



Transfer of Residential Property

Chapter 2 of the *Duties Act 2008*

As at 11 October 2012

Introduction

An eligible transaction involving land that is residential property will, upon application, be charged with transfer duty at the residential concessional rate (residential rate) under Chapter 2 Part 6 Division 4A of the *Duties Act 2008* ('Duties Act'). This rate applies to principal places of residence (i.e. owner occupied homes), rental homes, holiday homes and land on which a residence is constructed within five (5) years of the date on which liability to duty on the transaction arose.

Properties that are only partly used as a residence, for example, a restaurant with a residence above it, will also qualify for the residential rate of duty.

First homebuyers should refer to **Duties Fact Sheet 'First Home Owner Rate of Duty'** to ascertain if their transaction qualifies for the First Home Owners Rate (FHOR). The fact sheet is available from the Office of State Revenue (OSR) website at www.osr.wa.gov.au. A transaction that is not eligible to be assessed at the FHOR due to the value of the home or land exceeding the specified thresholds will still be eligible for the residential rate of duty.

Residential property – Sections 147 A - G

For the purpose of this Division, land is residential property if at the date the liability to duty arose:

- there is a residence on the land;
- the taxpayer has begun construction of a residence on the land;
- the taxpayer has entered into a contract for the construction of a residence on the land; or
- the taxpayer has entered into a contract to purchase a movable building that will be affixed to the land and be a residence,

irrespective of whether the land is also used for another purpose.

A 'residence' is a building, or part of a building, that may lawfully be used as a place of residence, in the Commissioner's opinion is suitable to be used as a place of residence, and is intended by the person liable to pay duty to be used as a place of residence.

Examples of circumstances where land is not residential property include where:

- the building has not been approved by the relevant local government for use as a residence (i.e. it cannot lawfully be used as a place of residence); or
- the land included a residence at the time of purchase, but the transfer is subject to rezoning approval being obtained that indicates that the transferee does not intend for the property to be used as a place of residence.

For the residential rate to apply there must be an eligible transaction the subject of which is residential property. An 'eligible transaction' is a transfer, an agreement to transfer, or a vesting by court order.

Concessional rate of duty for owner occupied home – Section 147

Some homebuyers may also qualify for the concessional rate of duty that is available for principal places of residence (i.e. owner occupied homes) that are valued below \$200,000. Depending on the value of the home, some homebuyers may pay less duty under this concession.

A dutiable transaction may be assessed at the concessional rate of transfer duty where the:

- dutiable property purchased includes a dwellinghouse;
- dutiable value of the dutiable property does not exceed \$200,000;
- dutiable property is to be transferred to an 'eligible purchaser' or a combination of 'eligible purchasers' and government bodies. An 'eligible purchaser' means:
 - an individual who occupies or will occupy the property as their principal place of residence for an indefinite period; or
 - a trustee (as defined in clause 1 of the Glossary to the *Land Tax Assessment Act 2002*) acquiring property on behalf of one or more disabled beneficiaries, if at least one beneficiary occupies or will occupy the property as their principal place of residence; and
- dutiable property has not been received as a gift.

Residential rate on vacant land

In circumstances where at the time the vacant land was acquired the purchaser has not begun construction of a residence, entered into a contract for the construction of a residence, or entered into a contract to purchase a movable building that will be affixed to the vacant land, the transaction does not immediately qualify for the residential rate and duty is chargeable at the general rate of transfer duty.

The taxpayer may apply in the approved form for a reassessment at the residential rate of duty if, within five (5) years from the day on which the liability to duty arose (e.g. execution date of the offer and acceptance to purchase the land), the taxpayer:

- begins construction of a residence on the land; or
- enters into a contract for the construction of a residence on the land; or
- enters into a contract to purchase a movable building that will be affixed to the land and be a residence.

The application for a reassessment of duty in these circumstances must be made within five (5) years of the original transaction or within twelve (12) months of the date on which construction began or the contract was entered into, whichever is later.

Transfer duty rates

Concessional rate – S147

\$ 0 – \$ 100,000		\$1.50	Per \$100 or part thereof
\$ 100,001 – \$200,000	\$ 1,500 +	\$4.39	Per \$100 or part thereof above \$ 100,000

Residential rate

\$ 0 – \$ 120,000		\$1.90	Per \$100 or part thereof
\$120,001 – \$150,000	\$ 2,280 +	\$2.85	Per \$100 or part thereof above \$ 120,000
\$150,001 – \$360,000	\$ 3,135 +	\$3.80	Per \$100 or part thereof above \$150,000
\$360,001 – \$725,000	\$11,115 +	\$4.75	Per \$100 or part thereof above \$360,000
\$725,001 and upwards	\$28,453 +	\$5.15	Per \$100 or part thereof above \$725,000

General rate

\$ 0 – \$ 80,000		\$1.90	Per \$100 or part thereof
\$ 80,001 – \$100,000	\$ 1,520 +	\$2.85	Per \$100 or part thereof above \$ 80,000
\$100,001 – \$250,000	\$ 2,090 +	\$3.80	Per \$100 or part thereof above \$100,000
\$250,001 – \$500,000	\$ 7,790 +	\$4.75	Per \$100 or part thereof above \$250,000
\$500,001 and upwards	\$19,665 +	\$5.15	Per \$100 or part thereof above \$500,000

Lodgment requirements

The Duties Act requires an instrument in hard copy form that effects or evidences a dutiable transaction to be lodged within two (2) months of the date liability for duty arise.

Where there is no hard copy instrument effecting or evidencing the transaction, a '**Transfer Duty Statement**' must be lodged with the Commissioner of State Revenue within two (2) months of the date liability for duty arises. The party to the dutiable transaction who is responsible for the payment of the duty (usually the purchaser or transferee) must ensure that the transaction record is lodged as required. Please refer to **Duties Fact Sheet 'Lodgment and Payment Requirements'** for more information.

Important information

It is important that the intended purchaser be clearly established prior to entering into a dutiable transaction, as any subsequent variation of the purchaser may result in further transfer duty being payable.

Purchaser

Details of the purchaser of the dutiable property must be provided in full. Information must include whether the property is to be held as joint tenants or tenants in common. In the case of tenants in

common, the percentage of each party's ownership must be clearly stated. If this is not disclosed, it will be presumed that the ownership is to be as tenants in common, in equal shares.

If the purchaser is acting as a trustee for a trust, disclosure of the trustee and trust on the agreement, at the time the agreement is entered into, will assist in avoiding any additional duty.

Transfer Under Agency Relationship

Where an agency relationship is disclosed in the agreement, and the principal and agent are clearly identified, the subsequent transfer of land in the name of the principal will be endorsed with 'No Double Duty'.

In circumstances where the agency relationship is not clearly identified, additional transfer duty may be payable.

Substituted Transferee

In certain circumstances, relief from transfer duty is available where the person named as transferee in a transfer of land differs from the person named in the agreement for purchase as the purchaser. The most common scenario is when the transferee is related to the purchaser. For more information regarding eligibility, please refer to **Duties Fact Sheet 'Substituted Transferees'**, which is available from the OSR website at www.osr.wa.gov.au.

In these circumstances, it is necessary to submit the agreement for transfer (e.g. offer and acceptance contract) and transfer of land form together with a **'Substituted Transferees'** application form in order for the transfer of land to be endorsed 'No Double Duty'.

Further Duty Payable

Further transfer duty may be incurred when a transfer (e.g. transfer of land) is not in accordance with the agreement for the transfer of dutiable property (e.g. different purchaser, different percentage of ownership) or if the new purchaser is not recognised as the principal under an agency relationship or as a substituted transferee.

Other fact sheets that may be of interest to homebuyers

Duties Fact Sheet 'Cancelled Transactions'

Duties Fact Sheet 'Transfer Duty Overview'

Contact the Office of State Revenue

Office	Plaza Level 200 St Georges Terrace PERTH WA 6000	Telephone	(08) 9262 1100 1300 368 364 (WA country STD callers only – local call charge)
Office hours	8:00 am – 5:00 pm Monday to Friday	Facsimile	(08) 9226 0834
Postal	Office of State Revenue GPO Box T1600 PERTH WA 6845	Web enquiry Website	www.osr.wa.gov.au/DutiesEnquiry www.osr.wa.gov.au

Note: The information contained in this DUTIES FACT SHEET is issued for guidance purposes only. It is not an exhaustive explanation of the provisions of the *Duties Act 2008* and reference should be made to the Act for complete details.