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Public Ruling Duties Act:

TRANSFER DUTY – AGGREGATION OF DUTIABLE TRANSACTIONS

A Public Ruling, when issued, is the published view of the Commissioner of State Revenue (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 or exemption, as the case may be, in accordance with the law.

What this Ruling is about

1. Under the *Duties Act 2001* (the Duties Act), transfer duty imposed on the dutiable value of a dutiable transaction¹ is calculated at progressive rates.² That is, the rate of duty increases in line with increases in the dutiable value of the dutiable property.
2. Section 30 of the Duties Act requires that, in assessing transfer duty on dutiable transactions that together form, evidence, give effect to, or arise from, what is substantially one arrangement, the transactions must be aggregated and treated as a single dutiable transaction.³ Duty is then calculated on the total of the dutiable values of the aggregated transactions instead of on each separate dutiable transaction. A copy of s.30 is attached to this Public Ruling.
3. Aggregation of dutiable transactions arising from one arrangement is a long standing principle which ensures that taxpayers in similar circumstances are treated consistently and equitably regardless of how transactions may be structured or documented or the number or type of properties involved.

Example 1

Case 1—Purchaser A enters into a contract to purchase an investment unit from Vendor B for \$600 000. The transfer duty payable is \$20 025.

Case 2—Purchaser J enters into one contract to purchase two investment units from Vendor K for \$300 000 each (\$600 000 in total). Without aggregation, the two dutiable transactions arising from the contract would each be assessed to duty of \$8 925 (\$17 850 in total), a saving of \$2 175 compared with the duty payable if aggregation applied.

¹ Sections 8, 9 and 10 of the Duties Act

² Sections 8, 9, 10, 24(2) and Schedule 3 of the Duties Act

³ Sections 30(1) and (2) of the Duties Act

Case 3—Purchaser X enters into two contracts to purchase two investment units from Vendor Y for \$300 000 each (\$600 000 in total). Both offers to purchase were made together and accepted by the vendor together. Without aggregation, the duty payable would be the same as for Case 2.

4. In each case in Example 1, there is one arrangement between the parties, namely, the sale and purchase of property for \$600 000. Aggregation ensures that the duty outcomes in each case are the same regardless of the number of contracts or properties involved. The focus for duty purposes is on the one arrangement.
5. This Public Ruling gives examples of how aggregation applies in common real estate transactions.⁴ The examples are provided as a general guide only. In determining whether s.30 of the Duties Act has application, each case will be considered on its own individual circumstances.

Ruling and explanation

6. Court cases have identified the principle that, dutiable transactions that arise from what is substantially one arrangement should show a unity of purpose in the business being transacted.⁵ This may become apparent from the association between the parties or the level of integration between the transactions. In addition, 'arrangement' has a very wide meaning and can include unilateral acts.⁶
7. To determine whether or not dutiable transactions must be aggregated, all relevant circumstances of the transactions must be taken into account. Some of these circumstances are set out in the Duties Act.⁷ However, these factors are not exhaustive and each case must be considered on its own facts.

Aggregation—same parties

8. In the following examples, the transactions would be aggregated and transfer duty would be assessed on the total consideration or value of the properties. In each case, the properties are being acquired under dutiable transactions that arise under substantially one arrangement.

Example 2

An investor enters a real estate agent's office and negotiates to buy two units in a residential unit building from the same vendor. The vendor and purchaser sign a separate contract for each unit.

The transactions would be aggregated.

⁴ However, the requirement to aggregate dutiable transactions is not limited to real estate transactions.

⁵ *The Attorney-General v. Cohen* (1937) 1 K.B. 487, *Jeffrey v. Commissioner of Stamps* (S.A.) 80 ATC 4126, *Old Reynella Village Pty Ltd v. Commissioner of Stamps* (S.A.) 89 ATC 4916, *Clancy & Ors v. Commissioner of State Revenue* (Vic) 98 ATC 2077

⁶ *Re Steeds Will Trusts, Sanford v Stevenson* [1960] 1 All ER 487, *Baker v Baker* [1961] ALR 972

⁷ Section 30(4) of the Duties Act

Example 3

An investor enters a real estate agent's office and negotiates to buy three units in one new residential unit building and a further two units in a different building from a different (unrelated) vendor. A separate contract is signed for each unit.

Because the purchaser has no plans to undertake development of the buildings or otherwise use the units in each building together, and as there are two unrelated vendors, there are two arrangements, one between the purchaser and the first vendor for the purchase of three units and one between the purchaser and the second vendor for the purchase of two units. Accordingly, one assessment would issue aggregating the transactions involving the first vendor and a separate assessment would issue aggregating the transactions involving the second vendor.

Aggregation—different parties**Example 4**

An investor enters a real estate agent's office and negotiates to buy a unit from one vendor who is a natural person and another unit from a vendor that is a company of which the other vendor is a majority shareholder. Separate contracts are signed for each unit.

As the natural person and the company are related persons under s.61 of the Duties Act, both transactions would be aggregated. In addition, if the properties were used together before the sale this would be another factor for aggregating the transactions.

Example 5

A purchaser signs five contracts for adjoining properties with five separate unrelated vendors on separate dates over a three month period. Each contract is conditional upon the owners of the other blocks agreeing to sell their properties.

It would be considered that there is sufficient unity of purpose in the dutiable transactions for the transactions to be aggregated. The same reasoning may also apply where all of the contracts are conditional on the granting of some approval by a third party organisation such as the local council.

Example 6

The same facts as Example 5 except that the contracts are not conditional on one another, however, the purchaser acquired the properties for redevelopment. Some vendors were aware of the purchaser's purpose and others were not.

The five transactions would be aggregated. Although the vendors' properties were used separately and independently prior to the transactions, there was a clear arrangement on the part of the purchaser to use the properties together after the transactions. By entering into the contracts under that arrangement there is unity of purpose that renders the whole of the dutiable transactions as substantially one arrangement, albeit a unilateral one by the purchaser.

No aggregation

9. In the following examples, the transactions would not be aggregated as they would not be considered to have arisen under substantially one arrangement.

Example 7

A large number of vacant lots in a development are sold on the same day by auction. One purchaser acquires six of the lots. Separate transfers for each lot are signed by the same vendor and purchaser on the same day.

The transactions would not be aggregated as the transactions do not share an integral relationship. Each transaction is established at the drop of the auctioneer's hammer and this process precludes the possibility of integration and unity of purpose as part of one arrangement.

Example 8

An investor enters a real estate agent's office and negotiates to purchase a unit in a residential unit building. The vendor and purchaser sign a contract that day. One week later, the investor decides to purchase another unit in the same building and negotiates to purchase another unit from the same vendor. Another contract is signed between the two parties for the purchase of the second unit. The contracts are not conditional, were separately negotiated and the vendor provided no discount for the purchase of the second unit.

There was no arrangement on the part of the purchaser to purchase the units for redevelopment of the building or to otherwise use the units together after the sale. Given this and as the same parties being involved in each transaction is coincidental, there is no integral relationship between the transactions. Accordingly, the transactions would not be aggregated.

Date of effect

10. This Public Ruling takes effect from 1 July 2011.

Tony Kulpa
Deputy Commissioner of State Revenue
Date of Issue 30 June 2011

References

Public Ruling	Issued	Dates of effect	
		From	To
DA030.1.2	30 June 2011	1 July 2011	Current
DA030.1.1	24 February 2009	24 February 2009	30 June 2011

Attachment

Copy of section 30 of the *Duties Act 2001*

30 Aggregation of dutiable transactions

- (1) This section applies to dutiable transactions that together form, evidence, give effect to or arise from what is, substantially 1 arrangement.
- (2) For assessing transfer duty on each of the dutiable transactions, the transactions must be aggregated and treated as a single dutiable transaction.

Example for subsection (2)—

A conducts a business of manufacturing bullbars. A agrees to sell the business to B as a going concern for \$500 000. The property included in the agreement comprises land, plant and equipment, goodwill and the business name.

The land is dutiable property being land in Queensland and each of the other assets are dutiable property being Queensland business assets.

The agreement, so far as it relates to the sale of the land, is a dutiable transaction being an agreement to transfer land in Queensland and, so far as it relates to the agreement to sell each of the business assets, is a dutiable transaction being an agreement to transfer dutiable property that is a Queensland business asset. Accordingly, there are 4 dutiable transactions under the agreement.

Because the dutiable transactions together form 1 arrangement, they must be aggregated under this section for imposing transfer duty.

- (3) For subsection (1), all relevant circumstances relating to the dutiable transactions must be taken into account in deciding whether they together form, evidence, give effect to or arise from what is, substantially 1 arrangement.
- (4) For subsection (3), relevant circumstances include the following—
 - (a) whether the transactions are contained in 1 instrument;
 - (b) whether any of the transactions are conditional on entry into, or completion of, any of the other transactions;
 - (c) whether the parties to any of the transactions are the same;
 - (d) whether any party to a transaction is a related person of another party to any of the other transactions;
 - (e) the time over which the transactions take place;
 - (f) whether, before the transactions take place, the dutiable property the subject of the transactions was used together, or dependently with one another, by the transferor or transferors;
 - (g) whether, after the transactions take place, the dutiable property the subject of the transactions will be used together, or dependently with one another, by the transferee or transferees.

- (5) Transfer duty imposed on the dutiable transaction aggregated under this section must—
- (a) be assessed on the total of the dutiable values of the transactions when the liability for transfer duty for each of the transactions arose; and
 - (b) be apportioned between the transactions as decided by the commissioner.

Example for subsection (5)—

Under 4 agreements between a builder and a developer, the builder agrees to purchase 4 lots of land from the developer for \$100 000 each. The lots are dutiable property being land in Queensland and each of the agreements is a dutiable transaction being an agreement to transfer land in Queensland.

Even though the sale of the 4 lots was negotiated at the same time, the agreements were signed on different dates over a 10 month period, had different settlement dates and were not conditional on each other.

Under section 24 (Rates of transfer duty) and schedule 3 (Rates of duty on dutiable transactions and relevant acquisitions for landholder and corporate trustee duty), the agreements for lots 1 to 3 have been separately stamped for \$2 350 transfer duty. When the agreement for lot 4 is lodged for stamping, the commissioner decides this section applies because the transactions together formed 1 arrangement.

Accordingly, the transactions must be aggregated under this section for imposing transfer duty and the duty apportioned between them.

Under subsection (5)(a), the total of the dutiable values of the dutiable transactions on which transfer duty is imposed is \$400 000, being the value of each of the lots when the liability for transfer duty arose for each of the transactions, regardless of a variation in the values since the liability arose.

Under section 24 and schedule 3, transfer duty imposed on the aggregated transaction is \$12 475.

If the commissioner decides to apportion the transfer duty equally between the dutiable transactions, the amount of transfer duty payable is \$3 118.75 for each transaction.

Under the Administration Act, part 3, the commissioner will make a reassessment for the transactions for lots 1 to 3. The assessment notice must state the matters mentioned in section 26(2) of that Act.

- (6) Each party to each of the dutiable transactions must, when lodging the instrument or transfer duty statement relating to the transaction, give notice to the commissioner stating details known to the party about—
- (a) all of the dutiable property included or to be included in the arrangement mentioned in subsection (1); and
 - (b) the dutiable value of each dutiable transaction.

Note—

Under the Administration Act, the requirement under this subsection is a lodgement requirement for which a failure to comply is an offence under section 121 of that Act.

- (7) This section does not apply to a dutiable transaction to the extent that it relates to an exchange of dutiable property.