

Section 67 of the SD Act

Introduction

Section 67 of the SD Act applies to:

- a conveyance on sale; or
- a conveyance operating as a voluntary disposition *inter vivos*; or
- any instrument (“document”) chargeable with duty as if it were a conveyance (including a Statement under section 71E of the SD Act).

The operating provision is section 67(3) of the SD Act which comes into force when two or more documents:

- arise from a single contract of sale; or
- together form, or arise from, substantially one transaction or one series of transactions.

Section 67 of the SD Act can apply where the two or more documents have:

- the same transferor(s) and the same transferee(s); or
- the same transferor(s) and different transferee(s); or
- different transferor(s) and the same transferee(s); or
- different transferor(s) and different transferee(s).

Each of the above examples can apply where the transferor(s) or transferee(s) acts alone or with different persons.

Where section 67 of the SD Act applies, the documents are charged with *ad valorem* conveyance stamp duty (or *ad valorem* voluntary conveyance stamp duty) calculated on the sum of the market values (or consideration paid) of the property or interests in property conveyed by these documents. Once the total duty is calculated, it is apportioned among the documents generally in the ratio of market values or consideration paid. When stamping on RevNet the section 67 field will need to be highlighted and the RevNet system will apportion the stamp duty for you. When using the Periodic Return Arrangement, you will need to apportion the stamp duty manually.

Section 67(4) of the SD Act states, in relation to this aggregation of transactions within 12 months that:

“Where by instruments that have been, or appear to have been, executed within 12 months of each other a person conveys property or interests in property to the same person (whether that person takes alone or with the same or different persons), it will be presumed, unless the Commissioner is satisfied to the contrary, that the instruments form one transaction or one series of transactions”.

It is not necessary that the conveying documents be executed on the same day. Section 67(4) of the SD Act states that documents that have been executed within 12 months of each other will be **presumed** to form one or a series of transactions given certain conditions. Those conditions are where a person conveys property or interests in property through different documents, to the same person or the same or different persons.

The Supreme Court has considered two cases regarding section 66ab of the SD Act (now Section 67 of the SD Act). These are:

1. *Jeffrey v Commissioner of Stamps* (1980) 23 SASR 398; and
2. *Old Reynella Village Pty Ltd v Commissioner of Stamps* (1989) 89 ATC 4916.

These cases assist with the interpretation and application of section 67 of the SD Act.

Whereas section 66ab of the SD Act referred only to conveyances of land, section 67 of the SD Act refers to **all** types of property **except**:

- A conveyance that relates to property that is being conveyed in separate parcels to different persons by separate conveyances where the Commissioner is satisfied that no arrangement or understanding exists between the persons under which the parcels of property conveyed are to be used otherwise than separately and independently from each other;
- a conveyance of stock, implements or other chattels in a case where section 31A of the SD Act applies;
- a conveyance on sale of any marketable security; or
- a document excluded from the operation of this section by the regulations.

Some common examples of types of property subject to section 67 of the SD Act are:

- land;
- land and chattels;
- land and business/partnership interests;
- partnership interests;
- units in a unit trust (not marketable securities);
- taxi plates;
- fishing licence and vessel; or
- fishing licences and land.

Regulation 28 under the SD Act excludes the following types of conveyances from the operation of section 67 of the SD Act:

- a document which is one of a series of separate conveyances under which rights or interests in a hotel, motel, resort or managed apartment complex are conveyed in separate parcels to different persons, each of whom is or becomes a member of the same managed investment scheme; and
- the Commissioner is satisfied that, apart from any arrangement or understanding entered into for the purpose of the managed investment scheme no arrangement or understanding exists between the members under which the parcels or property conveyed are to be used otherwise than separately and independently from each other.

All documents not subject to section 67 of the SD Act pursuant to Regulation 28 under the SD Act can be stamped under the appropriate document heading.

If section 67 of the SD Act **does** apply and the documents in the series are **not** stamped at the same time under the same bundle the documents cannot be self-stamped on RevNet or the Periodic Return Arrangement. These documents **must** be submitted for the Opinion of the Commissioner of State Taxation, together with a detailed description of the transaction including details of the other documents in the series.

If you agree that section 67 of the SD Act applies, the documents can be self-stamped **providing** all documents in the series are being stamped under the same bundle. When stamping on RevNet the section 67 field will need to be highlighted and the system will apportion the stamp duty for you. When using the Periodic Return Arrangement, you will need to apportion the stamp duty manually.

If you consider that section 67 of the SD Act does **not** apply the documents **cannot** be self-stamped. These documents **must** be submitted for the Opinion of the Commissioner of State Taxation, together with a detailed description as to why you consider that section 67(4) of the SD Act should not apply.

Where section 67(4) of the SD Act applies, this may be rebutted if the Commissioner can be satisfied that the following circumstances apply:

- each contract was negotiated separately and independently of the other contract(s), eg, they are not conditional contracts, not dependent on each other; and
- each property will be used separately from the other properties, eg, separate development on each property, no unity of purpose.

The documents **must** be submitted for the Opinion of the Commissioner of State Taxation, together with a detailed description as to why you consider that section 67(4) of the SD Act should not apply.

Following are **some** examples of where section 67 of the SD Act can apply. If you have a transaction which appears similar to any one of these examples but you consider that section 67(4) of the SD Act should **not** apply the documents **cannot** be self-stamped. These documents **must** be submitted for the Opinion of the Commissioner of State Taxation together with a detailed description as to why you consider that section 67(4) of the SD Act should not apply.

It can be seen from these examples that no one factor by itself may bring a number of conveying documents within the ambit of section 67 of the SD Act. Rather it is the combination of several factors, based on an examination of the particular facts and

circumstances of the one transaction or one series of transactions, that will be used to determine whether there is some essential **unity** or **oneness** to bring the various conveying documents within the provisions of section 67 of the SD Act.

Example 1 – Same Transferor to Same Transferee

Contract 1 - X agrees to convey land to B.

Contract 2 – X agrees to convey land to B.

The facts of this transaction are:

- same transferor;
- same transferee;
- adjoining land;
- two contracts;
- two conveying documents executed one month apart;]and
- contract 2 subject to completion of contract 1;
- *bona fide* arms length transaction between unrelated parties.

Section 67 of the SD Act applies because this is considered to be one transaction or one series of transactions.

However, if the contracts are not subject to each other, section 67(4) of the SD Act can be rebutted if the Commissioner can be satisfied that the following circumstances apply:

- each contract was negotiated separately and independently of the other contract, eg, they are not conditional contracts, not dependent on each other; and
- each property will be used separately from the other property, eg, separate development on each property, no unity of purpose.

Example 2 – Same Transferor to Same Transferee

Contract 1 - X agrees to convey land and chattels to B.

The facts of this transaction are:

- same transferor;
- same transferee;
- one contract;
- two conveying documents (ie. Memorandum of Transfer of Land, and Contract for Sale and Purchase of Land and chattels); and
- *bona fide* arms length transaction between unrelated parties.

Section 67 of the SD Act applies as both conveyances arise from the one contract. The stamp duty on the Memorandum of Transfer of Land is calculated on the

consideration payable (or the market value) for the land under the appropriate document heading:

- [Conveyance of Land – For Consideration – Conveyance of Land](#) (CL); or
- [Conveyance of Land – For No Consideration – Conveyance of Land](#) (VC).

The stamp duty on the Contract for Sale and Purchase of Land is calculated on the consideration payable (or the market value) for the chattels under the appropriate document heading:

- [Conveyance – Other – For Consideration – Property \(not land/shares/units\)](#) (C); or
- [Conveyance – Other – For No Consideration – Property \(not land/shares/units\)](#) (VC).

Example 3 – Same Transferor to Same Transferee (as Trustee for different Trusts)

Contract 1 - X agrees to convey property to B as Trustee for M Trust.

Contract 2 – X agrees to convey property to B as Trustee for N Trust.

Contract 3 – X agrees to convey property to B as Trustee for O Trust.

The facts of this transaction are:

- same transferor;
- same transferee (as trustee for three different trusts);
- three contracts; and
- three conveying documents.

Section 67 of the SD Act applies because this is considered to be one transaction or one series of transactions. For stamp duty purposes the beneficial owner of the property is irrelevant and the beneficiary under each trust is not the subject of the conveyance, rather it is the trustee.

However, if the contracts are not subject to each other and were executed within 12 months of each other, section 67(4) of the SD Act can be rebutted if the Commissioner can be satisfied that the following circumstances apply:

- each contract was negotiated separately and independently of the other contracts, eg, they are not conditional contracts, not dependent on each other; and
- each property will be used separately from the other properties, eg, separate development on each property, no unity of purpose.

Example 4 – Same Transferor to Different Transferees

Contract 1 - X agrees to convey land to D.

Contract 2 – X agrees to convey land to E.

The facts of this transaction are:

- same transferor;
- different transferees;
- two contracts;
- two conveying documents;
- same settlement dates; and
- joint farming venture subject to similar Joint Management Agreements and other arrangements.

Section 67 of the SD Act applies as this is considered to be one transaction or one series of transactions because the Joint Management Agreements evidences an arrangement or understanding between the parties to use the land together.

Example 5 – Same Transferor to Common Transferees

Contract 1 - X contracts to sell improved land to B, C and D.

Contract 2 - X contracts to sell vacant land to D (son of B and C).

The facts of this transaction are:

- same transferor;
- common transferees;
- same agent;
- two contracts—;
- two conveying documents; and
- same settlement date.

Section 67 of the SD Act applies because this is considered to be one transaction or one series of transactions.

However, if the contracts are not subject to each other, section 67(4) of the SD Act can be rebutted if the Commissioner can be satisfied that the following circumstances apply:

- each contract was negotiated separately and independently of the other contract, eg, they are not conditional contracts, not dependent on each other; and
- each property will be used separately from the other property, eg, separate development on each property, no unity of purpose.

Example 6 – Same Transferor to Related Transferees

X, Y and Z are in Partnership jointly.

Contract 1 - X contracts to sell half of his one-third interest in the partnership to Y.

Contract 2 - X contracts to sell the other half of his one-third interest in the partnership to Z.

Y and Z are now partners in equal shares.

The facts of this transaction are:

- same transferor;
- related transferees (ie. business partners);
- same property;
- two Agreements for Sale and Purchase of the partnership interests; and
- the transferees intend to continue to operate the business together in partnership.

Section 67 of the SD Act applies because this is considered to be one transaction or one series of transactions.

Example 7 – Same Transferor to Different Transferees

Contract 1 – B contracts to sell business of the Timbuktoo Hotel to C.

Contract 2 – B contracts to sell the Hotel land to C Pty Ltd.

C and C Pty Ltd are related because C is the only shareholder of C Pty Ltd.

The facts of this transaction are:

- same transferor;
- related transferees;
- two contracts;
- two conveying documents;
- same settlement date; and
- the land and the hotel business are to be used together and the purchaser would not buy one without the other.

Section 67 of the SD Act applies because this is considered to be one transaction or one series of transactions.

Example 8 – Different Transferors to Same Transferee

Contract 1 – X Pty Ltd contracts to sell the business of the Timbuktoo Post Office to Y.
Contract 2 – X contracts to sell the Post Office land to Y.

X and X Pty Ltd are related because X is a majority shareholder of X Pty Ltd.

The facts of this transaction are:

- related transferors;
- same transferee;
- two contracts;
- two conveying documents;
- same settlement date;and
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- the land and the post office business are to be used together and the purchaser would not buy one without the other.

Section 67 of the SD Act applies because this is considered to be one transaction or one series of transactions.

Example 9 - Different Transferors to Same Transferee

Transfer 1 - B gifts property to XYZ Pty Ltd as Trustee for the B Family Trust.
Transfer 2 – C gifts property to XYZ Pty Ltd as Trustee for the B Family Trust.
Transfer 3 – D gifts property to XYZ Pty Ltd as Trustee for the B Family Trust.

B, C and D are all members of the same family group and are all beneficiaries of the B Family Trust.

The facts of this transaction are:

- different transferors;
- same transferee;
- three conveying documents.

Section 67 of the SD Act applies because this is considered to be one transaction or one series of transactions. In the Commissioner's view, it is the intention of the transferors to re-organise the ownership of assets to the B Family Trust. The three parcels of land can now be used to further the purposes of the B Family Trust. The relationship between the three transfers is integral rather than merely fortuitous (*Old Reynella*).

Example 10 – Different Transferors to Same Transferee

X, Y and Z are in Partnership jointly.

Contract 1 - X contracts to sell his one-third interest in the partnership to Z.

Contract 2 - Y contracts to sell his one-third interest in the partnership to Z.

Z is now the sole proprietor of the business.

The facts of this transaction are:

- related transferors (ie business partners);
- same transferee;
- same property; and
- two Agreements for Sale and Purchase.

Section 67 of the SD Act applies because this is considered to be one transaction or one series of transactions.

Example 11 – Different Transferors to Same Transferee

Contract 1 - X contracts to sell land to B.

Contract 2 - Y contracts to sell land to B.

The facts of this transaction are:

- different transferors (unrelated);
- same transferee;
- adjoining land;
- two contracts
- two conveying documents;
- contract two subject to completion of contract one; and
- same settlement date.

Section 67 of the SD Act applies because the transferee intends to use both properties as one, therefore, it is considered to be one transaction or one series of transactions.

However, if the contracts are not subject to each other, section 67(4) of the SD Act can be rebutted if the Commissioner can be satisfied that the following circumstances apply:

- each contract was negotiated separately and independently of the other contract, eg, they are not conditional contracts, not dependent on each other; and
- each property will be used separately from the other property, eg, separate development on each property, no unity of purpose.

Example 12 – Different Transferors to Different Transferees

Contract 1 – B contracts to sell business of the Timbuktoo General Store to C.

Contract 2 – B Pty Ltd contracts to sell the General Store land to C Pty Ltd.

B and B Pty Ltd are related because B is the only shareholder of B Pty Ltd.

C and C Pty Ltd are related because C is a majority shareholder of C Pty Ltd.

The facts of this transaction are:

- related transferors;
- related transferees;
- two contracts;
- two conveying documents;
-
- same settlement date; and
- the land and the general store business are to be used together.

Section 67 of the SD Act applies because this is considered to be one transaction or one series of transactions.

Example 13 – Different Transferors to Different Transferees

Contract 1 - B agrees to convey farming land to C.

Contract 2 – D agrees to convey farming land to E.

Contract 3 - F agrees to convey farming land to G.

C, E and G have entered into a business relationship and intend to farm the property together and share costs, expenses and profits.

The facts of this transaction are:

- different transferors;
- different transferees (business partners);
- three contracts;
- three conveying documents;
- same settlement dates; and
- Joint Farming Partnership Agreement executed by the transferees.

Section 67 of the SD Act applies as this is considered to be one transaction or one series of transactions because the Joint Farming Partnership Agreement creates an arrangement or understanding between the parties to use the land together.

What is the formula for apportioning the stamp duty between the documents?

The stamp duty is calculated on the aggregate of either the market value or the consideration (including GST), WHICHEVER IS THE GREATER.

The stamp duty is calculated using either the *ad valorem* conveyance rate of duty or the *ad valorem* voluntary conveyance rate of duty (which are the same rate of duty) prescribed in Schedule 2 of the SD Act.

For ease of discussion we will call the greater of the consideration or market value the "Value". The formula for apportioning the stamp duty between the conveyances is as follows:

$$\frac{\text{Value of individual property}}{\text{Total value of all properties}} \times \text{Stamp Duty on total value of all properties} = \text{Stamp Duty on individual instrument}$$

Calculating the Stamp Duty pursuant to Section 67 of the SD Act

As an example, assume that section 67 of the SD Act applies and that the consideration paid represents the market value and calculate the stamp duty on each transfer.

The first Memorandum of Transfer of Land conveys land at Balhannah for a consideration of \$120,000.

The second Memorandum of Transfer of Land conveys the adjoining block of land at Balhannah for a consideration of \$360,000.

The aggregated value of these properties is \$480,000.

Ad valorem stamp duty (calculated on the aggregated value of these properties - \$480,000) is \$20,330.

The stamp duty would be apportioned between the Memorandum of Transfers of Land as follows:

Transfer 1

$$\begin{array}{r} \$120,000 \\ \hline \$480,000 \end{array} \times \$20,330 = \$5,082.50$$

Transfer 2

$$\begin{array}{r} \$360,000 \\ \hline \$480,000 \end{array} \times \$20,330 = \$15,247.50$$