

Revenue Ruling

Public Ruling

Ruling Number	: PUB-DT-2016-1
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	: 14 January 2016

Preamble

Chapter 2 of the [Duties Act 2001](#) (the Act) charges duty on dutiable transactions over dutiable property, which includes certain 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, transfer or surrender 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, transfer or surrender 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, transfer or surrender of a lease.

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 to exclude goods is limited to transactions that consist of the grant, transfer or surrender of a lease of commercial property. Accordingly, the Commissioner cannot

exercise the discretion to disregard goods where goods transfer as part of an arrangement involving a lease of purely residential premises or where goods transfer as part of an arrangement with any other dutiable transaction (such as a transfer of land) that does not also relate to a lease of commercial property.

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

Ruling

The Commissioner will consider it just and reasonable to exercise the discretion under section 24 to disregard the value of dutiable goods when determining the dutiable value of a transaction for the grant, transfer or surrender 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 (referred to as the 'ratio test');
- (b) The dutiable goods will be used predominantly for business use;
- (c) The dutiable goods will be used predominately on or at the leased premises; and
- (d) The dutiable transaction was not structured for the purposes of reducing or avoiding the payment of duty.

Commercial property

A lease of commercial property is defined by 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.

The Commissioner will generally accept that property is a commercial property if it is being used for business purposes, such as:

- the wholesale or retail sales of goods or services;
- manufacturing;
- 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.

The Ratio Test

The Commissioner has established that it would only be just and reasonable to exclude goods from the dutiable value where the value of the dutiable goods comprises not less than 90 per cent of the total dutiable value of the transaction. The following examples indicate how the ratio test is calculated in practice:

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	\$ <u>1.00</u>
Total purchase price	\$ 50 000.00

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

The goods to other dutiable property ratio in this case is 99.9 per cent ($\$20,000 / \$20,001 \times 100$). As the plant and equipment acquired will be used for business purposes on the leased premises, the value of the goods transferring will be disregarded when calculating the duty payable. Further, 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 from duty under section 53(d) of the Act¹.

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	<u>\$ 4 000.00</u>
Total purchase price	\$ 74 000.00

In calculating the ratio test, the value of goods (plant and equipment) is compared to the value of all dutiable property transferring. As stock-in-trade and the motor vehicle are not dutiable property under Chapter 2, the only other dutiable property is the granting of the lease.

The ratio in this case is 90.9 per cent ($\$40,000 / \$44,000 \times 100$). 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. However, because the dutiable value of 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	<u>\$ 300 000.00</u>
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). However, the ratio test in this matter is not satisfied insofar as the value of the dutiable goods constitutes only 42.8 per cent of the total dutiable value of the transaction ($\$300,000 / \$700,000 \times 100$) and, as the transaction does not meet the 90 per cent ratio test, the value of goods would remain dutiable.

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.

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*.

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 value of the dutiable goods 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.

It is important to know that ...

All rulings must be read subject to [Revenue Ruling PUB-GEN-2014-5](#) (Explanation and Status of Revenue Rulings) – see at www.sro.tas.gov.au.

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