



Exempt Family Farm Transactions – Transfer Duty

Sections 99 - 106 of the *Duties Act 2008*

As at 13 June 2019

Introduction

The transfer of farming property is exempt from transfer duty if the property is transferred between family members and the land is used solely or dominantly for primary production.

If a family-owned company owns the family farm, the transfer of shares between family members may be exempt from landholder duty. See [Duties Fact Sheet 'Landholder Duty'](#).

Terms used

Farming property means farming land or other dutiable property used solely or dominantly in connection with the business of primary production.

Farming land means land in Western Australia that is used solely or dominantly for the purpose of primary production.

Primary production means any of the following:

- the growing or rearing of plants (including trees, fungi or any crop) for the purpose of selling them, parts of them or their produce;
 - the breeding, rearing or maintenance of living creatures (produce animals) for:
 - selling them or their progeny for food or stud purposes;
 - the production or collection of the skins, shells or bodily produce;
 - selling parts of them, their skins, shells or bodily produce;
- or
- the breeding or rearing of horses for the purpose of selling them or their progeny.

It doesn't matter if the thing sold is in a natural, processed or converted state, but the processing or converting of anything to sell it is not primary production.

Transferor means:

- an individual (other than a trustee) from whom the property is, or will be, acquired; or
- if the property was held by a trustee (other than a trustee of a unit trust scheme or a discretionary trust) immediately before the transaction took place, an individual on whose behalf, and at whose direction, the trustee carried out the transaction.

Transferee means the person liable to pay duty on the transaction that is:

- a family member of the transferor; or
- a trustee of a trust, other than a unit trust scheme or a discretionary trust, if each beneficiary is a family member of the transferor; or
- a trustee of a discretionary trust if:
 - each beneficiary is the transferor or a family member of the transferor; and
 - the transferor is not the only beneficiary; and
 - the transferor does not control the trust.

A **family member** of a person is:

- a child or remoter lineal descendant of the person;
- a parent or remoter lineal ancestor of the person;
- a brother or sister of the person, or a child or remoter lineal descendant of a brother or a sister of the person;
- an aunt or uncle of the person;
- a brother or sister of the person's spouse or de facto partner of two years (brother-in-law/sister-in-law);
- the spouse or de facto partner of two years of a family member listed above; or
- the spouse, former spouse, de facto partner of two years or former de facto partner of two years of the person.

These persons must be acting in their own capacity and not as agent, trustee or otherwise on behalf of any other person. A reference to child includes a step-child.

A person **controls a discretionary trust**:

- if they are in a position to directly or indirectly influence the vesting of any of the capital or income from the trust property; or
- if a corporation is in a position to influence the vesting of any of the capital or income from the trust property and the person is either beneficially entitled to a share, or is a director or secretary, of that corporation or a related corporation.

A trustee and an appointor of a discretionary trust are both considered to be in a position to control the trust.

Exempt Family Farm Transaction

A dutiable transaction is an exempt family farm transaction only if:

- each transferor was using the farming property in the business of primary production immediately before the transaction took place; and
- each transferee intends to continue using the farming property in the business of primary production.

A family farm transaction will not be exempt if the same property received a family farm exemption for a transaction that was entered into within the previous five years.

Farming property used for primary production

Farming property includes farming land and other dutiable property, such as farming equipment that is used solely or dominantly in the business of primary production.

Farming land is still used in the business of primary production even if some of the land is leased to another person who uses it solely or dominantly for silviculture or reforestation.

Farming land does not include land that is used solely or dominantly for secondary processing facilities or for residential purposes.

Example 1 – Land used dominantly for primary production

Henry is transferring his farm to his wife. The property consists of several lots of land which are all used for sheep farming. Henry and his wife live in a residence on the land.

Because the dominant use of the land is for the sheep farming business, the farming land is farming property.

Example 2 – Some of the land used for reforestation

Greg is transferring his farm to his daughter. Greg uses the property to run a grain farm, however, he leases some of the land to a third party who uses it solely for reforestation purposes.

Because only some of the property is leased for reforestation purposes and the dominant use of the land is for a primary production business, the farming land is farming property.

Example 3 – Dominant use of the land is for secondary processing

Bob is selling his property to his daughter. He uses a small portion of land to grow grapes but uses the majority of the land as a wine making facility.

Because the dominant use of the land is for secondary processing purposes, it is not farming property.

Example 4 – Dominant use of the land is for other purposes

Sam is selling his farming property to his son. Sam uses a small portion of the land for breeding and rearing cattle and leases the rest of the property to a third party who uses it for a wind farm.

Because the dominant use of the land is for purposes other than primary production, it is not farming property.

Eligible transferor and transferee

As outlined above:

- The person transferring the farming property must be an individual or a bare trustee for an individual.
- A transferee is a family member of the transferor, a trustee of a bare trust whose beneficiaries are family members of the transferor, or, in certain circumstances, a trustee of a discretionary trust.

Example 5 – Transferor as bare trustee for an individual

Henry holds farming property as bare trustee for Francis. The farming property is being transferred from Henry to Francis' brother.

Francis is an eligible transferor because he is an individual on whose behalf and discretion Henry is acting.

Example 6 – Transferor as trustee of a discretionary trust

Greg holds farming property as trustee of his discretionary trust. He sells the farming property to his son.

Greg is not an eligible transferor because he holds the property as trustee of a discretionary trust.

Example 7 – Transferee as a family member of the transferor

Married couple Ned and June sell their farming property to Ned's brother (Andrew) and sister-in-law (Petra).

Andrew and Petra are eligible transferees because they are family members of both Ned and June.

Example 8 – Transferee as trustee for an individual

Rachel is transferring her farming property to her friend, Bradley, to hold it as bare trustee for Rachel's daughter.

Bradley is an eligible transferee because he is trustee of a trust for which the beneficiary is a family member of the transferor.

Example 9 – Transferee as trustee of a discretionary trust

Justin sells his farming property to his son, Sam, who will hold the property as trustee for Sam's discretionary trust. Justin and Sam are the beneficiaries of the discretionary trust, and Justin has no control over the trust.

Sam is an eligible transferee because he is trustee of a discretionary trust in which there are multiple beneficiaries, each of which is a family member of the transferor, and the transferor doesn't control the trust.

Farming the property

The farming property must be used in the business of primary production personally, with others, or through an entity or a combination of entities to which the transferor or transferee is related (as relevant).

- Farming personally means that the transferor or transferee farms the property in their own capacity, for example, as a sole trader.
- If a transferor or transferee farms the property with others, they must still be personally involved in the farming business, for example, as a partner in a partnership. The other partners can be any other person or entity (regardless of whether or not the other partners are related to the transferor or transferee).
- A transferor or transferee who is farming the property through an entity must be related to that entity.

A transferor is related to an entity when:

- for a trust (other than a unit trust scheme) – the transferor is a beneficiary of the trust and every other beneficiary is a family member of the transferor;
- for a unit trust scheme – the transferor holds a unit in the unit trust scheme and every other person who holds a unit in that unit trust scheme is a family member of the transferor; or
- for a corporation – the transferor is a shareholder in a corporation in which every other shareholder is a family member of the transferor.

A transferee is related to an entity when:

- for a trust (other than a unit trust scheme or discretionary trust) – the transferee is a beneficiary of the trust, and every other beneficiary is the transferor or a family member of the transferor;
- for a discretionary trust – the transferee is a beneficiary of the trust and:
 - every other beneficiary is the transferor or a family member of the transferor; and
 - the transferor does not control the trust;
- for a unit trust scheme – the transferee holds a unit in the unit trust scheme and every other person who holds a unit in that scheme is the transferor or a family member of the transferor; or
- for a corporation – the transferee is a shareholder in the corporation in which every other shareholder is the transferor or a family member of the transferor.

Example 10 – Transferee farming using a discretionary trust

Tom agrees to transfer farming property to his wife, Kate, as trustee for the XYZ Family Trust. The trust deed provides that Tom, Kate and their son are beneficiaries of the trust. The property will be farmed through the trust.

This is an exempt family farm transaction because Kate is related to XYZ Family Trust, the entity farming the property, and the beneficiaries of the trust are either the transferor or family members of the transferor.

Example 11 – Transferee farming with others

Bob agrees to transfer farming property to his daughter, Kelly, who will continue to farm the property through a partnership. The partnership will consist of Kelly, her friend and a company.

This is an exempt family farm transaction because Kelly will farm the property through the partnership, of which she is a partner. The other partners do not have to be family members of Bob.

Example 12 – Transferee farming using a discretionary trust

Tom agrees to transfer farming property to his wife, Kate. Kate will be farming the property through the XYZ Family Trust. The trust deed provides that the beneficiaries include Tom and Kate's children and a company.

This is not an exempt family farm transaction because Kate is not related to the entity farming the property. This is because the company, as a beneficiary of the XYZ Family Trust, is not a family member of the transferor.

Example 13 – Transferee farming using a company

Bob agrees to transfer farming property to his daughter, Kelly, who will continue to farm the property through ABC Pty Ltd. The shareholders of ABC Pty Ltd are Kelly, her son and XYZ Pty Ltd.

This is not an exempt family farm transaction because Kelly is not related to the entity farming the property. This is because XYZ Pty Ltd, as a shareholder of ABC Pty Ltd, is not a family member of the transferor.

A transferee that is a bare trustee is related to an entity if:

- each of the beneficiaries of the bare trust have an interest in the entity; and
- every other person who has an interest in the entity is a family member of the transferor.

Example 14 – Transferee is a bare trustee for a beneficiary, farming using a company

Jane agrees to transfer farming property to her friend Kate to hold as bare trustee for Jane's two children (the beneficiaries). Kate will continue to farm the property through ABC Pty Ltd, a company in which Jane and her children are the only shareholders.

This is an exempt family farm transaction because Kate is related to ABC Pty Ltd. This is because each of the beneficiaries is a shareholder in the company, and every other shareholder is the transferor or a family member of the transferor.

Family member farming the property before the transaction

If the transferor was not using the farming property in the business of primary production immediately before the transaction took place, the exemption may apply if the Commissioner is satisfied:

- the transferor previously used the farming property in the business of primary production (either personally, with others or through a related entity); and
- a family member of the transferor, or a related entity of a family member of the transferor, was using the farming property in the business of primary production immediately before the transaction took place.

The test used to determine if a transferee is related to an entity is also used to determine if a family member of the transferor farmed the property through a related entity before the transaction.

Partnership acquisition

An exempt family farm transaction includes a partnership acquisition between family members to the extent the partnership holds farming property. Any chattels owned by a partnership that are used for primary production are excluded when calculating the value of the partnership acquisition.¹

Example 15 – Exempt partnership acquisition with only farming property

Bob transfers his interest in a partnership to his daughter, Kelly, for natural love and affection. The partnership holds farming land used for primary production. Bob was farming the property through the partnership and Kelly will continue to farm the property through the partnership.

The partnership acquisition is an exempt family farm transaction.

Example 16 – Exempt partnership acquisition with farming and non-farming property

Bob transfers his interest in a partnership to his daughter, Kelly, for natural love and affection. The partnership holds farming land used for primary production as well as non-farming land. Bob was farming the property through the partnership and Kelly will continue to farm the property through the partnership.

Only the farming land will be exempt from duty on the partnership acquisition. Duty will apply to the dutiable value of the partnership acquisition to the extent that it relates to the non-farming land.

¹ Chattels that are held or used in connection with a primary production business are not dutiable property. See [Revenue Ruling DA 21 'Excluded Chattels'](#).

Subsequent liability to duty

An exempt family farm transaction where property was transferred to the trustee of a discretionary trust will become liable to duty if:

- during the lifetime of the transferor, a person who is not the transferor or a family member of the transferor becomes entitled to a share or interest in the trust, or otherwise benefits from the trust; or
- the transferor gains control of the trust.

If one of these events takes place, a transfer of the farming property is taken to have occurred. The trustee must lodge form [FDA19 'Transfer Duty Statement: Family Farm Transaction'](#) within two months of the event occurring. Duty will be charged on the unencumbered value of the farming property that was previously exempt from duty which is still held by the trust at the time the event takes place.

Duty will not be applied to the transaction if the trust no longer holds any farming property when the event occurs, or if duty has already been paid because one of the events has taken place.

Example 17 – Subsequent liability when a non-family member becomes a beneficiary

On 30 May 2015, Tom transfers his property to his wife, Kate, as the trustee of the ABC Family Trust. The transfer is exempt from duty as a family farm transaction. On 1 January 2016, the Trust adds a beneficiary who is not Tom's family member. This event is deemed a transfer of dutiable property as the trust still holds farming land and transfer duty must be paid on the unencumbered value of the farming property.

On 10 March 2016, the trust adds another unrelated beneficiary. Because the trust has already paid duty on the earlier event, it is not liable for further transfer duty.

Apply for an Exemption

All transferees must make a joint application using form [FDA 6 'Family Farm Exemption'](#). The completed application must be accompanied by the relevant transaction record (contract for sale, transfer of land or transfer duty statement) for the transaction.

Reassessment timeframes

If duty is paid on a transaction that meets the family farm exemption criteria, it may be reassessed if an application is made within 12 months of the day the transaction was duty endorsed (that is, the date duty is paid and the certificate is printed).

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, nor is it advice, and reference should be made to the Act for complete details.