

Liability to duty of a right to reside, life tenancy or life interest

Revenue Ruling DA.028

Replaces SD.104

Preamble

1. Section 7 of the Duties Act 2000 (the Act) charges duty on a transfer of dutiable property. Dutiable property is defined under section 10(1)(e) of the Act to include an interest under the will, codicil or estate of a deceased person. Duty is charged on the transfer of such an interest.
2. It is necessary to distinguish between an interest in land and certain residency rights relating to land, which are subject to the will, codicil or estate of a deceased person. Periodically questions arise concerning the transfer or disposal of a "right to reside", "life tenancy" or "life interest". The distinction relates to whether the nature of the residency right is a transferable interest in land or not, or whether it will be extinguished when the beneficiary ceases to occupy the property.
3. The purpose of this ruling is to explain how different types of residency rights are treated under section 10(1)(e) of the Act.

Ruling

4. A person may be granted a right to reside in a property under the terms of a will. The person must reside in the property to hold the interest and such a right is extinguished when the property is relinquished. Such a right to reside cannot be transferred or assigned from the beneficiary to another person and it does not constitute an interest under the definition of dutiable property in section 10(1)(e) of the Act.
5. A person who holds a life interest is known as a life tenant and such a person is able to treat the property as if it were theirs until their death. The

life tenant is not required to live in the property to be eligible to receive the interest. A life tenancy or a life interest is generally distinguished from a right to reside because a life tenancy or a life interest is transferable. Therefore, a life tenancy or a life interest is an interest within the meaning of section 10(1)(e) of the Act, and a transfer of a life tenancy or a life interest is a dutiable transaction.

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 Ruling No. GEN.01.

Commissioner of State Revenue
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