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Public Ruling Duties Act:

DUTIABLE VALUE OF TRANSFERS OF LAND TO LOCAL GOVERNMENTS

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. In Queensland, local governments are constituted by either the *Local Government Act 2009* (the Local Government Act), or for Brisbane City Council, the *City of Brisbane Act 2010*. They are not the 'state' and are not endowed with the rights and privileges of the Crown in the right of the state. Therefore, the exemptions in sections 145 and 426 of the *Duties Act 2001* (the Duties Act) do not apply to local governments.¹
2. Local governments are bound by the Duties Act and the *Taxation Administration Act 2001* (the Administration Act).
3. All transfers of land and agreements for the transfer of land in Queensland to local governments, whether for public purposes or otherwise, are dutiable transactions under ss.9(1)(a) and (b) and 10(1)(a) of the Duties Act.
4. Transfer duty is imposed on the dutiable value of a dutiable transaction.²
5. The dutiable value of transfers or agreements for the transfer of land in Queensland is the consideration for the dutiable transaction or the unencumbered value of dutiable property the subject of the transaction, whichever is the greater.³

¹ Section 145 of the Duties Act:
Transfer duty is not imposed on a dutiable transaction that is a transfer of land to the State for—
(a) *a public purpose under the Acquisition of Land Act 1967; or*
(b) *a community purpose under the Land Act 1994.*

Section 426 of the Duties Act:
The State is not liable to pay duty unless this Act expressly provides otherwise.

² Section 8(2) of the Duties Act

³ Section 11(7) of the Duties Act

6. For the purpose of deciding whether a person is liable to duty or their liability for duty, section 505 of the Duties Act permits the Commissioner to require production of a valuation or valuation evidence by the taxpayer⁴, obtain a valuation of the property⁵ or rely upon a valuation prepared by a registered valuer or another person the Commissioner is satisfied is properly qualified to provide evidence of value of the property for any purpose, whether or not for determining liability for duty.⁶ The Commissioner may recover the cost of any such valuation from the taxpayer.⁷
7. The Commissioner generally requires evidence of the unencumbered value of dutiable property the subject of a dutiable transaction where the Commissioner considers there to be an indication that the consideration for the transaction may be less than the unencumbered value of the dutiable property. Circumstances that may indicate this include:
 - (a) There is no consideration for the dutiable transaction.⁸
 - (b) The consideration cannot be ascertained when the liability for transfer duty arises.⁹
 - (c) The consideration is a nominal amount—for example, \$1.
 - (d) The method of calculating the consideration has no apparent relationship to the value of the dutiable property.
 - (e) An association or relationship exists between the parties to the transaction, such that they are not necessarily dealing at arm's length.
8. One or more of these circumstances may be identified in relation to transfers or agreements to transfer land to local government.
9. Public Ruling *DA505.1—Residential property transactions: when are valuations required, when are valuation costs to be passed on* outlines the Commissioner's practice in relation to valuations for dutiable transactions involving residential property.
10. This Public Ruling outlines the Commissioner's practice in relation to the evidence the Commissioner may rely on to establish the dutiable value of land transferred to local government in particular situations. In circumstances where both this Ruling and Public Ruling DA505.1 are capable of application, this Ruling applies to the extent of any inconsistency.

⁴ Section 505(1)(a) of the Duties Act

⁵ Sections 505(1)(b) and 505(2)(a) of the Duties Act

⁶ Section 505(1)(c) of the Duties Act

⁷ Section 505(3) of the Duties Act

⁸ Section 11(7)(b)(i) of the Duties Act

⁹ Section 11(7)(b)(ii) of the Duties Act

Ruling and explanation

Transfer of dutiable property of negligible commercial value in connection with a subdivision and/or development project

11. Subject to paragraph 12 below, where land is transferred to a local government for no or nominal consideration according to a plan of subdivision or development project, the Commissioner may rely upon a valuation of the unencumbered value of the land completed by a local government employee¹⁰ in determining the dutiable value of the land.

Example

A development application was approved by a local government. An infrastructure charges notice was given by the local government to the developer under Chapter 8 Part 2 of the *Sustainable Planning Act 2009*. Instead of paying the infrastructure charge, the developer and the local government agree, under section 639 of that Act, to the developer transferring land to the local government subject to a condition that the land must be held on trust in fee simple for public park infrastructure and/or local community facilities. The transfer states the consideration to be \$1. In this instance, the Commissioner accepts a valuation of the land provided by a qualified local government employee that the land has nominal value due to the restriction placed on the land that it must be held on trust for public and/or community purposes.

12. For the Commissioner to consider such a valuation, each of the following conditions must be met:
- (a) The valuation must clearly identify the property being valued by reference to the property's real property description or by sufficiently describing the property so as to identify it as the property that is the subject of the transaction.
 - (b) The valuation must provide a description of the size and shape of the property and a description of improvements on the property.
 - (c) The valuation must not have been made more than three months prior to the date of the execution of the instrument or the date of the transaction that evidences the transfer of the subject property.
 - (d) The valuation must include reasons for the value, and state any conditions or limitations placed upon the valuation. If a nil or nominal value is attributed to conditions upon the use of the land¹¹, the relevant limitations on use and the statutory or other sources of those limitations should be identified.
 - (e) The local government employee's role within the local government should be identified, together with their qualifications to assess the unencumbered value of the property. This may include reference to:
 - (i) any relevant tertiary qualifications or professional registrations or memberships held by the employee providing the valuation
 - (ii) the employee's experience in relevant local government roles

¹⁰ Section 505(1)(c) of the Duties Act

¹¹ For example, parks, access restriction strips, pumping station sites and easements

- (iii) any other relevant professional experience held by the employee.
13. If the Commissioner is not satisfied that discretion should be exercised to rely upon a valuation of the land by a local government employee, the Commissioner may:
- (a) by notice under section 505(1)(a) of the Duties Act, require the lodgement of a valuation by a registered valuer, or other evidence of value the Commissioner considers appropriate or
 - (b) either as an alternative to issuing a notice referred to in section 505(1)(a)¹² or if the Commissioner is not satisfied with the material provided in response to such a notice¹³, have the property valued, recovering the cost of the valuation from the person or persons liable for duty on the transaction.¹⁴
14. If the property involved is residential property, the Commissioner may also accept a valuation meeting the minimum accepted standard of valuation under Public Ruling DA505.1.

Acquisition of land with outstanding rates or charges following failed attempt to sell at auction or to highest bidder following auction

15. Section 140(2) of the Local Government Regulation 2012¹⁵ (Local Government Regulation) and section 132(2) of the City of Brisbane Regulation 2012 (City of Brisbane Regulation) permit a relevant local government to decide by resolution to sell land that is subject to overdue rates or charges in particular circumstances.
16. Where such a resolution is made, the Local Government Regulation and the City of Brisbane Regulation require the following:
- (a) The local government must offer the land for sale by auction.¹⁶
 - (b) The local government must set a reserve price for the auction¹⁷ that is at least:
 - (i) the 'market value' of the land or
 - (ii) the higher of the following:
 - A. the amount of overdue rates or charges on the land
 - B. the 'value' of the land.
 - (c) If the reserve price is not reached at auction, the local government may enter into negotiations with the highest bidder at the auction to sell the land by agreement, for more than the highest bid at the auction.¹⁸

¹² Section 505(1)(b) of the Duties Act

¹³ Section 505(2)(a) of the Duties Act

¹⁴ Section 505(3) of the Duties Act

¹⁵ See previously from 1 July 2010 to 13 December 2012 – Chapter 2 Part 12 Division 3 of the Local Government (Finance Plans and Reporting) Regulation 2010 (repealed) and prior to that section 1046 and Chapter 14 Part 7 Division 4 of the *Local Government Act 1993*.

¹⁶ Section 142(2) Local Government Regulation; section 134(2) City of Brisbane Regulation

¹⁷ Section 143(1) Local Government Regulation; section 135(1) City of Brisbane Regulation

¹⁸ Section 143(2) and (3) Local Government Regulation; section 135(2) and (3) City of Brisbane Regulation

- (d) If the highest bidder does not agree to buy the land for more than the highest bid at the auction, the land is taken to have been sold at the auction to the local government for the reserve price.¹⁹
17. Under the Local Government Regulation and the City of Brisbane Regulation, 'market value' is defined to include a reference to the market value of the land and any improvements on the land.²⁰ Further, the Local Government Regulation and the City of Brisbane Regulation state that a written report from a registered valuer who is not an employee of the local government is evidence of the market value of the land.²¹
18. 'Value' is defined by reference to the *Land Valuation Act 2010*.²²
19. Subject to paragraph 20 below, for the purpose of assessing an acquisition of land by a local government in these circumstances, the Commissioner will be satisfied that the dutiable value of the transaction is the reserve price that was set for the relevant unsuccessful auction.
20. The Commissioner may require confirmation from the local government that the Local Government Regulation or the City of Brisbane Regulation requirements, as applicable, have been met, including provision of a copy of any valuation evidence relied upon by the local government in setting the reserve price.

Acquisition of land with value less than outstanding rates or charges by local government

21. Under section 149(1) of the Local Government Regulation and section 141(1) of the City of Brisbane Regulation, the relevant local government may resolve to acquire land meeting each of the conditions under section 148 of the Local Government Regulation or section 140 of the City of Brisbane Regulation respectively, as follows:
- (a) There are overdue rates or charges on the land in a local government area.
 - (b) The liability to pay the overdue rates or charges is not the subject of court proceedings.
 - (c) Some of the overdue rates or charges have been overdue for at least 3 years.
 - (d) The person who is liable to pay the overdue rates or charges has an interest in the land that a corporation is not prohibited from holding (for example, a life interest in land).
 - (e) Either of the following applies:
 - (i) The total amount of the overdue rates or charges is more than the value²³ of the land, and the land is considered to be:
 - A. valueless or
 - B. of so little value that, if it were sold, the proceeds of the sale would be less than the amount of the overdue rates or charges.²⁴

¹⁹ Section 143(4) Local Government Regulation; section 135(4) City of Brisbane Regulation

²⁰ Section 137(1) Local Government Regulation; section 129(1) City of Brisbane Regulation

²¹ Section 137(2) Local Government Regulation; section 129(2) City of Brisbane Regulation

²² Section 72 Local Government Regulation; section 65 City of Brisbane Regulation

²³ Defined in section 72 of the Local Government Regulation 2012 and section 65 of the City of Brisbane Regulation by reference to the value of the land under the *Land Valuation Act 2010*

- (ii) The total amount of the overdue rates or charges is more than the market value of the land.²⁵
22. Under the Local Government Regulation, 'market value' is defined to include a reference to the market value of the land and any improvements on the land.²⁶ Further, the Local Government Regulation states that a written report from a registered valuer who is not an employee of the local government is evidence of the market value of the land.²⁷
23. 'Value' is defined by reference to the *Land Valuation Act 2010*.²⁸
24. Subject to paragraph 25 below, for the purpose of assessing an acquisition of land by a local government in these circumstances, the Commissioner will be satisfied that:
- (a) the dutiable value of a transaction for which the local government relies upon section 148(e)(i) of the Local Government Regulation, such that paragraph 21(e)(i) above applies, is the value of the land under the *Land Valuation Act 2010* at the time of the acquisition and
 - (b) the dutiable value of a transaction for which the local government relies upon section 148(e)(ii) of the Local Government Regulation, such that paragraph 21(e)(ii) above applies, is the market value of the land at the time of the acquisition.
25. The Commissioner may accept the following evidence of value or marketable value as applicable, for the purposes of paragraph 24 above:
- (a) a valuation of the land completed by a local government employee, subject to the conditions in paragraphs 11 and 12 of this Ruling
 - (b) if the property involved is residential property, a valuation meeting the minimum accepted standard of valuation under Public Ruling DA505.1.

Date of effect

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

Elizabeth Goli
Commissioner of State Revenue
Date of issue: 29 March 2016

²⁴ Section 148(e)(i) Local Government Regulation; section 140(e)(i) City of Brisbane Regulation

²⁵ Section 148(e)(ii) Local Government Regulation; section 140(e)(ii) City of Brisbane Regulation

²⁶ Section 137(1) Local Government Regulation; section 129(1) City of Brisbane Regulation

²⁷ Section 137(2) Local Government Regulation; section 129(2) City of Brisbane Regulation

²⁸ Section 72 Local Government Regulation; section 65 City of Brisbane Regulation

References

Public Ruling	Issued	Dates of effect	
		From	To
DA505.2.2	29 March 2016	29 March 2016	Current
DA505.2.1	21 November 2013	21 November 2013	28 March 2016
Supersedes Practice Direction DA 27.1	1 March 2002	1 March 2002	23 February 2009