

Revenue Ruling 2004

Public Ruling

Ruling Number	: PUB-DT-2004-5
Title	: Aggregation of Dutiable Transactions
Tax Line	: Duties
Legislative Reference	: <i>Duties Act 2001</i>
Previous Ruling	: PUB-DT-2002-3 and PUB-DT-2003-3 29 May 2003
Date of Ruling	: 1 December 2004
Attachments	:

THIS RULING HAS BEEN REPLACED FROM 1 AUGUST 2008 BY RULING No PUB-DT-2008-28

Preamble

Chapter 2 of the *Duties Act 2001* ("the Act") charges duty on dutiable transactions. Section 22 of the Act provides that certain dutiable transactions will be aggregated (treated as one transaction) for the purpose of calculating duty in some circumstances.

Dutiable transactions are to be aggregated and treated as a single dutiable transaction if:

- they occur within 12 months, 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 22(1) of the Act)

Section 22(2) provides that dutiable transactions are not to be aggregated if the Commissioner is satisfied that it would not be just and reasonable to do so in the circumstances.

Section 22(6) provides a maximum penalty of 100 penalty units for the failure of a transferee to whom section 22 applies to disclose to the Commissioner, in writing, at or before the time at which an instrument or statement relating to the dutiable transactions is lodged for stamping, details relating to the dutiable property and the consideration for each item or part of, or interest in, that dutiable property.

Clause 2(1) of Schedule 1 to the Act provides that section 22 extends to dutiable transactions where at least one of which occurred before the commencement day (1 July 2001) and at least one of which occurred on or after the commencement day, if they occurred within 12 months and the other provisions of that section are satisfied.

This ruling outlines the manner in which section 22 will be applied, with emphasis on:

- the circumstances in which two or more dutiable transactions are considered to constitute “one arrangement”; and
- the circumstances in which the Commissioner will consider exercising his discretion to not aggregate.

This ruling applies to all types of dutiable property (other than marketable securities), including, for example, business assets.

Ruling

The purpose of section 22 of the Act is to ensure the same duty is paid on similar transactions, even if one of the transactions is comprised of separate documents or apparently distinct transactions.

For example: B owns a business which is made up of land valued at \$40 000, plant and equipment worth \$100 000 and goodwill worth \$30 000. B sells the business to A. Where the transaction is comprised in one document or transaction it is easily seen that the total value of the dutiable property contained in the business is \$170 000. Duty amounting to \$4 625 would be payable by A. In a second scenario, B transfers the same property to C. However, this time B firstly transfers the land to C (valued at \$40 000) and then transfers the plant and equipment and goodwill at a later date (valued at \$130 000). The duty paid in each case would be \$800 and \$3 325. C would clearly obtain an inequitable advantage by paying duty of only \$4 125 compared to the \$4 625 that would have been paid by A.

Section 22 ensures that the same amount of duty is paid by aggregating multiple “dutiable transactions” that are essentially one larger transaction, or a series of transactions constituting one arrangement.

For aggregation to occur, each of the following three factors need to be present.

(a) Dutiable transactions occurring within 12 months

Where one arrangement comprises two or more dutiable transactions occurring within a 12-month period, that 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 were transferred over a period of longer than 12 months, those transactions occurring within any 12-month period would be aggregated.

For example: A purchases property from B on 1 July 2001. This transaction is known as TRANS 1. A purchases further property from B on 20 May 2002 (TRANS 2) and again further property from B on 15 November 2002 (TRANS 3). TRANS 1 and 2 can be aggregated. TRANS 2 and 3 can be aggregated.

(b) Transferee is the same or transferees are “associated persons”

Where there are two or more different transferees in a single dutiable transaction, all the transferees must be “associated persons” as defined in section 3 of the Act. For example, if two agreements to purchase land are entered into by a husband and wife (in one agreement) and their son and daughter-in-law (in the other agreement), the agreements cannot be aggregated under section 22 because not all the transferees are “associated persons” – the daughter-in-law is not “associated” with her husband’s parents by virtue of the definition of “related person”.

It should, however, be noted that persons are regarded as “associated persons” if they are acting in concert. See paragraph (g) of the definition of “associated person” in section 3 of the Act.

(c) One arrangement

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 arrange their affairs for a particular purpose or so as to produce a particular effect”: *Bell v Federal Commissioner of Taxation* (1953) 87 CLR 548 at 573.

In the duties context, aggregation provisions in other jurisdictions have referred to transactions “that form part of a larger transaction or a series of transactions”. Section 22 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”. Further, the words “together form, evidence, give effect to or arise from” are at least as wide as “form part of”.

As a consequence of these similarities, historical stamp duties cases on aggregation remain relevant to the operation of section 22. “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”: *Attorney-General v Cohen and Another* [1937] 1 KB 478, per Greene LJ at 491.

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 22 (see *Old Reynella Village Pty Ltd v Commissioner of Stamp Duties* (SA) (1989) 20 ATR 1080). However, it is accepted that the intention of the purchasers to subsequently deal with the property as a single arrangement or transaction 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 it would include antecedent options or development applications.

Section 22 does not refer to the identity of the vendors or transferors, so that the aggregation provisions can apply even if the vendors or transferors are not “associated” or “related”. However, the fact that the vendor is the same (or the vendors are related) can be relevant in determining whether the transactions constitute one arrangement.

Aggregated assessment of agreements for the sale of land will be made under subsection 22(1) in the following circumstances:

- where the agreements contain an interdependency clause, or
- where the agreements relate to fractional interests in one property, or
- where the agreements are pursuant to antecedent options over the properties, or
- the properties are sold subject to a development application or approval, or
- completion is conditional on the purchaser obtaining development approval, or
- the purchaser has lodged a development application prior to entering into the agreements.

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In addition, where the vendors are the same or associated persons, transactions will also be aggregated if:

- the agreements relate to freehold property and a business conducted on that property, or
- assets of a single going concern business are purchased under separate agreements, or
- the purchasers are buying all the lots in a subdivision or all units in a home unit block or a farming or grazing property.

The above examples do not limit the circumstances in which an aggregated assessment will be made. An assessment under subsection 22(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.

The following scenarios are NOT considered to constitute one arrangement:

- where the properties are purchased separately at auction.
- where there is an exchange of properties between "associated persons".
- where the only factor connecting the agreements, other than satisfying the first two criteria of subsection 22(1), is:
 - a development application 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.

Not just and reasonable – Commissioner's discretion not to aggregate

A decision under subsection 22(2) of the Act not to aggregate can only apply to an arrangement that satisfied all three elements of subsection 22(1), including that the transactions constitute one arrangement. Clearly, section 22 is wider in its application than its predecessor in the *Stamp Duties Act 1931* (section 70A), which was introduced as an anti-avoidance provision to deal with practices such as contract splitting.

As a consequence, the discretion not to aggregate will only be exercised in exceptional circumstances, and would depend on the facts of each case. The mere fact that the use of separate transactions was not for the purpose of avoiding duty is insufficient reason to exercise the discretion. As a general rule, the situation would have to be an unintended consequence of the broad wording of the legislation.

In all cases, a written submission must be lodged if an applicant is requesting consideration be given under subsection 22(2).

Stamping

Subsection 22(5) of the Act provides that when an assessment is made under subsection 22(1), duty may be apportioned to the instruments effecting or evidencing the dutiable transactions, or may be charged in accordance with subsection 16(1), as determined by the Commissioner. As a general rule, the amount of duty payable on the aggregated dutiable value is apportioned by the Commissioner to the respective instruments evidencing the dutiable transactions.

Enquiries in relation to this Revenue Ruling should be directed to the Revenue Advice and Audit Section on telephone (03) 6166 4400 or e-mail at audithelp@treasury.tas.gov.au. Copies of this ruling may be obtained from the State Revenue Office Web site at www.sro.tas.gov.au and follow the "Revenue Rulings" link.

All rulings must be read subject to Revenue Ruling PUB-GEN-2001-1



Peter Coe
COMMISSIONER OF STATE REVENUE

Enquiries:

Telephone: (03) 6166 4400
Facsimile: (03) 6234 3357
Email: taxhelp@treasury.tas.gov.au
Internet: www.tas.gov.au

By Correspondence:

The Commissioner of State Revenue, State Revenue Office
GPO Box 1374, HOBART Tas 7001

In Person: 4th Floor, 80 Elizabeth Street, Hobart

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