

Document Class: EXEMPTIONS
Document Name: Lease entered into pre 1/7/04
Document Description: To Exempt Authority
Document Code: EX

Introduction

This guide note applies to a lease of property to an “exempt authority” where the lease is entered into prior to 1 July 2004.

An exemption applies to documents that lease property to an “exempt authority”. For the purposes of this exemption an “exempt authority” is:

- the Crown or any person on behalf of the Crown - which is exempt under Schedule 2, General Exemption 12 of the SD Act; or
- a body that is exempt from stamp duty under its own enabling legislation or some other legislation.

If there is any doubt as to whether the authority is a part of the Crown or whether the exemption applies the document must be submitted to RevenueSA to obtain the Opinion of the Commissioner of State Taxation.

A lease is “entered into” once both parties to the lease have signed the lease agreement.

For example, where the lessor signs the agreement on 28 June 2004, the lessee signs the agreement on 29 June 2004 and the agreement is dated 2 July 2004, the lease will be taken to be “entered into” on 29 June 2004.

The onus is on the taxpayer to prove that the document is exempt from stamp duty.

“Lease” includes an agreement for a lease or any written document for the tenancy or occupancy of property.

“Property” means land or a tenement.

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

If the lease to an “exempt authority” is entered into on or after 1 July 2004, it cannot be stamped under this document heading. Refer to the document heading:

- [Lease – Entered into on or after 1/7/04](#) (EX)

If the Lessee is not an “exempt authority” the document cannot be stamped under this document heading, refer to the appropriate lease document heading.

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

The document can be in the form of:

- a LTO Form L1 - Memorandum of Lease;
- an Agreement to lease property; or
- a Deed containing provisions for the lease of property.

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

A lease is deemed **suitable** for self-stamping under this document heading where:

- the property is leased to the Crown, or any person on behalf of the Crown; or
- a body is exempt from stamp duty under its own enabling legislation or some other legislation; and
- the lease was entered into prior to 1 July 2004.

What stamp duty is payable on this document?

The document is “Exempt” from stamp duty.

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; and
- evidence of the authority’s exempt status.

Example 1 – Lease of land to the Crown

On 7 October 2003, ABC Pty Ltd entered into a lease of property with the Minister of Transport (a body of the Crown). Both parties execute a Memorandum of Lease.

The Memorandum of Lease is “Exempt” from stamp duty pursuant to Schedule 2, General Exemption 12 of the SD Act.

Example 2 – Lease of land to an exempt authority under their own enabling legislation

Sam has decided to lease his property to the Personnel Corporation. Pursuant to the *Personnel Corporation Act* the Corporation is exempt from all State taxes, fees and charges. Both parties enter into a Memorandum of Lease on 1 December 2003.

The Memorandum of Lease is “Exempt” from stamp duty.

What section of the SD Act applies?

Schedule 2, General Exemption 12 – applies in relation to leases to the Crown, and to any person on behalf of the Crown.

Or, the body is exempt from stamp duty under it's own enabling legislation or some other legislation.