

ABOLITION OF DUTY ON THE TRANSFER OF 'NON-REAL BUSINESS ASSETS'

DUTIES ACT 2001

This guideline contains information for taxpayers and their professional representatives about the practical outcomes flowing from the abolition of duty on the transfer of 'non-real business assets'.

Background

On 19 May 2005, the Government announced that duty on the transfer of 'non-real business assets' would be abolished from 1 July 2008. The subsequent *Revenue Measures Act 2005* made the necessary legislative changes to the *Duties Act 2001*.

Which transactions are affected?

Certain transactions evidenced by:

- written instruments executed on and after 1 July 2008; and
- transfers made on and after 1 July 2008.

The abolition will also impact certain transactions effected on and after 1 July 2008 where there is no written instrument.

Non-dutiable items post abolition

Except as detailed under **Dutiable items post abolition**, duty will not be charged on transactions comprising only the following property:

- commercial goodwill ('commercial goodwill' or 'name goodwill' is goodwill associated with the business name or the products sold by the business);
- personal goodwill (that is, goodwill generated by the reputation and skills of the proprietor);
- intellectual property;
- Australian Government statutory licences or permissions; and
- Tasmanian statutory licences or permissions.

Where a dutiable transaction includes items that are non-dutiable from 1 July 2008 and other items which are dutiable post abolition, the calculation of the dutiable value of the dutiable property that is subject to the dutiable transaction will exclude the value of the non-dutiable items described above.

Dutiable items post abolition

Duty will continue to be charged on transactions relating to the following items of dutiable property:

- **mineral tenements** (sections 9(1)(b) and 9(1)(c) of the Duties Act have been retained).
- **fixtures to land** (section 9(1)(c) of the Duties Act has been retained).
- **partnership interests** being an interest in a partnership that has partnership property that is dutiable property elsewhere referred to in this section (section 9(1)(i) is to be reinserted¹).
- **goods** (eg plant and equipment) other than those listed in section 9(1)(j) of the Duties Act, when they form part of an arrangement that includes a dutiable transaction over other dutiable property (section 9(1)(j) of the Duties Act has been retained).
- **site goodwill**² to the extent that the value of the land (that is, the real property) includes a site goodwill component.

Transactions involving any of the other items of dutiable property listed in section 9 of the Duties Act that have not been separately identified in this guideline will continue to be charged with duty. From 1 July 2008 section 9 of the Duties Act will appear as shown on page 3 of this guideline under the heading "Legislation".

Summary of duty treatment from 1 July 2008

Remains dutiable from 1 July 2008
Land in Tasmania
A mineral tenement within the meaning of the <i>Mineral Resources Development Act 1995</i>
Fixtures to land or a mineral tenement
A land use entitlement
A partnership interest
Site goodwill
Goods where they form part of an arrangement that includes a dutiable transaction over any dutiable property
An option to purchase land

¹ Amendments introduced in the *Revenue Measures Act 2005* inadvertently removed the partnership interest provisions from the *Duties Act 2001*. On 18 June 2008, the Treasurer, Michael Aird MLC, announced that the Government intended to introduce amendments in the Spring session of Parliament to reinsert the partnership interest provisions. The proposed amendments will apply retrospectively from 1 July 2008.

² **Site goodwill** was explained by the High Court in *Box v Commissioner of Taxation* (1952) 86 CLR 387 as follows: "Some premises have a site goodwill because the site has some particular advantage for carrying on a business as where premises adapted for a shop are situated in a position specially favourable for the business in a busy shopping area or where a licence can be obtained for carrying on a business such as that of a publican on a suitable site on which it would otherwise be unlawful to carry it on."

Becomes non-dutiable from 1 July 2008
Commercial/name goodwill
Personal goodwill
Intellectual property
Australian Government statutory licences or permissions
Tasmanian statutory licences or permissions
Goods where they <u>do not</u> form part of an arrangement that includes a dutiable transaction over any dutiable property

Anti-avoidance provisions

The general anti-avoidance provisions contained in Division 3A of the *Taxation Administration Act 1997* may be applied where the Commissioner considers that a transaction has been structured or restructured to take advantage of the abolition of duty on non-real business assets; that is, any transaction which is considered to be a scheme or a part of a scheme entered into with the sole or dominant purpose of reducing the amount of duty payable.

Examples of transactions that may result in the general anti-avoidance provisions being applied include, but are not limited to:

1. A transaction effected on or after 1 July 2008 which replaces a dutiable transaction made prior to 1 July 2008;
2. A transaction made through the use of an option where the option is granted before 1 July 2008 and exercised on or after that date; or
3. Any arrangement made before 1 July 2008 which defers the dutiable transaction until 1 July 2008 or later.

The Commissioner will be undertaking specific and targeted compliance action post abolition to ensure that transactions have not been structured or restructured to take advantage of the abolition of duty on the transfer of non-real business assets.

Legislation

From 1 July 2008, section 9(1) of the Duties Act will appear as follows:

9. What is dutiable property?

(1) Dutiable property is any of the following:

- (a) land in Tasmania;
- (b) a mineral tenement within the meaning of the [Mineral Resources Development Act 1995](#);
- (c) fixtures to land or a mineral tenement;

- (d) a land use entitlement;
- (e) *repealed, effective 1 July 2002*
- (f) *repealed, effective 1 July 2002*
- (g) *repealed, effective 1 July 2008*
- (h) *repealed, effective 1 July 2008*
- (i) a partnership interest, being an interest in a partnership that has partnership property that is dutiable property elsewhere referred to in this section;
- (j) goods in Tasmania, if the subject of an arrangement that includes a dutiable transaction over any dutiable property elsewhere referred to in this section, not including the following:
 - (i) goods that are stock-in-trade;
 - (ii) materials held for use in manufacture;
 - (iii) goods under manufacture;
 - (iv) livestock;
 - (v) a registered motor vehicle that is not exempted from motor tax under the [Vehicle and Traffic Act 1999](#) or the [Transport Act 1981](#);
- (k) an option to purchase dutiable property;
- (l) an interest in any dutiable property referred to in the preceding paragraphs of this section, except to the extent that –
 - (i) it arises as a consequence of the ownership of a unit in a unit trust scheme and is not a land use entitlement; or
 - (ii) it is, or is attributable to, an option over dutiable property.
 - (iii) *repealed, effective 1 July 2002.*

FREQUENTLY ASKED QUESTIONS for transactions following the abolition of duty on the transfer of 'non-real business assets'

1. I am buying a property that is used for commercial purposes. The amount I am paying includes an amount for "site goodwill" associated with the property. Will I have to pay duty based on the total amount I pay or will the value of the "site goodwill" be excluded?

Yes - duty will be payable based on the total amount paid for both the land and any associated goodwill that is found to be "site goodwill". "Site goodwill" is integral to the land and, as such, increases the value of the land from which it is derived.

2. Will I have to pay duty when I purchase a commercial fishing business?

No – provided that all of the assets acquired fall into the following categories:

- Fishing boat and associated plant and equipment;
- Licence to operate a commercial fishing venture; and
- Quota units (or similar) that regulate the amount that can be caught.

If items of dutiable property are acquired (refer to the list of dutiable property shown on page 3 of this guideline under the heading "Legislation"), duty will be payable on the total value of the plant and equipment and all other items of dutiable property acquired.

3. I have purchased some surplus plant and equipment from another business that is closing down. Will I have to pay any duty?

No – provided all that has been purchased is plant and equipment.

If any other items purchased are dutiable property, then duty will be payable on the total value of the plant and equipment and all other items of dutiable property acquired.

4. I am buying a business for \$245 000. The specific assets that I am purchasing are:

- plant and equipment - \$10 000;
- personal goodwill - \$10 000;
- stock-in-trade - \$25 000; and
- the premises from which the business operates - \$200 000 (no site goodwill attached).

What is the dutiable value?

Duty will be charged on a dutiable value of \$210 000 which is the sum of the consideration paid for:

- the plant and equipment; and
- the real estate.

In this instance the value of the plant and equipment is dutiable as it has been transferred as part of an arrangement involving other dutiable property (ie the land). The amounts paid for stock-in-trade and personal goodwill are not dutiable.

5. I am purchasing a business that operates from leased premises. Is there any duty payable on this transaction?

Yes - duty is payable in relation to a transfer of goods (eg plant and equipment) where there is also a **dutiable transaction** over other **dutiable property**.

In this situation the transfer, grant or surrender of a lease (or other interest in land) is a **dutiable transaction** over **dutiable property**.

That is, **the granting of a lease is still a dutiable transaction even though no duty is payable on the lease itself and will result in the value of any goods acquired as part of a single arrangement being subject to duty** (section 9(1)(j) of the Duties Act has been retained). Additionally, the amount of any premium paid on the granting of a lease represents the dutiable value of that particular dutiable transaction.

As section 9(1)(j) of the Duties Act has been retained, the following goods remain non-dutiable:

- goods that are stock-in-trade;
- materials held for use in manufacture;
- goods under manufacture;
- livestock; and
- registered motor vehicles which are not exempt from motor tax (NOTE: duty is paid separately on the transfer of registration of registered motor vehicles).

The following table includes examples of a number of different scenarios involving the purchase of business assets (comprising personal goodwill, plant and equipment and stock) where the business operates from leased premises and indicates whether or not duty would be payable. In these instances, liability for duty depends on both the purchase of goods (eg plant and equipment) and the lease transaction being part of a single arrangement.

Scenario	Duty payable	Explanation
1. Ann owns a business and the premises from which the business is operated. Ann sells the business assets to Bill and grants a lease over the premises from which the business operates.	Yes	Duty is payable on the value of dutiable property including plant and equipment and the amount of any lease premium.
2. Ann owns a business and the premises from which the business is operated. Ann sells the business assets to Bill who then operates the business from premises that Bill already owned or leased.	No	In the absence of a dutiable transaction over any dutiable property, duty is not payable on the value of plant and equipment acquired.
3. Ann owns a business that operates from leased premises owned by Cath. Ann sells the business assets to Bill and transfers the lease to Bill.	Yes	Duty is payable on the value of the dutiable property including plant and equipment as the purchase of the plant and equipment and the lease transaction are part of a single arrangement.

Scenario	Duty payable	Explanation
4. Ann owns a business that operates from premises leased from Cath. At the expiry of the lease Bill purchases the business assets from Ann and enters into a lease with Cath. There is a condition precedent in the agreement for the purchase of the business that Cath enters into a new lease with Bill.	Yes	Duty is payable on the total value of the plant and equipment and the amount of any lease premium as the purchase of goods and the lease transaction are part of a single arrangement.
5. Ann owns a business that operates from premises leased from Cath. At the expiry of the lease Bill purchases the business assets from Ann and <u>independently</u> negotiates a lease with Cath.	No	Duty is not payable on the dutiable value of the plant and equipment as the purchase of the plant and equipment and the lease transaction are not part of a single arrangement.
6. Ann owns a business that operates from premises leased from Cath. Ann agrees to sell the business assets to Bill. Ann, Bill and Cath agree to extinguish the existing lease so that a new lease can be entered into by Bill and Cath so that Bill can operate the business from the leased premises.	Yes	Duty is payable on the total value of dutiable property including the value of the plant and equipment as the surrender of the lease is a dutiable transaction.
7. Ann purchases plant and equipment from Bill and a lease is transferred as part of a <u>single arrangement</u> (that is, several transactions that effect a single arrangement).	Yes	Duty is payable on the value of the plant and equipment as the transfer of the lease is a dutiable transaction.

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