RevenueSA
DEPARTMENT OF TREASURY AND FINANCE

Stamp Duties **Circular No. 265**
(replaces Circular No. 157)

STAMP DUTY - SALE OF RETIREMENT VILLAGES

This Circular is issued in response to industry requests to clarify the practice of RevenueSA in respect of the assessment of stamp duty on the sale of retirement villages.

The sale of a retirement village may be achieved either by the direct sale of the land, upon which the village is built or by the sale of shares or units in a company or unit trust scheme that owns the land upon which the village is built.

BACKGROUND

An instrument to effect the conveyance or transfer of a retirement village, [including any transaction that is captured by section 71E of the *Stamp Duties Act 1923* (Act)] as a direct conveyance of land, fixtures and other business assets, is liable to stamp duty. Duty is calculated on the greater amount of either the market value of the property conveyed or the consideration paid. (Consideration includes the assumption by the purchaser of the liabilities of the vendor).

The purchase of the shares or units in a retirement village owning company or unit trust scheme may involve the acquisition of a majority interest in a land rich entity, requiring the submission of an acquisition statement. An acquisition statement is subject to duty, at conveyance rates, on the unencumbered value of the South Australian land assets of the entity, including the unencumbered value of the South Australian land assets of related entities.

A private entity (a private company or a private unit trust scheme) is a land rich entity if the unencumbered value of the South Australian land of the entity, together with the South Australian land of related entities, is $1 million or more; and if the unencumbered value of the land assets of the entity, together with the land assets of related entities, comprises 80% or more of the unencumbered value of the entity's total underlying assets [refer to section 94 (1) of the Act].

In one type of arrangement between residents and owners of retirement villages, incoming residents are required to make a lump sum payment to the retirement village representing the market value of a licence to occupy a unit. A part of the lump sum paid is a loan to the owner of the retirement village. On departure, the outgoing resident's loan is repaid with a predetermined percentage of the amount paid by the new incoming resident. The repayment of the outgoing resident's loan is contingent upon the payment of a lump sum by the incoming resident.

NOTE:

In this Circular, the term "residents' liabilities" means the amount payable at any point of time by the owner to the current residents on account of the lump sum paid by them on their taking up residency. It ***does not*** *include any other debts owing by the owner to any other person.*

There is some concern amongst industry that "residents' liabilities" will be added to the net consideration paid for the purpose of determining the stamp duty payable on the sale of retirement villages. The inclusion of the assumption of residents' liabilities to future outgoing residents as part of the consideration has the effect of increasing the consideration, resulting in an increase in the stamp duty payable.

The industry is also concerned about the treatment of residents' liabilities in the calculation of land rich liability.

RULING

Direct sale of land, fixtures and business assets

Section 60A of the Act, provides that the value of property conveyed under a conveyance on sale is the unencumbered market value as at the date of transfer. Pursuant to Section 60A(2) of the Act, the Commissioner of State Taxation ("Commissioner"), may treat the consideration payable for the sale as representing the unencumbered value of the property conveyed, unless it appears that the consideration is less than the value determined.

Accordingly, where the parties involved in the sale of a retirement village as a going concern, that includes both the sale of land and the business of carrying on a retirement village, are unrelated *bona-fide* purchasers and sellers, the consideration expressed for the sale will be accepted as the full market value of the retirement village for stamp duty purposes.

Given the unique method of reimbursing outgoing residents of retirement villages and the contingent nature of these liabilities assumed, the Commissioner will disregard the residents' liabilities as forming part of the consideration payable on the purchase of retirement villages.

This ruling has application only to the above-described residents' liabilities being assumed on the sale of retirement villages.

Sale of shares or units in a private entity that owns the retirement village

If the private entity is a land rich entity, the duty payable under Part 4 of the Act might be higher than the duty payable on a direct sale of the retirement village according to the treatment of consideration set out above.

In order to treat retirement village sales effected by the sale of shares or units in a land rich entity on an equivalent basis with a direct sale of land an offset of the residents' liabilities is required in determining the total unencumbered value of the entity's local land assets. (Section 96 of the Act).

For the purposes of determining the amount of any offset, some apportionment of the residents' liabilities against other assets owned by the land rich entity is required. Such an apportionment would involve a reduction in the total residents' liabilities available for offset.

The value of the offset to be allowed against a land rich duty assessment will be determined using the following formula:

$$\frac{\text{value of land \& buildings*}}{\text{value total assets}} \times \text{value of residents' liabilities}$$

* Unencumbered value of the entity's land assets in South Australia.

The adjustments to the value of residents' liabilities recognises that these liabilities fund the residents' homes and other assets of the retirement village.

FURTHER INFORMATION

Further information regarding these amendments may be obtained from RevenueSA.

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COMMISSIONER OF STATE TAXATION