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|----------------|--------------------|
| Document Type: | Conveyance of Land |
| Document Name: | Qualifying Land    |

## Introduction

This Document Guide Note explains how stamp duty is calculated on a conveyance of [Qualifying Land](#) on or after 7 December 2015 and Qualifying Land with other property on or after 7 December 2015.

Qualifying Land means land that is being used for any purpose other than:

- land that is taken to be used for residential purposes; and
- land that is taken to be used for primary production.

Stamp duty on the conveyance of [residential land](#) or [primary production land](#) remains unchanged.

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.

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

The document can be in the form of:

- LTO Form T1 – Transfer;
- LTO Form RTC – Application to Deposit a Plan of Division;
- [Section 71E Statement](#); or
- any other document that evidences the conveyance of qualifying land

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

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

- the conveyance has been entered into on or after 7 December 2015; and
- the land has a LUC of either Commercial, Industrial, Vacant Land (other than the [four](#) exceptions), Institutions, Public Utilities, Recreation, or Mining and Quarrying (LUC 8100-8409).

The document can be self-determined under this document type regardless of whether:

- the parties are related or unrelated;
- the conveyance is for consideration or no consideration;
- the conveyance is for consideration and includes other property;
- a full or fractional interest is being conveyed; or
- a portion of land is being conveyed (e.g. RTC).

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

For a conveyance of land with a LUC within the category of residential land or primary production land (or any of the [four](#) specific types of vacant land), refer to the document type:

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

If the conveyance is for multiple titles comprising both qualifying land and land coded as residential or primary production (or any of the [four](#) specific types of vacant land), the conveying document(s) must be **submitted to the Commissioner for assessment** with advice as to the apportionment of the consideration for the qualifying land and for the land coded as residential or primary production (or any of the [four](#) specific types of vacant land).

### 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 contract for sale and purchase of the land (if applicable) together with any Business Sale Agreement, schedule of plant/equipment, depreciation schedule, asset register;
- a copy of the contract for sale and purchase of the land together with the schedule showing the description and consideration for the items of other property;
- a copy of the direction or nomination (if applicable);
- a copy of the Assignment of Interest in the Contract (if applicable);
- a copy of the written statement from the builder stating the value of improvements as at the date of settlement (if applicable);
- a copy of the Certificate of Incorporation (where there is a nominee contract and a company is to be registered on the Certificate of Title); and

- evidence of the market value of the land as at the date of conveyance (if the parties are related, the transaction is not at 'arm's length' or a fractional interest is being conveyed); and
- evidence that a stamp duty determination has been made (i.e. Certificate of Stamp Duty, Document ID or stamped document).

## Land with other property

This Section explains how stamp duty is calculated on a conveyance of Qualifying Land pursuant to a contract for sale and purchase of land which has been entered into on or after 7 December 2015 together with a conveyance of other property where there is a consideration passing between the parties for both the land and the other property.

The contract for the sale and purchase must include a reference that other property is included. Other property can include items listed in the contract for sale and purchase of the property such as:

- Chattels;
- Livestock;
- Plant & equipment;
- Stock;
- Water licence;
- Goodwill; and
- Intellectual property

The contract for sale and purchase of the property may or may not apportion the consideration to the land and to the other property.

Where the contract for sale and purchase of the property does apportion the consideration, refer to Valuer-General valuation and a determination is made on the greater of the land contract consideration or the Valuer-General Market Value valuation. If the Valuer-General Market Value valuation is higher than the total contract consideration, the transfer must be **submitted to the Commissioner for assessment**.

Where the contract for sale and purchase of the property does not apportion the consideration, refer to the Valuer-General valuation and a determination can be made on the Valuer-General valuation. If the Valuer-General Market Value valuation is higher than the contract consideration, the transfer must be **submitted to the Commissioner for assessment**.

A transfer of a water licence includes the transfer of the whole or part of a water allocation of a water licence and is exempt from duty.

You will need to include the consideration for the other property in the specific field in RevenueSA Online. The other property is not liable to stamp duty.

## Examples

### Conveyance of Qualifying Land with Other Property (Chattels)

Jim contracts to sell commercial land to Ann for \$750 000 which consideration includes chattels for \$20 000. Jim is unrelated to Ann and the contract has been negotiated at arm's length through a land agent. This is a *bona fide* arm's length transaction, therefore, pursuant to Section 60A(2), the consideration is accepted as the market value of the land.

The stamp duty is calculated on \$730 000 and the relevant reduction applied. The conveyance of the other property is not required to be determined.

Note: The consideration panel of the Transfer should recite 'Seven Hundred and Thirty Thousand Dollars (\$730 000)' or 'Seven Hundred and Thirty Thousand Dollars (\$730 000) plus Twenty Thousand Dollars (\$20 000) for Other Property'. The consideration panel in the Transfer must not recite 'Seven Hundred and Fifty Thousand Dollars (\$750 000)' as duty will be applied to this consideration.

### Conveyance of Qualifying Land with Chattels, no consideration apportioned.

Fred contracts to sell his warehouse to Barney for \$655 000 which consideration includes various chattels. Fred is unrelated to Barney and the contract has been negotiated at arm's length through the local land agent.

The contract refers to chattels but does not apportion the consideration between the land and the chattels.

A Valuer-General Market Value search shows the value of the land is \$590 000 and the parties accept this value. The stamp duty is calculated on \$590 000 and the relevant reduction applied. The conveyance of the chattels (other property) is not required to be determined.

Note: The consideration panel of the Transfer should recite 'Pursuant to contract dated dd/mm/yyyy'. The consideration panel in the Transfer must not recite 'Six Hundred and Fifty Five Thousand Dollars (\$655 000)' as duty will be applied to this consideration.

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

- Section 15A
- Section 60
- Section 60A
- Section 67
- Section 71(1)
- Section 71E

## What stamp duty is payable on this document?

Stamp duty is charged using the *ad valorem* conveyance rate of stamp duty on either the **consideration** or **market value** of the interest being conveyed as at the date of conveyance, WHICHEVER IS THE GREATER, assuming that the property is at that date free from encumbrances (Section 60A(1)).

If the transfer is for no consideration, stamp duty is calculated on the **market value**.

The stamp duty reduction available on Qualifying Land is:

| Date contracted 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. If no contract has been entered into then the reduction is based on the date of the document.

If the transaction is a *bona fide* arm's length transaction between unrelated parties, then pursuant to Section 60A(2) the consideration may be treated as the market value of the land as at the date of conveyance.

Where a fractional interest or portion of land is conveyed, the parties are related or the transaction is not at 'arm's length', you must obtain evidence of the market value of the land as at the date of conveyance. For example:

- valuation from a suitably qualified valuer (if the valuation is less than the Valuer-General valuation for the land, the conveying document must be **submitted to the Commissioner for assessment** together with a copy of the valuation); or
- evidence of the current Valuer-General's capital value for the land (e.g. a copy of the relevant SAILIS print-out). If you do not accept this value, submit

the conveying document to the Commissioner for assessment with reasons and evidence to support the lower value.

The consideration expressed as being payable, or the value declared if transfer is for no consideration for the land must represent the actual value of the land and will be subject to verification by RevenueSA's Compliance Services Branch.

If the consideration appears lower than the value, the Commissioner may cause a valuation of the land to be made and calculate stamp duty on that value (refer Information Circular No 102 for further information). The Commissioner may pass on the whole or part of the cost of making the valuation to the person(s) liable to pay the duty.

Where land is being conveyed pursuant to a contract for sale and purchase of land and the land has been improved since the contract was signed but prior to settlement, stamp duty is calculated on the value of the land including improvements, whether complete or partially complete, as at the date of the conveyance of the property to the purchaser, which is usually the date of settlement. Refer to [Stamp Duty Document Guide \(Opinions\)](#) and [Revenue Ruling SDA008](#) for an explanation for this type of transaction. Evidence of value of the improvements, preferably a written statement from the builder stating the value of the improvements as at the date of the conveyance, must be kept for audit purposes.

## Section 67

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

Refer to the [Stamp Duty Document Guide \(Section 67\)](#) for further information.

## GST

If a transaction includes an amount payable for GST, duty is payable on the GST inclusive amount pursuant to Section 15A. The GST must be included in the consideration expressed in the conveying document pursuant to Section 11 of the *Taxation Administration Act 1996*. For example, where the consideration for a sale of land is \$100 000 plus GST of \$10 000, the consideration panel in the conveying document can recite either:

- \$100 000 plus GST of \$10 000; or
- \$110 000.

## Conveyance of Land pursuant to a Nominee Contract

Where a sale contract is executed 'and/or nominee', a Letter of Agency is not required.

Any direction to the vendor as to the true transferee at settlement should be recorded in writing and kept on the relevant RevenueSA Online file for audit purposes. Where this direction is provided by the purchaser under the sale contract, this is often referred to as a 'Nomination' or 'Letter of Nomination'.

Refer to [Revenue Ruling SDA009](#) for further information.

## Conveyance of Land pursuant to an Assignment of Interest in a Contract

More than one assignment can arise out of a contract, or the same interest can be assigned more than once.

### Examples

#### Conveyance of Land pursuant to an Assignment of Interest in a Contract

Ann contracts to sell ten separately titled allotments to Bob. Bob then assigns each allotment to ten separate unrelated purchasers.

Stamp duty is payable on **each** assignment and on **each** Transfer or other conveying document. The stamp duty payable on each assignment is calculated on the greater of the consideration paid for the assignment or the full market value of the interest assigned. The total of the considerations on the ten conveying documents should be equal to the contract consideration. Section 67 would **not** be applied to these documents if the Commissioner can be satisfied that each allotment will be used separately and independently of the others, refer to Section 67(2)(a) and the [Stamp Duty Document Guide \(Section 67\)](#) for further information.

Refer to [Revenue Ruling SDA009](#) for further information.

## Promoter Company

'Promoters' means the initial subscribers or office bearers of the newly formed company.

A contract may be entered into between a vendor and a promoter of a company and the subsequent conveyance is between the vendor and the newly incorporated company.

An assignment of an interest is **not** required if the purchasers named in the contract are the promoters of the company, which at the time that the contract is entered into is in the process of incorporation, and that company subsequently takes title.

## Purchase Price Amendment

A contract may include as a special condition the right for the parties to amend the purchase price in certain circumstances, for example, early settlement or land subject to survey. The stamp duty is calculated on the amended consideration. If the purchaser agrees to pay the agents sale commission, this is added to the consideration for stamp duty purposes.

## Examples

### Conveyance of Qualifying Land – Full Interest – Arm’s Length

Jim sells Qualifying land to Ann for \$750 000. Jim is unrelated to Ann and the contract has been negotiated at arm’s length through a land agent.

This is a *bona fide* arm’s length transaction, therefore, pursuant to Section 60A(2), the consideration is accepted as the market value of the land. The stamp duty is calculated on \$750 000 and the relevant reduction applied.

### Conveyance of Qualifying Land – Full Interest – Arm’s Length

Jim gifts Qualifying Land to his sister Ann with a value of \$750 000

A suitably qualified valuer has advised that the market value of the land is \$750 000.

The value is accepted as the market value of the land.

The stamp duty is calculated on \$750 000 and the relevant reduction applied.

### Conveyance of Qualifying Land – Fractional Interest – Related Parties

Bob and Helen (vendors) sell a half interest in Qualifying Land to Kate and Tim (purchasers) for \$600 000 via a contract for the sale and purchase of the land. The vendors are related to the purchasers. A suitably qualified valuer has advised that the market value of the interest being transferred is \$650 000.

As the market value is **greater** than the consideration, stamp duty is calculated on the market value of \$650 000 and the relevant reduction applied.

### Conveyance of Qualifying Land – Fractional Interest – Related Parties

Bob and Helen wish to convey a half interest in Qualifying Land to Kate and Tim. The conveyance is pursuant to a Deed of Gift.



The market value of the interest being conveyed is \$650 000. The stamp duty is calculated on the market value of \$650 000 and the relevant reduction applied.

## Conveyance of Qualifying Land and Residential Land – cannot be self-determined on RevenueSA Online

Bob and Helen convey their interest in two Certificate of Titles on one Transfer. One Certificate of Title has a Land Use Code of Residential, the other Certificate of Title has a Land Use Code of Commercial (which is qualifying land).

The total consideration in the contact is \$2 200 000 and this is apportioned \$1 000 000 for the Qualifying Land and \$1 200 000 for the residential land.

Pursuant to Section 67(5), duty is calculated as follows:

|                                |                     |
|--------------------------------|---------------------|
| Residential Land consideration | \$1 200 000         |
| Qualifying Land consideration  | <u>\$1 000 000</u>  |
| Total consideration            | \$2 200 000         |
|                                | (duty is \$114 830) |

Section 67(5) duty calculation for residential land is:

$$\frac{1\,200\,000}{2\,200\,000} \times \frac{114\,830}{1} = \$62\,634.55$$

Duty on the residential consideration is \$62 634.55.

Section 67(5) duty calculation for qualifying land is:

$$\frac{1\,000\,000}{2\,200\,000} \times \frac{114\,830}{1} = \$52\,195.45$$

The relevant Stamp Duty is applied:

| Date of Contract               | Reduction Amount   | Stamp Duty Payable |
|--------------------------------|--------------------|--------------------|
| Before 7 December 2015         | Nil                | \$52 195.45        |
| 7 December 2015 – 30 June 2017 | \$17 398.48 (1/3)  | \$34 796.67        |
| 1 July 2017 – 30 June 2018     | \$34 796.67 (2/3)  | \$17 398.48        |
| From 1 July 2018               | \$52 195.45 (full) | nil                |

This document will need to be **submitted to the Commissioner for assessment** – cannot be self-determined on RevenueSA Online.

## Conveyance of Qualifying Land – land has been improved since contract signed

Fred sells Qualifying Land to Barney for \$600 000 via a contract for the sale and purchase of land dated 15 July 2016. The land is improved between the date of the contract and the date of the conveyance by building a concrete driveway, double garage and electronic gates and fencing. The builder has provided a written advice that the improvements have a value of \$50 000. As the market value of the land as at the conveyance date of 15 July 2017 is greater than the contract price, stamp duty is calculated on the market value of \$650 000 (i.e. \$29 580 stamp duty) and a one third stamp duty reduction of \$9860 applies such that the duty payable is \$19 720.

## Version History

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