Superseded

Government of Western Australia
Department of Finance
Office of State Revenue

COMMISSIONER'S PRACTICE
DA 28.0

DUTIES – REDUCTION IN CONSIDERATION

Commissioner's Practice History

Commissioner's Practice	Issued	Dates of effect	
		From	To
DA 28.0	12 November 2010	12 November 2010	31 May 2012

This Commissioner's practice provides guidance on how the Commissioner will assess or reassess an agreement for the transfer of dutiable property when the consideration is reduced after the agreement is entered into.

This practice applies to transactions entered into on or after 1 July 2008.

Background

Reduction in Consideration

If the consideration under an agreement for the transfer of dutiable property is reduced after the agreement is entered into, and before the property is transferred, section 31(1) of the *Duties Act 2008* ("Duties Act") allows the Commissioner to assess or reassess the duty on the agreement for transfer on the reduced consideration if**:**

(a) the reduced consideration is not less than the unencumbered value of the dutiable property when the consideration was reduced; or

(b) the consideration is reduced because the parties have agreed not to transfer some of the dutiable property previously agreed to be transferred and the reduced consideration is not less than the unencumbered value of the dutiable property that remained to be transferred.

If the reduced consideration is less than the unencumbered value of**:**

(a) the dutiable property when the consideration was reduced; or

(b) the dutiable property that remained to be transferred,

the Commissioner may assess or reassess the agreement for transfer under section 31(3) of the Duties Act and the dutiable value of the transaction will be the unencumbered value of the dutiable property at the date the consideration was reduced.

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In accordance with section 31(6) of the Duties Act, duty is chargeable on a reassessment under section 31 in relation to a transaction at the same rate and using the same thresholds that applied when liability for duty on the transaction initially arose.

Under section 17(1) of the *Taxation Administration Act 2003* ("TAA") a taxpayer is not entitled to apply for a reassessment more than five years after the original assessment was made.

Valuation

Commissioner's Practice TAA 8 sets out the information a taxpayer must supply to enable the Commissioner to have a valuation made of any property, and clarifies when the Commissioner will accept a valuation from a licensed valuer.

Commissioner's Practice

Valuation of Dutiable Property

1. Where the consideration under an agreement to transfer is reduced, the Commissioner will obtain a valuation of the dutiable property at the date the consideration was reduced unless the parties to the agreement were at arms length and**:**

    1.1 the consideration was reduced by $5,000 or less, providing that the reason for the reduction in consideration was not merely an inducement or discount for early settlement; or

    1.2 the consideration was reduced by more than $5,000 and an independent report from a licensed building inspector identifies damage to, or defects of, the dutiable property and details the cost to repair the damage or defects, and this cost is greater than or equal to the amount by which the consideration was reduced; or

    1.3 the total unencumbered value of the dutiable property at the date the consideration was reduced is less than or equal to $400,000 and the taxpayer has a valuation of the property from a licensed valuer.

Assessment and Reassessment

2. If any of the circumstances set out in paragraphs 1.1, 1.2 and 1.3 apply, the taxpayer must provide relevant evidence to the Commissioner when applying for an assessment or reassessment, e.g. a copy of the building inspection report. In individual cases, the Commissioner may require further information to be satisfied that the dutiable property does not need to be valued.

3. Where the reduced consideration is not less than the unencumbered value of the dutiable property at the date the consideration was reduced, the Commissioner will assess or reassess the agreement for transfer on the reduced consideration.

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4. Where the reduced consideration is less than the unencumbered value of the dutiable property at the date the consideration was reduced, the Commissioner will assess or reassess the agreement for transfer on the unencumbered value of the dutiable property.

5. The same rates and thresholds that applied when liability for duty on the agreement for transfer initially arose will also apply to an assessment or reassessment on either the reduced consideration or the unencumbered value (whichever is applicable).

6. A taxpayer has five years from the date of issue of the original assessment relating to the agreement for transfer to apply for a reassessment of duty where the consideration under the agreement was reduced.

Date of Effect

This Commissioner's practice takes effect from 12 November 2010.

Bill Sullivan
COMMISSIONER OF STATE REVENUE
12 November 2010