



Duty exemption - Section 57A of the *Duties Act 2001*

[Section 57A of the *Duties Act 2001*](#) provides an exemption (or a reduction to the dutiable value) where public roads, parks or gardens:

- a) are transferred to a council, and
- b) where free public access is normally provided to these areas.

Land being transferred in accordance with Section 57A(1) is a transaction which must be self-endorsed by a TRO Agent, for which **no** duty is chargeable.

Land being transferred in accordance with Section 57A(2) cannot be self-endorsed and is to be lodged with the SRO for assessment.

Roads

Section 57A(1) applies if the sealed plan states that the Volume/Folio is to be used as a road and at the date of the transfer there is a road on the parcel of land. Retain photographic evidence showing that a road was constructed on the land as at the date of the transfer.

Public recreation space / park or garden

Section 57A(1)

This section may apply if the sealed plan states that:

- a) the Volume/Folio is to be used as public open space (although not necessary); and
- b) from the date of the transfer the council will normally provide free public access to the whole of the space (for example, no regularly fenced areas to exclude public access).

Section 57A(2)

This section may apply to any of the area that can be regularly locked or access can be restricted by the council (for example, sporting grounds that can only be booked for use by incurring a fee), with that area being liable for duty. In these cases, a valuation is required for that part of the property, including capital improvements. The transfer must be lodged with the SRO for assessment under Section 57A(2).

Footway

Land to be used for a footway will be considered the same as a public recreation space, unless there is a specific reason not to do so.

Road widening

Land to be used for road widening, either as part of the road or road verge, will be considered the same as public recreation space, unless there is a specific reason not to do so.

More information

Email: dutyhelp@treasury.tas.gov.au

Phone: (03) 6166 4400 (option 4, option 3)

1800 001 388 weekdays, 9:00am to 5:00pm

Entering the transaction in TRO

A. Claiming an exemption for the whole of the land being transferred

1. Enter the transaction in TRO as a *Property Transfer*.
2. On the *Exemption and concessions* screen, select **Yes** if claiming an exemption.
3. Enter *57A(1) Exemption to council*.

Exemptions and concessions

Is an exemption or concession being sought?

For the relevant exemption/concession category and section, use the drop-down menu, and then enter a space in the 'section' search field to make a selection.

Alternatively, you can simply make a selection from a list of all exemptions and concessions by entering a space in the 'section' search field.

Exemption/concession category

Exemption/concession section

Links:
[Documentary evidence guideline](#)

Essential: Retain photographic evidence showing infrastructure on the parcel of land at the date of transfer (for example, a constructed road).

B. Paying duty for part of the land being transferred

1. Enter the transaction in TRO as a *Property Transfer*.
2. On the *Exemption and concessions* screen, select **Yes** if claiming an exemption.
3. Enter *57A(2) Partial exemption to council*.
4. In the field, *Value attributed to public open space*, enter the value of the public road, park or garden being transferred.

Is the transaction relating to part of the PID?

Total area of PID

Area of part PID

Does the transaction relate to a subdivision or is it consolidated with another title?

Interest in property being transferred of

Exemption/concession section

Evidence Type:
Original executed and dated transfer instrument (Land Titles Office Transfer form); and the following:
Evidence that the land transferring is a public road or a public park or garden at the time of transfer; and
Evidence that the public road or public park or garden will be used as a public road or public park or garden in the future.

Links:
[Documentary evidence guideline](#)

Value attributed to public open space

The figure should only include the value of any capital improvements and land that:

- are used as a public road, park or garden; and
- the council will normally provide to the public free access.

Essential: Your evidence of the value must be capable of enabling the SRO to determine the value of any part of the transferred property that is liable for duty.

Frequently Asked Questions

- Q Does a duty exemption apply if, as at the date of transfer, a road is yet to be constructed on the property although it is marked on the sealed plan to be a road?**
- A Unless the public road has been constructed on the property as at the date of transfer, the exemption is **not** applicable.
- Q What is meant by ‘council will normally provide free public access’?**
- A Council will normally provide access ‘without restriction’, ‘without charge’ or both. If access is temporarily restricted because of public safety (say during construction works), usually the property would not be liable for duty.
- Q What is the duty liability where only part of the property is a road, footpath or public open space?**
- A Only the portion of the property being used for those purposes would **not** be liable for duty. The remainder of the property will be liable for duty.
- Q If claiming Section 57A(2) for the transfer, what evidence is required?**
- A The SRO needs the following evidence to determine the value of the part of the land (including improvements) that is liable for duty:
- where there is an Adjusted Government Value (AGV) for the whole of the property being transferred, provide a valuation of either the part of the property liable for duty or the part of the property that is not liable for duty; or
 - if there is no AGV for the whole of the property being transferred, provide a valuation of the whole of the property that clearly apports the total value between the dutiable and the non-dutiable areas.
- Q How do I determine the parts of the property liable for duty if claiming Section 57A(2)?**
- A The test to determine liability is whether the council will normally provide free or fee-paying public access to a part of the property. See below some typical examples:
- where an area is usually closed to the public (for example, works sheds or storage areas) or where a fee must be paid by the public to access or use an area, that part of the property is liable for duty.
 - where a building or structure is liable for duty, the land underneath them is also liable for duty.
 - where buildings are only temporarily locked for security purposes (for example, a toilet facility locked overnight), that part of the property is not liable for duty.
 - where an area is locked for security purposes but it can be booked for use without fee or charge, that part of the property is not liable for duty.

If uncertain whether specific land and/or improvements are liable for duty, ask the SRO to clarify this for you **before** obtaining a valuation.