



Office of State Revenue
NSW TREASURY

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Revenue Ruling No. DUT 10

Transfers Pursuant to an Agreement for the Sale or Transfer of Dutiable Property

Ruling history

| Ruling no. | Issued date | Dates of effect | | Status |
|------------|---------------|-----------------|---------|--------|
| | | From | To | |
| DUT 10 | 09 March 1999 | 01 July 1998 | current | |

Preamble

- Section 18 of the *Duties Act 1997* charges fixed duty on certain transactions or instruments in circumstances that might otherwise result in double duty.
- Section 18 (2) provides that the duty chargeable in respect of a transfer of dutiable property made in conformity with an agreement for the sale or transfer of the dutiable property is \$2¹ if the duty chargeable in respect of the agreement has been paid.
- Section 18 (3)² provides that the duty chargeable in respect of a transfer of dutiable property that is not made in conformity with an agreement for the sale or transfer of the dutiable property is \$2³ if:
 - the duty chargeable in respect of the agreement has been paid, and
 - the transfer would be in conformity with the agreement if the transferee was the purchaser under the agreement; and
 - the purchaser under the agreement and the transferee under the transfer were related persons at the time the agreement was entered into.
- This ruling specifies the circumstances in which a transfer will be liable to the fixed duty of \$2⁴ under section 18 (2) or (3), and the information required by the Chief Commissioner when assessing such a transaction.

Ruling

Transfers made in conformity - section 18 (2)

- As a general statement, a transfer will be in conformity with an agreement for sale or transfer if:
 - the property, the subject of the transfer, is the same as the property agreed to be sold or transferred; and
 - the consideration for the transfer is the same as the purchase price under the agreement, and
 - the transferor is the vendor under the agreement; and
 - the transferee is the purchaser named in the agreement.

¹ This duty is \$10 if executed on or after 1 January 2009

² Section 18(3) was amended on 27 June 2005 with the inclusion of the following paragraph:

(d) at the time the agreement was entered into, and at the completion or settlement of the agreement:

- the purchaser under the agreement and the transferee under the transfer are related persons, except as provided by subparagraph (ii), or
- if the purchaser purchased as a trustee, the transferee and the beneficiary are related persons.

³ This duty is \$10 if executed on or after 1 January 2009

⁴ see footnote 3

6. Section 18 (2) of the Duties Act uses the term 'transfer of dutiable property made in conformity with an agreement' In *Lake Victoria Ltd v Commissioner of Stamp Duties* (1949) 49 SR (NSW) 262, Jordan CJ discussed the meaning and construction of similar words in section 41 (4) of the *Stamp Duties Act 1920*. His Honour said (at p 265):

A conveyance is not made in conformity with the agreement unless it is made to the purchaser or if the agreement provides that it is to be made not to the purchaser but to some other person, to that person.

7. In *Vickery v Woods* (1951) 85 CLR 336, Dixon CJ made the following comment on Jordan CJ's observations (at 343 - 4):

Jordan CJ distinguishes for the purpose of the application of section 41 (4) (a) the case where the conveyance to a third party is made at the purchaser's direction, from the case of a contract which provides for a conveyance to the purchaser, or if not the purchaser to some other person. In the latter case, I understand His Honour regarded the conveyance as made in conformity with the contract and not chargeable with ad valorem duty ... Clearly enough Jordan CJ was here speaking of a person identified in the contract as opposed to any nominee.

8. A transfer to a person who is not the purchaser named in the agreement will be considered to be in conformity with the agreement in the following circumstances.

- (a) An agreement that states that the property will be transferred to a named person other than the purchaser, or to one of a number of named persons. If ad valorem duty has been paid on the agreement, duty of \$2⁵ is payable on a transfer to that named person or to one of those named persons.
- (b) An agreement that has been novated, with the transfer to the substituted purchaser. If ad valorem duty has been paid on the subsequent agreement created by the novation, duty of \$2⁶ is payable on the transfer. (The liability to duty of the first agreement is considered in Revenue Ruling DUT 011.)
- (c) An agreement with a purchaser acting on behalf of a named company yet to be formed, with the transfer from the vendor to the company after incorporation, without a novation agreement. If ad valorem duty has been paid on the agreement, duty of \$2⁷ is payable on the transfer. When the transfer is lodged for stamping, it must be accompanied by a statutory declaration stating:
- the date of incorporation of the company (ie, indicating whether the company was in existence at the date of the original agreement); and
 - whether the company named in the transfer has undergone a change of name at any time before transfer.
- (d) An agreement with a purchaser acting on behalf of a named unit trust yet to be formed, with the transfer from the vendor to the trustee after establishment of the unit trust, without a novation agreement. (The transfer will be assessed on the same basis as in (b) above.)
- (e) An agreement followed by a further agreement under which the original purchaser is vendor, with the transfer from the original vendor to the ultimate purchaser. If ad valorem duty has been paid on the second agreement (the subsale), duty of \$2⁸ will be payable on the transfer.

⁵ This duty is \$10 if executed on or after 1 January 2009

⁶ see footnote 5

⁷ see footnote 6

⁸ see footnote 7

9. A transfer will **not** be in conformity with an agreement in the following circumstances.
- (a) An agreement with a purchaser acting on behalf of a company to be formed, where the company is not named or identified, and where there is no novation. The transfer to the company will be liable to ad valorem duty.
 - (b) An agreement that is expressed to be with a purchaser or nominee of the purchaser, and the nominee is not identified in any way. A transfer to any person other than the named purchaser will be liable to ad valorem duty unless section 18 (3) applies.

Transfers to related persons - section 18 (3)

10. If a transfer is **not** in conformity with an agreement, \$2⁹ duty will still be payable if the transfer would have been in conformity but for the transferee not being the purchaser under the agreement, provided the purchaser under the agreement and the transferee under the transfer were related persons at the time the agreement was entered into.
11. 'Related person' is defined in the Dictionary to the Duties Act to mean a person who is related to another person in accordance with any of the following provisions:
- (a) natural persons are related persons if:
 - (i) one is the spouse or de facto partner of the other, or
 - (ii) the relationship between them is that of parent and child, brothers, sisters, or brother and sister,
 - (b) private companies are related persons if they are related bodies corporate within the meaning of the *Corporations Law*,
 - (c) a natural person and a private company are related persons if the natural person is a majority shareholder or director of the company or of another private company that is a related body corporate of the company within the meaning of the *Corporations Law*,
 - (d) a natural person and a trustee are related persons if the natural person is a beneficiary of the trust (not being a public unit trust) of which the trustee is a trustee,
 - (e) a private company and a trustee are related persons if the company, or a majority shareholder or director of the company, is a beneficiary of the trust (not being a public unit trust) of which the trustee is a trustee.
12. An application to assess a transfer under section 18 (3) must be accompanied by a statutory declaration stating that the purchaser under the agreement and the transferee under the transfer were related persons at the time the agreement was entered into, and stating the nature of the relationship.

J W Purcell
Chief Commissioner of State Revenue
9 March 1999

⁹ This duty is \$10 if executed on or after 1 January 2009