

Revenue Rulings

Goods held or used in connection with land

Revenue Ruling DA.054

Ruling history	
Ruling no.	DA.054
Status	Current
Issue date	March 2011
Replaces	SD.096
Dates of effect	
From	N/A*
To	

Preamble

The *Duties Act 2000* (the Act) imposes duty on the transfer of dutiable property unless an exemption or concession applies.

The term 'dutiable property' is defined in section 10(1) of the Act to include, amongst other things, an estate in fee simple in land.

The definition of dutiable property in the Act also includes goods in Victoria, if the goods are the subject of an arrangement that includes a dutiable transaction over an estate or interest in land elsewhere referred to in section 10(1), including goods used in connection with a business carried on or in connection with the land.

Section 10(1)(d) of the Act excludes the following categories of goods from the definition of dutiable property:

- i) goods that are stock-in-trade,
- ii) materials held for use in manufacture,
- iii) goods under manufacture,
- iv) goods held or used in connection with primary production,
- v) livestock.

The purpose of this Ruling is to provide clarification on the types of goods that are subject to duty under the Act and to explain the scope of the excluded categories of goods in section 10(1)(d)(i) – (iv). The Ruling also provides guidance on –

- the difference between goods and fixtures,
- the treatment of plant and plant produce, and
- the treatment of motor vehicles

for the purposes of section 10(1)(d) of the Act.

Although this Ruling considers the treatment of fixtures insofar as it relates to the definition of dutiable property in section 10(1) of the Act, it does not deal specifically with tenant's fixtures for duty purposes.

*There is no effective start date as this Revenue Ruling is merely clarifying the State Revenue Office's ongoing practice.

Ruling

While the term 'goods' is not defined in the Act, goods can be defined to include all chattels personal other than choses in action and money. The term is commonly understood to refer to tangible personal property and includes plant and equipment, furniture and fittings and other assets that may be used in connection with a business conducted on the land.

Goods subject to duty

Goods are treated as dutiable property under the Act where they are the subject of an arrangement that includes a dutiable transaction over an interest in land elsewhere referred to in section 10(1) of the Act. In such circumstances, goods are subject to duty unless excluded by section 10(1)(d) of the Act.

Furthermore, as goods must be tangible, intangible items such as licenses and unbundled water entitlements are not dutiable as goods.

Stock-in-trade, materials held for use in manufacture and goods under manufacture

Goods that are 'stock-in-trade' are excluded from the definition of dutiable property. As the term stock-in-trade is not defined in the Act, it is given its ordinary commercial meaning under common law.

Goods will generally be regarded as stock-in-trade if they are a commodity of the business, that is, they are held for sale or hire by the business. Examples of stock-in trade include:

- liquor sold by licensed premises such as a hotel,
- books sold in a bookstore, and
- motor vehicles owned for sale by a Licensed Motor Car Trader.

Materials held for use in manufacture and goods under manufacture are also excluded from the definition of dutiable property. Materials held for use in manufacture include, for example, raw materials, such as the timber used to make furniture and fabrics used to make items of clothing. Goods under manufacture include partly manufactured goods such as the chemicals used to make cleaning products.

Goods held or used in connection with primary production

Section 10(1)(d)(iv) of the Act excludes from the definition of dutiable property goods that are held or used in connection with primary production.

'Primary production' is defined in the Act to mean the use of land primarily for -

- a) cultivation for the purpose of selling the produce of cultivation (whether in a natural, processed or converted state), or
- b) the maintenance of animals or poultry for the purpose of selling them or their natural increase or bodily produce, or
- c) the keeping of bees for the purpose of selling their honey, or
- d) commercial fishing, including the preparation for commercial fishing or storage or preservation of fish or fishing gear, or
- e) the cultivation or propagation for sale of plants, seedlings, mushrooms or orchids.

Goods will be treated as being held or used in connection with primary production where they are held directly in connection with the primary production that is being undertaken on the land. These include harvesters, tractors, picking trolleys and trailers.

Conversely, ordinary household goods such as floor coverings, light fittings, bedding, curtains and furniture are not held directly in connection with primary production and the Commissioner of State Revenue (the Commissioner) will not consider such items to be primary production goods regardless of whether the goods are:

- situated in a house located on primary production land which is occupied by the farmer and/or the farmer's family, or
- supplied by the farmer to individuals engaged to assist in primary production on the land.

Goods and fixtures

It is important to distinguish goods from fixtures because whilst goods may, depending on their categorisation, be excluded from the definition of dutiable property, fixtures are always considered to be dutiable property.

This distinction is made on the basis that goods only have a temporary annexation to the land and therefore do not form part of the land whereas fixtures are annexed to the land in such a way that they are considered to form part of the land. Fixtures are therefore not treated as a separate item of dutiable property under section 10 of the Act, rather they fall within the meaning of dutiable property in section 10(1)(a)

of the Act (being an estate in fee simple).

Whether an item used for the purpose of primary production is classified as a good or fixture depends on its nature, use and degree of annexation to the land and intention regarding the annexation.

Examples of fixtures include sheds, fences and trellises used to support the growth of plants or vines. Machinery which may be moved but that is situated in a permanent location, such as milking machinery (including milk vats), is also regarded as a fixture.

Similarly, an item kept in position by its own weight that is intended to remain in that position permanently and which enhances the use of the property for primary production is considered to be a fixture.

Plant and plant produce

Whether a plant and/or its produce is treated as a good 'held or used in connection with primary production' depends on its categorisation as either *fructus naturales* or *fructus industriales*. *Fructus naturales* are considered to be fixtures of the land (which are dutiable), whilst *fructus industriales* are considered to be primary production goods and are therefore excluded from the definition of dutiable property.

Fructus industriales refers to a crop or harvest of the earth produced annually by labour and industry, through sowing and reaping, planting and gathering of the relevant crop or harvest. Although grown in the ground, this class of produce is not treated as part of the land as its characteristics are similar to those of primary production goods: see *Seas Sapfor Ltd v Commissioner of Stamps (SA)* (1997) 97 ATC 4535 (*Sapfor*). Items classed as *fructus industriales* include corn, hay, oats, wheat and potatoes.

In contrast, *fructus naturales* refers to plant or plant produce that grows naturally from the soil, that is, without human cultivation. The common law regards such items as being part of the soil: see *Sapfor*. *Fructus naturales* items include the trees found in pine and timber plantations, fruit trees and grape vines.

Items classed as *fructus naturales* are considered to be fixtures regardless of whether they have been planted for the purpose of harvesting or felling. This is because the labour involved in the planting of these items represents a small part of the overall process and its development is deemed to have occurred naturally from the soil: see *Marshall v Green* (1895) 1 CPD 35.

Fructus naturales items are only considered to be goods upon their actual severance from the land. Once this occurs, such items are expressly excluded from the definition of dutiable property by virtue of section 10(1)(d)(i) (i.e. stock-in-trade). For example, grapes on a grape vine are classed as a fixture for the

period that they are attached to the vine. It is only once the grapes have been removed from the vine that they are classed as goods that are stock-in-trade.

However, where at the time of contract, the *fructus naturales* items are to be immediately withdrawn from the land, or the process of vegetation is completed, the Commissioner will consider the land to be a 'warehouse' for the *fructus naturales* items and will therefore regard such items as goods that are stock-in-trade.

Example

A contract of sale in respect of a vineyard is executed with the contract stipulating that the grapes on the vines are to be immediately picked by the purchaser after the contract date. In such circumstances, the grapes are deemed to be goods, namely stock-in-trade and thus will be excluded from the definition of dutiable property. Accordingly, duty will be calculated on the value of the land and any fixtures (for example, sheds, vines and trellises etc) that are transferred to the purchaser.

There is also an intermediate class of produce which provides no crop in the year of planting (i.e. hops). In circumstances where no crop is produced until several years after planting, any crop derived after that first year of plantation is regarded as *fructus naturales*; see *Sapfor*.

Motor vehicles

The definition of dutiable property under section 10(1)(d) of the Act encompasses motor vehicles that are used in connection with a business carried on or in connection with land. However, Chapter 9 of the Act also separately imposes duty on an application for the registration or transfer of registration of a motor vehicle.

To avoid the imposition of double duty, motor vehicles which attract duty under Chapter 9 of the Act are not considered to be goods within the definition of dutiable property under section 10(1)(d) of the Act.

Where a registered vehicle, that does not attract duty under Chapter 9 of the Act, is the subject of an arrangement that includes a dutiable transaction over an estate or interest in land, that vehicle is regarded as dutiable property pursuant to section 10(1)(d) (unless it is otherwise excluded by that section).