



Monthly Information Newsletter – Tax & Super

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Getting a tax valuation from the ATO

Not every individual situation fits neatly with the tax laws as they stand – sometimes a taxable item's known value (and therefore the tax that applies to it) may need to be determined.

Many tax laws require the taxpayer to determine the market value of something. Common instances include:

- for individuals – transfers of real estate or shares between related parties, such as family members
- for employees – non-cash benefit transactions, such as gifts or other benefits such as car parking
- for small businesses – transfers of assets to related parties, or passing the asset threshold tests for the small business capital gains tax concessions
- for property developers – the GST margin scheme
- for businesses – consolidation events
- for all taxpayers – many anti-avoidance provisions.

Particularly for capital gains tax purposes, there are a number of instances where a valuation may be necessary.

In doing this, there are two choices:

- ask the ATO to provide the valuation, or
- provide the ATO with a valuation of the item and ask it to confirm that valuation.

The ATO may take the option to use a professional valuer to undertake or review your own valuation. The valuer usually charges the ATO a fee, which the law allows it to pass onto you. Consequently, if you apply for a private ruling requiring a valuation, it is also required that you pay for the work of the valuer.

The ATO says that 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 or for determining non-monetary consideration for GST purposes.

Acceptable valuations

Except for the most straightforward valuation processes, valuations undertaken by people experienced in their field of valuation would be expected to provide more reliable values than those provided by non-experts.

According to legal precedent, experts who assess market value should have specific knowledge, experience and judgement in that particular field. While professional qualifications may add weight to the valuer's opinion, they should also display personal integrity and competence. To ensure the objectivity of the report, the valuer should be independent of the party commissioning the report.

The valuation process should be adequately documented; if it isn't, the ATO may not accept the resulting value as a market value.

Whenever the ATO uses a professional valuer, it will first give an estimate of how much the valuer will charge. This amount is generally required to be paid before the ATO will proceed. If, however the valuation work has already started, it will generally be required that you pay for the work already undertaken.

If you provide the ATO with a valuation that meets the requirements set out in ATO guidance *Market valuation for tax purposes* (most search engines will find this for you), it will generally cost less to confirm it than to undertake a new valuation.

If the ATO decides that the valuation you have provided is not acceptable, before it issues a private ruling the ATO will ask if you want to either:

- submit a new valuation for review, or
- ask the ATO to provide the valuation.

You will need to pay any further costs the professional valuer charges to the ATO. And if the ATO does not receive any such advice, it generally will issue a private ruling stating that your valuation is not acceptable and that it will not provide an alternative valuation.

What happens when applying for a private ruling about the value of an item?

When the ATO receives an application for a private ruling that asks to determine or confirm the value of a thing, the following occurs:

- if it needs to use a professional valuer, before it starts the valuation process it will tell you, and ask you to agree in writing, to use a professional valuer
- it will ask for your input when selecting and instructing a valuer
- it will ask the professional valuer to provide a quote for the work – either to value the thing, or to review the valuation that has been supplied
- the ATO will provide a copy of the valuer's quote, which contains
 - the cost of their work
 - the time it will take to provide a report
 - any additional information they require to complete the work.

For complex valuation cases, the valuer may need to do the work in stages. In these situations, they will provide a quote for each stage before starting work on it. And before the valuer starts work, the ATO will ask you to:

- pay the estimated amount for the relevant stage, and
- provide any additional information the valuer requests.

Within 28 days of receiving the quote, you need to pay the quoted amount, which may be the whole amount or the amount for the stage in question.

The ATO generally does not ask the valuer to do the work until payment is received. Once the ATO receives your payment, it will:

- ask the valuer to start the work, and
- send you a receipt for your payment.

The receipt the ATO issues is also a tax invoice – for which you may be able to claim the GST included in the valuer's fee as a GST credit. Also note that as the cost of the valuation work is considered to be a cost of managing your tax affairs, it may be deductible for income tax purposes.

The ATO will tell you:

- when the valuation is finished or confirmed, and
- if there are any changes to the final cost of the valuation or review.

It will then either:

- refund any extra amount you paid, or
- ask you to pay any shortfall.

If there is a shortfall, this will need to be paid this before the ATO will provide your private ruling. Generally however, it can complete your private ruling within 28 days of receiving the valuer's report.

Private rulings involving a valuation may take longer than other private rulings because of the possibility of having to engage a professional valuer. Generally, the ATO will make contact within 14 days of receiving such an application to discuss an appropriate reply date.

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