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COMMISSIONER'S PRACTICE

TAA 8.9

VALUATION OF LAND FOR DUTIES PURPOSES

Commissioner's Practice History

| Commissioner's Practice | Issued | Dates of effect | |
|-------------------------|-------------------|-------------------|-------------------|
| | | From | To |
| TAA 8.0 | 21 October 2003 | 21 October 2003 | 14 September 2006 |
| TAA 8.1 | 15 September 2006 | 15 September 2006 | 30 November 2006 |
| TAA 8.2 | 1 December 2006 | 1 December 2006 | 11 January 2007 |
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| TAA 8.4 | 1 July 2008 | 1 July 2008 | 20 December 2010 |
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| TAA 8.8 | 14 February 2014 | 14 February 2014 | 18 December 2014 |
| TAA 8.9 | 19 December 2014 | 19 December 2014 | 12 March 2015 |

This Commissioner's practice outlines the circumstances in which the Commissioner will obtain a valuation of residential or commercial land for duties purposes.

This Commissioner's practice does not apply where the Commissioner requires the taxpayer to provide completed duties valuation forms under one of the following Commissioner's practices:

- 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'; and
- TAA 13 'Valuation of Life Interests and Remainder Interests for Duties and Stamp Duty Purposes'.

Background

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*¹ of any property, consideration or benefit, together with any documents or

¹ 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.

other records in the taxpayer's possession or control relevant to determining the value of the property, consideration or benefit.

Under section 21(2A) of the TAA, the Commissioner may require that a valuation, document or other record be provided in an electronic format, and that a valuation provided by the taxpayer 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:

- (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.

Duties Act

Under the *Duties Act 2008* ('Duties Act'), transfer duty is generally chargeable by reference to the dutiable value of a dutiable transaction.² Where the *dutiable value*³ of a *dutiable transaction*⁴ is the *unencumbered value* of the *dutiable property*,⁵ section 36 of the Duties Act sets out how the unencumbered value of property is to be determined.

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 section; and
- that is land – regard is given to the use of the land that would best enhance its commercial value.

Application of Other Practices

When the Commissioner obtains a valuation of land under this practice, the Commissioner will usually not require the taxpayer to also provide a written valuation by a qualified valuer.

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

² Duties Act s 26

³ Duties Act ss 27 – 29

⁴ Duties Act s 11

⁵ Duties Act ss 15 – 18

Commissioner's Practice

Principles of Valuation

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

GST

4. Where a transaction is subject to Goods and Services Tax ('GST'), the amount of GST is embedded in the market value and should be included in the value provided for transfer duty purposes.⁸ A valuation provided for the purposes of this practice (irrespective of whether it is provided by the taxpayer, the Valuer General or another external valuer) should not be determined on a GST-exclusive basis where the valuer is advised that GST is payable on the transaction.

When a Valuation is Required

5. Duties Information Requirement 'Transactions Involving Related Parties' sets out the information a taxpayer must provide for land valuation purposes.
6. Circumstances in which the appropriate duties land valuation form and the information referred to in paragraph 5 must be provided for a transaction include where:
 - 6.1 the parties are related or not otherwise dealing at arm's length, which includes:
 - (a) parties related by blood or marriage;
 - (b) parties related by prior business relationship;

⁶ (1907) 5 CLR 418.

⁷ [2014] WASCA 203.

⁸ See, for example, *Tomago Aluminium Company Ltd v Valuer-General* [2010] NSW LEC 4; *Storage Equities Pty Ltd v Valuer-General* [2013] NSWLEC 137.

- (c) related companies, as defined in the *Corporations Act 2001*;
 - (d) partners in a partnership;
 - (e) participants in the same joint venture;
 - (f) trustees of trusts which have common beneficiaries;
 - (g) joint owners of property; and
 - (h) entities with other significant business relationships;
- 6.2 there is no consideration for the land, or the consideration appears to be inadequate or is unascertainable; or
- 6.3 the Commissioner requires a valuation in accordance with Commissioner's Practice DA 28 'Duties – Reduction in Consideration'.

Additional Information Required (where available)

7. 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:
- 7.1 a valuation or market appraisal made by a qualified valuer that does not comply with paragraphs 9 and 10;
 - 7.2 a valuation or market appraisal made by a licensed real estate agent within three months of the date of the transaction; or
 - 7.3 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 damage or defects identified.

Obtaining a Valuation

8. Except where paragraphs 9 and 10 apply, the Commissioner will refer the valuation form and supporting evidence to the Valuer General for the land to be valued. Alternatively, the Commissioner may elect to refer the matter to another qualified valuer for valuation.

Valuation by a Qualified Valuer

9. Matters involving the valuation of land will usually not be referred to 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(s) 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;
 - 10.2 the valuer has carried out a physical inspection of the property;
 - 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; and
 - 10.4 either –
 - (a) the valuation was conducted for duty purposes; or
 - (b) where the valuation was not conducted for duty purposes (for example, where it was conducted to ascertain the unencumbered value of the property for security or lending purposes), the valuer provides written authorisation allowing the Commissioner to rely upon the valuation for the purpose of assessing duty.
11. Notwithstanding paragraphs 9 and 10, the Commissioner will refer a valuation provided by the taxpayer to the Valuer General for consideration if it appears unusually low for any reason.
12. If the Valuer General increases the value of the property, the Commissioner will determine if further action is appropriate in respect of the matter.

Copies of relevant forms and publications are available on the Office of State Revenue website at www.osr.wa.gov.au.

Date of Effect

This Commissioner's practice takes effect from 19 December 2014.

Nicki Suchenia
ACTING COMMISSIONER OF STATE REVENUE

19 December 2014