



<b>REVENUE CIRCULAR DAA011.2</b>
Dutiable Transactions Relating to Goods - <i>Duties Act 1999</i>
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### **Preamble**

1. Chapter 2 of the *Duties Act 1999* (the Act) imposes duty on dutiable transactions concerning dutiable property.
2. This circular identifies circumstances in which duty will be payable under Chapter 2 of the Act on transfers and other dutiable transactions in relation to goods.

### **Circular**

3. Under section 10 (1) (f) of the Act, certain goods are treated as dutiable property only if they are the subject of an arrangement that includes a dutiable transaction over any dutiable property (other than intellectual property).
4. Dutiable property includes land, a crown lease, a land use entitlement, or an option to purchase land in the ACT or a Crown lease over land in the ACT - see section 10 of the Act for the complete list. Section 10 (1) (f) also contains categories of goods that are excluded from goods that comprise dutiable property.
5. Under section 25 of the Act, the Commissioner for ACT Revenue (the Commissioner) has 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, in a dutiable transaction involving goods and other property.

### **Dutiable transactions**

6. Dutiable transactions are listed in section 7 (1) of the Act. It is immaterial whether or not a dutiable transaction is effected by a written instrument or by any other means, including electronic means (section 9).
7. Consequently, a number of instruments can document a single dutiable transaction. Even if an instrument separately dealing with goods constitutes a single dutiable transaction, it can be aggregated with other dutiable transactions under section 24 if the transactions together form, evidence, give effect to, or arise from what is substantially one arrangement and the other requirements of that section are met. Under section 14 of the Act, where a dutiable transaction is not effected by a written instrument, a written statement must be lodged in a form approved by the Commissioner within 90 days of the liability arising.

8. Where a dutiable transaction includes goods which are exempt under section 10 (1) (f), 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, if the parties choose to use an apportionment (whether or not the apportionment is set out in any instrument which effects the transaction), this will be examined on its merits, including having regard to whether the Commissioner is satisfied that the parties have dealt with each other at arm's length.

### **Goods**

9. The term "goods" is not defined in Chapter 2 of the Act but is often taken to include all personal property other than real property interests, things in action, and money. Some statutes define "goods" to include fixtures severable from the realty. However, in the present context, "goods" do not include fixtures. As fixtures are not goods, they are dutiable as part of the land.
10. Section 10 (1) (f) of the Act excludes from duty (among other stated exemptions):
  - (a) goods that are stock-in-trade;
  - (b) materials held for use in manufacture; and
  - (c) goods under manufacture.
11. Goods will be accepted as stock-in-trade if they are a commodity of the business i.e. 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 extends to materials and goods at any stage during the process of manufacture.
12. Transfers and transactions relating to goodwill, intellectual property and a statutory licence or permission ceased as being liable to duty where executed after 30 June 2006.
13. Section 10 (1) (f) of the Act also excludes from duty goods held or used in connection with land used for primary production; and livestock.
14. It is accepted that annual or seasonal growing crops, such as wheat, oats and lucerne (*fructus industrialis*) are excluded goods. However, fruit trees, grape vines, etc (*fructus naturalis*) are considered to be fixtures. As such, they will be assessed on the same basis as land.
15. Section 10 (1) (f) of the Act also excludes from duty under Chapter 2:
  - (a) a registered motor vehicle; and
  - (b) a ship or a vessel.
16. Duty on motor vehicle registration is imposed under Chapter 9 of the Act.

### **Commissioner's discretion**

17. An application for the Commissioner to consider exercising his or her discretion must be made in writing at the time the written instrument or written statement is lodged for assessment. The application must 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.
18. The Commissioner may, in exercising his or her discretion, disregard the value of some of the goods but include the value of other goods in determining the dutiable value.
19. In cases where the Commissioner's discretion is exercised, ad valorem duty will still be payable on the part of the dutiable transaction involving other dutiable property.

Signed

Kim Salisbury  
Commissioner for ACT Revenue  
7 August 2015