Queensland Government

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Public Ruling
Duties Act:

RESIDENTIAL PROPERTY TRANSACTIONS: WHEN ARE VALUATIONS REQUIRED, WHEN ARE VALUATION COSTS TO BE PASSED ON

A Public Ruling, when issued, is the published view of the Commissioner of State Revenue (the Commissioner) on the particular topic to which it relates. It therefore replaces and overrides any existing private rulings, memoranda, manuals and advice provided by the Commissioner in respect of the issue(s) it addresses. Where a change in legislation or case law (the law) affects the content of a Public Ruling, the change in the law overrides the Public Ruling—that is, the Commissioner will determine the tax liability or eligibility for a concession, grant or exemption, as the case may be, in accordance with the law.

What this Ruling is about

1. Transfer duty on a dutiable transaction involving residential property is charged on the sale consideration or the unencumbered value, whichever the higher.[1] In certain circumstances, for example where the transfer is by way of gift, the Commissioner will require a valuation to be submitted. The Commissioner may also obtain a valuation of his own accord and pass the valuation costs on to the taxpayer.

2. This Public Ruling sets out the circumstances in which valuations are required by the Commissioner, the standard of valuations required and when the costs of valuations will be recovered from taxpayers.

3. This Public Ruling also sets out how transfer duty is assessed having regard to sale consideration and value.

[1] Section 11(7) of the *Duties Act 2001* (the Duties Act)

Valuation in certain circumstances

4. For determining whether a person is liable for duty or a person's liability for duty, the Commissioner may—
   (a) require the person to lodge a valuation by a registered valuer or provide other evidence of value the Commissioner considers appropriate or
   (b) have the property valued or
   (c) rely on a valuation made for any purpose by a registered valuer or another person the Commissioner is satisfied is properly qualified.[2]

5. The Commissioner may assess duty on the basis of the valuation or other evidence of value the Commissioner considers appropriate.[3]

6. The circumstances in which the Commissioner may need a valuation include:
   (a) there is no consideration for the transaction or
   (b) the consideration can not be ascertained when the liability for transfer duty arises or
   (c) the Commissioner is not satisfied with the valuation or other evidence of value furnished.[4]

   These circumstances are discussed in paragraph 9 of this Public Ruling.

7. The Commissioner may recover the cost of obtaining a valuation from the person or persons liable for the duty.[5]

8. This Public Ruling is limited to dutiable transactions involving property which is used or capable of being used for residential purposes only. This Public Ruling does not apply to any other property.

Ruling and explanation

When a valuation is required by the Commissioner

9. The circumstances in which a valuation must be submitted for a dutiable transaction involving residential property include:
   (a) a person in the transaction is a member of the family[6] of another person in the transaction or
   (b) one or more of the persons in the transaction is a corporation and there is an element of association with another person in the transaction by way of directorships, shareholdings, partnership or joint venture arrangements or
   (c) there is no consideration for the transaction[7]

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[2] Section 505(1)(a)–(c) of the Duties Act
[3] Section 505(4) of the Duties Act
[4] Sections 11(7) and 505(2) of the Duties Act
[5] Section 505(3) of the Duties Act
[6] Member of a person's family is defined in the Schedule 6 Dictionary of the Duties Act.
[7] Section 11(7) of the Duties Act

(d) the consideration can not be ascertained when the liability for transfer duty arises.[8]

10. If the circumstances in paragraph 9 apply and the dutiable transaction is assessed under the self assessment system, the self assessor must retain evidence of value for a minimum of five years following the completion of the transaction.[9]

11. Where the Commissioner is not satisfied with the evidence of value provided or cannot be satisfied that the valuation furnished represents the unencumbered value of the property, the Commissioner may either have the property valued, or, rely on a valuation made for any purpose by a registered valuer or by another person properly qualified to provide evidence of value of the property.

Minimum accepted standard of valuations

12. For residential property, the Commissioner will generally accept evidence of market value submitted by registered valuers or by real estate agents who are:

(a) competent to assess the value of the residential property and are able to support their opinion by recent comparable sales and

(b) independent of the transaction.

13. Evidence of value must clearly identify the residential property being valued by giving the correct real property description and street address. The valuation should give a short description of improvements on the property, if any.

14. Evidence of value provided by a real estate agent must give at least 3 recent comparable sales. If it is not possible to give at least 3 recent comparable sales, because the residential property is located in an extremely remote area where sales are highly infrequent, the Commissioner will consider the evidence of market value submitted and determine whether any further corroboration is required, based on factors such as the location of the property, the type of property and the interval between sales.

15. The Commissioner will, in most circumstances, accept evidence of value dated up to 3 months prior to the date the parties sign the transfer of the residential property.

16. If the Commissioner requires a valuation to be made by a registered valuer, generally the industry standard valuation method, being direct comparison[10] or summation[11], will be accepted by the Commissioner. However, this will be determined by circumstances relating to the subject property at the appropriate date of valuation.

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8 Section 11(7) of the Duties Act

9 Section 118 of the *Taxation Administration Act 2001*

10 The direct comparison method is based on sales evidence. The valuer examines sales of properties similar to the property being valued, and after making appropriate adjustments to distinguish between them, places a value on the subject property.

11 The summation method uses the value of the main buildings plus the itemised values (depreciated replacement cost) of all the other major value-adding components, plus the unimproved value of the land.

When the cost of a valuation is to be passed on to the taxpayer

17. Where the value obtained by the Commissioner is up to $1,000,000—
    (a) if the value declared by the taxpayer or their agent is within 10% of the value obtained by the Commissioner, no charge will be made to the taxpayer or their agent to recover the cost of the valuation
    (b) if the value declared by the taxpayer or their agent is greater than 10% below the value obtained by the Commissioner, costs of obtaining the valuation will be passed on to the taxpayer or their agent.

18. Where the value obtained by the Commissioner is over $1,000,000—
    (a) if the value declared by the taxpayer or their agent is within $100,000 of the value obtained by the commissioner, no charge will be made to the taxpayer or their agent to recover the cost of the valuation
    (b) if the value declared by the taxpayer or their agent is greater than $100,000 below the value obtained by the commissioner, costs of obtaining the valuation will be passed on to the taxpayer or their agent.

Transfer duty principles applied to valuations

19. Where there is a consideration for the dutiable transaction and such consideration falls within the market range given in the valuation, transfer duty will be calculated on the consideration.

Example 1

A contract for the sale of a block of land from person A to person B states that the consideration is $106,500. The valuation submitted shows that on the open market, the property could be sold for $100,000 to $110,000. In this case duty would be assessed on the stated consideration, namely $106,500.

20. Where there is a consideration for the dutiable transaction and such consideration is less than the lowest ascertainable value in the range of market values in the valuation, transfer duty will be calculated on the highest ascertainable value in the valuation.

21. Where there is a consideration for the dutiable transaction and such consideration is greater than the highest ascertainable value in the range of market values given in the valuation, transfer duty will be calculated on the consideration.

Example 2

An agreement for the sale of a house from person E to person F states that the consideration is $180,000. The valuation submitted shows that on the open market, the property could be sold for $150,000 to $160,000. Duty would be assessed on the consideration, namely $180,000.

22. Where there is no consideration for the dutiable transaction, transfer duty will be calculated on the highest ascertainable value given in the valuation.

Example 3(a)

A mother decides to gift a block of residential land to her son. In this case, evidence of value must be submitted to the Commissioner as the transaction is between related parties. If the valuation is from a real estate agent, the agent must list at least 3 recent comparable sales to substantiate the valuation of the subject property.

A real estate agent gives 3 recent comparable sales and states that on the open market, the block of land would sell for $54,000 to $60,000. Duty would be assessed on the highest ascertainable value of the property, namely, $60,000.

Duty is assessable on the full value of the property. The Commissioner is under no obligation to adopt the lowest value in the range. To do so would be to assume, without any justification, that the property would not achieve its full sales potential on the open market—its full value.

Example 3(b)

Using the same circumstances as above, except that the valuation from the real estate agent does not give 3 recent comparable sales, and states that the value of the land is $35,000. The Commissioner is not satisfied that the value of $35,000 represents the unencumbered value of the property. In such cases, the Commissioner will request the taxpayer to re-submit a valuation by a real estate agent to include 3 recent comparable sales. After the valuation is re-submitted, the Commissioner will decide whether to obtain a valuation by a registered valuer.

Example 3(c)

As for the previous example, except that taxpayer does not re-submit a valuation and so the Commissioner decides to obtain a valuation from a firm of registered valuers, ABC Valuations. The registered valuer states that by using the direct comparison method, the value of the subject property is $50,000 to $55,000. The value submitted by the taxpayer ($35,000) is greater than 10% below the valuation obtained by the Commissioner. Duty would be assessed on $55,000 and the cost of obtaining the valuation would be passed on to the person liable for the duty.

Date of effect

23. This Public Ruling takes effect from the date of issue.

David Smith
Commissioner of State Revenue
Date of Issue 3 July 2009

References

Public Ruling	Issued	Dates of effect	
		From	To
DA505.1.2	3 July 2009	3 July 2009	Current
DA505.1.1	24 February 2009	24 February 2009	2 July 2009
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