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Public Ruling Duties Act:

ASSESSMENT OF TRANSFER DUTY ON TRANSFERS OF CROWN LEASES THAT CAN BE CONVERTED TO FREEHOLD TITLE

A Public Ruling, when issued, is the published view of the Commissioner of State Revenue (the Commissioner) on the particular topic to which it relates. It therefore replaces and overrides any existing private rulings, memoranda, manuals and advice provided by the Commissioner in respect of the issue(s) it addresses. Where a change in legislation or case law (the law) affects the content of a Public Ruling, the change in the law overrides the Public Ruling—that is, the Commissioner will determine the tax liability or eligibility for a concession, grant or exemption, as the case may be, in accordance with the law.

What this Ruling is about

1. The *Land Act 1994* (the Land Act) provides for the transfer of crown leases in certain circumstances, subject to Ministerial approval.
2. The *Duties Act 2001* (the Duties Act) imposes transfer duty on transfers and agreements for the transfer of dutiable property.¹ A lessee's interest under a crown lease is dutiable property, being an interest in 'land in Queensland'.²
3. Transfer duty is imposed on the dutiable value of the dutiable transaction. The dutiable value of the transfer or agreement for the transfer of a crown lease is the unencumbered value of the dutiable property the subject of the transaction, or the consideration for the dutiable transaction—whichever is the greater.³
4. Section 12 of the Duties Act provides for specific amounts to be included in the consideration for the purposes of identifying the dutiable value of a transaction. In particular it includes within the consideration for the dutiable transaction any liabilities assumed by the purchaser under the transaction.⁴
5. Some crown leases can be converted to a freehold interest, subject to approval by the Chief Executive under that Act and fulfilment of any applicable conditions, including payment for the freehold interest.

¹ Section 9(1)(a) and (b) Duties Act
² Section 10(1)(a) and (2) Duties Act
³ Section 11(7) Duties Act
⁴ Section 12(1) Duties Act

6. Chapter 4, Part 3, Division 3 of the Land Act outlines how particular crown leases may be converted to freehold.
7. Depending on the type of crown lease, payment for conversion to freehold might be required by a single lump sum amount. Alternatively the lessee may be entitled to elect to pay by entering a freeholding lease,⁵ under which the purchase price for the land is paid off over a term through periodic payments.
8. For transfers of crown leases that can be converted to freehold, payments additional to the amount paid by the party receiving the transfer of the lease to the outgoing lessee may form part of the dutiable value of the dutiable transaction arising from the transfer.
9. This Ruling confirms the Commissioner's practice in relation to working out the dutiable value of a transfer or agreement for the transfer of a crown lease that can be converted to freehold.
10. This Ruling does not cover any potential duty consequences of the creation of leases under the Land Act,⁶ or of the ultimate grant of land in fee simple under that Act.⁷

Ruling and explanation

11. For the transfer or agreement for the transfer of a crown lease that can be converted to freehold, other than a freeholding lease⁸, the consideration will include the amount of any liabilities assumed under the transaction, including payment of any amounts payable to obtain freehold title.⁹

Example 1

A is the lessee of a crown lease that can be converted to freehold; for example, a perpetual lease granted under the Land Act. B agrees to take a transfer of the lease on condition that A first applies for and is successful in an application to convert the lease to freehold. B agrees to pay \$150,000 to A, and to pay the amount set by the Chief Executive for conversion to freehold. On A's application, the Chief Executive offers to convert the lease to freehold on the condition of payment of a sum of \$200,000. Both the \$150,000 and the \$200,000 are included in the consideration for the agreement for the transfer the crown lease from A to B. However, future rental payments payable under the perpetual lease at the time of the dutiable transaction, or paid under the perpetual lease between the agreement for the transfer and ultimate conversion to freehold, are not included in the consideration.

12. The consideration for a transfer or agreement for the transfer a freeholding lease will include the amounts payable under the freeholding lease, as being amounts payable to the Crown to obtain freehold title.

Example 2

C agrees to transfer its freeholding lease to D. As part of the agreement, D pays C \$100,000, and assumes responsibility for repayment of the outstanding periodic payments under the freeholding

⁵ See definition of freeholding lease in Schedule 6 of the Land Act; means a pre-Wolfe freeholding lease, a post-Wolfe freeholding lease or a grazing homestead freeholding lease, as further defined in Schedule 6 of that Act.

⁶ See, for example, section 9(1)(f) Duties Act as to the dutiable transaction of the acquisition of a new right; and section 11(4) Duties Act for the dutiable value of the acquisition of a new right that is a lease of land in Queensland. An exemption under section 136(h) of the Duties Act may apply.

⁷ An exemption under section 136(b) of the Duties Act may apply.

⁸ See paragraph 12.

⁹ Section 12(1) Duties Act; *King v Commissioner of Stamp Duties* (1979) Qd R 167

lease, totalling \$200,000. Both amounts are included in the consideration for the agreement for the transfer the freeholding lease from C to D.

Date of effect

13. This Public Ruling takes effect from the date of issue.

David Smith
 Commissioner of State Revenue
 Date of issue: 16 December 2013

References

Public Ruling	Issued	Dates of effect	
		From	To
DA12.2.1	16 December 2013	16 December 2013	23 June 2015
Supersedes Practice Direction DA25.1	1 March 2002	1 March 2002	23 February 2009