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Public Ruling Duties Act:

SECURITIES QUOTED ON THE MARKET OPERATED BY A RECOGNISED STOCK EXCHANGE – SECURITIES SUSPENDED FROM QUOTATION

A Public Ruling, when issued, is the published view of the Commissioner of State Revenue (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 or exemption, as the case may be, in accordance with the law.

What this Ruling is about

1. This Public Ruling clarifies the application of the *Duties Act 2001* (the Duties Act) to transactions concerning securities that are temporarily suspended from quotation on the market operated by a recognised stock exchange.
2. Securities may be quoted on the market operated by a stock exchange following admission of the issuing entity to the exchange's official list. Once quoted, the securities may be subsequently suspended from quotation in certain circumstances. For example, shares are commonly suspended from quotation where there is to be a compulsory acquisition of the issuing company following a takeover bid.
3. Securities that are suspended from quotation on the Australian Securities Exchange (ASX) may be reinstated to quotation without a fresh application. However, if the issuing entity is removed from ASX's official list, quotation of all the entity's securities ends, and a fresh application for admission of the entity and quotation of its securities would need to be made.¹
4. Landholder duty is imposed on certain acquisitions of interests in landholders.² An acquisition of an interest in a listed or unlisted corporation or listed unit trust, that holds land in Queensland valued at \$2,000,000 or more, may attract landholder duty.³

¹ Explanatory Note to Chapter 17 of the ASX Listing Rules – *Trading halts, suspension, removal*

² Chapter 3, Part 1 of the Duties Act

³ Sections 165 and 165A of the Duties Act

5. Corporate trustee duty is imposed on certain acquisitions of interests in corporate trustees or relevant corporations for corporate trustees.⁴ The corporate trustee duty provisions only apply to acquisitions of interests in unlisted corporations⁵.
6. Transfer duty is imposed on the dutiable value of a dutiable transaction.⁶ A trust acquisition or trust surrender is a dutiable transaction.⁷ However, transfer duty does not apply to a trust acquisition or trust surrender of a trust interest in a public unit trust, other than a majority trust acquisition in a land holding trust.⁸ 'Public unit trust' is defined to include, among others, a listed unit trust.⁹ A listed unit trust is a unit trust the units in which are quoted on the market operated by a recognised stock exchange.¹⁰
7. The term 'quoted' is not defined in the Duties Act and therefore has its ordinary meaning.
8. 'Recognised stock exchange' is defined as the ASX or another stock exchange prescribed under a regulation.¹¹ The *Duties Regulation 2002* prescribes as recognised stock exchanges the Australia Pacific Exchange Limited, the Bendigo Stock Exchange Ltd, the Stock Exchange of Newcastle Limited, and a stock exchange that is a member of the World Federation of Exchanges.¹²

Ruling and explanation

9. Generally, in most circumstances where securities are temporarily suspended from quotation on the market operated by a recognised stock exchange, the securities will continue to be regarded as 'quoted' for the purposes of the Duties Act during the period of suspension.
10. If the issuing entity is subsequently removed from the official list of the exchange, the securities will cease to be 'quoted' for the purposes of the Duties Act from the time of the removal.
11. However, where the suspension is part of an arrangement to avoid the imposition of duty, the Commissioner may regard the securities as not being quoted on the market during the period of suspension.¹³
12. In determining whether the suspension is part of an arrangement to avoid the imposition of duty, the Commissioner will take into account all relevant facts and circumstances.

⁴ Chapter 3, Part 2 of the Duties Act

⁵ Defined in Schedule 6 of the Duties Act

⁶ Section 8 of the Duties Act

⁷ Section 9(1)(i) of the Duties Act

⁸ Section 49(2) of the Duties Act

⁹ Section 68(a) of the Duties Act

¹⁰ Section 69 of the Duties Act

¹¹ Schedule 6 of the Duties Act

¹² Section 8 of the *Duties Regulation 2002*

¹³ Section 498A of the Duties Act

Date of effect

13. This Public Ruling takes effect from 1 July 2011.

Tony Kulpa
Deputy Commissioner of State Revenue
Date of Issue 30 June 2011

References

Public Ruling	Issued	Dates of effect	
		From	To
DA498A.1.3	30 June 2011	1 July 2011	Current
DA498A.1.2	15 April 2010	15 April 2010	30 June 2011
DA498A.1.1	24 February 2009	24 February 2009	14 April 2010
Supersedes Practice Direction DA 79.2	22 January 2009	22 January 2009	23 February 2009