

Information Circular No: 86

Stamp Duties Act 1923

2015-16 Mid-Year Budget Review Stamp Duty on Transfers of Non-residential, Non-primary Production Real Property

Issued 7 December 2015

(updated 8 December 2015)

As part of the 2015-16 Mid-Year Budget Review released today, the Government announced that the commencement date for the first reduction of one-third of stamp duty on transfers of non-residential, non-primary production real property ("qualifying land") would be brought forward from 1 July 2016 to take effect from today, 7 December 2015.

Background

The Government previously announced, as part of the 2015-16 State Budget handed down on 18 June 2015, the phased abolition of stamp duty on transfers of qualifying land over a three-year period commencing 1 July 2016.

Stamp duty rates were to be reduced by one-third from 1 July 2016, with a further one-third reduction to apply from 1 July 2017, followed by the complete abolition of stamp duty from 1 July 2018.

Discussion

The legislative amendments to implement the phased abolition as originally announced as part of the 2015-16 State Budget reform package, are contained in Section 50 of the *Statutes Amendment and Repeal (Budget 2015) Act 2015* (the "2015 Budget Act"), which was assented to on 26 November 2015 and would have taken effect as Section 71DC of the *Stamp Duties Act 1923* (the "SDA") from 1 July 2016. An amendment to the SDA will now be required to bring forward the changed commencement date for the first rate reduction as announced today.

Until the legislative amendment to bring forward the commencement date of the first rate reduction is assented to, the following arrangements will apply.

Where a taxpayer enters into a contract to purchase qualifying land between 7 December 2015 and the date of assent of the required amendment to the SDA, the relevant one-third stamp duty reduction on the transfer will be paid by the Government on behalf of the taxpayer by way of *ex gratia* relief (with the taxpayer still liable for the remaining two-thirds stamp duty payable on the transfer of the qualifying land).

What is Qualifying Land?

Qualifying land means land that is being used other than for residential purposes or for primary production as defined in Section 50 of the 2015 Budget Act (and as proposed by Section 71DC of the SDA).

The Commissioner will generally rely on land use codes to determine whether he considers land to be residential or primary production land. The land use codes within the following Land Use Code (LUC) headings will be taken to be qualifying land:

- ▶ commercial;
- ▶ industrial;
- ▶ vacant land (see exceptions below);
- ▶ institutions;
- ▶ public utilities;
- ▶ recreation; and
- ▶ mining and quarrying.

Further Information

Further information can be obtained from RevenueSA.

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Any transfer of land (for the purposes of this Information Circular, a transfer of land will be taken to include a notional acquisition of an interest in the underlying local land assets of a land holding entity under Part 4 of the SDA) which is considered to constitute qualifying land but does not have a land use code from the above categories, must be submitted for Opinion to the Commissioner with advice as to the land use code, the actual use of the land as at the date of the contract for sale and purchase of the land and any other details to evidence that the land should be regarded as qualifying land.

Stamp duty on transfers of residential and primary production land will remain unchanged. Vacant land will be considered to be used for primary production or residential purposes in certain circumstances.

What is land used for Residential Purposes?

Land will be taken to be used for residential purposes where the Commissioner, after taking into account information provided by the Valuer-General, determines that:

- ▶ it is being predominantly used for that purpose;
- ▶ although the land is not being used for any particular purpose at the relevant time the land should be taken to be used for residential purposes due to improvements that are residential in character having been made to the land; or
- ▶ the land is vacant, or vacant with only minor improvements, the land is within a zone established by a Development Plan under the *Development Act 1993* that envisages the use, or potential use, of the land as residential, and the land should be taken to be used for residential purposes due to that zoning (subject to the qualification that if the zoning of the land indicates that the land could, in a manner consistent with the Development Plan, be used for some other purpose (other than for primary production) then the vacant land will not be taken to be used for residential purposes).

In some cases the zoning of the land will be relevant where the land is unimproved or there are only minor improvements.

A further exception is in relation to land which although coded as residential by the Valuer-General will nevertheless be considered by the Commissioner to be commercial in nature.

This treatment will be consistent with the Local Government zoning of the land. Land uses that fall into this category are Hostels, Hotels, Motels, Serviced Apartments and short term unit accommodation.

What is land used for Primary Production?

Land will be taken to be used for primary production purposes where the Commissioner, after taking into account information provided by the Valuer-General, determines that:

- ▶ it is being predominantly used for primary production purposes; or

- ▶ although the land is not being used at the relevant time the land should be taken to be used for primary production purposes due to a classification that has been assigned to the land by the Valuer-General.

Stamp duty will continue to apply to non-exempt transfers of primary production land. A stamp duty exemption may be available to certain transfers of primary production land that is used to carry on a business when it is transferred between family members.

The land use codes within the following LUC headings are not considered by the Commissioner to be qualifying land:

- ▶ residential;
- ▶ primary production;
- ▶ vacant land – urban (LUC 4100);
- ▶ vacant land with minor improvements (LUC 4101);
- ▶ vacant land – rural residential (LUC 4150); and
- ▶ vacant land with minor improvements (LUC 4151).

Application of the stamp duty reductions are based on the date of the contract for sale and purchase of the qualifying land, not the date of the Memorandum of Transfer or other conveying instrument. If a contract has been assigned, the date of the contract is used to determine whether a stamp duty reduction applies.

Anti-avoidance provisions

As the rates of stamp duty on qualifying land are phasing out over a number of years, a robust anti-avoidance provision has been legislated to provide significant deterrence to persons who may attempt to artificially structure a transaction in order to take advantage of a lower rate of stamp duty in the future.

Section 67 of the Stamp Duties Act 1923

If the transfer is a part of a series of transactions with other instruments, as described in **Section 67** of the SDA, then stamp duty is calculated on the total value of the property in the series of transactions and apportioned to each instrument.

If the instruments subject to Section 67 of the SDA are being stamped at different times, they must be submitted for Opinion to the Commissioner with the details of the other instruments in the series of transactions. They cannot be stamped on RevNet.

If the transfer is for multiple titles comprising qualifying land and land coded as residential or primary production, the transfer/s must also be submitted for Opinion to the Commissioner and not stamped via RevNet. Advice on the consideration separately paid for the qualifying land and land coded as residential or primary production must be provided.

Example

Bob Pty Ltd purchases two parcels of land with both contracts for sale dated 10 December 2015. One is a residential apartment building, while the other is a retail complex.

Section 67 of the SDA applies and stamp duty is calculated as follows:

| | |
|-----------------------------------|--------------------|
| Transfer 1: Residential Apartment | \$1 200 000 |
| Transfer 2: Retail Complex | \$1 000 000 |
| Total consideration | <u>\$2 200 000</u> |

Stamp duty on \$2 200 000 is \$114 830, which is apportioned back to the transfers as follows:

Transfer 1: Residential Apartment

$$\frac{1\,200\,000}{2\,200\,000} \times \frac{114\,830}{1} = \$62\,634.55 \text{ (rounded down)}$$

Transfer 2: Retail Complex

$$\frac{1\,000\,000}{2\,200\,000} \times \frac{114\,830}{1} = \$52\,195.45$$

The retail complex is classified as qualifying land and therefore qualifies for a reduction in stamp duty of 1/3.

$$\$52\,195.45 - 1/3 \text{ (being } \$17\,398.48) = \$34\,796.65$$

Stamp duty payable will be:

| | |
|-------------------------------------|--------------------|
| Conveyance 1: Residential Apartment | \$62 634.55 |
| Conveyance 2: Retail Complex | <u>\$34 796.65</u> |
| Total stamp duty payable | <u>\$97 431.20</u> |

New document types with supporting guide notes (including further examples) will be available via RevNet to allow for stamping of a transfer of qualifying land and a transfer of lease of qualifying land. If purchasers of land are in any doubt whether the stamp duty reduction applies they should contact RevenueSA before stamping the land transfer on RevNet and/or submitting the conveying instrument for Opinion of the Commissioner.

Graeme Jackson
COMMISSIONER OF STATE TAXATION
7 December 2015