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Public Ruling Duties Act:

EXTENSION OF TIME TO LODGE AN AGREEMENT TRANSFERRING DUTIABLE PROPERTY

A Public Ruling, when issued, is the published view of 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, subsidy or exemption, as the case may be, in accordance with the law.

What this Ruling is about

1. The purpose of this Public Ruling is to explain when the Commissioner may grant an extension of time to lodge an agreement for the transfer of dutiable property (agreement).
2. Section 19(3) of the *Duties Act 2001* (the Duties Act) provides that parties to an agreement must lodge the agreement within 30 days after the liability arises, being the time the agreement is made.¹
3. A person who fails to comply with s.19(3) of the Duties Act commits an offence and may be liable to unpaid tax interest and penalty tax under the *Taxation Administration Act 2001* (the Administration Act).
4. Section 151 of the Administration Act provides the Commissioner with the discretion to extend the date for lodgement of an agreement.

Ruling and explanation

5. The following details the Commissioner's practice in determining whether an extension of time to lodge an agreement should be granted.

¹ Section 16 and Schedule 2 of the Duties Act

Extension of time for lodgement

6. Subject to other matters mentioned in this Public Ruling, an extension of time for lodgement of an agreement will generally be granted where:
 - (a) completion of the agreement is conditional on an event and
 - (b) the parties to the agreement do not have control over the event except only that they must use their best endeavours to secure the event happening.
7. Where an extension of time to lodge an agreement is requested and the agreement contains a condition which is part of an arrangement to defer the payment of transfer duty, an extension of time will not be granted.
8. Examples of conditions to an agreement which may result in an extension of time being granted are:
 - (a) A party to the agreement obtaining from the Australian Taxation Office a satisfactory private taxation ruling as to the taxation consequences of the transaction.
 - (b) Approval of finance satisfactory to the purchaser.
 - (c) Subdivisional or rezoning approval.
 - (d) A purchaser obtaining a satisfactory building inspection report from a third party.
 - (e) A vendor obtaining the Minister's consent to transfer a lease to the purchaser in respect of leasehold land.
 - (f) The granting of a liquor licence.
 - (g) The vendor of a shopping centre obtaining renewal of existing leases.
 - (h) The sale being subject to sale of another property.
 - (i) Registration of a plan of subdivision ('off the plan' sales).
 - (j) A condition designed to meet the requirements of the *Foreign Acquisitions and Takeovers Act 1975* (Cwlth).
 - (k) A purchaser carrying out due diligence enquiries where the outcome of those inquiries is to be measured against objective criteria set out in the agreement. A general provision that the agreement is 'subject to due diligence' will not suffice.
9. Examples of conditions to an agreement which may not result in an extension of time being granted are:
 - (a) Completion is made conditional on payment of the purchase money.
 - (b) The vendor is to deliver records or information to the purchaser.
 - (c) The property is to be leased back to the vendor.
 - (d) The payment of money to discharge an outstanding debt on the property.
 - (e) A condition which depends for its fulfilment solely on the purchaser or the vendor being satisfied of a particular matter or thing (e.g. purchaser being satisfied of the condition of a dwelling or satisfied as to finishes).

- (f) A condition that the purchaser and vendor complete another agreement or transaction between themselves where neither agreement contains other conditions which give rise to an extension of the time for lodgement in accordance with this Public Ruling.

When a conditional agreement must be lodged

- 10. A conditional agreement must be lodged with the Commissioner for assessment of transfer duty within 30 days of the earliest of the following dates:
 - (a) The date upon which all the relevant conditions to the agreement are satisfied.
 - (b) Subject to paragraph 14, where the agreement is cancelled due to a relevant condition of the agreement not being satisfied, the date that the agreement was cancelled.
 - (c) The date specified under a written notice by the Commissioner to lodge the agreement.

How to apply for an extension of time for lodgement

- 11. Upon the relevant condition to an agreement being satisfied, the following documents must be lodged with the agreement in order for an application for an extension of time to be considered:
 - (a) A written request for the time of lodgement to be extended including reasons for the late lodgement.
 - (b) Documents from a third party evidencing when the condition/s was/were met. Where a condition relates to obtaining finance, the Commissioner will accept a copy of the financier's letter of approval or written advice from the purchaser's solicitor of the date of the financier's letter of approval.
- 12. The time at which the condition is satisfied is determined having regard to the terms of the agreement. For example, pursuant to Clause 3 (Finance Clause) of the standard Real Estate Institute of Queensland contract for houses and land (sixth edition)(REIQ contract), the time at which the condition is satisfied is the time when the purchaser receives finance approval from that person's financier rather than the time when the purchaser's solicitor gives notice to the vendor that the finance has been approved.
- 13. Finance approval is commonly given subject to mortgage insurance being effected or acceptance by the borrowers of the terms and conditions of the loan. This conditional approval is sufficient to make an agreement unconditional as to finance pursuant to the REIQ contract. The 30 day period during which the agreement can be lodged without penalty commences two days after the date of the letter of approval from the financier.

Cancellation of a Conditional Agreement

- 14. Where an agreement is cancelled due to a condition of that agreement not being satisfied, the agreement is exempt from transfer duty and is not to be lodged, unless:
 - (a) the Commissioner requires, by notice in writing, that the agreement be lodged or
 - (b) the agreement remains chargeable with transfer duty as a 'resale agreement' under s.115(1)(d) of the Duties Act.

Self assessor - transfer duty accounted for by return

15. This Public Ruling also applies to self assessors who are approved to account for transfer duty by returns and remit unpaid tax interest under Chapter 12 Part 4 of the Duties Act.
16. Where a self assessor accounts for transfer duty on a conditional agreement by return, the transfer duty is to be accounted for in the return period that relates to the extended date that the agreement can be lodged under this Public Ruling (the date the conditions of the agreement are satisfied) with unpaid interest tax being fully remitted.
17. Sufficient documentation must be kept by the self assessor to justify the remission of the unpaid tax interest.

Conditional agreements lodged prior to conditions being satisfied

18. Where a conditional agreement is lodged while the agreement is still conditional, an assessment will be issued and no extension of time for payment will be granted.

Date of effect

19. 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
DA019.1.1	24 February 2009	24 February 2009	2 July 2009
Supersedes Revenue Ruling DA12.1	1 March 2002	1 March 2002	23 February 2009