



Contents	Page
What this Ruling is about	1
Ruling and explanation	2
Date of effect	4
References	4

Public Ruling Duties Act:

TRANSFER DUTY – ADMINISTRATIVE ARRANGEMENT – RELIEF FOR DUTIABLE TRANSACTIONS IN SETTLEMENT OF NATIVE TITLE CLAIMS

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

- Section 223(1) of the *Native Title Act 1993* (Cwlth) (the Native Title Act) defines the expression 'native title' to mean the communal, group or individual rights and interests of Aboriginal peoples or Torres Strait Islanders in relation to land or waters, where:
 - the rights and interests are possessed under the traditional laws acknowledged, and the traditional customs observed, by the Aboriginal peoples or Torres Straits Islanders and
 - the Aboriginal peoples or Torres Strait Islanders, by those laws and customs, have a connection with the land or waters and
 - the rights and interests are recognised by the common law of Australia.
- The settlement of native title claims under the Native Title Act may involve the transfer of land pursuant to an Indigenous Land Use Agreement (ILUA).
- Such a transfer may give rise to a dutiable transaction for the purposes of imposing transfer duty under Chapter 2 of the *Duties Act 2001* (the Duties Act). Such dutiable transactions may include:
 - a transfer of land, or an interest in land, in Queensland¹
 - an agreement to transfer land, or interest in land, in Queensland²
 - an acquisition of an interest in land in Queensland on its creation, grant or issue.³

¹ Sections 9(1)(a) and 10(1)(a) of the Duties Act

² Sections 9(1)(b) and 10(1)(a) of the Duties Act

³ Section (9)(1)(f) and paragraph (a) in the definition of new right in Schedule 6 of the Duties Act

4. For the purposes of this Public Ruling, the dutiable transactions referred to in paragraph 3 will be called land transactions.
5. On 3 May 2006, an administrative arrangement was approved by the Honourable the Deputy Premier, Treasurer and Minister for Infrastructure under which relief would be provided from transfer duty on certain land transactions.⁴
6. Under the administrative arrangement, the transfer duty relief will be provided by way of ex gratia payment. That is, a transfer duty assessment will be raised but will be settled by way of an ex gratia payment.
7. This Public Ruling sets out the conditions under which the administrative arrangement will operate.

Ruling and explanation

Conditions for relief

8. Subject to the conditions set out in this Public Ruling, relief from transfer duty will be provided to native title claimants or any body holding or receiving land solely on their behalf, for land transactions:
 - (a) entered into on or after 3 May 2006 and
 - (b) undertaken for the sole purpose of giving effect to a registered ILUA and expressly contemplated by the ILUA, in settlement of a native title claim registered on the Register of Native Title Claims.
9. Relief will not be provided for any consequential transactions or instruments, such as loans or other transactions.
10. To qualify for relief for transactions referred to in paragraph 8, the land must be used solely or almost solely by or for the native title claimants for traditional or residential purposes, and not used for commercial purposes (the use requirement). The sale of the land will be considered to be a use for commercial purposes.
11. The transfer duty relief will only apply provided that the land:
 - (a) will start to be used in accordance with the use requirement no later than 6 months after the date when the native title claimants are entitled to possession of the land⁵ (the start date) and
 - (b) will be used in accordance with the use requirement for a continuous period of 12 months from the start date.

⁴ On 8 October 2006, the administrative arrangement was amended to include a time limitation in relation to the use requirement and to clarify that the sale of land will be considered to be a use for a commercial purpose. On 2 May 2007, further amendments were made to give the administrative arrangement practical effect. All such amendments have retrospective effect from 3 May 2006.

⁵ For transfers of freehold land, the claimant is entitled to possession once the transfer has been registered in the Land Titles Register. For grants of unallocated State land, the claimant is entitled to possession on the date that the deed of grant is issued by the Governor in Council.

12. In the event that the use requirement, as set out in paragraphs 10 and 11, is not met, the native title claimants are obliged to inform the Office of State Revenue (OSR) in writing within 28 days after the use requirement is not met.
13. The native title claimants will be immediately liable for the repayment of the transfer duty if the use requirement is not met. Interest and penalties may be payable. The calculation of the duty will be made on the basis of the transfer duty liability date, that is, the date when liability for transfer duty arises in accordance with s.16 of the Duties Act.

Lodgement requirements

14. The administrative arrangement does not alter the usual requirements for lodgement of documents with the OSR. If the transaction would normally be liable to duty, the parties must comply with the requirements of the Duties Act and the *Taxation Administration Act 2001*.⁶
15. The documentation required by the Commissioner to assess the relevant land transaction (eg transfer documentation, valuations where necessary and relevant approved forms) must be lodged with the OSR within 30 days after the transfer duty liability date.⁷
16. Where the land transaction is a conditional agreement, Public Ruling DA019.1—*Extension of time to lodge an agreement transferring dutiable property* may have application. In that case, the agreement is required to be lodged within 30 days after all the relevant conditions are satisfied or the agreement is cancelled, or from a date specified by the Commissioner in writing.

Application for relief

17. Application for ex gratia relief under the administrative arrangement may be made when the documents are lodged with the OSR. To remove doubt, it is not necessary to have satisfied the use requirement in order to make a claim for ex gratia relief. However, if the use requirement is subsequently not satisfied, the native title claimants will be required to repay the ex gratia amount, as set out in paragraphs 12 and 13.
18. In addition to the documentation in paragraph 15, the following documents must be provided to the OSR when lodging a request for ex gratia relief under the administrative arrangement:
 - (a) a statutory declaration containing:
 - (i) details of the applicant's intention to meet the land use requirements
 - (ii) an acknowledgment of the party's obligation to inform the OSR in writing within 28 days after the use requirement not being met and
 - (iii) an acknowledgment that the ex gratia payment is required to be paid back if the use requirement is not met
 - (b) a copy of the ILUA relevant to the transaction.
19. A statutory declaration is available on the OSR website (www.osr.qld.gov.au) for completion and lodgement with the application for ex gratia relief.

⁶ If a transaction is not liable to duty and there is no requirement that any documentation evidencing the transaction be lodged with the OSR, it will not be necessary to lodge any documents or seek ex gratia relief.

⁷ Section 19(3) of the Duties Act

Date of effect

20. 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
DA000.6.1	24 February 2009	24 February 2009	7 April 2011
Supersedes Practice Direction DA 76.1	19 July 2007	19 July 2007	23 February 2009