

Revenue Rulings

Duty concession for off the plan sales – land and building packages and refurbishments

Revenue Ruling DA.048

Ruling history	
Ruling no.	DA.048
Status	Current
Issued date	September 2008
Replaces	DA.011 & DA.016
Dates of effect	
From	1 October 2008
To	-

Preamble

The *Duties Act 2000* (the Act) imposes duty on transfers of dutiable property unless an exemption or concession applies. Concessions are available when there is a transfer of land as a result of an off the plan sale which involves either a land and building package under section 21(3) or a refurbishment under section 21(4).

The **land and building concession** applies where a person enters into a contract for the purchase of a land and building package and construction has not commenced, or only a percentage of construction has been completed, at the date of contract.

The **refurbishment concession** applies where a contract is entered into for the refurbishment of an existing building where the refurbishment has not commenced or is not complete at the date of the contract, and the transferor is the first registered proprietor of the subdivided lot. Section 21(5) of the Act defines a refurbishment as building work for which a building permit has been issued being work for the conversion of an existing building for which such a permit or approval is required.

The dutiable value under section 21(3) or 21(4) of the Act is determined by deducting the purchasers' cost of any construction or refurbishment (inclusive of GST) occurring after the date of the contract of sale from the contract price (inclusive of GST).

The *State Taxation Acts Amendment Act 2008* (the amending Act) has introduced changes to the calculation process for the off the plan concession, including a new fixed percentage method.

The purpose of this Revenue Ruling is to:

- clarify when the concessions apply
- publish percentage amounts for different classes of buildings or refurbishments, and
- explain the changes to the calculation of the concession and other issues as a consequence of the amending Act.

Ruling

This Revenue Ruling applies to contracts for off the plan sales entered into on or after **1 October 2008**.

In order for the Commissioner of State Revenue (the Commissioner) to determine the application of the off the plan concession, the transferor must complete SRO Duties Form 4A (Off the plan sales statutory declaration) in accordance with section 21(4A) of the Act. Part 6 of the Form relates to the calculation of the concession in accordance with the new fixed percentage method. Part 7 of the Form relates to the calculation of the concession in accordance with the previous method, referred to below as the alternative method.

Whole of project or single lot approach when determining the percentage of construction costs

In order to determine the percentage of construction costs completed as at the date of the contract of sale, it is necessary to have regard to the manner in which the project is managed. This can be either a whole of project approach or a single lot approach.

Whole of project approach

If the completion of the construction works for the property/lot is dependant on the completion of construction works for all other lots, including the common areas in that development, and the approval of the certificate of occupancy is dependant on the completion of all the other lots and common areas for that subdivision, then the transferor must use the whole of project approach.

This approach requires evidence of (but not limited to) progress payments claimed by the builder and supported by quantity surveyor reports. The whole of project approach accords with industry practice and ensures the calculations take into account the relevant proportion of costs attributable to common areas (e.g. security, lifts and stairwells).

An example of the whole of project approach is where the quantity surveyor report states that 60 per cent of construction is completed at the date of the contract of sale. Although no construction has commenced in

regards to units on the top floors, the transferor must state that based on the whole of project approach, 60 per cent of construction is completed in regards to all units sold at that time.

Single lot approach

If the completion of the construction works for the property/lot is not dependant on the completion of construction works for all properties in that development and separate approvals including certificate of occupancy can be obtained for the individual lot/unit, the transferor may use the single lot approach.

This approach requires the transferor to keep detailed records of the progress of the construction works for that specific lot/unit at the time of the contract of sale.

When to use the whole of project or single lot approach

The whole of project approach should be used for multi-lot low rise or high rise developments.

For a single lot freestanding construction, although the whole of project approach can be used, the following percentages for the various stages of construction may be used as a guide when determining the percentage of works carried out at the contract date:

- 15 per cent for base (slab/foundations etc)
- 30 per cent for frame
- 65 per cent for lock up
- 90 per cent for fixing
- 100 per cent for completion.

When the whole of project approach is used it must be used for all the units in the development.

Calculation of the off the plan concession

There are two methods for calculating the off the plan concession:

1. The fixed percentage method, or
2. The alternative method.

1. Fixed percentage method

The fixed percentage method involves the use of a deemed maximum percentage amount (fixed percentage) which represents the amount paid or payable by the purchaser for the construction component of the contract. This method is designed to make it easier for the transferor to calculate the concession.

Rounding down to 10 per cent increments

Where the fixed percentage method is used, the percentage of building works completed can be rounded down to the next 10 per cent increment, thereby resulting in a greater concession.

For example, where 37 per cent of the building works are completed prior to the contract of sale date, it can be rounded down to 30 per cent. Rounding down increases the off the plan concession by increasing the allowable deduction from the GST inclusive contract price. In this case, 70 per cent of the building costs occurring after the date of the contract are deducted instead of 63 per cent. Refer to Example 3 below.

Fixed percentages & class of buildings

When using the fixed percentage method the transferor is required to:

- define the class of building
- determine what percentage of the building works have been completed at the contract of sale date, and
- complete Part 6 of SRO Duties Form 4A.

The different classes of buildings are:

- Single lot freestanding or single dwellings sharing side walls (e.g. a terraced house or duplex). This also includes dwellings which have abutting garage walls
- Multi-lot low rise – up to and including 3 storeys, not including basements. These are usually units or apartments with access to common property, and
- High rise multi-lot, 4 or more storeys, not including basements. These are usually units or apartments with access to common property.

The deemed fixed percentage for each class of building is as follows:

Class of Building	Building works component % cost of construction of contract price
Single lot freestanding	45%
Multi-lot low rise – up to and including 3 storeys	60%
High rise	75%

Examples of fixed percentage method of calculation

Example 1

Where no construction or refurbishment has commenced at the date of the contract of sale, the minimum dutiable value of the property can be ascertained by deducting the deemed fixed percentage for cost of construction, or refurbishment, from the contract price. The dutiable value would be the contract price minus the deemed percentage amount for the class of building.

Date of contract: 1 October 2008

Class of building: single lot freestanding

Consideration: \$500,000

No construction commenced

As the fixed percentage of contract price for building works for a single lot freestanding building is set at 45 per cent, the concession would be calculated as follows:

Step one - deemed building works component is 45 per cent, therefore 45 per cent of \$500,000 = \$225,000

Step two - therefore the dutiable value would be \$500,000 minus \$225,000 = \$275,000

Example 2

Where construction or refurbishment has commenced but is incomplete at the date of the contract of sale, the dutiable value of the property can be ascertained as follows:

- Deduct the percentage of the construction works completed prior to the contract from the deemed fixed percentage for cost of construction, or refurbishment.
- Then deduct the remaining percentage of construction works from the contract price.
- The dutiable value is the contract price less the deemed percentage amount relating to the construction not completed at the contract date.

In this example the transferor is required to calculate the percentage of works carried out at the date of sale.

Date of contract: 11 October 2008

Class of building: single lot freestanding

Consideration: \$500,000

Percentage of construction completed at date of contract is 30 per cent, the frame is completed

As the fixed percentage of contract price for building works for a single lot freestanding building is set at 45 per cent, the concession would be calculated as follows:

Step one - deemed building works component is 45 per cent, therefore 45 per cent of \$500,000 = \$225,000

Step two – 30 per cent of building works completed at date of contact therefore 70 per cent uncompleted

Step three – 70 per cent of \$225,000 = \$157,500

Step four – therefore the dutiable value would be \$500,000 minus \$157,500 = \$342,500

Example 3

Rounding down to 10 per cent increments

Where 37 per cent of the building works are completed prior to the contract of sale date, it can be rounded down to 30 per cent. In this case, the calculation is based on 70 per cent of the building costs occurring after the date of the contract being deducted, instead of 63 per cent.

Date of contract: 21 October 2008

Class of building: single lot freestanding

Consideration: \$500,000

Percentage of construction completed at date of contract is 37 per cent

As the fixed percentage of contract price for building works for a single lot freestanding building is set at 45 per cent, the concession would be calculated as follows:

Step one – deemed building works component is 45 per cent, therefore 45 per cent of \$500,000 = \$225,000

Step two - completed building works is rounded down from 37 per cent to 30 per cent therefore the deemed uncompleted building works is 70 per cent

Step three – 70 per cent of \$225,000 = \$157,500

Step four – therefore the dutiable value would be \$500,000 minus \$157,500 = \$342,500

Alternative method

Some transferors may elect to use the alternative method which requires a declaration of land values and the actual cost of construction to the purchaser. It should be noted that rounding down is not available with this method.

The alternative method requires the transferor to complete Part 7 of SRO Duties Form 4A and address the following issues:

- base land value
- off the plan land value
- GST
- unit entitlement ratio
- non-deductible costs not related to the physical construction and deductible costs relating to construction together with a percentage of costs calculation.

These issues are discussed in greater detail on the SRO website under [Duty concession for off the plan sales](#).

Record keeping

In addition to the record keeping obligations imposed on the transferee pursuant to Part 8 of the *Taxation Administration Act 1997*, the amending Act introduces record keeping obligations for transferors. These obligations apply to all applications for the off the plan concession where the contract of sale is entered into on or after 1 October 2008, irrespective of the method of calculation.

The transferor is required to keep all records that are necessary to enable the duty payable on the transfer to be assessed. These records may include:

- land valuations
- quantity surveyor reports
- drawdown schedules against financial accommodation
- third party completion of works claims
- certificate of occupancy showing mandatory inspection stages
- any other relevant records.

The transferor must retain the records for not less than 5 years after the date they were made or obtained or the date on which the dutiable transaction occurred, whichever is the later unless the Commissioner authorises a shorter retention period.

The Commissioner, by written notice, may require a person to produce to him a document that is required to be kept within the period specified in the notice or any extended period allowed by the Commissioner.

Joint and several liability for additional duty

Where a transferor makes a declaration under section 21(4A) of the Act and that declaration is incorrect, the transferor is jointly and severally liable with the transferee for any additional duty payable on the transfer, including any penalty tax or interest.

Evidentiary requirements

The following documents must be lodged for assessment of duty:

- The original completed signed and dated transfer of land
- The original or complete copies of the contract/s of sale and if separate, a copy of the contract with the transferee for the construction or refurbishment of the subject property
- SRO Duties Form 1 (Goods statement for residential land) or SRO Duties Form 2 (Goods statutory declaration), whichever is applicable
- SRO Duties Form 4A completed by the transferor, and
- A copy of the building permit or building approval or permit.

Please note that rulings do not have the force of law. Each decision made by the State Revenue Office is made on the merits of each individual case having regard to any relevant ruling. All rulings must be read subject to Revenue Ruling GEN.001.