

Revenue Ruling DA.030

Transfer of dutiable property solely because of a change in trustee

Replaces SD.082 and DA.019

Preamble

Section 33(3) of the *Duties Act 2000* (the Act) exempts from duty a transfer of dutiable property to a person other than a special trustee solely because of the retirement of a trustee or the appointment of a new trustee, or other change in trustees and in order to vest the property in the trustees for the time being entitled to hold it.

There are many reasons why the trustee of a trust may change and thereby require the transfer of dutiable property in the trust from the former trustee to the new trustee. When considering the exemption under section 33(3), the Commissioner of State Revenue (the Commissioner) needs to be satisfied that the transfer of dutiable property is made solely because of the retirement of a trustee or the appointment of a new trustee and there is no change in the beneficial ownership of the property.

The purpose of this ruling is to specify the factors that the Commissioner will examine in determining whether the exemption under section 33(3) applies.

Ruling

In determining whether the exemption in section 33(3) of the Act applies, the Commissioner will consider:

- o The circumstances in which the former trustee has retired or been removed and the new trustee was appointed;
- o The circumstances surrounding the transfer of the dutiable property itself;
- o Whether the transfer of the dutiable property is part of a scheme for conferring an interest in relation to the trust property on a new trustee or any other person, whether as a beneficiary or otherwise, to the detriment of the beneficial interest or potential beneficial interest of any person.

Where the Commissioner is of the opinion that the change in trustee, which results in a consequent transfer of dutiable property, forms part of a transaction or a series of transactions that have a separate commercial objective the Commissioner will not be satisfied that the transfer is solely because of a change of the trustee. This will be so, irrespective of whether or not the effect of those transactions was to avoid the payment of duty. In such circumstances the exemption under section 33(3) of the Act will not apply.

Please note that rulings do not have the force of law. Each decision made by the SRO 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 2004

