Australian Government
Australian Taxation Office

Market valuation for tax purposes

Our commitment to you

We are committed to providing you with accurate, consistent and clear information to help you understand your rights and entitlements and meet your obligations.

If you follow our information in this Guide and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we must still apply the law correctly. If that means you owe us money, we must ask you to pay it but we will not charge you a penalty. Also, if you acted reasonably and in good faith, we will not charge you interest.

If you make an honest mistake in trying to follow our information in this Guide and you owe us money as a result, we will not charge you a penalty. However, we will ask you to pay the money and we may also charge you interest. If correcting the mistake means we owe you money, we will pay it to you. We will also pay you any interest you are entitled to.

If you feel that this Guide does not fully cover your circumstances, or you are unsure how it applies to you, you can seek further assistance from us.

This publication was current at August 2023.

This Guide assists you and your advisers in understanding the Commissioner's general expectations on market valuation for tax purposes. It includes information on what market value means for tax purposes and the evidence and processes we generally expect to see to support a valuation.

We use the term ‘asset’ in this Guide for anything that is being valued, including:

- real property
- plant and equipment
- businesses
- goodwill
- shares
- units
- liabilities
- benefits provided, and
- financial instruments.

While a valuation is an estimate of an asset's value, it is important that the valuation is based on the most relevant and reliable information that is known, or could reasonably be foreseen, at the valuation date.

This Guide aims to help you reduce tax risks associated with valuations. This Guide does not provide instructions or details on how to calculate or determine market value for tax purposes. Determining market value requires careful consideration of the asset, business or entity, environment, market and any other relevant factors.

If we undertake a market valuation review, the onus for providing a replicable and defensible valuation remains with you even when a professional is engaged to provide the valuation. You are responsible for ensuring that the valuer:

- is suitably knowledgeable and experienced
- receives appropriate engagement instructions
- remains objective

- is not presented with obstacles or limitations that inhibit their work, and
- provides a reasonable market value that is supported by credible evidence using an appropriate recognised valuation methodology.

A replicable and defensible valuation report is best evidenced in a substantive context by:

- referring to and retaining all relevant records
- thoroughly documenting all aspects of the valuation process, and
- choosing the most appropriate inputs and methodology.

Market value definition for tax purposes

The definition of 'market value' in subsection 995-1(1) of the *Income Tax Assessment Act 1997* (ITAA 1997) does not provide a meaning to be applied in all contexts. Unless market value is specially defined or qualified in a particular provision, it has an ordinary meaning for which the principles in case law and the International Valuation Standards Council (IVSC) are principally relevant.

Tax and superannuation law requiring a market value will frame the parameters of the valuation exercise on the asset for valuation and the valuation assessment date. The law may also contain stipulations on the appropriate valuation method and assumptions.

If you want advice tailored to a particular set of facts to provide you with more certainty, you can apply for a private ruling on an asset's market value providing it is relevant to a question about the tax law. We cannot provide a private ruling to determine or confirm:

- the appropriateness of a valuation methodology, or
- the market value applicable for a future event.

Documenting the requirements of the relevant tax and superannuation provisions, and having considered the relevant case law and ATO guidance (particularly where they relate to the calculation of market value), can save considerable time and effort in the event of a review or dispute.

Statutory meaning for market value

Examples where the statute provides for the determination of market value other than according to its ordinary meaning include:

- shares and rights for employee share schemes (ESS) – former Subdivision F of Division 13A of the *Income Tax Assessment Act 1936*
- superannuation – subsection 10(1) of the *Superannuation Industry (Supervision) Act 1993*.

Judicial meaning

The High Court, in *Spencer v Commonwealth of Australia* [1907] HCA 82, identified principles to be followed in determining the ordinary meaning of market value.

In valuing an asset, a valuer is to assume a market with hypothetical buyers and sellers and the 'market value', being the price negotiated between the buyer and seller to achieve a notional sale in the hypothetical market.

The notional sale is assumed to be made after voluntary bargaining between a willing but not anxious seller and purchaser rather than a forced sale and with both being fully informed about the advantages and disadvantages of the asset being valued and aware of the current market conditions.

International Valuation Standards Council definition

The IVSC defines market value as[1]:

> [t]he estimated amount for which an *asset* or liability *should* exchange on the valuation date between a willing buyer and a willing seller in an arm's length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion.

The Commissioner considers the definition provided by the IVSC to be consistent with the judicial definition.

International Valuation Standards Council conceptual framework

The following valuation concepts flow from the IVSC's definition of market value and are derived from accepted practice:

- 'The estimated amount' is the price or consideration expressed as money, or money equivalent, payable for an asset or liability in an arm's length market transaction. Market value is the most probable price reasonably obtainable in the market on the valuation date, in keeping with the market value definition. It is a meeting of the highest price reasonably obtainable by the seller and the lowest price reasonably obtainable by the buyer. This estimate excludes a price inflated or deflated by special terms or circumstances, such as
  - atypical financing
  - sale and leaseback arrangements
  - special considerations or concessions granted by anyone associated with the sale, or
  - any element of value available only to a specific owner or purchaser.
- 'An asset or liability *should* exchange' refers to the fact that the value of an asset or liability is an estimated amount where no actual market transaction can be relied on to determine a market price.
- 'On the valuation date' requires that the value is time-specific for a given date. Markets and market conditions change, and the estimated value may be incorrect or inappropriate for another time.
- 'Between a willing buyer' refers to a buyer who is reasonably informed and motivated but not compelled to buy. This buyer is neither overeager nor determined to buy at any price. This buyer is one who purchases according to the current market with current market expectations, rather than imaginary or hypothetical market conditions that cannot be demonstrated or anticipated to exist. The assumed buyer would not pay a higher price than the market requires. The present owner is included among those who constitute 'the market'.
- 'And a willing seller' indicates the seller is informed and is neither an overeager nor a forced seller prepared to sell at any price, nor one prepared to hold out for a price not considered reasonable in the current market. A willing seller is motivated to sell the asset at market terms for the best price attainable in the open market after proper marketing, whatever the price may be. The factual circumstances of the actual owner are not a part of this consideration because the willing seller is a hypothetical owner.
- 'In an arm's length transaction' means parties do not have a particular or pre-existing special relationship that could result in the transaction price

[1] International Valuations Standards Council (2019) *International Valuation Standards*, Page Bros, Norwich (IVS), p18.

differing from a market price; for example, parent and subsidiary companies or landlord and tenant that may make the price level uncharacteristic of the market,or inflated because of an element of special value.

- ‘After proper marketing’ means that the asset or liability would be exposed to the market in the most appropriate manner to influence its disposal at the best price reasonably obtainable, in accordance with the market value definition.
- ‘Where the parties had each acted knowledgeably, prudently’ presumes that both the willing buyer and the willing seller are reasonably informed about the nature and characteristics of the asset, its actual and potential uses, and the state of the market as at the valuation date. Each is further presumed to use that knowledge prudently to seek the price that is most favourable for their respective positions in the transaction. Prudence is assessed by referring to the state of the market at the valuation date, not with the benefit of hindsight at some later date.
- ‘And without compulsion’ establishes that each party is motivated to undertake the transaction but neither is forced or unduly coerced to complete it.
- The market value of an asset will reflect its ‘highest and best use’. The highest and best use is the use of an asset that maximises its potential and that is possible, legally permissible, and financially feasible. The highest and best use may be for the continuation of an asset’s existing use or for some alternative use. This is determined by the use that a market participant would have in mind for the asset when formulating the price that it would be willing to bid.

Market value **does not** reflect attributes of an asset that are of value to a **specific** owner or purchaser that are not available to other buyers in the market. Such advantages may relate to the physical, geographic, economic or legal characteristics of an asset. Market value requires the disregard of any such element of value, because at any given date it is only assumed that there is a willing buyer, not a **particular** willing buyer.

Fair value is not the same as market value for tax purposes

‘Fair value’ is specifically used for financial reporting purposes. It is not always an identical concept to market value, although it is usually defined in a similar way.

Australian Accounting Standard AASB 13 *Fair Value Measurement* defines fair value as ‘the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date’.

Who can determine market value?

For tax purposes, the acceptability of a valuation usually depends on the valuation process undertaken rather than who conducted it. However, there are some exceptions. For example, only a ‘professional valuer’ may undertake a market valuation for GST margin scheme purposes and only an ‘approved valuer’ may undertake a market valuation for the Cultural Gifts Program.

A reasonable estimate of market value requires skill, knowledge and experience. Several valuation and accounting professional bodies and institutes provide certification and standards for valuers. It is prudent to ensure that your valuer has obtained all certifications necessary for, and has previous experience and knowledge of, the asset class being valued. See Table 1 of this Guide for registration or licensing requirements when valuing certain assets.

A valuation report carried out by a suitably qualified professional following commonly-accepted industry standards and professional codes of conduct generally contains sufficient evidence and reasoning to allow for testing or replication and is considered more reliable by the Commissioner.

Who can value asset classes?

An asset class is a group of assets with similar characteristics. There is no official universally accepted list of asset classes but Table 1 of this Guide will help you find out if a valuer is suitably qualified for particular assets. This list is not exhaustive.

Table 1: Who can value asset classes?

Asset class	Description	Relevant professional
Property, Plant and Equipment	Tangible items that are: • held for use in the production or supply of goods or services, for rental to others, or for administrative purposes, and • expected to be used for more than one income year.	**Real property valuer** A person who is registered or licenced to carry out real property valuations under the relevant State, Territory or Commonwealth legislation. In Queensland, valuers must be registered by the Valuers Registration Board of Queensland. In Western Australia, land valuations must be undertaken by a licenced land valuer. **Margin scheme requirements** Three valuation approaches are available: • a valuation by a professional valuer • a valuation based on the payment seller receives under the contract of sale, or • a valuation prepared by a state or territory department for rating or taxing purposes. For the first approach, an *approved valuation* must be undertaken by a *professional valuer* who is any of the following: • person registered or licensed to carry out real property valuations under a Commonwealth, state or territory law • a person who runs a business as a valuer in a state or territory where they are not required to be licensed or registered • a person[2] who is a member of the – Australian Valuers Institute (Certified Property Valuer) – Royal Institute of Chartered Surveyors (RICS) (Registered Valuer) – Australian Property Institute (Certified Practising Valuer). **Plant and machinery valuer**

[2] A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination 2020.

Asset class	Description	Relevant professional
		A person who is sufficiently qualified and experienced to carry out plant and machinery valuations. **Cultural Gifts Program** The valuer must be on the Cultural Gifts Program approved valuer list.
Business	Business, securities and intangible assets 'Business' includes any profession, trade, employment, vocation or calling, but does not include an occupation as an employee. 'Intangible assets' are non-monetary assets that manifest by their economic properties. They do not have physical substance but grant rights and economic benefits to their owners, such as intellectual property and goodwill. 'Securities' include stocks, bonds, debentures, promissory notes, bank deposits, loans and contracts.	There is no formal admissions board in Australia for business valuers.

Valuation standards

The IVSC is the independent global standard setter for the valuation profession. It sets International Valuation Standards (IVS) that promote consistency and professionalism in the public interest. Professional valuers must also comply with additional valuation standards, such as APES 225 *Valuation Services.*[3]

Most professional bodies adopt the IVS as part of their code and professional institutes and registration and licensing bodies may adopt a variation of the IVS as their code, such as the RICS Red Book.[4] We will accept valuations that comply with these codes.

Depending on the purpose and the type of asset, a valuation that adopts and follows professional standards can add credibility to an estimate of market value.

Valuation fundamentals for tax compliance

1. A valuation should be specific to the tax and superannuation provision that it is being applied to and consider any requirements of the relevant provisions, having considered case law and relevant ATO guidance.

2. Market value is conceptually distinct from historical cost (the original price that is paid for goods or a service, or the amount paid to produce the goods or services by the relevant entity).

[3] Accounting Professional & Ethical Standards Board (2019) *APES 225 Valuation Services*, https://apesb.org.au/standards-guidance/valuation-services/

[4] Royal Institute of Chartered Surveyors (2021) *RICS Valuation – Global Standards*, Page Bros, Norwich.

3. The nature and source of the valuation inputs must be consistent with the bases of value (relevant facts and assumptions) and the valuation purpose (tax or superannuation provision).

4. The valuer should adopt the most relevant and appropriate valuation methodology based on industry standards and practice. This may be influenced by:

- the data available
- the circumstances relating to the market, and
- industry practice and standards for the asset being valued.

5. International valuation standards recommend that valuers consider using more than one approach. For tax purposes, we recommend that (where possible) a secondary or cross-check methodology should be applied to provide additional support for an estimated value from the primary methodology.

6. The process of valuation requires the valuer to make impartial judgments as to the reliability of inputs and assumptions. For a valuation to be credible, it is important that those judgments are made in a way that promote transparency (for example, state the inputs and any assumptions made) and minimise the influence of any subjective factors on the process.

7. The valuer should assemble and record evidence by means such as inspection (as required), enquiry, computation and analysis to ensure that the valuation is properly supported.

8. An estimate provided for a future date (prospective value) is frequently sought in connection with projects that are proposed, under construction or under conversion to a new use. Market value for tax purposes requires valuation for a date specified by the legislation and a prospective assessment will not be considered reasonable or acceptable.

Bases of value

International Valuation Standard IVS 104 defines 'bases of value' (sometimes called 'standards of value') as 'the fundamental premises on which the reported *values* will be based'.[5]

The bases (or basis) of value selected are critical and may influence the valuer's choice of methods, inputs and assumptions that will determine the valuation outcome.

Important facts and assumptions include the relevant transaction, the date used for valuation and the relevant parties and party characteristics. Further assumptions may include the circumstances of exchange.

The bases of valuation must be reasonable under the circumstances, supported by evidence, suitable for tax purposes, well-documented and not include buyer or seller transaction costs.

Where a valuer does not have all the required information to prepare a valuation, the outstanding information should be identified in the valuation report.

Valuation approach

A valuation approach is the methodology chosen to determine the value of an asset. The 3 internationally-defined valuation approaches are:

- **The market approach** – relies on applying market transactions for comparable valuation assets at the valuation date. This approach estimates market value by reference to market prices in actual transactions and asking prices of assets currently available for sale. The valuation process is

[5] IVS, p16.

essentially that of comparison and correlation between the asset to be valued and other similar assets.

- **The income approach** – refers to estimating the risk and return parameters of the valuation asset at the valuation date. This approach estimates the market value of an asset based on the income or cashflows that the asset can be expected to generate in the future.
- **The cost approach** – refers to estimating the market cost of replicating the valuation asset in a similar condition as at the valuation date as a suitable indicator of market value. It is often used when the plant and equipment is a component part of a larger transaction to allocate value to the plant and equipment as a proportion of the enterprise value.

The primary valuation methodology selected should be the most suitable approach for the valuation asset, with reference to the reliability and relevance of information available at the valuation date. The valuation report should include an explanation of why the chosen methodology is the most suitable. For tax purposes, it is highly recommended that a secondary or cross-check methodology is provided where possible to support the primary methodology estimate.

The valuation approach must be:

- reasonable given the valuation asset and information available
- supported by evidence
- suitable for tax purposes; depending on the circumstances and facts, a valuation that adopts and follows professional standards can add credibility to an estimate
- replicable, and
- well-documented.

Valuation method

Within each valuation approach, there are a range of valuation methods that the valuer can use to determine value. For example, when using the income approach, the valuer might choose to apply the discounted cash flow method, the capitalisation of earnings method or other applicable methods within that approach. The valuer must choose the most appropriate method for the valuation asset.

Valuation reports

Valuation reports should contain all necessary information to ensure a clear understanding of the valuation analysis and demonstrate how the conclusions were reached. The primary objective of a valuation report is to provide convincing and compelling support for the conclusions reached.

Most professional organisations provide valuation report templates to their members.

We expect a valuation report to cover, at a minimum, the following information:

- the purpose of the valuation, including the tax and superannuation provision for which the valuation has been provided and any relevant legislative provisions, case law and ATO guidance considered
- the scope of the valuation, including instructions and limitations on scope
- details of the asset being valued

- details of information (including its source and extent of investigation), facts, inputs and assumptions relied upon (including subject matter particulars and industry data)
- the standards governing the valuation engagement; for example, the IVS or APES 225
- the valuation assessment date; for example, a retrospective valuation assessment as at 1 July 2000
- the date the valuer inspected the asset being valued (if applicable)
- the definition of value
- valuation approaches and methodologies chosen, including reasons for selection and any available cross-checks
- adequate records to explain the basis of the market value. These records should not only confirm that a valuation was undertaken but also contain sufficient detail to enable the valuation process to be replicated. Failure to maintain detailed reports and working papers may affect the credibility of the valuation and may not meet statutory record-keeping requirements. Where a valuation is straightforward or the asset's value can readily be determined objectively, the report and associated records may be brief
- expert reports (that have details similar to those required in valuation reports) and the use of experts. When relying on an expert in the valuation process, you should include sufficient detail to confirm the expert's
  - competency in the field
  - reasonable use of assumptions, methods and sources of data
  - independence (or, if not independent, disclose the dependency and justification for it)
- the use of previous valuations, if applicable. If a valuer seeks to rely on a previous valuation, difficulties are likely to arise if the previous valuation was compiled for a different purpose. The current valuation should
  - explain how the previous valuation is relevant to the current valuation, with a particular focus on the purpose of that valuation compared to the purpose of the current one
  - confirm that the information and assumptions used in the previous valuation are still relevant
  - declare how any adjustments and changes have been made to comply with any statutory requirements associated with the valuation
- an explanation and quantifying of any material differences from values such as known historical costs, and values supported by previous valuations and valuations with a similar or proximate valuation date
- valuation conclusion that requires the specific market value be ascertained. Where the selected method leads to a range of possible values, an explanation is needed as to why the specific market value finally nominated was adopted
- any risks, disclaimers and indemnities. For instance, where a business valuation is dependent on the success of a commercial initiative by that business, these risks should be described in sufficient detail to show that they have been given due consideration and weight
- terms of engaging the valuer, including any special instructions relating to the valuation, whether in writing or verbal. In particular, the report should disclose

any instructions that have affected, or are likely to affect, the valuation process

- the valuer's identity, status and qualifications
- declaration of independence and any conflicts of interest, including any relationship the valuer has with the client, in sufficient detail for us to assess the valuer's independence
- the date the report is issued.

Common issues with valuations

We commonly see the following issues when conducting reviews of market value estimates:

- inappropriate choice of methodology given the circumstances and information available
- incorrect application of methodology according to industry and professional standards
- the valuation approach, including the bases of a valuation, does not align with the relevant tax and superannuation provision, case law or ATO guidance
- unreasonable or incorrect assumptions and inputs and the use of proxies based on historical performance
- omission of relevant information available on the valuation date
- inconsistencies with evidence (for example, legal documentation)
- reliance on post-valuation date information and future events that cannot be reasonably foreseeable at the valuation date
- inappropriate apportionment of value across assets (bases, evidence, calculation)
- inappropriate choice of comparable assets on which to base valuation (chosen entity, assets)
- lack of support for size, risk and other adjustments to the chosen discount rate or capitalisation multiple
- lack of appropriate analysis and scrutiny of base information
- inappropriate use of averaging
- insufficient market evidence for inputs and assumptions
- failure to verify inputs (subjective and unqualified)
- insufficient or incorrect documentation
- omission of assumptions from the valuation report.

Reviews

We may review an asset’s market value relating to your tax affairs in administering the tax system.

The likelihood of having a valuation reviewed is greater where the asset’s value is high or the methodology used is contentious. Where this may be the case, we would expect greater depth of evidence and explanation to support your valuation position.

If you undertake your own valuation or use valuations from people without adequate qualifications, you risk incorrectly reporting your tax and may be liable to interest and penalties.

Review process

When we initially engage with you, we will outline our concerns and discuss our information requirements.

When we review a market valuation, we consider:

- the value of the asset
- the type of asset involved (intangible assets are more likely to increase risk)
- materiality of any potential tax adjustment
- complexity of the valuation process
- documentary evidence supporting the valuation.

We generally use a valuer to confirm whether the market value is acceptable and to assess whether the valuation process complies with accepted valuation industry practice. Broadly, the review involves examining:

- how adequately the process was documented
- the market value definition used
- the appropriateness of the chosen method
- the underlying assumptions and information.

At the conclusion of the review, the valuer will provide us with a report on the valuation, which may include an estimate of the market value (or likely range) of the asset, based on data available to them at that time. When we receive the report, we use our standard risk assessment procedures to decide whether to take further action.

Depending on the circumstances, we may engage independent professional valuers to verify the estimate.

We will advise you of the outcome of the review in writing.

Supporting documents

As part of our normal assurance or review processes, you may be asked to provide additional information or documentation to support a market value estimate. The information required may vary from case to case and often includes the valuation report and the instruction provided to the valuer.

An asset's market value is better supported if your valuation report:

- contains the details listed in the valuation reports section of this document
- uses and demonstrates a robust qualify assurance framework
- complies with professional and industry standards
- identifies the asset, liability or equity item to be valued and classifies the item and its use; for example, ‘retail shop held as investment’ or ‘dwelling house for owner occupation’
- (if the asset is an interest) specifies the interest (and associated rights) being valued and details the interest in the estimate of market value – for example, whether the interest is in real property or a business, an individual shareholder’s interest or a class of shareholders’ interests where there are

multiple classes of shares, and a debt obligation owed by the company or convertible debt.

An asset's market value is also better supported if it can be demonstrated that the valuer has received instructions that clearly:

- ensured the valuer's independence in preparing the report and in drawing conclusions
- recognised the valuer's right to refuse to provide an opinion or report if the valuer has not been provided with the information and explanations needed
- granted the valuer access to the taxpayer's premises and necessary records
- ensured the valuer would be provided with all the help needed to complete the report
- established that any fee, where levied, did not depend on the outcome of the report.

Instructions to valuers will usually be in the form of a written request or documented in the engagement letter.

Most professional valuation bodies stipulate the documentation of the terms of any valuation engagement and provide templates to their members.

Administrative penalties

When a valuation is conducted by a professional valuer, administrative penalties could apply for making a false or misleading statement, or treating the income tax law in a manner that is not reasonably arguable, if:

- you have not given the correct information to your valuer to allow them to correctly determine the value of the asset
- you or your agent should reasonably have known the value was incorrect
- the methodology or valuation hypothesis used by the professional valuer is based on an unsettled interpretation of a tax or superannuation provision or unclear facts.

For example, a real property valuation prepared by a professional valuer or an estimate of historical building cost made by a quantity surveyor are matters that are likely to be outside of your expertise. Relying in good faith on advice of this nature is consistent with taking reasonable care, even if the advice later proves to be deficient.

In deciding whether to remit a penalty, we will consider:

- your compliance history
- whether tax was deferred or avoided
- whether we became aware of the tax shortfall as a result of your voluntary disclosure or because of our compliance efforts
- your attitude towards complying with the tax laws.

Interest

Interest charges will apply where you underpay your tax. This may occur when a market valuation results in the market value of an asset or liability being over-, or under, valued.

General interest charge (GIC)

GIC will apply to you where you have an unpaid tax liability, such as when you have an amount of tax, charge, levy or penalty and this is paid late or remains unpaid.

Shortfall interest charge (SIC)

SIC may apply in situations if you amend your tax return and your amended tax return results in an increase in your tax liability, and there is a shortfall.

Remission of interest

In deciding whether to reduce or cancel GIC, we consider factors such as whether there were any extenuating circumstances that caused a delay in payment and what steps you took to relieve the effects of those circumstances.

We may remit some, all or none of the SIC. We also initiate remissions where it is appropriate to do so; for example, if:

- we delay the start of an examination into your tax affairs
- the expected time to complete an examination is late due to our actions
- we cause periods of unreasonable delay, or
- we delay processing your amendment request.

Example 1: Margin scheme

Ahmed, a builder, engaged a professional valuer to determine the market value of land held before 1 July 2000. The valuation was used to calculate the goods and services tax (GST) payable on the sale of the developed land.

The ATO reviewed the market valuation and determined that the valuation was invalid as it did not comply with the requirements of the A New Tax System (Goods and Services Tax) Act 1999. After commissioning a new, valid valuation, Ahmed was found to have understated the amount of GST payable.

Although the valuation was invalid, Ahmed had taken reasonable care. Ahmed engaged a professional valuer and was unaware of the flaws in the valuation.

If correcting a valuation or using a different valuation results in more GST being payable, administrative penalties and general interest charge may apply. However, where a genuine mistake is made, the ATO may provide penalty relief.

Example 2: Maximum net asset value test

Frost Pty Ltd (Frost) disposed of a property it owned and claimed small business relief from capital gains tax (CGT) on the basis that it satisfied the maximum net asset value test. Frost had valued its assets itself before lodging its return.

The ATO contacted Frost about the valuation of 3 properties held by Frost immediately before the CGT event. The ATO engaged a professional valuer and determined that the market value of the 3 properties was understated by 25% and that Frost did not satisfy the maximum net asset value test.

Frost valued its properties based on comparison with other properties that had few characteristics in common with the properties owned and was unable to explain satisfactorily how some of the valuation assumptions were made.

A reasonable person would have recognised the real risk that the maximum net asset value test was not satisfied and that the tax return lodged was incorrect. A penalty for recklessness applied.

Frost may also have SIC applied if, as a result of the adjustment to the market value of the properties, there is a tax shortfall in its income tax return.

Example 3: Market value substitution – non-arm's length

Helen Bloggs obtained an appraisal from Tony Bloggs & Associates (real estate agents) for her property. Tony Bloggs is Helen's husband. Tony Bloggs & Associates appraised Helen's property at $1.8 million.

Helen sold the property for $1.8 million to a related party, Property Trading Pty Ltd. Tony Bloggs was the director and major shareholder of Property Trading Pty Ltd.

On transfer, the relevant State Revenue Office determined the market value of the property to be $2.3 million and assessed stamp duty payable accordingly. Property Trading Pty Ltd did not seek a review of the assessment for the additional stamp duty.

Helen's tax agent, when told about the additional stamp duty, pointed out to her that income tax is levied based on the market value of assets transferred to related parties, not necessarily the contract price. Helen instructed her tax agent to complete her tax return based on the $1.8 million appraisal.

Helen knew that the property was undervalued and that the property's value on disposal was understated by $500,000. A penalty for making a false or misleading statement, resulting from intentional disregard of a taxation law applies.

Objections

You can lodge an objection in writing within 60 days of the amendment, or 2 to 4 years from the relevant assessment, depending on your circumstances.

Your objection must:

- include full details of why you think our decision is wrong
- contain a declaration that the information provided in the objection and supporting documentation is true and correct
- be signed and dated.

ATO services

Early engagement

You can engage with us at an early stage to discuss a proposed or finalised complex transaction. We would not provide advice on a valuation estimate as part of an early engagement discussion; however, we may provide guidance on potential appropriate approaches for the circumstances.

Private rulings

You can apply for a private ruling on an asset's market value, either by:

- asking us to provide a valuation of the asset
- providing us with a valuation of the asset and asking us to confirm it.

We may use a professional valuer to conduct the valuation or review the provided valuation. The valuer charges us a fee, which the law allows us to pass on to you. You are required to pay any valuation fees incurred by the ATO in providing a valuation ruling.

Joint valuations

A joint valuation involves you and us working together to appoint and instruct an independent and impartial professional valuer to value an asset. The valuation costs are shared between the parties.

References

ATO advice and guidance

The following table sets out ATO advice and guidance on market value for various tax topics.

Table 2: ATO advice and guidance

Topic	**ATO advice and guidance**
Capital gains tax	CGT Determination TD 9 *Capital Gains: How do you apportion consideration received on the disposal of a composite asset?* Declaration of the value of unlisted shares Law Administration Practice Statement PS LA 2007/9 *Share buy-backs* Market value substitution rule Small business CGT concessions Taxation Determination TD 92/132 *Income tax: property development: if land is trading stock, do related interest costs, council rates and land taxes, form part of the cost price for trading stock valuation purposes?* Taxation Determination TD 97/1 *Income tax: property development: if land, originally acquired as a capital asset, is later ventured into a business of development, subdivision and sale, how is the market value of the land calculated at the time it is ventured into the business?* Taxation Determination TD 2004/22 *Income tax: for Off-Market Share Buy-Backs of listed shares, whether the buy-back price is set by tender process or not, what is the market value of the share for the purposes of subsection 159GZZZQ(2) of the Income Tax Assessment Act 1936?* Taxation Ruling TR 2004/13 *Income tax: the meaning of an asset for the purposes of Part 3-90 of the Income Tax Assessment Act 1997* Transferring property to family or friends
Charity tax concessions	Non-commercial supplies Property we value at more than $5,000
Consolidation	Consolidation valuation shortcuts Taxation Determination TD 2007/1 *Income tax: consolidation: in working out the market value of the goodwill of each business of an entity that becomes a subsidiary member of a consolidated group, should the value of related party transactions of each business of the entity be recognised on an arm's length basis?* Taxation Determination TD 2007/27 *Income tax: consolidation: is the cost base of the goodwill referred to in subsection 711-25(2) of the Income Tax Assessment Act 1997 limited to the cost base of goodwill previously identified under subsection 705-35(3) of that Act?*

Topic	ATO advice and guidance
	Taxation Ruling TR 2005/17 *Income tax: goodwill: identification and tax cost setting for the purposes of Part 3-90 of the Income Tax Assessment Act 1997*
Cryptocurrency	Tax treatment of crypto assets
Demergers	Taxation Determination TD 2006/73 *Income tax: demergers: in reallocating the cost bases of ownership interests under a demerger, as required by subsection 125-80(2) of the Income Tax Assessment Act 1997, is there more than one method that produces a reasonable apportionment?*
Employee share schemes	Market value
Fringe benefits	Fringe benefits tax – a guide for employers
Functional currency	Guide to functional currency rules
GST	GST and supplies by charities for nominal consideration – benchmark market values Charities consultative committee resolved issues document – Section B. Market value guidelines
GST margin scheme	Goods and Services Tax Ruling GSTR 2000/21 *Goods and services tax: the margin scheme for supplies of real property held prior to 1 July 2000* Goods and Services Tax Ruling GSTR 2006/7 *Goods and services tax: how the margin scheme applies to a supply of real property made on or after 1 December 2005 that was acquired or held before 1 July 2000* Goods and Services Tax Ruling GSTR 2006/8 *Goods and services tax: the margin scheme for supplies of real property acquired on or after 1 July 2000* Legislative instrument *A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination 2020* Margin scheme requirements
Goodwill	*Commissioner of Taxation (Cth) v Murry* [1998] HCA 42 Taxation Determination TD 2007/1 *Income tax: consolidation: in working out the market value of the goodwill of each business of an entity that becomes a subsidiary member of a consolidated group, should the value of related party transactions of each business of the entity be recognised on an arm's length basis?* Taxation Determination TD 2007/27 *Income tax: consolidation: is the cost base of the goodwill referred to in subsection 711-25(2) of the Income Tax Assessment Act 1997 limited to the cost base of goodwill previously identified under subsection 705-35(3) of that Act?* Taxation Ruling TR 1999/16 *Income tax: capital gains: goodwill of a business* Taxation Ruling TR 2005/17 *Income tax: goodwill: identification and tax cost setting for the purposes of Part 3-90 of the Income Tax Assessment Act 1997*
Non-arm's length income	Non-arm's length income
Off-market buy-backs	Law Administration Practice Statement PS LA 2007/9 *Share buy-backs* Taxation Determination TD 2004/22 *Income tax: for Off-Market Share Buy-Backs of listed shares, whether the buy-back is set by tender process or not, what is the market value of the share for the purposes of subsection 159GZZZQ(2) of the Income Tax Assessment Act 1936?*

Topic	ATO advice and guidance
Off-market takeovers	Taxation Determination TD 2002/4 *Income tax: capital gains: what is the first element of the cost base and reduced cost base of a share in a company you acquire in exchange for a share in another company in a takeover or merger?*
Real property	Taxation Determination TD 92/132 *Income tax: property development: if land is trading stock, do related interest costs, council rates and land taxes, form part of the cost price for trading stock valuation purposes?* Taxation Determination TD 97/1 *Income tax: property development: if land, originally acquired as a capital asset, is later ventured into a business of development, subdivision and sale, how is the market value of the land calculated at the time it is ventured into the business?* Taxation Ruling TR 97/25 *Income tax: property development: deduction for capital expenditure on construction of income producing capital works, including buildings and structural improvements* Transferring property to family or friends
Related service entities	Taxation Ruling TR 2006/2 *Income tax: deductibility of service fees paid to associated service entities: Phillips arrangements* Your service entity arrangements
Share buy-backs	Law Administration Practice Statement PS LA 2007/9 *Share buy-backs* Practical Compliance Guideline PCG 2021/1 *Application of market value substitution rules when there is a buy-back or redemption of hybrid securities – methodologies for determining market value for investors holding their securities on capital account* Taxation Determination TD 2004/22 *Income tax: for Off-Market Share Buy-Backs of listed shares, whether the buy-back price is set by tender process or not, what is the market value of the share for the purposes of subsection 159GZZZQ(2) of the Income Tax Assessment Act 1936?*
SMSF valuation guidelines	Valuation guidelines for self-managed super funds
Thin capitalisation	Thin capitalisation

Other information

Table 3: Other information

International Valuations Standards	International Valuations Standards
Other external valuer-related links	Queensland – Valuers Registration Board of Queensland Western Australia – (land) – land valuer
Approaching the ATO for advice on valuations	Private rulings Early engagement for advice Public business, not-for-profit, internationals and privately owned and wealthy groups Small business advice
ATO penalties	Law Administration Practice Statement PS LA 2012/5 *Administration of the false or misleading statement penalty – where there is a shortfall amount*

	Law Administration Practice Statement PS LA 2012/4 *Administration of the false or misleading statements penalty – where there is no shortfall amount* Miscellaneous Taxation Ruling MT 2008/2 *Shortfall penalties: administrative penalty for taking a position that is not reasonably arguable*
Lodging an objection	How to object to a decision
Other ATO valuation guidance	Joint valuations Cultural Gifts Program – approved valuers Form for instructing your valuation consultant

Amendment history

Date of amendment	Part	Comment
29 August 2023	Who can determine market value?	Remove specific references to institutes that provide certification and standards for valuers. Insert general statements on the need for valuers to have the appropriate certification and registration or licensing.
29 August 2023	Other information	Remove hyperlinks to Valuation Institutes providing certification and standards for valuers.