



Cancelled Transactions

Sections 88A and 107 of the *Duties Act 2008*

As at 1 July 2021

Duty is not chargeable on a cancelled transaction.¹ A cancelled transaction is a dutiable transaction that has not been, and will not be completed.

When duty is chargeable on a cancelled transaction

Duty is chargeable on a cancelled transaction if the transaction has been cancelled so that a replacement transaction or a subsale transaction can be entered into.

A replacement transaction is another dutiable transaction between the same parties that is

- substantially similar in effect to the cancelled transaction and
- considered by the Commissioner to be a scheme or arrangement, or part of one, for which the sole or dominant purpose of any party is to avoid, reduce or defer the payment of tax.

Example

Jim and Sue enter into an agreement to transfer dutiable property. When lower transfer duty rates come into effect, they cancel the agreement so they can enter into another agreement to transfer the same property. The Commissioner would consider the second transaction a replacement transaction and duty would remain chargeable on the first transaction.

However, if they cancel the agreement because Sue can't obtain finance, then enter into another agreement to transfer the same property after Sue has obtained finance from a different source, the Commissioner is unlikely to consider the second transaction a replacement transaction and duty would not be chargeable on the first transaction.

A subsale transaction is another dutiable transaction which results in a beneficial interest in the same property being held by

- a person who is not party to the cancelled transaction, a result which is contemplated or provided for under the cancelled transaction or
- a person who is not party to the cancelled transaction, a result which is substantially similar in effect to the effect of the cancelled transaction or
- another person, as a result of an agreement, arrangement or understanding between a person liable to pay duty on the cancelled transaction and any other party to the transaction (including any other person liable to pay duty on the cancelled transaction).

¹ Duties Act s107.

Duty is chargeable on a transaction that is cancelled to give effect to a novation, or a subsale to a person who is not a party to the transaction, or to the parties to the transaction.

Example

Annie and Bob enter into an agreement to transfer dutiable property to themselves as individuals. They then cancel the agreement so they can enter into another agreement to transfer the same property to their discretionary trust. The Commissioner would consider the second transaction a subsale transaction and duty would be charged on both transactions.

Assessment or reassessment for cancelled transactions

Apply using [Form FDA1 'Exemption for Cancelled or Terminated Transactions'](#) to request the Commissioner reassess the duty liability of a transaction that has been cancelled.

In accordance with section 54 of the *Taxation Administration Act 2003*, the Commissioner may refund duty that has already been paid.

A transaction record that was lodged in Revenue Online can be cancelled. See the [Online Duties - Frequently Asked Questions](#) for information about processing cancelled transactions. If the transaction record was duty endorsed through Revenue Online, the application form and original transaction record, together with any other transaction record that has been duty endorsed and all Certificates of Duty, must be forwarded to RevenueWA.

If the cancelled transaction is an agreement to transfer dutiable property, you cannot apply for a reassessment more than five years after the original assessment was made, or more than 12 months after the day on which the agreement became a cancelled transaction, whichever is the later.

For all other dutiable transactions, you cannot apply for a reassessment more than five years after the original assessment was made.

Termination of general conditional agreements

A general conditional agreement is an agreement, such as a contract for sale, where its completion is conditional on an event that is defined in section 87(2) of the Duties Act, such as subject to finance.² If the agreement is an issue of title or a subdivision conditional agreement, then it is not a general conditional agreement.

See the [Conditional Agreements fact sheet](#) for more information about general conditional agreements.

A general conditional agreement is terminated on relevant grounds if³

- it is not completed because certain conditions of the agreement⁴ were not fulfilled and
- duty would not be charged on the agreement under section 107 of the Duties Act because it would meet the criteria of a cancelled transaction.

Duty will not be applied to a general conditional agreement that is terminated on relevant grounds, if it had not been lodged for assessment within two months of the date of execution. The purchaser does not need to lodge a transaction record or apply for an exemption.

² Duties Act s87.

³ Duties Act s88A.

⁴ of a type referred to in section 88A(2) of the Duties Act.

If a general conditional agreement is terminated after lodgment but before payment, apply using [Form FDA1 'Exemption for Cancelled or Terminated Transactions'](#) to have the transaction reassessed.

A general conditional agreement that is lodged in Online Duties (Revenue Online) may also be terminated on relevant grounds. See the [Online Duties - Frequently Asked Questions](#) for information on processing the terminated transaction.

Transactions that cannot be cancelled or terminated on relevant grounds

The following transactions cannot be cancelled or terminated on relevant grounds:

- a call option of a simultaneous put and call option taken to be an agreement for the transfer of the option property⁵
- an assignment of a call option taken to be an agreement for the transfer of the option property⁶ or
- a terms contract if the taxpayer under the contract obtained exclusive use or control of the dutiable property, whether or not the contract is not fully carried into effect for any reason. This includes an agreement for transfer where the purchaser is entitled to possession or occupation of a property before the property is transferred.

Example

John buys vacant land under a vendor finance arrangement. Even though he won't be registered on the title until the vendor is fully paid, John takes exclusive possession of that land and begins to develop it. John's finance falls through and he cannot complete the transaction. Because he entered into a terms contract by taking possession of the land before the property was transferred, this is not a cancelled transaction, and duty will be charged on the transaction.

Offence

Providing an application containing false or misleading information is an offence. A penalty not exceeding \$20,000 plus three times the tax that was or might have been avoided applies.

Contact RevenueWA

Web enquiry	www.osr.wa.gov.au/DutiesEnquiry	Website	WA.gov.au
Office	200 St Georges Terrace Perth WA 6000	Phone	(08) 9262 1100 1300 368 364 (WA country landline callers)
Postal	GPO Box T1600 Perth WA 6845		

Note: This fact sheet provides guidance only. Refer to the *Duties Act 2008* for complete details.

⁵ Duties Act s45.

⁶ Duties Act s49.