



Business Acquisitions

Sections 14 and 79 – 86 of the *Duties Act 2008*

As at 11 July 2016

Introduction

Under the *Duties Act 2008* ('Duties Act'), transfer duty is imposed on dutiable transactions relating to dutiable property which includes a Western Australian business asset. Certain transactions relating to business acquisitions may therefore give rise to a transfer duty liability if there is a dutiable transaction over business assets.

Western Australian Business Assets

A Western Australian **business asset** is a business asset of a **Western Australian business**.

A **Western Australian business** means:

- a) a business that, at any time in the year before the transaction, has either been carried on in or from Western Australia, or supplied commodities or services to customers in Western Australia; or
- b) carrying out an activity for gain or reward under a Western Australian or Commonwealth business licence.

A **business asset** means any of the following:

- goodwill of a business;
- a restraint of trade arrangement;
- a business identity;
- a business licence;
- a right of a business under an uncompleted contract to supply commodities or provide services;
- intellectual property of a business; and
- things that a business has that are in the nature of rent rolls and client lists,

but does not include a trade debt.

Plant and Equipment

The transfer of a chattel, such as plant and equipment, is a dutiable transaction when the chattel is transferred with a business asset. However, as prescribed in section 3 of the *Duties Act*, a chattel does not include:

- chattels that are stock-in-trade, held for use in manufacture, under manufacture, or held or used in connection with the business of primary production;
- livestock;
- a vehicle the transfer or grant of a licence for which is chargeable with, or exempt from, vehicle licence duty; or
- a ship or vessel.

Transactions involving business assets

A dutiable transaction involving a Western Australian business asset (such as a transfer of business assets or an agreement to transfer business assets) is subject to transfer duty. However, the following transactions involving Western Australian business assets are not dutiable transactions:

- a transfer, or agreement to transfer, a business asset from a franchisor to a franchisee in accordance with a franchise arrangement when the franchise is first created, unless another person has relinquished or agreed not to extend the business asset so that the franchisee could acquire it;
- a transaction relating to intellectual property if the only dutiable property the subject of the transaction is intellectual property of the business, unless it is aggregated with a dutiable transaction for another Western Australian business asset; or
- an acquisition of intellectual property, a restraint of trade arrangement or a business identity on its creation, grant or issue, unless a person carries on, or has carried on, a business (the 'first business') and creates intellectual property, a restraint of trade arrangement or a business identity related to the first business for the purpose of the carrying on of the first business or another business by another person.

In addition, in circumstances where a person agrees to relinquish a business licence, or to not apply for a renewal of a licence, so that it or another similar licence can be issued to another person, that agreement will be taken to be a dutiable transaction. For further information relating to business licences, please refer to Duties Fact Sheet '[Business Licences](#)'.

How is duty calculated?

Duty is calculated by determining the dutiable value of the dutiable transaction and applying the appropriate rate of transfer duty. The method of calculating the dutiable value will be dependent on the nature of the business and business asset.

Where the business's head office or principal place of business is in Western Australia (including where the business only operates in Western Australia), the dutiable value of the business asset is calculated in accordance with section 85 of the Duties Act.

Where the business's head office or principal place of business is not in Western Australia, the dutiable value of the business asset is calculated in accordance with section 86 of the Duties Act.

Specific provisions exist for determining the dutiable value where the business asset is a business licence under a law of the Commonwealth or Western Australia. Further information on the dutiable value of business licences is available in Duties Fact Sheet '[Business Licences](#)'.

The dutiable value of chattels located in Western Australia will be the greater of the consideration given for, or the unencumbered value of, the chattels.

Transfer duty is charged at the applicable rate by reference to the dutiable value of the dutiable property acquired.

The rate of transfer duty will be the general rate, or a concessional rate if the business concession criteria set out in section 147 of the Duties Act are met.

General rate of transfer duty

The general rate of transfer duty is as follows:

\$	0 – \$ 80,000		\$1.90	per \$100 or part thereof
\$	80,001 – \$100,000	\$ 1,520 +	\$2.85	per \$100 or part thereof above \$ 80,000
\$	100,001 – \$250,000	\$ 2,090 +	\$3.80	per \$100 or part thereof above \$100,000
\$	250,001 – \$500,000	\$ 7,790 +	\$4.75	per \$100 or part thereof above \$250,000
\$	500,001 and upwards	\$19,665 +	\$5.15	per \$100 or part thereof above \$500,000

Concessional rate of transfer duty

In certain circumstances, a concessional rate of transfer duty applies to a dutiable transaction that is a sale of business assets. A transaction may be assessed at the concessional rate of duty where:

- the dutiable property is business property;
- the dutiable value of the dutiable property does not exceed \$200,000; and
- the purchaser is an eligible purchaser, being a person who is not a government body and who intends to carry on the business for an indefinite period.

The concessional rate of transfer duty is as follows:

\$	0 – \$ 100,000		\$1.50	per \$100 or part thereof
\$	100,001 – \$200,000	\$ 1,500 +	\$4.39	per \$100 or part thereof above \$100,000

An application for an assessment at the concessional rate of transfer duty should accompany the relevant transaction record when it is lodged with the Commissioner of State Revenue for duty endorsement. The appropriate application form is available from the [State Revenue website](#).

Lodging requirements

Self assessment

Certain dutiable transactions involving Western Australian business assets may be self assessed by an approved agent through Revenue Online.

Lodgment with the Commissioner

An instrument in hard copy form that effects or evidences a dutiable transaction, or a transfer duty statement in the approved form where there is no hard copy instrument, must be lodged within two months after the date that liability for duty on the dutiable transaction arises. Approved transfer duty statements are accessible on the [State Revenue website](#).

The Duties Information Requirements set out the standard information that should accompany each instrument or transfer duty statement in order to determine the correct transfer duty applicable to a transaction.

Aggregation of dutiable transactions

Where business assets are acquired via a number of separate transactions that form substantially one arrangement, all instruments and transfer duty statements in the series of transactions should be lodged together under the one Duties Document Lodgment and Assessment Form or, if lodged separately, sufficient reference must be made to ensure that the bundles can be cross-referenced to each other.

Where the sale of a business involves separate transactions for the transfer of a business asset and the transfer of a chattel, section 14(2) of the Duties Act provides that the transaction over the chattel is a dutiable transaction if the separate transactions form substantially one arrangement. In these circumstances, the transactions will be aggregated and treated as a single dutiable transaction. For further information regarding aggregation, please see Revenue Ruling [DA 14 'Aggregation of Dutiable Transactions'](#).

In circumstances where two or more of the transactions are treated as a single transaction and one of the transactions relates to residential property, provided the residential concessional criteria is satisfied, the residential concessional rate of duty will be chargeable on the single transaction. For further information on the residential concessional rate please see Duties Fact Sheet ['Transfer of Residential Property'](#).

Contact the Office of State Revenue

Office	200 St Georges Terrace PERTH WA 6000	Telephone	(08) 9262 1100 1300 368 364 (local call charge - WA country callers only)
Postal	Office of State Revenue GPO Box T1600 PERTH WA 6845	Web Enquiry Website	www.osr.wa.gov.au/DutiesEnquiry www.osr.wa.gov.au

Note: The information contained in this DUTIES FACT SHEET is issued for guidance purposes only. It is not an exhaustive explanation of the provisions of the *Duties Act 2008* and reference should be made to the Act for complete details.