

COMMISSIONER'S GUIDELINE

CG-SD-003:

Stamp duty exemption for conveyances of 'family farming property'

Guideline History

Version	Issued	Dates of effect	
		From:	To:
1	3 May 2005	3 May 2005	30 June 2006
2	29 June 2006	1 July 2006	31 December 2007
3	2 January 2008	1 January 2008	Current

Purpose

This Guideline explains how the 'family farming property' stamp duty exemption provided by section 87 of the *Stamp Duty Act* ('the Act') operates and the procedure for claiming the exemption.

Policy

The intention of the family farming property exemption is to provide an incentive to encourage younger generations to continue to work the family farm and to increase the use of more modern and productive farming techniques. The exemption is limited to primary production businesses due to the associated significant capital costs and relatively low returns.

Exemption

The Act provides an exemption from duty on a conveyance of **farming property** where it is in accordance with section 87 of the Act.

Farming property

Farming property is defined in the Act as property used solely or principally for **farming purposes** and includes an interest or estate in farming property.

Farming purposes means the business of primary production or a prescribed purpose. Currently, no other purposes are prescribed as farming purposes. Primary production is defined to mean:

- 1) the growing or cultivation of trees, crops or other vegetation (including fungi) for sale or for sale of their produce; or

- 2) the breeding, rearing or maintenance of living creatures for sale as food or for the production of skins, shells or bodily produce for sale.¹

For the purposes of the exemption, the property is to be used **solely or principally** for the business of primary production. Carrying on a business connotes conducting a commercial enterprise as a going concern, systematically and regularly, with a view to profit. Implicit in this idea are the features of continuity and system and the organisation of activities in a business-like manner, the keeping of appropriate books and records and having both a sufficient volume of operations and amount of capital employed.

The exemption does not apply to properties that are primarily used as a residence, even where some of the property is given over to a hobby farm or other form of 'primary production' activity that is not conducted as a business.

Where it is used solely or primarily for the business of primary production, farming property can include, for example, land or a lease of land (such as a pastoral lease), including fixtures on that land (such as sheds or a farmstead), statutory licences (such as an aquaculture licence) and plant and equipment.

Exempt conveyances

The stamp duty exemption applies where farming property is conveyed (which may be by way of gift or sale) for the main purpose of passing, or facilitating the passing, of a farming property, or the benefit of a farming property, from one generation of a family to a later generation or between members of the same generation.²

Furthermore, the conveyor and conveyee, or shareholders in the case of a company or beneficiaries in the case of a trustee, must be members of the same **family** as set out below.³

- 1) The conveyor must be:
 - a. a natural person who does not hold the property as trustee;
 - b. a **family company** that does not hold the property as trustee (the 'conveyor company'); or
 - c. the trustee of a **family trust** (the 'conveyor trust').
- 2) The conveyee must be:
 - a. a natural person who will not hold the property as trustee, if that person is:
 - (i) a member of the conveyor's family;
 - (ii) a member of the same family as the shareholders of the conveyor company; or

¹ Refer to section 4(1) of the Act for these definitions.

² Section 87(1)(a) of the Act.

³ Sections 87(2), (3) and (4) of the Act.

- (iii) a member of the family for which the conveyer trust is established;
- b. a family company that will not hold the property as trustee (the 'conveyee company') if:
 - (i) all of the shareholders of the conveyee company are:
 - A. members of the conveyor's family;
 - B. members of the same family as the shareholders of the conveyor company; or
 - C. members of the same family as the beneficiaries of the conveyor trust; and
 - (ii) no shareholder of the conveyee company holds or will hold any shares in that company as trustee;
- c. a person who will hold the property as trustee if:
 - (i) all of the beneficiaries of the trust are:
 - A. members of the conveyor's family;
 - B. members of the same family as the shareholders of the conveyor company; or
 - C. members of the same family as the beneficiaries of the conveyor trust; and
 - (ii) the trust deed includes provisions, that cannot be altered, specifying that only members of the relevant family may be beneficiaries of the trust and no beneficiary may be the trustee of another trust.

Other conditions of the exemption

In addition to the above conditions being satisfied, the exemption will not apply in the following circumstances:⁴

- 1) The Commissioner of Territory Revenue is satisfied that the conveyance arises from a scheme with the principal purpose of taking advantage of the benefit of the exemption from stamp duty.

That is, for the exemption to apply the Commissioner must be satisfied that the transaction is within the policy intention of the exemption, that being for the purpose of passing the farm on to a spouse, sibling, spouse of a sibling or the 'younger generation' of a family, not for other purposes, such as restructuring the commercial vehicles that hold primary production property or packaging such property for subsequent sale to persons who are not family members.
- 2) The person to whom the farming property is conveyed does not intend to use that farming property solely or principally for farming purposes.
- 3) The conveyance also conveys property that is not farming property.

⁴ Section 87(5) of the Act.
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That is, if other (non-farming) property is to be conveyed between the same parties, a separate instrument should be executed and any duty payable in respect of that instrument should be paid.

- 4) Any conditions imposed in respect of the conveyance by the Commissioner are not complied with.
- 5) The farming property (or part of the farming property) was the subject of a conveyance within the previous five years that received the 'family farming property' exemption.

Subsequent conveyances of farming property

Where an instrument that conveys farming property is exempt under section 87 of the Act, the exemption will not apply in respect of a conveyance of the same farming property or a part of that property within five years after the date of execution of that instrument.

Definitions

Family

Two or more persons are members of the same family where they are connected by **family relationships**.

Family relationship

Two persons are joined by a family relationship where:

- 1) they are spouses (which includes de facto partners);
- 2) one is a child (including an adopted child) or remoter lineal descendant of the other person;
- 3) one is a child or remoter lineal descendant of the other person's spouse;
- 4) one is a brother or sister (including step-brother or step-sister) of the other person;
- 5) one is the child or remoter lineal descendant of a brother or sister (including step brother or step-sister) of the other person; or
- 6) one is the spouse of a person who has a family relationship referred to in paragraphs (2) to (5) with the other person.⁵

Family trust

A family trust is a trust (whether a fixed trust, unit trust or discretionary trust) established to benefit the members of a particular family and in which only members

⁵ Section 4(1) (definitions of "family", "family relationship", "brother / sister", "spouse") of the Act.
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of that family may be beneficiaries (including unit holders of a unit trust or objects of a discretionary trust).⁶

Family company

A family company is a company of which all shareholders are members of the same family.⁷

Procedure for claiming the exemption

Persons who consider they meet the criteria for the exemption may apply by completing the details on the appropriate form (F-SD-005). The completed form, together with the instruments conveying the farming property should be lodged with the Commissioner for stamping within 60 days of the instruments being first executed.

See Commissioner's Guideline CG-SD-001: *Document lodgement and payment periods* for more information on the lodgement timeframes.⁸

If a person has paid duty on an instrument that is exempt under section 87 of the Act, a refund may be obtained if application for reassessment is made within five years after the date the instrument was assessed.⁹

Acquisitions of interests in land-holding companies entitled to farming property by family members, family companies or family trusts

The land-holding company provisions (Part 3, Division 8A of the Act) impose duty on relevant acquisitions¹⁰ in companies and unit trust schemes that are 'land-holding corporations' (that is, they are entitled to land in the Northern Territory with an unencumbered value of \$500 000 or more).¹¹

Land that is farming property is not included as land of the land-holding corporation for the purposes of assessing duty under the land-holding company provisions only if the relevant acquisition occurs by virtue of a transaction that would be exempt in accordance with section 87 of the Act if it was a conveyance of the farming land.¹²

For example, if the relevant acquisition results from the purchase of shares in a company, the farming land is not included for the purposes of the land-holding company provisions only if a conveyance of farming land from the conveyor of the shares to the conveyee of the shares would have been exempt under section 87 of the Act.

⁶ Section 4(1) (definition of "family trust") of the Act.

⁷ Section 4(1) (definition of "family company") of the Act.

⁸ Section 9 of the Act.

⁹ Section 21 of the *Taxation Administration Act*.

¹⁰ Section 56P of the Act.

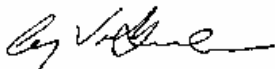
¹¹ Section 56N of the Act.

¹² Section 56C(9) of the Act.

Commissioner's Guideline CG-GEN-001, which sets out information on the revenue publication system, is incorporated into and is to be read as one with this Guideline. All Circulars and Guidelines are available from Territory Revenue Offices website.

Date of effect

This version of the Guideline takes effect from 1 January 2008.



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