



Cancelled Transactions

Sections 88A and 107 of the *Duties Act 2008*

As at 13 June 2019

Introduction

Transfer duty is not chargeable on certain dutiable transactions that are cancelled.

Cancelled transaction

Section 107 of the *Duties Act 2008* ('Duties Act') provides that duty is not chargeable on a cancelled transaction. A cancelled transaction is a dutiable transaction that has not been, and will not be, carried into effect. The following are not cancelled transactions:

- a call option of a simultaneous put and call option taken to be an agreement for the transfer of the option property under section 45 of the Duties Act;
- an assignment of a call option taken to be an agreement for the transfer of the option property under section 49 of the Duties Act; or
- a terms contract if the person liable to pay the duty under the contract obtained exclusive use or control of the dutiable property, whether or not the contract is not fully carried into effect for any reason.

A terms contract includes an agreement for transfer where the purchaser is entitled to possession or occupation of a property before the property is transferred. An example is where a purchaser buys vacant land under a vendor finance arrangement. The purchaser takes exclusive possession of that land and begins to develop it, but will not be registered on the title until the vendor is fully paid. If they subsequently default on the arrangements, it is not a cancelled transaction and the transaction is chargeable with duty.

When duty is chargeable on a cancelled transaction

Duty is chargeable on a cancelled transaction if the transaction has been cancelled so that a replacement transaction or a subsale transaction can be entered into.

A replacement transaction is another dutiable transaction between the same parties as the cancelled transaction that is:

- substantially similar in effect to the cancelled transaction; and
- considered by the Commissioner to be a scheme or arrangement, or part of one, for which the sole or dominant purpose of any party is to avoid, reduce or defer the payment of tax.

For example, A and B enter into an agreement to transfer dutiable property and then cancel the agreement so they can enter into another agreement to transfer the same property when lower transfer duty rates come into effect. The Commissioner would consider the second transaction a replacement transaction and duty would remain chargeable on the first transaction.

However, if A and B cancel the agreement because B cannot obtain finance, then enter into another agreement to transfer the same property after B has obtained finance from a different source, the Commissioner is unlikely to consider the second transaction a replacement transaction and duty would not be chargeable on the first transaction.

A subsale transaction is another dutiable transaction which results in a beneficial interest in the same dutiable property being held by:

- a person who is not a party to the cancelled transaction, a result which is contemplated or provided for under the cancelled transaction; or
- a person who is not party to the cancelled transaction, a result which is substantially similar in effect to the effect of the cancelled transaction; or
- another person, as a result of an agreement, arrangement or understanding between a person liable to pay duty on the cancelled transaction and any other party to the transaction (including any other person liable to pay duty on the cancelled transaction).

Duty would be chargeable on a transaction that is cancelled so that a novation, or a subsale to a person who is not a party to the transaction, or between parties to the transaction, can occur.

For example, A and B enter into an agreement to transfer dutiable property in their individual capacity, then cancel the agreement so they can enter into another agreement for the same property in the name of their discretionary trust. The Commissioner would consider the second transaction a subsale transaction and duty would remain chargeable on the first transaction.

Termination of general conditional agreements

A general conditional agreement is terminated on relevant grounds if:

- it is not carried into effect because a condition (of a type referred to in section 88A(2) of the Duties Act) was not fulfilled; and
- duty is not chargeable on the agreement under section 107 of the Duties Act because it is a cancelled transaction.

A general conditional agreement that is terminated on relevant grounds within two months of the date of execution is not liable to duty and a transaction record for the transaction is not required to be lodged with the Commissioner. In these circumstances there is no requirement to apply for an exemption for a cancelled transaction.

If a general conditional agreement is terminated on relevant grounds after it is required to be, or has been, lodged with the Commissioner and payment has not been made or is not yet due, apply to reassess the transaction using Form FDA16 '[General Conditional Agreement - Terminated on Relevant Grounds](#)'.

In all other instances, apply using Form FDA1 '[Exemption for Cancelled Transactions](#)' or FDA10 '[Reduction of Stamp Duty if Matter Not Carried Into Effect](#)'.

A general conditional agreement that is lodged in Online Duties ('ROL') may also be terminated on relevant grounds. For information on processing the terminated transaction, see [Online Duties - Frequently Asked Questions](#).

More information about general conditional agreements is provided in Duties Fact Sheet '[Conditional Agreements](#)'.

Assessment or reassessment for cancelled transactions

Apply using Form FDA1 '[Exemption for Cancelled Transactions](#)' to enable the Commissioner to reassess the duty liability of a dutiable transaction that has been cancelled.

In accordance with section 54 of the *Taxation Administration Act 2003* ('TAA'), the Commissioner may refund any duty that has already been paid.

A transaction record that was lodged in ROL can be cancelled. See information about processing cancelled transactions at [Online Duties - Frequently Asked Questions](#). If the transaction record was duty endorsed

through ROL, the application form and original transaction record, together with any other transaction record that has been duty endorsed and all Certificates of Duty, must be forwarded to the OSR.

If the cancelled transaction is an agreement to transfer dutiable property, a person is not entitled to apply for a reassessment more than five years after the original assessment was made, or more than 12 months after the day on which the agreement became a cancelled transaction, whichever is the later.

For all other dutiable transactions, a person is not entitled to apply for a reassessment more than five years after the original assessment was made.

If stamp duty has been paid or is payable on an instrument under the *Stamp Act 1921*, apply using Form FDA10 'Reduction of Stamp Duty if Matter Not Carried Into Effect'.

Offence

If an application contains false or misleading information, the person or persons commit an offence under the TAA and are liable to a penalty not exceeding \$20,000 plus three times the tax that was or might have been avoided.

Contact the Office of State Revenue

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