

Contents	Page
What this Ruling is about	1
Ruling and explanation	2
Date of effect	3
References	3

Public Ruling Duties Act:

CONCESSION FOR DUTIABLE TRANSACTIONS FOR PARTICULAR FAMILY BUSINESSES - DESCENDENT WHO IS A MINOR

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. Transfer duty is imposed on the dutiable value of a dutiable transaction under s.8 of the *Duties Act 2001* (the Duties Act). However, Chapter 2, Part 10 of the Duties Act provides a concession for transfer duty on particular dutiable transaction by way of gift of dutiable property used to carry on particular family businesses of primary production and prescribed businesses.
2. Sections 97(1)(a)–(e) of the Duties Act outline the dutiable transactions to which Part 10 applies provided that certain conditions applying to the transactions are satisfied.
3. Generally, the following conditions¹ apply:
 - (a) the transferor or person directing the transfer is an ancestor of the transferee
 - (b) the business for which the business property is used is carried on by the ancestor, whether alone or with others
 - (c) the business is intended to be carried on by the transferee, whether alone or with others and
 - (d) the transferee does not acquire the business property as agent or nominee of another person or as trustee, other than as trustee of a trust for the beneficiaries mentioned in paragraph 4.

¹ The conditions for each dutiable transaction are fully set out in ss.98–102 of the Duties Act.

4. The transferee or acquirer can acquire the business property or interest in the business property as trustee only where:
 - (a) the beneficiary of the trust is a descendent of the person creating the trust and is a minor and
 - (b) there are no other beneficiaries of the trust, other than a person who would become a beneficiary of the trust on the death of the beneficiary mentioned in paragraph 4(a).
5. An ancestor of a person is defined in the Duties Act to mean:
 - (a) a parent or grandparent of the person or person's spouse or
 - (b) a spouse of a parent or grandparent mentioned in paragraph 5(a).²
6. A descendent of a person is defined in the Duties Act to mean:
 - (a) a child or grandchild of the person or the person's spouse or
 - (b) a spouse of a child or grandchild mentioned in paragraph 6(a).³
7. This Public Ruling outlines examples of when the Commissioner will allow the concession regarding property transferred to a person as trustee.

Ruling and explanation

8. In the following examples, A is the ancestor, B is the trustee, C is a descendent of A and is a minor, D is a descendent of A and is a minor, E is a descendent of A and is not a minor, F is not a descendent of A and G is a person who would become a beneficiary of the trust upon the death of C or D.
9. Provided all other conditions are met, the transfer of business property, or an interest in business property in the following examples will attract the concession available under Chapter 2, Part 10 of the Duties Act:
 - (a) Where A transfers property to B to be held in a fixed trust for C only.
 - (b) Where A transfers property to B to be held in a discretionary trust where C and D are the only discretionary objects and default beneficiaries.
 - (c) Where A transfers property to B to be held in an unit trust where C and D are the only unit holders.
 - (d) Where A transfers property to B to be held on a discretionary trust where C and D are the discretionary objects and default beneficiaries and there is a proviso in the trust deed that upon the death of either C or D then G becomes a beneficiary.
10. The concession will not apply in the following examples:
 - (a) Where A transfers property to B to be held in a discretionary trust where the potential discretionary objects are C and D, and the default beneficiaries are E and F.
 - (b) Where A transfers property to B to be held in a unit trust where the unitholders are C, D, E and F.

² Schedule 6 of the Duties Act

³ Schedule 6 of the Duties Act

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
DA105.1.1	24 February 2009	24 February 2009	24 June 2014
Supersedes Practice Direction DA 15.2	2 January 2007	2 January 2007	23 February 2009