

REVENUE RULINGS

Transfer under a will for consideration Revenue Ruling DA.013

Replaces SD.066

Preamble

Section 10(1) of the Duties Act 2000 (the Act) defines the term "dutiable property" to include an interest under a will or codicil of a deceased person disposing of property. A transfer of such an interest constitutes a dutiable transaction under section 7 of the Act and is subject to duty unless an exemption under section 42 of the Act applies.

Section 42(1) of the Act exempts from duty a transfer of dutiable property not made for valuable consideration to a beneficiary where the transfer is made under and in conformity with the trusts contained in a will or arising upon an intestacy, or the transfer relates to a property that is the subject of a trust for sale contained in a will.

Uncertainty arises where the entitlement of the beneficiary under a will is conditional upon a payment being made. The purpose of this ruling is to outline the circumstances in which the exemption will apply notwithstanding that the beneficiary's entitlement is conditional on consideration being provided.

Ruling

The requirement of a transfer "not made for valuable consideration" in section 42(1) of the Act will be interpreted by the SRO as meaning a transfer of dutiable property for less than its full value, including a transfer for non-monetary consideration.

Where the entitlement is conditional upon the beneficiary paying certain monies, either to the estate or a third party, the terms of the will must be strictly complied with if the exemption is to apply. Therefore, for example, where the will states that 'A' is entitled to the property 'Greenacres' upon payment of \$100,000 to 'B', the exemption is only available if the payment is made in accordance with the terms of the will.

If, in the above example, 'A' assigns his/her interest to 'C', and instructs the executor of the

will to transfer 'Greenacres' to 'C', the assignment by 'A' to 'C' would be subject to duty. The instruction by 'A' to the executor would be evidence of an assignment.

The eventual transfer of the property by the executor to 'C', however, would not attract duty by virtue of section 17 of the Act.

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
November 2001

