



Valuation of Land for Duties Purposes

This Commissioner's practice outlines the circumstances in which the Commissioner will obtain a valuation for the purpose of making a duties assessment of residential land, commercial land or pastoral leasehold land.

Information regarding valuation of mining tenements is detailed in Commissioner's Practice [DA 42 'Certain Transactions Involving Mining Tenements'](#).

This Commissioner's practice does not apply where the taxpayer is required to provide completed duties valuation forms under Commissioner's Practices [TAA 13 'Valuation of Life Interests and Remainder Interests for Duties and Stamp Duty Purposes'](#) or [DA 22 'Easements'](#).

Background

Meaning of land

Under section 3A of the *Duties Act 2008* (Duties Act), *land* includes an estate or interest in land, a pastoral lease, and an interest of a pastoral lessee under a pastoral lease. It also includes anything fixed to land, or an estate or interest in a thing fixed to land, whether or not the thing:¹

- constitutes a fixture at law or
- is owned separately from the land or
- is notionally severed or considered to be legally separate from the land as a result of the operation of any law of the State or the Commonwealth.

Transfer duty

Under section 26 of the Duties Act, transfer duty is charged on the *dutiable value* of a *dutiable transaction*.² Section 27 provides that the *dutiable value* of a dutiable transaction is:³

- the *consideration* for the dutiable transaction or
- the *unencumbered value* of the dutiable property if –
 - there is no consideration for the transaction or
 - the consideration cannot be ascertained when liability for duty on the transaction arises or
 - the unencumbered value is greater than the consideration for the transaction.

¹ A thing is not fixed to land if it is on land on a temporary basis to be used in construction; it is not a fixture and is held or used in connection with a primary production business; it is a relocatable home fixed to a residential park site: Duties Act s 3A(3) A thing is also not fixed to land if it is purchased separately from the underlying land and will be permanently removed by the purchaser within 90 days after the transaction: Duties Act s 18A.

² *Dutiable transaction* is defined in section 11 of the Duties Act. Transfer duty is charged on the dutiable value of a dutiable transaction unless otherwise provided: Duties Act s 26.

³ Unless otherwise provided.

Landholder duty

Section 186 of the Duties Act provides that the value of a *landholder*⁴ is the sum of:

- the *unencumbered value* of the Western Australian land assets,⁵ chattels, or land assets and chattels (whichever is relevant) to which the landholder is entitled and
- the same percentage of the unencumbered value of the Western Australian land assets, chattels, or land assets and chattels to which any linked entity of the landholder is entitled as the percentage of the landholder's total direct or indirect interest in the linked entity calculated under section 154A.

Under section 148 of the Duties Act, *unencumbered value* has the meaning given in sections 36 and 36A as applied by sections 150 and 204C.

Section 150 of the Duties Act states that sections 36 and 36A apply, with any appropriate modifications, where it is necessary to determine the unencumbered value of land assets or chattels for the purposes of sections 155(5)(a), 157(2) or 186.

Section 204C of the Duties Act states that section 36 applies, with any appropriate modifications, where it is necessary to determine the unencumbered value of a fixed infrastructure statutory licence that is to be treated⁶ as if it were a land asset for the purposes of calculating duty in respect of a relevant acquisition under section 186.

Unencumbered value

Section 36(1) of the Duties Act provides that the unencumbered value of property is the value of the property determined 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 Commissioner's opinion, the reduction of the value of the property.

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

- the ordinary principles of valuation apply except where modified by the subsection
- the unencumbered value of an undivided share, is to be ascertained by multiplying the total unencumbered value by the share expressed as a fraction
- it is to be assumed that a hypothetical purchaser would, when negotiating the price of property, have knowledge of all existing information relating to the property and

⁴ A *landholder* is defined in section 155 of the Duties Act.

⁵ A *land asset* means land, a fixed infrastructure control right, a derivative mining right and, subject to section 204A, a fixed infrastructure access right: Duties Act s 148(1).

⁶ under section 204B(1) of the Duties Act.

- 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 value can be ascribed.

Section 36(5) of the Duties Act provides that when determining the unencumbered value of property that is land:

- if the land is transferred or agreed to be transferred, any improvement made to the land at the expense of the transferee before the date that the duty liability arises is taken not to have been made to the land
- regard will be given to the use of the land that would best enhance its commercial value
- regard will be given to commercial advantages (such as goodwill) that attach to the location or other aspects of the land and would affect the price that a reasonable purchaser would be willing to pay for the land and
- if section 36A applies, the value is to be determined having regard to that section.

Section 36A(2) of the Duties Act provides that, when determining the unencumbered value of dutiable property that is land, anything that is part of the land as a fixture is to be taken into account even if the dutiable transaction does not, or purports not to, apply to the fixture as well as the land.

Goods and Services Tax

Section 5 of the Duties Act provides that, in ascertaining the value or consideration of anything, there is to be no discount for the amount of Goods and Services Tax (GST) (if any) payable on the supply of that thing.

Valuation of property

Under section 21 of the *Taxation Administration Act 2003* (TAA), the Commissioner may require a taxpayer to provide a written valuation by a *qualified valuer*⁷ 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.

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.

⁷ 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.

Application of other practices

Commissioner's Practice TAA 23 'Circumstances When a Taxpayer Will Be Required to Provide a Written Valuation' ('CP TAA 23') outlines the circumstances in which the Commissioner will require a taxpayer to provide a written valuation for transfer duty or landholder duty purposes.

A taxpayer will not usually be required to provide a written valuation by a qualified valuer under CP TAA 23 where the Commissioner obtains a valuation of land under this practice.

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.

Principles of valuation

2. In *Spencer's Case*,⁸ the Court held that the value of property is required to be determined by reference to the price at which a willing but not anxious vendor would sell the property to a willing but not anxious purchaser on the assumption that both parties have all relevant information pertaining to the property.
3. The Commissioner considers the purchase price will usually provide the best evidence of the value of property where the parties to a transaction or an acquisition are dealing at arm's length and the other tests in *Spencer's Case* are satisfied.
4. In *Commissioner of State Revenue v Hazel Holdings Pty Ltd*,⁹ the Court of Appeal confirmed that to determine the dutiable value of land under section 36(4) of the Duties Act, the ordinary principles of valuation set out in *Spencer's Case* apply and that this price is to be assessed having regard to the highest and best use of the land.

⁸ *Spencer v The Commonwealth of Australia* (1907) 5 CLR 418.

⁹ *Commissioner of State Revenue v Hazel Holdings Pty Ltd* [2014] WASCA 203.

Goods and Services Tax

5. Where a transaction is subject to GST, the amount of GST should be embedded in the market value of the property and included in the purchase price.¹⁰ Therefore, the amount of GST should be included in the value provided for transfer duty purposes.
6. Any adjustments to add or subtract amounts for GST will either overstate or understate the market value, as any liability of a vendor to remit GST to the Australian Taxation Office is already factored into the market value.
7. The Commissioner may determine it is not appropriate to adopt a taxpayer valuation for assessment purposes where any artificial adjustments to GST are made to a market value or to the data relied on in determining the market value of, for example, comparable sales.

Residential or Commercial land

When a valuation is required

8. Duties Information Requirement 'Transactions Involving Related Parties' sets out the information a taxpayer must provide for land valuation purposes.
9. Circumstances in which the appropriate duties land valuation form and the information referred to in paragraph 8 must be provided for a transaction include where:
 - 9.1 the parties are related or not otherwise dealing at arm's length
 - 9.2 there is no consideration for the land, or the consideration appears to be inadequate or is unascertainable or
 - 9.3 the Commissioner requires a valuation in accordance with Commissioner's Practice DA 28 'Duties – Reduction in Consideration'.

Additional information required (where available)

10. If the taxpayer provides a duties valuation form to the Commissioner, the taxpayer should also provide any available information they hold that may assist in the valuation process, including:
 - 10.1 a valuation or market appraisal made by a qualified valuer that does not comply with paragraphs 11 and 12
 - 10.2 a valuation or market appraisal made by a licensed real estate agent within three months of the date of the transaction or
 - 10.3 a building inspection report from a licensed building inspector to identify damage to, or defects of, the dutiable property that may affect its value. Where available, parties should also provide details of the cost to repair the identified damage or defects.

¹⁰ See, for example, *Tomago Aluminium Company Ltd v Valuer-General* [2010] NSW LEC 4; *Storage Equities Pty Ltd v Valuer-General* [2013] NSWLEC 137.

Valuation by a qualified valuer

11. Subject to paragraph 12, matters involving the valuation of land will usually not be referred to a qualified valuer such as the Valuer General when:
 - 11.1 the Commissioner receives a valuation made by a person who holds a licence under the *Land Valuers Licensing Act 1978* (or a corresponding Act) and
 - 11.2 the total value of the land does not exceed \$2 million (not merely the interest transferred or agreed to be transferred).
12. A valuation made by a qualified valuer will usually be accepted for the purposes of paragraph 10 if:
 - 12.1 the valuation was made within three months of the date of the transaction, irrespective of the date the valuation report is issued
 - 12.2 the valuer has carried out a physical inspection of the property and
 - 12.3 the Commissioner receives written advice from the taxpayer confirming that no improvements have been made to the land since the valuation was conducted.
13. A written valuation provided by the taxpayer will be referred to a qualified valuer if the Commissioner considers for any reason that the valuation requires independent review. If the qualified valuer increases the value of the property, the Commissioner will determine if further action is appropriate.

Pastoral leasehold land

14. Pastoral leasehold land may be valued on the basis of:
 - 14.1 'walk in walk out', which includes the pastoral leases, improvements, livestock, plant and equipment, and chattels held or used in connection with the farming business or
 - 14.2 the value of the lease and improvements only.

When a valuation is required

15. Form FDA33 'Duties Valuation – Pastoral Land' must be used to provide the Commissioner with relevant information for valuation purposes.
16. Circumstances in which the valuation form and any other evidence to support the value of the pastoral leasehold land must be provided for a transaction include where:
 - 16.1 the parties are related or not otherwise dealing at arm's length or
 - 16.2 there is no consideration paid for the property, or the consideration appears to be inadequate or is unascertainable.

Obtaining a valuation

18. The Commissioner will refer the valuation form and any supporting evidence provided under this practice to a qualified valuer for the residential land, commercial land or pastoral leasehold land to be valued.

Date of Effect

This Commissioner's practice takes effect from 13 June 2019.

Nicki Godecke
COMMISSIONER OF STATE REVENUE

24 September 2020

Commissioner's Practice History

Commissioner's Practice	Issued	Dates of effect	
		From	To
TAA 8.8	14 February 2014	14 February 2014	13 March 2015
TAA 9.2	14 February 2014	14 February 2014	13 March 2015
TAA 10.2	14 February 2014	14 February 2014	13 March 2015
TAA 30.0	13 March 2015	13 March 2015	29 February 2016
TAA 30.1	1 March 2016	1 March 2016	25 May 2017
TAA 30.2	26 May 2017	26 May 2017	12 June 2019
TAA 30.3	24 September 2020	13 June 2019	21 March 2021