

COMMISSIONER'S GUIDELINE

CG-SD-013:

Advice on proposed transactions

Guideline History

Version	Issued	Dates of effect	
		From:	To:
1	20 February 2008	20 February 2008	Current

Purpose

This Guideline sets out the circumstances and conditions under which the Territory Revenue Office (TRO) will express its view on the stamp duty liability of unexecuted documents or proposed transactions ('proposed transactions').

Role of TRO

TRO has a responsibility to provide general information about the Northern Territory tax system to help taxpayers understand their tax obligations. This includes information on new developments in revenue laws, general guidance on TRO's interpretation of taxation legislation and details of administrative policies, practices or procedures followed by TRO in administering the legislation.

A publications management system has been developed to advise taxpayers whenever new information becomes available. For more information on the publications management system, refer to Commissioner's Guideline CG-GEN-001. Similarly, the TRO website has a number of brochures, information sheets, answers to frequently asked questions and stamp duty calculators to assist with the provision of information.

Except for rulings in respect of the stamp duty corporate reconstruction exemption,¹ TRO will not provide specific advice on the stamp duty liability of a proposed transaction or to assist individuals to arrange or structure their affairs in a manner that best advantages that person in relation to the payment of stamp duty, as these aspects are a commercial matter for the parties and their professional advisers to determine.

However, to provide certainty in particular instances, TRO will provide general advice on proposed transactions in limited circumstances, subject to the strict terms and conditions detailed in this Guideline.

¹ Refer to section 25 of the Stamp Duty Act (SDA).
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Circumstances where TRO may give advice

TRO will consider giving advice on proposed transactions where:

- 1) the amount of stamp duty payable depends upon the Commissioner of Territory Revenue exercising (or not exercising) a discretion expressly provided in the relevant legislation. However, this does not include situations where the exercise of the discretion requires a decision as to whether the transaction is or is part of a tax avoidance scheme (see below);
- 2) the documents are drafts of a standard form in which the applicant will enter into that type of transaction on a regular basis where that applicant is to be a party to the transactions. An example may be a standard form of insurance policy; or
- 3) proposed transactions that the Commissioner is satisfied will be significant to the Territory's economy.

However, TRO will not consider providing advice where:

- 1) the application requirements as detailed below have not been complied with. For example, no advice will be provided where:
 - a. there has not been a full disclosure of the parties to the proposed transaction; or
 - b. all of the material facts and circumstances have not been provided;
- 2) the applicant is not a party to the proposed transaction;
- 3) the determination of the duty imposed on the proposed transaction requires a decision as to whether the transaction is or is part of a tax avoidance scheme;²
- 4) a Commissioner's Guideline, Revenue Circular or other literature issued by TRO addresses the issue in question;
- 5) advice has already been given on the matter. This means that TRO will not engage in an iterative process by which a person who receives an unfavourable decision requests advice for a similar, but modified transaction;
- 6) the application is being used to evaluate alternative methods for completing the same intended transaction based on the duty consequences;
- 7) the request is frivolous or vexatious or the transaction is not seriously contemplated;
- 8) the advice requires TRO to obtain an opinion on the value of the dutiable property to be conveyed by a proposed transaction, unless the applicant agrees to meet the full costs arising from TRO's engagement of a valuer. In this circumstance, the appointment and instruction of the valuer will rest with TRO; or
- 9) the provision of advice would unreasonably impact on TRO's resourcing and performance of existing work requirements.

² Refer to section 4B of the SDA for a definition of a tax avoidance scheme.

TRO to decide whether advice to be given

The decision to provide advice is at the discretion of TRO and will be based on the utility of providing the advice, balanced against the other purposes for which TRO's resources could be used. A request for advice will not be prioritised over TRO's other ongoing administration responsibilities, such as TRO's compliance operations or the stamp duty assessment of executed documents.

Application requirements

A person who is uncertain of their stamp duty liability, or their professional representative on their behalf, may make an application to TRO for advice on the liability of a proposed transaction that they will be a party to. The application must be in the form of a written submission. The submission must:

- 1) explain why the advice is required;
- 2) describe the legislation and the issue in question;
- 3) state the applicant's interpretation of the provisions at issue and the rationale for such views, including arguments for and against the interpretation, referring to any relevant case law;
- 4) identify all parties to be involved in the proposed transaction by name and address;
- 5) provide all material facts and copies of relevant draft documents;
- 6) provide the estimated completion date of the proposed transaction;
- 7) include a declaration from the parties to the transaction that there is a genuine intention to proceed with the proposed transaction and that a full disclosure of all relevant facts has been provided; and
- 8) provide consent to TRO that allows access to such information as it may require in relation to providing advice on the proposed transaction.

Status of advice on a proposed transaction

Advice issued by TRO on a proposed transaction is not a conclusive statement of the law. Any such advice is an expression of TRO's view on the interpretation and application of the law in the given circumstances of the particular transaction at a particular point in time. This advice will not override the provisions of the relevant legislation.

Statements or declarations by TRO do not have the effect of an estoppel against the operation of the law. However, as the advice is a statement of TRO's opinion, TRO will generally assess the document in conformity with the advice given unless it is inappropriate to do so.

For example, any of the following circumstances render it inappropriate to assess a document in conformity with previous advice.

- 1) A subsequent court or tribunal decision clarifies the operation of the legislative provision(s) relevant to the advice (including the same or similar provisions in other legislation).
- 2) The full facts and circumstances were not disclosed or were misrepresented in the request for advice (including relevant court or tribunal decisions) or there is a material difference in the executed instrument or the manner in which the transaction proceeded to that represented in the request for advice.
- 3) Any amendment to any Northern Territory or Commonwealth legislation that results in a different stamp duty outcome.
- 4) A subsequent Commissioner's Guideline provides for a result which is different from the advice given.

Decision of TRO

On finalising the matter, TRO will provide written notice of its advice. The advice will be final and no further correspondence or debate will be entered into. If the transaction proceeds and an assessment is issued based on the advice given and the person liable for the payment of the duty is dissatisfied by the assessment, they have a statutory right of review by way of objection and appeal as set out under the *Taxation Administration Act 2007* (TAA)³.

Lodging requirements for executed documents and statements

Where advice has been given and the associated instrument is executed or the proposed transaction is performed, the liable party must lodge a copy of TRO's advice with the relevant document. The liable party must also confirm that the document or statement is identical in all material respects to the unexecuted documents or facts and circumstances on which TRO's advice was given. If the documents or facts and circumstances differ to those on which the advice was given, the liable party must detail the differences.

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.

³ Part 11 of the TAA.
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Date of effect

This Guideline takes effect from date of issue.



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COMMISSIONER OF TERRITORY REVENUE

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