



## COMMISSIONER'S PRACTICE DA 22.2

### DUTIES - EASEMENTS

Under the *Duties Act 2008* ('Duties Act'), the acquisition of new dutiable property and the surrender of special dutiable property are dutiable transactions. However, the Duties Act provides that certain transactions are not dutiable transactions, including certain prescribed transactions.<sup>1</sup>

Foreign transfer duty does not apply to transactions relating to a grant or surrender of an easement.<sup>2</sup>

This Commissioner's practice provides clarification on the method of assessment of duty in respect of the creation, grant or surrender of an easement.

#### Background

##### ***Creation or grant of an easement***

The creation or grant of an easement is a dutiable transaction under section 11(1)(f) of the Duties Act as an acquisition of new dutiable property. Schedule 1 to the Duties Act provides that the person liable to pay transfer duty is the person that acquires the new dutiable property, for instance the grantee.

##### ***Surrender of an easement***

The surrender of an easement is a dutiable transaction under section 11(1)(g) of the Duties Act as a surrender of special dutiable property.<sup>3</sup> Schedule 1 to the Duties Act provides that the person liable to pay transfer duty is the person to whom the interest is surrendered.

##### ***Valuations***

Section 22 of the *Taxation Administration Act 2003* provides that the Commissioner may have a valuation made of any property, consideration or benefit or adopt any available valuation of the property, consideration or benefit that the Commissioner considers appropriate. Refer to Commissioner's practices on valuations for further information.

##### ***Certain transactions over easements prescribed as not dutiable***<sup>4</sup>

Regulation 4(1)(e) of the *Duties Regulations 2008* prescribes a transaction that is a creation of an easement under the Part IVA of the *Transfer of Land Act 1893* ('TLA')<sup>5</sup> as an excluded transaction for the purposes of section 11(2)(e) of the Duties Act.

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<sup>1</sup> Non-dutiable transactions are defined in the Duties Act s11(2).

<sup>2</sup> Easements are excluded residential property under section 205Y of the *Duties Act 2008*. A Foreign Transfer Duty Declaration Form is not required to be presented with the transaction record for assessment.

<sup>3</sup> An easement is identified as *special dutiable property* under section 18 of the Duties Act.

<sup>4</sup> Duties Regulations 4(1)(e) and 4(1)(f) were inserted on 20 September 2013 and take effect from 1 July 2008.

<sup>5</sup> Section 136C of the TLA provides that an easement may be created by notation on a subdivision plan if, under subsection (2), the land to be burdened by the easement is a subject of the plan.

Duties Regulation 4(1)(f) provides that the following surrenders of an easement are excluded transactions for the purposes of section 11(2)(e) of the Duties Act:

- the surrender of an easement pursuant to an order of the Supreme Court under section 129C(1)(a) of the TLA; or
- the surrender of an easement pursuant to section 229A(2) of the TLA if the Commissioner of Titles is satisfied that the easement has not been used or enjoyed for a period of not less than 20 years and makes an order directing the removal of the entry or statement of the easement.

### **Commissioner's Practice**

#### ***Grant or surrender of an easement for consideration (other than nominal consideration) between arm's length parties***

1. Where consideration is paid or agreed to be paid for the grant or surrender of an easement and the transaction is between arm's length parties, the consideration will generally be accepted as representing the dutiable value.

#### ***Certain grants or surrenders of easements for no consideration or nominal consideration***

2. Where one of the parties to the transaction is a government authority or provider of utility services (for example, water, power or gas) and no consideration is paid or agreed to be paid for the grant or surrender of the easement, the Commissioner will accept that the easement has no value and no duty is payable.

3. Where the grant or surrender of an easement is between parties at arm's length and either:

- 3.1 no consideration is paid or agreed to be paid, and evidence is provided that the fair market value for the grant or surrender of the easement is nil; or

- 3.2 nominal consideration is paid or agreed to be paid, and evidence is provided that the consideration represents the fair market value for the grant or surrender of the easement,

the Commissioner will generally accept that the transaction has no dutiable value or that the agreed consideration represents the fair market value, as the case may be.

4. Evidence to support the proposed dutiable value as representing fair market value may include:

- 4.1 copies of any independent valuations or appraisals that have been obtained in support of the stated consideration; or

- 4.2 a written statement from the taxpayer or their agent confirming that the agreed consideration was negotiated at arm's length and represents the fair market value.

#### ***Endorsement of easements where no consideration is paid***

5. For the purposes of paragraphs 2 to 4, where a transaction relating to an easement is considered to have no value and is therefore not subject to duty, the instrument(s) will be date stamped and the words 'no duty payable' written within the date stamp.

### **Valuation of easements**

6. Regardless of whether the taxpayer or their agent has provided a written statement confirming that the consideration was negotiated at arm's length and represents the fair market value, the Commissioner may refer a matter to the Valuer General for valuation. This may include circumstances such as the grant or surrender of an easement over a mining tenement or an easement concerning a railway or pipeline.
7. Where a transaction relating to the grant or surrender of an easement is between parties who are not at arm's length, irrespective of whether consideration is paid or agreed to be paid or not, form FDA29 '[Duties Valuation - Easements](#)' must be completed and the easement will be referred to the Valuer General for valuation.

Copies of relevant forms and publications are available on the State Revenue website at [www.osr.wa.gov.au](http://www.osr.wa.gov.au).

### **Date of Effect**

This Commissioner's practice takes effect from 1 January 2019.

Nicki Suchenia  
COMMISSIONER OF STATE REVENUE  
1 January 2019

### **Commissioner's Practice History**

<b>Commissioner's Practice</b>	<b>Issued</b>	<b>Dates of effect</b>	
		<b>From</b>	<b>To</b>
DA 22.0	22 May 2009	22 May 2009	14 November 2013
DA 22.1	15 November 2013	15 November 2013	31 December 2018
DA 22.2	1 January 2019	1 January 2019	Current