

## REVENUE RULING NO. SD 279

### CONTRACTS FOR THE SALE OF LAND - BUILDER'S TERMS AND EQUIVALENT ARRANGEMENTS

#### PREAMBLE

1. Revenue Ruling SD 268 considers the operation of section 41(1) of the Stamp Duties Act 1920 ("the Act") in relation to what is known as "house/land packages". This ruling is intended to supplement SD 268 by setting out how the Act will be administered in relation to a contract for the sale of land on "builder's terms".

2. "Builder's terms" describes an arrangement where land is sold to a purchaser who is given the right by the vendor to erect improvements on the land prior to completion. It commonly involves an extended period for completion (for example, six months rather than the usual six weeks).

3. The use of the expression "builder's terms" is usually restricted to the situation where the purchaser is a builder who plans to onsell the improved property for profit. However, for the purposes of this ruling, it is taken to include any arrangement of the kind described in paragraph 2, for example, an arrangement under which an engaged couple buying vacant land are permitted to commence construction of their new home before completing the purchase.

4. The right to erect improvements is usually set out in a special condition of the contract but may be contained in a separate instrument or given orally. Commonly, the land involved is unimproved at the time of sale, but it may contain derelict buildings or buildings which are to be retained, for example as part of a dual occupancy development.

#### DISCUSSION

5. Under section 41(1), a contract for the sale of land is charged with the same ad valorem duty as if it were a conveyance of the "property agreed to be sold or conveyed".

6. As Sugerman J explained in *Bambro (No 2) Pty Ltd v CSD* 1963 SR (NSW) 522 on page 528 :  
... whatever, in accordance with the agreement, is to be transferred or vest or accrue by force of the conveyance to be executed pursuant thereto is the property agreed to be sold or conveyed."

7. Accordingly, where land is sold on builder's terms, the property "to be transferred or vest or accrue by force of the conveyance" to be executed pursuant to the agreement for sale is the land enhanced by whatever improvements are erected on the land prior to completion in accordance with those terms (which improvements comprise part of the land by operation of the law of fixtures).

8. The fact that the vendor of land sold on builder's terms is only receiving on completion the agreed consideration for the land in its state as at the date of the contract does not the fact that the property agreed to be conveyed is the land enhanced by any improvements made in accordance with those terms as at the date of completion.

9. Notwithstanding this analysis, it was not the practice prior to the publication of SD 268 to

require ad valorem duty in respect of the added value of subsequent improvements when assessing duty on a contract for the sale of land on builder's terms where the vendor and the builder of those improvements were not the same person or related persons. It has been decided to restore the former practice. Consideration is also being given to any amendments to the Act which may be necessary to reflect that practice.

## **RULING**

10. For the time being, the Act will be administered as follows when assessing the duty payable on a contract for the sale of land on builder's terms and a transfer pursuant to the contract in circumstances where the vendor and the builder are not the same person or related persons:

the amount of duty payable on the contract under section 41(1) will be determined as if the property agreed to be sold was the land in its state of improvement as at the date of first execution of the contract rather than at any later date; and whether the transfer is liable for nominal duty as a transfer made in conformity with the contract for the purposes of section 41(4) will be determined without regard to any improvements the purchaser is entitled to erect on the land under the terms of the contract prior to completion of the contract.

11. The tests for related persons as set out in section 99A(8) of the Act will be applied to determine whether or not a vendor and builder are related persons for the purposes of this ruling.

12. Attached to this ruling is a statutory declaration which replaces the one attached to SD 268. It should be provided in the same circumstances set out in paragraph 13 of that ruling. It includes new paragraphs 4 and 5 and contains a copy of section 99A(8). However, it will not be required where it is clear from the terms of the contract that:

the purchaser is not permitted to engage the vendor or a related person of the vendor as described in section 99A(8) of the Act, to erect the contemplated improvements, and the purchaser and the vendor are not related persons as described in section 99A(8).

13. Consideration will be given to the possibility of a refund by way of ex gratia relief to taxpayers who seek such relief on the grounds that, since the publication of SD 268, duty has been assessed on a contract for the sale of land on builder's terms otherwise than in accordance with the former practice as described above.

## **EXAMPLES**

14. The following should help to illustrate the relevant principles:

(i) Acme Pty Limited sells vacant land to Purchaser on terms which permit Purchaser to erect or arrange for the erection of improvements on the land within the period of 6 months prior to completion.

(ii) Prima facie, the property agreed to be conveyed is improved land. Accordingly if Purchaser engages Acme Pty Limited or, for example, Acme Constructions Pty Limited (a related party) to erect the improvements, then the added value of the improvements will be taken into account in assessing the duty payable in accordance with the principles outlined in SD 268.

(iii) However, if Purchaser engages a builder who is not related to Acme Pty Limited, then the added value of the improvements will not be taken into account in assessing the stamp duty payable on the contract or the transfer.

(iv) If the builder of the improvements is Purchaser and Purchaser and Acme Pty Limited are related, sub-paragraph (ii) applies. If they are not related, sub-paragraph (iii) applies.

B Buchanan  
Chief Commissioner of State Revenue  
13 August 1997

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