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## Public Ruling Duties Act:

### SECURITISATION TRANSACTIONS

*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 or exemption, as the case may be, in accordance with the law.*

## What this Ruling is about

1. This Public Ruling clarifies certain securitisation issues in relation to mortgage-backed securities, asset-backed securities and corporate debt securities under the *Duties Act 2001* (the Duties Act).

## Ruling and explanation

2. Refer also to Public Rulings DA 010.1, 010.2, 024.1,121.1 and 130I.1 which also may have application to securitisation transactions.

### Documented and paperless securities

3. Some securities are issued in inscribed or registered form, without a document or other paper security. The definition of corporate debt security in the Dictionary<sup>1</sup> applies to both documented and paperless securities.

### Definitions of mortgage-backed security and asset-backed security

4. Paragraph (b) of the definition of mortgage-backed security requires that payments under the security are received by the corporation substantially from the receipts from a mortgage or pool of mortgages.<sup>2</sup> To satisfy that condition, the funds used by the corporation to make payments under the security must be received or sourced by the corporation from a mortgage or pool of mortgages.

<sup>1</sup> Schedule 6 of the Duties Act

<sup>2</sup> Section 286(1)(b) of the Duties Act

5. Similarly, paragraph (b) of the definition of asset-backed security requires that payments under the security are received by the corporation substantially from the receipts from a financial asset or pool of financial assets.<sup>3</sup> To satisfy that condition, the funds used by the corporation to make payments under the security must be received or sourced by the corporation from a financial asset or pool of financial assets.

### **Exemptions from duty – mortgage-backed security schemes**

6. The Duties Act contains the following transfer duty exemptions for transactions relating to mortgage-backed securities.
- (a) The transfer, or agreement for transfer of a mortgage or pool of mortgages for creating, issuing, marketing or securing a mortgage-backed security.<sup>4</sup> This exemption applies from 28 November 2002.<sup>5</sup> A transfer, or agreement for transfer, of a mortgage before that date would be dutiable at the rate set out in s.24(3) or (4)<sup>6</sup> of the Duties Act, as the case may be.
- (b) The creation of a trust of dutiable property if the trust creation is required for creating, issuing, marketing, acquiring or securing a mortgage-backed security.<sup>7</sup>

#### **Examples**

- *Creation of an equity-based scheme where the investors have an interest in the securitised assets or income from those assets.*
  - *For a debt-based scheme, the establishment of a security trust for the investors or a trust which is to issue debt securities to investors.*
- (c) The issue or transfer of an interest in a trust if required for creating, issuing, marketing, acquiring or securing a mortgage-backed security.<sup>8</sup>

#### **Examples**

- *Issues of units to investors in an equity-based scheme.*
  - *Transfer of units by investors in an equity-based scheme.*
  - *Issue of notes to investors in a debt-based scheme.*
  - *Transfer of notes by investors in a debt-based scheme.*
- (d) The redemption, or partial redemption, of an interest in a trust if required to give effect to a redemption of a mortgage-backed security.<sup>9</sup>

<sup>3</sup> Section 130C(1)(b) of the Duties Act

<sup>4</sup> Section 130I(1) of the Duties Act

<sup>5</sup> Date of assent of *Revenue Legislation Amendment Act 2002*

<sup>6</sup> As in force prior to 1 January 2007 – the commencement date of s.18 of the *Revenue and Other Legislation Amendment Act 2006*.

<sup>7</sup> Section 130I(2) of the Duties Act. The trust creation could occur in circumstances referred to in either s.53(1) or (2) of the Duties Act.

<sup>8</sup> Section 130I(2) of the Duties Act

<sup>9</sup> A partial redemption of a mortgage-backed security that is a trust interest is not dutiable under the Duties Act; it is not a trust surrender and any consequential trust acquisition is exempt under s.130I(2) of the Duties Act. For a full redemption, exemption applies under s.130I(3) of the Duties Act.

- (e) A transfer, or agreement for the transfer of a mortgage-backed security.<sup>10</sup> This will be the case even if the mortgage-backed security is also a Queensland business asset because it is a debt.

**Example**

- *Transfer of secured notes held by an investor in a debt-based scheme.*

- (f) A transfer, or agreement for the transfer, of a corporate debt security (which may also be a mortgage-backed security).<sup>11</sup>

**Example**

- *Transfer of secured or unsecured notes held by an investor in a debt-based scheme.*

**Exemptions from duty – asset-backed security schemes**

7. The Duties Act contains the following transfer duty exemptions for transactions relating to asset-backed securities.

- (a) The transfer, or agreement for transfer, of a financial asset, or a pool of financial assets for creating, issuing, marketing or securing an asset-backed security.<sup>12</sup>
- (b) The creation of a trust of dutiable property if the trust creation is required for creating, issuing, marketing, acquiring or securing an asset-backed security.<sup>13</sup>

**Examples**

- *Creation of an equity-based scheme where the investors have an interest in the securitised assets or income from those assets.*
- *For a debt-based scheme, the establishment of a security trust for the investors or a trust which is to issue debt securities to investors.*

- (c) The issue or transfer of an interest in a trust if required for creating, issuing, marketing, acquiring or securing an asset-backed security.<sup>14</sup>

**Examples**

- *Issue of units to investors in an equity-based scheme.*
- *Transfer of units by investors in an equity-based scheme.*
- *Issue of notes to investors in a debt-based scheme.*
- *Transfer of notes by investors in a debt-based scheme.*

- (d) The redemption, or partial redemption, of an interest in a trust if required to give effect to a redemption of an asset-backed security.<sup>15</sup>

<sup>10</sup> Paragraph (h) of the definition of existing right in the Dictionary

<sup>11</sup> Section 148(b) of the Duties Act and the definition of corporate debt security in the Dictionary

<sup>12</sup> Section 130H(1)(b) of the Duties Act

<sup>13</sup> Section 130H(2) of the Duties Act

<sup>14</sup> Section 130H(2) of the Duties Act

- (e) A transfer, or agreement for the transfer of an asset-backed security.<sup>16</sup> This will be the case even if the asset-backed security is also a Queensland business asset because it is a debt.

**Example**

- *Transfer of secured notes held by an investor in a debt-based scheme.*

**Exemptions from duty – covered bonds**

8. Public Ruling DA130I.1 outlines an administrative arrangement under which, pending amendment to the *Duties Act 2001* (the Duties Act), the definitions of *mortgage-backed security* and *asset-backed security* may apply to covered bonds under the *Banking Act 1959 (Cwlth)* (the Banking Act) where all other relevant conditions are met.
9. Under the Banking Act, an Australian Authorised Deposit Taking Institution (ADI) is required to maintain the cover pool of assets so that the value of these assets is sufficient to meet 103 per cent of the face value of the outstanding covered bonds. This may involve the ADI transferring additional assets to the cover pool and/or replacing assets in the cover pool over time. To remove any doubt, such transfers are eligible as a dutiable transaction for creating, issuing, marketing or securing an asset and mortgage-backed security for the purposes of exemptions for those securities under sections 130H and 130L of the Duties Act, provided that all other relevant conditions are satisfied.

**Date of effect**

10. This Public ruling takes effect from 7 October 2012.

Martin Schwede  
Deputy Commissioner  
Date of Issue

**References**

Public Ruling	Issued	Dates of effect	
		From	To
DA000.3.2	Date of issue	7 October 2012	23 June 2013
DA000.3.1	24 February 2009	24 February 2009	6 October 2012
Supersedes Practice Direction DA 38.4	2 January 2007	2 January 2007	23 February 2009

<sup>15</sup> A partial redemption of an asset-backed security that is a trust interest is not dutiable under the Duties Act; it is not a trust surrender and any consequential trust acquisition is exempt under s.130H(2) of the Duties Act. For a full redemption, exemption applies under s.130H(3) of the Duties Act.

<sup>16</sup> Section 130H(1)(a) of the Duties Act