

Document Class:	EXEMPTIONS
Document Name:	Financial Products
Document Description:	Trustee to Trustee (no other doc)
Document Code:	EX

Introduction

This guide note refers to a conveyance (transfer) of financial products, that are not quoted on a recognised stock exchange, from a trustee to a trustee, of the same trust, where there is **no other document** evidencing the change in trustees. The transaction should be for the purpose of effecting 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 conveyance of property from a trustee to a trustee where:

- 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 other 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 relates to all financial products owned by the trust and this is part of a transaction where all trust property including financial products 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 financial products owned by the trust, 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.

The consideration panel in the document must recite “Trustee to Trustee” or similar.

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

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

If there is a document evidencing the change in trustee that has been duly stamped – refer to the document heading:

- [Financial Products –Trustee to Trustee with stamped Deed](#) (EX).

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

- [Other - Appointment of New 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 financial products 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 a 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 financial products pursuant to a cloned trust this should be submitted for opinion.

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

The document can be in the form of:

- a Standard Transfer Form;
- a Share Transfer Form; or
- any other document where the financial products are conveyed from a trustee to a trustee.

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

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

- the financial products are not quoted on a recognised stock exchange;
- there is no change to the beneficial interest of the trust property of the beneficiaries;
- the financial products remain in the same trust;
- stamp duty has **not** been paid on any other document evidencing the change in trustee, 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 Trust Deed establishing the trust;
- a copy of the 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 –Trustee to Trustee

Ann is the trustee of the Smith Unit Trust. Ann owns shares in Carr Pty Ltd, a company not quoted on a recognised stock exchange, 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 Standard Transfer form is executed wherein Ann in her capacity as Trustee of the Smith Unit Trust transfers the shares in Carr Pty Ltd to the company as trustee of the Smith Unit Trust. No other document evidencing the retirement/appointment of trustee exists.

There has been no change to the beneficial interest of the trust property of the beneficiaries.

As the above requirements of section 71(5)(d) have been satisfied, the document will be stamped Exempt.

What section of the SD Act applies?

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