



Contingent Consideration

Section 32 of the *Duties Act 2008*

As at 1 July 2021

When a dutiable transaction provides for a payment that is contingent on a future event happening, we will determine the dutiable value with regard to the highest possible consideration that might be payable, regardless of whether that consideration is paid.

Example 1

An agreement to transfer vacant land that is currently zoned 'Residential' specifies the consideration is \$400,000 plus an additional \$100,000 if the land is rezoned 'Commercial' within 12 months of the settlement date. The unencumbered value of the land is \$400,000. Duty will be assessed on consideration of \$500,000.

The Commissioner may reassess the duty liability if:¹

- duty has been assessed and paid on the agreement
- the contingent consideration has not been paid
- the event has not happened, or has not happened within the time specified in the agreement describing the event
- either
 - the event cannot happen in the future or
 - the time specified in the agreement describing the event has passed or expired
- and
- an application for reassessment is made using Form FDA4 '[Contingent Consideration](#)'² within five years after the day on which the liability for duty on the agreement to transfer the property arose.

A reassessment will only be considered if the non-occurrence of an event results in non-payment of the contingent consideration.

Duty will not be reassessed if there is an agreement to pay a rebate or reimbursement to a purchaser or transferee due to the happening of an event.

Example 2

In example 1, the purchaser pays consideration of \$400,000 at the time of settlement. As the land is not rezoned commercial within 12 months of the settlement date, the purchaser applies for the agreement to be reassessed without regard to the \$100,000 contingent consideration. The Commissioner reassesses the agreement on the dutiable value of \$400,000 and issues a refund for the difference in duty payable.

¹ Duties Act s32.

² Application forms are available on the website at WA.gov.au

Example 3

A purchaser enters into an agreement to acquire a rent roll business. The purchase price is calculated as \$3.50 for every \$1 of annual management and rental fees for clients who transfer to the purchaser within the first 12 months. There are 85 clients on the seller's rent roll, with annual management and rental fees totalling \$132,600. The Commissioner assesses on the maximum contingent consideration of \$464,100.

After 12 months of operating, only 75 of the clients transfer to the purchaser, with annual management and rental fees totalling \$117,000. The purchaser applies for a reassessment without regard to the contingent consideration. The Commissioner reassesses the agreement on the dutiable value of \$409,500 and issues a refund for the difference in duty payable.

Example 4

A purchaser enters into an agreement to acquire a business. The purchase price is \$600,000, plus a further \$250,000 if the business reaches agreed sales targets within the first three years after settlement. The Commissioner assesses on the maximum consideration payable of \$850,000.

After the first year of operating, the business performs poorly and is unlikely to reach the three year sales targets. The purchaser applies for a reassessment without regard to the contingent consideration. The Commissioner can't reassess the transaction because there are still two years remaining for the condition to be satisfied. The reassessment request can only be considered after the condition has lapsed.

Example 5

A purchaser enters into an agreement for a residential lot in a new subdivision for \$250,000. A condition of the agreement provides the developer will pay a rebate of \$10,000 to the purchaser if they construct a dwelling within the first 12 months after settlement.

The Commissioner assesses duty on \$250,000. The rebate paid by the developer to the purchaser is not contingent consideration.

Contact RevenueWA

Web Enquiry	www.osr.wa.gov.au/DutiesEnquiry	Website	WA.gov.au
Office	200 St Georges Terrace Perth WA 6000	Phone	(08) 9262 1100 1300 368 364 (WA country landline callers)
Postal	GPO Box T1600 Perth WA 6845		

Note: This fact sheet provides guidance only. Refer to the *Duties Act 2008* for complete details.