

# Revenue Ruling

Stamp Duties Act 1923

SDA009[V2]

## CONVEYANCE BY DIRECTION

### Preamble

No liability to duty arises in relation to a conveyance or transfer of an interest in non-residential and non-primary production land (“qualifying land”) executed on or after 1 July 2018 (subject to the conveyance or transfer of an interest not arising from a contract of sale or other transaction entered into before 1 July 2018). Accordingly, only conveyances or transfers of an interest (including an assignment) in residential and primary production land remain liable to duty.

Further information regarding the phased reduction of the rates applicable to qualifying land from 7 December 2015 to 30 June 2018 is available in [Information Circular 103](#).

The previously issued [Revenue Ruling SDA009 \[V1\]](#) described a change in RevenueSA’s practice where the person named in the transfer for the sale of land (“Transfer”) as the transferee (“Transferee”) is different from the person named in the contract for the sale of that land (“Contract”) as the Purchaser (“Purchaser”).

As previously advised in [Revenue Ruling SDA009 \[V1\]](#), in a majority of situations involving the sale of land, the Transferee named in the Transfer is the Purchaser named in the Contract. In such cases, duty is only imposed on the Transfer.

However, where the Purchaser and Transferee are not the same, it has previously been RevenueSA’s practice to require the production of certain further documentation to explain the difference.

RevenueSA has determined to further amend and update its practices from those advised in Revenue Ruling SDA009, as explained in this Ruling.

### Discussion

#### Letter of agency

In cases where a Contract was executed “and/or nominee” and the Transferee named in the Transfer was not the Purchaser named in the Contract, a letter of agency dated prior to the Contract, which authorised a person or entity to act on behalf of the Transferee in order to enter into the Contract on their behalf (“Letter of Agency”), was previously required. In such cases, duty was only imposed on the Transfer.

#### Assignment

In cases where the Purchaser and the Transferee were not the same, and:

- (i) the Contract was not executed by the Purchaser “and/or nominee”; or
- (ii) no Letter of Agency predating the Contract existed; or
- (iii) the Letter of Agency post-dated the Contract;

an assignment, which assigns the Purchaser’s interest in the Contract to the Transferee (“Assignment”), was previously required.

In such cases, duty was charged on both (i) the Assignment, calculated on the greater of the consideration paid for the Assignment or the full market value of the interest assigned and (ii) the Transfer, on the full market value of the land conveyed. In the majority of situations, the amount assessed on the Assignment would be equal to the deposit paid by the Purchaser under the Contract.

### Ruling

As advised in [Revenue Ruling SDA009 \[V1\]](#), RevenueSA amended these practices and no longer requires production of a Letter of Agency or an Assignment in the above circumstances where a Direction has been provided.

RevenueSA also acknowledges that the Purchaser under a Contract has a common law right (subject to anything to the contrary in the contract) to direct the vendor to transfer the land at settlement to any person or entity the Purchaser desires. This common law right exists irrespective of whether the Purchaser has executed the Contract “and/or nominee” or not. RevenueSA also accepts that an assignee under an Assignment may also have the right to direct the vendor under the Contract that has been assigned to transfer the land at settlement to any person or entity the assignee desires.

#### What is a Direction?

A Direction may be given by the Purchaser to the vendor, directing the vendor to transfer the property to the Transferee. A Direction is addressed to the vendor. The Direction is executed by the Purchaser and is not required to be signed by any other party. It is expected in most situations that a Direction will not include any reference to a deposit or reimbursement of a deposit, reimbursement for other costs incurred or payment of a premium. If the Direction does include a reference to a payment of any amount to the Purchaser by the Transferee and/or includes the Transferee as a party to the Direction, then that instrument may constitute an Assignment or possibly evidence a subsale of the land or a part of it.

Subject to that and the discussion below, a Direction is not liable to duty on the basis that the Purchaser is merely exercising its common law right to direct the transfer of the property.

#### Example of a Direction

Although in a general sense Directions can take many shapes and forms and even be verbal, for the purposes of ensuring the appropriate amount of stamp duty is paid, RevenueSA expects that contemporaneous written evidence is retained and is available to be produced to RevenueSA to support the claim that a Transfer is pursuant to a Direction.

Accordingly, RevenueSA provides the following example of where written evidence of a Direction is required, along with an example of a Direction:

### Example

On 1 December 2018, Fred enters into a contract to purchase land from Max.

Prior to settlement, Fred directs Max to transfer the property to Joan.

Fred provides a Direction to Max which reads:

*I, Fred of 9 Walker Street Adelaide, being the purchaser under contract, dated 1 December 2018 ("Contract"), for the purchase of the property at 55 Main Road Adelaide SA 5000, being the whole of the land in Certificate of Title Register Book Volume 5000 Folio 100, direct you, Max, being the vendor under the Contract, to transfer the property to Joan, of 200 Victoria Square Adelaide, as the transferee.*

*Dated the 20th day of January 2019.*

*Signed by Fred Jones .....*

## Assignments (Contractual Obligations Created Between Purchaser & Transferee)

As distinct from a Direction, where an Assignment is effected, duty will continue to be payable on the Assignment, calculated on the greater of the consideration paid for the Assignment or the full market value of the interest assigned. In the majority of situations, the amount assessed on the Assignment will be equal to the deposit paid by the Purchaser under the Contract. In addition, duty is also payable on the Transfer on the full market value of the land conveyed.

The question as to whether an Assignment of the contractual interest from the Purchaser to the Transferee has occurred, as opposed to a mere Direction, is a question of fact.

In most instances, the question as to whether an Assignment has been effected will be uncontroversial as the Transferee and Purchaser would have executed a Deed of Assignment.

Neither the reimbursement of the Purchaser by the Transferee for expenses incurred in entering the contract (e.g. deposit paid, legal costs and mere incidentals) ("Contract Expenses") or the entry into an agreement between the Vendor and the Transferee for the purposes of the Going Concern or Margin Scheme concessions under GST legislation (provided it does not involve any further payment by the Transferee to the Purchaser over and above Contract Expenses) will be indicative that an Assignment has occurred.

## Section 71E Statement

Depending on the facts of the matter, a [Section 71E Statement](#) and statutory declaration may need to be completed and stamped where an assignment or subsale has been effected without the execution of a written document.

For further information in respect of the stamping of an Assignment, refer to the respective Stamp Duty Document Guide notes:

[Conveyance of Land – Assignment – Land Contract](#)

[Conveyance of Land – Assignment – Land Contract – Qualifying Land](#)

## Section 68 of the Stamp Duties Act 1923

This Ruling does not change the manner in which Section 68 of the *Stamp Duties Act 1923* (the "Act") will be applied by RevenueSA.

In this regard, where there is an Assignment of the Contract for consideration, whether for the deposit alone or inclusive

of a premium, and the transfer is in favour of the assignee, Section 68 of the Act will not apply, as has been the practice to date (though, as discussed above, duty is payable on the Assignment).

Further, where there is no written Assignment of the Contract and the arrangement does not constitute a further sale within the meaning of any of subsections 68(3), (4) or (5) of the Act, any payment by the Transferee to the Purchaser (excluding expenses incurred in entering the contract e.g. the deposit paid, legal costs and mere incidentals) will be regarded as an Assignment. As such, as discussed above, a [Section 71E Statement](#) must be lodged and duty is payable on it.

However, notwithstanding the above common law right, where there is a further sale of property to a subpurchaser that falls within any of subsections 68(3), (4) or (5) of the Act, duty will be payable as follows (e.g. in most situations, duty is payable on the transfer by reference to the original sale and the further sale).

Subsection 68(3) of the Act provides that the contracted resale of a property, prior to its conveyance to the Purchaser, to any other person other than the Purchaser, will be chargeable with duty as:

- (i) a conveyance to the Purchaser on the consideration for the sale; and
- (ii) a conveyance by the Purchaser to the sub purchaser on the consideration for the sale.

### Example

On 1 January, Pam contracts to buy a residential property from Fred for \$210 000. Settlement is due to occur on 1 April.

On 1 February, Pam further contracts to sell the property to Megan for \$240 000.

At settlement on 1 April, Pam directs Fred to transfer the property directly to Megan.

In accordance with Section 68(3) of the Act, which directs that two assessments of duty be made on the single instrument of transfer from Fred to Megan, the conveyance is charged with duty as:

- (i) a conveyance for the consideration for the sale to the original purchaser, Pam, of \$210 000; and
- (ii) separately, a conveyance for the consideration for the sale by the original purchaser, Pam, to the subpurchaser, Megan, of \$240 000;

in the same manner as if the considerations were specified in separate instruments.

Section 67 is not applied in this situation.

Subsection 68(4) of the Act provides that the contracted resale of the whole or any part or parts of a property, prior to its conveyance to the Purchaser, to any other person(s) other than the Purchaser, will be chargeable with duty as:

- (i) a conveyance to the Purchaser on the consideration for the sale; and
- (ii) a conveyance by the Purchaser to the sub purchaser(s) on the consideration for the further sale(s).

The consideration for the sale to the Purchaser in respect of each part or parcel shall, for the purposes of this subsection, be ascertained by determining the ratio which the value of the part or parcel in question bears to the value of the whole property.

### Example

On 1 January, Pam contracts to buy a residential property from Fred for \$210 000. Settlement is due to occur on 1 April. The property consists of three subsisting lots.

On 1 April, Pam further contracts to sell by separate contracts a single lot to each of Tom, Dom and Harry for \$100 000 respectively (the contracted amounts totalling \$300 000). Each lot is of equal value.

At settlement on 1 April, Pam directs Fred to transfer one of the lots to each of Tom, Dom and Harry.

At settlement on 1 April, Pam directs Fred to transfer one of the lots to each of Tom, Dom and Harry.

In accordance with Section 68(4) of the Act, which directs that two assessments of duty be made on each of the instruments of transfer from Fred to Tom, Dom and Harry, the conveyance of each lot to Tom, Dom and Harry will be assessed on the respective consideration paid by each of them and one third of the purchase price payable under the contract between Pam and Fred. That is duty of \$70 000 and \$100 000 will be assessed on each transfer.

Subsection 68(5) of the Act provides that duty is chargeable on:

- (i) the conveyance to a subpurchaser of the interest of the person selling to them on the consideration moving from the subpurchaser; and
- (ii) the subsequent conveyance of the property by the original seller to the subpurchaser on the consideration for the sale to the Purchaser.

### Further Information

RevenueSA Online users can refer to the [Stamp Duty Document Guide \(Self Determination\)](#) for further information and obligations if self-stamping a document on RevenueSA Online.

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### History

This Revenue Ruling SDA009[V2] is effective from 7 December 2018 and replaces:

Document	Issue Date
<a href="#">SDA009 V1</a>	16 January 2015

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COMMISSIONER OF STATE TAXATION

7 December 2018