

# No Double Duty Transactions

Section s 41 and 42 of the Duties Act 2008

As at 25 October 2021

Duty will not be charged twice on the same transaction if<sup>1</sup>

- x duty was chargeable on a ~~the~~ transaction has already been endorsed for foreign transfer duty, general  
chargeable again on the subsequent transfer .

<sup>3</sup> 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.



#### 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

## 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.<sup>8</sup>

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 (e)122 (ya7 (id)-5 EMC 7.2 (t)TJ 0 Tc (i6 1.815 0 Td ( )Tj -0.009 T470.124 T a)-9.2 (c4

#### 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 :

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

#### 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.<sup>11</sup>

#### 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.

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<sup>10</sup> Duties Act s 42(7).

<sup>11</sup>

Transfers pursuant to declaration of trust

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.<sup>15</sup>

#### Example 17

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When applying, include:

- x the transaction record that is or will be duty endorsed, such as the contract for sale , if not yet provided
- x the transaction record, such as the transfer of land, for which NDD is sought
- x [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
- x 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	<a href="http://www.osr.wa.gov.au/DutiesEnquiry">www.osr.wa.gov.au/DutiesEnquiry</a>	Website	<a href="http://WA.gov.au">WA.gov.au</a>
Office	200 St Georges Terrace Perth WA 6000	Phone	(08) 9262 1100 1300 368 364 (WA country landline callers)
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Note : This fact sheet provides guidance only. Refer to the Duties Act 2008 for complete details.