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Public Ruling Duties Act:

PRIVATE RULINGS ON UNEXECUTED INSTRUMENTS OR PROPOSED TRANSACTIONS

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, subsidy or exemption, as the case may be, in accordance with the law.

What this Ruling is about

1. The *Duties Act 2001* (the Duties Act) contemplates that a person may apply for a ruling (statutory ruling), in certain circumstances, in relation to the duty consequences of a proposed transaction.¹
2. In addition to statutory rulings, in order to provide certainty and transparency, the Commissioner has developed a private ruling system in respect of the application of the Duties Act to unexecuted instruments or proposed transactions.
3. This Public Ruling sets out the terms on which the Commissioner will provide a private ruling to a person liable for duty under the Duties Act (client).

Ruling and explanation

Circumstances where a private ruling will be issued

4. A private ruling on the dutiability of an unexecuted instrument or proposed transaction will be provided in any of the following circumstances:
 - (a) Subject to paragraph 5, where the amount of duty payable depends on whether or not the Commissioner will exercise a discretion. The Commissioner recognises that the Commissioner is required to exercise a discretion where a section utilises the word 'satisfied' such that the section requires that the Commissioner must be 'satisfied' as to something.

¹ For example, s.410 of the Duties Act

- (b) On drafts of standard form documents which will be used widely by an organisation where the organisation is to be a party to those documents.
 - (c) On issues relating to Chapter 2, Part 8, Division 7 of the Duties Act being matters pertaining to dutiable transactions relating to public unit trusts such as an entity's status as a public unit trust.
 - (d) In exceptional circumstances, at the Commissioner's discretion, where the Commissioner is satisfied that the transaction is significant to the State economy and involves issues on which a private ruling is required.
5. A private ruling will not be provided where the discretionary power, referred to in paragraph 4(a), relates to whether the Commissioner is satisfied that a particular transaction is not part of an arrangement for the purpose of avoiding duty.²
6. Paragraph 5 does not apply to circumstances where the Commissioner is to be satisfied that there is no avoidance scheme in relation to the transfer duty concession for a first home or the mortgage duty concession for a home mortgage for a first home borrower.

How to obtain a private ruling

7. To obtain a private ruling, a client must lodge the draft instruments, where applicable, and draft statements as prescribed under the Duties Act that represent the proposed transaction, together with a written submission detailing:
- (a) the issue in question
 - (b) all parties involved
 - (c) all relevant facts and
 - (d) the applicant's view as to how the relevant provisions apply to their circumstances, including reasons for and against this view supported by any relevant case law.
8. An application for a private ruling will be refused where, in the Commissioner's opinion, any of the following circumstances apply:
- (a) There is no uncertainty regarding the operation of the law.
 - (b) There is already a public ruling on the matter in question and the issues are adequately addressed in the public ruling.
 - (c) An assessment of duty has been made in relation to the matter.
 - (d) The matter will be decided in the course of a duty audit which commenced before the application for the ruling.
 - (e) A private ruling on the matter has already been given. For example, a client who has received a private ruling will not be allowed to seek continued opinions on redrafted documents relating to the same transaction.
 - (f) The applicant will not be a party to, or a professional adviser for a party to, the proposed instrument or transaction which is the subject of the private ruling.

² For example, s.197(1)(b) of the Duties Act

- (g) The application seeks the Commissioner to evaluate alternatives and advise which option results in the least liability for duty.
9. The Commissioner, in his or her absolute discretion, may refuse to issue a private ruling where any of the following matters apply:
- (a) The Commissioner is satisfied that the application is made for the purposes of avoidance of duty.
 - (b) The application is unsupported by sufficient information to enable a ruling to be made.
 - (c) The application is frivolous or vexatious or the arrangement covered by the request is not seriously contemplated.
 - (d) It would be unreasonable to issue a ruling having regard to the amount of resources it would require, or any other relevant matters.
10. The Commissioner can review the information presented and request further information from the client, or third parties, before issuing a private written ruling on the matter. In no circumstances should a person construe oral advice to be a private ruling.
11. Any decision made by the Commissioner in relation to a private ruling (including whether a ruling will be issued) shall be considered final (subject to the conditions below). The client will have no right to enter into further correspondence or debate the decision made.
12. Upon the making of a private ruling, the client has no right of objection or appeal in respect of the decision evidenced by the private ruling. There are no review rights for failure to issue a private ruling.

Are private rulings binding?

13. A private ruling will not have status of law.
14. The Commissioner will be bound by any private ruling issued to a client provided that:
- (a) the executed instrument/s lodged are identical to drafts previously lodged for adjudication
 - (b) all relevant parties have been fully identified
 - (c) the client has fully disclosed all material facts in the written submission
 - (d) the circumstances to which the ruling is applied are identical to those represented to the Commissioner in the written submission and
 - (e) the client acts, or has acted, in accordance with the ruling.
15. However, even if a client meets the conditions in paragraph 14, the Commissioner may depart from the private ruling given where any of the following apply:
- (a) A subsequent court decision, of any relevant jurisdiction, if applied to the circumstances upon which a private ruling was given, provides for a result that differs from that in the private ruling.
 - (b) There is an amendment to any Commonwealth or Queensland legislation, which if applied to the circumstances upon which a private ruling was given, provides for a result that differs from that in the private ruling.

- (c) A public ruling provides for a result which is different from the private ruling.
16. Situations relevant to paragraph 15(c) usually will arise only in the case where a document is used multiple times over a long period of time or where the transaction envisaged by the private ruling is delayed for a lengthy period. Accordingly, clients should take care to fully inform themselves on the content of the Commissioner's publications in such circumstances.
 17. Where paragraph 15 applies, the ruling will be automatically withdrawn from the date of the court's decision or the date of the amendment or the date of effect of the public ruling. The onus is on the client to be satisfied that the relevant circumstances (ie statute and case law and public rulings) have not changed.
 18. Additionally, the Commissioner will not be bound by a private ruling where a client, or their representative, has failed to provide all material information which ought to have been provided, or has misrepresented information whilst seeking a private ruling. The ruling will be considered never to have had application and accordingly, the withdrawal of the ruling will have both a prospective and retrospective effect. The onus is on the client, or their representative, to provide all material information in the first instance and to monitor legislative amendments, judicial decisions and public rulings.
 19. In all situations, the onus will rest with the client to monitor the continuing validity of the private ruling. That is, the client will have to monitor movements in State and Federal Law both statute and case based. Clients will have to also monitor public rulings issued by the Commissioner subsequent to the date of the private ruling or issued prior to the date of the private ruling and amended after the date of the private ruling.
 20. A private ruling will have application only to the client to whom it is issued and to the factual situation presented. It cannot be relied upon as a precedent by other clients nor can a professional practitioner rely on a private ruling obtained for one client as a precedent for another. The exception to this relates to private rulings made in respect of drafts of standard form documents which will be widely used by an organisation where the organisation is to be a party to those documents.

Lodging the executed instrument/statement

21. Where a private ruling is given and the associated instruments are executed or proposed transactions are performed, the client must lodge the ruling with the associated instruments where applicable and prescribed statements under the Duties Act with the ruling. The client must also confirm that the executed instruments and statements are the same as the unexecuted instruments and statements on which the private ruling was given. If the executed instruments/statements differ to those on which the private ruling was given the client must detail the differences.
22. Where the instruments and statements are lodged for assessment without a disclosure being made of the existence of a private ruling, the Commissioner considers that s.496 of the Duties Act has been breached. Breaching s.496 of the Duties Act is an offence and the person liable for the duty may be prosecuted.

Date of effect

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

David Smith
Commissioner of State Revenue
Date of Issue 24 February 2009

References

| Public Ruling | Issued | Dates of effect | |
|--------------------------------------|------------------|------------------|------------------|
| | | From | To |
| DA000.1.1 | 24 February 2009 | 24 February 2009 | 22 February 2011 |
| Supersedes Revenue Ruling DA 16.5 | 9 November 2005 | 9 November 2005 | 23 February 2009 |