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Leasing Arrangements – Can they be subject to duty?

The application of the lease provisions under the *Duties Act 2000*

A recent Ruling issued by the Commissioner of State Revenue has provided guidance on the operation of the lease provisions, sections 7(1)(b)(v) and (va) (**lease provisions**) of the *Duties Act 2000 (Act)*. Ruling DA.052 outlines factors which the Commissioner will take into account in determining whether duty will be payable in respect of a lease.

The lease provisions render duty payable on a leasing arrangement (including a grant, transfer, assignment or surrender of a lease) if consideration is paid and the arrangement has the effect of transferring valuable rights or economic benefits in the property. For example, there will be a dutiable transaction in a situation where a lease arrangement transfers rights similar to a sale of property. This may occur where there is a grant of a long term lease in consideration for a premium payment in the vicinity of the market value of the property, and the rent specified is nominal, or the grant of a concurrent lease where the consideration paid reflects the net present value of income from the property. Other leasing

arrangements such as the right to purchase, options to purchase and the right of first refusal are also caught by the lease provisions.

The lease provisions apply to land used for both commercial and residential purposes where consideration is paid. They do not apply to ordinary leases which only require the payment of rent, or a transfer of lease as part of a sale of business.

Importantly, the Commissioner will have regard to the following circumstances in deciding whether a lease arrangement is dutiable:

- the transaction as a whole;
- nature and value of rights and benefits acquired;
- quantum of consideration paid;
- quantum of rent payable under the lease (and whether it is at a market rate); and
- term of the lease and ability to extend possession.

It should be noted that there are also exemptions from the application of the lease provisions, including residency rights in a retirement



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village, options in a lease granted before 21 November 2008, existing exemptions and concessions applicable to dutiable transactions, caravans and where duty has already been paid in respect of a lease.

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