Valuation of WA Business Assets for Duties Purposes

This Commissioner's practice outlines the circumstances in which the Commissioner will value, or obtain a valuation of, Western Australian business assets for duties purposes.

Background

Duties Act

Section 19 of the *Duties Act 2008* (Duties Act) provides that the liability to duty on a dutiable transaction arises the earlier of:

(a) the time referred to in Schedule 1 of the Duties Act or

(b) if the transaction is, or will be, effected by an instrument, when the instrument is executed.

Western Australian business assets

Section 15 of the Duties Act defines dutiable property to include a *Western Australian business asset*.

Under section 79 of the Duties Act, a *Western Australian business asset* means a *business asset* of a *Western Australian business* and includes any of the following:

(a) goodwill of a business

(b) a restraint of trade arrangement for a business

(c) a business identity

(d) a business licence

(e) a right of a business under an uncompleted agreement to supply commodities or provide services

(f) intellectual property of a business or

(g) things that a business has that are in the nature of rent rolls and client lists,

but does not include a trade debt.

Sections 85 and 86 of the Duties Act each provide a formula for calculating the dutiable value of a dutiable transaction for a business asset, depending upon whether the head office or principal place of business of the Western Australian business is located in Western Australia or elsewhere.

Changes to consideration

Section 31 of the Duties Act sets out how the Commissioner will treat changes to the consideration for an agreement for the transfer of dutiable property where the consideration is altered after the agreement is made but before the dutiable property is transferred under the agreement.

Section 31(4) of the Duties Act provides that, if after an agreement for the transfer of dutiable property is entered into and before the property is transferred:

(a) the consideration under the agreement is increased and

(b) the increased consideration is not less than the unencumbered value of the dutiable property when the agreement was entered into,

the Commissioner is to assess or reassess the liability to duty of the agreement in accordance with the increased consideration.

If, after a dutiable transaction is duty endorsed, the consideration under the transaction is increased as referred to in section 31(4) of the Duties Act, section 31(5) provides that the person liable to pay duty must, within two months after the day on which the consideration was increased, lodge:

(a) if the increase in consideration is effected by an instrument in hard copy form – that instrument and if there is more than one such instrument, each of them or

(b) if the increase in consideration is not effected by an instrument in hard copy form – an instrument in hard copy form that evidences the increase in consideration and if there is more than one such instrument, each of them, or a transfer duty statement for the transaction that shows the increase in consideration.

Taxation Administration Act

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.

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.

Application of other practices

When the Commissioner obtains a valuation of business assets under this practice, the Commissioner will generally 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.

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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.

Commissioner's Practice DA 28 'Reduction in Consideration' provides guidance on how the Commissioner will assess or reassess duty on an agreement for the transfer of dutiable property where the consideration is reduced after the agreement is entered into.

Commissioner's Practice

When a valuation is required

1. Duties Information Requirement 'Business Property' sets out the information a taxpayer must provide for all dutiable transactions involving business assets.

2. Circumstances in which the Commissioner may value, or obtain a valuation of, business assets for a transaction include where:

   2.1 the parties are related or not otherwise dealing at arm's length, which includes, but is not limited to:

      2.1.1 parties related by blood or marriage

      2.1.2 parties related by prior business relationship

      2.1.3 related companies, as defined in the *Corporations Act 2001*

      2.1.4 partners in a partnership

      2.1.5 participants in the same joint venture

      2.1.6 trustees of trusts which have common beneficiaries

      2.1.7 joint owners of property and

      2.1.8 entities with other significant business relationships or

   2.2 there is no consideration for the business assets, or the consideration appears to be inadequate or is unascertainable.

Agreements containing an adjustment clause for consideration

3. Where an agreement for the transfer of business assets provides for the consideration to be increased after the business assets have been transferred, and the value of the increased consideration is unascertainable at the date the agreement is made, the Commissioner will value, or obtain a valuation of, the business assets at the date that liability to duty arose on the agreement, i.e., the date on which the agreement is executed.

Example

An agreement for the sale of business assets provides that the consideration is to be paid as follows:

> *Subject to any adjustments to be made in accordance with this agreement the consideration payable is -*
>
> | | |
> |---|---|
> | Goodwill | $150,000 |
> | Business Licences | $ 75,000 |
> | Intellectual Property | $ 25,000 |

The agreement provides that the consideration is to be adjusted after the transfer of dutiable property and provides for the purchaser to pay to the vendor an amount equal to 3 per cent of the annual sales for the three years following settlement.

As part of the consideration is unascertainable, the Commissioner will value, or obtain a valuation of, the business assets at the date that liability to duty arose on the agreement.

Note: As the duty is chargeable at the date the liability to duty on the dutiable transaction arose, the Duties Act does not require the instrument to be resubmitted for re-assessment on completion of the adjustment of the consideration after the transfer of the property.

Valuation methods

4. The valuation method that the Commissioner will adopt will depend on the circumstances of the transaction and will be guided by, but not limited to, common industry practice for valuing the goodwill or other business assets for that type of business.

5. Where appropriate, the Commissioner may refer the information referred to in paragraph 1 to the Valuer General for the business assets to be valued. Alternatively, the Commissioner may elect to refer the matter to another qualified valuer for valuation.

Arbitrary valuation of business assets

6. Where the Commissioner has accepted or otherwise determined the consideration for the transaction, and accepted or otherwise determined the value of the underlying tangible assets, the excess of the consideration paid over the value of the underlying tangible assets will be taken to be the value of all intangible assets.

Super-profits method

7. The value of the goodwill of the business is calculated by considering:

   7.1 the average profits of the business calculated over a three to five year period

   7.2 an allowance made based on current industry norms where proprietors' salaries are not reflected in the accounts

   7.3 an allowance made for the implicit interest charge on capital contributed by the proprietor/retained earnings at the current benchmark interest rate used by the Australian Taxation Office[2] and

   7.4 the adjusted average profits for the business multiplied by a factor to be determined by the Commissioner. The value of this multiple may be based on common industry practice for the sale of similar businesses. Between one and three years adjusted

[2] www.ato.gov.au

average profits is the usual multiple, although other circumstances (such as monopoly or guaranteed markets) may increase this multiple.

Gross earnings

8. Where the value of the gross earnings are based on the current gross revenue of the business, and goodwill is based on an uplifting or discounting of these earnings, the uplift or discount factor may be calculated by considering:

   8.1 information collected when the Commissioner assesses other similar transactions

   8.2 advice from experts referred by industry groups. For example, when determining the value of goodwill on the sale of an accounting practice, the Commissioner may consult with experts from the leading accounting industry bodies

   8.3 advice from the Valuer General or

   8.4 advice from other experts engaged by the Commissioner.

Non-financial measures

9. The Commissioner may determine the value of business assets by reference to the output or quantifiable inputs of the businesses, for example, the number of licensed beds in an aged care facility.

Date of Effect

This Commissioner's practice takes effect from 14 February 2014.

Bill Sullivan
COMMISSIONER OF STATE REVENUE

14 February 2014

Commissioner's Practice History

Commissioner's Practice	Issued	Dates of effect	
		From	To
TAA 22.0	1 May 2009	1 July 2008	13 February 2014
TAA 22.1	14 February 2014	14 February 2014	Current