

Section 71E of the SD Act

Introduction

Section 71E of the SD Act sets out transactions that are dutiable in certain circumstances if there is no dutiable document. In these circumstances, the provision requires that a "Section 71E Statement" and "Section 71E Statutory Declaration" be completed. The "Section 71E Statement" becomes the dutiable document.

If there is a receipt that evidences the payment for the transaction then pursuant to section 31(3) of the SD Act the receipt is liable for stamp duty in the absence of any other instrument evidencing the transaction (ie. a section 71E Statement and section 71E statutory declaration are not required to be completed).

What types of transactions are involved?

The transactions that are liable pursuant to section 71E of the SD Act are those that result in the change of ownership (both legal and equitable) in the following properties:

- land;
- business in South Australia;
- part of a business situated in South Australia; and
- an interest in a partnership.

These also include the goodwill of a business.

What transactions does Section 71E deem *not* to be liable?

Section 71E does **not** apply to a number of transactions that occur due to the operation of other legislation. These are:

- the appointment of a receiver or trustee in bankruptcy;
- the appointment of a liquidator;
- a compromise or arrangement under part 5.1 of the Corporation Law; or
- any other transaction of a prescribed class (the Regulations prescribe one situation where property is transferred to a Co-operative.

What document heading applies?

If the section 71E Statement refers to a conveyance of land it must be stamped 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).

If the section 71E Statement refers to a conveyance of a business for a consideration where all assets are located in South Australia it must be stamped under the document heading:

- [Conveyance of Business – For Consideration – SA Business](#) (CB).

If the section 71E Statement refers to a conveyance of:

- a business or partnership for **no** consideration where all assets are located in South Australia;
- a multi-jurisdictional business or partnership (for consideration or for no consideration);
- a fractional interest of a business or partnership (for consideration or for no consideration); or
- an interest in a partnership (for consideration or for no consideration).

It must be submitted for the Opinion of the Commissioner of State Taxation together with:

- a schedule listing the location and values of the various assets subject to the sale agreement;
- a schedule of the businesses total sales for the last 3 years;
- the percentage of the business total sales which are attributable to South Australia; and
- the latest Balance Sheet and last 3 years Profit and Loss Accounts for the business/partnership (where the conveyance is for a fractional interest or between related parties or for **no** consideration).

Example 1

Charles agrees to sell his hairdressing business to Minnie for \$155,000. This is a *bona fide* arms length transaction between unrelated parties.

There is no document evidencing this transaction so Charles and Minnie complete a section 71E statutory declaration and a section 71E Statement.

As the transaction is a *bona fide* arms length transaction between unrelated parties then pursuant to section 60A(2) of the SD Act the consideration is treated as the market value of the hairdressing business.

Stamp duty is charged on the section 71E Statement using the *ad valorem* conveyance rate of stamp duty on the consideration of \$155,000 (ie. \$5,030 stamp duty).