

Document Type:	Conveyance of Land
Document Name:	Transfer of Lease – Qualifying Land

## Introduction

This Document Guide Note explains how stamp duty is calculated on the conveyance of a lessee's interest in a lease of [Qualifying Land](#) pursuant to a contract for sale and purchase of the lease or other property which includes the lease interest and which has been entered into on or after 7 December 2015, whether the lease is registered or unregistered.

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 purposes.

It does **not** apply to a conveyance of a lessee's interest in a Crown Lease by way of sale which is self-determined under the document type:

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

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.

Some examples of types of transactions that would be self-determined under this document type are:

- a conveyance of a lessee's interest in a lease of Qualifying Land where there is no sale of business involved; or
- a conveyance of a lessee's interest in a lease of Qualifying Land pursuant to a transfer of business.

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

The document can be in the form of:

- LTO Form T3 – Transfer of Lease, Mortgage or Encumbrance;
- [Section 71E Statement](#); or
- an Agreement or Deed that conveys the lessee's interest in a lease.

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 lessee's interest in a lease is deemed **suitable** for self-determination under this document type where:

- there is consideration or no consideration passing between the parties; and
- the document conveys the lessee's interest in the lease and other property (if any) and no other document exists.

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

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

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

If the transfer of a lessee's interest in a lease of land relates to residential land or Primary Production Land, refer to the document type:

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

## 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);
- evidence of the market value of the property as at the date of conveyance – where the parties are related or a fractional interest is being conveyed; and
- a copy of the contract for sale and purchase (if applicable).

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

- Section 15A
- Section 60
- 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 the **consideration** or **market value** of the lease interest being conveyed as at the date of the conveyance, WHICHEVER IS THE GREATER, assuming that the land 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**.

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

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 lease interest as at the date of the 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 value of 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.

Pursuant to Section 71(1), the value of the lease interest conveyed must be declared in the conveying document and this declared value will be subject to verification by RevenueSA's Compliance Services Branch. The conveyance of a lessee's interest of the lease may have little value due to the obligations assumed by the transferee, however, to constitute a valid contractual assignment, some valuable consideration must be involved. The Commissioner will accept for stamp duty purposes that a conveyance of a lease interest has at least a nominal value of \$1 giving a stamp duty liability of \$1.

If the declared value appears low, the Commissioner may cause a valuation of the lease interest to be made, and calculate stamp duty on that value.

The relevant stamp duty reduction is applied:

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 earlier of the date of the Transfer of Lease of the Qualifying Land or other document relevant to the transfer of lease, e.g., Business Sale Agreement.

## 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 the conveyance of a lessee's interest in a lease 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 Lease Interest 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. For example, Ann contracts to sell 10 separately titled allotments to Bob. Bob then assigns each allotment to 10 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 10 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.

## Examples

### Transfer of a Lease Interest

Tom has decided to relocate his business. He has sold the lease of his business premises to Sally for \$500 (there is **no** sale of business). The business premise has a land use code of Commercial.

The Transfer of Lease is chargeable with the *ad valorem* conveyance rate of stamp duty on the consideration of \$500, and duty is calculated based on the relevant reduction period.

### Transfer of Lease Interest Pursuant to a Sale of Business

Fred has sold his business to Barney. A condition of the sale is that Fred will transfer his interest in the lease of the business premise to Barney. The Business Sale Agreement apportions part of the sale price, namely \$10 000, for the transfer of Lease. The business premise has a land use code of Commercial.

The Transfer of Lease is chargeable with the *ad valorem* conveyance rate of stamp duty on the consideration of \$10 000 and duty is calculated based on the relevant reduction period as per the date of the Business Sale Agreement.

### Transfer of a Lease Interest

Tom has decided to relocate his business. He has given the lease of his business premises to Sally for no consideration (there is **no** sale of business). The business premise has a land use code of Commercial. The lease interest has been valued at \$500 and this has been declared in the Transfer of Lease document.

The Transfer of Lease is chargeable with the *ad valorem* conveyance rate of stamp duty on the value of \$500, and duty is calculated based on the relevant reduction period.

## Transfer of Lease Interest Pursuant to a Sale of Business

Fred has sold his business to Barney. A condition of the sale is that Fred will transfer his interest in the lease of the business premise to Barney. The Business Sale Agreement does not apportion part of the sale price to the transfer of Lease. The business premise has a land use code of Commercial.

The lease interest has been valued at \$1000 and this has been declared in the Transfer of Lease document.

The Transfer of Lease is chargeable with the *ad valorem* conveyance rate of stamp duty on the value of \$1000 and duty is calculated based on the relevant reduction period as per the date of the Business Sale Agreement.

### Version History

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