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FUTURE OF STAMP DUTY PAYABLE FOR SHORT TERM RESIDENCY ARRANGEMENTS

INTRODUCTION

On 22 January 2022, the Supreme Court of South Australia in *Perpetual Corporate Trust Limited V Commissioner Of State Taxation* [2022] SASC 7 ruled that the owners of the Atira Waymouth student accommodation building were exempt from a \$6.8 million stamp duty assessment. The Court determined that the short-term duration nature of the occupancy arrangements did not satisfy the “residential purposes” definition within the meaning of section 105A of the *Stamp Duties Act 1923 (SA)*.

THE BASIS OF THE DECISION

Section 105A of the *Stamp Duties Act 1923 (SA)* abolishes the requirement to pay stamp duty for property transfers which are considered “qualifying land”. Qualifying land means land that is being used for any purpose other than residential purposes or for primary production. In 2019, the applicant had received a stamp duty notice of assessment in the sum of \$6.8 million as the land was considered by the Commissioner as land used for residential purposes. The applicant disputed this assessment on the basis that the purpose-built student accommodation was not built for residential purposes but was instead built for use as short-term commercial accommodation.

In reaching a decision the court considered:

- The property’s Land Use Code;
- The meaning of “residence”;
- The average duration of an occupant’s stay; and
- The context of the property transaction.

LAND USE CODE

This decision does not create a blanket precedent for all commercial residential dealings to be exempt from stamp duty. When determining if the property is for residential purposes, the court will consider the influence of the Land Use Code assigned to the property in question. The Atira Waymouth building is zoned as “College and University residential accommodation”, which is distinct from a usual residential Land Use Code and consequently the Atira Waymouth Land Use Code is distinguished as a commercial use.

MEANING OF RESIDENCE

The court has considered the ordinary and natural meaning of “residential purposes”. In doing so, the court concluded that long-term or permanent commitment to the occupation of the premises in question is likely to constitute a residential purpose.

Short-term or temporary accommodation did not meet this definition and as a result no stamp duty is payable for such arrangements.

AVERAGE DURATION OF STAY

The duration of stay is a significant factor in determining what defines a short-term or long-term occupation. For the purpose of assessing the Atira Waymouth student accommodation building, the court considered a duration of 29 weeks to be short-term.

Further, the decision considered that the occupants were short-term residents of the building as they did not envisage living at the property for an extended period of time. Further the residents also typically moved to other private rental accommodation at the conclusion of their stay.

CONTEXT OF THE PROPERTY TRANSACTION

This case considered the contextual factors relating to the property transaction to determine its commercial classification. Those factors include whether or not the property:

- Was transferred in isolation or with pre-existing commercial arrangements;
- Is operated/managed by a controller for a commercial purpose;
- Has multiple occupancies;
- Is held out to the public as such;
- Has a central management arrangement;
- provides services in addition to commercial accommodation; and
- Is used primarily for the purpose of accommodation.

WHAT THIS MEANS FOR THE FUTURE

Parties intending to purchase a residential property for short-term commercial occupants may be exempt from paying stamp duty if the correct Land Use Code, average duration of occupancy and other matters considered in the decision of *Perpetual Corporate Trust Limited V Commissioner Of State Taxation* [2022] SASC 7 apply.

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We are happy to assist you in reviewing your transaction to determine if stamp duty will be assessed in your circumstances (a consideration worth investigating given the new exemption of short-term occupancies)