

Guideline

Easements and Covenants

The purpose of this guideline is to clarify when the *Duties Act 2001*, particularly Chapter 2, applies to easements, restrictive covenants, notable interests and agreements under Part 5 of the *Land Use Planning and Approvals Act 1993*.

Easements

An easement is 'a right enjoyed by the owner of land over the lands of another'¹. Therefore it is an interest in land. An interest in land is dutiable property.

A transaction that amounts to any of the following three situations is dutiable:

- a) a transfer of an easement whether conditional or not; or
- b) a grant or surrender of an easement; or
- c) a vesting of an easement by or as a consequence of a statute or court order.

The one **exception** is where an easement is created by and contained within a Schedule of Easements attached to a Sealed Plan.

Where an easement is transferred (other than as part of a transfer of the land itself), granted or vested, the duty payable is to be assessed on the dutiable value of the easement.

Where no consideration is provided, the value in most cases will be nominal. However, each easement will be assessed on its own circumstances.

Covenants and Restrictive Covenants

A covenant (including a restrictive covenant over land) is an agreement creating an obligation. Where a covenant is attached to land it is an interest in land and therefore is dutiable property.

A transaction that amounts to any of the following three situations is dutiable:

- a) a transfer of a covenant, whether conditional or not; or
- b) a grant or surrender of a covenant; or
- c) a vesting of a covenant by or as a consequence of a statute or court order.

Where a covenant is transferred (other than as part of a transfer of the land itself), granted or vested, the duty payable is to be assessed on the dutiable value. Where no consideration is provided, the value in most cases will be nominal. However, each covenant will be assessed on its own circumstances.

¹ *Osborn's Concise Law Dictionary* (7th edn), Sweet & Maxwell, London, 1983, p.127

Agreements relating to part 5 of the *Land Use Planning and Approvals Act 1993*

Agreements relating to part 5 of the [Land Use Planning and Approvals Act 1993](#) are exempt transactions under section 227(1)(ia) of the Duties Act.

Currently the State Revenue Office has an arrangement that a Part 5 agreement does not need to be endorsed as exempt.

(Read [Revenue Ruling PUB-DT-2005-3 - Instruments Subject To Exemptions That Are Not Required To Be Lodged With The Commissioner For Stamping](#), also at www.sro.tas.gov.au).

More information from the State Revenue Office.

Website

www.sro.tas.gov.au

Phone

(03) 6166 4400

1800 001 388 (for Tas-based callers outside the 62 area)

(weekdays, 9:00am to 4:00pm)

Email

dutyhelp@treasury.tas.gov.au

In person

Ground floor

Salamanca Building Parliament Square

4 Salamanca Place HOBART TAS 7000

(weekdays, 9:00am to 5:00pm)

Fax

(03) 6234 3357

Mail

The Commissioner of State Revenue

GPO Box 1374

HOBART TAS 7001