

Revenue Rulings

Guidelines – Duty exemption for voluntary transfers of business involving certain financial institutions

Revenue Ruling DA.008

Preamble

All building societies, credit unions and friendly societies became Authorised Deposit-Taking Institutions (ADIs) within the meaning of the *Banking Act 1959* on 1 July 1999. From this date, these institutions also became companies for the purposes of the Corporations Law and the Financial Institutions (Victoria) Code ceased to apply to these entities.

As a result of the changes, the supervision of ADIs was transferred to the Commonwealth with the enactment of the *Financial Sector (Transfers of Business) Act 1999* (the FS(TB) Act). Under section 22 of the FS(TB) Act, where there is a transfer of business from one ADI to another, all assets and liabilities of the transferring body become the assets and liabilities of the receiving body. A "receiving body" is a body to whom any property is transferred under Part 3 of the FS(TB) Act. Pursuant to section 3 of the *Duties Act 2000* (Duties Act), a receiving body has the same meaning as in the FS(TB) Act.

Imposition of Duty

Section 104 of the Duties Act charges duty in respect of the transfer of dutiable property to a receiving body. According to section 105 of the Duties Act, liability arises when the dutiable property becomes the property of the receiving body.

Sections 107 and 108 of the Duties Act require a receiving body that receives any such property to:

- lodge a statement with the Commissioner if duty would have been chargeable had an instrument for the conveyance, transfer or assignment of the property been executed in relation to the transfer;
- lodge a statement in a form approved by the Commissioner and specify the property transferred and the value of that property; and
- pay duty on the statement unless it is not chargeable under these guidelines.

Substantial penalties apply under sections 59 and 57 of the *Taxation Administration Act 1997* for failure to lodge a statement as required, and for lodging a statement that is knowingly false and misleading.

Statements which do not qualify for an exemption under section 109 of the Duties Act are liable to duty, which must be paid within three months after the day on which the property became the property of the receiving body.^{FN1}

Exemption from Duty

Section 109 of the Duties Act provides an exemption from Victorian duty for dutiable instruments arising from the voluntary transfer of assets of a financial institution where the merger meets the criteria established under guidelines approved by the Treasurer of Victoria. Institutions seeking an exemption from duty must apply in writing to the State Revenue Office of Victoria. The application must specify the property that is the subject of the instrument(s) of transfer, the amount of any duty involved and explain why the proposal meets the guidelines.

These guidelines are effective on 1 July 2001 and are issued to coincide with the introduction of the Duties Act. They reflect the previous guidelines approved under section 137P of the *Stamps Act 1958* (Stamps Act).

Ruling

An exemption is available where:

1. A certificate of transfer is issued by the Australian Prudential Regulation Authority under section 18 of the FS(TB) Act; and
2. The merger or transfer of engagements would not previously have been liable to duty under the Stamps Act, by virtue of the operation of the former Financial Institutions (Victoria) Code.

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
October 2001

^{FN1} The *State Taxation Acts Further Amendment Act 2011* amended the *Duties Act 2000* to provide that the period for payment of duty for dutiable transactions and relevant acquisitions occurring on or after 1 April 2012 is within 30 days after the liability to pay the duty arises.