

Section 50 of the *Duties Act 2000* (the Act) was repealed by section 11 of the *State Taxation Acts (General Amendment) Act 2005* (Amendment Act) with effect from 29 June 2005. Transitional provisions for the repeal are set out in Clause 21(5) of Sch 2 of the Act which was introduced by section 22 of the Amendment Act. This Revenue Ruling remains applicable to circumstances prescribed in the transitional provisions to which section 50 of the Act continues to apply.



REVENUE RULINGS

Transfer of dutiable property under a voluntary winding-up

Revenue Ruling DA.014

Replaces SD.093

Preamble

This ruling provides clarification on when the Commissioner of State Revenue (the Commissioner) will be satisfied that a voluntary winding-up of a company is not being undertaken as a means of transferring dutiable property to gain a reduction of the dutiable value available under section 50(2) of the *Duties Act 2000* (the Act).

A reduction of the dutiable value may apply on a transfer of dutiable property made to a shareholder of a company as part of the distribution of assets occurring under the voluntary winding-up of the company and the dutiable property is of the type referred to in section 10(1)(a) of the Act. Essentially, the reduction of the dutiable value reduces duty payable on the transfer to the extent that the shareholder is substituting an asset in the form of shares for another in the form of dutiable property. The value of dutiable property is reduced by a deduction before calculating the duty payable.

Under section 50(2) of the Act, the Commissioner may not approve an application for a reduction in the dutiable value of the property unless satisfied that the company is not being wound up as part of an arrangement or scheme devised with the collateral purpose of reducing the duty otherwise payable on the transfer.

Section 50(3) of the Act sets out the following factors that the Commissioner will have regard to when considering a reduction under section 50(2) of the Act:

- (a) the duration of the shareholder's shareholding in the company;
- (b) whether or not the shareholder held shares in a related corporation of a company that owned the dutiable property before it was owned by the

company;

(c) the period for which the real property has been owned by the company or a related corporation of the company;

(d) any dealing in shares of the company or a related corporation of the company-

(i) by the shareholder or a related corporation of the shareholder;

(ii) by a previous owner of the dutiable property;

(iii) whether there is any commercial efficacy to an arrangement or scheme of transactions involving any one or more of-

(iv) the company;

(v) the shareholder;

(vi) a related corporation of the company or the shareholder;

(vii) a substantial shareholder (within the meaning of the Corporations Act) in an entity referred to in sub-paragraph (i), (ii) or (iii)

(e) in relation to the winding up, other than to reduce the duty otherwise payable on the transfer; and

(f) any other matters he or she considers relevant.

Ruling

Applications for a reduction of the dutiable value under section 50(2) of the Act must be made in writing to the Commissioner. Unless other evidence demonstrates that the transfer is a scheme or part of a scheme to avoid duty, the Commissioner will approve an application that meets the following conditions:

- (i) the person appointed as liquidator of the company is a registered liquidator under section 1282(2) of the Corporations Act 2001 or exempt under section 532(4) of that Act; and

- (ii) the transferee shareholder has owned shares in the company to be wound up for the past three years; and
- (iii) the transferee has not acquired additional shares in the company to be wound up within the past year (except by means of a bonus issue or as part of a dividend reinvestment plan); and
- (iv) the dutiable property to be transferred has been owned by the company to be wound

up for the past three years or none of the following persons has held an interest in the dutiable property to be transferred within the past three years:

- (a) the transferee;
- (b) a related corporation of the transferee;
- (c) a related corporation of the company to be wound up;
- (d) a substantive shareholder (within the meaning of the Corporations Act 2001) of a person or entity referred to in (a), (b) or (c) above or the company to be wound up.

Where dutiable property is distributed to a shareholder under a voluntary winding up of a company in circumstances which do not meet the above conditions, the Commissioner may still approve an application for a reduction of the dutiable value. This includes a situation where the owners of flats who convert their property holdings from company title (where an owner holds shares in, rather than a title to, the property) to strata title. This process entails placing the company into a voluntary winding-up to distribute the newly divided property to the relevant shareholders. Even though it may not be possible to satisfy all of the above conditions for such transfers, the reduction of the dutiable value will be generally approved.

Evidentiary Requirements

All applications for a reduction of the dutiable value must be accompanied by the original executed transfer of land, a copy of the special resolution whereby members agreed to wind up the company voluntarily, a copy of the company's balance sheet at the date of distribution and a statutory declaration from the liquidator providing details of:

- the name of the liquidator, date of appointment, and whether appointed by the members or the creditors;
- the date, time and place of the meeting of members at which a special resolution was passed to place the company into voluntary liquidation;
- the reasons for placing the company into voluntary liquidation;

- whether a declaration of solvency was provided by the directors and, if so, the date on which it was lodged with the ASIC;
- whether a meeting of creditors has been held and, if so, the date, time and place of such meeting;
- details of the transferee's shareholdings in the company to be liquidated for the past three years;
- details of ownership of the dutiable property to be transferred for the past three years;
- the names of all shareholders and their respective shareholdings;
- the unencumbered market value of the property being transferred;
- the value and description of the class of share(s). Where there are different classes of shares, documentation must be provided to show how the different classes rank upon the liquidation of the company;
- the value and description of any other assets appropriated to any of the shareholders;
- whether the assets being transferred have been appropriated in full or part satisfaction of each transferee's interest as a shareholder of the company on the winding up of the company;
- whether the transferee, in receiving this appropriation together with all prior appropriations, is exceeding their entitlement to the assets of the company;
- whether the transferee is a creditor of the liquidated company and if so, the amounts outstanding at the date of distribution;
- whether or not the shareholder held shares in a related corporation of a company that owned the dutiable property before it was owned by the company;
- any dealing in shares of the company or a related corporation of the company-

- (a) by the shareholder or a related corporation of the shareholder;
- (b) by a previous owner of the dutiable property; and

- whether there is any commercial efficacy to an arrangement or scheme of transactions involving any one or more of

- (i) the company;
- (ii) the shareholder;
- (iii) a related corporation of the company or the shareholder;
- (iv) a substantial shareholder (within the meaning of the Corporations Act 2001) of a person or entity referred to in sub-paragraph (i), (ii) or (iii)

in relation to the winding up, other than to reduce the duty otherwise payable on the transfer.

In addition to the above, further information may be sought from an applicant including, but not limited to,

any contracts or agreements between the company to be wound up, a related corporation, or any other party, concerning the dutiable property to be distributed under the winding up.

**Commissioner of State Revenue
January 2002**

Please note that rulings do not have the force of law. Each decision made by the State Revenue Office is made on the merits of each individual case having regard to any relevant ruling. All rulings must be read subject to Revenue Ruling GEN.01.

