



## COMMISSIONER'S PRACTICE TAA 23.0 **SUPERSEDED**

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

#### 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

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

This Commissioner's practice does not apply where the Commissioner requires the taxpayer to provide completed valuation forms or the taxpayer provides a licensed valuation under the following Commissioner's practices:

- TAA 8 'Valuation of Land for Duties and Stamp Duty Purposes';
- TAA 9 'Valuation of Mining Tenements for Duties and Stamp Duty Purposes';
- TAA 10 'Valuation of Pastoral Leasehold Land for Duties and Stamp Duty Purposes';
- TAA 13 'Valuation of Life Interests and Remainder Interests for Duties and Stamp Duty Purposes';
- TAA 22 'Valuation of Business Assets for Duties Purposes'; and
- TAA 28 'Valuation of Shares Issued as Consideration for a Dutiable Transaction',

unless the Commissioner requests the taxpayer to provide a written valuation under section 21 of the *Taxation Administration Act 2003* ('TAA').

#### Background

##### *Transfer Duty*

Under section 26(1) of the *Duties Act 2008* ('Duties Act'), liability to transfer duty is generally chargeable by reference to the dutiable value of a dutiable

transaction where the dutiable transaction<sup>1</sup> relates to dutiable property,<sup>2</sup> new dutiable property<sup>3</sup> or special dutiable property.<sup>4</sup>

Division 5 of Chapter 2 of the Duties Act sets out how the dutiable value of dutiable transactions will be determined.

Unless otherwise provided for in Chapter 2 of the Duties Act, section 27 of the Duties Act provides that the dutiable value of a dutiable transaction is:

- (a) the consideration for the dutiable transaction; or
- (b) the unencumbered value of the dutiable property the subject of the transaction when liability for duty on the transaction arises if —
  - (i) there is no consideration for the transaction; or
  - (ii) the consideration cannot be ascertained when liability for duty on the transaction arises; or
  - (iii) the unencumbered value is greater than the consideration for the transaction.

Section 36 of the Duties Act identifies how the unencumbered value of property is determined. This section also applies where it is necessary to determine the unencumbered value of land or chattels for the purposes of assessing landholder duty.<sup>5</sup>

### ***Landholder Duty***

Landholder duty is calculated for a relevant acquisition in a landholder by reference to section 186 of the Duties Act, which defines the value of a landholder as being the sum of:

- (a) the unencumbered value of the Western Australian land, chattels or land and chattels (whichever is relevant) to which the landholder is entitled; and
- (b) 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.

Landholder duty for a relevant acquisition is calculated under section 188 of the Duties Act, which applies the appropriate rate of duty<sup>6</sup> to the value of the acquirer's interest in the landholder immediately after the relevant acquisition. Where a reduction is allowed in relation to an excluded interest as defined under section 189 of the Duties Act, the reduction is applied following this calculation and the resulting amount is the duty payable.

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<sup>1</sup> Section 11 of the Duties Act.

<sup>2</sup> Section 15 of the Duties Act.

<sup>3</sup> Section 17 of the Duties Act.

<sup>4</sup> Section 18 of the Duties Act.

<sup>5</sup> Section 150 of the Duties Act.

<sup>6</sup> Section 184 of the Duties Act provides that duty is chargeable at the general rate of duty set out in Schedule 2 of that Act.

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

Under section 21(1) of the 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.

*Qualified valuer* is defined in the Glossary to the TAA to mean a person who:

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

Under section 21(2A) of the TAA, the Commissioner may require that:

- (a) a valuation, document or other record be provided in an electronic format; and
- (b) 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; and
- (c) 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.

Section 21(2B) of the TAA provides that 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 request 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.

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:

- (a) have a valuation made of any property, consideration or benefit; or
- (b) 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 may:

- (a) remit some or all of the penalty tax imposed for failure to provide, or late provision of, a written valuation required for transfer duty or landholder duty purposes;

- (b) recover valuation costs from a taxpayer; and
- (c) where valuation costs are to be recovered, remit some or all of the penalty tax for undervaluation.

## **Commissioner's Practice**

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

1. Circumstances in which the Commissioner will require a taxpayer to provide a written valuation include:
  - 1.1 where the parties to a dutiable transaction or relevant acquisition are related or otherwise not acting at arm's length;
  - 1.2 in respect of transfer duty, where a percentage of the consideration or value for the transaction has been attributed to non-dutiable assets;
  - 1.3 in respect of landholder duty, where a percentage of the value of the landholder has been attributed to non-dutiable assets; or
  - 1.4 where the Commissioner is of the opinion that the nature of the property, consideration or benefit the subject of the transaction requires expert valuation for the purposes of assessing the liability to duty.
2. The Commissioner will not usually require a taxpayer to provide a written valuation under this Commissioner's practice for a routine transfer of property between related parties where the dutiable value of the property is below \$2 million.
3. Circumstances in which the Commissioner will usually have a valuation made under section 22 of the TAA include where:
  - 3.1 the taxpayer has failed to provide a written valuation in response to a requirement to do so; or
  - 3.2 the taxpayer has provided a written valuation which the Commissioner considers requires independent review by a qualified valuer.
4. In certain circumstances, the Commissioner may 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***

5. 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.

6. To assist the Commissioner in determining if he is satisfied of a person's suitability to provide a valuation, the taxpayer should provide either:
  - 6.1 a written valuation that includes a summary of the valuer's qualifications and experience; or
  - 6.2 where the valuation does not contain information about the valuer's qualifications or experience, a letter from the valuer regarding their qualifications, area of expertise, and experience relevant to valuing the property, consideration or benefit.

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

7. When requesting a taxpayer to provide a written valuation under section 21(1)(a) of the TAA, the Commissioner will set a specified due date that will allow the taxpayer four months in which to provide the valuation.
8. Where the Commissioner considers that, due to the complexity of the valuation issues, the valuation will take longer than four months to complete, the Commissioner will set a specified due date to provide the taxpayer a longer period of time to provide the written valuation, taking into account the taxpayer's views regarding the anticipated timeframe.
9. Section 21 of the TAA does not authorise the Commissioner to extend the due date to provide a written valuation. As such, although the Commissioner will accept that a written valuation may be provided after the specified due date, penalty tax will be applicable in accordance with section 26 of the TAA and CP TAA 24. CP TAA 24 also sets out the circumstances in which penalty tax will be remitted where the written valuation is provided after the specified due date.

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

10. 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.
11. For the purposes of section 22(1)(b) of the TAA, other types of evidence that the Commissioner may accept include:
  - 11.1 a fixed asset register at the date of a transaction as being satisfactory evidence of the value of certain chattels, plant and equipment; or
  - 11.2 a purchase price allocation report detailing the values of certain chattels, plant and equipment.
12. Where a taxpayer complies with a request under section 21 of the TAA by providing evidence other than a written valuation, this evidence may still be subject to recovery of valuation costs and penalty tax in accordance with CP TAA 24.

**Date of Effect**

This Commissioner's practice takes effect from 14 February 2014.

Bill Sullivan  
COMMISSIONER OF STATE REVENUE  
14 February 2014