

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	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

Subject to the conditions in this Guideline being satisfied, the Commissioner will extend the time to lodge and pay stamp duty on an eligible conditional agreement.

Extension of time for lodgement and payment

Where a person is liable to pay the duty on an eligible conditional agreement, the time to lodge and pay duty on the agreement is extended to the **earliest** of the following dates:

- 1) 60 days after the date upon which all relevant conditions to the agreement are satisfied;

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*.

- 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) where there has been a sub-sale of the property or there has been a subsequent conveyance of the property at the direction of the conveyee, 60 days from the date of this occurring;
- 4) the date specified under a written notice by the Commissioner to lodge the agreement; or
- 5)
 - a. 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
 - b. otherwise, 12 months after the date on which the agreement was first executed.

Eligible Conditional Agreement

The Commissioner will generally consider an instrument to be 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 will not be an eligible conditional agreement where:

- 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 conveyor;
 - d. the agreement being subject to general due diligence without objective criteria being specified; or
 - e. the conveyor or conveyee being satisfied of a particular matter.

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.

Lodgement

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).

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.

⁵ Section 24 of the *Taxation Administration Act*.

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.

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.

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 evidence that the conditions have been fulfilled) and present these records to the Territory Revenue Office (TRO) if requested.

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 must still be lodged with the Commissioner with the appropriate application form for the remission of stamp duty (F-SD-014). This must be done within 90 days of the date of the agreement being cancelled.⁷

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

⁷ Section 56A of the *Stamp Duty Act*.

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.

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 Territory Revenue Offices website.

Date of effect

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



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