Queensland Government
Treasury

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Public Ruling
Duties Act:
TRANSFER DUTY ON DUTIABLE TRANSACTIONS SUBJECT TO GST

A Public Ruling, when issued, is the published view of the Commissioner on the particular topic to which it relates. It therefore replaces and overrides any existing private rulings, memoranda, manuals and advice provided by the Commissioner in respect of the issue/s it addresses. Where a change in legislation or case law (the law) affects the content of a Public Ruling, the change in the law overrides the Public Ruling—that is, the Commissioner will determine the tax liability or eligibility for a concession, grant, subsidy or exemption, as the case may be, in accordance with the law.

What this Ruling is about

1. This Public Ruling clarifies how transfer duty is imposed under the *Duties Act 2001* (Duties Act) on dutiable transactions that attract the goods and services tax (GST).

2. Transfer duty is imposed on the dutiable value of dutiable transactions.[1]

3. Section 11 of the Duties Act outlines the mechanism for determining the dutiable value of a dutiable transaction.

4. Section 502 of the Duties Act provides that where the amount payable under a dutiable transaction may be increased or decreased depending on a particular thing happening or not happening, duty is imposed on the highest consideration payable under the instrument or transaction regardless of whether the thing happens or does not happen.

5. GST is imposed under *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (GST Act) on taxable supplies at 10% of the value of the supply.[2]

6. The value of a taxable supply is 10/11ths of the price.[3]

[1] Section 8 of the Duties Act
[2] Sections 7-1(1) and 9-70, GST Act
[3] Section 9-75, GST Act

7. The price of a taxable supply is the amount or market value of the consideration for the supply without any discount for the amount of GST (if any) payable on the supply.[4]

8. Alternatively, GST may be calculated using the margin scheme if the supply is of certain real property (selling a freehold interest in land, selling a stratum unit or granting or selling a long term lease[5])[6]. In that case, GST is 1/11th of the margin on the supply of the property.[7]

9. GST is payable by the person who makes the taxable supply.[8]

10. The above is only a summary of the operation of the GST and is not intended as and must not be relied on as advice on the GST laws. The Australian Taxation Office administers GST laws.

Ruling and explanation

11. In the case where the consideration payable for an agreement for the transfer or a transfer of dutiable property takes into account the transferor's liability for GST, so that no provision is made for any additional payment on account of GST, the transfer duty is calculated on the consideration or the unencumbered value of the dutiable property.[9]

Example 1

A contract for sale of a commercial office building owned by a property development company provides that the sale price is $2 million. No separate amount for GST is payable under the contract, even though the vendor will be liable for GST on the sale. If the parties are dealing with each other at arm's length so that the consideration for the transaction is not less than the unencumbered value of the property, the dutiable value is $2 million.

Example 2

A transfer of land from a father to his daughter as a gift is executed on 1 August with the land's unencumbered value being $350 000. The dutiable value is $350 000.

12. Alternatively, if an agreement for the transfer or a transfer of dutiable property contains a condition that the transferee will pay the stated consideration plus an amount for the GST payable by the transferor in respect of the transfer, the separate GST component is part of the consideration for the supply because the consideration is determined without any discount for the GST payable on the supply.[10] This is so regardless of the manner in which the separate component is described in the agreement. Consequently, the dutiable value upon which transfer duty is calculated is the greater of the consideration plus the separate GST component or the unencumbered value of the property.

Example 3

Same as for Example 1 except that the contract price is stated at $2 million plus GST. The dutiable value is $2 million dollars plus the GST component.

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4 Section 9-75, GST Act
5 At least 50 years, section 75-5, GST Act
6 Conditions apply – see section 75-5(2), GST Act
7 Section 75-10, GST Act
8 Section 9-40, GST Act
9 Section 11(7) of the Duties Act
10 Section 9-75, GST Act

Calculating the GST component of the consideration

13. Where the consideration for a dutiable transaction includes an additional component for GST, as in Example 3, the GST component is 10% of the stated consideration.

14. However, if the dutiable transaction provides that the GST component of the consideration is to be calculated using the margin scheme, the GST component will be 1/11th of the margin. In these cases, evidence will be required of the amount of the margin and the GST payable for transfer duty to be assessed. If the amount of GST subsequently varies, a reassessment of transfer duty may be made under ss.17(1) and 28 of the *Taxation Administration Act 2001*.

Example 4

On 1 August, the owner of an industrial shed contracts to sell the property. The agreement provides for $5.1 million plus an amount equal to GST. The parties have agreed to adopt the margin scheme. If the parties are dealing with each other at arm's length so that the consideration may be taken to be not less than the unencumbered value of the property, the dutiable value is $5.1 million plus the GST amount on the margin. Evidence will be required from the parties as to the amount of the margin and the GST payable on the margin.

Cases where no GST is payable

15. Where an agreement to transfer or a transfer of dutiable property provides that the purchaser will pay any GST liability but no GST liability is actually incurred, if appropriate evidence is produced prior to the transfer duty being assessed proving that no GST was payable, the dutiable value will exclude any amount for GST. Appropriate evidence is:

    (a) A statutory declaration by the vendor that, to the best of the vendor's knowledge, GST is not payable on the supply comprised by the agreement; and

    (b) Reference to the specific provisions of the goods and services tax legislation or any relevant ATO ruling which supports the view that no GST is payable in respect of the agreement.

16. Where a dutiable transaction is assessed in accordance with paragraph 15 and it is later determined that the purchaser/acquirer is actually required to pay GST which is chargeable against the vendor, a written disclosure of the relevant facts plus the appropriate documents must be produced to the commissioner so that a reassessment can be made under to s.17(1) of the *Taxation Administration Act 2001*. The dutiable value upon which the reassessment will be based will be consideration plus the amount paid or payable by the purchaser on account of GST.

Date of effect

17. This Public Ruling takes effect from the date of issue.

David Smith
Commissioner of State Revenue
Date of Issue 24 February 2009

References

Public Ruling	Issued	Dates of effect	
		From	To
DA011.1.1	24 February 2009	24 February 2009	Current
Supersedes Revenue Ruling DA 24.1	1 March 2002	1 March 2002	23 February 2009