

Aggregation of dutiable transactions

Revenue Ruling DA.026
Replaces DA.007

Ceased 30 June 2012

Preamble

1. Section 7(1) of the *Duties Act 2000* (the Duties Act) sets out the circumstances in which duty is charged on dutiable property, and refers to a "transfer" of dutiable property and "transactions" as set out in section 7(1)(a) and section 7(1)(b) of the Duties Act respectively.
2. Section 7(2) of the Duties Act defines a "dutiable transaction" as a "transfer" or "transaction" as specified in section 7(1).
3. Section 24 of the Duties Act provides for the aggregation of "dutiable transactions". This ruling explains the circumstances in which the aggregation provisions under section 24 of the Duties Act would be applied and some 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.
4. 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 the following criteria are satisfied:
 - a. either
 - i. in the case of "dutiable transactions" that are transfers on a sale of an item or part of dutiable property - the contracts of sale are entered into within 12 months (Criterion 1); or
 - ii. in any other case - the "dutiable transactions" occur within 12 months; and
 - b. 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).
5. 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.
6. 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.

7. 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".
8. 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

9. Section 24(2A) of the Duties Act provides that land which is dutiable property and will continue to be used for primary production (as defined in sections 9(1)(ga), (h), and (ha) of the *Land Tax Act 1958*) will not be subject to the aggregation provisions. Therefore, transactions in relation to primary production land specified in these provisions of the *Land Tax Act 1958* will not be aggregated and will be assessed on the individual values of the item or part of the dutiable property specified in the transfer, not on the aggregate value, except where they comprise partial or fractional interests of a parcel of land. This will be the case even when such items of dutiable property are contained within one transfer document. The Commissioner will require details of how the parties allocated the value of the total arrangement to the individual parcels for this approach to be taken.
10. 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 in the approved form (Duties - Form 12) to the Commissioner that the land will continue to be used for primary production.

Pre-1 July 2001 contracts

11. 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* continues to apply.

Ruling

12. The following paragraphs set out how the Commissioner would exercise the discretion not to aggregate and how to apportion duty on multiple transfers.

Criterion 1: 12 month requirement

13. Bearing in mind that section 7(2) of the Duties Act defines a dutiable transaction to be either a transfer or transaction referred to section 7(1) of the Duties Act the aggregation provisions will apply if:

- (i) the dutiable transactions are transfers on sale of an item, or part, of dutiable property arising from contracts of sale which are entered into within 12 months; or
- (ii) the dutiable transactions occur within 12 months as the case may be.

Criterion 2: Substantially one arrangement

14. *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.'

15. 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 for sale separately, would not generally be considered to reflect substantially one arrangement (unless for example, purchase of one was dependent on the other). Also, the sale of properties negotiated by private treaty would, if negotiated separately, not be considered to reflect substantially one arrangement (unless the sale of one was dependent upon the sale of the other).

16. There are transactions involving the same dutiable property that could be described as substantially one arrangement. Such arrangements may include the sale of the same dutiable property from A to B to C, who may be related. While such transactions may result from a single arrangement, such transactions would not be subject to aggregation.

Commissioner's discretion on aggregation

17. The Commissioner's discretion not to aggregate is likely to be applied to dutiable transactions arising from the purchase of multiple lots of land, or properties, which were genuinely

available for separate sale (and the purchase of which was not dependent on the purchase of the other properties). This would be the case whether or not the purchase was made for development or investment purposes.

18. Separate contracts will not influence the Commissioner's discretion not to aggregate where criteria 1 and 2 are satisfied (unless the contracts are conditional on each other).

19. Where the purchase of the properties is dependant or contingent on the sale of other properties the aggregation provisions will not apply where the Commissioner is satisfied that the transactions together do not evidence, give effect to or arise from what is substantially one transaction.

20. In determining whether (a) the dutiable transactions constitute 'substantially one arrangement' and (b) whether to exercise his discretion not to aggregate the Commissioner will consider the following:

- a. Were the properties advertised for separate sale? If so, copies of the advertising material such as newspaper advertisements, real estate advertisements, internet advertisements etc should be provided. If the properties were not advertised other evidence is required. The nature of such evidence will depend on the circumstances of the transaction.
- b. Whether the properties were purchased at auction. If so, and more than one property was purchased, were the properties auctioned separately or as a package. (e.g. if a block of 10 flats was purchased, were they advertised and auctioned as a whole or were they advertised and auctioned separately?)
- c. If vacant land has been purchased, whether there are any approved plans for example, building across the lots, or whether the properties have been sold subject to a development application or approval. This would result in the properties being aggregated and treated as a single transaction.

Were the assets of a going concern business such as land, plant and equipment purchased under separate contracts or agreements? If so, then the acquisitions of the land and business goods are dutiable transactions and may constitute substantially one arrangement for duty purposes. However, there are circumstances where the value of the business goods is not to be aggregated with the value of the land pursuant to section 22B of the Duties Act. That section applies where the transferees of the land and the business goods are not associated persons and the contract for the sale of land and the contract for the sale of business goods, whilst conditional on each other, are not substantially one transaction.

21. In all cases the onus is on the applicant to provide the Commissioner with the necessary information in order to make an informed decision on whether to exercise his discretion not to aggregate.
22. The above considerations are provided as a guide only and are not an exhaustive list. The Commissioner will consider each matter based on its own individual facts when determining whether to exercise his discretion not to aggregate.

Example 1: Where the Commissioner's discretion will be exercised

23. 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.
24. Where the builder however receives a discount as a result of purchasing more than one lot, the discretion to disaggregate will not apply, as the sales would be considered to be a single transaction.

Example 2: Where the Commissioner's discretion will not be exercised

25. A person enters into a contract to purchase a hotel. The hotel consists of the building as well as a car park. The client submits separate transfers 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 have a common use and it is unlikely they were genuinely available for separate sale.
26. A person enters into a contract to purchase more than one property and receives a discount.
27. A person enters into a contract to purchase partial or fractional interests in land.
28. Two or more contracts for the purchase of dutiable property that are interdependent would be aggregated unless the Commissioner is satisfied that the transactions together do not evidence, give effect to or arise from what is substantially one transaction.

Subdivision of land

29. The issue of aggregation frequently arises when a developer purchases property and the land is subdivided prior to settlement.
30. 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 existed at the date of contract. The duty payable will be

apportioned between each lot on the basis of any established Unit Entitlement Ratio (UER). Where no UER is applicable the duty payable on the original transaction will be apportioned to each transfer of land in proportion to the value of each subsequent contract to the aggregated value of all contracts. Any balance will be applied to residual transfers to the first purchaser. A statement of all subsequent contracts and their values will be required at the time each transaction is lodged for stamping.

31. Where multiple titles of land are purchased as substantially one arrangement, or conditionally on the ability or intention of developing across individual lots, the relevant dutiable transactions will be aggregated and treated as a single transaction.

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.