



EX GRATIA PAYMENTS IN LIEU OF LAND TAX

POLICY AND PROCEDURES

16 October 2002

PHASE 1 AIRPORTS

INTRODUCTION

The purpose of this document is to set out in detail the Commonwealth Government's policy requiring airport lessees to make ex gratia payments in lieu of land tax, and to fully describe the procedures to be followed in assessing the amounts to be paid and in making the payments.

While the obligation for airport lessees to make these payments arose on the signing of Airport Leases in 1997, some confusion has been apparent with some airport lessees. This confusion has probably been compounded by the absence of published guidelines and procedures.

In preparing this document, all previously available information and advice has been reviewed, and discussions have been held with selected airports and valuation authorities. It is anticipated that this document now sets out the procedures to be followed in a sufficiently clear and complete process so that all confusion and uncertainty should be removed. Where appropriate, previously published information has been cross-referenced in this document.

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1 LEGAL BASIS FOR EX GRATIA PAYMENTS

There are no Statutes or Regulations governing ex gratia payments in lieu of land tax to be made to the Commonwealth. The requirement is completely contractual as detailed in the Airport Leases.

Brisbane, Melbourne and Perth airports signed the same lease in which the relevant clause was 24.2(b). The clause is quoted below.

“24.2(b) Where land tax is not payable under sub-clause 24.1 because the Airport Site is owned by the Commonwealth, payments in lieu of land tax must be made by the Lessee in respect of those parts of the Airport Site:

- (i) sub-leased to tenants; or
- (ii) on which trading or financial operations are undertaken including, but not limited to, retail outlets and concessions, car parks and valet car parks, golf courses and turf farms, but excluding runways, taxiways, aprons, roads, vacant land, buffer zones and grass verges, and land identified in the airport Master Plan for these purposes,

unless these areas are occupied by the Commonwealth or an authority constituted under Commonwealth law which is excluded from making payments by Commonwealth policy or law. Unless otherwise directed by the Lessor, the Lessee will make payments promptly in lieu of land tax at the relevant State rate to the Commonwealth addressed as provided for in sub-clause 22.1.”

2 PRINCIPLES GOVERNING EX GRATIA PAYMENTS

2.1 The purpose of the ex gratia payments

Ex gratia payments in lieu of land tax were introduced to ensure that, after ‘privatisation’, competitive neutrality was maintained between commercial activities carried out on an airport and the same activities carried out off an airport.

In support of competitive neutrality, it is the Government’s intention that ‘on-airport’ contestable businesses should be subject to the same rates and taxes as businesses off-airport. This policy was confirmed in a Ministerial letter, where Minister Anderson stated ‘Pursuant to the Airport Leases, the amount of the ex gratia payment to the Commonwealth is equivalent to the amount which would

otherwise have been payable in respect of those parts of an airport site that are subleased to tenants or on which trading or financial operations are undertaken. These Airport Lease provisions reflect the application of the Competitive Principles Agreement with the States and broader principles of competitive neutrality. (Under those principles, State taxes and charges that apply in general in the relevant State jurisdiction would apply in Commonwealth places).

2.2 The exclusion of airside activities from ex gratia payments

Land dedicated to airside activities has been excluded from valuation for the purpose of calculating ex gratia payments to be made in lieu of land tax as stated in the Airport Lease.

'Runways, taxiways, aprons, roads, vacant land, buffer zones and grass verges and land identified in the Master Plan for these purposes' have been excluded from the requirement under the Airport Lease to make ex gratia payments in lieu of land tax for airport sites for two reasons. First, they have been excluded because they are involved in natural monopoly activities relating to the movement of aircraft and passengers, which do not compete with off-airport activities. Second, the Government sought to maintain the viability and continued operation of airports on inner city sites by excluding from land tax consideration large parcels of land which are essential to the continued operation of the airports but not commercially available for alternative uses.

2.3 Rate-equivalent and land tax-equivalent payments

There is no relationship between rate-equivalent and land tax-equivalent payments.

The only connection between these provisions was to provide guidance to Airport Lessees to limit what airport land was to be valued for land tax-equivalent purposes and how it was to be valued. The intention was to guide airport lessees to the approach of valuing commercial areas on a site by site basis, and not to require them to follow the current practice of the local council where it differs from this approach.

2.4 Defining the Valuation Methodology

Valuations for land tax-equivalent payments are to be carried out on a site by site basis in areas/precincts of the airport defined as taxable in the Airport Lease, and then each site is to be separately assessed for the amount of land tax-equivalent payable.

The Department's expectation has always been that valuations for land tax-equivalent payments were to be carried out on a site by site basis of the area of the airport defined as taxable in the Airport Lease. Correspondence to individual

airports confirms the Department's preference for a valuation that identifies separately all sites subject to land tax-equivalent, the tenant or the activity on each site and each area's individual value. In this context, the term 'site' is defined in clause 3.2.1 below.

It is now confirmed that the relevant State rates, including threshold exemption levels, are to be applied to the valuation derived on the individual sites, and the individual tax payments so derived are to be totalled to determine an airport's land tax-equivalent liability.

This methodology provides the desired result in terms of competitive neutrality, and protects airports from excessive tax on aeronautically affected areas. Although the Government has allowed airports to select their own valuers, it is important that those valuers fully understand the purpose of the ex gratia payment and follow this valuation methodology. If there is any doubt, a valuer should be guided by State practice and property revenue returns.

2.5 The Extent of the Application of States' Land Tax Provisions

The only aspect of State land tax legislation and regulations to apply to the determination of ex gratia payments in lieu of land tax is the State's rate of land tax to be applied.

Once an airport lessee has determined a correct valuation for an individual or multiple use site it then applies the 'the relevant State rate' to the valuation. The resulting figures are then aggregated to arrive at the amount to be paid for land tax-equivalent purposes. The relevant State land tax rate will probably be specified in State regulations as X cents per hundred or thousand dollars of land value, and probably will have a variable or sliding scale rate which will vary with the size of the valuation. In most States this sliding scale will have a zero rate below a certain threshold value or a discount percentage and this can be considered to be part of the 'relevant State rate'. No other aspect of State legislation or regulation is applicable to this payment. Specifically, the only exemptions from this land tax rate are those laid out in the wording of the Airport Lease. Valuation methodologies and dates as well as payment dates are as determined by the Commonwealth.

2.6 Information Required to be Provided in Assessments

Sufficient information is to be supplied with the annual assessment to enable the assessment process to be confirmed without further requests for information.

Assessment documentation is to include the following details:

- Sufficient detail of the valuation process to show that the individual area/precinct methodology specified in 2.4 above has been used. It is expected that this will include a list of all tenanted and/or commercial sites with the name of each tenant or purpose of use, the area of each site and the value attributed to it;
- Sufficient detail of any exemptions or deductions taken off the assessed value by either the airport or the valuer, to enable the Department to confirm the validity of such exemptions or deductions. This should include details of calculation of apportionment where this has occurred; and
- A copy of the relevant State's schedule of land tax charge rates, including threshold levels and rebate conditions.

3 PROCEDURES TO APPLY TO EX GRATIA PAYMENTS

3.1 Application of procedures now documented

3.1.1 Commencement of Procedures

The procedures now documented will be applied to payments due in respect of the year ended 30 June 2003. This will require a valuation to be carried out at 30 June 2002 using the specified methodology. An assessment will then be required by the Department by 30 November 2002. The assessment will set out in full detail the manner in which the land valuation was prepared, including for each area the tenant's name or activity conducted, the valuation rate applied, the unimproved value and reason for any exemption claimed, as well as the current rate schedule. The assessment will also show how the ex gratia payment has been calculated by application of the current State rate to the value of each assessable airport site, less any **threshold** exemption allowed under current State land-tax regulations.

Ex gratia payments calculated in accordance with this assessment must be paid by 30 November 2002 also.

3.1.2 Future Period Procedures

For the year ended 30 June 2004 and beyond, the assessment and payment of land tax-equivalent will be completed by 31 August and 30 September, respectively, of that current financial year. A new valuation will be necessary at the latest by 30 June 2005 in accordance with the Airport Lease. For the intervening financial years ending 30 June 2004 and 2005 the valuation prepared at 30 June 2002 can be used to calculate payments, subject to adjustment for changes in assessable area or the State rate. If a new valuation is prepared earlier it must be used for the next applicable financial year, with the three-year rule starting again.

You may make your payments using Electronic Funds Transfer. Separate advice will be sent to you regarding details on how to make payments to the Department in this way.

3.1.3 Policy and Procedure Review

The Department will review this process during the 2007/08 financial year.

3.1.4 Compliance Review

In consultation with the airports, the Department intends to undertake a detailed review of the methodology used, the assessment prepared and the payment made by each airport for the year ending 30 June 2003 to ensure compliance with, and comprehension of, these policies and procedures.

3.2 Valuations

3.2.1 Methodology

Individual Sites

Valuation of land is to be carried out on a site by site basis for all sites on an airport which are subleased to tenants or on which trading or financial operations are undertaken. For this purpose a site is defined as an individually identifiable lot or parcel of land on which a single tenant or commercial building is deriving a commercial level of revenue for the airport. Individual site valuations are to be prepared by reference to land supporting similar and appropriate activities off-airport and which give rise to different rates per square metre because of the different activities carried out on them. Under this method, an airport would be expected to value a pay carpark site by reference to, say, a CBD comparator, if that is the highest and best use value for that land.

Multiple Use Sites

Sites supporting multiple use buildings, for example terminals and office blocks, will be valued as an individual site, at the highest and best use for the commercial activities carried out on the site, determined by reference to off-airport comparators. Any apportionment for activities not subject to ex gratia payments will be made after calculation of the ex gratia payment (see Clause 3.3.2).

Marginally Commercial Land

Sites that are restricted for use by aviation requirements, and can only be used for low revenue purposes such as agistment or a golf course, should have that restriction reflected in its value, as this is probably the highest and best use. Such sites may possibly be entitled to exemption from the payment process (see 3.2.2).

En-globo valuations of the whole airport or an assumed or estimated portion deemed to be used or available for commercial use is not acceptable. Streets, footpaths, landscaped areas and the like are not subject to valuation, as it is assumed this level of development is built into property values in that area. Valuations must show enough detail to support the assessment requirements detailed in 3.1.1.

3.2.2 Exemptions

The only exemptions from the total airport land to be valued and rated for ex gratia payments are those specified in the Airport Lease, that is, 'runways, taxiways, aprons, roads, vacant land, buffer zones and grass verges, and land identified in the Master Plan for these purposes.'

Where exempt land of this nature is leased to tenants or used for trading or financial operations (for example agistment, golf course etc) it must be included in the valuation for the making of ex gratia payments. However, where it is obvious that such activity is not commercial due to the impact of aviation-related activity (eg where the revenue received is less than \$1,000 per hectare per annum) the site need not be valued for the making of ex gratia payments. Full details of proposals to exclude such areas, including the basis for the exclusion decision, must be provided with the assessment for 2003 for the Department's approval. In subsequent years, significant changes to the nature of use or rental received for such sites must be referred to the Department for reassessment of this decision. Any new sites proposed to be treated in this manner in future years must similarly be brought to the Department for approval.

Sites which might be zoned commercial under the master plan but which have not yet been developed for such use, or are being developed but have not yet been leased or used for commercial purposes may be considered exempt from valuation for ex gratia payments in lieu of land tax in terms of the Lease until it first becomes available for commercial use. As well, parts of the airport site in respect of which ex gratia payments are liable, but are 'occupied by the Commonwealth or an authority constituted under Commonwealth law which is excluded from making payments by Commonwealth policy or law', are exempt from being included in the calculation of ex gratia payments. This exemption may apply to such groups as Commonwealth Government agencies and authorities (eg Dept of Transport and Regional Services, Customs, AQIS, CASA, Airservices Australia, Aust Protective Service).

There are no other exemptions. Specifically, there are no exemptions for casually vacant commercial land, land occupied by charities and sporting bodies, for land occupied by parties exempted under State regulation or parties from whom the airport is unable to directly recover the land tax-equivalent paid on that site.

3.2.3 Exclusion of State Land Tax Regulations

The rate of land tax payable as specified or scheduled by each State each year is the only aspect of each State's land tax regulations which impacts on the determination of ex gratia payments in lieu of land tax. This land tax rate includes threshold exemptions and rebate provisions. In particular, the system of valuation, exemptions, and valuation, assessment and payment dates in State legislation and regulations do not apply to these ex gratia payments.

3.3 The Relevant State Rate

Each site which is required to be valued in 3.1.1 above is to have an ex gratia payment in lieu of land tax calculated for it by application of the relevant State rate as defined in 2.5.

3.3.1 Individually occupied Sites

Sites which are sub-leased to only one tenant, or on which only one commercial activity is undertaken, are to have the State rate as set out in Clause 2.5 applied separately to their individual valuation to determine the ex gratia payment for that site.

3.3.2 Multiple Use Sites

A multiple use site is one which has more than one tenant, or on which more than one commercial activity takes place. The most common example is a terminal, but many airports are increasingly developing multi-tenancy buildings that will fall under this definition. Such sites are to be valued as a whole, and to have the State rate as set out in Clause 2.5, including the threshold exemption, applied to that value. Apportionment for non-commercial activity or Commonwealth tenants can then be applied to the resulting ex gratia payment. However, details of tenant areas on the site and subject to the payment are to be shown in the detail required under 3.1.1, as well as details of any apportionment applied to the calculated ex gratia payment.

3.3.3 Calculation

Ex gratia payments calculated for individual sites and multiple use sites in the manner described in 3.3.1 and 3.3.2 above are then to be aggregated to arrive at the total ex gratia amount to be paid by the airport lessee to the Commonwealth.



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POLICY AND PROCEDURES

16 October 2002

PHASE 2 AIRPORTS

INTRODUCTION

The purpose of this document is to set out in detail the Commonwealth Government's policy requiring airport lessees to make ex gratia payments in lieu of land tax, and to fully describe the procedures to be followed in assessing the amounts to be paid and in making the payments.

While the obligation for airport lessees to make these payments arose on the signing of Airport Leases, mostly in 1998, some confusion has been apparent with some airport lessees. This confusion has probably been compounded by the absence of published guidelines and procedures.

In preparing this document, all previously available information and advice has been reviewed, and discussions have been held with selected airports and valuation authorities. It is anticipated that this document now sets out the procedures to be followed in a sufficiently clear and complete process so that all confusion and uncertainty should be removed. Where appropriate, previously published information has been cross-referenced in this document.

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1 LEGAL BASIS FOR EX GRATIA PAYMENTS

There are no Statutes or Regulations governing ex gratia payments in lieu of land tax to be made to the Commonwealth. The requirement is completely contractual as detailed in the Airport Leases.

All Phase 2 airports used the same standard lease in which the relevant clause was 26.2(b). The clause is quoted below.

“26.2(b) Where land tax is not payable under sub-clause 26.1 because the Airport Site is owned by the Commonwealth, payments in lieu of land tax must be made by the Lessee in respect of those parts of the Airport Site:

- (i) sub-leased to tenants; or
- (ii) on which trading or financial operations are undertaken including, but not limited to, retail outlets and concessions, car parks and valet car parks, golf courses and turf farms, but excluding runways, taxiways, aprons, roads, vacant land, buffer zones and grass verges, and land identified in the airport Master Plan for these purposes. These payments in lieu of land tax will be levied on a financial year basis. The Lessee must submit an assessment of the payment in lieu of land tax to the Commonwealth on 31 August of the current financial year with this payment due 30 days later. Land value assessments for the purpose of making payments in lieu of land tax are required at least every three years.

unless these areas are occupied by the Commonwealth or an authority constituted under Commonwealth law which is excluded from making payments by Commonwealth policy or law. Unless otherwise directed by the Lessor, the Lessee will make payments promptly in lieu of land tax at the relevant State rate to the Commonwealth addressed as provided for in sub-clause 24.1.”

2 PRINCIPLES GOVERNING EX GRATIA PAYMENTS

2.1 The purpose of the ex gratia payments

Ex gratia payments in lieu of land tax were introduced to ensure that, after ‘privatisation’, competitive neutrality was maintained between commercial activities carried out on an airport and the same activities carried out off an airport.

In support of competitive neutrality, it is the Government’s intention that ‘on-airport’ contestable businesses should be subject to the same rates and taxes as businesses off-airport. This policy was confirmed in a Ministerial letter, where Minister Anderson stated ‘Pursuant to the Airport Leases, the amount of the ex gratia payment to the Commonwealth is equivalent to the amount which would

otherwise have been payable in respect of those parts of an airport site that are subleased to tenants or on which trading or financial operations are undertaken. These Airport Lease provisions reflect the application of the Competitive Principles Agreement with the States and broader principles of competitive neutrality. (Under those principles, State taxes and charges that apply in general in the relevant State jurisdiction would apply in Commonwealth places).

2.2 The exclusion of airside activities from ex gratia payments

Land dedicated to airside activities has been excluded from valuation for the purpose of calculating ex gratia payments to be made in lieu of land tax as stated in the Airport Lease.

'Runways, taxiways, aprons, roads, vacant land, buffer zones and grass verges and land identified in the Master Plan for these purposes' have been excluded from the requirement under the Airport Lease to make ex gratia payments in lieu of land tax for airport sites for two reasons. First, they have been excluded because they are involved in natural monopoly activities relating to the movement of aircraft and passengers, which do not compete with off-airport activities. Second, the Government sought to maintain the viability and continued operation of airports on inner city sites by excluding from land tax consideration large parcels of land which are essential to the continued operation of the airports but not commercially available for alternative uses.

2.3 Rate-equivalent and land tax-equivalent payments

There is no relationship between rate-equivalent and land tax-equivalent payments.

The only connection between these provisions was to provide guidance to Airport Lessees to limit what airport land was to be valued for land tax-equivalent purposes and how it was to be valued. The intention was to guide airport lessees to the approach of valuing commercial areas on a site by site basis, and not to require them to follow the current practice of the local council where it differs from this approach.

2.4 Defining the Valuation Methodology

Valuations for land tax-equivalent payments are to be carried out on a site by site basis in areas/precincts of the airport defined as taxable in the Airport Lease, and then each site is to be separately assessed for the amount of land tax-equivalent payable.

The Department's expectation has always been that valuations for land tax-equivalent payments were to be carried out on a site by site basis of the area of the airport defined as taxable in the Airport Lease. Correspondence to individual

airports confirms the Department's preference for a valuation that identifies separately all sites subject to land tax-equivalent, the tenant or the activity on each site and each area's individual value. In this context, the term 'site' is defined in clause 3.2.1 below.

It is now confirmed that the relevant State rates, including threshold exemption levels, are to be applied to the valuation derived on the individual sites, and the individual tax payments so derived are to be totalled to determine an airport's land tax-equivalent liability.

This methodology provides the desired result in terms of competitive neutrality, and protects airports from excessive tax on aeronautically affected areas. Although the Government has allowed airports to select their own valuers, it is important that those valuers fully understand the purpose of the ex gratia payment and follow this valuation methodology. If there is any doubt, a valuer should be guided by State practice and property revenue returns.

2.5 The Extent of the Application of States' Land Tax Provisions

The only aspect of State land tax legislation and regulations to apply to the determination of ex gratia payments in lieu of land tax is the State's rate of land tax to be applied.

Once an airport lessee has determined a correct valuation for an individual or multiple use site it then applies the 'the relevant State rate' to the valuation. The resulting figures are then aggregated to arrive at the amount to be paid for land tax-equivalent purposes. The relevant State land tax rate will probably be specified in State regulations as X cents per hundred or thousand dollars of land value, and probably will have a variable or sliding scale rate which will vary with the size of the valuation. In most States this sliding scale will have a zero rate below a certain threshold value or a discount percentage and this can be considered to be part of the 'relevant State rate'. No other aspect of State legislation or regulation is applicable to this payment. Specifically, the only exemptions from this land tax rate are those laid out in the wording of the Airport Lease. Valuation methodologies and dates as well as payment dates are as determined by the Commonwealth.

2.6 Information Required to be Provided in Assessments

Sufficient information is to be supplied with the annual assessment to enable the assessment process to be confirmed without further requests for information.

Assessment documentation is to include the following details:

- Sufficient detail of the valuation process to show that the individual area/precinct methodology specified in 2.4 above has been used. It is expected that this will include a list of all tenanted and/or commercial sites with the name of each tenant or purpose of use, the area of each site and the value attributed to it;
- Sufficient detail of any exemptions or deductions taken off the assessed value by either the airport or the valuer, to enable the Department to confirm the validity of such exemptions or deductions. This should include details of calculation of apportionment where this has occurred; and
- A copy of the relevant State's schedule of land tax charge rates, including threshold levels and rebate conditions.

3 PROCEDURES TO APPLY TO EX GRATIA PAYMENTS

3.1 Application of procedures now documented

3.1.1 Commencement of Procedures

The procedures now documented will be applied to payments due in respect of the year ended 30 June 2003. This will require a valuation to be carried out at 30 June 2002 using the specified methodology. An assessment will then be required by the Department by 30 November 2002. The assessment will set out in full detail the manner in which the land valuation was prepared, including for each area the tenant's name or activity conducted, the valuation rate applied, the unimproved value and reason for any exemption claimed, as well as the current rate schedule. The assessment will also show how the ex gratia payment has been calculated by application of the current State rate to the value of each assessable airport site, less any **threshold** exemption allowed under current State land-tax regulations.

Ex gratia payments calculated in accordance with this assessment must be paid by 30 November 2002 also.

3.1.2 Future Period Procedures

For the year ended 30 June 2004 and beyond, the assessment and payment of land tax-equivalent will be completed by 31 August and 30 September, respectively, of that current financial year. A new valuation will be necessary at the latest by 30 June 2005 in accordance with the Airport Lease. For the intervening financial years ending 30 June 2004 and 2005 the valuation prepared at 30 June 2002 can be used to calculate payments, subject to adjustment for changes in assessable area or the State rate. If a new valuation is prepared earlier it must be used for the next applicable financial year, with the three-year rule starting again.

- ✓ You may make your payments using Electronic Funds Transfer. Separate advice will be sent to you regarding details on how to make payments to the Department in this way.

3.1.3 Policy and Procedure Review

The Department will review this process during the 2007/08 financial year.

3.1.4 Compliance Review

In consultation with the airports, the Department intends to undertake a detailed review of the methodology used, the assessment prepared and the payment made by each airport for the year ending 30 June 2003 to ensure compliance with, and comprehension of, these policies and procedures.

3.2 Valuations

3.2.1 Methodology

Individual Sites

Valuation of land is to be carried out on a site by site basis for all sites on an airport which are subleased to tenants or on which trading or financial operations are undertaken. For this purpose a site is defined as an individually identifiable lot or parcel of land on which a single tenant or commercial building is deriving a commercial level of revenue for the airport. Individual site valuations are to be prepared by reference to land supporting similar and appropriate activities off-airport and which give rise to different rates per square metre because of the different activities carried out on them. Under this method, an airport would be expected to value a pay carpark site by reference to, say, a CBD comparator, if that is the highest and best use value for that land.

Multiple Use Sites

Sites supporting multiple use buildings, for example terminals and office blocks, will be valued as an individual site, at the highest and best use for the commercial activities carried out on the site, determined by reference to off-airport comparators. Any apportionment for activities not subject to ex gratia payments will be made after calculation of the ex gratia payment (see Clause 3.3.2).

Marginally Commercial Land

Sites that are restricted for use by aviation requirements, and can only be used for low revenue purposes such as agistment or a golf course, should have that restriction reflected in its value, as this is probably the highest and best use. Such sites may possibly be entitled to exemption from the payment process (see 3.2.2).

En-globo valuations of the whole airport or an assumed or estimated portion deemed to be used or available for commercial use is not acceptable. Streets, footpaths, landscaped areas and the like are not subject to valuation, as it is assumed this level of development is built into property values in that area. Valuations must show enough detail to support the assessment requirements detailed in 3.1.1.

3.2.2 Exemptions

The only exemptions from the total airport land to be valued and rated for ex gratia payments are those specified in the Airport Lease, that is, 'runways, taxiways, aprons, roads, vacant land, buffer zones and grass verges, and land identified in the Master Plan for these purposes.'

Where exempt land of this nature is leased to tenants or used for trading or financial operations (for example agistment, golf course etc) it must be included in the valuation for the making of ex gratia payments. However, where it is obvious that such activity is not commercial due to the impact of aviation-related activity (eg where the revenue received is less than \$1,000 per hectare per annum) the site need not be valued for the making of ex gratia payments. Full details of proposals to exclude such areas, including the basis for the exclusion decision, must be provided with the assessment for 2003 for the Department's approval. In subsequent years, significant changes to the nature of use or rental received for such sites must be referred to the Department for reassessment of this decision. Any new sites proposed to be treated in this manner in future years must similarly be brought to the Department for approval.

Sites which might be zoned commercial under the master plan but which have not yet been developed for such use, or are being developed but have not yet been leased or used for commercial purposes may be considered exempt from valuation for ex gratia payments in lieu of land tax in terms of the Lease until it first becomes available for commercial use. As well, parts of the airport site in respect of which ex gratia payments are liable, but are 'occupied by the Commonwealth or an authority constituted under Commonwealth law which is excluded from making payments by Commonwealth policy or law', are exempt from being included in the calculation of ex gratia payments. This exemption may apply to such groups as Commonwealth Government agencies and authorities (eg Dept of Transport and Regional Services, Customs, AQIS, CASA, Airservices Australia, Aust Protective Service).

There are no other exemptions. Specifically, there are no exemptions for casually vacant commercial land, land occupied by charities and sporting bodies, for land occupied by parties exempted under State regulation or parties from whom the airport is unable to directly recover the land tax-equivalent paid on that site.

3.2.3 Exclusion of State Land Tax Regulations

The rate of land tax payable as specified or scheduled by each State each year is the only aspect of each State's land tax regulations which impacts on the determination of ex gratia payments in lieu of land tax. This land tax rate includes threshold exemptions and rebate provisions. In particular, the system of valuation, exemptions, and valuation, assessment and payment dates in State legislation and regulations do not apply to these ex gratia payments.

3.3 The Relevant State Rate

Each site which is required to be valued in 3.1.1 above is to have an ex gratia payment in lieu of land tax calculated for it by application of the relevant State rate as defined in 2.5.

3.3.1 Individually occupied Sites

Sites which are sub-leased to only one tenant, or on which only one commercial activity is undertaken, are to have the State rate as set out in Clause 2.5 applied separately to their individual valuation to determine the ex gratia payment for that site.

3.3.2 Multiple Use Sites

A multiple use site is one which has more than one tenant, or on which more than one commercial activity takes place. The most common example is a terminal, but many airports are increasingly developing multi-tenancy buildings that will fall under this definition. Such sites are to be valued as a whole, and to have the State rate as set out in Clause 2.5, including the threshold exemption, applied to that value. Apportionment for non-commercial activity or Commonwealth tenants can then be applied to the resulting ex gratia payment. However, details of tenant areas on the site and subject to the payment are to be shown in the detail required under 3.1.1, as well as details of any apportionment applied to the calculated ex gratia payment.

3.3.3 Calculation

Ex gratia payments calculated for individual sites and multiple use sites in the manner described in 3.3.1 and 3.3.2 above are then to be aggregated to arrive at the total ex gratia amount to be paid by the airport lessee to the Commonwealth.