



Business Acquisitions

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

As at 13 June 2019

Introduction

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

WA Business Assets

A *WA business asset* is a business asset of a *WA business*.

A *WA business* means:

- a) a business that, at any time in the year before the transaction, has either been carried on in or from WA, or supplied commodities or services to customers in WA; or
- b) carrying out an activity for gain or reward under a WA 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. 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;
- a ship or vessel; or
- anything fixed to land.

If an item is fixed to land (including land the subject of a mining tenement or pastoral lease), that item will not be considered a chattel for the purposes of the Duties Act.

However, the following things fixed to land will be treated as a chattel:

- a thing that is temporarily fixed to land for construction purposes;
- a thing that is not a fixture at law and is used in a primary production business;
- a relocatable home fixed to a residential park site, or an addition or structure fixed or attached to the home or site, that does not constitute a fixture at law; or
- a thing acquired without the underlying land and there is an arrangement for the purchaser to permanently remove the thing within 90 days after it is transferred (or a longer period approved by the Commissioner).

Transactions involving business assets

A dutiable transaction involving a WA business asset (such as a transfer of business assets or an agreement to transfer business assets) is subject to transfer duty. The following 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 WA business asset, a fixed infrastructure control right, a fixed infrastructure access right or a fixed infrastructure statutory licence; 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.

If 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, see 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 depend on the nature of the business and business asset. 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.

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

If the business's head office or principal place of business is not in WA, 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 WA. See Duties Fact Sheet '[Business Licences](#)'.

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

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

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

Apply using [Form FDA3 'Concessional Rate of Duty: Certain Residential or Business Property Transactions'](#).

Lodging requirements

Self-assessment

[Certain dutiable transactions](#) involving WA 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.

All transactions involving land (or any interest in land), must be lodged with [Form FDA41 'Foreign Transfer Duty Declaration'](#).

The instrument or transfer duty statement should be lodged electronically (as an attachment) through www.finance.wa.gov.au/cms/State_Revenue/Online_Services/Online_Services.aspx.

Aggregation of dutiable transactions

If business assets are acquired via separate transactions that form substantially one arrangement, all instruments and transfer duty statements in the series of transactions should be lodged together on the same [online lodgment](#) or, if in person or post, using a single [Form FDA0 'Duties Document Lodgment and Assessment'](#). Transactions lodged separately should include sufficient reference to the other lodgment so they can be cross-referenced to each other.

If 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, see Revenue Ruling [DA 14 'Aggregation of Dutiable Transactions'](#).

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

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