



Circumstances when a Taxpayer will be Required to Provide a Written Valuation

This Commissioner's practice outlines when a taxpayer will be required to provide a written valuation for the purpose of making an assessment of transfer duty or landholder duty.

Background

Transfer duty

Under section 26 of the *Duties Act 2008* (Duties Act), transfer duty is generally charged on the *dutiable value* of a *dutiable transaction*.¹ Unless otherwise provided, section 27 provides that the *dutiable value* of a dutiable transaction is:

- the *consideration*² 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.

Landholder duty

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

- the *unencumbered value* of the Western Australian land assets,³ 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.

¹ Duties Act s 11.

² *Consideration* means the amount of monetary consideration or the value of any non-monetary consideration and includes the amount of liabilities assumed under the transaction, including an obligation whether contingent or otherwise to pay any unpaid purchase money payable under an agreement for transfer, and the amount or value of any debt released or extinguished under the transaction: Duties Act ss 3 and 30.

³ A *land asset* means land, a fixed infrastructure control right, a derivative mining right and, subject to section 204C, a fixed infrastructure access right: Duties Act s 148.

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, under section 204B(1), is to be treated 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 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 as 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 a hypothetical purchaser would, when negotiating the price of property, have full knowledge of all existing information relating to the property 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 value can be ascribed.

Section 36(5) of the Duties Act provides that when determining the unencumbered value of land, the value is to be determined having regard to:

- the use of the land that would best enhance its commercial value and
- 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
- section 36A if it applies.

Determining unencumbered value: fixtures and mining tenement fixtures

Section 36A sets out how fixtures and *mining tenement fixtures* will be treated when determining the unencumbered value of land or mining tenements.

A *mining tenement fixture* means a thing that:⁴

⁴ Duties Act s 36A(1).

- under the authority (whether direct or indirect) of the mining tenement, is fixed to land that is the subject of the mining tenement and
- would be part of that land as a fixture if the mining tenement were a freehold estate in the land.

Anything that is part of land as a fixture, or is a mining tenement fixture, is to be taken into account even if the transaction does not, or purports not to, apply to the fixture as well as the land.¹⁰ These rules apply only if the value of the fixture would not be taken into account separately.¹¹ In this section, 'land' means the physical land.¹²

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.

This may include that a valuation, document or other record be provided in an electronic format, and include or be accompanied by copies of any models and details of any methods and assumptions that were relied on to arrive at the valuation.⁵ 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.

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.⁶

A requirement to provide a written valuation or valuation information must specify the date by which the taxpayer must provide the valuation or information.⁷ A person commits an offence if they do not comply with a requirement to provide a written valuation or valuation information.⁸

Qualified valuer

A qualified valuer is 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.⁹

⁵ TAA s 21(2A).

⁶ TAA s 21(2B).

⁷ TAA s 21(2).

⁸ TAA s 21(3).

⁹ TAA Glossary.

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.

Recoverable valuation costs and penalty tax

The Commissioner may recover valuation costs from a taxpayer if the taxpayer fails to provide a written valuation when required to do so.¹⁰ The taxpayer is also liable for penalty tax under section 26 for failing to provide information.

Valuation costs may also be recovered if the Commissioner is not satisfied with a valuation provided by the taxpayer and the value on which the taxpayer's liability is assessed exceeds the designated valuation¹¹ provided by the taxpayer by 15 per cent or more.¹² In this case, penalty tax for undervaluation will also apply under section 27A.

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

- remit penalty tax for non-compliance with a requirement to provide a written valuation
- recover valuation costs from a taxpayer and
- where valuation costs are to be recovered, remit any penalty tax for undervaluation.

Application of other practices

Commissioner's Practice [DA 42 'Certain Transactions Involving Mining Tenements'](#) outlines the Commissioner's treatment of certain issues when determining the dutiable value of a dutiable transaction that involves mining tenements or the unencumbered value of mining tenements that are held by a landholder.

Commissioner's Practice [TAA 30 'Valuation of Land for Duties Purposes'](#) outlines the circumstances in which the Commissioner will obtain a valuation of land or mining tenements for duties purposes.

¹⁰ TAA s 23A(1)(a).

¹¹ TAA s 23A(3) – (7).

¹² TAA s 23(A)(1)(b).

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. Circumstances in which the Commissioner will require a taxpayer to provide a written valuation include where:
 - 2.1 a written valuation is required under another Commissioner's practice¹³
 - 2.2 the parties to a transaction or an acquisition are related or not otherwise dealing at arm's length
 - 2.3 a portion of the consideration or value for the transaction or acquisition has been attributed to non-dutiable assets in the nature of goodwill and synergies or to assets in other jurisdictions
 - 2.4 the consideration is unascertainable or
 - 2.5 the Commissioner is of the opinion the property 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 land¹⁴ between related parties where the unencumbered value of the property is below \$2 million.

Qualified valuers

4. 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 taxpayer must provide evidence to satisfy the Commissioner that the person is suitably qualified or experienced to provide a valuation. The taxpayer should provide a written valuation or letter from the valuer that includes a summary of the valuer's qualifications and suitability to value the property, including any relevant experience valuing similar property.
5. Prior to engaging a qualified valuer, the taxpayer may request a determination that the Commissioner is satisfied with a person's suitability to provide a written valuation. The

¹³ See, for example, [CP DA 42 'Certain Transactions Involving Mining Tenements'](#).

¹⁴ For example, an agreement for the transfer of land by offer and acceptance.

request must be in writing and include a letter from the valuer containing the information set out in paragraph 4.

Timeframe for providing a written valuation

6. When issuing a notice under section 21 of the TAA to require a taxpayer to provide a written valuation and valuation information ('section 21 notice'), the Commissioner will usually set a specified due date that will allow the taxpayer four months in which to provide the valuation and information.
7. The Commissioner and the taxpayer may agree on a longer period of time to provide a written valuation where the extent or complexity of the valuation issues require more than four months to complete. In this case, the Commissioner will set a specified due date taking into account the taxpayer's views regarding the anticipated timeframe.
8. Where a taxpayer advises the Commissioner that a written valuation will be provided after lodgment of a transaction or acquisition, the Commissioner may issue a section 21 notice in accordance with paragraph 6.
9. Where a section 21 notice includes a requirement to provide other information that supports the valuation,¹⁵ the taxpayer will not have complied with the notice until the valuation and all of the required supporting information is provided in an appropriate format. If any required information is not provided by the due date, penalty tax will apply under section 26 of the TAA and CP TAA 24.
10. If a taxpayer voluntarily provides a written valuation without the methods, models and assumptions used in the valuation in an appropriate electronic form, the Commissioner may issue a section 21 notice requiring them to be provided electronically. The Commissioner will usually set a due date allowing the taxpayer one month to provide the information.
11. Section 21 of the TAA does not authorise the Commissioner to extend the due date to provide a written valuation or valuation information. The Commissioner may accept that a written valuation or valuation information will be provided after the specified due date, however penalty tax will apply under 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 value of the property that the Commissioner considers satisfactory.
13. The Commissioner may accept other evidence of value that is probative, independently verified and which provides an objective view of the value allocated to the property. Examples of this type of evidence include:
 - 13.1 a fixed asset register at the date of a transaction setting out the value of chattels, plant and equipment or

¹⁵ For example, the methods, models and assumptions used in the valuation in a form that allows the Commissioner to examine and test them.

13.2 a purchase price allocation report detailing the values of 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, the taxpayer may still be liable for recoverable valuation costs and penalty tax if the Commissioner's value exceeds the value set out in this evidence by 15 per cent or more.

Date of Effect

This Commissioner's practice takes effect from 24 July 2019.

Nicki Godecke
COMMISSIONER OF STATE REVENUE

24 July 2019

Commissioner's Practice History

Commissioner's Practice	Issued	Dates of effect	
		From	To
TAA 23.0	14 February 2014	14 February 2014	12 March 2015
TAA 23.1	13 March 2015	13 March 2015	23 July 2019
TAA 23.2	24 July 2019	24 July 2019	Current