



## Superannuation Transactions

Sections 121 – 127 of the *Duties Act 2008*

As at 1 July 2022

A transfer of, or agreement for the transfer of, dutiable property to a superannuation fund, between superannuation funds, or from a superannuation fund to a member of the fund, may be chargeable with nominal duty under the *Duties Act 2008* (Duties Act) if certain conditions are satisfied.

For transactions involving the transfer of, or agreement for the transfer of, dutiable property to a superannuation fund or between superannuation funds, lodge the transaction record and Form FDA15 '[Application For Nominal Duty – Superannuation Fund Transactions](#)' with the Commissioner of State Revenue.

An application form is not required to be lodged if the transaction relates to the transfer of, or agreement for the transfer of, dutiable property from a superannuation fund to a member of the fund.

A transfer of dutiable property to a superannuation fund for consideration can be self assessed for nominal duty through Revenue Online by an approved agent.

### **Superannuation funds**

For the purposes of the Duties Act, the following bodies are superannuation funds:

- a complying approved deposit fund
- a complying superannuation fund
- an eligible rollover fund
- a pooled superannuation trust

Definitions of the above bodies are included in the Duties Act and are taken from the *Superannuation Industry (Supervision) Act 1993* (Cth).

### **Transfer to a superannuation fund for consideration**

For a transfer of, or an agreement for the transfer of, dutiable property to a trustee or custodian of a superannuation fund, nominal duty will be chargeable if:

- consideration is paid, or will be paid, for the transaction
- either the transferor is the only member of the superannuation fund, or the property is held by the fund on behalf of the transferor such that no other member can obtain an interest in the property and
- the property is held in the fund only to be provided to the transferor as a retirement benefit.

## **Subsequent liability**

A subsequent liability may arise if nominal duty was charged on a transaction under these provisions, but later an event takes place that means one or more of the conditions cease to be satisfied (the event). If the custodian or trustee of a superannuation fund still holds any dutiable property that was charged with nominal duty on its acquisition, the event will be taken to be a transfer of the dutiable property and will be chargeable with full duty. The trustee or custodian of the superannuation fund must lodge a transfer duty statement for the event within two months of the event.

Contravention of this requirement is an offence which carries a maximum penalty of \$20,000.

## **Transfer to a superannuation fund without consideration**

A transfer of, or agreement for the transfer of, dutiable property to the trustee of an employer-sponsored superannuation fund (as defined by the *Superannuation Industry (Supervision) Act 1993* (Cth)) is chargeable with nominal duty if no consideration is paid for the transfer.

## **Transfer between superannuation funds without consideration**

A transfer of dutiable property from the trustee or custodian of one superannuation fund to another, or between the trustee and the custodian of the trustee of a superannuation fund, may be chargeable with nominal duty if:

- the transfer is in connection with a person ceasing to be a member of, or otherwise losing their entitlement to a benefit from, a superannuation fund or an entity that was a superannuation fund in the 12 month period prior to the transfer
- the transfer is in connection with a person becoming a member of, or otherwise gaining an entitlement to a benefit from, a superannuation fund or an entity that will be a superannuation fund within 12 months of the transfer and
- no consideration is paid for the transfer.

If the entity that is receiving the property is not a superannuation fund at the time liability to duty on the transfer arises, the application must be accompanied by a statutory declaration from the trustee (or a director of the trustee if it is a corporation) that in the opinion of the trustee (or director), the entity will be a superannuation fund within 12 months of the property being transferred.

The general rate of transfer duty will apply if the superannuation fund is a pooled superannuation trust.

## **Transfer between trustee and custodian of a superannuation fund**

Nominal duty is chargeable on a transfer of, or agreement for the transfer of, dutiable property between a trustee of a superannuation fund and a custodian of that fund, or between custodians of a trustee of a superannuation fund, providing there is no change in the beneficial ownership of the property.

Nominal duty is also chargeable if the entity is not a superannuation fund at the time of the transaction, but will be within 12 months of the property being transferred. In this case, the application must be accompanied by a statutory declaration from the trustee (or a director of the trustee if it is a corporation) that, in the opinion of the trustee (or director), the entity will be a superannuation fund within 12 months of the property being transferred.

## Transfer from a superannuation fund to a member

An application form is not required to be lodged for a transfer from a superannuation fund to a member. In these circumstances, lodge the transaction record for the dutiable transaction with a covering letter, a copy of the financial accounts for the superannuation fund showing the member entitlements as at the transaction date, and a copy of the deed establishing the superannuation fund.

Nominal duty is chargeable on a transfer of, or agreement for the transfer of, dutiable property from the trustee of a superannuation fund to either a member of the fund or, if the member has died, a dependant of or the legal personal representative of the member, if:

- the member was a member of the fund when the property was acquired and
- the value of the property transferred does not exceed the member's entitlement in the fund and
- there is, or will be, no consideration for the transfer or agreement.

If the value of the property transferred exceeds the member's entitlement in the fund, the general rate of transfer duty is chargeable on the amount by which the unencumbered value of the dutiable property exceeds the value of the member's entitlement in the fund.

For example, if a member of a superannuation fund were to receive land from the fund with an unencumbered value of \$100,000 and the member's interest in the fund was \$75,000, the dutiable value for the transaction would be \$25,000.

## Other transactions

Other dutiable transactions involving superannuation funds will be chargeable with duty at the general rate.

| <b>Contact RevenueWA</b> |  |                |   |
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| <b>Web Enquiry</b>       | <a href="http://www.osr.wa.gov.au/DutiesEnquiry">www.osr.wa.gov.au/DutiesEnquiry</a> | <b>Website</b> | <a href="http://WA.gov.au">WA.gov.au</a>                        |
| <b>Office</b>            | 200 St Georges Terrace<br>Perth WA 6000  | <b>Phone</b>   | (08) 9262 1100<br>1300 368 364<br>(WA country landline callers) |
| <b>Postal</b>            | GPO Box T1600<br>Perth WA 6845   |                |   |

**Note:** This fact sheet provides guidance only. Refer to the *Duties Act 2008* for complete details.