



Exempt Family Farm Transactions – Landholder Duty

Sections 171-174 of the *Duties Act 2008*

As at 24 October 2020

You may be exempt from landholder duty if you acquire an interest in a corporation or unit trust scheme from a family member and all of the land assets held by the corporation or unit trust scheme are used for primary production. A reduction in duty may apply if only some of the land assets are used for primary production.

See the '[Exempt Family Farm Transactions – Transfer Duty](#)' fact sheet for information about the transfer duty exemption for family farms that are transferred between eligible family members.

See the website at www.wa.gov.au/government/publications/landholder-duty for more information about landholder duty.

Terms used

A corporation or unit trust is a *landholder* if it, or a linked entity, is entitled to Western Australian land assets valued at \$2 million or more.

Primary production means any of the following:

- the growing or rearing of plants (including trees, fungi or any crop) for the purpose of selling them, parts of them or their produce
- the breeding, rearing or maintenance of living creatures (produce animals) for selling them or their progeny for food
- the production or collection of the skins, shells or bodily produce of produce animals for the selling parts of them, their skins, shells or bodily produce
- the breeding, rearing or maintenance of produce animals for the purpose of selling them or their progeny for stud purposes
- the breeding or rearing of horses for the purpose of selling them or their progeny and
- a contract farming arrangement that involves the land owner rearing produce animals under an agistment arrangement with the person who owns the animals.

Processing or converting anything for the purpose of selling it is not primary production even if the thing sold or to be sold is in a natural, processed or converted state.

A *family member* of a person is:

- a child or other direct descendant of the person
- a parent or other direct ancestor of the person
- a brother or sister of the person, or direct descendant of a brother or a sister, of the person
- an aunt or uncle of the person
- a brother or sister of the person's spouse or of the person's de facto partner of two years
- the spouse or de facto partner of two years of a family member listed above or
- the spouse, former spouse, de facto partner of two years or former de facto partner of two years of the person.

A *transferor* is a person from whom an interest is acquired. When an acquisition results from an event other than a transfer of an interest in a landholder (such as if new shares are issued in a corporation or units in a unit trust scheme are cancelled), the acquirer's interest in the landholder increases and the transferor is the person whose interest in the landholder decreases.

A person controls a discretionary trust when:

- the person is in a position to influence the vesting of the capital of the trust property or the distribution of income from the trust property or
- if a corporation is in a position to influence the vesting of the capital of the trust property or the distribution of income from the trust property, the person is beneficially entitled to a share in, or to act as a director or secretary of, that corporation or a related corporation.

Other relevant terms are provided in the ['Exempt Family Farm Transactions – Transfer Duty'](#) fact sheet.

Exempt family farm transaction

A relevant acquisition in a landholder that owns a family farm is exempt from landholder duty when:¹

- all of the land assets held by the landholder are used solely or dominantly in the business of primary production and the landholder intends to continue to use the land assets in this way and
- the acquirer is
 - a family member of the transferor or
 - a trustee of a trust, other than a unit trust scheme or a discretionary trust, if each beneficiary of the trust is a family member of the transferor or
 - a trustee of a discretionary trust in which each beneficiary of the trust is the transferor or a family member of the transferor, the transferor is not the only beneficiary of the trust and the transferor does not control the discretionary trust.

The exemption also applies when the land assets are used by a linked entity and not by the landholder itself.²

A land asset may be treated as being used in the business of primary production when some of it is leased to another person. This only applies if the lessee is using the leased land asset solely or dominantly for the purposes of silviculture or reforestation.

A partial exemption may apply if only some of the land assets held are used for primary production.

No exemption for further acquisition within five years

A landholder acquisition is not exempt if an acquisition of the same interest received a family farm exemption in the previous five years.

For example, A acquires 50 per cent of a landholder and receives an exemption. Two years later, they acquire the remaining 50 per cent, which will also be entitled to an exemption. If B acquires A's original 50 per cent interest three years after A's acquisition, an exemption will not apply.

¹ A *relevant acquisition* is defined in section 163 of the Duties Act and explained in the ['Landholder Duty'](#) fact sheet.

² *Linked entity* is defined in section 156 of the Duties Act and outlined in the ['Landholder Duty'](#) fact sheet.

Subsequent liability to duty in certain circumstances

If the trustee of a discretionary trust makes an exempt acquisition and:

- after this occurs there is a material alteration to the operation of the discretionary trust and
- at the time of the material alteration
 - the entity is a landholder and
 - the entity, or a linked entity, is using any of the land assets it was entitled to when the acquisition occurred solely or dominantly in the business of primary production,

an acquisition of an interest in the entity by the trustee is taken to have occurred. Landholder duty will apply to that acquisition.

There is a material alteration to the operation of a discretionary trust if:

- during the lifetime of the transferor, a person who is not a family member of the transferor becomes entitled to a share or interest in the trust, or otherwise benefits from the trust or
- the transferor gains control of the trust.

How to apply for exemption

Lodge Form '[FDA21 'Exempt Family Farm Transaction – Landholder Duty'](#) together with the acquisition statement or agreement no later than two months from the date you acquired the interest in the landholder or signed the agreement to acquire the interest.

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.