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**Public Ruling
Duties Act:**

**REASSESSMENT OF TRANSFER DUTY DUE
TO WITHDRAWAL OF A HOME OR FIRST
HOME CONCESSION**

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. Section 8(2) of the *Duties Act 2001* (the Duties Act) imposes transfer duty on the dutiable value of a dutiable transaction.
2. Section 17(2) of the Duties Act provides that transfer duty is to be paid by the parties to the transaction (taxpayers).
3. Chapter 2, Part 9 of the Duties Act provides a number of concessions for transfer duty on certain dutiable transactions, subject to statutory conditions, to assist taxpayers to acquire their first homes.
4. Sections 153 and 154 of the Duties Act require the Commissioner to reassess transfer duty in certain circumstances.
5. Under s.153 of the Duties Act, transfer duty is reassessed to a partial concession if, other than because of an intervening event¹, the taxpayer disposes of all or part of the land within a year after the occupation date². The partial concession is based on the proportion of the year the taxpayer spent in occupation prior to disposal.
6. Under s.154 of the Duties Act, transfer duty is reassessed in full as if the concession never applied if, other than because of an intervening event:

¹ Defined in Schedule 6 of the Duties Act

² Defined in s.88 of the Duties Act. See ss.86 and 86B of the Duties Act

- (a) the taxpayer's occupation date is not within –
 - (i) 1 year after the transfer date³ for a dutiable transaction related to residential land or
 - (ii) 2 years after the transfer date for a dutiable transaction related to vacant land or
 - (b) the taxpayer disposes⁴ of all or part of the land before their occupation date.
7. Until 31 July 2011, a concessional rate of transfer duty also applied to acquisitions relating to homes that were not first homes.⁵ Where liability for transfer duty arose before the removal of the concessional rate, the pre-amended home concession provisions continue to apply.⁶
8. The purpose of this Public Ruling is to explain the Commissioner's practice in identifying the taxpayer to whom a reassessment under s.153 or s.154 of the Duties Act is issued, where:
- (a) a number of taxpayers have purchased residential land⁷ or vacant land⁸
 - (b) an assessment of transfer duty has been made based on at least one taxpayer being granted a concession under Chapter 2, Part 9 of the Duties Act
 - (c) that assessment has been paid
 - (d) subsequently, at least one of the taxpayers who was granted a concession failed to satisfy the statutory requirements for the concession or was only entitled to retain part of the concession and
 - (e) a requirement for a reassessment under s.153 or s.154 of the Duties Act has resulted.

Ruling and explanation

9. Where an assessment of transfer duty has been paid and a reassessment has been made under s.153 or s.154 of the Duties Act, the Commissioner's practice, in the first instance, is to issue the reassessment and consequently make liable for any additional transfer duty, unpaid tax interest⁹ or penalty tax¹⁰ only those taxpayers whose actions or inactions directly triggered the reassessment.

Example 1 – Reassessment under s.153 of the Duties Act

Mark and Jane are de facto partners and enter into a contract for the purchase of their first home. Mark and Jane are both eligible for the first home transfer duty concession for the transaction and pay the duty assessment accordingly. Mark and Jane both occupy the home within 1 year of the transfer date. However, Mark and Jane separate, and within 3 months of occupation, Mark moves out of the property and transfers his interest to Jane. Jane continues to reside in the property and eventually satisfies the occupancy requirements. A reassessment under s.153 of the Duties Act is issued to Mark, but not Jane.

³ Defined in s.89 of the Duties Act

⁴ Defined in s.154(2) of the Duties Act

⁵ Part 7, Division 3 of the *Community Ambulance Cover Levy Repeal and Other Legislation Amendment Act 2011*.

⁶ Section 628 of the Duties Act

⁷ Section 86A of the Duties Act

⁸ Section 86C of the Duties Act

⁹ Section 54(5) of the *Taxation Administration Act 2001*

¹⁰ Section 58(1)(c) of the *Taxation Administration Act 2001*

Example 2 – Reassessment under s.154 of the Duties Act

Jack and Dennis, two brothers, enter into a contract for the purchase of their first home. Jack and Dennis are both eligible for the first home transfer duty concession for the transaction and pay the duty assessment accordingly. Before occupation of the property, Dennis accepts a job overseas. Dennis never moves into the property and instead sells his share in the property to his parents. Jack moves into the home and subsequently satisfies the occupancy requirements. A reassessment under s.154 of the Duties Act is issued to Dennis, but not Jack.

Date of effect

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

David Smith
 Commissioner of State Revenue
 Date of Issue 12 September 2011

References

Public Ruling	Issued	Dates of effect	
		From	To
DA000.11.1	12 September 2011	12 September 2011	30 June 2012
Supersedes Revenue Ruling DA 23.2	2 January 2007	1 January 2007	23 February 2009