



## Substituted Transferees

### Transfer to a Substituted Purchaser

Sections 42(2), 42(4B), 42(4C), 43 and 205Q of the *Duties Act 2008*

As at 13 June 2019

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#### Introduction

Section 42 of the *Duties Act 2008* ('Duties Act') provides relief from duty when:

- property is transferred to a person who is related to the purchaser under an agreement for the transfer of dutiable property; or
- a purchaser under an agreement takes a transfer of the property as the trustee for a related beneficiary.

Section 205Q of the Duties Act applies similar relief from foreign transfer duty for transfers to related persons. However, if the original agreement was not subject to foreign transfer duty and the property is transferred to a person who is a foreign person, the transfer will be chargeable with foreign transfer duty. See Fact Sheet '[Foreign Transfer Duty](#)'.

#### Transfer to a person related to the purchaser

Duty is not chargeable on the transfer of dutiable property to a transferee under an agreement for the transfer of dutiable property if:

- when liability for duty on the agreement arises, the transferee and the purchaser of the property under the agreement are related persons (as referred to in section 43 of the Duties Act); and
- the agreement is duty endorsed on the basis that duty has been paid or is payable at the general or a concessional rate; and
- duty would, but for this section, be chargeable on the transfer of the property at the rate at which duty was chargeable on the agreement.

#### Transfer to purchaser as a trustee

Duty is not chargeable on the transfer of dutiable property to the purchaser under an agreement for the transfer of dutiable property if the purchaser is taking the transfer as either a trustee of a unit trust scheme, or as a trustee other than a trustee of a discretionary trust or a unit trust scheme.

This relief applies when a purchaser is an individual who has entered into an agreement for transfer in their own right, but the subsequent transfer is to the purchaser in their capacity as a trustee.

- If the purchaser is taking a transfer as the trustee of a unit trust scheme, the purchaser must be either the sole unit holder in the unit trust, or a unit holder in the unit trust and related to each of the other unit holders (all of whom must be individuals).
- If the purchaser is taking a transfer as a trustee other than a trustee of a discretionary trust or a unit trust scheme, the beneficiary must be an individual who is related to the purchaser.

The unit holder's or beneficiary's interest in the unit trust scheme or trust must be a beneficial interest.

The relationships referred to are limited to those between individuals, as set out in the Qualifying Relationships section below.

## Qualifying Relationships

The following persons are related to a **purchaser** who is an **individual**.

- The purchaser's spouse or de facto partner
- A parent or *remoter lineal ancestor* of the purchaser or of the purchaser's spouse or de facto partner
- A child or *remoter lineal descendant* of the purchaser
- A spouse or de facto partner of a child or remoter lineal descendant of the purchaser
- A spouse or de facto partner of a parent or remoter lineal ancestor of the purchaser
- A sibling of the purchaser or of the purchaser's spouse or de facto partner
- A spouse or de facto partner of a sibling of the purchaser or of a sibling of the purchaser's spouse or de facto partner

**Note:** The terms *remoter lineal ancestor* and *remoter lineal descendant* refer to persons who are related directly as ancestors or descendants of a person, for example, a direct line of relationship that can be traced up through a person's parent, grandparent etc. or down through a person's child, grandchild etc. A step-child of the purchaser is treated as a child. Aunts/uncles and nieces/nephews do not qualify as lineal ancestors or descendants.

A **corporation** is related to a **purchaser** who is an **individual** if:

- the purchaser is the sole shareholder of the corporation; or
- the purchaser is a shareholder of the corporation and is related (as set out in these qualifying relationships) to each of the other shareholders.

A **trustee of a unit trust scheme** is related to a **purchaser** who is an **individual** if:

- the purchaser is the sole unit holder in the unit trust scheme; or
- the purchaser is a unit holder in the unit trust scheme and is related (as set out in these qualifying relationships) to each of the other unit holders.

A person is related to a **purchaser** that is a **corporation** if:

- the person is the sole shareholder of that corporation; or
- the person is a shareholder of the corporation and, if the person were a purchaser, would be related (as set out in these qualifying relationships, subject to the exceptions noted below) to each of the other shareholders.

A person is related to a **purchaser** that is the **trustee of a unit trust scheme** if:

- the person is the sole unit holder in that unit trust scheme; or
- the person is a unit holder in the unit trust scheme and, if the person were a purchaser, would be related (as set out in these qualifying relationships, subject to the exceptions noted below) to each of the other unit holders.

## Exceptions to qualifying relationships

A person is not related to a purchaser when they will hold the dutiable property the subject of the transaction on behalf of another person (the beneficiary):

- as the trustee of a discretionary trust; or
- as a trustee of a unit trust scheme, **unless** the purchaser is the sole unit holder in the unit trust or is a unit holder in the trust and is related to each of the other unit holders; or
- as a trustee other than a trustee of a discretionary trust or unit trust scheme, **unless** the purchaser, transferee and beneficiary are all individuals, **and** the purchaser and the transferee are related, **and** the purchaser and the beneficiary are related.

## How to apply

The relevant agreement for transfer (such as the contract for sale or offer and acceptance contract) and the transfer of land, must both be submitted together with Form FDA14 'Substituted Transferees' and Form FDA41 'Foreign Transfer Duty Declaration'. Forms are available from the Office of State Revenue website at [www.osr.wa.gov.au](http://www.osr.wa.gov.au).

If property is being transferred to a substituted transferee not named on the agreement for transfer, a Foreign Transfer Duty Declaration Form must be completed and submitted for each transferee.

If the transaction is assessed on Revenue Online, the Substituted Transferees application form must be retained by the lodging party for auditing purposes.

## Contact the Office of State Revenue

<b>Office</b>	200 St Georges Terrace PERTH WA 6000	<b>Telephone</b>	(08) 9262 1100 1300 368 364 (WA country STD callers only – local call charge)
<b>Postal</b>	Office of State Revenue GPO Box T1600 PERTH WA 6845	<b>Web enquiry</b>	<a href="http://www.osr.wa.gov.au/DutiesEnquiry">www.osr.wa.gov.au/DutiesEnquiry</a>
		<b>Website</b>	<a href="http://www.osr.wa.gov.au">www.osr.wa.gov.au</a>

**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.