



## No Double Duty Transactions

*Duties Act 2008*

As at 1 January 2019

### Introduction

Section 42 of the *Duties Act 2008* ('Duties Act') provides that duty will not be charged twice on two dutiable transactions (documents) relating to the same transaction. Where duty is chargeable on a dutiable transaction such as a contract for sale of land, the subsequent transfer of land or declaration of trust will be considered a 'no double duty' transaction ('NDD') if it is in conformity with the initial dutiable transaction.

Some dutiable transactions may be considered NDD for transfer duty purposes, but are chargeable with foreign transfer duty where the transferee on the transfer of residential property is a foreign person and the agreement for transfer was not endorsed with foreign transfer duty. Refer to Fact Sheet '[Foreign Transfer Duty](#)' for more information.

### No double duty provisions

#### More than one type of dutiable transaction for the same transaction (section 41)

If a transaction over dutiable property comprises more than one type of dutiable transaction, the Commissioner will decide which dutiable transaction is most applicable to charge with duty and which to endorse for NDD.

#### Transfers in conformity with an agreement (section 42(1))

If a transfer of dutiable property is in conformity with an agreement to transfer (i.e. contract for sale) and the agreement has been duty endorsed, the transfer will be endorsed for NDD. This usually occurs where the persons named on the transfer of land are the same persons named on the agreement.

NDD will not apply where the parties liable to duty under the agreement differ in name or the shares held from the transferees under the transfer (see examples 4 and 5).

#### *Example 1*

John Smith enters into a contract to purchase land from Jane Doe. Duty on the contract is paid and the contract is duty endorsed.

The transfer of land describes the same property to be transferred from Jane Doe to John Smith.

Because the contract is already duty endorsed, the transfer of land is endorsed for NDD.

#### Foreign transfer duty

If an agreement for transfer has already been endorsed with foreign transfer duty, it will not be chargeable again on a transfer of land in conformity with the agreement relating to the same acquisition of residential property.

### Transfers to a person related to the purchaser (section 42(2))

NDD applies where the transferee on a transfer of land is related to the purchaser named on the agreement if:

- (a) when liability for duty on the agreement arises (generally the date of execution of the agreement), the purchaser and the transferee are related (as defined in section 43); and
- (b) the agreement is duty endorsed on the basis that duty is chargeable at the general or concessional rate; and
- (c) the same rate of duty would otherwise be applicable to both transactions.

See Duties Fact Sheet '[Substituted Transferees](#)'.

#### *Example 2 – NDD relief available*

Mary Jones enters into a contract to purchase land in her own name. Prior to settlement, Mary decides the land should be held in a corporate entity. A transfer of land is lodged for duty endorsement naming MJ Assets Pty Ltd as the transferee.

At the date the contract was entered into, Mary and her sister held all the shares in MJ Assets Pty Ltd.

The transfer of land is endorsed for NDD because Mary was a shareholder of the company at the date of the contract and was related to the only other shareholder.

#### *Example 3 – No NDD relief available*

Oliver Walker enters into a contract to purchase land in his own name. Prior to settlement, Oliver is advised the land should be held for his family trust.

A transfer of land names Walker Pty Ltd as the transferee. Walker Pty Ltd is acting in the capacity as trustee for the Walker Family Trust.

Duty is chargeable on both the agreement to transfer (contract) and the transfer of land because a qualifying relationship does not include a transferee who holds the land in their capacity as trustee of a discretionary trust, irrespective of the relationship between the purchaser and the beneficiaries of the trust.

### Transaction records not in conformity (section 42(3))

NDD only applies to the extent the transfer is in conformity with the agreement. Where the parties liable to duty under the agreement differ from the transferee named on the transfer, or the division of property differs between the transactions, transfer duty will be chargeable to the extent of the difference.

#### *Example 4 – Partial NDD relief available*

Jack Norton and Jill Bennet are friends who enter into a contract to purchase land as tenants in common in equal shares. Duty on the contract is paid and the contract is duty endorsed.

Prior to settlement, Jack and Jill decide the land is to be held as tenants in common in unequal shares, and they submit a transfer of land indicating the transferees as Jack with 10 shares and Jill with 90 shares, as tenants in common.

Jack and Jill do not hold a qualifying relationship for the purposes of section 43 (substituted transferees).

The transfer of land is chargeable with duty to the extent of the difference in the purchasers' shares described on the contract and the transferees' shares described on the transfer of land. In this example, Jill acquired 40 of Jack's shares.

NDD relief is available on 60% of the transfer comprising of Jack's 10% interest and Jill's 50% interest.

#### *Example 5 – Partial NDD relief available*

John Williams enters into a contract to purchase land. Prior to settlement of the property, the contract is varied, naming John Williams and Jack Black as the buyers. Duty on the contract is paid and the contract is duty endorsed. The transfer of land names John Williams and Jack Black as the transferees.

Despite the transfer of land being in conformity with the contract as varied, the transfer of land is chargeable with duty to the extent of the difference between the original named purchasers at the date of execution of the contract, and the transferees on the transfer of land.

Because John Williams' ownership of the property changed by 50%, NDD is applied to the extent that remains the same as the original contract and duty is charged on the difference being the greater of 50% of the unencumbered value of the property, or the consideration paid.

#### **Transfers to a trustee of a bare trust or unit trust (section 42(4B))**

NDD applies where the transferee is the purchaser who is an individual acting as a trustee of:

- (a) a unit trust scheme in which they are either the sole unit holder or a unit holder that is related to each of the other individual unit holders; or
- (b) a trust that is not a discretionary or unit trust provided that the purchaser and beneficiary are both individuals and related to each other.

#### *Example 6*

Adam White enters into a contract to purchase land. Duty on the contract is paid and the contract is duty endorsed.

Prior to settlement, Adam decides the property should be held in his capacity as trustee for the White Unit Trust of which Adam and his wife are the only unit holders.

The transfer of land names the transferee as Adam White.

The transfer of land is endorsed for NDD.

#### **Transfers where the purchaser was acting as agent of the transferee (section 42(4))**

If the person named as purchaser in the agreement was disclosed as the agent of the transferee at the time the agreement was made, the subsequent transfer to the transferee will be endorsed for NDD.

For further information see Duties Revenue Ruling DA 7 '[Transfer under agency relationship where the transferee on the transfer differs from the purchaser named in the agreement to transfer](#)'.

Refer to Item 7.9 of the [Duties Information Requirements](#) for supporting documentation required.

#### *Example 7 – NDD relief available*

Sue Osborne enters a contract to purchase land, acting as agent for Jonathan Osborne as the purchaser. The agency relationship is disclosed on the contract. Duty on the contract is paid and the contract is duty endorsed.

The transfer of land names Jonathan Osborne as the transferee.

The transfer of land is endorsed for NDD.

*Example 8 – No NDD relief available*

Richard Lee enters a contract to purchase land as the purchaser. No agency relationship is disclosed on the contract. Duty on the contract is paid and the contract is duty endorsed.

The transfer of land names Peter Johnson as the transferee. Richard claims that he was acting as agent for Peter at the time the contract was entered into.

Unless evidence is provided to support the existence of the agency relationship at the time the contract was entered into, duty is chargeable on the transfer of land on the greater of the unencumbered value of the property, or the consideration paid.

**Intention to transfer to a corporation yet to be incorporated (section 42(5))**

If the transferee is a newly formed or dormant corporation that is not acting as trustee of a trust, and the purchaser entered into the agreement with the intention of transferring the property to that corporation, no further duty will be charged on the transfer. The purchaser must show that, at the time of the agreement, steps were being taken to either incorporate the company or purchase shares in the dormant company.

See Commissioner's Practice DA 35 '[Duties – Transfers of Western Australian Business Assets](#)'.

Refer to Items 7.13 and 7.14 of the [Duties Information Requirements](#) for supporting documentation required.

*Example 9 – NDD relief available*

A contract for the purchase of commercial land is entered into with the purchaser named as 'Joe Bloggs *on behalf of a company yet to be incorporated*'. Duty on the contract is paid and the contract is duty endorsed.

The transfer of land names the transferee as Bridgetown Construction Pty Ltd.

Supporting information shows that steps were being taken to incorporate the company Bridgetown Construction Pty Ltd at the time the contract was entered into.

The transfer of land is endorsed for NDD.

*Example 10 – No NDD relief available*

A contract is entered into for the purchase of land with the purchaser named as 'Reece Smith *on behalf of a company yet to be incorporated*'. Duty on the contract is paid and the contract is duty endorsed.

The transfer of land names the transferee as Smith and Sons Pty Ltd, acting as trustee for the Smith and Sons Family Trust.

Even though supporting information shows that steps were being taken to incorporate the company Smith and Sons Pty Ltd at the time the contract was entered into, NDD does not apply where the purchaser transfers the property to a company yet to be incorporated, if the company is acting as trustee of a trust.

Duty is chargeable on the transfer of land on the greater of the unencumbered value of the property, or the consideration paid (if any).

**Certain transfers to become managed investment scheme property (section 42(7))**

NDD applies to a transfer of property from a vendor under an agreement to a managed investment scheme if:

- the Commissioner is satisfied the managed investment scheme has been or will be established by a public subscription offer; and

- the Commissioner is satisfied that, before the managed investment scheme was established, the purchaser entered into the agreement with the intention the property would become scheme property; and
- the agreement provides for its termination if the scheme is not established; and
- the agreement is duty endorsed.

### **Intervening transaction between agreement and transfer (section 42(8))**

If there is an agreement to transfer (first transaction) over dutiable property, and an intervening transaction(s) takes place over the same dutiable property, the transfer(s) which give effect to the first and intervening transactions are endorsed for NDD.

#### *Example 11*

Thomas Anderson enters into a contract to purchase land from Lily Stuart (first agreement). Duty is paid and the first agreement is duty endorsed.

Prior to settlement, Thomas enters into another contract agreeing to sell the same land to Peter Bourke (second agreement). Duty is paid and the second agreement is duty endorsed.

A transfer of land, executed between Lily Stuart as transferor and Peter Bourke as the transferee, is endorsed for NDD.

#### *Example 12*

Super Trustee Pty Ltd, as trustee for the ABC Superannuation Fund, enters into a contract to purchase commercial property. Duty is paid and the contract is duty endorsed.

Custodian Pty Ltd, the custodian of the ABC Superannuation Fund, executes a declaration of trust after signing the offer and acceptance which states that Custodian Pty Ltd will hold the property on behalf of Super Trustee Pty Ltd as trustee for the ABC Superannuation Fund. The declaration of trust is chargeable with nominal duty (section 117).

The transfer of land naming Custodian Pty Ltd as the transferee is endorsed for NDD to both the agreement and the declaration of trust.

### **Transfers pursuant to declaration of trust (section 42(9))**

A transfer of property to the trustee of a trust will be endorsed for NDD where it is made pursuant to a duty endorsed declaration of trust, or pursuant to a declaration of trust that is not chargeable with duty under section 42(11).

### **Declarations of trust that declare the same trust as the agreement to purchase (section 42(10))**

If an agreement to purchase discloses the purchaser as trustee of a trust, a subsequent declaration of trust identifying the same trust arrangement as on the contract will be endorsed for NDD.

#### *Example 13*

Naomi Clarkson, acting as trustee for the Clarkson Family Trust, enters into a contract to purchase land. Duty on the contract is paid and the contract is duty endorsed.

A transfer of land is executed naming Naomi Clarkson as the transferee. A declaration of trust, executed on the same day of the contract, declares Naomi Clarkson is holding the same property (as stated on the contract) on trust for the Clarkson Family Trust.

The transfer of land is endorsed for NDD under section 42(1) and the declaration of trust is endorsed for NDD under section 42(10).

### **Acknowledgements of trust and subsequent declarations of trust (section 42(11))**

Duty is not chargeable on a declaration of trust if:

- (a) the declaration replaces an existing declaration of trust which is duty endorsed and declares the same trusts as were declared under the preceding declaration of trust; and
- (b) the beneficiary under the declaration of trust is the same as under the preceding declaration of trust; and
- (c) the dutiable property subject of the declaration of trust is the same as under the preceding declaration of trust.

#### *Example 14*

Michael Avery, acting as trustee for the Avery Family Trust, enters into a contract to purchase land. The contract notes the buyer as “*Michael Avery ATF the Avery Family Trust*”. Duty on the contract is paid and the contract is duty endorsed.

After settlement, Michael executes a declaration (original declaration) of trust restating the trust relationship as disclosed on the contract.

Six months later, Michael subdivides the land and three resulting lots are registered in his name. Michael executes a declaration of trust (replacement declaration) declaring that the three resulting lots are held by him as trustee for the Avery Family Trust.

Both declarations are endorsed for NDD as the subject property of both declarations is substantially the same and the beneficiary is the same.

### **Transfers resulting from a vesting of dutiable property (section 42(12))**

Duty is not chargeable on a transfer of dutiable property resulting from a vesting of that property, either by law or statute, if the vesting instrument is duty endorsed.

#### *Example 15*

The Family Court of Western Australia orders a property to be transferred from John Doe to Jane Doe. John and Jane sign a transfer of land to effect the transfer.

The court order is endorsed for nominal duty in accordance with section 131, and the transfer of land is endorsed for NDD.

### **Transfers resulting from a foreclosure order (section 42(13))**

A transfer of dutiable property will be endorsed for NDD where it is made pursuant to an order for a foreclosure of a mortgage that has been duty endorsed.

### **Transfers in accordance with a partnership acquisition (section 42(14))**

A transfer of dutiable property will be endorsed for NDD where it is in accordance with a partnership acquisition that has been duty endorsed.

### **Transfers of interests in mining tenements in accordance with farm-in agreements (section 42(15))**

A transfer of, or an agreement for the transfer of, an interest in a mining tenement under a farm-in agreement will be endorsed for NDD where the exploration amount under the agreement has been expended and the farm-in agreement is duty endorsed.

## How to apply for NDD

NDD requests should be made electronically if the transaction records were lodged using our [Online Services](#). All other NDD requests can be lodged by post or in person.

A request for NDD on a transaction record can be lodged:

- 1) together with the primary transaction record;
- 2) after the primary transaction record is lodged; or
- 3) after the primary transaction record is assessed, paid or endorsed.

A transaction record will only be endorsed for NDD after duty on the primary transaction record has been paid or exempted.

For immediate processing of routine NDD requests, see [Revenue Ruling DA 1 'Assessment Services and Procedures'](#).

When applying for NDD, submit the transaction record that is duty endorsed or to which duty is to be applied, [Form FDA41 'Foreign Transfer Duty Declaration'](#), the transaction record for which NDD is sought, supporting information and application forms (where relevant). If the duty endorsed transaction record is missing, refer to item 8.3 of the [Duties Information Requirements](#).

## Contact the Office of State Revenue

<b>Office</b>	200 St Georges Terrace PERTH WA 6000	<b>Telephone</b>	(08) 9262 1100
<b>Postal</b>	Office of State Revenue GPO Box T1600 PERTH WA 6845	<b>Web enquiry</b> <b>Website</b>	<a href="http://www.osr.wa.gov.au/DutiesEnquiry">www.osr.wa.gov.au/DutiesEnquiry</a> <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 2008* and reference should be made to the Act for complete details.