

EXEMPTION FROM DUTY IN FAVOUR OF UNIT TRUST TRANSACTIONS UNDER CHAPTER 2 OF THE DUTIES ACT 2000

Revenue Ruling DA.027

Preamble

Chapter 2 of the *Duties Act 2000* ("the Act") charges duty on the transfer of dutiable property, other specified transactions, and transactions which result in a change of beneficial ownership of dutiable property. Dutiable property is defined in the Act to include real property.

Where a transaction results in a change in beneficial ownership of real property, duty is payable on the value of that property unless the change is a result of the issue, transfer, redemption or cancellation of units in a unit trust scheme. Such transactions were exempt from duty under s7(1)(b)(vi) of the Act.

The State Taxation Acts (Miscellaneous Amendments) Act 2003 amended s7(1)(b)(vi) of the Duties Act and introduced a provision allowing the Commissioner of State Revenue ("the Commissioner") to charge duty on transactions resulting in a change of beneficial ownership of dutiable property as a result of unit trust transactions. The purpose of this Ruling is to outline the scope of the amended exemption and the situations where the Commissioner will exercise his discretion to impose duty on unit trust transactions.

The amendments are intended to remove the opportunity for avoiding payment of conveyance duty where transfers in beneficial ownership of dutiable property are effected through unit trust schemes.

Ruling

The State Taxation Acts (Miscellaneous Amendments) Act 2003 received Royal Assent on 16 June 2003. The amendment however has a commencement date of 8 February 2003, being the date the Treasurer announced the change. This

Ruling therefore applies to transactions entered into on or after 8 February 2003.

Duty is charged on transactions that result in a change in beneficial ownership of dutiable property, other than excluded transactions. An excluded transaction is defined to include a range of transactions relating to the disposition of units, and to the variation of rights attaching to units, in a unit trust scheme.

An excluded transaction is dutiable if, in the Commissioner's opinion, it was part of a scheme or arrangement that was made with the collateral purpose of reducing the duty otherwise chargeable under Chapter 2 of the *Duties Act*. The Commissioner considers that the ordinary trading of units in a unit trust scheme will not have a collateral purpose of reducing the duty otherwise chargeable, unless there are facts indicating otherwise (eg transactions between related parties or transactions where it can be shown that the parties are acting in concert to achieve a tax advantage).

The amendment is not intended to qualify Chapter 3 and while the land-rich provisions were introduced "to close a significant loophole whereby conveyance duty is avoided through the use of company shares and private unit trusts", the Commissioner would not be of the opinion that an arrangement had a collateral purpose under section 7(2A) merely because it did not attract duty under Chapter 3.

Also, prior to the above amendment, questions arose in respect of the term "beneficial ownership" found in section 7(1)(b)(vi) of the Act. The Commissioner is of the view that a change in beneficial ownership occurs "when the purchase money specified in the contract has been paid, title has been made or accepted and the purchaser is entitled to a conveyance or transfer. At that point the purchaser is entitled in equity to the land and the vendor is a bare trustee

(*McWilliam v McWilliams Wines Pty Ltd* (1964) 114 CLR 656 at 660 and *Stern v McArthur* (1988) 165 CLR 489 at 522-523)". In respect of The Commissioners view of section 7(1)(b)(vi) the relevant words in the above statement are "when the purchase money specified in the contract has been paid",

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.

Commissioner of State Revenue

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