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 to buy or sell property at a given price. The right must be exercisable on or before a specified time.

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 11(2) of the Duties Act provides the acquisition of a right is not a dutiable transaction if there is not, and will not be, any consideration for the transaction.

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.

Section 28(4) of the Duties Act provides that the dutiable value of the grant of a lease (other than a pastoral lease or diversification lease) is the total of:

- the consideration for the grant of the lease and
- any amount paid or payable under the lease as rent that —
    - is in excess of a fair market rent for the leased property and
    - represents an amount paid or payable for the grant of the lease.

Under section 35 of the Duties Act, if the fee for an option forms part of the consideration for the transaction when the option is exercised, the duty payable on the exercise of the option is reduced by any duty already paid on the grant or renewal of the option.

Commissioner’s practice

1. The grant of an option to acquire dutiable property is not subject to transfer duty if there is no consideration for the option right.

2. The grant of an option to acquire dutiable property will be assessed with transfer duty on the consideration if the exercise of the option would result in the property being transferred to the option holder.

3. The assignment of an option right will be assessed with transfer duty on the greater of the consideration paid for the assignment or the value of the right.

4. When an option right is exercised the transfer, or agreement for transfer, the dutiable property the subject of the option comes into existence. The transfer or agreement will be assessed for duty on the greater of the consideration paid or the unencumbered value of the option property as at the exercise date. A credit may be given for the duty paid on the grant or renewal of the option.

5. A valuation will be required if:

   5.1 the Commissioner considers the unencumbered value of the option property at the date of transfer, or agreement for transfer, may exceed the consideration for the transaction or

   5.2 an option relating to residential, commercial or farming land is exercised more than three months after it is granted.

Options relating to leases

6. An option to be granted a lease, or an assignment of an option to be granted a lease, is not dutiable because the property to which the right relates does not exist until the option is exercised. There is no requirement to lodge documents evidencing the option for assessment.

7. If the option is exercised, the grant of the lease:

   7.1 is dutiable if there is consideration for the grant, or the amount payable under the lease exceeds the fair market rent for the leased property.

   7.2 is dutiable if any part of the amount payable on grant of the option is consideration for grant of the lease.

   7.3 is not dutiable if there is no consideration for the grant and the payment of rent does not exceed fair market rent, even though there may have been consideration for the grant of the option.

8. The Commissioner will generally accept that a rental amount negotiated between unrelated parties acting at arm’s length will be fair market rent for leased property.

Example 1: No consideration for the grant of a lease

Green Farm Co is a renewable energy company conducting due diligence investigations on farming land to determine if the land is suitable for its windfarm operations. Before entering into a formal lease, Green Farm Co enters into an option agreement with the owner of the land (grantor) for the right to be granted a lease over the land subject to payment of an annual option fee of $50,000 during the 5-year option period.

On the date the option period concludes, Green Farm Co exercises the option and the grantor grants a lease over the land that was subject to the option agreement. Green Farm Co is not required to pay consideration for the grant of the lease. They are required to make ongoing fair market rent payments under the lease.

Duty is not chargeable on the grant of the lease as no consideration was paid for it.

Example 2: Consideration (premium) for the grant of a lease

Green Farm Co's option agreement requires payment of an annual option fee of $50,000 during the 5-year option period and payment of $10,000 on exercise of the option for the grant of the lease.

On the date the option period concludes, Green Farm Co exercises the option and the grantor grants a lease over the land that was subject to the option agreement. Green Farm Co pays $10,000 to the grantor for the grant of the lease.

Duty is not chargeable on the option to grant the lease, however, the grant of the lease is liable to duty calculated on the dutiable value of $10,000. This represents the sum of the consideration for the grant of the lease ($10,000) and any amount in excess of fair market value rent payable for the leased property ($0).

The consideration for the option to grant a lease (option fees) does not form part of the consideration for the grant of the lease.

Example 3: Consideration (option fees) for the grant of a lease

Green Farm Co's option agreement requires payment of an annual option fee of $50,000 during the 5-year option period. It provides that $250,000 is payable for the grant of the lease if the option is exercised and the option fees paid during the term of the option agreement will be deducted from the amount payable for the grant of the lease on exercise of the option.

After two years Green Farm Co exercises the option and pays $150,000. The grantor grants a lease over the land that was covered by the option agreement.

Duty is not chargeable on the option to grant the lease, however, the grant of the lease is liable to duty calculated on the dutiable value of $250,000 which is the consideration for the grant of the lease ($100,000 in option fees and $150,000 paid on exercise of the option) and the amount of rent paid in excess of fair market rent for the leased property ($0).

The option fees are included as consideration because the option agreement provides that they form part of the consideration if the option is exercised.

Date of effect

This Commissioner's Practice takes effect from 2 July 2026.

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COMMISSIONER OF STATE REVENUE

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Document history

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