



Substituted Transferees (Transfer to a substituted purchaser)

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

As at 9 October 2012

Introduction

Section 42 of the *Duties Act 2008* ('Duties Act') provides relief in certain circumstances from duty that may otherwise be chargeable on the transfer of property. This may occur either where property is transferred to a person who is related to the purchaser under an agreement for the transfer of dutiable property, or where a purchaser under an agreement takes a transfer of the property as the trustee for a related beneficiary.

It should be noted that the purpose of these provisions is to provide relief from transfer duty on eligible transactions. The provisions should not be construed as having any legal effect in relation to the parties' rights and obligations under an agreement or transfer.

Transfer to a person related to the purchaser

Section 42(2) of the *Duties Act* provides that duty is not chargeable on the transfer of dutiable property to a transferee under an agreement for the transfer of dutiable property if —

- when liability for duty on the agreement arises, the transferee and the purchaser of the property under the agreement are related as referred to in section 43; and
- the agreement is duty endorsed on the basis that duty has been paid or is payable at the general or a concessional rate; and
- duty would, but for this section, be chargeable on the transfer of the property at the rate at which duty was chargeable on the agreement.

Transfer to purchaser as a trustee

Section 42(4B) of the *Duties Act* provides that duty is not chargeable on the transfer of dutiable property to the purchaser under an agreement for the transfer of dutiable property where the purchaser is taking the transfer as either a trustee of a unit trust scheme, or as a trustee other than a trustee of a discretionary trust or a unit trust scheme.

This relief applies in circumstances where a purchaser has entered into an agreement for transfer in his or her own right, but the subsequent transfer is to the purchaser in the capacity as a trustee. The relief applies only where the purchaser is an individual.

Where the purchaser is taking a transfer as the trustee of a unit trust scheme, the purchaser must be either the sole unit holder in the unit trust, or a unit holder in the unit trust and related to each of the other unit holders (all of whom must be individuals).

Where the purchaser is taking a transfer as a trustee other than a trustee of a discretionary trust or a unit trust scheme, the beneficiary must be an individual who is related to the purchaser.

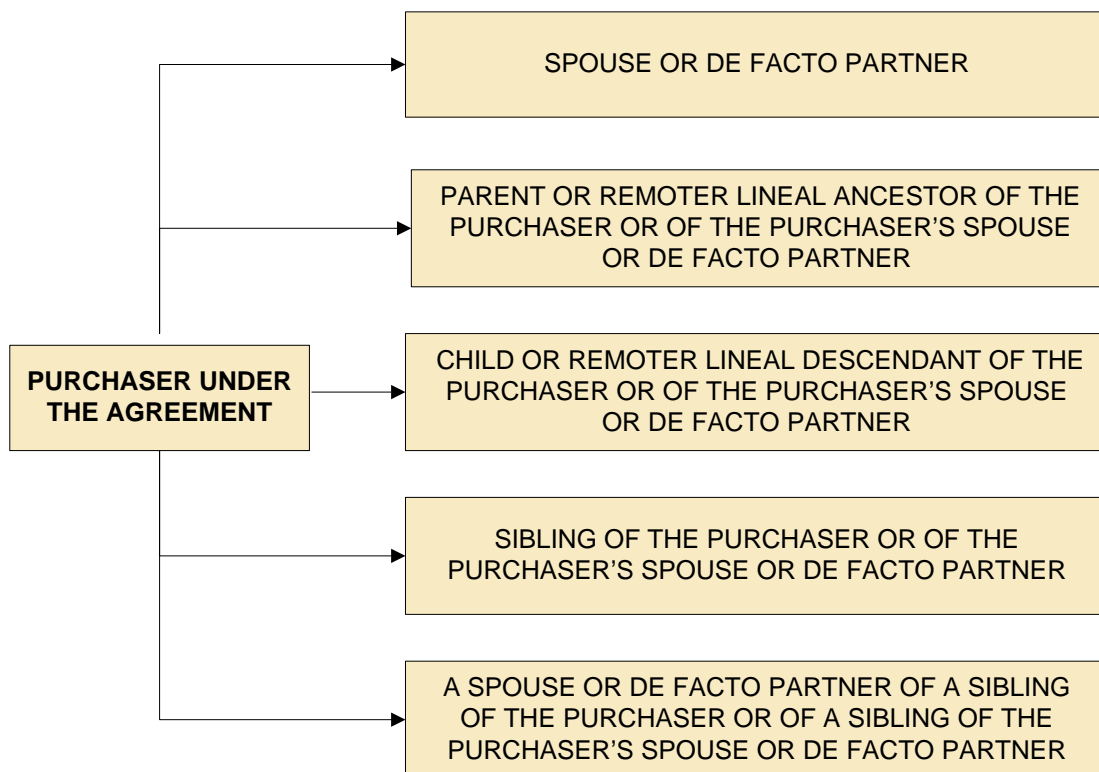
The relationships referred to are limited to those between individuals, as set out in section 43(1)(a) to (e) of the Duties Act.

In accordance with section 42(4C) of the Duties Act, the unit holder's or beneficiary's interest in the unit trust scheme or trust must be a beneficial interest.

Qualifying Relationships

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 descendant* of the purchaser or of the purchaser's spouse or de facto partner
- 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



NB: The terms *remoter lineal ancestor* and *remoter lineal descendant* refer to persons who are related directly as ancestors or descendants of a person e.g. 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. Aunts/uncles and nieces/nephews do not qualify as lineal ancestors or descendants.

A **corporation** is related to a **purchaser** who is an **individual** if:

- the purchaser is the sole shareholder of the corporation; or
- the purchaser is a shareholder of the corporation and is related (as set out in these qualifying relationships) to each of the other shareholders.

A **trustee of a unit trust scheme** is related to a **purchaser** who is an **individual** if:

- the purchaser is the sole unit holder in the unit trust scheme; or
- the purchaser is a unit holder in the unit trust scheme and is related (as set out in these qualifying relationships) to each of the other unit holders.

A person is related to a **purchaser** that is a **corporation** if:


- the person is the sole shareholder of that corporation; or
- the person is a shareholder of the corporation and, if the person were a purchaser, would be related (as set out in these qualifying relationships, subject to the exceptions noted below) to each of the other shareholders.

A person is related to a **purchaser** that is the **trustee of a unit trust scheme** if:

- the person is the sole unit holder in that unit trust scheme; or
- the person is a unit holder in the unit trust scheme and, if the person were a purchaser, would be related (as set out in these qualifying relationships, subject to the exceptions noted below) to each of the other unit holders.

Exceptions to qualifying relationships

The abovementioned persons (i.e. individuals, corporations or unit trustees) are not considered to be related to a purchaser where the dutiable property the subject of the transaction is to be held by the person 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 unit 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 a trustee 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

The relevant agreement for transfer, e.g. contract for sale or offer and acceptance contract, and the transfer of land must both be submitted together with a **Substituted Transferees** application form, which is available from the Office of State Revenue website at www.osr.wa.gov.au.

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.