



COMMISSIONER'S PRACTICE DA 11.0

SUPERSEDED

DUTIES – DUTIABLE TRANSACTIONS INVOLVING A UNIT ENTITLEMENT UNDER THE *FISH RESOURCES MANAGEMENT ACT 1994* - CLAIM OF NO PASSING OF A BENEFICIAL INTEREST

Commissioner's Practice History

Commissioner's Practice	Issued	Dates of effect	
		From	To
DA 11.0	1 July 2008	1 July 2008	8 November 2013

This Commissioner's practice describes the transfer duty treatment of a dutiable transaction involving a unit entitlement under the *Fish Resources Management Act 1994* ("FRMA"), which it is claimed does not result in the passing of a beneficial interest.

Background

Section 79 of the *Duties Act 2008* ("Duties Act") defines a "business licence" as meaning a licence, permit or authority which is issued, granted or given under –

- (a) a written law and which is required by a written law to be held by a person carrying out an activity for gain or reward; or
- (b) a law of the Commonwealth and which is required by a law of the Commonwealth to be held by a person carrying out an activity in Western Australia for gain or reward.

Transfer duty is chargeable on a dutiable transaction involving a business licence. A business licence includes an authorisation or entitlement under the FRMA.

Section 136 of the Duties Act provides that nominal duty is chargeable on a dutiable transaction, the subject of which is a business licence held under the FRMA, if the Commissioner is satisfied that the transaction has not, and will not, result in the passing of a beneficial interest in the business licence.

Section 22 of the Duties Act provides that the person liable to pay duty on a dutiable transaction must prepare a transfer duty statement with the Commissioner where the transaction is not effected or evidenced by an instrument in hard copy form.

Fish Resources Management Act 1994

The FRMA is administered by the Department of Fisheries and regulates the management of commercial fisheries.

In accordance with the FRMA:

- an “authorisation” means a permit or licence;
- a “managed fishery licence” (“MFL”) authorises a person to engage in a fishing activity;
- an “entitlement” is an entitlement that a person has from time to time under a MFL. The entitlement of the licence is the extent to which the licence authorises a person to engage in the fishing activity;
- an entitlement is expressed in terms of a number of “units”. The entitlement to fishing under a licence is limited to the total value of units;
- a “unit” in relation to an entitlement, means a unit as defined from time to time in the relevant management plan; and
- a “security interest” in relation to an authorisation or aquaculture lease, means an interest in the authorisation or aquaculture lease (however arising) which secures payment of a debt or other pecuniary obligation or the performance of any other obligation.

Under the FRMA, an authorisation and a unit entitlement may be transferred on a permanent basis. A unit entitlement may also be transferred for a limited period.

The following Department of Fisheries forms are used to effect a transfer:

- T1:** used for a permanent transfer of an authorisation (MFL), under section 140 of the FRMA;
- T2:** used for a permanent transfer of part of a unit entitlement under an authorisation to another authorisation holder, under section 140 of the FRMA;
- T3:** used for a transfer of part of a unit entitlement under an authorisation to another authorisation holder for a limited period, under section 141 of the FRMA; and
- V2:** used for the variation of an authorisation, under section 142 of the FRMA.

Unit entitlements must be registered against a MFL, however, it is not unusual for the beneficial ownership of the unit entitlement to differ from the beneficial ownership of the MFL. This is due to the Department of Fisheries recording only the holder of the unit included on the MFL, rather than any person claiming to be the beneficial owner. The beneficial owner of the unit entitlement may protect their interest by recording a security interest against the MFL.

Where the holder of a unit entitlement registered against an MFL wishes to lease their unit entitlement for one season to a person on another MFL, a T3 form can be used.

However, instances arise where a T3 form cannot be used to accommodate the transfer of unit entitlements, as the use of this form will automatically result in the reversion of the unit entitlements at the conclusion of a season. This may not be appropriate where the arrangement is intended to continue for more than one season. In such circumstances, a T2 form is used.

Commissioner's Practice

1. A lease agreement whereby a unit entitlement is leased to another authorisation holder for one or more seasons is not itself subject to duty under the Duties Act. It is the transfer of the unit entitlement to the lessee pursuant to the terms of the lease that attracts transfer duty. As that transfer is not effected by an instrument in hard copy form, a transfer duty statement is required to be prepared in all cases.

Transfers using the T3 form

2. These transfers only contemplate a temporary arrangement for the current season, as the unit entitlement automatically reverts to the original holder at the end of the season. As the Commissioner will usually be satisfied that the transfer will not result in the passing of a beneficial interest in the unit entitlement, the transfer duty statement will be charged with nominal duty of \$20.

Transfers using the T2 form pursuant to a written lease agreement

3. Where the Commissioner is satisfied that a T2 form is being used solely to give effect to a lease of a unit entitlement to another authorisation holder, rather than to effect a permanent transfer, and that there is no passing of a beneficial interest in the unit entitlement, the transfer duty statement will be charged with nominal duty of \$20.
4. At the expiration of the lease, a further transfer duty statement must be provided in respect of the transfer of the unit entitlement back to the original holder.

Transfer using the T2 form in the absence of a written lease agreement

5. Sufficient documentary evidence must be provided to satisfy the Commissioner that the transaction has not, and will not, result in a passing of a beneficial interest in the unit entitlement.

6. Where the evidence provided does not satisfy the Commissioner in accordance with paragraph 5, the transfer duty statement will be assessed with transfer duty, based on the dutiable value of the transaction.

Date of Effect

This Commissioner's Practice takes effect from 1 July 2008.

Bill Sullivan
COMMISSIONER OF STATE REVENUE

1 July 2008