



REVENUE CIRCULAR DAA010.2
Evidence of Value - <i>Duties Act 1999</i>
Issue Date: 7 August 2015
Status: Current – Effective 7 August 2015
Previous Circular: DAA010.2

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 valuation 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 (section 251), 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 assessment of market rent for a commercial lease with premium (section 251A). Where the valuation is undertaken by the ACT Revenue Office, the cost of obtaining that valuation is recoverable from the person liable to pay the duty.

Circular

Access Canberra

6. This circular clarifies the valuation requirements for determining the dutiable value of dutiable property. It also sets out guidelines on when evidence of value will be required, and the type of evidence of value acceptable to the Commissioner.
7. A land rent lease (see *Land Rent Act 2008*) is treated the same as any other Crown lease for the purposes of the Act. The dutiable value of a land rent lease is the amount that would be the unencumbered value of the lease, if it were a nominal Crown lease and not a land rent lease (section 20 (1) (b) (i)).

8. For the transfer of a commercial lease with premium, the dutiable value of the dutiable transaction is the amount of the premium paid for the lease; if the premium is other than rent reserved and exceeds the amount determined by the Commissioner. However, if a lease is granted for more than one purpose including commercial purposes, the dutiable value is the percentage of the premium paid that relates to the land, the subject of the lease that may be used for commercial purposes.

When evidence of value will be required

9. 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.
10. 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) in the case of a commercial lease with premium – where the rent reserved for the lease is not clearly specified and/or a premium amount paid for the lease cannot be determined;
 - (e) all or part of the consideration is not monetary;
 - (f) the Commissioner is not satisfied that the consideration is an adequate reflection of the unencumbered value of the property;
 - (g) the Commissioner is not satisfied with the value provided by the granting body, or if the granting body did not provide a value; or
 - (h) the parties to the transaction are related persons or associated persons.

Related persons

11. "Related person" is defined 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

12. “Associated person” is defined 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

13. 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 accordance 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 of property in question.
14. 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

15. 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

16. 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.
17. 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

18. Documentation is required as follows:

Vacant and unimproved land	<ul style="list-style-type: none">• A property valuation report by a certified valuer for the ACT Revenue Office for stamp duty purposes
Improved land	<ul style="list-style-type: none">• A full property valuation report by a certified valuer for the ACT Revenue Office for stamp duty purposes or• an agreement for sale which is evidence of a recent (within 3 months) 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
Commercial lease with premium	<ul style="list-style-type: none"> • A declaration from a certified valuer of the market rent for the lease, or other evidence that the Commissioner considers appropriate (for example, lease documentation showing rent payable during the term, any amount paid or payable for right to use the land, liabilities, and the value of all improvements, additions and outgoings). • Evidence of the agreement for the payment of a premium in relation to the lease, being any monetary or non-monetary consideration that is paid or agreed to be paid in relation to the lease, other than rent reserved.

Signed

Kim Salisbury
Commissioner for ACT Revenue
7 August 2015