

AUSTRALIAN CAPITAL TERRITORY

TAXATION (ADMINISTRATION) ACT 1987

STAMP DUTIES (INTERESTS IN LAND)

INSTRUMENT NO. 227 OF 1998

EXPLANATORY STATEMENT

The *Taxation (Administration) Act 1987* deals with the administration of various tax laws relating to the imposition and collection of certain taxes, duties and fees. These tax laws are specified in section 3 of the Act. Section 99 empowers the Minister to determine these taxes, duties and fees.

2. One of the specified tax laws is the *Stamp Duties and Taxes Act 1987* (the Act), Part III of which deals with interests in land.
3. This determination revokes Determination No 38 of 1997 which was notified in ACT Special Gazette No S40 of 12 February 1997.
4. This determination also sets the rate of stamp duty payable upon the transfer or agreement for transfer of an estate in fee simple, a Crown lease, a transfer or agreement for the transfer of a Crown lease, a lease (not being a Crown lease or for residential purposes), and a transfer, or assignment or an agreement for a transfer or assignment of a lease (not being a Crown lease). The rates set by the revoked instrument (Determination No. 38 of 1997) are not amended by this determination.
5. Paragraph 3 of the revoked determination established the basis for valuing a Crown lease for the purpose of the payment of stamp duty and provided that:

“the value of the interest granted or transferred by a Crown lease, a transfer of a Crown lease or an agreement for a transfer of a Crown lease, as the case may be, is the greater of the consideration given or agreed to be given or the capital sum that might be expected to have been offered for the Crown lease subject to the terms and conditions upon which it is held, it being deemed that

- a) the rent payable under the Crown lease is a nominal rent; and
- b) the lessee is not obliged by any provision of the Crown lease to carry out or cause to be carried out capital works whether on land, the subject of the Crown lease, or elsewhere.”.

6. These words were intended to establish the market value of the property, or if a greater price was paid, that value, on a particular day having regard only to the terms and conditions of the Crown lease. However, in a recent Administrative Appeals Tribunal case it was suggested that in determining the market value of the lease regard could be had to factors such as the lease being transferred subject to a mortgage and without vacant possession.

7. Deletion of the words 'upon which it is held' and substitution of the words 'of the lease' in sub-paragraph (b) and the addition of sub-paragraphs (iii) and (iv) in paragraph 3 of the new determination, make it clear that any mortgages or other affecting interests on the lease or the absence of vacant possession, should not be taken into account when establishing the value of the interest for a Crown lease for stamp duty purposes.

8. Similar changes to those outlined in Paragraph 3 have been made to Paragraph 4, to ensure the basis for valuing the interest for a lease of land, not being for residential purposes, and a transfer or assignment, or an agreement for a transfer or assignment, of a lease of land is similarly clarified for stamp duty purposes.

9. The use of the words "...the aggregate of the consideration given ..." in Paragraphs 3, 4 and new Paragraph 5 is to make it clear that the sum total of the consideration given and the consideration agreed to be given is required to be taken into account in establishing the value of the interest in the land for stamp duty purposes, where this method of calculation is used.

10. Paragraph 5 inserts the method for establishing the value of the interest for a transfer, or an agreement for a transfer, of an estate in fee simple.

11. Paragraph 8 replaces paragraphs 7 and 8 of the revoked determination which set out the methods to be used in determining the stamp duty payable on a lease of land not being for residential purposes. Those methods have remained unchanged; paragraph 8 merely sets out those methods more clearly.

12. Paragraph 9 provides the advice that this determination does not set the rate of stamp duty payable under section 17(1)(ca) of the Act which, at the time this determination was prepared, is set under Determination No. 2 of 1988 - Stamp Duty (Surrender and Regrant) Determination.

13. Other changes in the new determination include replacing some of the headings used in the revoked determination with references to the relevant provisions of the Act and, more importantly, expressing the provisions of the determination in clear and unambiguous language.

Circulated by the authority of the Chief Minister.