



Exempt Family Farm Transactions – Landholder Duty

Sections 171-174 of the *Duties Act 2008*

As at 31 August 2015

Introduction

Under sections 171 – 174 of the *Duties Act 2008* ('Duties Act'), the acquisition of shares in a landholding corporation is exempt from landholder duty if the shares are transferred between family members and the land is used solely or dominantly in primary production.

The intent of the provisions is to replicate the transfer duty exemption for family farms where the farm is instead held by a company that is owned by a family. For further information about the transfer duty exemption, please refer to Duties Fact Sheet '[Exempt Family Farm Transactions – Transfer Duty](#)'.

For further information regarding landholder duty, please refer to Duties Fact Sheet '[Landholder Duty](#)' which is available at www.osr.wa.gov.au.

Terms Used

Corporation means a corporation that is a landholder.

Primary production means any of the following:

- the growing or rearing of plants (including trees, fungi or any crop) for the purpose of selling them, parts of them or their produce;
- the breeding, rearing or maintenance of living creatures (produce animals) for selling them or their progeny for food;
- the production or collection of the skins, shells or bodily produce of produce animals for the selling parts of them, their skins, shells or bodily produce;
- the breeding, rearing or maintenance of produce animals for the purpose of selling them or their progeny for stud purposes; and
- the breeding or rearing of horses for the purpose of selling them or their progeny.

It does not matter if the thing sold or to be sold is in a natural, processed or converted state, however, the processing or converting of anything for the purpose of selling it is not primary production.

A **family member** of a person is:

- a child or remoter lineal descendant of the person;
- a parent or remoter lineal ancestor of the person;
- a brother or sister of the person, or remoter lineal descendant of a brother or a sister of the person;
- an aunt or uncle of the person;
- the spouse, former spouse, de facto partner of two years or former de facto partner of two years of the person; or
- the spouse or de facto partner of two years of a family member listed above.

Transferor means:

- an individual (other than a trustee) from whom the property is, or is to be, acquired; or
- if the property was held by a trustee (other than a trustee of a unit trust scheme or a discretionary trust) immediately before the transaction took place, an individual on whose behalf, and at whose direction, the trustee carried out the transaction.

Note: this definition excludes land held by the trustee of a unit trust or a discretionary trust from the exemption.

Transferee means:

- a family member of the transferor, if the family member does not intend to hold the farming property on behalf of any other person;
- a trustee of a trust, other than a unit trust scheme or a discretionary trust, if the beneficial owner of the trust property under the trust is a family member of the transferor; or
- a trustee of a discretionary trust, if all the persons who have a share or interest in the trust property or who may benefit from the discretionary trust are family members of the transferor, and the transferor does not control the discretionary trust.

A **person controls a discretionary trust** where:

- the person is in a position to influence the vesting of the capital of the trust property or the distribution of income from the trust property; or
- if a corporation is in a position to influence the vesting of the capital of the trust property or the distribution of income from the trust property, the person is beneficially entitled to a share in that corporation or a related corporation, or to act as a director or secretary of that corporation or a related corporation.

Exempt Family Farm Transaction

An acquisition of shares in a corporation owning a family farm is exempt from landholder duty where:

- a) the land held by the corporation is used solely or dominantly in the business of primary production;
- b) the transfer is one that would have been exempt from transfer duty under section 102(1) of the Duties Act if the corporation's land had been held by the transferor; and
- c) immediately after the acquisition the corporation intends to continue to use the land solely or dominantly in the business of primary production.

The exemption also applies where the land is used by a linked entity and not by the corporation itself. The meaning of a *linked entity* is defined in section 156 of the Duties Act and is outlined in Duties Fact Sheet 'Landholder Duty'.

Land may be treated as being used in the business of primary production even where some, but not all, of the land is leased to another person. This only applies where the lessee is using the leased land solely or dominantly for the purposes of silviculture or reforestation.

A partial exemption is available where some of the land is not used solely or dominantly in the business of primary production.

Subsequent Acquisitions

No exemption for further acquisition within five years

A further acquisition of an interest in the corporation that occurs within five years of an acquisition that was exempted under these provisions is not exempt even if it would otherwise have met all the requirements to be an exempt acquisition.

Subsequent liability to duty in certain circumstances

Where the transferee of an acquisition that is exempted under these provisions is the trustee of a discretionary trust and:

- a) after the acquisition occurs there is a material alteration to the operation of the discretionary trust; and
- b) at the time of the material alteration, the corporation is a landholder and the corporation, or a linked entity, is using any of the land to which it was entitled when the acquisition occurred solely or dominantly in the business of primary production,

an acquisition of an interest in the corporation by the trustee is taken to have occurred. Landholder duty will apply to that acquisition.

There is a material alteration to the operation of a discretionary trust if:

- during the lifetime of the transferor a person who is not a family member of the transferor becomes entitled to a share or interest in the trust, or otherwise benefits from the trust; or
- the transferor gains control of the trust.

How to Apply for Exemption

An application for exemption must be made using the Exempt Family Farm Transaction – Landholder Duty – Application for Exemption, which is required to be lodged together with the acquisition statement no later than two months from the date the interest in the corporation was acquired. The application form is available from the Office of State Revenue website at www.osr.wa.gov.au.

Office	200 St Georges Terrace PERTH WA 6000	Telephone	(08) 9262 1100 1300 368 364 (WA country callers only – local call charge)
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*, **nor is it advice**, and reference should be made to the Act for complete details.