

Revenue Ruling

Stamp Duties Act 1923

SDA009

CONVEYANCE BY DIRECTION

Preamble

In a majority of situations involving the sale of land, the transferee named in the Memorandum of Transfer (“Transfer”) is the same person named as the purchaser in a contract for the sale of that land (“Contract”). In such cases, duty is only imposed on the Transfer.

However, where the purchaser and transferee are not the same, it has previously been RevenueSA’s practice to require the production of certain further documentation to explain the difference.

RevenueSA has determined to amend the following practices as explained in this Ruling.

Discussion

Letter of agency

In cases where a Contract was executed “and/or nominee” and the transferee named in the Transfer was not the purchaser named in the Contract, a letter of agency dated prior to the Contract, which authorised a person or entity to act on behalf of the transferee in order to enter into the Contract on their behalf (“Letter of Agency”), was previously required. In such cases, duty was only imposed on the Transfer.

Assignment

In cases where the purchaser and transferee were not the same, and:

- ▶ the Contract was not executed by the purchaser “and/or nominee”;
- ▶ no Letter of Agency predating the Contract existed; or
- ▶ the Letter of Agency post-dated the Contract;

an assignment, which assigns the purchaser’s interest in the Contract to the transferee (“Assignment”), was previously required.

In such cases, duty was charged on both (i) the Assignment, calculated on the greater of the consideration paid for the Assignment or the full market value of the interest assigned and (ii) the Transfer, on the full market value of the land conveyed. In the majority of situations, the amount assessed on the Assignment would be equal to the deposit paid by the purchaser under the Contract, unless the market value of the land had increased since the date of the Contract.

Ruling

RevenueSA has amended these practices and will no longer require production of a Letter of Agency or an Assignment in the above circumstances.

RevenueSA also acknowledges that the purchaser under a Contract has a common law right to direct the vendor to transfer the land at settlement to any person or entity the purchaser desires. This common law right exists irrespective of whether the purchaser has executed the Contract “and/or nominee” or not.

However, where an Assignment is still executed (e.g. where a transferee requests an Assignment of the purchaser’s contractual interest to them), duty will continue to be payable on the Assignment, calculated on the greater of the consideration paid for the Assignment or the full market value of the interest assigned. In the majority of situations, the amount assessed on the Assignment will be equal to the deposit paid by the purchaser under the Contract, unless the market value of the land has increased since the date of the Contract. In addition, duty is also payable on the Transfer on the full market value of the land conveyed.

Section 68 of the *Stamp Duties Act 1923*

This Ruling does not change the manner in which Section 68 of the *Stamp Duties Act 1923* (the “Act”) will be applied by RevenueSA.

In this regard, where there is an Assignment of the Contract for consideration, whether for the deposit alone or including a premium, and the transfer is in favour of the assignee, Section 68 of the Act will not apply, as has been the practice to date (though, as discussed above, duty is payable on the Assignment). Further, where there is no Assignment of the Contract, any reimbursement of the deposit by the named transferee to the contracting purchaser (whether on behalf of the transferee or otherwise) will not be considered to constitute a further sale for the purposes of Section 68 of the Act provided it is the only amount reimbursed.

However, notwithstanding the above common law right, where there is a further sale of property to a subpurchaser that falls within any of Subsections 68(3), (4) or (5) of the Act, duty will be payable as follows.

Subsection 68(3) of the Act provides that the contracted resale of a property, prior to its conveyance to an original purchaser, to any other person other than the original purchaser, will be chargeable with duty as:

- ▶ a conveyance to the original purchaser on the consideration for the sale; and
- ▶ a conveyance by the original purchaser to the subpurchaser on the consideration for the sale.

Revenue Rulings do not have the force of law.

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Example 1

On 1 January 2014, Pam contracts to buy a property from Fred for \$210 000. Settlement is due to occur on 1 April 2014. On 1 February 2014, Pam further contracts to sell the property to Megan for \$240 000 consideration. At settlement on 1 April 2014, Pam directs Fred to transfer the property directly to Megan.

In accordance with Section 68(3) of the Act which directs that two assessments of duty be made on the single instrument of transfer from Fred to Megan, the conveyance is charged with duty as:

- ▶ a conveyance for the consideration for the sale to the original purchaser, Pam, of \$210 000; and
- ▶ separately, a conveyance for the consideration for the sale by the original purchaser, Pam, to the subpurchaser, Megan, of \$240 000;

in the same manner as if the considerations were specified in separate instruments.

Subsection 68(4) of the Act provides that the contracted resale of the whole or any part or parts of a property, prior to its conveyance to an original purchaser, to any other person(s) other than the original purchaser, will be chargeable with duty as:

- ▶ a conveyance to the original purchaser on the consideration for the sale; and
- ▶ a conveyance by the original purchaser to the subpurchaser(s) on the consideration for the further sale(s).

The consideration for the sale to the original purchaser in respect of each part or parcel shall, for the purposes of this subsection, be ascertained by determining the ratio which the value of the part or parcel in question bears to the value of the whole property.

Example 2

On 1 January 2014, Pam contracts to buy a property from Fred for \$210 000. Settlement is due to occur on 1 April 2014. The property consists of three subsisting lots.

On 1 April 2014, Pam further contracts to sell by separate contracts a single lot to each of Tom, Dom and Harry for \$100 000 respectively (the contracted amounts totalling \$300 000). Each lot is of equal value.

At settlement on 1 April 2014, Pam directs Fred to transfer one of the lots to each of Tom, Dom and Harry.

In accordance with Section 68(4) of the Act, which directs that two assessments of duty be made on each of the instruments of transfer from Fred to Tom, Dom and Harry, the conveyance of each lot to Tom, Dom and Harry will be assessed on the respective consideration paid by each of them and one third of the purchase price payable under the contract between Pam and Fred. That is duty on \$70 000 and \$100 000 will be assessed on each transfer.

It is to be noted that Section 67 of the Act, which empowers the Commissioner of State Taxation, in determining the duty chargeable in certain instances, to aggregate the sum of amounts on multiple instruments that would otherwise be assessed separately at lower marginal rates, may apply depending on the particular circumstances of a given matter.

Subsection 68(5) of the Act provides that duty is chargeable on:

- ▶ the conveyance to a subpurchaser of the interest of the person selling to them on the consideration moving from the subpurchaser; and
- ▶ the subsequent conveyance of the property by the original seller to the subpurchaser on the consideration for the sale to the original purchaser.

Further Information

Further information can be obtained from RevenueSA.

Location	RevenueSA State Administration Centre 200 Victoria Square East ADELAIDE SA 5000
Postal	Commissioner of State Taxation RevenueSA GPO Box 1353 ADELAIDE SA 5001
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RevNet Participants can refer to the RevNet Guide Notes for further information and obligations if self-stamping a document on RevNet.

History

This Revenue Ruling is effective from 16 January 2015.

This is the first Revenue Ruling issued on this topic.

Tim Smith
A/COMMISSIONER OF STATE TAXATION

16 January 2015