

Revenue Ruling 2004

Public Ruling

Ruling Number	: PUB-DT-2004-8
Title	: Evidence of Value
Tax Line	: Duties
Legislative Reference	: <i>Duties Act 2001</i>
Previous Ruling	: PUB-DT-2002-6, PUB-DT-2002-9 9 September 2002
Date of Ruling	: 1 December 2004 to 2 July 2007
Attachments	:

Preamble

Chapter 2 of the *Duties Act 2001* ('the Act') imposes duty on specified transactions relating to specified dutiable property.

Duty is charged on the "dutiable value" of the dutiable property the subject of the dutiable transaction. The dutiable value of dutiable property is the greater of consideration for the dutiable transaction, and the unencumbered value of the dutiable property (section 18) except for foreclosures, transfers of business assets and transfers of partnership interests, all of which have separate and specific provisions.

The Commissioner of State Revenue under section 247 of the Act may require a person who is liable to duty (the liable person) "to provide a declaration by a competent valuer as to the unencumbered value of the property or to provide such other evidence of that value as the Commissioner thinks fit". The Act does not prescribe the circumstances in which evidence of value may be required.

Where the Commissioner is of the opinion that the consideration is inadequate with respect to the value of real property, he is authorised by section 248(2) of the Act to determine unencumbered value of real property by multiplying the capital value of the real property, as determined under the *Valuation of Land Act 2001*, by the last adjustment factor, as determined by the Valuer-General before the date of the agreement, transfer assignment or other instrument relating to that real property.

Where the Commissioner is not able to determine the value of real property using section 248(2), he is authorised to assess the duty payable on the unencumbered value of the relevant real property determined by the Valuer-General as at the date on which the agreement, transfer, assignment or other instrument was made (section 248(3)).

A decision to utilise the provisions of section 247 or section 248 and the decision to require a person liable to duty to provide evidence of value, and the type of evidence required, is at the discretion of the Commissioner.

This ruling provides some general guidelines as to when each approach will be adopted, when evidence of value will be required, and sets out types of valuation or other evidence of value acceptable to the Commissioner.

Ruling

1. What approach will be adopted?

When the Commissioner is satisfied that the consideration is an adequate indication of the unencumbered value of the dutiable property, the consideration will be accepted as evidence of the unencumbered value of the dutiable property.

When relevant dutiable property is any property other than real property and the Commissioner is not satisfied that the consideration is an adequate indication of the unencumbered value of the dutiable property (including where there is no consideration or nominal consideration only), evidence of value must be produced by the liable person.

When the relevant dutiable property is real property and the Commissioner is not satisfied that the consideration is an adequate indication of the unencumbered value of the dutiable property (including where there is no consideration or nominal consideration only) the Commissioner may either:

- utilise the provisions of section 248 of the Act to determine value; or
- request the liable person to provide a declaration by a competent valuer as to the unencumbered value of the property or to provide such other evidence as the Commissioner thinks fit, or obtain a valuation himself,

whichever is more appropriate to the circumstances.

In practice, when the dutiable property is real property, the Commissioner will usually request the liable person or his agent to provide evidence that the consideration is an adequate reflection of unencumbered value. The acceptable evidence is set out under “Evidence of value – land” on page 6. If no evidence is forthcoming, or the evidence is not sufficient to satisfy the Commissioner of the value (ie it does not conform with the evidence requirements below), he may then use section 248(2) (the “government valuation method”) to determine value. The Commissioner will only use section 248(2) when there has been no significant change in the condition of the property since the last valuation by the Valuer-General and the date of the transfer. Significant change would include such things as erection of buildings, renovations to the structure of existing buildings, etc. If it is not appropriate, for whatever reason, to use section 248(2), the Commissioner will usually request that evidence be provided by the taxpayer under section 247 or have the Valuer-General undertake a valuation of the property pursuant to section 248(3).

The “government valuation method” as set out in section 248(2) requires the Commissioner to determine the dutiable value of the dutiable property by multiplying the capital value of the real property as determined under the *Valuation of Land Act 2001* by the latest adjustment factor determined by the Valuer-General before the date of the agreement, transfer, assignment or other instrument or dealing relating to that real property.

Persons approved to pay duty by way of a special tax return arrangement under section 49 of the Taxation Administration Act 1997 (using Tasmanian Revenue Online or SDRS)

When an instrument evidencing a transfer of real property is endorsed using Tasmanian Revenue Online (pursuant to Part 6 of the *Taxation Administration Act 1997*), the liable person or their agent may:

- retain acceptable evidence (as described in this ruling), as appropriate, to justify the value of the dutiable property, or

- if there has been no significant change in the condition of the property since the last valuation by the Valuer-General and the date of the transfer, assess by using the government valuation method, where the “dutiabale value” is calculated by multiplying the capital value of the real property (as determined under the *Valuation of Land Act 2001*) by the latest adjustment factor determined by the Valuer General.

Where the “government valuation method” is adopted, persons using Tasmanian Revenue Online or SDRS should keep a copy of the Property Information Sheet issued by the Valuer-General pursuant to the *Valuation of Land Act 2001* (obtainable from LIST) showing the capital value. The adjustment factors issued by the Valuer-General can be accessed through the Duty section of the State Revenue Office Web site by selecting 'Duty'>'Transfers of Dutiable Property'>Links<'Information Page'. The document is titled “Estimated Trends in Capital Value as at 1 July 2005”).

Note: The government valuation method cannot be used by persons approved to use Tasmanian Revenue Online if only part of the property identified by the property identification number (PID) is transferred or sold.

2. *When evidence will be required:*

If there is a monetary consideration for a transaction, evidence of value will usually be required only if there is some indication that the consideration is less than the unencumbered value of the property.

Evidence of value will usually be required, in order to verify the adequacy of the consideration, in the following circumstances:

- the parties are associated persons; or
- in the case of an agreement for sale, there is no real estate agent or selling agent; or
- the transaction relates to fractional interests in property; or
- the consideration appears low for the type of property being sold; or
- all or part of the consideration is not monetary (for example, in an exchange of property).

“**Associated person**” is defined by the Act to be a person who is associated with another person in accordance with any of the following provisions:

- persons are associated persons if they are related persons;
- natural persons are associated persons if they are partners in a partnership to which the *Partnership Act 1891* applies;
- private companies are associated persons if common shareholders have a majority interest in each private company;
- trustees are associated persons if any person is a beneficiary common to the trusts (not including a public unit trust scheme) of which they are trustees;
- a private company and a trustee are associated persons if a related body corporate of the company (within the meaning of the Corporations Law) is a beneficiary of the trust (not including a public unit trust scheme) of which the trustee is a trustee;
- a public company and another person are associated persons if the person is a subsidiary of that public company;
- persons are associated persons if they are acting in concert.

“**Related person**” is also defined by the Act and means a person who is related to another person in accordance with any of the following provisions:

- natural persons are related persons if –
 - one is the spouse or partner, including a caring partner, of the other; or
 - the relationship between them is that of a parent and child, brothers, sisters, or brother and sister.
- private companies are related persons if they are related bodies corporate within the meaning of the Corporations Law;
- a natural person and a private company are related persons if the natural person is a majority shareholder or director of the company or of another private company that is a related body corporate of the company within the meaning of the Corporations Law;
- a natural person and a trustee are related persons if the natural person is a beneficiary of the trust (not being a public unit trust scheme) of which the trustee is a trustee; or
- a private company and a trustee are related persons if the company, or a majority shareholder or director of the company, is a beneficiary of the trust (not being a public unit trust scheme) of which the trustee is a trustee.

In most cases where the parties to a transaction are unrelated, duty will be assessed on the amount of the consideration, because in such circumstances the noted consideration would reflect the unencumbered value of the property. The important matter for determination is whether or not the parties are dealing with each other at arm's length. Therefore, any relationship between the parties is relevant, as related parties may not act severally and independently in forming their bargain in the same manner that arm's length parties would normally do.

Even if there is no relationship between the parties, evidence of value will still be required if the Commissioner is not satisfied that the parties to the transaction have been dealing with each other at arm's length – for example if there is a possibility of collusion to achieve a particular result. This would include the situation where the consideration for a transaction was apportioned between dutiable property and other property in an attempt to minimise the duty payable.

Persons approved to pay duty by way of a special tax return arrangement under section 49 of the Taxation Administration Act 1997 (using Tasmanian Revenue Online)

Where an instrument evidencing a transfer of dutiable property is endorsed using Tasmanian Revenue Online pursuant to Part VI of the *Taxation Administration Act 1997*, the liable person or their agent should retain appropriate evidence whenever any of the following circumstances are relevant:

- the parties are associated persons; or
- there is no real estate agent involved when the transaction involves real property; or
- the transaction relates to fractional interests in property; or
- the consideration appears low for the type of property being sold; or
- all or part of the consideration is not monetary (for example, in an exchange of property).

Example 1: "A" transfers property known as "Blackacre" to "B". The consideration for the property is \$120 000. The capital value shown on the government valuation for the property is \$200 000 and the adjustment factor for the year is 1.0. There is no real estate agent involved, with the agreement for sale being drawn up by the parties themselves. Persons approved to use Tasmanian Revenue Online may either:

- assess on the government valuation of \$200 000 (being \$200 000 x 1.0), retaining a copy of the Property Information Sheet and marking the appropriate field on Tasmanian Revenue Online; or
- obtain and retain evidence to substantiate a dutiable value of less than \$200 000. Acceptable evidence is set out below under the heading "Evidence of value – land" on page 6.

Example 2: “D” gives property known as “Greenacre” to his son “E”. As there is no monetary consideration and “D” and “E” are associated persons within the *Duties Act 2001* definition, persons approved to use Tasmanian Revenue Online may either:

- assess on the government valuation of \$200 000 (being \$200 000 x 1.0) retaining a copy of the Property Information Sheet and marking the appropriate field on Tasmanian Revenue Online; or
- obtain and retain evidence to substantiate some other dutiable value. Acceptable evidence is set out below under the heading “Evidence of value – land”.

3. *Date of evidence of value*

Evidence of value is required as at the date of first execution of the instrument effecting the transfer. Evidence of value within three months of the date of first execution will be accepted in most cases. If the evidence of value is at a date more than three months from the date of the dutiable transaction, it may be accepted provided there has been no change affecting the value of the dutiable property during that time.

In the case of land, evidence of value as at a date more than three months and up to 12 months from the date of the transaction will be accepted if it is accompanied by a statutory declaration stating that no improvements have been effected, nor any zoning changes or lifting of restrictive conditions made by Council, between the date of the valuation and the date of the dutiable transaction. The period of 12 months referred to above may be varied depending on the state of the property market and the location of the property.

In the case of land where the government valuation method is adopted, the last capital value and the last adjustment factor determined by the Valuer-General before the date of the agreement, transfer, assignment or other instrument or dealing relating to that real property must be used.

4. *Evidence of value – land*

Where evidence of value of land is required to determine the adequacy of the consideration (see “When evidence will be required” on page 3) the following are acceptable:

- where there has been no significant change in the condition of the property since the last valuation by the Valuer-General and the date of the transfer, a copy of the Property Information Sheet issued by the Valuer-General pursuant to the *Valuation of Land Act 2001* (obtainable from LIST) showing the capital value last determined by the Valuer-General before the date of the agreement, transfer, assignment or other instrument or dealing in relation to that real property. A statutory declaration completed by the transferee (or the transferee’s agent/solicitor) stating that no improvements have been effected, nor any zoning changes or lifting of restrictive conditions made by Council, between the date of the valuation and the date of the dutiable transaction will be sufficient evidence that there has been no significant change in the condition of the property. The period of 12 months referred to above may be varied depending on the state of the property market and the location of the property; or
- a declaration by a competent valuer; or
- a private opinion or expression of value by a registered valuer, identifying the specific property; or
- an agreement which is evidence of a recent arm’s length sale of the property (within the last 12 months); or
- a valuation required by a financial institution for finance purposes, with the proviso that such valuations are often conservative and may indicate that the property has a higher unencumbered value.

If this evidence of value indicates that the consideration is adequate, no further evidence of value will be required.

If the above evidence of value indicates that the unencumbered value of the land exceeds the consideration by a significant amount**, or the Commissioner requests evidence pursuant to section 247 of the Act, a “declaration by a competent valuer” will be required, being either:

- a valuation by the Valuer-General of the improved land value; or
- a valuation by a registered real estate valuer of the full market value, being a comprehensive valuation of the property in its present condition and indicating that an inspection of the property has been undertaken (brief market appraisals, estimates of value or other statements that do not indicate a full inspection of the subject property has been undertaken will not be acceptable).

** A significant amount would be a variation of 15% for properties valued at over \$40 000 and 25% for properties valued at or below \$40 000.

If there is no consideration or nominal consideration, evidence of value must consist of:

- a copy of the Property Information Sheet issued by the Valuer-General pursuant to the *Valuation of Land Act 2001* (obtainable from LIST) showing the capital value last determined by the Valuer-General before the date of the agreement, transfer, assignment or other instrument or dealing in relation to that real property, where there has been no significant change in the condition of the property since the last valuation by the Valuer-General and the date of the transfer; or
- a valuation by the Valuer-General of the improved land value; or
- a valuation by a registered real estate valuer of the full market value, being a comprehensive valuation of the property in its present condition and indicating that an inspection of the property has been undertaken (brief market appraisals, estimates of value or other statements that do not indicate a full inspection of the subject property has been undertaken will not be acceptable); or
- an agreement which is evidence of a recent arm’s length sale of the property (within the last 12 months).
- Where the property is vacant and unimproved land, a copy of the Property Information Sheet issued by the Valuer-General pursuant to the *Valuation of Land Act 2001* (obtainable from LIST) showing the capital value last determined by the Valuer-General before the date of the agreement, transfer, assignment or other instrument or dealing in relation to that real property is acceptable.

Example 3: “X” transfers real property known as “Whiteacre” to “Y”. The consideration for the property is \$100 000. There is no real estate agent involved. Accordingly, some evidence of the adequacy of the consideration is required (see “When evidence will be required” on page 3). The agent for the transferee (for example, a solicitor) obtains a copy of the government valuation. The government valuation for the property indicates that the capital value (after adjustment) is \$250 000. There has been no substantial change in the condition of the property since that time. However the stated consideration represents only 40% of the value of the property and in these circumstances the Commissioner would consider the consideration to be prima facie inadequate. The options available to the liable person are to:

- accept the adjusted government valuation as the unencumbered value of the property; or
- provide evidence to substantiate a lesser unencumbered value.
- In this case, the property market in the area has suffered a considerable downturn since the last government valuation. Accordingly, there are again two options available to the transferee:
- either obtain a new government valuation of the property; or
- obtain a valuation by a registered real estate valuer of the full market value of the property.

A valuation is obtained and provided to the Commissioner. The Commissioner accepts the valuation (provided it is a valuation carried out by a registered valuer of the full market value after inspection, etc, as explained above). The transfer is assessed on the value determined by the registered valuer.

Example 4: “F” transfers to “G” a property known as “Blueacre”. The consideration for the property is \$200 000. “F” and “G” are associated persons. Accordingly, some evidence of the appropriateness of the consideration is required (see “When evidence will be required” on page 3). The agent for the transferee (for example, a solicitor) obtains a copy of the government valuation. The government valuation for the property indicates that the capital value (after adjustment) is \$500 000. There has been no substantial change in the condition of the property since that time. However the stated consideration represents only 40% of the value of the property and in these circumstances the Commissioner would consider the consideration to be prima facie inadequate. The options available to the liable person are to:

- accept the government valuation as the unencumbered value of the property; or
- provide evidence to substantiate a lesser unencumbered value.

In this case, the transferee is not prepared to provide evidence to substantiate a lesser dutiable value for the property that is acceptable to the Commissioner (ie, the evidence set out above) despite requests to do so. The Commissioner will assess by utilising the provisions of section 248 of the Act to determine value.

5. *Vesting orders*

Where the land is the subject of a vesting order under the *Land Titles Act 1980*, section 35 of the Act charges duty on the land value of the land within the meaning of the *Valuation of Land Act 2001*. A copy of the Property Information Sheet issued by the Valuer-General pursuant to the *Valuation of Land Act 2001* (obtainable from LIST) showing the unimproved land value last determined by the Valuer-General before the date of the agreement, transfer, assignment or other instrument or dealing in relation to that real property will be accepted. If that is not available, a letter from a registered real estate valuer as to the unimproved land value will be accepted.

6. *Evidence of value – partnership interests*

A partnership interest is defined in section 9(i) as an interest in a partnership that has partnership property that is dutiable property. However, the value of an interest in a partnership is derived from the net value of partnership assets after deducting partnership liabilities. This is further qualified by section 18(4), which states that the dutiable value of a partnership interest is to be determined in accordance with section 25, which determines the dutiable value by reference to a proportion of the greater of:

- the value of the partnership interest; and
- the consideration for the transfer of the partnership interest.

The proportion is determined by reference to the unencumbered value of the dutiable property of the partnership and the unencumbered value of all assets of the partnership.

In some cases, particularly in professional partnerships such as those of accountants and solicitors, transactions relate to only small fractional interests in small amounts of dutiable property. Where the parties are at arm’s length, duty will be assessed on the full consideration unless the lodging party provides evidence of the values required to determine the proportion. Where the parties are at arm’s length and there is no consideration, \$20 duty will be payable.

7. *Evidence of value – other dutiable property*

For dutiable property other than land or interests in land, evidence of value will not be required unless there is some indication that the transaction is for less than full consideration or that the parties did not deal with each other at arm’s length. A declaration by a competent valuer will not be required if other reasonable evidence of value is available.

For a life interest or remainder interest, actuarial tables will be used to apportion the value of the property between the various interests, if relevant information is supplied by the lodging party (eg the date of birth of the life tenant).

However, if the taxpayer is dissatisfied with the valuation determined on such bases, or where the Commissioner is unable to determine the value, a formal valuation will be required pursuant to section 247 of the Act, being a "declaration by a competent valuer". Such a valuation must be by a person whose business it is to make valuations of the particular class of property in question, such as an accountant, actuary or registered valuer.

Enquiries in relation to this Revenue Ruling should be directed to the Revenue Advice and Audit Section on telephone (03) 6233 5437 or e-mail at audithelp@treasury.tas.gov.au. Copies of this ruling may be obtained from our website at www.treasury.tas.gov.au/tax and follow the "Revenue Rulings" link.

All rulings must be read subject to Revenue Ruling PUB-GEN-2001-1.



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