

Revenue Ruling

Public Ruling

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| Ruling Number | : PUB-DT-2009-1 |
| Title | : Evidence of Value |
| Tax Line | : Duties |
| Legislative Reference | : <i>Duties Act 2001</i> |
| Previous Ruling | : PUB-DT-2007-4 |
| Date of Ruling | : 23 November 2009 to 5 November 2014 |
| Attachments | : Evidence Requirements |

Preamble

For the purposes of this ruling, all references to sections and chapters relate to sections and chapters of the *Duties Act 2001* unless otherwise specified.

This ruling explains what evidence of value will be accepted by the Commissioner; when the Commissioner will require a valuation in order to determine the dutiable value of property; and situations in which the Commissioner will seek to recover the cost of a valuation.

Overview of the relevant provisions

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

Duty is charged on the “dutiable value” of the property that is the subject of the transaction.

Section 18 provides that the dutiable value of property is the greater of either the:

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

Chapter 3 imposes duty on certain transactions that are not transfers under Chapter 2, including relevant acquisitions in land-rich corporations, land use entitlements and put and call option agreements.

Section 247 provides that the Commissioner may require a person to provide evidence of value, while section 248 provides a method by which the Commissioner may assess duty if she does not

consider that the consideration reflects the unencumbered value of the real property. Under this method, the unencumbered value of the real property may be calculated by reference to the value as identified by the *Valuation of Land Act 2001* and adjusted by the relevant adjustment factor for vacant land, or the estimated trends in capital value for other land, as supplied by the Valuer-General. This is known as the adjusted Government valuation.

Unencumbered Value

The unencumbered value of dutiable property is defined in section 20 as the amount for which the property would 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

Ruling

The Commissioner will generally not require evidence of value where there is evidence that the consideration reflects the market value of the property. For example, evidence that a transaction was undertaken through a real estate agent would be regarded as evidence that the transaction had been conducted at arms length, and therefore that the consideration reflected the market value of the property.

In addition, the Commissioner considers the following to be transactions undertaken at arms length and/or on the open market:

- private sale by owner;
- tenders conducted on the open market;
- sales by the Crown or the Director of Housing; and
- sales made through brokerage agents, for example business advisory firms.

If it is apparent from the documentation that has been provided, for example, the agreement for sale, that the transaction has been undertaken at arms length and/or on the open market, no further evidence will be required.

In some cases the basis on which the transaction was negotiated is not apparent from the documentation. In these cases, evidence that demonstrates that the transaction has been undertaken at arms length and/or on the open market will be required.

In all other circumstances, the consideration will be reviewed to determine whether it is an adequate reflection of the market value.

When the consideration is deemed adequate

The Commissioner will compare the consideration against the adjusted Government valuation as calculated in accordance with section 248.

If the Commissioner is satisfied that the consideration reflects the value obtained using this method, the consideration will be regarded as adequate and no further evidence will be required.

¹ International Assets Valuation Standards Committee 1993

When the consideration is deemed inadequate

If the consideration is less than 85 per cent of the adjusted Government valuation, the Commissioner will require further evidence, either that the transaction has been undertaken at arms length and/or on the open market, or that the consideration is adequate. Alternatively, the liable party may elect to have duty determined using the adjusted Government valuation as the dutiable value.

Where a transaction is for no or nominal consideration, duty must be determined on 100 per cent of the adjusted Government valuation unless evidence as to the market value of the property is provided or retained.

When is evidence that the consideration is adequate required?

If the transaction was not conducted at arms length and/or on the open market, the Commissioner will require evidence of value or will use the adjusted Government valuation (as outlined in section 248 and described above) or will seek a valuation from the Valuer-General. Transactions are unlikely to have been made at arms length and/or on the open market when:

- the parties are related or associated, which includes but is not limited to:
 - parties are related persons, whether as family or by marriage;
 - related companies, as defined in the *Corporations Act 2001*;
 - partners in a partnership;
 - participants in the same joint venture;
 - trustees of trusts which have common beneficiaries;
 - joint owners of property; and
 - entities with other significant business relationships (eg where there is a significant contractual arrangement between parties or one is a significant customer or provider of services to the other);
- the same representative (eg firm or conveyancer) is acting for both parties;
- part interests in property are transferred;
- the transfer is for no or nominal consideration;
- a partnership interest is transferred;
- the transfer involves a partition or exchange of land;
- any part of the consideration for a transfer is being provided by way of non-monetary consideration.

Other circumstances in which evidence of value will be required

The Commissioner will require evidence of value in the following circumstances, regardless of whether the transaction was undertaken at arms length and/or on the open market:

- the relevant acquisition is in a land-rich corporation or unit trust;
- the amount or value of the consideration payable cannot be determined from the agreement for sale, the instrument of transfer or acquisition or is dependent upon the occurrence (or non-occurrence) of contingent events;
- dutiable property is transferred with non-dutiable property and the total consideration payable has not been apportioned appropriately in order to determine the dutiable value of the dutiable property;

- if prior to the transfer, the transferee has made improvements to the land and the consideration has been calculated to reflect this in accordance with section 20(3);
- the dutiable transaction is a vesting order in accordance with section 35;
- an objection is submitted in respect of a determination made by the Commissioner under section 248 as to the value of property.

The Commissioner also reserves the right to require a valuation in circumstances where the consideration may not reflect market value.

What evidence is acceptable?

When it is not obvious from the documentation that a transaction has been undertaken at arms length and/or on the open market

The Commissioner will accept a declaration in an approved form by the purchaser, or the purchaser's legal practitioner or conveyancer, attesting to the circumstances of the sale and that it was derived from an arms length and/or an open market transaction or other evidence, for example a copy of an advertisement for the property or tender documentation.

When the consideration is inadequate

The Commissioner will accept the following evidence of value when determining the adequacy of consideration:

- a valuation by a competent valuer that declares the market value of the property, including valuations prepared for security purposes;
- an agreement which is evidence of a recent (within three months) arms length sale of the property, together with a declaration that there has been no change affecting the value of the dutiable property during that time; or
- evidence, that can be verified with the Valuer-General, that the property has substantially changed since the last Government valuation.

Details of the evidence that must be retained or submitted to determine the value of a property are attached.

What is a competent valuer?

A competent valuer is a person who is a certified practising valuer and who is a member of the Australian Property Institute or a person who is considered to have equivalent qualifications.

Date of evidence of value

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, the dutiable value is calculated as at the date of the agreement for sale.

In most cases the Commissioner will accept evidence of value dated within three months of the date of the agreement for sale or transfer as applicable.

If the evidence of value identifies the value of the property at a date more than three months prior to the date of the dutiable transaction, such evidence may be accepted depending on the time that has elapsed since the effective date of the evidence of value.

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

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 lodging party must supply the date of birth and gender of the life tenant 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.

When will the Commissioner 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 intends to rely on a valuation she has obtained, she will provide a copy of the valuation to the taxpayer and provide an opportunity for the taxpayer to make a submission regarding the valuation.

The Commissioner will only seek to recover costs where the stated consideration or value declared by the taxpayer is less than 85 per cent of the value declared by the valuation. In all other cases the Commissioner will bear the cost of the valuation.

Tasmanian Revenue Online

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 attached table. Where the table indicates that a transaction cannot be self-assessed, the relevant documents together with the evidence must be forwarded to the SRO for assessment.

In all other cases, evidence must be retained for transactions that are self-assessed as set out in the attached evidence requirements.

Enquiries in relation to this ruling should be directed to dutyhelp@treasury.tas.gov.au or telephone 03 6166 4400.

All rulings must be read in conjunction with Revenue Ruling PUB-GEN-2008-29.



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Appendix 1

This table details the evidence of value required in the circumstances listed below. It does not cover all documentary requirements for assessment, which are detailed in the separate guideline: [Dutiable Transactions and Instruments - Evidence Requirements Duties Act 2001](#)

| | Circumstance | Evidence of Value required | Assessable on TRO? |
|---|--|---|--------------------|
| ARMS LENGTH/OPEN MARKET TRANSACTIONS | | | |
| 1. | Where it is apparent from the agreement for sale that the transaction has been undertaken at arms length and/or on the open market, eg: <ul style="list-style-type: none"> • Real estate agent negotiated transactions; • Tenders conducted on open market; and • Sales by the Crown or • Sales by Director of Housing | <ul style="list-style-type: none"> • consideration is deemed adequate and no evidence of value is required. | Yes |
| 2. | Where it is not apparent from the agreement for sale that the transaction has been undertaken at arms length and/or on the open market, AND the consideration is at least 85 per cent of the adjusted Government valuation. | <ul style="list-style-type: none"> • consideration is deemed adequate and no evidence of value is required. | Yes |
| 3. | Where the transaction has been undertaken at arms length and/or on the open market, but this is not apparent from the agreement for sale AND the consideration is less than 85 per cent of the adjusted Government valuation. | <ul style="list-style-type: none"> • a declaration in an approved form by the purchaser or the purchaser's conveyancer or legal practitioner attesting to the circumstances of the sale and that it was derived from an arm's length and/or an open market transaction; or • evidence that the transaction was undertaken on the open market and/or at arms length, such as copies of advertisement for sale or tender documentation. | Yes |

| | Circumstance | Evidence of Value required | Assessable on TRO? |
|--|---|--|--------------------|
| NON ARMS LENGTH/OPEN MARKET TRANSACTIONS | | | |
| 4. | Where the transaction has NOT been undertaken at arms length and/or on the open market AND the consideration is less than 85 per cent of adjusted Government valuation. | <ul style="list-style-type: none"> • a valuation by a competent valuer that declares the market value of the property, including valuations prepared for security purposes; or • an agreement which is evidence of a recent (within three months) arms length sale of the property, together with a declaration that there has been no change affecting the value of the dutiable property during that time. | Yes |
| In certain circumstances specific evidence must be supplied, where: | | | |
| 5. | The adjusted Government valuation is disputed on the basis that the property has substantially changed (eg fire damage). | <ul style="list-style-type: none"> • as detailed at 4; or • reports by an insurance provider or government agency detailing changes that can be verified by the Valuer-General (eg Tasmanian Fire Service report). | No |
| 6. | Prior to the transfer, the transferee has made improvements to the land and the purchaser requests that the unencumbered value be reduced to reflect this (in accordance with section 20(3)). | <ul style="list-style-type: none"> • a declaration in the approved form by the purchaser that the improvements were made and paid for by the purchaser together with supporting documentation (eg receipts for goods or work). | No |
| 7. | Any part of the consideration is non-monetary. | <ul style="list-style-type: none"> • details of the non-monetary consideration including its value and the method by which it was calculated. | No |
| 8. | Amount/value of consideration cannot be determined from the instrument or is dependent on contingent events. | <ul style="list-style-type: none"> • estimate of the consideration including the method by which it was calculated. | No |
| 9. | Unencumbered value cannot be determined. | <ul style="list-style-type: none"> • an interim assessment will be issued. However, within three months of the interim assessment, you must provide either: <ul style="list-style-type: none"> ○ a notice of valuation from the Valuer- | No |

| | Circumstance | Evidence of Value required | Assessable on TRO? |
|-----|--|--|--------------------|
| | | General; or <ul style="list-style-type: none"> ○ a valuation by a competent valuer that declares the market value of the property, including valuations prepared for security purposes. | |
| 10. | Dutiable property transferred with non-dutiable property and total consideration has not been apportioned. | <ul style="list-style-type: none"> • apportionment of the consideration for both dutiable and non-dutiable property and the calculation method used; and • business financial statements dated within three months of the transaction. | No |
| 11. | Transfers of life interests in dutiable property. | <ul style="list-style-type: none"> • date of birth and gender of the life tenant, to enable the value of the relevant interest to be calculated using actuarial tables. | No |
| 12. | Part interests in property are transferred AND the consideration is less than 85 per cent of the proportion of the adjusted Government valuation represented by interest transferred. | <ul style="list-style-type: none"> • a valuation by a competent valuer that declares the market value of the property, including valuations prepared for security purposes. | Yes |
| 13. | A partnership interest is transferred. | <ul style="list-style-type: none"> • partnership financial statements for past three years. | Yes |
| 14. | The transfer involves a partition of land AND if the value of one partitioned portion is less than 85 per cent of the other(s). | <ul style="list-style-type: none"> • a valuation by a competent valuer that declares the market value of the partitioned property, including valuations prepared for security purposes. | No |
| 15. | Exchange of land where consideration for each transfer is less than 85 per cent of the adjusted Government valuation for the respective property. | <ul style="list-style-type: none"> • a valuation by a competent valuer that declares the market value of each property, including valuations prepared for security purposes. | Yes |
| 16. | A relevant acquisition in a land-rich corporation or unit trust. | <ul style="list-style-type: none"> • a valuation by a competent valuer that declares the market value of Tasmanian land holdings (see <i>Section 68 - Acquisition Statement</i>). | No |

| | Circumstance | Evidence of Value required | Assessable on TRO? |
|-----|---|--|---------------------------|
| 17. | The dutiable transaction is a vesting order in accordance with section 35 AND the adjusted Government valuation is disputed. | <ul style="list-style-type: none"> • a valuation by a competent valuer that declares the market value of the property, including valuations prepared for security purposes. | No |
| 18. | An objection is submitted in respect of a determination made by the Commissioner under section 248 as to the value of a property. | <ul style="list-style-type: none"> • a valuation by a competent valuer that declares the market value of the property, including valuations prepared for security purposes. | No |

Note: This is not an exhaustive list and, in certain circumstances, the Commissioner may request further evidence of value including a valuation by a competent valuer.