

10 December 2021

Our ref: [BT/WD – SL/RL]

The Hon Cameron Dick
Treasurer, Minister for Trade and Investment

Dear Minister

The application of the *Duties Act 2001* (Qld) to deceased estates and small business restructures

We write to raise some concerns about the *Duties Act 2001* (Qld) (**Duties Act**) and its application to deceased estates, as a result of our members inquiring about the operation of this aspect of the legislation. A similar issue arises in the context of particular small business restructures.

We consider that there is an issue with the technical application of the legislation to deceased estates which has, in the interim, been addressed by a public ruling issued by the Commissioner or State Revenue (**Commissioner**) pending legislative amendment.

In light of the concerns raised by members, Queensland Law Society (**QLS**) seeks your assistance to progress urgently the amendments required to clarify the legislation and to ensure that there is no suggestion of death duties in Queensland. This will also ensure that our members can assist their clients to administer estates without the risk of unintended transfer duty being imposed.

The QLS Succession Law and Revenue Law Committees have assisted with this correspondence given their substantial expertise in this area.

We refer to two articles (the **articles**) that appeared in the online publication, *Proctor*, copies of which are **attached** to this correspondence:

- Vince Bailey, 'Death duties in Queensland – Who would have thought?' (12 August 2021); and
- Vince Bailey, 'Transmission by death – another death duty?' (6 October 2021).

In these articles, one of our members raises issues with the Duties Act as it applies to statutory vesting on death.

Section 124 of the Duties Act provides that transfer duty will not be imposed on dutiable transactions to the extent that such transactions give effect to the distribution of a deceased person's estate (the **deceased estate exemption**).

However, the deceased estate exemption does not exempt a statutory vesting. A statutory vesting is triggered by the death of a person. In Queensland, there can be multiple statutory vestings in respect of the same deceased estate. For example, where the court grants probate of a will having a different executor or the court revokes a grant of probate and makes a subsequent grant. In both instances, the property will be divested from the original executor and revested in the executor named in the later grant.

Since the introduction of the Duties Act, the Commissioner has adopted the practice of applying the deceased estate exemption to statutory vestings on death. While this is so, Public Ruling DA124.3.2 'Exemption for deceased person's estate – extension to certain statutory vestings' (**Public Ruling**) explicitly states that '[a] statutory vesting is not a transaction to which s. 124 currently applies'.¹

The Public Ruling clarifies that:

On 3 April 2017 an administrative arrangement was approved, pending legislative amendment, to enable the exemption in s. 124 of the Duties Act to apply to a dutiable transaction that is a vesting of dutiable property pursuant to s. 45 of the Succession Act, to the extent that the vesting gives effect to a distribution in the estate of a deceased person.²

While our members report that the Office of State Revenue is consistently assessing duty in accordance with the Public Ruling, the articles raise concerns as to the true extent to which a statutory vesting gives effect to a distribution in the estate of a deceased person.

Additionally, there is ambiguity in relation to whether a transmission of land to a legal personal representative in a statutory vesting is a dutiable transaction under the Duties Act. We note that in most Australian States and Territories where duty is transaction based, the duty legislation contains an express exemption for the statutory vesting and a separate exemption or concession for distribution from a deceased estate.³

Some of our members have voiced concerns that the current wording of the Duties Act leaves open the potential for death duties in Queensland. This presents a significant risk to legal practitioners, many of whom act in estate administration matters and are duty self-assessors.

In addition, we are aware that legal insurers have recently issued risk alerts advising legal practitioners of potential risks that the Office of State Revenue may not continue to assess duty in accordance with the Public Ruling, which may result in a legal personal representative of an estate being personally liable to pay the assessed duty, any Unpaid Tax Interest and penalty tax on the duty liability.

We refer also to the Palaszczuk Labor Government response to the QLS Queensland State Election 2020 Call to Parties Statement from Deputy Premier Miles, which commits that the Government has no plan 'to introduce so called death taxes. The Palaszczuk Labor Government confirms that it will not introduce new taxes if re-elected'.⁴

¹ Public Ruling DA124.3.2 'Exemption for deceased person's estate – extension to certain statutory vestings' (19 December 2019) [6].

² Ibid [7].

³ See Vince Bailey, Death duties in Queensland – Who would have thought?' (Proctor, 12 August 2021) <<https://www.qlsproctor.com.au/2021/08/death-duties-in-queensland-who-would-have-thought/>>.

⁴ 'Call to Parties: Palaszczuk Labor Government response' (Proctor, 20 October 2020) <<https://www.qlsproctor.com.au/2020/10/call-to-parties-palaszczuk-labor-government-response/>>.

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Given our member concerns, we write to seek the amendments necessary to give legislative effect to the “administrative arrangement” alluded to in the Public Ruling to ensure that there are no death duties in Queensland and to provide certainty to duty self-assessors and legal personal representatives. The legislation should be amended to specifically exempt statutory vesting and have retrospective effect from the commencement of the Duties Act.

Additionally, we highlight that the Duties Act imposes duty on a partnership interest or a unit in a unit trust distributed from a deceased estate by the executor to a beneficiary under the terms of the will. Currently, the taxpayer must apply for *ex gratia* relief which is only considered on a case-by-case basis.

QLS considers that all distributions from deceased estates to beneficiaries made in accordance with the deceased’s will should be exempt from duty, as opposed to requiring taxpayers to rely on the Commissioner’s discretion.

A similar issue arises in relation to the current exemption from transfer and vehicle registration duties for certain transactions relating to particular small business restructures. The exemption has been implemented by way of Public Ruling DA000.16.2 (updated 21 July 2021)⁵ but to ensure certainty for self-assessors when considering these transactions, legislative amendment is required.

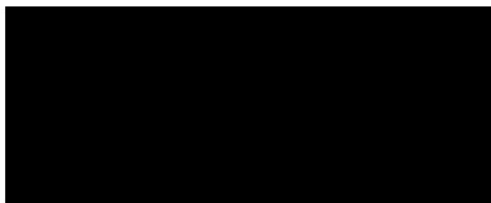
As identified in the ruling, “Unless an exemption applies, the Duties Act imposes, among other things, transfer duty on the dutiable value of dutiable transactions and vehicle registration duty on applications to register or transfer a vehicle.”

QLS strongly recommends that Treasury also progresses the Duties Act amendments required to implement, on a permanent basis, the exemption presently available to small business restructures under this ruling. Only legislative change will provide the certainty required for self-assessors and taxpayers.

We would welcome the opportunity to consult with the Government on these legislative amendments.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via policy@qls.com.au or by phone on (07) 3842 5930.

Yours faithfully



Elizabeth Shearer
President

⁵ <https://www.treasury.qld.gov.au/resource/da000-16/> - Public Ruling DA000.16.2 Administrative arrangement—duty exemptions for eligible small business restructures