



Transfer Duty Overview

Chapter 2 of the *Duties Act 2008*

As at 6 April 2017

Introduction

Transfer duty may be described as a general revenue tax, which is imposed under the *Duties Act 2008* ('Duties Act') on various dutiable transactions (whether documented or not) including transfers of real estate and certain business assets.

Dutiable transactions

The Duties Act specifies a list of dutiable transactions, together with a list of dutiable property that may be the subject of a dutiable transaction. Transfer duty is imposed on dutiable transactions.

The ten dutiable transactions are:

- a transfer of dutiable property;
- an agreement for the transfer of dutiable property;
- a declaration of trust over dutiable property;
- a vesting of dutiable property by statute law or court order;
- a foreclosure of a mortgage over dutiable property;
- an acquisition of new dutiable property on its creation, grant or issue;
- a surrender of special dutiable property;
- a trust acquisition or surrender;
- a partnership acquisition;
- a farm-in agreement.

Certain transactions are **not** dutiable transactions, and are therefore not subject to transfer duty. The following transactions are not dutiable transactions:

- a transaction the subject of which is a right, unless there is consideration paid for the transaction;
- a transfer, or agreement to transfer, a lease, unless there is a consideration paid for the transaction;
- a transfer, or agreement to transfer, a security interest where the consideration for the transfer is equal to or greater than the market value of the security interest;
- a transaction over a unit in a unit trust.

Dutiable property

There are four items of dutiable property that may be the subject of a dutiable transaction:

- **Land in Western Australia** – Land includes:
 - any estate or interest in land other than a carbon right or a carbon covenant registered under the *Carbon Rights Act 2003*;
 - a mining tenement;
 - an estate or interest in a mining tenement;
 - anything that, under the authority (whether direct or indirect) of a mining tenement, is fixed to land that is the subject of that mining tenement;
 - anything that would be part of that land as a fixture if the mining tenement were a freehold estate in the land;
 - a licence under the *Petroleum Pipelines Act 1969*;
 - a pipeline, as defined in the *Petroleum Pipelines Act 1969* section 4(1), constructed on land under the authority of a licence under that Act;
 - anything that is part of land as a fixture.
- **A right** – A right is only dutiable property if a transfer of the property to which the right relates would be dutiable and consideration is given for the transaction. Rights include the following:
 - an option to acquire dutiable property, unless the option is part of simultaneous put and call option over dutiable property;
 - a right of pre-emption for dutiable property;
 - a right to acquire dutiable property;
 - a right under a joint venture relating to dutiable property of the joint venture;
 - a right to exploit dutiable property;
 - a right to income from dutiable property;
 - a right to capital growth of dutiable property.
- **A chattel in Western Australia** – A transaction over a chattel is not a dutiable transaction if the only property the subject of the transaction is a chattel. However, if a transaction relating to a chattel is aggregated with another transaction that is a dutiable transaction and the transactions are treated as a single dutiable transaction, then the transaction involving the chattel is a dutiable transaction.
- **A Western Australian business asset** – 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;
 - things that a business has that are in the nature of rent rolls and client lists.

However, a business asset does not include a trade debt.

New dutiable property

Certain types of dutiable property (referred to as 'new dutiable property') will be dutiable on their creation, grant or issue. The following sets out what constitutes new dutiable property:

- **Land in Western Australia** – land includes an estate or interest in land. Accordingly an interest in land, such as certain *profit a prendres* or leasehold interests, will constitute new dutiable property and will be dutiable on their creation, grant or issue.
- **The following rights** –
 - an option to acquire dutiable property, unless the option is part of a simultaneous put and call option over dutiable property;
 - a right to acquire dutiable property;
- **The following Western Australian business assets** –
 - intellectual property;
 - a restraint of trade arrangement;
 - a business identity.

The following are **not** new dutiable property, and accordingly will not be dutiable upon their creation grant or issue:

- a security interest in dutiable property;
- a partner's interest in a partnership;
- a lease if no consideration is paid, or agreed to be paid, for the grant of the lease;
- a mining tenement;
- a licence under the *Petroleum Pipelines Act 1969*;
- a licence, or water entitlement under a licence, under the *Rights in Water and Irrigation Act 1914* section 5C;
- a *profit a prendre* created under a timber sharefarming agreement under the *Conservation and Land Management Act 1894* or the *Forest Products Act 2000*, unless a *profit a prendre* had been previously created in respect of a crop of trees to which the agreement applies;
- a plantation interest, created under an agreement under the *Tree Plantation Agreements Act 2003*, unless the interest had been previously created in respect of a plantation to which the agreement applies.

Special dutiable property

Certain types of dutiable property (referred to as 'special dutiable property') will be dutiable on their surrender. Special dutiable property includes any of the following:

- a life interest in land;
- a remainder interest in land;
- a lease, if consideration is paid, or agreed to be paid, by the lessor for the surrender of the lease;
- an easement;
- a right of way;
- a mining tenement in whole or part, if the surrender is made in contemplation of, or as part of an agreement that, the tenement, or part of the tenement, be granted to, or acquired by, another person;
- a right under an application under the *Mining Act 1978* for a mining tenement if consideration is paid for the transaction.

Dutiable value

The dutiable value of a dutiable transaction is generally the consideration for the dutiable transaction, or the unencumbered value of the dutiable property that is the subject of the dutiable transaction in circumstances where there is no consideration for the transaction, the consideration cannot be ascertained, or the unencumbered value is greater than the consideration.

However, this principle does not apply to all dutiable transactions, and there are also specific rules to determine the dutiable value of certain types of transactions set out within the Duties Act.

Aggregation of dutiable transactions

Dutiable transactions that relate to separate items of dutiable property are to be treated as a single dutiable transaction if they together form, evidence, give effect to or arise from what is substantially one arrangement. Duty is chargeable on the total of the dutiable values of each of the dutiable transactions and is determined at the time liability to duty arose on each transaction.

In circumstances where one of the dutiable transactions that is aggregated relates to residential property, the residential concessional rate of duty will be chargeable on the single aggregated transaction. For further information on the residential concessional rate of duty, please refer to the **Duties Fact Sheet 'Transfer of Residential Property'** available at www.osr.wa.gov.au.

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.

If any of the transactions are eligible for the residential concessional rate of duty, the applicable application form should also be provided at the time of lodgment.

Exemptions

Certain dutiable transactions are exempt from transfer duty. Some common examples are:

- dutiable transactions where the liable party is the State, a local government or certain other declared public authorities;
- dutiable transactions that are entered into for charitable or similar public purposes;
- dutiable transactions which involve a transfer of a farm between family members;
- certain dutiable transactions relating to bankruptcy;
- cancelled transactions.

Nominal duty

Nominal duty of \$20 is chargeable on specified dutiable transactions, which include:

- dutiable transactions that occur on the breakdown of a marriage or de facto relationship in certain circumstances;
- transactions that occur on the distribution of property under a will or on an intestacy;
- certain dutiable transactions involving trusts;
- certain dutiable transactions involving superannuation;
- dutiable transactions involving a business licence held under the *Fish Resources Management Act 1994* where there is no passing of a beneficial interest in the business licence;
- dutiable transactions effecting a change of tenure;
- farm-in agreements in certain circumstances.

Rates of transfer duty

General rate of duty

The general rate of transfer duty applies to a dutiable transaction, unless the Duties Act provides otherwise. The general rate of transfer duty is set out below.

\$	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 rates of duty

There are concessional rates of transfer duty available for dutiable transactions by first home owners, dutiable transactions relating to residential property and dutiable transactions relating to certain businesses and principal places of residence.

First home owner rate

A person who qualifies for a first home owner grant, or a person who would have otherwise qualified for a first home owner grant except that:

- no consideration was paid for the transaction; or
- the transaction was for the purchase of an established home; or
- the person is a resident of the Indian Ocean Territories,

may be entitled to a first home owner rate on the transfer of, or agreement to transfer, the home or vacant land.

For further information on eligibility requirements for the first home owner rate, please refer to the **Duties Fact Sheet ‘First Home Owner Rate of Duty’** available at www.osr.wa.gov.au.

Residential rate

The residential rate applies to places of residence, rental homes and land on which a residence is constructed within five years from the date the liability to duty arose. It is irrelevant whether the home will be occupied by the owner as a place of residence, occupied by a tenant as a place of residence under a lease with the owner, or occupied as a holiday home for part of the year. The residential concessional rate also applies to mixed use property such as a restaurant with a residence above it.

For further information on the residential rate, please refer to the **Duties Fact Sheet ‘Transfer of Residential Property’** available at www.osr.wa.gov.au.

Principal place of residence and business concessional rate

A person may be eligible for a concessional rate of duty where the dutiable property is either a principal place of residence or a Western Australian business asset, and the dutiable value does not exceed \$200,000.

For further information on the eligibility requirements for this concessional rate, please refer to the applicable **Duties Fact Sheets ‘Transfer of Residential Property’** or ‘**Business Acquisitions’** available at www.osr.wa.gov.au.

Lodgment requirements

Certain dutiable transactions may be self assessed or lodged electronically through Revenue Online by an approved agent.

The Duties Act requires an instrument in hard copy form that effects or evidences a dutiable transaction to be self assessed or lodged within two months after the date that liability for duty on the dutiable transaction arises.

Where there is no hard copy instrument effecting or evidencing the transaction, a transfer duty statement in the approved form must be lodged with the Commissioner of State Revenue within two months after the date that liability for duty on the dutiable transaction arises. Transfer duty statement forms can be found at www.osr.wa.gov.au.

The party to the dutiable transaction who is responsible for the payment of the duty (usually the purchaser or transferee) must ensure that the transaction record is lodged as required.

For further information on self assessment, lodgment and payment, please refer to the Lodgment and Payment Requirements information available at www.osr.wa.gov.au.

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* and reference should be made to the Act for complete details.