Substituted Transferees

Sections 42(2), 42(4B), 42(4C), 43 and 205Q of the *Duties Act 2008*

25 October 2021

The *Duties Act 2008* (Duties Act) imposes transfer duty and foreign transfer duty on dutiable transactions.

Duty will not be charged twice on the same transaction[1] if duty was chargeable on a transaction, such as a contract for sale of land, and another transaction, such as a transfer of land or declaration of trust, is in conformity with the initial transaction.[2]

Foreign transfer duty is applied to the purchase of residential property by foreign persons.[3] If the person named in the original agreement was not a foreign person and the property is transferred to a foreign person, foreign transfer duty will apply to the transfer of land.[4]

If the person named as purchaser on an agreement, such as a contract for sale of land, is different from the person named as transferee on the transfer of land, duty will be chargeable on the transfer of land unless the transferee was related[5] to the purchaser when the agreement was executed.

Duty will not be charged on the transfer of property to an individual if they have entered into an agreement and then transfer the property to themselves in their capacity as trustee of a trust that is not a discretionary trust.

- If the purchaser is taking a transfer as trustee of a unit trust scheme, the purchaser must be either the sole unit holder, or a unit holder and related to each of the other unit holders (all of whom must be individuals).
- If the purchaser is taking a transfer as a trustee of a trust that is not a discretionary trust or a unit trust scheme, the beneficiary must be an individual who is related to the purchaser.

Qualifying relationships

A person is related to the purchaser if they have a qualifying relationship. If not, duty will be chargeable on the interest in the property the person on the transfer will receive.

The following persons are related to a purchaser who is an individual.

- The purchaser's spouse or de facto partner
- A parent or *remoter lineal ancestor* of the purchaser or of the purchaser's spouse or de facto partner
- A child or *remoter lineal descendent* of the purchaser
- A spouse or de facto partner of a child or remoter lineal descendant of the purchaser

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1 Duties Act s 42.

2 See the 'No Double Duty' fact sheet.

3 Duties Act s205G.

4 See the 'Foreign Transfer Duty' fact sheet.

5 Duties Act s 43.

- A spouse or de facto partner of a parent or remoter lineal ancestor of the purchaser
- A sibling of the purchaser or of the purchaser's spouse or de facto partner
- A spouse or de facto partner of a sibling of the purchaser or of a sibling of the purchaser's spouse or de facto partner

The terms *remoter lineal ancestor* and *remoter lineal descendant* refer to persons who are related directly as ancestors or descendants of a person. For example, a direct line of relationship that can be traced up through a person's parent, grandparent etc. or down through a person's child, grandchild etc.

A step-child of the purchaser is considered a child. Aunts/uncles and nieces/nephews do not qualify as lineal ancestors or descendants.

If the purchaser is an individual, a corporation is related to the purchaser if:

- the purchaser is the sole shareholder of the corporation or
- the purchaser is a shareholder of the corporation and each other shareholder is an individual who has a qualifying relationship with the purchaser.

If the purchaser is a corporation, a person is related to the purchaser if:

- the person is the sole shareholder of that corporation or
- the person is a shareholder of the corporation and each other shareholder is an individual who has a qualifying relationship with the purchaser.

If the purchaser is an individual, a trustee of a unit trust is related to a purchaser if:

- the purchaser is the sole unit holder in the unit trust or
- the purchaser is a unit holder in the trust and each other unit holder is an individual who has a qualifying relationship with the purchaser.

If the purchaser is the trustee of a unit trust, a person is related to a purchaser if:

- the person is the sole unit holder in that unit trust or
- the person is a unit holder in the trust and each other unit holder is an individual who has a qualifying relationship with the purchaser.

Exceptions to qualifying relationships

A person is not related to a purchaser if they will hold the property on behalf of another person (the beneficiary):

- as the trustee of a discretionary trust or
- as a trustee of a unit trust scheme, unless the purchaser is the sole unit holder in the trust or is a unit holder in the trust and is related to each of the other unit holders or
- as a trustee other than of a discretionary trust or unit trust scheme, unless the purchaser, transferee and beneficiary are all individuals, and the purchaser and the transferee are related, and the purchaser and the beneficiary are related.

How to apply

Submit the relevant agreement to transfer (such as the contract for sale or offer and acceptance) and the transfer of land, with Form FDA14 'Substituted Transferees'. A separate 'Foreign Transfer Duty Declaration' form must be submitted for each person. Forms are available from the website at WA.gov.au

If the transaction is self-assessed in Revenue Online, the lodging party must retain the substituted transferees application form and the foreign transfer duty declaration for auditing purposes.

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.