

Bulletin D4/04 provided general information in relation to land use entitlements under the *Duties Act 2000* ("the Act"). This Bulletin clarifies when land use entitlements in Alpine Resorts attract Duty under the Act.

Due to changes to the lease provisions in the *Duties Act 2000*, this Bulletin should be read in conjunction with Bulletin July 09 D1/09. Alternatively, refer to our website for further details.

# Land use entitlements in Alpine Resort areas

## Duties Act Bulletin

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### Background

A land use entitlement is a type of dutiable property under section 10(1)(a)(v) of the Act. A transfer of a land use entitlement is liable to duty under section 7(1)(a) of the Act, where the contract of sale was entered into on or after 13 May 2004 and settlement occurred on or after 17 June 2004.

A "land use entitlement" is defined in section 3(1) of the Act as "an entitlement to occupy land in Victoria conferred through an ownership of shares in a company or units in a unit trust scheme, or a combination of a shareholding or ownership of units together with a lease or licence".

While this definition clearly applies to traditional share flat and home unit companies, some doubt has arisen about its application to alpine resorts. The purpose of this bulletin is to clarify the types of rights to alpine resort apartments which the Commissioner of State Revenue ("the Commissioner") considers to fall within the definition of "land use entitlement". The Bulletin also clarifies the application of exemptions and concessions to the creation or transfer of land use entitlements.

### Types of alpine resort apartments

The Commissioner is aware that rights to alpine resort apartments are achieved by a number of different ownership arrangements. Typically there is a company which holds a Crown lease over the property containing the ski lodge complex. The company then grants a sub-lease and/or issues shares in the company (or units in a unit trust of which it is the trustee) to each individual apartment owner.

Some situations are relatively clear cut. For instance, if the occupancy rights arise solely by virtue of owning a particular class of shares in the head lessee company, the creation or transfer of those shares is liable to Duty as a "land use entitlement". By contrast, if there is no shareholding or unitholding at all, there are no Duty consequences.

Some other arrangements are less clear, and the

Commissioner will examine each such arrangement to determine whether it falls within the definition. In particular, where the apartment owner holds both shares (or units) and a derivative lease, the Commissioner will examine the rights conferred by the derivative lease and the shares (or units) and the connection between those rights.

### Examples

1. The apartment owner holds shares in the head lessee company. Those shares entitle the owner to occupy a nominated apartment and to use common property. There is no sub-lease. A transfer of the shares is liable to Duty on the value of the apartment.
2. The apartment owner has shares in the head lessee company, which confer the right to take a sub-lease in relation to the apartment. The apartment owner's rights derive from both the ownership of shares and the sub-lease. A transfer of the shares and sub-lease is dutiable as a land use entitlement.
3. The apartment owner has both a sub-lease and shares in the head lessee company. The sub-lease entitles the apartment owner to occupy the nominated apartment (only). The ownership of the shares entitles the apartment owner to use common property and vote at meetings of apartment owners, rights analogous to the rights of members of a body corporate under a strata title subdivision. Under the terms of the sub-lease and the company's constitution, the sub-lease and the shares must be transferred together. The right of occupancy is considered to arise from a combination of the sub-lease and the shareholding, and is liable to Duty as a land use entitlement.
4. A person is the tenant of a nominated apartment and common property under a sub-lease. The head lessee is a company which, in addition to holding the head lease, has other activities which have no relationship to the ski lodge. The tenant holds shares in the company which carry an entitlement only to shares in the profits of the company's other activities. This arrangement is not dutiable, since it is the sub-lease

which gives the tenant the right to occupy the apartment. The ownership of the shares is merely incidental and the tenant does not derive any rights or interest in relation to the apartment through them.

5. The apartment owner's rights derive from a sub-lease from the head lessee company. The apartment owner does not own shares in the company. No Duty is payable upon grant or assignment of the sub-lease.

## Exemptions and concessions

The Commissioner accepts that exemption and concession provisions in Chapter 2 of the Act which refer to a "transfer of land" or "transfer of dutiable property" are capable of applying to the creation or transfer of a land use entitlement.

In particular, where an alpine resort is newly constructed, it may be that purchasers acquire apartments "off-the-plan". Although the land and building concession in section 21(3) of the Act refers to "the consideration for the transfer of land", the Commissioner accepts that the concession can apply.

## Further Information

For further information please contact the State Revenue Office:

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