

Information Circular No: 102

Stamp Duties Act 1923

Valuations of land, interests in land and land holder interests

Issued 10 May 2017

This Information Circular outlines when the Commissioner of State Taxation (the “Commissioner”) may cause a valuation of land or an interest in land for duty assessment purposes, following:

- ▶ a direct conveyance or transfer of South Australian land; or
- ▶ an indirect acquisition of South Australian land via an acquisition of an interest in an entity that owns, directly or indirectly, South Australian land.

Section and Part references in this Information Circular relate to the *Stamp Duties Act 1923*, unless otherwise stated.

The practices described in this Information Circular apply whether the conveyance is submitted to the Commissioner for stamping, is stamped using RevNet or where the conveyance is the subject of review on an audit.

When may the Commissioner cause a valuation?

Critically, the Commissioner must be satisfied that a value for land or an interest in land submitted for duty assessment purposes is reflective of the unencumbered market value of the land or the interest in land as at the date of the conveyance or as at the time that the question of value falls to be determined (“Market Value”) (Sections 60A(1) and 99(2) and (6)). If not satisfied with a value submitted, the Commissioner may cause a valuation and assess duty by reference to that valuation (Sections 60A(3) and 99(3)).

The table below summarises the sources of value the Commissioner considers to be reflective of Market Value (for which the Commissioner will not cause a valuation) and not reflective of Market Value (for which the Commissioner may cause a valuation), with more specific details and examples provided further below.

Sources of value reflective of Market Value for real property transactions

Type of Transaction	Consideration	Capital Value	Valuer-General Market Value	Land Valuer Market Value
Direct arm’s length, including fractional and part interests	Yes, unless not reflective of Market Value	N/A	N/A	N/A
Direct non-arm’s length, including fractional and part interests	No, unless supported by satisfactory evidence of value	Yes, unless greater than \$5 million or not reflective of Market Value	Yes	Yes, if report meets Commissioner’s requirements
Indirect – Land holder	No, unless supported by satisfactory evidence of value	Yes, unless greater than \$5 million or not reflective of Market Value	Yes	Yes, if report meets Commissioner’s requirements

General guidance about evidence of value submitted to the Commissioner

A valuation report submitted to the Commissioner should:

- ▶ specifically pertain to the Market Value of the land in its entirety (including anything fixed to the land), not some other purpose;
- ▶ be for the highest and best use of the land, which may differ from its actual use as at the date of the conveyance or as at the time that the question of value falls to be determined;
- ▶ if two or more distinct parcels of land are involved (particularly for land holder transactions), separately provide a Market Value for each parcel of land, noting that a single parcel of land may be comprised of multiple titles that have been consolidated;
- ▶ be prepared by a land valuer who satisfies the requirements of Section 5 (or Section 6 if the land valuer is a body corporate) of the *Land Valuers Act 1994* or a corresponding Act in another State or Territory;
- ▶ be a valuation of the land within 120 days of the date of the conveyance, or within 120 days of the time that the question of value falls to be determined; and
- ▶ include full details of the instructions and information provided by the taxpayer or their representative to the author of the valuation report.

Relevantly, the Commissioner does not consider that the Market Value of land is reflected in (for example):

- ▶ a valuation prepared on a GST-exclusive basis;
- ▶ a valuation prepared for finance purposes, as the purpose of the valuation is to identify a safe value for lending rather than the Market Value of land; or
- ▶ valuation methodologies that identify a value of land based upon the value of all the assets of a business or enterprise, as the purpose of such valuation methodologies is to identify the value of a business or enterprise rather than the Market Value of land - refer to Example 10 below.

Evidence of value (including but not limited to a valuation report) can be submitted at any time prior to a duty assessment being made.

All evidence of value submitted will be referred to the Valuer-General for review, with such evidence only being satisfactory and meeting the Commissioner's requirements if the Valuer-General agrees with it. If the Valuer-General does not agree with the evidence of value submitted, the Commissioner will cause a valuation to be made.

Direct - Arm's length conveyance or transfer of land

The Commissioner considers that the consideration associated with any arm's length conveyance or transfer of land constitutes the Market Value of the land, including where the consideration is less than the capital value of the land calculated by the Valuer-General for rating purposes ("Capital Value") for the relevant financial year, unless (for example):

- ▶ the consideration does not specifically pertain to the land in its entirety (including anything fixed to the land) - refer to Example 2 below;
- ▶ the consideration pertains to property that is liable to duty and to property that is not liable to duty, such as where land is conveyed or transferred together with other business assets or other primary production assets - refer to Example 3 below and to RevNet Guidenotes:

Conveyance of Land – For Consideration – Residential/Primary Prod with Other Property;

Conveyance of Land – For Consideration – Qualifying Land with Other Property; or

- ▶ settlement is delayed for an extended period (in most cases for more than 120 days, but there may be circumstances where the Commissioner will consider an extended period after the contract date (refer to Example 4 below). However, for off-the-plan sales (i.e. the sale of an apartment before the building in which it will be contained has been constructed or completed), the consideration will be accepted even if settlement is delayed for more than 120 days.

However, where the consideration pertains to property that is liable to duty and to property that is not liable to duty, and the parties are willing to pay duty on the Capital Value of the land (and none of the other exceptions apply), the Commissioner will accept the Capital Value as being reflective of the Market Value of the land (refer to Example 3).

Example 1

B transfers improved land to C for a consideration of \$450 000. B is unrelated to C and the contract for sale is negotiated at arm's length through a land agent. The Capital Value of the land for the relevant financial year is \$475 000.

As this is an arm's length transaction, the consideration of \$450 000 is considered to be reflective of the Market Value of the land.

Example 2

D owns improved residential land (house with a large backyard) and intends to subdivide the land into 2 equal allotments, retaining the allotment with the house and selling the other allotment (the vacant backyard).

D enters into a contract to sell the vacant backyard to E for \$350 000. D is unrelated to E.

Before settlement, capital improvements worth \$70 000 are made to the vacant backyard. As the consideration in the contract (\$350 000) pertains to vacant land and the land has been improved prior to settlement, the consideration is not considered to be reflective of the Market Value of the land. Accordingly, the Commissioner will cause a valuation to be made, unless satisfactory evidence of value is provided.

Example 3

F transfers farming land (including chattels, livestock, plant and equipment, and water licence) to G for a consideration of \$1.1 million. F is unrelated to G and the contract for sale is negotiated at arm's length through a land agent. The contract ascribes a value of \$400 000 to the farming land and farmhouse, and \$700 000 to the chattels, livestock, plant and equipment, and water licence. The Capital Value of the land for the relevant financial year is \$600 000.

As the consideration in the contract (\$1.1 million) pertains to property that is liable to duty (the farming land) and to property that is not liable to duty (the chattels, livestock, plant and equipment, and water licence), the Commissioner does not consider that the value of \$400 000 for the farming land is reflective of the Market Value of the land, unless supported by satisfactory evidence of value.

This approach ensures lodging parties do not artificially reduce the value of the land by ascribing greater value to property that is not liable to duty in the contract.

However, in these circumstances, the Commissioner considers that the Capital Value of the land (\$600 000) for the relevant financial year is reflective of the Market Value of the land. If the taxpayer or their representative considers the Capital Value to be inappropriate for duty assessment purposes, the Commissioner will cause a valuation to be made, unless satisfactory evidence of value is provided. The above would also apply in circumstances where the contract does not ascribe a value to the various assets.

Example 4

H sells vacant land to J for a consideration of \$150 000. H is unrelated to J and the contract for sale is negotiated at arm's length through a land agent. The agreed date of settlement is 90 days after the contract is executed. Due to financing difficulties, the settlement of the transaction occurs 180 days after the contract is executed.

As sales of comparable land suggest that the value of the vacant land may have increased during the extended period between the contract and settlement dates, the Commissioner considers that the consideration may no longer be reflective of the Market Value of the land. Accordingly, the Commissioner will cause a valuation to be made, unless satisfactory evidence of value is provided.

Direct - Non-arm's length conveyance or transfer of land

The Commissioner will not accept that the consideration or value submitted for a non-arm's length conveyance or transfer of land (including transactions between related persons, pursuant to Section 60A(6)) is reflective of the Market Value of land, unless supported by satisfactory evidence of value. For more information about related persons, refer to "Related Persons" under the [RevNet Stamp Duty Glossary of Terms](#).

However, the Commissioner is prepared to accept the Capital Value of land for the relevant financial year as being reflective of the Market Value of land, unless (for example):

- ▶ improvements have been made to the land between the date the Capital Value is assigned by the Valuer-General (i.e. 1 January prior to the financial year it comes into force) and the date of the conveyance (refer to Example 7 below). For example, if the date of conveyance was between 1 July 2015 and 30 June 2016, then the Capital Value in force as at midnight 30 June 2015 can be used as long as no improvements have been made to the land on or after 1 January 2015;
- ▶ a portion of the Capital Value of the parent title is used for sub-divided land - refer to Example 8 below;
- ▶ the Capital Value reflects a notional value determined in accordance with Section 22A of the *Valuation of Land Act 1971*, which is a concessional value that may not reflect the highest and best use of the land. It is the highest and best use of land which must be considered when determining Market Value - refer to Example 9 below; or
- ▶ the Capital Value of the land for the relevant financial year is greater than \$5 million.

For vacant land, the Capital Value should be used instead of the site value (also calculated by the Valuer-General for rating purposes). The Capital Value of vacant land reflects the fact the land is vacant, but also accounts for minor improvements on the land that might not be reflected in the site value.

Where a taxpayer or their representative considers the Capital Value of land for the relevant financial year to be inappropriate

for duty assessment purposes, the Commissioner will cause a valuation to be made, unless satisfactory evidence of value is provided.

Example 5

K transfers improved land to L for a consideration of \$400 000. K and L are related (siblings). L's representative submits a value for the land of \$500 000 for duty assessment purposes.

In support of this value, L's representative submits a council rates notice that states that the Capital Value of the land for the relevant financial year is \$500 000.

The Capital Value of the land will be considered by the Commissioner to be reflective of the Market Value of the land.

Example 6

M Pty Ltd transfers improved land to N Pty Ltd for a consideration of \$750 000. Fred and Wilma are the directors and shareholders of both M Pty Ltd and N Pty Ltd. The land has a Capital Value of \$780 000 for the relevant financial year.

As the parties are related, this is not an arm's length transaction, and the consideration is not accepted as, *prima facie*, being reflective of the Market Value of the land. The Commissioner would accept the Capital Value of the land for the relevant financial year for duty assessment purposes, unless satisfactory evidence of a different value is provided.

Example 7

On 1 December 2016, O transferred improved land to P for a consideration of \$1. O and P are related (grandmother and granddaughter). P submitted a value for the land of \$300 000 for duty assessment purposes. The land has a Capital Value of \$320 000 for the 2016-17 financial year.

P also submitted a valuation report that values the land at \$300 000. However, the valuation report was prepared on 1 August 2016 (i.e. 4 months prior to settlement), when the land was vacant. At settlement there was a newly completed house on the land.

As the valuation report pertains to vacant land and the land has been improved prior to settlement, the consideration is not considered to be reflective of the Market Value of the land. In addition, the Capital Value of the land is not considered to be reflective of Market Value because improvements have been made to the land between the date the Capital Value was assigned by the Valuer-General (i.e. 1 January 2016) and the date of the conveyance (i.e. 1 December 2016). Accordingly, the Commissioner will cause a valuation to be made, unless satisfactory evidence of value is provided.

Example 8

Q owns vacant land with a Capital Value of \$400 000 for the relevant financial year. Q subdivides the land into 2 equal allotments, at a cost of \$10 000. Q then transfers 1 allotment to R. Q and R are related (parent and child). R submits a value for the transferred allotment of \$205 000 for duty assessment purposes.

In support of this value, R submits that given the Capital Value for the whole of the land prior to its subdivision was \$400 000 and the cost of the subdivision was \$10 000, resulting in a total of \$410 000, half of this total is \$205 000.

The submitted value is not considered to be reflective of the Market Value of the transferred allotment because half the Capital Value of the whole of the land prior to its subdivision plus half the cost of the subdivision does not constitute the Market Value of the transferred allotment. Accordingly, the Commissioner will cause a valuation to be made, unless satisfactory evidence of value is provided.

Example 9

S owns improved residential land that has been given a notional Capital Value by the Valuer-General pursuant to the *Valuation of Land Act 1971*, to reflect its actual use for residential as opposed to its highest and best use for commercial redevelopment. S transfers an interest in the land to T for no consideration. S and T are related (father and son). The notional Capital Value of the land is substantially less than the Market Value of the land.

The Commissioner has access to information about the substantive Capital Value of land (i.e. the Capital Value that would apply if the land was no longer entitled to the benefit of a notional Capital Value), which the Commissioner considers to be reflective of the Market Value of the land. If the taxpayer or their representative considers the substantive Capital Value to be inappropriate for duty assessment purposes, the Commissioner will cause a valuation to be made, unless satisfactory evidence of value is provided.

Indirect – Land holder transactions

Unlike a direct conveyance or transfer of land, land holder transactions arise from an acquisition of an interest in an entity that owns, directly or indirectly, South Australian land with a Market Value of \$1 million or more, with the land to be valued at the date that a person or group acquires, or increases, a prescribed interest in the land holding entity.

As a consequence of the differences that exist between a direct conveyance or transfer of land and a land holder transaction, the Commissioner considers that for land holder transactions a value for an interest in land submitted for duty assessment purposes will only be reflective of Market Value if it is supported by satisfactory evidence of value.

Therefore, the use of the consideration paid for the acquisition of an interest in a land holding entity is not considered by the Commissioner to be reflective of Market Value for land holder transactions, regardless of whether the parties to such transactions are arm's length or otherwise.

However, the Commissioner is prepared to accept the Capital Value of land for the relevant financial year as being reflective of the Market Value of land, subject to the same exceptions that apply to the use of Capital Value for a direct non-arm's length conveyance or transfers of land (refer to page 5). This also applies to a determination of whether an entity owns, directly or indirectly, South Australian land with a Market Value of \$1 million or more.

Relevantly, for land holder transactions, the Capital Value of land for the relevant financial year will not be accepted for any distinct parcel of land if it is greater than \$5 million, noting that a single parcel of land may be comprised of multiple titles that have been consolidated.

Where a taxpayer or their representative considers the Capital Value of land for the relevant financial year to be inappropriate for duty assessment purposes, the Commissioner will cause a valuation to be made of the relevant distinct parcel(s) of land, unless satisfactory evidence of value is provided.

Example 10

U acquires a prescribed interest of 100% in a land holding entity, V Pty Ltd. U lodges a Section 102B Acquisition Statement showing V Pty Ltd has a South Australian land asset with an unencumbered value of \$16 million.

In support of this value, a valuation report is submitted that values the enterprise operated by V Pty Ltd at \$20 million using an enterprise valuation methodology. The valuation report also provides a value for the South Australian land asset of \$16 million, based on the fact that the book value for the South Australian land asset constitutes 80% of the value of the assets of V Pty Ltd in its financial statements.

As the valuation methodology used does not seek to identify the Market Value of the South Australian land asset (rather it seeks to identify the value of the enterprise operated by V Pty Ltd), the submitted value is not considered to be reflective of the Market Value of the South Australian land asset. Accordingly, the Commissioner will cause a valuation to be made, unless satisfactory evidence of value is provided.

Who will be appointed to provide a valuation for the Commissioner?

Where the Commissioner determines to cause a valuation, the Valuer-General will be appointed in the first instance to provide a valuation. The taxpayer or their representative will be advised of the value returned by the Valuer-General and afforded the option to either accept or dispute that value for duty assessment purposes.

Where the value is disputed, any evidence of value (including but not limited to a valuation report) submitted will be referred to the Valuer-General for review. If such evidence of value does not alter the valuation of the Valuer-General, a duty assessment will be made by reference to the valuation of the Valuer-General.

If the Valuer-General is unable to provide a valuation, a person external to government that is a land valuer who satisfies the requirements of Section 5 (or Section 6 if the land valuer is a body corporate) of the *Land Valuers Act 1994* or a corresponding Act in another State or Territory will be appointed to undertake the valuation, with the process including a review by that person of any evidence of value submitted by the taxpayer or their representative. The taxpayer or their representative will be advised of the value determined by the valuation and a duty assessment will be made by reference to that value.

Prior to appointing a person external to government to conduct a valuation, the taxpayer or their representative will be advised of the approximate cost of the valuation, given the taxpayer may be charged the whole or a part of the cost of the valuation (Sections 60A(4) and 99(4)).

When will a taxpayer be charged with the cost of a valuation?

Where a person external to government is appointed to conduct a valuation and the value stated in the valuation is 30% or more than the value submitted by the taxpayer or their representative for duty assessment purposes, the taxpayer will be charged the whole of the cost incurred for the valuation.

Where the value stated in the valuation is 15% or more, but less than 30% or more, of the value submitted by the taxpayer or their representative for duty assessment purposes, the taxpayer will be charged half of the cost incurred for the valuation.

In all other situations, including all instances where a valuation is provided by the Valuer-General, the taxpayer will not be charged for any of the cost incurred for the valuation.

This practice is to encourage lodging parties to declare a realistic value for duty assessment purposes.

In circumstances where the whole or a part of the cost of the valuation is passed onto a taxpayer, and the amount passed on is paid in full by the taxpayer, the taxpayer will be provided with a complete copy of the valuation.

Example 11

Adopting the facts from Example 10 above, if the Commissioner determined to cause a valuation (and the Valuer-General was unable to provide a valuation) and a person external to government is appointed, and the value stated in the valuation for the South Australian land asset of V Pty Ltd is:

- a) \$20.8 million, which is \$4.8 million (or 30%) more than the value submitted for duty assessment purposes, the taxpayer will be charged the whole of the cost incurred for the valuation;
- b) \$19.2 million, which is \$3.2 million (or 20%) more than the value submitted for duty assessment purposes, the taxpayer will be charged half of the cost incurred for the valuation; or
- c) \$17.6 million, which is \$1.6 million (or 10%) more than the value submitted for duty assessment purposes, the taxpayer would not be charged for any of the cost incurred for the valuation.

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Further Information

Further information can be obtained from RevenueSA.

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