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Public Ruling Duties Act:

WAIVING OF ADJUDICATION FEES

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 *Duties Act 2001* (the Duties Act) provides that where:
 - (a) a person lodges an instrument for a decision by the Commissioner as to whether the instrument, or transaction to which it relates, is imposed with duty and
 - (b) the Commissioner decides the instrument or transaction is not imposed with dutythe Commissioner must keep the instrument until the prescribed fee has been paid.¹
2. The amount of the fee (the adjudication fee) is provided in the *Duties Regulation 2002*² and is published on the Office of State Revenue website.
3. The Commissioner may waive payment of the adjudication fee if the Commissioner considers it is appropriate having regard to the type of instrument and the circumstances in which the instrument was lodged.³
4. This Public Ruling clarifies the Commissioner's practice in relation to the waiving of adjudication fees on certain types of instruments.

¹ Section 495(2) and (3) of the Duties Act

² Section 6 of the *Duties Regulation 2002*

³ Section 495(4) of the Duties Act

Ruling and explanation

5. The adjudication fee will be waived in the following circumstances:
 - (a) when instruments are lodged with, or pursuant to, another instrument upon which duty has been, or is to be, paid (for example, a guarantee or a building contract)
 - (b) on any instrument which is not chargeable with duty and is required to be registered or entered in or upon any book or record
 - (c) on an instrument that must, under s.487(1) of the Duties Act, be properly stamped for use in law or equity or for any purpose or if it is to be given as evidence in any legal proceeding, other than a criminal proceeding.
6. It is not generally intended that an adjudication fee will be charged in cases where a person, acting without professional advice, lodges an instrument which is not chargeable with duty. Where this becomes evident to the assessor, the matter is to be referred to a Senior Revenue Officer. Waiver of the fee can only be approved by a Senior Revenue Officer or an officer with the equivalent delegation. This is not authority for all instruments lodged by private persons to have the fee waived and each case is to be considered on its own merit.
7. Section 495(2) of the Duties Act is not a means of obtaining a private ruling on draft instruments. Draft instruments are only to be considered for a ruling if they are within the ambit of Public Ruling DA000.1—*Private Rulings on Unexecuted Instruments or Proposed Transactions*.
8. All adjudications and non-dutiable instruments must proceed through the normal assessing processes as for other instruments.
9. An instrument upon which no duty is chargeable will be stamped by endorsing it with an indication that no duty is payable.⁴
10. An adjudication fee is not payable if an instrument is lodged by a self assessor under the self assessment system.

Date of effect

11. This Public Ruling takes effect from 1 July 2012.

David Smith
Commissioner of State Revenue
Date of Issue 3 July 2012

⁴ Section 492(c) of the Duties Act

References

Public Ruling	Issued	Dates of effect	
		From	To
DA495.1.5	3 July 2012	1 July 2012	2 September 2013
DA495.1.4	20 September 2011	1 July 2011	30 June 2012
DA495.1.3	5 July 2010	1 July 2010	30 June 2011
DA495.1.2	3 July 2009	1 July 2009	30 June 2010
DA495.1.1	24 February 2009	24 February 2009	30 June 2009
Supersedes Practice Direction DA 1.8	2 July 2008	2 July 2008	23 February 2009