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COMMISSIONER'S PRACTICE DA 4.0

DUTIES – TRANSACTION SPLITTING – SUBSTANTIALLY ONE ARRANGEMENT

Commissioner's Practice History

Commissioner's Practice	Issued	Dates of effect	
		From	To
DA 4.0	1 July 2008	1 July 2008	27 February 2014

This Commissioner's practice provides guidance on matters relating to whether two or more dutiable transactions are to be treated as a single dutiable transaction for the purpose of the assessment of transfer duty.

Background

Section 37 of the *Duties Act 2008* ("Duties Act") is an anti-avoidance measure designed to counter the practice known as "agreement splitting" whereby a single arrangement is effected or evidenced by separate transaction records, in order to take advantage of the lower rates of transfer duty applying to lower valued transactions.

Section 37(1) provides that dutiable transactions relating to separate items of dutiable property that together form, evidence, give effect to or arise from what is, substantially one arrangement are to be aggregated and treated as a single dutiable transaction.

Without limiting section 37(1), section 37(2) provides that, unless the Commissioner is satisfied to the contrary, dutiable transactions will be deemed to comprise substantially one arrangement if:

- (a) the transactions have taken place within 12 months; and
- (b) in respect of each of the transactions, the person liable to pay duty is the same person (whether that person is the only person liable to pay duty or is liable to pay duty with the same or different persons).

Section 37(8) provides that the transactions that are treated as a single dutiable transaction may include a transaction that would otherwise not be a dutiable transaction.

Commissioner's Practice

1. The information specified in Duties Information Requirement 21 "Aggregation of Dutiable Transactions" should be provided when any transaction records to which section 37 of the Duties Act may have application are lodged.
2. It should be noted that section 37(1) may apply to dutiable transactions having different vendors and/or purchasers, notwithstanding the provisions of section 37(2).
3. Section 37 may apply even where one of the transactions is one that would otherwise not be a dutiable transaction, e.g. an agreement for the purchase of chattels only will be aggregated with an agreement to purchase land where it is determined that both transactions arise from substantially one arrangement.
4. Transaction records for dutiable transactions which may be aggregated in accordance with section 37 must be either:
 - 4.1. lodged with the Commissioner using a single Duties Document Lodgment and Assessment Form to record all transaction records; or
 - 4.2. if the transaction records are lodged separately, then a covering letter must refer the Commissioner to all transaction records and indicate that section 37 of the Duties Act may apply.
5. If it is found that transaction records for dutiable transactions potentially subject to section 37 have been lodged separately and without advising the Commissioner of the related transaction records, then upon any determination by the Commissioner that section 37 applies to the transactions, the matter will be referred to the Assistant Commissioner (Compliance) for consideration of prosecution action.

Date of Effect

This Commissioner's Practice takes effect from 1 July 2008.

Bill Sullivan
COMMISSIONER OF STATE REVENUE

1 July 2008