



## **CIRCULAR 11**

## **DUTIES ACT 2008 TAXATION ADMINISTRATION ACT 2003 REVENUE LAWS AMENDMENT ACT 2013**

The *Revenue Laws Amendment Act 2013* ('the Act') contains various amendments to the *Duties Act 2008* ('Duties Act') and the *Taxation Administration Act 2003* ('TAA'). The Act was passed by Parliament on 19 September 2013 and received the Royal Assent on 24 September 2013.

Parts 2 and 3 of the Act come into operation on 25 September 2013, and introduce a new interim assessment regime and make amendments to certain provisions relating to valuations.

The information provided in this circular is not an exhaustive explanation of the amendments, and reference should be made to the Act and the Explanatory Memorandum.

It should be noted that these amendments are aimed at high value and/or complex transactions and not at everyday property or business purchases. A number of new and updated Commissioner's practices are currently being drafted and will be published prior to the Commissioner making any interim assessment using the new provisions outlined below.

A general summary of the amendments to the Duties Act and the TAA follows.

### **INTERIM ASSESSMENT OF TRANSFER DUTY AND LANDHOLDER DUTY**

The interim assessment measures contained in the Act are aimed at the more timely collection of duties revenue. The amendments give the Commissioner the power to issue an interim assessment for a portion of the duty payable in defined circumstances where it will, or is expected to, take an extended period of time to determine the total value of a transaction.

Under section 44A of the Duties Act, the Commissioner may make an interim assessment of transfer duty on a dutiable transaction if:

- duty is payable on the transaction; and
- either –
  - more than six months have passed since the transaction record for the transaction was, or should have been, lodged; or
  - the Commissioner is satisfied it will not be possible to determine the dutiable value for the transaction within a six month period; and
- a portion of the dutiable value can be determined.

Under section 195A of the Duties Act, the Commissioner may make an interim assessment of landholder duty on a relevant acquisition if:

- duty is payable on the acquisition; and

- either –
  - more than six months have passed since an acquisition statement or application for determination of liability was, or should have been, lodged; or
  - the Commissioner is satisfied it will not be possible to determine the value of the landholder within that six month period; and
- a portion of the value of the landholder can be determined.

Section 16A of the TAA provides the following:

- The Commissioner may make an interim assessment of a portion of tax when a taxation Act authorises him to do so. The specific amendments to the Duties Act noted above provide the required authorisation to allow interim assessments to be made in relation to transfer duty and landholder duty.
- The Commissioner can only make one interim assessment, which must be followed by a complete assessment that must be made when either the Commissioner has sufficient information to make the assessment or makes a compromise agreement.
- An interim assessment does not bind the Commissioner in relation to the complete assessment.
- A complete assessment is not a reassessment of the interim assessment.
- The complete assessment supersedes the interim assessment but does not alter the liability to penalty tax arising out of the interim assessment or interest payable under a tax payment arrangement.

Section 16 of the TAA has been amended such that the Commissioner cannot make a reassessment of an interim assessment unless required to do so by an objection or review proceeding.

Under section 34 of the TAA:

- a taxpayer cannot object to an interim assessment within three years after the date on which the interim assessment notice is issued;
- an objection to an interim assessment can only be made against the validity or correctness of the interim assessment at the date the interim assessment notice is issued; and
- a taxpayer is no longer entitled to object to an interim assessment if the complete assessment is made before an objection to the interim assessment is lodged.

For the purposes of determining an objection to an interim assessment, section 37 of the TAA provides that the Commissioner may only consider relevant information that was obtained before the assessment notice for the interim assessment was issued.

Section 54(2A) of the TAA provides that if the tax paid on an interim assessment exceeds the tax payable on the final assessment, the difference will be refunded to the taxpayer together with interest at the prescribed rate calculated from the date that the interim assessment was paid until the date the Commissioner approves the refund.

## **REQUIREMENT TO PROVIDE A WRITTEN VALUATION**

Section 21 of the TAA has been amended so that the Commissioner may require a taxpayer to provide a written valuation by a **qualified valuer** and any other related documents or information in the taxpayer's possession or control, including that:

- the valuation, document or record be provided in an electronic format; and
- a valuation include or be accompanied by the methods, models and assumptions of valuation; and
- electronic methods, models and assumptions be provided in a format that allows the Commissioner to examine and test them when determining whether to adopt the valuation.

The Glossary to the TAA has been amended to define **qualified valuer** to mean a person who:

- is licensed under the *Land Valuers Licensing Act 1978*; or
- is licensed or registered under a law of another State or Territory corresponding to the *Land Valuers Licensing Act 1978*; or
- the Commissioner is satisfied is suitably qualified or experienced to provide a valuation.

As noted above, these amendments are aimed at more complex, high value transactions and will not generally apply to routine transfers of property between related parties.

## **RECOVERY OF VALUATION COSTS AND PENALTY TAX FOR UNDERVALUATION**

To complement the interim assessment amendments, the Act also amended the TAA to allow the Commissioner to recover costs from a taxpayer for a valuation undertaken by the Commissioner in certain circumstances. To further ensure the integrity of property valuations, a specific penalty tax provision has also been included in the TAA to discourage significantly understated values being presented to the Commissioner.

Section 23A of the TAA has been inserted to allow the Commissioner to recover the costs from a taxpayer for a valuation that the Commissioner obtained where:

- the taxpayer has not provided a written valuation as required under section 21 of the TAA; or
- where the Commissioner is not satisfied with the taxpayer's **designated valuation**, and the valuation upon which the final assessment is based exceeds the taxpayer's valuation by 15% or more.

Where valuation costs are recoverable under section 23A of the TAA and the Commissioner decides to recover those costs from the taxpayer, section 27A of the TAA provides that the taxpayer is also liable to pay penalty tax. The penalty tax payable is the difference between:

- what would be the amount of the taxpayer's primary liability if the taxpayer's **designated valuation** were used to make an assessment; and
- the lesser of the value on which the Commissioner has assessed the taxpayer's liability to duty or, if the taxpayer challenges the validity of the assessment, the amount of the taxpayer's primary liability in the final assessment after the objection and any subsequent review proceedings.

For the purposes of recovery of valuation costs and penalty tax for undervaluation, section 23A describes a **designated valuation** to be:

- a valuation nominated by the taxpayer; or
- in the absence of a nomination, the last valuation provided by the taxpayer prior to the Commissioner obtaining a valuation; or
- a valuation accepted by the Commissioner as a 'designated valuation' after the taxpayer has nominated a valuation or the Commissioner has sought a valuation.

Sections 23A and 27A of the TAA also respectively provide that if a valuation gives a range of values and a preferred value is not provided, the valuation is taken to fix a value at the median point in the range.

## **TRANSITIONAL PROVISIONS**

Under the transitional provisions for the Act, the interim assessment amendments may still be applied to dutiable transactions or relevant acquisitions that occurred before 25 September 2013.

However, the Commissioner cannot recover the costs of obtaining a valuation, and as a result impose penalty tax under section 27A, if before 25 September 2013:

- the taxpayer provided the Commissioner with a written valuation; or
- the Commissioner sought or adopted a valuation of any property, consideration or benefit.

## **FURTHER INFORMATION**

For additional information on these changes, or other duty issues, please contact the Office of State Revenue by telephone on 9262 1100 or by making a duties web enquiry at [www.osr.wa.gov.au/DutiesEnquiry](http://www.osr.wa.gov.au/DutiesEnquiry).

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