

COMMISSIONER'S GUIDELINE

CG-SD-014:

Stamp duty concession for substituting a related purchaser

Guideline History

| Version | Issued | Dates of effect | |
|---------|-------------|-----------------|---------|
| | | From: | To: |
| 1 | 1 July 2009 | 1 July 2009 | Current |

Purpose

From 1 July 2009 the *Stamp Duty Act* ('the Act') provides a stamp duty concession for substituting a related purchaser ('the substituted purchaser concession'). This Guideline explains how the concession operates and outlines the procedure for claiming the concession.

Policy

The intent of the substituted purchaser concession is to provide the flexibility for a purchaser, after entering an agreement to purchase dutiable property, to nominate a related person to join or complete the purchase of the property. Such situations often occur following the purchaser receiving professional advice as to a more appropriate structure to hold the property or after difficulties in obtaining finance.

Prior to 1 July 2009, such a nomination could result in both the original purchaser named in the agreement and the substituted related purchaser each being liable to conveyance duty. In the alternative, the original purchaser may have purported to rescind the agreement to enable the substituted related purchaser to re-enter the same agreement in their name in an attempt to avoid double conveyance duty being payable.

Concession

Item 1(6A) of Schedule 1 to the Act provides for duty of \$5 to apply to a transfer to the substituted related purchaser where the conveyance is in accordance with section 17A(2A) of the Act.

Eligible conveyances

The concession applies to a transfer where at the time the relevant agreement for purchase was made and when it was completed or settled:

- the purchaser and the substituted purchaser were in a **family relationship**; or
- one of them is an individual who is a shareholder of a family company and the other is the **family company**; or
- one of them is an individual who is a beneficiary in a family trust and the other is a trustee of the **family trust**; or

- the purchaser and substituted purchaser were **related corporations** under section 50 of the *Corporations Act 2001* (Cth).

Other conditions of the concession

Furthermore, the following conditions must be satisfied:

- 1) the agreement for the conveyance of the property is duly stamped – i.e. conveyance duty was paid on the agreement; and
- 2) except as the trustee of a family trust, the substituted purchaser must not hold the property as trustee; and
- 3) no valuable consideration is given by the substituted purchaser to the original purchaser; and
- 4) the conveyance occurs at the same time as, or proximately with, the completion or settlement of the agreement.

Definitions

Family

Two or more persons are members of the same family where they are connected by **family relationships**.

Family relationship

Two persons are joined by a **family relationship** where:

- 1) they are spouses (which includes de facto partners);
- 2) one is a child (including an adopted child) or remoter lineal descendant of the other person;
- 3) one is a child or remoter lineal descendant of the other person's spouse;
- 4) one is a brother or sister (including step-brother or step-sister) of the other person;
- 5) one is the child or remoter lineal descendant of a brother or sister (including step brother or step-sister) of the other person; or
- 6) one is the spouse of a person who has a family relationship referred to in paragraphs (2) to (5) with the other person.

Note: The term 'remoter lineal descendant' means persons who are direct descendants of another person. For example, this could include a person's child, grandchild or great grandchild.

Family company

A family company is a company of which all shareholders are members of the same family.

Family trust

A family trust is a trust (whether a fixed trust, unit trust or discretionary trust) established to benefit the members of a particular family and in which only members of that family may be beneficiaries (including unit holders of a unit trust or objects of a discretionary trust).

A family trust which allows for other beneficiaries to be added to the family trust will not be eligible for the substituted purchaser concession. This concession is limited to trusts where only members of a particular family are beneficiaries.

Procedure for claiming the concession

Persons who consider they meet the criteria for the concession may apply by completing the details on the appropriate form (F-SD-027). The completed form, together with the information specified in that form, the agreement for purchase and the conveyance to the substituted related purchaser should be lodged with the Commissioner for stamping within 60 days of the instruments being first executed.

See Commissioner's Guideline CG-SD-001: *Document lodgement and payment periods* for more information on the lodgement timeframes.

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 Guideline takes effect from 1 July 2009.



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DEPUTY COMMISSIONER OF TERRITORY REVENUE

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