
Contents	Page
What this Ruling is about	1
Ruling and explanation	1
Date of effect	2
References	2

Public Ruling Duties Act:

DISTINGUISHING BETWEEN RENT AND PREMIUM

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. Chapter 2 of the Duties Act 2001 (the Duties Act) imposes transfer duty on dutiable transactions.¹ One such dutiable transaction is an acquisition of a new right on its creation, grant or issue.² An acquisition of a new right includes an acquisition of a leasehold interest in land in Queensland.³
2. The dutiable value of a new right that is a lease of land in Queensland includes any premiums, fines or other consideration payable for the grant of the lease.⁴
3. Any amount payable that constitutes rent does not form part of the dutiable value.
4. This Public Ruling provides guidance in determining whether an up-front payment is a premium or rent.

Ruling and explanation

5. To determine whether a sum paid by the lessee to the lessor is a premium or is rent, reference must be made to the instrument as a whole and whether the payment is required as consideration for the granting of the lease, or whether it is a payment for the use and enjoyment of the land by the lessee.⁵

¹ Section 8 of the Duties Act

² Section 9(1)(f) of the Duties Act

³ Definition of new right in Schedule 6 of the Duties Act and s.36 of the *Acts Interpretation Act 1954*

⁴ Section 11(4) of the Duties Act

⁵ *Frazier v Commissioner of Stamp Duties (NSW)* (1986) 17 ATR 64

6. As a matter of practice, a lump sum paid for a lease, where there is no provision in the instrument for rental payments is to be regarded as a premium.
7. The following factors would support a finding that the lump sum payment was for the use and enjoyment by the lessee of the land (i.e. a rental payment):
 - (a) A clause in the lease allowing a refund of a proportion of the money upon the occurrence of certain events such as early termination.
 - (b) A clause allowing abatement in the case that the premises become unfit for occupation and use of the lessee.

Date of effect

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

David Smith
 Commissioner of State Revenue
 Date of Issue 24 February 2009

References

Public Ruling	Issued	Dates of effect	
		From	To
DA011.2.1	24 February 2009	24 February 2009	Current
Supersedes Practice Direction DA 73.1	24 July 2006	24 July 2006	23 February 2009