

**REVENUE CIRCULAR DAA010.4**

Evidence of Value – *Duties Act 1999*

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## Introduction

This circular clarifies the valuation requirements for determining the dutiable value of dutiable property under the Barrier Free model. It sets out the following guidelines:

- when evidence of value will always be required;
- when the Commissioner for ACT Revenue (the Commissioner) will not be satisfied with a provided value, and therefore require evidence of value;
- the type of evidence acceptable to the Commissioner.

In general transferees must have evidence of value (a valuation report) prepared for any dutiable transaction affected by the circumstances listed in this circular. This evidence must be completed before registration of property title with Access Canberra as the Commissioner will routinely request evidence of value for affected transactions.

Transactions under the Barrier Free model for which no duty is payable, or concessional duty is payable, are an exception to this requirement. As full duty is not payable for the transaction, the Commissioner will accept an estimated value in lieu of formal evidence of value. See page 6 of this circular for more information.

## Legislative provisions

Chapter 2 of the *Duties Act 1999* (the Act) imposes duty on specified transactions.

Duty is charged on the dutiable value of dutiable property subject to the dutiable transaction.

## Dutiable value

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.

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.

## Valuations

If 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 to determine the unencumbered value of the lease. 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.

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.

## Barrier Free model

In the Barrier Free model for collecting conveyance duty, the point of payment is moved to after settlement so that transferees pay duty after they register their title. Conveyance duty is a self-assessed tax in the Barrier Free model. It is the transferee's responsibility to ensure that the dutiable value of the property is accurately reported to the Commissioner through Access Canberra.

## Record keeping requirements

Under the Barrier Free model, the transferee is expected to keep their own records of the transaction under the record keeping requirements in part 8 of the *Taxation Administration Act 1999* (TAA). The transferee must retain records showing evidence of value for at least 5 years after the settlement of the transaction under section 64 of the TAA.

## Requests for information

The Commissioner is empowered under the TAA (see section 82) and the Act (see above) to request copies of supporting documents, including evidence of value, to review the basis for the assessment.

## When evidence of value is required

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.

The transferee is expected to obtain evidence of value when:

- there is a nil or nominal consideration;
- in the case of an agreement for sale—where there is no selling agent, and:
  - the same legal firm is acting for both parties; or
  - one party is self-represented and one party has a legal firm acting for them; or
  - both parties are self-represented;
- 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;
- 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;
- all or part of the consideration is not monetary;
- the parties to the transaction are related persons or associated persons; or

Full evidence of value is not required if the transaction is for concessional duty or exempt from duty. See page 6 of this circular for more information.

The Commissioner can also request evidence of value from the transferee if:

- the Commissioner is not satisfied that the consideration adequately reflects the unencumbered value of the property;
- the Commissioner is not satisfied with the value provided by the granting body, or if the granting body did not provide a value; or
- in the case of a transaction between public companies—the Commissioner is not satisfied that the transaction is at arm's length.

## **When evidence of value must be prepared**

If this circular requires evidence of value for a transaction the Commissioner expects that the transferee will have the valuation prepared before registration of property title with Access Canberra. Transferees should have this evidence prepared before registration as the Commissioner will routinely request a valuation for such transactions.

The transferee is responsible for consequences such as interest or penalty tax that may arise from a failure to have a valuation prepared or delays in receiving a valuation.

In some circumstances, the Commissioner will verify a transaction after registration and not be satisfied with the value declared through the lodgement at Access Canberra. The circumstances in which the Commissioner will not be satisfied by the value alone are also set out in this circular, so that transferees can comply with the requirement to have a valuation completed before registration.

## **Form of evidence of value**

Documentation is required in the following form.

### **Vacant and unimproved land**

A full property valuation report by a certified practising valuer accredited by a recognised professional entity for the ACT Revenue Office for conveyance duty purposes.

### **Land with building/improvements**

- A full property valuation report by a certified practising valuer accredited by a recognised professional valuation entity authorised for the use of the ACT Revenue Office for conveyance duty purposes; or
- an agreement for sale which is evidence of a recent arm's length transaction of the property (the recent agreement must be dated within 3 months of the liability date for the relevant transaction).

### **New Crown lease**

- 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 practising valuer or a valuer authorised by the ACT Revenue Commissioner.

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 full 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).

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)).

### **Partnership interests**

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**

A declaration from a certified practising valuer accredited by a recognised professional entity 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.

### **Date of evidence of value**

Evidence of value is required as at the date a liability for duty on a dutiable transaction arises. This is generally the first execution date of the property – not the date of settlement or registration.

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

### **Requirements for property valuation report**

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 also be kept in the event that the Commissioner requests the instructions.

The valuation report for stamp duty purposes should include sufficient information about the subject property that strongly supports the valuation. As a minimum the report must include a brief description of the property being valued, identification of any factors that might significantly affect the marketability of the property and the full analysis of any sales and/or rental evidence that the valuer has considered in the establishment of a market value for the property.

The valuer must be a person who is accredited with a recognised professional valuation entity and has demonstrable experience in order to make valuations for the class of property in question.

### **Requirements for off the plan purchase agreements**

If an agreement involves both the sale or transfer of land (including a unit) and the construction of a residence on the land to be constructed before the completion of the sale or transfer, the land with the completed residence on it constitutes the dutiable property. The consideration and unencumbered value of a property purchased ‘off the plan’ are to be assessed accordingly. See *Bambro (No 2) Pty Ltd v Commissioner of Stamp Duties (NSW)* (1963) 63 SR (NSW) 522, 528-9 (Sugerman J); *Commissioner for ACT Revenue v Araghi* [2013] ACTCA 54 [58]-[59], [88] (Penfold J).

Therefore, for transactions that meet the description above, evidence of value must be obtained on the basis of a completed residence as at the date the duty liability for the transaction arises under the Act.

## Related people

'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.

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

'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:

- people are associated people if they are related people;
- individuals are associated people if they are partners in a partnership to which the *Partnership Act 1963* applies;
- private companies are associated people if common shareholders have a majority interest in each private company;
- 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;
- 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.

## Non-Barrier Free transactions

Certain transactions are not affected by the Barrier Free model as they do not cause a change to the register of land titles. These transactions include:

- declarations of trust;
- cancelled agreements;
- commercial leases with premium.

Such transactions must be lodged directly with the Commissioner within 90 days of the execution date. The Commissioner requires the evidence of value to be provided at the time of lodgement.

For a non-Barrier Free transaction, evidence of value as at the liability date (e.g. execution date) or within 3 months after the liability date is acceptable.

Presenting the required evidence of value with the transfer documentation will enable such transfers to be processed without delay.

### Commercial leases with premium

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, excluding rent reserved, if the premium 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 is not required**

Evidence of value is not required for a Barrier Free transaction to which this circular applies if the transaction qualifies for a concession or exemption from duty.

In such cases, an estimate of the property's dutiable value will be accepted in place of a valuation.

The exemptions to which this policy applies include, but are not limited to exemptions under:

- part 2.4 of the Act (Special provisions);
- part 2.5 (Exemptions);
- part 11.1 (Exemptions from duty—general);
- part 11.2 (Exemptions from duty—certain personal relationships);
- the Home Buyer Concession Scheme;
- the Disability Duty Concession Scheme; and
- the Pensioner Duty Concession Scheme (until 30 June 2018).

For such transactions, when completing the transfer for lodgement at Access Canberra, it is acceptable to include an estimate of the property's unencumbered value under the appropriate field on the form.

A free price estimate obtained from a real estate website or property value report website will be accepted for this purpose.

Price estimates will not be accepted as evidence of value for any other transaction mentioned in this circular.

The Commissioner reserves the right to obtain a valuation under section 251 of the Act if not satisfied with the estimated value declared on the transfer.

Signed

Kim Salisbury  
Commissioner for ACT Revenue  
15 December 2017