

REVENUE RULINGS



Partition or division of dutiable property

Revenue Ruling DA.017

Replaces SD.017

Preamble

The transfer or conveyance of dutiable property is subject to ad valorem duty under Chapter 2 of the *Duties Act 2000* (the Act). The term "dutiable property" is defined in Section 10(1) of the Act to include real property.

Section 27 of the Act provides that where a dutiable transaction effects a partition or division of an interest in land, duty is payable on the value less any beneficial interest held by the transferee prior to the transaction.

Uncertainty occasionally arises regarding the duty payable on instruments of transfer executed when two or more persons entitled to an interest in real property decide to partition or divide the real property so as to entitle each party to a separate parcel of land, and, in particular, in the situation where some of the land to be partitioned is located outside Victoria.

The purpose of this ruling is to clarify how the duty payable on the partitioned property in Victoria will be calculated.

Ruling

When an interest in real property is transferred as a result of a partition, section 27 of the Act provides that the value of the transferee's interest in the real property must be identified prior to the transfer. In order to calculate the duty to be paid upon conveyance of the partitioned property, the unencumbered market value of the transferee's interest in the real property prior to the transfer is deducted from the unencumbered market value of the transferee's partitioned property after the transfer.

If the transferee is receiving property of a value that does not exceed the value of the transferee's interest in the whole of the property, the

transaction is not liable to duty. However, if the transferee is receiving property of a value that exceeds the value of the transferee's interest in the whole of the property, duty will be assessed on the difference between the value of the transferee's prior interest in the real property and the value of the transferee's interest after the partition or division of the real property.

This partition provision only applies to land to be partitioned that is located in Victoria.

The following example illustrates this ruling.

Example

X and Y own land in Victoria valued at \$100,000 with a respective 30% and 70% interests in the land. The land is partitioned under an agreement such that after the partition, each has an interest of \$50,000 in the land.

No duty would be charged on the transfer of Y's interest in the land because the value of Y's interest in the land prior to the partition (ie \$70,000) exceeds the value after the partition (ie \$50,000). Duty would be charged on the transfer of X's interest in the land because the value after the partition (ie \$50,000) is greater than that before the partition (ie \$30,000). Duty would therefore be charged on the transfer of the interest in land to X and calculated on a value of \$20,000.

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 Ruling No. GEN.01

Commissioner of State Revenue
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