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Public Ruling
Duties Act:

**TRANSFER DUTY – CHANGE OF TRUSTEE
EXEMPTION – ADMINISTRATIVE
ARRANGEMENT**

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. Transfer duty is imposed on the dutiable value of dutiable transactions.¹
2. Section 117 of the *Duties Act 2001* (the Duties Act) exempts from transfer duty a dutiable transaction for the sole purpose of giving effect to a change of a trustee if:
 - (a) the transaction is not part of an arrangement—
 - (i) involving a change in the rights or interest of a beneficiary of the trust or
 - (ii) terminating the trust and
 - (b) transfer duty has been paid on all trust acquisitions for which transfer duty is imposed for the trust before the transaction.
3. An administrative arrangement has been approved to expand the exemption available under s.117 of the Duties Act.
4. This Public Ruling outlines the administrative arrangement.

¹ Section 8 of the *Duties Act 2001*

Ruling and explanation

5. Section 117 of the Duties Act is to be administered on the basis that the exemption will also apply where the dutiable transaction is part of an arrangement involving a change in the rights or interests of a beneficiary of a trust if:
- (a) in relation to the change in those rights or interests—
 - (i) transfer duty is paid or
 - (ii) no transfer duty is payable (because of the application of an exemption or it is otherwise not a dutiable transaction) and
 - (b) the change of trustee is not part of an arrangement to avoid duty.

Example 1

ABC Ltd is trustee of ABC Trust which holds dutiable property.

ABC Trust is to become a registered Managed Investment Scheme. The trustee will issue 10 million units in the ABC Trust to the public and qualify to be treated as a widely held unit trust under the Duties Act. As part of this arrangement, ABC Ltd is replaced as trustee for the ABC Trust by ABC Management Ltd.

The retirement of ABC Ltd and the appointment of ABC Management Ltd as trustee of ABC Trust requires the transfer of dutiable property of the trust from ABC Ltd to ABC Management Ltd, which will be a dutiable transaction under s.9(1)(a) of the Duties Act.

The change of trustee forms part of an arrangement that facilitates the public issue of units in the ABC Trust. As such, the transaction involves a change in the rights or interests of the beneficiaries.

The change in the rights or interests of the beneficiaries is a trust acquisition of a trust interest in public unit trust. However, s.49(2) of the Duties Act provides that transfer duty will not apply to such a transaction unless it is a majority trust acquisition in a land holding trust. In this case ABC Trust is not a land holding trust. As a result, transfer duty is not applicable to the change in the rights or interests of the beneficiaries.

Therefore, provided that the change of trustee was not part of an arrangement to avoid duty, transfer duty would not be imposed on the dutiable transactions giving effect to the change of trustee.

Example 2

XY Pty Ltd is trustee of the XY Unit Trust which holds dutiable property.

The units are held by X Pty Ltd and Y Pty Ltd.

All the units in the unit trust are transferred to Z Pty Ltd. As part of the same arrangement, XY Pty Ltd is replaced by Z Co Pty Ltd as trustee of XY Unit Trust.

Z Pty Ltd's acquisition of the units is a trust acquisition. Transfer duty is paid on this dutiable transaction.

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The retirement of XY Pty Ltd and the appointment of Z Co Pty Ltd as trustee of XY Unit Trust requires the transfer of dutiable property of the trust from XY Pty Ltd to Z Co Pty Ltd, which will be a dutiable transaction under s.9(1)(a) of the Duties Act.

However, provided that there is no arrangement to avoid duty, the exemption in s.117 of the Duties Act will apply to the dutiable transaction effecting the transfer of dutiable property, as it is part of an arrangement involving a change in the rights or interest of a beneficiary and transfer duty has been paid in relation to that change in the rights or interest.

Date of effect

6. 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
DA117.1.1	24 February 2009	24 February 2009	15 April 2010
Supersedes Practice Direction DA 70.1	13 August 2004	13 August 2004	23 February 2009