



## Transfer Duty Overview

Chapter 2 of the *Duties Act 2008*

As at 13 June 2019

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### Introduction

Transfer duty is imposed under the *Duties Act 2008* ('Duties Act') on various dutiable transactions (whether documented or not), including transfers of real estate and certain business assets.

### Dutiable transactions

The Duties Act specifies dutiable transactions and dutiable property that may be the subject of a dutiable transaction. Transfer duty is imposed on the following dutiable transactions:

- a transfer of dutiable property;
- an agreement for the transfer of dutiable property;
- a declaration of trust over dutiable property;
- a vesting of dutiable property by statute law or court order;
- a foreclosure of a mortgage over dutiable property;
- an acquisition of new dutiable property on its creation, grant or issue;
- a surrender of special dutiable property;
- a trust acquisition or surrender;
- a partnership acquisition;
- a farm-in agreement.

The following are not dutiable transactions and are not subject to transfer duty:

- a transaction the subject of which is a right (other than a fixed infrastructure control right, fixed infrastructure access right, fixed infrastructure statutory licence or derivative mining right), unless there is consideration paid for the transaction;
- a transfer, or agreement to transfer, a lease (other than a pastoral lease), unless there is a consideration paid for the transaction;
- a transfer, or agreement to transfer, a security interest where the consideration for the transfer is equal to or greater than the market value of the security interest;
- a transaction over a unit in a unit trust.

## Dutiable property

There are four items of dutiable property that may be the subject of a dutiable transaction:

- **Land in Western Australia** – Land includes:
  - any estate or interest in land;
  - a mining tenement;
  - an estate or interest in a mining tenement;
  - a pastoral lease;
  - an interest of a pastoral lessee under a pastoral lease;
  - anything fixed to the land (including land the subject of a mining tenement or pastoral lease), whether or not the thing constitutes a fixture at law, is owned separately from the land, is notionally severed or considered to be legally separate from the land as a result of the operation of any law of the State or Commonwealth, or an estate or interest in anything fixed to land.

Land does not include a carbon right or a carbon covenant registered under the *Carbon Rights Act 2003* or a derivative mining right.

A thing fixed to land, or an estate or interest in a thing fixed to land, is **not land** if:

- it is fixed to land on a temporary basis and only for the purpose of being used in construction works; or
  - it does not constitute a fixture at law and that is held or used in connection with the business of primary production; or
  - it is 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
  - the thing is acquired without the underlying land as part of the transaction (or another transaction aggregated with that transaction) 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).
- **A right** – A right is only dutiable property if a transfer of the property to which the right relates would be dutiable. Rights include:
    - an option to acquire dutiable property, unless the option is part of simultaneous put and call option over dutiable property;
    - a right of pre-emption for dutiable property;
    - a right to acquire dutiable property;
    - a right under a joint venture relating to dutiable property of the joint venture;
    - a right to exploit dutiable property;
    - a right to income from dutiable property;
    - a right to capital growth of dutiable property;
    - a fixed infrastructure control right;
    - a fixed infrastructure access right;
    - a fixed infrastructure statutory licence;
    - a derivative mining right;
    - a right under an application under the *Mining Act 1978* for a mining tenement;
    - a licence, or a water entitlement under a licence, under the *Rights in Water and*

*Irrigation Act 1914* section 5C; and

– a part of, or an interest in, a right.

- **A chattel in Western Australia** – A transaction over a chattel is not a dutiable transaction if the only property the subject of the transaction is a chattel.

A transaction relating to a chattel is also a dutiable transaction if:

- it involves another dutiable transaction and the transactions are treated as a single dutiable transaction; or
- it is part of the same arrangement as an acquisition of a significant interest in a landholder or an acquisition of a further interest of a landholder who already holds a significant interest.

- **A Western Australian business asset** – 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;
- things that a business has that are in the nature of rent rolls and client lists.

A business asset does not include a trade debt.

### ***New dutiable property***

Certain types of dutiable property (referred to as ‘new dutiable property’) will be dutiable on their creation, grant or issue. New dutiable property includes:

- **Land in Western Australia** – land that includes an estate or interest in land, such as certain *profit a prendres* or leasehold interests.
- **The following rights** –
  - an option to acquire dutiable property, unless the option is part of a simultaneous put and call option over dutiable property;
  - a right to acquire dutiable property;
  - a fixed infrastructure control right;
  - a fixed infrastructure access right;
  - a derivative mining right.
- **The following Western Australian business assets** –
  - intellectual property;
  - a restraint of trade arrangement;
  - a business identity.

The following are **not** new dutiable property, and accordingly will not be dutiable upon their creation grant or issue:

- a security interest in dutiable property;
- a partner's interest in a partnership;
- a lease (other than a pastoral lease) if no consideration is paid, or agreed to be paid, for the grant of the lease;
- a pastoral lease, or an interest of a pastoral lease under a pastoral lease, if the grant of the lease under the *Land Administration Act 1997* section 101 is not subject to the payment of a sale price;
- a mining tenement;
- a licence, or water entitlement under a licence, under the *Rights in Water and Irrigation Act 1914* section 5C;
- a *profit a prendre* created under a timber sharefarming agreement under the *Conservation and Land Management Act 1894* or the *Forest Products Act 2000*, unless a *profit a prendre* had been previously created in respect of a crop of trees to which the agreement applies;
- a plantation interest, created under an agreement under the *Tree Plantation Agreements Act 2003*, unless the interest had been previously created in respect of a plantation to which the agreement applies.

### ***Special dutiable property***

Certain types of dutiable property (referred to as 'special dutiable property') will be dutiable on their surrender. Special dutiable property includes:

- a life interest in land;
- a remainder interest in land;
- a lease (other than a pastoral lease), if consideration is paid, or agreed to be paid, by the lessor for the surrender of the lease;
- an easement;
- a right of way;
- a mining tenement in whole or part, if the surrender is made in contemplation of, or as part of an agreement that, the tenement, or part of the tenement, be granted to, or acquired by, another person;
- a right under an application under the *Mining Act 1978* for a mining tenement if consideration is paid for the transaction;
- a fixed infrastructure control right, if consideration is paid or agreed to be paid for the surrender of the right;
- a fixed infrastructure access right, if consideration is paid or agreed to be paid for the surrender of the right;
- a derivative mining right, if consideration is paid or agreed to be paid for the surrender of the right.

## Dutiable value

The dutiable value of a dutiable transaction is:

- the consideration for the dutiable transaction; or
- the unencumbered value of the dutiable property if there is no consideration for the transaction, the consideration cannot be ascertained, or the unencumbered value is greater than the consideration.

This principle does not apply to all dutiable transactions. There are specific rules to determine the dutiable value of certain types of transactions set out within the Duties Act.

## Aggregation of dutiable transactions

Dutiable transactions that relate to separate items of dutiable property are treated as a single dutiable transaction if they together form, evidence, give effect to or arise from what is substantially one arrangement. Duty is chargeable on the total of the dutiable values of each of the dutiable transactions and is determined at the time liability to duty arose on each transaction.

In circumstances where one of the dutiable transactions that is aggregated relates to residential property, the residential rate of duty will be chargeable on the single aggregated transaction. For further information on the residential rate of duty, see Duties Fact Sheet '[Transfer of Residential Property](#)'.

All instruments and transfer duty statements in the series of transactions should be made under a single [online lodgment](#) or, if in person or post, using one [Duties Document Lodgment and Assessment Form](#). Transactions lodged separately should include sufficient reference to the other lodgment so they can be cross-referenced to each other.

If any of the transactions are eligible for the residential rate of duty, the relevant application form should also be provided at the time of lodgment.

## Exemptions

Certain dutiable transactions are exempt from transfer duty. Some common examples are:

- dutiable transactions where the liable party is the State, a local government or certain other declared public authorities;
- dutiable transactions that are entered into for charitable or similar public purposes;
- dutiable transactions which involve a transfer of a farm between family members;
- certain dutiable transactions relating to bankruptcy;
- cancelled transactions; and
- certain dutiable transactions involving a transfer to incorporated associations.

## Nominal duty

Nominal duty of \$20 is chargeable on specified dutiable transactions, which include:

- dutiable transactions involving partitions of property (not including those relating to partnerships) where the parties receive dutiable property with the same proportionate value as their interest in all of the jointly held property;
- transfers to facilitate subdivision of land;

- transfers to and from a bare trustee;
- dutiable transactions that occur on the breakdown of a marriage or de facto relationship in certain circumstances;
- transactions that occur on the distribution of property under a will or on an intestacy;
- transactions under an administration order;
- certain dutiable transactions involving trusts;
- certain dutiable transactions involving superannuation;
- dutiable transactions involving a business licence held under the *Fish Resources Management Act 1994* where there is no passing of a beneficial interest in the business licence;
- dutiable transactions effecting a change of tenure; and
- farm-in agreements in certain circumstances.

## Rates of transfer duty

### General rate of duty

The general rate of transfer duty applies to a dutiable transaction, unless the Duties Act provides otherwise. The general rate of transfer duty is set out below.

\$ 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 rates of duty

Concessional rates of transfer duty are available for dutiable transactions by first home owners, dutiable transactions relating to residential property and dutiable transactions relating to certain businesses and principal places of residence.

#### First home owner rate

A person who qualifies for a first home owner grant, or a person who would have otherwise qualified for a first home owner grant except that:

- no consideration was paid for the transaction; or
- the transaction was for the purchase of an established home; or
- the person is a resident of the Indian Ocean Territories,

may be entitled to a first home owner rate on the transfer of, or agreement to transfer, the home or vacant land.

For further information on eligibility requirements for the first home owner rate, see Duties Fact Sheet '[First Home Owner Rate of Duty](#)'.

## ***Residential rate***

The residential rate applies to places of residence, rental homes and land on which a residence is constructed within five years from the date the liability to duty arose. It is irrelevant whether the home will be occupied by the owner as a place of residence, occupied by a tenant as a place of residence under a lease with the owner, or occupied as a holiday home for part of the year. The residential rate also applies to mixed use property such as a restaurant with a residence above it.

For further information on the residential rate, see Duties Fact Sheet ['Transfer of Residential Property'](#).

## ***Principal place of residence and business concessional rate***

A person may be eligible for a concessional rate of duty where the dutiable property is either a principal place of residence or a WA business asset, and the dutiable value does not exceed \$200,000.

For further information on the eligibility requirements for this concessional rate, see Duties Fact Sheets ['Transfer of Residential Land'](#) or ['Business Acquisitions'](#).

## ***Foreign Transfer Duty***

Foreign transfer duty at a rate of 7 per cent is charged on foreign dutiable transactions involving residential property. The value of any chattels sold with residential property will be aggregated with the value of the property if the chattels are directly linked to or are incidental to the use of the property for residential purposes.

For more information, see Fact Sheet ['Foreign Transfer Duty'](#) and Commissioner's Practice DA 44 ['Residential Property for the Purposes of Foreign Transfer Duty'](#).

## **Lodgment requirements**

[Certain dutiable transactions](#) may be self assessed or lodged electronically through Revenue Online by an [approved agent](#).

The Duties Act requires an instrument in hard copy form that effects or evidences a dutiable transaction to be self assessed or lodged within two months after the date that liability for duty on the dutiable transaction arises.

Where there is no hard copy instrument effecting or evidencing the transaction, a transfer duty statement in the approved form must be lodged with the Commissioner of State Revenue within two months after the date that liability for duty on the dutiable transaction arises. Transfer duty statement forms can be found at [www.osr.wa.gov.au](http://www.osr.wa.gov.au)

The party to the dutiable transaction who is responsible for the payment of the duty (usually the purchaser or transferee) must ensure that the transaction record is lodged as required.

All transactions involving the purchase or requisition of land (or any interest in land), must be accompanied by a completed [Form FDA41 'Foreign Transfer Duty Declaration'](#) for each person or entity acquiring the land.

For further information on self assessment, lodgment and payment, please refer to the [Lodgment and Payment Requirements](#) information available at [www.osr.wa.gov.au](http://www.osr.wa.gov.au)

## 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 callers only – local call charge)
<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 and reference should be made to the Duties Act for complete details.