

GST POLICY STATEMENT

Please note that the following Policy Statement, although correct at the time of issue, may not have been updated to reflect any subsequent legislative changes.

P-069 LAND ALLOWANCE FOR RESIDENTIAL COMPLEXES

Date of Issue

May 25, 1993

Subject

The amount of land subjacent and immediately contiguous to a residential complex which is reasonably necessary for its use and enjoyment as a place of residence for individuals

Legislative Reference(s)

Subsection 123(1) - definition of "condominium complex", "multiple unit residential complex", "residential complex" and "residential condominium unit"

National Coding System File Number(s)

11870-5

Effective Date

January 1, 1991

Text

Issue and Decision :

This policy statement will discuss the amount of land subjacent and immediately contiguous to a building that is reasonably necessary for the use and enjoyment of the building as a place of residence for individuals.

There is an administrative presumption that land in excess of 1/2 hectare that is subjacent and immediately contiguous to a residential building is not reasonably necessary for the use and enjoyment of the building as a place of residence and, therefore, does not form part of the residential complex, unless it can be shown by the taxpayer that it is reasonably necessary for the use and enjoyment of the building as a place of residence for individuals. No proof of such use and enjoyment is normally required where the subjacent and immediately contiguous land is not in excess of 1/2 hectare. However, where a portion of that land is used in commercial activities, such portion will not usually be considered to contribute to such use and enjoyment. Further, where a taxpayer claims input tax credits related to the land, the allocation of such credits for this purpose is normally an indication of the extent to which the taxpayer considers the land to be used in commercial activities.

In determining whether land in excess of 1/2 hectare forms part of the residential complex, the taxpayer must clearly show that the excess land is necessary for the residential building to properly fulfill its function as a residence and not simply be desirable. Land in excess of 1/2 hectare could be so necessary where the size or character of a residential building together with its location on the lot make such excess land essential to its use and enjoyment as a residence or where the location of a building requires such excess land in order to provide the taxpayer with access to an from public roads. Other factors which may in some cases be relevant in determining whether land

in excess of 1/2 hectare is reasonably necessary for the use and enjoyment of the building as a residence are severance or subdivision restrictions and minimum lot sizes. In all cases, however, it is a question of fact as to how much, if any, of the excess land is reasonably necessary for the use and enjoyment of the building as a residence. Where the residential complex is also being claimed as a principal residence for income tax purposes, the amount of land that qualifies as part of the principal residence for income tax purposes will normally also qualify as part of the residential complex for GST purposes.

A property used for residential purposes may be affected by a law or regulation of a municipality or province requiring a minimum lot size for a residential site. A legally imposed minimum lot size, for residential use, exceeding 1/2 hectare that was in effect on the date the property was acquired by the taxpayer, is generally considered to be the minimum amount of land reasonably necessary for the use and enjoyment of the residential building as a residence throughout the period that the property is continuously owned by the taxpayer after that acquisition date. However, where a portion of the minimum lot size is not used for residential purposes but rather for commercial activities, such portion is usually not considered to be reasonably necessary for the use and enjoyment of the building as a residence.

Where the excess land does not qualify as part of the residential complex, the self-supply rules relating to a residential complex would not apply to that portion of the excess land and any part of the GST paid on the consideration for the supply of a residential building and land that relates to such excess land would not be eligible for the housing rebates. In addition, to the extent any excess land does not form part of the residential complex, the GST new housing rebate threshold at which the rebate is reduced would not be based on the total purchase price or the fair market value, as the case may be, of the residential complex and the excess land. The rebate threshold would be based on the price or value attributed only to the residential complex which includes only the qualifying portion of the land that forms part of the residential complex.

It should also be noted that although the excess land may not form part of the residential complex and, therefore, not be exempt under the provisions relating to sales of residential complexes, the sale of land or an interest in the land by an individual or qualifying trust may still be exempt where section 9 of Part I of Schedule V of the Act applies.

The GST implications on the portion of the land considered part of the residential complex may be different from that of the portion of the land which is not part of the residential complex. In such cases, the land must be allocated between the portion which is considered part of the residential complex and the portion of the land which is not part of the residential complex. The allocation must be based on a method that is fair and reasonable (for example, the fair market value of each of the properties) and consideration must be given to any restrictions and/or severance laws or regulations, in effect on the date of acquisition, of any part of the property, including the portion that does not qualify as the residential complex.

For example, a property with a residential building on it comprises a total area of fifteen hectares. Most of the bare land consists of scrub land. At all relevant times, the legally imposed minimum lot size for a residential complex in the area is ten hectares and thus the land considered to be reasonably necessary for the use and enjoyment of this particular building as a place of residence is ten hectares. However, the portion of the total value of the property, as of the dates of purchase and sale, attributed to the excess five hectares may be relatively low because such excess land would have no intrinsic value of its own and could never have been severed and sold separately.

With respect to the land that is considered part of the common areas of a condominium complex or strata lot plan, each owner of a unit normally has an undivided interest as a tenant-in-common in the common areas of the condominium complex or strata lot plan with the other members of the condominium corporation or other owners of the land under the strata lot plan. On the sale of the residential condominium unit, the vendor's undivided interest in the common areas is assumed by the purchaser. The ownership of the common areas is not normally divided on sale and, therefore, the land associated with the common areas may be supplied as part of the ownership of the residential condominium unit, the supply of which takes on the same tax status as the supply of the unit itself.

SAMPLE RULINGS

EXAMPLE 1

Facts

A property with an individual's personal residence on it has a total area of five acres which is located in a rural municipality. Two acres of the land in question are being leased by a third party for a dog kennel. The municipality requires the house to be built on a minimum lot size of five acres.

Ruling requested

How much land qualifies as part of the residential complex under the *Excise Tax Act* ?

Ruling provided

Three acres of land comprising the land upon which the building is situated and immediately contiguous land that is not used in commercial activities would qualify as part of the residential complex. The excess land (i.e. two acres) which is being leased would not qualify as part of the residential complex since the land is not reasonably necessary for the use and enjoyment of the house as a place of residence (i.e. it is being used in commercial activities).

EXAMPLE 2

Facts

A corporation is selling a cottage property that was used by the majority shareholder for his personal use and enjoyment. The cottage is located on a five hectare lot. At the time of sale, the lot in question is subject to a municipal by-law which imposes a minimum lot size of no less than two hectares.

Ruling requested

How much land qualifies as part of the residential complex under the *Excise Tax Act* ?

Ruling provided

At the time of sale, the lot in question is subject to a minimum lot size of two hectares. Consequently, two hectares of land, including the land upon which the cottage is situated, and immediately contiguous land would be considered reasonably necessary for the use and enjoyment of the building as a place of residence. The allocation of the consideration payable for the residential complex (including the qualifying land) and the non-qualifying land should be determined on a fair and reasonable basis.

EXAMPLE 3

Facts

Mr. John Doe owns a house in an expensive development. His house is situated on a one hectare lot (the large lot adds to the prestige image of the development). There exists no municipal requirement imposing minimum lot sizes. Mr. John Doe does not carry on any commercial activities on the property.

Ruling requested

What portion of the land constitutes a residential complex ?

Ruling given

One-half hectare of the land comprising the land upon which the house is situated and immediately contiguous land will be considered part of the residential complex. The land in excess of one-half hectare is not considered part of the residential complex unless the taxpayer can demonstrate that such excess is reasonably necessary for the use and enjoyment of the building as a place of residence. Under the circumstances, the excess land is not required by any municipal or provincial requirement, rather it appears only to enhance the image of the development and, therefore, does not form part of the residential complex. (The sale of the excess land by Mr. Doe may, however, be exempt under section 9 of Part I of Schedule V.)

EXAMPLE 4**Facts**

Mr. John Doe owns a ten story residential apartment building which he now wants to sell. The recreational facilities and tenant parking is contained within the land immediately contiguous to the building. The subjacent and immediately contiguous land comprises two hectares of land. The parking is for the exclusive use of the tenants, the rental of which is exempt from GST under section 8.1 of Part I of Schedule V. The recreational facilities (being a swimming pool and two tennis courts) are extensively used by the tenants of the building and are for their exclusive use at no extra charge.

Ruling requested

What portion of the land associated with the apartment building is considered part of the residential complex?

Ruling given

Normally, land in excess of 1/2 hectare is not considered part of the residential complex unless the taxpayer can establish that the excess is necessary for the use and enjoyment of the building as a place of residence by individuals. Since the immediately contiguous land is comprised of parking and recreational facilities that are supplied exclusively to the tenants of the apartment building on an exempt basis and are reasonably necessary for the use and enjoyment of the building as a place of residence, the two hectares of land would be considered part of the residential complex.

EXAMPLE 5**Facts**

An owner of a residential condominium unit in a high-rise condominium complex has listed his unit for sale. It is a two bedroom unit in a complex with a swimming pool, tennis court and a lawn bowling facility.

Ruling requested

What portion of the land and common areas pertaining to the ownership of the residential condominium unit that is owned in co-tenancy with the other owners of units in the condominium complex constitute a residential complex ?

Ruling given

At the time of sale of the residential condominium unit, the vendor's undivided interest in the land and common areas that is held in co-tenancy with the other owners of units in the condominium complex is assumed by the purchaser. Therefore, the land and common areas are supplied as part

of the ownership of the residential condominium unit and form part of the residential complex.

Date Modified: 2002-08-01