

COMMISSIONER'S GUIDELINE

CG-SD-002:

Eligible conditional agreements – extension of time to lodge instrument and pay duty

Guideline History

Version	Issued	Dates of effect	
		From:	To:
1	3 May 2005	3 May 2005	31 December 2007
2	2 January 2008	1 January 2008	27 August 2009
3	28 August 2009	28 August 2009	Current

Purpose

This Guideline sets out the circumstances under which the Commissioner of Territory Revenue will extend the time for lodging an **eligible conditional agreement** (including 'off-the-plan' conveyances of property) and for paying stamp duty on the agreement.

Background

A person liable to pay the duty on an instrument must lodge and pay the duty within 60 days after the date the instrument is first executed.¹ For more information on the requirement to lodge and pay in the 60-day period, refer to Commissioner's Guideline CG-SD-001: *Document lodgement and payment periods*. A person who fails to comply with these requirements commits an offence and may be liable to interest and penalty tax.² However, the Commissioner has the discretion to extend the time for lodging and paying stamp duty on an instrument.³

It is common for agreements for the purchase of dutiable property to contain conditions that must be satisfied before the conveyance can be completed. Despite these conditions, unless otherwise extended, the agreement must be lodged with the Territory Revenue Office (TRO) and the duty paid within the abovementioned period.

This guideline sets out the conditions upon which the Commissioner will extend the time to lodge and pay stamp duty on eligible conditional agreements.

¹ Section 4(1) ('execute') and section 9 of the *Stamp Duty Act*.

² Part 5 of the *Taxation Administration Act* and Commissioner's Guideline CG-GEN-02: *Interest and penalty tax*.

³ Sections 48(1) and 54 of the *Taxation Administration Act*.

What is an Eligible Conditional Agreement?

For the purpose of this guideline, an agreement is an eligible conditional agreement if:

- 1) the completion of the agreement is conditional upon the happening of an event; and
- 2) the parties (or a person related to the parties) to the agreement do not have any control over the event except to the extent that they are required to use their best endeavours to secure the event happening.

Examples of such conditions are:

- 1) a party to the agreement obtaining a satisfactory private ruling as to the taxation consequences of the agreement from the Australian Taxation Office;
- 2) a financial institution approving the conveyee's finance;
- 3) the agreement being subject to the conveyance of another property;
- 4) subdivisional, rezoning, planning or local council approval;
- 5) the conveyee obtaining a satisfactory building inspection report from an independent party;
- 6) the granting of a liquor licence;
- 7) the conveyer of a commercial property obtaining the renewal of existing leases;
- 8) a conveyer of leasehold land obtaining the Minister's consent to convey the lease; or
- 9) the issue of separate titles for each unit or lot after a property development is completed.

An agreement is not an eligible conditional agreement for the purpose of this guideline if:

- 1) the agreement contains a condition that is part of an arrangement to defer the payment of duty;
- 2) the agreement is between related persons;⁴ or
- 3) completion of the agreement is only conditional on one or more of the following:
 - a. the conveyee paying the consideration;
 - b. a party to the agreement delivering information to the other party or a related party;
 - c. the property being leased back to the conveyer;
 - d. the agreement being subject to general due diligence without objective criteria being specified; or
 - e. the conveyer or conveyee being satisfied of a particular matter.

⁴ Related persons includes 'associates' as defined in section 4(2) of the *Stamp Duty Act* as well as such persons as partners in a partnership or members of a joint venture.

Types of Eligible Conditional Agreements

Off-the-plan conditional agreement

An eligible conditional agreement is an off-the-plan conditional agreement where the agreement is for:

- 1) the conveyance of a strata lot and the construction of a building on the strata lot for commercial, residential or mixed-use purposes, or
- 2) the conveyance of a vacant lot in a proposed development after the land has been subdivided at the conveyor's cost.

Subdivision conditional agreement

An eligible conditional agreement is a subdivision conditional agreement where the completion of the agreement is conditional on the conveyee obtaining approval from the relevant authorities to subdivide the land or part of the land.

Extension of time for lodgement and payment

A person liable to pay the duty on an eligible conditional agreement is required to lodge and pay duty on the agreement by the **earliest** of the following dates:

- 1) 60 days after the date upon which all relevant conditions to the agreement are satisfied;
- 2) 60 days from the date of the conveyee having the right to possession of the property, disregarding any deferment of the conveyee's right to possession due to the leasing of the property;
- 3) the date specified under a written notice by the Commissioner to lodge the agreement;
- 4) where the agreement is an **off-the-plan conditional agreement** or **subdivision conditional agreement**, 24 months after the date on which the agreement was first executed; or
- 5) in all other cases (other than where the property is subject to a subsequent sub-sale or a conveyance by direction of the conveyee), 12 months after the date on which the agreement was first executed.

Special lodgement arrangements involving sub-sales and conveyances by direction

Where the property, subject of an eligible conditional agreement, is subject to a subsequent sub-sale or conveyance by direction of the conveyee, the agreement must be lodged with TRO by the earliest of the dates detailed above but no later than 60 days after the sub-sale, agreement to sub-sell or conveyance by direction occurs. Subject to this requirement being satisfied, payment of the duty will be extended to the earliest of the dates specified above.

The extension is subject to the agreement remaining an eligible conditional agreement as defined in this guideline.

Lodgement requirements

Lodgement form

When lodging an eligible conditional agreement, the lodging party must enter the following details on the stamp duty lodgement form (in addition to the usual information required, bearing in mind the requirement to fully and truly disclose all the facts and circumstances affecting the tax liability)⁵:

- 1) the date relied on for the extension of time (for example, the date that the contract became unconditional); and
- 2) the type of agreement (that is, a normal eligible conditional contract, an off the plan conditional agreement or subdivision conditional agreement.

If this information is not provided, the agreement will be assessed as though it is not an eligible conditional contract and interest and penalty tax will apply because of the tax default.⁶

As noted, where an agreement contains a condition which is part of an arrangement to defer the payment of stamp duty, the Commissioner will not grant an extension of time and interest and penalty tax will be imposed where the payment of duty occurs later than 60 days after the instrument was first executed.

Home owner concessions

If the conveyee is eligible for a first home owner concession or principal place of residence rebate, the appropriate application form (F-HI-002 or F-HI-003) should be submitted at the time of lodging the agreement.

Sub-sales and conveyances by direction

If the property is subject to a sub-sale or a conveyance by direction, notification to that effect is required at the time of lodgement of the agreement together with a copy of the sub-sale agreement or the conveyance direction.

Records

The person liable for duty on the agreement must maintain appropriate records that evidence the date the agreement became unconditional (for example, evidence of the date that finance was obtained or correspondence between the parties to the agreement that evidences that the conditions have been fulfilled) and present these records to the Territory Revenue Office (TRO) if requested.

⁵ Section 24 of the *Taxation Administration Act*.

⁶ As to interest and penalty tax, see Commissioner's Guideline CG-GEN-002: *Interest and penalty tax*.

Interest and penalty tax

If the agreement is not lodged and stamp duty paid within the extended timeframe interest and penalty tax will apply.

Further extensions of time

This Guideline represents the Commissioner's general extension of time in relation to eligible conditional contracts. In appropriate circumstances, the Commissioner will consider a further extension of time (beyond the maximum 12 or 24 month period).

Application should be made in writing for such further extension, setting out the reasons it is required.

However, the Commissioner will only consider extending the 12 or 24 month period in situations where the contract is still subject to conditions that have not been fulfilled. Once the conditions are fulfilled or the conveyee gains a right of possession of the property, no further extension of time will be granted.

Cancellation of a Conditional Agreement

If the agreement does not proceed (whether rescinded by mutual agreement, cancelled because a condition was not satisfied or otherwise), the agreement is not required to be lodged with TRO unless it is cancelled to give effect to a sub-sale of the property or is the result of a conveyance by direction.⁷

Conveyances by Return

Eligible conditional agreements may be stamped by persons approved under the Conveyance By Return (CBR) special tax return arrangement in accordance with the extension of time provided under this Guideline except for an eligible conditional contract that is subject to a subsequent sub-sale or conveyance by direction of the conveyee. These agreements must be lodged with TRO.

Commissioner's Guideline CG-GEN-001, which sets out information on the revenue publication system, is incorporated into and is to be read as one with this Guideline. All Guidelines are available from TRO's website.

⁷ Section 9(3A) of the *Stamp Duty Act*
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Date of effect

This version of the Guideline takes effect from 28 August 2009.



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DEPUTY COMMISSIONER OF TERRITORY REVENUE

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