Revenue Ruling

Public Ruling

Ruling Number	: PUB-DT-2014-3
Title	: Section 24 of the Duties Act 2001 – Discretion to disregard the value of goods
Tax Line	: Duties
Legislative Reference	: Duties Act 2001
Date of Ruling	: 21 March 2014

Preamble

Chapter 2 of the *Duties Act 2001* (the Act) charges duty on dutiable transactions affecting dutiable property, including goods.

Section 24 of the Act contains a discretion ('the discretion') whereby the Commissioner of State Revenue (the Commissioner) can disregard the value of dutiable goods in determining the dutiable value of a transaction consisting of a grant, surrender or transfer of a lease of commercial property.

This ruling sets out the circumstances under which the Commissioner would generally exercise the discretion.

Background

Under Sections 6 and 9 of the Act, the grant, surrender or transfer of a lease over land in Tasmania **is dutiable** because a lease constitutes an interest in land.

Under Section 9, goods are **also dutiable if** they are the subject of an arrangement that includes other dutiable property. Therefore, goods become dutiable if they transfer as part of an arrangement that includes a grant, surrender or transfer of a lease of commercial property.

Goods such as stock-in-trade, materials held for manufacture, goods under manufacture and livestock are excluded goods under Section 9(j) of the Act and are **not** subject to duty.

Registered motor vehicles are **dutiable** under Chapter 8 of the Act, and are separately dutiable on their transfer. As a result, registered motor vehicles are also not included in the duty calculation under chapter 2.

Under Section 24 of the Act 'the discretion' is limited to the extent that the transaction consists of the grant, surrender or transfer of a lease of commercial property.

A lease of commercial property is defined under Section 24(2) of the Act to be a lease in respect of real property that is to be used for the purpose of a business, whether or not there are premises on the property that may be used in whole or in part as a residence.

Section 24 of the Act was introduced effective from 7 December 2011.

Ruling

The Commissioner may exercise the discretion under Section 24 to disregard the value of dutiable goods when determining the dutiable value of a transaction, consisting of a grant, surrender or transfer of a lease of commercial real property, where:

(a) The value of dutiable goods is 90 per cent or more of the total dutiable value of the transaction; *and*

(b) The dutiable goods will be used predominantly for business use; *and*

(c) The dutiable goods will be used predominately on or at the leased premises; *and*

(d) The dutiable transaction was not structured for reducing or avoiding the payment of duty.

Mineral tenements

A mineral tenement is not a lease. Therefore 'the discretion' cannot be exercised for a transaction consisting of goods and a mineral tenement.

Registered motor vehicles

Under Section 9(j) of the Act, registered motor vehicles are excluded goods for the purpose of Chapter 2 of the Act. Therefore the discretion to disregard the value of goods under Section 24 in Chapter 2 does not extend to the duty separately calculated for the acquisition or transfer of motor vehicles under Chapter 8.

Commercial property

The Commissioner will generally accept that property is a commercial property if it is being used for business purposes, for example if the property will be used for:

- the business of wholesale or retail sales of goods or services; or
- the business of manufacturing; or
- a primary production business; or
- purposes ancillary to the running of the business, for example administration or the storage of stock, equipment or other supplies.

If the above criteria are met, the value of dutiable goods may be disregarded from the assessment of duty.

Example 1.

The purchaser is obtaining shop equipment as part of a lease over business premises.

Plant and equipment	$ 20 000.00
Stock	$ 29 999.00
Lease	$ 1.00
Total purchase price	$ 50 000.00

In calculating the 90 per cent ratio test, the value of goods (plant and equipment) is compared to the value of all dutiable property transferring. Stock is not dutiable property, and therefore the only other dutiable property is the granting of the lease.

The ratio in this case is 99.9 per cent ($20,000 / $20,001 x 100). Because the plant and equipment will be used for business purposes on the leased premises, the value of the goods transferring will be disregarded when calculating the duty payable. Because the dutiable value for the lease (i.e. premium) is less than $3 000, the lease would not incur a duty liability as it would be exempt under Section 53(d)[1].

[1] The threshold for the exemption under section 53(d) has been increased from $1 300 to $3 000 effective from 21 October 2013 under amendments made by the *Taxation and Related Legislation (Miscellaneous Amendments) Act 2013.*

Example 2.

The purchaser is obtaining shop equipment as part of a lease over business premises.

Plant and equipment	$ 40 000.00
Stock	$ 10 000.00
Motor vehicle	$ 20 000.00
Lease	$ 4 000.00
Total purchase price	$ 74 000.00

In calculating the 90 per cent ratio test, the value of goods (plant and equipment) is compared to the value of all dutiable property transferring. Stock and the motor vehicle are not dutiable under Chapter 2, therefore the only other dutiable property is the granting of the lease.

The ratio in this case is 90.9 per cent ($40,000 / $44,000 x 100). Because the plant and equipment will be used for business purposes on the leased premises, the value of the goods transferring will be disregarded when calculating the duty payable. Because the dutiable value for the lease (i.e. premium) is more than $3 000 the lease would incur a duty liability based on a dutiable value of $4 000.

Example 3.

The purchaser is buying business assets as well as non-business related freehold property:

Freehold residence and associated chattels	$ 400 000.00
Lease of a factory on an adjacent block	$ 0.00
Business-related plant and equipment located in the factory	$ 300 000.00
Total purchase price	$ 700 000.00

In this case all of the assets transferring are dutiable (as plant and equipment are not excluded goods, and in some cases may constitute fixtures). The ratio of goods versus all other dutiable property is therefore 42.8 per cent, ($300,000 / $700,000 x 100) and, as the transaction does not meet the 90 per cent ratio test, the value of goods would remain dutiable.

Requesting the Commissioner's discretion

A written request for the Commissioner to exercise the discretion to disregard the value of goods should be made when the lease is lodged at the State Revenue Office for assessment. It should include submissions that deal with the criteria set out in this Ruling.

If the transaction is being self assessed using Tasmanian Revenue Online, please keep sufficient evidence to support the plant and equipment being 90 per cent or more of the total dutiable value. This should include evidence of the apportionment of the consideration between all the property acquired, together with evidence to support the value of the plant and equipment, e.g. a copy of the depreciation schedule.

Important

All rulings must be read subject to Revenue Ruling PUB-GEN-2011-3 (Explanation and Status of Revenue Rulings) – see at www.sro.tas.gov.au.

JC Root
COMMISSIONER OF STATE REVENUE
21 October 2013

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