



Business Licences

Sections 14, 79 to 86 and 136 of the *Duties Act 2008*

As at 13 June 2019

Introduction

Under the *Duties Act 2008* ('Duties Act'), transfer duty is chargeable on a dutiable transaction relating to a Western Australian ('WA') business asset which includes a business licence (such as a transfer of a business licence or an agreement to transfer a business licence). Transfer duty is also chargeable if a person agrees to relinquish a licence, or to not apply for a renewal of a licence, so that it or another similar licence can be issued to another person.

For information about dutiable transactions relating to WA business assets, see Duties Fact Sheet '[Business Acquisitions](#)'.

Business licences

A *business licence* means a licence, permit or authority that is issued, granted or given under:

- a) a WA law and which is required by a WA law to be held by a person carrying out an activity for gain or reward; or
- b) a Commonwealth law and which is required by a Commonwealth law to be held by a person carrying out an activity in WA for gain or reward,

but does not include a fixed infrastructure access right, a fixed infrastructure control right or a fixed infrastructure statutory licence.

A business licence includes:

- an authorisation or entitlement under the *Fish Resources Management Act 1994*;
- a pearling licence, hatchery licence or quota under the *Pearling Act 1990*;
- a taxi plate under the *Taxi Act 1994*;
- a licence under the *Liquor Licensing Act 1988*;
- a commercial radio broadcasting licence or commercial television broadcasting licence under the *Broadcasting Services Act 1992* (Cth); and
- a subscription-based broadcasting licence under Part 7 of the *Broadcasting Services Act 1992* (Cth).

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 licence. 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 be 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).

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 licence. 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.

The dutiable value of a *WA business licence* is the greater of:

- a) the consideration for the dutiable transaction; or
- b) the unencumbered value of the business licence at the time when the liability for duty arises.

The dutiable value of a *Commonwealth business licence* held by a person carrying out an activity in WA (but where there is no business being conducted in or from WA) is the greater of:

- a) the value of the business licence so far as it authorises the carrying out of an activity in WA; or
- b) the portion of the consideration for the transaction that relates to the carrying out of an activity in WA under the authority of the business licence.

The dutiable value of a Commonwealth business licence held by a business that is conducted in WA will be calculated under section 85 or 86 of the Duties Act, depending on the location of the business's head office or principal place of business.

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

Business licences held under the Fish Resources Management Act

Section 136 of the Duties Act provides for nominal duty to be charged on a dutiable transaction involving a business licence under the *Fish Resources Management Act 1994* in circumstances where the Commissioner is satisfied that the transaction has not, and will not, result in the passing of a beneficial interest in the business licence.

Commissioner's Practice '[DA 11 - Dutiable Transactions Involving a Unit Entitlement under the Fish Resources Management Act 1994 - Claim of No Passing of a Beneficial Interest](#)' outlines the duty treatment of a transfer or lease of a unit entitlement under the *Fish Resources Management Act 1994* where it is claimed that there is no change in beneficial ownership.

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 – section 147

A business transaction may be assessed at the concessional rate of transfer 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 that 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 Western Australian 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 licences are acquired via separate transactions that form substantially one arrangement, all instruments and transfer duty statements in the series of acquisitions 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 transfer of a business licence involves separate transactions for the transfer of a business licence 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.