

Revenue Ruling DA.029

Transfers of land and business

Preamble

1. Section 7 of the *Duties Act 2000* (the Act) charges duty on the transfer of dutiable property. The term dutiable property is defined in section 10(1)(a) of the Act to include an estate in fee simple in land in Victoria.
2. Section 20 of the Act provides that the dutiable value of dutiable property is the greater of the consideration for the dutiable transaction and the unencumbered value of the dutiable property. The term unencumbered value is further defined in section 22 of the Act as "the amount for which the property might reasonably have been sold in the open market at the time the dutiable transaction occurred free from any encumbrances to which the property was subject at that time".
3. In situations involving transfers of land upon which a business is conducted, the unencumbered value of that land may be difficult to determine. The Act does not charge duty separately on the sale of a business, but the presence of a business may affect the value of the land.
4. Furthermore, where land and business are transferred, the apportionment of the consideration between the land component and the business component may address accounting or other considerations and may not reflect the unencumbered value of the land.
5. The State Revenue Office (SRO) takes the view that the most accurate method of determining the unencumbered value of land transferred with a business, is by way of valuation.
6. Section 273 of the Act provides that the Commissioner of State Revenue (the Commissioner) may require a person who is liable to duty to provide a valuation by a competent valuer.
7. The purpose of this ruling is to set out the circumstances in which the Commissioner will require a valuation in order to determine the unencumbered value of land transferred with a business and the basis of that valuation.

Ruling

SECTION 1 – VALUATION

Circumstances where a valuation will be required:

Transactions involving properties exceeding \$1 million

8. A valuation will be required in the following circumstances:
 - a. Transfer of land and concurrent transfer of business: Transfers of land accompanied by a transfer of the business where the consideration for the land and improvements and the business, including goods, exceeds \$1 million; or
 - b. Transfer of land with a prior or subsequent transfer of business: Transfers of land upon which a business is conducted where the consideration for the land and improvements, including goods, exceeds \$1 million and where:
 - (i) there has been a transfer of the business or a change in the control of the business within the 12 months preceding the transfer of the land; or
 - (ii) it is proposed, or an option has been offered, to transfer the business or change the control of the business within the 12 months following the transfer of the land.

Transactions with certain characteristics:

9. A valuation will be required for transactions falling within the circumstances described in paragraphs 8(a) or (b), regardless of the consideration, where they have the following characteristics:
 - a. some of the parties (vendor or purchaser) are associated persons for the purposes of the Act; or
 - b. the transaction relates to fractional interests in the dutiable property; or
 - c. the declared value of the land, in the opinion of the Commissioner, does not reflect the market value in view of the municipal capital improved value.

Any other circumstances that the Commissioner considers necessary:

10. A valuation may be required in any other circumstances in which the Commissioner considers it necessary.

Requirement for a valuation may be waived

11. Even if a transaction falls within any of the above circumstances, the Commissioner may waive the requirement for a valuation. An example of such a situation may be where the consideration for the real property is not low in view of the municipal capital improved value.
12. If a taxpayer is unsure whether a valuation will be required, guidance may be obtained from the SRO prior to the lodgement of documents. Although such guidance may have been provided, the Commissioner may subsequently require a valuation.

Transactions not falling within any of the above circumstances

13. Where a transaction does not fall within any of the above circumstances, the Commissioner will accept the declared value, provided the declared value of the real property is not low in view of the municipal capital improved value.

Failure to provide valuation

14. Where the Commissioner has required a valuation and it has not been provided, the Commissioner may assess the transfer of the land by way of estimate or using the information he has from any source at the time the assessment is made pursuant to section 11 of the *Taxation Administration Act 1997*.

SECTION 2 – BASIS OF VALUATION

15. The valuation must be from either a certified practising valuer who is a member of the Australian Property Institute or from a member of The Real Estate Institute of Victoria Ltd with sworn valuer accreditation.
16. The valuation must state that, in determining the unencumbered value of the land, the effect on that value of any business conducted from the land has been taken into account.
17. Where the land is subject to a leasehold interest, the valuation must be based on the actual terms of the lease, unless the lease is not at arms length. The valuation must also include the value of any reversionary interest upon the expiration of the lease with the vendor of the land. Where the lease is not at arms length or the land is owner occupied, then the land should be valued on the basis of the land's potential market rental, taking into account any enhancement in value/rental derived from the going concern operations, including turnover rental, permits, etc. associated with the land.
18. Section 22(3) of the Act states that any interest, agreement or arrangement (for example a lease) that has the effect of reducing the value of the land is to be disregarded unless the Commissioner is satisfied

that it was not done for the purpose of reducing the duty payable. In deciding this, the Commissioner may have regard to:

- a. the duration of the interest, agreement or arrangement (for example, a lease entered into within 12 months of sale of land); and
- b. whether the interest, agreement or arrangement is with an associated or related party; and
- c. whether there is any commercial effect of the interest, agreement or arrangement other than reducing duty; and
- d. any other relevant matters.

Valuations by financial institutions

19. The Commissioner will accept a valuation commissioned by or for a financial institution for security purposes provided the valuation is from a certified practising valuer who is a member of the Australian Property Institute or from a member of The Real Estate Institute of Victoria Ltd with sworn valuer accreditation and provided it incorporates the above basis of valuation.

Request for a further valuation

20. Where the taxpayer provides a valuation and the Commissioner considers that the value is understated, the Commissioner may request a further valuation from the taxpayer or refer the matter to the Valuer-General or another competent valuer under section 273 of the Act in order to determine the value of the land.
21. Under section 273(3) of the Act, the taxpayer must pay the cost of a valuation where:
 - a. the valuation of the land exceeds the value provided by the taxpayer by 15 per cent or more and the taxpayer does not object to the assessment of duty based on the valuation; or
 - b. if the taxpayer does object, the valuation as determined on objection, appeal or review exceeds the value provided by the taxpayer by 15 per cent or more.

Please note that rulings do not have the force of law. Each decision made by the State Revenue Office is made on the merits of each individual case having regard to any relevant ruling. All rulings must be read subject to Revenue Ruling GEN.001.