

REVENUE CIRCULAR DAA011.3

Dutiable Transactions Relating to Goods – *Duties Act 1999*

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Introduction

Chapter 2 of the *Duties Act 1999* (the Act) imposes duty on dutiable transactions concerning dutiable property.

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.

Goods as dutiable property

Under section 10 (1) (g) 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) elsewhere mentioned in section 10 (1).

The other dutiable property mentioned in section 10 (1) includes:

- land in the ACT;
- a Crown lease;
- a declared land sublease;
- a land use entitlement;
- a commercial lease with a premium;
- a partnership interest;
- an option to purchase land in the ACT, a Crown lease or a declared land sublease in the ACT; and
- an interest in any of the above dutiable property (other than an option over dutiable property or an interest attributable to an option).

Section 10 (1) (g) also contains categories of goods that are excluded from goods that make up dutiable property.

In a dutiable transaction involving goods and other property, 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 (section 25).

Dutiable transactions

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).

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.

Barrier Free model

In the Barrier Free model for collecting conveyance duty, the point of payment is moved to after settlement so that transferees pay duty after they register their title. Conveyance duty is a self-assessed tax in the Barrier Free model.

If a transaction is affected by the Barrier Free model, section 15 (2) of the Act states that the lodgement process for duty purposes is integrated with the process of title registration under the *Land Titles Act 1925*.

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.

For more information see the latest version of Revenue Circular *Barrier Free Model* (DAA018). Circulars are available on the ACT Revenue Office website at www.revenue.act.gov.au.

Transactions outside Barrier Free model

The Barrier Free model does not affect all transactions under the Duties Act. In general these transactions must be lodged directly with the ACT Revenue Office in order to be assessed in compliance with the legislation.

For more information on lodging transactions outside the Barrier Free model, see the information under the 'Barrier Free Conveyancing' tab on www.revenue.act.gov.au.

Exempt goods

Where a dutiable transaction includes goods which are exempt under section 10 (1) (g), 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), the Commissioner may request an explanation of the apportionment to examine it on its merits. The Commissioner will have regard to whether the parties have dealt with each other at arm's length.

Meaning of 'goods'

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.

Section 10 (1) (g) of the Act excludes from duty (among other stated exemptions):

- goods that are stock-in-trade;
- materials held for use in manufacture; and
- goods under manufacture.

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.

Primary production goods

Section 10 (1) (g) of the Act also excludes from duty:

- goods held or used in connection with land used for primary production; and
- livestock.

It is accepted that annual or seasonal growing crops, such as wheat, oats and lucerne (*fructus industriales*) are excluded goods. However, fruit trees, grape vines, etc (*fructus naturales*) are considered to be fixtures. As such they will be assessed on the same basis as land.

Motor vehicles, ships and vessels

Section 10 (1) (g) of the Act also excludes from duty under Chapter 2:

- a registered motor vehicle; and
- a ship or a vessel.

Duty on motor vehicle registration is imposed under chapter 9 of the Act.

Commissioner's discretion

An application for the Commissioner to consider exercising his or her discretion must be made in writing no later the time the written instrument or written statement is lodged for registration with the Registrar-General, for Barrier Free transactions, or otherwise lodged with the Commissioner for assessment, for non-Barrier Free transactions. 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.

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.

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.

The Commissioner may require the applicant to pay full duty in relation to the transaction while an application is being assessed. If the discretion is subsequently applied, the Commissioner will reassess the duty and make an appropriate refund of overpaid amounts.

Signed

Kim Salisbury
Commissioner for ACT Revenue
18 September 2017