# Partnership Acquisitions

Sections 70 – 78A and 205X of the *Duties Act 2008*

**As at 13 June 2019**

The *Duties Act 2008* (Duties Act) imposes duty on dutiable transactions including transfers, agreements to transfer and partnership acquisitions. A partnership acquisition occurs when a person acquires an interest in a partnership that holds a direct or an indirect interest in land in Western Australia, certain fixed infrastructure rights[1] or derivative mining rights.[2]

Land, chattels, certain fixed infrastructure rights and derivative mining rights held by a partnership (directly or indirectly) are taken into account for the purpose of calculating duty on a partnership acquisition (dutiable partnership property). The value of other property owned by the partnership, such as business assets, are not included in the dutiable value of a partnership acquisition.

If a foreign person acquires a direct or indirect interest in a partnership that holds residential property, foreign transfer duty may apply to the transaction. See the 'Foreign Transfer Duty' fact sheet for more information.

## Acquiring a partnership interest

A person acquires a partnership interest if a partnership is formed or the person's interest in a partnership increases.

A partnership may be formed on its creation, on a change in the membership of the partnership, or on the merger of two or more partnerships. A person's partnership interest may increase under the terms of a partnership agreement, on the retirement of a partner, or by a change in the terms of a partnership agreement that alters the partners' interests.

## Value of a partnership interest

A partner's partnership interest is expressed as a percentage. The interest is the greater of the percentage of:

- the partnership capital that the partner has contributed and
- the percentage of partnership losses that the partner is required to bear.

For example, if a partner had contributed capital of $20,000 out of a total partnership capital of $40,000, their partnership interest is 50 per cent.

The value of a partnership interest is determined by applying a person's partnership interest to the total unencumbered value of the dutiable partnership property.

For example, a partnership owns dutiable partnership property valued at $1.5 million and business assets valued at $500,000. If a person had a partnership interest of 50 per cent, the value of their partnership interest would be $750,000. The value of the business assets is not included because business assets are not dutiable partnership property.

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1 Fixed infrastructure rights are defined in section 91C of the Duties Act.

2 A *derivative mining right* is defined in section 3 of the Duties Act to mean an authorisation of a kind described in the *Mining Act 1978* section 118A. Refer to Fact Sheet 'Derivative Mining Rights' for more information.

When assessing foreign transfer duty, the partnership interest is calculated only on the value of residential property and associated chattels. In the above example, if the dutiable partnership property consisted of commercial land and chattels valued at $750,000 and residential land and chattels valued at $750,000, foreign transfer duty would be charged on the value of the partnership interest of the residential land and chattels, being $375,000 ($750,000 x 50 per cent).

## Calculating duty

The dutiable value of a partnership acquisition is the greater of the consideration for the acquisition (to the extent it relates to dutiable partnership property) or the value of the partnership interest. For information about how the Commissioner will apportion the consideration to property of a partnership, see [Commissioner's Practice DA1 'Dutiable Value of a Partnership Acquisition'].

### *New partnership*

Duty applies to a partnership acquisition on the formation of a new partnership. The dutiable value of a partnership acquisition on the creation of a partnership is the greater of the consideration for the transaction or the value of the partner's interest in the partnership. The value of any dutiable partnership property contributed by a partner that is not joint property[3] is disregarded in calculating the value of the partnership interest.

*Example 1 – Contribution of property on formation*

John and Jane each own land worth $1 million. They both contribute their land to a new 50/50 partnership.

The value of the partnership interest acquired by John is determined by applying his partnership interest (50 per cent) to the unencumbered value of the dutiable partnership property ($2 million).

The value of John's dutiable partnership property contribution ($1 million) is disregarded, and his duty liability is calculated on 50 per cent of the value of the property he didn't contribute.

The value of John's 50 per cent partnership interest acquisition is therefore $500,000 and he will be liable to pay duty on that amount. The same applies to Jane.

If jointly owned property is contributed by the partners on formation of the partnership, duty will not apply if the interest in the property contributed by the partners is equal to their partnership interest. If there is a variation in the interests, duty is chargeable to the extent of a variation in the interests.

Joint property is property held by a new partner and at least one other partner.

When determining the value of a partnership interest[4] where joint property is contributed on the formation of a partnership, the value is reduced, for each interest in joint property held by the new partner, by the unencumbered value of that interest (before the contribution) or by the 'cap amount', whichever is less.

The 'cap amount' is calculated by applying the new partner's partnership interest to the total unencumbered value of the joint property to which that partner's interest relates (after the contribution).

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[4] Duties Act s 77(2A).

If a person's entitlement to jointly held property increases as a result of it being contributed to a partnership, duty is charged to the extent of that increase. If multiple joint properties are contributed, the value of a partnership interest with respect to each jointly contributed property must be calculated separately.

*Example 2 – Contribution of joint property on formation*

Jack and Jill own land and chattels worth $1 million in equal shares. They form a new 50/50 partnership and contribute the land and chattels to the partnership.

As in example 1, the value of the partnership interest acquired by Jack is determined by applying his partnership interest (50 per cent) to the unencumbered value of the dutiable partnership property, which in this case is $1 million.

Unlike example 1, the value of Jack's dutiable partnership property contribution is not disregarded because the property contributed is jointly owned property. Instead, the value of Jack's partnership interest acquired ($500,000) is reduced by the unencumbered value of the interest in the joint property he contributed ($500,000).

The value of Jill's partnership interest acquisition is calculated in the same way.

No duty is payable by either Jack or Jill because the dutiable value of the partnership interest acquired on formation is nil.

This outcome recognises that the relative interests of Jack and Jill did not change when the partnership was formed.

*Example 3 – Uneven contributions of separate and joint property on formation*

John and Jane own Lot 1 in equal shares, John owns Lot 2, and Jane owns Lot 3. Each lot is valued at $1 million. John and Jane form a new partnership and contribute Lots 1, 2 and 3. John acquires a 70 per cent interest in the partnership and Jane acquires a 30 per cent interest. No consideration is provided by John for the acquisition.

In determining the dutiable value of John's partnership acquisition, the value of John's partnership interest is calculated as follows:

- Total unencumbered value of all dutiable partnership property is $3 million.
- Without taking any of the specific contributions into account, the value of John's 70 per cent interest in the partnership is $2.1 million (70 per cent of $3 million).
- Because John contributed Lot 2 on formation of the partnership, Lot 2's value is subtracted (disregarded) before John's partnership interest is calculated. Therefore, John's interest is $1.4 million (70 per cent of $2 million).
- Because John contributed joint property on formation of the partnership, the $1.4 million can be reduced by the lesser of:
  - the unencumbered value of John's interest in Lot 1 ($500,000)

  or

  - the cap amount, which in this case is $700,000 (70 per cent of $1 million).
- The value of John's partnership interest is therefore reduced to $900,000 ($1.4 million - $500,000).

The duty outcome reflects that John has acquired a notional interest of 20 per cent in Lot 1 ($200,000) and a notional interest of 70 per in Lot 3 from Jane ($700,000).

### *Change in membership of a partnership*

When a new partnership is formed because the membership of an old partnership changed, the dutiable value of a partnership acquisition by a new partner is the greater of the consideration for the acquisition or the value of their partnership interest (not including the value of any land or chattels contributed by that partner on joining). The dutiable value of any increase in a continuing partner's interest is the greater of the consideration for the transaction or the value of the increase in their interest.

*Example 4 – Adding a new partner*

Jack and Jill are in an equal partnership. Jack holds Lot 1 for the partnership and Jill holds Lot 2 for the partnership. Each lot is valued at $1 million. Duty was paid when the partnership was formed.

James joins the partnership and pays $600,000 to acquire a 40 per cent interest. The other partners retain equal shares of 30 per cent each.

The value of the partnership interest acquired by James is determined by applying his partnership interest (40 per cent) to the unencumbered value of the dutiable partnership property ($2 million).

As the value of the partnership interest is greater than the consideration paid, duty is payable on $800,000.

### *Change in interest in a partnership*

If the same partners are continuing in partnership but their interest changes, the dutiable value of the partnership acquisition will be the greater of the consideration for the transaction or the value of the increase in the partner's interest.

*Example 5 – Change in interest in a partnership*

John and Jane are partners in a partnership with land and chattels valued at $1 million, as well as business assets valued at $700,000. Each has a 50 per cent interest in the partnership.

John pays Jane $150,000 for a further 20 per cent interest in the partnership.

The value of the partnership acquisition is 20 per cent of the dutiable partnership property, being the $1 million attributable to land and chattels.

As the value of the partnership interest is greater than the consideration paid, duty is payable on $200,000.

### *Transactions on dissolution or retirement from the partnership*

If dutiable property is transferred, agreed to be transferred, or retained by a partner on their retirement from or dissolution of a partnership, duty is charged to the extent that the legal interest transferred (and/or retained) exceeds the partner's partnership interest immediately before dissolution or retirement.

If the partner's retirement results in an increase in any remaining partner's partnership interest, duty will be charged on the greater of the consideration for the transaction or the value of the increase in the partner's interest.

### *Dutiable value of a transfer to a retiring partner*

Where dutiable property is transferred, or agreed to be transferred, to a retiring partner, all types of dutiable property, (including business assets) will be dutiable.[5] In determining the dutiable value of the transaction, the unencumbered value of the transfer property is:

  transfer property
\+ relevant retained property (if any)
\- (retiring partner's partnership interest x value of the relevant partnership property)

*Where:*

**Transfer property** is the dutiable property that is transferred on retirement or dissolution.

**Relevant retained property** refers to an interest in the relevant partnership property if the retiring partner was the legal owner of the relevant partnership property immediately before the retirement or dissolution but will no longer hold it for the partnership on retirement or dissolution.

**Relevant partnership property** is a particular item of dutiable property held by the partnership immediately before the retirement or dissolution.

When calculating the dutiable value of a transfer to a retiring partner, each item of property must be considered individually. For example, where a partnership holds Lots 1 and 2 immediately before retirement of a partner, followed by a transfer of 50 per cent interest of Lot 1 to that partner, only Lot 1 is relevant partnership property for the purposes of calculating the dutiable value of the transfer.

*Example 6 – Transfer to a retiring member (1)*

Jack and Jill form an equal partnership where Jack contributes land valued at $1 million and Jill contributes the capital. Jack and Jill are each taken to have acquired a 50 per cent partnership interest. Jill pays duty on 50 per cent of the value of the land, while Jack pays no duty as he contributed the land. The legal title in the land remains in Jack's name and he holds it for the partnership.

On dissolution of the partnership, Jack transfers a 50 per cent interest in the land to Jill while other assets are transferred to Jack. No consideration is provided by Jill for the transfer. The unencumbered value of the property transferred is calculated as follows:

- unencumbered value of the property transferred is $500,000 (the transfer property)
- as Jill did not hold the legal title to the property prior to the transaction, there is no relevant retained property
- the amount of $500,000 is reduced by an amount calculated by applying Jill's retiring partnership interest to the unencumbered value of the relevant partnership property (50 per cent of $1 million = $500,000)
- the dutiable value of the transfer is therefore nil and no duty is payable by Jill.

The legal interest transferred to Jill represents the 50 per cent partnership interest she obtained upon formation for which duty has already been paid.

[5] Duties Act s 70.

*Example 7 – Transfer to a retiring member (2)*

John and Jane jointly own land valued at $1 million. They form an equal partnership, contributing the jointly held land and capital. John and Jane are each taken to have acquired a 50 per cent partnership interest. Duty is not charged upon formation of the partnership as the partners' relative interests in the land have not changed.

On dissolution of the partnership, John transfers his 50 per cent interest to Jane while other assets are transferred to Jack. No consideration is provided by Jane for the transfer. The unencumbered value of the property transferred is calculated as follows:

- unencumbered value of the property transferred is $500,000 (the transfer property)
- the unencumbered value of the land retained by Jane is $500,000 (relevant retained property)
- the aggregate value of the transfer property and relevant retained property is $1 million
- the amount of $1 million is reduced by an amount calculated by applying Jane's retiring partnership interest to the unencumbered value of the relevant partnership property (50 per cent of $1 million = $500,000)
- the dutiable value of the transfer is therefore $500,000.

As Jane's interest in the land has increased from 50 per cent to 100 per cent, Jane will pay duty on the value of $500,000.

### *Deemed transfers of retained land on dissolution or retirement of a partner*

If a partner retains property when they retire from the partnership or the partnership is dissolved, there is deemed to be a transfer of that property to that partner.[6] This ensures that duty applies to any notional interest in the retained property acquired by the retiring partner from the other partners when there is no transfer of the legal title.

A deemed transfer of property to a retiring partnership is only dutiable if that property is land, chattels, certain fixed infrastructure rights or derivative mining rights.[7]

*Example 8 – Deemed transfer to a retiring member*

Jack and John form an equal partnership where Jack contributes land valued at $1 million and John contributes $500,000 cash and business assets valued at $500,000. Jack and John are each taken to have acquired a 50 per cent partnership interest. John pays duty on 50 per cent of the value of the land. Jack pays no duty as he contributed the land.

On dissolution of the partnership, Jack retains the land and John retains the other non-land assets. No consideration is provided by Jack. Even though there is no transfer of legal title in the land, there is a deemed transfer of retained land to Jack. The unencumbered value of the retained property is calculated as follows:

- the unencumbered value of the retained land is $1 million
- the amount of $1 million is reduced by an amount calculated by applying Jack's retiring partnership interest to the unencumbered value of the relevant partnership property (50 per cent of $1 million = $500,000)

6 Duties Act s 78A.

7 Duties Act s 70.

- the dutiable value of the deemed transfer is therefore $500,000.

Jack has effectively re-acquired the 50 per cent interest in the land that John acquired on formation of the partnership. As Jack's interest in the land has increased from 50 per cent to 100 per cent, Jack will pay duty on the value of $500,000.

### *Partnership acquisitions and deceased estates*

Partnership acquisitions that give effect to a distribution in the estate of a deceased person in accordance with a will or on intestacy are chargeable with nominal duty if there is no consideration for the transfer.[8]

For more information, see Commissioner's Practice DA 29 'Duties – Nominal Duty for Certain Dutiable Transactions Relating to Deceased Estates'.

## Partnerships that own farming land

An exemption is available for certain partnership acquisitions that are between family members. See the 'Exempt Family Farm Transactions –Transfer Duty' fact sheet for more information.

## Lodging requirements

A person making a partnership acquisition must lodge:

- the instrument that effects or evidences the acquisition (usually the partnership agreement) or
- a transfer duty statement if there is no written agreement for a partnership acquisition, and where there is a deemed transfer of retained property

  and
- Form FDA41 'Foreign Transfer Duty Declaration' and
- the information set out in the Duties Information Requirements – 'Acquisition of a Partnership Interest'

**within two months** of the acquisition.

The acquisition of an interest in a partnership that meets the definition of an excluded transaction[9] is not required to be lodged for assessment of duty. The relevant records the taxpayer relied on to determine the partnership acquisition is an excluded transaction must be provided on request. For more information on excluded transactions, see Revenue Ruling DA20 'Partnership Acquisitions: When a Partnership Holds Land'.

## Contact RevenueWA

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| **Web Enquiry** | www.osr.wa.gov.au/DutiesEnquiry | **Website** | WA.gov.au |
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**Note**: This fact sheet provides guidance only. Refer to the *Duties Act 2008* for complete details.

8 Duties Act s 139(2)(d).

9 Regulation 4(1)(g) of the *Duties Regulations 2008.*