



Office of State Revenue  
NSW TREASURY

ABN: 77 456 270 638

## Revenue Ruling DUT 12

### Dutiable Transactions - Evidence of Value

#### PREAMBLE

1. Chapter 2 of the *Duties Act 1997* imposes duty on certain specified transactions over specified dutiable property. Duty is charged on the "dutiable value" of the dutiable property subject to the dutiable transaction.
2. In general, the dutiable value of dutiable property is the greater of consideration for the dutiable transaction, and the unencumbered value of the dutiable property (section 21). Section 305 authorises the Chief Commissioner to require a person who is liable to duty "to provide a declaration by a competent valuer as to the unencumbered value of the property or to provide such other evidence of that value as the Chief Commissioner thinks fit". The Act does not prescribe the circumstances in which evidence of value may be required.
3. A decision to require a person liable to duty to provide evidence of value, and the type of evidence required, are at the discretion of the Chief Commissioner. This ruling provides some general guidelines as to when evidence of value will be required, and sets out types of valuations or other evidence of value acceptable to the Chief Commissioner.

#### RULING

##### When evidence of value is required

4. In general, evidence of value will be required in 2 circumstances:
  - if there is no consideration or nominal consideration; and
  - if the Chief Commissioner is not satisfied that the consideration is an adequate indication of the unencumbered value of the property.
5. Where there is a monetary consideration for a transaction, evidence of value is only required if there is some indication that the consideration is less than the unencumbered value of the property. In most cases where the parties to a transaction are unrelated, duty will be assessed on the amount of the consideration, because in such circumstances the unencumbered value of the property is likely to be equivalent to the amount of the consideration.
6. The important matter for determination is whether or not the parties are **dealing** with each other at arm's length. Therefore, any relationship between the parties is relevant, as related parties may not act severally and independently in forming their bargain in the same manner that arm's length parties would normally do.

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7. Even if there is no relationship between the parties, evidence of value will still be required if the Chief Commissioner is not satisfied that the parties to the transaction have been dealing with each other at arm's length, such as in colluding to achieve a particular result. This would include where the consideration for a transaction has been apportioned between dutiable property and other property in an attempt to minimise the duty payable.
8. Evidence of value will usually be sought to verify the adequacy of the consideration in the following circumstances:
  - (a) the parties are associated persons\*; or
  - (b) in the case of an agreement for sale, there is no selling agent and the same legal firm is acting for both parties; or
  - (c) the transaction relates to fractional interests in property; or
  - (d) the consideration appears low for the type of property being sold.

*[\* “associated persons” includes “related persons”, both of which are defined in the Dictionary to the Duties Act]*
9. When there is no consideration or nominal consideration, or all or part of the consideration is not monetary (such as an exchange of property), evidence of value will be required in most cases.

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

10. A liability to duty on a dutiable transaction arises on the date the transaction occurs (sections 12 (1) and 9 (2) (c)). In most cases, this will be the date of first execution of the instrument that effects the dutiable transaction (section 12 (2)). Evidence of value is therefore required as at that date, although evidence of value within 3 months of that date will be accepted in most cases. If the evidence of value is at a date more than 3 months from the date of the dutiable transaction, it may be accepted provided there has been no change affecting the value of the dutiable property during that time.
11. In the case of land, evidence of value more than 3 months and up to 12 months from the date of the transaction will be accepted if accompanied by a statutory declaration stating that no improvements have been effected, nor any zoning changes or lifting of restrictive conditions made by Council, between the date of the valuation and the date of the dutiable transaction. The period of 12 months referred to above may be varied depending on the state of the property market and the location of the property. Generally, a period of 18 months will apply in the case of properties outside the metropolitan area.

#### **Evidence of value - land**

12. Where evidence of value of land is required to determine the adequacy of the consideration as outlined in paragraph 8 above, the following are acceptable:
  - (a) a “declaration by a competent valuer” as outlined in paragraph 13; or

- (b) a private opinion or expression of value by a registered valuer, identifying the specific property; or
- (c) an agreement which is evidence of a recent arm's length sale of the property; or
- (d) a valuation required by a financial institution for finance purposes, with the proviso that such valuations are often conservative and may indicate that the property has a higher unencumbered value.

*If this evidence of value indicates that the consideration is adequate, no further evidence of value will be required.*

13. If the above evidence of value indicates that the unencumbered value of the land exceeds the consideration by a significant amount, a "declaration by a competent valuer" will be required, being either:
  - (a) a valuation by the Valuer General of the improved land value; or
  - (b) a valuation by a registered real estate valuer within the meaning of the *Valuers Registration Act 1975* of the full market value, being a comprehensive valuation of the property in its present condition indicating that an inspection of the property has been undertaken. (Brief market appraisals, estimates of value or other statements that do not indicate a full inspection of the subject property has been undertaken will not be acceptable.)
14. If there is no consideration or nominal consideration, evidence of value must consist of either a "declaration by a competent valuer" as referred to in paragraph 10 or an agreement which is evidence of a recent arm's length sale of the property.
15. Where the property is vacant and unimproved land, the most recent notice of valuation by the Valuer General for rating purposes would be acceptable.

### **Possessory applications**

16. Where the land is the subject of a possessory application under the *Real Property Act 1900*, section 52 of the Duties Act charges duty on the land value of the land within the meaning of the *Valuation of Land Act 1916*. An extract of valuation by the Valuer General of the unimproved land value as last determined will be accepted. If not available, a letter from a registered real estate valuer as to the unimproved land value will be accepted.

### **Evidence of value - partnership interests**

17. A partnership interest is defined in section 11 (i) as an interest in a partnership that has partnership property that is dutiable property. However, the value of an interest in a partnership is derived from the net value of partnership assets after deducting partnership liabilities. This is further qualified by section 21

(4), which states that the **dutiable** value of a partnership interest is to be determined in accordance with section 29, which determines the dutiable value by reference to a proportion of the greater of:

- the value of the partnership interest, and
- the consideration for the transfer of the partnership interest.

*The proportion is determined by reference to the unencumbered value of the dutiable property of the partnership and the unencumbered value of all assets of the partnership.*

18. In some cases, particularly professional partnerships such as accountants and solicitors, transactions relate to only small fractional interests in small amounts of dutiable property. Where the parties are at arm's length, duty will be assessed on the full consideration unless the lodging party provides evidence of the values required to determine the proportion. Where the parties are at arm's length and there is no consideration, no duty will be payable.

#### **Evidence of value - other dutiable property**

19. For dutiable property other than land or interests in land, evidence of value will not be required unless there is some indication that the transaction is for less than full consideration or that the parties did not deal with each other at arm's length. A declaration by a competent valuer will not be required if other reasonable evidence of value is available. For example, the following evidence of value may be acceptable:

- shares or units - the latest balance sheet and supporting notes; and
- life interest or remainder interest - actuarial tables will be used to apportion the value of the property between the various interests, if relevant information is supplied by the lodging party (eg, the date of birth of the life tenant). [Note that section 306 of the Act provides that regard may be had to the death of a person having a life estate occurring before the assessment of duty is actually made in ascertaining the value of the interest.]

20. However, if the taxpayer is dissatisfied with the valuation determined on such a basis, or where the Chief Commissioner is unable to determine the value, a more formal valuation will be required, being a "declaration by a competent valuer". Such a valuation must be by a person whose business it is to make valuations of the particular class of property in question, such as an accountant, actuary or registered valuer.

**J W Purcell**

**Chief Commissioner of State Revenue**

18 march 1999