

## Aggregation of dutiable transactions

### Revenue Ruling DA.007

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#### Preamble

Section 24 of the *Duties Act 2000* (the Duties Act) provides for the aggregation of certain dutiable transactions. This ruling explains the circumstances in which the aggregation provisions under section 24 of the Duties Act would be applied and the typical circumstances in which the Commissioner would be likely to exercise his discretion under section 24(2) of the Duties Act not to aggregate the dutiable transactions.

Section 24(1) states 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 all of the following criteria are satisfied –

- (a) they occur within 12 months (Criterion 1); and
- (b) the transferee is the same or the transferees are associated persons (Criterion 2); and
- (c) 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 3).

Section 10(1) of the Duties Act provides the general definition of 'dutiable property'. Section 10(1)(a) and section 10(1)(d) of the Duties Act specifically define dutiable property to include land and goods connected with the land.

Unlike section 68(3) of the *Stamps Act 1958* (the Stamps Act), the Duties Act does not provide relief from aggregation where the transfer of property resulting from one arrangement is conveyed in separate parcels by separate instruments.

Section 24(2) of the Duties Act, however, provides the Commissioner with a discretion not to aggregate the dutiable transactions if satisfied that it would not be just and reasonable to do so in the circumstances.

Section 24(6) of the Duties Act requires the transferee to disclose to the Commissioner in writing, details known to the transferee of all the items or parts of the dutiable property included or to be included in the arrangement referred to in section 24(1). The transferee must also disclose the consideration for each item or part of that dutiable property.

#### Primary production land

Section 24(2A) of the Duties Act provides that land which is dutiable property that will continue to be used for primary production as defined in the *Land Tax Act 1958* will not be subject to the aggregation provisions. Therefore, any person who buys primary production land will continue to be able to transfer separate lots or titles by separate transfers and have the advantage of paying duty on the value of the land in each of the individual transfers rather than the total value of the land as specified in the arrangement.

Section 24(2B) of the Duties Act requires the transferee of a dutiable transaction to which section 24(2A) applies, to make a written declaration to the Commissioner that the land will continue to be used for primary production.

#### Pre 1 July 2001 contracts

The aggregation provisions under section 24 of the Duties Act do not apply to contracts entered into before 1 July 2001. For dutiable transactions occurring on or after 1 July 2001, but arising from contracts entered into before that date, section 68 of the Stamps Act applies.

#### Ruling

The following is an examination of the aggregation criteria, how the Commissioner would exercise the discretion not to aggregate and how to apportion duty on multiple transfers.

#### Criterion 1 - Dutiable transactions occurring within 12 months

Under the Duties Act, a dutiable transaction is defined in section 7(2) and includes the transfer of dutiable property. For the purchase of land and goods, the transaction is completed at settlement when the executed transfer of land is delivered to the transferee to complete the dutiable transaction.

Two or more dutiable transactions will be deemed to have occurred within 12 months if one of the dutiable properties is transferred to the same transferee, or an associated person of the transferee, within 12 months of any other dutiable transaction, and will be aggregated.

## **Criterion 2 - Transferee is the same or the transferees are associated persons**

In order for section 24(1)(b) of the Duties Act to apply, the transferee in respect of two or more dutiable transactions must be the same or associated persons.

Section 3 defines 'associated person' to include related persons and certain business relationships. The definition of 'related person' states that natural persons are related persons if one of them is a relative of the other. A relative is defined to include 'a child or remoter lineal descendant of the person or of the spouse of the person.'

Where there are two or more dutiable transactions involving more than one transferee as a party to one or more of the transactions, all transferees must be associated persons for the purposes of section 3.

For example, if a husband and wife are the transferees in one transaction and their son and daughter-in-law are the transferees in the other transaction, the transactions will not be excluded from aggregation because both the husband and wife are associated with both the son and daughter-in-law.

## **Criterion 3 - Substantially one arrangement**

The Butterworths Legal Dictionary (1997) defines an arrangement as, 'Generally, an agreement, plan, or compact, the legal effect of which depends on the context in which it is used.' The examples in Butterworths make clear that there must be more than one party to an arrangement.

In considering whether dutiable transactions constitute 'substantially one arrangement' the Commissioner will examine the facts of each case in light of the above definition. For example, contracts for the purchase of more than one property at public auction, which were offered as separate parcels, would not be considered to reflect substantially one arrangement. Also, the sale of properties negotiated by private treaty would, if negotiated separately, not be considered to reflect substantially one arrangement.

### **Commissioner's discretion on aggregation**

The Commissioner would be likely to consider not aggregating the dutiable transactions arising from the purchase of multiple lots of land, or properties, which were genuinely available for separate sale. This would be the case whether or not the purchase was made for development or investment purposes.

Where the lots are to be further developed the exercise of the Commissioner's discretion would depend on the circumstances.

Separate contracts will not influence the Commissioner's discretion not to aggregate where criteria 1, 2 and 3 are satisfied.

### **Example 1 – Where the Commissioner's discretion will be exercised**

A builder buys two or more lots of land at a new estate with the intention of building a separate new home on each lot for the purpose of resale. In this case, as long as the lots were genuinely available for separate sale, the Commissioner would not aggregate the dutiable transactions.

### **Example 2 – Where the Commissioner's discretion will not be exercised**

A person enters a contract to purchase a hotel. The hotel consists of the establishment as well as a car park. The client submits separate transfer of land forms for the hotel and the car park. In this case the Commissioner would not exercise the discretion to not aggregate because the hotel and car park were not genuinely available for separate sale.

### **Subdivision of land**

A frequent scenario where the issue of aggregation arises is where a developer purchases property and has it subdivided prior to settlement.

In such cases ad valorem duty will be assessed on the greater of the consideration paid or the value of the dutiable property as it was at the contract date prior to the subdivision.

Where multiple lots of subdivided land are purchased, with the intention of developing across individual lots, the relevant dutiable transactions will be aggregated and treated as a single transaction.

### **Apportionment of duty**

Section 24(4) of the Duties Act provides that the amount of duty payable under this section is to be reduced by the amount of duty paid on a prior dutiable transaction that is the subject of aggregation under this section.

The Commissioner will assess and aggregate each dutiable transaction in order of the date that each dutiable transaction is completed.

The following example illustrates how the Commissioner will apportion the duty payable pursuant to section 24(5) of the Duties Act.

This method will apply for all aggregated dutiable transactions.

### **Example**

Three items of dutiable property X, Y and Z are acquired under one arrangement by the same transferee or associated persons.

Property X was acquired on 1 July 2001 for \$110,000, property Y was acquired on 15 November 2001 for \$110,000 and property Z on 1 August 2002 for \$110,000.

X and Y are subject to aggregation, as are Y and Z. However, X and Z are not subject to aggregation as the transactions have not occurred within 12 months of each other.

The SRO may not be aware of the related transactions until advised by the purchaser at or before the time of stamping, as required by section 24(6).

In the above example, the transferee will be liable to pay duty as follows:

- *Duty on X by 1 October 2001*
  - duty payable on \$110,000 for X      **\$2,440**
  
- *Duty on Y by 15 February 2002*
  - duty on aggregated figure of \$220,000 for X and Y      \$8,860
  - less duty paid on X      \$2,440
  - duty payable on Y      **\$6,420**
  
- *Duty on Z by 1 November 2002*
  - duty payable on aggregated figure \$220,000 for Y and Z      \$8,860
  - less duty paid on Y      \$6,420
  - duty payable on Z      **\$2,440**

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.01.



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Commissioner of State Revenue