

# Guideline

## Sub-sale provisions

### Agreements for sale, and Put and Call options

**Important:** This guideline does not constitute a Ruling.

#### Introduction

In 2009, amendments to the Duties Act 2001, were made under the Duties Administration Act 2009. These amendments had the effect of removing the list of dutiable transactions in Section 6(1)(b) of the Duties Act and implementing new sub-sale provisions. These amendments took effect from 1 July 2009.

In 2013, amendments to the sub-sale provisions in the Duties Act were made under the *Taxation and Related Legislation (Miscellaneous Amendments) Act 2013*. The changes to the sub-sale provisions incorporated transactions involving put and call options; they took effect from 21 October 2013.

#### The sub-sale provisions (Part 4A - Chapter 2)

##### Terms used in this guideline

Agreement	Agreement for Sale	Put and Call Option
<b>Vendor</b>	The vendor under an agreement for sale.	A person who enters into a put and call option with the right to sell property.
<b>First Purchaser</b>	The purchaser under an agreement for sale.	A person who enters into a put and call option with the right to purchase property.
<b>Subsequent Purchaser</b>	A person who obtains the right to have property (referred to in the agreement for sale) transferred to them.	A person who obtains the rights of the First Purchaser under a put and call option.
<b>Consideration under the Agreement</b>	The amount given, or agreed to be given, under the agreement for sale.	The sum of the amounts given or agreed to be given: <ul style="list-style-type: none"><li>• to obtain the put and call option; and</li><li>• payable on the exercise of the option.</li></ul>
<b>Consideration for the Subsequent Transaction</b>	The sum of: <ul style="list-style-type: none"><li>• the <i>Consideration under the Agreement</i>; and</li><li>• any additional amounts paid by the <i>Subsequent Purchaser</i> to the <i>First Purchaser</i> to obtain the <i>Transfer Right</i>.</li></ul>	The sum of: <ul style="list-style-type: none"><li>• the consideration payable on the exercise of the put and call option; and any additional amounts paid by the <i>Subsequent Purchaser</i> to obtain the <i>Transfer Right</i>.)</li></ul>

## How do the sub-sale provisions operate?

The sub-sale provisions are designed to apply duty where a subsequent transaction results in a genuine sub-sale.

A subsequent transaction occurs when a Vendor enters into an Agreement with the First Purchaser, but transfers the property to a Subsequent Purchaser who obtains the right to take a transfer of the property (Transfer Right).

If the Transfer Right is acquired from the First Purchaser, any amount paid that exceeds the Consideration under the Agreement is additional consideration. However, a payment made to the First Purchaser to reimburse a deposit paid to the Vendor is not regarded as additional consideration.

A sub-sale occurs when the Subsequent Purchaser (or an associate) pays additional consideration (monetary or otherwise) to the First Purchaser (or an associate) for the Transfer Right. A sub-sale also occurs where a second Subsequent Purchaser pays additional consideration for the Transfer Right.

If a Transfer Right is acquired from the first Subsequent Purchaser by another Subsequent Purchaser, any consideration that exceeds the consideration payable by the first Subsequent Purchaser is additional consideration. However, effective from the date of Royal Assent of the Taxation and Related Legislation (Miscellaneous Amendments) Act 2011 (28 June 2011), certain costs incurred by the purchaser such as legal costs, selling agents' fees, and survey or valuation payments ('excluded costs') reimbursed by a Subsequent Purchaser are not treated as additional consideration and the sub-sale provisions do not apply.

### Example I – Subsequent transaction (agreement for sale) - no sub-sale

- A' enters into an agreement for sale as the purchaser of dutiable property with a purchase price of \$400 000 and incurs valuation and legal costs totaling \$15 000.
- Prior to settlement, 'A' agrees to transfer the rights under the agreement to 'B'.
- B' pays 'A' \$15 000 to reimburse the value of the legal and valuation costs (that is, the 'excluded costs') paid by 'A'.
- At settlement 'B' pays the vendor the remaining \$400 000 required to be paid under the agreement

In this example 'B' has not paid any additional consideration (if the transfer was effected on or after 28 June 2011). 'B' has only paid what was required under the agreement for sale, and the payment to 'A' was only to reimburse the 'excluded costs' paid by 'A'. In this case, there is **no sub-sale**.

**Important:** Because the transferee named on the transfer differs from the purchaser on the agreement for sale, the transferee will be required to use a [Section 36I Duties Act 2001 Statutory Declaration – Subsequent transactions including sub-sales](#).

If a person obtains a Transfer Right as part of a subsequent transaction, the value of that transaction, for the purposes of the sub-sale provisions, is calculated only to the extent of the Transfer Right obtained by the Subsequent Purchaser. This change was also effective from the date of Royal Assent of the *Taxation and Related Legislation (Miscellaneous Amendments) Act 2011*.

### Example 2 – Subsequent transaction (agreement for sale) - no sub-sale

- 'A' enters into an agreement for sale as the purchaser of dutiable property with a purchase price of \$550 000 and pays a \$10 000 deposit to the vendor.
- Prior to settlement, 'A' agrees to transfer the rights under the agreement to 'B'.
- 'B' pays 'A' \$10 000 to reimburse the value of the deposit paid by 'A'.
- At settlement 'B' pays the vendor the remaining \$540 000 required to be paid under the agreement.

In this example 'B' has not paid any additional consideration. 'B' has only paid what was required under the agreement for sale, and the payment to 'A' was only to reimburse the deposit paid by 'A'. In this case, there is **no sub-sale**.

Please use the [Section 36I Duties Act 2001 Statutory Declaration – Subsequent transactions including sub-sales](#).

### Example 3 – Subsequent transaction (agreement for sale) – resulting in a sub-sale

- 'A' enters into an agreement for sale as the purchaser of dutiable property with a purchase price of \$500 000 and pays a \$10 000 deposit to the vendor.
- Prior to settlement, 'A' agrees to transfer the rights under the agreement to 'B'.
- 'B' pays 'A' \$10 000 to reimburse the value of the deposit paid by 'A' together with an additional \$20 000 to acquire the transfer right from A.
- At settlement, 'B' pays the vendor the remaining \$490 000 required to be paid under the original agreement.

In this example, because 'B' has paid additional consideration to obtain the transfer right, a sub-sale has occurred.

### Example 4 – Subsequent transaction (put and call option) – resulting in a sub-sale

- 'A' and 'B' enter a put and call option agreement (PCA) where, for an option price of \$10 000, 'A' grants a Call Option to 'B' over a property with an agreed exercise price of \$490 000 and 'B' grants 'A' a Put Option over the same property.
- 'B' subsequently transfers the call option rights under the PCA to 'C' for \$50 000.
- The Call Option is exercised for \$490 000, and 'A' transfers the property to 'C'. The liability for duty arises when the transfer is effected.
- Duty on the transfer is calculated as follows:
  - 'B' is liable for duty based on a dutiable value of \$500 000 [that is, the total of the option price (\$10 000) plus the exercise price (\$490 000)].
  - 'C' is liable for duty based on the assignment consideration of \$540,000 [that is, the amount paid to 'B' (\$50 000) plus the exercise price (\$490 00)].

## What evidence is required when a subsequent transaction occurs?

The Duties Act (Section 36I) requires that a statutory declaration must be provided if a subsequent transaction has occurred. That is, where dutiable property (or any part of the property) under an Agreement is transferred to a person who is not the First Purchaser.

A Section 36I Statutory Declaration must be provided by each transferee not named on the Agreement; it will be used to determine whether a sub-sale has occurred. The transferee must disclose in the declaration whether any consideration has been paid to the First Purchaser (or to another Subsequent Purchaser) in order to receive the Transfer Right.

### Example 5 – Circumstances where a Section 36I Statutory Declaration is required

- 'A' enters into an Agreement as the First Purchaser of dutiable property. The transfer names 'B' as transferee.  
'B' is a Subsequent Purchaser and is required to complete a Section 36I Statutory Declaration.
- 'A' enters into an Agreement as the First Purchaser of dutiable property. The transfer names 'A' and 'B' as the transferees.  
'B' is a Subsequent Purchaser and is required to complete a Section 36I Statutory Declaration because of the interest acquired in the property.
- 'A' and 'B' enter into an Agreement as the First Purchaser of dutiable property. The transfer names 'A' only as transferee.  
'A' is a Subsequent Purchaser (as it relates to 'B's' interest under the Agreement as the First Purchaser of dutiable property) and is required to complete a Section 36I Statutory Declaration because of the additional interest acquired in the property.

## Can subsequent transactions be self-assessed on Tasmanian Revenue Online (TRO)?

Subsequent transactions can only be self-assessed on TRO if a sub-sale **has not** occurred.

Where no additional consideration has been paid by a Subsequent Purchaser/transferee to the First Purchaser (or to any other Subsequent Purchaser), then a sub-sale has **not** occurred. The transfer **can be** self-assessed on TRO in the usual manner. A completed Section 36I Statutory Declaration must be retained as part of the TRO evidence requirements.

**Important:** If additional consideration has been paid by a Subsequent Purchaser/transferee to the First Purchaser (or to another Subsequent Purchaser), a sub-sale has occurred. This transaction **cannot** be self-assessed on TRO. Documents must be lodged, together with any relevant agreements for sale and a completed Section 36I Statutory Declaration(s), with the State Revenue Office for assessment.

## How is duty applied on transfers where a sub-sale has occurred?

The sub-sale provisions apply duty as follows:

- firstly, as if the Agreement had been completed/exercised by the First Purchaser (the first transaction); and
- secondly, on the subsequent transaction or, if more than one subsequent transaction has taken place, on each subsequent transaction in which a sub-sale has occurred.

The transfer will be stamped once for the first transaction and stamped separately for each sub-sale.

If a transfer within a first or subsequent transaction is entitled to an exemption or concession, then either of these would also continue to apply under the sub-sale provisions for that component of the transaction.

## What is the dutiable value of transactions where a sub-sale has occurred?

Dutiable value of the first transaction:

- the greater of the Consideration under the Agreement ; and
- the unencumbered value of the property transferred, as at the date the agreement was entered into.

Dutiable value of any sub-sale is the greater of:

- the Consideration for the Subsequent Transaction; and
- the unencumbered value of the property transferred, as at the date the Agreement was entered into.

## Who is liable for duty?

First transaction:

- for the first transaction (as if the Agreement had been completed), the first purchaser is the liable party; for any subsequent transactions that are sub-sales, the respective *Subsequent Purchaser* is the liable party.

Subsequent purchaser:

- if the transferee (*Subsequent Purchaser*) elects to pay all of the duty liable to enable registration of the transfer to occur, the Duties Act allows the transferee to recover from the liable party that portion of the duty paid for which they are not liable to pay.

## More information from the State Revenue Office

**Phone** (03) 6166 4400  
(weekdays, 9:00am to 4:00pm)

**Email** [dutyhelp@treasury.tas.gov.au](mailto:dutyhelp@treasury.tas.gov.au)

**In person** Ground Floor  
Salamanca Building Parliament Square  
4 Salamanca Place HOBART TAS 7000  
(weekdays, 9:00am to 5:00pm)