

SOUTH AUSTRALIA



RevenueSA

Stamp Duties

Circular No. 187

CONVEYANCES OF INTELLECTUAL PROPERTY

A conveyance of intellectual property is chargeable with duty under the provisions of the *Stamp Duties Act 1923* (“the Act”) both when conveyed by an instrument or without an instrument (if Section 71E applies) if the required nexus with South Australia exists. The relevant sections of the Act are sections 31, 60 and 71E.

Intellectual property can include but is not to be restricted to:-

- patents;
- copyrights;
- designs;
- trademarks (registered and unregistered);
- names;
- trade secrets and confidential information;
- plant breeder’s rights; and
- EL Rights under the *Circuit Layouts Act 1989*.

Although intellectual property in some circumstances has been held to be property that is situated in the Commonwealth and not in any particular State, this is no bar to duty being chargeable in South Australia on the conveyance of such property if a relevant nexus exists.

Section 4 of the Act charges stamp duties at the rates specified in Schedule 2 of the Act in respect of the instruments specified in that Schedule. Section 5 states that duty is chargeable in relation to an instrument that is outside South Australia, if that instrument relates to property situated in South Australia, or there is any matter or thing done or to be done in South Australia.

The effect of these provisions is that any conveyance of intellectual property is dutiable in South Australia where an instrument:-

- is executed in this State;
- is brought into the State;
- relates to property in this State; or
- relates to a matter or thing to be done in this State.

The Second Schedule of the Act charges the “CONVEYANCE or TRANSFER on sale of any property”, regardless of where that property is situated. There is an arguable case that where the required territorial nexus is established under one or more of the situations outlined above, that the Act allows duty to be charged on the value of all property conveyed or transferred by the relevant instrument, regardless of the proportion of the property that is referable to or situated in, South Australia.

However, the practice of this Office is to charge duty only in relation to the conveyance or transfer of intellectual property situated in South Australia. Where the intellectual property is associated with a business that is carried on in South Australia and in one or more other Australian jurisdiction(s), the value of the intellectual property conveyed is determined by reference to that proportion or percentage of the business’s total sales which are attributable to its South Australian operations. This Office will however consider an alternate and more appropriate method of determining the apportionment of intellectual property between the various jurisdictions if necessary.

Where there is no similar basis upon which the value of the intellectual property can be apportioned between two or more jurisdictions, the value of the property attributable to South Australia can be settled by negotiation with RevenueSA on a case by case basis.

SECTION 31

Your attention is drawn to Section 31 of the Act under which certain contracts or agreements for the sale of an estate or interest in property (including intellectual property) are chargeable with duty. Whether Section 31 applies depends on the nature of the legislation that created the intellectual property, in view of the exception found at Section 31(1)(a) of the Act (relating to property which cannot vest in the purchaser except upon the registration of a conveyance).

For example, the *Patents Act 1990* provides for the keeping of a register (Section 186) on which trusts are not registrable (Section 188) but rights granted by a patent are personal property capable of assignment (Section 13) by an instrument in writing (Section 14). It is the view of RevenueSA, that Section 31(1)(a) of the Act does not apply to an agreement for the sale of a patent and therefore *ad valorem* stamp duty would be chargeable pursuant to Section 31.

SECTION 71E

The above principles apply where intellectual property is conveyed in a transaction to which Section 71E of the Act applies where no instrument has been executed in relation to the transaction.

FURTHER INFORMATION

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COMMISSIONER OF STATE TAXATION

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