Revenue | Rulings

Transfer of real property under a voluntary liquidation

Revenue Ruling SD.093

CEASED 30 June 2001 CEASED 30 June 2001 CEASED 30 June 2001

Preamble

This ruling provides advice on when the Commissioner of State Revenue will be satisfied that a voluntary liquidation of a company is not being undertaken as a means of transferring real property and gaining the concession from duty available under section 72(3) of the *Stamps Act 1958* (the Act).

The concession may apply when a shareholder of a company receives real property as part of the distribution of assets occurring under the voluntary winding up of the company. Essentially the concession reduces duty payable on the transfer to the extent that the shareholder is exchanging an asset in the form of shares for another in the form of real property. There are many reasons for the voluntary liquidation of a company but there have been instances where such action has been taken to avoid the stamp duty normally payable on a transfer of real property. Anti avoidance provisions were inserted into Section 72 of the Act to ensure that the concession was not abused. This ruling explains the SRO's views on when a taxpayer can expect the concession to apply.

Under the concession, the value of the property is reduced by a deduction before calculating the duty payable (section 72(6)). The shareholder must seek the deduction by making a written application to the Commissioner before the property is transferred (section 72(3)).

The Commissioner may not approve the application unless satisfied that the company is not being wound up in connection with a scheme or arrangement intended to use the means of a voluntary winding up of a company to effect a transfer of real property and thereby reduce the stamp duty otherwise payable on the transfer (section 72(4)).

Section 72(5) sets out the factors that the Commissioner may consider when deciding whether to approve an application. They include:

(a) the duration of the shareholder's shareholding in the company;

(b) whether or not the shareholder held shares in a related corporation of the company that owned the real 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 real property;

(e) 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 Part 6.7 of the Corporations Law) of a person referred to in sub-paragraph (i), (ii) or (iii)—

in relation to the winding up, other than to reduce the stamp duty otherwise payable on the conveyance;

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

The premise for this ruling is that a voluntary liquidation of a company is unlikely to form part of a scheme to avoid stamp duty on the transfer of real property where:

- **the real property distributed to a shareholder had been held by that company for a period of three years, and**
- **the transferee had been a shareholder for three years, and**
- **the transferee's shareholding had not increased markedly within the previous year, and**
- **the real property had not been acquired by the liquidated company from a party linked to the transferor or the transferee.**

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Ruling

The Commissioner has ruled that an application for a deduction from stamp duty made under section 72(3) of the Act will be approved where:

- **the person appointed as liquidator of the company is a registered liquidator under section 1282(2) of the Corporations Law, and**
- **the transferee shareholder has owned shares in the company to be liquidated for the past three years, and**
- **the transferee has not acquired additional shares in the company to be liquidated within the past year (except by means of a bonus issue or as part of a dividend reinvestment plan), and**
- **the real property to be transferred has been owned by the company to be liquidated for the past three years, OR**
- **no person has held an interest in the real property to be transferred within the past three years where that person is any of the following;**
  - **a) the transferee,**
  - **b) a related corporation of the transferee,**
  - **c) a related corporation of the company to be liquidated**
  - **d) a substantive shareholder (within the meaning of Part 6.7 of the Corporations Law) of a person referred to in a), b) or c) above or the company to be liquidated,**

unless other evidence demonstrates that the transfer is a scheme, or part of a scheme to avoid stamp duty.

The application for a deduction must be accompanied by a copy of the special resolution whereby members agreed to wind up the company voluntarily together with a statement signed by 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 ASC,**
- **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, and**
- **details of ownership of the real property to be transferred for the past three years.**

Where real 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 deduction. Further information will be sought from an applicant including, but not limited to, any contracts or agreements between the company to be liquidated, a related corporation, or any other party, concerning the real property to be distributed under the winding up.

The concession will apply to 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 the more modern strata title. This process entails placing the company into voluntary liquidation 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 deduction would be routinely approved.

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

December 1998