



Stamp Duties

Circular No 234

“OFF-THE-PLAN” SALES OF PROPERTY

This Circular clarifies the treatment of “off-the-plan” sales of property for stamp duty purposes.

An off-the-plan sale generally relates to the sale of a home unit or an apartment before the building in which it will be contained has been constructed or completed. Off-the-plan sales also generally involve the purchase of a lot in an undeposited community, strata or surface subdivision.

There is a practice in the building industry to sell off-the-plan, where purchasers enter into an agreement to purchase unimproved land as well as a building contract for the construction of improvements on that land. These arrangements are often marketed to the purchaser on the understanding that the benefit of this arrangement to the purchaser is that he/she will only pay stamp duty upon the unimproved value of the land. This is not the case.

For the purposes of the *Stamp Duties Act 1923* (“the Act”), the purchase of property “off-the-plan” is a conveyance on sale. Accordingly, pursuant to section 60A of the Act, the value of the property, for stamp duty purposes, is to be determined as at the “date of the sale”.

RevenueSA is of the view (based on relevant judicial authority) that the “date of the sale” of a property is the date of conveyance of the property to the purchaser. The “date of the sale” is not the date of the contract for the sale and purchase of the subject property.

For the purposes of determining the “date of the sale”, RevenueSA looks at the date that the purchaser is in possession of an executed Transfer, which cannot occur until the relevant plan of division is deposited at the Lands Titles Office (“LTO”) by the Registrar-General. The purchaser is entitled to register the Transfer from this date.

Often, at the time a plan of division is deposited the land will be improved, and it is upon the improved value of the land that stamp duty will be assessed.

The following examples outline RevenueSA’s assessment practices in respect of off-the-plan sales:-

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1. Community Plans

Community plans are plans of community division under the *Community Titles Act 1996* that include lots and common property.

Where a sale of property involves the purchase of community titled vacant land with a building contract annexed, the “date of sale” will be the date that the purchaser is in possession of an executed Transfer, which will occur after the community plan has been deposited at the LTO by the Registrar-General. Stamp duty will only be payable on the vacant value of the land, if it can be shown that building has not yet commenced as at the date of sale.

2. Strata Plans

Strata plans are plans dividing a structure into units and common property under the *Strata Titles Act 1988*. In a strata scheme, the boundaries of a unit are defined by reference to the structural divisions in a building, not by reference to the land.

Where a sale of property involves a contract for purchase of strata titled land and a building contract, stamp duty will apply to the value of the strata unit as at the date of sale (the date that the purchaser is in possession of an executed Transfer), which will be after the strata plan has been deposited at the LTO.

3. Community Strata Plans

Community strata plans are plans dividing a structure into lots and common property under the *Community Titles Act 1996*. In a community strata scheme, there must be at least one lot that exists above another, and the lot boundaries are defined by reference to parts of the building, similar to a strata title.

Where a sale of property involves a contract for purchase of community strata titled land and a building contract, stamp duty will apply to the value of the community strata lot as at the date of sale (the date that the purchaser is in possession of an executed Transfer), which will be after the community strata plan has been deposited at the LTO.

4. Surface subdivision

Where the land being purchased is vacant, the “date of sale” (the date that the purchaser is in possession of an executed Transfer) cannot occur until a plan is deposited by the Registrar-General. Duty will be assessed on the value of the vacant land only, if it can be shown that building has not yet commenced as at the date of sale.

Transfers of land involving any of the above circumstances can be stamped via TIMBER, RevNet, or by Periodic Return Arrangement (PRA), providing stamp duty is determined pursuant to the above practices.

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Where a contract is signed for land value only, and duty is liable to be assessed on the value of the land together with any building thereon (whether complete or partially complete) a valuation of the improved land is to be kept for a period of five (5) years for audit purposes. Circular No 166 provides further information regarding valuations.

Penalties apply under Part 8 the *Taxation Administration Act 1996* for the provision of false or misleading information and the deliberate evasion of tax.

RevenueSA is aware that in the case of large multi-storey apartment developments some time can elapse between the signing of the purchase contract and the actual "date of sale", and that the value of such properties can increase quite substantially in the intervening period. If the consideration expressed in the contract is an amount that a person could reasonably be expected to have been required to pay in order to purchase the relevant property from the vendor, under arms length circumstances, the Commissioner of State Taxation may accept this amount as the value of the property, for stamp duty purposes.

FURTHER INFORMATION

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COMMISSIONER OF STATE TAXATION