

An aerial photograph of a city skyline, likely New York City, featuring numerous skyscrapers and a river. The image is overlaid with a semi-transparent blue filter and enclosed within a thin orange rectangular border. The text "Business Real Property" is centered in white.

Business Real Property

SMSFR 2009/1

- 71 page ruling
- (condition 1) Real Property:
- (Condition 2) Used;
 - Wholly; and
 - Exclusively, in
 - One or more “businesses”
 - Carried on by an entity
 - Except where the private use is incidental & relevant

What is a Business?

- TR 97/11
- SGR 2005/1
- Commercial purpose or character
- Purposes and prospect of a Profit
- Repetition & Regularity
- Planned, organized and carried on like a business
- Size, scale & permanency
- Or is it better characterised as a hobby
- Includes Primary Production and Professional Services
- NFPs may still comply

What is a Fixture - Considerations

- whether removal would destroy the attached property;
- whether the cost of removal would exceed the value of the attached property;
- whether removal would occasion significant damage to the land or buildings to which the property is attached;
- whether the attachment was for the better enjoyment of the property or for the better enjoyment of the land and buildings to which it was attached;
- the nature of the property itself;
- the contemplated use of the property;
- the period of time for which the property was to be in position; and
- the function to be served by the annexation of the property.

Crops

- Are crops part of the land?
- Fructus naturales versus (natural vegetation IS)
- Fructus industrials (man made vegetation ISN'T)
 - With some exceptions – e.g. fruit trees



Companies

- Does a share in a company confer an interest in real property?
- Examples:
 - Company merely owns Real Property
 - Company Title
 - Barristers' Chambers
- Is NOT an interest in Real Property

Where non-business use is OK

- Direct connection with a business
- Incidental and relevant to the business
- Residential tenant of a rental business
- Employees parking their cars on the premises
- Security guard sleeping on premises
- Employees residing on premises where they are at call (e.g. motel)
- Guests of a commercial accommodation business

Primary Production

- Safe harbour rule – Section 66(6) SISA
- Predominant purposes is primary production
 - Predominant use refers to the ruling, prevailing or most influential use of the property
- Residential up to 2 hectares
- But may rely on the de minimus rule if more than 2 hectares

De-Minimus Principle



- For partial non-business use
- That is relatively minor or trifling
- For example, peter keeps his tools in the office garage
- Employees parking their cars on the premises
- Security guard sleeping on premises
- Employees residing on premises where they are at call (e.g. motel)
- Guests of a commercial accommodation business

Other Principles

- Temporary vacancy
- Temporary business use