



Easements

Under the *Duties Act 2008* (Duties Act), transfer duty applies to the grant or surrender of an easement.

Foreign transfer duty does not apply to transactions relating to a grant or surrender of an easement.¹

This Commissioner's practice clarifies how duty will be assessed on the creation, grant or surrender of an easement.

Background

Creation or grant of an easement

The creation or grant of an easement is a dutiable transaction as an acquisition of new dutiable property.² The person liable to pay transfer duty is the person that acquires the new dutiable property.³

Surrender of an easement

The surrender of an easement is a dutiable transaction as a surrender of special dutiable property.⁴ The person liable to pay transfer duty is the person to whom the interest is surrendered.⁵

Valuations

Section 22 of the *Taxation Administration Act 2003* provides the Commissioner may have a valuation made of any property, consideration or benefit or adopt any available valuation of the property, consideration or benefit that the Commissioner considers appropriate. See the Commissioner's practices on valuations for further information.

Certain transactions over easements prescribed as not dutiable

A transaction that is a creation of an easement by notation on a plan of subdivision under the Part IVA of the *Transfer of Land Act 1893* (TLA)⁶ is an excluded transaction for the purposes of section 11(2)(e) of the Duties Act.⁷

The following surrenders of an easement are excluded transactions for the purposes of section 11(2)(e) of the Duties Act:⁸

¹ Easements are excluded residential property under section 205Y of the *Duties Act 2008*. A Foreign Transfer Duty Declaration Form is not required to be presented with the transaction record for assessment.

² Duties Act s 11(1)(f).

³ Duties Act Schedule 1.

⁴ Duties Act s 11(1)(g). An easement is identified as *special dutiable property* under section 18 of the Duties Act.

⁵ Duties Act Schedule 1.

⁶ Section 136C of the TLA provides that an easement may be created by notation on a subdivision plan if, under subsection (2), the land to be burdened by the easement is a subject of the plan.

⁷ *Duties Regulations 2008* s 4(1)(e).

⁸ *Duties Regulations 2008* s 4(1)(f).

- the surrender of an easement pursuant to an order of the Supreme Court under section 129C(1)(a) of the TLA or
- the surrender of an easement pursuant to section 229A(2) of the TLA if the Commissioner of Titles is satisfied the easement has not been used or enjoyed for a period of not less than 20 years and makes an order directing the entry or statement of the easement to be removed.

Commissioner's Practice

Grant or surrender of an easement for consideration

1. If consideration is paid or agreed to be paid for the grant or surrender of an easement and the transaction is between arm's length parties, the consideration will generally be accepted as representing the dutiable value.

Certain grants or surrenders of easements for no consideration or nominal consideration

2. If one party to the transaction is a government authority or provider of utility services (for example, water, power or gas) and no consideration is paid or agreed to be paid for the grant or surrender of the easement, the Commissioner will accept that the easement has no value and no duty is payable.
3. If the grant or surrender of an easement is between parties at arm's length and either:
 - 3.1 no consideration is paid or agreed to be paid, and evidence is provided that the fair market value for the grant or surrender of the easement is nil or
 - 3.2 nominal consideration is paid or agreed to be paid, and evidence is provided that the consideration represents the fair market value for the grant or surrender of the easement,

the Commissioner will generally accept that the transaction has no dutiable value or that the agreed consideration represents the fair market value, as the case may be.
4. Evidence to support the proposed dutiable value as representing fair market value may include:
 - 4.1 copies of independent valuations or appraisals obtained in support of the stated consideration or
 - 4.2 a written statement from the taxpayer or their agent confirming the agreed consideration was negotiated at arm's length and represents the fair market value.

Endorsement of easements when no consideration is paid

5. For the purposes of paragraphs 2 to 4, if a transaction relating to an easement is considered to have no value and is therefore not subject to duty, a 'no duty payable' certificate of duty will be issued.

Valuation of easements

6. The easement will be referred to the Valuer General for valuation:
 - 6.1 under any circumstances in which the Commissioner considers it appropriate to do so.
 - 6.2 if the consideration or stated value is uncertain or appears inadequate. This may arise with the grant or surrender of an easement over a mining tenement or an easement created for the purposes of a railway or pipeline.
 - 6.3 if a transaction relating to the grant or surrender of an easement is between parties who are not at arm's length.

7. The transferee must complete and submit form [FDA29 'Duties Valuation - Easements'](#) if the transaction is between parties who are not at arm's length or if otherwise requested to do so.

Copies of relevant forms and publications are available on the website at www.wa.gov.au

Date of effect

This Commissioner's practice takes effect from 5 November 2021.

Marcelyn Nicolaou
COMMISSIONER OF STATE REVENUE
5 November 2021

Commissioner's Practice history

Commissioner's Practice	Issued	Dates of effect	
		From	To
DA 22.0	22 May 2009	22 May 2009	14 November 2013
DA 22.1	15 November 2013	15 November 2013	31 December 2018
DA 22.2	1 January 2019	1 January 2019	4 November 2021
DA 22.3	5 November 2021	5 November 2021	Current