

Information Circular No: 38

Stamp Duties Act 1923

Conveyances of intangible property

Issued 18 January 2012

Replaces Circular No: 187

The relevant legislative provisions:

A conveyance of intangible property is chargeable with duty under the provisions of the *Stamp Duties Act 1923* (the "Act") both when conveyed by an instrument or without an instrument (if Section 71E applies) if the required nexus with South Australia exists. The relevant sections of the Act are Sections 3A, 3B, 3C, 31, 60A and 71E.

Intangible property can include but is not to be limited to:

- ▶ business or product goodwill;
- ▶ intellectual property (except know-how and confidential information);
- ▶ rights conferred under a franchise agreement or licence (including a statutory licence granted under the law of the Commonwealth but not a statutory licence granted under the law of the State);
- ▶ a registered patent, circuit layout or design
- ▶ a right under the *Plant Breeder's Rights Act 1994* (Cwth);
- ▶ a trade mark; and
- ▶ a copyright.

Although intangible property in some circumstances has been held to be property that is situated in the Commonwealth and not in any particular state, this does not prevent duty being chargeable in South Australia on the conveyance of such property if the relevant nexus exists.

Section 4 charges stamp duty at the rates and on the instruments specified in Schedule 2. Section 3B states that the Act applies in respect of an instrument that relates to property situated, or a matter or thing to be done, in South Australia irrespective of whether the instrument is within South Australia or the instrument was executed within or outside South Australia.

The Second Schedule to the Act charges a 'CONVEYANCE or TRANSFER on sale of any property'. Duty is calculated as if the instrument related only to the property in South Australia.

Where the intangible property is associated with a business that is carried on in South Australia and in one or more other Australian jurisdiction(s), the value of the intangible property conveyed in South Australia is determined by reference to the volume of business carried on in each jurisdiction. However, RevenueSA will consider an alternate and more appropriate method of determining the apportionment of intangible property between the various jurisdictions if necessary.

Where there is no similar basis upon which the value of the intangible property can be apportioned between two or more jurisdictions, the value of the property attributable to South Australia can be settled by negotiation with RevenueSA on a case by case basis.

Section 31

Your attention is drawn to Section 31 under which certain contracts or agreements for the sale of an estate or interest in property (including intellectual property) are chargeable with duty. The application of Section 31 depends on the nature of the legislation that created the intangible property, and thus the potential for the exception contained at Section 31(1)(a) to apply (i.e. relating to property which cannot vest in the purchaser until the registration of a conveyance).

For example, the *Patents Act 1990* provides for the keeping of a register (Section 186) on which trusts are not registrable (Section 188) but rights granted by a patent are personal property capable of assignment (Section 13) by an instrument in writing (Section 14). It is the view of RevenueSA, that Section 31(1)(a) does not apply to an agreement for the sale of a patent and therefore ad valorem stamp duty would be chargeable pursuant to Section 31.

Section 71E

The above principles apply where intangible property is conveyed without an instrument and Section 71E has application.

Mike Walker
COMMISSIONER OF STATE TAXATION

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Further Information

Further information can be obtained from RevenueSA.

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