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Wills and Estates – Duty Exemptions and Concessions

Preamble

1. The *Duties Act 2001* (the Act) imposes duty on "dutiable transactions". This includes transfers of "dutiable property" under section 6(1)(a) of the Act.
2. However, certain transactions are entitled to exempt and concessional treatment under the Act. In particular, some provisions of the Act provide exempt and concessional treatment of transactions involving deceased estates.
3. This ruling explains how these exemptions and concessions of the Act operate and are applied by the Commissioner. Specifically, this ruling considers the following sections of the Act:
    - Section 53(j) [exemption];
    - Section 47(1) [concession]; and
    - Section 47(1A) [concession].
4. This ruling does not consider alternative trust structures and arrangements that do not involve deceased estates, including family discretionary trusts and unit trusts.

Definition of terms used in this revenue ruling

5. A "will" has the same meaning as in the *Wills Act 2008* and includes a codicil and any other testamentary disposition.
6. "Intestate" has the same meaning as in the *Intestacy Act 2010* (the Intestacy Act). That is, per section 5 of the Intestacy Act, "*an intestate is a person who dies and either does not leave a will or leaves a will but does not dispose effectively by will of all or part of his or her property*".

Ruling

7. The Commissioner, when considering the circumstances of a deceased estate, will consider each of the provisions of the Act in the same order as adopted in this ruling. This is because sections 47(1) and 47(1A) of the Act are "subject" to section 53(j) of the Act. Accordingly, where there is an assent in accordance with section 36(1) of the *Administration and Probate Act 1935* (the AP Act), the transfer will be exempt pursuant to section 53(j) of the Act and section 47 of the Act will not apply.
8. Taxpayers and their representatives seeking to obtain exempt or concessional treatment should also consider the application of the provisions in the same order.

Section 53(j)

9. Section 53(j) of the Act states:

> *Duty is not chargeable under this Chapter on the following:*
>
> …
>
> *(j) an assent given under section 36(1) of the Administration and Probate Act 1935 in relation to the vesting of real estate*

10. Broadly, an "assent" is the process by which a personal representative makes and communicates a decision to transfer a legacy of an estate to a legatee. For example, a decision by an executor of a deceased estate to transfer property from the estate to a beneficiary.

11. In order for an assent to come within scope of section 53(j) of the Act it must comply with section 36(1)(b) of the AP Act which provides:

> *A personal representative may –*
>
> …
>
> *(b) in relation to real estate that is subject to that [Land Titles Act 1980], assent in the prescribed form–*
>
> *to the vesting in any person who, whether by devise, bequest, devolution, or appropriation, may be entitled thereto, either beneficially or as a trustee or personal representative, of any estate or interest in real estate to which the testator or intestate was entitled or over which he exercised a general power of appointment by his will, and which devolved upon the personal representative.*

12. The Commissioner considers in order for an assent to be given under section 36(1)(b) of the AP Act, the following requirements must be satisfied:
    a. the assent must be in the "*prescribed form*";
    b. the relevant beneficiary, trustee or personal representative must be entitled to an estate or interest in the real estate under the will; and
    c. the entitlement must be by "*devise, bequest, devolution, or appropriation*".

13. Generally, the prescribed form for the purposes of section 36(1)(b) of the AP Act is the Land Titles Office's "Transfer by way of Assent".

14. The Commissioner considers a beneficiary, trustee or personal representative's entitlement can be determined from the terms of the will, looking at the whole instrument.[1] This includes whether the entitlement is by devise, bequest, devolution, or appropriation.[2]

15. If a vesting under an assent is strictly in conformity with the terms of the will, then the Commissioner will consider the assent has been made under 36(1) of the AP Act.

16. However, it is noted that a power of appropriation also exists at common law and under section 40 of the AP Act. Where a taxpayer relies on an alternative basis of appropriation this should be explained in correspondence to the Commissioner.

17. The same principles will apply where the deceased is an intestate. However, rather than considering the terms of the will, the Commissioner will have regard to the requirements of the Intestacy Act.

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[1] *Keulemans v Attorney-General New South Wales* [2013] NSWSC 1772; *Leader v Duffey* (1888) 13 App Cas 294.
[2] An appropriation is, in effect, the application in specie of an asset of the estate.

Example 1A

18. Mr Smith passed away and bequeathed a property to Mrs Smith under the terms of his will.
19. The executor makes an assent to transfer the property solely to Mrs Smith.
20. A Transfer by way of Assent is prepared and, alongside a copy of the will and other relevant documentation, is lodged with the State Revenue Office.
21. The assent in these circumstances likely complies with the requirements of section 36(1)(b) of the AP Act and, in turn, the transfer should be exempt from duty under section 53(j) of the Act.

Example 1B

22. Assuming the same facts as example 1A, except the executor makes an assent to transfer 50 per cent of the property to Mrs Smith and 50 per cent of the property to Mr Stevens.
23. In this situation, as Mr Stevens is not entitled under the will, the assent to Mrs Smith will not satisfy section 36(1)(b) of the AP Act and, as such, will not be exempt under section 53(j) of the Act.

Example 1C

24. Ms Sinclair passed away and left an estate of $1 million. The assets of Ms Sinclair's estate consist of a property (worth $500 000) and cash of $500 000.
25. Under her will, Ms Sinclair made no specific gifts but left the residue of the estate to her daughter (Mary) and sister (Anne) – 50 per cent each. The will provides the executor with a power of appropriation.
26. The executor transfers the cash to Mary.
27. The executor makes an assent to transfer the property to Anne. That is, the executor applied the property in satisfaction of Anne's entitlement under the will.
28. A Transfer by way of Assent is prepared and, alongside a copy of the will and other relevant documentation, is lodged with the State Revenue Office.
29. The assent in these circumstances likely complies with the requirements of section 36(1)(b) of the AP Act as the executor had a power of appropriation under the will and, in turn, the transfer should be exempt from duty under section 53(j) of the Act.

Section 47(1)

30. Section 47(1) of the Act states:

> *Subject to section 53(j), duty of $50 is chargeable in respect of a transfer of dutiable property not made for valuable consideration by the legal personal representative of a deceased person to a beneficiary, being –*
>
> *(a) a transfer made under and in conformity with the trusts contained in the will of the deceased person or arising on an intestacy; or*
>
> *(b) a transfer of property the subject of a trust for sale contained in the will of the deceased person; or*
>
> *(c) a transfer of property in accordance with an order made under the Testator's Family Maintenance Act 1912.*

31. For the purposes of section 47(1)(a) of the Act, a transfer will be "*made under and in conformity with the trusts contained in the will of the deceased person or arising on an intestacy*", where the transfer is strictly in conformity with the trusts contained in the will or arising on an intestacy. In other words, it must be entirely consistent with the terms of the will[3] or the Intestacy Act.

[3] The same principles of interpretation discussed in paragraph 14 will be applied to wills being considered under Section 47 of the Act.

32. Similarly, for the purposes of sections 47(1)(b) and 47(1)(c) of the Act, a transfer of property the subject of a trust for sale contained in the will or a transfer of property in accordance with an order made under the *Testator's Family Maintenance Act 1912* (the TFM Act) will only give rise to concessional treatment where the transfer is strictly in conformity with the will or an order under the TFM Act respectively.

33. Dealings between the executor and the beneficiaries for the convenience of administration of the estate – that are not according to the trusts contained in the will of the deceased person – will generally not be in strict conformity and, therefore, will not give rise to concessional treatment under section 47(1) of the Act.

34. Additionally, section 47(1) of the Act will only be satisfied if the transfer is "*not made for valuable consideration*". In other words, the transaction must not be for any valuable consideration. "Valuable consideration" is a more specific term than "consideration" and, as such, requires the parties to exchange something with independent value (e.g. monetary consideration). Valuable consideration does not include the mere beneficial entitlement under the will.

Example 2A

35. Ms Walker passed away and bequeathed a property to her three children (a one–third entitlement each) under the terms of her will.

36. The executor transferred one–third of the property to each of the three children strictly in accordance with the terms of the will. No monetary consideration was provided.

37. While the transaction was in accordance with the terms of the will, the executor did not complete a "Transfer by way of Assent".

38. By failing to complete the "prescribed form" for the purposes of section 36(1)(b) of the AP Act, the requirements of section 53(j) of the Act cannot be satisfied.

39. However, section 47(1)(a) of the Act would be satisfied in this case and the transactions would likely be entitled to concessional treatment.

Example 2B

40. Assuming the same facts as example 2A, except one of the three children decides to take 100 per cent ownership of the property and in exchange pays $200 000 to each of the other two siblings.

41. The executor agrees to this arrangement and transfers the entire property to the one child.

42. As the arrangement is not strictly in conformity with the terms of the will, the transfer will not be entitled to concessional treatment under section 47(1) of the Act. However, please note the comments below in relation to section 47(1A) of the Act and, in particular, please consider Example 3A.

Section 47(1A)

43. Section 47(1A) of the Act states:

> *(1A) Subject to section 53(j), if –*
>
> *(a) a transfer of dutiable property is made to a beneficiary by the legal personal representative of a deceased person; and*
>
> *(b) the transfer is made under, but only partially in conformity with, the trusts contained in the will of the deceased person or arising on an intestacy –*
>
> *the dutiable value of the dutiable property is to be reduced by the value of so much of the transfer as is made in conformity with the trusts and is not made for valuable consideration.*

44. The purpose of section 47(1A) of the Act is to provide transactions with partial concessional treatment where the requirements of section 53(j) and section 47(1) of the Act have not been satisfied. In particular, a transfer to a beneficiary may receive partial concessional treatment if it is "*made under*" but "*only partially in conformity*" with the trusts contained in the will or arising on an intestacy and not made for "*valuable consideration*".

45. In relation to each of these three elements of section 47(1A) of the Act, it is noted:

    a. A transaction can be "under" the trusts contained in the will or arising on an intestacy, regardless of the form of the arrangement.

    b. A transaction is "partially in conformity" when there is an overlap between what a beneficiary is entitled to under the trusts contained in the will or arising on an intestacy and what is actually received. A transaction will not be partially in conformity where the fundamental nature of the interests in the relevant property are changed (e.g. a life estate to a fee simple estate – see also example 3B below).

    c. "Valuable consideration" under section 47(1A) of the Act is subject to apportionment. That is, if valuable consideration is only provided for a portion of a transfer, the rest of the transaction may still be entitled to concessional treatment.

46. The key documents for determining whether a transaction is partially in conformity with a trust contained in the will are: the will, any deed of family arrangement and any other associated documentation (e.g. the contract of sale).

47. In determining whether a transaction is partially in conformity with the trusts arising on an intestacy, the Commissioner will have regard to the requirements of the Intestacy Act, any deed of family arrangement and any other associated documentation (e.g. the contract of sale).

Example 3A

48. Mr Dawkins passed away and bequeathed a property to his two children: Paul and Ben (50 per cent each) under the terms of his will. The property has a market value of $500 000.

49. Paul, Ben and the executor agree that Paul will take 100 per cent ownership of the property and in exchange will pay the executor $250 000. The executor will, in turn, transfer the $250 000 to Ben.

50. There is no formal agreement to support this arrangement, other than the contract of sale. The contract of sale includes a special condition that $250 000 of the consideration payable represents Paul's beneficial entitlement under the will.

51. This arrangement will satisfy the requirements of section 47(1A) of the Act. Specifically:

    - As Paul is still receiving his 50 per cent entitlement under the will, the transaction will be partially in conformity with a trust contained in the will; and
    - The monetary consideration of $250 000 paid to the executor does not have any connection with Paul's 50 per cent entitlement under the will.

52. The dutiable value of the property is to be reduced by the value of Paul's 50 per cent entitlement under the will. The other 50 per cent will be subject to duty. Accordingly, the transaction would have a dutiable value of $250 000. Duty will be payable on $250 000 at the general rate.

Example 3B

53. Ms Lucas passed away and left her son (Robert) a life estate in her property. Upon Robert's death the property would pass to ABC Charity.

54. Robert entered into an agreement with ABC Charity and the executor, whereby he would receive the fee simple estate in the property and he would immediately transfer $50 000 to ABC Charity.

55. As the fundamental nature of the interest being transferred to Robert has been changed from a life estate into a fee simple estate, the transfer is not "partially in conformity" with the trusts under the will.

56. The transaction is not entitled to concessional treatment under section 47(1A) of the Act and, in turn, duty will be payable at the general rate on the dutiable value of the property without any reduction under section 47(1A).

Example 3C

57. Ms Jones passed away without a will.

58. Ms Jones is survived by her two children, Mark and Lily. Ms Jones' spouse predeceased her.

59. Under the Intestacy Act, Ms Jones' children are entitled to share in the distribution of the intestate estate and are each entitled to a 50 per cent interest in a property. The property has a market value of $500 000.

60. Instead, Mark, Lily and the administrator of the deceased estate execute a deed of family arrangement under which Mark receives a 100 per cent interest in the property and in exchange pays $250 000 to the administrator. The administrator will, in turn, transfer the $250 000 to Lily.

61. This arrangement will satisfy the requirements of section 47(1A) of the Act. Specifically:

    - As Mark is still receiving his 50 per cent entitlement under the trusts arising on intestacy, the transaction will be in partial conformity with a trust arising on intestacy; and
    - The monetary consideration of $250 000 paid by Mark under the deed of family arrangement does not have any connection with his original 50 per cent entitlement under the Intestacy Act.

62. The dutiable value of the property is to be reduced by the value of Mark's 50 per cent entitlement under the Intestacy Act. The other 50 per cent will be subject to duty. Accordingly, the transaction would have a dutiable value of $250 000. Duty will be payable on $250 000 at the general rate.

Application of this Ruling

63. This Ruling applies to assessments and reassessments on and after 9 October 2026.

64. *Rulings do not have the force of law*. Each decision made by the State Revenue Office is made on the merits of each individual case having regard to any relevant legislation and Ruling / Guidelines.

More information

For more information about this ruling, please contact the State Revenue Office's Legislation, Communication and Review section by emailing revenuereview@treasury.tas.gov.au or calling (03) 6166 4400. For all Revenue Rulings go to sro.tas.gov.au/resources/rulings. All Rulings must be read subject to the Revenue Ruling Explanation and Status of Revenue Rulings, available at sro.tas.gov.au/resources/rulings.

JC Root **(Commissioner of State Revenue)**
9 October 2026