

Document Class: EXEMPTIONS
Document Name: Conveyance – Land
Document Description: Trustee to Trustee
Document Code: EX

Introduction

This guide note refers to a conveyance (transfer) of land from a trustee to a trustee in order to effect the retirement of a trustee and or the appointment of a new trustee.

Section 71(5)(d) of the SD Act provides relief from *ad valorem* stamp duty where there is a conveyance of property from a trustee to a trustee and:

- the document conveys property and
- the conveyance is not part of a scheme for conferring a benefit, in relation to the trust property, upon the trustee or any other person to the detriment of the beneficial interest of any other person.

In considering whether the conveyance is part of a scheme for conferring a benefit, in relation to the trust property, upon the trustee or any other person to the detriment of the beneficial interests of any person, the beneficial interest of the beneficiaries in the trust, before and after the conveyance, need to be considered. If the beneficial interest of any of the beneficiaries of the trust has changed after the conveyance, then the exemption will not apply.

If the conveyance is part of a transaction where all trust property including all land is being transferred to the same new trustee and the property remains in the same trust, the document can be stamped on RevNet provided the above criteria are satisfied.

If the conveyance only relates to some of the trust property, this may fall under trust splitting and the exemption at section 71(5)(d) of the SD Act may apply. Such transfers must be submitted for opinion. See commentary below on this.

It is irrelevant whether the trustee is a person or a company.

The consideration panel of the document may recite “Trustee to Trustee” or similar.

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](#).

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

For an “Appointment of a New Trustee” refer to the document heading:

- [Others - Appointment of New Trustee](#) (EX).

For a conveyance of property (other than land/shares/units) from a trustee to a trustee refer to the document heading:

- [Conveyance – Other - Trustee to Trustee](#) (EX).

For a conveyance of financial products from a trustee to a trustee refer to the document heading:

- [Financial Products – Trustee to Trustee with stamped Deed](#) (EX); or
- [Financial Products – Trustee to Trustee \(no other doc\)](#) (EX).

For a conveyance of units from a trustee to a trustee refer to the document type:

- [Exemptions – Units – Trustee to Trustee \(EX\)](#)

Split Trust

Trust splitting can be described as partitioning, splitting, dividing, or allocating trust properties into two or more parts and having different trustees appointed in respect of the trust property that is now in each separate part. This is generally referred to as creating a split trust or sub-trust. It is considered by RevenueSA that there is only one trust but different trustees in respect of different parts of the trust property. The trustees are governed by the same trust deed.

If you have a transfer of property from a trustee to a trustee pursuant to a trust splitting arrangement as described above, this transfer **cannot** be stamped on RevNet and **must** be submitted for opinion. Your submission should include full details of the transaction and why you consider the section 71(5)(d) exemption should apply.

Cloned Trust

A trust (ie, the original trust) is cloned when one or more trusts are established with the same terms and beneficiaries as the original trust. A cloned trust will usually have a different name to the original trust. A cloned trust may also have a different trustee and different appointor.

A cloned trust is a separate trust from the original trust. A transfer of property to a cloned trust is liable to *ad valorem* duty pursuant to section 71(3)(a)(i) of the SD Act. Section 71(5)(d) of the SD Act does **not** apply to exempt from stamp duty a transfer of property to a cloned trust.

If you have a transfer of land to a cloned trust it should be stamped under the RevNet document type:

- [Conveyance of Land – For No Consideration – Conveyance of Land \(VC\)](#)

If the cloned trust has the same trustee as the original trust and the land is intended to be held by the cloned trust and there is no documentation to evidence this, a section 71E Statement and Statutory Declaration must be completed and stamped under the RevNet document type:

- [Conveyance of Land – For No Consideration – Conveyance of Land \(VC\)](#)

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 from a trustee to a trustee.

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

A conveyance of land from a trustee to a trustee is deemed **suitable** for self-stamping on under this document heading where:

- there is no change to the beneficial interest of the trust property of the beneficiaries;
- the land remains subject to the same trust; and
- the conveyance is not part of a trust splitting or cloning arrangement (as described above).

What stamp duty is payable on this document?

Exempt.

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 stamped Deed establishing the trust; and
- a copy of any stamped Amending/Variation Deeds (if applicable); and
- a copy of the resolution recording the retirement of a trustee and/or the appointment of a new trustee (if applicable).

Example 1 – Conveyance of Land from a trustee to a trustee

Ann is the trustee of the Smith Unit Trust. Ann owns farming land in Berri in her capacity as trustee of the trust.

Ann has been advised by her accountant to have a corporate trustee as trustee of the trust, and has set up a company for this purpose.

A Deed of Appointment of New Trustee has been executed and stamped, and the farming land now needs to be transferred to the new trustee.

Ann in her capacity as trustee of the Smith Unit Trust transfers the farming land to the company as trustee of the Smith Unit Trust and has executed a Memorandum of Transfer of Land evidencing this.

There is no change to the beneficial interest of the trust property.

As the requirements of section 71(5)(d) of the SD Act have been satisfied, the document is stamped Exempt.

What section of the SD Act applies?

Section 71(5)(d)
Schedule 2, Part 2, General Exemption 28