



ACT Revenue Office
Department of Treasury

Revenue Circular DAA010
Duties Act 1999
Evidence of Value

Circular history

| Circular number | Issued date | Dates of effect | | Status |
|-----------------|----------------|-----------------|--------------|--|
| | | From | To | |
| D13 | December 2002 | 1 February 2003 | 30 June 2008 | Republished as DAA010 and updated with new information |
| DAA010 | 21 August 2008 | 1 July 2008 | - | Current |

Preamble

1. Chapter 2 of the *Duties Act 1999* (the Act) imposes duty on specified transactions.
2. Duty is charged on the dutiable value of dutiable property subject to the dutiable transaction.
3. In general, the dutiable value of dutiable property (section 20 of the Act) is the consideration for the dutiable transaction (section 21 of the Act) or the unencumbered value of the dutiable property (section 22 of the Act), whichever is the greater.
4. Section 22 of the Act states that the unencumbered value of a Crown lease at the time it is granted is, for Chapter 2, taken to be the amount determined by the granting body to be that value. If the Commissioner for ACT Revenue (the Commissioner) is not satisfied with the provided value, or if no value is provided by the granting body, the Commissioner may obtain a value and determine the unencumbered value of the lease in accordance with the valuation. The cost of obtaining the valuation can be recovered from the lessee, unless it is not more than the value provided by the granting body.
5. Under Chapter 12 of the Act, the Commissioner is authorised to require a person to provide a declaration by a competent valuer of the value (unencumbered or otherwise) of the dutiable property, or such other evidence of that value as the Commissioner thinks fit. This also applies to the valuation of a lease instrument (Chapter 5). Where the valuation is undertaken by the ACT Revenue Office, the cost of obtaining that valuation is recoverable from the transferee or settlor.
6. The unencumbered value of a long-term lease or franchise agreement is the unencumbered value of the Crown lease of the land in relation to which the long-term lease or franchise agreement is granted.
7. The value of shares or units that are not quoted on a stock exchange is ascertained from the audited financial statements for the period up to the date of the transaction. After 30 June 2010, unquoted marketable securities will no longer be dutiable property.

8. For a declared affordable house and land package (sections 16A and 16B of the Act), the dutiable value is the lesser of the land value component of the package on the date of the agreement, and the land value component of the package on the date the liability for duty arises.

9. Chapter 5 of the Act imposes duty on lease instruments. Duty is assessed on the higher of the cost of the lease and the value of the lease. Lease instruments executed after 30 June 2009 are not dutiable.

10. A Land Rent Lease (see *Land Rent Act 2008*) is treated the same as any other Crown lease for the purposes of the Act and the dutiable value is arrived at under sections 20, 21 and 22 of the Act.

Circular

11. This circular clarifies the valuation requirements for determining the dutiable value of dutiable property and lease instruments. It also sets out guidelines on when evidence of value will be required, and the type of evidence of value acceptable to the Commissioner.

When evidence of value will be required

12. An important factor in determining the dutiable value of dutiable property is whether the parties are dealing with each other at arm's length. The relationship between parties is relevant, since related or associated parties may not act severally and independently in forming an agreement in the same manner as arm's length parties would normally do.

13. Evidence of value will be required when:

- (a) there is a nil or nominal consideration;
- (b) in the case of an agreement for sale—where there is no selling agent and the same legal firm is acting for both parties;
- (c) in the case of a new Crown lease—where the value of works to be carried out on land, other than the land subject to the lease, is not specified;
- (d) all or part of the consideration is not monetary;
- (e) the Commissioner is not satisfied that the consideration is an adequate indication of the unencumbered value of the property;
- (f) the Commissioner is not satisfied with the value provided by the granting body, or if the granting body did not provide a value; or
- (g) the parties to the transaction are related persons or associated persons

Related persons

14. "Related person" is defined in the Dictionary in the Act and means a person who is related to another person in accordance with any of the following provisions:

- (a) individuals are related people if:
 - (i) they are partners, or they have been partners and the partnership has ended (whether the partnership ended in Australia or elsewhere); or
 - (ii) the relationship between them is that of parent and child, brothers, sisters, or brother and sister;
- (b) private companies are related people if they are related bodies corporate;

- (c) an individual and a private company are related people if the individual is a majority shareholder or director of the company or of another private company that is a related body corporate of the company;
- (d) an individual and a trustee are related people if the individual is a beneficiary of the trust (other than a public unit trust scheme) of which the trustee is a trustee;
- (e) a private company and a trustee are related people if the company, or a majority shareholder or director of the company, is a beneficiary of the trust (other than a public unit trust scheme) of which the trustee is a trustee.

Associated persons

15. “Associated person” is defined in the Dictionary in the Act and means a person who is associated with another person in accordance with any of the following provisions:

- (a) people are associated people if they are related people;
- (b) individuals are associated people if they are partners in a partnership to which the *Partnership Act 1963* applies;
- (c) private companies are associated people if common shareholders have a majority interest in each private company;
- (d) trustees are associated people if any person is a beneficiary common to the trusts (not including a public unit trust scheme) of which they are trustees;
- (e) a private company and a trustee are associated people if a related body corporate of the company is a beneficiary of the trust (not including a public unit trust scheme) of which the trustee is a trustee.

Requirements for a property valuation report

16. A property valuation report must be prepared on the basis of a transaction between a “willing but not anxious buyer and a willing but not anxious seller”. Instructions to the valuer preparing the report must be in accord with this requirement and must be attached to the valuation report. The valuer must be a person who is qualified to make valuations for the class/es of property in question.

17. The granting body or person making the valuation of a Crown lease at the time it is or was granted must assume that consideration is or was to be paid in a lump sum and the lessee is not obliged by the lease to carry out any works on the land leased or elsewhere (section 22 (6) of the Act).

Presenting evidence of value

18. Presenting the required evidence of value with the transfer documentation will enable such transfers to be processed without delay, so eliminating the need for issuing an interim assessment.

Date of evidence of value

19. Evidence of value is required as at the date a liability to pay duty on a dutiable transaction arises; however, evidence of value within 3 months of that date may be accepted.

20. Evidence of value for the grant of a Crown lease is required as at the date of the grant of the lease.

Evidence of value required

21. Documentation is required as follows:

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| Vacant and unimproved land | <ul style="list-style-type: none"> • A property valuation report by a certified valuer |
| Improved land | <ul style="list-style-type: none"> • A full property valuation report by a certified valuer or • an agreement for sale which is evidence of a recent arm's length sale of the property |
| New Crown lease | <ul style="list-style-type: none"> • A determination by the granting body of the value at the time the lease is granted; or • a full property valuation report by a certified valuer or the authorised contract valuer for the ACT Revenue Office <p>The granting body, or the person making a valuation must assume:</p> <ul style="list-style-type: none"> • consideration for the lease is or was to be paid as a lump sum, and • the lessee is not obliged by the lease to carry out any works, or to cause any works to be carried out, on the land leased, or elsewhere. |
| Partnership interests | <ul style="list-style-type: none"> • Audited financial statements of the partnership (or certified management reports) as at the date of transfer identifying the net value of partnership assets (after deducting partnership liabilities), the value of all dutiable property and the value of all partnership assets |
| Shares and units | <ul style="list-style-type: none"> • Audited financial statements (being balance sheet, operating statement and cash flow statement), or statement from your accountant if an audited financial statement is not available, and supporting notes for the period up to the date of transfer of the relevant entity or • A full property valuation report by a certified valuer |
| Lease instrument | <ul style="list-style-type: none"> • Lease documentation showing rent payable during the term, any amount paid or payable for right to use the land, any premium payable, rates and land tax liabilities, and the value of all improvements, additions and outgoings |

SIGNED

Graeme Dowell
 Commissioner for ACT Revenue
 21 August 2008

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