

# Revenue Rulings

## Aggregation of dutiable transactions and the exception from aggregation for domestic builders where residential premises are to be constructed

*Duties Act 2000*

Revenue Ruling DA.026 (version 2)

Ruling history	
Ruling no.	DA.026 (version 2)
Status	Current
Issue date	January 2014
Replaces	DA.026
Dates of effect	
From	28 June 2012
To	-

### Preamble

The *Duties Act 2000* (the Act) charges duty on the dutiable value of dutiable property the subject of a dutiable transaction.

Section 24 of the Act provides for the aggregation of dutiable transactions in certain circumstances. The *State Taxation Acts Amendment Act 2012* (the Amending Act) amended the aggregation provisions by removing the discretion of the Commissioner of State Revenue (the Commissioner) to not aggregate and replacing it with a specific exemption for transactions involving vacant land purchased by domestic builders provided certain criteria are met. The changes introduced by the Amending Act apply to dutiable transactions taking place on or after 28 June 2012.

Section 24A of the Act provides that, if the exception from aggregation for domestic builders in section 24(2) of the Act applies and the residential premises are not constructed within 5 years or the land is transferred without the residential premises being constructed, the Commissioner may reassess duty on those transactions that have not been aggregated as if they have been aggregated (giving an allowance for any duty already paid in respect of the transfers).

The purpose of this Ruling is to clarify how the Commissioner will apply the aggregation provisions in section 24 of the Act. In particular:

- the circumstances in which two or more dutiable transactions will be considered to form 'substantially one arrangement' (Section A of this Ruling)
- the exception from aggregation for domestic builders in some circumstances (Section B of this Ruling), and

- re-assessment of duty where the domestic builder exception is applied and residential premises are not constructed (Section C of this Ruling).

### Ruling

#### Section A – Aggregation of Dutiable Transactions

Section 24(1) of the Act provides that dutiable transactions relating to separate items or separate parts of dutiable property are to be aggregated and treated as a single dutiable transaction if:

- the contracts of sale are entered into within 12 months pursuant to section 24(1)(a)(i) of the Act or in any other cases, the dutiable transactions occur within 12 months pursuant to section 24(1)(a)(ii) of the Act (**Criterion 1**), and
- the dutiable transactions together form, evidence, give effect to or arise from what is, substantially, one arrangement relating to all of the items or parts of the dutiable property (**Criterion 2**).

#### Criterion 1 - The 12 month period

For dutiable transactions that are transfers upon sale, dutiable transactions may be aggregated where the contracts of sale are entered into within 12 months of each other.

Where one or more of the dutiable transactions are not transfers upon sale, dutiable transactions which occur within 12 months of each other may also be aggregated.

#### Criterion 2 - Substantially one arrangement

Aggregation can only apply where dutiable transactions together form, evidence, give effect to or arise from what is, substantially one arrangement relating to all of the items of dutiable property.

Section 24(1) of the Act does not capture disparate transactions, which are separate and independent.

The *Butterworths Legal Dictionary* defines an 'arrangement' as 'generally, an agreement, plan or compact, the legal effect of which depends on the context in which it is used'. An 'arrangement' has been interpreted as constituting a wider course of action than a single agreement, and includes 'all kinds of concerted action by which persons may arrange their affairs for a particular purpose or so as to produce a particular effect': *Bell v Federal Commissioner of Taxation* (1953) 87 CLR 548 at 573.

The reference to 'one arrangement' in section 24(1) of the Act is at least as broad as the expressions 'one transaction' or 'one series of transactions', used in the previous aggregation provision in the *Stamps Act 1958: Chief Commissioner of State Revenue v Pacific General Securities Ltd and Finmore Holdings Pty Ltd* (2004) 58 ATR 17 (*Pacific General Securities*). Accordingly, the Court and Tribunal decisions in relation to the previous provision are still relevant in determining whether transactions form one arrangement.

In determining whether a series of transactions form 'substantially one arrangement', the Commissioner will consider the substance of the transactions. This involves consideration of any connection or interdependence between the transactions which gives them some essential unity or 'oneness', and whether the relationship between the transactions is an integral and not a fortuitous one depending merely on such circumstances as contiguity in time or place: *Jeffrey v Commissioner of Stamps* (1980) 23 SASR 398 and *Old Reynella Village Pty Ltd v Commissioner of Stamps* (1989) 51 SASR 378.

An 'arrangement' may exist regardless of whether separate items of property are dealt with in separate contracts or transfer instruments. Further, an 'arrangement' may exist regardless of the number of transferors or the number of transferees.

In determining whether an 'arrangement' exists, the Commissioner will consider the conduct of the transferee or transferees. Where there is more than one transferee, it is not necessary that the transferees be 'related persons' or 'associated persons' as defined in section 3(1) of the Act. The Commissioner will look at the overall circumstances of the relationship between the transferees and their conduct.

The Commissioner will analyse each matter on its own merits on a case by case basis. The examples provided in this Ruling do not limit the circumstances in which an aggregated assessment will be made. Such an assessment may also be made if other factors are present that lead to the conclusion that the transactions have a sufficient relationship, connection or interdependence to make them, in substance, one arrangement.

*Factors Commissioner will consider in determining whether there is 'substantially one arrangement'*

In deciding whether the circumstances of a particular case amount to 'substantially one arrangement', the Commissioner is required to have regard to all relevant factors including, but not limited to, the circumstances immediately surrounding the transfers in question: *Pacific General Securities*.

The Commissioner will consider, among others, the following factors:

- **for transactions concerning land** – the nature of the items of land, including whether items of land have a dependant or interrelated use and/or are single parcels, the history of their ownership and use, and whether they have been acquired in order to be used together. These factors are analysed to determine whether the properties have been acquired for separate and independent use. For example, in cases involving transfers of fractional interests, the use of the land acquired for a common purpose is an indicator that the transactions involve 'substantially one arrangement'.
- **for transactions concerning land and goods** – the use of the goods, and the connection of that use with the relevant land.
- **for all transactions** – the nature of the negotiation process for the different items of dutiable property, the timing and sequence of the transactions relating to the different items of property, and the terms of any contracts. The Commissioner will examine:
  - whether the contracts were negotiated separately
  - whether the contracts were conditional upon each other
  - whether the transferee(s) received a discount by virtue of acquiring multiple items of property, and

<p>- whether there was another way in which the transferor(s) could have effected the transactions.</p> <ul style="list-style-type: none"> <li>• <b>where there are different transferees</b> – the relationship between the transferees, including whether they were acting in concert or with a common purpose.</li> </ul> <p><i>Examples of situations where Commissioner <u>will</u> aggregate</i></p> <p>Examples of situations where the Commissioner would generally consider there to be ‘substantially one arrangement’ include:</p> <ul style="list-style-type: none"> <li>• there are separate transfers arising out of a single contract, or out of separate contracts which arise out of a single option</li> <li>• there are separate contracts of sale, at least one of which is interdependent or conditional on another</li> <li>• a single price has been negotiated for all the items of property and then allocated to separate items</li> <li>• there are transfers of fractional interests in the same property</li> <li>• the transaction concerns a single parcel of land, for example, all the apartments in a block or a hotel and their associated car parks which are not available for separate sale, or a single unit and its accessory unit(s) which is not available for separate sale</li> <li>• land is sold subject to subdivision – duty will be assessed on the aggregated dutiable value rather than the separate values of the subdivided lots</li> <li>• land is sold subject to approved plans for building or development across different lots</li> <li>• separate items of land used for the same business are sold by separate contracts to one purchaser (or associated purchasers), and</li> <li>• land and a business conducted on the land are sold by one vendor (or associated vendors) to one purchaser (or associated purchasers) – duty will be assessed on the value of the land and the business goods, whose values will be aggregated.</li> </ul> <p><i>Factors which indicate that there may not be ‘substantially one arrangement’</i></p> <p>Factors which may indicate that there is <u>not</u> ‘substantially one arrangement’ include:</p>	<ul style="list-style-type: none"> <li>• where the items of property are acquired from independent vendors, or</li> <li>• where the items of property are genuinely available for separate sale. However, although advertising material may establish that items of property are genuinely available for separate sale, if the mode of sale is different from that advertised they may form ‘substantially one transaction’. For example, where two properties are advertised for auction in separate lots, but the purchaser negotiates a sale of both properties with the vendor before the auction, this may indicate ‘substantially one transaction’.</li> </ul> <p><i>Examples of situations where Commissioner will not aggregate</i></p> <p>Interdependent or conditional contracts would normally be viewed as part of ‘substantially one arrangement’. However, there may be circumstances where contracts are conditional but are not part of a single transaction or arrangement from the perspective of the purchasers. An example might be where unrelated purchasers buy separate items of property. In this case, the vendor would only sell these items of property if the vendor is able to find separate purchasers for each item. Section 22B of the Act makes specific provision for such a situation in relation to business goods. That section provides that business goods are not to be aggregated with the dutiable value of unencumbered land in certain circumstances, such as where the contracts of sale are conditional on each other, but do not form substantially one transaction and the purchasers of the land and business are not associated or the same person.</p> <p>Examples of situations where the Commissioner would generally consider there <u>not</u> to be ‘substantially one arrangement’ include:</p> <ul style="list-style-type: none"> <li>• the items of property are purchased at auction in separate lots</li> <li>• there is an exchange of properties between associated parties</li> <li>• there is a distribution between associated parties as a result of a property settlement</li> <li>• there is a distribution between associated parties as a result of a litigation settlement</li> <li>• there is a distribution to separate beneficiaries of a trust, and</li> </ul>
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- there is an in specie distribution under a Will or distribution from a trust where the transferees' entitlement under the deed is exceeded, and more than one property is transferred in accordance with that deed.

#### **Disclosure requirements relating to transactions forming part of substantially one transaction**

Section 24(6) of the Act requires a transferee to disclose to the Commissioner in writing, at or before the time of lodging an instrument or declaration for stamping, details known to the transferee of all the items of dutiable property that are part of substantially one transaction. The penalty for failure to disclose these details is 100 penalty units. Please refer to the SRO Duties Form 2 (Goods statutory declaration) to disclose the relevant details.

#### **Section B – Exception from Aggregation for Domestic Builders**

Section 24(2) of the Act provides a specific exception from aggregation for vacant land purchased by licensed home builders in certain circumstances. Section 24(2) of the Act provides that dutiable transactions are not aggregated if the Commissioner is satisfied that:

- (a) the dutiable property that is the subject of the dutiable transactions is vacant land
- (b) the transferee is registered as a domestic builder under the *Building Act 1993* and is a builder within the meaning of the *Domestic Building Contracts Act 1995*, and
- (c) the transferee intends to construct residential premises on the vacant land for the purpose of selling that land to the public.

Section 24(7) of the Act clarifies that the Commissioner may treat land as vacant if satisfied that the land is substantially vacant apart from there being the remnant of any building, object or structure that the Commissioner is satisfied has been preserved because of its heritage significance.

#### **Section C – Reassessment of Duty Where Residential Premises are not Constructed**

Section 24A(1) of the Act provides that, if the exception to aggregation in section 24(2) of the Act is applied and the builder:

- (a) transfers the land before residential premises are ready for occupation as a place of residence
- (b) constructs premises other than residential premises (commercial premises for example) and those premises are ready for occupation or use for the purpose for which they were constructed, or
- (c) fails to construct residential premises which are ready for occupation on the vacant land within 5 years after the date on which the land was transferred,

the Commissioner may reassess duty on those transactions that were not aggregated as if they were aggregated (giving an allowance for any duty already paid in respect of the transfers).

Section 24A(3) of the Act sets out the methodology for the reassessment of duty in respect of each dutiable transaction comprising vacant land to which subsection (1) applies. This methodology allows the duty to be determined where one or multiple transactions need to be reassessed.

The dutiable value of the aggregated dutiable transactions is determined based on the dutiable value at the time the transactions originally occurred. Duty is then calculated on the aggregated dutiable value, and apportioned across each dutiable transaction (based on the proportion of the dutiable value represented by each dutiable transaction). An allowance is then given for duty already paid on the relevant dutiable transaction due to the operation of section 24(2) of the Act.

Section 24A(6) of the Act requires the transferee to lodge written notice with the Commissioner within 30 days after becoming aware that any of the circumstances set out in sub-section (1) have occurred in respect of any of those transactions.

**Please note that 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 ruling. All rulings must be read subject to Revenue Ruling GEN.001.**



January 2014

Commissioner of State Revenue