RevenueSA
DEPARTMENT OF TREASURY AND FINANCE

Information Circular No: 99

Stamp Duties Act 1923

Stamp Duty on Business Transactions

Issued 10 May 2017

As a result of amendments to the *Stamp Duties Act 1923* as part of the 2015-16 and 2016-17 State Budgets, stamp duty is no longer payable on a conveyance of property, apart from a conveyance of land.

"Land" is defined in Sections 2(4) to 2(11), and includes:

- interests in land (including the interest of a tenant under a lease of land); and
- fixtures, and items fixed to land (even if not fixtures at law) (together referred to as "Fixed Items").

The purpose of this Information Circular is to clarify that sale of business transactions that include a transfer of Land (as defined), are required to be stamped online via RevNet or lodged with RevenueSA for an assessment of duty. Instruments that can be stamped via RevNet, as discussed below, can alternatively be lodged with RevenueSA for an assessment of duty.

Section and Part references in this Information Circular relate to the *Stamp Duties Act 1923*, unless otherwise stated.

Stamp Duty on Business Transactions

An instrument in respect of a sale of business transaction that relates only to non-dutiable property, will not be required to be stamped or submitted to RevenueSA for assessment of duty. Examples of non-dutiable property include:

- items of plant and equipment that are not Fixed Items;
- goodwill;
- intellectual property;
- receivables; and
- transfers of statutory leases and licences.

However, duty remains payable on any transfer of Land (as defined) that occurs as part of a sale of a business transaction.

Example 1
Sale of Business with no Land (as defined)

Pursuant to a Business Sale Agreement dated 1 July 2016, XYZ Pty Ltd (as vendor) sells their business known as 'The Hot Dog Co.' to HDC Pty Ltd for consideration of $385 000, with no Land (as defined) being transferred as part of the transaction.

The Business Sale Agreement is not liable to duty.

Example 2
Sale of Business with Transfer of Land & Fixed Items

Pursuant to a Business Sale Agreement dated 15 July 2016, MNO Pty Ltd purchased a country hotel business and land from Country Hotels Pty Ltd. Part of the purchase price for the business includes an amount of $145 000 for plant and equipment. After reviewing the Plant and Equipment schedule, it is determined that plant and equipment includes Fixed Items with a value of $125 000. The remaining plant and equipment valued at $20 000, consists of chairs, tables, pool tables and cash registers. The land is sold for $300 000.

Duty will be calculated by aggregating the amounts paid for the transfer of land ($300 000) and the Fixed Items ($125 000) for a total value of $425 000, resulting in duty of $17 580.

However, as the transactions in this example occurred after 7 December 2015 and involve non-residential, non-primary production real property, both the transfer of land and the transfer of the Fixed Items qualify for a one-third duty reduction.

Duty will therefore be calculated as follows:

$$\$17\,580 - \$5\,860^{*} = \$11\,720$$

*being 1/3 of $17 580

Duty is stamped on and apportioned between the Memorandum of Transfer

$$\frac{\$300\,000}{\$425\,000} \times 11\,720 = \$8\,272.94$$

and the Business Sale Agreement

$$\frac{\$125\,000}{\$425\,000} \times 11\,720 = \$3\,447.06$$

Both instruments are stamped via RevNet pursuant to the RevNet document type: **Conveyance of Land – For Consideration – Qualifying Land.**

Example 3
Sale of Business with a Transfer of Lease & Fixed Items

Pursuant to a Business Sale Agreement dated 20 June 2016, Max's Steel Pty Ltd purchases a steel making business from FL Pty Ltd for consideration of $4 500 000. A condition of the sale requires FL Pty Ltd to transfer its interest in the lease of the business premises.

The Business Sale Agreement apportions $2 500 000 of the purchase price to plant and equipment. After reviewing the asset register, it is determined that the plant and equipment includes Fixed Items (such as a furnaces and continuous casting machines) valued at $1 500 000. The remaining plant and equipment valued at $1 000 000 consists of loose tools, furniture, trucks and vehicles.

Duty payable on the Fixed Items is $76 330.

However, as the transactions in this example occurred after 7 December 2015 and involve non-residential, non-primary production real property, the transfer of the Fixed Items qualifies for a one-third duty reduction.

Duty will therefore be calculated as follows:

$76 330 - $25 443.33* = $50 886.67

*being 1/3 of $76 330

Duty is stamped on the Business Sale Agreement via RevNet pursuant to the RevNet document type: **Conveyance of Land – For Consideration – Qualifying Land.**

While it has been submitted that a leasehold interest often has no value, the Commissioner is of the view that a leasehold interest conveyed pursuant to a Transfer of Lease constitutes a conveyance of Land (as defined), for which at least a nominal value is applicable. However, this can be stamped with nominal duty via RevNet pursuant to the RevNet document type: **Conveyance of Land - For No Consideration - Transfer of Lease - Qualifying Land**

Where a Deed of Assignment of Lease is executed together with a Transfer of Lease (which has been stamped via RevNet with nominal duty as set out above), the Deed of Assignment of Lease is to be adjudged stamped via RevNet pursuant to:

Adjudged – Deed of Assignment of Lease – Pursuant to Transfer of Lease (please note that the Guide Note is to follow)

Where a Deed of Assignment of Lease is executed without a Transfer of Lease, the Deed of Assignment of Lease is stamped with nominal duty via RevNet pursuant to the RevNet document type: **Conveyance of Land - For No Consideration - Transfer of Lease - Qualifying Land**

Transactions undertaken without a written document

The above examples are based on there being documents evidencing the transactions.

If there is a change in the ownership of a business or an interest in a partnership that includes an interest in Land (as defined) without a written document, a **Section 71E Statement** must be completed. The Section 71E Statement becomes the dutiable document.

Transitional Arrangements

Transactions occurring between 18 June 2015 and 30 June 2016

For transactions that occurred between 18 June 2015 and 30 June 2016, duty was also payable on prescribed goods.

Prescribed goods was defined to mean goods the subject of an arrangement that includes a dutiable land transaction such as a transfer of freehold land or a lease and where those goods have a significant connection with the land.

The *Stamp Duties (Budget 2016) Amendment Act 2016* removed, with effect from 1 July 2016, duty on prescribed goods.

Unstamped Documents

If taxpayers or their advisers have not stamped the appropriate instrument (for example, Business Sale Agreements or Section 71E Statements) in respect of transactions entered into post 18 June 2015 relating to businesses that include interests in land (for example, leasehold interests) or Fixed Items (and prior to 30 June 2016, prescribed goods) they should do so within two (2) months of the date of this Information Circular. Any instrument not stamped during this period in respect of a transaction entered into post 18 June 2015 and detected thereafter will attract interest and penalty tax at the rates prescribed in the *Taxation Administration Act 1996*.

Graeme Jackson
COMMISSIONER OF STATE TAXATION

10 May 2017

Further Information

Further information can be obtained from RevenueSA.

Website	www.revenuesa.sa.gov.au
Email	stamps@sa.gov.au
Telephone	(08) 8226 3750