



DUTIES Commissioner's Interpretation of Consideration in Relation to Transfers

This revenue ruling applies only to transfers to self-managed superannuation funds in accordance with section 122(1) of the *Duties Act 2008* (Duties Act).

Introduction

1. This revenue ruling provides the Commissioner's interpretation of *consideration* as referred to in section 122(1) of the Duties Act.

Background

2. Section 122(1) of the Duties Act provides that nominal duty is chargeable on a *relevant superannuation transaction* if there is, or will be, consideration for the transaction.
3. Under section 122(2) of the Duties Act, a *relevant superannuation transaction* is a reference to a transfer of, or an agreement for the transfer of, *dutiable property* by a person (the transferor) to a trustee, or a custodian of a trustee,¹ of an *approved superannuation fund*. In order to be considered an *approved superannuation fund*:
 - (a) either the transferor can be the only member of the superannuation fund, or the property can only be held in the superannuation fund specifically for the transferor so that the property cannot be pooled with the contributions or other assets of another member and no other member can obtain an interest in the property and
 - (b) the property is to be held in the superannuation fund to be provided to the transferor as a retirement benefit.
4. *Dutiable property* is defined in section 15 of the Duties Act as including land in Western Australia, a right, a chattel in Western Australia or a Western Australian business asset.
5. For the purposes of section 122 of the Duties Act, the term *property* is defined as meaning, and including any net income from, either the dutiable property the subject of a relevant superannuation transaction or, if the property is sold so that the proceeds can be provided to the transferor as a retirement benefit, those proceeds. In addition, property includes any income retained by a trustee of a superannuation fund while legal ownership of the property is held by a custodian of a trustee of the fund.
6. Section 3 of the Duties Act provides that *consideration* can be monetary or non-monetary.

¹ The application of nominal duty to transfers to a custodian of a trustee was introduced by the *Taxation Legislation Amendment Act (No. 3) 2015* with effect from 27 May 2015.

7. In accordance with findings of the High Court of Australia,² the obligation to provide the contributing member of the superannuation fund with the rights and benefits to which he or she would in due course become entitled under the rules of the fund, constitutes consideration.

Ruling

8. Where property is transferred to a self-managed superannuation fund in accordance with section 122 of the Duties Act, the rights and benefits which the transferor would in due course be entitled to receive under the rules of the superannuation fund constitute the consideration for the transfer or agreement to transfer.
9. The Commissioner of State Revenue will have regard to such rights and benefits, regardless of whether or not there is any monetary consideration for the transfer, when making a determination for nominal duty.

Ruling History

Revenue Ruling	Issued	Dates of effect	
		From	To
DA 17.0	19 June 2015	12 August 2014	Current

² *Cook v Benson* (2003) 214 CLR 370 and *Australasian Annuities Pty Ltd (in liq) v Rowley Super Fund Pty Ltd* [2015] VSCA 9.