



Option Agreements

This Commissioner's practice explains how the Commissioner will assess option agreements relating to dutiable property, assignments of options and the transfer, or agreement for the transfer, of dutiable property resulting from the exercise of the option.

Background

Under an option agreement, a party acquires a right, exercisable on or before a specified time, to buy or sell property at a given price.

Section 11(1) of the *Duties Act 2008* (Duties Act) defines a dutiable transaction to include:

- an acquisition of new dutiable property on its creation, grant or issue and
- a transfer, or an agreement for the transfer, of dutiable property.

Section 17 of the Duties Act provides that certain rights are new dutiable property, including an option to acquire dutiable property, unless the option is part of a simultaneous put and call option.

Under section 27 of the Duties Act, the dutiable value of a dutiable transaction is:

- the consideration for the transaction or
- the unencumbered value of the dutiable property if –
 - there is no consideration or
 - the consideration is unascertainable or
 - the value is greater than the consideration.

However, section 11(2) of the Duties Act provides the acquisition of a right is not a dutiable transaction if no consideration is paid or agreed to be paid for it.

Section 35 of the Duties Act applies where duty has been paid on the grant or renewal of an option, and the option fee will form part of the consideration for the transaction if the option is exercised. The duty payable upon the exercise of the option is reduced by the duty paid on the grant or renewal of the option.

Commissioner's practice

1. An agreement granting an option to purchase dutiable property will be assessed with transfer duty on the consideration paid. If no consideration is paid or payable for the option right, the agreement will not be subject to transfer duty.
2. When the holder of an existing option right assigns that right, the assignment will be assessed with transfer duty on the consideration paid by the assignee, or the value of the right, whichever is greater.
3. When the holder of an option right exercises the option, the transfer of, or an agreement for the transfer of, the dutiable property the subject of the option comes into existence. The transfer or agreement will be assessed with transfer duty on the consideration paid, or the value of the dutiable property as at the exercise date, whichever is greater. A credit may be given for the duty paid on the grant or renewal of the option.

4. If the Commissioner considers the unencumbered value of the option property as at the date of the transfer, or agreement for transfer, may exceed the consideration for the transaction, a valuation of the property will be required.
5. A valuation will always be required if an option relating to residential, commercial or farming land is exercised more than three months after it is granted.

Date of effect

This Commissioner's Practice takes effect from 14 August 2023.

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COMMISSIONER OF STATE REVENUE

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