



REVENUE RULING

DA 7.1

DUTIES ACT **TRANSFER UNDER AGENCY RELATIONSHIP WHERE THE TRANSFEEE ON THE TRANSFER DIFFERS FROM THE PURCHASER NAMED IN THE AGREEMENT TO TRANSFER**

RULING HISTORY

Revenue Ruling	Issued
DA 7.0	July 2008
DA 7.1	February 2013

This revenue ruling only applies to transactions entered into on or after 1 July 2008. Revenue Ruling SD 36 applies to instruments executed and transactions entered into on or before 30 June 2008.

INTRODUCTION

1. This revenue ruling applies to a transfer of dutiable property subsequent to an agreement to transfer dutiable property.
2. Chapter 2 of the *Duties Act 2008* ('Duties Act') imposes duty on dutiable transactions. A dutiable transaction includes a transfer of dutiable property and an agreement for the transfer of dutiable property.
3. Section 42(1) of the Duties Act provides that when an agreement to transfer dutiable property is duty endorsed, the subsequent transfer of dutiable property shall not be chargeable with duty when it is in conformity with the agreement to transfer that dutiable property.
4. Where the purchaser named in an agreement to transfer dutiable property differs from the transferee named on the subsequent transfer, or there is a difference in the division of the property, section 42(3) of the Duties Act applies to charge duty on the transfer to the extent of the change between the agreement and the transfer.

5. Subsections 42(2), (4A), (4B), (4C), (4), (5) and (7) of the Duties Act provide that duty is not chargeable on the subsequent transfer in certain circumstances, despite there being a difference between the agreement to transfer and the subsequent transfer. As this revenue ruling deals exclusively with section 42(4) of the Duties Act, it does not apply where the provisions of subsections (2), (4A), (4B), (4C), (5) and (7) of section 42 are applicable.
6. Section 42(4) of the Duties Act provides that where the purchaser named in an agreement to transfer was, at the time that liability to duty on the agreement arose, acting as the agent of the person named in the subsequent transfer as the transferee, that transfer shall not be chargeable with transfer duty.
7. At law, an agent is a person appointed to act as the representative of another person (the principal). What a principal can do in their own right, they can generally do through an agent. The agency relationship referred to in section 42(4) of the Duties Act is the relationship between the person named as the purchaser in an agreement to transfer dutiable property (the agent) and the person named in the subsequent transfer as the transferee (the principal).
8. Where the person named as purchaser in the agreement to transfer claims to have been acting as agent for another person when they entered into the agreement (i.e. they claim they were buying the property on behalf of that other person), the requirements of section 42(4) of the Duties Act must be met in order for the subsequent transfer to the principal to not be chargeable with duty.
9. This ruling sets out the Commissioner's view on how section 42(4) of the Duties Act operates and provides guidance on the evidence required to satisfy the Commissioner that the person named in an agreement to transfer dutiable property was acting as agent for the person named in the subsequent transfer as the transferee.

RULING

Where agency disclosed and the principal is identified

10. Where the agreement clearly indicates that at the time it was entered into, the person who executed the agreement as the purchaser was acting as agent for another named person (the principal), the Commissioner will accept that an agency relationship existed. A transfer to that other person will not be charged with duty as provided for under section 42(4) of the Duties Act.

Examples of where an agreement clearly discloses agency and identifies the principal as the purchaser with the result that no duty is chargeable on the transfer are:

- Sue Green *as agent for* John Brown
- Sue Green *for* John Brown (50%), Joe Black (25%) and Fred Smith (25%)
- Sue Green *on behalf of* John Brown

Where agency disclosed and the principal is not identified

11. Where the agreement clearly indicates that at the time it was entered into, the person named in the agreement as the purchaser was acting as agent for another unidentified person, a transfer to another person will be charged with duty unless sufficient evidence is produced to satisfy the Commissioner that the transferee was the person for whom the named purchaser was acting at the time the agreement was entered into (i.e. that they were buying the subject property on behalf of that person).

Examples of where an agreement clearly discloses agency but the principal is not identified are:

- Sue Green as agent
- Sue Green on behalf of a person to be disclosed
- Sue Green (agent)

Where agency is not disclosed

12. Where the agreement to transfer dutiable property does not explicitly indicate that the person named in the agreement as purchaser was acting as an agent, and the subsequent transfer is to another person, the Commissioner will not accept that section 42(4) of the Duties Act applies unless sufficient evidence is produced to satisfy the Commissioner that the named purchaser was acting as agent for the transferee when they entered into the agreement to transfer the property (i.e. that they were buying the subject property on behalf of that person).

An agreement does not disclose agency where, for example, it describes Sue Green as the purchaser and she signs the agreement as the purchaser.

Agency arrangements must be certain

13. There must be no uncertainty in the agency arrangements. It must be clear:
- 13.1 that the person who entered into the agreement was acting as the agent of the person named in the transfer at the time when the agreement was entered into;
 - 13.2 that they were buying the subject property on behalf of that person; and

- 13.3 if the agent was buying the property on behalf of a number of principals, that the interest in the property of each principal as specified in the transfer is identical to the interest in the property acquired by each principal under the agreement.
14. Uncertainty arises in many situations including the following:
- 14.1 where it is not clear whether the person who enters into the agreement as purchaser is:
- 14.1.1 acting as agent for one or a number of persons; or
- 14.1.2 acting for themselves as well as agent for one or more other persons;
- 14.2 where the person who enters into the agreement as purchaser is acting as agent for a number of persons, but it is not clear from the agreement what interest each principal is acquiring in the property; and
- 14.3 where “and/or” or “or” is utilised in the clause describing the named purchaser in the agreement.
15. Any uncertainty regarding the matters referred to in paragraph 13 could result in duty being charged on the subsequent transfer.

Nominee clauses

16. Some agreements contain a term which entitles the person who is the purchaser under the agreement to nominate one or more persons (who may or may not be named in the agreement) as nominee, either on the basis that the nominee(s) will become a party (purchaser) to the agreement, or alternatively, will not become a party to the agreement but will merely be nominated as transferee in the subsequent transfer.

Examples of nominee clauses:

- Sue Green and nominee
 - Sue Green or nominee
 - Sue Green and/or nominee
17. A nominee clause does not give rise to any assumption that, at the time that the agreement was entered into, an agency relationship existed between the person who entered into the agreement as purchaser and the nominee(s), or that the person who entered into the agreement was buying the subject property on behalf of the nominee(s).

18. A nominee clause in an agreement for the transfer of dutiable property entitles the person who entered into the agreement as purchaser to nominate another person(s) for a certain purpose. This is an arrangement between the seller and the person who entered into the agreement as purchaser. The source of that arrangement is the agreement itself. That arrangement is entirely different to an agency relationship, which results from an arrangement between the person who enters into an agreement for the transfer of property as purchaser and their principal.
19. If it is claimed that the person who entered into the agreement as purchaser was acting as agent for a person nominated pursuant to a nominee clause in the agreement, and the nominee is named as the transferee in the subsequent transfer, the transfer will be chargeable with transfer duty unless sufficient evidence is produced to satisfy the Commissioner that the person who executed the agreement was acting as the agent of the person named in the subsequent transfer at the time when the agreement was entered into (i.e. that they were buying the property on behalf of that person).

Evidence

20. Matters to which the Commissioner may have regard in order to verify the existence of an agency relationship, the identity of the principal and the claim that the person who entered into the agreement as purchaser was buying the subject property on behalf of the principal include, but are not limited to, the following:
 - 20.1 where the existence of an agency relationship was not shown on the agreement to transfer, reasons as to why the capacity in which the named purchaser was acting was not disclosed on the agreement;
 - 20.2 where the identity of the principal for whom the named purchaser was acting was not shown on the agreement, reasons as to why the principal's identity was not disclosed on the agreement;
 - 20.3 express written authority, correspondence or documentation prior to the agreement being entered into, confirming the appointment of the person (named as the purchaser in the agreement) as agent to purchase the subject property for the transferee;
 - 20.4 evidence showing that the purchase monies, including any deposit, have been or will be provided by the transferee (e.g. loan documents, bank statements);
 - 20.5 any other evidence which is relevant to the nature of the relationship and the arrangements that existed between the named purchaser and the transferee at the time the agreement was entered into; and

- 20.6 where a nominee clause is used, reasons as to why the agreement was drafted in terms that entitled the person who entered into the agreement as purchaser to make a nomination rather than in terms that reflected an agency relationship between the person who entered into the agreement as purchaser and the person claimed to be their principal.
21. If a person proposes to appoint someone as their agent for the purpose of entering into an agreement to purchase property on their behalf, it is advisable for the purposes of the Duties Act that the person's name be disclosed on the agreement with the result that paragraph 10 will apply. However, if disclosure is not preferred it is advisable for the purposes of the Duties Act that, before the agreement is entered into, both parties enter into an instrument appointing the agent that identifies the subject property and specifies what the agent is authorised to do. The instrument of appointment should be dated and be witnessed by an independent person. Provided that the Commissioner is satisfied that the instrument of appointment and all related documents were executed prior to the time the agreement for the transfer of property was entered into, it will be accepted that section 42(4) of the Duties Act is satisfied.