



## Penalty Tax and Recovery of Valuation Costs for Written Valuations

This Commissioner's practice outlines the circumstances in which the Commissioner may:

- remit some or all of the penalty tax for non-compliance with a request to provide a written valuation
- recover valuation costs from a taxpayer and
- where valuation costs are to be recovered, remit any applicable penalty tax for undervaluation.

This practice only applies where a taxpayer is required to provide a written valuation by a qualified valuer under [Commissioner's Practice TAA 23 'Circumstances When a Taxpayer will be Required to Provide a Written Valuation'](#) (CP TAA 23). This practice does not apply where a valuation has been provided under [Commissioner's Practice TAA 30 'Valuation of Land for Duties Purposes'](#).

### Background

#### *Valuation of property*

Under section 21(1) of the *Taxation Administration Act 2003* (TAA), the Commissioner may require a taxpayer to provide a written valuation by a *qualified valuer*<sup>1</sup> of any property, consideration or benefit, together with any document or other records in the taxpayer's possession or control relevant to determining the value.

Section 21(2A) of the TAA provides that a requirement under subsection (1) may include that a valuation, document or other record be provided in an electronic format, and include or be accompanied by copies of any models and details of any methods and assumptions that were relied on to arrive at the valuation. These should be provided in a format that allows the Commissioner to examine and test the methods, models and assumptions when determining whether to adopt the valuation.

In accordance with section 21(2) of the TAA, a requirement to provide a written valuation or valuation information must specify the date by which a taxpayer must provide the valuation or information. Under section 21(3) of the TAA, a person commits an offence if they do not comply with a requirement to provide a written valuation or valuation information.

CP TAA 23 sets out when the Commissioner will require a taxpayer to provide a written valuation or valuation information.

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.

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<sup>1</sup> *Qualified valuer* means a person who is licensed under the *Land Valuers Licensing Act 1978*; or is licensed or registered under a law of another State or Territory corresponding to the *Land Valuers Licensing Act 1978*; or who the Commissioner is satisfied is suitably qualified or experienced to provide a valuation: TAA Glossary.

## **Recovery of valuation costs**

Section 23A(1) of the TAA provides that the Commissioner may recover from a taxpayer the costs of obtaining a valuation under section 22 if:

- (a) the taxpayer does not comply with a requirement under section 21 to provide a written valuation or
- (b) the Commissioner is not satisfied with a valuation provided by the taxpayer and the value on which the taxpayer's liability is assessed exceeds the designated valuation provided by the taxpayer by 15 per cent or more.

However, if the taxpayer challenges the assessment referred to in section 23A(1)(b), the Commissioner can only recover the valuation costs if:<sup>2</sup>

- (a) the value on which the taxpayer's final assessment is based exceeds the taxpayer's designated valuation by 15 per cent or more and
- (b) the difference between the value on which the taxpayer's liability was originally assessed and the value on which the taxpayer's final assessment is based is less than 15 per cent.

The final assessment is the assessment applicable after any objection and review proceedings are discontinued or otherwise finally determined.<sup>3</sup>

The Commissioner cannot recover the costs of a valuation that the Commissioner has obtained because, or in the course, of objection or review proceedings.<sup>4</sup>

## **Designated valuation**

For the purposes of recoverable valuation costs in section 23A of the TAA and undervaluation penalty tax in section 27A, section 23A(3) provides that a *designated valuation* is a reference to:

- (a) a valuation nominated by the taxpayer for the purposes of the section or
- (b) in the absence of a nomination – the last valuation provided by the taxpayer prior to the Commissioner seeking a valuation under section 22 or
- (c) a valuation accepted as the designated valuation by the Commissioner under section 23A(7).

The Commissioner may ask the taxpayer whether they wish to nominate in writing a valuation for the purposes of recovery of valuation costs.<sup>5</sup> Where the Commissioner has not sought a nomination from the taxpayer, the Commissioner cannot recover the costs of obtaining a valuation.<sup>6</sup>

Under section 23A(7) of the TAA, the Commissioner may accept a valuation provided by the taxpayer after the taxpayer has nominated a valuation, or the Commissioner has sought a valuation, as the designated valuation, if it is reasonable to do so in the circumstances.

For the purpose of section 23A of the TAA, if a valuation gives a range of values and a preferred value is not provided, the valuation is taken to fix a value at the median point in the range.<sup>7</sup>

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<sup>2</sup> TAA s 23A(2).

<sup>3</sup> TAA s 23A(8).

<sup>4</sup> TAA s 23A(9).

<sup>5</sup> TAA s 23A(4) and (5).

<sup>6</sup> TAA s 23A(6).

<sup>7</sup> TAA s 23A(10).

## Penalty tax

Section 28 of the TAA limits the total amount of penalty tax payable by a taxpayer to the amount equal to the taxpayer's primary liability.

### *Penalty tax for contravention of a taxation Act*

Under section 26(1) of the TAA, a taxpayer is liable to pay penalty tax where they fail to provide information required under a taxation Act or, as a result of any other contravention of a taxation Act, they avoid or delay the submission of information required for the assessment of tax.

The amount of penalty tax payable imposed under section 26(3) of the TAA is the amount equal to the taxpayer's primary liability.

### *Penalty tax for undervaluation*

If the Commissioner decides to recover valuation costs from a taxpayer under section 23A of the TAA because the Commissioner is not satisfied with the taxpayer's valuation and the difference between the valuations is 15 per cent or more, section 27A(2) provides that the taxpayer is also liable to pay penalty tax for undervaluation.<sup>8</sup>

Under section 27A(3) of the TAA, the amount of penalty tax payable is the difference between:

- (a) the amount the taxpayer's primary liability would have been if the taxpayer's designated valuation were used in assessing their liability and
- (b) the lesser of the amount of the taxpayer's liability as assessed by the Commissioner and, if the taxpayer challenges the validity of the assessment, the amount of their primary liability in the final assessment.

Section 29 of the TAA provides that the Commissioner may remit penalty tax wholly or in part.

## Commissioner's practice

1. Where the taxpayer has provided a written valuation (whether or not in response to a requirement to do so), or the taxpayer does not comply with a requirement to provide a written valuation under section 21 of the TAA, the taxpayer may be separately liable for:
  - 1.1 penalty tax for non-compliance with a requirement to provide a written valuation
  - 1.2 recovery of valuation costs and
  - 1.3 penalty tax for undervaluation.
2. Where relevant, the total amount of penalty tax assessed will be limited to an amount equal to the taxpayer's primary liability.<sup>9</sup>
3. The table at Appendix 1 sets out the different circumstances in which the amounts set out in paragraph 1 may apply.

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<sup>8</sup> Undervaluation penalty tax does not apply where the Commissioner recovers valuation costs because the taxpayer fails to provide a written valuation when required to do so under section 21 of the TAA.

<sup>9</sup> Recoverable costs are not penalty tax under the TAA and will not be taken into consideration for the purposes of section 28 of the TAA.

## General matters

### *Valuation costs*

4. The costs of obtaining a valuation under section 22(1)(a) of the TAA (valuation costs) are not limited to amounts directly invoiced to the Commissioner by a qualified valuer and may consist of other expenses associated with obtaining a valuation, including:
  - 4.1 legal costs incurred in relation to instructions for the valuer
  - 4.2 travel costs and
  - 4.3 other costs the Commissioner incurs as a result of engaging any other third party expertise required in a valuation matter.

### *Unforeseen and unusual circumstances*

5. A reference in this practice to 'unforeseen and unusual circumstances' means unanticipated circumstances outside the taxpayer's control. These circumstances are considered to constitute a higher benchmark than the criteria used when considering 'exceptional circumstances' of the type set out in other Commissioner's practices relating to the remission of penalty tax.<sup>10</sup>
6. Examples of circumstances that would be considered unforeseen and unusual include:
  - 6.1 the total destruction of the taxpayer's business records as a result of fire, flood or other disaster
  - 6.2 the serious illness, incapacitation or death of a valuer where the valuer is not part of a firm in which another valuer could complete the matter or
  - 6.3 the valuation methodology used by the taxpayer's valuer (not including the taxpayer's legal arguments) are subsequently overturned by a court or tribunal.

### *Reassessment of recoverable costs and penalty tax*

7. Recoverable valuation costs and any applicable undervaluation penalty tax will be assessed when the original assessment of primary tax is made.<sup>11</sup> If a reassessment is required that reduces the primary tax, the amounts will be recalculated accordingly and refunded where applicable.<sup>12</sup>

## Non-compliance with a request to provide a written valuation

8. A request by the Commissioner under section 21 of the TAA to provide a written valuation by a qualified valuer (section 21 notice) will usually allow a taxpayer four months to respond, unless an alternative period has been otherwise agreed in accordance with CP TAA 23.
9. Penalty tax will be imposed under section 26 of the TAA where a taxpayer does not provide a written valuation when requested to do so or provides a written valuation after the specified due date, and will be remitted in accordance with paragraph 10.

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<sup>10</sup> Commissioner's Practices TAA 18, TAA 19 and TAA 20.

<sup>11</sup> Excluding an interim assessment under TAA s 16A.

<sup>12</sup> This will include interest at the prescribed rate if the reassessment results from objection or review proceedings.

10. Penalty tax will be remitted from 100 per cent of the taxpayer's primary liability to interest on the primary liability at a rate of 20 per cent per annum calculated daily for the penalty period as follows:

Contravention	Penalty period	Penalty remitted to
Failure to provide valuation	Day after section 21 notice due date to date of issue of assessment notice	(primary duty x 20%) x (penalty period/365)
Valuation provided after section 21 due date	Day after section 21 due date to date valuation provided	

11. Where a taxpayer has not complied with a section 21 notice because all of the required supporting information was not provided in an appropriate format by the specified due date, penalty tax will be calculated from the day after the due date until the date the last of the required information is received.
12. Where the taxpayer notifies the Commissioner that they require additional time to respond to a section 21 notice due to unforeseen and unusual circumstances, the Commissioner will accept that the valuation or information will be provided after the specified due date.
- 12.1 The taxpayer will be liable for penalty tax in accordance with paragraphs 9 and 10.
- 12.2 The taxpayer may make a written request for the remission of penalty tax.  
If accepted, the Commissioner will usually agree to remit the penalty tax in full.

### Nominating a designated valuation

13. A nomination of a valuation as the designated valuation for the purposes of recoverable valuation costs and undervaluation penalty tax must be in writing.
14. If the taxpayer has not already nominated a valuation, the Commissioner will make a written request to the taxpayer to do so. The Commissioner will usually seek such a nomination before determining whether it is appropriate to adopt the valuation for assessment purposes.
15. The taxpayer will be given 14 days in which to respond to a request to nominate a valuation as the designated valuation. Where the taxpayer does not nominate a valuation or advise the Commissioner of their intention to provide a new valuation within this time period, the Commissioner will proceed on the basis the last valuation provided by the taxpayer is the designated valuation.

### Subsequent valuation

16. The taxpayer must make a written submission to the Commissioner if they want to nominate a different valuation ('subsequent valuation') to the valuation that was previously designated.<sup>13</sup>

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<sup>13</sup> This is a valuation that was nominated by the taxpayer as the designated valuation or a valuation that was designated under section 27A(3)(b) in the absence of a nomination by the taxpayer.

17. The written submission must address the following:
- 17.1 the reasons the Commissioner should accept the subsequent valuation as the designated valuation and
  - 17.2 if the taxpayer nominated the original valuation as the designated valuation, why that valuation should be superseded by the subsequent valuation or
  - 17.3 if the taxpayer did not nominate a valuation as the designated valuation following a request from the Commissioner, the reasons why the taxpayer failed to do so.
18. The Commissioner will usually accept a subsequent valuation as the designated valuation when satisfied there were circumstances beyond the taxpayer's control which caused the original valuation to be incomplete or inaccurate, or which prevented the taxpayer from providing a valuation or nominating a designated valuation when requested to do so. Examples of circumstances beyond the taxpayer's control include changes to:
- 18.1 an interpretation of the law or valuation methodologies as a result of the decision of a court or tribunal or
  - 18.2 accounting or other financial standards.
19. The Commissioner will not accept a subsequent valuation as the designated valuation where the Commissioner considers the request to nominate the subsequent valuation is made for a purpose that is or includes avoiding or reducing the potential assessment of recoverable valuation costs and, where applicable, undervaluation penalty tax.

### **Recovery of valuation costs**

20. The Commissioner can only recover valuation costs where:
- 20.1 the taxpayer did not provide a written valuation when required to do so<sup>14</sup> or
  - 20.2 the Commissioner is not satisfied with the taxpayer's valuation and the value on which the taxpayer's liability is assessed exceeds the taxpayer's designated valuation by 15 per cent or more.<sup>15</sup> This would generally occur where the Commissioner has decided it is appropriate to adopt a different valuation.
21. Examples of when the Commissioner will generally not be satisfied with a taxpayer's valuation and would adopt a different valuation include:
- 21.1 the taxpayer's valuation does not take into account the relevant statutory context, including specific legislative provisions or applicable case law
  - 21.2 the taxpayer's valuation does not value the assets as at the date of the transaction, and the Commissioner is satisfied there would be a significant difference in values between the valuation date and the date of the transaction<sup>16</sup>
  - 21.3 the taxpayer's valuation uses a methodology that the Commissioner considers is inconsistent with generally accepted methods for that class of asset

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<sup>14</sup> This does not include where the valuation was provided after the due date specified in the section 21 notice.

<sup>15</sup> Where the final assessment is the outcome of a review proceeding, the recovery of costs by the Commissioner also requires the final assessment not to vary from the original assessment by more than 15 per cent: s 23A(2).

<sup>16</sup> This may be due to there being a significant time between the two dates, or a significant change in circumstances between those dates.

- 21.4 the taxpayer's valuation uses inputs or assumptions to support its preferred value that the Commissioner considers are not appropriate, not justified or not persuasive or
- 21.5 the taxpayer's valuation contains mathematical or similar errors that affect the final valuation.

### Penalty tax for undervaluation

22. Under section 27A(3) of the TAA, penalty tax for undervaluation is the difference between the tax assessed on the Commissioner's valuation and the tax that would have been assessed on the value in the designated valuation.
23. Penalty tax will be remitted from 100 per cent of the amount payable to a percentage of the penalty as follows:

Variance between commissioner's valuation and designated valuation	Penalty tax remitted to
15% - 20%	5%
Greater than 20% - 35%	10%
Greater than 35% - 50%	25%
Greater than 50% - 80%	40%
Greater than 80% - 100%	50%
Greater than 100%	75%

24. There will be no remission of penalty tax where:
- 24.1 the variance between the Commissioner's value and the value in the designated valuation is greater than 100 per cent and
- 24.2 the Commissioner considers the taxpayer has attempted to avoid, reduce or defer the payment of tax or mislead the Commissioner by providing an underestimated valuation.
25. Further remission of penalty tax beyond the amounts specified in paragraph 23 will usually only be considered where there are circumstances outside the taxpayer's control that caused the designated valuation to be incomplete or inaccurate.<sup>17</sup>
26. The table at Appendix 2 provides examples of how penalty tax for undervaluation may be remitted.
27. Penalty tax for undervaluation is not imposed under section 27A of the TAA if the Commissioner adopts a value from the taxpayer's designated valuation that exceeds the taxpayer's value under the designated valuation by 15 per cent or more. This is because the Commissioner has not obtained a valuation for which any costs can be recovered.

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<sup>17</sup> See paragraph 18 for examples.

### *Example*

A taxpayer designates a written valuation that allocates \$10 million to mining tenements and \$5 million to mining information.

In accordance with Commissioner's Practice DA 42, the Commissioner is satisfied with the taxpayer's allocations to other dutiable property, but disregards the allocation to mining information and adds it to the value allocated to mining tenements. The Commissioner assesses duty on a value of \$15 million.

The value on which the Commissioner assessed duty exceeds the taxpayer's value in the valuation by 50 per cent. However, because the Commissioner used the taxpayer's valuation and did not incur any valuation costs that could be recovered, undervaluation penalty tax cannot apply.

### **Date of effect**

This Commissioner's practice takes effect from 12 December 2019.

Nicki Godecke  
COMMISSIONER OF STATE REVENUE

12 December 2019

### **Commissioner's Practice history**

Commissioner's Practice	Issued	Dates of effect	
		From	To
TAA 24.0	14 February 2014	14 February 2014	11 December 2019
TAA 24.1	12 December 2019	12 December 2019	Current



## Appendix 1 – Penalty tax and recovery of valuation costs

Circumstances at time of assessment	Penalty tax for late provision of written valuation s26(1)(c)	Penalty tax for failure to provide written valuation s26(1)(e)	Recovery of valuation costs s23a(1)(a)	Recovery of valuation costs s23a(1)(b)	Penalty tax for undervaluation s27a(2)
Taxpayer provides valuation without section 21 notice; Commissioner obtains valuation; valuation differential is 15% or more	No	No	No	Yes	Yes
Taxpayer provides valuation without section 21 notice; Commissioner obtains valuation; valuation differential is less than 15%	No	No	No	No	No
No valuation provided in accordance with section 21 notice; Commissioner obtains valuation	No	Yes	Yes	No	No
Valuation provided after due date in section 21 notice; Commissioner accepts valuation	Yes	No	No	No	No
Valuation provided after due date in section 21 notice; Commissioner obtains valuation; valuation differential is 15% or more	Yes	No	No	Yes	Yes
Valuation provided after due date in section 21 notice; Commissioner obtains valuation; valuation differential is less than 15%	Yes	No	No	No	No
Valuation provided in accordance with section 21 notice; Commissioner obtains valuation; valuation differential is 15% or more	No	No	No	Yes	Yes
Valuation provided in accordance with section 21 notice; Commissioner obtains valuation; valuation differential is less than 15%	No	No	No	No	No

## Appendix 2 – Calculation of penalty tax for undervaluation

Commissioner's valuation (CV)		Designated valuation (DV)		Remission of penalty tax			
Dutiable value \$	Duty \$	Dutiable value \$	Duty \$	Variation between CV and DV %	Penalty amount (difference between duty on CV and duty on DV) \$	Penalty tax remitted to %	Penalty tax \$
115,000,000	5,916,415	100,000,000	5,143,915	15%	772,500	5%	38,625
125,000,000	6,431,415	100,000,000	5,143,915	25%	1,287,500	10%	128,750
150,000,000	7,718,915	100,000,000	5,143,915	50%	2,575,000	25%	643,750
175,000,000	9,006,415	100,000,000	5,143,915	75%	3,862,500	40%	1,545,000
200,000,000	10,293,915	100,000,000	5,143,915	100%	5,150,000	50%	2,575,000
300,000,000	15,443,915	100,000,000	5,143,915	200%	10,300,000	75%	7,725,000