



Office of State Revenue
NSW TREASURY

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Revenue Ruling No. DUT 36

Aggregation of Dutiable Transactions

Ruling history

Ruling no.	Issued date	Dates of effect		Status
		From	To	
DUT 36	5 February 2009	5 February 2009		Current

Preamble

- Chapter 2 of the *Duties Act 1997* (the Act) charges duty on specified “dutiable transactions”. Section 25 of the Act provides for the aggregation of certain dutiable transactions for the purposes of calculating duty in some circumstances.
- Section 25 (1) of the Act provides that dutiable transactions are to be aggregated and treated as a single dutiable transaction if:
 - they occur within 12 months, and
 - the transferor is the same or the transferors are associated persons, and
 - the transferee is the same or the transferees are associated persons, 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, or interests in, the dutiable property.
- Section 25 (6) of the Act provides a maximum penalty of 100 penalty units for the failure of a transferee to whom section 25 of the Act applies to disclose to the Chief Commissioner, in writing, at or before the time at which an instrument or statement relating to the dutiable transactions is lodged for stamping, details known to the transferee relating to the dutiable property and the consideration for each item or part of, or interest in, that dutiable property.
- This ruling outlines the manner in which section 25 of the Act will be applied, with emphasis on the circumstances in which two or more dutiable transactions are considered to constitute “one arrangement”. The ruling primarily refers to transactions over real property, but the general principles would apply to all types of dutiable property (other than marketable securities), including, for example, business assets.

Ruling

- The purpose of section 25 of the Act is to ensure that duty is assessed on a transaction, even where parts of that transaction are comprised in separate documents or presented as apparently distinct transactions. The legislation effects this by aggregating multiple “dutiable transactions” that are essentially one larger transaction, or a series of transactions constituting one arrangement. An aggregated assessment will be made where all of the following criteria are met:

The dutiable transactions occur within 12 months [criterion 1]

- Under section 25 (1)(a) of the Act, the dutiable transactions relating to the separate items of

(or separate parts of, or interests in) dutiable property must occur within 12 months of each other.

7. Where one arrangement comprises more than two dutiable transactions occurring on different days, the 12 month period will commence from the date of the first dutiable transaction that is being aggregated. Therefore, if separate items of dutiable property, or separate parts of, or interests in, dutiable property, are transferred over a period of longer than 12 months, only those transactions occurring within the first 12 months would be aggregated with the initial transaction.
8. Any other property under the same arrangement that is the subject of a transaction after that initial 12 month period would not be aggregated with those earlier transactions, even if within 12 months of one of the transactions. However, where more than one dutiable transaction occurs more than 12 months after the initial transaction, those later transactions may be aggregated together (but not with the earlier transactions).

Transferor is the same or transferors are associated persons [criterion 2]

9. Under section 25(1)(ab) of the Act, if the transferors are not the same they must be “associated persons” as defined in the Dictionary of the Act.
10. If there are more than two different transferors under the respective dutiable transactions, all of them must be associated persons.

Transferee is the same or transferees are associated persons [criterion 3]

11. Under section 25 (1) (b) of the Act, if the transferees are not the same they must be “associated persons”. For the meaning of “transferee” in respect of any dutiable transaction other than a transfer of dutiable property see sections 9(1) and 9(2) of the Act.
12. If there are more than two different transferees under the respective dutiable transactions, all of them must be associated persons. For example, if the respective purchasers under two agreements for sale of land are a husband and wife (under the first agreement) and their son and daughter-in-law (under the second agreement), the agreements cannot be aggregated under section 25 of the Act because not all of the transferees are associated persons – the daughter-in-law is not associated with her husband’s parents.

The dutiable transactions constitute substantially one arrangement [criterion 4]

13. Under section 25(1)(c) of the Act, the several dutiable transactions must together form, evidence, give effect to or arise from what is, substantially, one arrangement relating to all of the items of (or parts of, or interests in) the dutiable property.
14. In determining whether the dutiable transactions form, evidence, give effect to or arise from what is, substantially, one arrangement all the facts and circumstances of the case must be considered and particular importance must be attached to the meaning of “substantially”.¹
15. Whether the dutiable transactions form, evidence, give effect to or arise from what is, substantially, one arrangement is determined at the time the dutiable transactions are entered into. Dutiable transactions might finish up as one arrangement even though they did not commence that way.²
16. The term "arrangement" has been interpreted in different ways in different statutory contexts. In the present context, an arrangement comprises two or more dutiable transactions, usually being two or more agreements, so that an "arrangement" constitutes a wider course of action than a single agreement, such as "all kinds of concerted action by which persons may

¹ *Brianco Nominees Pty Ltd & ors v Commissioner of State Revenue (Taxation)* [2008] VCAT 999 at [29]

² *Blood Properties Pty Ltd v Commissioner of State Revenue (Taxation)*[2005] VCAT754 at [33].

arrange their affairs for a particular purpose or so as to produce a particular effect".³

17. In the stamp duties context, aggregation provisions in other jurisdictions have referred to transactions "that form part of a larger transaction or a series of transactions". Section 25 of the Act refers to "arrangement" in the context of aggregating separate transactions (including transactions over a period of time), and so it is considered that "one arrangement" would include a "series of transactions" of that kind. Further, the words "together form, evidence, give effect to or arise from" are at least as wide as "form part of".
18. Therefore as a consequence of these similarities, historical stamp duties cases on aggregation remain relevant to the operation of section 25 of the Act. "One arrangement" would include "cases where the relationship between the transactions is an integral and not a fortuitous one depending merely on such circumstances as contiguity in time or place".⁴
19. The purchase of separate but adjoining blocks of land with the intention of integrating them into one holding could constitute "one arrangement" for the purposes of section 25 of the Act.⁵
20. However, it is accepted that dealing with the properties jointly, subsequent to purchase is not, of itself, sufficient to characterise the initial transactions as one arrangement. There must be some further factor to indicate that the relationship between the transactions is "an integral and not a fortuitous one". The most obvious example of this is an interdependency clause in agreements, but would also include antecedent options or development applications.
21. Examples of transactions that would constitute "one arrangement" include:
 - (a) where the agreements contain an interdependency clause,
 - (b) agreements that relate to fractional interests in one property,
 - (c) agreements that relate to freehold property and a business conducted on that property,
 - (d) where the agreements are pursuant to antecedent options over the properties,
 - (e) where the properties are sold subject to a development application or approval,
 - (f) where completion is conditional on the purchaser obtaining development approval in relation to the properties,
 - (g) where the purchaser has lodged a development application in relation to the properties prior to entering into the agreements,
 - (h) agreements that relate to separate assets of a single going concern business,
 - (i) the purchase of all the lots in a subdivision,
 - (j) the purchase of all units in a home unit block,
 - (k) the purchase of all land and other assets of a primary production business (whether the primary production land is in the same title or different titles).
22. The above examples do not limit the circumstances in which an aggregated assessment will be made. An assessment under section 25 (1) of the Act may also be made if other factors are present that lead to the conclusion that the transactions have sufficient relationship, connection or interdependence to make them, in substance, one arrangement.

³ Bell v Federal Commissioner of Taxation (1953) 87 CLR 548 at 573,

⁴ Attorney-General v Cohen and Another [1937] 1 KB 478, per Greene LJ at 491.

⁵ Old Reynella Village Pty Ltd v Commissioner of Stamps (SA) (1989) 20 ATR 1080.

23. The following scenarios are not considered to constitute one arrangement:

- (a) The purchase of separate lots at auction. However, if the purchase of one was dependent on the purchase of the other it will be treated as one arrangement.
- (b) An exchange of properties between associated persons.
- (c) The acquisition of single lots in a new strata plan or subdivision by associated persons where none of the other factors in paragraph 21 are present.
- (d) Where the only factor connecting the agreements, other than satisfying the first three criteria of section 25 (1) of the Act, is:
 - a development application relating to the properties lodged by the purchaser **after** execution of the agreements (unless completion of the agreements is conditional on the purchaser obtaining development approval); or
 - a single loan or facility agreement or mortgage; or
 - the payment of a single deposit.

Exception for home builders

24. Section 25 (2) of the Act provides an exception from aggregation for vacant land purchased by licensed home builders in certain circumstances.

Under this provision transactions are not aggregated if the Chief Commissioner is satisfied that:

- (a) the dutiable property to which the transactions relate are comprised of separate allotments of vacant land, and
- (b) the transferee is a person authorised to contract to do residential building work under the *Home Building Act 1989*, and
- (c) the transferee intends to construct residential premises on the allotments for the purposes of sale to the public.

For the purpose of this provision 'vacant land' includes land that the Chief Commissioner considers is substantially vacant apart from there being on that land the remnant of any building, or any other object or structure, that the Chief Commissioner is satisfied has been preserved because of its heritage significance (see section 25(8) of the Act). The purchaser should complete declaration form [ODA 023](#).

Stamping

25. Section 25 (5) of the Act provides that when an assessment is made under section 25 (1) of the Act, duty may be apportioned to the instruments effecting or evidencing the dutiable transactions, or may be charged in accordance with section 18 (1) of the Act, as determined by the Chief Commissioner. Where such instruments are lodged together they will, unless otherwise requested, be stamped in accordance with section 18 (1) of the Act, with one instrument stamped with the ad valorem duty calculated on the sum of the dutiable values (see section 25 (3) of the Act), and each other instrument stamped with fixed duty of \$50.

Tony Newbury

Chief Commissioner of State Revenue

5 February 2009