

Revenue Ruling

Ruling Number	: PUB-DT-2019-5
Title	: Application of section 22 of the <i>Duties Act 2001</i> (Aggregation)
Date of Ruling	: 07 November 2019.
Tax Line	: Duties
Legislative Reference	: Duties Act 2001
Replaces previous Ruling	: PUB-DT-2012-1

Preamble

For the purposes of this Ruling, all references to sections and chapters relate to sections and chapters of the [Duties Act 2001](#) unless otherwise specified.

Chapter 2 charges duty on dutiable transactions. Section 22 provides that two or more dutiable transactions will be treated as one transaction (i.e. aggregated) for the purpose of calculating duty where:

- either:
 - in the case of dutiable transactions that are transfers on a sale of an item or part of dutiable property, the agreements for sale are entered into within 12 months; or
 - in any other case, the dutiable transactions 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 interests in the dutiable property.

Section 22(2) provides a discretion to not aggregate dutiable transactions where the Commissioner is satisfied that it would not be just and reasonable to do so in the circumstances.

This ruling outlines how 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 Commissioner will consider exercising the discretion not to aggregate.

Ruling

Duty is imposed on a progressive basis with the consequence that the higher the value of the transaction, the higher the rate of duty. This means that, without aggregating dutiable transactions, a liability to duty could be reduced by splitting a single transaction into separate transactions.

Example: a transfer of two properties sold through one contract for \$200 000 would attract duty of \$5 935. If the transaction was split into two transactions of \$100 000, each transaction would attract duty of \$2 435, resulting in total duty of \$4 870.

The purpose of section 22 is to ensure that, regardless of how the transactions are structured, the same amount of duty is paid on multiple transactions that constitute ‘one arrangement’ as would be payable if effected as a single transaction.

For aggregation to occur, each of the following three factors must be present:

1. The agreements for sale are entered into within 12 months or, in any other case, the dutiable transactions occur within 12 months.

Where one arrangement comprises two or more agreements or dutiable transactions occurring within a 12-month period, the 12-month period will commence from the date of the first agreement or dutiable transaction. Therefore, where:

- separate items of dutiable property,
- separate parts of an item of dutiable property, and/or
- other interests in dutiable property,

are transferred, or agreed to be transferred, within a 12 month period, the transactions will be aggregated and treated as a single dutiable transaction for the purposes of assessing duty.

Any items, parts or interests in dutiable property transferred outside of the 12-month period will be assessed independently for duty and not aggregated.

Example

‘B’ purchases property from ‘A’ on 1 July 2017. This transaction is known as Transaction 1.

‘B’ purchases further property from ‘A’ on 20 May 2018 (Transaction 2), and again from ‘A’ on 15 November 2018 (Transaction 3). Provided the transactions together form one arrangement, Transactions 1 and 2 are to be aggregated. Transaction 3 cannot be aggregated with Transaction 1 because it falls outside the 12-month time frame.

Transaction 3 would, however, be aggregated with Transaction 2 as those two transactions occurred within 12-months of each other. To prevent the payment of double duty on Transaction 2, the Commissioner will reduce the tax payable on the second aggregation in accordance with section 22(4). This section provides for the amount of duty payable to be reduced by the amount of any duty paid on a prior transaction that has been aggregated.

2. The transferee is the same or the transferees are ‘associated persons’.

Where the transferee(s) in respect of multiple dutiable transactions is the same, this requirement is satisfied. Where there are two or more transferees, all the transferees must constitute “associated persons” for aggregation to occur.

The term “associated person” is exhaustively defined by section 3 of the Act and includes a number of business, commercial and fiduciary relationships such as partners in a partnership, trustees and beneficiaries, private companies with common shareholders etc. It also includes persons who constitute “related persons”, which term is also defined by section 3 to include spouses (including de facto) and certain blood-relatives in addition to certain business relationships such as those existing between related bodies corporate or between a private company and its majority shareholder or a director.

In addition to recognising common business and family relationships, the definition of “associated person” includes persons who are “acting in concert”. Whilst this phrase is not defined by the Act, the meaning ascribed to it by Bowen CJ in *Tillmans Butcheries Pty Ltd v Australasian Meat Industry Employees’ Union* (1979) 42 FLR 331 was as follows:

“Acting in concert involves knowing conduct, the result of communication between the parties and not simply simultaneous actions occurring spontaneously”

Accordingly, parties will be considered to be acting in concert where there is an understanding or arrangement between the parties as to a common purpose or object.

Example

In circumstances where 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 daughter-in-law is not an “associated person” to her husband’s parents by virtue of the definition of “related person”. However, the parties may be considered to be “associated persons” by virtue of acting in concert if they actively communicated amongst themselves to acquire both properties in this fashion.

Section 22 of the Act is not expressly concerned with the identity of the transferor(s) such that dutiable transactions may be aggregated regardless of whether the transferors are the same or associated persons. Nevertheless, for two transactions to be aggregated, they must still arise from substantially one arrangement.

3. One arrangement

For the purposes of the Act, ‘one arrangement’ may include a series of transactions. Consistent with case law (*Attorney-General v Cohen and Another* [1937] 1 KB 478, per Greene LJ at 491), ‘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.”

In considering whether dutiable transactions constitute substantially one arrangement, the Commissioner will examine the facts of each case and consider a range of factors.

What **will** generally be considered evidence of ‘one arrangement’.

The following circumstances will generally be considered to constitute substantially ‘one arrangement’:

- agreements for sale are interdependent (this is usually evidenced by at least one of the agreements containing an interdependency clause);
- the agreements relate to fractional interests in one item of dutiable property;
- the agreements are pursuant to antecedent options (options created prior to the division of property into separate components);
- one price is negotiated and then split between the dutiable transactions;
- the purchaser or associated persons, enter into multiple contracts to purchase dutiable property and receive a discount for purchasing more than one; or
- multiple lots of property are purchased with the intention that the lots will be used for a common purpose, in conjunction with each other or as a single amalgamated property.

What will **not** be considered ‘one arrangement’.

The following circumstances will generally not constitute 'one arrangement' provided none of the circumstances referred to immediately above under the heading "*What will generally be considered evidence of 'one arrangement'*" have occurred:

- the items of property are purchased at auction and were offered for sale separately;
- there is an exchange of dutiable property between 'associated persons';
- the only factor connecting the agreements, other than satisfying the first two criteria of section 22(1), is a single loan or facility agreement or mortgage; or
- where a builder purchases two or more lots in a subdivision with the intention to build separate residences on each lot for the purposes of resale.

The above examples **do not** limit the circumstances in which a series of transactions will or will not be considered to constitute 'one arrangement' and, where the relationship between two or more transactions is more integral than fortuitous, the transactions will likely be viewed as one arrangement.

Example

A supermarket chain plans to acquire land adjacent to its store for expansion of its facilities. It enters into a contract to purchase some of the land from one vendor and the balance of land from another. Without purchasing both parcels of land the development cannot go ahead and so the agreements are made conditional upon each other. In such circumstances the two transactions would be considered one arrangement even though there are two different vendors because the properties are being acquired for a common purpose.

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

In *Chief Commissioner of State Revenue v Pacific General Securities Ltd and Finmore Holdings Pty Ltd (No.2)* [2005] NSWADTAP 54, a case based on the equivalent of section 22(2) in the New South Wales legislation, the Tribunal found that the purpose of the 'just and reasonable' discretion is to "provide a measure of discretion to deal with unforeseen consequences, anomalies or unexpected outcomes". The Tribunal stated that the discretion "must be applied in a manner which does not defeat the fundamental legislative objectives of the scheme of regulation within which the dispensing power is located".

As a general rule, the discretion to disaggregate would typically be applied only in circumstances where the applicability of the aggregation provisions was an unintended consequence of the broad wording of the legislation. In such a case, a taxpayer must establish that there are special or unusual circumstances to justify the exercise of the discretion not to aggregate the transactions.

The mere fact that the relevant transactions did not have the purpose of avoiding or reducing duty is not, of itself, a sufficient reason to exercise this discretion. Therefore, when considering whether to exercise the discretion to disaggregate, the Commissioner will take into account the circumstances of each case, together with the policy basis for the inclusion of the aggregation provisions in the legislation.

For example, the discretion to disaggregate may be exercised where multiple contracts are interdependent but the interdependency is for the benefit of the vendor rather than the purchasers.

In all cases, a written submission must be lodged with the Commissioner if a taxpayer is requesting that consideration be given to disaggregating transactions under section 22(2).

Evidence requirements.

Where it is evident that dutiable transactions are to be aggregated, the transferee is required to disclose certain details about the dutiable transactions at the time the documentation is lodged for assessment. The disclosure is to be made in writing and must contain:

- details about the dutiable property and its acquisition; and
- the consideration paid for each item, or interest in that dutiable property.

Where the transferee considers that the transactions **may** be subject to aggregation, or a request from the State Revenue Office about aggregation is made, an aggregation statement ([Aggregation statement statutory declaration](#)) is to be completed by the transferee(s) for each transaction.

Stamping

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

Application of this ruling

This Revenue Ruling applies from 07 November 2019.

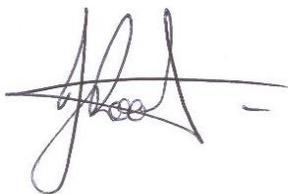
More information from the State Revenue Office

All rulings must be read in conjunction with the 'Explanation and Status of Revenue Rulings' available on the SRO website, www.sro.tas.gov.au/resources/rulings.

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J C Root
Commissioner of State Revenue

07 November 2019.