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Public Ruling Duties Act:

GUIDELINES FOR DETERMINING THE EXISTENCE OF A BUSINESS – FAMILY BUSINESSES

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. Chapter 2, Part 10 of the *Duties Act 2001* (the Duties Act) provides concessions for transfer duty on particular dutiable transactions by way of gift of dutiable property used to carry on particular family businesses of primary production and prescribed businesses.
2. Section 105 of the Duties Act states that the unencumbered value of business property if the business is a primary production business is taken to be nil to the extent that it is by way of gift. In relation to a business that is a prescribed business the unencumbered value is limited to the amount by which the value exceeds \$500 000.
3. The term business property is defined in Schedule 6 of the Duties Act to mean:
 - (a) land primarily used to carry on a business of primary production or a prescribed business or
 - (b) personal property used to carry on the business on the land.
4. This Public Ruling provides guidelines to assist in determining whether a business is being carried on.

Ruling and explanation

Existence of a business

5. To determine the existence of a business, regard should be had to a number of factors including:
- (a) whether the activity has a significant commercial purpose or character
 - (b) whether there is more than just an intention to engage in a business (ie. look to the extent of activity to develop same)
 - (c) whether there is an intention to make a profit as well as the profitability of the activity
 - (d) whether there is repetition and regularity of the activity
 - (e) whether the activity is of the same kind and carried on in a similar manner to that of the ordinary trade in that line of business
 - (f) whether the activity is planned, organised and carried on in a businesslike manner such that it is directed at making a profit
 - (g) the size, scale and permanency of the activity
 - (h) whether the activity is better described as a hobby, a form of recreation or a sporting activity.
6. The existence of one of the factors may not conclusively establish the existence of a business; however a combination of those factors may indicate that the operation in question is a business. The relevance and weight to be given to each factor will depend on the circumstances of each particular case.

Business of Primary Production

7. The business of primary production is defined to mean a business of agriculture, pasturage or dairy farming.¹
8. The words agriculture, pasturage or dairy farming refer to production resulting directly from either:
- (a) the cultivation of the land; or
 - (b) the maintenance of animals for the purpose of selling them or their bodily produce, including their natural increase.

The words include the manufacture of dairy produce by the person who produced the raw materials used in that manufacture.

Prescribed Business

9. Prescribed business is defined to mean a business involving solely an activity prescribed under a regulation.² Those activities are listed in Schedule 3 of the *Duties Regulation 2002*.

¹ Schedule 6 of the Duties Act

² Schedule 6 of the Duties Act

Application for Concession

10. Application for the concession must be made in the approved form (Form 2.5).³

Date of effect

11. 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
DA105.2.1	24 February 2009	24 February 2009	2 September 2013
Supersedes Practice Direction DA16.1	1 March 2002	1 March 2002	23 February 2009

³ Section 107 of the Duties Act