

# Guideline

## Duty payable on the purchase of business assets

### Summary

This Guideline outlines:

- how to identify if the purchase of a business is dutiable;
- how to calculate the duty liability; and
- the evidence required when preparing business sale documents for stamping.

It relates only to property and assets located in Tasmania and should be read in conjunction with Revenue Ruling, [Discretion to disregard the value of goods](#).

### The assessment of duty on the purchase of business assets

Many businesses hold assets which fall under the classification of 'goods' for the purpose of the [Duties Act 2001](#) (the Act). For example, assets such as plant and equipment are considered goods.

Goods transferred by themselves are not dutiable. However, goods are subject to duty if they are transferred in an arrangement that includes other dutiable property such as:

- a freehold interest in land or a mineral tenement; or
- where the transfer of business assets is conditional on the granting of a new lease over business premises.

Where a business is sold together with a lease for the business premises, the lease is an interest in land, and is defined as dutiable property under section 9(l) of the Act.

Therefore, any goods transferred as part of an arrangement, which includes a lease (or any other dutiable property), will also be dutiable.

On 7 December 2011, section 24 was introduced to give the Commissioner of State Revenue (the Commissioner) a discretion to disregard the value of dutiable goods. That is, when determining the dutiable value of a transaction that consists of a grant, surrender or transfer of a lease of commercial property.

Please read the Revenue Ruling, [Discretion to disregard the value of goods](#) at [www.sro.tas.gov.au/rulings](http://www.sro.tas.gov.au/rulings).

## How to calculate duty payable

### STEP 1

#### Determine if the transaction includes an item of dutiable property

Does the transaction include, as part of the arrangement, any of the following assets?

Asset type	Example	Response
Land	Does the arrangement include a freehold interest in real property in Tasmania?	Yes / No
An interest in dutiable property	Does the arrangement include the assignment of a lease (including a Crown lease), or is the transaction conditional on a new lease being granted?	Yes / No
Fixtures to land	Does the arrangement include an interest in capital improvements on leasehold property?	Yes / No
A mineral tenement	Does the arrangement include a Mineral Resources Tasmania lease or licence for a mineral tenement?	Yes / No
A land use entitlement	Does the arrangement include an entitlement to occupy land within Tasmania conferred through an ownership of shares in a company or an ownership of units in a unit trust?	Yes / No
An option to purchase dutiable property	Does the arrangement include an option to purchase dutiable property?	Yes / No

If the answer is 'yes' to any of the above, the transaction will be dutiable. Proceed to Step 2.

If 'no' to all of the above, the transaction is not dutiable; therefore, it does not need to be stamped).

### STEP 2

#### Determine the full consideration paid

To calculate the full consideration paid you must include the value of monetary and non-monetary payments; this includes the value of liabilities assumed (see section 18 and 19 of the Act). Consideration should be stated inclusive of Goods and Services Tax if applicable.

#### EXAMPLE: Calculation of consideration paid

Consideration type	Example	Value
Monetary payments	Payments of cash or cash equivalents.	\$750 000
Liabilities assumed	Long service leave provisions, loans or other debts assumed by the purchaser (or purchaser's associate) as part of the arrangement.	\$ 25 000
Non-monetary payments	Vehicles, property, debt forgiveness or any other non-monetary payment made by the purchaser (or purchaser's associate) to the vendor (or vendor's associate) as part of the arrangement.	\$ 25 000
<b>Total consideration</b>		<b>\$800 000</b>

### STEP 3

#### Apportion the consideration paid between the assets being transferred

The full consideration should be apportioned to each of the asset types being transferred. The total value of the apportioned consideration should equal the full value of consideration paid, as calculated in Step 2.

**EXAMPLE: Apportionment of the consideration paid**

<b>Asset type</b>	<b>Example</b>	<b>Value</b>
Plant and equipment	Machinery, equipment and supplies used in the operation of the business.	\$150 000
Stock in trade	Products or equipment which are sold or hired as part of the business operation.	\$250 000
Registered motor vehicles	Any vehicle, craft or trailer that is registered with the Department of Infrastructure, Energy and Resources (Transport).	\$ 50 000
Interest in land	Value attributed to a lease or freehold interest	\$ 75 000
Intellectual property	Information or brands which are proprietary to the business.	\$250 000
Goodwill (if applicable)	This may be calculated as the amount by which the consideration exceeds the unencumbered value of other assets (if any).	\$ 25 000
<b>Consideration apportioned</b>		<b>\$800 000</b>

### STEP 4

#### Determine the consideration paid for the items of dutiable property

Remove items which are not dutiable from the apportionment made at Step 3. Most commonly these will be assets such as:

- the business goodwill (but not site goodwill);
- intellectual property;
- stock in trade;
- materials held for use in manufacture;
- goods under manufacture;
- livestock; and
- registered motor vehicles.

**EXAMPLE: Apportionment of consideration after removing non-dutiable components**

<b>Asset type</b>	<b>Example</b>	<b>Value</b>
Plant and equipment	Machinery, equipment and supplies used in the operation of the business.	\$ 150 000
Interest in land	Value attributed to the lease	\$ 75 000
<b>Consideration apportioned to dutiable assets</b>		<b>\$ 225 000</b>

## STEP 5

### Determine the unencumbered value of the items of dutiable property

The unencumbered value is the amount for which the property might reasonably have been sold in the open market, free from any encumbrance to which the property may be subject to.

The dutiable value of dutiable property is the greater of the consideration paid for the property or the unencumbered value of the property (section 18 of the Act).

The unencumbered value may be estimated by reference to a valuation or by other means such as the written down value shown in a business asset depreciation schedule. The adjusted Government valuation may be used in determining the unencumbered value of real property.

Other assets, such as the right to a leasehold interest, are far more difficult to value. The Commissioner will, in most cases, accept the consideration apportioned to a lease to save taxpayers the time and expense of providing valuations for such assets.

#### EXAMPLE: Determination of the unencumbered value of dutiable property

Asset type	Example	Value
Plant and equipment	The written down value of the plant and equipment, as shown in business financial statements, may be used as the unencumbered value.	\$ 145 000
Interest in land	As it is difficult to verify the unencumbered value of a leasehold interest, generally the value of consideration apportioned for the assignment of a lease will be accepted.	\$ 75 000
<b>Unencumbered value of dutiable assets</b>		<b>\$220 000</b>

## STEP 6

### Determine the dutiable value of the dutiable property

The dutiable value of dutiable property is the greater of the consideration paid as calculated at Step 4 and the unencumbered value of the dutiable property as calculated at Step 5.

#### EXAMPLE: Determination of the dutiable value

Asset type	Consideration apportioned from Step 4	Unencumbered value from Step 5	Dutiable value is the greater of (a) and (b)
Plant and equipment	\$150 000	\$145 000	
Interest in land	\$ 75 000	\$ 75 000	
<b>Total</b>	<b>\$225 000 (a)</b>	<b>\$220 000 (b)</b>	<b>\$ 225 000</b>

## STEP 7

### Determine whether the value of goods will be disregarded as dutiable items

The value of dutiable goods may be disregarded (see [section 24 of the Act](#)) if the transaction consists of a grant, surrender or transfer of a lease of commercial real property that is to be used for business purposes, and:

- a) the value of dutiable goods is 90 per cent or more of the total dutiable value; 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. The 'discretion' to disregard the goods as dutiable items cannot be exercised for a transaction consisting solely of goods and a mineral tenement.

### Registered motor vehicles

Registered motor vehicles are excluded goods under section 9(j) of the Act, and therefore the discretion to disregard the value of goods does not extend to them.

#### EXAMPLE: Determine ratio of goods

Dutiable asset type	Value	%
Plant and equipment (goods)	\$150 000	66.7
Interest in land	\$ 75 000	33.3
<b>Total</b>	<b>\$225 000</b>	

### 90 per cent ratio test

For the purpose of calculating the 90 per cent ratio test, the value of goods (plant and equipment) is compared to the value of all dutiable property transferring.

The ratio of goods versus all other dutiable property in this case is therefore 66.7 per cent ( $\$150\,000 / \$225\,000 \times 100$ ) and, as the transaction does not meet the 90 per cent ratio test, the value of goods would remain dutiable.

Although a lease is a dutiable interest in land, from 22 November 2012 duty is not chargeable on the grant, transfer or surrender of a lease if the consideration paid for the lease is \$1 300 or less (section 53(d) of the Act).

## STEP 8

### Determine if the transaction is eligible to receive an exemption under section 53(c) of the Duties Act in relation to the transfer of goods to a relative

Section 53(c) exempts the transfer of dutiable goods specified in section 9(1)(j) of the Act made between persons who are relatives. That is, if the relative is:

- a child or grandchild; or
- a parent or grandparent; or
- a brother or sister; or
- a spouse or caring partner; or
- a spouse or caring partner of a child, grandchild, brother or sister.

## **STEP 9**

### **Lodge the relevant documents at the State Revenue Office**

The following documents **are required** for stamping purposes:

- the document effecting the transfer – examples include:
  - . a deed of lease assignment; or
  - . a Land Titles Office transfer instrument; or
  - . a Crown Land transfer;
  - . a mineral tenement transfer; or
  - . a statement under section 13 of the Act if the transaction was not effected by a written instrument.
- a copy of the executed agreement for sale, if one exists;
- details of the consideration paid (monetary and non-monetary), including any liabilities assumed;
- an apportionment of the consideration between the assets transferring;
- if existing, a copy of the business financial statements as at or approximate to the date of the transaction, specifically a balance sheet and depreciation schedule;
- evidence supporting an application for the value of goods to be disregarded or for any other exemption or concession being claimed.

Should you be processing a transfer as a licensed agent through Tasmanian Revenue Online, you must retain sufficient evidence that supports the dutiable value and the use of any concession or exemption. (See the [Documentary evidence requirements](http://www.sro.tas.gov.au) guideline at [www.sro.tas.gov.au](http://www.sro.tas.gov.au)).

## **More information**

### **Website**

[www.sro.tas.gov.au](http://www.sro.tas.gov.au)

### **Phone**

(03) 6166 4400

### **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 4:00pm)

### **Fax**

(03) 6234 3357

### **Mail**

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GPO Box 1374  
Hobart Tas 7001