

Information Circular No: 103

Stamp Duties Act 1923

Stamp Duty on Conveyance or Transfers of Non-residential, Non-primary Production Real Property (Qualifying Land)

Issued 7 December 2018
(Replaces Information Circular 86)

No liability to stamp duty arises in relation to a conveyance or transfer of an interest in non-residential and non-primary production real property (“qualifying land”) arising from a contract entered into on or after 1 July 2018.

For the purposes of this Information Circular, a conveyance or transfer of real property (or land) will be taken to include a notional acquisition of an interest in the underlying local land assets of a land holding entity under Part 4 of the *Stamp Duties Act 1923* (the “SDA”).

The abolition of stamp duty on the conveyance or transfer of qualifying land was phased in as follows:

Date contract entered into	Stamp duty reduction
On or before 6 December 2015	No reduction
Between 7 December 2015 and 30 June 2017	1/3 reduction
Between 1 July 2017 and 30 June 2018	2/3 reduction
From 1 July 2018	Full reduction

Application of the stamp duty reduction is based on the date of the contract, not the date of the Memorandum of Transfer or other conveying instrument. If no contract has been entered into then the reduction is based on the date of the Memorandum of Transfer or other conveying instrument. If a contract has been assigned, the date of the contract is used to determine whether a stamp duty reduction applies.

The abolition of stamp duty on the conveyance or transfer of qualifying land is contained in Section 71DC of the SDA.

Stamp duty on the conveyance or transfer of residential and primary production land remains unchanged.

What is Qualifying Land?

Qualifying land means land that is being used other than for residential purposes or for primary production as defined in Section 71DC of the SDA.

The Commissioner of State Taxation (the “Commissioner”) will generally rely on land use codes to determine the use of land. The land use codes within the following Land Use Code (LUC) headings will be taken to be qualifying land:

- ▶ commercial;
- ▶ industrial;
- ▶ vacant land, where the land is within a zone established by a Development Plan under the *Development Act 1993* that envisages the use, or potential use, of the land as non-residential and non-primary production;
- ▶ institutions;
- ▶ public utilities;
- ▶ recreation; and
- ▶ mining and quarrying.

The land use codes within the following LUC headings are not considered by the Commissioner to be qualifying land:

- ▶ residential;
- ▶ primary production; and
- ▶ vacant land – urban (LUC 4100), vacant land with minor improvements (LUC 4101), vacant land – rural residential (LUC 4150) and vacant land with minor improvements (LUC 4151), unless the land is within a zone established by a Development Plan under the *Development Act 1993* that envisages the use, or potential use, of the land as non-residential and non-primary production.

Any conveyance or transfer of land that is considered to constitute qualifying land, but does not have a LUC heading for qualifying land from above, must be submitted to the Commissioner for Assessment with submissions as to:

- ▶ why the LUC heading may be incorrect;
- ▶ the actual use of the land as at the date of the contract (or the date of the Memorandum of Transfer or other conveying instrument if no contract has been entered into); and
- ▶ why the land should be regarded as qualifying land.

What is land used for Residential Purposes?

Land will be taken to be used for residential purposes where the Commissioner, after taking into account information provided by the Valuer-General, determines that:

- ▶ it is being predominantly used for that purpose;
- ▶ although the land is not being used for any particular purpose at the relevant time the land should be taken to be used for residential purposes due to improvements that are residential in character having been made to the land; or
- ▶ the land is vacant, or vacant with only minor improvements, and the land is within a zone established by a Development Plan under the *Development Act 1993* that does not envisage the use, or potential use, of the land as non-residential and non-primary production.

A further exception is in relation to land which although coded as residential by the Valuer-General will nevertheless be considered by the Commissioner to be commercial in nature.

This treatment will be consistent with the Local Government zoning of the land. Land uses that fall into this category are Hostels, Hotels, Motels, Serviced Apartments and short term unit accommodation.

What is land used for Primary Production?

Land will be taken to be used for primary production purposes where the Commissioner, after taking into account information provided by the Valuer-General, determines that:

- ▶ it is being predominantly used for primary production purposes; or
- ▶ although the land is not being used at the relevant time the land should be taken to be used for primary production purposes due to a classification that has been assigned to the land by the Valuer-General.

Anti-avoidance provisions

As the rates of stamp duty on qualifying land were phased out over a number of years, a robust anti-avoidance provision has been legislated to provide significant deterrence to persons who may attempt to artificially structure a transaction in order to take advantage of a lower rate of stamp duty.

Section 67 of the Stamp Duties Act 1923

If the conveyance or transfer is a part of a series of transactions with other instruments, as described in **Section 67** of the SDA, then stamp duty is calculated on the total value of the property in the series of transactions and apportioned to each instrument.

If the instruments subject to Section 67 of the SDA are being stamped at different times, they must be submitted to the Commissioner for Assessment with the details of the other instruments in the series of transactions. They cannot be stamped on RevenueSA Online.

If the conveyance or transfer is for multiple titles comprising qualifying land and non-qualifying land, the conveyance/s or transfer/s must also be submitted to the Commissioner for Assessment and not stamped via RevenueSA Online. Advice on the consideration separately paid for the qualifying land and non-qualifying land must be provided.

Example 1

Bob Pty Ltd purchases two parcels of land with both contracts for sale dated 10 December 2018. One is a residential apartment building, while the other is a retail complex.

Section 67 of the SDA applies and stamp duty is calculated as follows:

Transfer 1: Residential Apartment	\$1 200 000
Transfer 2: Retail Complex	\$1 000 000
Total consideration	\$2 200 000

Stamp duty on \$2 200 000 is \$114 830, which is apportioned back to the transfers as follows:

Transfer 1: Residential Apartment

1 200 000		114 830		=	\$62 634.55
2 200 000	x	1			(rounded down)

Transfer 2: Retail Complex

1 000 000		114 830		=	\$52 195.45
2 200 000	x	1			

The retail complex is classified as qualifying land and therefore qualifies for a full reduction of stamp duty.

Stamp duty payable will be:

Conveyance 1: Residential Apartment	\$62 634.55
Conveyance 2: Retail Complex	nil
Total stamp duty payable	\$62 634.55

Document types with supporting guide notes (including further examples) are available via RevenueSA Online to allow for stamping of a conveyance or transfer of qualifying land and a transfer of lease of qualifying land. If purchasers of land are in any doubt whether the stamp duty reduction applies they should contact RevenueSA before stamping the conveyance or transfer of land on RevenueSA Online and/or submitting the conveying instrument to the Commissioner for Assessment.

Julie Holmes
 COMMISSIONER OF STATE TAXATION
 7 December 2018

Further Information

Further information can be obtained from RevenueSA.

Website	www.revenuesa.sa.gov.au
Email	stamps@sa.gov.au
Telephone	(08) 8226 3750