

Document Class:	EXEMPTIONS
Document Name:	Family Farm
Document Description:	Pursuant to Sec 71CC
Document Code:	FF

Introduction

This guide note applies to a conveyance of primary production land between family members.

The document will be “Exempt” from stamp duty pursuant to Section 71CC of the SD Act providing the following criteria are satisfied:

- the land is used wholly or mainly for the business of primary production and is not less than 0.8 hectares in area;
- a business relationship existed between the transferor and the transferee for at least 12 months immediately before the date of the transfer;
- the principal business of the transferor is primary production; and
- the document transfers land between natural persons who are specified relatives, or trustees of the specified relatives.

Section 71CC(5) of the SD Act defines specified relatives. The following are examples of some family relatives:

- grandparent to child or grandchild;
- child to parent or grandparent;
- aunt/uncle to niece/nephew (or vice versa);
- brother and sister (including in-laws); or
- spouses or a spouse of any person referred to above. The definition of “spouse” includes a married couple or a *de facto* husband and wife who have been cohabiting for at least 3 years.

The SD Act also provides a definition for “natural person” or “person”; stating that these terms do not include a person who is deceased at the time of execution of the transfer. This means that the exemption will **not** apply where either the transferor or transferee are trustees or executors of a deceased estate.

Where the transferor or transferee (or both) are trustees of a trust, the beneficiaries of the trust must be restricted to the specified relatives. The trustee can be a corporate trustee.

The exemption applies regardless of whether or not there is a consideration passing between the parties.

You will need to indicate whether the land is used as **residential** or **non-residential**. For further advice on this refer to the [Stamp Duty Guide Glossary](#).

If you are unsure whether the exemption applies, the document must be submitted for the Opinion of the Commissioner of State Taxation, together with the Application for Stamp Duty Concession on the transfer of a Family Farm form and any other documentation to support the application for exemption.

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

If the document gives effect to a transaction, or part of a transaction, of which some of the elements are exempt from stamp duty pursuant to section 71CC of the SD Act and others are not (eg, goodwill, or a transferor does not meet all the exemption criteria), the document must be submitted for the Opinion of the Commissioner of State Taxation. Refer to Commissioner's [Circular No. 236](#) for more information. Also, see Example 5 in this guide note.

This exemption **does not** apply to an "Application to Transfer the Registration of a Motor Vehicle".

If the land is conveyed together with an Agreement for the conveyance of stock, implements or chattels, the Agreement must be stamped under the document heading:

- [Exemptions – Family Farm – Stock, Implements, Chattels \(Sec 71CC\)](#) (EX).

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

The document can be in the form of:

- a LTO Form T1 - Memorandum of Transfer of Land; or
- any other document that conveys land pursuant to the section 71CC of the SD Act exemption criteria.

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

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

- the land is used wholly or mainly for the business of primary production and is not less than 0.8 hectares in area;
- a business relationship existed between the transferor and transferee for at least 12 months immediately before the date of the transfer;
- the principal business of the transferor is primary production; and
- the document transfers land between natural persons who are specified relatives, or trustees of the specified relatives.

What stamp duty is payable on this document?

The document is “Exempt” from stamp duty.

You will need to supply to RevenueSA either the **consideration** or **market value** of the interest in the land being transferred (WHICHEVER IS THE GREATER). This will **not** effect the stamp duty charged but is required for statistical purposes.

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 completed “Application for Stamp Duty Concession on the Transfer of a Family Farm” statutory declaration;
- evidence of the market value of the land;
- a copy of the trust and any amending Deeds (applicable only where either the transferor and/or transferee are trustees); and
- evidence that a business relationship exists between the transferor(s) and the transferee(s).

This evidence can be in the form of:

- a previous employment relationship between the parties (regardless of the amount or form of remuneration);
- a share-farming arrangement;
- the provision of assistance in the running of the business;
- a partnership arrangement; or
- any other documentation that evidences the business relationship between the transferor(s) and the transferee(s).

Example 1 – Transfer of primary production land between natural persons.

Fred owns a primary production property covering 20 hectares on which he operates a viticulture business. He works on the property full time with his two children, Tim and Sally.

Fred wants to transfer this property to his two children as a reward for the services that they have provided him over the last five years.

A Memorandum of Transfer of Land is executed which conveys the property from Fred to Tim and Sally.

As the document satisfies the criteria of section 71CC of the SD Act the document is “Exempt” from stamp duty.

Example 2 – Transfer of primary production land from a Trust to a natural person.

Bill Smith Pty Ltd is the registered owner of a 12 hectare farming property in the Adelaide Hills where they conduct a primary production business.

Bill Smith Pty Ltd is holding the land as trustee for the Smith Family Trust. The specified beneficiaries of the Trust are Bill Smith, his wife, their children and grandchildren.

On 1 October 2001, a Memorandum of Transfer of Land is created whereby the farming property is transferred to Dave Smith (the brother of Bill Smith).

Both Bill and Dave are employees of Bill Smith Pty Ltd and primarily work on the farming property in the Adelaide Hills (and have done so for the last seven years).

As the transaction satisfies the criteria of section 71CC of the SD Act the document is “Exempt” from stamp duty.

Example 3 – Transfer of primary production land from a natural person to a Trust.

Megan owns a 25 hectare vineyard in the Barossa Valley. Megan and her husband, Dave, work full time maintaining the vineyard and receive all their income from the profits of the vineyard.

Her financial advisor has advised her to transfer the ownership of the vineyard to the Trustee of the Megan and Dave Family Trust (the Trust has been in existence for 2 years). The beneficiaries of the Trust are Megan, Dave, Tim, their parents, children and grandchildren.

On 1 October 2001, Megan executed a Memorandum of Transfer of Land whereby the Barossa Valley property was transferred to Megan and Dave as Trustees of the Megan and Dave Family Trust.

As the transaction satisfies the criteria of section 71CC of the SD Act the document is “Exempt” from stamp duty.

Example 4 – Transfer of family farm between Family Trusts.

Ian is the Trustee of the Ian Family Trust. The family trust owns a 40 hectare orange growing property in the Riverland.

Ian wishes to transfer this property to his sister's trust, namely XYZ Pty Ltd as trustee of the Julie Family Trust.

Ian and Julie (Ian's sister) have been working the land in partnership for ten years.

The beneficiaries of both trusts are limited to their immediate family groups as per the requirements of section 71CC of the SD Act.

On 1 February 2002, Ian (as trustee of the Ian Family Trust) executed a Memorandum of Transfer of Land whereby the Riverland property was transferred to XYZ Pty Ltd (as trustee of the Julie Family Trust).

As the document satisfies the criteria of section 71CC of the SD Act the document is "Exempt" from stamp duty.

Example 5 – Transfer of primary production land where a transferor does not satisfy the exemption criteria.

Bill and his brother Bob jointly own a 50 hectare primary production property in the Riverland. Bill has operated this property for many years but his brother Bob works as an accountant in Adelaide. They wish to transfer the property to Bill's son Charlie, who works the land in partnership with Bill.

A Memorandum of Transfer of Land is executed which conveys the property from Bill and Bob to Charlie for a consideration of \$500,000 which is equivalent to the value of the land.

As the transfer of the interest from Bill to Charlie satisfies the criteria of section 71CC of the SD Act, this element is exempt from stamp duty. The transfer of the interest from Bob to Charlie valued at \$250,000 does **not** satisfy the criteria of section 71CC of the SD Act as Bob is not in the business of primary production and this element is chargeable using the rate of duty prescribed in Schedule 2 of the SD Act, ie, duty of \$8,955 is payable.

This transfer **cannot** be stamped on RevNet and must be submitted for the opinion of the Commissioner of State Taxation.

What section of the SD Act applies?

Section 71CC