



Exempt Family Farm Transactions – Transfer Duty

Sections 99 -106 of the *Duties Act 2008*

As at 9 August 2016

Introduction

Under sections 99 – 106 of the *Duties Act 2008* ('Duties Act'), the transfer of farming property is exempt from transfer duty if the property is transferred between family members and the land is used solely or dominantly in primary production.

Where the family farm is held instead by a company that is owned by a family, the transfer of shares between family members may be exempt from landholder duty. For further information about the landholder duty exemption, please refer to [Duties Fact Sheet 'Landholder Duty'](#) which is available at www.osr.wa.gov.au.

Terms used

Farming land means land in Western Australia that is used solely or dominantly for the purpose of primary production.

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.

Farming property means farming land or other dutiable property that is used solely or dominantly in connection with the business of 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 the person liable to pay duty on the transaction that is:

- 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

Land used for primary production

An exempt family farm transaction is a dutiable transaction to the extent the subject of the transaction is farming property that is, or is to be, acquired by a transferee or transferees. An exempt family farm transaction may also be a partnership acquisition if the partnership holds farming land.

A dutiable transaction is an exempt family farm transaction only if:

- each transferor was using the farming property in the business of primary production immediately before the transaction took place; and
- when the liability to duty on the transaction arose, each transferee intends to continue to use the farming property in the business of primary production.

It is irrelevant whether a transferor was using, or a transferee intends to continue using, the farming property in the business of primary production personally or through an entity or combination of entities to which the transferor or transferee is related (see the definitions of 'related entity' below).

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.

Related entity

A transferor is related to an entity if:

- the transferor is a beneficiary of a trust (other than a unit trust scheme or a discretionary trust) and every other beneficiary is a family member of the transferor;

- the transferor has a share or interest in trust property held by the trustee of a discretionary trust and every other person who holds such a share or interest in that property, or who may benefit from the trust, is a family member of the transferor;
- the transferor holds units in a unit trust scheme and every other person who holds a unit in that unit trust scheme is a family member of the transferor;
- the transferor is a shareholder in a corporation in which every other shareholder is a family member of the transferor; or
- the transferor is a partner in a partnership in which every other partner is a family member of the transferor.

A transferee is related to an entity if:

- the transferee is a beneficiary of a trust (other than a unit trust scheme or a discretionary trust), and every other beneficiary is a family member of the transferor;
- the transferee has a share or interest in trust property held by the trustee of a discretionary trust and every other person who holds such a share or interest in that property, or who may benefit from that trust, is a family member of the transferor and the transferor does not control the trust;
- the transferee holds units in a unit trust scheme and every other person who holds a unit in that unit trust scheme is a family member of the transferor;
- the transferee is a shareholder in a corporation in which every other shareholder is a family member of the transferor; or
- the transferee is a partner in a partnership in which every other partner is a family member of the transferor.

Exemption to a related entity

The entity intending to use the farming property in the business of primary production cannot include:

- the transferor as a beneficiary of a trust; or
- an unrelated shareholder of a company; or
- an unrelated partner of a partnership.

Where the transferee intends to continue to use the farming property in the business of primary production through an entity, or through a combination of entities, the transferor or transferee, as is relevant, must be related. Due to the definition of family member in section 100 of the Duties Act, the transferor cannot be related to himself.

Examples where an exemption would be disallowed

The transferor as a beneficiary of a trust

A husband (transferor) agrees to transfer farming property to his wife as trustee for the ABC Family Trust (transferee). The trust deed provides that the husband is a beneficiary of the ABC Family Trust. The husband, as a beneficiary of the trust, is not a family member of himself as the transferor because he cannot be related to himself.

Other beneficiaries of a trust

A husband (transferor) agrees to transfer farming property to his wife as trustee for the ABC Family Trust (transferee). The trust deed provides that the primary beneficiaries include the husband's and wife's children, and the general beneficiaries include a company. The company is not defined as a family member in section 100 of the Duties Act and therefore is not related to the transferor.

A shareholder of a company

A father (transferor) agrees to transfer farming property to his daughter (transferee), where the daughter will continue to use the farming property through a company. The shareholders of the company include the daughter, her son and a company. The company, as a shareholder, is not defined as a family member in section 100 of the Duties Act and therefore is not related to the transferor.

A partner of a partnership

A father (transferor) agrees to transfer farming property to his daughter (transferee), where the daughter will continue to use the farming property through a partnership. The partnership will consist of the daughter and a company. The company is not defined as a family member in section 100 of the Duties Act and therefore is not related to the transferor.

A father (transferor) agrees to transfer farming property to his daughter (transferee), where the daughter will continue to use the farming property through a partnership. The partnership will consist of the daughter and a company as trustee for the ABC Family Trust. The ABC Family Trust is not defined as a family member in section 100 of the Duties Act and therefore is not related to the transferor.

Subsequent Transactions

A liability to duty may arise where certain transactions take place after an exempt family farm transaction.

No exemption for subsequent transaction within five years

Where duty was not charged on an exempt family farm transaction and another transaction occurs within a period of five years for the same farming property, duty is chargeable on the subsequent transaction even though it would otherwise be considered an exempt family farm transaction.

Subsequent liability to duty in certain circumstances

Where the transferee under an exempt family farm transaction is the trustee of a discretionary trust and, after the transaction:

- 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, during the transferor's lifetime; or
- the transferor gains control of the trust,

the event is taken to be a transfer of the farming property.

Note: the event is taken not to be a transfer of farming property if, at the time the event took place, the trust no longer holds any farming property the subject of an exempt family farm transaction, or if an event taken to be a transfer of dutiable property is already duty endorsed.

Where a transfer of farming property is taken to have occurred, the trustee of the trust must lodge a transfer duty statement with the Office of State Revenue within two months of the event occurring. Duty will be charged on the unencumbered value of the farming property the subject of the exempt family farm transaction that is still held by the trust at the time the event takes place.

How to Apply for Exemption

An application for an exemption from transfer duty must be made jointly by all of the transferees using form FDA 6 'Family Farm Exemption' available from the Office of State Revenue website. The completed application must be accompanied by the relevant transaction record (i.e. instrument or transfer duty statement) for the transaction.

An application for a reassessment in order to obtain the exemption must be made within 12 months of the day on which the transaction was duty endorsed.

Contact the Office of State Revenue

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.