



## **DUTIES      Transfer Under Agency Relationship where the Transferee on the Transfer Differs from the Purchaser Named in the Agreement to Transfer**

This revenue ruling applies to transactions entered into on or after 1 July 2008 in which the purchaser named in an agreement to transfer dutiable property (agreement) differs from the transferee named on the subsequent transfer of the dutiable property (transfer), or there is a difference in the division of the property.

### **Introduction**

1. This ruling sets out the Commissioner's view on how section 42(4) of the *Duties Act 2008* (Duties Act) operates and provides guidance on the evidence required to satisfy the Commissioner that the person named in an agreement was acting as agent for the person named as the transferee in the subsequent transfer.
2. Chapter 2 of the Duties Act imposes duty on dutiable transactions, which includes both an agreement and a transfer.
3. Section 42(1) of the Duties Act provides that when an agreement is duty endorsed, the subsequent transfer is not chargeable with duty if it is in conformity with that agreement.
4. Where the purchaser named in an agreement differs from the transferee named on the subsequent transfer, or there is a difference in the division of the property, section 42(3) of the Duties Act applies to charge duty on the transfer to the extent of the change between the agreement and the transfer.
5. Subsections 42(2), (4A), (4B), (4C), (4), (5) and (7) of the Duties Act provide that duty is not chargeable on the subsequent transfer in certain circumstances. This ruling deals exclusively with section 42(4) of the Duties Act and does not apply in relation to the provisions of the other subsections.
6. Section 42(4) of the Duties Act provides that, if at the time liability to duty on the agreement arose, the purchaser named in an agreement was acting as the agent of the person named in the subsequent transfer as the transferee, that transfer is not chargeable with duty.
7. The agency relationship referred to in section 42(4) is the relationship between the person named as the purchaser in an agreement (the agent) and the person named as the transferee in the subsequent transfer (the principal). At law, the agent is a person appointed to act as the representative of the principal. What the principal can do in their own right, they can generally do through the agent.
8. Where the person named as purchaser in the agreement claims to have been acting as the agent for another person when they entered into the agreement (i.e. they claim they were buying the property on behalf of that other person), the requirements of section 42(4) of the Duties Act must be met in order for the subsequent transfer to the principal to not be chargeable with duty.
9. From 1 January 2019, sections 205A to 205ZC of the Duties Act impose additional duty on certain acquisitions of residential property by foreign persons.<sup>1</sup> If any of the purchasers or transferees are a foreign person, foreign transfer duty will be applied to the dutiable value of

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<sup>1</sup> As amended by the *Duties Amendment (Additional Duty for Foreign Persons) Act 2018*.

the residential property. If there are multiple purchasers and not all of them are foreign persons, foreign transfer duty will be applied to the interests in the property being acquired by the foreign persons. Refer to the ['Foreign Transfer Duty'](#) fact sheet for further information.

## **Ruling**

### ***Where agency disclosed and the principal is identified***

10. Where the agreement clearly indicates that at the time it was entered into, the person who executed the agreement as the purchaser was acting as the agent for another named person (the principal), the Commissioner will accept that an agency relationship existed. A transfer to the principal will not be charged with duty.

Examples of where an agreement clearly discloses agency *and* identifies the principal as the purchaser with the result that no transfer duty is chargeable on the transfer are:

- Sue Green *as agent for* John Brown (principal)
- Sue Green *for* John Brown (50%), Joe Black (25%) and Fred Smith (25%) (principals)
- Sue Green *on behalf of* John Brown (principal)

### ***Foreign transfer duty***

11. If the principal is a foreign person and foreign transfer duty is paid on the agreement, it will not be applied to the subsequent transfer.

### ***Where agency disclosed and the principal is not identified***

12. Where the agreement clearly indicates that at the time it was entered into, the person named in the agreement as the purchaser was acting as the agent for another unidentified person, a transfer to another person will be charged with transfer duty. For the transfer to not be charged with duty, sufficient evidence must be produced to satisfy the Commissioner that the transferee was the person for whom the agent was acting at the time the agreement was entered into (i.e. that they were buying the subject property on behalf of that person).

Examples of where an agreement clearly discloses agency but the principal is not identified are:

- Sue Green as agent
- Sue Green on behalf of a person to be disclosed
- Sue Green (agent)

### ***Foreign transfer duty***

13. As the principal is not named, the agreement will be chargeable with foreign transfer duty if the person named as the purchaser in the agreement is a foreign person.

- 13.1 If the Commissioner is satisfied that an agency relationship with a foreign person existed at the time the agreement was entered into and foreign transfer duty is paid on the agreement, foreign transfer duty will not be chargeable on the subsequent transfer.

- 13.2 If the Commissioner is satisfied that an agency relationship with a non-foreign person existed at the time the agreement was entered into and foreign transfer duty is paid on the agreement, foreign transfer duty will be reassessed exempt at the time of the transfer to that person.

### ***Where agency is not disclosed***

14. Where the agreement does not explicitly indicate that the person named in the agreement as purchaser was acting as an agent, and the subsequent transfer is to another person, the agency relationship will not be accepted unless sufficient evidence is produced to satisfy the Commissioner that the named purchaser was acting as the agent for the transferee at the time when the agreement was entered into.

### ***Foreign transfer duty***

15. As the agency relationship is not identified, the agreement will be chargeable with foreign transfer duty if the person named as the purchaser in the agreement is a foreign person.
  - 15.1 If the Commissioner is satisfied that an agency relationship with a foreign person existed at the time the agreement was entered into and foreign transfer duty is paid on the agreement, foreign transfer duty will not be chargeable on the subsequent transfer.
  - 15.2 If the Commissioner is satisfied that an agency relationship with a non-foreign person existed at the time the agreement was entered into and foreign transfer duty is paid on the agreement, foreign transfer duty will be reassessed exempt at the time of the transfer to that person.

### ***Agency arrangements must be certain***

16. There must be no uncertainty in the agency arrangements. It must be clear:
  - 16.1 that the person who entered into the agreement was acting as the agent of the person named in the transfer at the time when the agreement was entered into
  - 16.2 that they were buying the subject property on behalf of that person and
  - 16.3 if the agent was buying the property on behalf of a number of principals, that the interest in the property of each principal as specified in the transfer is identical to the interest in the property acquired by each principal under the agreement.
17. Uncertainty arises in situations such as:
  - 17.1 where it is not clear whether the person who enters into the agreement as purchaser is:
    - 17.1.1 acting as the agent for one or a number of persons or
    - 17.1.2 acting for themselves as well as the agent for one or more other persons
  - 17.2 where it is clear the person who enters into the agreement as purchaser is acting as the agent for a number of persons, but it is not clear from the agreement what interest each principal is acquiring in the property; and
  - 17.3 where “and/or” or “or” is utilised in the clause describing the named purchaser in the agreement.

Any uncertainty could result in duty being charged on the subsequent transfer.

### ***Nominee clauses***

18. Some agreements contain a term which entitles the purchaser under the agreement to nominate one or more persons (who may or may not be named in the agreement) as nominee. This may be on the basis that the nominee(s) will become a party (purchaser) to the agreement, or will merely be nominated as transferee in the subsequent transfer.

Examples of nominee clauses:

- Sue Green and nominee
- Sue Green or nominee
- Sue Green and/or nominee

19. A nominee clause does not give rise to the assumption of an agency relationship at the time the agreement was entered into. It is an arrangement between the seller and the person who entered into the agreement as purchaser.
20. If it is claimed that the person who entered into the agreement as purchaser was acting as the agent for another person pursuant to a nominee clause, the subsequent transfer to the other person is chargeable with duty. Sufficient evidence must be produced to satisfy the Commissioner that an agency relationship was in place at the time the agreement was entered into.

### **Evidence**

21. The following evidence may be considered when verifying the existence of an agency relationship and the identity of the principal:
- 21.1 where an agency relationship was not shown on the agreement – reasons as to why the agent was not disclosed on the agreement
  - 21.2 where the identity of the principal for whom the named purchaser was acting was not shown on the agreement – reasons as to why the principal's identity was not disclosed on the agreement
  - 21.3 express written authority, correspondence or documentation prior to the agreement being entered into that confirms the appointment of the purchaser in the agreement as agent to purchase the property for the transferee
  - 21.4 evidence showing that the purchase monies, including any deposit, have been or will be provided by the transferee (e.g. loan documents, bank statements)
  - 21.5 any other evidence relevant to the nature of the relationship and the arrangements that existed between the named purchaser and the transferee at the time the agreement was entered into and
  - 21.6 where a nominee clause is used – reasons as to why the agreement was drafted with a nominee clause rather than in terms that reflected an agency relationship.
22. If the principal does not wish to be disclosed on the agreement, it is advisable that both parties enter into an instrument appointing the agent, identifying the subject property and specifying the agent's authorisation before the agreement is entered into. The instrument of appointment should be dated and be witnessed by an independent person. Such an instrument would satisfy the Commissioner that an agency relationship existed at the time the agreement was entered into.

### **Ruling history**

Revenue Ruling	Issued	Date of Effect	
		From	To
DA 7.0	July 2008	July 2008	February 2013
DA 7.1	February 2013	February 2013	31 December 2018
DA 7.2	1 January 2019	1 January 2019	Current