



COMMISSIONER'S PRACTICE

DA 28.3

DUTIES – REDUCTION IN CONSIDERATION

This Commissioner's practice provides guidance on how the Commissioner will assess or reassess the duty payable on a dutiable transaction where the consideration was reduced after the agreement was entered into.

Background

If the consideration under an agreement to transfer dutiable property is reduced after the agreement is entered into but before the property is transferred, section 31(1) of the *Duties Act 2008* ('Duties Act') allows the Commissioner to assess or reassess duty on the reduced consideration if:

- (a) the reduced consideration is not less than the unencumbered value of the dutiable property when the consideration was reduced; or
- (b) the consideration is reduced because the parties have agreed not to transfer some of the dutiable property previously agreed to be transferred and the reduced consideration is not less than the unencumbered value of the remaining dutiable property that is to be transferred.

Otherwise, section 31(3) of the Duties Act provides the dutiable value of the transaction will be assessed or reassessed according to the unencumbered value of the dutiable property at the date the consideration was reduced.

Commissioner's Practice [TAA 30 'Valuation of Land for Duties Purposes'](#) sets out the information a taxpayer must provide to enable the Commissioner to have a valuation made of dutiable property (other than life and remainder interests), and clarifies when the Commissioner will accept a valuation from a qualified valuer.¹

Commissioner's Practice

Valuation of Dutiable Property

1. Where the consideration under an agreement to transfer is reduced and the parties to the agreement are not dealing at arms length, the Commissioner will require a valuation of the dutiable property as at the date the consideration was reduced.
2. Where the consideration under an agreement to transfer is reduced and the parties to the agreement are dealing at arms length, the Commissioner will require a valuation of the dutiable property as at the date the consideration was reduced unless:
 - 2.1 the consideration was reduced by \$5,000 or less, providing the reason for the reduction was not merely an inducement or discount for early settlement; or

¹ A *qualified valuer* is defined in the TAA as meaning a person licensed or registered under the *Land Valuers Licensing Act 1978* or a corresponding Act in another State or Territory, or a person who the Commissioner is satisfied is suitably qualified or experienced to provide a valuation.

- 2.2 the consideration was reduced by more than \$5,000 and an independent report from a licensed building inspector identifies damage to, or defects of, the dutiable property and the cost to repair the damage or defects is greater than or equal to the amount by which the consideration was reduced; or
- 2.3 the total unencumbered value of the dutiable property at the date the consideration was reduced does not exceed \$2 million and the taxpayer has a valuation of the property from a qualified valuer.

Examples – Valuation not required

Example 1

Jane entered into a contract for sale on 1 June 2015 to purchase a home for consideration of \$500,000. The contract specified that settlement was to occur on 31 July 2015 and was subject to the seller removing a shed from the property prior to settlement.

On 20 July 2015, the seller notified the purchaser that they were unable to remove the shed prior to settlement. The parties agreed to reduce the purchase price to \$495,000 in exchange for the buyer removing the shed.

As the reduction did not exceed \$5,000 and was not an inducement or discount for early settlement, duty was assessed on the reduced consideration of \$495,000.

Example 2

John entered into a contract for sale on 1 August 2015 to purchase vacant land for consideration of \$354,000. The terms of the contract specified settlement was to occur on 31 October 2015.

On 15 August 2015, the parties varied the contract to provide an earlier settlement date in return for reduced consideration of \$350,000.

As the reduction was considered an inducement or discount for early settlement, duty was assessed with respect to the original consideration of \$354,000 which represents the unencumbered value of the land.

Example – Valuation required

Eve entered into a contract for sale on 1 December 2015 to purchase a home from Ben for consideration of \$750,000. The terms of the contract specified settlement was to occur by 31 January 2016, and was conditional upon Eve being approved for finance and accepting an offer for the sale of her home for consideration of \$500,000 by 15 January 2016.

On 10 January 2016, Eve accepted an offer for the sale of her home for \$485,000. As Eve was unable to finance the purchase of Ben's home for the agreed consideration, the parties agreed to reduce the consideration to \$735,000.

As the consideration was reduced by more than \$5,000, the property must be valued as at the date of the variation to ascertain the unencumbered value of the property at the date the consideration was agreed to be reduced. The duty will then be assessed on the greater of either the reduced consideration of \$735,000 or the unencumbered value of the property.

Assessment and Reassessment

3. If the circumstances set out in paragraph 2 apply, the taxpayer must provide relevant evidence to the Commissioner when applying for an assessment or reassessment, for example, a copy of the building inspection report. The Commissioner may require additional information to be satisfied the dutiable property does not need to be valued.
4. Where the reduced consideration is not less than the unencumbered value of the dutiable property as at the date the consideration was reduced, the Commissioner will assess or reassess the agreement for transfer on the reduced consideration at same rate and using the same thresholds that applied when liability to duty on the transaction initially arose.
5. Where the reduced consideration is less than the unencumbered value of the dutiable property as at the date the consideration was reduced, the Commissioner will assess or reassess the agreement for transfer on the unencumbered value of the dutiable property at the same rate that applied when liability to duty on the transaction initially arose.
6. An application for a reassessment of duty where the consideration under the agreement was reduced must be made within five years from the date of issue of the original assessment.²

Date of Effect

This Commissioner's practice takes effect from 1 November 2016.

Nicki Suchenia
COMMISSIONER OF STATE REVENUE
1 November 2016

Commissioner's Practice History

Commissioner's Practice	Issued	Dates of effect	
		From	To
DA 28.0	12 November 2010	12 November 2010	31 May 2012
DA 28.1	1 June 2012	1 June 2012	7 May 2015
DA 28.2	8 May 2015	8 May 2015	31 October 2016
DA 28.3	1 November 2016	1 November 2016	Current

² *Taxation Administration Act 2003* section 17(1).