assets of a financial institution.
7. The administrative arrangement provides for concessional duty treatment in relation to transfers, or agreements for the transfer, of specific types of property arising from a business transfer transaction. The duty treatment for the specific property type is shown in the table below.

Item	Property transferred	Duty treatment
1	(a) A loan secured by a mortgage solely over land in Queensland (b) A loan secured by another mortgage, that is incidental to, and transferred in connection with, a mortgage referred to in subparagraph (a) (a primary mortgage) if the primary mortgage is the principal security held by the transferor	\$5 ¹
2	A loan secured by a mortgage over property other than a loan covered by Item 1	No duty
3	An unsecured loan	No duty
4	Liquid assets required to be maintained as such to meet regulatory requirements, if the transfer of the assets is liable to transfer duty under the Duties Act.	No duty

8. Transfers, or agreements for the transfer, of other dutiable property (such as land in Queensland and goodwill) arising from the business transfer transaction will be assessed to transfer duty at the relevant rate set out in Schedule 3 of the Duties Act.²

Information required

9. Applications for ex gratia relief are to include all documentation required by the Commissioner under the Duties Act and *Taxation Administration Act 2001* to assess the transaction.
10. Without limiting paragraph 9, the following information is required to be lodged—
- copies of any agreements/deeds relating to the transfer of the property or where these have not been prepared an approved form D2.3 – *Transfer Duty Statement*
 - copy of transfer documents
 - certified copies of all relevant Australian Prudential Regulatory Authority (APRA) approvals
 - a copy of any statement prepared in accordance with ss.19 or 20(1) of the Business Transfer Act, where prepared

¹ As per s.24(1) of the Duties Act.

² Section 30 of the Duties Act will have application.

- (e) details of all dutiable property, including valuations where necessary, being transferred as part of the arrangement—
- (i) land in Queensland
 - (ii) transferable site areas
 - (iii) existing rights including but not limited to—
 - number and value of mortgages secured solely over land in Queensland
 - number and value of other mortgages, that are incidental to, and transferred in connection with, a mortgage secured solely over land in Queensland (a primary mortgage) if the primary mortgage is the principal security held by the transferor
 - value of loans secured over property in Queensland other than land
 - (iv) Queensland business assets including but not limited to—
 - value of unsecured loans
 - goodwill
 - (v) chattels in Queensland
 - (vi) value and nature of liquidity assets that are dutiable property
- (f) where there has been a transfer of the total business, copies of audited financial statements.

Date of effect

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

David Smith
 Commissioner of State Revenue
 Date of Issue 17 February 2010

References

Public Ruling	Issued	Dates of effect	
		From	To
DA000.8.1	17 February 2010	17 February 2010	18 January 2017