



Office of State Revenue
NSW TREASURY

ABN: 77 456 270 638

Revenue Ruling DUT 4

Dutiable Transactions Relating to Goods and Other Property

PREAMBLE

1. Chapter 2 of the Duties Act 1997 imposes duty on dutiable transactions concerning dutiable property. Certain goods in New South Wales are dutiable property, but only if the subject of a dutiable transaction together with other dutiable property (section 11(j)).
2. Transactions involving goods and other property most often arise under agreements for the sale or transfer of a business, and may be in respect of a combination of land, fixtures and moveable plant and equipment. When businesses are sold, the agreement for sale will usually involve a purchase price related to more than one type of dutiable property. Goodwill, fixed plant and various types of goods are the more common types of property involved in such transactions.
3. Section 11 (j) also contains a number of excluded categories of goods which will not be dutiable property in any circumstances.
4. Under section 26, the Chief Commissioner has a discretion to disregard the value of the goods if satisfied that it would not be just and reasonable in the circumstances to charge duty on the dutiable value of all the dutiable property. The discretion is intended as a "safety net" to reduce the potential for anomalous treatment of transactions relating to goods.
5. This ruling identifies the circumstances in which duty will be payable on transfers and other dutiable transactions in relation to goods.

RULING

Dutiable transactions

6. Dutiable transactions are listed in section 8 (1). Importantly, it is immaterial whether or not the dutiable transaction is effected by a written instrument (section 10). Consequently, a number of instruments can constitute a single dutiable transaction. Even if an instrument separately dealing with goods constitutes a single dutiable transaction, it may be aggregated with other dutiable transactions under section 25 if the transactions together form, evidence, give effect to or arise from what is, substantially, one arrangement.
7. Where a dutiable transaction includes goods which are exempt under section 11 (j), it is not necessary for a claim for exemption to be made, nor is it necessary for an apportionment of consideration to be made. However, an apportionment by the parties (whether or not the apportionment is set out in any instrument which effects the transaction)

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will generally be accepted where the Chief Commissioner is satisfied that the parties have dealt with each other at arm's length.

Goods

8. The term "goods", while not defined in Chapter 2, is often defined to include all chattels personal other than things in action and money. In some contexts, "goods" is defined by statute to include fixtures severable from the realty (see, for example, section 182 in Chapter 6 - Hire of goods). However, in the present context, goods clearly does not include fixtures.
9. Section 11 (j) excludes from duty:
- (i) goods that are stock-in-trade;
 - (ii) materials held for use in manufacture; and
 - (iii) goods under manufacture.

Goods will be accepted as "stock-in-trade" if they are a commodity of the business, that is, if they are the very items to be sold or hired to customers of the business. Where the business is or includes the manufacture of goods, the exemption clearly extends to materials and goods at any stage during the process of manufacture.

10. Section 11 (j) excludes from duty:
- (iv) goods held or used in connection with land used for primary production; and
 - (v) livestock.

It is accepted that annual or seasonal growing crops, such as wheat, oats, lucerne (*fructus industrialis*) are excluded goods. However, fruit trees, grape vines, etc (*fructus naturalis*) are considered to be fixtures. Oysters are also accepted as excluded goods.

11. Section 11 (j) (vi) and (vii) exclude a registered motor vehicle and a ship or vessel from duty under Chapter 2. Duty on motor vehicle registration is imposed under Chapter 9 of the Act.

Not just and reasonable

12. The discretion under section 26 will be exercised only in circumstances where it would be clearly unreasonable to impose duty on the total value of the assets concerned.
13. In deciding whether or not to exercise the discretion in relation to a sale of business, the Chief Commissioner will have regard to the overall scheme of section 11 (j), namely that ad valorem duty is only charged on a dutiable transaction involving goods where that transaction involves other dutiable property, and that this will usually be the case where there is a sale of business. Nonetheless, it may not be just and reasonable in the circumstances to charge duty on goods where the goods comprise the great

majority (measured in terms of value) of the property the subject of the dutiable transaction.

14. While each case will be considered on its merits, the "great majority" would generally be regarded as 90% or more. The property to be taken into account in determining an aggregate value is all other property passing in connection with the sale of business, whether or not it is dutiable property.
15. In forming an opinion as to whether the great majority of property passing in connection with a sale of business comprises goods in a particular case, the Chief Commissioner will look to the value of the property involved, and may require a valuation rather than relying on the prices apportioned to the various items of property by the parties to the transaction.
16. A request for the Chief Commissioner to consider exercising the discretion should be made in writing at the time the written instrument or written statement is lodged for assessment. The application should set out all the relevant facts and indicate why it would not be just and reasonable in the circumstances to charge duty on the goods in question.
17. The Chief Commissioner may, in exercising the discretion, disregard the value of some of the goods, but include the value of other goods in determining the dutiable value.
18. In cases where the discretion is exercised, ad valorem duty will still be payable on the dutiable property that is not goods.

B BUCHANAN
Chief Commissioner of State Revenue
1 July 1998