



## DUTIES

## Excluded Chattels

### Introduction

1. This ruling sets out the Commissioner's interpretation of when items will be excluded from the definition of *chattel* in section 3 of the *Duties Act 2008* (Duties Act).

### Background

2. Under the Duties Act, transfer duty is charged on a *dutiable transaction*<sup>1</sup> involving *dutiable property*.<sup>2</sup> A *chattel* is included as dutiable property.<sup>3</sup> In general, transfer duty applies to a chattel when it is transferred, or agreed to be transferred, with other dutiable property.<sup>4</sup> Similarly, landholder duty is calculated on the value of all land and chattels held by the landholder.<sup>5</sup>
3. Certain items that are chattels at law are excluded from the meaning of chattels for duties purposes. Section 3 of the Duties Act provides that *chattel* does not include:
  - (a) chattels that are stock-in-trade
  - (b) chattels held for use in manufacture
  - (c) chattels under manufacture
  - (d) chattels held or used in connection with the business of *primary production*
  - (e) livestock
  - (f) a vehicle the transfer or grant of a licence for which is chargeable with, or exempt from, vehicle licence duty
  - (g) a ship or vessel or
  - (h) anything fixed to land.
4. If an item is fixed to land (including land the subject of a mining tenement or pastoral lease), that item will be considered to be land and therefore is not a chattel for the purposes of the Duties Act, whether or not that thing:
  - (a) constitutes a fixture at law
  - (b) is owned separately from the land or
  - (c) is notionally severed or considered to be legally separate from the land as a result of the operation of any law of the State or Commonwealth.<sup>6</sup>

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<sup>1</sup> Duties Act s 11.

<sup>2</sup> Duties Act s 15.

<sup>3</sup> Duties Act s 15.

<sup>4</sup> Duties Act s 14(1).

<sup>5</sup> Duties Act s 186.

<sup>6</sup> Duties Act s 3A(1)(f).

5. However, a thing fixed to land will be treated as a chattel if:
  - (a) it is temporarily fixed to land for construction purposes<sup>7</sup>
  - (b) it is not a fixture at law and is used in a primary production business<sup>8</sup>
  - (c) it is a relocatable home fixed to a site in a residential park, or an addition or structure fixed or attached to the home or site for the use or enjoyment of the occupier of the home, that does not constitute a fixture at law<sup>9</sup> or
  - (d) it is a thing fixed to land that is acquired without where the underlying land as part of the transaction, or another transaction aggregated under section 37, and there is an agreement or understanding that the thing will be permanently removed from the land within 90 days after it is transferred (or a longer period approved by the Commissioner).<sup>10</sup>
6. Under section 101A of the Duties Act, a reference to *primary production* is a reference to any of the following:<sup>11</sup>
  - (a) the growing or rearing of plants (including trees, fungi or any crop) for the purpose of selling them, parts of them or their produce
  - (b) the breeding, rearing or maintenance of living creatures for any of the following purposes (produce animals) —
    - (i) selling them, or their progeny, for food
    - (ii) the production or collection of their skins, shells or bodily produce or
    - (iii) selling parts of them or their skins, shells or bodily produce
  - (c) the breeding, rearing or maintenance of produce animals for the purpose of selling them or their progeny for stud purposes or to be used for a purpose set out in paragraph (b) or
  - (d) the breeding or rearing of horses for the purpose of selling them or their progeny.
7. It is irrelevant if a thing is sold in a natural, processed or converted state, but the process of converting anything for the purpose of selling it is not primary production.<sup>12</sup>

## Ruling

8. The same items may be classified as different types of excluded chattels depending on their nature and the stage of the process in which they are being used by their owner. For example, mineral stockpiles may be stock-in-trade for one owner and upon the sale of the stockpiles then be chattels held for use in manufacture by the new owner.
9. This ruling provides guidance on which type of excluded chattel an item may be classified as depending on its use. Evidence must be provided to support a taxpayer's submission for items to be excluded from the definition of chattel.

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<sup>7</sup> Duties Act s 3A(4)(a).

<sup>8</sup> Duties Act s 3A(4)(b).

<sup>9</sup> Duties Act s 3A(4)(c).

<sup>10</sup> Duties Act s 18A.

<sup>11</sup> Duties Act s 3 provides *primary production* has the meaning given in the Duties Act s 101A.

<sup>12</sup> Duties Act s 101A(2).

### **Chattels that are stock-in-trade**

10. The Commissioner interprets the term 'stock-in-trade' as meaning items of property ready or held for the purpose of sale or hire in the ordinary course of trade. To determine whether a chattel is stock-in-trade it is necessary to consider the nature of the business to which it belongs.<sup>13</sup>
11. Chattels that are not held or used in the ordinary course of business will not be considered stock-in-trade. This includes chattels acquired by a taxpayer where the vendor:
  - (a) was not carrying on a business to begin with
  - (b) disposed of a chattel as an incidental or unplanned result of sale, for example to extinguish or forgive a debt
  - (c) sold a chattel as a one-off, for example as part of a transaction involving a range of other assets or
  - (d) sold a chattel internally, for example to a related corporation, before selling the business to a third party.
12. In the context of a mining business, minerals that are ready for sale will be regarded as stock-in-trade regardless of their form where the sale of those minerals forms part of an ordinary business. In particular, stockpiles of unprocessed minerals which are sold in that form and processed minerals which are ready for sale constitute 'chattels that are stock-in-trade' for the purposes of the Duties Act where the mining company's usual trading business is the sale of those minerals in that form. Examples of chattels that fall under this category include:
  - (a) finished ore stockpiles that consist of the ore after it has been crushed and
  - (b) copper, zinc or lithium concentrates.
13. In the context of a non-mining business, chattels that are ready for sale will be regarded as stock-in-trade where the sale of those chattels forms part of an ordinary business. Examples of chattels that fall under this category include:
  - (a) wine, beer, olive oil or chocolate and
  - (b) hardware products, electronic goods, shoes or clothing.
14. The taxpayer may be required to provide information about a trading business to satisfy the Commissioner that a particular chattel is sold or held ready for sale in the ordinary course of business.

### **Chattels held for use in manufacture**

15. The term 'held for use in manufacture' is not defined in the Duties Act and has not been the subject of judicial consideration in a duties context.
16. The term 'manufacture' is not defined in the Duties Act and so takes its ordinary meaning. The *Macquarie Dictionary* defines manufacture as:
  - To make or produce by hand or machinery, especially on a large scale
  - To make in any manner
  - To work up (material) into form for use.

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<sup>13</sup> *Olivedale Park Pty Ltd v Commissioner of State Revenue (Taxation)* [2012] VCAT 1874 at [35] referring to *Ferguson v FCT* (1979) 26 ALR 307 at 311 per Bowen CJ.

17. The term manufacture has been considered in a variety of statutory and factual contexts from which the following principles emerge:
  - (a) to manufacture is to make a different thing from that out of which it is made.<sup>14</sup> Alteration of an existing thing without production of a new item is not manufacture.<sup>15</sup>
  - (b) whether something is new is a question of fact.<sup>16</sup>
  - (c) whether something is new or different turns not only on physical characteristics but different in utility for a purpose.<sup>17</sup>
  
18. The Commissioner considers the mining production process involves the manufacture of an item where the process has the following characteristics:
  - (a) it works the compound containing the mineral which is drawn from the earth into a form for use, namely the extracted mineral or
  - (b) it involves making a different thing (mineral or element) out of the compound drawn from the earth.
  
19. In *Alcoa of Australia v Button*,<sup>18</sup> the Court considered the meaning of the word 'use' and made a distinction in the manufacturing process between goods merely engaged in the manufacturing process and goods to some extent incorporated in the final product.<sup>19</sup> His Honour held that caustic soda was 'used in the manufacture' of alumina as it was incorporated into the alumina.<sup>20</sup> His Honour concluded that fuel oil, used for combustion to directly cause chemical changes to the alumina for purification, was not 'used in manufacture'.<sup>21</sup>
  
20. The Commissioner interprets the term 'chattels held for use in manufacture' to mean raw materials or components which are ultimately incorporated into the final product.
  
21. Examples of chattels that fall under this category include:
  - (a) run-of-mine stockpiles, which is mined material that has not yet been crushed or processed
  - (b) gold-in-circuit in its raw form and
  - (c) plates of alloy used in the process of making boats or ships, fabrics used in the process of making clothing, cocoa beans used in the process of making chocolate, and grapes used in the process of wine making.

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<sup>14</sup> *Commissioner of Taxation v Softex Industries Pty Ltd* (2001) 107 FCR 111 at 114[7] referring to *McNichol v Pinch* [1906] 2 KB 352.

<sup>15</sup> *Commissioner of Taxation v Softex Industries Pty Ltd* (2001) 107 FCR 111 at 114[7] referring to *FCT v Jack Zinader* (1949) 78 CLR 336.

<sup>16</sup> *FCT v Jack Zinader* (1949) 78 CLR 336; *FCT v Jax Tyres Pty Ltd* (1984) 5 FCR 257.

<sup>17</sup> *Commissioner of Taxation v Softex Industries Pty Ltd* (2001) 107 FCR 111; *FCT v Jack Zinader* (1949) 78 CLR 336; *Caltex Australia Petroleum Pty Ltd v Commissioner of Taxation* (2008) 173 FCR 359.

<sup>18</sup> (1984) 2 FCR 13.

<sup>19</sup> *Alcoa of Australia v Button* (1984) 2 FCR 13 at 17.

<sup>20</sup> *Alcoa of Australia v Button* (1984) 2 FCR 13 at 17.

<sup>21</sup> *Alcoa of Australia v Button* (1984) 2 FCR 13 at 18-19.

22. To the extent inventory consumables comprise items which are not incorporated into the final product, they are not 'chattels held for use in manufacture' and are therefore chattels for the purposes of the Duties Act. Examples of these items include:
- (a) items added to a manufacturing process as disposable consumables that exit as waste and do not form part of the end product, for example, grinding balls
  - (b) clothing and equipment worn and operated by staff in the manufacturing process
  - (c) communications equipment
  - (d) drill hammers
  - (e) fuels and lubricants
  - (f) ground support materials such as mesh, cement, bolts, plates, etc.
  - (g) maintenance parts and supplies (spare parts) such as belting, motors, engines, piping, pumps, valves, filters, lighting, etc.
  - (h) tools and instruments and
  - (i) tyres and ventilation materials.

### ***Chattels under manufacture***

23. The Commissioner will treat materials or components that are undergoing the production process and are partly manufactured as 'chattels under manufacture'. These items are often referred to as work-in-progress.
24. Examples of chattels that fall under this category are:
- (a) run-of-mine stockpiles undergoing the production process
  - (b) gold-in-circuit undergoing the production process
  - (c) engines, propellers and the hull of a boat or ship that is in the process of being manufactured for sale and
  - (d) crushed grapes in the process of being made into wine.

### ***Primary production chattels***

25. Chattels are 'held or used in connection with the business of primary production' when they directly relate to the growing or rearing of plants or the breeding, rearing or maintenance of produce animals. Examples of these chattels include:
- (a) items used in the breeding of livestock such as cattle and pigs that are sold for food, for example, feed, water troughs, water tanks and mobile holding pens or yards and
  - (b) items used to grow, maintain and harvest crops, for example, fertilisers, harvesters, tractors and ploughs.
26. Where a primary production business involves the sale of plants or produce animals rather than by-products of the plants or produce animals, the plants or produce animals will not be chattels held or used in connection with the business of primary production. For example, plants that are sold by a nursery owner to a retail garden centre would be chattels that are stock-in-trade.
27. Items used in the processing or converting of plants or produce animals (secondary production) are not chattels held or used in primary production. In some cases these items may be excluded from the definition of chattel under another category and in other cases the items will be included in the definition of chattel. For example, chattels used to make wine would be treated as follows:

| <b>Chattels</b>                  | <b>Category</b>   |
|----------------------------------|---|
| Harvesters                       | Excluded chattels that are held or used in connection with primary production   |
| Wine                             | Excluded chattels that are stock-in-trade   |
| Removed grapes                   | Excluded chattels that are held for use in manufacture if used in the process of wine making or stock-in-trade if they are to be sold without further processing  |
| Crushed grapes, fermenting juice | Excluded chattels under manufacture   |
| Crusher, destemmer, barrels      | Not excluded chattels because the items are held or used in secondary production and are not chattels held for use in manufacture. These items will be included in the dutiable value of the transaction. |

### Ruling history

| <b>Revenue Ruling</b> | <b>Issued</b> | <b>Dates of effect</b> |              |
|-----------------------|---------------|------------------------|--------------|
|                       |               | <b>From</b>            | <b>To</b>    |
| DA 21.0               | 19 May 2017   | 19 May 2017            | 16 July 2019 |
| DA 21.1               | 17 July 2019  | 17 July 2019           | Current      |