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## Public Ruling Duties Act:

### LIABILITY TO DUTY OF PARTIES TO A TRANSACTION TO WHICH THE STATE IS A PARTY

*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

1. Under the *Duties Act 2001* (the Duties Act), the State is not liable to pay duty<sup>1</sup> unless the Duties Act expressly provides otherwise.<sup>2</sup>
2. The State refers to the State of Queensland.<sup>3</sup>
3. Under the Duties Act, some provisions provide that all parties to a transaction chargeable with duty are liable to pay the duty.<sup>4</sup>
4. This Public Ruling applies where:
  - (a) one of the parties to an instrument or transaction is the State or represents the State
  - (b) under the Duties Act, the State is exempt from duty on the instrument or transaction and
  - (c) the Duties Act imposes the liability to duty also on another party to the transaction.

## Ruling and explanation

5. If, in the circumstances set out in paragraph 4, the commercial obligation to pay the duty would usually be upon the State, the Commissioner will not pursue either party for the payment of the duty. The document or duty statement is to be stamped pursuant to s.492(b) of the Duties Act.

<sup>1</sup> Section 426 of the Duties Act

<sup>2</sup> See, for example, ss.17(1) and 357(3) of the Duties Act

<sup>3</sup> Section 36 of the *Acts Interpretation Act 1954*

<sup>4</sup> See, for example, ss.17(2) of the Duties Act

**Example 1**

*An agreement for the transfer of land is executed under which the State agrees to purchase a block of land from A.*

*Section 17(2) of the Duties Act imposes an obligation on both parties to pay the transfer duty. However, under usual commercial practice, the purchaser generally assumes the commercial obligation to pay that duty.*

*The State is the purchaser in this instance. However, there is no express obligation in the Duties Act for the State to pay the duty so that s.426 of the Duties Act will apply to exempt the State from payment of the duty.*

*The agreement will be stamped pursuant to s.492(b) of the Duties Act. The Commissioner will not pursue A for the payment of the transfer duty.*

6. If, in the circumstances set out in paragraph 4, the commercial obligation to pay the duty would not usually be upon the State, the other parties to the instrument or transaction who are liable for the duty under the Duties Act will remain liable to pay the duty to the Commissioner.

**Example 2**

*An agreement for the transfer of land is executed under which X Pty Ltd as purchaser agrees to purchase land from the State.*

*Section 17(2) of the Duties Act imposes an obligation on both parties to pay the transfer duty. However, under usual commercial practice, the purchaser generally assumes the commercial obligation to pay that duty.*

*X Pty Ltd is the purchaser in this instance and there is no provision in the Duties Act exempting X Pty Ltd from payment of duty.*

*The purchaser is liable to pay the transfer duty.*

*The Commissioner will not seek payment of the transfer duty from the State, as it is exempt from duty under s.426 of the Duties Act.*

7. Paragraph 6 applies even if, under the instrument or transaction, the State assumes liability to pay the duty. While the State would remain exempt from duty under the Duties Act, the arrangement between the parties regarding the payment of the duty does not prevent the Commissioner from recovering the duty from the other parties who are liable to pay the duty.

**Example 3**

*An agreement for the transfer of land is made between the State as the vendor and E as purchaser. The vendor and purchaser have agreed that the State will pay any transfer duty on the agreement. This is not the usual commercial practice.*

*Under usual commercial practice, the purchaser would normally have had the commercial obligation to pay the transfer duty.*

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*The purchaser remains liable to pay the transfer duty to the Commissioner despite the terms of the agreement with the State.*

*The Commissioner will not seek payment of the transfer duty from the State, if it is exempt from duty under s.426 of the Duties Act.*

8. The question of whether an entity is, or represents, the State can only be determined by consideration of all facts relevant to the matter.

## Date of effect

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

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

## References

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Public Ruling	Issued	Dates of effect	
		From	To
DA426.1.1	24 February 2009	24 February 2009	Current
Supersedes Practice Direction DA 51.3	12 February 2008	12 February 2008	23 February 2009