

Revenue Ruling

Public Ruling

Ruling Number	: PUB-DT-2016-6
Title	: Evidence of Value
Tax Line	: Duties
Legislative Reference	: <i>Duties Act 2001</i>
Previous Ruling	: PUB-DT-2014-7
Date of Ruling	: 6 December 2016

Preamble

This Ruling explains:

- what is the dutiable value of dutiable property;
- what is the unencumbered value of dutiable property;
- what constitutes an open market transaction;
- when the consideration paid will be considered adequate;
- when evidence of value will be required;
- what evidence of value is acceptable;
- when the Adjusted Government Valuation must be used;
- how life interests are valued;
- how the Adjusted Government Valuation may be challenged;
- when the Commissioner will obtain a valuation;
- when the Commissioner will recover the cost of a valuation; and
- value instructions for Tasmanian Revenue Online users.

Overview

For the purposes of this Ruling, all references to sections and Chapters relate to the [Duties Act 2001](#) unless otherwise specified.

Chapter 2 imposes duty on certain transactions relating to dutiable property.

Chapter 3 imposes duty on certain transactions that are not transfers under Chapter 2, including relevant acquisitions in landholders and the acquisition of land use entitlements. The same valuation principles enunciated in this Ruling will, generally, be applied in determining the unencumbered value of interests in land for the purposes of Chapter 3.

Section 247 provides that the Commissioner may require a person to provide evidence of value.

Section 248 provides a method by which the Commissioner may calculate the unencumbered value of real property and assess duty if not satisfied the consideration paid adequately reflects the unencumbered value of the property.

Ruling

If the taxpayer or their representative has acceptable evidence of the value of dutiable property which indicates a higher market value for the property than the consideration paid, duty must be paid on the higher value. A failure to remit duty on this basis may constitute the intentional disregard of a taxation law for the purposes of the penalty tax provisions in the [Taxation Administration Act 1997](#).

Where acceptable evidence of the value of the dutiable property is not available, the Commissioner will, generally, assess duty on the consideration paid and not require further evidence of value to be provided if satisfied the consideration paid adequately reflects the market value of the dutiable property. This will ordinarily be satisfied where the transaction was conducted on the open market.

However, where, in the case of a dutiable transaction involving real property, no evidence of value is available and the Commissioner is not satisfied the dutiable transaction was conducted on the open market for market value, the consideration will be compared to the Adjusted Government Valuation of the property. Ordinarily, if the Commissioner is of the opinion that the consideration paid is inadequate with reference to that valuation, the dutiable value of the property will be determined in accordance with the Adjusted Government Valuation.

What is the Dutiable Value of dutiable property?

Pursuant to Section 17, duty is charged on the “dutiable value” of the property that is the subject of the transaction. In turn, section 18 provides that the dutiable value of property is the greater of the:

- consideration for the dutiable transaction; or
- unencumbered value of the dutiable property.

Consequently, if the consideration paid for dutiable property is less than the property’s unencumbered value, duty is charged on the (higher) unencumbered value.

What is the Unencumbered Value of dutiable property?

The unencumbered value of dutiable property is defined in section 20 as the amount for which the property might reasonably have been sold on the open market (that is, the ‘market value’ of the property) or the value as calculated in sections 247 or 248. The international valuation standard for market value is defined as:

“The estimated amount for which an asset should exchange on the date of valuation between a willing buyer and a willing seller in an arms length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion.”¹

Section 248 also provides a mechanism by which the Commissioner is able to determine the unencumbered value of real property. Under this method, the unencumbered value of the real property is determined with reference to the value of the property identified by the Valuer-General under the [Valuation of Land Act 2001](#) upon applying any relevant adjustment factor advised under that enactment. This is known as the Adjusted Government Valuation.

What constitutes an Open Market Transaction?

Unless there is evidence that the consideration paid did not adequately reflect the unencumbered value of the property, evidence that a transaction was undertaken through a real estate agent would typically be regarded as evidence that the transaction had been conducted on the open market and, therefore, that the consideration paid reflected the market value of the property.

The Commissioner also generally considers the following transactions to have been undertaken on the open market:

- sales following a public tender process;
- sales by the Crown, the Director of Housing or Local Government; and
- sales made through brokerage agents, for example business advisory firms.

¹ International Assets Valuation Standards Committee 1993

Where the basis upon which the transaction was negotiated is not apparent from the documentation provided, evidence that the transaction was undertaken on the open market should, if available, be provided. Such evidence might include a statement from the purchaser or the purchaser's legal practitioner or conveyancer attesting to the circumstances of the sale and that it was derived from an open market transaction. Other evidence, for example a copy of an advertisement for the property or tender documentation, would also, generally, be considered acceptable.

If the Commissioner is satisfied from documentation provided, for example the agreement for sale, that the transaction has been undertaken on the open market and no other evidence of the property's value is available, the Commissioner will, generally, accept that the consideration paid is adequate and no further evidence of value will be required (ie duty will be assessed on the consideration only).

Where evidence of an open market transaction is not provided, the Commissioner will, generally, not be satisfied the transaction was conducted on the open market. In these circumstances, unless a valuation of the property is provided, the Commissioner will review the adequacy of the consideration and scrutinise the dutiable value of the property accordingly.

When the Consideration Paid will be considered adequate

In determining the adequacy of the consideration, the Commissioner will compare the consideration paid for the property against the Adjusted Government Valuation as calculated in accordance with section 248.

Generally, if the Commissioner is satisfied that the consideration paid for the dutiable property constitutes not less than 85 per cent of its Adjusted Government Valuation, the consideration will be considered adequate and no further evidence of value will be required (that is, duty will be assessed based on the consideration paid only).

Conversely, where the consideration paid for the real property constitutes less than 85 per cent of the property's Adjusted Government Valuation, the Commissioner will, generally, not consider the consideration adequate. In these circumstances, the Commissioner will use the Adjusted Government Valuation in order to determine the dutiable value of the property unless acceptable evidence of value is provided.

When Evidence of Value will be required

The Commissioner will assess duty on the Adjusted Government Valuation of real property or otherwise require evidence of value in the following circumstances, regardless of whether or not the transaction was undertaken on the open market:

- the transaction constitutes a relevant acquisition in a landholder under Chapter 3; the transaction is for no or nominal consideration or the consideration payable cannot be determined from the agreement for sale;
- subject to application of the contingency principle, the consideration payable is dependent upon the occurrence (or non-occurrence) of contingent events (that is, such as future royalty payments, profitability adjustments, and so on);
- dutiable property is transferred together with non-dutiable property and it is not clear whether the consideration has been apportioned appropriately between the two types of property;
- if the transferee has made improvements to the land and is claiming an adjustment to the dutiable value in accordance with section 20(3);
- an objection is submitted in respect of an assessment of duty made by the Commissioner based on the Adjusted Government Valuation determined under section 248.

The Commissioner reserves the right to require a valuation in any circumstances where it is considered that the consideration paid may not reflect the market value of the dutiable property.

What Evidence of Value is acceptable?

The following would, ordinarily, be acceptable evidence of the market value of the property:

- a valuation by a competent valuer that declares the market value of the property at the time of the dutiable transaction;
- an agreement which is evidence of a recent open market sale of the property, together with a declaration that there has been no material change to the dutiable property during that time.

A competent valuer is a person who is a certified practising valuer who has experience in valuing the type of asset conveyed and who is a member of the Australian Property Institute or considered to have equivalent qualifications. The Commissioner may also recognise a person as a competent valuer if satisfied they are independent of the parties to the transaction and have professional experience valuing the type of asset conveyed.

With regard to the date evidence of value must relate to, duty is charged on the dutiable value of the property at the time of transfer. However, if the transfer was subject to an agreement for sale, section 20(1)(a) provides that the dutiable value is calculated as at the date of the agreement for sale.

In the case of valuations, the Commissioner will accept evidence of value as current if it identifies the value of the property within three months of the date of the agreement for sale or transfer as applicable, provided there has been no material change to the property.

In the case where evidence of a recent open market sale of the property is relied upon, such evidence will ordinarily be considered current if it identifies the value of the property within six months of the agreement for sale or transfer as applicable, provided there has been no material change to the property.

If the evidence of value does not identify the value of the property within the aforementioned time frames, such evidence may still be accepted depending on the time that has elapsed since the effective date of the evidence of value and the extent of any changes to the property since that time.

In some instances, evidence may be requested to substantiate that there has been no physical change affecting the value of the dutiable property since the effective date of the evidence of value.

When must the Adjusted Government Valuation be used?

If the dutiable transaction is a vesting order in accordance with section 35, the Commissioner is required to assess duty based on the Adjusted Government Valuation. In all other circumstances, the Commissioner can deviate from using the Adjusted Government valuation if acceptable evidence as to the dutiable value of the property is provided.

How Life Interests are valued

Where a dutiable transaction deals with a life interest or remainder interest, actuarial tables will be used in conjunction with the formula provided in section 248 to determine the value attributable to the relevant life interest in the dutiable property.

The lodging party must supply the date of birth and gender of the life tenant to enable application of the Australian life tables.

If the taxpayer is dissatisfied with the dutiable value of the life interest being determined in such a manner or the Commissioner is unable to determine the value using this method, a declaration by a competent valuer of the value of the life interest in the property will be required.

How the Adjusted Government Valuation may be challenged

Where duty is assessed based on the Adjusted Government Valuation and the taxpayer disputes the value derived using that method, the taxpayer is able to object to that assessment for the purposes of Part 10 of the *Taxation Administration Act 1997* only by providing a declaration of the property's unencumbered value prepared by a competent valuer (section 248(5)).

If such valuation is provided, the Commissioner may treat the value identified in the valuation as the unencumbered value of the relevant property. Where the Commissioner disagrees with the value of the property identified in a valuation provided by the taxpayer under section 248(5), the Commissioner may, in accordance with section 248(6), obtain their own valuation from the Valuer-General. In these circumstances, the Commissioner is required to treat the value identified in the valuation obtained from the Valuer-General as the unencumbered value of the property.

When the Commissioner will obtain a valuation

The Commissioner would, ordinarily, only obtain a valuation from the Valuer-General if unable to determine dutiable value with reference to the Adjusted Government Valuation or if the taxpayer requests it. The Commissioner may also obtain a valuation if not in agreement with the market value identified in a valuation relied upon by the taxpayer.

When the Commissioner will recover the cost of a valuation

If the Commissioner considers that a valuation is necessary, the costs of that valuation may be recovered from the taxpayer in accordance with sections 247(4) and 248(4). Wherever possible, the Commissioner will advise taxpayers of the need for, and estimated cost of, a valuation before the valuation is obtained.

Where the Commissioner obtains and intends to rely on a valuation in assessing duty, a copy of the valuation will be provided to the taxpayer.

The Commissioner will, ordinarily, only seek to recover costs of obtaining a valuation where the value relied upon by the taxpayer (including in any valuation provided by the taxpayer) is less than 85 per cent of the value declared in the valuation relied upon by the Commissioner. Where a valuation is obtained in connection with a relevant acquisition in a landholder under Chapter 3 or as a result of suspected value shifting between items of dutiable and non-dutiable property, the Commissioner reserves the right to recover the costs of obtaining a valuation on a case-by-case basis.

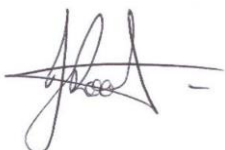
Value instructions for Tasmanian Revenue Online users

TRO users are able to self-assess all transactions where evidence of value is, or may be, required **except** in the circumstances identified in the Duty instrument self-assessment arrangements for Tasmanian Revenue Online guideline. Where that guideline indicates that a transaction cannot be self-assessed, the relevant documents, together with the evidence of value, must be forwarded to the State Revenue Office for assessment.

In all other cases, evidence of value must be retained for transactions that are self-assessed as set out in this Ruling and in the Documentary Evidence Requirements guideline.

For questions about this ruling, please email dutyhelp@treasury.tas.gov.au or phone (03) 6166 4400.

All rulings must be read in conjunction with the 'Explanation and Status of Revenue Rulings' available on the SRO website, <https://www.sro.tas.gov.au/resources/rulings>.



JC Root
Commissioner of State Revenue

6 December 2016