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Public Ruling Duties Act:

AMOUNTS PAYABLE BY A PURCHASER UNDER A SPECIAL CONDITION OF AN AGREEMENT WHICH ARE IN ADDITION TO THE PURCHASE PRICE

A Public Ruling, when issued, is the published view of the Commissioner of State Revenue (the Commissioner) on the particular topic to which it relates. It therefore replaces and overrides any existing private rulings, memoranda, manuals and advice provided by the Commissioner in respect of the issue(s) it addresses. Where a change in legislation or case law (the law) affects the content of a Public Ruling, the change in the law overrides the Public Ruling—that is, the Commissioner will determine the tax liability or eligibility for a concession, grant or exemption, as the case may be, in accordance with the law.

What this Ruling is about

1. It is sometimes the case that a special condition of an agreement for the transfer of dutiable property provides for a purchaser to pay an amount other than the stated purchase price e.g. a real estate agent's commission.
2. Section 11(7) of the *Duties Act 2001* (the Duties Act) states that the dutiable value in relation to this type of transaction is:
 - (a) the consideration for the dutiable transaction or
 - (b) the unencumbered value of the dutiable property if there is no consideration, or the consideration is less than the unencumbered value or the consideration can not be ascertained when the liability for transfer duty arises.
3. By operation of s.12(1) of the Duties Act, consideration includes:
 - (a) the amount of any liabilities assumed under the transaction, including an obligation, whether contingent or otherwise, to pay any unpaid purchase money payable under an agreement for the transfer of dutiable property and
 - (b) the amount or value of any debt to the extent it is released or extinguished under the transaction.
4. This Public Ruling provides examples of amounts payable by a purchaser under a special condition of an agreement that would be included in the consideration under s.12 of the Duties Act.

Ruling and explanation

5. The following examples illustrate where the purchaser agrees to assume liabilities of the vendor and therefore such payments would be included in the consideration under s.12 of the Duties Act.

Example 1

A standard REIQ contract provides that the purchase price is \$200 000. The sale is a sale where the real estate agent is engaged by the vendor and is the agent of the vendor. A special condition of the contract of sale provides that the purchaser will pay commission to the real estate agent on the sale in addition to the purchase price. By applying s.12(1)(a), the consideration for this transaction is \$200 000 plus the commission paid to the vendor's agent.

Example 2

A vendor owns a 1 hectare vacant block of land that has been sewerred and had services delivered to its frontage by the Brisbane City Council (BCC). Those services were part of a development deed between the BCC and the vendor whereby the potential vendor was, by that deed, obliged to pay to the BCC \$100,000 for the services. A purchaser contracts to purchase from the vendor that block of land for \$1 million. Under a condition of the contract, the purchaser agrees to pay, on or before completion, to the BCC the outstanding \$100,000. By applying s.12(1)(a), the consideration for this transaction is \$1.1 million.

Example 3

A vendor owns a vacant block of land. The land is subject to an outstanding land tax charge equal to \$10 000. The vendor agrees to sell that land to a purchaser for \$900 000. There is a special condition in the contract that the purchaser must pay the land tax. By applying s.12(1)(a), the consideration is \$910 000.

6. The following are examples of when amounts are not included in the consideration.

Example 4

A purchaser and vendor enter into a contract whereby the vendor sells to the purchaser a 1 hectare block of land (Blackacre) for a purchase price of \$1 million. The vendor owns all the land surrounding Blackacre. The purchaser wants an easement for services to Blackacre through the land owned by the vendor. Accordingly, it is a condition of the contract of sale that the vendor will grant an easement to the purchaser, provided that the purchaser pays all the costs (e.g. legal costs, surveyor costs, stamp duty) incurred in granting the easement. These costs total \$10 000. The completion of the contract is conditional on the condition relating to the easement being fulfilled.

The amount paid by the purchaser for the costs incurred by the vendor in granting the easement will NOT be added to the stated purchase price. The amount is not related to the transfer itself. It is related to the grant of the easement. When the easement is granted s.8 of the Duties Act imposes transfer duty on the grant and s.12(1)(a) will result in the payment of \$10 000 being included in the consideration for the easement.

Example 5

A special condition of a contract allows the purchaser to occupy the premises pending settlement and subject to the payment of rent or a licence fee. The payment of these monies does not relate to the conveyance of the property. In assessing duty, the special condition should be considered in its own right as a grant of a new right being an interest in land.

Date of effect

7. This Public Ruling takes effect from the date of issue.

David Smith
Commissioner of State Revenue
Date of Issue 24 February 2009

References

Public Ruling	Issued	Dates of effect	
		From	To
DA012.1.1	24 February 2009	24 February 2009	Current
Supersedes Practice Direction DA 19.1	1 March 2002	1 March 2002	23 February 2009