

Document Type:	Conveyance of Land
Document Name:	Exemptions
Exemption Provision::	Family Farm Pursuant to Sec 71CC

Introduction

This Document Guide Note applies to a conveyance of an interest in land used wholly or mainly for the business of primary production between certain relatives (family members) and/or their trustees, and companies with a shareholding limited to family members, which can include a conveyance from:

- natural person to a natural person;
- natural person to a trustee;
- natural person to a company;
- trustee to a natural person;
- trustee to a trustee;
- trustee to a company;
- company to a natural person;
- company to a trustee; and
- company to company.

The transaction is exempt from stamp duty pursuant to Section 71CC subject to the criteria of this section (see below). The exemption applies regardless of whether or not there is a consideration passing between the parties.

The 'business of primary production' is defined as the business of agriculture, pasturage, horticulture, viticulture, apiculture, poultry farming, dairy farming, forestry or any other business consisting of the cultivation of soils, the gathering in of crops, the rearing of livestock or the propagation and harvesting of fish or other aquatic organisms (Section 2(1)).

Section 71CC(5) defines 'relative'. The following are examples of some family relative relationships:

- grandparent and child or grandchild;
- child and parent or grandparent;
- aunt/uncle and niece/nephew (or vice versa);
- brother and sister (including in-laws);
- spouses or a spouse of any person referred to above. A person is the spouse of another if they are legally married; or

- domestic partners or a domestic partner (within the meaning of the *Family Relationships Act 1975*) of any person (excluding spouses or a spouse) referred to above.

Section 71CC(5) defines:

- a **natural person** or **person** to not include a person who is deceased at the time of execution of the conveying document. This means that the exemption will not apply where either the transferor or transferee are executors or administrators of a deceased estate; and
- a **company** as a 'family company' if each shareholder of the company is a relative of all other shareholders of the company.

The term 'conveyance' includes vesting, transfer, assignment and other like terms. The term 'conveying document' includes a [Section 71E Statement](#) if there is no actual conveying document.

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

If a party to the transaction includes the trustee/s of a family discretionary trust, the range of beneficiaries or potential beneficiaries of the family discretionary trust must be limited to natural persons of a particular family group and cannot include, for example, non-relatives, companies, other trusts or charities.

If a party to the transaction includes the trustee/s of a unit trust, the range of unit holders of the unit trust must be limited to natural persons of a particular family group and cannot include, for example, non-relatives, companies, other trusts or charities.

If a party to the transaction includes the trustee/s of a superannuation fund trust, the range of members of the superannuation fund trust must be limited to natural persons of a particular family group and cannot include, for example, non-relatives, companies, other trusts or charities.

You will need to indicate whether the land is used as **residential** or **non-residential**. For further advice on this refer to the [Document Guide](#) Page.

If you are unsure whether the exemption applies, contact RevenueSA for assistance.

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

The document can be in the form of:

- LTO Form T1 - Transfer;
- [Section 71E Statement](#); or

- any other document that conveys land pursuant to the Section 71CC exemption criteria.

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 a family farm is deemed **suitable** for self-determination under this document type where:

- the land is used wholly or mainly for the business of primary production and is not less than 0.8 hectares in area;
- a business relationship with respect to the use of the land for the business of primary production existed between the transferor and transferee for at least 12 months immediately before the date of the conveying document. Where the transferor or transferee or both is a trustee, you must name the beneficiary under each trust who has the pre-existing immediate 12 month business relationship with each other. Where the transferor or transferee, or both, are family companies, you must name the shareholder(s) under each company who has a pre-existing immediate 12 month business relationship with each other;
- the sole or principal business of the transferor or, if a company, at least one shareholder of the company is (immediately before the date of the conveying document) the business of primary production;
- the document transfers land where a familial relationship exists between a transferor and a transferee, between natural persons who are relatives as defined by the *Stamp Duties Act 1923*, a trustee for a relative or family companies (where all of the shareholders of the company are relatives); and
- the transfer does not arise from arrangements or a scheme devised for the principal purpose of taking advantage of the benefit of the section.

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

If the conveying document gives effect to a transaction, or part of a transaction, of which some of the elements are exempt from stamp duty pursuant to Section 71CC and others are not, the document must be **submitted to the Commissioner for assessment**.

If the transaction is effected by a transfer of shares in a land holding company and the exemption at Section 102F applies, the Section 102B return will need to be completed and **submitted to the Commissioner for assessment**.

This exemption does not apply to an 'Application to Transfer the Registration of a Motor Vehicle'.

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;
- evidence that a stamp duty determination has been made (i.e. Certificate of Stamp Duty, Document ID or stamped document)
- a completed 'Application for Stamp Duty Concession on the Transfer of a Family Farm' statutory declaration;
- evidence of the market value of the land;
- a copy of the Trust Deed and any Amending Deed(s) (applicable only where either the transferor and/or transferee are trustees);
- evidence that the sole or principal business of at least one shareholder of the company or the natural person who, or whose trustee, is the transferor is (immediately before the conveying document) the business of primary production;
- evidence that each shareholder of the company is a relative of all other shareholders of the company;
- evidence that the land is not less than 0.8 hectares in area;
- evidence, if another business besides the business of primary production is conducted on the land, that the business of primary production is the main business conducted on the land; and
- evidence that a business relationship with respect to the use of the land for the business of primary production existed between the transferor(s) and the transferee(s) (where the transferor and/or transferee is a company, at least one of the shareholders of the company) for at least 12 months immediately before the date of the transfer.

Evidence of the business relationship can be in the form of:

- a previous employment relationship between the parties (regardless of the amount or form of remuneration);
- a share-farming arrangement;
- the provision of assistance in the running of the business;
- a partnership arrangement; or
- any other documentation that evidences the primary production business relationship for the land between the transferor(s) and the transferee(s).

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

- Section 71CC

What stamp duty is payable on this document?

The conveying document is **Exempt** from stamp duty.

You will need to supply to RevenueSA either the consideration or market value of the interest in the land being conveyed as at the date of conveyance **WHICHEVER IS THE GREATER**, assuming that the property is at that date free from encumbrances. This is required for statistical purposes.

Examples

Transfer of Primary Production Land between natural persons

Fred owns a primary production property covering 20 hectares (used wholly or mainly for the business of primary production) on which he operates a viticulture business as his principal business. His two children, Tim and Sally, work full-time on the property with him and have so for at least the immediately preceding 12 months.

Fred wants to transfer this property to his two children as a reward for the services that they have provided him over the last five years.

A Transfer is executed which conveys the property from Fred to Tim and Sally.

As the transaction satisfies the criteria of Section 71CC, the document is self-determined under this document type as **Exempt** from stamp duty.

Transfer of Primary Production Land from a natural person to a trustee for a Family Trust

Meagan owns a 25 hectare vineyard (used wholly or mainly for the business of primary production) in the Barossa Valley on which she conducts her primary production business as her principal business with her husband Dave.

Meagan wants to transfer an interest in this Primary Production Land to her husband, but after receiving financial advice has decided to transfer the land to a family trust for the benefit of herself and her husband Dave.

Meagan has executed a Transfer whereby the land is transferred to Dave Pty Ltd as trustee for the Meagan and Dave Family Trust. This trust has Meagan and Dave as the specified beneficiaries and includes their relatives as potential beneficiaries of the trust. The trust does not include any other persons as potential beneficiaries of the trust.

Evidence of a business relationship for at least the immediately preceding 12 months between Meagan and Dave has been provided.

As the transaction satisfies the criteria of Section 71CC, the document is self-determined under this document type as **Exempt** from stamp duty.

Note: If the Meagan and Dave Family Trust is not limited to natural persons or the relatives of Meagan and Dave, the exemption will not apply.

Transfer of Primary Production Land from a trustee for a family trust to a trustee for a family trust

Daniel and Kate run a cattle farm as their principal business on 500 hectares of land (used wholly or mainly for the business of primary production) which is held in their family trust, the Shank Family Trust. The beneficiaries of the Shank Family Trust are limited to Daniel and 'the relatives of Daniel as the term relative is defined in Section 71CC(5)'.

Daniel and Kate's daughter Charlie has assisted with running the cattle farm for a number of years and draws a wage and/or distribution from the Shank Family Trust.

Daniela and Kate wish to hand control and ownership of the farm to Charlie and her husband. Although Daniel and Kate, as trustees of the Shank Family Trust, could distribute the land to Charlie and her husband as beneficiaries of the trust stamp duty exempt, Charlie and her husband desire to hold the land in their own family trust. Accordingly, a transfer of the land is effected from Daniel and Kate as trustees of the Shank Family Trust to Chas Pty Ltd as trustee for the Chas Family Trust. The beneficiaries of the Chas Family Trust are limited to Charlie and 'the relatives of Charlie as the term relative is defined in Section 71CC(5)'.

Charlie declares that she has an existing 12 month business relationship with her father Daniel in respect of the cattle farm.

As the transaction satisfies the criteria of Section 71CC, the document is self-determined under this document type as **Exempt** from stamp duty.

Transfer of Primary Production Land to a trustee of a superannuation fund

Ross and Mary own 250 hectares of land (used wholly or mainly for the business of primary production) upon which they conduct a dairy farm in partnership as their principal business. Ross and Mary desire to transfer the Primary Production Land to their self- managed superannuation fund, in which both are the only members.

Ross and Mary declare that they have been in a 12 month business relationship arising from the use of the land for primary production. They also advise that Ross' existing use in the land is being transferred to the fund's trustee to be allocated for Mary's benefit, and vice versa.

Membership of the fund is limited to the relatives of Ross and Mary as defined in Section 71CC(5).

As the transaction satisfies the criteria of Section 71CC, the document is self-determined under this document type as **Exempt** from stamp duty.

Transfer of Primary Production Land to the trustee of a unit trust

Fred and Wilma own 150 hectares of land (used wholly or mainly for the business of primary production) upon which they conduct an apple orchard in partnership as their principal business. Fred and Wilma desire to transfer the Primary Production Land to a unit trust fund, in which both are the only unit holders.

Fred and Wilma declare that they have been in a 12 month business relationship arising from the use of the land for primary production. They also advise that Fred's existing use in the land is being transferred to the fund's trustee for Wilma's benefit, and vice versa.

The range of unit holders of the unit trust fund is limited to relatives of Fred and Wilma as defined in Section 71CC(5) of the Act.

As the transaction satisfies the criteria of Section 71CC, the document is self-determined under this document type as **Exempt** from stamp duty.

Transfer of Primary Production Land from natural person to a company

George and Mildred own 50 hectares of land used as an apple orchard which is their principal business. George and Mildred desire to transfer the primary production land to a company in which they will be shareholders together with other shareholders, all of which are relatives of George and Mildred.

George and Mildred declare that they have been in a 12 month business relationship arising from the use of the land for primary production.

The range of shareholders of the company limited to relatives of George and Mildred as defined in Section 71CC(5) of the Act.

As the transaction satisfies the criteria of Section 71CC, the document is self-determined under this document type as **Exempt** from stamp duty.

Version History

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