



Transactions to Facilitate Subdivision of Land

This Commissioner's practice outlines how the Commissioner will assess transactions relating to the subdivision of land. It explains the factors the Commissioner will consider when determining whether:

- a transaction has been entered into solely for the purposes of facilitating a subdivision
- there will be a re-transfer of the land after the subdivision or
- to grant an extension of time to register a re-transfer of land.

Background

Under sections 120A - 120E of the *Duties Act 2008* (Duties Act), duty relief is available for certain transactions entered into to facilitate a subdivision of land.

Section 120A(1) of the Duties Act provides that nominal duty applies to transfers and agreements to transfer land if the Commissioner is satisfied:

- the sole purpose of the transfer is to facilitate the subdivision of the land and
- there will be a whole or partial re-transfer of the subdivided lots to the person who contributed the land.

Nominal duty also applies to the re-transfer of the land to the original transferor to the extent they receive all or part of their original land back.¹ However, duty will be charged at the applicable rate on any portion of land transferred to the person that did not comprise part of their original land.²

Section 120B of the Duties Act provides that, at the time of re-transfer, any portion of the original transferor's land that is not transferred back to them is taken to be a transfer of land to the transferee (*deemed transaction*).

- Duty will be charged on a deemed transaction to the extent the transferee retains an interest in a portion of land they did not have prior to the original transfer or agreement to transfer. This includes any portion of land that will be retained solely or jointly with the original transferor after the re-transfer.
- Duty will not be charged on land retained by a transferee that is being held for transfer to another person for the purposes of the subdivision.

Section 120C of the Duties Act provides that if nominal duty is charged on a transaction to facilitate a subdivision, a re-transfer of land must be registered under the *Transfer of Land Act 1893* (TLA) within five years of the date of registration of the original transfer. If the re-transfer is not registered within that time, the Commissioner will reassess the transactions so that duty is charged at the applicable rate.^{3 4} The Commissioner may extend the time

¹ Duties Act s 120A(2).

² Duties Act s 120A(3).

³ Duties Act s 120C(1).

⁴ Duties Act s 120C(3).

provided to register the re-transfer of land on conditions the Commissioner considers appropriate.⁵

Section 120D of the Duties Act provides that nominal duty does not apply to transactions to facilitate a subdivision of land:

- under a strata plan registered under the *Strata Titles Act 1985* (STA) unless it is a single tier strata scheme defined in section 3(1) of the STA (before the commencement of the *Strata Titles Amendment Act 2018*) or
- a strata scheme defined in section 3(1) of the STA, unless is it a single tier strata scheme defined in Schedule 2A clause 3 of the STA (after the commencement of the *Strata Titles Amendment Act 2018*).

Section 120E of the Duties Act provides that, for the purposes of sections 120A and 120B of the Duties Act, land that is transferred by a person to facilitate the subdivision is treated as being transferred back to the person after the subdivision:

- even though the legal description of land will change following subdivision and
- whether the land is transferred back to the person to be held solely or with any other persons.

Commissioner's Practice

Transactions solely to facilitate a subdivision with re-transfer

1. To satisfy the Commissioner that the sole purpose of a transaction is to facilitate the subdivision of the land and that there will be a re-transfer of the subdivided land, the Commissioner will consider:
 - 1.1 the method the parties use to transfer the land and the practical reasons for doing so. For example, if there is a particular administrative practice or method to subdivide the land, such as the Registrar of Title's requirement to hold the legal title of land in common ownership
 - 1.2 the plans of subdivision and whether they have been approved by the Western Australian Planning Commission or other authority
 - 1.3 whether a re-transfer of the subdivided land has been provided simultaneously with the transfer. If the re-transfer cannot be provided at the time of transfer, each party must provide a written statement advising of:
 - 1.3.1 the intended date of re-transfer of the proposed lots to the original transferor(s) and
 - 1.3.2 details of any portion of land that will not be re-transferred to the person who contributed the land
 - 1.4 any agreement or declaration between the parties that confirms the land being transferred is held solely for the purpose of subdivision
 - 1.5 the extent of the transferee's rights or powers to deal with the property and
 - 1.6 whether there is any consideration passing between the parties.

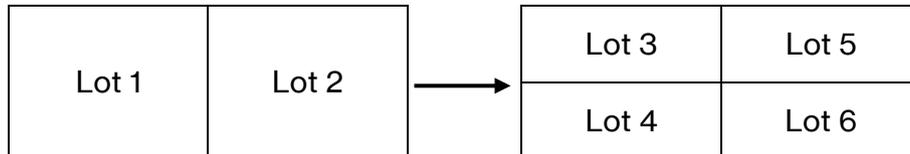
⁵ Duties Act s 120C(2).

Example 1 – Multiple lots transferred into common ownership to facilitate subdivision

John owns lot 1 and Jane owns lot 2. John and Jane wish to subdivide their respective lots to create four lots on a deposited plan.

Lots 3 and 4 will be comprised of land formerly contained in lot 1. Lots 5 and 6 will be comprised of land formerly contained in lot 2.

Following subdivision, the newly created lots will be transferred to John and Jane.



To facilitate the subdivision, Jane and John transfer the lots into common ownership by executing two transfers of land. John transfers lot 1 to Jane and himself as tenants in common in equal shares, and Jane transfers lot 2 to John and herself as tenants in common in equal shares.

The transfers of lot 1 and 2 are lodged for duty assessment with the approved plans of subdivision. John and Jane also lodge two executed transfers of land to transfer lots 3 and 4 to John and lots 5 and 6 to Jane.

The Commissioner is satisfied the transfers of lot 1 and 2 are only for the purposes of subdividing the land and that there will be a re-transfer of the same land back to John and Jane after the subdivision. The transfers of lots 1 and 2 are assessed for nominal duty.

The re-transfers of lots 3 and 4 comprise only of land that John owned before subdivision (lot 1) and lots 5 and 6 comprise only of land that Jane owned before subdivision (lot 2). The re-transfers of lots 4 and 5 to John is assessed for nominal duty, as is the re-transfer of lots 5 and 6 to Jane.

Example 2 – Single lot transferred into common ownership for subdivision

As in example 1, John and Jane wish to subdivide their land. However, rather than executing two transfers of land, John transfers his whole interest in lot 1 to Jane. This results in the legal title to lot 1 and lot 2 being held solely in Jane's name.

Jane lodges the transfer of lot 1 for duty assessment with the approved plans of subdivision.

John and Jane also lodge an executed transfer of land to transfer lots 3 and 4 to John.

The Commissioner is satisfied the transfer of lot 1 is only for the purposes of subdividing the land and there will be a re-transfer of land back to John after the subdivision. A re-transfer of land back to Jane is not required as Jane already holds the title to the new lots that were created from her original land.

The transfer of lot 1 is assessed for nominal duty.

2. Nominal duty will not apply to a transaction if the Commissioner is not satisfied that:

2.1 the purpose of the transaction is solely to facilitate a subdivision or

2.2 there will be a re-transfer of the subdivided land to the transferor.

However, the Commissioner will reassess the transaction for nominal duty if the criteria are satisfied within five years from the date duty is assessed on the original transaction.

Example 3 – Transfers lodged without evidence of subdivision or re-transfer

As in example 1, John and Jane wish to subdivide their land. However, plans of subdivision and re-transfers are not provided when the transfers of lot 1 and lot 2 are lodged for duty assessment. The Commissioner is not satisfied that the purpose of the transfers is solely to facilitate the subdivision or that there will be a re-transfer of land.

The transfer of lot 1 into John and Jane's name is charged with duty on the 50 per cent interest that Jane receives. The transfer of lot 2 into John and Jane's name is charged with duty on the 50 per cent interest that John receives.

Twelve months later, John and Jane subdivide the land into the four lots. They lodge the transfer of lots 1 and 2 into common ownership for reassessment, together with the plans of subdivision and two executed transfers of land to transfer lots 3 and 4 to John and lots 5 and 6 to Jane.

The Commissioner is satisfied the transfer of lots 1 and 2 was only for the purpose of subdividing the land and that there is a re-transfer of land back to John and Jane after the subdivision.

The transfers of lot 1 and 2 are reassessed for nominal duty. The difference in duty payable is refunded to John and Jane.

Transfers and agreements to transfer land following subdivision (re-transfers)

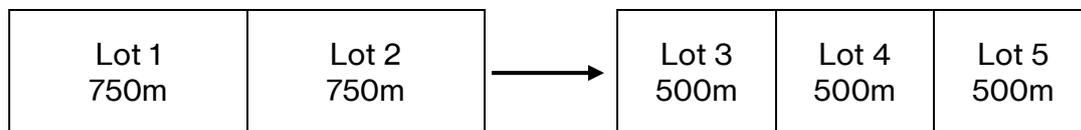
3. Following subdivision, a re-transfer will be assessed for nominal duty to the extent that the original transferor receives back the land they contributed.⁶
4. Duty will apply to any portion of land transferred to a person that did not comprise part of their original land. The dutiable value of the land is the greater of the unencumbered value of that portion of land transferred or the consideration (if any) for that portion of the land.
5. To assess duty, the Commissioner will require a valuation of the portion of land being re-transferred that did not comprise part of the transferee's original land.⁷

⁶ A re-transfer will also be charged with nominal duty under section 120A(2) to the extent the original transferor receives their own land back, if the original transfer was charged with nominal duty under section 118 of the Duties Act (as it was at 11 June 2019).

⁷ See Commissioner's Practice [TAA 30 'Valuation of Land for Duties Purposes'](#).

Example 4 - Re-transfer of land with additional duty charged

John owns lot 1 and Jane owns lot 2. John and Jane wish to subdivide their respective lots to create three lots on a deposited plan. Following subdivision, lots 3 and 4 will be transferred to John and lot 5 will be transferred to Jane. John pays Jane consideration for the portion of land from Jane's original land (lot 2) that forms part of lot 4.



The transfers of lots 1 and 2 into common ownership are lodged for duty assessment with the approved plans of subdivision. John and Jane also lodge two executed transfers of land to transfer lot 3 and 4 to John and lot 5 to Jane.

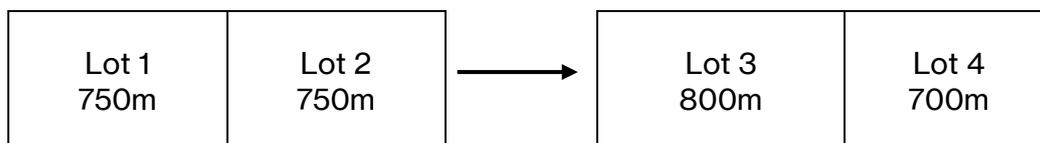
The Commissioner is satisfied the transfer of lots 1 and 2 is only for the purposes of subdividing the land. Lots 3 and 4 transferred to John comprises of land that John owned before subdivision (lot 1) as well as part of Jane's original lot (lot 2). Lot 5 which is transferred to Jane only comprises of land that Jane owned before subdivision (lot 2).

The transfers of lots 1 and 2 into common ownership and the re-transfer of lot 5 to Jane are assessed for nominal duty. The transfer of lots 3 and 4 to John is assessed for:

- nominal duty to the extent that John receives his own land back (all of lot 3 and the portion of lot 4 that was originally part of John's land) and
- duty on the greater of the consideration paid for, or the unencumbered value of, that part of lot 2 now contained in lot 4 after subdivision.

Example 5 - Subdivision of lots for boundary realignment, with additional duty charged

John owns lot 1 and Jane owns lot 2. John and Jane believed the fence line of their properties represented the lot boundary line, but a survey of the property indicates the fence is not on the boundary line and John has been using part of Jane's land as his own. John and Jane agree to subdivide the land and create new lots 3 and 4 only for the purposes of transferring part of Jane's original land to John to align the lot boundaries with the fence line. John pays Jane consideration to acquire the additional land.



To facilitate the subdivision of land, Jane and John execute two transfers of land to transfer the lots into common ownership. John transfers lot 1 to Jane and himself as tenants in common in equal shares, and Jane transfers lot 2 to John and herself as tenants in common in equal shares.

The transfers of lots 1 and 2 are lodged for duty assessment with the approved plans of subdivision. John and Jane also lodge two executed transfers of land to transfer lot 3 to John and lot 4 to Jane.

The Commissioner is satisfied the transfer of lots 1 and 2 is only for the purposes of subdividing the land. Lot 3 transferred to John comprises of land that he owned before subdivision (lot 1) as well as part of Jane's original lot (lot 2). Lot 4 transferred to Jane only comprises land that she originally owned before subdivision (lot 2).

The transfers of lots 1 and 2 into common ownership and the re-transfer of lot 4 to Jane are assessed for nominal duty. The transfer of lot 3 to John is assessed for:

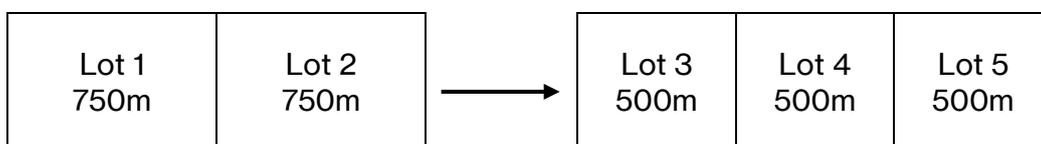
- nominal duty to the extent that John receives his own land back (all of lot 1) and
- duty on the greater of the consideration paid for, or the unencumbered value of, that part of lot 2 that is now comprised in lot 3.

Land retained by a transferee (deemed transactions)

6. Any portion of land not re-transferred to a transferor following subdivision is deemed to be a transfer of land to the transferee (deemed transaction), unless the transferee is holding it for transfer to another person as part of the subdivision.
7. If land is retained and there is no written instrument that evidences the agreement between the parties, the transferee must complete Form [FDA18 'Transfer Duty Statement'](#).
8. Duty will apply to the dutiable value of the land that is retained. The dutiable value will be the greater of the unencumbered value of the portion of land retained or the consideration (if any) for the land. The Commissioner will require a valuation of the portion of land that is retained as at the date of the original transfer.⁸
9. Duty will not apply to land retained by a transferee if the Commissioner is satisfied it is being held for transfer to another person for the purposes of the subdivision. Evidence of this may include:
 - 9.1 the transfer or agreement to transfer to the other person or
 - 9.2 a declaration of trust confirming the land is still being held for re-transfer to the other person.

Example 6 - Land retained after subdivision chargeable with duty

John owns lot 1 and Jane owns lot 2. John and Jane wish to subdivide their respective lots to create three lots on a deposited plan. Following subdivision, lot 3 will be transferred to John, lot 5 will be transferred to Jane, and lot 4 will be held by Jane and John as tenants in common in equal shares.



To facilitate subdivision of the land, Jane and John transfer the lots into common ownership by executing two transfers of land. John transfers lot 1 to Jane and himself as tenants in common in equal shares, and Jane transfers lot 2 to John and herself as tenants in common in equal shares.

The transfers of lot 1 and 2 are lodged for duty assessment with the approved plans of subdivision. John and Jane also lodge two executed transfers of land to transfer lot 3 to John and lot 5 to Jane.

⁸ See Commissioner's Practice [TAA 30 'Valuation of Land for Duties Purposes'](#).

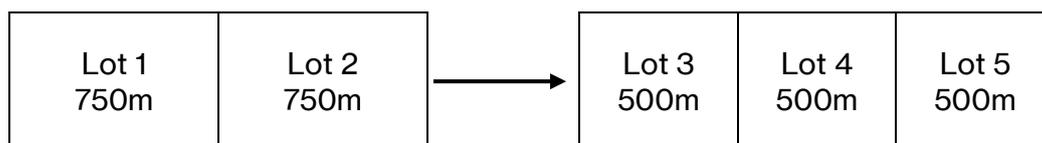
The Commissioner is satisfied the transfer of lots 1 and 2 is to facilitate the subdivision. Lot 3 is transferred to John and comprises of land from lot 1 which John owned before subdivision. Lot 5 is transferred to Jane and comprises of land from lot 2 which Jane owned before subdivision. John and Jane retain lot 4 as tenants in common in equal shares.

The transfers of lots 1 and 2 and the retransfers of lots 3 and 5 are assessed for nominal duty. Although a transfer of lot 4 is not required, the Commissioner deems that land has been retained by both John and Jane. John and Jane complete a transfer duty statement for lot 4 which is assessed for duty on:

- the unencumbered value of that part of lot 4 which John obtains a 50 per cent interest in that he did not originally have and
- the unencumbered value of that part of lot 4 which Jane obtains a 50 per cent interest in that she did not originally have.

Example 7 - Land retained by transferee after subdivision for re-transfer

As in example 6, John and Jane wish to subdivide their lots to create three new lots. Following subdivision, lots 4 and 5 will be transferred to John and lot 6 will be transferred to Jane. John and Jane have engaged the assistance of Adam to help facilitate the subdivision process.



To facilitate the subdivision of the land, Jane and John transfer the lots into common ownership by executing two transfers of land to transfer lots 1 and 2 to Adam.

The transfers of lots 1 and 2 are lodged with the approved plans of subdivision as well as a declaration of trust that confirms Adam will hold the titles to the property to facilitate the subdivision and the newly created lots will be transferred back to John and Jane.

The Commissioner is satisfied the transfer of lots 1 and 2 is to facilitate the subdivision and that there will be a re-transfer of the resultant lots. The transfers are assessed for nominal duty.

Following subdivision, a transfer of lot 5 is executed between Adam as transferor and Jane as transferee. The re-transfer of lot 5 to Jane is assessed for nominal duty as the land transferred to her only comprises of land she owned before subdivision (lot 2).

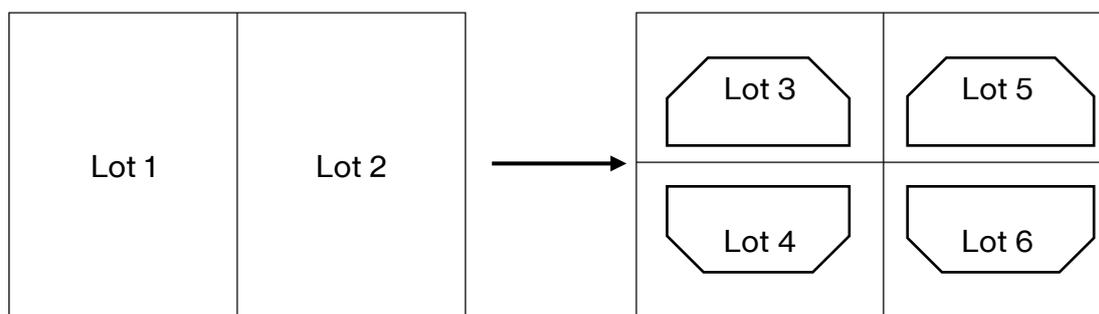
The transfer of land relating to lots 3 and 4 have not yet been prepared as John is currently overseas. Therefore, at the time lot 5 is re-transferred, the land retained by Adam (lots 3 and 4) will not be charged with duty because the parties confirm that lots 3 and 4 are being held by Adam for re-transfer. When they are re-transferred, the transfer of lots 3 and 4 will be assessed for duty at the nominal rate plus additional duty for that part of lot 4 that was originally part of Jane's land in lot 2.

Strata plan subdivisions

10. Section 120D of the Duties Act excludes multi-level strata schemes from the duties concession. This is because it is not possible to determine if each person receives the same land back after the subdivision.
11. Provided the conditions of section 120A of the Duties Act are met, transactions to facilitate a subdivision of land into a single tier strata scheme will be eligible for nominal duty. A single tier strata scheme is defined in the STA⁹ to mean a strata scheme in which no lot, or part of a lot, exists above or below another lot.
12. The Commissioner will consider the facts and circumstances of each transaction when determining whether the land will be subdivided by registration of a strata plan or is a strata scheme for the purposes of section 120D of the Duties Act.

Example 8 – Subdivision by single-tier strata plan

As in example 1, John and Jane wish to subdivide their land to create four new lots which will be re-transferred following the subdivision. However, the subdivision will be completed by registration of a strata plan for a single tier strata scheme, on which each lot will be defined by a two-story townhouse with surrounding land connected to the lot.



To facilitate the subdivision, Jane and John transfer the lots into common ownership by executing two transfers of land. John transfers lot 1 to Jane and himself as tenants in common in equal shares, and Jane transfers lot 2 to John and herself as tenants in common in equal shares.

The transfers of lots 1 and 2 are lodged for duty assessment with the approved plans of subdivision. John and Jane also lodge two re-transfers of land to transfer lots 3 and 4 to John, and lots 5 and 6 to Jane.

The Commissioner is satisfied the transfers of lots 1 and 2 are only for the purposes of subdividing the land by way of registering a strata plan for a single-tier strata scheme, and there will be a re-transfer of land back to John and Jane after the subdivision.

The transfers of lots 1 and 2 are assessed for nominal duty, as are the re-transfers.

⁹ Before and after the commencement of the Strata Titles Amendment Act.

Example 9 - Conversion of a strata lot to a lot on a deposited plan

An existing strata plan consists of 30 lots in a multi-story residential apartment building and a large single lot which remains undeveloped. John owns the undeveloped lot and wishes to extract his lot from the strata plan to convert it to a single lot on a deposited plan.

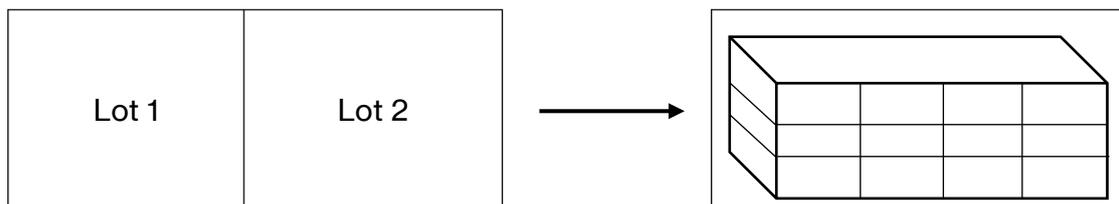
To facilitate the conversion of the undeveloped lot, John transfers his lot to the strata company so it becomes part of the common property on the strata plan. The strata company then transfers the undeveloped lot back to John but retains a small portion of the lot as common property. This transfer removes the lot from the strata plan to the deposited plan allowing for the creation of a new freehold title.

The Commissioner is satisfied that the subdivision of the lot is not excluded from qualifying for nominal duty as the subdivision is not effected by the registration of a strata plan.

The transfers of the lot to and from John are charged with nominal duty because the Commissioner is satisfied the transfers are solely to subdivide the land and the lot John receives back comprises land he originally owned. The portion of land retained by the strata company is a deemed transaction and is charged with duty.

Example 10 - Land transferred to facilitate subdivision of a multi-tiered strata plan

John and Jane wish to amalgamate their lots and create a four-storey residential apartment building. Following subdivision, John and Jane will distribute the new lots between themselves so that they receive land of an equal value.



To facilitate subdivision of the land, Jane and John transfer the lots into common ownership by executing two transfers of land. John transfers lot 1 to Jane and himself as tenants in common in equal shares, and Jane transfers lot 2 to John and herself as tenants in common in equal shares.

John and Jane then complete the subdivision by way of registration of the strata plan. After registration of the strata plan, half the newly created lots are transferred to John and the other half are transferred to Jane.

Nominal duty does not apply to the transfer into common ownership to facilitate the subdivision and the transfers after subdivision because the strata plan is not a single-tiered strata plan.

The transfers of lots 1 and 2 are assessed for duty on the greater of the unencumbered value of the land or consideration paid for:

- the transfer of a 50 per cent interest in lot 1 that John transfers to Jane and
- the transfer of a 50 per cent interest in lot 2 that Jane transfers to John.

John and Jane can apply for duty relief on the transfer of the newly created lots into their own names following subdivision under the partition provisions in section 39 of the Duties Act.

Requirement to lodge re-transfer of land

13. A re-transfer of land charged with nominal duty must be lodged for registration under the TLA within five years of the date the first transaction was registered. If this does not occur, nominal duty under section 120A of the Duties Act will no longer apply to:
 - 13.1 the transfers to facilitate the subdivision and
 - 13.2 any re-transfers of land as a result of the subdivision.
14. The Commissioner will reassess the transactions on the greater of the consideration for the transaction or the unencumbered value of the land the subject of the transaction, unless another relief provision applies. A valuation of the land will be required as at the date of the original transaction and re-transfer (if applicable).

Example 11 – Re-transfer of land not registered within timeframes

As in example 1, John and Jane transfer their lots into common ownership to subdivide the land into four lots, which will be re-transferred to them individually following the subdivision of the land. The transfers of lots 1 and 2 into John and Jane’s names as tenants in common were assessed for nominal duty and registered with the Registrar of Titles (Landgate) on 1 July 2019.

The re-transfers of land for lots 3, 4, 5 and 6 were assessed for nominal duty on the basis that John would receive lots 3 and 4 and Jane would receive lots 5 and 6. However, the re-transfers were not lodged for registration with Landgate by 1 July 2024. Therefore, the title to all the newly created lots has remained in the name of John and Jane as tenants in common in equal shares.

The Commissioner issues a reassessment on the greater of the unencumbered value of the land or the consideration for:

- the transfer of a 50 per cent interest in lot 1 that John transfers to Jane
- the transfer of a 50 per cent interest in lot 2 that Jane transfers to John.

The re-transfers will also be reassessed, with nominal duty chargeable on the re-transfers under section 39 of the Duties Act as a partition of jointly held property. Where the re-transfers are not carried into effect, they will be reassessed as cancelled transactions that are exempt under section 107 of the Duties Act.

15. On application, the Commissioner may extend the time to register a re-transfer of land. When considering whether to extend the time beyond five years, the Commissioner will consider:
 - 15.1 whether approvals (conditional or not) have been granted and the progress of the subdivision to date
 - 15.2 the size and scale of the subdivision
 - 15.3 factors that may cause a delay in completing the subdivision and re-transfer, including –
 - 15.3.1 financing of the subdivision
 - 15.3.2 subdivision conditions imposed and any complexities in satisfying them and
 - 15.3.3 approvals from relevant authorities

- 15.4 whether there has been any partial re-transfer of land to date
 - 15.5 the date the subdivision is expected to be completed and the re-transfer to take effect and
 - 15.6 whether any previous extension of time was allowed to register the re-transfer.
16. A taxpayer can apply in writing to request an extension of the time to register a re-transfer of land. Applications should be made within five years of the date the original transaction was registered and include the reasons they are seeking an extension along with all relevant supporting evidence.
17. The Commissioner may impose conditions as part of extending the date, such as including a date the re-transfer must be lodged for registration with the Registrar of Titles.

Transfers to facilitate subdivisions where there will be no re-transfer

18. Nominal duty does not apply to land transferred to facilitate a subdivision that will not involve a re-transfer of the new lots. Examples include where:
- 18.1 land is transferred to achieve unity of title for subdivision purposes and is then subdivided and sold without a re-transfer, regardless of whether the proceeds of sale are distributed proportionately to the original transferors or
 - 18.2 land is transferred to facilitate a subdivision and is then sold to another person who completes the subdivision.

Partitioning of land following subdivision

19. If nominal duty applies to a transfer to facilitate a subdivision, the re-transfers after subdivision are not subject to the partition provisions in section 39 of the Duties Act.¹⁰

Example 12 - Partitioning of property

As in example 1, John and Jane contribute their own land to facilitate a subdivision. Following the subdivision, John and Jane lodge a Form 22 disposition on subdivision statement which has the effect of creating lots 3, 4, 5 and 6 on a survey-strata plan, with lots 3 and 5 acquired by John and lots 4 and 6 acquired by Jane. John and Jane have effectively 'swapped' part of their land, but both end up with lots of equal value.

John and Jane apply for nominal duty relief under section 39 of the Duties Act on the basis that the jointly held land is being partitioned between the owners and none of the owners are receiving an excess value entitlement.

To facilitate subdivision, the transfer of lot 1 from John and the transfer of lot 2 from Jane into common ownership was assessed for nominal duty under section 120A of the Duties Act.

Therefore, nominal duty cannot apply to the subsequent transfer under the partition provisions.

However, nominal duty will apply to the extent that John and Jane receive those parts of their original land back.

¹⁰ Duties Act s 39(3).

Foreign transfer duty

20. A subdivision transaction involving a foreign person acquiring an interest in residential land will be exempt from foreign transfer duty when the transaction is charged with only nominal duty under these provisions.
21. If duty is charged on a subdivision transaction other than at the nominal rate, foreign transfer duty will also apply to the transaction to the same extent.

Reassessment timeframes

22. If the conditions of sections 120A – 120E are met, a taxpayer may apply for a reassessment of duty at the nominal rate within five years of the date of the original assessment notice for the transaction.¹¹
23. There is no time limit on when the Commissioner must reassess a nominal duty transaction for full duty because a re-transfer was not lodged as required.¹²

Date of Effect

This Commissioner's practice takes effect from 17 July 2019.

Nicki Godecke
COMMISSIONER OF STATE REVENUE

17 July 2019

Document History

Document	Issued	Dates of effect	
		From	To
DA 47.0	17 July 2019	17 July 2019	Current

¹¹ Taxation Administration Act 2003 s 17(1).

¹² Duties Act s 120A(4).