

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 document chargeable with duty as if it were a conveyance (including a Statement under section 71E of the 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);

Section 67 of the SD Act does not apply where two or more documents have:

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

where the Commissioner is satisfied that the land is being conveyed by persons acting separately and independently from each other.

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 properties conveyed by these instruments. Once the total duty is calculated, it is apportioned among the instruments 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 stamp duty will be apportioned 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 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 an interest in property through different documents, to the same person or the same person and other 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.

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; 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;
- units in a land owning unit trust (not marketable securities);

Regulation 11 under the SD Act excludes the following types of conveyances from the operation of section 67 of the SD Act:

- a document which is 1 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 11 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 stamp duty will be apportioned 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 of the SD Act should not apply.

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

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

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 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 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 a series of transactions to determine whether the various conveying documents are brought within the provisions of section 67 of the SD Act.

Example 1 – Same Transferors to Same Transferees

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 transferors;
- same transferees;
- adjoining allotments;
- two contracts;
- two conveying documents;
- contract two subject to completion of contract one; and
- bona fide arm's length transaction between unrelated parties.

Section 67 of the SD Act applies because this is considered to be 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, e.g. they are not conditional contracts, not dependent on each other; and
- each property will be used separately from the other property, e.g. separate development on each property, no unity of purpose.

Example 2 – Same Transferors to Same Transferees (as Trustee for different Trusts)

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

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

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

The facts of this transaction are:

- same transferors;
- same transferees (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 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, 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, e.g. they are not conditional contracts, not dependent on each other; and
- each property will be used separately from the other property, e.g. separate development on each property, no unity of purpose.

Example 3 – Same Transferors and 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 transferors;
- different transferees;
- two contracts;
- two conveying documents;
- same settlement dates; and
- joint farming venture subject to identical Joint Management Agreements and other arrangements.

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

Example 4 – Same Transferors 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 transferors;
- common transferees;
- same agent;
- adjoining land;
- two contracts – both in the same form; and
- same settlement date.

Section 67 of the SD Act applies because this is considered to be 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, e.g. they are not conditional contracts, not dependent on each other; and
- each property will be used separately from the other property, e.g. separate development on each property, no unity of purpose.

Example 5 - Different Transferors and Same Transferees

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 transferees;
- three conveying documents.

Section 67(2)(ab) excludes this transaction from Section 67 grouping as this is a series of separate conveyances of land by different persons to the same person if the Commissioner is satisfied that the land is being conveyed by persons acting separately and independently from each other.

Example 6 – Different Transferors to Same Transferees

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 transferees;
- adjoining land;
- two contracts (dated three weeks apart);
- contract two subject to completion of subject one; and
- simultaneous settlement dates.

Section 67(2)(ab) excludes a transaction from Section 67 grouping for a series of separate conveyances of land by different persons to the same person if the Commissioner is satisfied that the land is being conveyed by persons acting separately and independently from each other. As the contracts are subject to completion of each other it is considered that the persons X and Y are not acting separately and independently from each other therefore Section 67 applies.

Example 7 – Different Transferors and 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 are related and intend to farm the property together and share costs, expenses and profits.

The facts of this transaction are:

- different transferors;
- different transferees (related);
- 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 series of transactions because the Joint Farming Partnership Agreement creates an arrangement or understanding between the parties to use the farming lands together.

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

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 or the *ad valorem* voluntary conveyance rate of duty prescribed in the 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

In this example, we will 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 Land conveys land for a consideration of \$120,000.

The second Memorandum of Transfer of Land conveys the adjoining block of land 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

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