

Revenue Rulings

Partition or division of real property

Revenue Ruling SD.017

CEASED 30 June 2001

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Preamble

The transfer or conveyance of real property is subject to ad valorem duty under Heading VI of the Third Schedule to the *Stamps Act 1958* (the Act).

Uncertainty occasionally arises regarding the duty payable on instruments of transfer executed when two or more persons entitled to an interest in real property decide to partition or divide the real property so as to entitle each party to a separate parcel of land, and, in particular, in the situation where some of the land to be partitioned is located outside Victoria.

The purpose of this ruling is to clarify how the duty payable on the partitioned property will be calculated.

Ruling

When an interest in real property is transferred as a result of a partition, Section 72(1) of the Act provides that the value of the transferee's interest in the real property must be identified prior to the transfer. In order to calculate the duty to be paid upon conveyance of the partitioned property, the unencumbered market value of the transferee's interest in the real property prior to the transfer is deducted from the unencumbered market value of the transferee's partitioned property after the transfer.

If the transferee is receiving property of a value which does not exceed the value of his or her interest in the whole of the property, the transfer instrument is not liable to duty. However, if the transferee is receiving property of a value which exceeds the value of his or her interest in the whole of the property, stamp duty will be assessed on the difference between the value of the transferee's prior interest in the real property and the value of the transferee's interest after the partition or division of land.

This partition provision relates only to situations in which all land to be partitioned is located in Victoria.

The following example illustrates these points:

Example

Victorian land valued at \$100,000 is jointly owned by X and Y, owning 30% and 70% interests in the land respectively. The land is partitioned under an agreement such that after the partition, X's land is worth \$50,000, and Y's land is also worth \$50,000.

No duty would be charged on the transfer of Y's interest in the land because the value of his or her land prior to the partition (ie. \$70,000) exceeds the value after the partition (ie. \$50,000). However, duty would be charged on the transfer of X's interest in the land because the value after the partition (ie. \$50,000) is greater than that before the partition (ie. \$30,000). Duty would therefore be charged on the transfer of the interest in land to X, calculated on \$20,000, being the value after the partition less the value before the partition.

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 Ruling No. GEN.01

Denzil Griffiths

Commissioner of State Revenue

31 December 1995

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