

This bulletin advises of remedies available to some taxpayers who may have overpaid duty on transfers of land and how they may seek assistance from the State Revenue Office (SRO).

Transfers of land and business

Duties Act Bulletin

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Following recent judicial decisions, it is evident that a number of taxpayers may have overpaid duty on transfers of land where there were contemporaneous transfers of land and a business conducted on that land.

Section 7 of the *Duties Act 2000* (the Act) charges duty on the transfer of dutiable property. The term dutiable property is defined in section 10(1)(a) of the Act to include an estate in fee simple in land in Victoria.

Section 20 of the Act provides that the dutiable value of dutiable property is the greater of the consideration for the dutiable transaction and the unencumbered value of the dutiable property. The term unencumbered value is further defined in section 22 of the Act as "the amount for which the property might reasonably have been sold in the open market at the time the dutiable transaction occurred free from any encumbrances to which the property was subject at that time".

In situations involving transfers of land upon which a business is conducted, the unencumbered value of that land may be difficult to determine. The Act does not charge duty separately on the sale of a business, but the presence of a business may affect the value of the land.

Furthermore, where land and business are transferred, the apportionment of the consideration between the land component and the business component may address accounting or other considerations and may not reflect the unencumbered value of the land.

Change in approach to determining dutiable value

The transfers of a business and the land, from which the business operated, caused the SRO particular concern where site goodwill was identified as one of the business assets transferred. To ensure that duty was paid on the higher of the consideration paid or the unencumbered value of the land, it was the SRO's practice to include any site goodwill identified in the value of the land assessed for duty.

Ultimately the decisions in *Commissioner of State Revenue v Uniquema* [2004] VSCA 82 and *Primelife*

(*Glendale Hostel*) Pty Ltd v Commissioner of State Revenue [2004] VSC 214 found that the dutiable value of land could not be determined in this manner.

The SRO's view is that the most accurate method of determining the unencumbered value of land transferred with a business is by way of valuation. Accordingly, the Act was amended in the Autumn 2004 session of Parliament to enable the Commissioner of State Revenue to request a valuation to accompany certain transfers of land presented for stamping. *Revenue Ruling DA.029* explains in more detail the rationale for seeking valuations, who is considered competent to provide such valuations and when they will be required.

Remedies for taxpayers who have overpaid duty

Taxpayers may ask the SRO to review the amount of duty charged for their transfers of land. The SRO will first determine the duty payable in accordance with the guidelines published in *Revenue Ruling DA.029*. If duty is found to have been overpaid, the taxpayer may be able to obtain a refund under the refund provisions of the *Taxation Administration Act 1997* (the TAA). Alternatively, the Commissioner may reassess the taxpayer's liability and subsequently refund any duty found to have been overpaid.

Refunds

The refund provisions of the TAA impose a number of restrictions:

- Section 19(1) enables a taxpayer to seek a refund of tax which was paid within the preceding three years;
- Section 19(2) prevents a taxpayer from applying for a refund if a notice of assessment was issued for an amount of tax which was subsequently paid; and
- Section 19(3) requires an application to be made in a form approved by the Commissioner.

An application for a refund can be made by taxpayers who paid duty within the past three years, provided they



were not issued with a notice of assessment for the duty. This group will include those whose documents were stamped by a DRS agent and those whose transfer documents were stamped at the SRO's Customer Service Centre.

Reassessments

The reassessment powers of the Commissioner under the TAA have some restrictions.

- Section 9(1) enables the Commissioner to make one or more reassessments; and
- Section 9(3) does not allow the Commissioner to make a reassessment more than three years after the initial assessment of a liability except to give effect to decisions on objection or appeal or where not all necessary information was provided to the Commissioner in the first instance.

If the SRO's review finds that duty was overpaid, the Commissioner can reassess the liability of those taxpayers who were issued with the first notice of assessment for a given transfer within the past three years. Reassessments can be made for taxpayers who did not object to their assessments as well as those taxpayers whose objections were disallowed. However, the Commissioner will not consider a reassessment for a taxpayer who negotiated a settlement with the SRO, either during the objection process or after requesting a review by the VCAT or an appeal to the Supreme Court.

How to request a review

Those taxpayers who believe that they qualify for either of the remedies available under the TAA, may ask the SRO to review the duty paid on their transfers of land.

All requests should be made in writing and should outline the circumstances of the transfer and the duty which the taxpayer believes would have been payable under the approach set out in *Revenue Ruling DA.029*.

The application for review should be supported by the following documentation:

- Copy of the contract(s) for the sale of the land and business;
- Copy of the stamped transfer of land document;
- Copy of any other documentation supplied at the time of lodgement of the transfer, particularly any valuations provided;
- A valuation if required by *Revenue Ruling DA.029*; and
- A refund application form (only required if the taxpayer did not receive a notice of assessment and available at the SRO's website www.sro.vic.gov.au)

Applications should be addressed to:

Review of duty paid for transfers of land and a business
Policy and Legislation Branch
State Revenue Office
GPO Box 1641
Melbourne VIC 3001

Further information

Please contact the State Revenue Office:

Website	www.sro.vic.gov.au
Email	contact@sro.vic.gov.au
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