



## DUTIES      Aggregation of Dutiable Transactions

### INTRODUCTION

1. Under section 37 of the *Duties Act 2008* ('Duties Act'), 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.
2. The purpose of this ruling is to provide guidance as to when the Commissioner will consider that two or more dutiable transactions are taken to be substantially one arrangement. The factors outlined in this ruling are not intended to be an exhaustive list.

### BACKGROUND

3. Where two or more dutiable transactions that are chargeable at the same rate of duty<sup>1</sup> together form, evidence, give effect to or arise from what is, substantially one arrangement, the transactions will be treated as a single dutiable transaction that took place at the time that the last of the aggregated transactions took place, and the duty will be:
  - (a) assessed on the total of the dutiable values for each transaction at the time when liability for duty on each transaction arose;
  - (b) apportioned between the transactions; and
  - (c) reduced by the amount of any duty paid on previous dutiable transactions that are aggregated under the arrangement.
4. Section 37(2) of the Duties Act provides that where dutiable transactions relating to separate items of dutiable property:
  - (a) have taken place within 12 months; and
  - (b) the person liable to pay duty in respect of each transaction 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),

unless the Commissioner is satisfied to the contrary, the dutiable transactions are taken to together form, evidence, give effect to or arise from what is, substantially one arrangement. The onus is on the taxpayer to demonstrate that the transactions do not form what is substantially one arrangement.

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1 Duties Act section 37(3)(a)

5. The Duties Act provides that:
  - (a) if dutiable transactions are aggregated they are to be treated as a single dutiable transaction that took place at the time that the last of the aggregated transactions took place;<sup>2</sup> and
  - (b) where transactions are aggregated, duty is assessed on the total of the dutiable values for each of the transactions at the time when liability for duty on each transaction arose, and apportioned between the transactions.<sup>3</sup>
6. The effect of these provisions is that transactions that are aggregated will generally be charged with a greater amount of duty than if the transactions were not aggregated.
7. Despite the requirement for the transactions to be chargeable at the same rate of duty,<sup>4</sup> transactions may be aggregated for assessment at the concessional residential rate of duty provided at least one of them is a concessional transaction for the purposes of section 147C of the Duties Act.
8. Where section 37 of the Duties Act may apply, or is deemed to apply, to two or more dutiable transactions, the person lodging the relevant transaction records with the Commissioner must provide the information specified under Duties Information Requirement 4<sup>5</sup> and:
  - (a) lodge the transaction records together under one bundle; or
  - (b) provide a covering letter with at least one transaction record referring to each other transaction with which it may or will be aggregated, including any transactions that have already been assessed with duty.

Where the taxpayer agrees that section 37 of the Duties Act should be applied to the transactions, a statement in writing consenting to the aggregation of the transactions may be provided in lieu of the duties information requirements.

## RULING

9. There is no one factor that will determine whether or not two or more dutiable transactions will be aggregated.
10. In applying section 37 of the Duties Act, the key issue to be determined is whether there is “substantially one arrangement”. Case law demonstrates that in order to attribute a meaning to this phrase, consideration must be given to the meaning of the individual words where:
  - (a) the word **substantially** has considerable importance. “Something may not be one arrangement *in fact* but it may, nonetheless, be “substantially” one arrangement.<sup>6</sup>” The Commissioner “is required to look at “the substance” of the several transactions, and determine

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2 Duties Act section 37(4).

3 Duties Act section 37(6).

4 Duties Act section 37(3)(a).

5 Duties Information Requirements are accessible on the website at <https://www.wa.gov.au/government/multi-step-guides/duties-information-requirements>

6 *Brianco Nominees Pty Ltd & Ors v Commissioner of State Revenue (Taxation)* [2008] VCAT 999 at [29].

whether they are, “in substance”, one [arrangement] although masquerading as several”;<sup>7</sup>

- (b) the word **one** “points to some essential unity, some “oneness”, and some unifying factor that brings the several transactions within the section”.<sup>8</sup> There must exist “a relationship or connection or interdependence between the transaction that gives to them the essential unity”.<sup>9</sup> The unifying factors must not be just “fortuitous ones”.<sup>10</sup> There will be no “oneness” if the transactions are “separate and independent [and] unconnected with the others”;<sup>11</sup> and
- (c) the word **arrangement** in a statutory context has the following characteristics:
- it is wide enough to include a unilateral arrangement;<sup>12</sup>
  - it extends beyond contracts and agreements and need not be legally enforceable;<sup>13</sup>
  - it does not have to be in writing<sup>14</sup> and can be inferred by taking into consideration all the relevant circumstances;<sup>15</sup>
  - it comprises two or more dutiable transactions, usually resulting from two or more agreements, such that it constitutes a wider course of action than a single agreement; and
  - it includes “all kinds of concerted action by which persons may arrange their affairs for a particular purpose or so as to produce a particular effect”.<sup>16</sup>
11. In summary, two or more dutiable transactions will be aggregated for duty purposes where it can be established that there is an underlying connection between them that indicates that they constitute a single arrangement between some or all of the parties. The connection must be an intentional one rather than merely coincidental.
12. The issue of whether dutiable transactions form, evidence, give effect to or arise from what is, substantially one arrangement is determined by the circumstances at the time the transactions are entered into. Consideration of the individual facts that establish the fortuitous nature of the transactions may lead to a determination not to aggregate duty even though the transactions might finish up as one arrangement.<sup>17</sup>

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7 Jeffrey v Commissioner of Stamps (1980) 23 SASR 398 at [406].

8 Khoury v Chief Commissioner of State Revenue [2010] NSWADT 13 at [24].

9 Grafton v Commissioner of State Revenue [2011] WASAT 180 at [30], [41].

10 Khoury v Chief Commissioner of State Revenue [2010] NSWADT 13 at [28].

11 Brianco Nominees Pty Ltd & Ors v Commissioner of State Revenue (Taxation) [2008] VCAT 999 at [36].

12 Re Chief Commissioner of State Revenue and Pacific General Securities Ltd and Finmore Holdings Pty Ltd (2004) 58 ATR 17 at [23].

13 Grafton v Commissioner of State Revenue [2011] WASAT 180 at [27].

14 Grafton v Commissioner of State Revenue [2011] WASAT 180 at [27].

15 Khoury v Chief Commissioner of State Revenue [2010] NSWADT 13 at [25].

16 Bell v Federal Commissioner of Taxation (1953) 87 CLR 548 at [573].

17 Blood Properties Pty Ltd v Commissioner of State Revenue (Taxation) [2005] VCAT 754 at [33].

*Example 1*

Person A enters into an agreement to purchase the freehold of a licensed hotel. On the same day, Person A enters into an agreement to purchase the residential property next door to the hotel from a different vendor. Person A immediately begins the process of obtaining the relevant approvals to convert the front portion of the residential property into a small restaurant that will act as an extension to the neighbouring hotel. Until approval is granted, Person A decides to use the property as a personal residence. After 12 months, Person A gains final approval to convert the front portion of the property.

While Person A did use the property for an independent purpose for 12 months, it was always intended that the two lots would be used for a common purpose and therefore the transactions form what is substantially one arrangement. As such, the two agreements would be aggregated.

If Person A had purchased the properties independently (one as a hotel, one as a residence) but some time after the transactions were completed had decided to convert the residential lot into a restaurant, the two transactions would not be aggregated.

13. Considering the properties jointly, subsequent to purchase is not, of itself, sufficient to characterise the initial transactions as one arrangement. There must be some further factor to indicate that the relationship between the transactions is “an integral and not a fortuitous one”. While an obvious example of this is an interdependency clause in agreements, also considered may be antecedent options<sup>18</sup> or development applications.

*Example 2*

On the same weekend, Person B and his brother, Person C, each enter into separate contracts to purchase adjacent vacant lots from different vendors. In the week following the completion of the transactions, Persons B and C jointly lodge a development application in respect to the two lots. The date on the development plan indicates that it was drawn up prior to the transactions being entered into.

The contracts for purchase were negotiated individually and were neither conditional upon the purchase of the neighbouring lot nor upon condition of receiving development approval.

Had the transactions occurred without lodgment of the development application, the proximity of the lots would be considered fortuitous rather than integral and the dutiable transactions would not be aggregated. However as the agreements that were entered into show a unity of purpose, they are seen as substantially one arrangement and an assessment issued on the aggregated value of the two lots.

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18 Antecedent options are options created prior to the division of property into separate components.

14. The following factors illustrate where two or more dutiable transactions will generally be considered to form or evidence substantially one arrangement:
- (a) the transactions are evidenced or effected by a single instrument;
  - (b) the transactions relate to fractional interests in a particular item of dutiable property;
  - (c) the transactions are interdependent, i.e. completion of each transaction is conditional upon completion of the other;
  - (d) the transactions are conditional upon the same external event occurring, or not occurring, where the external event indicates a relationship between the transactions that is not fortuitous;
  - (e) the transactions are pursuant to antecedent options;
  - (f) a single purchase price is negotiated in respect of the transactions and then apportioned to each transaction;
  - (g) a discounted purchase price is given for entering into multiple transactions;
  - (h) the transactions relate to multiple lots that are subject to a development application lodged by the transferor(s), or development approval held by the transferor(s);
  - (i) the transactions relate to multiple lots and the purchaser(s) lodged a development application in relation to the lots before entering into the transactions, or completion of the transactions is conditional on the purchaser(s) obtaining development approval;
  - (j) the transactions relate to the assets of a business and the land upon which the business is conducted;
  - (k) the transactions relate to lots forming part of what is historically one farming operation;
  - (l) the transactions relate to land and chattels located on or associated with that land;
  - (m) the transactions relate to mining tenements forming part of the same mineral field;
  - (n) the transactions relate to the assets of a single going concern business; or
  - (o) the transactions relate to items of dutiable property that are adjacent or in close proximity to each other.
15. The circumstances in which dutiable transactions will be aggregated and treated as a single dutiable transaction are not limited to those set out in paragraph 14. Consideration of other factors that indicate that the transactions have sufficient relationship, connection or interdependence to make them, in substance, one arrangement may result in aggregation.

*Examples of circumstances that would lead to aggregation of duty:*

Person D enters into two separate agreements with different vendors to purchase a café and the vacant neighbouring lot with the intention to develop the adjacent land as a car park for the café. The agreements are in separate instruments, but each agreement contains a clause stating that the agreement is conditional upon the successful settlement of the other agreement.

Person E is looking to purchase several units in a newly completed strata complex. Each of the units is on the market for \$400,000. The vendor advises E that he is prepared to reduce the price to \$350,000 per unit if E buys four or more units. E agrees to buy four units at the reduced price.

Person F agrees to buy three adjacent lots from a new land release, intending to amalgamate the lots and build a number of units on the combined area. The agreements are not conditional upon each other.

Persons G and H execute a Deed of Family Arrangement with respect to a deceased estate. As a result of the Deed, two lots of land are transferred to G and three lots are transferred to H. The transfers of land to G and H will not be aggregated, but the two lots transferred to G would be aggregated and the three lots transferred to H would be aggregated.

16. The following situations illustrate where two or more dutiable transactions will generally be considered *not* to relate to “substantially one arrangement”:
- (a) the transactions relate to the acquisition of items of dutiable property at auction and the items were offered for sale separately;
  - (b) the transactions relate to an exchange of dutiable properties;
  - (c) the transactions relate to the partition of jointly held dutiable property, but only to the extent that property is transferred to different persons;
  - (d) where the purchase of dutiable property is dependent or contingent upon the sale of other property by the purchaser, the sale of the purchaser’s property will not be taken into account in any resultant aggregation that may still arise from the purchase of the dutiable property; or
  - (e) the transactions relate to a distribution of property resulting from a winding up of a corporation or unit trust scheme, a deceased estate, a dissolution of a partnership, a Family Court order etc., but only to the extent that property is transferred to different persons.
17. The circumstances in which dutiable transactions will not be aggregated and treated as a single dutiable transaction are not limited to those set out in paragraph 16.

*Examples of circumstances that would not be aggregated:*

Persons I, J and K are joint owners of a block of land which is being subdivided into three smaller lots. The land will be partitioned into three lots of different sizes and different values under a single instrument. Any duty liabilities arising from the partitioning of the land to Persons I, J and K will not be aggregated.

Person L is planning on purchasing an existing business in Western Australia. In order to be close to the place of business L makes an agreement to purchase a house that is in close proximity to the business premises. The agreement to purchase the house is conditional on L successfully purchasing the business.

Person M agrees to buy two vacant lots from a new land release, intending to build a house on each as an investment. The lots are not adjacent, but are in close proximity to each other. The agreements were separately negotiated and, while they are not conditional upon each other, they are conditional upon a new subdivision plan being registered for these and the other adjacent lots.

Person N purchases three adjacent lots from the same vendor at an auction. Each lot was offered separately for sale.

18. Notwithstanding the presence of the factors listed in paragraph 16, dutiable transactions may still be aggregated if other factors are present that lead to the conclusion that the transactions have a sufficient relationship, connection or interdependence to make them, in substance, one arrangement, and the relationship or unity of purpose between the transactions is more integral than fortuitous.

## **RULING HISTORY**

| <b>Revenue Ruling</b> | <b>Issued</b> | <b>Effective Dates</b> |                 |
|-----------------------|---------------|------------------------|-----------------|
|                       |               | <b>From</b>            | <b>To</b>       |
| DA 14.0               | 10 July 2013  | 10 July 2013           | 14 May 2018     |
| DA 14.1               | 15 May 2018   | 15 May 2018            | 26 October 2021 |

See [Revenue Ruling DA 25 'Substantially One Arrangement'](#)