

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

## Introduction

This Document Guide Note explains how stamp duty is calculated on the conveyance for consideration of a lessee's interest in a lease of [residential land](#) or [primary production land](#), whether the lease is registered or unregistered.

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](#)

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

- conveyance of a shack site lease; and
- conveyance of a lease as part of a company title scheme.

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.

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.

## What documents can I self-determined 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
- 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 of residential land or primary production land (or any of the [four](#) specific types of vacant land) 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 document conveys the lessor's interest in the lease pursuant to a sale of residential land or primary production land, refer to the document type:

[Adjudged | Transfer of Lease – Pursuant to Conveyance of 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;
- 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 60A(2)
- 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.

## **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 – Residential & Primary Production Land

Dave sells his registered lease shack site and improvements to Lisa for \$140 000. The parties are unrelated and the contract has been negotiated through a land agent.

The parties have executed an LTO Form T3 – Transfer of Lease, Mortgage or Encumbrance. 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 \$140 000 (i.e. \$4430 stamp duty).

### Transfer of a Lease Interest – Residential & Primary Production Land

Dave gifts his registered leasehold shack site and improvements to Lisa. The parties are related family members.

The Valuer-General valuation for the property is \$140 000.

The parties have executed an LTO Form T3 – Transfer of Lease, Mortgage or Encumbrance. The Commissioner will accept this value and assess stamp duty on this document using the *ad valorem* conveyance rate of stamp duty (i.e. \$4430 stamp duty).

## Version History

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