



Option Agreements

This Commissioner's practice explains the method of assessment of 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

An option agreement is an agreement under which 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.

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 over dutiable property.

However, section 11(2) of the Duties Act states that a transaction the subject of which is a right is not a dutiable transaction if no consideration is paid or agreed to be paid for the transaction.

Section 11(1) of the Duties Act also defines a dutiable transaction to include a transfer, or an agreement for the transfer, of dutiable property.

Section 27 of the Duties Act provides that the dutiable value of a dutiable transaction is the consideration for the dutiable 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 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. Where there is no consideration paid or payable for the granting of the option right, the agreement will not be subject to transfer duty.
2. Where 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 the greater.
3. Where the holder of an option right exercises the option, an agreement for the transfer of the dutiable property the subject of the option comes into existence. The option may also be exercised by the execution of a transfer. The transfer, or agreement for transfer, will be assessed with transfer duty on the consideration paid, or the value of the dutiable property as at the exercise date, whichever is the greater. A credit may be given for the duty paid on the grant or renewal of the option, pursuant to section 35 of the Duties Act.

4. Where the Commissioner considers that 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. In all cases where a period of more than three months has elapsed between the date of entering into an option agreement, and the date of exercise of that option, a valuation will be required.

Date of Effect

This Commissioner's Practice takes effect from 1 July 2008.

Bill Sullivan
 COMMISSIONER OF STATE REVENUE

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Document History

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