

Document Type:	Conveyance of Business
Document Name:	SA Business (Pre 18/06/2015)

A Conveyance of Business document executed before 18 June 2015 is liable to *ad valorem* duty and must be self-determined under this document type.

Stamp duty will be abolished on non-real property transfers entered into on or after 18 June 2015, including a conveyance of business executed on or after 18 June 2015.

## Introduction

This Document Guide Note explains how stamp duty is calculated on a conveyance of a business by way of sale, where all of the assets of the business are located within South Australia and the business operates solely in South Australia.

If the conveyance of business includes stock which is subject to valuation, the document cannot be self-determined via RevenueSA Online until the stock value has been agreed and the final (total) conveyance of business consideration determined. It is not possible to self-determine a document via RevenueSA Online on an estimated stock amount.

If there is a Transfer of Lease pursuant to the conveyance of business, refer to the relevant document type:

[Conveyance of Land | Transfer of Lease](#)

[Conveyance of Land | Transfer of Lease – Qualifying Land](#)

If there is a Deed of Assignment of the Lessee's interest pursuant to the conveyance of business, refer to the document type:

[Exemptions | Deed](#)

If the conveyance of business document contains any other documents they must be self-determined separately under the appropriate document type e.g. a Deed of Restraint or Deed of Guarantee must be self-determined under the document type:

[Exemptions | Deed](#)

## What documents can I self-determine under this document type?

The document can be in the form of:

- Agreement or Deed evidencing the sale of a business;
- receipt evidencing the sale and purchase of a business; or
- [Section 71E Statement](#) (together with a [Section 71E Statutory Declaration](#)).

Refer to the [Stamp Duty Document Guide \(Section 71E\)](#) for further information.

## What types of transactions can I self-determine under this document type?

A conveyance of business is deemed **suitable** for self-determination under this document type where:

- the document is executed before 18 June 2015;
- the business operates solely **within** South Australia;
- **all** of the assets of the business are located in South Australia; and
- there is a **consideration** passing between the parties.

The document can be self-determined under this heading where:

- the parties are related or unrelated; and/or
- the conveyance is for a full or fractional interest.

The following similar transactions cannot be self-determined under this document type:

If the conveyance of business includes a motor vehicle(s), the Application for Transfer of the Registration of a Motor Vehicle Form must be **submitted to the Commissioner for assessment** with:

- a copy of the Conveyance of Business document; and
- evidence that a stamp duty determination has been made (i.e. Certificate of Stamp Duty, Document ID or stamped document).

The Application for Transfer of the Registration of a Motor Vehicle Form must state a monetary amount in the consideration panel.

If the conveyance of business relates to or includes the transfer of a **gaming machine business**, including the transfer of any underlying or indirect interest in a gaming machine business, then the document must be **submitted to the Commissioner for assessment**. The stamp duties gaming machine surcharge may apply. Refer to [Circular No. 235](#) for more information.

A document must be **submitted to the Commissioner for assessment** together with the Balance Sheet and Profit and Loss Accounts for the last three years or some other evidence of the market value if the document conveys:

- a business for **no** consideration; or
- an interest in a partnership (either for consideration or for no consideration).

If the business operates **both within South Australia and outside of South Australia** then the document must be **submitted to the Commissioner for assessment**, together with the following information to confirm the value of the business apportioned to South Australia:

- the turnover of the business for the last three years;
- the relative extent of income generated by the business in each jurisdiction in which the business is carried on during the last three years;
- the relative extent of the work carried on in each of the relevant jurisdictions; and
- any other relevant factors (e.g. If the parties are related, or the business is transferred for less than market value, a valuation of the business, if available must be submitted. If not, the Profit and Loss Statements and Balance Sheets for the business for the last three years or other evidence of value must be produced).

## What evidence do I need to retain for audit purposes?

For audit purposes, you will need to retain the following documentation either in paper form or electronic form:

- a copy of the documents;
- a copy of the stock certificate (if applicable);
- evidence of the market value (where the parties are related or a fractional interest is being conveyed);
- a copy of the [Section 71E Statement](#) (if applicable);
- a copy of the [Section 71E Statutory Declaration](#) (if applicable); and
- evidence that a stamp duty determination has been made (i.e. Certificate of Stamp Duty, Document ID or stamped document).

Refer to the [Stamp Duty Document Guide \(Section 71E\)](#) for further information.

## What Section(s) of the *Stamp Duties Act 1923* applies?

- Section 31
- Section 60
- Section 60A

- Section 67
- Schedule 2, Conveyance or Transfer Head of Duty

## What stamp duty is payable on this document?

All assets conveyed as part of a business are liable to stamp duty. Following is a list of some property that may be included as part of the sale of the business:

- plant;
- equipment;
- stock in trade;
- debtors;
- fixtures and fittings;
- leasehold interest in land;
- goodwill;
- business names;
- statutory licences;
- trademarks; and
- copyrights.

The stamp duty is charged on either the **market value** or **consideration**, WHICHEVER IS THE GREATER, using the *ad valorem* conveyance rate of stamp duty.

Stamp duty is calculated on the market value of the property free from encumbrances (Section 60A(1)). If there is any assumption of liability, then it must be added to the consideration stated to determine the dutiable consideration of the business.

In the case of a conveyance on sale, duty is payable on the market value of the business as at the date of sale (Section 60A(1)(a)). The consideration will be accepted as being the market value of the business if it is a *bona fide* arm's length transaction between unrelated parties and the whole of the business is being conveyed.

If the conveyance of business is between related parties or for a fractional interest you will need to determine the market value of the interest passing (full or fractional interest) as stamp duty is payable on either the **market value** or **consideration**, WHICHEVER IS THE GREATER.

Where a fractional interest is conveyed, the parties are related or the transaction is not at 'arm's length' you will need to obtain evidence of the market value of the business. This can be in the form of:

- a valuation from a suitably qualified valuer; or
- documents from the parties and/or their representatives detailing the basis of negotiations between the parties and how the consideration was ascertained together with the last three years Profit and Loss Statements and Balance Sheets for the business.

## Section 67

If the conveyance is a part of a series of transactions with other documents (in Section 67), then stamp duty is charged on the **total** value of the property in the series of transactions and apportioned to each document.

If the documents subject to Section 67 are being determined at different times, they must be **submitted to the Commissioner for assessment** with the details of the other documents in the series of transactions.

An example where Section 67 would apply is where there is a conveyance of land in conjunction with the sale of business (refer Example 4). In this case, the stamp duty is charged on the total value of the business **and** the land and the stamp duty is apportioned between the two documents (the agreement for sale and purchase **and** the land transfer).

For further advice regarding the application of Section 67 refer to the [Stamp Duty Document Guide \(Section 67\)](#) and [Stamp Duty Guide Glossary](#) and the *Stamp Duties Act 1923*.

## Examples

### Conveyance of Business between arm's length, unrelated parties

Bill and Ben have sold their nursery business to Tim and Kate for a consideration of \$185 000 plus stock at valuation. On the date of settlement, the parties have agreed that the value of stock is \$35 649. Thus, the total consideration for the business is \$220 649.

Pursuant to Section 60A(2) the consideration is accepted as the market value of the business. The stamp duty is charged on the consideration of \$220 649 using the *ad valorem* conveyance rate of stamp duty (i.e. \$7709.75 stamp duty).

The parties have also entered into a Deed restraining the vendors from trading within a radius of 10km of the business premises for the next five years. This Deed is Exempt and is self-determined under the document type:

[Exemptions | Deed](#)

## Conveyance of Business between related parties

Megan and Hugh have sold their video hire business to their parents Fred and Pam for a consideration of \$120 000 plus stock at valuation. On the date of settlement, the parties have agreed that the value of stock is \$8955. Thus, the total consideration for the business is \$128 955.

The market value of the business has been determined by a suitably qualified valuer at \$145 000 and the valuer has agreed with the stock value of \$8955. Thus, the total market value of the business is \$153 955.

The stamp duty is charged on the market value of \$153 955 (as this is higher than the consideration) using the *ad valorem* conveyance rate of stamp duty (i.e. \$4990 stamp duty).

## Conveyance of a fractional interest in a Business

Dave and Helen have sold a half interest in their pizza business to their friends John and Jo for a consideration of \$55 000 plus stock at valuation. On the date of settlement, the parties have agreed that the value of half of the stock on hand is \$2755. Thus, the total consideration for the half interest of the business is \$57 755.

The market value of the half interest in the business has been determined by a suitably qualified valuer at \$55 000 and the valuer has agreed with the stock value of \$2755. Thus the total market value of the business is \$57 755.

The stamp duty is charged on the consideration of \$57 755 (as this equals the market value of the half interest) using the *ad valorem* conveyance rate of stamp duty (i.e. \$1353 stamp duty).

## Conveyance of Business subject to Section 67

ABC Pty Ltd has sold its Timbuktoo Wine Making business to Tim Smith for a consideration of \$400 000 plus stock at valuation.

ABC Pty Ltd has also sold its interest in the land on which the Timbuktoo Wine Making is situated to Smith Pty Ltd (which is the trustee of Tim's Family Trust) for a consideration of \$600 000.

There is a clause in the special conditions of each contract that makes it conditional upon the settlement of the other.

On the date of settlement, the parties have agreed that the value of stock is \$135 649. Thus, the total consideration for the Timbuktoo Wine Making business is \$535 649.

This transaction is deemed to be liable pursuant to Section 67 because:

- the vendors are the same;
- the purchasers are related; and
- the contracts are conditional with each other.

Note: This is one example of where Section 67 can apply.

Pursuant to Section 60A(2) the consideration is accepted as the market value of the business. The stamp duty is calculated using the *ad valorem* conveyance rate of stamp duty on the total value of the transaction \$1 135 649, being \$600 000 for the sale of the land and \$535 649 for the sale of the business, (i.e. \$56 293.50 stamp duty).

The stamp duty will be apportioned between the conveyance of business document and the Transfer.

## Version History

Version No.	Release Date
1	May 2018
2	November 2018
3	July 2019