

Exemption from stamp duty on conveyance of family farm

IMPORTANT:

- Before completing the application, please read the Guidance Notes carefully.
- All sections must be completed and where indicated, supporting information provided, otherwise the application will not be processed.

SECTION 1 DETAILS OF PARTIES TO THE CONVEYANCE

Conveyor(s):	<input type="text"/>
Name of Trust (if applicable):	<input type="text"/>
Conveyee(s):	<input type="text"/>
Name of Trust (if applicable):	<input type="text"/>

SECTION 2 RELATIONSHIP OF PARTIES

2.1 - Conveyor(s)

Is each of the **conveyors** one of the following:

- (a) a **natural person** who does not hold the property as the trustee of a trust? Yes No
- (b) a **company** who does not hold the property as the trustee of a trust **all** of the shareholders of which are natural persons? Yes No
- (c) a person who holds the property as the **trustee of a trust** whether a fixed trust, unit trust or discretionary trust **all** of the beneficiaries of which (including unit holders of a unit trust or objects of a discretionary trust) are natural persons? Yes No

If you answered **YES to (a)**, complete question 2.2.

If you answered **YES to (b)**, complete question 2.3.

If you answered **YES to (c)**, complete question 2.4.

2.2 - Conveyees where conveyor is a natural person

Is each of the **conveyees** one of the following:

- (a) a **natural person** who will not hold the property as the trustee who is a member of the conveyor's family? Yes No
- (b) a **company** that will not hold the property as the trustee of a trust, where **all** of the shareholders of the company are natural persons that do not and will not hold the shares in the company as the trustee of a trust and are **all** are member's of the conveyor's family? Yes No
- (c) a person who will hold the property as the **trustee of a trust**: Yes No
- (i) where **all** of the beneficiaries of the trust are a member's of the conveyor's family; and
- (ii) the trust deed includes a provision, that cannot be altered, specifying that only persons that are a member's of the conveyor's family may be beneficiaries of the trust and no beneficiary may be the trustee of another trust?

SUPPORTING INFORMATION

If you answered **NO** to all of the above in respect of **any** conveyee, the transaction is not eligible for the exemption

If you answered **YES to (a)**, attach a schedule identifying the relationship of the conveyee to the conveyor.

If you answered **YES to (b)**, attach a schedule of all shareholders of the company identifying their relationship to the conveyor.

If you answered **YES to (c)**, attach:

- a copy of the trust deed and all amending deeds;
- a schedule identifying the provisions of the trust deed (by clause number and page number) that specify that only persons that are a member's of the conveyor's family may be beneficiaries of the trust and that no beneficiary may be the trustee of another trust; and
- a schedule of all beneficiaries of the trust identifying their relationship to the conveyor.

2.3 - Conveyees where conveyor is a company

Is each of the **conveyees** one of the following:

- (a) a **natural person** who will not hold the property as a trustee who is a member of the same family as **all** the shareholders of the conveyor company? Yes No
- (b) a **company** that will not hold the property as the trustee of a trust, where **all** of the shareholders of the company are natural persons that do not and will not hold the shares in the company as the trustee of a trust and are **all** members of the same family as **all** of the shareholders of the conveyor company? Yes No
- (c) a person who will hold the property as the **trustee of a trust**: Yes No
- (i) where **all** of the beneficiaries of the trust are members of the same family as **all** of the shareholders of the conveyor company; and
- (ii) the trust deed includes a provision, that cannot be altered, specifying that only persons that are members of the same family as the shareholders of the conveyor company may be beneficiaries of the trust and no beneficiary may be the trustee of another trust?

SUPPORTING INFORMATION

If you answered **NO** to all of the above in respect of **any** conveyee, the transaction is not eligible for the exemption.

If you answered **YES to any of the above**, attach a schedule of all shareholders of the conveyor company.

If you answered **YES to (a)**, attach a schedule identifying the relationship of the conveyee to **all** of the shareholders of the conveyor.

If you answered **YES to (b)**, attach a schedule of all shareholders of the conveyee company identifying their relationship to **all** of the shareholders of the conveyor.

If you answered **YES to (c)**, attach:

- a copy of the trust deed and all amending deeds;
- a schedule identifying the provisions of the trust deed (by clause number and page number) that specify that only persons that are a family member of the shareholders of the conveyor company may be beneficiaries of the trust and that no beneficiary may be the trustee of another trust; and
- a schedule of all beneficiaries of the trust identifying their relationship to **all** of the shareholders of the conveyor company.

2.4 - Conveyees where conveyor is a person who holds the property as the trustee of a trust

Is each of the **conveyees** one of the following:

- (a) a **natural person** who will not hold the property as a trustee who is a member of the same family as **all** the beneficiaries of the conveyor's trust? Yes No
- (b) a **company** that will not hold the property as the trustee of a trust, where **all** of the shareholders of the company are natural persons that do not and will not hold the shares in the company as the trustee of a trust and are **all** members of the same family as **all** of the beneficiaries of the conveyor's trust? Yes No
- (c) a person who will hold the property as the **trustee of a trust** Yes No
- (i) where **all** of the beneficiaries of that trust are a members of the same family as **all** of the beneficiaries of the conveyor's trust; and
- (ii) the trust deed includes a provision, that cannot be altered, specifying that only persons that are a family member of the beneficiaries of the conveyor's trust may be beneficiaries of the trust and no beneficiaries may be the trustee of another trust?

SUPPORTING INFORMATION

If you answered **NO** to all of the above in respect of **any** conveyee, the transaction is not eligible for the exemption.

If you answered **YES to any of the above**, attach a copy of the trust deed and all amending deeds of the conveyor's trust.

If you answered **YES to (a)**, attach a schedule identifying the relationship of the conveyee to **all** the beneficiaries of the conveyor's trust.

If you answered **YES to (b)**, attach a schedule of all shareholders of the conveyee company identifying their relationship to **all** the beneficiaries of the conveyor's trust.

If you answered **YES to (c)**, attach:

- a copy of the trust deed and all amending deeds of the conveyee's trust;
- a schedule identifying the provisions of the trust deed (by clause number and page number) that specify that only persons that are the beneficiaries of the conveyor's trust may be beneficiaries of the trust and that no beneficiaries may be the trustee of another trust; and
- a schedule of all beneficiaries of the trust identifying their relationship to all the beneficiaries of the conveyor's trust

SECTION 3 PRIOR EXEMPTION

- 3.1 Did the conveyor(s) acquire any part of the prescribed property that is the subject of this application within the past five (5) years? Yes No
- 3.2 If the answer to question 3.1 is **YES**, was a 'family farm' exemption under former section 8E of the *Stamp Duty Act* or section 87 of the Act granted in relation to that conveyance? Yes No

SECTION 4 DESCRIPTION AND VALUE OF PRESCRIBED PROPERTY

4.1 Land used for the business of primary production (*attach a schedule if insufficient space*)

Lot number	hundred of	volume	folio

4.2 Other prescribed property conveyed as part of the transaction (*attach a schedule if insufficient space*)

4.3 Consideration paid: \$

Estimated unencumbered value: \$

SECTION 5 USE OF THE FARMING PROPERTY

5.1 Describe the nature of the primary production business carried on by the conveyor:

5.2 Did the **conveyor** use the farming property solely or principally in the business describes in 5.1? Yes No

5.3 If NO, provide details of what the farming property was used for:

5.4 Does the **conveyee** intend to use the farming property solely or principally in the same primary production business as the conveyor? Yes No

5.5 If NO:

(a) describe the nature of the primary production business to be carried on by the **conveyee**;

(b) provide details of what the prescribed property will be used for:

SECTION 6 DECLARATION

I/We, do solemnly and sincerely declare that statements and information which I/we have given in this application are true and correct in every particular.

Conveyor(s):	<input type="text"/>	<input type="text"/>	<input type="text"/>
	<i>Name</i>	<i>Signature</i>	<i>Date</i>
	<input type="text"/>	<input type="text"/>	<input type="text"/>
	<i>Name</i>	<i>Signature</i>	<i>Date</i>
Conveyee(s):	<input type="text"/>	<input type="text"/>	<input type="text"/>
	<i>Name</i>	<i>Signature</i>	<i>Date</i>
	<input type="text"/>	<input type="text"/>	<input type="text"/>
	<i>Name</i>	<i>Signature</i>	<i>Date</i>

NOTE: It is an offence under the *Taxation Administration Act* to provide information that you know is false or misleading (maximum penalty 400 penalty units - currently \$52 000).

PRIVACY STATEMENT

The information requested in this form is required by the Territory Revenue Office to determine whether the conveyee satisfies the eligibility criteria for the stamp duty family farm exemption. Any information you provide is on a voluntary basis but is required to process your claim for exemption. The information contained in this form may be communicated to persons authorised under the *Taxation Administration Act*. You may review or correct any personal information provided by contacting the Territory Revenue Office.

GUIDANCE NOTES

Introduction

Section 87 of the *Stamp Duty Act* provides an exemption for conveyances of farming property the main purpose of which is to pass, 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. It also extends to conveyances to and from family companies and family trusts.

Key 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:

- a) they are spouses (which includes de facto partners);
- b) one is a child (including an adopted child) or remoter lineal descendant of the other person;
- c) one is a child or remoter lineal descendant of the other person's spouse;
- d) one is a brother or sister (including step-brother or step-sister) of the other person;
- e) one is the child or remoter lineal descendant of a brother or sister (including step-brother or step-sister) of the other person; or
- f) one is the spouse of a person who has a family relationship referred to in paragraphs (b) to (e) with the other person.

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 of the relevant family may be beneficiaries (including unit holders of a unit trust or objects of a discretionary trust).

Family company

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

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:

- a) the growing or cultivation of trees, crops or other vegetation (including fungi) for sale or for sale of their produce; or
- b) the breeding, rearing or maintenance of living creatures for sale as food or for the production of skins, shells or bodily produce for sale.

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 exemption applies to the following conveyances of farming property which may be by way of gift or sale. 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.

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
 - (iii) a member of the family for which the conveyor 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 conveyor company are:
 - 1. members of the conveyor's family;
 - 2. members of the same family as the shareholders of the conveyee company; or
 - 3. 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:
 - 1. members of the conveyor's family;
 - 2. members of the same family as the shareholders of the conveyor company; or
 - 3. 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 where:

1. The Commissioner 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 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. A conveyee does not intend to use the farming property solely or principally for farming purposes.

3. The conveyance also conveys property that is not farming property.

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 prescribed 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.

Procedure for claiming the exemption

Persons who consider they meet the criteria for the exemption may apply by completing this application form. The completed form, together with the instruments conveying the farming property should be lodged with the Commissioner for stamping within the usual 60-day time frame.

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.

HOW TO CONTACT TRO

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