



No Double Duty Transactions

Sections 41 and 42 of the *Duties Act 2008*

As at 25 October 2021

Duty will not be charged twice on the same transaction if¹

- duty was chargeable on a transaction such as a contract for sale of land and
- another transaction, such as a transfer of land or declaration of trust, is in conformity with the initial transaction.

The Commissioner will decide which transaction is most applicable to charge with duty and which to endorse for no double duty (NDD).²

If a transaction has already been endorsed for foreign transfer duty, generally it will not be chargeable again on the subsequent transfer.³ However, foreign transfer duty may apply to an NDD transaction if the transferee is a foreign person and the agreement was not endorsed for foreign transfer duty. See the [‘Foreign Transfer Duty’](#) fact sheet for more information.

Example 1

John Smith, who is a foreign person, enters into a contract to purchase land from Jane Doe. Duty is paid and the contract is duty endorsed.

The transfer of land describes the same property to be transferred from Jane Doe to John Smith.

Because the contract is already endorsed for transfer duty and foreign transfer duty and the transfer is in conformity with the contract, the transfer of land is endorsed for NDD.

Transfers to a person related to the purchaser

NDD applies when the transferee on a transfer of land is related to the purchaser named on the agreement if

- (a) the purchaser and the transferee are related⁴ when liability for duty on the agreement arises (generally the date the agreement is executed) and
- (b) the agreement is duty endorsed and
- (c) the same rate of duty would otherwise apply to both transactions.⁵

See the [‘Substituted Transferees’](#) fact sheet for more information.

¹ Duties Act s 42.

² Duties Act s 41.

³ Duties Act s 205Q.

⁴ As defined in Duties Act s 43.

⁵ Duties Act s 42(2).

Example 2 – NDD relief available

Mary Jones enters into a contract to purchase land in her own name. Before settlement, Mary decides the land should be held in a corporate entity. She lodges a transfer of land naming MJ Assets Pty Ltd as the transferee as well as a substituted transferee application.

At the date the contract was entered into, Mary and her sister held all the shares in MJ Assets Pty Ltd.

The transfer is endorsed for NDD because Mary was a shareholder of the company at the date of the contract and was related to the only other shareholder.

Example 3 – NDD relief available

Mary Jones, a permanent resident, enters into a contract to purchase land. Before settlement, Mary decides she wants to jointly own the land with her sister, Diana, a foreign person. She lodges a transfer of land naming Mary and Diana as the transferees in equal shares as well as a substituted transferee application.

Since Mary and Diana are related, the transfer is endorsed for NDD on the transfer duty portion. However, foreign transfer duty will apply to the transfer on the interest acquired by Diana, the foreign person, since the contract was not endorsed for foreign transfer duty.

Example 4 – NDD relief available

RS Pty Ltd enters into a contract to purchase land as trustee for the Riley S Superannuation Fund. Before settlement, Riley decides that he would like to acquire the land in his personal capacity. The transfer names Riley as the transferee.

The transfer is endorsed for NDD because Riley was the sole shareholder of RS Pty Ltd at the date of the contract.

Example 5 – No NDD relief available

Oliver Walker enters into a contract to purchase land in his own name. Before settlement, Oliver decides the land should be held for his family trust.

The transfer names Walker Pty Ltd as the transferee. Walker Pty Ltd is acting in the capacity as trustee for the Walker Family Trust.

Duty is chargeable on both the agreement and the transfer because a transferee who is a trustee of a discretionary trust is not related to the purchaser.

Transaction records not in conformity

NDD only applies to the extent the transfer is in conformity with the agreement. If the purchasers under the agreement differ from the transferees named on the transfer with no qualifying relationship, or their shares on the transfer are different, transfer duty is chargeable to the extent of the difference.⁶

⁶ Duties Act s 42(3).

Example 6 – Partial NDD relief available

Jack and Jill are friends who enter into a contract to purchase land as tenants in common in equal shares. Duty is paid and the contract is duty endorsed.

Before settlement, they decide to hold the land in unequal shares. They submit a transfer of land providing the transferees as Jack with 10 shares and Jill with 90 shares.

The transfer of land is chargeable with duty on the difference in the purchasers' shares. In this example, Jill acquired 40 of Jack's shares.

NDD is applied to 60% of the transfer, comprising of Jack's original 10% interest and Jill's original 50% interest. Jill's additional 40% acquisition is chargeable with duty on the transfer.

Example 7 – Partial NDD relief available

John enters into a contract to purchase land. Before settlement, the contract is varied to name John and his friend, Jack, as the buyers. Duty on the contract is paid and the contract is duty endorsed. The transfer of land names John and Jack as the transferees.

Even though the transfer was in conformity with the varied contract, the transfer is chargeable with duty to the extent of the difference between the named purchaser when the contract was executed, and the transferees on the transfer of land.

NDD applies to the 50% interest transferred to John, as duty was paid on the contract. Duty is charged on the 50% interest acquired by Jack, being the greater of 50% of the unencumbered value of the property or 50% of the consideration paid under the contract.

Transfers to a trustee of a bare trust or unit trust

NDD applies when the transferee is the purchaser who is an individual acting as a trustee of:

- (a) a unit trust scheme if they are either the sole unit holder or a unit holder who is related to each of the other individual unit holders or
- (b) a bare trust if the purchaser and beneficiary are both individuals and related to each other.⁷

Example 8

Adam enters into a contract to purchase land. He pays duty on the contract which is then duty endorsed.

Before settlement, Adam decides the property should be held in his capacity as trustee for the White Unit Trust of which Adam and his wife are the only unit holders.

The transfer of land names the transferee as Adam White.

The transfer of land is endorsed for NDD.

⁷ Duties Act s 42(4B).

Transfers where the purchaser was acting as agent of the transferee

If the person named as purchaser in the agreement was the agent of the transferee at the time the agreement was made, the subsequent transfer to the transferee will be endorsed for NDD.⁸

See Revenue Ruling DA 7 '[Transfer under agency relationship where the transferee on the transfer differs from the purchaser named in the agreement to transfer](#)' for more information about transfers under agency relationship.

See the [Duties Information Requirements](#) for the supporting documents that must be provided.

Example 9 – NDD relief available

Sue enters into a contract to purchase land, acting as agent for Jonathan. The agency relationship is disclosed on the contract. Duty is paid and the contract is duty endorsed.

The transfer of land names Jonathan as the transferee.

The transfer of land is endorsed for NDD.

Example 10 – No NDD relief available

Richard enters into a contract to purchase land. There is no agency relationship disclosed on the contract. Duty is paid and the contract is duty endorsed.

The transfer of land names Peter as the transferee. Peter and Richard are not related. Richard claims he was acting as agent for Peter at the time the contract was entered into.

Unless Peter can provide evidence to show the agency relationship existed when the contract was entered into, duty is also charged on the transfer of land on the greater of the unencumbered value of the property or the consideration paid (if any).

Intention to transfer to a corporation yet to be incorporated

If the transferee is a newly formed or dormant corporation that is not acting as a trustee, and the purchaser entered into the agreement with the intention to transfer the property to that corporation, duty will not be charged on the transfer. However, the purchaser must show that steps were being taken to incorporate the company or purchase shares in the dormant company at the time of the agreement.⁹

See Commissioner's Practice DA 35 '[Duties – Transfers of Western Australian Business Assets](#)'.

See the [Duties Information Requirements](#) for the required supporting documents.

⁸ Duties Act s 42(4).

⁹ Duties Act s 42(5).

Example 11 – NDD relief available

The purchaser on a contract to purchase commercial land is named as ‘Joe *on behalf of a company yet to be incorporated*’. Duty is paid and the contract is duty endorsed.

The transfer of land names the transferee as Bridgetown Construction Pty Ltd.

Supporting documents show that steps were being taken to incorporate the company Bridgetown Construction Pty Ltd at the time the contract was entered into.

The transfer of land is endorsed for NDD.

Example 12 – No NDD relief available

The purchaser on a contract to purchase land is named as ‘Reece *on behalf of a company yet to be incorporated*’. Duty is paid and the contract is duty endorsed.

The transfer of land names the transferee as Smith and Sons Pty Ltd, acting as trustee for the Smith and Sons Family Trust.

Although supporting documents show that steps were being taken to incorporate Smith and Sons Pty Ltd when the contract was entered into, NDD does not apply when a purchaser transfers property to that company if it is acting as trustee of a trust.

Duty is chargeable on the transfer of land on the greater of the unencumbered value of the property and the consideration paid (if any).

Certain transfers to become managed investment scheme property

NDD applies to a transfer of property from a vendor under a duty endorsed agreement to a managed investment scheme if the agreement will be terminated if the scheme is not established, and the Commissioner is satisfied that:

- the managed investment scheme has been or will be established by a public subscription offer and
- before the managed investment scheme was established, the purchaser entered into the agreement with the intention the property would become scheme property.¹⁰

Intervening transaction between agreement and transfer

If there is an agreement to transfer property, and a second transaction takes place over the same property before the transfer is settled, the transfer that gives effect to the first and second transactions is endorsed for NDD.¹¹

Example 13

Thomas enters into a contract to purchase land from Lily (first agreement). Duty is paid and the first agreement is duty endorsed.

Before settlement, Thomas enters into a contract to sell the same land to Peter (second agreement). Duty is paid and the second agreement is duty endorsed.

A transfer of land, executed between Lily as transferor and Peter as the transferee, is endorsed for NDD.

¹⁰ Duties Act s 42(7).

¹¹ Duties Act s 42(8).

Transfers pursuant to declaration of trust

A transfer of property to the trustee of a trust will be endorsed for NDD if it is made pursuant to:

- a duty endorsed declaration of trust or
- a declaration of trust that is not chargeable with duty under section 42(11).¹²

Example 14

Yu owns property and decides she will now hold it on trust for her sister Mei. Yu executes a declaration of trust which provides that Yu is holding the property as bare trustee for Mei as the sole beneficiary. Duty is assessed and paid on the declaration of trust based on the unencumbered value of the property.

One year later, Yu transfers the land to Mei, which is endorsed as NDD.

Declarations of trust that declare the same trust as the agreement to purchase

If an agreement to purchase discloses the purchaser as trustee of a trust, a subsequent declaration of trust identifying the same trust arrangement as on the contract will be endorsed for NDD.¹³

Example 15

Naomi, acting as trustee for the Clarkson Family Trust, enters into a contract to purchase land. Duty is paid and the contract is duty endorsed.

A transfer of land is executed naming Naomi as the transferee. A declaration of trust, executed on the same day of the contract, declares Naomi is holding the same property on trust for the Clarkson Family Trust.

The transfer of land is endorsed for NDD under section 42(1) and the declaration of trust is endorsed for NDD under section 42(10).

Acknowledgements of trust and subsequent declarations of trust

Duty is not chargeable on a declaration of trust if the declaration replaces an existing duty endorsed declaration of trust and both declarations declare the same trusts, beneficiaries and dutiable property.¹⁴

Example 16

Michael, acting as trustee for the Avery Family Trust, enters into a contract to purchase land. The contract notes the buyer as "*Michael ATF the Avery Family Trust*". Duty is paid and the contract is duty endorsed.

After settlement, Michael executes a declaration (original declaration) of trust restating the trust relationship as disclosed on the contract.

¹² Duties Act s 42(9).

¹³ Duties Act s 42(10).

¹⁴ Duties Act s 42(11).

Six months later, Michael subdivides the land and registers the three resulting lots in his name. He executes a declaration of trust (replacement declaration) declaring that the three resulting lots are held by him as trustee for the Avery Family Trust.

Both declarations are endorsed for NDD as the subject property of both declarations is substantially the same and the beneficiary is the same.

Transfers resulting from a vesting of dutiable property

Duty is not chargeable on a transfer of property resulting from a vesting of that property, either by law or statute, if the vesting document is duty endorsed.¹⁵

Example 17

The Family Court of Western Australia orders a property to be transferred from John to Jane. John and Jane sign a transfer of land to effect the transfer.

The court order is endorsed for nominal duty in accordance with section 131, and the transfer of land is endorsed for NDD.

Transfers resulting from a foreclosure order

A transfer of property will be endorsed for NDD if it is made under an order for a foreclosure of a mortgage that has been duty endorsed.¹⁶

Transfers in accordance with a partnership acquisition

A transfer of property will be endorsed for NDD if it is in accordance with a partnership acquisition that has been duty endorsed.¹⁷

Transfers of interests in mining tenements in accordance with farm-in agreements

A transfer, or agreement for the transfer, of an interest in a mining tenement under a farm-in agreement will be endorsed for NDD if the exploration amount under the agreement has been expended and the farm-in agreement is duty endorsed.¹⁸

How to apply for NDD

Apply electronically if the transaction records were lodged using our [Online Services](#). Lodge all other NDD requests by post or in person.

Lodge a request for NDD on a transaction record:

- together with the primary transaction record
- after the primary transaction record is lodged or
- after the primary transaction record is assessed, paid or endorsed.

¹⁵ Duties Act s 42(12).

¹⁶ Duties Act s 42(13).

¹⁷ Duties Act s 42(14).

¹⁸ Duties Act s 42(15).

When applying, include:

- the transaction record that is or will be duty endorsed, such as the contract for sale, if not yet provided
- the transaction record, such as the transfer of land, for which NDD is sought
- [Form FDA41 'Foreign Transfer Duty Declaration'](#), if the liable person on the NDD transaction record is different to the liable person on the primary transaction record
- supporting information and application forms (where relevant).

A document will only be endorsed for NDD after duty on the primary document has been paid or exempted.

For immediate processing of routine NDD requests, see [Revenue Ruling DA 1 'Assessment Services and Procedures'](#).

If the duty endorsed transaction record is missing, see the [Duties Information Requirements](#).

| 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.