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Public Ruling Duties Act:

TRANSFER DUTY—RELIEF FOR CERTAIN VACANT LAND CONCESSION BENEFICIARIES

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 9 of the *Duties Act 2001* (the Duties Act) provides concessions for transfer duty for a dutiable transaction that is either of the following (each a relevant transaction):
 - the transfer, or agreement for the transfer, of a home, first home or land on which a first home is to be constructed or
 - the acquisition, on its creation, grant or issue, of a new right that is a lease—
 - of residential land on which a home or first home is constructed or of vacant land on which a first home is to be constructed and
 - for which a premium, fine or other consideration is payable (a home or vacant land lease) or
 - the vesting, under s.9(1)(d) of the Duties Act, of a home, first home or of vacant land on which a first home is to be constructed.¹
- A residence is a person's first home if the person's occupation date for the residence is within one year after the person's transfer date for the residential land.²
- A home is a person's first home if, before acquiring the home:
 - the person did not hold, and never before held, an interest in other residential land³ in Queensland or elsewhere other than—
 - as trustee for another person or

¹ Section 85 of the Duties Act

² Section 86(1) of the Duties Act

³ Section 86A of the Duties Act defines 'residential land' to be land, or the part of land, on which a residence is constructed, and includes the curtilage attributable to the residence if the curtilage is used for residential purposes.

- (ii) as lessee or
 - (iii) as the holder of a security interest and
 - (b) the person was not, and had never been, a vacant land concession beneficiary⁴ in relation to land other than the residential land on which the residence is constructed.⁵
4. A residence that is to be constructed on vacant land⁶ is a person's first home if:
- (a) the person's occupation date for the residence is within two years after the person's transfer date for the vacant land and
 - (b) before acquiring the vacant land—
 - (i) the person did not hold, and never before held, an interest in residential land in Queensland or elsewhere other than—
 - (A) as trustee for another person or
 - (B) as lessee or
 - (C) as the holder of a security interest and
 - (ii) the person was not, and had never been, a vacant land concession beneficiary in relation to land other than the vacant land on which the residence is to be constructed.⁷
5. Section 154 of the Duties Act provides that a reassessment to remove the first home vacant land concession will occur in the following circumstances, other than because of an intervening event:⁸
- (a) the transferee, lessee or vested person, before the occupation date, disposes of the land by—
 - (i) in the case of a home or vacant land lease—the lessee surrendering the lease or
 - (ii) transferring, leasing or otherwise granting exclusive possession of, part or all of the land to another person or
 - (b) the transferee, lessee or vested person fails to take up occupation within two years after the transfer date of the vacant land on which a residence is to be constructed.
6. A person is a vacant land concession beneficiary in relation to particular land if:
- (a) the person was—
 - (i) a transferee under a dutiable transaction that was the transfer, or agreement for the transfer of the land or
 - (ii) a lessee under a dutiable transaction that was the acquisition on its creation, grant or issue of a new right that is a lease of land for which a premium, fine or other consideration is payable or

⁴ Defined in s.86D of the Duties Act

⁵ Section 86(2) of the Duties Act

⁶ Section 86C of the Duties Act defines that land is 'vacant land' if a residence is to be constructed on the land and there was no building or part of a building on the land when it was acquired.

⁷ Section 86B of the Duties Act. Paragraph 3(b)(i)(B) does not apply to the interest in land of a lessee of a lease of residential land for which a premium, fine or other consideration is payable.

⁸ Defined in the Dictionary in Schedule 6 of the Duties Act

- (iii) a vested person for the land under a dutiable transaction that was the vesting by statute law of land and
 - (b) a concession under Chapter 2 Part 9 applied to the transaction and
 - (c) at the time of the transaction, the land was vacant land.⁹
- 7. A person is taken to be a vacant land concession beneficiary even if the transaction they received the first home vacant land concession on has been reassessed under s.154 of the Duties Act.¹⁰
- 8. As a result, where a person obtains the vacant land concession but fails to build a home on the land within the required time frame or disposes of the land before building a home, transfer duty must be reassessed at the non-concessional rate. The relevant provisions operate so that the person will be ineligible for the first home concession or the vacant land concession on a subsequent purchase despite never having owned a home. However, it is intended that these concessions should be available where a person has never held an interest in land containing a residence.
- 9. Ex gratia relief from transfer duty will be considered, on a case-by-case basis, to extend the benefit of the first home concession and vacant land concession to transactions where the transferee, lessee or vested person previously obtained a vacant land concession and the transaction was reassessed because no home was built on the land within the required timeframe or the land was disposed of prior to the construction of a home.
- 10. This Public Ruling sets out the circumstances under which ex gratia relief may be provided.

Ruling and explanation

- 11. Ex gratia relief to extend the benefit of the first home concession and the first home vacant land concession may apply in the following circumstances:
 - (a) transfer duty was assessed for a dutiable transaction on the basis that the first home vacant land concession applied
 - (b) transfer duty was subsequently reassessed for the transaction at the non-concessional rate of duty under s.154 of the Duties Act because no home was constructed on the land within the required time frame or the land was disposed of without a home being constructed on it
 - (c) the land, while owned by the transferee under the transaction, remained vacant
 - (d) all duty assessed and reassessed for the transaction has been paid
 - (e) the transferee under the transaction subsequently acquires a home or vacant land and would be entitled to the first home concession or the first home vacant land concession for this later transaction but for the fact that the first home vacant land concession applied to the earlier transaction.

⁹ Section 86D(1) of the Duties Act

¹⁰ Section 86D(2) of the Duties Act

12. To make a claim for ex gratia relief, the transferee must complete the approved form¹¹ to claim the appropriate concession and make a declaration to be bound by the conditions of the concession including declaring to notify the Commissioner in the approved form¹² if a notifiable event¹³ occurs and acknowledging that, if they fail to comply with the conditions of the concession¹⁴, the transaction may be reassessed, the concession amount may be required to be repaid in full or in part and that penalty tax¹⁵ and interest¹⁶ may apply.
13. The relevant documents, together with a statement providing details of the vacant land concession that was previously claimed, must be lodged with the Commissioner of State Revenue to progress the ex gratia request.

Date of effect

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

David Smith
Commissioner of State Revenue
Date of issue: 24 June 2013

References

Public Ruling	Issued	Dates of effect	
		From	To
DA085.2.2	24 June 2013	24 June 2013	11 December 2016
DA085.2.1	2 August 2012	2 August 2012	23 June 2013

¹¹ The current approved forms under s.95 of the Duties Act are the *Form OSR—D2.1—Claim for home or first home transfer duty concession* and the *Form OSR—D2.7—Claim for transfer duty concession first home vacant land*.

¹² The current approved form under s.155 of the Duties Act is the *Form OSR—D2.4—Notice for reassessment of transfer duty home and vacant land concessions*.

¹³ Under s.155 of the Duties Act, notifiable event means transferring, leasing or otherwise granting exclusive possession of all or part of the land, and for transactions involving the lease of residential or vacant land surrendering the lease, before or within 1 year after the transferee's, lessee's or vested person's occupation date for the residence on the land; or failure to comply with the occupancy requirement for the residence on the land.

¹⁴ The condition that the transferee must have never claimed the vacant land concession may be disregarded.

¹⁵ Section 58 of the *Taxation Administration Act 2001*

¹⁶ Section 54 of the *Taxation Administration Act 2001*