ACT Government

ACT REVENUE OFFICE

REVENUE CIRCULAR DAA006
Concessions and Exemptions from Duty: Transfers to Certain Personal Relationships *Duties Act 1999*
Issue Date: 30 June 2008
Status: Current – Effective 20 November 2010
Previous Circular: D12

Preamble

1. The *Duties Act 1999* (the Act) provides for concessional duty and exemptions from duty for certain transactions resulting from changes to personal relationships. Changes to such relationships may arise from a court order or be pursuant to an agreement.
2. The purpose of this circular is to show how the concessional duty and exemptions apply.

Circular

Transfers by Court Orders

3. Duty is not chargeable on transfers of dutiable property under Chapter 2 of the Act (section 74B), transactions under Chapter 3 of the Act (section 115H), or the Chapter 9 application to transfer the registration of a motor vehicle (section 213), made under a court order under the *Family Law Act 1975* (Cth), *Married Person's Property Act 1986* (ACT), or any other court order for the distribution of property consequent on the termination of a domestic relationship.

Transfers Pursuant to a Financial Agreement, Domestic Relationship Agreement or Termination Agreement

4. Duty is not chargeable on:
   (a) financial agreements made under the *Family Law Act 1975* (Cth), section 90B, section 90C or section 90D, that is binding on the parties under that Act; or
   (b) domestic relationship agreements, or a termination agreements, under the *Domestic Relationships Act 1994*.
5. Duty is not chargeable on transfers of dutiable property under Chapter 2 of the Act (section 74B), transactions under Chapter 3 of the Act (section 115H), or the Chapter 9 application to transfer the registration of a motor vehicle (section 213), if the transfer is made under a financial agreement made under the *Family Law Act 1975* (Cth), sections 90B, 90C or 90D, if the transfer is consequent on the dissolution, annulment or irretrievable breakdown of a marriage. The property transferred must be matrimonial property transferring to the parties to the marriage or children of the marriage.

6. Duty is not chargeable on transfers of dutiable property under Chapter 2 of the Act (section 74B), transactions under Chapter 3 of the Act (section 115H), or the Chapter 9 application to transfer the registration of a motor vehicle (section 213), if the transfer is made under a domestic relationship agreement or a termination agreement within the meaning of the *Domestic Relationships Act 1994*.

The agreements must satisfy the following requirements:

(a) be in writing;

(b) be signed by the parties; and

(c) have endorsed on it, or be accompanied by, a certificate in relation to each party given by a solicitor before the signing of the agreement to the effect that the solicitor has advised that party, independently of the other party, as to the following matters:

(i) the effect of the agreement on the rights of the parties under the *Domestic Relationships Act 1994*;

(ii) whether it was advantageous, financially or otherwise, for that party to enter into the agreement;

(iii) whether it was prudent for that party to enter into the agreement; and

(iv) whether the agreement was fair and reasonable in the light of the circumstances that were then reasonably foreseeable.

Transfers of Interest in Principal Place of Residence

7. Under section 72 of the Act, duty of $20 is payable in respect of a transfer from one party to the other party of an interest in dutiable property that is, at the date of the transfer, used as their principal place of residence **and** the transfer results in the property being held by them as:

(a) joint tenants;

(b) tenants in common in equal shares; or

(c) tenants in common in shares that are proportionate to their contribution towards the purchase and improvement of the property or in such proportions as are prescribed.

Meaning of "Partner", "Domestic Partner" and "Domestic Relationship"

8. The dictionary defines "partner" as a person's spouse or someone with whom the person has a domestic relationship. "Domestic relationship" is defined in the dictionary to have the same meaning as in the *Domestic Relationships Act 1994*, section 3.

9. Section 169 of the *Legislation Act 2001* defines "domestic partner" and "domestic partnership" in an Act or statutory instrument as follows:

(a) a reference to a person's "domestic partner" is a reference to someone who lives with the person in a domestic partnership, and includes a reference to a spouse[1] or civil partner of the person; and

(b) a "domestic partnership" is the relationship between 2 people, whether of a different or the same sex, living together as a couple on a genuine domestic basis (and includes a reference to a marriage and a civil partnership).

10. Section 169 of the *Legislation Act 2001* gives examples[2] of indicators to decide whether 2 people are in a domestic partnership as follows:

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1 Note the Macquarie dictionary (1997) defines spouse as 'either member of a married pair in relation to the other; one's husband or wife'.

2 Note an example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see s 126 and s 132 of the Legislation Act).

1 the length of their relationship
2 whether they are living together
3 if they are living together: how long and under what circumstances they have lived together
4 whether there is a sexual relationship between them
5 their degree of financial dependence or interdependence, and any arrangements for financial support, between or by them
6 the ownership, use and acquisition of their property, including any property that they own individually
7 their degree of mutual commitment to a shared life
8 whether they mutually care for and support children
9 the performance of household duties
10 the reputation, and public aspects, of the relationship between them

Evidence Required to establish the Transfer

11. For the purposes of ascertaining that the parties to the transaction satisfy the requirements of this provision, the parties to the transfer must provide the following evidence.
    (a) Statutory declarations by both parties stating that the property being transferred is their principal place of residence and attesting to the date from which they have lived at the property.
    (b) Documentary evidence fulfilling one of the following three categories:
        (i) Marriage Certificate issued by a Registrar of Marriages; or
        (ii) Birth Certificate of a child of the parties; or
        (iii) each party to provide documentary evidence supporting the existence of a personal relationship demonstrated by a <u>minimum</u> of 3 of the following items:
            A. Marriage Certificate issued by a Marriage Celebrant;
            B. drivers' licences, registration papers of the parties showing a common address;
            C. property utility accounts (.g. electricity, water, gas, phone) in the name of the parties;
            D. joint bank account statements;
            E. statement or extract from the ACT Electoral Roll;
            F. ATO Tax assessment Notices for both parties for the last completed financial year;
            G. other documentary evidence.

Evidence Required of Proportionate Contribution

12. Where the transfer results in the property being held by the parties as tenants in common in shares that are proportionate to their contribution towards the purchase and improvement of the property, evidence of the proportionate contribution is required.

13. Evidence of cash or monetary contributions made toward the purchase of the property by both parties that predate the intended transfer date must include the following:
    (a) statutory declarations by both parties attesting to the date and purchase price of the property and their respective contributions;
    (b) copies of any financial agreements between the parties in respect of that purchase; and

(c) details of bank accounts from which deposits, regular mortgage payments (if any), or other one-off payments for the purchase or subsequent improvements of the property, were drawn.

SIGNED

Graeme Dowell
Commissioner for ACT Revenue
30 June 2008