

Public Ruling

Ruling Number	: PUB-DT-2007-4
Title	: Evidence of Value
Tax Line	: Duties
Legislative Reference	: <i>Duties Act 2001</i>
Previous Ruling	: PUB-DT-2004-8 (1 December 2004)
Date of Ruling	: 3 July 2007
Attachments	:-

Preamble

This ruling provides guidance on the application of the valuation provisions relating to dutiable property contained in sections 247 and 248 of the Duties Act 2001 (“Duties Act”).

Chapter 2 of the Duties Act imposes duty on certain transactions relating to 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 the consideration for the dutiable transaction and the unencumbered value of the dutiable property (section 18 of the Duties Act), except for foreclosures, transfers of business assets and transfers of partnership interests, all of which have separate provisions.

Ruling

Section 248 – dutiable transactions relating to real property

Where the Commissioner of State Revenue (the Commissioner) is of the opinion that the consideration is inadequate with respect to the value of real property and no satisfactory evidence of value has been provided, the Commissioner is able to determine the unencumbered value of the real property in accordance with section 248 of the Duties Act.

The Duties Act deals with the value of vacant land and improved land separately and in the manner set out below.

Section 248(2A) – vacant land

Government Valuation Method using “Adjustment Factors”

For the purpose of this ruling, vacant land is land classified as “vacant” by the Valuer-General. To identify the classification of the land, refer to the land use code specified in the Property Information Sheet for the subject property obtainable from the Land Information System Tasmania (LIST) database.

To determine the adjusted value of vacant land, you must multiply the capital value of the real property as determined under the *Valuation of Land Act 2001* (“the Valuation of Land Act”), by the relevant land adjustment factor determined by the Valuer-General under section 50A of the Valuation of Land Act. The relevant value is determined as at the date of the dutiable transaction.

For State Revenue Office (SRO) clients not registered on Tasmanian Revenue Online (TRO), to identify the adjusted value of vacant land, you must obtain the capital value from the Property Information Sheet and multiply it by the applicable land adjustment factor. The land adjustment factor is available from the SRO’s Web site at www.sro.tas.gov.au.

TRO users can identify the adjusted value of vacant land by entering the Property Identification Number (PID) and the date of the transaction into the Dutiable Value Calculator, located in the menu section on TRO, and TRO will calculate the adjusted value by multiplying the capital value by the relevant land adjustment factor.

Section 248(2) – land that is non-vacant (land with improvements)

Government Valuation Method using “Estimated Trends in Capital Value”

For the purpose of this ruling, land that is non-vacant is land that is not classified as “vacant” by the Valuer-General. As outlined above, the land use code is specified in the Property Information Sheet for the subject property obtainable from the LIST database.

To determine the adjusted value of non-vacant land, you must multiply the capital value of the real property as determined under the Valuation of Land Act, by an amount representing the latest estimated trend in capital value as advised by the Valuer-General before the date of the dutiable transaction relating to that real property.

For SRO clients that are not registered on TRO, to determine the adjusted value of non-vacant land please contact the SRO on 03 6233 3722. You will need to provide the PID and the date of the transaction to obtain an adjusted value. **This service is only available for clients not registered to use TRO.**

TRO users can identify the adjusted value by entering the PID and the date of the transaction into the Dutiable Value Calculator and TRO will calculate the adjusted value by multiplying the capital value by the relevant estimated trend in capital value.

Note: TRO Users

TRO applies the above methodology to automatically compare and advise whether the consideration entered is adequate in comparison with the adjusted value using either the land adjustment factors or estimated trends in capital value, depending on the land use attributed to the PID entered when submitting a transaction that relates to land.

In cases where the consideration is estimated by TRO to be inadequate, a warning will be displayed in the TRO user's results window once a document has been submitted. At this point, the TRO user can edit the document details by using the adjusted value provided in the warning message or leave the consideration as is **PROVIDED** evidence, such as a declaration by a competent valuer, is available to substantiate that consideration.

Important note: the Government Valuation Method cannot be used for transactions relating to part of a PID.

For SRO clients not registered on TRO, you should submit documents relating to a part PID transaction together with any information concerning the dutiable value of the property with the SRO for assessment.

For TRO users, if a transaction was **not** negotiated via a real estate agent (an indicator of an arms-length transaction) and you do not hold a declaration by a competent valuer as to the unencumbered value of the property, the documents relating to a part PID transaction must be lodged with the SRO for assessment. If you hold a declaration by a competent valuer, you may process the transaction on TRO using either the consideration or declared value, whichever is the greater.

Section 247 – dutiable property other than real property

Under section 247 of the Duties Act, the Commissioner may require a person who is liable to pay 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 Duties Act does not prescribe the circumstances in which evidence of value may be required.

The adequacy of consideration for dutiable transactions

When the Commissioner is satisfied that the consideration is an adequate indication of the value of the dutiable property, the consideration will be accepted as the dutiable value and duty will be chargeable accordingly.

To proceed on the above basis, the Commissioner must be satisfied that the dutiable transaction arises from a transaction conducted by the parties at arms-length such that the consideration specified reflects the open-market value of the property. Therefore, any relationship between the parties is relevant, as related or associated persons may not necessarily act severally and independently in forming their bargain as would parties acting at arms-length.

Real property

When the dutiable transaction involves real property and the Commissioner is not satisfied that the consideration adequately reflects the unencumbered value of the real property (including where there is no consideration), the Commissioner will initially rely upon the unencumbered value as determined under section 248(2) of the Duties Act (as outlined above). However, the Commissioner may accept a declaration of value by a competent valuer (see explanation below) reflecting the unencumbered value of the relevant real property at the date of the transaction or, in exceptional circumstances, the Commissioner may ascertain value with reference to any other information the Commissioner thinks fit.

Property other than real property

When the dutiable transaction involves dutiable property other than real property and the Commissioner is not satisfied that the consideration adequately reflects the unencumbered value of the dutiable property (including where there is no consideration) the Commissioner may require the person liable to duty to provide a declaration by a competent valuer which reflects the unencumbered value of the relevant dutiable property as of the date of the dutiable transaction or, in exceptional circumstances, the Commissioner may ascertain value with reference to any other information the Commissioner thinks fit (see explanations below).

Declaration by a Competent Valuer

'A declaration by a competent valuer' means a valuation undertaken by a "land valuer" as defined by the *Land Valuers Act 2001*.

In establishing dutiable value otherwise than with recourse to the methods in section 248, the Commissioner will generally require a valuation by a competent valuer as evidence of the value of the dutiable property. In exceptional circumstances the Commissioner may consider other documentary evidence that independently verifies the dutiable value of the property or the adequacy of the consideration.

Date of evidence of value

In the case of real property, where the Government Valuation Method is adopted, the latest estimated trends in capital values (non-vacant land) advised by the Valuer-General and the latest land adjustment factor (vacant land) determined by the Valuer-General before the date of the dutiable transaction must be used.

In all other cases, evidence of value (eg. a declaration by a competent valuer as described above) is required as at the date of first execution of the instrument effecting the dutiable transaction. Evidence of value should identify the value of property within three months of the date of first execution and such evidence will be accepted in most cases. If the evidence of value identifies the value of the property more than three months from the date of the dutiable transaction, such evidence may be accepted depending on the time that has elapsed since the evidence of value was dated and provided documentary evidence is available to substantiate that there has been no change affecting the value of the dutiable property during that time.

Vesting Orders

Where the land is the subject of a vesting order under the *Land Titles Act 1980*, section 35 of the Duties Act charges duty on the capital value of the land within the meaning of the Valuation of Land Act. A copy of the Property Information Sheet (obtainable from the LIST database) will typically be accepted as evidence of the capital value of the land at the date of the application and this information should be lodged with the SRO together with the original vesting order for assessment.

Life Interests

Where a dutiable transaction deals with a life interest or remainder interest, actuarial tables will be used to apportion the value attributable to the relevant interest in the dutiable property. The values used in this apportionment will be determined in accordance with sections 247 and/or 248 of the Duties Act as described above.

The lodging party must supply the date of birth of the life tenant to the SRO to enable application of the actuarial tables.

If the taxpayer is dissatisfied with the valuation determined in such a manner, or in circumstances where the Commissioner is unable to determine the value, a declaration by a competent valuer of the property will be required pursuant to section 247 of the Duties Act.

Objections

Pursuant to section 248(5) of the Duties Act, a person who objects to the unencumbered value of the relevant real property as determined under sections 248(2) or section 248(2A) of the Duties Act must, at the time of lodging the objection, provide the Commissioner with a declaration by a competent valuer as to the unencumbered value of the real property.

Enquiries in relation to this ruling should be directed to the Revenue Advice and Audit Section of the SRO on telephone 03 6233 3722 or e-mail at dutyhelp@treasury.tas.gov.au. Copies of this ruling may be obtained from the SRO Web site at www.sro.tas.gov.au and follow the "Revenue Rulings" link.

All rulings must be read subject to Revenue Ruling PUB-GEN-2005-5.



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