

## COMMISSIONER'S PRACTICE TAA 8.9

### VALUATION OF LAND FOR DUTIES PURPOSES

#### Commissioner's Practice History

Commissioner's Practice	Issued	Dates of effect	
		From	To
TAA 8.0	21 October 2003	21 October 2003	14 September 2006
TAA 8.1	15 September 2006	15 September 2006	30 November 2006
TAA 8.2	1 December 2006	1 December 2006	11 January 2007
TAA 8.3	12 January 2007	12 January 2007	30 June 2008
TAA 8.4	1 July 2008	1 July 2008	20 December 2010
TAA 8.5	21 December 2010	21 December 2010	6 February 2012
TAA 8.6	7 February 2012	7 February 2012	31 May 2012
TAA 8.7	1 June 2012	1 June 2012	13 February 2014
TAA 8.8	14 February 2014	14 February 2014	18 December 2014
TAA 8.9	19 December 2014	19 December 2014	12 March 2015

This Commissioner's practice outlines the circumstances in which the Commissioner will obtain a valuation of residential or commercial land for duties purposes.

This Commissioner's practice does not apply where the Commissioner requires the taxpayer to provide completed duties valuation forms under one of the following Commissioner's practices:

TAA 9 'Valuation of Mining Tenements for Duties and Stamp Duty Purposes';

TAA 10 'Valuation of Pastoral Leasehold Land for Duties and Stamp Duty Purposes'; and

TAA 13 'Valuation of Life Interests and Remainder Interests for Duties and Stamp Duty Purposes'.

#### 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*<sup>1</sup>

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)

## Commissioner's Practice

### *Principles of Valuation*

1. Section 36(4) of the Duties Act requires that land be valued by reference to the ordinary principles of valuation and having regard to the use of the land that would best enhance its commercial value.
2. The ordinary principles of valuation, as set out in *Spencer v The Commonwealth of Australia*<sup>6</sup> ('Spencer's Case'), require that the value of property be determined by reference to the price at which a willing but not anxious vendor would sell the property to a willing but not anxious purchaser on the assumption that both parties have all relevant information pertaining to the property.
3. In *Commissioner of State Revenue v Hazel Holdings Pty Ltd*,<sup>7</sup> the Court of Appeal confirmed that, to determine the dutiable value of land under section 36(4) of the Duties Act, the ordinary principles of valuation set out in Spencer's Case apply and that this price is to be assessed having regard to the highest and best use of the land.

### **GST**

4. Where a transaction is subject to Goods and Services Tax ('GST'), the amount of GST is embedded in the market value and should be included in the value provided for transfer duty purposes.<sup>8</sup> A valuation provided for the purposes of this practice (irrespective of whether it is provided by the taxpayer, the Valuer General or another external valuer) should not be determined on a GST-ex1TJETurpo1l or a (irres1-3( )-3(rpo1l)11( )-321(o)-3(9o)-3(r )-318

- (c) related companies, as defined in the *Corporations Act 2001*;
  - (d) partners in a partnership;
  - (e) participants in the same joint venture;
  - (f) trustees of trusts which have common beneficiaries;
  - (g) joint owners of property; and
  - (h) entities with other significant business relationships;
- 6.2 there is no consideration for the land, or the consideration appears to be inadequate or is unascertainable; or
- 6.3 the Commissioner requires a valuation in accordance with

10. A valuation made by a qualified valuer will usually be accepted for the purposes of paragraph 9 if:
  - 10.1 the valuation was made within three months of the date of the transaction;
  - 10.2 the valuer has carried out a physical inspection of the property;
  - 10.3