

## Dutiable value of dutiable property acquired under a terms contract

Revenue Ruling DA.037

### Preamble

Section 7 of the *Duties Act 2000* (the Act) charges duty on the transfer of dutiable property unless an exemption applies. Under section 10(1)(a) of the Act, dutiable property includes an estate in fee simple in land in Victoria.

Section 20(1) of the Act provides that the dutiable value of dutiable property is the greater of the consideration for the dutiable transaction and the unencumbered value of the dutiable property. According to section 20(1)(a) of the Act, consideration is the amount of a monetary consideration or the value of a non-monetary consideration. This includes the value of all encumbrances (whether certain or contingent) on the property (section 21 of the Act).

In cases where the transfer of dutiable property occurred by way of a sale, the unencumbered value is defined in section 22(1)(a) of the Act as the market value at the time the contract of sale was entered into.

A terms contract includes an executory contract for the sale of land under which the purchaser is obliged to make two or more payments to the vendor after entering into the contract and before the execution of the transfer of land – refer to section 2(1) of the *Sale of Land Act 1962*. Interest payments made at regular intervals between the deposit and the final payment under a contract would also qualify the contract as a terms contract (*Wacal Developments Pty Ltd v Realty Developments Pty Ltd* (1978) 140 CLR 503).

The term 'consideration', as Dixon J pointed out in *Archibald Howie Pty Ltd v Commissioner of Stamp Duties* (NSW) (1948) 77 CLR 143 at 152, '... should receive the wider meaning or operation that belongs to it in conveyancing rather than the more precise meaning of the law of simple contracts'. That is, as His Honour went on to say, 'the consideration is rather the money or value passing which moves the conveyance or transfer'. These principles were applied in the subsequent cases of *Davis Investments Pty Ltd v Commissioner of Stamp Duties* (NSW) (1958) 100 CLR 392 and *Chief Commissioner of State Revenue v Dick Smith Electronics Holdings Pty Ltd* [2005] HCA 3 (8 February 2005).

There are circumstances where a purchaser may agree to pay interest to the vendor under a contract of sale of land such as a terms contract. In such circumstances, the question arises as to whether or not the interest payments form part of the consideration for the dutiable property.

The Commissioner of State Revenue (the Commissioner) has taken the view that unless he is of the opinion that a taxpayer has entered into or carried out a scheme or any part of a scheme with other persons with a collateral purpose of reducing duty that would have been otherwise payable, he would not consider the interest payments made pursuant to a terms contract as part of the consideration for the dutiable property. This view was reflected in the Duties Act Bulletin D5/05 which was published in August 2005.

The Commissioner has reviewed his position on this issue. The purpose of this Revenue Ruling is to clarify the current position of the Commissioner in determining the dutiable value of a dutiable property acquired under a terms contract. This Revenue Ruling replaces Duties Act Bulletin D5/05.

### Ruling

Whilst the Commissioner accepts the interpretation of the term 'consideration' in the above cases to be correct for Duty purposes, he takes the view that interest payments made under a terms contract do not form part of the consideration for the dutiable property acquired under that contract. Accordingly, in determining the dutiable value of dutiable property acquired under a terms contract, the Commissioner may accept the greater of the amount of consideration (excluding interest payments) paid under that contract and the market value of the dutiable property at the date that contract was entered into. Further, if the Commissioner considers that the value of the dutiable property acquired under a terms contract is understated, he may require a valuation or refer the matter to the Valuer-General for valuation pursuant to section 273 of the Act.

**Please note that rulings do not have the force of law. Each decision made by the State Revenue Office is made on the merits of each individual case having regard to any relevant ruling. All rulings must be read subject to Revenue Ruling GEN.01.**