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Public Ruling Duties Act:

TRANSFER DUTY – ADMINISTRATIVE ARRANGEMENT – RELIEF FOR CERTAIN DUTIABLE TRANSACTIONS RELATING TO A SPECIAL DISABILITY TRUST

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. Under Chapter 2 of the *Duties Act 2001* (the Duties Act), transfer duty is imposed on the dutiable value of a dutiable transaction¹. The types of dutiable transactions include:
 - (a) a transfer of dutiable property;
 - (b) an agreement for the transfer of dutiable property;
 - (c) the creation of a trust of dutiable property; and
 - (d) a trust acquisition.²
2. A special disability trust (SDT) is defined under Section 1209L of the *Social Security Act 1991* (Cwlth) and section 52ZZZW of the *Veterans Entitlements Act 1986* (Cwlth). The requirements for a trust to be a SDT include:
 - the trust must have no more than one beneficiary ('principal beneficiary') who has an impairment or disability as determined under the relevant Commonwealth Act; and
 - the sole purpose of the trust during the lifetime of the principal beneficiary as provided by the trust deed for the trust must be to meet the reasonable care and accommodation needs of the principal beneficiary.³
3. Under an approved administrative arrangement, ex gratia relief will be provided from transfer duty otherwise payable on certain dutiable transactions relating to a SDT.

¹ See Section 8(2) of the Duties Act.

² See section 9(1) of the Duties Act

³ There are a number of additional requirements, including additional requirements in relation to the trust beneficiary and trust purpose, and requirements in relation to the trust deed, trustee, trust property, reporting and audit.

4. This Public Ruling sets out the circumstances in which ex gratia relief will be provided.

Ruling and explanation

5. Ex gratia relief will be provided from transfer duty on a dutiable transaction relating to a SDT in the following circumstances.
- (a) The dutiable transaction is:
 - (i) the transfer of, or an agreement for the transfer of, *qualifying dutiable property* to a trustee of a SDT;
 - (ii) the creation of a trust of *qualifying dutiable property* where the trust is a SDT; or
 - (iii) the acquisition of a trust interest in a SDT to the extent the SDT holds *qualifying dutiable property*.
 - (b) *Qualifying dutiable property* is property that will be used as the principal place of residence of the principal beneficiary under a SDT.
 - (c) The transaction occurred on or after 10 May 2010.
6. An application for ex gratia relief is to be made in writing to the Office of State Revenue and be lodged with all other documents necessary to enable an assessment of duty to be made. In this regard, a copy of the SDT trust deed must also be lodged⁴.

Date of effect

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

David Smith
Commissioner of State Revenue
Date of Issue: 16 December 2010

References

Public Ruling	Issued	Dates of effect	
		From	To
DA000.9.1	16 December 2010	16 December 2010	7 April 2011

⁴ Section 1209P of the *Social Security Act 1991* and section 52ZZZWC of the *Veterans Affairs Act 1986* require that the trust must comply with certain form and content requirements for the trust to be recognised as a SDT.