Valuation of Shares Issued as Consideration for a Dutiable Transaction

This Commissioner's practice outlines how the Commissioner will value shares that form part of the consideration for a dutiable transaction or relevant acquisition in a landholder.

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 other records in the taxpayer's possession or control relevant to determining the value of the property, consideration or benefit.[2]

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.

Under section 27 of the *Duties Act 2008* (Duties Act), the dutiable value of a dutiable transaction is the greater of the consideration for the transaction and the unencumbered value of the dutiable property the subject of the transaction.

Chapter 3 of the Duties Act provides duty is charged on a relevant acquisition of an interest in a landholder based on the value of land assets and chattels held by the landholder. While duty is not based on the consideration, the value of the consideration may be a useful guide to the value of land assets and chattels.

Application of other practices

Commissioner's Practice TAA 23 'Circumstances When a Taxpayer will be Required to Provide a Written Valuation' outlines when the Commissioner will require a taxpayer to provide a written valuation for transfer duty or landholder duty purposes. This may include a valuation of the consideration for a transaction.

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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.

2 This may include a requirement that the valuation, document or other record be provided in an electronic format, and that a valuation provided by the taxpayer include any models and details of any methods and assumptions that were relied upon in order to arrive at the valuation.

Commissioner's Practice

1. The consideration for a dutiable transaction or relevant acquisition may consist of or include the issue of shares in a corporation to the vendor (vendor shares), or options to acquire shares in a corporation (share options).

Value of unlisted vendor shares

2. If vendor shares are to be issued in a previously dormant company, or one with minimal assets, the Commissioner will generally accept the specified issue value of the shares.

3. A valuation of the shares will be required for vendor shares issued in an active company. The taxpayer must provide:

   3.1 complete financial statements for the company for the three financial years prior to the transaction date and

   3.2 any other information relevant for this purpose.

Value of listed vendor shares

4. The value of vendor shares issued in a listed company will be based on the closing sale price for similar shares at the date liability to duty arose on the transaction.

Value of share options

5. If the consideration for a transaction includes options to acquire shares in a listed company, the Commissioner will determine if similar options are currently traded on the Australian Stock Exchange (ASX)[3] and use these to guide the value of those options.

6. If the ASX does not provide guidance, the Commissioner will accept commonly used valuation methods for those options, including the Black-Scholes method.

Value of performance shares

7. The Commissioner considers the value of performance shares is directly linked to the likelihood of an event being performed which converts those performance shares into ordinary shares. In determining their value, the Commissioner will have regard to any values reported within the issuing company's financial reports or to the ASX.

8. If there is little guidance as to the value of the performance shares, the Commissioner will consider valuation evidence and submissions from the taxpayer concerning an appropriate discount. The Commissioner will accept commonly used valuation methods for those performance shares, including the Monte Carlo method.

[3] A reference to the ASX in this practice will include other similar financial markets.

Escrow arrangements

9. If vendor shares or options are to be issued and will be subject to a stock exchange imposed escrow period of up to 12 months, the Commissioner will generally accept a proportionate discount of up to 15 per cent per annum to the share's ordinary market value. This is in recognition of their lack of negotiability.

10. If vendor shares or options are to be issued and will be subject to a stock exchange imposed escrow period in excess of 12 months, the Commissioner will consider valuation evidence and submissions from the taxpayer concerning an appropriate discount. The Commissioner will not accept a proposed discount of more than 15 per cent without supporting evidence.

11. If vendor shares or options are to be issued and will be subject to a contractually imposed escrow period, the Commissioner will consider valuation evidence and submissions from the taxpayer concerning an appropriate discount.

12. Some securities, such as performance shares, may inherently not be transferrable. If an escrow period applies to these securities, the Commissioner will not accept a proposed discount as their lack of negotiability will already be taken into account in determining their ordinary market value.

Determining a value for assessment

13. After determining the value of vendor shares or options under this practice, the Commissioner will consider whether to accept that value as the dutiable value for a dutiable transaction, or as the starting point for a valuation of a landholder's assets. If the consideration may not reflect the value of the dutiable property or assets of a landholder, the Commissioner will generally seek a direct valuation of the property or assets before determining the correct value for an assessment.

Date of Effect

This Commissioner's practice takes effect from 19 September 2022.

Chris McMahon
COMMISSIONER OF STATE REVENUE

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Document History

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