



## COMMISSIONER'S PRACTICE

### TAA 30.2

#### VALUATION OF LAND FOR DUTIES PURPOSES

This Commissioner's practice outlines the circumstances in which the Commissioner will obtain a valuation for duties purposes of:

- residential or commercial land;
- mining tenements; or
- pastoral leasehold land.

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

#### Background

##### *Duties Act*

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 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.

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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.

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

### ***Taxation Administration Act 2003***

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*<sup>6</sup> 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.

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 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.

The 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.

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<sup>6</sup> 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 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. Section 36(4) of the Duties Act requires that land be valued by reference to the ordinary principles of valuation (as modified by that section) and having regard to the use of the land that would best enhance its commercial value.
3. The ordinary principles of valuation were set out in *Spencer v The Commonwealth of Australia*<sup>7</sup> ('Spencer's Case') and require that the value of property 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.
4. In *Commissioner of State Revenue v Hazel Holdings Pty Ltd*,<sup>8</sup> 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.

### ***Goods and Services Tax***

5. Where a transaction is subject to Goods and Services Tax ('GST'), the amount of GST should be embedded in the market value of the property and included in the purchase price<sup>9</sup> Therefore, the amount of GST should be included in the value provided for transfer duty purposes.

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<sup>7</sup> (1907) 5 CLR 418.

<sup>8</sup> [2014] WASCA 203.

<sup>9</sup> See, for example, *Tomago Aluminium Company Ltd v Valuer-General* [2010] NSW LEC 4; *Storage Equities Pty Ltd v Valuer-General* [2013] NSWLEC 137.

## ***Residential or Commercial Land***

### *When a valuation is required*

6. Duties Information Requirement 'Transactions Involving Related Parties' sets out the information a taxpayer must provide for land valuation purposes.
7. Circumstances in which the appropriate duties land valuation form and the information referred to in paragraph 6 must be provided for a transaction include where:
  - 7.1 the parties are related or not otherwise dealing at arm's length;
  - 7.2 there is no consideration for the land, or the consideration appears to be inadequate or is unascertainable; or
  - 7.3 the Commissioner requires a valuation in accordance with Commissioner's Practice DA 28 'Duties – Reduction in Consideration'.

### *Additional information required (where available)*

8. Where the taxpayer provides a duties valuation form to the Commissioner, the taxpayer should also provide any available information that may assist in the valuation process, including:
  - 8.1 a valuation or market appraisal made by a qualified valuer that does not comply with paragraphs 9 and 10;
  - 8.2 a valuation or market appraisal made by a licensed real estate agent within three months of the date of the transaction; or
  - 8.3 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.

### *Valuation by a qualified valuer*

9. Subject to paragraph 11, matters involving the valuation of land will usually not be referred to a qualified valuer such as the Valuer General when:
  - 9.1 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
  - 9.2 the total value of the land does not exceed \$2 million (not merely the interest transferred or agreed to be transferred).
10. A valuation made by a qualified valuer will usually be accepted for the purposes of paragraph 9 if:
  - 10.1 the valuation was made within three months of the date of the transaction, irrespective of the date the valuation report is issued;
  - 10.2 the valuer has carried out a physical inspection of the property; and
  - 10.3 the Commissioner receives written advice from the taxpayer confirming that no improvements have been made to the land since the valuation was conducted.

11. 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.

### ***Mining Tenements***

12. Duties Information Requirement 'Mining Tenements' sets out the information that a taxpayer must provide for valuation purposes. The Commissioner may also require the taxpayer to provide further information.
13. Circumstances in which the duties form 'Valuation – Mining Tenements' and the information referred to in paragraph 12 must be provided for a transaction include where:
  - 13.1 a portion of the consideration for the transaction or value of the mining tenements is allocated to mining information;
  - 13.2 a portion of the consideration for the transaction consists of a royalty;
  - 13.3 the parties are related or not otherwise dealing at arm's length; or
  - 13.4 there is no consideration for the mining tenements, or the consideration appears to be inadequate or is unascertainable.
14. The fact that a taxpayer provides a valuation form does not prevent the Commissioner from determining that it is more appropriate to require the taxpayer to provide a written valuation by a qualified valuer under CP TAA 23.

### ***Pastoral Leasehold Land***

15. Pastoral leasehold land may be valued on the basis of:
  - 15.1 '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
  - 15.2 the value of the lease and improvements only.

### ***When a valuation is required***

16. The duties form 'Valuation – Pastoral Land' must be used to provide the Commissioner with relevant information for valuation purposes.
17. 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:
  - 17.1 the parties are related or not otherwise dealing at arm's length; or
  - 17.2 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 or commercial land, mining tenements or pastoral leasehold land to be valued.

### **Date of Effect**

This Commissioner's practice takes effect from 26 May 2017.

Nicki Suchenia  
COMMISSIONER OF STATE REVENUE

26 May 2017

### **Commissioner's Practice History**

<b>Commissioner's Practice</b>	<b>Issued</b>	<b>Dates of effect</b>	
		<b>From</b>	<b>To</b>
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	Current