



## COMMISSIONER'S PRACTICE TAA 23.1 SUPERSEDED

### CIRCUMSTANCES WHEN A TAXPAYER WILL BE REQUIRED TO PROVIDE A WRITTEN VALUATION

This Commissioner's practice outlines the circumstances in which the Commissioner will require a taxpayer to provide a written valuation for transfer duty or landholder duty purposes.

#### Background

##### *Transfer Duty*

Under section 26 of the *Duties Act 2008* ('Duties Act'), transfer duty is generally chargeable by reference to the *dutiable value*<sup>1</sup> of a *dutiable transaction*<sup>2</sup> that relates to *dutiable property*,<sup>3</sup> *new dutiable property*<sup>4</sup> or *special dutiable property*.<sup>5</sup>

In order to determine the dutiable value of a transaction, it may be necessary to determine the *unencumbered value* of property. Section 36(1) of the Duties Act provides that the unencumbered value is the value of the property without regard to:

- any encumbrance to which the property is subject, whether contingently or otherwise; or
- any overriding power of revocation or reconveyance; or
- any scheme or arrangement that results in the reduction of the value of the property, and for which a dominant purpose of any party to the scheme or arrangement was, in the opinion of the Commissioner, the reduction of the value of the property.

Section 36(4) of the Duties Act relevantly provides that when determining the unencumbered value of property:

- the ordinary principles of valuation apply as modified by that section; and
- information relating to property (including the right to and use of the information) will be regarded as an attribute of the property and not something to which an independent valuation can be ascribed; and

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<sup>1</sup> Duties Act ss 27 – 29.

<sup>2</sup> Duties Act s 11.

<sup>3</sup> Duties Act s 15.

<sup>4</sup> Duties Act s 17.

<sup>5</sup> Duties Act s 18.

- that is land – having regard to the use of the land that would best enhance its commercial value.

### ***Landholder Duty***

For the purposes of calculating landholder duty on a relevant acquisition, section 186 of the Duties Act defines the value of a landholder as the sum of:

- the unencumbered value of the Western Australian land, chattels or land and chattels (whichever is relevant) to which the landholder is entitled; and
- the same percentage of the unencumbered value of the Western Australian land, chattels or land and chattels to which any linked entity in respect of the landholder is entitled as the percentage of the landholder's interest in the linked entity.

Section 148 of the Duties Act defines *unencumbered value* to have the meaning given in section 36 as applied by section 150. Section 150 of the Duties Act states that section 36 applies, with any appropriate modifications, where it is necessary to determine the unencumbered value of land or chattels for the purposes of sections 155(5)(a),<sup>6</sup> 157(2)<sup>7</sup> or 186 of that Act.

### ***Valuation of Property, Consideration or Benefit***

#### *Requirement to provide a written valuation*

Under section 21(1) of the *Taxation Administration Act 2003* ('TAA'), the Commissioner may require a taxpayer to provide a written valuation by a *qualified valuer* of any property, consideration or benefit, together with any documents or other records in the taxpayer's possession or control relevant to determining the value of the property, consideration or benefit.

Section 21(2A) of the TAA provides that a requirement under subsection (1) may include that a valuation, document or other record be provided in an electronic format, and that a valuation include or be accompanied by copies of any models and details of any methods and assumptions that were relied upon in order to arrive at the valuation. These should be provided in a format that allows the Commissioner to examine and test the methods, models and assumptions when determining whether to adopt the valuation.

Under section 21(2B) of the TAA, a taxpayer may comply with a requirement under subsection (1)(a) by providing other evidence as to the value of the property, consideration or benefit that is satisfactory to the Commissioner.

In accordance with section 21(2) of the TAA, a requirement to provide a written valuation must specify the date by which a taxpayer must comply with it. Under section 21(3) of the TAA, a person who does not comply with such a requirement commits an offence.

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<sup>6</sup> Valuing land to which a corporation or the trustee of a unit trust is entitled.

<sup>7</sup> Valuing the entitlement of the linked entity's land.

### *Qualified valuer*

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.

### *Commissioner's power to have a valuation made*

Section 22 of the TAA provides that, regardless of whether the Commissioner has required the taxpayer to provide a valuation or whether the taxpayer has complied with such a requirement, the Commissioner may:

- have a valuation made of any property, consideration or benefit; or
- adopt any available valuation of the property, consideration or benefit that the Commissioner considers appropriate.

### ***Application of Other Practices***

Commissioner's Practice [TAA 24 'Penalty Tax and Recovery of Valuation Costs for Written Valuations'](#) ('CP TAA 24') sets out the circumstances in which the Commissioner will:

- remit some or all of the penalty tax applicable for non-compliance with a requirement to provide a written valuation;
- recover valuation costs from a taxpayer; and
- where applicable, remit some or all of the penalty tax for undervaluation.

### **Commissioner's Practice**

#### ***Related Parties***

1. For the purposes of this practice, parties that are related or not otherwise dealing at arm's length include:
  - 1.1 parties related by blood or marriage;
  - 1.2 parties related by prior business relationship;
  - 1.3 related companies, as defined in the *Corporations Act 2001*;
  - 1.4 partners in a partnership;
  - 1.5 participants in the same joint venture;
  - 1.6 trustees of trusts which have common beneficiaries;
  - 1.7 joint owners of property; or
  - 1.8 entities with other significant business relationships.

#### ***Requirement to Provide a Written Valuation***

2. Subject to paragraph 3, circumstances in which the Commissioner will require a taxpayer to provide a written valuation include:

- 2.1 where the parties to a dutiable transaction or relevant acquisition are related or not otherwise acting at arm's length;
  - 2.2 for transfer duty – where a portion of the consideration or value for the transaction has been attributed to non-dutiable assets or to information;
  - 2.3 for landholder duty – where a portion of the value of the landholder has been attributed to non-dutiable assets or to information; or
  - 2.4 where the Commissioner is of the opinion that the nature of the property, consideration or benefit the subject of the transaction requires expert valuation.
3. The Commissioner will not usually require a taxpayer to provide a written valuation under this Commissioner's practice for a routine transfer of property<sup>8</sup> between related parties where the unencumbered value of the property is below \$2 million.
  4. Circumstances in which the Commissioner will usually have a valuation made under section 22 of the TAA include where:
    - 4.1 the taxpayer has failed to provide a written valuation when required to do so; or
    - 4.2 the taxpayer has provided a written valuation which the Commissioner considers requires independent review by a qualified valuer.
  5. In certain circumstances, the Commissioner will seek to recover from the taxpayer the costs of having a valuation made under section 22 of the TAA in accordance with section 23A of the TAA and CP TAA 24.

### **Qualified Valuers**

6. Where a valuer is not licensed or registered under the *Land Valuers Licensing Act 1978* or a corresponding Act in another State or Territory, the Commissioner must be satisfied that the person is suitably qualified or experienced to provide a valuation.
7. To assist the Commissioner in this respect, the taxpayer should provide either:
  - 7.1 a written valuation that includes a summary of the valuer's qualifications and experience; or
  - 7.2 where the valuation does not contain information about the valuer's qualifications and experience, a letter from the valuer outlining their qualifications, area of expertise, and experience relevant to valuing the property, consideration or benefit.
8. Prior to engaging a qualified valuer, the taxpayer may request a determination that the Commissioner is satisfied with a person's suitability

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<sup>8</sup> For example, an agreement for the transfer of land by way of offer and acceptance.

to provide a written valuation. The request must be made in writing and must include a letter from the valuer containing the information set out in paragraph 7.2.

### ***Timeframe for Providing a Written Valuation***

9. When requiring a taxpayer to provide a written valuation under section 21 of the TAA, the Commissioner will usually set a specified due date that will allow the taxpayer four months in which to provide the valuation.
10. Where the Commissioner considers that the valuation will take longer than four months to complete due to the complexity of the valuation issues, the Commissioner will set a specified due date to allow the taxpayer a longer period of time to provide the written valuation taking into account the taxpayer's views regarding the anticipated timeframe.
11. Section 21 of the TAA does not authorise the Commissioner to extend the due date to provide a written valuation. The Commissioner may accept that a written valuation will be provided after the specified due date, however penalty tax will be applicable in accordance with section 26 of the TAA and CP TAA 24.

### ***Other Evidence of Value***

12. In certain circumstances, the taxpayer may comply with a requirement to provide a written valuation by a qualified valuer by providing other evidence of the property, consideration or benefit that the Commissioner considers satisfactory.
13. For the purposes of sections 21(2B) and 22(1)(b) of the TAA, the Commissioner may accept other evidence of value that is probative, independently verified, and that provides an objective view of the value allocated to the property. This may include:
  - 13.1 a fixed asset register at the date of a transaction as being satisfactory evidence of the value of certain chattels, plant and equipment; or
  - 13.2 a purchase price allocation report detailing the values of certain chattels, plant and equipment.
14. Where a taxpayer complies with a requirement under section 21 of the TAA by providing evidence other than a written valuation, this evidence may still be subject to recoverable valuation costs and penalty tax.

### **Date of Effect**

This Commissioner's practice takes effect from 13 March 2015.

Nicki Suchenia  
ACTING COMMISSIONER OF STATE REVENUE  
13 March 2015

### Commissioner's Practice History

Commissioner's Practice	Issued	Dates of effect	
		From	To
CP TAA 23.0	14 February 2014	14 February 2014	12 March 2015
CP TAA 23.1	13 March 2015	13 March 2015	23 July 2019

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