



## Superannuation Transactions

Sections 121 – 127 of the *Duties Act 2008*

As at 11 July 2016

### Introduction

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, the transaction record for the dutiable transaction should be lodged with the Commissioner of State Revenue and must be accompanied by Form FDA15 '[Application For Nominal Duty – Superannuation Fund Transactions](#)', which is available from the website.

An application form is not required to be lodged where 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

Where there is a transfer of, or an agreement for the transfer of, dutiable property to a trustee, or a custodian of a trustee, of a superannuation fund, nominal duty will be chargeable where the following conditions are satisfied:

- 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 where a transaction has met these conditions and a transaction record for the transaction has been duty endorsed, but at some time later an event takes place that means one or more of the conditions cease to be satisfied ('the event'). If the custodian of a trustee of a

superannuation fund, or superannuation fund, still holds any of the dutiable property that was the subject of the transaction charged with nominal duty, the event will be taken to be a transfer of the dutiable property which is still held as part of the superannuation fund, and will be chargeable with duty. The trustee, or a custodian of the trustee, 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, provided that there is no consideration paid for the transfer. A transfer of, or agreement for the transfer of, dutiable property to the trustee of a self-managed superannuation fund for no consideration will be chargeable with nominal duty if the fund is an employer-sponsored superannuation fund.

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

A transfer of dutiable property from the trustee, or custodian of the trustee, 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, where the following conditions have been satisfied:

- 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 period of 12 months 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.

However, the general or residential rate of transfer duty (as applicable) will apply where 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 the trustee 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, the transaction record for the dutiable transaction must be lodged 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, where the member has died, a dependant of or the legal personal representative of the member, if the following conditions are satisfied:

- 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.

Where the value of the property transferred exceeds the member's entitlement in the fund, the general or residential rate of transfer duty (as applicable) 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 of transfer duty.

### Contact the Office of State Revenue

<b>Office</b>	200 St Georges Terrace PERTH WA 6000	<b>Telephone</b>	(08) 9262 1100 1300 368 364 (WA country STD callers only – local call charge)
<b>Postal</b>	Office of State Revenue GPO Box T1600 PERTH WA 6845	<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://www.osr.wa.gov.au">www.osr.wa.gov.au</a>

**Note:** The information contained in this DUTIES FACT SHEET is issued for guidance purposes only. It is not an exhaustive explanation of the provisions of the *Duties Act 2008* and reference should be made to the Act for complete details.