

- **The State Revenue Office has issued a new ruling that provides for new methods of calculating off-the-plan concession.**
- **The new rules apply for all contracts entered into on or after 1 October 2008.**
- **There is now a choice of applying the fixed percentage method or the 'alternative method'.**
- **Developers as well as purchasers are liable if the new rules are not properly applied.**
- **All developers must ensure that their contracts comply with the new rules.**

The Victorian State Revenue Office ('SRO') has issued a new revenue ruling, DA.048, and a statutory declaration to clarify the operation of the recently amended off-the-plan concession. This introduces a new method of calculating the concession and will have a major impact for all property developers looking to sell properties off-the-plan.

Who does this impact?

Every developer of land that intends to sell-off-the plan will need to take into account the legislative changes and the new methods of calculating the concession provided by the SRO. Both developers and purchasers will be liable for any extra duty payable if the calculations are not made correctly. The changes apply to all contracts entered into from 1 October 2008.

The existing concession

In Victoria, a duty concession applies for a buyer who purchases property before completion of construction of a new building or refurbishment of an existing structure. A buyer is only liable for duty on the value of the property at the date of signing of the contract. The difficulty arises from determining the component of the total purchase price that represents the value of the property at the contract date.

Recent legislation change

The *State Taxation Acts Amendment Act 2008* (given Royal Assent on 17 June 2008) provides for a number of changes to the off-the-plan concession. These changes:

- allow for the Commissioner to publish a standard percentage amount of the purchase price to represent the value of a building to be constructed;
- provide that a developer must keep all relevant records for 5 years, and for penalties of up to 500 penalty units for failure to create or retain records and to produce the records when required; and
- provide for joint and several liability for any additional duty (plus penalties or interest) if a statutory declaration provided by the developer to the purchaser is incorrect.

Joint and several liability means that the SRO can issue an assessment to a developer rather than the multiple purchasers if the calculations of the concession are wrong.

New revenue ruling – DA.048 (duty concessions for off-the-plan sales – land and building packages and refurbishments)

The new ruling provides for two different methods of calculating the value of the concession:

- fixed percentage method; and
- the 'alternative method'.

The fixed percentage method implements the recent legislative changes. The alternative method is similar to the approach to date and is set out in new Form 4A (Off-the-Plan Sales Statutory Declaration) ('New Form 4A').

Under each method, a percentage amount is determined so that duty is only payable on the part of the purchase price equal to the percentage of construction that is completed at the date of the contract.

Either the whole-of-project approach or the single-lot approach is used in making the calculation under each method. The whole-of-project approach applies in large developments and applies the completion percentage for the development as a whole to each unit being sold in the development. The single-lot approach considers only completion percentage for the particular lot being sold.

Fixed percentage method

This method relies on a table prescribed by the Commissioner showing the deemed building works component as a percentage of the total purchase price for a unit or lot for different classes of construction:

Class of Building	Building Works component % cost of construction of contract price
Single lot – Freestanding	45%
Multi-lot low rise (up to 3 storeys)	60%
High Rise	75%

Example

This table means that if a unit in a high rise building is sold off-the-plan for \$500,000 before any construction commenced – 75% or \$375,000 of the purchase price would be attributable to the construction costs and the dutiable value of the unit would therefore be \$125,000.

For off-the-plan sales after construction has commenced, the percentage of construction completed at the contract date (using either the whole-of-project or single-lot approach) is determined. The value of the concession is equal to the value of deemed building works component, multiplied by the percentage of building works uncompleted at the date of contract. The percentage of building works uncompleted is rounded up to the nearest 10%.



Example (cont.)

Continuing the above example, if the contract is signed when 60% of the construction is still to be completed:

Step 1: calculate deemed building works component using the above table = \$375,000 as per the above example.

Step 2: determine percentage of building works uncompleted at date = 60%.

The value of the concession would therefore be \$375,000 x 60% or \$225,000. The dutiable value of the unit would be \$275,000 (being \$500,000 less \$225,000).

Alternative method

The alternative method is found in New Form 4A and is similar to the approach previously taken. The procedure is outlined as follows:

Step 1: calculate the 'base land value' of the lot, being the market value of the underlying land x unit entitlement ratio.

Step 2: add a percentage amount for infrastructure value (the Commissioner acknowledges that this must be a minimum of 25% – but the actual percentage to be used must be justifiable).

Step 3: add the 'non-deductible costs' (such as legal or business expenses of selling the property).

Step 4: subtract the GST payable (if any) from the contract purchase price.

Step 5: subtract the total of costs from steps 1-3 from the GST exclusive contract purchase price to determine the 'total construction costs'.

Step 6: multiply the total construction costs by the exact percentage of construction works uncompleted at the contract date.

Step 7: add GST to the amount calculated in step 6 – being the lesser of 10% of the amount calculated in step 6 or the GST amount in step 4.

The amount in step 6 plus the GST added in step 7 gives the value of the concession. This is subtracted from the purchase price.

New Form 4A

The New Form 4A is required to be completed where the off-the-plan concession is being claimed and covers both methods of calculating the concession. It is required to be accompanied by either Duties Form 1 (Goods Statement for Residential Land) or Duties Form 2 (Goods Statutory Declaration).

Contacts

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