

Document Class:	EXEMPTIONS
Document Name:	Family Farm
Document Description:	Stock / Implements / Chattels (Sec 71CC)
Document Code:	EX

Introduction

This guide note applies to a conveyance of goods comprising livestock, machinery, implements and other goods (the “goods”) conveyed in conjunction with primary production land between family members.

The document conveying the goods will be “Exempt” from stamp duty pursuant to section 71CC of the SD Act providing:

- the goods are used or acquired for the business of primary production conducted on the land;
- the goods are conveyed between natural persons who are specified relatives, or trustees of the specified relatives;
- the principal business of the transferor is primary production;
- the goods are conveyed in conjunction with the land used for primary production; and
- the conveyance of land satisfies the remaining criteria pursuant to section 71CC of the SD Act.

If the goods are not conveyed **in conjunction** with the land then the exemption does **not** apply.

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 business relationship must be between the specified beneficiaries.

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

If you are unsure as to whether or not 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 2 in this guide note.

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

The conveyance of land document must be stamped under the document heading:

- [Exemptions – Family Farm – Pursuant to Sec 71CC](#) (FF).

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

The document can be in the form of:

- an Agreement that conveys goods pursuant to the section 71CC of the SD Act exemption criteria;
- a Deed that conveys goods pursuant to the section 71CC of the SD Act exemption criteria; or
- any other document that conveys goods 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 goods is deemed **suitable** for self-stamping under this document heading where:

- the goods are used or acquired for the business of primary production conducted on the land;
- the goods are conveyed between natural persons who are specified relatives, or trustees of the specified relatives;
- the principal business of the transferor is primary production;
- the goods are conveyed in conjunction with the land used for primary production; and
- the conveyance of land satisfies the remaining criteria pursuant to section 71CC of the SD Act.

What stamp duty is payable on this document?

The document is “Exempt” from stamp duty.

You will need to supply either the **consideration** or **market value** of the interest in the goods being transferred (WHICHEVER IS THE GREATER). This will **not** effect the stamp duty charged on the document 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 goods;
- a copy of the trust and any amending Deeds (applicable only where either the transferor and/or transferee are trustees); and
- any other documentation required to be retained for the transaction.

Example 1 – Transfer of primary production land and goods between specified relatives.

Tom owns a 500 hectare farming property in Mount Gambier that is used for primary production purposes. Tom has farmed the property for 25 years and his nephew, Jim, also works full time on the property and has done so for the last two years.

Tom would like to transfer the farming property in Mount Gambier and the machinery used on the property to his nephew, Jim.

On 15 October 2001, Tom and Jim signed a Memorandum of Transfer of Land for the property at Mount Gambier and also signed an Agreement to evidence the conveyance of the farming machinery from Tom to Jim.

As these documents satisfy the criteria of section 71CC of the SD Act, the documents are “Exempt” from stamp duty.

Example 2 – Transfer of primary production land with other property, including an element which is not exempt from duty.

Fred owns a primary production property covering 230 hectares on which he operates a horticulture business growing flowers. He works on this property full time in partnership with his two children, Tim and Sally.

Fred is retiring from the business and is transferring his interest in all his partnership assets to his children. It is agreed that his value of these interests are:

Land	\$200,000
Plant and equipment	\$ 45,000
Goodwill	<u>\$ 50,000</u>
Total	\$295,000

On 1 July 2006, the parties sign a Memorandum of Land Transfer and an Agreement evidencing the transfer of the other assets.

As these documents give effect to a transaction of which an element is not exempt from stamp duty, these documents must be submitted for the opinion of the Commissioner of State Taxation.

The transfer of the goodwill of the partnership is not exempt pursuant to section 71CC of the Act and therefore this element is chargeable using the rate of duty prescribed in Schedule 2 of the SD Act, ie, \$1,080 is payable on the goodwill of \$50,000.

What section of the SD Act applies?

Section 71CC