

Document Type:	Conveyance of Land
Document Name:	Exemptions
Exemption Provision:	Trustee to Trustee

## Introduction

This Document Guide Note refers to a conveyance (transfer) of land from a trustee to a trustee in order to effect the retirement of a trustee and or the appointment of a new trustee.

Section 71(5)(d) provides relief from *ad valorem* stamp duty where there is a conveyance of property from a trustee to a trustee and:

- the document conveys property; and
- the conveyance is not part of a scheme for conferring a benefit, in relation to the trust property, upon the trustee or any other person to the detriment of the beneficial interest of any other person.

In considering whether the conveyance is part of a scheme for conferring a benefit, in relation to the trust property, upon the trustee or any other person to the detriment of the beneficial interests of any person, the beneficial interest of the beneficiaries in the trust, before and after the conveyance, need to be considered. If the beneficial interest of any of the beneficiaries of the trust has changed after the conveyance, then the exemption will not apply.

If the conveyance is part of a transaction where all trust property including all land is being transferred to the same new trustee and the property remains in the same trust, the document can be self-determined on RevenueSA Online provided the above criteria are satisfied.

If the conveyance only relates to some of the trust property, this may fall under trust splitting and the exemption at Section 71(5)(d) may apply. Such transfers must be **submitted to the Commissioner for assessment**. See commentary below on this.

It is irrelevant whether the trustee is a person or a company.

The consideration panel of the document may recite 'Trustee to Trustee' or similar.

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.

## Split Trust

Trust splitting can be described as partitioning, splitting, dividing, or allocating trust properties into two or more parts and having different trustees appointed in respect of the trust property that is now in each separate part. This is generally referred to as creating a split trust or sub-trust. It is considered by RevenueSA that there is only one trust but different trustees in respect of different parts of the trust property. The trustees are governed by the same trust deed.

If you have a transfer of property from a trustee to a trustee pursuant to a trust splitting arrangement as described above, this transfer cannot be self-determined on RevenueSA Online and must be **submitted to the Commissioner for assessment**. Your submission should include full details of the transaction and why you consider the Section 71(5)(d) exemption should apply.

## Cloned Trust

A trust (i.e. the original trust) is cloned when one or more trusts are established with the same terms and beneficiaries as the original trust. A cloned trust will usually have a different name to the original trust. A cloned trust may also have a different trustee and different appointor.

A cloned trust is a separate trust from the original trust. A transfer of property to a cloned trust is liable to ad valorem duty pursuant to Section 71(3)(a)(i). Section 71(5)(d) does not apply to exempt from stamp duty a transfer of property to a cloned trust.

If you have a transfer of land to a cloned trust it should be self-determined under the RevenueSA Online document type:

[Conveyance of Land | Residential Land/Primary Production Land](#)

[Conveyance of Land | Qualifying Land](#)

If the cloned trust has the same trustee as the original trust and the land is intended to be held by the cloned trust and there is no documentation to evidence this, a [Section 71E Statement](#) and [Section 71E Statutory Declaration](#) must be completed and self-determined under the RevenueSA Online document type:

[Conveyance of Land | Residential Land/Primary Production Land](#)

[Conveyance of Land | Qualifying Land](#)

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

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

The document can be in the form of:

- LTO Form T1 - Transfer; or
- any other document that conveys land from a trustee to a trustee.

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

A conveyance of land from a trustee to a trustee is deemed suitable for self-determination under this document type where:

- there is no change to the beneficial interest of the trust property of the beneficiaries;
- the land remains subject to the same trust; and
- the conveyance is not part of a trust splitting or cloning arrangement (as described above).

## 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 copy of the Deed establishing the trust;
- a copy of any Amending/Variation Deeds (if applicable); and
- a copy of the resolution recording the retirement of a trustee and/or the appointment of a new trustee (if applicable).

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

- Section 71(5)(d)
- Schedule 2, Part 2, General Exemption 28

## What stamp duty is payable on this document?

This document is exempt from stamp duty.

## Example

### Conveyance of Land from a Trustee to a Trustee

Ann is the trustee of the Smith Unit Trust. Ann owns farming land in Berri in her capacity as trustee of the trust.

Ann has been advised by her accountant to have a corporate trustee as trustee of the trust, and has set up a company for this purpose.

A Deed of Appointment of New Trustee has been executed had stamp duty determined. The farming land now needs to be transferred to the new trustee.

Ann in her capacity as trustee of the Smith Unit Trust transfers the farming land to the company as trustee of the Smith Unit Trust and has executed a Transfer evidencing this.

There is no change to the beneficial interest of the trust property.

As the requirements of Section 71(5)(d) have been satisfied, the document is self-determined under this document type as **Exempt**.

## Version History

Version No.	Release Date
1	May 2018
2	November 2018
3	July 2019
	Hyperlinks updated – April 2022