

COMMISSIONER'S GUIDELINE

CG-SD-010:

Tax assessments requiring evidence of value

Guideline History

Version	Issued	Dates of effect	
		From:	To:
1	15 December 2006	15 December 2006	30 June 2007
2	23 July 2007	1 July 2007	31 December 2007
3	2 January 2008	1 January 2008	Current

Purpose

This Guideline sets out the Territory Revenue Office's (TRO's) power to require a taxpayer to provide written evidence of the value of property and to recover the costs of a valuation obtained by TRO in certain circumstances.

TRO may require a taxpayer to provide written evidence of value

Section 25 of the *Taxation Administration Act* (TAA) provides that TRO may require a taxpayer whose tax liability is determined by reference to the value of property to provide a written valuation of the property.¹

If the taxpayer fails to provide a written valuation within the time required or if TRO is not satisfied with the valuation provided, TRO may obtain a valuation from the Valuer-General or another valuer (being a certified practising valuer or person considered to have equivalent qualifications).²

TRO may recover the costs of obtaining such a valuation from the taxpayer if:

- 1) the taxpayer did not provide a written valuation when required; or
- 2) the valuation obtained by TRO exceeds the valuation provided by the taxpayer by 15 per cent or more.³

Dutiable value of dutiable property

Under the *Stamp Duty Act* (SDA), duty is payable on the conveyance of dutiable property, which includes land. Duty is also payable on the acquisition of a significant or further interest in a land-holding corporation or unit trust.⁴

¹ Section 25(1) of the TAA.

² Section 25(3) of the TAA.

³ Section 25(4) of the TAA.

⁴ Part 3, Division 8A of the SDA.

For a direct conveyance of dutiable property (including land, goodwill and other business property), including changes to a partnership interest,⁵ the dutiable value is the greater of the consideration payable for the conveyance or the unencumbered value of the property.⁶

For an acquisition of a significant or further interest in a land-holding corporation or unit trust, the dutiable value is the unencumbered value of the land to which the land-holding corporation or unit trust is entitled.⁷

Consideration means the consideration for the conveyance without any deduction or discount for the amount of GST (if any) payable in relation to the supply of the property conveyed.⁸

Unencumbered value means the full value of property free from any encumbrances such as a mortgage or charge over the land.⁹ The unencumbered value of dutiable property is determined in accordance with ordinary valuation principles, which means the price at which the property would change hands between a willing but not anxious vendor and a willing but not anxious purchaser, where both were perfectly acquainted with the property and cognisant of all circumstances which might affect its value.

The SDA specifically provides that, when determining the unencumbered value of land, TRO may have regard to the following ordinary valuation principles.

- 1) The use of the land that would best enhance its commercial value.
- 2) Commercial advantages (such as goodwill or licences) that attach to the location or other aspects of the land and would affect what a reasonable purchaser would be willing to pay for the land.
- 3) Information about the land that would, if known to a reasonable purchaser, affect the price the purchaser would be willing to pay for the land.¹⁰

Additionally, TRO may disregard any agreement or arrangement (whether or not the parties are associates) that has the effect of reducing the unencumbered value of dutiable property.¹¹

Date for determining unencumbered value

The date for determining the unencumbered value of dutiable property is, in the case of a conveyance effected by a dutiable instrument such as an agreement for sale or transfer document, the date of execution of the instrument.¹²

⁵ Part 3, Division 3 of the SDA.

⁶ Item 1 of Schedule 1 and sections 4(1) ('dutiable property', 'dutiable value', 'consideration' and 'unencumbered value'), 4A and 4AB of the SDA.

⁷ Section 56R of the Act.

⁸ Section 4(1) ('consideration') of the SDA.

⁹ Section 4A(1) and (4) of the SDA.

¹⁰ Section 4A(2) of the SDA.

¹¹ Section 4A(4)(c) of the SDA.

¹² Section 4(1) ('execute') of the SDA.

For a conveyance that is not evidenced by a dutiable instrument, the valuation date is the date of the conveyance. For acquisitions in a land-holding corporation or unit trust, the unencumbered value of land is determined at the date of the acquisition.¹³

Circumstances where TRO will require a taxpayer to provide a written valuation of property

In determining the dutiable value of dutiable property, it is necessary in all cases for TRO to be satisfied of the unencumbered value of the property. As a general rule, where the parties to a sale are at arm's length (see below for the meaning of arm's length) and there is no issue of apportionment of the consideration between dutiable and non-dutiable property, TRO will accept that the consideration payable represents the unencumbered value of the dutiable property and duty will be assessed on that amount.

However, TRO will require evidence of the unencumbered value of dutiable property in any of the following circumstances.

- 1) The parties to the transaction are not operating at arm's length.
- 2) Fractional interests in property are conveyed, other than where a person is acquiring the interest of the Chief Executive Officer (Housing) in a home under a shared equity housing scheme.
- 3) The conveyance is for no or only a nominal consideration.
- 4) The relevant acquisition is in a land-holding corporation or unit trust.
- 5) A partnership interest is conveyed.
- 6) The conveyance involves a partition or exchange of land.
- 7) Any part of the consideration for a conveyance is being provided by way of non-monetary consideration.
- 8) The amount or value of the consideration payable cannot be determined from the instrument of conveyance or acquisition or is dependent upon the occurrence (or non-occurrence) of contingent events.
- 9) An application is made under section 4A(5) of the SDA to exclude the value of improvements on the land being conveyed on the basis that the improvements were built by or at the expense of the conveyee.
- 10) TRO is of the opinion that there is an agreement or arrangement in place to reduce the unencumbered value of the land.
- 11) Dutiable property is conveyed with non-dutiable property and the total consideration payable must be apportioned appropriately in order to determine the dutiable value of the dutiable property.
- 12) Any other case where TRO is of the opinion that the consideration is or may be less than the unencumbered value of the dutiable property.

¹³ Section 56C(8) and 56R(2) of the SDA.
CG-SD-010
Page 3 of 7

Evidence of value

The written valuation required to be provided by the taxpayer is a valuer's opinion as to the value of the property or other evidence of value satisfactory to the Commissioner.¹⁴

For these purposes, a valuer is defined as a person that is a certified practising valuer who is a member of the Australian Property Institute or a person who is considered to have equivalent qualifications.¹⁵

When evidence of value other than a valuer's opinion will be satisfactory

TRO acknowledges that it would not be appropriate in all situations, depending upon factors such as the nature of the transaction and/or the type of dutiable property being conveyed, to require the taxpayer to provide a valuation from a certified practising valuer.

As a general rule, where the dutiable property is commercial or residential land only, TRO will accept that an appraisal from a real estate agent will satisfy the requirement under section 25 of the TAA to provide written evidence of value. TRO may still obtain a valuation where it is not satisfied that the value set out in the appraisal is correct, but will only recover the costs of that valuation if it exceeds the value set out in the appraisal by 15 per cent or more. Accordingly, to avoid the possibility of the assessment being delayed while TRO obtains a valuation, taxpayers may consider providing better or more detailed evidence on which TRO may place greater reliance, such as (in order of reliability):

- 1) a valuation made by a certified practising valuer or an equivalently qualified person;
- 2) an appraisal made by a suitably qualified valuer; or
- 3) multiple appraisals from real estate agents that provide comparative evidence of recent sales of similar properties in the immediate area of the relevant property.

Where the dutiable property comprises property other than commercial or residential land (such as, for example, mining or pastoral land, goodwill or other business property), TRO will generally require a written valuation by a specialist valuer. However, TRO may in some circumstances accept evidence other than a valuer's opinion. In doing so, TRO will have regard to the following.

- 1) The nature of the property. TRO is more likely to require the valuation to have been undertaken by a specialist valuer where the property is intangible, mining or pastoral property.
- 2) The indicative value of the property, because higher values will require valuation evidence of a higher reliability.
- 3) The purpose for which the evidence of value was obtained or created.

¹⁴ Section 25(2) of the TAA.

¹⁵ Section 3(1) ("valuer") of the TAA.

- 4) The qualifications of the person who issued or created the evidence of value.
- 5) How contemporary the evidence was to the date of the conveyance.
- 6) The level of detail in the evidence of value, such as the description of the property, examination of comparable sales (where relevant), whether a physical inspection has been made (where relevant) and the extent to which any special features of the property that may impact on the value of the property have been taken into account.

Where TRO requires a written valuation under section 25 of the TAA, the notice will specify the type of evidence of value required.

Valuations obtained by TRO will be provided to the taxpayer before assessment

Where TRO obtains a valuation that indicates that the value of property is greater than the valuation (including evidence of value satisfactory to TRO) provided by the taxpayer and TRO intends to rely on the valuation it has obtained to assess the taxpayer's tax liability, TRO will provide a copy of the valuation to the taxpayer before finalising the assessment. The taxpayer will be given a reasonable opportunity to make submissions regarding the valuation and/or to provide further evidence of the value of property. TRO will take these submissions and/or evidence into account before making a final decision and issuing the assessment.

Recovery of valuation costs

As set out above, the TAA provides that TRO may recover the costs of obtaining a valuation where a taxpayer did not provide a written valuation when required or the valuation obtained by TRO exceeds the valuation provided by the taxpayer by 15 per cent or more.

As a general rule, the TRO will recover the costs of the valuation where the valuation exceeds the taxpayer's valuation by 15 per cent or more.

Where the taxpayer has failed to provide a written valuation (including evidence of value satisfactory to TRO), TRO will determine whether to recover the costs of obtaining a valuation given the circumstances of the individual case. Factors that TRO will consider include:

- 1) the value of the property set out in TRO's valuation compared to the value of the property declared by the taxpayer. In this respect, where TRO's valuation provides that the value of the property:
 - a. is the amount declared by the taxpayer – TRO will be unlikely to recover the costs of the valuation, unless circumstances of the case, such as because of the other factors set out below, are such that it appears appropriate to recover the costs;

- b. exceeds the amount declared by the taxpayer by 15 per cent or more – other than in exceptional circumstances, TRO will recover the costs of the valuation;
 - c. exceeds the amount declared by the taxpayer by less than 15 per cent – in determining whether to recover the costs of the valuation, TRO will give careful consideration both to the amount by which the valuation exceeds the value declared by the taxpayer (both in actual value and as a proportion) and the other factors set out below;
- 2) the nature of any evidence of value provided by the taxpayer supporting the value of the property declared; and
 - 3) the general level of cooperation by the taxpayer during the assessment process.

Recovery of costs of valuation after successful objection or appeal

If TRO obtains a valuation because it was not satisfied with a taxpayer's valuation (as opposed to a valuation obtained because the taxpayer failed to provide a written valuation) and the value on which the tax assessed is successfully challenged on an objection or appeal, TRO may only recover the costs of the valuation if the value on which tax is finally assessed exceeds the taxpayer's valuation by 15 per cent or more.¹⁶

Where the final value does not exceed the taxpayer's valuation by 15 per cent or more and TRO has already recovered the costs of its valuation, this amount will be refunded along with interest calculated in the same manner as for overpaid tax refunded as a result of a successful objection or appeal.

Valuations that provide a range of values

The TAA provides that if a valuation gives a range of values and does not fix a particular point in the range at which the value probably lies, the valuation is taken to fix a value at the median point in the range for the purposes of comparing that valuation to other valuations (to determine whether one valuation exceeds another by 15 per cent or more).¹⁷

Generally, where the consideration for a conveyance or acquisition of an interest in a land-holding corporation or unit trust falls within a valuation range provided in a valuation that TRO will use for the purposes of assessing tax, duty will be assessed on that consideration, unless TRO considers that the unencumbered value exceeds the consideration paid.

Where no consideration is paid or payable, or is below the valuation range, and the valuation does not also set out a preferred or indicative valuation within that range, duty will generally be assessed on an unencumbered value determined as the mid

¹⁶ Section 25(5) of the TAA.

¹⁷ Section 25(6) of the TAA.

point of the valuation range where there is no other information that indicates that another value in that range would be more appropriate.

Parties at arm's length

A conveyance by sale is generally considered to be at arm's length when it is a transaction between independent and unrelated persons, conducted on an equal footing in which each acts in their own self-interest. Unrelated persons who do not have any business connections with each other generally deal with each other at arm's length, although this might not be the case if, for example, one is under the influence or control of the other.

Related persons (including associates within the meaning of section 4(2) of the SDA) are not considered to deal with each other at arm's length. Similarly, it is assumed that the persons are not dealing at arm's length where one of the parties to a transaction is related to or an associate of a person with a business or other similar connection to the other party.

Commissioner's Guideline CG-GEN-001, which sets out information on the revenue publication system, is incorporated into and is to be read as one with this Guideline. All Circulars and Guidelines are available from TRO's website.

Date of effect

This version of the Guideline takes effect from 1 January 2008.



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