



## **COMMISSIONER'S PRACTICE DA 3.0**

### **DUTIES – TRANSFERS OF DUTIABLE PROPERTY TO AND FROM A TRUSTEE**

This Commissioner's practice addresses the circumstances in which a transfer of dutiable property will be accepted as satisfying the conditions set out in section 118 of the *Duties Act 2008* ('Duties Act').

#### **Background**

In accordance with section 118 of the Duties Act, nominal duty of \$20.00 is chargeable on a transfer of dutiable property that is:

- made by a transferor to a trustee (other than a trustee of a unit trust or discretionary trust) to be held solely as trustee for the transferor without any change in the beneficial ownership of the dutiable property; or
- made by way of re-transfer to the transferor, if no other person has had a beneficial interest in the property between the transfer to the trustee and the re-transfer.

#### **Commissioner's Practice**

1. Every transfer of dutiable property to a trustee that is claiming to hold the property on behalf of the transferor, or re-transfer of dutiable property to the transferor, will be closely scrutinised in order to verify that it is not associated with a change in the beneficial ownership of the property. The following examples demonstrate cases where the requirements of section 118 of the Duties Act will generally be accepted as having been satisfied.

#### ***Property Subdivision***

2. Under the *Transfer of Land Act 1893*, land must be in common ownership before an application may be made for new certificates of title upon the subdivision of the land.
3. A transfer of land made to effect common ownership for the purposes of a subdivision will be assessed with nominal duty under section 118 of the Duties Act where the taxpayer is able to provide evidence to confirm that:
  - 3.1 the transfer is solely for the purpose of facilitating the subdivision; and
  - 3.2 the transferor will receive the same piece of land after subdivision (notwithstanding that the legal description may have changed) as they owned previously.

### ***Property Owner Under a Permanent Disability***

4. Where a property owner is unable to discharge the rights and obligations of property ownership (for example, due to mental incapacity), a legal administrator may hold the land in a trustee capacity by executing a declaration that the land is held on trust for the specified beneficiary.
5. When lodging the transaction record (e.g. transfer of land), the legal administrator will need to provide:
  - 5.1 a copy of the order from the Guardianship Board appointing the trustee as Administrator for the disabled person; and
  - 5.2 a medical report confirming that the disabled person is unable to manage his or her own financial affairs.

### ***Other Circumstances***

6. Any other circumstances where the taxpayer is able to satisfy the Commissioner under section 118 of the Duties Act.

### **Date of Effect**

This Commissioner's practice takes effect from 1 July 2008.

Bill Sullivan  
COMMISSIONER OF STATE REVENUE

1 July 2008

### **Commissioner's Practice History**

<b>Commissioner's Practice</b>	<b>Issued</b>	<b>Dates of effect</b>	
		<b>From</b>	<b>To</b>
DA 3.0	1 July 2008	1 July 2008	Current