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Public Ruling Duties Act:

CERTAIN UNREGISTERED MANAGED INVESTMENT SCHEMES MAY QUALIFY AS POOLED PUBLIC INVESTMENT UNIT TRUSTS

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

- Chapter 2, Part 8 of the *Duties Act 2001* (the Duties Act) applies to dutiable transactions relating to trusts. However, the Part does not apply to a trust acquisition or trust surrender of a trust interest in a public unit trust, other than a majority trust acquisition in a land holding trust.¹
- A public unit trust is —
 - a listed unit trust
 - a widely held unit trust
 - a wholesale unit trust
 - a pooled public investment unit trust or
 - a declared public unit trust.²
- Subject to conditions, a pooled public investment unit trust is a unit trust that is a registered managed investment scheme or exempt managed investment scheme.³
- The term *exempt managed investment scheme* is defined in the Dictionary in Schedule 6 to the Duties Act. An exempt managed investment scheme is a unit trust that is a managed investment scheme under the *Corporations Act 2001* (Cwlth) (the Corporations Act) that, under the Corporations Act, section 601ED, does not have to be registered because of the issue of units in the trust only to professional investors mentioned in the Corporations Act, section 708(11).

¹ See s.49 of the Duties Act

² Section 68 of the Duties Act

³ Section 75 of the Duties Act

5. Professional investors are defined in section 9 of the Corporations Act and are included as a category of wholesale client under the Act in relation to unregistered managed investment schemes. The categories of wholesale clients relating to unregistered managed investment schemes are set out in sections 761G and 761GA of the Act.
6. On 26 October 2012, an administrative arrangement was approved, pending amendment to the Duties Act, to enable a unit trust that is a managed investment scheme under the Corporations Act that does not have to be registered because of the issue of units in the trust only to wholesale clients under sections 761G and 761GA of the Corporations Act, to qualify as a pooled public investment unit trust where all other relevant conditions are met.
7. This Public Ruling gives effect to the administrative arrangement.

Ruling and explanation

8. Section 75 of the Duties Act defines a pooled public investment unit trust, which includes a reference to an exempt managed investment scheme.
9. From 26 October 2012, the Duties Act will be administered on the basis that an exempt managed investment scheme as defined in the Dictionary in Schedule 6 to the Duties Act means a unit trust that is a managed investment scheme under the Corporations Act that, under the Corporations Act, does not have to be registered because of the issue of units in the trust only to wholesale clients set out in sections 761G and 761GA of the Corporations Act.
10. An exempt managed investment scheme specified in paragraph 9 may qualify as a pooled public investment unit trust if the remaining conditions in section 75 of the Duties Act are satisfied.

Date of effect

11. This Public Ruling takes effect from 26 October 2012

Martin Schwede
Deputy Commissioner
Date of Issue

References

Public Ruling	Issued	Dates of effect	
		From	To
DA075.2.1	Date of Issue	26 October 2012	23 June 2013