



Contingent Consideration

Section 32 of the *Duties Act 2008*

As at 1 July 2008

Introduction

Where a dutiable transaction provides for a payment that is contingent upon the happening of a future event, the dutiable value will be determined by having regard to the highest possible consideration that might be payable, regardless of whether that consideration is paid.

For example, if an agreement for the transfer of vacant land that is currently zoned 'Residential' specifies that the consideration is \$400,000 plus an additional \$100,000 if the land is rezoned 'Commercial' within 12 months, and the unencumbered value of the land is \$400,000, the dutiable value of the transaction is \$500,000.

Pursuant to section 32 of the *Duties Act 2008* ('Duties Act'), the Commissioner may reassess an agreement for the transfer of dutiable property in certain circumstances where duty has been paid on the agreement on the basis of contingent consideration, and the contingent consideration is not paid.

Reassessment where contingent consideration is not paid

A taxpayer may apply for a reassessment if duty on an agreement for the transfer of dutiable property has been paid in respect of consideration that was contingent upon the happening of a future event, and the contingent consideration is not ultimately paid.

The criteria for a reassessment are as follows:

1. The contingent consideration must not have been paid.
2. The event must not have happened, or must not have happened within the time specified in an instrument effecting or evidencing the agreement for the happening of the event.
3. Either:
 - the event cannot happen in the future; or
 - the time specified in an instrument effecting or evidencing the agreement for the happening of the event has passed or expired.
4. An application for reassessment must be made in the approved form within five (5) years after the day on which the liability for duty on the agreement for the transfer of the dutiable property arose.

Important information

A reassessment can only be considered where the non-occurrence of an event results in non-payment of the contingent consideration.

Where a rebate or reimbursement is provided to a purchaser or transferee due to the happening of an event, (e.g. construction of a dwelling within 12 months of the purchase of a vacant lot) there is no entitlement to a reassessment of duty under section 32 of the Duties Act.

How to apply for a reassessment

The taxpayer must lodge an application within five (5) years of the day on which the liability for duty on the agreement for the transfer of the dutiable property arose.

An approved application form is available on the web site at www.osr.wa.gov.au.

Contact the Office of State Revenue

Office	200 St Georges Terrace PERTH WA 6000	Telephone	(08) 9262 1100 1300 368 364 (WA country STD callers only – local call charge)
Postal	Office of State Revenue GPO Box T1600 PERTH WA 6845	Web Enquiry Website	www.osr.wa.gov.au/DutiesEnquiry www.osr.wa.gov.au

Note: The information contained in this DUTIES FACT SHEET is issued for guidance purposes only. It is not an exhaustive explanation of the provisions of the *Duties Act 2008* and reference should be made to the Act for complete details.