

COMMISSIONER'S GUIDELINE

CG-SD-011:

Improvements on land built by the conveyee

Guideline History

Version	Issued	Dates of effect	
		From:	To:
1	8 February 2007	8 February 2007	30 June 2007
2	23 July 2007	1 July 2007	31 December 2007
3	2 January 2008	1 January 2008	Current

Purpose

This Guideline explains the circumstances in which the Territory Revenue Office (TRO) will generally exercise the discretion under section 4A(5) of the *Stamp Duty Act* (SDA) to disregard, for the purpose of making an assessment of the stamp duty payable on a conveyance of land, improvements on the land built by, or at the expense of, the conveyee of the land.

Background

Stamp duty is payable on instruments effecting or evidencing a conveyance of land including fixtures such as houses, sheds and similar structures. Duty is calculated on the greater of the consideration for or the unencumbered value of the land at the date of execution of the instrument of conveyance.

Section 4A(5) of the SDA deals with the circumstance where a conveyee has made improvements on the land prior to the conveyance as a result of arrangements with the conveyor and the parties have taken these improvements into account when negotiating the purchase price of the land. The provision recognises it would generally be inequitable for duty to be paid by the conveyee in relation to improvements built by or at the expense of the conveyee.

Accordingly, the provision confers on the Commissioner of Territory Revenue a discretion to reduce the unencumbered value of the land by the amount that, in the Commissioner's opinion, reflects the value of those improvements as at the date of execution of the relevant instrument.

Terms explained

Meaning of 'improvements on land'

In the context of section 4A(5) of the SDA, 'improvements on land' means something that substantially and permanently enhances the value of the land, generally by the addition of new fixtures to the land, such as the construction of a dwelling or the addition of rooms to an existing building.

The term ‘improvements on land’ means more than mere repairs and maintenance. The term does not extend to work performed by or at the expense of the conveyee that merely rectifies defects or is undertaken in anticipation of forthcoming defects (preventative repairs and maintenance). Similarly, it does not include work undertaken to keep the property in a suitable condition to allow it to serve the purpose for which it exists – that is, keeping the property in good ‘working order’, even where that work extends to the replacement of items.

Meaning of ‘unencumbered value’

The composite term ‘unencumbered value’ is defined in section 4A(1) of the SDA to mean the full value of the property free from encumbrances. For further information on valuing land for the purposes of stamp duty, refer to Commissioner’s Guideline CG-SD-010: *Tax assessments requiring evidence of value*.

When the discretion will be exercised

Generally, the discretion will be exercised where TRO is satisfied that the improvements have been built by or at the expense of the conveyee whether or not they were made in contemplation of a conveyance of the land to the conveyee at the time they were made.

The discretion will not be exercised where the improvements are effected under, or by virtue of, an agreement or arrangement, whether formal or informal, express or implied whereby the conveyor, directly or indirectly, is ultimately responsible for the improvement(s). For example, if the conveyee, in consideration for the use of the land or for a discount in rent, made the improvements in accordance with a contractual obligation to do so, TRO will not exercise the discretion. In these circumstances, the improvements have not been built by or at the expense of the conveyee, but rather by the conveyor.

Reduction of the unencumbered value

If TRO is satisfied that the improvements were built by or at the expense of the conveyee in the circumstances set out above, the unencumbered value of the land will generally be reduced by the difference between the unencumbered value of the land including and excluding the improvements built by the conveyee irrespective of the expenditure incurred to effect those improvements.

Duty is then assessed on the greater of the consideration (which generally takes into account the improvements made by the conveyee) for the conveyance or the unencumbered value of the land excluding the conveyee’s improvements.

Lodgement requirements

Conveyees requesting TRO to exercise the discretion to exclude the value of conveyee’s improvements on land will need to provide the following information when lodging the instrument for assessment of duty.

- 1) A written statement from the conveyor and conveyee confirming the nature of and terms on which the conveyee built the improvements on the land.

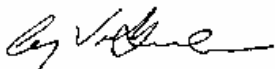
- 2) A copy of any agreement that provides the conveyee with the right of possession to, or occupation of, the land (or part of it) for the period that the improvements were being built.
- 3) A detailed description of the improvements built on the land by the conveyee. For example, the nature, characteristics and features of the improvements.
- 4) Independent corroborative evidence that the conveyee built the improvements or incurred the expense to build the improvements on the land. For example, a building contract, building permits, invoices, bank statements or other relevant financial documents.
- 5) A copy of any development plans, building plans or photographic evidence of the land prior to and after the improvements were built.
- 6) Evidence of the unencumbered value of the land with and without the improvements built by the conveyee.
- 7) Any other relevant information that may support the conveyee's claim, bearing in mind the obligation to make a full and true disclosure of all material facts and circumstances that may affect the assessment of tax (refer to Commissioner's Guideline CG-GEN-005: *Requirement for full and true disclosure*).

For further information on what evidence is acceptable, refer to Commissioner's Guideline CG-SD-010: *Tax assessments requiring evidence of value*.

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 Circulars and Guidelines are available from TRO's website.

Date of effect

This version of the Guideline has effect from 1 January 2008.



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COMMISSIONER OF TERRITORY REVENUE

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