

Duties (Commercial Lease with Premium) Determination 2014 (No 1)

Disallowable instrument DI2014-49

made under the

Duties Act 1999, s 6A (Meaning of commercial lease with premium)

EXPLANATORY STATEMENT

1. This instrument is the *Duties (Commercial Lease with Premium) Determination 2014 (No 1)*.
2. This instrument commences the day after notification.
3. The *Duties (Commercial Leases) Amendment Bill 2014* (the Bill) abolished duty on long-term leases (leases that have a term of 30 years or greater), and established provisions to impose duty on commercial leases where a premium is paid for the grant of the lease. These changes were necessary as the long-term lease provisions which imposed duty on a commercial lease with a term of 30 years or greater did not work effectively as an anti-avoidance mechanism, resulting in negative impacts on commercial leasing arrangements in the Territory.
4. The amendments made by the Bill provide longstanding businesses in the ACT a greater level of certainty with regards to their taxation liability in their leasing arrangements. This certainty is achieved by no longer charging duty once a lease period is 30 years or greater, which removes a potential large taxation burden that is commonly passed onto the lessee once the lease has reached the 30 year period. This large taxation liability can create an environment where legitimate commercial arrangements may have to relocate before their lease reaches a 30 year period to remain sustainable.
5. Imposing duty upon the premium paid on the grant of a lease provides an effective anti-avoidance measure, which is fairer and also easier for potential taxpayers to understand. Previous provisions had complex issues that left taxpayers uncertain in their taxation liability.
6. This disallowable instrument determines the premium value at which a commercial lease with a premium becomes liable for duty. By determining the threshold value via disallowable instrument, the determined value can be adjusted (if required) to reflect changes in market trends.

7. The premium threshold amount has been determined as the consideration paid that exceeds 25 per cent above market rent over the term of the lease. This is considered an acceptable value where market competition could no longer be factored into the premium paid. Payment of a high value premium for a commercial lease provides a strong indication of a de facto land transfer.

Authorised by Kim Salisbury
Commissioner for ACT Revenue