



Office of State Revenue
NSW TREASURY

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Revenue Ruling No. DUT 16

Duty on Land Purchased by Home Builders

Ruling history

Ruling no.	Issued date	Dates of effect		Status
		From	To	
DUT 16	15 July 1999	15 July 1999	1 November 2006	Replaced by DUT 36

Preamble

1. Section 25 (1) of the *Duties Act 1997* aggregates separate dutiable transactions in some circumstances where the transferee is the same (or the transferees are associated persons) and the transactions occur on the same day or within 12 months.
2. Dutiable transactions are only aggregated when they ‘form, evidence, give effect to or arise from what is, substantially, one arrangement’. This therefore aggregates separate dutiable transactions that are commercially a single arrangement, regardless of the number of documents involved. A separate ruling will be published on the question of what constitutes ‘substantially one arrangement’ in this context.
3. The effect of section 25 (1) is to increase the total duty payable because of the progressive nature of the stamp duty scales. However, section 25 (2) grants the Chief Commissioner a discretion to not aggregate if ‘it would not be just and reasonable’ in the circumstances.
4. The Housing Industry Association Limited (‘HIA’) has made representations about the impact of aggregation on the housing industry, particularly in relation to a potential increase in the duty payable in some circumstances. This ruling outlines the application of section 25 to two common situations involving home builders.

Ruling

Purchases of multiple lots

5. It is common for a builder to buy two or more lots in a development from the same vendor on the same day. Each lot is dealt with in a separate agreement, usually with no interdependency between the agreements. However, these agreements are almost always the result of single negotiations between the parties, and form one arrangement.

Section 25 (1) therefore operates to impose duty on the aggregated consideration.

6. The HIA has raised a number of public policy issues that indicate that an increased duty liability is inappropriate.
 - These arrangements would not have been aggregated prior to 1 July 1998, unless all the lots in the deposited plan had been bought. This is an unintended impact of the new legislation in these circumstances.
 - Aggregation would be more likely to impact on properties at the lower end of the market, where properties are more often developed and sold as a completed home.

- Multiple purchases are undertaken because of land planning issues - many land developers encourage builders to make multiple purchases to ensure rapid turnover and for community planning purposes, with the benefits accruing to the ultimate purchasers, not the builders.
 - These properties are effectively part of the builder's 'trading stock', with duty already payable by both the builder and the ultimate homebuyer.
 - Aggregation could distort commercial practice by forcing builders to change their business practice to reduce their duty liability.
7. The Chief Commissioner has determined that it would not be just and reasonable to aggregate dutiable transactions where a builder purchases more than one lot of vacant land (not comprising all of the lots in a deposited plan) for the purpose of building residential premises for on-sale to the public.
8. Multiple agreements, exchanged on the same date, for the purchase of land by the same purchaser from the same vendor will be aggregated under section 25 (1) unless the applicant lodges a statutory declaration stating that the land being purchased:
- a) is vacant land;
 - b) does not comprise all of the lots in the deposited plan; and
 - c) is being purchased for the purpose of building residential premises for on-sale to the public.

Purchases within 12 months

9. It is also common for a builder to buy one or more lots in a development, and after building houses and selling the properties, buy a further number of lots within a few months of the first purchase. At the time of the initial purchase, the later purchases were not contemplated by the parties (other than, perhaps, as an intention on the part of the purchaser to buy, if available, unspecified additional lots on an unspecified date). This satisfies the first two requirements of section 25 (1) (being the purchase within 12 months by the same purchaser). However, the Chief Commissioner accepts that transactions in these circumstances do not form 'one arrangement'. Consequently, these transactions will not be aggregated.

J W Purcell
Chief Commissioner of State Revenue
15 July 1999