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## Business Assets

Sections 14, 79 – 86 and 136 of the *Duties Act 2008*

As at 1 July 2022

Transfer duty is charged on transfers, or agreements to transfer, certain WA business assets.

### WA business assets

A *WA business* means

- a) a business that, at any time in the year before the transaction, has either been carried on in WA, or supplied commodities or services to customers in WA or
- b) the carrying out of an activity in WA for gain or reward under a State or Commonwealth business licence.

A *business asset* is

- goodwill of a business
- a restraint of trade arrangement
- a business identity
- a business licence
- a right of a business under an uncompleted contract to supply commodities or provide services
- intellectual property of a business or
- things that a business has that are in the nature of rent rolls and client lists,

but does not include a trade debt.

The following are not dutiable transactions and do not incur transfer duty:<sup>1</sup>

- a transaction in which a franchisor transfers, or agrees to transfer, a business asset, fixed infrastructure control right, fixed infrastructure access right or fixed infrastructure statutory licence to a franchisee in accordance with a franchise agreement. However, it will be chargeable with duty if another person agrees to relinquish, surrender or not extend use of that asset, right or licence so the franchisee could acquire it.
- a transaction where the only dutiable property involved is the intellectual property of the business, unless it is aggregated with the acquisition of another WA business asset or chattel
- an acquisition of intellectual property, a restraint of trade arrangement or a business identity when it is created, granted or issued, unless a person carries on, or has carried on a business and creates the property for the purpose of carrying on that business or a business by another person.

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<sup>1</sup> Duties Act s 81.

## Business licences

A *business licence* means a licence, permit or authority that is issued under

- a WA law and required to be held by a person carrying out an activity for gain or reward or
- a Commonwealth law and required to be held by a person carrying out an activity in WA for gain or reward,

but does not include a fixed infrastructure access right, a fixed infrastructure control right or a fixed infrastructure statutory licence.

A business licence includes

- an authorisation under the *Fish Resources Management Act 1994*
- a pearling licence, hatchery licence or quota under the *Pearling Act 1990*
- a taxi plate under the *Taxi Act 1994*
- a licence under the *Liquor Licensing Act 1988*
- a commercial radio or television broadcasting licence under the *Broadcasting Services Act 1992* (Cth) and
- a subscription-based broadcasting licence under Part 7 of the *Broadcasting Services Act 1992* (Cth).

A dutiable transaction includes where a person agrees to give up or not renew a business licence so that the licence or a similar licence can be issued to another person, as opposed to a direct transfer of that licence.

### ***Business licences held under the Fish Resources Management Act***

Nominal duty is charged on a dutiable transaction involving a business licence under the *Fish Resources Management Act 1994* if the Commissioner is satisfied that the transaction has not, and will not, result in the passing of a beneficial interest in the business licence.<sup>2</sup>

See Commissioner's Practice ['DA 11 - Dutiable Transactions Involving a Unit Entitlement under the Fish Resources Management Act 1994 - Claim of No Passing of a Beneficial Interest'](#) for information about the duty treatment of a transfer or lease of a unit entitlement.

## Plant and equipment

The transfer of chattels, such as plant and equipment, is a dutiable transaction when they are transferred with other dutiable property, including business assets. A chattel does not include

- chattels that are stock-in-trade, held for use in manufacture, under manufacture, or held or used in connection with the business of primary production
- livestock
- a vehicle the transfer or grant of a licence for which is chargeable with, or exempt from, vehicle licence duty
- a ship or vessel or
- anything fixed to land.

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<sup>2</sup> Duties Act s 136.

If an item is fixed to land (including a mining tenement or pastoral lease on land), that item is considered to be land for the purposes of the Duties Act. However, the following things fixed to land will still be treated as chattels:

- a thing that is temporarily fixed to land for construction purposes
- a thing that is not a fixture at law and is used in a primary production business
- a relocatable home fixed to a residential park site, or an addition or structure fixed or attached to the home or site, that does not constitute a fixture at law or
- a thing acquired without the underlying land and there is an arrangement for the purchaser to permanently remove the thing within 90 days after it is transferred (or a longer period approved by the Commissioner).

### ***How duty is calculated***

The general rate of transfer duty is applied to the dutiable value of a transaction, unless the business concession criteria<sup>3</sup> are met.

See transfer duty rates on the website at [WA.gov.au](http://WA.gov.au)

### ***Dutiable value***

If the business's head office or principal place of business is in WA (including a business that only operates in WA), the dutiable value of the business asset is calculated in accordance with section 85 of the Duties Act as:

the greater of the consideration for the business asset or its unencumbered value

- x the percentage of total commodities supplied and services provided less the commodities supplied and services provided to customers elsewhere in Australia.<sup>4</sup>

If the business's head office or principal place of business is not in WA, the dutiable value of the business asset is calculated in accordance with section 86 of the Duties Act as:

the greater of the consideration for the business asset or its unencumbered value

- x the percentage of total commodities supplied and services provided to customers in Western Australia.<sup>5</sup>

The dutiable value of a *WA business licence* is the greater of

- the consideration for the dutiable transaction or
- the unencumbered value of the business licence at the time when the liability for duty arises.

The dutiable value of a *Commonwealth business licence* is the greater of

- the value of the business licence so far as it authorises the carrying out of an activity in WA or
- the consideration for the transaction that relates to the carrying out of an activity in WA under the authority of the business licence.

The dutiable value of a Commonwealth business licence held by a business that is conducted in WA will be calculated under section 85 or 86 of the Duties Act, depending on the location of the business's head office or principal place of business.

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<sup>3</sup> Duties Act s 147.

<sup>4</sup> Duties Act s 85.

<sup>5</sup> Duties Act s 86.

The dutiable value of chattels located in WA will be the greater of the consideration apportioned to, or the unencumbered value of, the chattels.

## Lodging requirements

### Self-assessment

An approved agent can self assess [certain dutiable transactions](#) involving WA business assets through Revenue Online.

### Lodging with the Commissioner

You must lodge a copy of the document that effects or evidences a dutiable transaction within two months of the date of liability for duty. If there is no such document, approved transfer duty statements are accessible on the website. These should be lodged electronically (as an attachment) through [Online Services](#).

The [Duties Information Requirements](#) set out the standard information that should accompany each document or statement.

If the dutiable value of the business assets does not exceed \$200,000, complete a [Form FDA3 'Concessional Rate of Duty: Certain Residential or Business Property Transactions'](#).

You must also lodge [Form FDA41 'Foreign Transfer Duty Declaration'](#) if your transaction involves land.

## Aggregation of dutiable transactions

If separate transactions form substantially one arrangement, they will be treated as a single dutiable transaction. For example, the Commissioner may aggregate separate transactions to buy business assets and land if they form substantially one arrangement.

All related documents and transfer duty statements should be lodged on the same [online lodgment](#) or, if in person or post, using a single [Form FDA0 'Duties Document Lodgment and Assessment'](#). If lodged separately, each transaction should refer to the other lodgment so they can be considered for aggregation.

See Revenue Ruling [DA 14 'Aggregation of Dutiable Transactions'](#) for information about aggregation.

<b>Contact RevenueWA</b>			
<b>Web enquiry</b>	<a href="http://www.osr.wa.gov.au/DutiesEnquiry">www.osr.wa.gov.au/DutiesEnquiry</a>	<b>Website</b>	<a href="http://WA.gov.au">WA.gov.au</a>
<b>Office</b>	200 St Georges Terrace Perth WA 6000	<b>Phone</b>	(08) 9262 1100 1300 368 364 (WA country landline callers)
<b>Postal</b>	GPO Box T1600 Perth WA 6845		

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