

Duties Fact Sheet

Conditional Agreements

Sections 87 – 91 of the *Duties Act 2008*

As at 1 July 2008

Introduction

Alternative lodgment and payment periods are available for conditional agreements for the transfer of dutiable property which satisfy the requirements of Chapter 2 Part 5 Division 6 of the *Duties Act 2008* ('Duties Act').

A conditional agreement is an agreement for the transfer of dutiable property where completion of the agreement is conditional upon the happening of certain events specified in an instrument effecting or evidencing the agreement.

The parties (or a person related to a party) to the conditional agreement must not have any control over the happening of the event, except to the extent that they are required under the conditional agreement to use their best endeavours to secure the happening of the event.

The conditions to which a conditional agreement may be subject are:

- a) the purchaser obtaining a satisfactory private taxation ruling by the Commissioner of Taxation of the Commonwealth, as to the consequences of the agreement with respect to taxation under a law of the Commonwealth;
- b) the purchaser obtaining funds or approval to obtain funds to finance the purchase to the satisfaction of the purchaser;
- c) the purchaser obtaining a satisfactory building inspection, geotechnical or environmental report from a third party in relation to the property the subject of the agreement;
- d) the vendor obtaining the consent of the Minister responsible for administering the *Land Administration Act 1997* to transfer a lease of leasehold land to a purchaser;
- e) the authorisation of the payment to the purchaser of a first home owner grant under the *First Home Owner Grant Act 2000*;
- f) the purchaser obtaining a licence to trade or the grant of a franchise;
- g) the vendor of a commercial property obtaining the renewal of an existing lease of the property;
- h) the vendor obtaining from the landlord of a leasehold business a new lease, or an assignment of the current lease, to a purchaser;
- i) the sale of another property by the purchaser;
- j) the vendor obtaining the approval for the subdivision of the land or the registration of a strata/survey strata plan;
- k) the purchaser obtaining approval from a regulatory body;
- l) the results of the making of due diligence inquiries by the purchaser where the results are to be measured against objective criteria set out in the instrument effecting or evidencing the agreement;
- m) the issue of a certificate of title for the property;

- n) the purchaser obtaining consent required under the *Mining Act 1978* for the transfer of a mining tenement;
- o) a prescribed event.

A 'conditional agreement', however, **excludes** the following:

- a) a call option of a simultaneous put and call option taken to be an agreement for the transfer of option property under section 45; or
- b) an agreement that is subject to a condition which, in the opinion of the Commissioner, constitutes a scheme or arrangement, or part of a scheme or arrangement, the sole or dominant purpose of which is to defer the payment of duty.

There are five (5) classes of conditional agreements, which are described below:

1. Farming Land Conditional Agreement

A farming land conditional agreement is a conditional agreement, the subject of which is solely or dominantly farming land as defined in section 99(1) of the Duties Act.

2. Off-The-Plan Conditional Agreement

An off-the-plan conditional agreement is a conditional agreement for the sale of a strata lot and the construction of a building on the strata lot for commercial, residential or mixed-use purposes.

3. Mining Tenement Conditional Agreement

A mining tenement conditional agreement is a conditional agreement, the subject of which is a mining tenement.

4. Subdivision Conditional Agreement

A subdivision conditional agreement is a conditional agreement for the sale of land, the completion of which is conditional on the **purchaser** obtaining approval from the relevant authorities to subdivide the land or part of the land.

5. General Conditional Agreement

The term 'general conditional agreement' refers to a conditional agreement other than an agreement described in 1 to 4 above.

Each of the above types of conditional agreements has different lodgment and/or payment obligations. These are set out below.

Lodgment of conditional agreements

General Conditional Agreements

A general conditional agreement that becomes unconditional within one (1) month after the day on which liability for transfer duty arises must be lodged with the Commissioner of State Revenue within two (2) months after the day on which that liability arose.

A general conditional agreement where a vendor is related to a purchaser is required to be lodged within two (2) months after the day on which liability to duty on the agreement arises, irrespective of when the agreement may become unconditional.

All other general conditional agreements must be lodged within two (2) months after the day on which the agreement becomes unconditional, or within 12 months after the day on which the

liability for transfer duty arose, whichever is earlier. The date that the agreement becomes unconditional must be noted on the Duties Document Lodgment and Assessment Form.

Some general conditional agreements that are terminated may not need to be lodged with the Commissioner. Further information is provided below.

Farming Land, Mining Tenement, Off-The-Plan and Subdivision Conditional Agreements

Conditional agreements falling within the above categories are required to be lodged with the Commissioner of State Revenue within two (2) months after the day on which liability to duty arose. Extended payment periods for these types of agreements are available, as set out below. To obtain the extended payment period, the type of conditional agreement must be noted on the Duties Document Lodgment and Assessment Form.

Time for payment of duty on certain conditional agreements

General Conditional Agreements

Duty on a general conditional agreement is payable within one (1) month after the date of the Duties Assessment Notice.

Farming Land or Mining Tenement Conditional Agreements and Certain Agreements Relating to Primary Production Activities

Duty on a farming land or mining tenement conditional agreement is payable within 12 months after the date on which the liability for duty arose, or one (1) month after the date of the assessment notice, whichever is the later.

Duty on an agreement for the transfer of dutiable property which relates solely or dominantly to farming land as defined in section 99(1) of the Duties Act, and the completion of which is affected by or subject to an activity that constitutes primary production as defined in section 3 of the Duties Act, is also payable within 12 months after the date on which the liability for duty arose, or one (1) month after the date of the assessment notice, whichever is the later.

Off-The-Plan or Subdivision Conditional Agreements

Duty on an off-the-plan or subdivision conditional agreement is payable within two (2) years after the date on which the liability for duty arose, or one (1) month after the date of the assessment notice, whichever is the later.

The extended period does not apply in circumstances where before the original agreement is duty endorsed, the person liable to pay duty under the original agreement enters into a further dutiable transaction (e.g. an on-sale) in respect of the dutiable property, or part of the dutiable property.

Where a further dutiable transaction occurs, the original purchaser must notify the Commissioner of the new transaction in the approved form within two (2) months of entering into that transaction. The Commissioner will reassess the original conditional agreement with one (1) month to pay from the date of the assessment notice.

The applicable [approved form](#), Notification of Further Dutiable Transaction After Off-The-Plan or Subdivision Conditional Agreement, is available from the Office of State Revenue website at www.osr.wa.gov.au

Cancelled conditional agreements

A cancelled transaction is a dutiable transaction that has not, and will not be carried into effect, provided the cancellation has not occurred so that a replacement transaction or a subsale transaction can be entered into.

For further information on the application of section 107 of the Duties Act, please refer to the [Duties Fact Sheet 'Cancelled Transactions'](#) available from the Office of State Revenue website at www.osr.wa.gov.au

General Conditional Agreements

A general conditional agreement which is 'terminated on relevant grounds' before it is required to be lodged, is not required to be lodged with the Commissioner of State Revenue and transfer duty is not chargeable on the agreement. A conditional agreement is 'terminated on relevant grounds' if it is not carried into effect because the condition to which it was subject cannot be fulfilled for reasons that are not within the control of a party to the agreement, or a person that is related to a party to the agreement. In addition, the provisions contained in section 107 of the Duties Act relating to exempt cancelled transactions must apply to the agreement so that duty is not chargeable. However, it is not necessary for an application to be made to the Commissioner of State Revenue.

Where a general conditional agreement has been lodged with the Commissioner of State Revenue and is subsequently cancelled, an [Application for Exemption for Cancelled Transactions](#) is required to be lodged.

The [Application for Exemption for Cancelled Transactions](#) is available at www.osr.wa.gov.au

Farming Land, Mining Tenement, Off-The-Plan or Subdivision Conditional Agreements

Where one of these types of agreements is cancelled, its liability to duty is determined under section 107 of the Duties Act. Accordingly, an [Application for Exemption for Cancelled Transactions](#) is to be lodged. Applications are available on the web site at www.osr.wa.gov.au

Penalty and Offence

Penalty tax applies for the late lodgment of transaction records and late payment of duty.

Office	Plaza Level 200 St Georges Terrace PERTH WA 6000	Telephone	(08) 9262 1100 1300 368 364 (WA country STD callers only – local call charge)
Office hours	8:00 am – 5:00 pm Monday to Friday	Facsimile	(08) 9226 0834
Postal	Office of State Revenue GPO Box T1600 PERTH WA 6845	E-mail	duties@dtf.wa.gov.au
		Website	www.osr.wa.gov.au

Note: The information contained in this DUTIES FACT SHEET is issued for guidance purposes only. It is not an exhaustive explanation of the provisions of the *Duties Act 2008* and reference should be made to the Act for complete details.