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Public Ruling Duties Act:

NOMINEE AGREEMENTS - UNDER AN AGENCY RELATIONSHIP

A Public Ruling, when issued, is the published view of the Commissioner on the particular topic to which it relates. It therefore replaces and overrides any existing private rulings, memoranda, manuals and advice provided by the Commissioner in respect of the issue/s it addresses. Where a change in legislation or case law (the law) affects the content of a Public Ruling, the change in the law overrides the Public Ruling—that is, the Commissioner will determine the tax liability or eligibility for a concession, grant, subsidy or exemption, as the case may be, in accordance with the law.

What this Ruling is about

- Section 22(3) of the *Duties Act 2001* (the Duties Act) states that if the Commissioner is satisfied—
 - a person (the agent) is appointed in writing as an agent for another person (the principal) and
 - under the appointment, the agent enters into a dutiable transaction that is an agreement for the transfer of dutiable property from a person (the original transferor) to the agent on behalf of the principal (the agreement) and
 - the principal provided all the consideration, including any deposit paid and
 - transfer duty imposed on the agreement is paid and
 - the dutiable property is later transferred to the principal by the original transferor or the agent (the agency transfer)no transfer duty is imposed on the agency transfer or the trust acquisition or trust surrender by the principal because of the agreement or agency transfer.
- Section 22(4) of the Duties Act provides that for paragraph 1(a) above, the Commissioner must not be satisfied the person was properly appointed as agent unless the original instrument of appointment is lodged.
- The purpose of this Public Ruling is to explain what is required for the Commissioner to be satisfied under s.22(3) of the Duties Act that a purchaser was acting as an agent for a principal when entering into an agreement for the transfer of dutiable property.

Ruling and explanation

4. When determining whether s.22(3) of the Duties Act has application, the Commissioner is required to consider all of the relevant facts of each case.
5. In considering s.22(3) of the Duties Act, the Commissioner requires the following:
- (a) A statutory declaration from the principal declaring that:
 - (i) the principal provided all purchase monies, including any deposit paid and
 - (ii) when the agent signed the agreement to acquire the property, the agent was acting for the principal under a current written authority.
 - (b) A statutory declaration from the agent declaring that:
 - (i) the agent did not provide any of the purchase monies, including any deposit paid and
 - (ii) when signing the agreement to acquire the property, the agent was acting for the principal under a current written authority.
 - (c) A copy of the written authority witnessing the agency relationship.
 - (d) A written outline as to all the other relevant facts and circumstances which clarify the nature of the agency relationship.

Date of effect

6. This Public Ruling takes effect from the date of issue.

David Smith
 Commissioner of State Revenue
 Date of Issue 24 February 2009

References

Public Ruling	Issued	Dates of effect	
		From	To
DA022.1.1	24 February 2009	24 February 2009	Current
Supersedes Revenue Ruling DA 10.1	1 March 2002	1 March 2002	23 February 2009