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## Public Ruling Duties Act:

### **CERTAIN DEREGISTERED MANAGED INVESTMENT SCHEMES MAY BE TREATED AS AN EXEMPT MANAGED INVESTMENT SCHEME**

*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. Chapter 2, part 8 of the *Duties Act 2001* (the Duties Act) applies to dutiable transactions relating to trusts. However, the part 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.<sup>1</sup>
2. A public unit trust is a listed unit trust, a widely held unit trust, a wholesale unit trust, a pooled public investment unit trust or a declared public unit trust.<sup>2</sup>
3. Subject to conditions, a pooled public investment unit trust is a unit trust, other than a listed unit trust, widely held unit trust, wholesale unit trust or declared public unit trust, that is a registered managed investment scheme, an exempt managed investment scheme or a pooled superannuation trust.<sup>3</sup>
4. A *registered managed investment scheme* is a managed investment scheme registered under the *Corporations Act 2001* (Cwlth) (the Corporations Act).<sup>4</sup> An *exempt managed investment scheme* is a unit trust that is a managed investment scheme under the Corporations Act if, because of s.601ED(2) of that Act, the unit trust does not have to be registered because of the issue of units in the trust only to wholesale clients.<sup>5</sup>
5. Due to the wording of s.601ED(2) of the Corporations Act, a managed investment scheme with only wholesale clients can only qualify as an exempt managed investment scheme if it has never previously issued units to retail clients.

<sup>1</sup> Section 49 of the Duties Act

<sup>2</sup> Section 68 of the Duties Act

<sup>3</sup> Section 75 of the Duties Act

<sup>4</sup> Schedule 6 of the Duties Act

<sup>5</sup> Schedule 6 of the Duties Act

6. However, to facilitate the voluntary deregistration of registered managed investment schemes that have previously issued to retail clients but currently only have wholesale clients, the Australian Securities and Investments Commission (ASIC) may grant relief to exempt a managed investment scheme from the requirement to register in certain circumstances.
7. On 9 August 2017 an administrative arrangement was approved, pending legislative amendment, to enable the Duties Act to be administered on the basis that a deregistered managed investment scheme with only wholesale clients, that for the purpose of facilitating voluntary deregistration has been granted relief by ASIC exempting it from the requirement to register, may be treated as an exempt managed investment scheme, subject to certain conditions.
8. This public ruling sets out the terms of the administrative arrangement.

## **Ruling and explanation**

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### **Definitions of deeming period and deregistered managed investment scheme**

9. The following new terms are used in this public ruling.
  - (a) *Deeming period* means the period:
    - (i) commencing immediately before the first trust acquisition or trust surrender of a trust interest in the unit trust since it was deregistered by ASIC under s. 601PA of the Corporations Act  
and
    - (ii) ending the earlier of
      - when the instrument of exemption and declaration made by ASIC under s.601QA of the Corporations Act ceases to apply
      - immediately before units in the trust are issued to a person who is not a wholesale client within the meaning of s.761G(4) of the Corporations Act.
  - (b) *Deregistered managed investment scheme* means a unit trust approved by the Commissioner of State Revenue (the Commissioner) that is a managed investment scheme within the meaning of s.9 of the Corporations Act if, because of an exemption and declaration made by ASIC under s.601QA of that Act, the scheme:
    - (i) has been deregistered under s.601PA of the Corporations Act because all the members of the scheme
      - agreed that the scheme should be deregistered
      - were wholesale clients within the meaning of s.761G(4) of the Corporations Act at the time they acquired (by way of issue or transfer) their interest in the scheme

- were wholesale clients at the time the application for deregistration was lodged with ASIC
- (ii) is exempt from complying with s.601ED of the Corporations Act to the extent that it may require the scheme to be registered after it is deregistered.

### **Treatment of certain deregistered managed investment schemes as exempt managed investment scheme**

10. For trust acquisitions and trust surrenders occurring on or after 9 August 2017, chapter 2, part 8, division 7, subdivision 5 of the Duties Act is to be administered on the basis that a unit trust is taken to be an exempt managed investment scheme for the deeming period if, after receiving an application from the trustee of the unit trust, the Commissioner has approved the unit trust as a deregistered managed investment scheme.
11. In determining whether to approve a unit trust as a deregistered managed investment scheme, the Commissioner must be satisfied that it would be appropriate having regard to:
- (a) the reasons for deregistering the managed investment scheme
  - (b) the terms of any exemption and declaration made by ASIC under s.601QA of the Corporations Act
  - (c) whether the unit trust has ever qualified as a public unit trust and the reasons it no longer qualifies
  - (d) the circumstances surrounding the operation of the unit trust since it was deregistered
  - (e) the provisions of chapter 2, part 8, division 7 generally.

### **Date of effect**

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12. This public ruling takes effect from the date of issue.

Elizabeth Goli  
 Commissioner of State Revenue  
 Date of issue: 7 September 2017

### **References**

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Public Ruling	Issued	Dates of effect	
		From	To
DA075.3.1	7 September 2017	7 September 2017	11 November 2018