

Document Class: CONVEYANCE - BUSINESS
Document Name: For Consideration
Document Description: SA Business
Document Code: CB

Introduction

This guide note explains how stamp duty is calculated on a conveyance of a business by way of sale, where all of the assets of the business are located within South Australia and the business operates solely in South Australia.

If the conveyance of business includes stock which is subject to valuation, the document cannot be stamped via RevNet until the stock value has been agreed and the final (total) conveyance of business consideration determined. It is not possible to stamp a document via RevNet on an estimated stock amount. If a stocktake is involved, use the date of the stocktake as the date of the instrument when data entering on RevNet.

If there is an Assignment of Interest in the conveyance of business contract for consideration, refer to the document heading:

- [Conveyance – Other – For Consideration – Property \(not land/shares/units\)](#)

If there is a Transfer of Lease pursuant to the conveyance of business, refer to the document heading:

- [Adjudged – Transfer of Lease – Pursuant to Conveyance of Business](#) (ADJ).

If there is a Deed of Assignment of the Lessee's interest pursuant to the conveyance of business, refer to the document heading:

- [Others – Deed](#) (EX).

If the conveyance of business document contains any other documents they must be stamped separately under the appropriate document heading eg. a Deed of Restraint or Deed of Guarantee must be stamped under the document heading:

- [Others – Deed](#) (EX).

The following similar transactions cannot be stamped under this document heading:

If the conveyance of business **includes a motor vehicle(s)**, the Application for Transfer of the Registration of a Motor Vehicle Form must be submitted for Opinion of the Commissioner of State Taxation with a copy of the stamped Conveyance of Business document. The consideration panel of the Application for Transfer of the Registration of a Motor Vehicle Form must state a monetary amount.

If the conveyance of business relates to or includes the transfer of a **gaming machine business**, including the transfer of any underlying or indirect interest in a gaming machine business, then the document must be submitted for the Opinion of the Commissioner of State Taxation. The stamp duties gaming machine surcharge may apply. Refer to [Commissioner's Circular No. 235](#) for more information.

A document must be submitted for the Opinion of the Commissioner of State Taxation together with the Balance Sheet and Profit and Loss Accounts for the last 3 years or some other evidence of the market value if the document conveys:

- a business for **no** consideration; or
- an interest in a partnership (either for consideration or for no consideration).

If the business operates **both within South Australia and outside of South Australia** then the document must be submitted for the Opinion of the Commissioner of State Taxation, together with the following information to confirm the value of the business apportioned to South Australia:

- the turnover of the business for the last three (3) years;
- the relative extent of income generated by the business in each jurisdiction in which the business is carried on during the last three (3) years;
- the relative extent of the work carried on in each of the relevant jurisdictions; and
- any other relevant factors (eg. If the parties are related, or the business is transferred for less than market value, a valuation of the business, if available must be submitted. If not, the Profit and Loss Statements and Balance Sheets for the business for the last three (3) years or other evidence of value must be produced).

What *documents* can I stamp under this document heading?

The document can be in the form of:

- an Agreement or Deed evidencing the sale of a business;
- a receipt evidencing the sale and purchase of a business; or
- a [Section 71E Statement](#) (together with a section 71E Statutory Declaration).

What types of *transactions* can I stamp under this document heading?

A conveyance of business is deemed **suitable** for self-stamping under this document heading where:

- the business operates solely **within** South Australia;
- **all** of the assets of the business are located in South Australia; and
- there is a **consideration** passing between the parties.

The document can be stamped under this heading where:

- the parties are related or unrelated; and/or
- the conveyance is for a full or fractional interest.

What stamp duty is payable on this document?

All assets conveyed as part of a business are liable to stamp duty. Following is a list of some property that may be included as part of the sale of the business:

- plant;
- equipment;
- stock in trade;
- debtors;
- fixtures and fittings;
- leasehold interest in land;
- goodwill;
- business names;
- statutory licences;
- trademarks; and
- copyrights.

The stamp duty is charged on either the **market value** or **consideration**, WHICHEVER IS THE GREATER, using the *ad valorem* conveyance rate of stamp duty.

Stamp duty is calculated on the market value of the property free from encumbrances (section 60A(1) of the SD Act). If there is any assumption of liability, then it must be added to the consideration stated to determine the dutiable consideration of the business.

In the case of a conveyance on sale, duty is payable on the market value of the business as at the date of sale (section 60A(1)(a) of the SD Act). The consideration will be accepted as being the market value of the business if it is a *bona fide* arms length transaction between unrelated parties and the whole of the business is being conveyed.

If the conveyance of business is between related parties or for a fractional interest you will need to determine the market value of the interest passing (full or fractional interest) as stamp duty is payable on either the **market value** or **consideration**, WHICHEVER IS THE GREATER.

Where a fractional interest is conveyed, the parties are related or the transaction is not at “arms length” you will need to obtain evidence of the market value of the business. This can be in the form of:

- a valuation from a suitably qualified valuer; or
- documents from the parties and/or their representatives detailing the basis of negotiations between the parties and how the consideration was ascertained together with the last three (3) years Profit and Loss Statements and Balance Sheets for the business.

NOMINEE CONTRACTS

Where a person or company authorises another person or company to act on their behalf to negotiate the purchase of a property, the authority must be given prior to the contract being entered into. Any letter of agency, authority or nomination given afterwards is not accepted as creating an agency for the purpose of that purchase.

SECTION 67 OF THE SD ACT

If the conveyance is a part of a series of transactions with other documents (as described in section 67 of the SD Act), then stamp duty is charged on the **total** value of the property in the series of transactions and apportioned to each document.

If the documents subject to [Section 67](#) are being stamped at different times, they must be submitted for Opinion of the Commissioner of State Taxation with the details of the other documents in the series of transactions.

An example where [Section 67](#) of the SD Act would apply is where there is a conveyance of land in conjunction with the sale of business (refer Example 4). In this case, the stamp duty is charged on the total value of the business **and** the land and the stamp duty is apportioned between the two documents (the agreement for sale and purchase **and** the land transfer).

For further advice regarding the application of [Section 67](#) of the SD Act refer to the [Stamp Duty Guide Glossary](#) and the Stamp Duty Act.

What evidence do I need to retain for audit purposes?

For audit purposes, you will need to retain the following documentation:

- a copy of the stamped document;
- a copy of the stock certificate (if applicable);
- evidence of the market value (where the parties are related or a fractional interest is being conveyed); and
- letter of agency (if applicable);
- a copy of the stamped section [71E Statement](#) (if applicable); and
- a copy of the section 71E Statutory Declaration (if applicable).

Example 1 – Conveyance of Business between arms length, unrelated parties

Bill and Ben have sold their nursery business to Tim and Kate for a consideration of \$185,000 plus stock at valuation. On the date of settlement, the parties have agreed that the value of stock is \$35,649. Thus, the total consideration for the business is \$220,649.

Pursuant to section 60A(2) of the SD Act the consideration is accepted as the market value of the business. The stamp duty is charged on the consideration of \$220,649 using the *ad valorem* conveyance rate of stamp duty (ie. \$7,709.75 stamp duty).

The parties have also entered into a Deed restraining the vendors from trading within a radius of 10km of the business premises for the next 5 years. This Deed is Exempt and is stamped under the document heading:

- [Others – Deed](#) (EX).

Example 2 – Conveyance of Business between related parties

Megan and Hugh have sold their video hire business to their parents Fred and Pam for a consideration of \$120,000 plus stock at valuation. On the date of settlement, the parties have agreed that the value of stock is \$8,955. Thus, the total consideration for the business is \$128,955.

The market value of the business has been determined by a suitably qualified valuer at \$145,000 and the valuer has agreed with the stock value of \$8,955. Thus, the total market value of the business is \$153,955.

The stamp duty is charged on the market value of \$153,955 (as this is higher than the consideration) using the *ad valorem* conveyance rate of stamp duty (ie. \$4,990 stamp duty).

Example 3 – Conveyance of a fractional interest in a Business

Dave and Helen have sold a half interest in their pizza business to their friends John and Jo for a consideration of \$55,000 plus stock at valuation. On the date of settlement, the parties have agreed that the value of half of the stock on hand is \$2,755. Thus, the total consideration for the half interest of the business is \$57,755.

The market value of the half interest in the business has been determined by a suitably qualified valuer at \$55,000 and the valuer has agreed with the stock value of \$2,755. Thus the total market value of the business is \$57,755.

The stamp duty is charged on the consideration of \$57,755 (as this equals the market value of the half interest) using the *ad valorem* conveyance rate of stamp duty (ie. \$1,353 stamp duty).

Example 4 – Conveyance of Business subject to Section 67 of the SD act

ABC Pty Ltd has sold its Timbuktoo Wine Making business to Tim Smith for a consideration of \$400,000 plus stock at valuation.

ABC Pty Ltd has also sold its interest in the land on which the Timbuktoo Wine Making is situated to Smith Pty Ltd (which is the trustee of Tim's Family Trust) for a consideration of \$600,000.

There is a clause in the special conditions of each contract that makes it conditional upon the settlement of the other.

On the date of settlement, the parties have agreed that the value of stock is \$135,649. Thus, the total consideration for the Timbuktoo Wine Making business is \$535,649.

This transaction is deemed to be liable pursuant to section 67 of the SD Act because:

- the vendors are the same;
- the purchasers are related; and
- the contracts are conditional with each other.

Note: This is one example of where [Section 67](#) of the SD Act can apply.

Pursuant to section 60A(2) of the SD Act the consideration is accepted as the market value of the business. The stamp duty is calculated using the *ad valorem* conveyance rate of stamp duty on the total value of the transaction \$1,135,649, being \$600,000 for the sale of the land and \$535,649 for the sale of the business, (ie. \$56,293.50 stamp duty).

The stamp duty will be apportioned between the conveyance of business document and the Memorandum of Transfer of Land.

What section of the SD Act applies?

Section 31
Section 60
Section 60A
Section 67
Schedule 2, Conveyance or Transfer Head of Duty